LAW OF TORTS: Consumer Protection

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Consumer Protection in India: A Brief History

- What does consumer protection law in India seek to achieve?
- Interplay between various Fundamental Rights and Directive Principles of State Policy under the Indian Constitution.
- Sources of consumer law and consumer protection in India.
- Consumer Protection Act, 1986 and Consumer Protection Act, 2019.

Definitions under Consumer Protection Act, 2019 – Sec. 2

“Advertisement” and “Misleading Advertisement”

- Advertisement → “…any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents”.
- Misleading Advertisement → “in relation to any product or service, means an advertisement which—

(i) falsely describes such product or service; or

(ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or

(iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or

(iv) deliberately conceals important information”.

Definitions under Consumer Protection Act, 2019 – Sec. 2

“Consumer”

- Consumer → “buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose”.

Definitions under Consumer Protection Act, 2019 – Sec. 2

"Complainant"

- Complainant → "(i) a consumer; or

(ii) any voluntary consumer association registered under any law for the time being in force; or

(iii) the Central Government or any State Government; or

(iv) the Central Authority; or

(v) one or more consumers, where there are numerous consumers having the same interest; or

(vi) in case of death of a consumer, his legal heir or legal representative; or

(vii) in case of a consumer being a minor, his parent or legal guardian".

Definitions under Consumer Protection Act, 2019 – Sec. 2

"Complaint"

- Complaint → "… any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act, that—

(i) an unfair contract or unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider; (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects; (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency; (iv) a trader or a service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price— (a) fixed by or under any law for the time being in force; or (b) displayed on the goods or any package containing such goods; or (c) displayed on the price list exhibited by him by or under any law for the time being in force; or (d) agreed between the parties; (v) the goods, which are hazardous to life and safety when used, are being offered for sale to the public-- (a) in contravention of standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force; (b) where the trader knows that the goods so offered are unsafe to the public; (vi) the services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety; (vii) a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be".

Definitions under Consumer Protection Act, 2019

"Defect" and "Deficiency"

- **Defect** → "any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly".
- **Deficiency** → "any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes— (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and (ii) deliberate withholding of relevant information by such person to the consumer".

Definitions under Consumer Protection Act, 2019

“Product Liability” and “Harm”

- Product Liability → “the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto”.
- Harm → “in relation to a product liability, includes—

(i) damage to any property, other than the product itself;

(ii) personal injury, illness or death;

(iii) mental agony or emotional distress attendant to personal injury or illness or damage to property; or

(iv) any loss of consortium or services or other loss resulting from a harm referred to in subclause (i) or sub-clause (ii) or sub-clause (iii), but shall not include any harm caused to a product itself or any damage to the property on account of breach of warranty conditions or any commercial or economic loss, including any direct, incidental or consequential loss relating thereto”.

Definitions under Consumer Protection Act, 2019

“Goods” and “Service”

- Goods → “every kind of movable property and includes "food" as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006 (34 of 2006)”.
- Service → “service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service”.

Authorities under the Consumer Protection Act, 2019

- Consumer Protection Council – A largely advisory body at the national and state levels.
- Central Consumer Protection Authority – A hybrid body with regulatory and limited enforcement powers at the national level.
- Consumer Commissions - Adjudicatory bodies at the district, state and national levels with powers of adjudication and enforcement of awards.

Processes and Powers of the Central Consumer Protection Authority

- Investigation wing – a mandatory part of the establishment of the CCPA.
- Investigation of complaints by the CCPA
- Inquiry and investigation may be based on a complaint or *suo motu*.
- Non-binding recommendations of the CCPA.
- Power to refer a matter to another regulator.
- Enforcement and search and seizure powers of the CCPA.

Role of the Consumer Commissions

- Determination of jurisdiction at the district, state and national levels – pecuniary and territorial jurisdiction.
- Who can file a complaint before the Commissions?
- Proceeding before the Commissions:

  - Admission of the complaint

  - Rejection of the complaint

Reference to Mediation by Consumer Commissions

- When can a dispute be referred to mediation?
- Process of mediation under the Consumer Protection Act, 2019:

  - Establishment of consumer mediation cells at all levels.

  - Duty of mediator to disclose certain facts

  - Possible outcomes and procedures thereafter

Appeals

- Appeals are possible against the orders of the consumer commissions at each level.
- Typically, District Commission orders → State Commission → National Commission → Supreme Court of India.

Product Liability

- An application of the principle of no-fault liability / strict liability.
- 2-step test: (a) Cause of action lies in a defective good or service, (b) A ‘harm’ has been suffered from such good or service.
- Complaints may be brought against the manufacturer of the product or, in certain cases, the seller.
- Duties that the manufacturers / sellers have.