

AIM OF THE JOURNAL

Consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer.

-Adam Smith

In 2020, Justice A.M. Khanwilkar highlighted the phrase “*Consumer is the king*”,¹ which underscores the importance of the consumers’ interest. Consumer trust and confidence are the hallmarks of a robust consumer protection mechanism, which forms the foundation of a sound market system.² The advancement of consumer rights requires negation of information asymmetry and unethical business practices, an objective which must guide the future development of consumer laws.

Consumer rights and consumerism have gradually gained importance. Historically, the onus of judging a product’s quality rested on the buyer.³ Even though ancient texts like Manusmriti emphasized ethical trade practices,⁴ the principle of *caveat emptor* (let the buyer beware) prevailed. Eventually, it was realized that reasonable examination by a consumer cannot reveal the inherent defects, especially in complex products,⁵ the knowledge of which is possessed only by the seller. Thus, arose the need for protecting the consumer; and the responsibility was shifted, to some extent, on the seller, laying the foundations of *caveat venditor* (let the seller beware).

In India, certain legislations such as the Indian Penal Code, 1860, the Sale of Goods Act, 1930, the Essential Commodities Act, 1955, the Prevention of Food Adulteration Act, 1954, the Drugs and Cosmetics Act, 1940, among others, constituted the legal framework that catered to consumer protection. Most notably, the provisions of the Sale of Goods Act marked a perceptible shift to *caveat venditor* by introducing the concept of merchantable quality, seller’s skill and judgment.⁶ Consumer rights were formally recognized in India with the Consumer Protection Act, 1986 (“**CPA 1986**”).

The CPA 1986 was a welcome step. It established a holistic structure of grievance-redressal mechanisms and emboldened the consumer through

¹ Branch Manager, Indigo Airlines v. Kalpana Rani, (2020) 9 SCC 424.

² Chapter-1, Manual on Consumer Protection, 2016, UNCTAD, <https://unctad.org/en/PublicationsLibrary/webditcclp2016d1.pdf>, last seen on 12/08/2020.

³ Whitmore v. Orono Pulp & Paper Co., 39 A. 1032, 1036 (Me. 1898).

⁴ Manusmriti, Chapter X, verse 115, <https://www.sacred-texts.com/hin/manu/manu10.htm>, last seen on 12/08/2020.

⁵ Chapter-9, Manual on Consumer Protection, 2016, UNCTAD, <https://unctad.org/en/PublicationsLibrary/webditcclp2016d1.pdf>, last seen on 22/08/2020.

⁶ S. 16, the Sale of Goods Act, 1930.

the introduction of remedies against unfair or restrictive trade practices, hazardous goods, and defective goods inter alia. To spread awareness regarding consumer rights and educate the consumers against prevailing malpractices of the sellers, the Indian Government's launched its noteworthy consumer awareness campaign, "*Jago Grabak Jago*" back in 2005. To adapt to the digital age, the campaign is now being revamped to spread awareness through social media platforms.

The dawn of the 21st century has witnessed drastic changes in the market dynamics, the modus operandi of businesses and the technological landscape.⁷ It has become tough to attribute liability for deficiency in services due to the multiplicity of entities involved in modern-day transactions. To combat new challenges, improved regulatory measures were needed. India drew inspiration from consumer protection legislations in countries like the US, Singapore, France, etc., and from the European Union Directives, and passed the Consumer Protection Act, 2019 ("**CPA 2019**" / "**the Act**") (enforced in 2020⁸). This Act replaced the 33-year-old CPA 1986.

The CPA 2019 has introduced new concepts to protect the consumer, namely criminal liability,⁹ product liability,¹⁰ liability for misleading/ false advertisements,¹¹ mediation for consumer disputes¹² and rules on e-commerce¹³. Provisions for liabilities vis-à-vis consumer protection were spread across different legislations; however, the CPA 2019 has consolidated many of those liabilities for simplification and creation of efficient enforcement machinery. Though criminal as well as product liability have been introduced, it is to be seen whether they act as a roadblock in the ease of doing business, and whether the age of Artificial Intelligence and Robots can be effectively regulated.

Structurally, the CPA 2019 has established a regulatory body in the form of the Central Consumer Protection Authority ("**CCPA**") and has increased the pecuniary jurisdiction of the District, State and National Consumer Protection forums. The CCPA is a centralized structure, introduced for supervision of the tiered consumer protection forums. The measure is perceived to aim at enhancing protection of consumer rights.

⁷ The Consumer Protection Bill, 2019, Statement of Objects and Reasons, https://www.livelaw.in/pdf_upload/pdf_upload-362684.pdf, last seen on 12/08/2020.

⁸ Ministry of Consumer Affairs, Food and Public Distribution, Notification S.O. 2351(E), <https://consumeraffairs.nic.in/sites/default/files/Act%20into%20force.pdf>, last seen on 22/08/2020.

⁹ Chapter VII, The Consumer Protection Act, 2019.

¹⁰ Chapter VI, The Consumer Protection Act, 2019.

¹¹ S. 89, The Consumer Protection Act, 2019.

¹² Chapter V, The Consumer Protection Act, 2019; The Consumer Protection (Mediation) Regulations, 2020.

¹³ The Consumer Protection (E-Commerce) Rules, 2020.

According to the National Consumer Disputes Redressal Commission, over 4.8 lakh consumer cases are pending in the country.¹⁴ The introduction of mediation, as an out-of-court-settlement, is a step in the right direction to allow speedy justice. However, questions as to the application of arbitration procedures or the Online Dispute Resolution (“ODR”) methods for consumer disputes are yet to be resolved.

During the COVID-19 pandemic, instances of misinformation, disinformation and fake news have proliferated. In light of this, the timely introduction of liability for misleading advertisements is an essential safeguard for consumers. Despite these advances, issues like targeted advertisements, unsolicited commercial communications, among others, are likely to outstrip the reach of the existing provisions and impede the realization of their aims.

The definition of terms like ‘consumer’, ‘service’, ‘deficiency’, etc., has been widened; while certain other terms have been added in the CPA, 2019 to make it a holistic legislation. This has increased the ambit for regulation of unethical and restrictive trade practices. However, the Act covers only those services where consideration is involved. This places free public services beyond the scope of the Act, even though such services might pose considerable risks for unsuspecting consumers.

Since 2013, the number of consumer complaints received at the National Consumer Helpline has been exponentially increasing every year.¹⁵ While the E-commerce rules have set the stage for consumer protection in this digital era, numerous concerns yet stand unaddressed; and this may potentially jeopardize the success of regulatory measures. *Can the existing regulatory framework manage to meet the ever-increasing challenges of the Digital Age?* The question warrants immediate attention.

Consumer protection is not a law that acts in a vacuum; rather, its realization and enforcement extend into several fields like environmental law, antitrust laws, intellectual property laws, privacy issues, amongst others. The theme of the World Consumer Rights Day, 2020, “*Sustainable Consumer*”,¹⁶ indicates the importance of global sustainable consumption and stands as a testament to the interdisciplinary nature of consumer law.

The provisions against tying and bundling of services in competition laws, or fair use of copyrights and licensing of patents under the IPR laws are

¹⁴ Statistics, National Consumer Disputes Redressal Commission, <http://ncdrc.nic.in/stats.html>, last seen on 24/08/2020.

¹⁵ Cheating by E-commerce Companies, Unstarred Questions No. 384, Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, <https://164.100.158.235/question/annex/246/Au384.pdf>, last seen on 24/08/2020.

¹⁶ The Sustainable Consumer – World Consumer Rights Day 2020 theme, Consumers International, <https://www.consumersinternational.org/news-resources/news/releases/the-sustainable-consumer-world-consumer-rights-day-2020-theme/>, last seen on 22/08/2020.

certain provisions that indirectly ensure consumer protection. However, there are several anti-competitive practices adopted by different entities which threaten the consumers by disrupting the market system; and thus, there arises a need to take another look at the existing antitrust laws from a consumer's perspective. In a globalized environment connected via digital means, IPR and consumer welfare has become more pertinent than ever.

Moreover, the interplay of the financial sector regulations and consumer protection laws is inevitable, particularly due to the rapid transition to a digital economy. The growing complexity of the transactions involved puts the consumers at risk of exploitation. The entry of FinTech and e-insurance mechanisms creates an entirely new environment for a consumer and their viability needs to be tested. The position of gig workers, prevalent in different sectors like the automobile industry or the food delivery aggregators, needs to be analyzed to assess whether they should be treated as consumers to protect their interest. The rising cases of insolvencies also ring alarm bells for a consumer as money invested in big conglomerates and companies might just be lost on account of an insolvency, whether it be voluntary or involuntary. *Should a consumer be treated as just another creditor? Should consumer redressal proceedings be allowed despite moratorium on other proceedings?*

Besides legislations at the domestic level, there are certain standards and principles adopted at the international level which include the UN Guidelines on Consumer Protection, 2015; Model UNCTAD Manual on Consumer Protection, 2017, among other guidelines. Moreover, there are certain multilateral organizations like the International Consumer Protection Enforcement Network and the ASEAN Committee on Consumer Protection that work at the international level and aim to establish cooperation between nations for consumer protection. However, despite the aforementioned endeavors, standardization and uniformity is yet to be achieved at the international level, especially where cross-jurisdictional issues arise.¹⁷

The recent turn of legislative measures has greatly emboldened the consumer in tackling the new challenges. However, despite adoption of the best practices from different jurisdictions, implementation and realization of the objectives of CPA, 2019 is yet to be tested. *Has the balance been tilted a bit too much in favor of the consumer? Are the existing interpretations and definitions enough to deal with the growing challenges or do they need a fresher outlook? Should a comparative approach be used to mold the present law?* The important question that stands in limbo is- *whether consumers in the 21st century are adequately equipped and informed to protect themselves?*

¹⁷ M. Durovic, International Consumer Law: What is it all About?, 43 Journal of Consumer Policy, 125, 133, 2020.

While coursing through a plethora of incumbent issues in consumer protection, there arise questions both perennial and contemporary. In spite of considerable changes in laws aiming to adapt to the new developments, a strong consumer protection framework and an efficient consumer disputes redressal mechanism has always been a challenge for India.

In light of the changing market dynamics and evolving consumer protection laws, RSRR delves into the theme of “**Protecting Consumers in the 21st Century: Broadening the Outlook**”, to review the legal and policy framework in today’s consumer centric economy.