

Consumer Rights Jurisprudence in Digital Era: An Overview



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Abstract

Consumer rights are an integral part of our lives like the consumerist way of life. We have all made use of them at some point in our daily lives. Market resources and influences are growing by the day and so is the awareness of one's consumer rights. These rights are well defined and there are agencies like the Government, consumer courts and voluntary organizations that work towards safeguarding. While we like to know about our rights and make full use of them, consumer responsibility is an area which is still not demarcated and it is hard to spell out that all the responsibility is that a consumer is supposed to shoulder. Consumer rights are the rights given to a "consumer" to protect him/her from being cheated by salesman/manufacturer/shopkeeper. Consumer protection laws are designed to ensure fair trade competition and the free flow of truthful information in the marketplace. The laws are designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors and may provide additional protection for the weak and those unable to take care of themselves.

Keywords: Consumer Protection Law, Government Regulation.

Introduction

Consumer Protection laws are a form of government regulation which aim to protect the rights of consumers. The purpose of economic planning is to allocate resources, as far as possible, for the maximum satisfaction of consumers' needs. Any goods or services produced in an economy are ultimately meant for consumers. There is a logical, moral and political force in the proposition that the consumers themselves should have the right to take decisions about the allocation of resources for their own needs. Realising this need, the International Organisation of Consumer Unions, now known as Consumers International, took the initiative and under its consistent lobbying, the United Nations adopted a set of Guidelines for Consumer Protection on April 9, 1985 which were revised in 1999. The Guidelines address the interests and needs of consumers worldwide and provide a framework for Governments, particularly those of developing and newly independent countries, to use for elaborating and strengthening consumer protection policies and legislation.

Historical Evolution of Consumer Protection Law in India

Consumer Protection has its deep roots in the rich soil of Indian civilization, which dates back to 3200 B.C. In ancient India, human values were cherished and ethical practices were considered of great importance. However, the rulers felt that the welfare of their subjects was the primary area of concern. They showed keen interest in regulating not only the social conditions but also the economic life of the people, establishing many trade restrictions to protect the interests of buyers. This article examines the historical perspective of consumer protection in India from the Vedic age¹ (ancient period) to the modern period. It also briefly analyzes the development of consumer law in India. Finally, an attempt is made to discuss the legal framework of the Indian Consumer Protection Act of 1986 which led to the evolution of a new legal culture in India.

Objectives of The Study

1. To explore concept, consumer right jurisprudence and mechanism for the right to be protected against marketing of goods which are hazardous to life and property.
2. To measure the performance of district forums in India regards to disposal of cases.
3. To suggest means for improving the functioning of Consumer forums in India with reference to Digital era.

Review of Literature

Neelam Singh's (2001) article deals with the consumer protection in the developing and developed countries. In the developed countries the role of media is widespread and extremely effective and potent tool of consumer protection through consumer education. On the contrary, the developing countries, where a large chunk of consumers belong to low income bracket are facing the problems of non availability of essential commodities and price escalation and hence need egalitarian consumerism to overcome the consumer grievances.

S. Mustafa Alam Naqvi (2000) in his article explains consumerism and the role of the judiciary in protecting the interest of the consumers.

Balkrishna V. Eradi's (1991) article deals with consumer protection in India. He makes suggestions for making people aware of their rights as consumers.

Subir K. Bhatnagar (1999) in his article explains the problems of the consumers and highlights the consumer protection strategies.

Robert N. Mayer (2000) in his article traces the history of consumerism in the world and compares the American consumerism with the consumerism in other countries and their inter-relations.

H.K. Mudgil (2000) in his article narrates the socio-economic movement and makes suggestions for the fruition of consumer movement in India, especially Haryana, where it is in a nascent stage.

Pushpa Girimaji's (1999) article deals with the complicated issues on food safety vis-à-vis new technologies like genetically modified food and irradiated food. Consumer protection is more complex than before.

P.K. Ghosh (2000) in his article traces the consumer rights of the consumer and he stresses that consumer education is a powerful tool that can take consumers from the current disadvantageous position in the market place to one of strength.

Pratima P. Mathew's (2000) article highlights that market has emerged as a big force controlling life style and thought process of people of all age groups, irrespective of their socio-economic background. No one seems to have escaped from the clutches of commercialization.

Suryanarain T. Sastry's (1992) article deals with the role of voluntary organisations in creating consumer awareness. An individual consumer always remains in weak position in market against the organized seller. The voluntary consumer organisations play a vital role in educating the consumers by providing them timely and adequate information about various goods and services. They act as liaison with the government as well as with the manufacturers.

Harish S. Oza (1987) in his article reveals that the philosophy of marketing is based on consumer and consumer is not only the heart of marketing, but also the controller of marketing functions. However, the idea of consumer supremacy and consumer sovereignty is definitely fallacious in free market economy. He emphasizes that in reality

consumer may be 'king' of corporate activities, but his 'kingdom' remains on paper only.

United Nations' Guidelines/Resolutions

The objective of the United Nations guidelines for consumer, protection are as follows:

1. To assist the countries in achieving or maintaining adequate protection for their population as consumers;
2. to facilitate production and distribution patterns responsive to the needs and desires of consumers;
3. to encourage ethical conduct for those engaged in the production and distribution of goods and services to consumers;
4. to assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
5. to facilitate the development of independent consumer groups;
6. to further international co-operation in the field of consumer protection; and

Consumer Protection in Ancient India

In ancient India, all sections of society followed *Dharma-sastras* ("*Dharma*"), which laid out social rules and norms, and served as the guiding principle governing human relations. The principles of *Dharma* were derived from *Vedas*.³ *Vedas* were considered the words of God, and law was said to have divine origin which was transmitted to society through sages.⁴ Thus, *Vedas* were the primary sources of law in India.

Manu Smriti

Manu Smriti describes the social, political and economic conditions of ancient society. Manu, the ancient law giver, also wrote about ethical trade practices.¹⁰ He prescribed a code of conduct to traders and specified punishments to those who committed certain crimes against buyers. For example, he referred to the problem of adulteration and said "one commodity mixed with another must not be sold (as pure), nor a bad one (as good) not less (than the property quantity or weight) nor anything that is at hand or that is concealed."¹¹ The punishment "for adulterating unadulterated commodities and for breaking gems or for improperly boring (them)" was the least harsh. Severe punishment was prescribed for fraud in selling seed corn: "he who sells (for seed-corn that which is) not seed-corn, he who takes up seed (already sown) and he who destroys a boundary (mark) shall be punished by mutilation. Interestingly, Manu also specified the rules of competency for parties to enter into a contract. He said "a contract made by a person intoxicated or insane or grievously disordered (by disease and so forth) or wholly dependent, by an infant or very aged man, or by an unauthorized (party) is invalid."

Kautilya's Arthashastra

Written subsequent to *Manu Smriti*, Kautilya's *Arthashastra* is considered to be a treatise and a prominent source, describing various theories of statecraft and the rights and duties of subjects in ancient society. Though its primary concern is with

matters of practical administration, consumer protection occupies a prominent place in *Arthashastra*. It describes the role of the State in regulating trade and its duty to prevent crimes against consumers.

Between 400 and 300 B.C., there was a director of trade whose primary responsibility was to monitor the market situations. Additionally, the director of trade was made responsible for fair trade practices. The director of trade was required to be "conversant with the differences in the prices of commodities of high value and of low value and the popularity or unpopularity of goods of various kinds whether produced on land or in water [and] whether they . . . arrived along land-routes or water-routes, [and] also [should know about] suitable times for resorting to dispersal or concentration, purchase or sale." The director of trade advised to "Avoid even a big profit that would be injurious to the subjects. . . . He should not create a restriction as to time or the evil of a glut in the market in the case of commodities constantly in demand."

Consumer Protection in Medieval Periods

In the medieval period, consumer protection continued to be of prime concern of the rulers. During Muslim rule, a large number of units of weights were used in India. During the Sultanate period, the prices used were determined by local conditions. During the rule of Alauddin Khalji, strict controls were established in the market place.³⁸ In those days, there was unending supply of grain to the city and grain-carriers sold at prices fixed by the Sultan. There was a mechanism for price-enforcement in the market. Similarly, shop-keepers were punished for under weighing their goods.

In the modern period, the British system replaced the age old traditional legal system of India. However, one of the outstanding achievements of British rule in India was "the formation of a unified nationwide modern legal system."⁴¹ During the British period, the Indian legal system was totally revolutionized and the English legal system was introduced to administer justice. However, it is important to note that the traditions and customs of the Indian legal system were not ignored. "The law itself underwent considerable adaptation. The British institutions and rules were combined with structural features [e.g. a system of separate personal laws] and rules [e.g. *Dharma*, and local custom] which accorded with indigenous understanding. The borrowed elements underwent more than a century and a half of pruning in which British localisms and anomalies were discarded and rules [were] elaborated to deal with new kinds of persons, property and transactions.

Some of the laws which were passed during the British regime concerning consumer interests are: the Indian Contract Act of 1872, the Sale of Goods Act of 1930, the Indian Penal Code of 1860, the Drugs and Cosmetics Act of 1940, the Usurious Loans Act of 1918, and the Agriculture Procedure (Grading and Marketing Act) of 1937. These laws provided specific legal protection for consumers.

For fifty-five years, the Sale of Goods Act of 1930 [SGA] was the exclusive source of consumer protection in India. The SGA, drafted with precision, is

"an admirable piece of legislation." It is also praised as a "Consumer's Charter." The main protection for the buyer against the seller for defective goods is found in Section 16 of the Act. It provides exceptions to the principle of *Caveat emptor* ("let the buyer beware") and the interests of the buyer are sufficiently safeguarded. Phrases such as "skill and judgment of the seller", "reliance on sellers' skill", and the test of "merchantable quality" provide effective remedies to buyers. Courts interpreted these rules in the consumer's favor. The SGA was the exclusive consumer legislation until 1986, with the passage of the Consumer Protection Act of 1986, designed to supplement the remedies already provided under the SGA.

Consumer protection was also provided within India's criminal justice system. The Indian Penal Code of 1860 has a number of provisions to deal with crimes against consumers. It deals with offenses related to the use of false weights and measures, the sale of adulterated food or drinks, the sale of noxious food or drink, and the sale of adulterated drugs.

Consumer Protection in Modern Periods

Consumer protection legislation enacted after India's independence from Britain include: the Essential Commodities Act of 1955, the Prevention of Food Adulteration Act of 1954 and the Standard of Weights and Measures Act of 1976. A benefit of these acts is that they do not require the consumer to prove *mens rea*. Rather, "the offenses are of strict liability, and not dependent on any particular intention or knowledge." Criminal law in the field of consumer protection has acquired much significance, as consumers are less inclined to go to civil court for small claims. It has been said that "the functional value of criminal law in the field of consumer protection is a high one and it has a respectable pedigree." Another view is that there has been an attempt to look at consumer protection as "a public interest issue rather than as a private issue" to be left to individuals for settlement in court.

In addition to the remedies under contract and criminal law, consumers have rights under tort law. Based on its numerous legal intricacies, however, tort law is not the ideal remedy for injured consumers in India. For example, the traditional doctrine of negligence imposes heavy responsibility on the plaintiff to prove each of its required elements. These traditional legal requirements naturally encourage injured consumers to pursue legal remedies under different laws. Not surprisingly, it is estimated that for about half a century from 1914 to 1965, only 613 tort cases came before the appellate courts.

The orthodox legal requirements under the law of torts and contracts forced the policy makers to craft specific legislation to protect consumers. As a result, the Consumer Protection Act of 1986 was enacted with the objective of providing "cheap, simple and quick" justice to Indian consumers.

Legal Provisions on Consumer Rights

The objective of this paper is to present the plight of Consumer Protection Act by analysing its current status with reference to Consumers

International or as per UN guidelines. It states the major deviations between the consumer protection framework and its application, their drawbacks and the reasons behind it. It also highlights the need of Consumer Education and the urgency of initiating the Consumer Movements to combat consumer exploitation.

The upcoming concept of industrialisation coupled with globalisation, liberalisation across the nations has empowered the consumers to realise their role in governance and society. An analysis of marketing management has made it clear that consumer is the king pin of the market. The producer should produce goods keeping in mind the requirements of the consumer and satisfy the consumer needs. In a developing country like India where the prevalence of poverty and unemployment is very high and level of literacy is very low, because of which people have to go through bulk of problems, notably in consumer related issues. Unlike in the developed world, consumer such countries lack in promotion of development process.

As we all know, the basic purpose of economic planning is to allocate resources for maximum satisfaction of consumer needs. Ultimately the goods and services produced in any economy are meant for the king of the market i.e. the consumer. In a rational economy, there is this logical, political, and moral force in the proposal that the consumers themselves should have the right to take and make decisions for fulfilling their needs with wise use of resources being allocated. Realising this, the international organisation of consumer unions, now known as Consumers International took the action and under its consistent persuasion, the UN adopted a set of guidelines for the Consumer Protection on April 9, 1985 which were amended in 1999. These guidelines address the consumers keeping in view their needs and interest worldwide by promoting consumer protection and administer the legal framework for government stressing on development and newly independent countries by embellishing and strengthening consumer protection policies and legislation. Consumer protection is very wide. It includes various rights and various remedies which are available to consumers.

There are three aspects of consumer protection:

1. Physical protection
2. Protection of economic interest
3. Promotion of public interest.

These are not only beneficial for consumers but it is equally important for businessmen also, when Corporate Social Responsibility (CSR) is at its peak of consumer protection. These are as follows:

1. Physical safety
2. Promotion and protection of consumer's economic interest
3. Standards for safety and quality of consumer goods and services.
4. Distribution facilities for essential consumer goods and services.
5. Measures enabling consumers to obtain redress.
6. Education and information programmes.

7. Promotion of sustainable consumption.
8. Measures relating to specific areas like water, food and pharmaceuticals.

As per the above mentioned guidelines, these are adapted into 8 consumer rights by Consumers International:

1. Right to Basic needs
2. Right to Choice
3. Right to Information
4. Right to Safety
5. Right to Consumer Education
6. Right to Redressal
7. Right to Representation
8. Right to Healthy Environment

This paper evaluates the current situation along with these rights and the corresponding drawbacks in its administration. They are as follows:

Basic Needs

Every citizen has a right to fulfil the basic needs to survive and have dignified living. The basic needs include food, clothing, health care, drinking water, sanitation, shelter, education, energy and transportation. The UN guideline indirectly mentions the right to make basic needs for government to take adequate measures so that consumers can easily access the "basic needs for goods and services." There are 2 goods and 6 services included in the basic needs.

Right to Food

In India, the central government for ensuring food security (Right to Food) introduced Public Distribution System (PDS). Surveys show that on an average 25% of poor are availing the advantages of PDS. The minor failures of PDS relate to the factors such as low margins of Fair Price Shop owners, which lead to corruption, transportation bottlenecks, timings of the opening of shops are not convenient.

Right to Basic Need

It is an essential need and therefore it comes under „Right to basic need.“ In India the Textile policy, 1981 was introduced for establishing infrastructure for distribution of cloth to weaker sections of the society. The Textile Regulation, 1988 also highlights some of these issues. De-licensing of sector in August 1991 is yet another measure which was taken.

Right to Health

National Health Policy and Drug Policy give the synopsis of Right to Health. Since independence, life expectancy at birth has more than doubled, in 1947 it was 30 years and in 1992-96 it was 60 years. The infant mortality rate declined from 134 per 1000 live births to 72 infants per 1000 in 1998.

Right to Shelter

In 1988, the government of India approved the National Housing & Habitat Policy to ensure the Right to Shelter. This policy conceptualised a major shift in government role from provider to facilitator. Currently the housing scenario is such that 25-50% of urban population is living in throw-away settlements or slums. In rural areas 75% of the constructions are semi-permanent in nature.

Right to Education

As per the chapter mentioned in Directive Principle of State Policy in the constitution of India.

The 83rd Constitutional (Amendment) Act 2000 has made elementary education a fundamental right. Basic and elementary education is compulsory for all children upto 14 years of age and also Adult Education is being promoted.

Right to Energy-

The Indian Electricity Act 1910 and Electricity (supply) Act 1948 have been amended to conduct in a new legal administrative and financial environment. State electricity boards have been reorganised and the Central Electricity Regulation Commission and State Regulatory Commission have been set up. Census 1991 states that only about 42% of household had access to electricity in their households as against 26% in 1981. The rural urban ratio is quite noticeable. In 1991 3/4th of rural population had access to electricity.

Transport

There is an urgent need to adopt a well integrated transport policy covering roads, railways and water transport.

Safety

According to this right the consumers have the right to be protected against the marketing of goods and services which are hazardous to life and property. UN guidelines contemplate two kinds of safety.

1. Physical Safety and Standards of safety
2. Quality of consumer goods and service

In India there are legislative and administrative provisions concerning this right. Under the constitutions provisions, the most essential one is the Protection of Life & Personal Liberty (Article 21). Under the legislative provisions, the crucial ones are Prevention of Food Adulteration Act, 1954 and Bureau of Indian Standard Act, 1986.

Even though the categorizing certain products to comply to Indian Standard Institution (ISI) norms and regulations, still many products in the market are still without ISI mark. Infact the product with ISI marks are not adhering to its norms. They are even unaware of whom to approach in case they face any problem regarding safety. Prevailing corruption in the administrative system makes the laws ineffective in many such cases.

Right To Choice

According to this right every consumer has the right to choose the goods or services of his/her liking. This means an assurance of availability, ability and access to variety of products and services at competitive price and by competitive price we mean just and fair price. UN guidelines deal with economic aspects under its section on promotion and protection of consumer's economic interest.

In India, there are many administrative and legislative measures which guide the consumer with reference to types of goods and the terms & conditions they should buy. These measures also expound numerous duties and responsibilities for guiding supplies along with penalties/fines for not adhering to it. The considerable legislations are approving MRTP Act 1969, Bureau of Indian Standards Act 1986 and Weight Measure Act.

For better evolution and advancement in India, enactment of independent regulatory mechanisms in the field of electricity, insurance, telecom etc. should be executed.

A new competition law „Competition Act 2002” has replaced MRTP Act, is being introduced. However, factors like limited information about products, preconceived notions, and absence of effective regulatory mechanism cease the consumers to follow and take actions.

Right to Information

According to this right the consumer has the right to get information about the quality, quantity, purity, standard and price of goods and services so as to protect himself against the abusive trade practices and making right decisions. Also, consumers should have the right to access information regarding public affairs as well as those which are handled by government and its agencies. Right to Information Act 2005 has been introduced for the same. Adding further, provisions regarding the Right to Information are these under the Consumer Protection Act 1986, Bureau of Indian Standard Act 1986, MRTP Act 1969, Standard of Weight and Measures Act 1976. The department of consumer affairs has taken certain steps to provide information to the public. For promotions, advertisings with “JAAGO GRAHAK JAAGO!” as an intensive multimedia consumer campaign are being telecasted regularly to make the consumers aware of their rights and duties especially in rural areas. National Consumer Helpline is started for easy filing of complaints. The inter play of many institutions/ministries with little co-ordination is the major hurdle in the way of implementation of these law.

Consumer Protection

According to this right, it is the right of consumer to acquire the knowledge and skills to be informed to customers. Along with the aim to literate the consumers to know their rights and take actions, this right also assures that illiterate consumer can seek information about the existing acts and agencies that are being set up for their protection.

At present there is not any definitive policy in India concerning consumer education. But, the government of India has included consumer education in the school curriculum and various university colleges. The NCERT is working on introducing consumer education in the syllabus. The IGNOU has devised a syllabus for distant education on consumer protection as a separate course. Likewise, Government of India by implementing Consumer Welfare Fund has designed provisions to fund and promote consumer education programme initiated by consumer groups of state government despite provision taken by government of India and consumer organisations, still masses are unaware or partially aware about legislations and implementation of consumer protection mechanism.

Right to Redressal

This right includes right to be compensated for misrepresentation of unsafe/deficient goods or unsatisfactory services and availing the acceptable forms of legal aid or redressals for small claims. In

India, the Consumer Protection Act was enacted in 1996 with definitive aim for promoting consumers rights and implementing a cheap, speedy and simple redressal to consumer disputes. Three tier Quasi-Judicial Machinery is set up at each district, state and national levels called District Forums, State Consumer Redressal commission respectively. At present, there are 569 district forums, 33 state commissions with apex as a National Consumer Dispute Redressal Commission having office at Janpath Bhawan, New Delhi. This has provided numerous benefits to the consumers. Despite the establishment of such comprehensive law, the scenario of consumer redressal in India is constrained with complications like non-compliance with order, delays in judgement etc. However, the current scene regarding this certainly shows a tremendous improvement as compared from past situations.

Right to Representation

According to this right, the consumer has the right to represent himself or to be heard or to advocate his interest. In case a consumer has been exploited or has any complaint against the product or service then he has the right to be heard and be assured that his/her interest would receive due considerations. The UN guidelines have formulated several measures with respect to the Right to Representation. Firstly government should encourage the development of independent consumer groups for presenting the views in the decision making process.

In India, government has set up Parliament Commission and representation mechanism in various departments. Furthermore, the directorate of Public Grievances handles complaint that is addressed to the central government. Thirdly, any individual or group can seek remedies through representation by filing written petitions in the Supreme Court or high court.

The freedom of Information Bill 2000 has been implemented by parliament to facilitate the process of Representation. On a whole, the major issue associated with representation is the corruption in the system, which leads to delays in getting justice. Also there is lack of effective co-ordination between consumer organisations to ensure thorough implementation.

Healthy Environment

According to this right, the consumer and all the citizens have the right to be protected against the environmental pollution and environmental degradation. This right insists on providing a pollution free, tension free and healthy environment for today's and future generations i.e. sustainable development. As per the UN guidelines government must adopt measures to use, store and production of pesticides and chemicals. The concept of sustainable development and consumption was also included in it. This is now listed as a consumer right.

Introduction of Environment Act 1986 provides the instructions for management of hazardous wastes etc. for example – safety reports, safety audit etc. It also includes pollution of water, air and soil. Though these laws have been introduced but they are not implemented effectively. Multiplicity of

law is the major reason for this, which further adds to multiplicity of administration, corruption and lack of resources to implement the laws faithfully.

Lack of awareness among consumers regarding hazardous use of pesticides and chemicals and also ineffective training of people broadens the problem further.

In the context of Sustainable Consumption, promotion by government, through indirect measures The Biological Diversity Bill has been introduced to secure the conservation, sustainable use of equitable share in benefits arising out of the use of such biological resources.

Judicial Approach

Very few Judgments are available covering disputes in E-commerce. In 2014 Division Bench of Delhi High court in an appeal in the case of World Wrestling Entertainment Inc. Vs M/s Reshma collection &Ors ruled that jurisdiction can be invoked at the buyer's place of residence in E-Commerce cases for the reason that contract comes into existence at the place of the buyer on his making payment. This interpretation suits the consumer. In this case the Plaintiff/Appellant (World wrestling Entertainment Inc.) is from USA and Defendant/Respondent is from Mumbai. Plaintiff /Appellant sells its merchandise through website to buyers all over the world. Case is filed by the Plaintiff /Appellant for seeking permanent injunction restraining Defendant in Mumbai from violating its copyright. Plaintiff/Appellant demonstrated that its customers place orders online and confirmation is sent by E-mail. Hence the court in India has jurisdiction.

Relying on the interpretation of the cause of action/ place of business/ Agent/ branch office in online transactions, even if seller is foreign company/resident, it can be argued that courts in India will have jurisdiction if the contract is brought into force in India. However an amendment in CPA clarifying jurisdiction issue in unambiguous terms in case of online transactions will put to rest controversy on jurisdiction.

Creating consumer awareness about his rights is key to reap the benefits of good legislation. When new Consumer protection Bill 2015 becomes a law, consumers get protection in respect offline and online transactions and reference of IT Act is made and it also fixes responsibility on manufacturers for deficiency in product quality. Let us hope that the new Bill will regulate E-commerce transactions and protect consumers rights against misleading advertisements, defective goods or delayed refunds.

Consumer Rights in the Digital Era

The World Consumer Rights Day is celebrated, on March 15th of every year to create awareness about consumer's rights with a view to promote and protect such rights. In India, Department of Consumer Affairs, a nodal organization of Ministry of Consumer Affairs, Food and Public Distribution, is also creating awareness about consumers' rights and available disputes redressal Forums. Thus Consumer rights awareness is on the rise in India but still a lot is to be done to strengthen the rights of consumers in

the Digital era. In this article, efforts are made to examine whether existing law protects consumer rights in the digital era especially in E-commerce or online contracts.

Increased internet users and E-commerce

A world survey in 2016 reveals that about 40% of world population has access to internet. About 10% of population in underdeveloped nations have access to internet. It is expected that by 2020, 52% of population will have access to internet.

In India 34% of total population have access to internet. In terms of penetration of internet, China, USA and India are occupying 1st 2nd 3rd Places respectively. As regards percentage of online payments in India, it is estimated at 15.5% of total transactions. The present Government, post demonetization, has been trying to push digital payments in order to encourage less cash transactions. In this increased E-commerce scenario, let us examine the existing CPA and consumer rights and whether such rights are available in the case of online or E-commerce transactions.

Application of Consumer Law in Banking Sector

According to the act, "Consumer", section 2(1)(d) of the Act, includes a person who hires or avails of any service for a consideration. Therefore in banking transactions, a customer of a bank who has a bank account with the bank or a person who purchases a bank draft, hires locker facility or obtains bank guarantee from a bank are all "consumers" and can prefer complaints under the Act for "deficiency in service" on the part of the bank or for "restrictive trade practice" or "unfair trade practice" adopted by the bank.

A person who has applied for shares is a consumer, contrary to the general misconception that an applicant for shares prior to their allotment cannot be a consumer. The reason for this misconception is the judgment of the Supreme Court in the case of Morgan Stanley where the Supreme Court interpreted the provisions of the Consumer Protection Act prior to its amendment in June 1993, and held that an applicant cannot enjoy the status of a consumer prior to allotment. Fortunately, the CP Act, was amended in 1993 so that prospective consumers, who have agreed to purchase any goods, would also have a right to file a complaint.

Applications for shares are mostly made by tendering the application to specified banks appointed by a company for that purpose. These banks are required to process the applications by presenting the applicant's cheque for clearance and then crediting the proceeds to the company's account. Subsequently, the company allots the shares or sends the refund order in accordance with the scheme of allotment.

Many times, during this processing, the bank misplaces or loses some application forms. In other cases, the bank appoints some computer agency for processing the data. Due to a mistake in feeding the details, some cheques are returned for re-presentation after correcting the relevant mistakes. Instead of making the necessary correction and re-presenting the cheque, the bank sleeps over the

matter, and by the time the applicant comes to know of this fact, the issue has already closed.

In such cases, the applicant's money has not been received by the company floating the shares, and hence he would not be entitled to allotment of shares by the company. Here, action would lie against the bank and not against the company. Can the bank take a stand that the applicant has not paid any service charges to the bank for accepting and processing the application and hence the services rendered being free are outside the ambit of the Consumer Protection Act? No, the bank cannot wriggle out by raising such an excuse.

The bank is doing this work on a commercial basis and is being paid by the company to accept applications on its behalf. Hence, even though the applicant may not be paying service charges to the bank, the service is not free. The applicant thus becomes a beneficiary of the services hired by the company, and hence is entitled to file a complaint against the bank for its negligence and deficiency in service. A complaint against the bank can be filed.

To provide more attention to the definition of the word consumer, let us study the following cases in the court. These cases are in the favor of customer

1. In Punjab and Sind Bank vs. Manpreet Singh [1994 (3) CPJ 532], it was held by the Punjab State Commission that a savings bank account holder is a consumer under the Act. It was observed that difference in the lending and borrowing rates is the consideration for rendering service by the bank.

It was also observed that even if the bank does not charge for providing cheque facility to the account holder, it cannot be said that the same is given without consideration. Actually, the cheque book facility is obtained by the depositor in consideration of his putting funds at the disposal of the bank.

2. In Vimal Chandra Grover vs. Bank of India [2000 (2) CPJ 11 (SC): AIR 2000 SC 2181], it was argued before the Supreme Court on behalf of the bank that the appellant, who took overdraft facility from the bank by pledging shares, is not a consumer within the meaning of the consumer Protection Act.

The Supreme Court repelled the arguments of the bank and held that bank is rendering service by providing overdraft facilities to a consumer, which is not without consideration. Bank is charging interest and other charges as well in providing the service. Provision for overdraft facility is certainly a part of the banking and falls within the meaning of "service" as provided in section 2(1)(o) of the Act.

3. In Shobhatai Daulatrao Talekar vs. Maharashtra Rajya Shahakari Krishi & Gramin Development Bank [2004 (2) CPJ 349], the issue before the Maharashtra State Commission was the justifiability of the order of the District forum holding that the Forum had no jurisdiction to entertain the dispute since the complainant was a member of the defendant bank which was registered under the Maharashtra Cooperative

Societies Act, 1961 and that being so, the jurisdiction would lay before the co-operative court and not before the consumer court.

The State Commission did not agree with this view. It held that the nature of service hired by the complainant pertains to the banking business which is permissible by the bank to undertake under the provisions of the Reserve Bank of India Act and the Banking Regulation Act, 1949 and as such, would be squarely amenable to the jurisdiction of a consumer forum as per the definition of "service" under section 2(1)(o) of the Act. The State Commission further held that the jurisdiction of the consumer for a is also not ousted in view of the provisions of section 3 of the Act, which provides an additional remedy over and above those available in the other statutes to the parties.

Conclusion and Suggestions

Although transactions over the internet have increased the efficiency in transactions and accessibility for consumers, many pit falls still exist, that have not yet been satisfactorily dealt with. While growth in the ecommerce industry is sweeping across the country, there appears to be inadequate supervision and laws dealing with quality control over the products of companies and the services rendered by them.

In the above ruling it has been observed that the laws with respect to consumer protection have been enacted more than a quarter of a century ago, the same was not entirely geared towards protecting the consumer rights in the digital era. The need for the legislators to step in and clear the ambiguity with respect to territorial jurisdiction in complaints arising from online transactions is required. While specifically deciding on the issue of jurisdiction, the Meghalaya State Commission has held that the aspect has been dealt with at length, not only to adjudicate the present appeal, but also to lay the path in case of similar issues arising in future, foreseeing and believing in the likelihood of the same. The above ruling is subject to any appeal filed by the aggrieved party before the

National Commission. However, prima facie, the period for filing an appeal from the above order has lapsed and no appeal appears to have been filed before the National Commission.

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