

Protection of Buyer: An Analysis in the Light of Contract Act and Consumer Protection Act

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Abstract

'The Consumer Protection Act' aims at surveying a proper information about the awareness of the Act and its effective execution is to sustain the rights of the consumers amongst the masses where every human being is a 'consumer'.

For protecting the consumer's interests, the Parliament of India introduced an Act on October 1986, viz. 'The Consumer Protection Act', which came into force on December 24 of the same year. The statute on the right was made before COPRA Act.

This article also aims at making an analysis of the two most important and common words used in contracts namely Damages and Penalty. These two terms have been used under the Indian Contract Act 1872 viz. Sec. 73 and 74 respectively. A meagre study of these sections could give anyone an idea as to its significance in the context or relating to the Consumer Protection Act 1986. The facts of both these relate equally with Damages and Penalty as a structure of economic gain that are owed by the defaulter to the innocent party that has suffered a loss.

Keywords: Execution, Statutes, Sustain, Exploitations, Defaulter.

Introduction

In general, a contract is a legalized covenant that recognizes and governs the rights and duties of the parties to an agreement. A contract is legally enforceable because it meets the exchange of goods and services, monetary or pecuniary or financially approvals of law. If there is any breach of contract, then the parties can also get legal remedies like claiming of damages and compensation and cancellation of contract.

The law relating to consumer protection is being stated under the Consumer Protection Act 1986. The Central Government however published in the Official Gazette regarding the application of this act. As per this, a consumer is one who buys goods or hires services for consideration and uses such goods exclusively for ensuring livelihood by self-employment. The term "Consumer" also includes any user of such goods other than the buyer himself. The beneficiary, however, acquires the use of such services for consideration paid or promised or under any system of deferred payment. It does not include any individual who obtains goods for resale or for any commercial purpose.¹ The consumer protection is correlated to the initiative of consumer rights and to the configuration of consumer organizations and to pursue complaints against businesses when there lie any default. Government entities also promote help to ensure their enforcement as they have consumer protection agencies and watchdog groups. Non-government organizations and individuals can also be asserted via consumer

¹Kapoor, N.D. (2019) *Mercantile Law* 40thed.

activism.² According to Mahatma Gandhi, businessmen are the trustees of the society's wealth, where we should use wealth for the benefit of the people. The basic need or purpose of the business is to create and gratify customers, as we all know customers are the foundation of business. To retain them, goods and services of right quality and quantity must be provided at right prices.

Consumer orientation and serving of good quality products must be given for the survival of fulfillment of the needs of consumers. Dishonest and greedy businesses exploit consumers.³

Rise of Consumer Awareness

In the era of globalisation, privatization, liberalization, most of the decisions related to the economy are taken by the market. The government has withdrawn itself from quite a lot of activities which interferes very often when the market mechanism fails due to structural rigidities in the economic condition and other certain factors, to make available goods and services to the people. Buying is considered as one of the most significant economic activities and it requires law-abiding government intervention, as the market is unable to promote security and welfare aspects of the consumers.⁴

Consumer awareness implies the awareness of consumers in different aspects of consumption activities, whereas the concept behind it states about the Maximum Retail Price (MRP), price, quality and expiry date of product, rights and duties and also certifies certain products in terms of ISI, Agmark, ISO-2000.⁵

Rights of Consumer

The following rights of the consumers are coded in the Indian laws and those are:

- **Measures to be taken for safety:** This is the right to be protected against the marketing of goods which are perilous to life and property. There are various risks drawn in the consumption and use of products, such as food, drugs, electrical appliances, etc., against which the consumers have the right to get protection. Hence, the responsibility for their safety should be fixed on producers and distributors.⁶
- **Awareness to be taken while making a choice:** The consumer should be assured access to variety of goods at competitive prices, which means the seller should not use aggressive selling techniques to sell the product to the buyer; there should be liberty to choose from substitute products.
- **Seeking Proper Redressal:** It means to get the right claims and complaints advanced against manufacturers for sellers due to unfair trade practices and exploitations by them.
- **Consumer Education:** The consumer must be aware of his rights and remedies accessible to him which will help to make them conscious and protect themselves against frauds by businessmen.
- **Providing Testimony:** The consumer can register his discontent and can apply the court for remedies in specified forums. Claims of them must be considered and looked into.

²Wikipedia.(n.d). *Consumer Protection*. Retrieved from http://en.m.wikipedia.org/wiki/Consumer_protection

³Gupta, C.B. (2017) *ISC Commerce* 17thed.

⁴The Week.(n.d). *Consumer Awareness and Role Of Government*. Retrieved from http://www.theweek.in/news/biz-tech/Consumer-awareness_Role-of-government-and-civil-society.html

⁵Lawctopus.(n.d). *Consumer Awareness*. Retrieved from <http://www.lawoctopus.com/academike/consumer-awareness>

⁶Supra 3

- **Right To Get Proper Information:** The consumer must possess information regarding the quality, quantity, potency, purity, standard and price of goods he intends to purchase.⁷

Duties of the Consumer

In order to secure rights, consumers have to maintain and fulfil certain duties.⁸

1. Consumers should come across at the quality of the products also the warranty of it while purchasing the goods.
2. On purchasing the item they should ask for Cash Memo.
3. Consumer Awareness Organizations should be formed by them.
4. They must complain for their genuine grievances.
5. Knowing their rights and duties are mandatory.

Role of Government and Civil Society

The term consumer is self-explanatory and the accurate meaning of it is “one who buys or consumes”. In traditional theory, the consumer or the buyer is considered as to be well acquainted about costs, price and quality of goods.

Numerous laws have been approved by the Indian Government to protect consumers and sustain their rights- like the Prevention of Food Adulteration Act, 1954, The Essential Commodities Act, 1955, etc, among which The Consumer Protection Act, 1986 has been considered as one of such Act which has actually brought a refurbished version to provide an accurate meaning to the protection of consumers., Therefore, the role of government should be to ensure a balance between buyer and seller in the marketplace, only if there is a fundamental equality of bargaining between buyer and seller. This will lead to an efficient allocation of resources. Therefore, the goal of government in the protection of the consumer should not only to just regulate the legitimate businessman, but also to ensure the deserved benefits of the enterprise.⁹

Consideration and Consumer Protection Act

Among all the other essential elements of a valid contract, “consideration” is the main and crucial element which actually deals relating to the protection of the consumers or the Consumer Protection Act, 1986.

Consideration being one of the essential elements to support a contract is subjected to certain exceptions. An agreement made without consideration is nudum pactum and is void. It is a technical term used in the sense of quid pro quo.

When a party to an agreement assures to do something, he must get “something” in return. This “something” is defined as consideration.

A complaint, in relation to any goods sold or delivered, may be filed under the District Forum by:

- Any consumer association which is organized or well organized is the consumer to whom the goods are sold or delivered or agreed to do both, is a member of such association or not; or

⁷Supra 1

⁸Supra 5

⁹Supra 4

- More than a number of consumers with their same interests, along with the permission of the District Forum and so on.

Also, the State Government has set the State Commission where its jurisdiction is restricted to the boundaries of the concerned state. Therefore, the Consumer Protection Act deals the functioning of a State Commission as:

- According to this Commission it will consist of a President, being an experienced as Judge of a High Court along with two other members. All the three persons need to be appointed by the State Government.
- The State Commission after being satisfied with the goods which resulted into a defective one can issue an order directing the conflicting party to either eradicate the defect, or return the price paid, or to provide compensation to the consumer for loss or injury faced by the consumer.

Any person who is being put out by the order of the State Commission can plea against such order to the National Commission before the end of 30 days. Therefore, the relevant provisions of the Act, pertaining to the National Commission solemnly states that:

- The Central Government shall appoint such an individual as a President, who has an experience of being a Judge of the Supreme Court along with four other members.
- Goods or services, costing to a price of more than 100 lakhs, if causes any disadvantage or mishap to the consumer then for its compensation, a complaint can be filed.

Case Analysis

1. **Indian Medical Association v. V.P. Shantha and Others.**

The court apprehended that the services rendered by a medical professional fall with the domain of “services” under Sec. 2(1)(o) of the Act. It discarded the contention that a medical practitioner does not fall under the extent of Indian Medical Council Act, which stands excluded from CPA.¹⁰

2. **Delhi Development Authority v. D.C. Sharma.**

The National Commission cancelled the revised application for lack of stability in judgment of the State Commission where it regulated the payment of five lakhs for the involvement in impartial practices related to trade and for harassing the respondent for more than 18 years without any specific reason.¹¹

¹⁰Indian Kanoon.(n.d). *Indian Medical Association v. V.P. Shantha and Others*. Retrieved from <https://indiankanoon.org/doc/723973/>

¹¹Indian Kanoon.(n.d). *Delhi Development Authority v. D.C. Sharma*. Retrieved from <https://indiankanoon.org/doc/10638342/>

Conclusion

It has been realised that the Consumer Protection is both a social as well as an economical program which is to be pursued by both the governmental authority as well as the business sector. It is the satisfied consumer who is in the interest and demand of both. According to this fact the government, however, carries a major responsibility for the protection of the consumers' interests and rights via, suitable policy measures, authorized structure and administrative framework.

However, The Consumer Protection Act of 1986 has brought a legal uprising to India, and at the same time these mechanisms have created a great legal challenge to the traditional quotes in orthodox ways and bestowed a new phase on the existing Indian legal structure with its strong ancient legal foundations.

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