VOLUME 5 | ISSUE 4

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

CONSUMER PROTECTION AND REDRESSAL AGENCIES IN RELATION TO INFRASTRUCTURE LAW AND POLICY AND POSSIBLE SOLUTIONS TO IMPROVE ITS CURRENT SCENARIO IN INDIA

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CONSUMER PROTECTION ACT, 1986

An Act to ensure better safeguarding of the consumers' interests and to establish provisions for the creation of consumer councils and other bodies for resolving consumer disputes, along with related matters

Be it enacted by Parliament in the thirty-seventh year of the Republic of India as follows-

Section 1 Short title, extent and application

1. This Act may be referred to as the Consumer Protection Act 1986.
2. It applies throughout India, excluding the State of Jammu and Kashmir.
3. It shall take effect on such date as the Central Government may designate by notification, with different dates potentially assigned for various States and for different sections of this Act.
4. Unless otherwise explicitly stated by the Central Government through notification, this Act shall be applicable to all goods and services.

2. AIMS AND OBJECTIVES OF THE ACT

The Consumer Protection Act, 1986 was instituted following a significant consumer protection initiative. Based on the report from the Secretary General on Consumer Protection

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dated 27 May 1983, the United Nations Economic and Social Council advised that the global governments should formulate, enhance, and execute a cohesive consumer protection strategy while considering the guidelines provided therein. The governments were also tasked with establishing sufficient infrastructure, including organizations and financial resources, to develop, implement, and oversee consumer protection policies.

The launch of new products in developing regions was meant to be evaluated against local conditions, considering the current production, distribution, and consumption trends relevant to the particular country or region. In light of the consumer movement and international commitments for safeguarding consumer rights, provisions within the Act have been established with the purpose of interpreting the applicable law sensibly and achieving the aims defined in the Act. A rational perspective rather than a technical interpretation is the requirement of the law.

As stated in the Preamble of the Act, the legislation was established, 'to provide for the protection of the interests of consumers. 'The choice of the term 'protection' is crucial to understanding the intentions of the Act's creators.

The legislature has been careful not only to define 'complaint,' 'complainant,' and 'consumer' but also to specify in detail what constitutes unfair trade practices by offering an extensive definition in clause (r),

In addition to defining 'defect' and 'deficiency' in clauses (f) and (g), which allow a consumer to approach the Commission. Consequently, the Act seeks to safeguard a consumer's economic interests as they are comprehended in a commercial context as a buyer of goods and, more broadly, as a user of services.

It marks a significant milestone in the history of socio-economic law and is aimed at accomplishing public welfare

Quality of materials: The CPA can pertain to the quality of materials utilized in construction.

Property properties: The CPA can be relevant if the characteristics of the infrastructure differ from what was guaranteed in the agreement.

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Untimely delivery: The CPA can be applicable if possession of the house is granted later than what was assured.

Incomplete construction: The CPA can be invoked if the construction remains unfinished. Land allotment: The CPA can be utilized if a government authority assigns land.

Consumer forums: The CPA offers a method for consumers to lodge complaints with Consumer Forums, which are capable of providing compensation to consumers.
Real Estate Regulatory Authority (RERA): The Supreme Court has determined that homebuyers are allowed to initiate a case under the CPA even if the project is registered with RERA. According to the introduction of the Act, the Act was established 'to provide for the protection of the interests of consumers.'

The use of the term 'protection' is crucial for grasping the authors' intentions behind the Act. The legislature not only assures the definitions of 'complaint,' 'complainant,' and 'consumer' but also offers a detailed account of what constitutes an unfair trade practice by providing a comprehensive definition in clause (r) and clarifying 'defect' and 'deficiency' through clauses (f) and (g), enabling consumers to address the Commission.

Consequently, the Act seeks to protect the economic interests of consumers as identified in a commercial context as buyers of goods and generally as users of services. It signifies an important achievement in the field of socio-economic regulation, oriented towards improving public welfare. Every consumer has unique rights that this Act is designed to uphold. For example[2], each consumer has the right to be informed about the quality, quantity, potency, purity standard, and price of goods; the right to be protected from the sale of goods that could threaten life and property; the right to access a variety of goods at competitive prices; the right to receive consumer education; the right to have their voices heard with the guarantee that consumer interests will be acknowledged at relevant forums; and ultimately, the right to seek redress against unfair trade practices or the unethical exploitation of consumers. The Supreme Court has ruled that the aim of the Consumer Protection Act is to improve the

[2] SCC Online Supreme Court Expands The Scope of Section 35(1)(a) of the Consumer Protection Act 1986 Fox Mandal Concurrent Remedies under RERA and Consumer Protection Act Lawyers and Legal Services Not Subject to Consumer Protection- Indian Law Offices

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safeguarding of consumer interests and to assist in the formation of consumer councils and other bodies intended to address consumer disputes and related matters.

3. **OBJECTS OF THE ACT-** The objectives of the Central Council shall be to promote and protect consumer rights, including,- (a) The right to be safeguarded against the marketing of goods [and services] that pose threats to life and property. (b) The right to be informed about the quality, quantity, potency, purity, standard, and price of goods [or services, as relevant] to protect the consumer from unfair trade practices; (c) The right to be assured, whenever possible, access to a variety of goods and services at competitive prices; (d) The right to be heard and to be ensured that consumer interests will be taken into account at suitable forums; (e) The right to seek remedies against unfair trade practices [or restrictive trade practices] or unethical exploitation of consumers; and (f) The right to consumer education.

1. RIGHT TO PROTECTION AGAINST HAZARDOUS GOODS

The Act provides every consumer the right to be protected against the marketing of goods and services that are dangerous to life and property. Hazardous goods encompass, for instance, adulterated food, narcotic drugs, poorly manufactured cement, etc. , all of which present risks to life and property.

Although representatives of the government hold numerous regulations to hinder the promotion of harmful products and services, any consumer who has endured damage to their body or property may seek protection, and they will obtain a quick and effective resolution for their grievances.

The 2019 Act distinguishes the roles of a product manufacturer, product seller, and service provider and thus specifies separate criteria for pursuing product liability actions against each of these entities. The specifics are detailed below:

I.Liability of a Product Manufacturer

The 2019 Act, in Section 2(36), provides a wide-ranging definition of ‘product manufacturer’, including every entity involved in the sales process within the scope of its definition. As per the 2019 Act, a ‘product manufacturer’ is characterized as a person who:

(a) creates any product or any component thereof; or (b) assembles parts produced by others; or (c) places or leads to the placement of their own label on any product made by any other

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individual; or (d) produces a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, or maintains such product or is otherwise involved in making such product available for commercial purposes; or (e) designs, produces, fabricates, constructs, or re-manufactures any product before its sale; or (f) additionally acts as a seller of a product while being a manufacturer of that product.

Section 84 of the Act outlines the circumstances under which a product manufacturer shall be liable in a compensation claim stemming from a product liability action for damage inflicted by a defective product that the manufacturer generated. The circumstances are as follows:

a. The product contains a manufacturing defect;
b. The product has a design fault;
c. The product does not conform to manufacturing specifications;
d. A compensation claim against a product manufacturer may also be valid when the product fails to comply with an express warranty. It is crucial to note that under the 2019 Act, if the product does not fulfill an express warranty, a product liability action can be initiated against the product manufacturer regardless of the manufacturer's negligence or deceitful intent in delivering that express warranty;
e. Similarly, a product liability action will be applicable against the manufacturer if the produced product is lacking sufficient instructions for safe use to prevent harm or does not provide adequate warnings regarding improper or incorrect usage.

II. Liability of a Product Service Provider

A product service provider defined under the 2019 Act is recognized as an individual who offers a service related to any product. [5] This definition of a product service provider has been intentionally included in the 2019 Act to cover services such as maintenance or repair when the service and product are fundamentally connected, and the service substantially impacts the product's performance.

Section 85 of the Act outlines the situations in which a product service provider will be liable in a product liability action for damage caused by a defective product that the service provider worked on. The situations are as follows:

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a. If the service provided by it was flawed, imperfect, deficient, or lacking in quality, nature, or manner of execution. The evaluation must be conducted according to the standards set by any applicable law, or in accordance with any contract.

b. A provider of product services will also be considered liable if there was either an act of omission or commission, negligence, or intentional withholding of any information that led to the harm.

c. Liability will also be placed on the provider of product services if it does not offer adequate instructions or warnings to prevent any harm.

d. Similarly, a provider of product services will be liable in a product liability situation if the service did not comply with an express warranty or the terms of the contract.

III. Liability of a Product Seller

A product seller as defined by the 2019 Act refers to any person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or is otherwise engaged in placing such a product for commercial purposes and includes (a) a manufacturer who is also a product seller; or (b) a service provider. This section specifically excludes certain individuals from being categorized as a product seller as detailed below[3].

A seller of immovable property will not be recognized as a product seller unless that individual is engaged in the sale of built houses or in the construction of homes or apartments.

In a similar vein, a provider of professional services, where the skill or service is the main focus of the transaction and the sale or use of the product is merely incidental, shall not be counted as a product seller.

Ultimately, a person will not be classified in the definition of a product seller if he/she (a) acts solely in a financial role regarding the sale of the product or (b) is not a manufacturer, wholesaler, distributor, retailer, direct seller, or electronic service provider or (c) leases a product without having a reasonable chance to inspect and identify defects in the product,

[3] Consumer Protection Act Book- LexisNexis India BookStore Consumer Protection Laws of India- caaa.in ResearchGate – The Consumer Protection Act: A Review of Legal Perspective EBC Webstore The Law of Consumer Protection (In 2 Volumes) India Code Consumer Protection Act 2019

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under a lease agreement where the selection, possession, maintenance, and operation of the product are handled by another party instead of the lessor.

The Law of Torts generally includes matters related to hazardous goods and the same principle can also be taken into the consideration with regards to infrastructure policy in relation to the consumers. The key case regarding dangerous goods is Donoghue v Stevenson, in which it was established that a producer supplying goods to the market would be accountable to the final consumer if their body or property suffers damage through the normal use of those goods.

In this significant case, a manufacturer who provided a defective product to a retailer, who then sold it to a buyer, was found liable to a friend of the buyer who fell ill after consuming it; indeed, her condition deteriorated due to the remains of a deceased snail that surfaced from the bottle of a drink she had previously consumed. This decision broadened the range of liable entities.

Every person within the distribution loop, from the producer to the final consumer, has been deemed responsible. In another important case, **Grant v Australian Knitting Mills**, liability was designated to the creator of trousers that contained a chemical responsible for the dermatitis (skin condition) suffered by the person who wore those trousers. In **Winfield's terminology:** The principle has been extended from food and drink products to cover, among other items, kiosks, gravestones, hair dye, industrial chemicals, elevators, motor vehicles and their parts, toys, and scented erasers. Likewise, the term **'consumer'** indicates the ultimate user of the product or anyone physically near it. This principle is applicable in all situations, whether involving injuries to a child from a fallen gravestone, the sale of defective cars, or accountability concerning individuals who became trapped in an elevator.

2. RIGHT OF INFORMATION

Every consumer possesses the right to be informed regarding the quality, quantity, potency, purity, standard, and price of products or services, as applicable, that he purchases or obtains. This right to information has been granted to consumers to safeguard them from deceptive trade practices. The phrase 'deceptive trade practice' is defined in section 2(1) (r).

Deceptive trade practices encompass false claims that goods or services meet certain standards, quality, grade, etc. ; any false warranty or guarantee of the performance of goods

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or services at a discounted price that are not actually meant to be sold or supplied at that discounted price; the offering of gifts; prizes or other items with the intention of failing to deliver them as promised or creating an impression that something is being offered for free when it is not genuinely so.

The case of **Consumer Protection Council v National Dairy Development Board** serves as a useful reference here. In this instance, the complainant sought to understand how the Dairy Board was utilizing the imported palmolein oil, but the Board was not disclosing the necessary information as it argued that the figures were privileged from public disclosure in the public interest. It was determined that the complainant had the right to information.

In **India Photographic Co v HD Shourie**, a film importer could not print prices on films because the nature of his business did not allow him to open packages. Consequently, he was instructed to attach price tags to each item before selling them to his retailers[4].

RIGHT OF ACCESS TO VARIETY OF GOODS AND SERVICES AT COMPETITIVE PRICES

Every consumer is entitled to access a variety of goods and services at competitive prices. This can only be achieved when markets are organized and market prices are established in such a manner that all dealers are provided with a diverse range of products for the consumer's benefit and that the products are offered at competitive prices.

This obligation to organize markets and market prices has been assigned to the Central Consumer Protection Council by the Act. Certain freedom has been granted to shopkeepers concerning marketing so that a variety of goods and services can become available at competitive prices.

This duty of organizing markets and market prices has been entrusted to the Central Consumer Protection Council by the Act.

Some autonomy has been allowed to shopkeepers in relation to marketing to ensure that a range of goods and services may be accessible at competitive prices. When an issue is reported to the Monopolies Commission indicating that a shopkeeper is compelling his customers to purchase only one type of product, offering them no choice regarding stock-in-

[4] TaxMann' Consumer Protection Law & Practice

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trade. This authority has also now been conferred upon the Central Consumer Protection Council by section 6(c).

4. RIGHT TO BE HEARD AND RECEIVE DUE CONSIDERATION AT APPROPRIATE FORUMS

Every consumer possesses the right to express their concerns and receive fair consideration at suitable forums. The Central Consumer Protection Council is responsible for ensuring that every consumer dispute is properly addressed and for guaranteeing that consumer interests are given appropriate attention at relevant forums.

5. RIGHT AGAINST UNFAIR OR RESTRICTIVE TRADE PRACTICES, UNSCRUPULOUS EXPLOITATION

Every consumer has the right to pursue remedy against unfair trade practices, restrictive trade practices, or unscrupulous exploitation. This responsibility has also been assigned to the Central Consumer Protection Council.

Situations where goods are advertised with ISI marking but do not actually meet the required standards, where payment for a car is made in advance but no vehicle is delivered within the stipulated timeframe, where a lawn is reserved for a wedding but is unavailable on the scheduled day despite being free, selling refurbished goods as new, and selling oils that claim to treat baldness or medications that assert to cure leucoderma while they do not, are all considered unfair trade practices.

6. RIGHT TO CONSUMER EDUCATION

Every consumer is entitled to consumer education. This implies that every consumer should be made aware of their rights and available legal remedies. As VM Shukla noted in the introduction of his book Legal Remedies, when individuals do not utilize their legal remedies, the system of remedies tends to stagnate.

Individuals ought to be informed of their rights and the availability of legal remedies when these rights are compromised. According to section 6(f), the Central Consumer Protection Council has been tasked with the duty of educating the public regarding their remedies under the Consumer Protection Act. Every person is a consumer in some capacity, and when

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everyone is made aware of their rights, they can better protect themselves against exploitation by manufacturers and traders.

4. WHO IS A CONSUMER ?

Section 2(1) (d) of the Consumer Protection Act, 1986 defines the term 'consumer' in two parts; first is a consumer who purchases goods, and second is a consumer who avails services. The Act encompasses both types of transactions, that is, for the supply of goods as well as for the provision of services—

(d) 'Consumer' means any individual who—

(a) buys any goods for a payment that has either been made or promised, or partly paid and partly promised, or under any deferred payment system, and includes any user of such goods, except for the individual who acquires such goods for resale or any commercial purpose; or

(b) Engages or utilizes any services for which payment has been made or promised, either partially paid and partially or through any system of deferred payment, and also includes any recipient of such services other than the individual who engages or utilizes the services for payment made or promised, or partially paid and partially promised, or through any system of deferred payment, when such services are accessed with the consent of the originally mentioned individual, but excludes a person who accesses such services for any commercial purpose:

CONSIDERATION

The consumer definition suggests that a consumer refers to anyone who acquires any goods for compensation. Therefore, the primary stipulation is that the transaction must involve compensation.

Therefore, the primary stipulation is that the transaction must involve compensation. The term 'consideration' present in the definition of 'consumer' in section 2(1)(d) has not been defined within the scheme or the Act.

Thus, the dictionary meaning must be consulted. **'Consideration'** is defined as: 'Something that is legally acknowledged as the equivalent or return given or suffered by the general principle that there is adequate consideration for a promise if there is any benefit to the promisor or any loss or detriment to the promisee.

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The core of the term 'consideration' and its legal significance has been clearly summarized in section 2(d) of the Contract Act, 1872.

The transfer of goods for compensation includes all forms of transfer of goods for compensation, whether in monetary terms or alternative goods, that is, barter or exchange or services. There must be a genuine contract between the parties engaged in the transaction. If the transaction is recorded in various documents, those documents must be analyzed and interpreted together to determine whether they form a valid and binding contract between the parties.

5. FUTURE GOODS NOT INCLUDED

A prospective investor in future goods does not meet the criteria to be considered a consumer. Therefore, an applicant for the allocation of company shares, being a potential investor, does not meet the criteria to be recognized as a consumer.

In **Morgan Stanley Mutual Fund v Kartick Das**, the appellant, a domestic mutual fund, was registered with the Securities and Exchange Board of India (SEBI) and was governed by the Board of Trustees.

Before the SEBI (Mutual Fund) Registrations, 1993, the investment management company of the appellant was also registered with SEBI and was granted a certificate of incorporation on 18 October 1993 by the Registrar of Companies, Bombay. Its Memorandum and Articles of Association were approved by SEBI.

The draft scheme of the appellant received sanction on 23 November 1993 from SEBI and following this, the promotion of the scheme via advertisements began. All advertisements and promotional materials received written approval from SEBI.

6. BENEFICIARY

The term consumer includes any person who uses goods other than the person who buys those goods for a payment that has been made or promised, regardless of whether it is fully paid, partially paid, or under any deferred payment agreement, as long as such use happens

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with the consent of the buying individual. It also includes any recipient of such services other than the person who utilizes or gains from the services for a payment that has been made or promised, whether it is fully paid, partially paid, or under any deferred payment arrangement.

SIMULTANEOUS PROCEEDINGS IN CIVIL COURT AND CONSUMER FORUM

Proceedings under the Consumer Protection Act can proceed concurrently with those in a civil court, even if the issues in both proceedings are largely alike. This is because the remedies available are separate from one another. The presence of parallel or alternative adjudicatory forums does not negate or limit the jurisdiction established under the Consumer Protection Act. The Act's provisions exist in addition to, and not in conflict with, any other laws currently in effect.

A criminal proceeding initiated by the complainant concerning the same cause of action has been deemed no obstacle to the maintainability of a complaint under the Consumer Protection Act.

Certain matters are not eligible to be addressed as consumer disputes, and thus, they fall outside the scope of the Act. Some examples are as follows-

1. Breaches of contract
2. Matters that are sub judice in civil courts;
3. Cases presenting complex legal and factual questions,
4. Arbitration clauses
5. Criminal proceedings,
6. Non-issuance of permits by the State Government under the Rice Procurement levy order;
7. Claims that must be filed before the Accident Claims Tribunal under the Motor Vehicles Act,
8. Matters concerning Stamp and Registration Acts.

PROTECTION OF CONSUMERS

The Consumer Protection Act offers safeguards to consumers. Similarly, the Sale of Goods Act, 1930 also extends some level of protection to purchasers of goods, whether they are consumers or not.

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It allows the buyer to reject items if they do not match their description, are unsuitable for their intended purpose, lack merchantable quality, or do not conform to the sample when sold in bulk. However, it only outlines the substantive rights of parties and does not establish a specific forum for addressing grievances.

In the case of **Frances B Martins v Mafalda Maria Teresa Rodrigues**, the Supreme Court determined that the aim of the Consumer Protection Act is to enhance protection for consumers' interests and to provide for the creation of consumer councils and other entities for resolving consumer disputes and related issues.

In **Lucknow Development Authority v MK Gupta,** the Supreme Court pointed out that the Act must be interpreted favorably for consumers to fulfill the intentions behind its enactment, as it is legislation aimed at social benefit. The primary role of the court while interpreting the provisions of such an Act is to take a constructive approach without distorting the language of the provisions or generating an outcome contrary to the intended objectives of the legislation

The **Consumer Protection Act covers 'business-to-consumer' disputes exclusively, and does not apply to 'business-to-business' disputes. Section 3 of the Act** clarifies that it is subordinate to any other law currently in effect. The remedies offered by the Act are supplementary to the existing legal remedies.

There was a dispute from a consumer regarding a depositor who was seeking the return of his deposit from a non-banking entity.

It was determined that the ruling of **the Company Law Board under s 45-QA of the RBI Act instructing the company to reimburse depositors** was not enforceable for other depositors who were not involved before the Company Law Board and who had filed their cases with the consumer forum where the company did not participate.

7. QUESTIONS TO BE CONSIDERED

. *How is the Consumer Protection Act relevant to infrastructure developers and builders?*

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. Is it possible for a consumer to lodge a complaint in case of a delay in the delivery of an infrastructure project?

. What significance does the Consumer Protection Act hold in guaranteeing the standard of infrastructure projects?

. What importance does the Consumer Protection Act have concerning infrastructure services such as utilities and transportation?

8. CONCLUSION AND LEGAL OPINIONS

The Consumer Protection law is complex, encompasses numerous jurisdictions, and is subject to continual changes. Regardless of this complexity, a law student or novice attorney can gain a clearer understanding of the area.

When conducting research in this area, keep in mind the importance of starting your online research with free resources.

Dismissal of joint/group complaints where there was no representation of other similarly situated consumers became the standard ruling of the NCDRC. The stance that joint/group complaints must be necessarily filed in a representative capacity remained firm until on 17-12-2021, the Supreme Court, in Brigade Enterprises Ltd. v. Anil Kumar Virmani10, determined that a "joint complaint" filed by several consumers, but not in a representative capacity, was maintainable under Section 35(1)(a) of the 2019 Act. The basis was that Section 2(5)(i)11 of the Act, which defines a "consumer", encompasses "consumers" by the combined effect of Section 13(2) of the General Clauses Act, 189712, and there being nothing contradictory in the 2019 Act to assert otherwise.

If no useful search results are found, then only a small amount of time has been expended. However, if a researcher quickly finds the relevant statute or regulation through an online search and more importantly with regards to changing aspects of infrastructure law and policy, consumer protection act also should change its patterns so that it can help in the welfare of the consumers as well as maintain a well balanced growth between urban development and consumer protection respectively.

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