

Efficacy of Current Adjudication Mechanisms for Consumer Protection

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The contemporary era is marked as the era of consumers. No nation can intentionally or unconsciously ignore the interest of the consumers. This can be contended based on the rapid enactment of consumer protection laws in practically all parts of the world. Aside from the consumer protection laws in developed world, we could see the accelerated rate of lawmaking for consumers in developing countries like Thailand, Sri Lanka, Korea, Mongolia, Philippines, Mauritius, China, Taiwan, Nepal, Indonesia, Malaysia and other countries¹. India isn't an exception to this standard. The Consumer Protection Act, 1986 is one of the examples that is to be treated as a milestone in the history of socio-economic legislation to secure the interests of the consumers in India. The legislation to ensure and propel the interest of consumers in India was at last materialized after the in-depth study of consumer protection laws working in different nations and in consultation with representatives of consumers, producers, trade and industrial segments of India and abroad. In order to serve the interests of the consumer in a better way and to settle their disputes amicably, Consumer Council and other legitimate mechanisms are also being established.²

This paper studies the effectiveness of Redressal System established under this Act and various aspects and perspectives of the current level of consumer protection in India while analyzing need of the consumers. This paper also provides some remedial or suggestive measures which will be helpful for the promotion and protection of consumer protection and rights. This paper critically analyze the working of this Act whether it has proved successful in obtaining its goal in as speedy and cheapest redressal agencies to the consumer.

In pursuing the present study, the researcher has followed a doctrinal method of research. It involves the collection of data from primary and secondary sources; primary sources like statutes, reports of the commissions and committees and secondary sources like books written by eminent authors and articles found in the journals and websites. Use of online resources also became very relevant to find out the most updated, relevant and apt information which helped the researcher in exploring the subject from various dimensions. Inductive methodology i.e. getting general results from specific points by analysis of literature studied has also been used. The researcher would be conducting a critical and analytic enquiry into the history, growth, challenges and future of consumer protection in India.

Further, the researcher has also procured information on the functioning of Consumer Forum and its intervention in

various cases regarding consumer protection. Opinions and views articulated by experts, academia, research scholars, consumer activists, policy analysts, etc., have also gathered for information. Research journals and print media are used as inputs to this work for making pragmatic suggestions and recommendations. Important decided cases reported in various legal journals and articles were also helpful for understanding the interpretation of the letter and tenor of the legal provisions.

The consumers, central part of the whole Consumer Protection Act, 1986 is protected and given support to the maximum so that the objectives of the act do not stay idle. Though there are a number of embedded undesirable errors in the Act, there is always a positive side which considerably reduces the chances of exploitation of the consumers by the producers or the sellers. As an addition to the objectives, other main thing that the Act focuses on is to create awareness about its benefits to those who are in need of it. Now, the need to remove the existing errors has arisen with the increasing necessity to make changes in the administration of these provisions too.³ The business and production sector has been developing technologically with the help of new techniques and this has now made the exploitation of consumers much easier than before. Marketing efforts of the marketers influence the buyers in such a way that they do not have to even think before they buy a product. High levels of influencing and advertising makes the consumer fall in their trap. Not all the businesses exploit consumers, but a few firms make use of the opportunity and sell faulty goods. Thus, having all this there comes a need for revision of new procedures for the betterment of administration. But in the end, it is not satisfying to state that yet there are so many consumers who do not obtain relief even after complaining. These may be due to accessibility, jurisdictional overlapping, procedural unfairness in standard form contract, role of president and other members, powers and function of adjudicating authorities, and status of court of record.

Accessibility

The District Forum is set up mostly in the district headquarters but the regular courts and gram nyayalayas are present at the taluka and the village level. The Consumer Protection Act, 1986 requires the aggrieved consumers to approach the district forum present in the district headquarters even though it may be very far and inaccessible. With this, the burden of commuting costs and time are also present.

Jurisdictional overlapping

³Saeed, Muhammad Farhan. (2018). Consumer Protection in India – Need for Structured Reforms.

¹Verma, S., &Wani, M. (n.d.). A Treatise On Consumer Protection Laws. *Indian Law Institute*.

²Chatterjee, A., &Sahoo, S. (2011). Consumer Protection: Problems and Prospects. *Postmodern Openings*, 157-182.

The Consumer Protection Act is not the only act which protects the consumer and addresses their issues. There are so many other public organisations and quasi-judicial bodies which have the powers to save any consumer who is in need of support. Some of the organisations who act similar to Consumer Protection Act are The MRTP Act of 1969, Competition Act 2002, the Electricity Supply Act of 1948, the Insurance Act of 1938, The Indian Post Office Act of 1898, etc. The Ombudsmen are set up for various sectors like insurance and banking which provide a similar remedy. Moreover, Government Departments are also setting up the adalats (a consensual alternative dispute resolution method) at the departmental level such DakAdalat conducted by the post offices.

Procedural unfairness in standard form contract

Among all the available Alternative Dispute Resolution (ADR) methods, arbitration alone is of adjudicatory form. Others such as mediation, conciliation, judicial settlement etc. are non adjudicatory. An agreement is necessary to seek remedy under ADR methods. In ADR methods, there is no involvement of the court or any other judicial body. All agreements nowadays have within itself, a contract of the arbitration. It is more prominent in commercial agreements where the seller or the service provider makes the arbitration clause as a non-avoidable factor in the agreement. The victim signs the agreement without knowing the inclusion of the arbitration in the agreement or not understanding the arbitral process. This incomplete acknowledgement is due to the presence of more pages in the agreement. In reality, there is a very less chance of reading all the pages during acknowledgement. These booklets turn down the interest of the consumer to entirely read the agreement. Sometimes the conditions/terms of the contract are written in small letters which may be blur and invisible as well. Finally, this unfair practice by the person who is framing the agreement makes the consumer fall in the seller's trap. The complexity of the agreement also makes it impossible for the buyer to understand it completely. According to the Section 8 of Arbitration and Conciliation Act, 1996, the court has the power to direct the cases for arbitration. The Consumer Protection Act does not support this, but the consumers are forced to exercise arbitration due to the agreements made. And this arbitration proceeding greatly affects the proceedings of the consumer forums. Hence the evidence here proves that arbitration clause not only affects the consumer but also makes the consumer forums weak one not enabling it to exercise its duties. Under the Law Commission Report (India, 2006), it is given that unjust advantage or unjust disadvantage to one party due to another party during the acknowledgement of a contract or unfair situations under which one party signs the contract is termed as a procedurally unfair contract. Of all the companies, banking and non-banking firms make the maximum of mistakes while formulating an agreement. These are the companies who make a layman easily trapped into their net. On other technique used by these firms is making the agreement more of uncommon terms. All the sentences and statements mentioned will not be easily understood. Making the agreement more professional and words with more intense meaning, the sellers easily exploit the buyers.

Role of President and other members

Under the Consumer Protection Act of 1986, there are six hundred and twenty-nine district forums, thirty-five state commissions and one national commission to carry out the redressing process easily and in a way that is very economical. During the initial years of the establishment of the Consumer Protection Act, there were certain restrictions being followed in the commissions. (Commission, 2017) It has laid a strict rule that every proceeding in the commission has to be conducted only in the presence of the President and a minimum of at least one member of the commission. In addition to this, the passed orders must be acknowledged by the members and president who witnessed the proceeding. But the later version of the act after the amendment made significant changes in the rules and regulations. During the absence of the President, the senior most member of the commission holds the power to conduct the proceeding. Any order passed by the President of the district forum (*Export Credit Guarantee Corporation of India Ltd., Varanasi v. Mohd. Aslam, Partner Mohd. Ibrahim and Sons & Another*⁴), President of the state commission (*Baroda Municipal Corporation v. AkhilBharatiyaGrahak Panchayat Ltd.*⁵), and the President of the National commission without considering the member's opinions will be directly taken as an illegal order. The amendment has also given the authority or legal power to the national and state commissions to make decisions on the Benches. The commissions are increasing in their capacity and the redressing techniques are being quicker like never before but this is not sufficient with the inherent defects and pendency. With all these intentions, the Act also takes the improvement or development of the consumer movement as its primary objective. Some issues include no power to impose criminal punishments, the complexity of the agreements between buyer and seller etc.

Powers and functions of the adjudicating authorities

The adjudicating authorities have amounted to a number of confusions in the procedures to be followed under the Act. This is due to the settlement which states, that the "Procedural laws" are to be followed only by the General judiciary and not the Adjudicating Authorities. There arose so many issues regarding uniformity of procedures in the Act due to this violation or settlement which was unfair. To terminate these problems of irregular procedures, necessary steps were taken by the national commission. With the approval of the central government, the national commission made few regulations which were termed as the Consumer Protection Regulation, 2005. These regulations made clear procedures and stated that the relief provided should be within the conditions of the Act. All the redressing agencies under the Act were insisted to follow the principles of natural justice to provide relief. There was another settlement made which meant that reliefs which cross the limits of those mentioned in the Act will not be accepted or granted (*TarsemLalGoyal v. Union of India*⁶). Along with this, there was a clear statement which implied that all the forums have the same powers as granted in the civil

⁴1999 (2) CPR 106 (UP)],

⁵1992 CPC 768 (NC)

⁶ (1993) 2 CPR 191 (Punj.)

court and the proceedings made are to be considered as legal or judicial proceedings.

Pecuniary Jurisdiction

The forums established under the Consumer Protection Act, 1986 has pecuniary jurisdiction. The district forum under the Section 11(2), can admit cases valued not more than rupees two million. The next in hierarchy, the state commission permits cases only valued between rupees one million to rupees 10 million under the Section 17. The national commission handles all complaints and cases valued more than rupees ten million. The question is whether the value of goods and services are to be considered or compensation sought to calculate the pecuniary jurisdiction. The law and the judiciary are not clear on this aspect.

Powers to determine matters summarily

The general judicial terms and conditions state that the redressing agencies under the act can handle or has the power to deal with only matters which has a summarily nature. This statement was again made clear and reinstated by the Supreme Court (*Trai Foods Ltd. v. National Insurance Company and Ors.* III⁷). Thus, it is evident that there is no possible jurisdiction for the redressing agencies to handle matters which do not come under the purview of matters of summarily nature (*Procalor Photographics Pvt. Ltd v. OCL Photo Industries Pvt. Ltd.*⁸).

Power to grant interim relief

The concept of interim or temporary relief gave chance to many conflicting and divergent opinions from everyone. The issue continued until there was a clear establishment to convey the actual or set rule with respect to the interim relief. Confusions were mainly due to improper allocation of powers and duties. There was no particular law or legislation which stated the power to provide interim relief. There was a case where the state commission permitted the district forum to proceed with interim order and relief having in consideration the inconvenience and loss caused by the opposite party. Also, these interim reliefs are provided on the basis of prima facie case. So, with this case there is an interpretation that redressing agencies have the power to give interim relief (*Chita Rajan Dey v. Mrinal Kant Chakraborty, III*⁹ (West Bengal S.C.D.R.C)). There is one more case in comparison with the previous one and the latter happened with the *Bombay Dyeing & Manufacturing Co. Ltd. V. Union Bank of India*(I)¹⁰. In this case, the national commission held that the consumer forums have not been given with the power to give interim relief. Only financial relief can be given with the powers of the consumer forums. In *Morgan Stanley Mutual Fund v. Kartick Das*(II)¹¹, the Supreme Court observed: "A careful reading of the above discloses that there is no power under the Act to grant any interim relief of even an ad interim relief. Only a final relief could be granted." These two extremes of usage of power or misdirected factors were put to an end by the amendment act of 2003 under the section 13 (3B). It says that the district forum

has the authority to pass an interim order if the produced facts are fair and just. In *Bhupender Kumar v. Angrej Singh*¹², the Hon'ble Supreme Court held that, "The decree for specific performance of the contract is in the nature of preliminary decree and hence one can expect that the proceeding would continue under the control of the Forums till either party move for passing the final decree." Yet, there is a dilemma if the adjudicating authorities can grant interim relief under specific performance of the contract.

Power of review or recall of the order

There exists no embedded power to recall or review any order passed. It may happen when there is legal permission from the law and by any involvement by it into the complaint. In *Ghaziabad Development Authority v. Nishi Agarwal, II*¹³, the modified order of the district forum was once taken before the state commission. The commission opined for the review of the previous order. Since there is no particular provision made for the review of the orders under the Act, the order made for the second time should have been suspended or set aside. In *West Bengal State Commission (Smt. Manju Nag v. CESC Ltd, I)*¹⁴, there was an order made for which the commission was not permitted to review its own order. As a contradiction, the Supreme Court in *Satyam Fibres (India) Pvt. Ltd., (AIR 1996 SC 2592: (1996) 5 SCC 550)* had directed that the Constitutional, Administrative, Statutory authorities have the power or authority to review their own orders or judgements made. This power is not exercised over all the cases, instead of limited to only a few specific complaints. In the middle of all these varied powers and malfunctioning commissions, the Act clearly states that only the National Commission has the power to review or recall its own order. This settlement is prominently given in section 22(2) and section 22A under the Act.

Provisions as to appeal

All the appeals against orders are taken to the very next commission which acts as a head to the commission or a forum which issued the order. If the orders given by the district forum by original jurisdiction do not satisfy the complainant or opposite party, appeal can be made against the order to the state commission under the sections 15, 17(2) and 27A of the Consumer Protection Act. Section 21A (2) and section 19 of the Consumer Protection Act states that appeals against orders by the state commission can be brought before the national commission. Similarly, the appeals against orders from the national commission can be made to the Supreme Court under the section 23 of the act. The period allotted for appeals is thirty days which at times may be extended in case there is a necessity due to the conditions of "sufficient cause". Having all this clear, the Act lacked proper explanation for appeals against interim or interlocutory orders (*Kashatriya Kalyan Sanstha v. Shantilal Amritlal Kapadia*¹⁵). These provisional orders are very temporary and had no set standards for appeals against it. In *Kashatriya Kalaya Sanstha v. Shantilal Amritlal Kapadiya* case (Supra), there was an interim order passed followed by an appeal against it. But, the high court mentioned to dismiss the appeal having the point that no

⁷(2012) CPJ 17 (SC)

⁸(1992) CPC 201 (Chandigarh)

⁹(1996) CPJ 155

¹⁰(2001) CPJ 1 (N.C.)

¹¹(1994) CPJ 7 (S. C.)

¹²(2009) 8 SCC 766 at para 19)

¹³(1998) CPJ 138)

¹⁴(2001) CPJ 174

¹⁵1996 (1) CPR 129)

appeals can be made against temporary orders. As a contrary rule (A. v. B, I (1996) CPJ 264 (Cal H.C.)), the section 17 and section 21 have made provisions for the state commission and the national commission to handle appeals against the interim or interlocutory orders. This states that both the commissions have the power to take or admit appeals even in such dilemma of orders. However, the reasons for these errors or poorly standardised functioning of the commissions is due to general provisions in the place of specific mentions. This directly means that the power to admit the appeals is mentioned, but on the conditions or criteria on which it should be taken is unspecified. All the appeals are taken randomly and thus there are differences between each commission functioning all over the nation.

Status of "Court of record"

The term "court of record" denotes any court whose proceedings are recorded for further use or investigation. This recorded material is purely for evidential purpose and thus, it takes the role of the precedent in the upcoming proceeding/case. Also, the mentioned evidence in the record cannot be questioned by any court while taking it for any purpose. The use of these records is possible in any court only if there is a separate provision of law. The "court of record" is not a term which can be used to all the courts and is only limited to two courts. The High court and the Supreme Court are the two courts which have been awarded the status or permission to call it as "court of record". It has been established under the Arts. 215 and 219 of the Constitution of India. Coming to the commissions, not even one of the state and national commissions have been given with the "court of record" power. In addition to this, there is no provision which takes these commissions as a precedent for the following proceeding. The lower consumer forums never share the decisional power with the higher forums and this clearly means that the administrative control is also disturbed partially. This status of "court of record" can be well understood in the following situation (Mahabubnagar Citizens Council (Regd. Society) v. District Consumer Disputes Redressal Forum, Mahabubnagar)¹⁶. The district forum issued a circular stating that a consumer association has the right to apply for complaints only if the complainant is a member of the association. If not, the complaint will stand cancelled. Unfortunately, the decision of this circular was taken by the state commission. Thus, the order was challenged to the high court due to dissatisfaction and the high court handled it thereon. The investigation revealed that the state commission has no right to set a precedent since it lacks the status of "court of record". Having this, the circular was declared void with the statutory provision. The example now makes it clear that the state commission or the national commission in spite of having an administrative control over the lower forums, cannot be taken as a "court of record".

The effectiveness of CPA, 1986 - Justice ArijitPasayat Report

In the year 2016, there was a committee formed by the Supreme court for analysing the functioning of consumer forums in India (State of U.P. and Ors. V. All U.P. Consumer Protection Bar Association (Civil Appeal no. 2740 of 2007)).

This committee was headed by Mr Justice ArijitPasayat, former Judge of the Supreme Court. The committee was established for few main objectives such as (a) examination of the infrastructure of the state commission and assessing if there is a need for improvement with remedial measures (b) the commissions and forums at all levels were checked for vacancy of member positions and if any they were planned to refill the positions (c) the necessity for extra benches in the national and state commissions and district forum (d) examining the qualification required for appointing non-judicial members (e) examination of the administrative powers of the officers in responsibility in the state commissions and district forum which is currently present and which should be given in future (f) examination of the salary and other services provided to the members of the commission (g) assessing the needs of the staff to provide them with all the necessary facilities to act as an efficient support staff (h) establishment of separate cadre of staff for national commission, state commission and district for a (i) examination of other unidentifiable issues which have not been solved for a very long time. Since its establishment, the committee has been disposing of its duties in the most productive way. The committee made its examination on existing conditions of consumer forum in states of Orissa, Maharashtra, Punjab, Haryana, Andhra Pradesh, Telangana, Jammu and Kashmir, Tamil Nadu, Bihar and Jharkhand. In national level, the National Consumer Disputes Redressal Commission of New Delhi was also taken for assessment by the committee. With the examination, the committee has come up with the finding that the established commissions are more diverted from its real objectives. In comparison with the set agenda and the reality, the committee has in reality where a number of activities of the commissions did not adhere to the regulations of the commissions always. The committee submitted a temporary report on the held examination stating the level of diversion of the Consumer Protection Act from the way it was desired to be. The establishment of the Consumer Protection Act of 1986 was major to protect consumers from being exploited. The goal was achieved, but it had equal damaging effects on the status of the commission for the way it performed. The main reason for this level of deviation is marked to be due to poor infrastructure. In the end, all the deficiencies of the functioning of the whole system occur majorly due to improper facilities in the location. Basic needs such as fans and lights in the courtrooms were also an issue when the committee visited the states for examination. These issues might look very simple and delicate but the effects of it would adversely react and make the whole process of handling a case hard. It was also found that there were very fewer stenographers in the court. This is a major mistake since dictations cannot be noted down and this is limit the written evidence of the case. The records of the handled and to be handled cases are very important in any court/forum. These files have to be maintained properly with adequate facilities and database to track the cases if possible. But unfortunately, the files have been misplaced and eaten by termites due to the absence of shelves and cupboards. No provision was available for proper arrangement of these files and the retrieval of the same also becomes quite hard. Peons should be present in all the courts for making clerical work easier and faster. The absence of clerical work by the peons will lead to prolonged time for disposal of cases. The members of the commission

¹⁶ 1996 LAWS(APH) 8

cannot be spending time on retrieval of files from the record room. Proper assistance should be provided for them to make sure that they concentrate only on the cases admitted. But all these needs and specifications are missed in the commissions. Next is the irresponsible attitude of the state government towards the maintenance of the consumer forum. The central governments have made necessary aids to serve the national commission with the best of facilities. Also, the construction work was also headed or provided by the central government in order to ensure smooth functioning of the commission. The state commission has failed to carry out its work with respect to the commissions under it. It has not filled the vacancies of the state commission and has also lacked in providing necessary facilities of construction. Hence the parliament now focuses on certain issues regarding the improvement of the state commission. The revealed results are thus in the nature of changing the whole system of operation, especially infrastructure.

Conclusion

Despite being in operation for three decades, the Consumer Protection Act, 1986 has failed to create the impact it was intended to. To add, the consumer education as well has not improved significantly. Moreover, the new amendment proposed to the law which includes mediation for dispute resolution instead of the decision by consumer forum suggests that the government has accepted the failure of the system and is trying to privatise the justice system. Again, the consumer forum was themselves an alternative when created. With the inefficiency, the new mediation cells which are proposed under the new bill will try for amicable resolution of the disputes. Proper appointments and good infrastructure continue to be the primary requirement for these consumer forums. To strengthen these forums, human resources and infrastructural remodelling is necessary.