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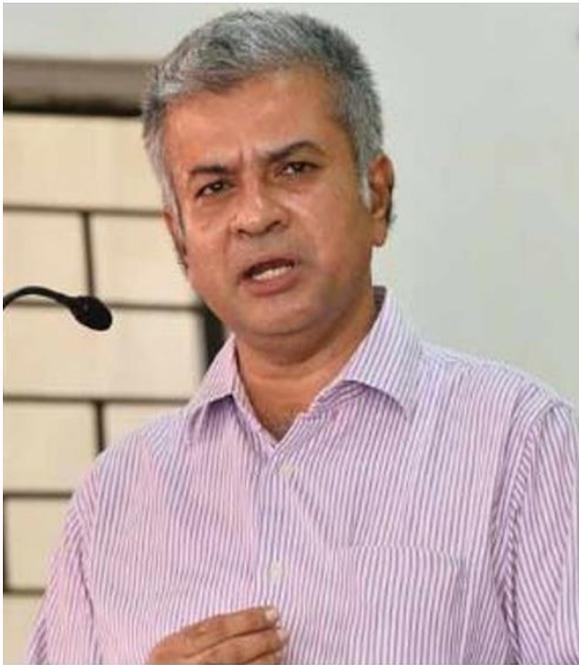
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

“COMPANY’S LIABILITY TOWARDS CONSUMER PROTECTION”

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LL.M. 1 YEAR, SEM-I, ROLL NO. 39

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Abstract:

In the modern business landscape consumer protection is a critical concern emphasizing the responsibility that companies have towards their customers. The need for a comprehensive consumer protection law in India became apparent in the 1960s and 1970s when there was rising concern about the exploitation of consumers by businesses this led to enactment of the Consumer Protection Act, 1986. In 2019, the Consumer Protection Act, 2019 was enacted to replace the old 1986 Act. The new Act modernizes and strengthens consumer protection by introducing provisions related to e-commerce, product liability, and stricter penalties for misleading advertisements. Consumer protection is not just a legal obligation but a strategic imperative for companies. By prioritizing consumer protection, businesses can enhance their reputation, customer loyalty, and long-term success. To provide insights into the intricate interplay between technology, consumer expectations, legal frameworks, and ethical considerations in shaping companies' responsibilities towards consumer protection in the digital age. Understanding these dynamics is crucial for businesses, policymakers, and consumers alike to ensure a harmonious and secure marketplace. Despite the enactment of consumer protection laws companies failing in their liabilities towards consumer in providing safe marketplaces and implementing of consumer protection laws. There shall be strict implementation of the consumer protection laws and also checks and balances shall be kept on growing frauds in the world of online markets. The researcher has undertaken the topic to study and investigate scenarios where despite having consumer protection laws how the consumers are at a risk of being exploited and the changing nature of frauds being committed in e-commerce.

Key Words - Companies, Consumer, E-commerce, Fraud, Protection.

1. INTRODUCTION

Consumer protection makes markets work for both businesses and consumers. Consumers need to be able to obtain accurate, unbiased information about the products and services they purchase. This enables them to make the best choices based on their interests and prevents them from being mistreated or misled by businesses. Consumer protection policies, laws and regulations help increase consumer welfare by ensuring that businesses can be held accountable.

Businesses that are known to treat consumers fairly will gain a good reputation and become more sought after. This increases their profitability and competitiveness which will also lead to economic growth in the long run. Consumer protection policies, laws and regulations guarantee that businesses are kept in check.

Consumer protection contributes to dynamic and effective markets for businesses to grow. Consumer demand drives innovation and economic development as businesses are required to maintain fair prices and good quality of their products and services.¹

With increasing consumerism in today's world and greater awareness of legal rights, product liability claims have risen rapidly and have become popular in many countries. Product liability finds its roots in various theories like tort-negligence, strict liability, and contract-warranty theory. There are conceptual confusions around the relationship of strict product liability with warranty theory since the former was intimately related with and derived its existence from the implied warranty of fitness of the product for the particular purpose and its merchantability. The correct position is that the warranty approach is one of the theoretical justifications of strict product liability. A recent survey conducted in India revealed the extent of the problem, with one in two customers encountering high-value products with inherent defects and an equally flawed redressal mechanism. The Consumer Protection Act, 2019 (CPA), that came into effect in July 2020, marked the first step towards the explicit introduction of product liability, including the strict one, into the Indian legal structure.²

¹ *Consumer protection*, ASEAN Consumer, available at <https://www.aseanconsumer.org/cterm-consumer-protection/why-is-consumer-protection>, last seen on 03/12/2023.

² Kartik Sharma, *An Appraisal of Strict Product Liability in India: Making a Case for Protection to Bystanders*, SCC Online, <https://www.sconline.com/blog/post/2022/10/21/an-appraisal-of-strict-product-liability-in-india-making-a-case-for-protection-to-bystanders/>, last seen on 03/12/2023.

2. EVOLUTION OF CONSUMER PROTECTION IN INDIA

The evolution of consumer protection laws in India can be traced through several significant milestones. Here's an overview of the key developments:

A. The Consumer Protection Act, 1986:

The Consumer Protection Act, 1986, was the first comprehensive legislation in India aimed at protecting the rights of consumers.

It established consumer rights, including the right to be protected against marketing of goods and services that are hazardous to life and property, the right to information, the right to choose, and the right to seek redressal.

B. Amendments to the Consumer Protection Act, 2002:

In 2002, the Consumer Protection Act underwent significant amendments to strengthen consumer rights and streamline the dispute resolution process.

The amendments introduced the concept of product liability, making manufacturers and service providers liable for defective products or deficient services.

C. Consumer Protection Act, 2019:

The Consumer Protection Act, 2019, replaced the earlier 1986 Act and came into force on July 20, 2020.

The new Act aims to enhance consumer protection by introducing provisions for e-commerce, direct selling, and tele-shopping.

It establishes the Central Consumer Protection Authority (CCPA) to promote, protect, and enforce consumer rights.

D. E-Commerce Rules, 2020:

In 2020, the Ministry of Consumer Affairs, Food, and Public Distribution issued the Consumer Protection (E-Commerce) Rules, 2020. These rules set out guidelines for e-commerce entities to ensure fair business practices, prevent fraud, and protect the interests of consumers engaged in online transactions.

E. Product Liability in India:

The concept of product liability gained importance with the 2019 amendments to the Consumer

Protection Act.

It holds manufacturers, service providers, and sellers accountable for any harm caused to consumers due to defective products or deficient services.

F. Digital Consumer Protection:

With the increasing digitalization of services, there has been a growing emphasis on digital consumer protection.

The government and regulatory bodies are working towards addressing issues related to data protection, privacy, and online fraud to safeguard the interests of digital consumers.

G. Strengthening Enforcement Mechanisms:

Efforts have been made to strengthen the enforcement mechanisms, including the establishment of consumer courts at various levels - District Consumer Disputes Redressal Forum, State Consumer Disputes Redressal Commission, and the National Consumer Disputes Redressal Commission.

Consumer protection laws in India continue to evolve to keep pace with changing market dynamics, emerging technologies, and new challenges faced by consumers in the rapidly evolving marketplace. It's essential to stay updated on the latest legal provisions to ensure effective consumer protection.³

3. CONSUMER PROTECTION ACT, 2019

To further strengthen the provisions for consumer protection especially in the new era of globalization, online platforms, e-Commerce markets etc., The Consumer Protection Act, 2019 was enacted to replace the Consumer Protection Act 1986. It inter-alia, provides for improved protection for consumers involved in online transactions. The Consumer Protection Act 2019 has widened the scope of the definition of "consumer" to include persons who buy or avail of goods or services online or through electronic means which was not present in the Consumer Protection Act 1986. The Consumer Protection Act 2019 has also included definition of advertisement as any audio or visual publicity, representation, endorsement or pronouncement made by means of, inter-alia, electronic media, internet or website.

³ Dr. A. Rajendra Prasad, Historical Evolution of Consumer Protection and Law in India, JCCL_INDIA, http://www.jtexconsumerlaw.com/V11N3/JCCL_India.pdf, last seen on 04/12/2023.

The Consumer Protection Act 2019 explicitly includes e-commerce transactions within its scope, defining e-commerce as the buying or selling of goods or services including digital products over digital or electronic network.

To safeguard consumers from unfair trade practices in e-commerce, the Department of Consumer Affairs has already notified the Consumer Protection (E-commerce) Rules, 2020 under the provisions of the Consumer Protection Act. These rules, inter-alia, outline the responsibilities of e-commerce entities and specify the liabilities of marketplace and inventory e-commerce entities, including provisions for customer grievance redressal.

The emergence of unfair trade practices known as “Dark Patterns” which involve using design and choice architecture to deceive, coerce, or influence consumers into making choices that are not in their best interest was notified by the Department of Consumer Affairs (DoCA). An interactive consultation / session was conducted by the DoCA in Mumbai on June 13, 2023 with various stakeholders including Advertising Standards Council of India (ASCI), e-commerce companies, industry associations etc. The e-commerce companies, industry associations were urged to refrain from indulging in any design or pattern in the online interfaces of their platform that may deceive or manipulate consumer choices and fall into the category of dark patterns by the DoCA.

4. PRODUCT LIABILITY UNDER CONSUMER PROTECTION ACT, 2019

‘Product Liability’ has been defined for the first time under the Consumer Protection Act, 2019 (**“hereinafter the 2019 Act”**). As per the 2019 Act, ‘product liability’ means the responsibility of a product manufacturer or product seller, or product service provider, to compensate for any harm caused to a consumer by a defective product manufactured or sold or by deficiency in services in relation to the product.⁴

The 2019 Act introduced the legal regime on product liability and dedicated an entire chapter (Chapter VI) Section 82 to 87 to enumerate the situations where a claim for compensation under a product liability action would be available for ‘harm’ caused by a ‘defective’ product manufactured by a product manufacturer or serviced by a product service provider or sold by

⁴ S. 2(34), The Consumer Protection Act, 2019.

a product seller.⁵

‘Harm’, in relation to a product liability inter alia includes — (i) damage to any property other than the product itself; (ii) personal injury, illness or death; (iii) mental agony or emotional distress, etc. It may be noted that this does not include any harm caused to a product itself or any damage to the property on account of breach of warranty conditions or any commercial or economic loss including any direct, incidental or consequential loss relating thereto.⁶ Further, the Act defines ‘defect’ to mean any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard, which is required to be maintained by or under any law or contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product.⁷

CPA 2019, expressly or by necessary implication, does not indicate that these new provisions of product liability will also apply to product liability actions already pending before various consumer fora. However, since these provisions create new rights and liabilities, there is a presumption in law that they are prospective in operation.

A product liability action can be filed against ‘product manufacturer’ or a ‘product service provider’ or a ‘product seller’, as the case may be. CPA 2019 defines each of these expressions in very wide terms to bring within their fold every possible aspect of a product liability claim. CPA 2019 also delineates the situations in which they will be held liable.

Few such situations are summarized below. While the situations envisaged under the CPA 2019 are quite exhaustive, there is nothing to indicate that these would be the only situations where liability will arise. It, however, remains to be seen how the courts will interpret these provisions.

A. Liability of a product manufacturer

A product manufacturer shall be liable, if –

- i. the product contains a manufacturing defect; or
- ii. the product is defective in design; or

⁵ S. 82, The Consumer Protection Act, 2019.

⁶ S. 2(22), The Consumer Protection Act, 2019.

⁷ S. 2(10), The Consumer protection Act, 2019.

- iii. there is a deviation from manufacturing specifications; or
- iv. the product does not conform to the express warranty; or
- v. the product fails to contain adequate instructions of correct usage to prevent harm or any warning regarding improper or incorrect usage.⁸

B. Liability of a product seller

A product seller (who is not a product manufacturer) shall be liable, if –

- i. he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or
- ii. he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or
- iii. he has made an express warranty of a product independent of any express warranty made by a manufacturer and the product failed to conform to such warranty; or
- iv. the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or
- v. he failed to exercise reasonable care in assembling, inspecting or maintaining such product⁹.

C. Liability of a product service provider

A product service provider shall be liable, if –

- i. the service provided by him was faulty in quality, nature or manner of performance; or
- ii. there was an act of omission or commission or negligence or conscious withholding of any information which caused harm; or
- iii. the service provider did not issue adequate instructions or warnings to prevent any harm; or
- iv. the service did not conform to express warranty or the terms and conditions

⁸ S. 84, The Consumer Protection Act, 2019.

⁹ S. 86, The Consumer Protection Act, 2019

of the contract.¹⁰

D. Exceptions to a product liability action

CPA 2019 also envisages some specific defences to a product liability action. Few of the defences are summarized below:

- i. The product was misused, altered or modified at the time of harm. *Curiously, as per this exception, there cannot be a product liability action against a product seller. This is somewhat intriguing, since this exception should equally apply to a product manufacturer or a product service provider.*
- ii. In any product liability action based on the failure to provide adequate warnings or instructions, the product manufacturer will not be liable, if-

The product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to the employer; or
The product was sold as a component or material to be used in another product and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material, but the harm was caused to the complainant by use of the end product in which such component or material was used; or

The product ought to have been used only by or under the supervision of an expert; or
The complainant, while using the product, was under the influence of alcohol etc.

- iii. A product manufacturer will not be liable for failure to instruct or warn about a danger which is obvious or commonly known to the user of such product.¹¹

Even prior to CPA 2019, in most product liability actions, one or more of the above defences were taken. These defences now have statutory recognition. CPA 2019 does not say that the defences set out are the only defences to any product liability action. It, however, remains to be seen how the courts will interpret these provisions.¹²

¹⁰ S. 85, The Consumer Protection Act, 2019.

¹¹ S. 87, The Consumer Protection Act, 2019.

¹² Product Liability under the Consumer Protection Act, 2019: Let the manufacturer/seller beware!, Bar and Bench, available at <https://www.barandbench.com/columns/product-liability-under-the-consumer-protection-act-2019-let-the-manufacturer-seller-beware>, last seen on 04/12/2023.

5. CHALLENGES IN REGULATING CONSUMER PROTECTION IN INDIA

Consumer Protection concerns are not new and have been around for long. But the changes in the marketplace have revealed new issues in these age old problems. The consumer protection frameworks discussed above need to adapt and evolve to adequately address the following concerns.

A. Information asymmetry in a marketplace occurs when one party to the transaction possess more information on the products/services. In a typical consumer market, the producer or seller possess more information as compared to the customer. When making purchase decisions, consumers would like to know three pieces of information the price of the product, the quality of the product, and, the terms of trade. In practice, consumers are imperfectly informed; they may not have the full details about these three pieces of information. This information asymmetry puts the consumers in a disadvantageous position, making them vulnerable to exploitation by the producers. In present market this is one of the leading causes of consumer detriment experienced by consumers. This is more prevalent in certain industries such as financial services, telecom, and e-commerce. These are the fastest growing sectors in India, where increasing number of consumers are entering the market. Information asymmetry in newer markets as these can arise due to the following:

- a) Complexity of the products/services offered: The consumer might not fully understand the product/service or the working/functioning of the same.
- b) Complex terms of contract: In absence of any standard contract, the consumers might not understand terms of contract.
- c) New or innovative terminology: Consumers might not understand the terms used by the sellers.

B. Redressal Mechanisms provide recourse to consumers who have had unpleasant experience in the market. Consumer Protection Act, 1986 provides for quasi-judicial system consisting of the Consumer Fora, State Commissions and National Commission. Some specific challenges relating to redress mechanisms are:

- a) Long, cumbersome, time-consuming legal process.
- b) Onus is on the consumer to take action.

- c) Lack of understanding about legal intricacies.
- d) Lack of Alternate Dispute Redressal Mechanisms.

C. Data Protection & Privacy have gained importance with advancement of information technology. Boundary-less transactions and online dealings have brought in new challenges and frauds, especially in the context of data protection. Protection of credit details and credit history of consumers is a major risk area, as these details can be easily stolen and abused. The issue of data protection has various elements that require attention. These include:

- a) Privacy of Personal Details of Consumers.
- b) Private data Protection.
- c) System and Data Integrity.
- d) Data of consumers sold as commodity by business.
- e) International Flow of Data.

D. Unfair Trade Practices are fraudulent, deceptive or dishonest trade practices or business representation of the product/service, which is prohibited by law or actionable under law by a judgement of the court. When advertisements try to influence the consumers by making unsubstantial claims they go against the interest of the consumers; they become deceptive, false or misleading and a question arises on the ethics of manufactures and sellers. (CUTS International, 2013) There are certain challenges being faced in India as regards UTPs, as listed below: -

COPRA is mainly a compensatory legislation, cannot grant penalties or punishments to offenders.

- a) Individuals do not have the power or resources to take upon large business houses against any unfair trade practices or misleading ads.
- b) Consumer authorities under COPRA do not possess any investigative powers.
- c) Consumer courts and authorities cannot take up a case suo moto. They can act only when complaints are lodged.
- d) The scope of COPRA and the sectoral legislations clash that gives rise to confusion resulting in forum shopping by the aggrieved parties.

E. Quality standards ensure the minimum quality compliance by producers. Indian producers follow either Indian standards as developed by Bureau of Indian Standards (BIS) or international standards by bodies such as ISO, WHO, FAO, etc. Certification of Indian standards is done by BIS. The compliance certification of international standards is done by various third parties. All international standards that are being followed in India are voluntary in nature. Standards developed by BIS fall under two categories: mandatory and voluntary. Standards relating to essential products and commodities fall under mandatory category, for example as in case of electric appliances and electronic goods. Some issues relating to Quality standards in India are:

- a) Most of the standards in India are voluntary in nature.
- b) A strict standards compliance is lacking.
- c) Many existing Indian Standards do not conform to international standards.
- d) The Third parties certifying compliance to standards may not themselves be authentic.

F. Vulnerable consumer groups

These include especially the children, women, elderly, illiterate are some consumer groups likely to be vulnerable. They require special protection against abuses and exploitation in the marketplace because of the following reasons:

- a) Due to Digital Divide i.e. inequality due to access to information & communication technology and e-skills, elderly and children are more exposed to risks from their digital activity.
- b) People lacking access to internet, ICT or skills to use these resources might suffer with regards to various opportunities and developments. (EU, 2014).
- c) Children become prey of abusive advertisements aimed at them which makes children 'victim' and they are also vulnerable to undesirable internet access.
- d) Ever growing use of social media platforms by the children as they believe it to be inseparable part of their online lives has raised serious privacy concerns.¹³

¹³ Archana Singh and Isha Goel, New Age Challenges in Consumer Protection in India, The International Journal of Business & Management, www.theijbm.com, last seen on 04/12/2023.

6. MAJOR RECOMMENDATIONS AND SUGGESTIONS

- i. Strengthening of the existing redressal mechanism to make it more efficient for delivering speedier justice
- ii. Supplement the existing redressal system with an active ADR Mechanism.
- iii. Building a strong consumer information and advisory system.
- iv. Integrate State Consumer Helplines and Consumer Advice Centre to facilitate mediation.
- v. Review of Consumer Protection Act 1986 and take adequate measures to plug loopholes with a view to reduce delays and enhance its reach to new areas of consumer issues.
- vi. National Consumer Protection Agency.
- vii. Information Technology tools for better delivery of service
- viii. Strengthen the existing Redressal Mechanism to make it more efficient for delivering speedier justice.
- ix. Supplement the existing redressal system with Alternate Dispute Resolution (ADR) Mechanism.

It has been rightly said that: ‘Justice delayed is justice denied’. An effective judicial system requires not only that just results be reached but that they are reached swiftly. But the currently available infrastructure of courts in India is not adequate to settle the growing litigation within reasonable time. This situation is gradually becoming equally relevant in the case of consumer forums also, albeit to a lesser degree as of now.¹⁴

7. OFFENCES AND PENALTIES UNDER CONSUMER PROTECTION ACT, 2019

The offences and penalties listed under this Act are mentioned as follows.

- a) **Punishment for false and misleading advertisements:** Under Section 89 of the Act any manufacturer or service provider who promotes false or misleading advertisements will be punished with imprisonment for a term that may extend to two years and with fine that may extend to ten lakh rupees.¹⁵
- b) **Punishment for manufacturing, selling, distributing products containing**

¹⁴ Dr.. Pratap Singh and Joginder Grewal, Consumer Protection in India: Some Issues & Trends, International Journal of Latest Trends in Engineering and Technology, IJLTET, <https://www.ijltet.org/>, last seen on 04/12/2023.

¹⁵ S. 89, The Consumer Protection Act, 2019.

adulterants:

Under Section 90 of the Consumer Protection Act, 2019 any person who sells, manufactures, distributes products containing adulterants shall be penalised in case of the following circumstances;

If the adulterated product does not cause any injury to the consumer then the term for imprisonment will extend to a period of six months and fine which may extend to one lakh rupees,

If the product containing adulterant causes injury not amounting to grievous hurt then the term for imprisonment will extend to a period of one year and fine which may extend to three lakh rupees,

If the product containing adulterant causes injury amounting to grievous hurt then the term for imprisonment will extend to a period of seven years and fine which may extend to five lakh rupees,

If the product results in causing death to the consumer then the term for imprisonment will be for a period of seven years which may extend to life imprisonment and fine not less than ten lakh rupees.¹⁶

c) Punishment for manufacturing, selling, and distributing spurious products:

Section 91 states that any person who sells, manufactures, or distributes spurious products shall be punished for such acts.¹⁷

8. CONCLUSION

There are several potential conclusions that could be drawn about the issue of large companies acquiring small companies in India. Some possible perspectives on this issue are: From an economic perspective, the acquisition of small companies by large ones can be seen as a natural part of the process of consolidation in an industry. This can lead to efficiencies and cost savings, and can ultimately benefit consumers. From a societal perspective, however, there are concerns that the acquisition of small companies by large ones may lead to a concentration of economic power in the hands of a few companies, which can be detrimental to competition and potentially lead to higher prices for consumers. From a cultural perspective, the acquisition of small companies by large ones may be seen as a loss of local control and a homogenization of products and services. This can be particularly concerning in industries that

¹⁶ S. 90, The Consumer Protection Act, 2019.

¹⁷ S. 91, The Consumer Protection Act, 2019.

are closely tied to local traditions and cultural practice. From a business perspective, small companies may be hesitant to sell to larger ones out of fear of losing their independence and control over their operations. On the other hand, large companies may see the acquisition of small companies as a way to quickly gain access to new markets or technologies. Overall, the acquisition of small companies by large ones in India is a complex issue with various pros and cons that need to be carefully considered.

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