

# EVOLUTION OF CONSUMER COURTS IN INDIA: THE CONSUMERS PROTECTION ACT 2019 AND EMERGING THEMES OF CONSUMER JURISPRUDENCE

—Ankur Saha\* and Sri Ram Khanna†

**Abstract:** *This paper underlines the role of Consumer Courts in the developing consumer jurisprudence in India. It starts with the need to set up Consumer Courts under the Consumers Protection Act 1986. This Act was required in the Indian markets because the well-organized sectors of manufacturers often exploited the consumers. The procedures of Civil Courts were time consuming, expensive and had to follow complicated procedures during trials. Therefore, the Consumer Courts were conceived as alternative quasi-judicial tribunal system which were inexpensive. This law has been amended thrice earlier before being repealed and replaced by the 2019 law which has gone into legal effect from 20th July 2020 ushering in many improvements and changes.*

*It retains the structure and jurisprudence of the Consumer Courts system. The changes in the existing Act of 1986 are mostly positive*

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\* Ankur Saha has LL.B. degree from KIIT Law School, Bhubaneswar and has built a specialisation in consumer law. She has acquired expertise in handling consumer disputes and fighting for aggrieved consumers. She heads the Consumer Law desk at Consumer VOICE at Delhi which regularly monitors developments in consumer law to guide and advise consumers. In this role she has drafted and shared inputs with the Ministry of Consumer Affairs in the new Consumer Protection Act and Rules of 2019.

† Sri Ram Khanna taught marketing research and International business at Dept of Commerce, Delhi School of Economics at University of Delhi for 34 years and served as its Head and Dean of Faculty before he retired in 2016. He has MCom, PhD and LLB degrees from Delhi University. He has been Managing Trustee of Voluntary Organisation for Interest in Consumer Education (VOICE) which he set up on the Delhi University Campus in 1983 and which pioneered Comparative Testing in India in 1991. He was a member of the Central Government's Committee which designed the Consumers Protection Bill 1986 (1984-1985). He was a Director of Life Insurance Corporation of India (2002-04) and Consumers International, London (2001-2007). He currently serves as the Managing Editor of Consumer Voice monthly magazines (English and Hindi). He is author of *Consumer Affairs and Customer Care* (2019) and several other books and papers. He was instrumental in introduction of a paper on 'Consumer Affairs' in the undergraduate programs at Delhi University since 2005.

*and explained. The Supreme Court and the National Commission have rendered a series of judgments on consumer law. We are covering three leading themes of consumer jurisprudence which have evolved from the law laid down by the Consumer Courts and upheld by the Supreme Court. One of the leading themes is of class action and joint action on behalf of aggrieved consumers.*

*The second theme is the gradual widening of the types of ‘services’ which are amenable to action in consumer courts. The range of services has been considerable widened under the principle of interpretation of statutes known as ‘ejusdem generis’ as applied to its definition under this law.*

*The third theme is the principle that one-sided agreement between the seller and the buyer which have been drafted by the seller who asks the buyer to sign on the dotted line is unenforceable against the buyer and are unfair trade practices.*

**Keywords:** Consumer Court, Consumer Protection Act 2019, E-commerce, Services.

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## I. INTRODUCTION

This paper addresses the subject of current consumer jurisprudence governing the relations between businesses and consumers in the marketplace. This

analysis is done in three parts: First, the paper analyses the emergence of the consumer courts system in India. It traces the background in which consumer courts were set up under the Consumer Protection Act 1986. After analyzing the differences between consumer courts and civil courts it follows the three main amendments brought prior to the 2019 law which repealed and replaced the 1986 law to strengthen the system. It also highlights the salient features of the 2019 law.

Second, it focuses on three leading themes of consumer jurisprudence which have evolved from the law laid down by the Consumer Courts and upheld by the Supreme court. One leading theme is of Class Action and Joint Action on behalf of aggrieved consumers. The second leading theme is widening the subject jurisdiction of consumer courts based on the definition of 'Services' resting on the principle of '*ejusdem generis*'. The third leading theme is development of the principle that one sided agreement between buyers and sellers are unfair trade practices and hence are not binding. These themes have been presented on the basis of case law that has evolved to bring a wide variety of B to C relations under the ambit of consumer courts. Third, it concludes with the need to improve the consumer courts by proposing the direction of future improvements in the Consumer Courts system.

## II. EMERGENCE OF CONSUMER COURTS SYSTEM IN INDIA

### A. Background of Consumer Protection Law

The Indian Constitution based on universal adult franchise was adopted in 1950 which gave citizens fundamental rights to be protected by the High Courts and the Supreme Courts. India came to be governed by the elected governments in an economic environment marked by planned economic development under a mixed economy. Production and markets grew under state controls and a regime of import substitution, industrial licenses and strict foreign exchange controls emerged. It was only after the assassination of Prime Minister Indira Gandhi in 1984 that ideas of economic liberalization and competitive markets began to overtake dominant Nehruvian economic philosophy of socialism with public sector as the commanding heights of the Indian economy.

This happened as the new generation assumed political power under the leadership of Prime Minister Rajiv Gandhi. Among the low hanging fruits in these ideas was a law to protect consumers from exploitation amidst competitive markets. The then Prime Minister Rajiv Gandhi directed his Civil Supplies Minister K.P.N. Singh Deo to draft a consumer protection law. The Minister

convened and sat through a two-day conference of consumer activists and organizations in 1985 at Vigyan Bhavan to discuss the ideas of such a proposed legislation. He also constituted a committee to draft the first version of this proposed Bill and expedited it.

The first version of the Bill was circulated as a cabinet note while the Minister was replaced by Rao Birender Singh MP from Haryana who was also relentless in following up the Bill and addressing comments from other Ministries. By the time The Consumers Protection Bill 1986 was introduced in Lok Sabha, the Haryana MP had been replaced by H.K.L. Bhagat as Union Civil Supplies Minister. He was also the Parliamentary Affairs Minister and could manage to have the Bill passed in Lok Sabha on 1 December 1986<sup>1</sup> and have it introduced and passed in Rajya Sabha the next day without any substantial political opposition. The day the Bill was passed was later notified by Shanta Kumar, the latter, a NDA Union Minister of Civil Supplies, as National Consumer Day.

A question is often raised as to what was the need to bring in this law? It is relevant to point out that when this law was enacted, the population had grown in the first few decades of independence. A modest GDP growth of 3 to 5% per annum and slow increase in per capita incomes, rapid urbanization and with growth of literacy, Indian retail markets had significantly grown. Industrialization and multifaceted development in India after the independence had resulted in a flood of consumer goods and services in the Indian Market. There was widespread exploitation of consumers. The consumer was at the receiving end while buying products and services. Inflation rates were in high single or low double digits and middle-class consumers protested shortage of goods and rising prices amidst stagnant incomes.<sup>2</sup>

Open market systems are an essential part of a capitalist market system and impart efficiency to markets in allocating resources. However, such open market systems do not work in perfect competition and are prone to monopolization as well as market failures. Information asymmetries between buyers and sellers make consumers vulnerable to exploitation and subject to restrictive or unfair methods of business. Therefore, consumer protection was required to protect consumers from exploitation.

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<sup>1</sup> Sri Ram Khanna and Hanspal Savita, *Consumer Affairs and Customer Care* (vol 1, 1st edn, Voice Society 2019) 171-172.

<sup>2</sup> *ibid* 85-96.

It was around this time that ‘The U.N. Guidelines on Consumer Protection’ were adopted by the U.N. General Assembly in 1985.<sup>3</sup> These guidelines were timely as they called upon member governments to take adequate steps to protect consumers interests. Part III Chapter E of the 1985 guidelines, is devoted to “measures enabling consumers to obtain redress”. Paras 32 to 34 specifically explained this measure. Further under 2015 revised U.N. Guidelines, their scope was expanded. Part V Chapter F refers to the “Dispute Resolution and Redress” which contains Point no. 37 to 41 that explain the need to provide consumer redressal mechanisms. The 1986 law is also justified on the basis of conforming to the U.N. Guidelines.<sup>4</sup>

This law was required in Indian markets because the well-organized sectors of manufacturers, traders, and service providers with the knowledge of the market and manipulative skills often exploited the consumers, in spite of the existence of various provisions of different laws for protecting their interests. The Consumer Protection Bill 1986 was designed as a simple, speedy, inexpensive alternative redressal mechanism to better protect the interests of consumers. With its enactment in December 1986, it became one of the most progressive and comprehensive pieces of legislation and is now an umbrella regulation covering all goods and services today.

It is also relevant to point out that the Indian Constitution has guaranteed fundamental rights to the Indian Citizen-Consumer, but it fails to protect the economic interests of the citizens in the marketplace. The framework of fundamental rights enshrined in the Indian Constitution provides protection to citizens from the excesses of the state and its instrumentalities. Writ petitions can be filed against the state and its agencies against violation of fundamental rights.

However, the remedy of such writs is ineffective against wealthy businesses which are non-state entities. In a recent matter of *Upendra Choudhury v Bulandshahar Development Authority*<sup>5</sup>, the Supreme Court has held that its writ jurisdiction was not open to citizens who complained against private companies. The Supreme Court held that Writ Petition under art 32 was not maintainable in Supreme Court against builders. Citizens need to seek relief from Consumer Courts, RERA, IBC.

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<sup>3</sup> Consumers International, ‘UN Guidelines for Consumer Protection’ <<https://www.consumersinternational.org/what-we-do/consumer-protection/global-policy-cooperation/un-guidelines-for-consumer-protection/>> accessed 9 March 2021.

<sup>4</sup> *ibid.*

<sup>5</sup> 2021 SCC OnLine SC 92.

## **B. Establishment of Consumer Courts: Comparison with the Civil Courts – The Three-Tier Structure of Consumer Courts**

When the law was enacted in 1986, complicated procedures of Civil Courts were expensive. Litigation on a cause of action which involved only a few thousand rupees was not productive as the cost of litigation would exceed the financial relief in the unlikely event of success. Therefore, the Consumer Courts were conceived as an alternative redressal system of quasi-judicial tribunals where no court fees were payable, therefore inexpensive.

Before the enactment of the Consumers Protection Act 1986, little in this direction was possible. This law has now worked for over 34 years and has enabled citizens to sue wealthy companies and businesses of a wide variety to answer the allegations of wrongdoing before the Consumer Courts. A three-step hierarchy of Consumer Courts was set up with the establishment of a District Forum in each district of the country.

Since the enactment of the Consumer Protection Act in 1986 which set up these courts, they have functioned to uphold consumer rights and bolster the strength of the individual citizen to challenge the wrongdoings of businesses in markets. While High Courts protect fundamental rights of citizens under writ jurisdiction, these consumer courts protect rights of citizens as consumers buying goods and services from corporations in the marketplace.

The Consumer Protection Act 1986 provided for a three-tier, quasi-judicial structure for a speedy resolution of consumer disputes. The provisions of this Act covered goods as well as services. The goods are those which are manufactured or produced or sold to consumers through wholesalers and retailers. All services in the nature of transport, telephone, electricity, housing, banking, insurance, etc. were covered.

If the consumer was not satisfied by the decision of the District Forum, she/he could appeal to the State Commission and against the order of the State Commission, a consumer could appeal to the National Commission as well. Furthermore, when the consumer is not satisfied by the decision of the National Commission, she/he can approach the Supreme Court of India. This system has been challenged on constitutional grounds, but the Supreme Court repelled this challenge in *State of Karnataka v Vishwabharati House Building Coop Society*.<sup>6</sup>

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<sup>6</sup> (2003) 2 SCC 412.

### C. Features of Consumer Courts and Their Functioning

The 1986 law had also enshrined some features that distinguished these Consumer Courts from Civil Courts. These features have also been retained in the 2019 law and include:

- a. Staffing of consumer courts with a mix of judicial and non-judicial expertise.
- b. Applicability of Rules of Natural Justice to the exclusion of the Civil Procedure Code.
- c. Time bound adjudication following specified summary procedure.
- d. Not bound by rules of Indian Evidence Act and thereby obtain and decide on Basis of evidence by way of affidavits.
- e. No stamp duty payable on claims only specified nominal fees.
- f. Not necessary to be represented by a lawyer. Both parties can be represented by an authorized agent. This issue was settled by the SC in *C. Venkatachalam v Ajitkumar C. Shah*<sup>7</sup>

### D. Choice of Forum: Consumer Courts vs Civil Courts

The real test of the effectiveness of these courts arrived nearly two and a half decades after the enactment of the 1986 law. In the early 2010s, need for lower- and middle-class housing in urban centers saw real estate builders collecting large sums of money from home buyers and then reneged on their promises to deliver homes within the promised time frame. Each of these homebuyers had invested their life savings in such transactions. Many have taken home loans and paid the builders in advance of the construction of their homes. They got caught in a double jeopardy - on the one hand regularly paying their monthly EMI including interest on home loans as well as paying rent on their current dwellings while awaiting delivery of their new home. Hundreds of such cases in many parts of the country forced homebuyers to consider legal action.

The natural step would have been filing civil suits claiming their rights to their promised flats and/or compensation. Such action would have been maintainable under the Contract Act of 1876 as each homebuyer had a Builder Buyer Agreement signed and sealed in their hands. However, surprisingly each such buyer was advised to proceed against builders not in civil courts but in the Consumer Courts. The reasons are not far to see. Firstly, the contract Act

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<sup>7</sup> (2011) 12 SCC 497.

has been in force for nearly 144 years. Jurisprudence of contracts has developed in such a manner that once a contract has been signed, albeit an unfair one containing one-sided condition, civil courts will enforce them.

Most businesses have developed one sided contract with terms unfair to one party and have been using them to advance their business interests for decades. This is largely true when the two parties are of unequal bargaining position as is the case in most business to consumer (“B2C”) contracts. As a result, buyers of such flats chose to shun civil courts where they did not expect much relief in the face of established contractual jurisprudence. Secondly, this was done as the citizen seeking justice and filing a civil suit would have had to pay stamp duty proportionate to the value of their claim. This would enhance the cost of litigation.

Thirdly, another reason was that the civil courts are subject to the Civil Procedure Code (“CPC”) which is well equipped with numerous procedural devices which can be easily used by ingenious defense lawyers to delay adjudication of substantive issues in a timely manner. The Civil Courts have gathered a reputation of being hyper technical in the interpretation of the legal provisions before them. Defense lawyers have built their reputations on ensuring delay by raising triable preliminary issues that may have little to do with substantial justice being sought and seeking their adjudication prior to the determination of issues of substantial justice.

Defense lawyers have then used the appeal process under CPC to challenge orders on preliminary issues before allowing the triable main issues to be adjudicated. Once preliminary issues have been settled, trial proceeds and adjudication of each issue is then subject to rules of evidence and cross examination of witnesses from both sides leading to the entire process becoming lengthy, time consuming and thereby expensive relatively. In view of the foregoing, the result is that most such cases have landed in Consumer Courts and not in Civil Courts.

### **E. Amendments to Consumers Protection Act 2019**

The law has been amended thrice. It was first amended in 1991 after a Central Committee headed by West Bengal Left Front Minister Niren De suggested improvements. It was once again amended in 1993 to bring marginal improvements. The third amendment was made in 2002 under the Prime Minister Atal Behari Vajpayee’s NDA Government. The steps to initiate the fourth amendment were initiated under the Prime Minister Manmohan Singh’s UPA Government but the Bill lapsed upon dissolution of Lok Sabha in 2014.

The present amendment is a leap of faith as compared to the incremental changes made in the first three amendments.

The Consumer Protection Bill 2015 was introduced in parliament by the then Union Minister Ram Vilas Paswan on 10th August 2015 after wide-ranging consultations with civil society including Voluntary Consumer Organizations (“VCOs”) who welcomed the changes. It was referred to the Standing Committee of Parliament headed by J.C. Divakar Reddy the same month. After significant deliberations, the Standing Committee made some new suggestions in its report submitted to parliament on 26th April 2016. The government had taken 20 months to process the changes and introduced the revised 2018 Bill in Parliament in January 2018.

However, the 2018 bill died an unnatural death as it lapsed after the term of the Lok Sabha ended in early 2019 before it could be passed in the Rajya Sabha. On 8th July 2019, The Consumer Protection Bill 2019 was again introduced in Lok Sabha by the then Minister of Consumer Affairs, Food and Public Distribution, Ram Vilas Paswan and it was passed on 30th July 2019 in Lok Sabha and on 6th August 2019 in Rajya Sabha. The old consumer Act of 1986 was finally repealed and replaced completely with the new law passed by Parliament in 2019.<sup>8</sup> The new law has come into legal effect from 20th July 2020 ushering in many improvements and changes in the old law while retaining the structure and jurisprudence of the Consumer Courts system. The law is expected to increase the level of consumer protection in the country.

*(a) The Consumers Protection Act 2019: Basic Concepts and Features*

Apart from creating a three-tiered structure of Consumer Courts, the 1986 law had also created legal concepts to protect consumers from wrongs committed by businesses in the process of sales of goods and services in the marketplace. These concepts have been retained in 2019 law and include Defective Product, Deficiency in Service, Definition of Goods and Services and Unfair Trade Practices.

New Consumer Protection Act of 2019 has carried over basic rights of consumers from the 1986 law. The six basic rights of a consumers stated are: Right to Safety, Right to Choose, Right to be Informed, Right to Consumer Education, Right to be Heard and Right to Seek Redressal. These rights are applicable to all sectors including the newly emerging e-commerce sector. All the protective features of the 1986 law have been retained lock, stock and barrel in the 2019 law along with added features to strengthen this law. The

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<sup>8</sup> Khanna (n 1) 192.

three-tier structure of Consumer Courts has not been touched, rather it has been strengthened.

*(b) Inclusion of E-commerce*

Another welcome feature is the inclusion of e-commerce and expanding the definition of Consumer. In the old Consumer Protection Act of 1986, the definition of consumer was only limited to buying goods or services largely from brick-and-mortar stores. The new Act has expanded the definition of consumer. It includes description about online transactions and offline transactions, teleshopping and multi-level marketing and direct selling. E-commerce rules have been notified under the new law and distinguish between sellers and platform providers (intermediaries). Given the business model of Inventory Entities, the e-commerce rules require them to comply with all the obligations imposed on market place entities as well as sellers. Particularly, all display requirements applicable to marketplace entities will also apply to inventory entities, including all information prescribed under the Legal Metrology Rules. However, certain requirements that are specific to Marketplace Entities, such as the due diligence requirements under the IT Act and seller-related compliance, will not apply to Inventory Entities.<sup>9</sup>

*(c) Highlights and Salience of the 2019 Law Over the 1986 Law?*

We have identified seven positive features in the 2019 Act which has repealed and replaced the 1986 Act completely. These include:

- Setting up of a new Executive Regulatory Authority called Central Consumers Protection Authority (“CCPA”) specialized in protecting consumers.
- Settings up of a Mediation Cell in each Consumer Court to mediate on consumer disputes.
- Widens the geographical jurisdiction of a Consumer Court to include the home or workplace of the Complainant.
- It substantially enhances pecuniary jurisdiction of Consumer Courts at all three levels.
- It introduces the concept of Unfair Terms of Contract which can be nullified by a Consumer Court.

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<sup>9</sup> Consumers International, ‘UN Guidelines for Consumer Protection’ <<https://www.consumersinternational.org/what-we-do/consumer-protection/global-policy-cooperation/un-guidelines-for-consumer-protection/>> accessed 9 March 2021.

- It introduces punishment to jail and fine for misleading ads and injury from adulteration and spurious goods.
- It introduces the concept of product liability action widening the jurisdiction of the Consumer Courts.

*(d) New Definitions*

In addition, there are clauses added in the definition section which makes the Act stronger. Few important clauses being: All contracts in India have been judged on the basis of jurisprudence based on the Indian Contract Act 1876. For nearly 144 years Indian courts have upheld the validity of all terms of contracts if the contract was validly entered and have refused to judge the reasonableness of terms of contracts once parties have bound themselves to such contracts. The major exception being contracts in which minors were parties or the object of the contract was against public purpose or policy.

The 2019 Act classifies six contract terms as 'unfair'. These cover terms such as: (i) payment of excessive security deposits; (ii) disproportionate penalty for a breach; (iii) refusal to accept early repayment of debts; (iv) unilateral termination without reasonable cause; (v) causing consumer detriment by assigning a contract to another party; (vi) one which puts the consumer at a disadvantage. In the new Act, the District Commission is not empowered to declare the terms as void, only the State and National Commission are being empowered to declare such terms of contracts as null and void. This will certainly reverse the current trend of contractual jurisprudence in B to C transactions and is to be welcomed by the consumers.

Few more important definitions clauses being e-commerce, endorsements, mediation, mediator, misleading advertisement, product liability, product liability action, product manufacturer, product seller, product service provider. After analyzing the entire Consumer Protection Act 2019, it can be said that this Act is matured, robust and it strengthens the old law of 1986. Though the above additions made to the Act will certainly prove to be advantageous to the consumers.

### **III. EMERGING THEMES OF CONSUMER JURISPRUDENCE**

This part of the paper focuses on three leading themes of consumer jurisprudence that have emerged after three decades of litigation in consumer courts. Final adjudication of all consumer disputes is done by the Supreme Court which is the court of last appeal in such matters. Judgments of the Supreme Court have defined the consumer jurisprudence that prevails at

present. Art 141 of the Constitution of India stipulates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India.

Thus, the principles or interpretation laid down by the Supreme Court are binding on each individual including those who are not a party to an order. The Supreme Court and the National Commission have rendered a series of judgments on consumer law in recent times and many of them have reinforced consumer jurisprudence to serve consumer justice. We are covering three leading themes in Indian consumer jurisprudence that have emerged over the period of the COVID-19 lockdown:

- The first theme is of class action under which one party as a complainant can sue on behalf of class of aggrieved consumers who are similarly placed. A part of this theme is the concept of ‘joint action’ by a Voluntary Consumer Association (VCA) who can sue on behalf of one or more named aggrieved consumers.

The second theme is the gradual widening of the types of ‘services’ which are amenable to action in consumer courts.

- The range of services has been considerably widened under the principle of interpretation of statutes known as ‘*ejusdem generis*’ as applied to its definition under this law.
- The third theme is the principle that one sided agreement between the seller and the buyer which have been drafted by the seller who asks the buyer to sign on the dotted line are unenforceable against the buyer and are unfair trade practices.

## **A. The Beginnings of Successful Class Action in Consumer Courts**

In December 1984 when the tragedy of Bhopal gas leak killed hundreds living around the Union Carbide pesticide plant, Indian law did not have the legal tool of class action wherein one or few victims of this tragedy could seek civil damages for the loss of life in Indian Courts. These victims had to file a class action suit in Courts in New York against the parent company of Union Carbide. But by 1986, all of these litigations in the U.S. District were transferred to India on the grounds of *forum non conveniense*.

The settlement which resulted from this class action got hundreds of crores of rupees to the Government of India to be spent on compensation, rehabilitation, and relief to the victims. The Supreme Court put its seal of approval in this case and brought the curtain down on litigation in India<sup>10</sup> in the case

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<sup>10</sup> (1989) 2 SCC 540.

of *Union Carbide Corpn. v Union of India*. This was not a court ruling but a settlement between parties which the court approved. There was no class action then but the Consumer Protection Act 2019 provides for class action in the Indian civil legal system today.

However, it took nearly three decades for Consumer Courts to interpret this provision in the spirit in which it was enacted. The first case which broke the tradition was *Ambrish Kumar Shukla v Ferrous infrastructure (P) Ltd* case.<sup>11</sup> Thereafter in *Anjum Hussain v Intellicity Business Park (P) Ltd*<sup>12</sup>, Supreme Court upheld *Ambrish Shukla* case to hold that each complainant need not have same cause of action - a common interest or grievance is adequate for action u/s 12(1)(c). This case was followed up by *Rameshwar Prasad Shrivastava v Dwarkadhis Projects (P) Ltd*<sup>13</sup>; the Supreme Court set aside National Commission orders that held complaints to be non-maintainable against a builder. It made the distinction between ss 12(1)(c) and 12(1)(b) r.w. s 13(6) of the Act of 1986. This judgment clarified meaning of a joint action and should be read with *Anjum Hussain* case that upholds *Ambrish Shukla*.

The icing on these layers of this cake called “class action” has come in 2020. In *Bhrigu Kaushik v Ansal Hi Tech Township Ltd*<sup>14</sup>, the National Commission held that class action in case of buyers of a township was held to be maintainable under s 12(1)(c). The concept of class action has advanced and consumers are getting relief in class action cases like this one decided in October 2020 relying upon previous Supreme Court cases. National Commission held that once the jurisdiction of this Commission by way of class action is invoked, the Commission is required to take the matter to its logical conclusion unless the matter is settled with every member of the class.

## **B. Role of Voluntary Consumers Association Established**

Joint Action by a VCA on behalf of aggrieved consumers was another concept embedded in the 1986 law under s 12(1)(b) of the Act. This provides that a VCA can sue on behalf of other consumers in a joint action. It enables a number of aggrieved consumers to file an action through a VCA who sues on behalf of others. Such representative action by a consumer association is not very popular but has commenced. In a recent case of *Sobha Hibiscus Condominium v Sobha Developers Ltd*,<sup>15</sup> it was held that a voluntary consumer

<sup>11</sup> 2016 SCC OnLine NCDRC 1117, (2017) 1 CPJ 1 (NC).

<sup>12</sup> (2019) 6 SCC 519.

<sup>13</sup> (2019) 2 SCC 417.

<sup>14</sup> CC No. 1951 of 2016, decided on 16-10-2020 (NCDRC).

<sup>15</sup> (2020) 11 SCC 328, 2020 SCC OnLine SC 191.

association will be a body formed by a group of persons coming together, of their own will and without any pressure or influence from anyone and without being mandated by any other provisions of law. An earlier judgement of the National Commission in the case of *Moulivakkam Trust Heights Flats Affected Buyers Assn v Prime Sristi Housing (P) Ltd*<sup>16</sup> has laid down the criteria qualifying a recognized voluntary consumers association filing a complaint under this section. The bench has laid down the six tests to judge which VCA can file cases under s 12(1)(b) collectively for consumers and have got the authority of a Supreme Court of India judgment. These tests are:

- a. *Registration*: The VCA must be registered under the Companies Act or under any other law for the time being in force.
- b. *Objectives of Association*: The VCA should be formed to protect, safeguard and watch the case of consumers as its main or one of the objectives.
- c. *Association not for Financial Gains*: VCA members must come together voluntarily and not due to any pressure or influence and without being involved by financial consideration of earning profit or remuneration using such an association. It held that if the objective of the association is to get financial gain for its members it would not qualify as Voluntary Consumer Association.
- d. *VCA can be Setup Anytime*: On the timing of forming of Voluntary Consumer Association, it relied upon *Engineers India Ltd v Ghaziabad Development Authority*<sup>17</sup> and held that whether the VCA was formed before or after the cause of action arose is not material. It followed the decision of a five-member bench in this case and held even if the association was formed after the grievance arose it would qualify as VCA.
- e. *Same Relief Claimed Against Same Person*: It also relied upon the NCDRC judgment in *Lotus Panache Welfare Assn v Granite Gate Properties (P) Ltd*.<sup>18</sup> It was contended that a VCA can only seek reliefs which are general in nature and a society which has no privity of contract with them cannot claim reliefs such as delivery of possession of the apartment and payment of compensation to the individual allottees. The National Commission held that that if the reliefs claimed are of the same nature and against the same person, such an association is competent to file a complaint for and on behalf of the persons.

<sup>16</sup> 2017 SCC OnLine NCDRC 163.

<sup>17</sup> (2001) 1 CPJ 8.

<sup>18</sup> CC No. 120 of 2015, decided on 28-8-2015 (NCDRC).

- f. *Protecting the Interest of the Consumers*: It also relied upon the NCDRC judgment in *Amrapali Sapphire Flat Buyers Welfare Assn v Amrapali Sapphire Developers (P) Ltd*,<sup>19</sup> where it was held that if the objective of the Association included advocating the cause of its members to protect their interest it would qualify as a Voluntary Consumer Association.
- g. *Trust is not VCA*: Another decision given was that a Charitable Trust would not qualify as a VCA under S 12(1)(b) of the Act.

### C. Scope of ‘Services’ Widened: Focus on Medical Services and Government Services

The second leading theme is the widening of coverage of ‘Services’ defined u/s 2(1)(o) of the 1986 law as - ‘service means services of any description made available to the potential users and includes the provision of facilities like, banking, financing, insurance, transport, processing and supply of electrical or other energy, boarding, lodging, entertainment, construction (housing), amusement or providing news or other information’

The pioneer judgment by Supreme Court in *Lucknow Development Authority v M.K. Gupta*.<sup>20</sup> Wherein it was held that the statutory housing authority was liable for deficiency of service in provision of service of construction of a flat whose possession had been delayed. The complainant was awarded compensation for deficiency of service and delay in delivery of possession of flat.

A spate of judgments has followed the *Lucknow Development Authority* case upholding the interests of consumers as buyers of flats. Recently builders challenged action by home buyers in Consumer Courts on grounds that their building projects were registered under the Real Estate Regulation Act 2006 (“RERA”) and hence homebuyers would have to seek Redressal of their grievances under the RERA mechanism. This challenge was repelled by the Supreme Court in 2020.

The Supreme Court in the matter of *Imperia Structures Ltd v Anil Patni*<sup>21</sup>, has held that registration of project under Real Estate Regulatory Authority (“RERA”) is no bar to initiate proceedings under the Consumer Protection Act. The Supreme Court held that despite the enactment of the Real Estate (Regulation and Development) Act, to deal with real estate firms, homebuyers

<sup>19</sup> 2016 SCC OnLine NCDRC 2727.

<sup>20</sup> (1994) 1 SCC 243.

<sup>21</sup> (2020) 10 SCC 783.

can still approach the consumer forum to seek remedies including refund and compensation from such companies for delay in handing over possession of their dream homes.

The provisions of Consumers Protection Act 1986 often came into conflict with provisions of other laws. Under s 3 of the 1986 law (or u/s 100 of 2019 Law) This s provides that this law 'is in addition to but not in derogation of any other law'. Several challenges to judgments of Consumer Courts are brought on grounds that the provisions of this law conflict with other laws. This provision has enabled the jurisdiction of consumer courts to be justified on grounds of harmonious construction of conflicting laws.

In another judgment the Supreme Court upheld the interest of a consumer buying commercial property. Under this law anyone buying for a commercial purpose cannot sue as a consumer. Commercial purpose involved in buying products or services excludes the dispute from jurisdiction of Consumer Courts. In a number of judgments, it has been held so. In *Ankur Goyal v Rise Project (P) Ltd*,<sup>22</sup> it was held that the onus for proving commercial purpose of buyer of flat is on the opposite party who must show that the buyer is buying and selling flats.

#### (a) Focus on Medical Services

The CPA 2019 in its current form does not explicitly specify health care in the list of services defined in the 1986 definition of 'service' which has been retained in the New Act of 2019. This definition has been held to be interpreted on an *ejusdem generis* basis and has proven to be the most dynamic legal concept that has widened the scope of this law. The Supreme Court has held that medical services are covered as a "service" in *Indian Medical Assn. v V.P. Shantha*.<sup>23</sup> The Hon'ble Court held that patients are consumers as long as they are making some form of payment for the medical service rendered and had also read healthcare into the definition of services.

This judgment has been followed up by spate of judgments upholding the rights of a patient to sue medical practitioners and hospitals for deficiency of service or negligence in service. In 1998 the Supreme Court in *Spring Meadows Hospital v Harjol Ahluwalia*<sup>24</sup> held that the hospital was responsible for negligence when a nurse gave a wrong injection to a patient. In *Charan Singh v Healing Touch Hospital*,<sup>25</sup> the Supreme Court held that the

<sup>22</sup> 2020 SCC OnLine NCDRC 465.

<sup>23</sup> (1995) 6 SCC 651, AIR 1996 SC 550.

<sup>24</sup> (1998) 4 SCC 39, AIR 1998 SC 1801.

<sup>25</sup> (2000) 7 SCC 668, AIR 2000 SC 3138.

compensation for medical negligence should be based on each and every ground pleaded by the complainant. The 2008 Supreme Court judgment in *Samira Kohli v Prabha Manchanda*<sup>26</sup> laid down an especially important principle of ‘informed consent’ of the patient prior to surgery or any other invasive procedure.

In 2008, the Supreme Court set aside the NCDRC order and held that the medical expert should have been sent all the medical records to obtain his expert opinion on medical negligence. In *Ramesh Chandra Agrawal v Regency Hospital Ltd*,<sup>27</sup> it was also held that the complainant must be given adequate opportunity to obtain expert evidence by sending the necessary medical records. In another judgment of 2009, in the matter of *Martin F. D’Souza v Mohd. Ishfaq*,<sup>28</sup> it was held that a medical practitioner could not be held liable because he went wrong or there was an error of judgment. The court while elaborating the ‘standard of care’ upon a medical practitioner, it also emphasized the need for expert evidence before a finding of medical negligence could be given.

In *Advanced Medicare and Research Institute v Kunal Saha*<sup>29</sup> judgment dated 24.10.13, the bench awarded the highest ever compensation of INR 6.08 crores to the complainant. This compensation was awarded on grounds of loss of income of deceased wife, her medical treatment costs, hotel expenses, loss of consortium of wife, pain and suffering and cost of litigation. It also awarded 6% interest from date of claim to date of payment.

*(b) Focus on Government Services*

The earliest case is *Regl Provident Fund Commr v Shiv Kumar Joshi*<sup>30</sup> judgment dated 14.12.99 where a division bench of the Supreme Court of S. Sagir Ahmed and R.P. Sethi JJ. held that an employee was a consumer when he participated in a Statutory Provident Fund. The employee filed a complaint at District Fora against delay in release of his provident fund. The District Forum awarded 18% interest in delayed payment and INR 1000 as costs. An appeal filed in the State Commission was dismissed. After dismissal of the 2nd appeal in National Commission a final appeal was filed in Supreme Court. The Supreme Court held that the employee was a consumer and there had been a deficiency in service of delay in release of provident fund of the employee.

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<sup>26</sup> (2008) 2 SCC 1, AIR 2008 SC 1385.

<sup>27</sup> (2009) 9 SCC 709, AIR 2010 SC 806.

<sup>28</sup> (2009) 3 SCC 1.

<sup>29</sup> (2014) 1 SCC 384, 2013 CPJ 1.

<sup>30</sup> (2000) 1 SCC 98.

The latest expansion in definition of services has come from the inclusion of statutory services under jurisdiction of consumer courts. In *Punjab Urban Planning and Development Authority (now GLADA) v Vidya Chetal*<sup>31</sup> the bench of N.V. Ramanna, Mohan M. Shantanagouder and Ajay Rastogi JJ. reversed an earlier SC division bench judgment in *HUDA v Sunita*<sup>32</sup> this 2005 judgment had held that the NCDRC had no jurisdiction to adjudicate the legality behind the demand of composition and extension fees made by HUDA. It was a statutory obligation and did not qualify as deficiency of service.

The SC bench upon a reference to review *HUDA v Sunita*<sup>33</sup> dwelt on the interpretation of s 2(1)(g) and (o) of the 1986 Act held that validity of statutory dues arising out of deficiency of service can be undertaken by the Consumer Fora. It overruled the *HUDA v Sunita* case. This judgment has opened the doors for challenge to deficiency in services provided by a wide range of government authorities under different central and state statutes. State agencies, authorities, municipalities, statutory boards, provide a wide range of public services against payment of fees. Such services can now be questioned before consumer courts.

Another recent case is *Joint Labour Commissioner and Registering Officer v Kesar La*<sup>34</sup> it was held that the beneficiary of a statutory welfare scheme was entitled to remedies under the Consumer Protection Act. The issue in this case was whether a worker who is registered under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 and was a beneficiary in a scheme under this law was a consumer u/s 2(d) of Consumers Protection Act 1986.

#### **D. One-sided Contract Clause No Longer Enforceable**

The third leading theme of consumer jurisprudence is that an agreement between a buyer and seller/service provider drafted by the seller where the buyer must sign on the dotted line, is one sided has been held to be an unfair trade practice and is inoperative. In *Pioneer Urban Land and Infrastructure Ltd v Govindan Raghavan*<sup>35</sup> a division bench of the Supreme Court held that that incorporation of one-sided clauses in an agreement between builders and flat purchasers constitutes an unfair trade practice falling under s 2 (r) of the

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<sup>31</sup> (2019) 9 SCC 83.

<sup>32</sup> (2005) 2 SCC 479.

<sup>33</sup> *ibid.*

<sup>34</sup> 2020 SCC OnLine SC 327.

<sup>35</sup> (2019) 5 SCC 725.

Consumer Protection Act 1986. This principle has been applied in several cases since then.

The National Commission held that, keeping in view the delay of 3 years in procuring the Occupancy Certificate, the Purchaser could not be compelled to take possession at such a belated stage. The Apex Court upheld the decision of the National Commission that the Purchaser made a clear case of deficiency of service on the part of the Builder and the Purchaser was justified in terminating the Apartment Buyer's Agreement by filing a consumer complaint. Further rightly so, the Purchaser cannot be compelled to accept the possession whenever it is offered by the Builder. The purchaser was legally entitled to seek refund of the money deposited along with compensation.

In *Arifur Rahman Khan v DLF Southern Homes (P) Ltd*<sup>36</sup> the bench of Dr. Chandrachud and K.M. Joseph JJ. in its judgment of 24th August 2020 reinforced this principle to give relief to flat buyers.

In this case 339 flat buyers had complained against delayed handing over of possession, the bench held that the flat buyers are entitled to compensation for delayed handing over of possession. A failure of the developer to comply with the contractual obligation to provide the flat to the buyer within a contractually stipulated period amounts to a deficiency. The Court focused on one sided clause in case of delay on the part of the developer in handing over possession post the date on which purchasers will obtain a home.

Besides servicing their loans, purchasers have to finance the expenses of living elsewhere. The court ordered the builders to pay compensation at the rate of 6% simple interest per annum to each of the appellants for period if delay. This would be in addition to the amounts which have been paid over or credited by the developer at the rate of INR 5 per square foot per month at the time of the drawing of final accounts.

In a recent case of *Ireo Grace Realtech (P) Ltd v Abhishek Khanna*,<sup>37</sup> a SC bench of Nageswara Rao, Indu Malhotra, and Ajay Rastogi JJ. decided on 11th January 2021. The above-mentioned principle enunciated in the two cases were upheld. Developer challenged the decision of NCDRC wherein refund of the amounts deposited by the Apartment Buyers was directed on account of inordinate delay in completing the construction and obtaining the Occupation Certificate. Court observed on perusal of the clauses mentioned in the Agreement that the said clauses were wholly one-sided terms of the Agreement

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<sup>36</sup> (2020) 16 SCC 512, 2020 SCC OnLine SC 667.

<sup>37</sup> 2021 SCC OnLine SC 14.

Buyer's Agreement, which were entirely loaded in favour of the Developer and against the allottee at every step.

In *Capital Greens Flat Buyers Assn v DLF Home Developers Ltd*<sup>38</sup> the appellant had assailed the judgment passed by the NCDRC 'granting relief of compensation and refund of money to the homebuyers.' In the said appeal, DLF sought that they should not be asked to pay any additional compensation apart from the contractual rate of compensation (INR 10 per square foot per month) as agreed in the Apartment Buyers Agreement ("ABA").

The principle laid down in, *Arifur Rahman Khan v DLF Southern Homes (P) Ltd* and in *Pioneer Urban Land and Infrastructure Ltd v Govindan Raghavan* where similar issues had arisen, where the Court observed that 'a term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice.'

The Court held that the mere fact that the developers had given exit offers to the flat buyers along with the interest rate of 9% would have no bearing on deciding whether such flat buyers, who did not opt for such exit options, would be entitled to claim compensation. In the present case, the Court held that where a genuine flat buyer has purchased a flat intending to shift into the flat, and not just as a financier or an investor, then a mere refund or an exit offer would not exempt the developer from paying additional compensation for the delay. A refund of the entire amount along with a 9% interest rate is not a just compensation for a genuine buyer who continues to remain in the contract to fulfil his or her dream to get possession of the flat. Hence, an additional compensation at the rate of 6% should be provided annually.

#### **IV. CONCLUSION: MODERNIZING THE INDIAN CONSUMER COURTS SYSTEM**

The quasi-judicial tribunals commonly known as Consumer Courts have been deeply embedded in the Indian justice delivery system. Since the pecuniary jurisdiction of the District Commissions has now been increased to INR 1 crore under the 2019 law, a much larger number of complaints is likely to be filed in Districts. Urgent steps are needed to improve the physical and IT infrastructure of these commissions to make them effective and efficient in speedy delivery of consumer justice to protect consumer interests.

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<sup>38</sup> 2020 SCC OnLine NCDRC 3.

Three steps are recommended:

Firstly, provision of proper court rooms, waiting room and mediation facilities and filing systems with adequate court staff and IT facilities: Some of the District Commissions are working from make-shift-premises without proper facilities and filing systems with case files stored in corridors. They do not have suitably trained/experienced support staff. Many State Governments do not pay adequate attention to the timely appointment of members of these tribunals and provide facilities for their functioning. The Central Government should frame guidelines in this regard to ensure that adequate attention is paid to provide facilities and infrastructure of a minimum standard at the district level.

Secondly, it has been over a year since the CCPA was notified but it has been unable to pass final orders to restrain a single misleading advertisement or unfair trade practice or initiate any class action in spite of notices being issued so far. Steps need to be taken to appoint full time Commissioners and support staff so that it can act as the independent regulatory body the law has envisaged for it. These tribunals along with the CCPA should play the role of an enabler of consumer justice rather than complaints redressal mechanism. They should be able to provide substantial justice and not dismissing complaints on minor technical grounds, ensuring timely disposal, online filing and hearings, providing substantial financial relief and paying special attention to class action cases which have now obtained the seal of approval of the Supreme Court.

Thirdly, the *E-Dakhil* software for online filing and virtual hearing by Video Conference has been released by the National Informatics Centre (NIC). It should be rolled out in a time bound manner. Judges of these tribunals and their support staff should be adequately trained to manage online. Filing and hearing of cases for speedy disposal. Future appointment of judges in these tribunals should require a minimum level of IT skills as an additional requirement for selection and appointment.

With the intent of safeguarding the interest of the consumers across all models of modern age retail trade, the 2019 Act aims to transform the jurisprudence pervading consumer protection from *caveat emptor* ('let the buyer beware') to *caveat venditor* ('let the seller beware'). Among all this, the most important is that everyone involved in a transaction, other than the consumer, will have to be more careful and cautious than ever before. There appears to be a political consensus among political parties at the national level.

The law was passed in 1986 with the political impetus during the tenure of Prime Minister Rajiv Gandhi. It was amended when Atal Behari Vajpayee was Prime Minister and the latest enactment strengthening this law had been brought under rule of Prime Minister Modi. Unlike farm laws, this law enjoys the support of political parties across the aisle in the Parliament. The current state of consumer jurisprudence is well positioned to serve and protect the interests of more than a billion Indian consumers in the decades ahead.