

## Comparative Analysis of Consumer Protection Law in India & UToJ&K

Dr. Showkat Ahmad Bhat<sup>1</sup> Ajaz Afzal lone<sup>2</sup>

1. Assistant Professor, School of Law, University of Kashmir, J&K- 190006
2. Research Scholar, Faculty of Law, Aligarh Muslim University, email: aalone101@myamu.ac.in

**Abstract:** The growing interdependence of the global economy and worldwide character of many business practices have contributed to the development of universal emphasis on consumer rights protection and promotion. Consumers, customers, Clients are demanding worth for money in the form of quality goods and better services. Contemporary technological developments have no doubt made a great impact on the quality, availability and safety of goods and services. However the fact of life is that the consumers are at a standstill victims of unscrupulous and exploitative practices. moreover in India the old law of Consumer Protection Act, 1986 and recently introduced Consumer Protection Act, 2019 is pertinent but still exploitation of consumers assumes numerous forms such as adulteration of food, spurious drugs, dubious hire purchase plans, high prices, poor quality, deficient services, deceptive advertisements, hazardous products, black marketing and many more. In addition, with revolution in information technology newer kinds of challenges are thrown on the consumer like cyber crimes, plastic money etc. which affect the consumer in even bigger way. This study examines & analyzes the comparative study of central legislation Cp, Act 1986 & Cp, Act 2019 and newly changes introduced by Cp, Act 2019.

### Introduction

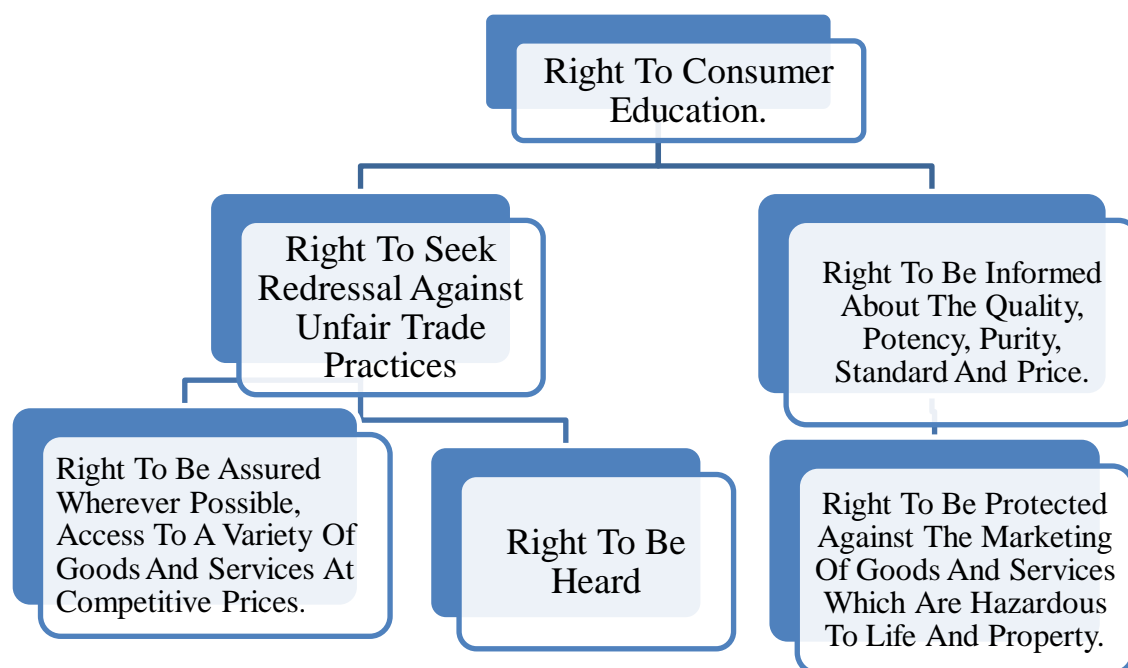
The Word “consumer” is a derivative of the Latin word “Consumere” which means, “to take up totally or to eat”. The consumer is one who consumes or uses any commodity or service available to him either from natural resources or through a market. According to John F. Kennedy, “Consumer by definition includes everyone. There are the largest economic grope affecting and affected by almost every public and private economic decision”<sup>1</sup>. *The Consumer Protection Act, 1986* defines the consumer as ‘one who buys any goods, hires any services or partly paid and partly promised or under any system of deferred payment’. ‘Consumer is sovereign’ and ‘customer is the king’ are nothing more than myths in the present scenario particularly in the developing societies. However, it has been realized and rightly so that the Consumer protection is a socio- economic programme to be pursued by the government as well as the business as the satisfaction of the consumers is in the interest of both. In this context, the government, however, has a primary responsibility to protect the consumers’ interests and rights through appropriate policy measures, legal structure and administrative framework.<sup>2</sup>

### Materials and Methods

The materials and methods applied for the study include analytical method of legal research by undertaking the legislative survey and scrutiny of Consumer Laws at centre and state levels. The study of consumer laws are based on established canons of statutory interpretation analysis. It also undertakes the comparative law method of central legislations & State consumer laws also innovation and safeguard laws under recent introduced Cp, Act 2019. —

**The Consumer Protection Act, 1986:** With changing times the economic and business environment of India also went through a change. In the 1980s and 1990s, we opened our

economy and truly became a global trading partner with the world. This exposed customers to new products but also new problems and we finally introduced the *Consumer Protection Act* to safeguard consumers. *Consumer Protection Act* has been implemented (1986) bring into existence to protect the rights of a consumer. It protects the consumer from exploitation that business practice to make profits which in turn harm the well being of the consumer and society. This right help to educate the consumer on the right and responsibilities of being a consumer and how to seek help or justice when faced exploitation as a consumer.<sup>3</sup> The *Consumer Protection Act* was passed in 1986 and it came into force from 1 July, 1987. The main objectives of the Act are to provide better and all round protection to consumers and effective safeguards against different types of exploitation such as defective goods, deficient services and unfair trade practices.<sup>4</sup> It also makes provisions for simple, speedy and inexpensive machinery for redressal of consumer's grievances. This *Consumer Protection Act* applies to the whole of India except the State of Jammu and Kashmir and covers all goods and services purchased by the consumers and to all sectors private, public and cooperative. The objective of the Act is "to provide for better protection of the interests of consumers and for that purpose to make provisions for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith". It protects the consumers from unfair trading or unfair trade practices. It is important to note that the Indian *Consumer Protection Act* is social welfare legislation and has been designed to avoid technicalities, procedural delays, procedural requirement, court fees and costs. The Indian *Consumer Protection Act* is social welfare legislation and has been designed to avoid technicalities, procedural delays, procedural requirement, court fees and costs.<sup>5</sup> The *Consumer Protection Act*, 1986 provides the following rights to the consumers:



The Act applies to all goods and services unless specifically exempted by the Central Government:

**Jammu & Kashmir Consumer Protection Act, 1987:** The *Jammu and Kashmir Consumer Protection Act* was passed in 1987 and it came into force from 3<sup>rd</sup> Oct, 1987. The main objectives of the Act are to provide better and all round protection to consumers and effective safeguards against different types of exploitation such as defective goods, deficient services and unfair trade practices. It also makes provisions for simple, speedy and inexpensive machinery for redressal of consumer's grievances. This *Consumer Protection Act* applies to the whole of State of Jammu and Kashmir and covers all goods and services purchased by the consumers and to all sectors -private, public and cooperative. The objective of the Act is to provide for better protection of the interests of consumers and for that purpose to make provisions for the establishment of state Consumer protection Council and other authorities for the settlement of consumer disputes and for matters connected therewith". It protects the consumers from unfair trading or unfair trade practices<sup>6</sup>. It is important to note that the *J&K Consumer Protection Act* is social welfare legislation and has been designed to avoid technicalities, procedural delays, procedural requirement, court fees and costs. This statute is regarded as the 'Magna Carta' in the field of consumer protection for checking unfair trade practices, 'defects in goods' and 'deficiencies in services' as far as J&K is concerned. It has led to the establishment of a widespread network of consumer forums and appellate courts in J&K. It has significantly impacted how businesses approach consumer complaints and has empowered consumers to a great extent.

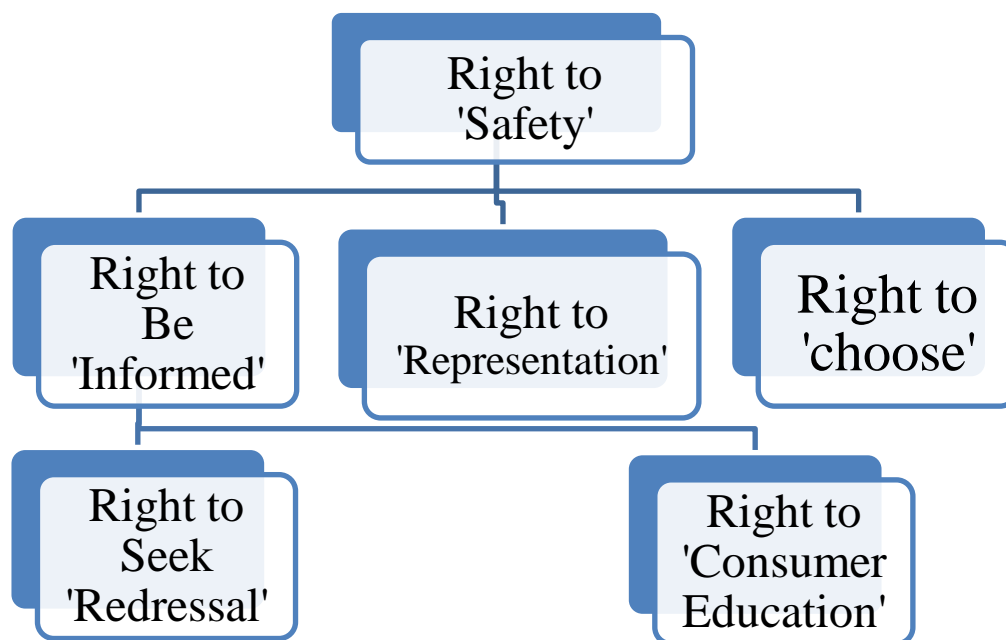
#### **Applicability of Central Laws in J&K after Abrogation of Article 370:**

The Jammu and Kashmir Reorganisation Act, 2019, extended central laws to Jammu and Kashmir after abrogation. Jammu & Kashmir and Ladakh become Union Territories on October 31, 2019. The 1987 Jammu and Kashmir Consumer Protection Act established a state commission and district forums. The 1987 state law was replaced by the central Consumer Protection Act, 1986, on October 31, 2019. The 1986 central Act was abolished and replaced with the Consumer Protection Act, 2019 on August 9, 2019. The Union Ministry of Consumer Affairs, Food, and Public Distribution released new Act guidelines on July 15, 2020.

**The Consumer protection Act, 2019:** Consumer Protection Act, 2019 has recently replaced the three decade old *Consumer Protection Act*, 1986. The new Act proposes a slew of measures and tightens the existing rules to further safeguard consumer rights. Introduction of a central regulator, strict penalties for misleading advertisements and guidelines for e-commerce and electronic service providers are some of the key highlights. The Digital Age has ushered in a new era of commerce and digital branding, as well as a new set of customer expectations. Digitisation has provided easy access, a large variety of choice, convenient payment mechanisms, improved services and shopping as per convenience.<sup>7</sup> However, along the growth path it also brought in challenges related to consumer protection. Keeping this in mind and to address the new set of challenges faced by consumers in the digital age, the Indian Parliament, on 6 August 2019, passed the landmark *Consumer Protection Bill*, 2019 which aims to provide the timely and effective administration and settlement of consumer disputes. The *Consumer Protection Act*, 2019 (New Act) received the assent of the President of India and was published in the official gazette on 9 August 2019. This new legislation will ease the overall process of consumer grievance redressal. Further, it proposes setting up of a Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers as a class. The CCPA would make interventions to prevent consumer detriment

arising from unfair trade practices. The agency can also initiate class action, including enforcing recall, refund and return of products. A manufacturer or product service provider or product seller will now be responsible to compensate for injury or damage caused by defective product or deficiency in services. The Bill also enables regulations to be notified on E-commerce and direct selling with a focus on the protection of interest of consumers. The 2019 *Consumer Protection Act* brings about fundamental changes to the existing 1986 legislation. But it also envisages a Central Consumer Protection Authority and vests too much power and control in this authority without proposing adequate administrative safeguards. The definition of “consumer” under the 2019 Act includes those who make purchases online. Endorsement of goods and services, normally done by celebrities, are also covered within the ambit of the 2019 Act.<sup>8</sup> In fact, an additional onus has been placed on endorsers, apart from manufacturers and service providers, to prevent false or misleading advertisements. In contrast to the 1986 Act, the definition of “goods” has been amended to include “food” as defined in the Food Safety and Standards Act, 2006. This would also bring the meteorically rising number of food delivery platforms within the fold of the 2019 Act. Interestingly, “telecom” has been added to the definition of “services” to bring telecom service providers within the purview of the 2019 Act. But surprisingly, such inclusion has not been worded as “telecommunication service” defined under the Telecom Regulatory Authority of India Act, which would have included internet, cellular and data services.<sup>9</sup> A significant addition to the 2019 Act is the introduction of “product liability” whereby manufacturers and sellers of products or services have been made responsible to compensate for any harm caused to a consumer by defective products, manufactured or sold, or for deficiency in services. Another newly introduced concept is that of “unfair contracts” aimed to protect consumers from unilaterally skewed and unreasonable contracts which lean in favour of manufacturers or service providers. The definition of “unfair trade practices” has been enlarged to include electronic advertising which is misleading, as well as refusing to take back or withdraw defective goods, or to withdraw or discontinue deficient services, and to refund the consideration within the period stipulated or in the absence of such stipulation, within a period of thirty days. It is now also an offence if any personal information, given in confidence and gathered in the course of a transaction, gets disclosed. All these changes signify an attempt to create more transparency in the marketplace, through legislative protection, with a view to ensure that consumer interests are above all else. The 2019 Act continues to have Consumer Dispute Redressal Commissions at the District, State and National levels (Consumer Commissions), however the pecuniary jurisdiction, i.e. the monetary value of complaints that can be entertained, of each of these commissions have been substantially increased to reduce the burden on the State and National Commissions by encouraging consumers to approach the District Commission for complaints valued up to Rupees 1 Crore. Furthermore, the jurisdiction of the Consumer Commissions has also been expanded to allow complaints to be made where the complainant resides or personally works for gain, as opposed to the 1986 Act where complaints had to be instituted where the opposite party resides or conducted business<sup>10</sup>, or where the cause of action arose. This will ease the burden on consumers who will now be able to institute complaints at the district level where they reside and will not be compelled to travel to other parts to pursue their complaints. Notably, the admissibility of complaints made to Consumer Commissions are to be decided within twenty-one days. Though such provision was part of the 1986 Act as well, an addition

to the 2019 Act is that if the issue of admissibility of the complaint is not decided within such time, the complaint shall be deemed to have been admitted. One can't overstate what a remarkable addition this is, as it does away with the languishing of complaints at the pre-admission stage, as had become a current practice, especially at the National Commission. Regrettably, corresponding procedural amendments have not been introduced, which raise some doubts about the practical efficacy of the changes.<sup>11</sup> The 2019 Act introduces the power of judicial review, which would allow Consumer Commissions to review their orders, thereby reducing the burden faced on account of appeals being preferred to rectify errors apparent on the face of the record. In stark contrast to the 1986 Act, appeals from the State Commission to the National Commission may now only be made where they involve substantial questions of law. Appeals from the National Commission to the Supreme Court can only be made against complaints which originated in the National Commission. The period prescribed for preferring appeals has now also been made more stringent, with a view to tightening the noose regarding timely filing of appeals.



### Conclusion

The consumer protection Act, 2019 when compared with the 1986 shows that it provides for greater protection of consumer interests taking into consideration the current age of digitization. The 2019 Act also deals with the technological advancements in the industry, provides for easier filing of complaints and also imposes strict liability on business including endorsers for violating the interests of the consumers. However, the test of time will prove the fate of the 2019 Act which prima facie, appears to be much more consumer friendly than the 1986 Act and also includes the current industry trends of e-commerce. However the 2019 Act in some corners of the retail industry as the compliance costs of the already cash strapped e-commerce sector is bound to swell. The proscriptions on directly or indirectly influencing the price of third price listed goods or services or the transactional decisions of the consumers intensifying, the discounted flash sale become the past and e-commerce players whilst navigating the most competitive and volatile industry of India.



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