

PROTECTION OF CYBER CONSUMERS IN INDIA

Written by Manoj Singh

Assistant Professor, Faculty of Juridical Sciences, Rama University, Kanpur

Abstract

In the modern day the internet has become an integral part of our daily life. The consumer has witnessed a huge conversion from being ordinary consumers to being cyber consumers. In the midst of a cyber-legal-commercial revolution and in order to provide a smooth adoption to e-governance and e-commerce, the Information Technology Act 2000 was enacted to provide a legal framework and enforce legal discipline.

Cyber consumerism has revolutionized the way of doing business and has shrunked the consumer market to the computer screen and thus the subject of legal protection available to the consumers under the Indian law and the issues which arise for them in the cyber market, deserves attention.

This paper deals with the concept of cyber consumer and protection of cyber consumers in India and the related law. This paper tries to make its reader aware of the various aspects associated with cyber consumers, the ways to redress them, the various redressal agencies and their jurisdictions and the reliefs available to the aggrieved under protection of cyber consumer.

Key Words: Consumer, Cyber Consumer, jurisdiction, redressal,.

Who Is A Cyber Consumer?

There is no special statute regarding protection of cyber consumers in India. For the protection of consumers our parliament has enacted Consumer Protection Act, 1986. Sub-section (d) of section 2 of the Consumer Protection Act, 1986 defines consumer which says “consumer” means any person who—

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes;

Explanation — For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment.

This section applies to cyber consumers also because there is no basic difference between cyber consumer and ordinary consumer. Differences occur in the medium of availing and hiring goods and services. Ordinary consumer goes to market for purchasing goods and availing services but in later case it is done via computer. Thus cyber consumer is a consumer who hires goods and avail

services through internet for consideration. Consideration is something of value.¹ A person who obtains goods or availing services free does not come under the definition of consumer.

Section 2(i) of The Consumer Protection Act, 1986 defines goods which says “goods” means goods as defined in The Sale of Goods Act, 1930. Section 2(7) of The Sale of Goods Act, 1930 defines goods as every kind of movable property other than actionable claim and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. Thus it is an inclusive definition. Service is defined in section 2(o) of the Consumer Protection Act, 1986 which says service means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction entertainment, amusement or the purveying of news or other information, but does not include the information of any services free of charge or under a contract of personal service.

There is a difference between ‘contract for service’ and ‘contract of service’. A ‘contract for service’ implies a contract whereby one party undertakes to render services e.g. professional or technical services to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses own knowledge and discretion. A ‘contract of service’ implies a relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its performance.²

Consumer Dispute Redressal Agencies

Section provides for redressal agencies for consumer dispute namely (a) District Forum (b) State Commission established state government by and (c) National Commission established by the Central Government by notification³.

Pecuniary Jurisdiction of the Redressal Agencies

¹ Vivek Sood, “*Cyber Law Simplified*” (New Delhi: Tata Mc Graw Hills, 2001), 539.

² Dharangdhara Chemical Works Limited V State Of Saurashtra 1957 SCR 152

³ Section 9 of the Consumer Protection Act, 1986.

District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed "does not exceed rupees twenty lakhs"⁴. State Commission shall have jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore⁵. National Commission shall have jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore⁶.

Territorial Jurisdiction of the Redressal Agencies

A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises. A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or

⁴ Section 11 of the Consumer Protection Act, 1986.

⁵ Section 17 of the Consumer Protection Act, 1986.

⁶ Section 21 of the Consumer Protection Act, 1986.

personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises⁷.

Appellate Jurisdiction of the Redressal Agencies

There are three redressal agencies which use appellate powers 1.State commission 2.National commission and Supreme Court. Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not finding it within that period⁸. Any person aggrieved by an order made by the State Commission may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period⁹. Any person, aggrieved by an order made by the National may prefer an appeal against such order of the Supreme Court within a period of thirty days from the date of the order provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period¹⁰.

Reliefs under Consumer Protection Act

District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the

⁷ Section 11 of the Consumer Protection Act, 1986.

⁸ Section 15 of the Consumer Protection Act, 1986

⁹ Section 19 of the Consumer Protection Act, 1986

¹⁰ Section 23 of the Consumer Protection Act, 1986

services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:—

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;

- (e) to remove the defects in goods or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- (hb) to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five percent of the value of such defective goods sold or service provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

(i) to provide for adequate costs to parties.

(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government¹¹.

Problem Regarding Goods Sold or Services Provided From Outside India To Indian Consumers

A question may arise that in case of foreign goods or service provider how liability will be imposed because in such situation problem of territorial jurisdiction may arise. In such case liability will be Consumer Protection Act, 1986 under depends on intension and knowledge of goods or service provider. If he intends that his products are sold in India would be liable to the consumers under

¹¹ Section 14 of the Consumer Protection Act, 1986

Consumer Protection Act, 1986 otherwise not¹². The onus of proving such intention would lie upon foreign goods or service provider¹³.

Conclusion

A cyber consumer in law is no different from an ordinary consumer. It is only the modus –operandi for purchasing a product or hiring a service, which is different. A cyber consumer purchases goods or hires services using the Internet whereas an ordinary customer uses traditional methods of going to the market physically. Since cyber consumer also comes under the definition of consumer given under Consumer Protection Act, 1986, therefore there is no dilemma, but sometimes problem may arise regarding territorial jurisdiction of the court. For combating this problem amendment should be made in Consumer Protection Act, 1986 by our parliament because consumers and computers have no concern with boundaries of the nations. In the age of globalization boundaries of the countries have no meaning, especially when we are living in the age of cyber domination. At last consumers themselves should be alert and conscious while dealing with distant goods and service providers because prevention is better than cure.

¹² Vivek Sood, “*Cyber Law Simplified*” (New Delhi: Tata Mc Graw Hills, 2001),574.

¹³ Id. at 573.