



CONSUMER DETRIMENT IN B2C TRANSACTIONS UNDER CONSUMER LAW IN INDIA: ROLE OF CONSUMER COURTS

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ABSTRACT

The Indian consumer protection law confines itself to Business to Consumer (B2C) transactions and leaves out Business to Business (B2B) transactions from its ambit. This issue has been a subject of litigation in consumer courts over the years. The Supreme Court of India has had to adjudicate the issue a number of times over last three and a half decades.

A two Judge Bench of the Supreme Court of India (SCI) in the recent case of Shrikant G. Mantri vs Punjab National Bank again observed that 'business to business' (B2B) disputes cannot be construed as consumer disputes and claims arising out of the same cannot be entertained under the Consumer Protection Act (CPA). The judgment brings back to focus one of the most contentious issues in the consumer protection arena – the 'commercial purpose' interpretation.

This research paper seeks to explore the rationale for the rigid classification between Business to Business (B2B) and Business to Consumer (B2C) transactions and argues the justification of the said classification under the CPA. It shall trace the development of consumer jurisprudence on this issue through some of the landmark Judgments of the National Commission (NC) and Supreme Court of India (SCI).

INTRODUCTION

The moment a person is born, he is a consumer of various goods and services. Had it not been for consumer, no business or industry would have ever existed. When any person purchases any goods or avails any service, he does weigh *value for money* proposition.¹ This value for money consideration exists in the aspects of quality, quantity, price, merchantability etc. Unfortunately, the consumers in India have been neglected a lot. The manufacturers, traders and wholesalers have dominated the marketplace and exploited the consumers to a great extent. Whenever our foreign brethren narrated the rights of consumer on their soil, it always seemed to be more of a childhood fairy tales.² The story of “*Consumer is King*” is more of a fiction than reality.

The Law of Contracts in India was enacted under British colonial rule and it was meant to regulate commercial contracts under the colonial mercantile era. It covered all kinds of contracts and there was no distinction among the types of contracts it applied to. It was based on the principles of equity among the contracting parties who were considered supreme to fashion terms of the contract and bind themselves to it. The British mercantile tradition in 19th century Britain mainly catered to the needs of the British merchants and the industrial class which grew during the industrial revolution. It was also meant to serve the colonial maritime trade of the British merchant fleet. *The Indian Contract Act 1872* and the *Sales of Goods Act 1930* which were enacted to cover this domain were based on the British laws and the common law doctrines that were evolved in British Courts. These laws covered all kinds of sales of goods and services in India for nearly four decades after independence in 1947.

1 Commentary on Consumer Protection Act, available at: http://ncdrc.nic.in/bare_acts/1_1_2.html#:~:text=The%20Consumer%20Protection%20Act%2C%201986,express%20additional%20rights%20on%20him [Last seen August 19, 2022].

2 K. R. Bulchandani, *Business Law for Management*, Himalaya Publishing House 6th Edition.

CONSUMER PROTECTION ACT, 1986: THE SUNSHINE LEGISLATION

The Indian economy from the very beginning was a highly regulated one and not much was being thought on the aspect of consumer rights. In fact, State itself was the substantial provider of goods and services. Later on, with the opening up of the economy, the private players too joined the market as providers of various goods and services. The doctrine of *caveat emptor*, meaning ‘let the buyer beware’ absolved all manufacturers and suppliers from all liabilities all these years to the detriment of consumers. The post-emergency period actually led to activism in various spheres of social activity.

After almost four decades of independence, the CPA, 1986 came up in recognition of power asymmetries in terms of bargaining position between consumers and providers of goods and services. It has a consumer-friendly design and is aimed at resolving consumer disputes by taking care of the issues of cost, time and procedural technicalities involved in conventional court litigation.

B2B AND B2C CONTRACTS: THE RECOGNITION OF DISTINCTION

Importantly, the business laws enacted earlier covered commercial contracts (B2B) as well as Consumer contracts (B2C). Thus, hitherto there was no distinction being made between B2B and B2C contracts from the aspect of seeking remedy for the aggrieved party. Giving similar treatment to both these kinds of contracts was unfair and the apple-orange classification was imperative in context of market realities. The Indian consumer protection law changed the legal basis of B2C contracts and defined Business to Consumer (B2C) transactions and left out Business to Business (B2B) transactions from its ambit.

In order to avail the benefits of this benevolent legislation, the person has to be a ‘consumer’. The act has defined this term and one needs to be falling within the four corners of this definition to avail the benefits under the act. Also, not falling within this definition, doesn’t imply that a person doesn’t

have a remedy at all. Just that, the remedy shall be then available under the conventional civil court. The legislative intent of excluding commercial disputes from the ambit of the legislation is reflected in the definition of the term 'Consumer'. This law is meant to compensate for consumer detriment caused by unfair methods to consumers but not to compensate business losses in B2B transactions.

BUSINESS DISPUTES AND CONSUMER DISPUTES: THE BLURRED BOUNDARIES

Consumer Protection Act is aimed at protecting the interests of consumers and in order to be eligible to claim remedy under CPA, the definition of the term 'Consumer' needs to be satisfied. The opening paragraph of the definition of 'Consumer' (dealing with goods) prevailing then was:

“consumer means any person who 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”.³

Thus, resale and commercial purpose were two specific exclusions provided under the definition and the people purchasing goods for themselves as end users of goods/services were the ones to be called Consumers under the act.

THE AMBASSADOR CASE: PUSHING FOR A RE-LOOK

During the early days of CPA, *Western India State Motors Vs. Sobhag Mal Meena*⁴ was one of the very interesting cases that came up for consideration before the National Commission (NCDRC).

The complainant purchased an ambassador car from the respondent manufactured by Hindustan

Motors. The car developed engine issues after the first use itself and had to be taken up for repairs. Unfortunately, even after repairs the car wasn't functional and it became a recurring problem. The complainant had purchased it to run it as a taxi for earning his livelihood. Also, he had availed loan from bank for the same. He approached the State Commission claiming a new car, compensation for loss of profits and mental agony. The NCDRC dismissed the complaint and held that buying of the car for running as a taxi was surely for a commercial purpose and was explicitly excluded from the definition of consumer. Even the plea of livelihood wasn't entertained by National Commission.

The judgment in this case attracted a lot of public attention and consumer associations were very disappointed with the existing provision. This case of even earning a livelihood to be treated as commercial in nature appeared very unjust. This interpretation was surely to exclude a lot of deserving cases being ruled out. The NCDRC judgment would go on to serve as a ratio decidendi and would henceforth be followed by all subordinate consumer courts. This would exclude a number of consumers from these courts.

SYNCO TEXTILES CASE: RAISING AN INTERESTING ARGUMENT

Another case that deserves mention on this issue is *Synco Textiles Pvt. Ltd. Versus Greaves Cotton & Company Ltd* (1991)⁵. Synco Textiles which was dealing in edible oil contracted with Greaves Cotton Co. for supply of generating sets (3) at Rs 553,000 for usage in factory. The generating sets supplied were found to be defective and resultantly led to loss of business for Synco Textiles. It approached the State Commission claiming cost of machines and compensation for loss of business. The claim was dismissed the purpose for generating sets being commercial. Synco Textiles argued that the electricity to be produced from generating sets was for a production purpose and electricity itself was not for sale. It added:

“a fridge, a fan, a water cooler etc. purchased and installed in a residence will not be considered 'commercial purpose' and hence covered by the

3 The Consumer Protection Act, 1986, Section 2(d)(i).

4 MANU/CF/0016/1989.

5 MANU/CF/0109/1990.

Act but, if installed in a factory, a shop, a lawyer's chamber or a doctor's clinic, will become an acquisition for a commercial purpose and hence would not attract the provisions of the Act. The same situation will arise in respect of a car purchased by an officer of a company with the funds provided by his employer, and a car purchased by a company for the use of its officers: the former would not be for a commercial purpose whereas the latter would be for a commercial purpose”.

Notably, as the term commercial purpose wasn't defined in the act. The commission thus resorted to ordinary dictionary meaning and maintained commercial meant 'large scale'. The National Commission made a distinction between small-scale and large scale. It held Synco Textiles to be 'large' and thus was not 'consumer' within the act.

Meanwhile, the Department of Consumer Affairs (DCA) was created and it later got elevated to a separate ministry.⁶ The Act too got later amended to assimilate the demand of the consumer groups and the following explanation was added to the definition of consumer under Section 2(d) of the Consumer Protection act.

*“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”.*⁷

Thus, the following conditions had to be satisfied to claim benefit of the exception provided in Explanation:

- The product or service is exclusively used;
- The exclusive use is for the purpose of earning livelihood;
- Such livelihood is earned by means of self-employment.

CORPORATE CONSUMERS: THE DISTURBING TREND

The Consumer Protection Act clearly leaves out the commercial purpose from its ambit. However,

6 Akhileshwar Pathak, Legal Aspects of Business, p.no.349, McGraw Hill Publication, Fourth Edition, 2010.

7 The Consumer Protection (Amendment) Act, 1993, Explanation to Section 2(d).

in order to avail the benefits of this legislation, even the large-scale business houses claim it to be case of business for livelihood.⁸ It is pertinent to point out that the distinction between large vs small was not spelt out in Synco Textiles case. At what size small became large was left unanswered. Around this time a number of commercial disputes between business having insurance contracts also started filing cases in Consumer Courts alleging deficiency in service on a repudiation of insurance contracts. The Insurance Act of 1938 was already in force and the litigation between insurers and those claiming insurance payments would normally have been litigated as contracts in civil Courts subject to the Civil Procedure Code and payment of Stamp duty on amounts claimed. Business lawyers started filing cases in Consumer courts which did not require payment of stamp duty and Civil Procedure Code was not applicable in the summary procedure. One could watch cases of crores of Rupees of compensation claimed by businesses eating away the bulk of the judicial time in NCDRC then located at Indian Oil Bhavan in the early 1990s. Consumers were relegated to the background when such cases were asked to wait for their turn. This also gave rise to the argument as to why businesses were being allowed to come to consumer courts when there were hundreds of civil courts in each state.

The terms livelihood and self-employment being added in the explanation after Synco Textiles case were dealt with elaborately by SCI in the case of *Laxmi Engineering Works Vs PSG Industrial Institute* (1995).⁹

Mr. Joshi was a diploma holder in engineering discipline and wanted to start a SSI – Laxmi Engineering Works. It was also registered with the Directorate of Industries, Maharashtra. He contracted with Premier Automobiles for the supply of parts required by them. The machinery procured from PSG Industrial Institute was found to be defective. The Consumer commissions at State and National level held the appellant not to be a consumer. The case finally reached the SCI. It observed that com-

8 Jehangin B Gai, “Commercial Transaction for livelihood comes under Consumer Protection Act” Times of India, August 16, 2016 available at: <https://timesofindia.india-times.com/city/mumbai/commercial-transaction-for-livelihood-comes-under-consumer-protection-act/article-show/53701980.cms>

9 (1995) 3 SCC 583.

mercial purpose is a question not of law but of fact and needs to be appraised on case-to-case basis. The emphasis is on the purpose and not the value of goods under consideration. It held:

“The several words employed in the explanation, viz., uses them by himself, exclusively for the purpose of earning his livelihood and by means of self-employment, make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself, by employing himself for earning his livelihood. The ambiguity in the meaning of the words “for the purpose of earning his livelihood” is explained and clarified by the other two sets of words.”

Thus, the SCI laid down in this landmark case that commercial purpose is a question of fact in a respective case and needs to be dealt with on a case-to-case basis. It is on account of it that a good deal of subjectivity has crept in the interpretation of commercial purpose.

COMMERCIAL PURPOSE INTERPRETATION: LANDMARK JUDGMENTS

The legislative intent as envisaged under the objectives of the act was to exclude business-to-business disputes from the domain of CPA. The consumer courts were set up for consumer disputes and not commercial disputes. Interestingly, after the insertion of the Explanation to Section 2(d)(i) under Consumer Protection (Amendment) Act, 1993 some commercial disputes too managed to venture into consumer courts.

The court in case of *Cheema Engineering Services v. Rajan Singh* (1997)¹⁰ held that in the absence of the definition of ‘Self-employment’ it becomes a matter of available evidence. There is a fine line between manufacture and sale of bricks for a commercial purpose and for earning a livelihood. The court also held ‘He’ *“includes the members of his family, Whether the respondent is using the machine exclusively by himself and the members of his family for preparation, manufacture and sale of bricks or whether he employed any workmen and if so, how many are matters of evidence”*.

10 (1997) 1 SCC 131.

Meanwhile, the explanation added in the year 1993 was further enlarged for Services as well in the year 2003. The revised explanation being: *“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”*¹¹

The Hon’ble apex Court in the case of *National Seeds Corporation Ltd. vs. M. Madhusudhan Reddy and Ors*¹² held that where farmers have entered into buyback agreements for the sale of crops grown from those seeds, it will still not oust them from being consumers under the act. The transaction is means of earning livelihood and not a transaction for resale.

In the case of *Kalpavruksha Charitable Trust vs. Toshiwal Brothers (Bombay) Pvt. Ltd.*¹³ the matter before the court was to adjudicate whether the machines purchased for being used at the Diagnostic Centre by a Charitable Trust were meant for ‘commercial purpose’ or not. The Apex court seconded the decision of the National Commission that machinery was indeed installed for a business purpose and as such, the Trust was not a ‘consumer’.

In *Paramount Digital Colour Lab and others vs. AGFA India Private Limited and others*¹⁴ This Court, on facts in the said case, found that the appellants therein were unemployed graduates and had bought the said machine for their own utility, personal handling and for their own venture to make a livelihood. This Court further found that this was quite different from a large-scale manufacturing activity carried on for making huge profits. It was, therefore, held that the appellants therein would be taken as ‘consumers’.

In the case of *C.P Moosa vs. Chowgle Industries Ltd.*¹⁵ the appellant purchased EPBAX system for the hotel. It also had a warranty and AMC (annual maintenance contract). The EPBAX system turned out to be a case of service deficiency. The National Commission allowed the contention of the appellant as Consumer.

11 The Consumer Protection (Amendment) Act, 2002, Explanation to Section 2(d).

12 (2012) 2 SCC 506.

13 (2000) 1 SCC 512.

14 (2018) 14 SCC 81.

15 (2001) CPI-3-9-NC.

The utilization of goods/services for the expansion purposes in scale of operations or supplementing income or which involves an employment of a full-fledged workforce will rule out the claim for availing benefit under the act. In *Sunil Kohli and Ors. Vs. Purearth Infrastructure Ltd*¹⁶ the complainants disposed of their property in Denmark and booked a commercial space in Delhi to start their own business. The appellants here had left their existing employment and commercial space was booked “*exclusively for the purpose of earning livelihood by means of self-employment*”.

In *Shrikant G. Mantri Vs. Punjab National Bank*¹⁷, the Commission has come to a finding that the appellant opened a bank account with the respondent, and availed an overdraft service for the expansion of business. Also, the overdraft service has been subsequently enhanced as well. The appellant-respondent relationship is thus purely a “business to business” relationship. As such, it would surely come under ‘commercial purpose’ and the argument “*exclusively for the purpose of earning livelihood by means of self-employment*” doesn’t stand in the given case.

CAMEL IN THE DESERT TENT: ADMISSIBILITY OF BUSINESS DISPUTES

According to the classical fiction – Camel in the tent, on a cold night, the camel requests the master to allow him to put his head for warmth which the master accepts. Later, the camel request for bringing his neck and legs as well in the tent which is allowed by the master. Finally, the camel gets in the tent completely and as the size of the tent wasn’t that big the master is forced out from the tent.

The story conveys a caution that acts with noble intentions too can lead to unexpected consequences. When the desert storm gets into the camel’s eyes, the result will be obvious. The creeping camel in the tent analogy is the counter view to the admissibility of business disputes under the protective umbrella of CPA. The very idea of a Consumer forum is to provide a forum where the ag-

grieved consumers can represent cases on their own and the services of an advocate are also not required. With the business houses coming in as consumers, the heavyweight legal practitioners arguing cases for their clients are going to seriously tilt the balance and disturb the equilibrium at consumer courts.

WAY FORWARD

There are plethora of commercial ventures and start-ups operating today which are in the nature of self-employment and are indeed very much for livelihood. According to the Ministry of Micro, Small & Medium Enterprises (MSME) micro, small and medium enterprises account for more than 7.9 million (As on March, 2022). As per the revised criteria under MSME dated July 2020, investment in plant and machinery or equipment should be not more than 1 crore, not more than 10 crores and not more than 50 crores respectively for Micro, Small and Medium enterprises.¹⁸

The MSME is one of the most vibrant sectors of the Indian economy. The contribution of the said sector is immense and next only to agriculture. The sector is significant as it encourages entrepreneurship and generates large employment opportunities at comparatively lower capital cost. It will surely make a lot of sense to include them as ‘Consumers’ under the act irrespective of the amount involved.

The Australian law too adopts a cost criterion to draw the line between consumer and commercial purpose. The value criteria are combined with nature of usage criteria. According to the Australian Competition and Consumer Commission (ACCC) “*A person – or a business – will be considered a consumer if:*

1. *they purchase goods or services that cost less than \$100,000.*
2. *the goods or services cost more than \$100,000, but they are of a kind ordinarily acquired for domestic, household or personal use or consumption.*
3. *the goods are a commercial road vehicle or*

16 (2020) 12 SCC 235.

17 (2022) 5 SCC 42.

18 Ministry of Micro, Small and Medium Enterprises, GOI available at: <https://msme.gov.in/know-about-msme> [Last seen on September 1, 2022]

trailer used primarily to transport goods on public roads”¹⁹

CONCLUSION

The SCI in the landmark case of Laxmi engineering Works in 1995 stated that: “*It is not the value of the goods that matters but the purpose to which the goods bought are put to*”. The case being an authority on the subject has been a guiding light for last 3 decades. However, considering the overall scenario it will make good sense if reliance is in fact placed on value as well. The commercial courts are the appropriate forum for resolution of commercial disputes and the consumer courts should confine itself to consumer disputes only. The terms ‘livelihood’ and ‘self-employment’ have not been defined in the act. It is on account of this reason that there is a good deal of uncertainty involved and it depends on the subjective interpretation of the concerned consumer commission.

The major reason attributed to the exclusion of business players from the ambit of the legislation is to discourage the benefits of this beneficial legislation to those who can afford the hefty fees of civil courts and more importantly to ensure the ones vulnerable in the real sense of the term are provided a time bound and cost-effective dispute resolution mechanism. The District, State and National Commissions have well defined pecuniary jurisdiction to entertain complaints relating to goods and services. One way to remove ambiguity and ensure greater clarity is to link the turnover based on tax returns to objectively oust the business entities from the domain of the act.²⁰

Many of the small and average-sized start-up ventures have been unjustly deprived a relief on account of the commercial purpose aspect in the amendment. They are surely deserving case and

needs to be roped in to this benevolent legislation. This approach will surely be forward-looking and likely to ensure level playing field instead of a blanket commercial apartheid.

Hence, we feel that more definitive criteria be laid down under this law to avoid litigation on the issue of who is a consumer. Consumer Commissions should be focused on determining the amount of Compensation due to a consumer caused by defective goods, deficiency in services, unfair contracts or unfair trade practices rather than wasting time to determine who is a consumer?

Therefore, it is recommended that a micro enterprise should be considered as a small enterprise primarily meant for livelihood of the entrepreneur and its workers. A micro enterprise should be covered under definition of a consumer. Hence, it is recommended that any small enterprise registered as micro enterprise under the law be included in definition of a consumer.

Since all small enterprises are not registered as micro enterprises, it is also recommended that a threshold of income or turnover be defined for the purpose of inclusion of a small enterprise being defined as a consumer. As an illustration any small enterprise with either an annual net profit below ₹25 L or a turnover below ₹1 crore be included in definition of consumer. The figures can be debated and decided. The crucial issue being that a small enterprise where business is on a small scale primarily for livelihood of the entrepreneur who may employ a small number of people who are also dependent on him for livelihood can be protected under this law.

19 Australian Competition and Consumer Commission (ACCC), Who is a Consumer, available at: <https://www.accc.gov.au/business/treating-customers-fairly/consumers-rights-obligations#:~:text=Who%20is%20a%20consumer%3F,or%20personal%20use%20or%20consumption> [Last seen on August 16, 2022].

20 Sanjay Pinto, “Define ‘livelihood’ and ‘self-employment’ in Consumer Law, Deccan Chronicle, December 9, 2018, available at: <https://www.deccanchronicle.com/nation/in-other-news/091218/define-livelihood-and-self-employment-in-consumer-law.html>

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