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2nd Year, BBA LL.B.**COMPARISON OF CONSUMER LAW OF AUSTRALIA WITH INDIAN
LEGALITY****ABSTRACT**

Consumer protection laws are state statutes governing sales and credit purchases pertaining to consumer goods. Such statutes prohibit and regulate misleading and deceptive advertisement and sales practices, product quality and features generally done to attract customers and actually shows the features more than the actual worth of the product. The Motto of consumer protection laws is to protect consumers against exploitation and deception, who are basically unaware and average citizens engaging in business deals such as buying goods or borrowing money, etc.

Historically, consumer transactions—purchases of goods or services for personal use or household use were considered fair because it was assumed that buyers and sellers bargained and negotiated from equal positions. But after few years there have been reported complaints by consumer advocates that consumers were inherently disadvantaged and exploited by the sellers, thus consumer protection law ensures fair trade practices and free flow of verified and truthful information in the marketplace.

INTRODUCTION

The Fair Trading (Australian Consumer Law) Act 1992 applies the Australian Consumer Law which was set out in the Competition and Consumer Act 2010 (Commonwealth), schedule 2 (including any regulation under that Act, s 139G). The ACL Law was enforced on the year 1st January 2011, and thus replacing 20 different consumer protection laws across the Commonwealth nations and the states and territories. In India consumer protection law is one of the main acts of protection of consumer in India. The Act was introduced in the year 1986 and was amended in the year 2002 by the Consumer Protection Amendment Act, 2002. And now again it was amended on 2019 thus including various aspects like purchases from e-commerce sites included under this act.

COMPARISON OF AUSTRALIAN CONSUMER PROTECTION LAW WITH INDIAN CONSUMER PROTECTION LAW

The main aim of enforcing consumer protection law in any country either it's Australia or India is to protect the consumer from any exploitation by the sellers and also creating awareness among them. About their rights as a consumer and if exploitation happens then what to proceed and where to seek redressal.

Definition of consumer

The definition of 'Consumer' under every country varies. In Australia the ACL that is Australia consumer law defines consumer as a person who acquires goods or services whose price is less than \$ 40000. A person is also a consumer if he acquires goods higher than \$40000 but they ordinarily used for domestic , personal or household consumption . For example – If a person purchases a vehicle for use in the transport of goods on the public roads, irrespective of what the price, is also considered to be a consumer under the purview of ACL . **However** a person is not a consumer if he purchases goods for resale , re-supply ,or to be transformed in trade or commerce in the production process to be taken of . From 1 July 2021, the monetary Ambit for the definition of 'consumer' will be altered and increase from \$40,000 to \$100,000, by way of the *Treasury Laws Amendment (Acquisition as Consumer - Financial Thresholds) Regulations 2020* (Regulations). These changes were introduced in the act by considering and abiding to the recommendations of the Australian Consumer Law Review (ACLR). In India the definition of consumer is Under Section 2(7) explanation (b) of the Consumer Protection Act, 2019 ¹"consumer" is defined as a person who "buys any of the goods and "hires any of the service" for some consideration but it does not include a person who acquires goods for resale or goods or service for any commercial purpose. The Act widens the scope of this definition. Therefore a consumer under the act will now include any person who "buys any goods" or "hires any services" which will include both online (e- commerce) and offline transactions through electronic means, teleshopping, direct selling etc .

Rights of Consumers

¹ "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 service 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 service 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 service for any commercial purpose.

The Australian Consumer law (ACL) provides and grants certain consumer rights that are known as consumer guarantees. If there is a breach of quality and acceptability then the consumer have rights to repair your product or may ask for replacement or refund from the seller as well as compensation for the damages and loss occurred to the consumer or the consumer even cancel the faulty services. When a person buy goods or services they come with automatic reasonable guarantees that should be in the product and they will work and do what one has asked for. If you buy something that isn't that don't stand by the guarantees provided, you have consumer rights.

1. **Replace, repair, refund** - If a product or service you buy fails to meet the consumer guarantee provided, you have the right to ask to repair or mend the product, seek for replacement or may ask for refund under the Australian Consumer Law. The remedy a person is entitled to will depend upon whether the issue complained of is minor or major one. It is important to note that the consumer guarantees do not apply if you got what you asked for and there is no issue per se but you simply changed your mind or may be found it cheaper somewhere else, decided you did not like the purchase then you don't have the access the rights granted. If there persists any **minor issue** with the product or service, then the seller have the option to do free repair instead of a replacing or refunding the product. When you have a **major issue with the protect** with a product, you have the right to rightly ask for your choice of a replacement or refund. For any major issue with a **service**, one can choose to receive compensation for the decrease in value of the services below the price paid, or a may ask for a refund at one's discretion.
2. **Cancelling a service** - If you have a major problem with the service or a minor problem that can not be fixed within a reasonable period of time a person then have the right to cancel a service contract, when it is:
 - provided with level of care and skill which is unacceptable
 - unfit for the purpose of use or you one asked for
 - not delivered within a reasonable span of time when there is no agreed date.
3. **Compensation for damages or loss** - . You can ask for compensation for the damages and losses occurred and the consumer suffered as a consequences due to the issue persisting with product or service if the problem was reasonably foreseeable and anticipated by the supplier .. This feature is an addition to the right to repair, replacement or refund the product or services. Compensation should put you in the actual and original position you would have been in if the products or services had done what they are supposed to yield under consumer guarantees. For example: A consumer took their clothes to the laundry for the wash. When the consumer went to pick up their clothes they were not on a good state. The consumer would not only be entitled to get compensated for the defective service done (e.g. a refund for the cleaning fee) but the laundry men also have to pay for the loss incurred. This could include the laundry men paying to replace the curtains.

Rights of the consumer in India has been provided under section 2(9) of the Consumer Protection Act, 2019²

1. being protected against the marketing of things such as goods , products or services which are hazardous to life and to property
2. being informed and awarded about the quality, quantity, , purity, standard and price stipulated of the goods, products or services;
3. being assured, have access to a variety of goods, products or services at competitive prices;
4. being heard (grievances and complaints)and being assured that consumers' interests will receive due and appropriate consideration .
5. seek redressal against unfair trade practices (like defective measurements) or unscrupulous exploitation of consumers; by businesses and seller
6. Creating consumer awareness

Who are required to comply with these laws ?

In India , in accordance with the new Act, product liability is affixed to the product manufacturer, product service provider and the product seller. The recent addition also include such manufacturers who has been well received as the liability for the defective product or service can be attached to its sources now. In Australia all businesses and corporations engaged in trade and commerce are required to abide by ACL(Australian consumer law) which means both suppliers and manufacturers are included under the compliance of the ACL law

Agencies for consumer protection

Certain agencies or bodies are normally established by the legislatures to ensure enforcement of consumer protection law. In India , the CCPA (central consumer protection authority) had a wide number of powers to investigate any type of unfair trade practices or malpractices against consumer . Under this there is also an investigation wing , district collector has also been provided with power to address and investigate complaint. The authority have the power to file complaints, penalise the offenders under the act .

² consumer rights" includes,—

- (i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property;
- (ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;
- (iii) the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;
- (iv) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora; (v) the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and
- (vi) the right to consumer awareness

In Australia the Australian Consumer Law is enforced and introduced by Australian Competition and Consumer Commission at centre level and state and Territory consumer protection agencies at different levels in the country. The one Commission at centre level has almost similar Function of that of India. This ensures one authority for all matters but also one suffers the burden of all the responsibilities provided thereof.

Check on the quality of goods , products and services

It ensures that the product and services available in the market is of certain good standard. Legislations always endeavour that certain level of quality is always maintained by the manufacturers. In India product liability is recently added under the act, chapter 6 gives power to take against defective goods. Defect has been defined as shortcoming quality of the product. Production manufacturers and services providers can be made liable if the product or services is not up to the mark and inadequate.

In Australia, it has clearly defined standard universal terms which is included in every transaction and this leaves no scope to traders and manufacturers to escape liability. For example – The concept of consumer guarantees has been defined in Australian law which is certain terms with regards to quality check of the products which automatically and by default applies to every product. Guarantee defines certain level of standard and accepted quality of products and its breach will lead to redressal. Hence supplier must ensure that goods are fit for use.

CONCLUSION

Different country of the world have their own consumer law, but the main focus is to protect consumer from exploitation, malpractices and deception by the manufacturers and services providers. In this Article comparison was done between two different countries i.e. Australia and India, they may geographically separated but both the acts i.e. Australian consumer law and Consumer protection Act, 2019 of India was actually enforced to save the consumers from the clutches of unfair trade practices. In India the consumer have now recently included those doing online transactions from e-commerce site but Australian law is silent about this aspect. In India product liability talks about the certain standards to the goods to be met, but there is no strict approach like that of Australia which has universal defined terms, This approach can also be adopted in India in accordance to Product Liability sections recently added in the amendment act.. subsequent amendments by the legislature can make certain reasonable standards which is to be achieved by traders pertaining to quality of goods and services. This would ensure a minimum standard of service expected out of a product.³

³ <https://www.lexology.com/library/detail.aspx?g=1c2dfca4-1893-49e7-8590-35ff02499515>