

RGNUL STUDENT RESEARCH REVIEW

(RSRR)



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CALL FOR PAPERS

On

**“PROTECTING CONSUMERS IN THE 21ST CENTURY: BROADENING THE
OUTLOOK”**

for

VOLUME 7, ISSUE 1 OF THE JOURNAL

CALL FOR PAPERS

The RSRR Journal invites papers for Volume 7, Issue 1, from academicians, practitioners, legal luminaries and students on the theme titled, “**PROTECTING CONSUMERS IN THE 21ST CENTURY: BROADENING THE OUTLOOK**”.

Consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer.

-Adam Smith

In 2020, Justice A.M. Khanwilkar highlighted the phrase “*Consumer is the king*”,¹ which underscores the importance of the consumers’ interest. Consumer trust and confidence are the hallmarks of a robust consumer protection mechanism, which forms the foundation of a sound market system.² The advancement of consumer rights requires negation of information asymmetry and unethical business practices, an objective which must guide the future development of consumer laws.

Consumer rights and consumerism have gradually gained importance. Historically, the onus of judging a product’s quality rested on the buyer.³ Even though ancient texts like Manusmriti emphasized ethical trade practices⁴, the principle of *caveat emptor* (let the buyer beware) prevailed. Eventually, it was realized that reasonable examination by a consumer cannot reveal the inherent defects, especially in complex products⁵, the knowledge of which is possessed only by the seller. Thus, arose the need for protecting the consumer; and the responsibility was shifted, to some extent, on the seller, laying the foundations of *caveat venditor* (let the seller beware).

¹ Branch Manager, Indigo Airlines v. Kalpana Rani, 2020 SCC OnLine SC 90.

² Chapter-1, Manual on Consumer Protection, 2016, UNCTAD, <https://unctad.org/en/PublicationsLibrary/webditcclp2016d1.pdf>, last seen on 12/08/2020.

³ Whitmore v. Orono Pulp & Paper Co., 39 A. 1032, 1036 (Me. 1898).

⁴ Manusmriti, Chapter X, verse 115, <https://www.sacred-texts.com/hin/manu/manu10.htm>, last seen on 12/08/2020.

⁵ Chapter-9, Manual on Consumer Protection, 2016, UNCTAD, <https://unctad.org/en/PublicationsLibrary/webditcclp2016d1.pdf>, last seen on 22/08/2020.

In India, certain legislations such as the Indian Penal Code, 1860, the Sale of Goods Act, 1930, the Essential Commodities Act, 1955, the Prevention of Food Adulteration Act, 1954, the Drugs & Cosmetics Act, 1940, among others, constituted the legal framework that catered to consumer protection. Most notably, the provisions of the Sale of Goods Act marked a perceptible shift to *caveat venditor*, by introducing the concept of merchantable quality, seller's skill and judgment.⁶ Consumer rights were formally recognized in India with the Consumer Protection Act, 1986 ("**CPA 1986**").

The CPA 1986 was a welcome step. It established a holistic structure of grievance-redressal mechanisms and emboldened the consumer through the introduction of remedies against unfair or restrictive trade practices, hazardous goods, and defective goods *inter alia*. To spread awareness regarding consumer rights and educate the consumers against prevailing malpractices of the sellers, the Indian Government's launched its noteworthy consumer awareness campaign, "JagoGrahakJago" back in 2005. To adapt to the digital age, the campaign is now being revamped to spread awareness through social media platforms.

The dawn of the 21st century has witnessed drastic changes in the market dynamics, the modus operandi of businesses and the technological landscape.⁷ It has become tough to attribute liability for deficiency in services due to the multiplicity of entities involved in modern-day transactions. To combat new challenges, improved regulatory measures were needed. India drew inspiration from consumer protection legislations in countries like the US, Singapore, France, etc., and from the European Union Directives, and passed the Consumer Protection Act, 2019 ("**CPA 2019/ the Act**") (enforced in 2020⁸). This Act replaced the 33-year old CPA 1986.

The CPA 2019 has introduced new concepts to protect the consumer, namely criminal liability⁹, product liability¹⁰, liability for misleading/ false advertisements¹¹, mediation for consumer

⁶ Section, 16, the Sale of Goods Act, 1930.

⁷The Consumer Protection Bill, 2019, Statement of Objects and Reasons,https://www.livelaw.in/pdf_upload/pdf_upload-362684.pdf, last seen on 12/08/2020.

⁸Ministry of Consumer Affairs, Food and Public Distribution, Notification S.O. 2351(E),<https://consumeraffairs.nic.in/sites/default/files/Act%20into%20force.pdf>, last accessed 22/08/2020.

⁹ Chapter VII, The Consumer Protection Act, 2019.

¹⁰ Chapter VI, The Consumer Protection Act, 2019.

¹¹ Section 89, The Consumer Protection Act, 2019.

disputes¹² and rules on e-commerce¹³. Provisions for liabilities vis-à-vis consumer protection were spread across different legislations; however, the CPA 2019 has consolidated many of those liabilities for simplification and creation of efficient enforcement machinery. Though criminal as well as product liability have been introduced, it is to be seen whether they act as a roadblock in the ease of doing business, and whether the age of AI and Robots can be effectively regulated.

Structurally, the CPA 2019 has established a regulatory body in the form of the Central Consumer Protection Authority (“CCPA”) and has increased the pecuniary jurisdiction of the District, State and National Consumer Protection forums. The CCPA is a centralized structure, introduced for supervision of the tiered consumer protection forums. The measure is perceived to aim at enhancing protection of consumer rights.

According to the National Consumer Disputes Redressal Commission, over 4.8 lakh consumer cases are pending in the country.¹⁴ The introduction of mediation, as an out-of-court-settlement, is a step in the right direction to allow speedy justice. However, questions as to the application of arbitration procedures or the Online Dispute Resolution (ODR) methods for consumer disputes are yet to be resolved.

During the COVID-19 pandemic, instances of misinformation, disinformation and fake news have proliferated. In light of this, the timely introduction of liability for misleading advertisements is an essential safeguard for consumers. Despite these advances, issues like targeted advertisements, unsolicited commercial communications, among others, are likely to outstrip the reach of the existing provisions and impede the realization of their aims.

The definition of terms like ‘consumer’, ‘service’, ‘deficiency’, etc., has been widened; while certain other terms have been added in the CPA, 2019 to make it a holistic legislation. This has increased the ambit for regulation of unethical and restrictive trade practices. However, the Act covers only those services where consideration is involved. This places free public services beyond

¹² Chapter V, The Consumer Protection Act, 2019; The Consumer Protection (Mediation) Regulations, 2020.

¹³ The Consumer Protection (E-Commerce) Rules, 2020.

¹⁴ *Statistics*, National Consumer Disputes Redressal Commission, <http://ncdrc.nic.in/stats.html>, last seen on 24/08/2020.

the scope of the Act, even though such services might pose considerable risks for unsuspecting consumers.

Since 2013, the number of consumer complaints received at the National Consumer Helpline has been exponentially increasing every year.¹⁵ While the E-commerce rules have set the stage for consumer protection in this digital era, numerous concerns yet stand unaddressed; and this may potentially jeopardize the success of regulatory measures. *Can the existing regulatory framework manage to meet the ever-increasing challenges of the Digital Age?* The question warrants immediate attention.

Consumer protection is not a law that acts in a vacuum; rather, its realization and enforcement extends into several fields like environmental law, antitrust laws, intellectual property laws, privacy issues, amongst others. The theme of the World Consumer Rights Day, 2020, “*Sustainable Consumer*”¹⁶, indicates the importance of global sustainable consumption and stands as a testament to the interdisciplinary nature of consumer law.

The provisions against tying and bundling of services in competition laws, or fair use of copyrights and licensing of patents under the IPR laws are certain provisions that indirectly ensure consumer protection. However, there are several anti-competitive practices adopted by different entities which threaten the consumers by disrupting the market system; and thus, there arises a need to take another look at the existing antitrust laws from a consumer’s perspective. In a globalised environment connected via digital means, IPR and consumer welfare has become more pertinent than ever.

Moreover, the interplay of the financial sector regulations and consumer protection laws is inevitable, particularly due to the rapid transition to a digital economy. The growing complexity of the transactions involved puts the consumers at risk of exploitation. The entry of FinTech and

¹⁵ *Cheating By E-commerce Companies*, Unstarred Questions No. 384, Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, <https://164.100.158.235/question/annex/246/Au384.pdf>, last seen on 24/08/2020.

¹⁶ *The Sustainable Consumer – World Consumer Rights Day 2020 theme*, Consumers International, [https://www.consumersinternational.org/news-resources/news/releases/the-sustainable-consumer-world-consumer-rights-day-2020-theme/#:~:text=Consumers%20International%20has%20announced%20that,righ%20and%20protection%20can%20play.](https://www.consumersinternational.org/news-resources/news/releases/the-sustainable-consumer-world-consumer-rights-day-2020-theme/#:~:text=Consumers%20International%20has%20announced%20that,righ%20and%20protection%20can%20play.,), last seen on 22/08/2020.

e-insurance mechanisms creates an entirely new environment for a consumer and their viability needs to be tested. The position of gig workers, prevalent in different sectors like the automobile industry or the food delivery aggregators, needs to be analyzed to assess whether they should be treated as consumers to protect their interest. The rising cases of insolvencies also ring alarm bells for a consumer as money invested in big conglomerates and companies might just be lost on account of an insolvency, whether it be voluntary or involuntary. *Should a consumer be treated as just another creditor? Should consumer redressal proceedings be allowed despite moratorium on other proceedings?*

Besides legislations at the domestic level, there are certain standards and principles adopted at the international level which include the UN Guidelines on Consumer Protection, 2015; Model UNCTAD Manual on Consumer Protection, 2017, among other guidelines. Moreover, there are certain multilateral organizations like the International Consumer Protection Enforcement Network (ICPEN) and the ASEAN Committee on Consumer Protection (ACCP) that work at the international level and aim to establish cooperation between nations for consumer protection. However, despite the aforementioned endeavors, standardization and uniformity is yet to be achieved at the international level, especially where cross-jurisdictional issues arise.¹⁷

The recent turn of legislative measures has greatly emboldened the consumer in tackling the new challenges. However, despite adoption of the best practices from different jurisdictions, implementation and realization of the objectives of CPA, 2019 is yet to be tested. *Has the balance been tilted a bit too much in favour of the consumer? Are the existing interpretations and definitions enough to deal with the growing challenges or do they need a fresher outlook? Should a comparative approach be used to mould the present law?* The important question that stands in limbo is- *whether consumers in the 21st century are adequately equipped and informed to protect themselves?*

While coursing through a plethora of incumbent issues in consumer protection, there arise questions both perennial and contemporary. In spite of considerable changes in laws aiming to

¹⁷ M. Durovic, *International Consumer Law: What Is It All About?*, 43 *Journal of Consumer Policy*, 125, 133, 2020.

adapt to the new developments, a strong consumer protection framework and an efficient consumer disputes redressal mechanism has always been a challenge for India.

In light of the changing market dynamics and evolving consumer protection laws, RSRR seeks to delve into the theme- **“Protecting Consumers in the 21st Century: Broadening the Outlook”**, to review the legal and policy framework in today’s consumer centric economy. The object behind this theme is to invite scholarly, original and unpublished written works from persons across the legal profession – students, academicians, practitioners, and the stakeholders of the industry. The authors are free to choose from a catena of sub-themes within the main theme. Submissions initiating a critical and/or comparative discourse amongst the readers, followed by exposition, proposing legislative, judicial or policy-based solutions are encouraged.

SUB-THEMES

RSRR invites submissions on the following **sub-themes**:

1. Liability under Consumer Protection: A Boon or a Bane?
 - a. Criminal Liability: A Step Backwards?
 - b. Critical Analysis of the Product Liability Framework
 - c. Imputability of liability in the age of Robots and AI
2. Protecting a Digital Consumer
 - a. The Impact of AI on Consumerism
 - b. Privacy of an Online Consumer
 - c. Unsolicited Commercial Communications
3. Changing Ambits of Consumer Grievance Redressal Mechanism: A Cross Jurisdictional Analysis
 - a. Mediation as a Fresh Resolution Mechanism
 - b. The Arbitrability of Consumer Disputes

- c. Expanding the Jurisdiction of Consumer Disputes
 - d. Online Dispute Resolution: A Viable Remedy?
4. Consumer Law in a Global Village
 - a. Need for Uniform and Standard Principles of International Consumerism
 - b. Jurisdictional and Enforcement Issues vis-a-vis Cross-Border Trade
5. Comparative Consumer Law: Analyzing International Best Practices
6. Revamping the definition of ‘Service’
 - a. Educational Institutions: Serving Students?
 - b. Accountability for ‘Free’ Healthcare Services?
 - c. Content Moderation on Social Media Platforms: A Consumer Issue?
 - d. Applicability of Sovereign Immunity for Government Services
 - e. Aggregators and Gig Economy: Are gig workers consumers?
7. Issues Around Consumer Consent
 - a. Consenting to Unfair Contractual Terms
 - b. Impact of Big Data Analytics on Consumer Rights
 - c. Consent in Internet of Things and Consumer Law
8. Consumer Protection in the Financial Sector
 - a. Regulating Fin-Tech and E-payment Portals
 - b. Deficiency of Service by Banks- An Expansive Interpretation
 - c. Insurance Regulation for the Benefit of the Consumer
9. Insolvency and Bankruptcy Issues vis-à-vis Consumer Laws
 - a. Consumer as a Creditor to the Corporate Debtor
 - b. Concurrent Reliefs for a Consumer

- c. Individual Bankruptcy: A Consumer Protection Measure or a Market Abuse Measure?
- 10. Evolving Anti-Competitive Practices and Consumer Protection: Are the existing legislations adequate?
- 11. Consumer Protection and Environmental Sustainability: Creating a Balance
- 12. IPR Regulation for Consumer Benefit
- 13. Regulation of Advertising and Marketing Laws: Influencing Consumers' Behavior
 - a. Liability of Advertising Agencies and Influencers
 - b. E-Commerce Portals: Targeting Online Consumers
 - c. Regulation of Telemarketing and Robocalls
 - d. Deceiving Vulnerable Consumers: Advertising and Trademarks

Note: The above mentioned sub-themes are only illustrative and not exhaustive, and the authors are free to write upon any other sub-theme, provided they fall within the broad ambit of this journal's theme.

SUBMISSION GUIDELINES

❖ SUBMISSION CATEGORIES

The RSRR invites papers under the following categories:

- **Articles** (5,000 to 10,000 words)
- **Short Notes** (3,500 to 5,000 words)
- **Case Comments** (2,500 to 4,500 words)
- **Normative Law Articles** (3,000 to 5,000 words)

Articles: A comprehensive and thorough analysis of issues related to the theme of the Journal.

Short Notes: These should contain brief, terse and pointed arguments revolving around a specific, current issue or an issue of importance which may have not received due research.

Case Comments: An academic writing that analyses or is a critique of a recent case.

Normative Law Articles: These will explore the opinion of students relating to the specific legislations involved in the theme of the Journal. It seeks to bring out a student's view on how a particular legislation or legislative provision should have been drafted to bring out clarity into the law. The authors are welcome to draft amendments (or even a law in entirety) to the existing laws should they believe that the particular legislation requires some amendments. Arguments must be logical and can take into account aspects such as sociological, political, and economic implications of the law.

❖ INSTRUCTIONS FOR AUTHORS:

1. All submissions must be in Garamond, font size 12, spacing 1.5.
2. All footnotes shall be in Garamond 10, single-spaced and should conform to the **Standard Indian Legal Citation (SILC)**.
3. Margins: Left 1 Inch and Right 1 Inch, Top 1 Inch and Bottom 1 Inch (A4).
4. The word limit is exclusive of all the footnotes.

5. Co-authorship is allowed up to 2 authors.
6. All submissions must be accompanied with an abstract of subject to a maximum of 250 words. Abstract shall also be accompanied by at least 3 keywords in the paper, up to a maximum of 7 keywords.
7. The submissions of abstracts and papers should accompany a cover letter specifying author's name, designation, institute, contact number and email for future reference **in the mail body itself**.
8. All entries should be submitted in **.doc/ .docx** format **only**.
9. The abstracts and papers must be mailed at **submissionsrslr@rgnul.ac.in**, with the subject **“Submission for Volume 7, Issue 1 – Type of Submission (Article/ Short Note/ Case Comment/ Normative Law Articles)”**.
10. The author(s) bear sole responsibility for the accuracy of facts, opinions or views stated in the submitted paper. In case of any plagiarism found in the contents of submitted paper, the Manuscript shall be subject to rejection.

❖ **SUBMISSION DEADLINE:**

The last date for submissions of abstracts is 15th October, 2020.

Deadline for final paper submission is **15th November, 2020** by 11:59 P.M. (Indian Standard Time).

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❖ **CONTACT:**

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ABOUT RGNUL STUDENT RESEARCH REVIEW

The RGNUL Student Research Review (RSRR) Journal is a bi-annual, student run, blind peer reviewed, flagship journal based at Rajiv Gandhi National University of Law, Punjab. It has been founded with the objective of facilitating arguments in black and white. Legal Research skills form the core of the learning process in any dimension of law.

The RSRR Journal aims to publish comprehensive treatments of subjects (“articles”), written by law students as well as shorter pieces, commonly called “notes” and “comments”.

Normative law articles form a major component of the RSRR Journal. Legislative Bill Drafting is one of the novel and the primary areas which it aims to cover. Ambiguous provisions in the law are a cause of concern amongst the legal community. The RSRR Journal aims to seek the opinion of student researchers and provides the option to draft and/or amend the existing law. RSRR is proud to share that its Journal has been continuously supported and published by Eastern Book Company (EBC) in the past. The Journal has already applied for the RNI number and upon its approval, EBC will again be a part of the journal’s forthcoming publications. EBC’s online legal-research tool SCC also features the previously published volumes of the RSRR Journal.

RSRR also runs its Blog Series with an aim to provide a platform for academicians to critically analyze contemporary and unexplored legal issues. The RSRR Blog Series has been named one of the top 35 Constitutional Law Blogs by [Feedspot](#).

NOTABLE COLLABORATIONS OF RSRR

RSRR has previously collaborated with firms and organisations for various blog series as well as past editions of the journal.

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Blog Series on Artificial Intelligence	Mishi Choudhary & Associates - A technology driven law firm, founded by the founder of Software Freedom Law Centre, Mishi Choudhary. We, in collaboration, also conducted webinar series on AI.
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