



## CONSUMER PROTECTION ACT 2019: AN OVERVIEW

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### ABSTRACT

The digital age has led to a new era of commerce and digital branding making set of customer expectations. Digitization has provided: easy access, a large variety of choice, convenient payment mechanisms, improved services and shopping as per convenience. With the growth path it also brought in challenges related to consumer protection. Address the new set of challenges faced by consumers in the digital age. The New Act seeks to replace old Consumer Protection Act, 1986. 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, which aims to provide the timely and effective administration and settlement of consumer disputes. While the Act contains certain old provisions, the Parliament has incorporated certain new clauses with regard to consumers' grievances attributed to the modernized society, with a view of creating an exhaustive consumer protection law. The Government instead of bringing an amendment in the 1986 Act, enacted a new Act altogether so as to provide enhanced protection to the consumers taking into consideration the booming e-commerce industry and the modern methods of providing goods and services such as online sales, tele-shopping, direct selling and multi-level marketing in addition to the traditional methods.

**Key Words:** Digital age, Consumer Rights, Product Liability, E-Commerce, Mediation

### INTRODUCTION

Ideally, a market economy where firms compete to sell goods and services to the consumers should serve the interests of consumers better but more often than not the consumers are exploited by the adoption of unfair and restrictive trade practices. Far from being a sovereign the consumer is a child who is too weak to resist or challenge the suppliers of goods and services. Therefore, even in a free-market economy he needs protection of his rights by a legal authority. Consumer protection is necessary even in a controlled economy where public enterprises play a dominant role since consumers are likely to be denied their rights in their case too.

It is the duty of a State to provide every rightful consumer with assured protection from any unlawful business or unfair trade practice taking place within the territory of the concerned country. India being an overly populated country with a considerably large number of people bearing tremendously poor knowledge regarding Consumer Rights and Protection is obviously an easy target for brutally business-minded people who actively or silently promote and support unfair trade practices in India, suppressing the rights of their consumers.<sup>1</sup>

Due to unethical nature of business and lack of professionalism and responsibilities towards the consumers, these money-minded manufacturers and traders drastically cut down the genuineness and quality of their commodities and sell those out at high price in the market and as the inevitable consequence of such odious act, innocent consumers purchase those low quality, substandard products out of need and suffer. 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 cybercrimes, plastic money etc., which affect the consumer in even bigger way. 'Consumer is sovereign' and 'customer is the king' are nothing more than myths in the present scenario particularly in the developing societies.

The Government of India introduced the Consumer Protection Act, 2019 with a goal to provide protection of the interests of consumers against unfair trade practices in India and to establish authorities for timely and effective administration and settlement of consumers' disputes in India. Consumer Protection Act, 2019 is a law to protect the interests of the consumers. This Act provides safety to consumers regarding defective products, dissatisfactory services, and unfair trade practices. The basic aim of the Consumer Protection Act, 2019 is to save the rights of the consumers by establishing authorities for timely and effective administration and settlement of consumers' disputes.<sup>2</sup>

Compared to the earlier CP Act, 1986 which had only 31 sections divided into 4 chapters, the CP Act, 2019 contains 107 sections divided into 8 chapters. The CP Act, 2019 also incorporates new words for definition such as 'Advertisement', 'Central Authority', 'Consumer Rights', 'Design', 'Direct Selling', 'Director General', 'E-Commerce', 'Electronic Server Provider', 'Endorsement', 'Establishment', 'Express Warranty', 'Harm', 'Injury', 'Mediation', 'Mediator', 'Misleading Advertisement', 'Product and Product

<sup>1</sup> D. P Wadhwa, The Law of Consumer Protection, p. 7

<sup>2</sup> www.lawyer-monthly.com › 2020 › 01



Liability', 'Product Liability Action', 'Product Manufacturer', 'Product Seller', 'Product Service Provider' and 'Regulator and 'Unfair Contract'.

The 2019 Act has brought in some major changes and provides for more protection to the consumers in parimateria to the earlier 1986 Act which can be seen from the comprehensive definition provided for the term 'Consumer' and 'Unfair Trade Practice'. The 2019 Act expands the scope of the definition of Consumer so as to include the consumers involved in online transactions and it now squarely covers the E-commerce businesses within its ambit. The 2019 Act has also widened the definition of Unfair Trade Practices as compared to the 1986 Act which now includes within its ambit online misleading advertisements; the practice of not issuing bill/memo for the goods and services; failing to take back defective goods or deactivate defective services and refund the amount within the stipulated time mentioned in the bill or memo or within 30 days in the absence of such stipulation; and disclosing personal information of a consumer unless such disclosure is in accordance with law.

**Comprehensive Definitions and More Protection to Consumers**

**Consumer**

As per Section 2(7) of the 2019 Act, consumer is any person who buys goods or avails any service for a consideration and includes any user except for the person who has availed such services or goods for the purpose of resale or commercial use. The explanation to the definition specifically states that the expression "buys any goods" and "hires or avails any services" includes all online transactions conducted through electronic means or direct selling or teleshopping or multi-level marketing. Online transactions are an exclusive feature of this act and added keeping in mind the growing e-commerce business and advancement in technology.

**Complainant**

A consumer; or any voluntary consumer association registered under any law for the time being in force; or the Central Government or any State Government; or the Central Authority; or one or more consumers, where there are numerous consumers having the same interest; or in case of death of a consumer, his legal heir or legal representative; or in case of a consumer being a minor, his parent or legal guardian.<sup>3</sup>

**Unfair Trade Practice**

Section 2(47) of the Consumer Protection Act, 2019 defines 'unfair trade practice'. The definition of 'unfair trade practice' has been broadened to include practices such as: manufacturing or offering spurious goods for sale or adopting deceptive practices for providing service, not issuing proper cash memo or bill for the services rendered and the good sold, refusing to withdraw, take back or discontinue defective goods and services and refund the consideration taken thereof within the time period stipulated in the bill or within 30 days if there is no such provision in the bill, disclosing personal information of the consumer to any other person not in accordance with the prevailing laws. The New Act introduces a specific broad definition of Unfair Trade Practices, which also includes sharing of personal information given by the consumer in confidence, unless such disclosure is made in accordance with the provisions of any other law.

The repealed Act of 1986 did not include online misleading advertisements in the definition of unfair trade practice that are added in the 2019 Act.

**Concept of Unfair Contract**

The 2019 Act has also introduced the concept of unfair contract. 'Unfair Contract' is defined under Section 2(46) and it refers to any contract between a consumer and a manufacturer or service provider or trader whose terms brings about a significant change in the consumer rights under the Act. These terms are namely such as: requirement of excessive security deposits by the consumer in for facilitating the performance of obligations under the contract; imposing penalty for breach of contract on the consumer which is not in proportion with the loss suffered due to such breach; not accepting early debt repayment along with the applicable penalty; allowing one of the parties to terminate the contract without any reasonable cause or unilaterally; entitling one party to assign the contract to the detriment of the consumer and without his consent; imposing unreasonable condition, obligation or charge on the consumer that puts him in a disadvantageous position;

**Consumer Rights**

Under the Act, consumers have six main rights, which are listed as follows:

- a. the right to be protected against the marketing of goods, products or services which are hazardous to life and property;

<sup>3</sup> Clause (vii) has been inserted in new act expanding the definition of complainant



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- b. 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;
- c. the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;
- d. the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;
- e. the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and
- f. the right to consumer awareness;<sup>4</sup>

**Direct selling**

Marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location is covered under the meaning of direct selling.<sup>5</sup>

**Electronic service provider**

Means a person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites.<sup>6</sup>

**Establishment of Central Consumer Protection Authority Regulator<sup>7</sup>**

Under the Act of 2019, a Central Consumer Protection Authority (CCPA) is established with a view to regulate matters involving violation of consumer rights, misleading or false advertisements, unfair trade practices and enforcement of consumer rights. The Central Government will appoint the members of the CCPA. The authority will consist of a Chief Commissioner along with other such prescribed members.

The 2019 Act specifies the functions of the CCPA and who will appoint its members. However, there is ambiguity as to how the CCPA will perform its functions and what methods will it adopt to achieve its functions. There is also no specification of qualification for the recruitment of the members of the CCPA. Further, the appointment of members of the CCPA by the Central Government will affect the independence of the authority. The consumer may be at a disadvantage in a dispute where the government has provided deficient services.

The CCPA is a regulatory authority and shall be empowered to impose penalties, recall goods, cause withdrawal of services, provide refunds and investigate into matters. Above all its empowered to enquire suo-motu, to intervene in any proceedings before the District Commission or the State Commission or the National Commission or on a complaint received or on direction of Central Government; File Complaints or intervene in any proceedings before District or State or National Commission.

**Penalties for Misleading Advertisement**

Misleading and false advertisements is one of the many aspects that are introduced by the 2019 Act. The repealed Act did not deal with the concept of misleading and false advertisements. Misleading advertisement is defined under Section 2(28) of the Act and includes any advertisement, which gives false description of a product or service, gives false guarantee misleading the consumers, and conveys express representation constituting unfair trade practice and deliberately not revealing essential information about the product.<sup>8</sup>

Under Section 21(4) of the Act, any person who publishes false and misleading advertisements may be punished with imprisonment or a penalty that may extend up to ten lakh rupees. Further, Section 21(3) states that the CCPA can prevent the endorser of any such misleading and false advertisements from endorsing any other products or services for a period of one year. The issuer of any misleading advertisements shall also be liable to neutralise the effect of such advertisements.

<sup>4</sup>Section2(9) of CP Act 2019

<sup>5</sup>Amway, Modicare, Oriflame ...

<sup>6</sup>Olx, E-bay.

<sup>7</sup> The new Act mentions the establishment of Central Consumer Protection Authority which shall be known as ‘Central Authority’ that has been added under Section 10.

<sup>8</sup> The Act provides for penalties to both celebrities and advertising agencies involved in misleading advertisements.



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## Product Liability<sup>9</sup>

Product Liability is one of the remarkable and significant steps incorporated in the 2019 Act. An entire chapter<sup>10</sup> under the Act is dedicated to deal with this concept.

A complainant can bring a product liability action against any product manufacturer or service provider or a seller in case any harm is suffered by him due to a defective product or service.<sup>11</sup>

A product manufacturer will be held liable under Section 84 of the Act in case the product has a manufacturing defect, defective in design, does not follow the manufacturing specifications, does not conform to implied warranty and does not contain adequate instructions for proper usage of the product.

Section 85 of the Act discusses the liability of the service provider in a product liability action. To be liable under this section, the service provided shall be deficient, faulty, in adequate or imperfect, an act or negligence withholding any information responsible for the harm caused, without adequate warnings and instructions and without conformation to express warranty or contractual terms.

A product seller will be liable in a product liability action if there is exercise of substantial control over manufacturing, testing, designing, labeling or packaging of the product. Other instances may be if there is substantial alteration or modification responsible for the harm caused, the product seller making express warranty that does not conform to the warranty made by the manufacturer, the product seller failing to take reasonable care in maintaining, assembling or inspecting the product.

## Exceptions

There are certain exceptions to product liability action as well. These exceptions are discussed in Section 87 of the 2019 Act. Any consumer who himself misuses, alters or modifies the product and suffers harm as a result, cannot file a product liability claim.<sup>12</sup> A consumer cannot bring product liability action in case the product manufacturer has given adequate warnings for use of the product, the product purchased was used as a part of another product and the end use caused damage, the product was supposed to be used under an expert's supervision or the product was used under alcohol influence.<sup>13</sup> A product manufacturer will not be liable for not warning about any danger that is commonly known or obvious.<sup>14</sup>

## Consumer Dispute Redressal Commission

### Jurisdiction

**Territorial Jurisdiction:** A complainant can now file a complaint where he resides or works. The repealed Act only allowed the complainant to file a complaint where the opposite party carries out business or resides. This caused a lot of difficulties to the complainants.

**Pecuniary Jurisdiction:** The pecuniary jurisdiction will now be determined on the basis of the consideration paid for the value of goods purchased and services availed, rather than the compensation claimed as per the repealed Act of 1986. The pecuniary jurisdiction limit has also been increased for the various commissions under the 2019 Act. The District Commission will now deal with cases of up to Rupees One Crore, up from Rupees Twenty lakhs as per the repealed Act. The State Commission's pecuniary jurisdiction limit has been fixed between Rupees One Crore to Rupees Ten Crores and the National Commission will deal with cases with pecuniary limit of Rupees Ten Crores or more.

**Review:** The District Consumer Redressal Commission<sup>15</sup> under Section 40 has been given the power to review its order which was not provided in the old Act for which an appeal had to be made. The new act specifically mentions that the District Commission shall have

<sup>9</sup> New Consumer Protection Act, 2019- Product Liability & Penal Consequences, <https://taxguru.in/corporate-law/consumer-protection-act-2019-product-liability-penal-consequences.html>

<sup>10</sup> Chapter VI

<sup>11</sup> Compensate for injury, harm or damage caused by defective designs and deviation from manufacturing specifications or failing to provide adequate instructions to correct usage.

<sup>12</sup> Section 87(1) of the Consumer Protection Act, 2019

<sup>13</sup> Section 87(2) of the Consumer Protection Act, 2019

<sup>14</sup> Even prior to CPA 2019, in most product liability actions, one or more of the above defences were taken. These defences now have statutory recognition. CPA 2019 does not say that the defences set out are the only defences to any product liability action. It, however, remains to be seen how the courts will interpret these provisions.

<sup>15</sup> Referred as Forum under the old Act of 1986



the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.

### Alternate Dispute Resolution<sup>16</sup>

If it appears to the Consumer Dispute Redressal Forum that the consumer dispute can be settled by way of mediation, it may refer the parties to mediation with their consent. For the purpose of mediation, the State Government shall establish a consumer mediation cell for each District Commission and State Commission.<sup>17</sup> The Central Government shall establish a consumer mediation cell attached to the National Commission.<sup>18</sup> The consumer mediation cell will be responsible for maintaining a list of empanelled mediators, cases handled by the cell, record of proceeding and other information by specified regulations.<sup>19</sup> The dispute can be resolved either in whole or in parts. The Commissions can, at any stage of the proceedings, direct the parties to have their matter settled by mediation, where it appears that there exists a possibility of resolution of the dispute through mediation. Thus, in the event, the mediation is successful; the terms of such agreement shall be reduced into writing accordingly. Where the consumer dispute is settled only in part, the Commission, shall record the settlement of the issues which have been settled, and shall continue to hear the remaining issues involved in the dispute. In the event the mediation is not successful, the respective commission shall within seven days of the receipt of the settlement report, pass a suitable order and dispose the matter accordingly. The cell also has to submit a quarterly report to the commission it is attached to.<sup>20</sup>

### E-Complaints

Section 17 of the Act provides that a complaint regarding unfair trade practice, violation of consumer rights or misleading and false advertisements can be filed in electronic mode also to the District Collector, the Regional Office Commissioner or the Central Authority. The New Act provides flexibility to the consumer to file complaints with the jurisdictional consumer forum located at the place of residence or work of the consumer. This is unlike the current practice of filing it at the place of purchase or where the seller has its registered office address. The New Act also contains enabling provisions for consumers to file complaints electronically and for hearing and/or examining parties through video-conferencing. This is aimed to provide procedural ease and reduce inconvenience and harassment for the consumers.

### Conclusion

In spite of certain lacunas in the Act, the Consumer Protection Act, 2019 is a positive step towards development and reformation of consumer laws in the country. Implementation of the Act is a welcome change in favour of customers. The Act provides a simple and effective mechanism to consumers to resolved their disputes in fast-track way. The filing of complaints through electronic medium is a boon for consumers. Online market places and online auction sites, which have been included in the Act will place more responsibility on them with respect to goods and services to be sold by them. The Act also make responsible to manufacturers, producers as well as endorsers of the goods and services, this will help to a large extent to protect rights of consumers. It makes business more mindful and responsible for their actions. Now consumer must be treated as king and the concept Caveat emptor is replaced by Caveat Venditor. Hence, it is important for consumer driven businesses such as, retail, e-commerce to be mindful of the changes in the legal landscape and have robust policies dealing with consumer redressal in place. Consumer driven businesses must also strive to take extra precautions against unfair trade practices and unethical business practices.

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<sup>16</sup> Section 37 of the Consumer Protection Act, 2019

<sup>17</sup> Section 74(1) of the Consumer Protection Act, 2019

<sup>18</sup> Section 74(2) of the Consumer Protection Act, 2019

<sup>19</sup> Section 74(4) of the Consumer Protection Act, 2019

<sup>20</sup>Section 74(5) of the Consumer Protection Act, 2019