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## THE CONSUMER PROTECTION ACT, 2019

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**Abstract:** Consumer Protection is a Socio-economic activity that is to be carried out by the government in the interest of consumer satisfaction. Every human being is a 'Consumer'. Consumers play a vital role in the development of a nation. Mahatma Gandhi said, "A consumer is the most important visitor on our premises He is not dependent on us, we are dependent on him. He is not an interruption to our work, he is the purpose of it. We are not doing a favour to a consumer by giving him an opportunity. He is doing us a favour by giving us the opportunity to serve him". Consumer protection has been a part of the responsibilities of the rulers in India even before independence. A consumer protection law, which purely focuses on consumer protection, was enacted in the year 1986. Consumer Protection Act 1986 (CPA 1986), which was passed in Parliament in 1986, was considered as one of the best Acts for consumer protection. But cheating by way of overcharging, black marketing, misleading advertisements, unfair trade practices at e-commerce platforms etc has become a common practice among the greedy sellers and manufacturers to make unreasonable profits and without giving attention to consumer rights and their interests. So the government has made some major changes in the consumer protection act by introducing a new Consumer protection act, 2019. This act explains the various measures to aware the consumers regarding consumer rights and policies. The Consumer Protection Act, 2019 is an important piece of legislation enacted to provide effective safeguards to consumers against various types of exploitations and unfair dealings that focus mainly on compensatory rather than a punitive approach. The consumer protection act has developed a well organizational set up at the central, state level and district level for the redressal of consumer grievances and promotion of standard of goods and services etc. and introduced ADR mechanism for settlement of consumer disputes. To spread consumer awareness the government has established a consumer protection council. The objective of this paper is to provide an insight into newly introduced provisions, and a comparative analysis of some of the key provisions of the Consumer Protection Act, 2019 versus the Consumer Protection Act 1986.

**Index terms :** Consumer Protection Act 2019, Consumer Protection ,Consumer Councils, Consumer Dispute Redressal Commissions, E-commerce, Product liability

### 1. INTRODUCTION

Consumer Protection Act, 2019 is an Act of the Parliament of India. It replaces the Consumer Protection Act, 1986. The Consumer Protection Bill, 2019 was introduced in the Lok Sabha on 8 July 2019 and passed by Lok Sabha on 30 July 2019 and later passed in Rajya Sabha on 6 August 2019. The Act came into force on 20 July 2020, while certain other provisions of the Act like establishing the Central Consumer Protection Authority came into effect from 24 July 2020. This act was introduced by the by the Minister of Consumer Affairs, Food and Public Distribution, Ram Vilas Paswan. This act explains the various measures to aware the consumers regarding consumer rights and policies. The Consumer Protection Act, 2019 is an important piece of legislation enacted to provide effective safeguards to consumers against various types of exploitations and unfair dealings. The consumer protection act has developed a well organizational setup at the central, state level and district level for the redressal of consumer grievances and promotion of standard of goods and services etc. and introduced ADR mechanism for settlement of consumer disputes. To spread consumer awareness the government has established consumer protection council. The paper analyses the changes introduced in the CPA 2019.

**Research methodology:** The study was purely based on secondary data.

## 2. MAJOR CHANGES INTRODUCED BY THE CPA, 2019:

### 2.1 Definition of “CONSUMER”

The definition of “consumer” has been expanded to include persons who engage in offline or online transactions through electronic means or by tele-shopping or direct selling or multi-level marketing. The seller at each level of multi-level marketing can be subjected to liability under CPA, 2019 and not limited to only the manufacturer of the product but all entities involved at various stages of production and marketing.

**NOTE:** The person availing the services for free will not be considered as consumer under this act. It is a question of fact to decide whether the services being provided was free or not and will depend on case to case.

### 2.2 PECUNIARY JURISDICTION

The amount of limit (Pecuniary Jurisdiction) to entertain complaints where the value of the goods or services paid as consideration has been increased. The changes are shown in the table below:

**Table1:** Pecuniary jurisdiction

COMMISSION	CPA,1986	CPA, 2019
DISTRICT FORUM	Upto 20 lakh	Upto 1 crore
STATE COMMISSION	More than 20 lakh but does not exceed 1 crore	More than 1 crore but doesnot exceed 10 crore
NATIONAL COMMISSION	More than 1 crore	More than 10 crore

The increase in the pecuniary jurisdiction of all three commissions is a step towards the lesser number of claims in appellate commissions which ensures the swifter disposal of cases.

### 2.3 TERRITORIAL JURISDICTION

A complaint shall be instituted in a Commission within the limits of whose jurisdiction -

- the opposite party or each of the opposite parties ordinarily resides or carries on business or personally works for gain
- the cause of action, wholly or in part, arises
- the complainant resides or personally works for gain.

Under CPA, 2019 the Territorial jurisdiction now extends to where the complainant resides and personally works for gain before it was only limited to where opposite party resides and personally works for gain and where cause of action arises.

Note: Consumer can complaint electronically in consumer commission and through video conferencing hearing can be done and complaints be deemed admissible if the question of admissibility is not decided within the period of 21 days.

### 2.4 CCPA (Central Consumer Protection Authority)

CCPA has established to regulate the matters relating to the violation of the rights of the consumers, to institute complaints, to stop unfair trade practices and to impose penalty for manufacturers , publishers for publishing false or misleading advertisements.

Under the provisions of CPA 2019, CCPA is to carry out the following functions :

- protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights and inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either suo motu or on a complaint received or on the directions from the Central Government
- prevent unfair trade practices and ensure that no person engages himself in unfair trade practices and can issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.
- ensure that no false or misleading advertisement is made of any goods or services and also ensure that no person takes part in the publication of any advertisement which is false or misleading.
- file complaints before the District Commission, the State Commission or the National Commission and may intervene in any proceedings before the District Commission or the State Commission or the National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices
- review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation
- undertake and promote research in the field of consumer rights
- spread and promote awareness on consumer rights

- issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services
- advise the Ministries and Departments of the Central and State Governments on consumer welfare measures
- imposition of penalties,

The district collectors have also been empowered to conduct such investigations that affect interests of consumer under CPA 2019. They can investigate or inquire at the instance of a complaint or on a reference made by CCPA but they cannot initiate action suo moto.

## **2.5 PRODUCT LIABILITY**

The concept of product liability is introduced in CPA, 2019 for any harm on account of defective product and brings within its scope, the product manufacturer, product service provider and product seller, for any claim for compensation. There was no separate legislation governing 'product liability' in India.

Section 2(35) of CPA 2019 allows a person to make a claim of product liability against such manufacturer, seller or service provider for such defective products. Product liability means the responsibility of a product manufacturer or product seller, of any product or service, related to the product to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating to the product.

### **2.5.1 Product manufacturer**

A product manufacturer shall be liable in a product liability action, if-

- the product contains a manufacturing defect or defective in design
- there is a deviation from manufacturing specifications
- the product does not conform to the express warranty
- the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper usage

**NOTE:** A product manufacturer shall be liable even if he proves that he was not negligent or fraudulent in making the express warranty of a product.

### **2.5.2 Product service provider**

A product service provider shall be liable in a product liability action, if-

- the service provided by him was faulty or imperfect or deficient or inadequate in quality
- there was an act of omission or commission or negligence or conscious withholding any information which caused harm
- the service provider did not issue adequate instructions or warnings to prevent any harm and the service did not conform to express warranty or the terms and conditions of the contract.

### **2.5.3 Product seller**

A product seller who is not a product manufacturer shall be liable in a product liability action, if-

- he has exercised substantial control over the designing, testing, manufacturing, packaging or labeling of a product that caused harm
- he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm
- he has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm (e) he failed to exercise reasonable care in assembling, inspecting or maintaining such product
- he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm.

**NOTE:** CPA, 2019 also lay down certain exceptions to "product liability" action, where the products have been misused, or if the product purchased by the employer for use at the workplace did not comply with the installation warnings, or if the product is of such nature that the user should have known the associated dangers, etc.

## **2.6 MEDIATION**

ADR mechanism of mediation has been introduced. The consumer commission can referred the case for mediation if it appears to them that there exists a scope of early settlement and parties do not have objection in settling their disputes through mediation. Mediation will be done in mediation cells which are to be established under the directions of consumer commission and no appeal can be made against the settlement through mediation.

Where the consumer dispute could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, shall continue to hear all the issues involved in such consumer dispute.

## 2.7 E-COMMERCE

E-commerce has been defined as buying or selling of goods or services including digital products over digital or electronic network. Every E-commerce entity like Amazon, flipkart, myntra, etc. is required to provide information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, grievance redressal mechanism, payment methods, security of payment methods, charge-back options, etc. including country of origin which are necessary for enabling the consumer to make a decision before purchasing on its platform. Ecommerce platforms have to acknowledge the receipt of consumer complaint within 48 hours and redress the complaint within 1 month from the date of receipt. E-commerce retailers offering goods and services to the Indian consumers whether registered in india or outside the territory of india have to comply with the rules , if not then strict penal actions will be taken against them. The central government has been authorized to take measures and make rules to prevent unfair trade practices in e-commerce.

## 2.8 CONSUMER PROTECTION COUNCIL

- **At central level**

The Central Government shall establish the Central Consumer Protection Council to be known as the Central Council. Its objects shall be to render advice on promotion and protection of the consumers' rights.

- **At state level**

Every State Government shall establish a State Consumer Protection Council for such State to be known as the State Council. The objects of every State Council shall be to render advice on promotion and protection of consumer rights under this Act within the State

- **At district level**

The State Government shall establish for every District with a District Consumer Protection Council to be known as the District Council. The objects of every District Council shall be to render advice on promotion and protection of consumer rights under this Act within the district.

## 2.9 UNFAIR CONTRACTS

CPA, 2019 has added the ground to file the complaints and allow the consumers to challenge the contracts which are unfair and unreasonable while under CPA, 1986 a consumer can only file complaint against the trader or service provider if he adopts any of the unfair trade practices and restrictive trade practices.

Unfair contract includes the contracts on such terms between a manufacturer or trader or service provider and a consumer which cause significant change in the rights of such consumer, including the following:

- requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or
- imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or
- refusing to accept early repayment of debts on payment of applicable penalty; or entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or
- permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or
- Imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage.

**NOTE:** State commission and NCRDC has been given extra powers to declare any terms of contract null and void If it is found unfair to the consumers.

## 2.10 UNFAIR TRADE PRACTICES

CPA, 2019 has added three types of additional unfair trade practices:

- failure or non-issuance of a bill or a cash memo

- refusal to take back or withdraw defective goods or withdrawal or discontinuance of deficient services or refusal to refund the consideration amount paid within the period as stipulated in the bill or cash memo or receipt or in the absence of such stipulation, refusal to withdraw or refund goods or services within thirty (30) days
- Disclosure of consumer's personal information to any other person unless such disclosure is made in accordance with the provisions of any law for the time being in force or in public interest.

## 2.11 POWER OF REVIEW

Power of review of their own orders has been also given to District Forum and State commission under CPA, 2019. While under CPA, 1986 only National commission is empowered to do review.

## 2.12 PENALTIES

**2.12.1** Any manufacturer or service provider who causes a **false or misleading advertisement** to be made which is prejudicial to the interest of consumers.

- **On first conviction:** imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees
- **On second/ subsequent conviction:** with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

**2.12.2** The competent court may give punishment for **selling or manufacturing adulterant/ spurious goods**.

- **On first conviction:** suspend any license issued to any person upto 2 years
- **On second/ subsequent conviction :** cancel the license issued to any person

## 3. RIGHTS OF CONSUMERS

- the right to be protected against the marketing of goods, products or services which are hazardous to life and property
- 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
- the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices
- the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate for a
- the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers

**NOTE: The "HEALTHCARE" was included in the services. The consumer affairs ministry came across the Supreme Court judgment of 1995 which said that medical services to the patient, for which fees are charged, come under the purview of Consumer Protection act. (Indian Medical Association vs. V.P. Shantha, 1995 SCALE 273)**

## 4. COMPARATIVE CHART OF CPA, 1986 and CPA, 2019

**Table2:** Comparison between Act of 1986 & 2002

TITLE	CPA,1986	CPA, 2019
TERRITORIAL JURISDICTION	<ul style="list-style-type: none"> <li>• the opposite party or each of the opposite parties ordinarily resides or carries on business or personally works for gain</li> <li>• the cause of action, wholly or in part, arises</li> </ul>	<ul style="list-style-type: none"> <li>• the opposite party or each of the opposite parties ordinarily resides or carries on business or personally works for gain</li> <li>• the cause of action, wholly or in part, arises</li> <li>• the complainant resides or personally works for gain.</li> </ul>
PECUNIARY JURISDICTION	<ul style="list-style-type: none"> <li>• District forum: upto 20 lakh</li> <li>• State commission : more than 20 lakh but less than 1 crore</li> </ul>	<ul style="list-style-type: none"> <li>• District forum: upto 1 crore</li> <li>• State commission : more than 1 crore but less than</li> </ul>

	<ul style="list-style-type: none"> <li>National commission: more than 1 crore</li> </ul>	10 crore <ul style="list-style-type: none"> <li>National commission: more than 10 crore</li> </ul>
TIME LIMIT FOR FILING COMPLAINT	30 DAYS	45 DAYS
EXTRA POWER OF COMMISSION	No such provision.	State commission and NCDRC to declare any terms of contract null and void if found unfair to any consumer.
POWER OF REVIEW	Conferred on only National commission	Conferred on state, district and national commission.
CENTRAL AUTHORITY ESTABLISHED	No such provision	Established central authority to regulate the matters relating to violation of consumer rights, unfair trade practices, false or misleading advertisements
PRODUCT LIABILITY	No such provision	A product liability action may be brought by the complainant against manufacturer or services provider or a seller for any harm on account of defective product.
MEDIATION	No such provision	The consumer commission can referred the case for mediation if it appears to them that there exists a scope of early settlement.
E-COMMERCE	No such provision	e-commerce transaction also covered under this act.
VIDEO CONFERENCING	No such provision	Consumers can seek hearing through video conferencing.

## 5. CONCLUSIONS:

The Consumer Protection Act,2019 is a positive step towards reformation and development of consumer laws. This act has introduced many changes and widens the scope of consumer laws. It introduced those concepts which were not even touched by CPA, 1986 like the ADR mechanism, establishment of statutory authority, hearings through video conferencing. By increasing the pecuniary jurisdiction of the commissions, imposing higher penalties is a step towards the lesser number of claims in appellate commissions which ensures the swifter disposal of cases. This act of 2019 gave more power to the consumers to protect their rights. Now everyone has to be more cautions and careful in dealing with consumers than ever before.

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