

# GLIMPSES OF THE CONSUMER PROTECTION ACT, 2019.

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To address the new set of challenges faced by consumers in the digital age, the Indian Parliament, on 6 August 2019, passed the The Consumer Protection Act 2019, which received the Presidential assent on the 9th August 2019 and was published in the Official Gazette for general information, The new Act repealed the old Act of 1986 and it aims at safeguarding the interests of the consumers by introducing provisions for addressing consumer concerns in an effective and time bound manner. The Act also would ease the overall process of consumer grievance redressal mechanism.

**Special Features of the Act are as follows:**

1. **Establishment of Central Consumer Protection Authority:** The New Act proposes the establishment of the Central Consumer Protection Authority known as 'Central Authority' to regulate matters relating to violation of rights of consumers. The Central Authority shall consist of a Chief Commissioner and such number of other Commissioners to be appointed by the Central Government<sup>1</sup>. It also has an Investigation Wing headed by a Director-General and such number of Additional Director General, Joint Director, Deputy Director and Assistant Director from among persons who are experienced in investigation and possess such qualifications as may be prescribed for the purpose of conducting inquiry or investigation under this Act<sup>2</sup>. The Central Authority shall protect, promote and enforce the rights of consumers as a class and prevent violation of consumer rights, prevent unfair trade practices and ensure that no person engages himself in unfair trade practice, ensures that no false or misleading advertisement is made of any goods or services and to ensure that no person takes part in the publication of any advertisement which is false or misleading<sup>3</sup>.The Central Authority has wide powers to inquire into violations of consumer rights or unfair trade practices either *suo-motu* or on a complaint or on the directions of the Central Government. It can

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<sup>1</sup> Section 13

<sup>2</sup> Section 15

<sup>3</sup> Sec.18

file complaints, intervene in any proceedings before the Commissions, undertake and promote awareness on consumer rights, spread and promote awareness on consumer rights, issue safety notices to alert consumers against dangerous or hazardous or unsafe goods, issue necessary guidelines to prevent unfair trade practices and protect consumers' interest<sup>4</sup>.

2. **Enhanced Pecuniary Jurisdiction:** As per the new Act, District Forum renamed as District Consumer Disputes Redressal Commission known as 'District Commission', shall have jurisdiction to entertain complaints where the value of goods or services paid as consideration does not exceed one crore rupees<sup>5</sup>. The State Commission can entertain complaints where the value of the goods or services exceeds rupees one crore but does not exceed rupees ten crore<sup>6</sup>; and the National Commission shall have jurisdiction where such value exceeds rupees ten crore<sup>7</sup>.
3. **Inclusion of E-Commerce:** The New Act has widened the definition of 'consumer'. E-Commerce is defined as buying or selling of goods or services including digital products over digital or electronic network<sup>8</sup>. The definition now includes any person who buys any goods and hires or avails any services' includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing<sup>9</sup>. The earlier Act did not specifically include e-commerce transactions, and this lacuna has been addressed by the New Act.
4. **Electronic filing and hearing of Complaints:** The New Act includes provision for filing complaints electronically and also gives additional flexibility to the consumer to file complaints with the jurisdictional consumer commission where the complainant resides or personally work for gain<sup>10</sup>. Earlier this was possible only at the place where the opposite party ordinarily resides or carries on business or has a branch office or where the cause of action wholly or in part arises. The New Act also envisages provision for the consumers to file complaints electronically<sup>11</sup> and for hearing or for examination of parties through video-conferencing<sup>12</sup>. This new provision aims to provide procedural ease and to reduce inconvenience caused to the consumers.
5. **Product Liability:** The New Act contains a provision for compensation under a product liability action by a complainant for any harm caused by a defective product manufactured or serviced by a product service provider or sold by a product seller<sup>13</sup>.

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<sup>4</sup> Ibid

<sup>5</sup> Sec.34(1)

<sup>6</sup> Sec 47 (1).

<sup>7</sup> Sec.58(1)

<sup>8</sup> Sec 2 (16)

<sup>9</sup> Sec. 2 (7)(b) of the C.P. Act, 2019.

<sup>10</sup> Sec 34 (1) (d)

<sup>11</sup> Sec 38 (4)

<sup>12</sup> Sec 38 (6)

<sup>13</sup> Sec.82

The 'product liability' means the responsibility of a product manufacturer or product seller of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or deficiency in services relating thereto<sup>14</sup>. The term 'product seller' in relation to a product means a person who in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains or otherwise is involved in placing such product for commercial purpose and includes, a manufacturer who is also a product seller or a service provider but does not include a seller of immovable property, unless such person is engaged in the sale of constructed house or in the construction of homes or flats; a provider of professional services in any transaction in which, the sale or use of a product is only incidental thereto, but furnishing of opinion, skill or services being the essence of such transaction<sup>15</sup>. Certain exceptions have been provided under this provision from product liability claims, i.e, that at the time of harm, the product was misused, altered or modified. A product manufacturer shall not be liable for failure to instruct or warn about a danger which is obvious or commonly known to the user or consumer of such product or which such user or consumer, ought to have known, taking into account the characteristics of such product<sup>16</sup>.

6. **Increased Penalties:** The new Act provides for increased penalties and punishment for offences committed under the Act. Whoever fails to comply with the direction of the Central Authority shall be punished with imprisonment for a term up to 6 months or with fine up to 25 lakh rupees or with both<sup>17</sup>. False or misleading advertisements shall be punished with imprisonment up to 2 years and with a fine which may extend up to 10 lakh rupees; and for every subsequent offence imprisonment upto 5 years and with a fine up to 50 lakh rupees<sup>18</sup>.

For manufacturing for sale or storing, selling or distributing or importing products containing adulterant shall be punished with imprisonment up to 6 months if it does not result in injury to the consumer; causing injury not amounting to grievous hurt to the consumer, imprisonment up to 1 year and with fine up to rupees 3 lakh; injury resulting in grievous hurt to consumer with imprisonment up to 7 years and with fine up to rupees 5 lakhs; and resulting in the death of the consumer with imprisonment not less than 7 years but may extend up to life imprisonment with a fine of not less than rupees ten lakhs<sup>19</sup>.

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<sup>14</sup> Sec. 2(34)

<sup>15</sup> Sec.2(37)

<sup>16</sup> Sec 87 (3)

<sup>17</sup> Sec.88

<sup>18</sup> Sec.89

<sup>19</sup> Sec.90

Manufacturing for sale or for storing or distributing or importing spurious goods shall be punishment with imprisonment up to one year with fine of rupees three lakhs, which may extend to 7 years imprisonment with a fine of rupees 5 lakh if causing injury resulting in grievous hurt and if it results in death of a consumer the imprisonment shall be not less than 7 years but may extend to life imprisonment with fine of not less than ten lakh rupees<sup>20</sup>.

Vexatious search conducted by the Director General or any other officer knowing that there are no reasonable ground for doing so yet searches any premises or seizes any record, register or other document, shall also be punished with imprisonment up to one year or with fine up to ten thousand rupees or with both<sup>21</sup>.

The increased penalties and fine amounts will act as a deterrent to avoid unfair trade practices including false advertisements and also to comply with the directions of the Consumer Commissions as well as the Central Authority. It has also prescribed punishment for vexatious search and seizure by the Investigation Wing of Central Authority.

- Punishment for False or Misleading Advertisement:** The new consumer Protection Act defines misleading advertisement as one which falsely describes such product or service or gives a false guarantee or likely to mislead consumers as to the nature, substance, quality or quantity of such product or service or conveys an unfair trade practice or deliberately conceals important information<sup>22</sup>. The Act provides punishment for false or misleading advertisements, where by any manufacturer or service provider who causes a false or misleading advertisement which is prejudicial to the interest of the consumers shall be punished with imprisonment up to 2 years and with fine up to rupees ten lakh; and for every subsequent offence, imprisonment up to 5 years and with fine up to fifty lakh rupees can be imposed<sup>23</sup>.

Where the Central Authority is satisfied after investigation that any advertisement is false or misleading prejudicial to the interest of consumer or is in contravention of consumer rights, it may issue directions to the concerned trader or manufacturer or endorser or advertiser or publisher to discontinue such advertisement or modify the same in such manner as specified. Where it deems necessary, it may by order prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period of up to one year. For every subsequent offence, the period of prohibition may extend to three years. The Central Authority if satisfied after investigation may impose a

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<sup>20</sup> Sec.91

<sup>21</sup> Sec.93

<sup>22</sup> Sec.2 (28)

<sup>23</sup> Sec.89

penalty of rupees ten lakhs for misleading advertisements<sup>24</sup>. This new provision will force the advertising agencies as well as manufacturer's to avoid false or dubious claims and ultimately consumers will be benefited from this.

8. **Mediation:** The New Consumer Protection Act has given much importance to the Alternate Disputes Resolution and for the settlement of cases through mediation; the State Government shall establish a 'Consumer Mediation Cell' to be attached to each of the District Commission and the State Commissions of that State<sup>25</sup>. Likewise the Central Government shall establish a 'Consumer Mediation Cell' to be attached to the National Commission and each of the Regional Benches<sup>26</sup>. Every Consumer mediation cell shall maintain a list of empanelled mediators; list of cases handled by the cell, record of proceedings and other information as specified. For the purpose of mediation the National Commission or the State Commission and the District Commission, shall prepare a panel of the mediators to be maintained by the consumer mediation cell<sup>27</sup>. Where a consumer dispute is referred for mediation, the mediator nominated by such commission having regard to the rights and obligations of the parties, usages of trade and such other relevant factors as he may deem necessary shall be guided by the principles of natural justice while carrying out mediation. The mediator shall prepare a settlement report of the settlement and forward signed agreement along with such report to the concerned Commission. Where no agreement is reached or where the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission and such commission shall hear all issues involved in such consumer dispute<sup>28</sup>.
9. **Unfair Trade Practices:** The New Act gives very broad definition of the term 'Unfair Trade Practices' to cover all types of unfair trade practices adopted by the traders like false representation of various types, misleading the public regarding price, warranty or guarantee, selling substandard goods, permitting hoarding, not issuing bill or cash memo 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<sup>29</sup>.
10. **Measures to prevent unfair trade practices in e-Commerce. Direct selling etc.** For the purpose of preventing unfair practices in e-commerce, direct selling and also to protect the interest and rights of consumers, the Central Government may take such measures in the manner as may be prescribed<sup>30</sup>. In the age of information technology, large number of consumers are using various services online, for example,

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<sup>24</sup> Sec 21

<sup>25</sup> Sec.74(1)

<sup>26</sup> Sec.74(2)

<sup>27</sup> Sec.75

<sup>28</sup> Sec.80

<sup>29</sup> Sec.2(47)

<sup>30</sup> Sec.94

booking and cancellation of travel tickets, online payments, online banking, usage of Ola, Uber, mango etc as cab services, Uber Eats, Zomato, Food Panda and Swiggy for home delivery of food items, Flip Cart, Amazon, Myntra, online purchase of house hold and personal items including medicine and many more items, it was highly essential to include e-commerce within the purview of the Act, hence this provision will help large number of online consumers especially the young new generation.

11. **Power of Review:** The District Commission<sup>31</sup>, State Commission<sup>32</sup> and the National Commission<sup>33</sup> have 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 30 days of such order. This new provision will help the litigants to avoid some appeals which are filed only for the rectification of errors.
12. **Power to make regulations:** The new Act gives wide powers to both Central and State Governments to make rules for carrying out any of the provisions contained in the Act<sup>34</sup>. The National Commission as well as the Central Authority also with the previous approval of the Central Government may make regulations not inconsistent with the Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act<sup>35</sup>.

**Conclusion:** The new Consumer Protection Act 2019 is really a welfare legislation aimed at the protection of the interests of consumers and also to provide effective administrative mechanism for the settlement of consumer's disputes and other matters connected there with. The Act has brought in its ambit the digital transactions, online business and e-commerce and moreover it has adopted the information technology for filing of complaints and also for the recording of evidence through video conferencing. Establishment of Central Consumer Protection Authority with Investigation wing empowered to conduct inquiries or investigations and to recall goods or withdrawal of services which are dangerous, hazardous or unsafe and also to order to discontinue such false or misleading advertisement, etc. are beneficial to the consumers as a whole. Since, for the first time some of the acts and omissions of manufacturers and sellers would constitute offences and the offences are categorized as cognizable and non-bailable, the said provisions give more teeth to the Act which serves the consumers better than ever.

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<sup>31</sup> Sec.40

<sup>32</sup> Sec.50

<sup>33</sup> Sec.60

<sup>34</sup> Sec.101 and 102

<sup>35</sup> Sec.103 and 104