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COPRA 2019- SEALING THE LOOPHOLES BY REPEALING?

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ABSTRACT

Who is a Consumer? In simple words, a person who buys goods and services from a seller for money is a consumer. According to Mahatma Gandhi, the consumer is giving an opportunity for the business persons to serve him and he is the ultimate purpose of the business. But the profit motive of the marketers, sellers and dealers is resulting in consumer exploitation through deceitful and immoral market practices. The concept of Consumer Protection is being educated for a long time. Consumer Protection is a socio-economic day to day activity to be carried out by government and business where the prime objective is protecting the interests of consumers and their fair satisfaction. It is the responsibility of the government to protect the rights and interests of consumers by formulating suitable policies, laws and administrative frameworks.

Important legislation made in this field was the Trade Practices Act, 1974. But a formal consumer protection law which purely focuses on consumer protection was enacted only in 1986 in India which is the Consumer Protection Act, 1986. In many developing countries including India, the United Nations Organization's Guidelines were the basis for the formulation of consumer protection policies and measures. The CPA, 1986 is considered to be a milestone in the history of India for consumer rights.

Consumerism is a universal phenomenon and its interdependence on different sections of the populous has made the consumer more vulnerable. Consumerism is rapidly emerging as an environmental force affecting major business decisions as consumers are becoming more aware of their rights. A new era of commerce has begun with the advent of digitalization and growth in technology. There is enormous growth in the consumer markets. As it grew, different kinds of malpractices emerged. The Act no longer served its purpose and needed a mandatory update for the benefit of the consumers. Due to the large amount of changes to be made, instead of bringing amendments to the Act, a whole new Act meeting the needs of the hour was enacted. The Parliament passed the Consumer Protection Act, 2019 on 6th August 2019, repealing the old one. The benefits and effects of this Act are yet to be known. This paper is an attempt to analyze and review the new Act and find the key features of the Act and its benefits.

Keywords: Consumer Protection, Consumer Rights, Scope Enhancing, New Features, Consumer Friendly

INTRODUCTION

Consumer markets for goods and services saw tremendous growth for the last few decades. With the growth of the market, the malpractices grew as well. Innocent consumers were exploited by large wealthy companies. To prevent this, the Central Government came up with the Consumer Protection Act, 1986. The Act aimed at protecting consumer interests and to ensure that ethical business practices are followed by the business people. The Act also focused on providing consumer education and establishing fair and responsible markets for the welfare of the consumers. The Act provided for the establishment of consumer councils and authorities for settling disputes. And the Act recognized 6 basic rights of consumers and tried protecting them. Though the Act served its purpose to a considerable extent, the dispute settlement mechanism was not so efficient due to several constraints¹.

With the advent of digitalization, a new era of commerce began. The digital age witnessed a drastic transformation of the consumer markets by providing various services to the consumers. The rapid development of e-commerce platforms has provided consumers with a lot of new options and opportunities. At the same time, consumers became more vulnerable to many unfair trade practices. So, it was necessary to bring amendments to the Act to address the new challenges faced by the consumers.

Therefore, in light of these facts, the Consumer Protection Act, 2019 was passed by the Parliament. This 2019 Act replaces the three-decades-old 1986 Act. Instead of bringing an amendment to the 1986 Act, the government enacted a new Act altogether to provide enhanced protection for the consumers. The Act aims to safeguard the consumer interests and establish an effective dispute settlement mechanism for speedy disposal of cases. The new Act intends to tighten the existing

¹ Statement of Objects and Reasons- 2019 Act.

system to protect consumer rights. Keeping in mind the digital nature of markets, the Act intends to enhance the scope of its application.

For instance, misleading advertisements with false representations is a new challenge posed to consumers in recent years. The 1986 Act had no provision for that, whereas the 2019 Act has defined ‘misleading advertisements’ and has also provided a penalty for it.

Likewise, the Act has added many other terms and broadened its scope of application to protect the consumers from the unscrupulous traders of the modern age. The Act has also included e-Commerce into its purview to help the consumers using the digital platform, to enforce their rights and get remedies, if any.

So, this article aims to provide a detailed analysis of the features of the Consumer Protection Act, 2019 and how it is different from the 1986 Act. Also, the impact and effects of the Act will be discussed in detail.

NEED

The Consumer Protection Act, 2019 has repealed the 1986 Act. This is because of the change in the nature of consumer markets since the beginning of the digital era. As India is moving towards western culture, the expectations of the consumers are rising. To meet those expectations, product manufacturers, sellers and service providers are coming up with new trade practices and strategies. Otherwise, they may not be able to survive the competition prevailing in the market. So, this fear keeps the traders active in their business to earn profits. In view of this, the manufacturers and sellers are engaging themselves in many new forms of unfair trade practices which would earn them more profits and enable them to be alive in the market. This has created a lot of problems for the consumers as they are being cheated by these selfish traders. This is when the need for a new Act was felt by both the consumers and the government.

Another factor is that the 1986 Act suffered from various limitations such as time constraints, jurisdiction issues, long-pending cases etc. These constraints kept the consumers in a disadvantageous position. The Act’s purpose was to protect the consumers by providing them

justice in a timely manner but it did not achieve its purpose. In order to overcome these limitations, a mere amendment was not enough and a new law was required.

Also, the 1986 Act did not contain provisions regarding the e-Commerce sector. When the e-Commerce sector was growing rapidly, the consumers faced new challenges which were not redressed by the 1986 Act. That being the situation, the traders were at liberty to follow unethical methods and exploit the gullible consumers. This also necessitated the enactment of new legislation.

Considering all these reasons, the government felt the need for a new Act that would suit the current period. Thus, the Consumer Protection Act, 2019 was passed by the government in August 2019.

ENHANCING THE SCOPE

The Consumer Protection Act, 2019 has brought in many new phrases and definitions in its fold to enhance its scope of application to address the emerging issues. The new framework provides for the establishment of new authorities, expansion of the jurisdiction, Suo moto powers to regulators and many more. The major changes incorporated in the Act shall be discussed in detail:

1. Consumer- Definition:

Consumers are the ultimate users of the products and services provided by manufacturers and traders. Until the 21st century, the only face to face trade was prevalent. But for the last 20 to 25 years the advent of the internet has changed the habit of buying and selling. Everything has become digital now. So, to adapt to the present practices, an addition was required as the 1986 Act did not contain provisions for consumers using online platforms.

Section 2 (7) of the Consumer Protection Act, 2019 defines the term ‘consumer’. The definition is the same as that of the 1986 Act. But there is an addition, in the Explanation to the section, of persons who are involved in offline or online transactions through electronic means or by

teleshopping or direct selling or multi-level marketing². Now, this definition recognizes people who transact through online or offline platforms as consumers which will enable them to avail remedies under the Act.

Also, the person availing the services which are provided for free will not be considered as a consumer. But whether the service being provided is for free or not is a question of fact and that has to be evaluated on a case to case basis. So, with this addition in the definition, consumers who buy products and avail services online will be benefitted.

2. Unfair Trade Practices:

The phrase ‘unfair trade practice’ can be broadly described as the use of deceptive or fraudulent or unethical methods in order to obtain business or earn profits in the business. Such unfair trade practices will cause substantial loss or injury to the consumers. To avoid such loss, the 1986 Act brought this concept under its fold to punish the fraudulent traders. As days passed, with the introduction of new facilities in the consumer market, consumer expectations started increasing. So, to meet those high expectations and to increase their profits, traders started using unethical methods. At a point in time, the 1986 Act was not exhaustive to cover all the fraudulent methods used by the traders. So, there was a pressing need to add those practices which harmed the consumers for the past 2 decades in order to make the list suitable for the 21st century.

The term ‘unfair trade practices’ is defined u/s 2(47) of the 2019 Act. The 2019 Act has now widened the scope of this definition compared to the 1986 Act. The Act has now included in its purview, misstatements and publication of any advertisements by way of electronic records among other existing modes and forms.

Misleading advertisements are also brought within the ambit of this definition. Further, four additional practices have been added to the definition of unfair trade practices. They are-

(1) Manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;

² Explanation 2 to Section 2(7) of CPA, 2019.

- (2) Failure or non-issuance of a bill or a cash memo;
- (3) Refusal to take back defective goods or withdraw 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;
- (4) Disclosing personal information of a consumer unless such disclosure is in accordance with the law.

In addition to this, ‘unfair trade practice’ will now include withholding from participants of any scheme offering gifts, prizes or other items free of charge. These additions in the definition will be beneficial to the consumers.

3. Unfair Contracts:

Consumers and producers sign a lot of contracts for the purchase and sale of products and services. They make promises to each other and make them legally enforceable contracts. But some manufacturers take advantage of innocent consumers and make contracts with unreasonable terms and conditions which affect the consumers badly.

So, the Act has introduced a new concept called ‘unfair contracts’ defined u/s 2(46) of the Act. This includes contracts which favor the manufacturers or service providers and are detrimental to the consumer interests. The Act penalizes the manufacturers and service providers for entering into such unreasonable contracts and exploiting them.

In 2018, homebuyers of DLF Ltd.’s residential project in Gurgaon complained to the Competition Commission of India that DLF had imposed unfair and arbitrary contractual terms in the buyer’s agreement. But the CCI dismissed the complaint on the ground that DLF hadn’t been dominant in the relevant market³.

³ Rohit Jain, New Problems, New Remedies, Consumer Protection Act 2019 Ushers in More Benefits for Consumers (August 29, 2019; 8:35am) <https://www.bloomberquint.com/law-and-policy/will-the-new-consumer-protection-act-make-consumers-king>

There were many such instances in the market. So, is an emerging issue, it forced the legislators to bring this concept into the 2019 Act and penalize it. So, complaints similar to the one made in the DLF case can now be admitted in the courts under the head ‘unfair contract’.

The definition of ‘unfair contracts’ expressly provides for six contracts thus enlarging the grounds for filing complaints against unfair and unreasonable contracts. The State Commission and the National Commission will now have jurisdiction to entertain cases against unfair contracts.

Also, this would be a check on businesses including banks and e-Commerce sites that take advantage of their dominance in the market and mandatorily require the helpless consumers to sign such unfair contracts and accept their standard terms before selling them goods or providing services⁴.

4. Misleading Advertisements:

It is a challenge faced by consumers nowadays. So, its introduction in the new Act has proved to be beneficial to the consumers. In the case of Nikhil Jain vs. Emami Ltd⁵ in 2017, the consumer forum held that the advertisement of the beauty cream “Fair and Handsome” manufactured by the Respondent which was endorsed by a renowned celebrity Shah Rukh Khan claiming that the cream will make men fair in 3 weeks, was misleading. At that point in time, due to the fact that the 1986 Act was in force and that it did not contain provisions regarding misleading advertisements, such an act of the respondent and the endorser was not penalized. Now that the 2019 Act has come into force, such manufacturers and endorsers of misleading advertisements will be penalized under the Act. Also, the Standing Committee on Food and Consumer Affairs & Public distribution in its 9th report has recommended stringent provisions to deter misleading advertisements.

People were deceived by some advertisements which gave false information about the quality of a product or service. This was against consumer interest. But to punish such an act, there was no provision in the 1986 Act. And the major remedy provided by the existing laws was mere

⁴ Gaurang Kanth and Divjot Singh Bhatia, Kanth & Associates, [The Consumer Protection Act, 2019: An Overview](https://www.mondaq.com/india/dodd-frank-consumer-protection-act/876600/the-consumer-protection-act-2019-an-overview) (14 January, 2020), <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/876600/the-consumer-protection-act-2019-an-overview>

⁵ First Appeal Number. 549/2015/ SCRDC (Delhi)

compensation. Owing to this, manufacturers and sellers were exploiting the consumers. This pushed for the introduction of such a concept into the 2019 Act.

Section 28 of the Act defines ‘misleading advertisement’ as an advertisement which falsely describes or falsely guarantees a product or service and which deliberately conceals important information. Now, misleading advertisements are punishable as an unfair trade practice under the Act. The Central Consumer Protection Authority (CCPA) has been empowered to take action against misleading advertisements and to impose penalties on such violators. When advertising for a product, the trader, the manufacturer, the advertiser and the endorser should ensure that they don’t convey any false information to the consumers. If not, they have to be punished for such a negligent or deliberate act.

Another special feature of this provision is that the endorser of an advertisement will also be brought under liability. Section 18 of the Act defines ‘endorsement’ as a message, demonstration or depiction of a product or service of any organization to make the consumers believe in such product or service and the person making such endorsement is called the ‘endorser’.

Manufacturers and sellers get the help of a celebrity to promote their product or service. Believing them, consumers buy those products or seek those services. But when those products or services are defective, consumers are the ones deceived. The celebrities who promoted such defective products or services were not liable for such fake promises before the insertion of this concept into the Act.

Now, under this Act, such celebrities who are called endorsers will also be liable for such fake promises if they have not exercised due diligence before participating in such advertisements. Thus, it has created a fear in the minds of all advertisers, manufacturers and celebrities which will prevent them from publishing and participating in misleading advertisements.

5. Concept of Product Liability:

A major introduction in the 2019 Act is the concept of ‘Product Liability’ as envisaged in Chapter 6 containing Sections 82 to 87. The term ‘product liability’ as defined in the Act is the responsibility of the product manufacturer or product seller, of any product or service to

compensate for any harm caused to the consumer by such defective product manufactured or sold or deficiency in services relating to that product⁶. Prior to the Consumer Protection Act, 2019 there was no specific product liability theory in India. Even before the formulation of the product liability concept, certain laws in India such as:

- The Consumer Protection Act, 1986
- The Sale of Goods Act, 1930 (Sections 57, 57 and 59)
- The Drugs and Cosmetics Act, 1945 (Chapter 4)
- The Prevention of Food Adulteration Act, 1954 (Sections 14, 15 and 16)

protected the interests of the consumers against faulty products and services to some extent. But it couldn't give a comprehensive legal framework to this theory. The impact of the concept of product liability is that it is not only the manufacturer who is liable to compensate a consumer but also the seller if it fulfills the conditions mentioned in the Act⁷. The term 'Product Seller' includes a person who is involved in placing the product for a commercial purpose including e-Commerce platforms. Thus, the e-Commerce platforms cannot take the defense that they are mere 'platforms' or 'aggregators'. The Act allows a person to raise a product liability action by filing a complaint before a District Commission or State Commission or National Commission⁸.

I. Manufacturer Liabilities: The scenarios in which the manufacturers can be made liable in a Product Liability Action as provided u/s 84 of the Act are that if the product,

- Contains a manufacturing defect, or
- Has a defective design, or
- Has any deviation from the manufacturing specifications, or
- Doesn't conform to an express warranty given by the manufacturer, or

⁶ Section 2(34) of Consumer Protection Act, 2019

⁷ Section 82 of Consumer Protection Act, 2019

⁸ Section 2(35) of Consumer Protection Act, 2019.

- Doesn't contain adequate instructions or any warning regarding improper or incorrect usage or correct usage to prevent harm.

Section 84(2) makes the manufacturer liable even if he proves that he was not negligent or fraudulent in making the express warranty of a product.

II. Service Provider Liabilities: As per Section 95, the Service Provider is liable for:

- Providing services which were faulty, imperfect, deficient or inadequate, or
- Doing an act of omission or commission or negligence or conscious withholding of any information which caused harm, or
- Providing inadequate instruction or warning to prevent harm, or
- Providing services not conforming to express warranty or the terms and conditions of the contract.

III. Seller Liabilities: Under Section 86 of the new Act, even the seller is liable when he:

- Has exercised substantial control over the designing, testing, manufacturing etc., of a product that caused harm, or
- Has altered or modified the product and such alteration was the substantial factor in causing the harm, or
- 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, or
- Sold the product, the identity of whose manufacturer is unknown or if known the service of notice or process or warrant cannot be effected on the manufacturer or if the manufacturer is not subject to the law which is in force in India, or
- Has failed to exercise reasonable care in assembling, inspecting or maintaining such product or to 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.

Section 87 provides the exceptions for product liability action. There will be no liability on the product seller if at the time of harm, the product was misused, altered or modified. In any action of product liability against the product manufacturer based on the failure to provide adequate warnings or instructions, he cannot be made liable, if the product:

- Was purchased for the use in the workplace and the manufacturer had given all instructions and warnings to the employer who purchased it, or
- Was sold as a component to be used in another product and necessary instructions and warnings had been given by the manufacturer, and the harm was caused to the complainant from the use of the end product, or
- Was one which was legally meant to be used under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give warnings or instructions for usage to such expert or class of experts, or
- Was used by the complainant under the influence of alcohol or any prescription drug which had not been prescribed by a medical practitioner, or
- Was of such nature having a danger which is obvious or commonly or ought to have been known to the user or consumer of such product taking into account the characteristics of such product⁹.

The emergence of this concept helps the consumers in gaining justice more easily as now it specifies liabilities for sellers, manufacturers and service providers separately. Hence, this concept is beneficial to consumers.

⁹ Section 87(3) of Consumer Protection Act, 2019.

6. Jurisdiction of Redressal Forums:

The new Act brought in some key changes with regard to the jurisdiction of the Consumer Redressal Forums.

- **Territorial Jurisdiction:** The old Act provides that filing of a complaint should be done where the opposite party resides or carries on business, which was a disadvantage. The new Act removes this disadvantage by providing for the filing of complaints where the complainant resides or works for again. This would help in eliminating difficulties faced by the consumers in seeking redressal for their grievances against businesses which may not have an office or branch in their state. Thus, it eliminates the territorial barriers for filing a complaint.

- **Pecuniary Jurisdiction:** Pecuniary simply means ‘related to money’. Pecuniary Jurisdiction sets the pecuniary limit on the jurisdiction of a court. The pecuniary limit of the District Commission has been increased from 20 lakhs to 1 crore. The State Commission has been granted pecuniary jurisdiction up-to 10 crores. With respect to the National Commission, the pecuniary jurisdiction has been increased to over and above Rs.10 Crores as against Rs.1 Crore in the 1986 Act. The manner for determining the pecuniary jurisdiction for filing a complaint has also been changed in the new Act. According to the 1986 Act, the pecuniary jurisdiction was determined as per the value of goods and services as well as the compensation claimed. But the 2019 Act states that the pecuniary jurisdiction will be determined only on the basis of the value of goods or services paid as consideration. This would help in eliminating the practice where the compensation claimed will be inflated by the aggrieved so as to bring the complaint within the jurisdiction of State or National Commission.

7. E-Commerce:

Consumers are the most important elements in a business ecosystem. Without consumers, the trade will not take place in isolation. Having such great importance, it is a matter to be viewed seriously that consumer rights are not protected because of the non-availability of stringent laws, especially in the e-Commerce sector as it is an emergent sector in the system and is new to the consumers.

The 1986 Act did not provide for online transactions as that period did not have such facilities with the internet. But considering its emerging nature, the inclusion of e-Commerce into the 2019 Act was inevitable. So, one significant change in the 2019 Act is that the e-Commerce platforms are brought within its ambit.

E-Commerce is defined u/s 2(16) of the Act. It will be governed by all the laws that are applied to direct selling. The Central Government has been authorized to take measures and make rules to prevent unfair trade practices in e-Commerce.

Since the concept of product liability is introduced, the ground taken by e-Commerce websites that merely act as ‘platforms’ or ‘aggregators’ will not be accepted by the Courts anymore¹⁰. Also, unfair trade practices in e-Commerce platforms and unfair contracts signed by business entities in e-Commerce sites will now be penalized under the Act.

8. Central Consumer Protection Authority:

Establishment of the CCPA is one of the most important changes brought by the Act. The Act has provided for the establishment of a central body to look into the grievances of consumers. Being a central authority, it will have wide powers to crack down all the unfair and unethical practices against consumer welfare. The CCPA will not address the consumer’s grievances directly; rather its regulatory measures will be directed towards the manufacturers, sellers and service providers¹¹.

It is a body established to strengthen the existing system by taking administrative steps like addressing the unfair practices, imposing liabilities on manufacturers etc. The establishment of such a central body will ensure that prompt actions are taken in consumer disputes when the governments fail to address them.

Section 10 of the Act, seeks to establish a central authority, Central Consumer Protection Authority (CCPA) to promote, protect and enforce consumer rights. An entire chapter i.e. Chapter III

¹⁰ Gaurang Kanth and Divjot Singh Bhatia, Kanth & Associates, The Consumer Protection Act, 2019: An Overview (14 January, 2020), <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/876600/the-consumer-protection-act-2019-an-overview>

¹¹ Shipra Singh, Separate Regulator, here’s how consumers will benefit under the new Consumer Protection Act (August 19, 2019; 6:30AM) <https://economictimes.indiatimes.com/wealth/spend/heres-how-consumers-will-benefit-under-the-new-consumer-protection-act/articleshow/70711304.cms>

(Section 10 to 27) contains provisions regarding CCPA. The CCPA aims to enforce consumer rights against matters related to unfair trade practices, misleading advertisements etc.

The CCPA has been provided with vast powers by the Act to take actions and impose penalties against misleading advertisements and false advertisements including the celebrities who endorse defective products or services. The Act provides for the formation of an investigation wing under the CCPA which shall conduct inquiries, investigations and take actions against the violators. It also has the power to issue safety notices to alert the consumers of hazardous and dangerous goods and services.

Another significant power of the CCPA is that, it can initiate Suo-moto proceedings against the violators and pass directions to them. It can file complaints regarding consumer rights before the Consumer Dispute Redressal Commissions at the district, state and national levels. Also, the CCPA can file class-action suits for multiple consumers to protect mass consumer interests. By establishing such a body with large powers to address consumer issues, consumer confidence is restored.

9. Alternate Dispute Resolution:

The Preamble of the Act provides for ‘timely and effective’ settlement of consumer disputes. As per the National Consumer Dispute Redressal Commission (NCDRC), there are more than 4,80,000 cases pending at present in all consumer forums collectively. This shows that the desired objective is a long way to be reached. To achieve the objectives of the Consumer Protection Act, 2019, there is a need for devising mechanisms for speedy trial and to adopt an Alternate Dispute Mechanism¹².

The Consumer Protection Act, 2019 aims at simplifying the entire process of consumer dispute redressal through mediation proceedings as an alternative dispute resolution for making the dispute adjudication process quicker and simpler. The provisions for the same are given in Chapter 5 containing Sections 74 to 81. As per the Act, the consumer forum shall refer any matter to mediation on the written consent of both the parties. For this purpose, the Act also provides for the

¹² Bijoy Sinha roi vs. Bishwanath das and Ors- Civil Appeal No. 4761 To 4763 Of 2009

establishment of a consumer mediation cell in each District Commission and State Commission by the respective State Governments as well as at the National Commission by the Central Government¹³.

If it appears to the members of the Central Authority, that there exists an element of a settlement, they may refer it to mediation and in case of failure of mediation, the complaint shall proceed further. Given the huge amount of pending cases, this new step helps in reducing the burden of the forums and paves way for timely and effective administration as well as the settlement of consumer disputes. The Apex Court in *Afcon Infrastructures Ltd. Vs. Cherian Varkey Construction Ltd.*¹⁴ has held that the use of ADR is useful in consumer disputes also. This will lead to speedy disposal of cases and foster the dispute redressal process.

10. Rights of Consumers:

The consumers are empowered with certain rights in order to protect themselves from the malpractices of sellers and manufacturers. The old Act provides six basic consumer rights that all are aware of. The rights are:

- Right to Safety
- Right to be Informed
- Right to Choose
- Right to be Heard
- Right to seek Redressal
- Right to Consumer Education

These rights are basic rights that are necessary for protecting consumers from various malpractices. The new Act also made provisions for the aforesaid rights under section 2(9). With the widened scope of the Act, it is noticeable that some other rights are also given to the consumers which are

¹³ Section 74(2) of Consumer Protection Act, 2019

¹⁴ 8 SCC 24 (2010) (India)

necessary in this modern era. So, in addition to the existing consumer rights, there are 5 new rights that one gets as a consumer.

- I. Right to file a complaint from anywhere:** Consumers can now file a complaint to the District or State forums from anywhere. Previously, a complaint had to be filed in the place where the opposite party resides or carries on business. But the new Act makes this process simpler by providing that a case can be filed in the place of residence or gain of the complainant itself. This would be very advantageous to the online shoppers as the seller is generally someone whose office of gain is far away. Moreover, the Consumer Affairs Ministry is going to frame rules for the filing of complaints electronically and will also specify norms for paying the required fee digitally.
- II. Right to seek compensation under Product Liability:** A consumer can file a complaint against a seller or manufacturer for any loss caused to him or her on account of a defective product. This applies to services as well. The manufacturer can be held liable if there is a manufacturing defect or a deviation from the manufacturing specifications or the product does not conform to the express warranty.
- III. Right to protect consumers as a class:** Any complaint relating to a violation which is prejudicial to the interests of the consumers as a class may be forwarded either in writing or in electronic mode to the District Collector or the Commissioner of Regional Office or the Central Consumer Protection Authority.
- IV. Right to seek a hearing through video conferencing:** The Act under Section 38 says that every complaint shall be heard by the District Commission on the basis of an affidavit and documentary evidence placed before it. The Commission can allow if an application is made for hearing or examination of parties through video conference.
- V. Right to know why a complaint was rejected:** The Proviso to Section 36 of the Act clearly says that no Commission can reject any complaint without hearing the complainant. In case a complaint is rejected, the complainant should be informed as to why the complaint has been rejected. The Commission has to decide about admitting or rejecting a case within 21 days. It shall be deemed to have been admitted if it is not

decided within the said time. If the Commission finds that a settlement is possible, it can have the dispute settled through mediation.

These new rights ensure that consumers are protected to the fullest by bringing in rights and solutions according to modern needs. These rights protect the consumers from the newly emerged unfair trade practices and exploitations.

11. Miscellaneous:

The major changes in the Consumer Protection Act, 2019 have been discussed so far. The Act also has some other minor changes which are beneficial to the consumers. Such minor changes are discussed as under:

I. Definition Clause:

Section 2 of the Act is the definition clause. The new Act provides with 47 definitions unlike the old Act containing 18 definitions which is a sign that the scope of the Act has been largely widened. Some of the significant changes in the definition clause are as follows:

- Clause 5 of the Section defines a ‘Complainant’. The new Act brings in minor also under the definition of a complainant. Now a minor can initiate a complaint through his parent or legal guardian.
- Clause 17 of the Section defines a new term ‘Electronic Service Provider’ as a person who provides technologies to the product seller to engage in advertising and selling goods or services to the consumers. It includes any online market place or auction sites also.
- Clause 43 of the Section defines a new kind of goods (i.e.) Spurious Goods which means goods which are falsely claimed to be genuine.

II. Other changes:

- 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 to the consumers.

- Under Section 61 of the Act, the aggrieved party has the right to set aside any order of the National Commission by making an application, if such order is passed by the National Commission ex-parte.
- The National Commission is now vested with the power of judicial review of any of the order passed by it if there is an error on the face of the record either Suo moto or on an application made by any of the parties within 30 days of such order.
- Faced with the swelling malpractice of spurious goods, the Act has brought in penalty for selling such spurious goods. Selling such goods is made punishable under section 91 of the Act.

IMPACT

The Consumer Protection Act, 2019 has repealed the 1986 Act by introducing many additional concepts to address various problems arising in the modernized society and to make an exhaustive consumer law. The Act aimed at providing timely justice to the consumers and at protecting the consumer interests to the maximum level. But ‘Has the Act accomplished its goals?’ is a matter to be looked into. Not all groups of people reacted similarly to the introduction of the Act. The Act has created a significant impact on various parts of the business ecosystem, which is to be examined to ascertain the success of the Act.

Firstly, let us look into the impact on the manufacturers. Manufacturers are entities that make goods or assemble parts made by themselves or another party or design any products before sale. Though all manufacturers may be product manufacturers, all product manufacturers are not manufacturers¹⁵. The introduction of ‘product liability’ has enhanced the scope of liability for manufacturers by making them liable for producing defective products, hazardous products, goods containing adulterants, spurious goods, and for misleading advertisements. The Act imposes

¹⁵ Aparajita Rana and Aman Gera, Consumer Protection Act, 2019 – Key Highlights for Product Manufacturers (9th September, 2019) <https://www.mondaq.com/india/Consumer-Protection/843368/Consumer-Protection-Act-2019-Key-Highlights-For-ProductManufacturers#:~:text=The%20Act%20also%20imposes%20liability,up%20to%20INR%2010%20lakhs>

several penalties on manufacturers whose activities are prejudicial to consumer interests. Thus, the Act has succeeded in discouraging manufacturers from indulging in such unethical practices.

Secondly, while looking into the impact on service providers and sellers, the introduction of product liability has imposed similar penalties on them. The Act requires the service providers to provide perfect and appropriate services along with adequate instructions and warnings to the consumers. Service providers are made liable for faulty or deficient services and for negligent acts. The Act also mandates the sellers to exercise reasonable care in inspecting the products regarding the warranty and usage before selling them to the consumers, failing which, they will be held liable and will be imposed fine. Therefore, the Act directs service providers and sellers to exercise due diligence while providing services and selling products.

Thirdly, the Act has an impact on the endorsers also. As discussed earlier, endorsers are celebrities who promote a product or service to make the consumers believe and buy such products or services. The Act makes such celebrities liable if those advertisements are misleading. Innocent consumers believing in some products and services by them, just because their favorite personality promoted them. So, these celebrities should have the responsibility to exhibit the true nature of any product or service. Thus, the introduction of the concept of ‘misleading advertisements’ and penalties for it has proved to be a restraint on celebrities from promoting defective products and services.

Lastly, the impact on consumers has to be deeply looked into. The Act ushers a lot of benefits to the consumers. The Act has introduced a new catalogue of measures and tightens the existing system to safeguard consumer interests. The Act, having recognized all the existing basic consumer rights, has also added some more rights to ensure that no consumer is devalued. The 2019 Act was brought to overcome all the lacunas in the 1986 Act. By bringing the aforesaid measures, the Act has provided the consumers with a speedy redressal system which was its aim. Heavy penalties are imposed on the violators which will act as a bar to defraud the consumers. Thus, the consumers are kept in an advantageous position by the Act.

Also, the Act has affected different industries in different ways. Whilst most are advantageous, there are some limitations also as any other Act would have. Both merits and limitations are to be explained to determine the success of the Act.

One important industry included in the Act is the e-Commerce industry. Purchasing and selling through an online platform is in trend and it is legally recognized by the Information Technology Act, 2005. Online purchasing has been made secured to protect consumers from deceitful practices. Also, sellers selling through online platforms have a variety of checks. They are made liable for displaying and selling deceptive products through online platforms. In this aspect, the consumers are benefitted. Further, the Department of Consumer Affairs and the Ministry of Consumer Affairs, Food and Public Distribution, on August 02, 2019 have issued the e-Commerce guidelines for consumer protection, 2019 ("Guidelines") in order to safeguard the interest of the consumers¹⁶. The guidelines consist of general conditions for carrying out an e-Commerce business, activities which are not to be undertaken by an e-Commerce entity, and liabilities for not following any of the guidelines. Hence, this effect on the e-Commerce industry is also beneficial to consumers.

Additionally, the Act has a considerable impact on various businesses as a lot of regulations have been brought in to ensure the elimination of all unfair trade practices prevalent in the market. Now, business entities have to take more precautions about their products like ensuring that no false claims about the features of the product are made, ensuring the standards of their goods, avoiding adulteration etc. Their standing in the market is wholly dependent on their consumers as the consumers are the ultimate users of the market products and services. The Act benefits the consumers to the most and is an initiative to make businesses more responsible and concerned about the wellbeing of the consumers.

Like any other statute, the Consumer Protection Act, 2019 also suffers from some limitations. Positively, those are very minimal and can be easily rectified. Firstly, mandatory civil services like

¹⁶ Advisory to State Governments / Union Territories: Model Framework for Guidelines on e-Commerce for consumer protection <https://consumeraffairs.nic.in/sites/default/files/fileuploads/latestnews/Guidelines%20on%20e-Commerce.pdf>

health care, sanitation, water supply etc., provided by the state or local authorities are not covered by the Act. Secondly, the consumers can seek redressal only if a loss or damage is suffered as a result of any unfair trade practices or other kinds of malpractice, although the per se rule ensures that any act or practice which prima facie appears to be unfair shall be regarded as unfair and against consumer interests as such. Thirdly, another disadvantage which follows from the old Act is the execution of the orders passed by the consumer courts. There are a lot of defaults in compliance of the orders passed by the Consumer Courts.

These are things that weren't taken note of while framing this Act and are not disadvantages that arise out of the newly framed provisions. There are minimal limitations in the formulation of the Act. However, any difficulty may arise in the future as its practical use increases. Therefore, the Act on the face appears to be advantageous to the consumers and acts as a deterrent to unscrupulous traders and manufacturers and has a positive impact on the whole.

CONCLUSION

The Consumer Protection Act, 2019 on the whole shows that it provides for greater protection of consumer interests with regard to the current problems in the digital age. The Act, as discussed above, has many new features which benefit the consumers in a lot of ways. It has widened the scope of reach by introducing new concepts and penalties and has attempted to address the issues which were not dealt with under the 1986 Act.

The Act intends to speed up the process of consumer disputes resolution by expanding the jurisdiction of the Commissions, increasing the number of members of the commissions, establishing mediation cells etc. The Act takes into account the technological advancements in the industry and provides for e-Filing of complaints, which makes it easier for the consumers to lodge complaints. Also, the Act has included many new definitions as compared to the 1986 Act so as to provide an exhaustive consumer law.

Further, the Act has imposed strict liability on all persons in the businesses including the endorsers for violating consumer interests. The Act has prescribed the infrastructure of all the authorities it

created and provides for an efficient dispute disposal system. A significant addition is the inclusion of the e-Commerce industry into the application of the Act.

The Act has introduced the concept of ‘unfair contracts’ and penalized contracts which are unfavorable to the consumers. In addition to this, the definition of ‘unfair trade practices’ has also been widened to protect the consumers from modern frauds. And by establishing a central authority with large powers, the Act has kept a check on the traders and preserved consumer interests.

The Act may have introduced a lot of measures to safeguard the consumers, but it is imperative on consumers to know and understand their rights and reliefs awarded for the violation of those rights. The consumers have to stand for their rights and ensure that they are aware of their rights. It is their duty to take precautionary measures so as to protect themselves from unscrupulous traders.

The Act renders the maxim ‘Caveat Emptor’ (buyer's beware) obsolete as the onus is placed on the producers and now it is their duty to be responsible and cautious about their products and services. With the introduction of the Act, it will be easier for the consumers to call out the mistakes of sellers and manufacturers and enforce their rights more effectively.

Conclusively, the Consumer Protection Act, 2019 upholds consumer sovereignty and keeps the rights of consumers in the forefront. The Act is undoubtedly consumer-friendly legislation of the Parliament. But the fate of the Act will be known only over the passage of time. The ramifications of the Act cannot be accurately measured now and the success of the Act will have to pass the test of time. But as of now, consumers can cheer as the Act showers them with a lot of fortunes.