



THE CONSUMER PROTECTION ACT, 2019

Summary and Background:

- Passed by the Lok Sabha (Lower House): July 30, 2019
- Passed by the Rajya Sabha (Upper House): August 06, 2019
- Assent of President of India: August 09, 2019

The Consumer Protection Bill, 2019 (“**Bill**”), which seeks to replace the long existing Consumer Protection Act of 1986 (“**Old Act**”), was passed by the Lok Sabha on July 30, 2019 and by the Rajya Sabha on August 06, 2019. The Bill received the assent of the President of India on August 09, 2019 as the Consumer Protection Act, 2019 (“**Act**”). The Act has focused on enforcing consumer rights alongwith timely and effective administration of consumer disputes.

As per Section 1(3) of the Act, the Act shall come into force on such date as the Central Government may, by notification, appoint. (It may be noted that as per Section 5 of the General Clauses Act, 1897, where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the President. Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement).

The Act, among other things, proposes setting up of a Central Consumer Protection Authority (“**CCPA**”) to promote, protect and enforce

the rights of consumers as a class. The CCPA would make interventions to prevent consumer detriment arising from unfair trade practices. The agency can also initiate class action, including enforcing recall, refund and return of products.

The Act also envisages a simplified dispute resolution process, and has provisions for Mediation and e-filing of cases. The consumer will be able to file cases in the nearest consumer commission under the jurisdiction of which he resides.

For the first time there will be an exclusive law dealing with Product Liability. A manufacturer or product service provider or product seller will now be responsible to compensate for injury or damage caused by defective products or deficiency in services.

Additional swift executive remedies are proposed in the Act through CCPA. There are provisions for deterrent punishment to check misleading advertisements and adulteration of products. Product liability provisions have been included to deter manufacturers and service providers from delivering defective product or deficient services. The Act also enables regulations to be notified on E-commerce and direct selling with focus on protection of interest of consumers.

The Act establishes Consumer Protection Councils at the district, state and national level to render advice on consumer protection.

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Background of Amendment:

Consumer markets for goods and services have undergone a drastic transformation since the enactment of the old Act. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and series and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade marketing, direct selling and e-commerce which pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent harm to consumers. Therefore, it has become inevitable to amend the Act to address the myriad and constantly emerging vulnerabilities of the consumers. In view of this, it is proposed to repeal and re-enact the Act.

Accordingly, the Bill was introduced in and passed by Lok Sabha in December, 2018. While the Bill was pending consideration in Rajya Sabha, the 16th Lok Sabha was dissolved and the Bill lapsed. Hence the Bill was again introduced in the Parliament.

Primary Features and Major Changes:

The key changes brought in by the Act are as follows:

Establishment of a Regulator: The CCPA will be established with powers to, either suo moto or on complaints/directions received from the Central Government, regulate and inquire into matters relating to violation of consumer rights, unfair trade practices, false or misleading advertisements and to enforce class actions. This may be done in the following manner.

- file complaints before the district commissions, state commissions or National Consumer Disputes Redressal Commission (“**National Commission**”) or intervene in proceedings before these agencies;
- issue guidelines to prevent unfair trade practices or misleading advertisements;
- pass orders for recalling goods or withdrawal of services which are

dangerous, hazardous or unsafe; or for reimbursement of prices of such goods or services; and for discontinuation of practices which are unfair and prejudicial to consumers’ interest.

An investigation wing within the CCPA headed by a Director General will be tasked with conducting inquiries and investigations. Appeal from orders of the CCPA shall lie to the National Commission within 30 (thirty) days from the date of receipt of such order.

Separately, central, state and district advisory councils will be set up at each level to render advice on the promotion and protection of consumer rights.

Strict consequence for false or misleading advertisement for manufacturer, endorser, publisher: The CCPA may, following investigation, impose a penalty on the manufacturer or endorser of a false or misleading advertisement of up to INR 10,00,000 (Indian Rupees Ten Lakhs) and with imprisonment up to two years. For every subsequent contravention a penalty up to INR 50,00,000 (Indian Rupees Fifty Lakhs) with imprisonment which may extend to five years may be imposed.

The endorser of such an advertisement may be prohibited from making endorsement of any product or service for a period of up to one year and for subsequent contravention for a period of up to three years. However, if the endorser has exercised due diligence to verify the veracity of the claims made in the advertisement, he/she shall not be penalized. The publisher or a person who is party to such publication may also be penalized for amount of up to INR 10,00,000 (Indian Rupees Ten Lakhs).

Product Liability & Product Liability Action: Product liability has been defined to mean the responsibility of the 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 by deficiency in services relating thereto. A product liability action is a complaint filed for claiming compensation for any ‘harm’ caused to due to deficiency, inadequacy in the product

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service or manufacturing or design defects, deviation from specifications, not conforming to warranty or lacking adequate instructions regarding correct usage. A product seller who is not a product manufacturer is also liable if he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or has altered or modified the product such that it caused harm. Exceptions have also been provided to such actions, e.g., misuse, alteration or modification of the product at the time of harm being caused or failure on part of the manufacturer to warn or instruct about a danger which is obvious or commonly known or ought to be known on account of the characteristics of the product, etc.

“Harm” in relation to product liability includes damage to property other than the product itself, personal injury, illness or death and mental agony or emotional distress resulting from such harm.

Unfair contracts and enlarges scope of unfair trade practices: “Unfair contract” has been defined to mean a contract between a manufacturer or trader or service provider on the one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer. Any complaint against unfair contracts can be filed with the state commissions or the National Commission, Six types of unfair contracts have been identified, namely:

- contract requiring manifestly excessive security deposits;
- contracts imposing disproportionate penalty on the consumer for breach of contract;
- contracts refusing to accept early repayment of debts on payment of applicable penalty;
- contracts entitling a party to the contract to terminate such contract unilaterally without reasonable cause;
- contracts permitting or having the effect of permitting one party to assign the contract to the detriment of the other party, who is a consumer, without his consent; and
- contracts imposing on the consumer any unreasonable charge, obligation or

condition which puts such consumer to disadvantage.

The scope of unfair trade practices has been expanded to include the following practices:

- Not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;
- Refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt, or, in the absence of such stipulation within a period of 30 (thirty) days; and
- Disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.

Revised Pecuniary and Territorial Jurisdiction:

The pecuniary jurisdiction of the district commissions, state commissions and National Commission has been revised as below. The territorial jurisdiction will now also include the place of residence or business of the complainant in addition to that of the opposite party and the place of concurrence of the cause of action.

- district commissions – upto INR 1,00,00,000 (Indian Rupees One Crore) (currently up to INR 20,00,000 (Indian Rupees Twenty Lakhs));
- state commissions – between INR 1,00,00,000 (Indian Rupees One Crore) to INR 10,00,00,000 (Indian Rupees Ten Crores) (currently up to INR 1,00,00,000 (Indian Rupees One Crore));
- National Commission – above INR 10,00,00,000 (Indian Rupees Ten Crores) (currently above INR 1,00,00,000 (Indian Rupees One Crore)).

Mediation: Mediation has been provided as an alternative dispute redressal mechanism. A Consumer Mediation Cell will be set up for this purpose. If there is any possibility of a settlement between the parties, the district commissions, state commissions or the National Commission may direct the parties

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to give a written consent to have their dispute settled by mediation.

New penalties/punishments: The manufacturing, storing, selling, distributing or importing of products containing adulterants and spurious goods is punishable with both fine and imprisonment depending on the degree of harm, injury or grievous hurt caused ranging from imprisonment for 6 months with a fine of INR 1,00,000 (Indian Rupees One Lakh) to imprisonment for seven years with a fine of INR 5,00,000 (Indian Rupees Five

Lakhs). Life imprisonment alongwith a fine of INR 10,00,000 (Indian Rupees Ten Lakhs) may also be awarded in cases where such act has resulted in the death of any consumer, the minimum term of imprisonment in such cases being seven years.

On the other hand, vexatious searches and seizures by the DG or any other officer are also punishable with imprisonment up to one year or with fine which may extend to INR 10,000 (Indian Rupees Ten Thousand) or with both.

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Please feel free to address any further questions or request for advice to:

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