



## CONSUMER UPDATE

### SALIENT FEATURES OF THE CONSUMER PROTECTION ACT, 2019

Considering the changes to the way things are being bought and sold in the fast-paced world of ecommerce, and the challenges associated with it, and to further protect consumer interests in the country, the government decided to replace the three decade old [CPA, 1986](#). Accordingly, [The Consumer Protection Act, 2019 \(CPA 2019\)](#) was enacted, which received the President's assent on August 9, 2019. Specific provisions related to product liability, misleading advertisements, e-commerce, mediation, increase in pecuniary jurisdiction in district, state and national commissions, and the introduction of a central regulator (Central Consumer Protection Authority) are some of the notable features of CPA 2019.

#### *Defining “E-commerce” and expanding the scope of “Consumer”*

As compared to CPA 1986, the definition of “Consumer” has been broadened under CPA 2019 to reiterate the inclusion of online transactions through electronic means, teleshopping, direct selling and multi-level marketing [Section 2(7)(ii)(b)]. E-commerce has been specifically mentioned and is defined as buying and selling of goods/services/digital products, online [Section 2(16)]. Central government is empowered to take appropriate measures (framing of rules, regulations, guidelines, etc) to prevent unfair trade practices in e-commerce and direct selling [Section 94, Section 101 (2)(zg)].

#### *Unfair contracts*

Earlier, a consumer could file a complaint only for an unfair trade practice or restrictive trade practice adopted by the trader/service provider. However, there were numerous instances where consumers, left with little option, entered into agreements/contracts that were unilateral and arbitrary in nature, and were bound by them. Thus, to protect the interests of these consumers, “unfair contracts” has been added as a ground for filing complaints in the present Act. Consumers can challenge contracts that are unreasonable.

“Unfair Contract” means a contract between the manufacturer/trader/service provider and the consumer and shall be deemed to be unfair if it adversely affects the rights of the consumer and includes, demand for huge payments to fulfill the contractual obligations; imposing penalty on consumer for breach of contract when the consumer has already suffered a greater loss due to the breach; refusing pre-closure of debts with applicable payment; unilateral termination of contracts without proper reasons; permitting one party to assign the contract to the detriment of the consumer, without his consent; imposing inequitable conditions that affect consumers.

#### *Unfair trade practice*

As we know, CPA 1986 had listed 6 types of unfair trade practices: false representation; advertisement for sale at bargain price when there is no intention to do so; offering gifts by increasing the price/conducting games, lottery for the purpose of promoting products/ failure to provide information about the final results of a scheme where prizes were announced; sale of goods that do not comply with standards; hoarding or destruction of goods; sale of spurious goods.

The new Act has 3 more elements to it that are extremely important: non issuance of bill/ receipt for goods sold or service rendered; failure to take back defective goods/ withdraw deficient services and refund the amount as mentioned in the bill or within a period of 30 days; disclosure of personal information given in confidence, unless that disclosure is in accordance with law [Section 2(47)].

### ***Place of filing complaints***

CPA 1986 required consumers to file complaints (in Forums) only at places where the opposite party had its office. However, CPA 2019 allows complainant to file a complaint in the area where he/she resides/ works [Section 34 (2) (d)].

### ***Renaming of the Forums***

Earlier, the consumer courts at district level were termed as “forums” and at the state and national level as “commissions”. The purpose of terming them as forums and commissions instead of “courts” was to make sure that consumers felt comfortable in approaching them. However, giving two different names created confusion in consumers’ minds as they were not able to decipher if forums and commissions were the same statutory bodies for consumer complaints. Thus, to eliminate the ambiguity around the terms, the district forums have been renamed as district commissions under CPA 2019 [Section 2(15), Section 28].

### ***Central Consumer Protection Authority (CCPA)***

Section 10 of CPA 2019 seeks to establish a Central Consumer Protection Authority (to be termed as Central Authority) that will promote, protect and enforce the rights of consumers as a class. The Authority will regulate matters relating to violation of consumer rights including unfair trade practices, misleading advertisements, etc. that are detrimental to consumer interest. An investigative wing, that will investigate complaints of this nature, has been proposed (Section 15). The CCPA may initiate action suo moto. District collectors are also authorised to investigate at the instance of a complaint or on a reference made by CCPA (Section 16).

If the investigating officers have reason to believe that there was violation of consumer rights, they may enter the premises in question, and search and seize evidence (Section 22). However, if the search was proved to be vexatious, the concerned officer may be penalized with imprisonment up to 1 year, or fine up to ten thousand rupees, or both.

The Authority is required to perform certain functions (Sections 18,20), which include:

- Investigating into violation of consumer rights/unfair trade practices and filing cases before appropriate forums;
- Issuing safety notices to alert consumers against hazardous or unsafe goods or services;
- Undertaking research and promoting awareness on consumer rights;
- Ensuring no false advertisement is made of any goods or services;
- Imposing penalties in instances of contravention; and
- Passing orders on recalling of goods, reimbursements and discontinuation of unfair practices

The establishment of the Authority and initiating class action will be an added relief for consumers.

## ***Misleading Advertisements***

A provision, authorising the CCPA to issue directions and levy penalties against deceptive advertisements under CPA 2019 (Section 21), is an important one, as we see thousands of consumers being exploited by misleading advertisements through diverse media on a daily basis. CCPA can impose a penalty of up to Rs. 10 lakhs, which may extend up to Rs. 50 lakhs in case of subsequent violations. It is interesting to note that penalties will be imposed on endorsers as well. The authority will also have the power to abstain an endorser from endorsing for a period of one year, if he/she had endorsed a false/misleading advertisement. However, the endorser will not be held liable if he/she is able to establish that he/she had exercised due diligence to verify the veracity of the claim, before endorsing the same.

Failure to comply with the orders of the CCPA under Section 20 and 21 will attract punishment with imprisonment for a period that may extend to 6 months, or fine up to 20 lakhs, or both (Section 88).

## ***Pecuniary Jurisdiction***

According to CPA 1986, consumers seeking compensation of Rs. 20 lakhs and less were to approach the district forums, from Rs. 20 lakhs to Rs. 1 crore the state commissions, and above Rs. 1 crore, the national commission. However, under the present Act, in order to facilitate easy access for consumers from districts and to ensure quick disposal of cases, the pecuniary jurisdiction has been increased to upto Rs. 1 crore for district commissions, from Rs. 1 crore to Rs. 10 crores for state commissions and above Rs. 10 crores for national commission.

## ***Mediation***

CPA 2019 provides for settlement of disputes through mediation, if agreed by both parties, and if there was a possibility of arriving at a settlement during admission or at any later stage of the case proceedings. Mediation cells will be attached to all district, state, and national commissions. If the matter is not resolved through mediation, the respective commissions will continue to hear the case [Sections 74 – 81].

## ***Product Liability***

We have not had any laws/regulations to govern product liability and thus, introduction of a separate chapter on product liability in CPA 2019 [Sections 82 - 87] is of great significance. Product liability refers to the responsibility of a product manufacturer/seller of any product or service to compensate for any harm caused to the consumer by such defective product manufactured/sold or due to deficiency in services [Section 2(34)]. Section 2(35) allows a person to make a claim of product liability for the harm caused due to defective products/deficient services. The Act defines product manufacturer [Section 2(36)], product seller [Section 2 (37)] and product service provider [Section 2 (38)] to provide clarity on who can be held liable.

### ***Requirements to initiate product liability action:***

The product manufacturer will be liable if the product has a manufacturing defect or defective design. Additionally, the product manufacturer will also be held responsible for deviations from manufacturing specifications, not conforming to express warranty and, failure to provide instructions for correct usage.

The product service provider will be liable if the service provided is imperfect, not of good quality, withholds information that may cause harm, fails to provide adequate instructions, etc.

Product seller shall also be liable if he had played a role in designing, manufacturing, labeling of the product that caused harm, had modified the product which was the cause of the harm, or had failed to provide necessary instructions/warnings regarding proper usage of the product, etc.

### ***Exceptions to product liability action:***

- Misuse;
- Failure to follow instructions on installation;

- When dangers associated with the product is common knowledge and consumer should have known; and
- Usage of the product under the influence of alcohol

### ***Penalty for non-compliance of orders***

Under CPA 1986, failure to comply with orders passed by the District Forums or the State Commissions or the National Commission attracted a punishment of imprisonment for a term not less than one month, but which could extend to three years, or with fine, which was not less than two thousand rupees and could extend up to ten thousand rupees, or with both. While CPA 2019 retains the same term of imprisonment for non-compliance, the fine has been increased to twenty five thousand rupees, which may extend to one lakh rupees, or both (Section 72).

### ***Offences and Penalties***

A person (by himself or through someone on his behalf) who manufactures/sells/ stores /imports/distributes any product containing an adulterant will be punished (Section 90) with:

- Imprisonment up to 6 months and a fine of up to 1 lakh rupees – in case of no injury to consumer;
- Imprisonment up to 1 year and a fine of up to 3 lakh rupees – injury not amounting to grievous hurt;
- Imprisonment up to 7 years and a fine of up to 5 lakh rupees – in case of grievous hurt;
- Imprisonment of not less than 7 years, which may extend to life, and a fine of not less than 10 lakhs – in case of death.

A person (by himself or through someone on his behalf) who manufactures/sells/ stores /imports/distributes spurious goods will be punished (Section 91) with:

- Imprisonment up to 1 year and a fine of up to 3 lakh rupees – injury not amounting to grievous hurt;
- Imprisonment up to 7 years and a fine of up to 5 lakh rupees – in case of grievous hurt;
- Imprisonment of not less than 7 years, which may extend to life, and a fine of not less than 10 lakhs – in case of death.

### ***Conclusion***

While it is too early to measure the outcome of CPA 2019, we can definitely say that it has attempted to widen the scope of consumer protection in India by introducing several sections that are relevant to the present day scenario. The success of it will solely depend on effective implementation, which remains to be seen.



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CAG is a 34 year old non profit, non political, professional organization working towards protecting citizen's rights in consumer and environmental issues and promoting good governance including transparency, accountability and participatory decision making.

The complaints cell at CAG addresses specific problems of consumers. Also CAG regularly conducts consumer awareness programmes for schools, colleges and special target groups.

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