



**UNDERSTANDING THE RIGHTS OF  
THE CONSUMERS: A COMMENTARY  
ON THE CONSUMER PROTECTION  
ACT, 2019**

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**ABSTRACT**

*The Consumer Protection Act, 2019 has been enacted to overcome the shortcomings and the gaping inadequacies of the Consumer Protection code of 1986. In this article, the authors have made a nuanced approach to deliberate on the necessity of reforming the pre-existing legislation and reaffirm upon the need for statutory amendments in the outmoded Consumer Protection Act, with the advent of digital marketing and constantly evolving socio-economic and political scenario in India. The paper illustrates the noteworthy provisions constituting the primordial regulations along with the newly incorporated terms in detail, drawing a comprehensive analysis of the exemplariness of the Act as well as highlighted its insufficiencies. How the clauses inserted in the aforementioned Act will be a major breakthrough in safeguarding the rights and fostering the welfare of the consumers have been discussed in the succeeding subsections.*

**Keywords:** Consumer Protection, E-Commerce, digitization, Central Councils, Central Authority, Consumer Disputes Redressal Commissions, Mediation, Mediation cell, Unfair trade practices, Unfair

contracts, Product Liability, product sellers, manufacturers, service providers, misleading advertisements, stringent measures, protection and promotion of consumer rights.

**INTRODUCTION**

*“The importance of the Consumer Protection Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, ‘network of rackets’ or a society in which, ‘producers have secured power’ to ‘rob the rest...”<sup>1</sup>*

Justice M. Sahai.

The modern market place comprises a plethora of myriad goods and services. With technology making headway, Indian markets have undergone a substantial metamorphosis. In this era of digitization, the emergence of global supply chains, evolving e-commerce, and multi-level marketing are supplanting the traditional market system. Online marketing has attracted customers nationwide for its availability of an expansive range of products, convenient payment mechanisms, easy access, and improved services. Consequentially, this has rendered the consumers susceptible to unfair and immoral trade practices. The constant escalation in the vulnerabilities of the consumers exhorted the repealing of the archaic Consumer Protection Code of 1986 and re-enactment of a more inclusive Act. The novel Consumer Protection Act, 2019 aims at establishing an efficacious legal framework for enhanced protection of the consumers from inappropriate and unethical business activities.

<sup>[1]</sup> Lucknow Development Authority v. M.K. Gupta, 1994 SCC (1) 243.



## HISTORICAL BACKGROUND

Consumer Protection has its deep roots in the rich soil of Indian civilization, which dates back to 3200 B.C.<sup>2</sup> In ancient India, human values were cherished and ethical practices were considered of paramount importance.<sup>3</sup> All the sections of the society followed Dharma (derived from Vedas), which served as the guiding principle governing human relations.<sup>4</sup> The rulers felt that the well-being of their subjects should be their prime concern. Not only did they devise laws to regulate the social conditions but also strived to ameliorate the economic state of affairs, thereby safeguarding the interests of the buyers.

During the British dominion, the Indian legal system was totally revolutionized and the English legal system was introduced to administer justice. Some of the laws which were promulgated during the British reign concerning consumer interests are the Indian Penal Code of 1860, the Indian Contract Act of 1872, the Usurious Loans Act of 1918, the Sale of Goods Act of 1930, the Agriculture Procedure (Grading and Marketing Act) of 1937 and the Drugs and Cosmetics Act of 1940.<sup>5</sup> These laws provided specific legal protection to the consumers. Consumer protection legislations formulated after India's independence from British includes the Prevention of Food Adulteration Act of 1954, the Essential Commodities Act of 1955, and the Standard of Weights and Measures Act of 1976.<sup>6</sup> Apart from remedies

awarded under the contract and criminal laws, consumers also have sanctioned rights under the Law of Torts. Gradually, the policymakers observed the inadequacies in the prevailing laws and therefore crafted a comprehensive legislation exclusively for the customers: The Consumer Protection Act, 1986. However, with the introduction of e-commerce in the marketing system, the incorporation of more explicable provisions was required to strengthen the rights of the consumers. Taking the new set of challenges into consideration, the Indian Parliament passed the Consumer Protection Bill, 2019 which acquired the Presidential assent on 6<sup>th</sup> of August 2019.

The Union Minister for Consumer Affairs, Food and Public Distribution, Shri Ram Vilas Paswan elucidated on the command of the Act taking effect. The scope of the Consumer Protection Act, 2019 has been expanded through procedural amendments. The Act imposes strict liabilities on product sellers, Electronic service providers, fallacious manufacturers and misleading advertisers. Substantial changes have been made in the structure and functions of the Central Authority and the Consumer Disputes Redressal Commissions for the purpose of making swift executive interventions to prevent consumer detriment.<sup>7</sup>

Now, we shall draw a systematic review of the contemporary law on consumer protection that is The Consumer Protection Act, 2019 and the subsequent Gazette

<sup>[2]</sup> Dr. A. Rajendra Prasad, Historical Evolution of Consumer Protection and Law in India, Journal of Texas Consumer Law, Available at [http://www.jtexconsumerlaw.com\\_jccl\\_india/\(Last accessed on Aug 14, 2020\).](http://www.jtexconsumerlaw.com_jccl_india/(Last accessed on Aug 14, 2020).)

<sup>[3]</sup> id.

<sup>[4]</sup> id.

<sup>[5]</sup> id.

<sup>[6]</sup> id.

<sup>[7]</sup> The Consumer Protection Act, 2019, Lexis Nexis, See, Statement of Objects and Reasons of the Consumer Protection Act (2019).



Notification which made it operative from 20<sup>th</sup> of July 2020.

### SUBSTANTIVE ANALYSIS

The principal objective of the Consumer Protection Act, 2019 is, *“To provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers’ disputes and for matters connected therewith or incidental thereto.”*<sup>8</sup>

As inscribed in Sec. 2 sub-clause 9, the Consumer Protection Act acknowledges the rights of the consumers which include:

- The right to be protected against products that are hazardous to life and property;
- The right to be informed about the quality, quantity, potency, purity, standard and price of goods;
- The right to be assured of the access to a variety of goods or services at competitive prices;
- The right to seek redressal against restrictive trade practices and unscrupulous exploitation;
- The right to be heard and be assured that consumer’s interests will receive due consideration at appropriate fora;
- The right to consumer awareness.

Now, we shall delve into critiquing the virtues and vices of the Consumer Protection statute.

#### a) E-COMMERCE RULES

The recent Act of 2019 recognizes the conventional market shoppers as well as those who are engaged in multilevel transactions over the internet in its definition of ‘consumer’, as against the 1986 Act. Any person (natural or juridical entity) who avails products and services for a consideration through the online as well as the offline mode is termed as the consumer. The payment on purchasing or hiring of a product or service can be made in advance, immediately or in installments. A person buying goods and services only to resell them is not considered under the purview of a consumer. E-trading through innovative marketing technologies is the order of business.

Online products and service providers such as Amazon and Flipkart also fall within the ambit of product sellers and are liable to take the due standard of care like any traditional market product seller. Under this Act, an e-commerce entity has to provide information regarding the country of origin, payment methods, modes of payment, security of payment methods, charge-back options, return of goods, refund, exchange, warranty and guarantee, delivery, and shipment.<sup>9</sup> The e-commerce platforms ought to acknowledge the receipt of any consumer complaint within forty- eight hours of receiving it.

On violation of the rights of a consumer, a complaint may be filed in written format or electronically. It deems acceptability of the complaints if the question of admissibility is not decided within the specified period of 21 days. The Act also provides for hearing or

<sup>[8]</sup> The Consumer Protection Act, 2019, Lexis Nexis, See, Pg. 3 of the Consumer Protection Act (2019).

<sup>[9]</sup> S.S. Rana & Co. Advocates , India: Consumer Protection (E- Commerce) Rules, 2020 Comes Into Force , mondaq (Aug 11, 2020), Available at

<https://www.mondaq.com/india/dodd-frank-consumer-protection-act/974928/consumer-protection-e-commerce-rules-2020-comes-into-force> (Last accessed on Aug 14, 2020).



examination of cases through video-conferencing. This will aid in moderating the anxiety of the consumers owing to the procedural ease especially during this pandemic induced lockdown situation. The meticulous shift from the offline to online medium will prove lucrative for the contending parties. If the Indian Judiciary re-engineers its processes effectively and optimizes the use of its human resources to bring about change in management by harnessing the potentiality of the available Information and Communication Technology (ICT) to its fullest extent, the objective of granting prompt justice to the anguished party would materialize.<sup>10</sup>

The lacunae in the promotion of awareness campaigns regarding low-quality, sub-standard products sold online, is apparent. The e-shopping platforms are expected to provide the authentic characteristics and usage conditions while listing an item for sale. Many consumers are deceived by the lustre and grandeur of the products offered for sale at discounted prices online which turn out to be unsatisfactory and waste of money on being delivered. The Act should be enforced in its real essence and awareness should be raised on the mechanism of seeking redressal against the spurious goods sold online. The 2019 Act replaced a three-decade old Act to combat the challenges associated with the defunct 1986 Consumer Protection Act. The Information Technology Rules must be upgraded to keep pace with the sophisticated technology. This would enhance the efficiency in the functioning of the Act.

<sup>[10]</sup> Sri Suresh Chand Sri Aviral Singh, District Court Computerization & Computerization Committee, E-courts Mission Mode Project ( Mar 18, 2020), Available at

Often, the goods and services sold online are subject to dynamic pricing where the value of goods might amplify each time we check the price. The online shopping sites do not display the Maximum Retail Price of the commodities in order to maximise their profits. This puts the customers into a vulnerable position. Due to the unavailability of a variety of goods and services, many people resort to online shopping and they likely require paying unreasonably exorbitant prices for the products imperatively. To our disappointment, the law is cut short to safeguard the interests of the online buyers in this respect, especially the relatively impecunious section of people who cannot afford high expenditure. There is also no provision pertaining to the insurance policies sold online in the interest of the consumers.

The law has also not prescribed an efficient monitoring system to investigate the web-based advertisements as to if they suffice the conditions of the Advertising Standards Council of India. To protect the consumers from misleading advertisements and brands, the Act should have provided for an online monitoring system that would book complaints voluntarily.

#### b) CONSUMER PROTECTION COUNCILS (Chapter II)

The Act establishes Consumer Protection Councils at the district, state and national levels, as advisory bodies. The Central Council and the State Councils shall be headed by the Minister-in-charge of Consumer Affairs at the central and state

<https://districts.ecourts.gov.in/bahraich/district-court-computerization-computerization-committee> (Last accessed on Aug 15, 2020).



level, respectively.<sup>11</sup> The District Council will be led by the District Collector.<sup>12</sup> The Councils shall supposedly advise on the promotion and protection of consumer rights. As a matter of fact, the Act does not specify whom the Council would render the advice to. The Act has assigned this duty to the Central Consumer Protection Authority.

c) CENTRAL CONSUMER PROTECTION AUTHORITY  
(Chapter III)

The Central Government notified that thenceforth the Central Consumer Protection Authority would be referred to as the Central Authority. The Central Government is entitled to appoint those officers, experts, professionals as Chief Commissioners, who are competent under the prescribed admissibility criterion. The Central Authority shall be delegated such powers to promote, protect and enforce the rights of consumers through superintendence and control of the administrative matters. The Central Authority is empowered to

- Conduct investigations into prima facie cases of violation of consumer rights and institute complaints or prosecution.<sup>13</sup>
- Regulate matters relating to the violation of the rights of consumers.<sup>14</sup>
- Order recall of unsafe goods and services.<sup>15</sup>
- Order discontinuance of unfair trade practices and misleading advertisements.<sup>16</sup>

- Impose penalties on manufacturers or endorsers or misleading advertisers.<sup>17</sup>

The Central Authority shall have an Investigation Wing that would be presided over by the Director General to conduct inquiry or direct the working of the Authority. This gorges the institutional void in the regulatory regime extant.<sup>18</sup> It has been provided in a manner that the role envisaged for the Central Authority complements that of the sector regulators, and duplication, overlapping or potential conflict is avoided.<sup>19</sup> The Act has clearly stated the extent of jurisdiction and the functions of the members which shall ensure the supremacy of the Doctrine of Separation of Powers.

d) CONSUMER DISPUTES REDRESSAL COMMISSIONS  
(Chapter IV)

Under this new Act, there are Central Consumer Protection Council Rules, Consumer Disputes Redressal Commission Rules, Appointment of President and Members in State or District Commission Rules, Mediation Rules, Model Rules, E-Commerce Rules, Consumer Commission Procedure Regulations, Mediation Regulations and Administrative control over State Commission and District Commission

[11] Consumer Protection Bill, 2019, Ministry: Consumer affairs, Food and Public Distribution, PRS Legislative Research, Available at <https://www.prsindia.org/billtrack/consumer-protection-bill-2019> (Last accessed on Aug 15, 2020).

[12] id..

[13] Central Consumer Protection Authority established to promote, protect and enforce the rights of consumers; will function from Indian Institute of Public Administration premises, Ministry of Consumer Affairs, Food & Public Distribution (Jul 30,

2020, 8:03PM), Available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1642422> (Last accessed on Aug 15, 2020).

[14] id.

[15] id.

[16] id.

[17] id.

[18] The Consumer Protection Act, 2019, Lexis Nexis, See, Statement of Objects and Reasons (2019).

[19] id.



Regulations.<sup>20</sup> The Consumer Redressal Commissions at the state and district and national levels shall consist of the President and the members whose qualifications cater to the eligibility criteria of the 2019 Act and the Gazette notification released by the Department of Consumer Affairs. The quasi-federal nature in the composition of the Commissions is maintained in the allotment procedure.

The Act now entails that complaints can be filed from where the complainant resides or works for personal gain as against the 1986 Act, which required the complainant to file a complaint where the other party resided or carried out his business.<sup>21</sup> This provision will prove beneficial for the complainants as it would eliminate the tribulations involved in travelling from one place to another for the sake of seeking redressal. The manner in which the complaint should be registered, and the complaints along with revised petitions should be dealt with, is intricately detailed in the present Act.

The Pecuniary Jurisdiction for the District Commission, State and National Commissions over the disputed goods and services has also been altered in the 2019 Act.

- For District Consumer Dispute Redressal Commissions, the upper pecuniary limit has been altered from 20 lakh to 1 crore as against the 1986 Act.<sup>22</sup>

- For State Consumer Dispute Redressal Commissions, the upper pecuniary limit has been increased to 10 crore from 1 crore as against the 1986 Act.<sup>23</sup>
- For National Consumer Dispute Redressal Commission, the pecuniary limit has been extended to goods and services priced beyond 10 crore as against the 1986 Act.<sup>24</sup>

The pecuniary jurisdiction would be determined on the basis of the value of goods and services paid as consideration as against the 1986 Act wherein the pecuniary jurisdiction was determined on the value of goods, services as well as the compensation demanded.<sup>25</sup> This prospective change would help in going away with the practice of unnecessarily inflating the compensation claimed and thereby alleviating the burden of impending cases on the State and National Commissions. There would be an optimum distribution of cases filed and would thus expedite the process of disposal of cases. However, an ambiguity that is noted at this point is, whether the undecided cases would continue to be heard in the Commissions in accordance with the 1986 Act or they are to be transferred in conformity with the regulations of the new Act.

As per the Consumer Disputes Redressal Commission Rules, no fee is to be charged

<sup>[20]</sup> Consumer Protection Act, 2019 comes into force from today, Ministry of Consumer Affairs, Food & Public Distribution (Jul 20 2020 4:53PM), Available at

<https://pib.gov.in/PressReleasePage.aspx?PRID=1639925> (Last accessed on Aug 15, 2020).

<sup>[21]</sup> Gaurang Kanth and Divjot Singh Bhatia, India: The Consumer Protection Act, 2019: An Overview, mondaq (Jan 14 2020), Available at <https://www.mondaq.com/india/dodd-frank->

[consumer-protection-act/876600/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) (Last accessed on Aug 15, 2020).

<sup>[22]</sup> The Consumer Protection Act, 2019, Lexis Nexis, See, Sec. 34(1) (2019).

<sup>[23]</sup> The Consumer Protection Act, 2019, Lexis Nexis, See, Sec. 47 ((1)(a)(i)) (2019).

<sup>[24]</sup> The Consumer Protection Act, 2019, Lexis Nexis, See, Sec. 34 ((1)(a)(i)) (2019).

<sup>[25]</sup> Supra 21.



for filing cases up to Rs. 5 lakh. There are provisions for filing complaints electronically, credit of amount due to unidentifiable consumers to the Consumer Welfare Fund (CWF).<sup>26</sup> The State Commissions shall have to furnish information to Central Government on a quarterly basis on the vacancies, disposal, pendency of cases, and other matters.<sup>27</sup>

The Commissions have been empowered to review the order of the cases passed by them within thirty days of such order.<sup>28</sup> As per Sec. 49(2) and 59(2), the State and National Commission may deem terms of a contract between consumer and service provider which is unfair to the consumer, be ineffective and void. According to Sec. 62, if a complainant writes an application to the National Commission at any stage of the proceeding when the complaint is pending, the Commission may arrange for transfer of the case. The District, State and National Commissions shall not admit a complaint if the case has not been filed within two years from the date of such cause of action except for situations where the Commission is convinced of the reason for the delay caused.<sup>29</sup> As stated in Sec. 70 of the Act, the National Commission shall have administrative control over the State Commissions and the latter can as well monitor performances and investigate into any allegations made against the members of the District Commissions (falling under the jurisdiction of the respective State Commission). This would aid in the prevention of arbitrary exploitation of power

by providing checks and balances. The Commissions shall have to preserve a record of all the cases disposed of as well as those that are in suspension.

The Act has also laid down provisions for the aggrieved parties to file an appeal against the orders predetermined. If an order has been passed in the interest of one party (ex parte) by a Commission, the aggrieved party might appeal to the Higher Commission and in the instance where the National Commission has inordinately favoured one party, an appeal can be made to the latter for setting aside such order.<sup>30</sup> The unsatisfied party is also liable to pay fifty percent of the amount prescribed by the Commission before the appeal is heard. The limitation period for filing appeals in the State Commissions has been revised. Appeals can be made to the State Commission against the order passed by the District Commission within forty-five days of passing such order and the appeals ought to be disposed of by the Commission within ninety days from the date of admission.<sup>31</sup> Appeals can be made to the National Commission within thirty days of passing such order by the former or by the State Commission and subsequently to the Supreme Court within thirty days of passing such order by the National Commission.<sup>32</sup> The order of the Apex Court shall reign supreme.

#### e) MEDIATION (Chapter V)

<sup>[26]</sup> Supra 20.

<sup>[27]</sup> Supra 20.

<sup>[28]</sup> The Consumer Protection Act, 2019, Lexis Nexis, See, Sec. 40, Sec. 50, Sec. 60 (2019).

<sup>[29]</sup> The Consumer Protection Act, 2019, Lexis Nexis, Sec. 69 (2019).

<sup>[30]</sup> The Consumer Protection Act, 2019, Lexis Nexis, Sec. 61 (2019).

<sup>[31]</sup> The Consumer Protection Act, 2019, Lexis Nexis, Sec. 52 (2019).

<sup>[32]</sup> The Consumer Protection Act, 2019, Lexis Nexis, Sec. 51, Sec. 67 (2019).



The Consumer Protection Act, 2019 articulates the process of mediation for the settlement of consumer disputes. In other words, mediation is an alternative dispute resolving mechanism that has been adopted by the Act. The enactment calls for the establishment of consumer mediation cells under the aegis of the National, the State and District Commissions. The objective of incorporating this provision is to provide an alternative mode of dispute resolution, a breakaway from the archaic complications of consumer disputes redressal commission.

Mediation, as a form of conflict dissolver, exists in the other facets of law likewise. The Constitutional Courts for long have fielded for mediation as a holistic and 'timesaving' method that can be resorted to for legal remedy. KVK Vasuki, J, most aptly referred to the note of formal Chief Justice of India where he insisted on discouraging litigation and opted for persuasion, "*...to compromise wherever you can. Point out to them how the nominal winner is often a real loser-in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man.*"<sup>33</sup> These lines clearly uphold the functionality and litigant friendly mode of legal remedy that mediation seeks to render through arbitration, negotiation and conciliation. In *Jaibir & Ors. v. State & Anr.*<sup>34</sup>, the Honorable Court was of the opinion that there is an all-round attempt by the Legislature and Judiciary, as well as the Executive, to promote the settlement of disputes through the approach of mediation and therefore, in the best interest of the

public, once disputes are settled by the process of mediation, the parties must treat it as a solemn settlement. This view was also reiterated in the case of *National Insurance Co. Ltd v. Hindustan Safety Glass Works Ltd.*<sup>35</sup>

The National Consumer Redressal Commission sets forth the qualifications required to become a mediator, the procedure of their empanelment and removal, salaries, and the manner of proceedings in detail.<sup>36</sup> The quasi-federal nature of the mediation cell is preserved through the admission of members having proficiency in jurisprudence and experts or bureaucrats having substantial merit. The autonomy and independence of the mediators are of prime importance as far as the impartation of just remedy is concerned. It is deemed to simplify the consumer dispute adjudication process through speedy disposal of cases and thereby minimizing the count of unsettled cases. This alternative system of grievance redressal shall also safeguard the interests of the consumers who cannot afford litigation costs to fight big business houses.

In this context, it can be well said that the institution of mediation in consumer dispute redressal that is to be guided by the tenets of natural justice, is a welcome move. The elaboration on the structure and functioning of the mediation cell would plausibly ensure transparency and fairness in the justice served.

#### f) PRODUCT LIABILITY (Chapter VI)

<sup>[33]</sup> B.Ranganathan vs State of Tamil Nadu, Criminal Original Petition no. 4324 of 2003, The High Court of Judicature at Madras (2003).

<sup>[34]</sup> RFA No.4592 of 2011, The High Court of Punjab and Haryana (2018).

<sup>[35]</sup> Civil Appeal no.. 3883 of 2007, The Supreme Court of India (2007).

<sup>[36]</sup> Gazette Notification, REGD. No. D. L.-33004/99 (Jul 24, 2020).



In this latest Consumer Protection legislation, an all-new segment relating to the product liability has been augmented much to the satisfaction of the consumers. Broadly speaking, this neo segment empowers the ordinary customers to bring an action against the product manufacturer, the product seller or the service provider in case the consumer is harmed as a consequence of using a defective product or substandard service whatever the case might be. The duty of a manufacturer or a seller or a service provider does not terminate upon manufacturing or selling a certain product but also solicits cognizance of any harm caused to the respective consumers for having used their product or service which is in any way or the other defective or is discordant with its description or lacks significant operational capabilities. To maintain a just and integrated relationship between the buyer, seller and manufacturer, mutual checks and balances must be enforced. Chapter VI of the Consumer Protection Act fulfills those prerogatives which the previous consumer code failed to do and as a direct consequence, that Act could not achieve all its aims and objectives for inaction and voids were ubiquitous throughout.

In this regard, we can well cite the reference of the reputed landmark judgment of *Donoghue v Stevenson*<sup>37</sup> which vindicated the duty to take the due standard of care towards the purchasers that is the consumers. The sellers and service providers are under a legal obligation to take necessary care while selling products and availing services respectively. This in turn paves way for a complainant to bring an action and demand damages for any harm or injury caused to him

<sup>[37]</sup> AC 562, UKHL 100 (1932).

because of a substandard or ill product being sold to him under Sec. 2(35) of the Consumer Protection Act of 2019. The Code delineates the situations when the product manufacturers, service providers and product sellers are responsible under this Chapter.

Sec. 84(1) of the Act expressly deals with the liability of a product manufacturer and makes him liable for any manufacturing defect which might be present in his product, or if there is any defect in the design thereof, or if the final product which reaches the doorsteps of the consumers deviates from its prescribed specifications. Furthermore, the manufacturer would also be held liable if the product thus manufactured does not conform to the express warranty and also if the product lacks distinct set of instructions for safe and proper usage and forewarnings against incorrect usages. It is quite pertinent to mention here that sub-clause 2 of Sec. 84 prevents the product manufacturer from escaping liability (under sub-clause 1) by pleading non negligence or non fraudulent misrepresentation with regard to the manufacturing activities making the liability watertight and comprehensive.

As discussed earlier, it is not only the product manufacturers but also the service providers who are liable for harm caused due to deficiency in their services. Sec. 85 of Consumer Protection Act of 2019 provides for the liability of a service provider if the service rendered by him is imperfect, deficient or lacks in adequate quality, nature or fails to meet certain performance parameters that every service is expected to meet under ordinary circumstances.<sup>38</sup> The service provider is also duly liable if he is

<sup>[38]</sup>The Consumer Protection Act, 2019, Lexis Nexis, Sec. 85 (a) (2019).



negligent in imparting the service to the consumer and also if he fails to deliver the proper set of instructions, following which the consumer is harmed by that particular service at bay.<sup>39</sup> Failure of the service to conform to the express warranty and the terms and conditions arising out of the contract makes the provider of that service liable accordingly.<sup>40</sup>

Likewise, Sec. 86 imparts liability upon a product seller if he has substantial control over manufacturing, designing and packaging activities of a product that has inflicted harm, or has altered or modified a product which led to an injury being caused, or there was an express warranty on the part of the seller independent of that given by the manufacturer which caused the injury.<sup>41</sup> A product seller is also liable if the identity of the manufacturer is illusive, or if the manufacturer enjoys the protection of any law which is in effect in the territory of India, or if he fails to take due care which is expected of him in handling the product he sells.<sup>42</sup>

The new consumer protection statute also strikes a balance between the sellers and purchasers as it protects the sellers and manufacturers from erratic charges levied by the purchasers by inserting exceptions to a product liability suit. Sec. 87 deals with the exceptions prohibiting the consumers from bringing an action for product liability, if the buyer made any alterations or modifications in the sold product. Sub-clauses (2) and (3)

also put certain embargos on the consumers willing to bring a suit for product liability, thus abiding by righteousness and the equity principle.

As per the Gazette Notification released by the Department of Consumer Affairs, the issuance of a cash memo or bill or receipt or invoice has been made mandatory. Every minute aspect related to the sale of the product notably the name and address of the seller, the consecutive serial number not exceeding sixteen characters, the date of its issue, the name of the consumer, the description of goods or services, the quantity, the shipping address (where applicable), the taxable value and discounts, the signature of the seller or his authorized agent, the customer care number or e-mail ID, the total amount charged in a single figure, along with the apportion of expenses manifesting all the compulsory and discretionary payments and other requisite information, must be penned down.<sup>43</sup>

The definition of “unfair trade practices” has been expanded to encompass misleading electronic advertising, taking back or withdrawal of defective goods, discontinuation of deficient services, and reimbursement of the consideration within the stipulated period or in the absence of such precondition, within thirty days. However, due to certain legal loopholes, many online customers get hoodwinked. Many companies expressly mention limited liability clauses to escape liability for defective and deficient goods and services. In this event, the law has

<sup>[39]</sup>The Consumer Protection Act, 2019, Lexis Nexis, See, Sec. 85 (b), (c) (2019).

<sup>[40]</sup>The Consumer Protection Act, 2019, Lexis Nexis, See, Sec. 85 (d) (2019).

<sup>[41]</sup>The Consumer Protection Act, 2019, Lexis Nexis, See, Sec. 86 1(a), (b), (c) (2019).

<sup>[42]</sup>The Consumer Protection Act, 2019, Lexis Nexis, See, Sec. 86 (d) (2019).

<sup>[43]</sup>Gazette Notification, REGD. No. D. L.-33004/99 (Jul 15, 2020).



not taken precedence over the limited liability clauses to protect the customers.

In Sec. 2 (7) (i) and (ii), it has been asserted that to deem a person as the consumer, one has to buy goods and services for a consideration (price). Thus, the definition excludes those individuals who avail goods and services free of cost, from the ambit of consumer definition. So, a person cannot seek relief for the prejudice or disadvantage caused to him, if he has not disbursed for the certain product or service. This can induce incessant exploitation of such consumers as they would be unable to claim remedy. On the other hand, healthcare has been removed from the definition of services although it is still there in the list of services, while the 'telecom' services have been brought under the purview of the list of services.

Several producers do not disclose the essential attributes like the Maximum Retail Price, date of manufacture, expiry date, and composition of their products. Product manufacturers, sellers and service providers will need to ensure that they have shown due diligence while placing a product for sale and complied with all the prerequisites under the legislation for consumer protection.

The consumer awareness campaign of "Jago Grahak Jago" should be broadcasted and propagated across India in such a manner that it reaches to the consumers inhabiting in the remotest of localities. People should be made aware of the deficient goods and services sold both online and offline and the process of seeking redressal for infringement of the consumer rights should be extensively publicized.

<sup>[44]</sup> The Consumer Protection Act, 2019, Lexis Nexis, Offences and Penalties (See, Chapter VII).

#### g) OFFENCES AND PENALTIES (Chapter VII)

However path breaking may a statute be in addressing the grievances of the oppressed class which is in this case are we, the 'customers', the provisions are admirable only when executed effectually. It is splendid to be optimistic but utopia leads to disarray. Often it is taken for granted that the provisions will be followed in their true spirit, but then, we might not have had the requirement of a specific set of procedural and substantive provisions conjoined as a statute to empower the consumers against inter alia, erratic service providers and gigantic Multi-National Companies. The Consumer Protection Act, 1986 though trailblazing in protecting the rights of the consumers was more like a baton than a spear. The Act was silent on standalone liabilities and offenses on the part of the manufacturers, service providers and other stakeholders involved in consumer services. It is in this context that the Consumer Protection Act, 2019 plays a pivotal role. It pricks that privileged bubble where only the Consumer Forums had the sanction to inflict punitive measures and calls for slapping the offenders involved in unruly and malicious anti-consumer practices with proportionate penalties. This Chapter also empowers the Central Authority as failing to comply with its directions results in imprisonment and fine.<sup>44</sup>

The Chapter explicitly prescribes punishments for crimes such as fabricating false or misleading advertisements, storing, manufacturing, selling, distributing or importing of spurious products and adulterous goods.<sup>45</sup> Hoarding or destroying

<sup>[45]</sup> The Consumer Protection Act, 2019, Lexis Nexis, See, Sec. 90 (1), Sec. 91(1) (2019).



goods with the intention of raising the cost of these or similar goods manufactured in greater number, so as to manipulate higher prices is also illicit and calls for penalization.<sup>46</sup> The offenses committed can be cognizable and non-bailable if the crime has caused severe injury or death of the consumer. Moreover, the new Act proposes to protect consumers from unreasonable contracts that are unilaterally skewed.<sup>47</sup> If the right of a consumer is infringed upon due to some non-negotiable agreement by the seller, the consumer can approach the Consumer Disputes Redressal Commissions. Besides, it checks upon the powers of the higher officials by incriminating those who conduct vexatious searches and unreasonably seizes any documents.<sup>48</sup>

A provision that requires special mention is punishment for false or misleading advertisement, which says that any manufacturer or service provider who engenders and publishes feigned or misleading advertisements that are prejudicial to the interest of consumers, shall be punished with incarceration as well as indemnification.<sup>49</sup> The Consumer Protection Act has successfully widened the reach of the consumer protection regime in India by bestowing responsibilities not only upon the sellers, service providers and manufacturers but also on the endorsers. The consumers have immense confidence in the endorsements of a product or service by their favourite celebrities and they subconsciously try to imitate them by purchasing those products. So the endorsers are expected to act

judiciously lest they can be penalized under the present law for advertising unsubstantiated goods.

This inclusion was a long overdue as it sets advertisers to be accountable for their advertisements, for they directly influence the choice of a customer and its ignorance in a way was hampering the entire objective of the Consumer Protection Code. Though Sec. 92 dilutes this provision by barring inter alia normal consumers from filing complaint in this regard as they stand at the receiving end of such dubious advertisements, the Act still goes a long way in answering the plight of the very consumers whose interest this very Act seeks to prevent.

## RENEWAL [C] CONSUMER-FRIENDLY PROVISIONS

Through the application of the ensuing regulations, the legal principle of 'salus populi suprema lex esto' would be advocated at its best. The Latin maxim signifies, "Let the welfare of the people be the supreme law". The Legislature has aimed to uphold the pre-eminence of the Indian citizens by championing their cause and securing their rights as consumers.

The 2019 Act provides for filing a consumer complaint from the residential town facilitating the injured party who will not have to travel an extra mile to file the suit. This is particularly advantageous in aggravated circumstances as now, where the COVID 19 is spreading its clutches alarmingly all over the world, and the feasibility of physical appearances in courts is practically impossible. The filing of

<sup>[46]</sup> The Consumer Protection Act, 2019, Lexis Nexis, See, Sec.2 (47) (v).

<sup>[47]</sup> Supra 20.

<sup>[48]</sup> The Consumer Protection Act, 2019, Lexis Nexis, See, Sec. 93 (2019).

<sup>[49]</sup> The Consumer Protection Act, 2019, Lexis Nexis, See, Sec. 89(2019).



complaints as well as the hearing of cases can also take place through online medium.

The Consumer Council shall act as a consultative body to the Commissions. The Central Authority would act as a supervisory body having administrative powers over the Commissions and would primarily look into the transgressions against consumer rights and the complaints against any member of the three adjudicating Commissions at the centre, state and district.

To protect the consumers from getting deceived by the sale of deficient goods and services, the Act has provided for revamping of the old authorities such as the District, State and National Consumer Disputes Redressal Commissions. The extension of the pecuniary jurisdiction of the District, State and National Commissions is a praiseworthy experiment. According to a 2020 survey, the number of unresolved consumer dispute cases stood at 4.8 lakh.<sup>50</sup> The aforementioned provision would help the Commissions in mitigating the overburdening of cases as the complaints addressed by the Commissions would get evenly distributed. The 2019 Act also provides for judicial review of the cases where the verdict has been declared for once.

The new Act has also laid down the provision for the establishment of a mediation cell. The quasi-federal nature in the composition of the consumer mediation cell is sustained. The provision has been introduced to settle consumer disputes through arbitration on the principles of natural justice. The alternative

grievance redressal forum is deemed to thwart the backlog of consumer cases and deliver speedy justice to the injured parties.

The Act also attempts to protect the consumers from the adulteration of food products and spurious goods and services. The liability for selling inferior quality and flawed goods is entirely upon the manufacturers, service providers and sellers excluding few exceptions like alteration, modification and misuse by the buyer of the sold product. Thus, a methodical drift from the concept of Caveat emptor (let the buyer beware) to Caveat venditor (let the seller beware) promoting the sovereignty of consumers in the market is observed.

The Code also requires celebrities to conduct due veracity of claims and statements concerning the product or service being endorsed.<sup>51</sup> It provides statutory penalties against the false affirmations made by the celebrities. Misleading advertisements by the manufacturers and service providers also invite penalization. The austerity in the punishments proposed shall curtail the rate of crime against the consumers.

### CONCLUSION

With the upswing in international trade, multi-layered delivery chains, direct selling, and rapid development in e-commerce in the marketing system, the implementation of strict countermeasures was required to regulate the online trade. With both offline and online marketing becoming the order of the day, the legislature needed to formulate impactful measures to protect the consumers

<sup>[50]</sup> Statistics, National Consumer Disputes Redressal Commission, Available at <http://ncdrc.nic.in/stats.html> (Last accessed on Aug 15, 2020).

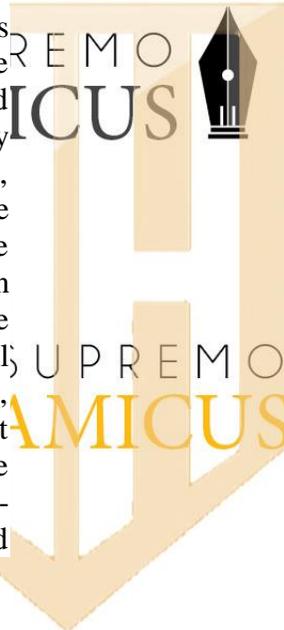
<sup>[51]</sup> AZB & Partners, Celebrity endorsements and liability under the Consumer Protection Act, 2019, Lexology (Feb 3, 2020), Available at

<https://www.lexology.com/library/detail.aspx?g=4387fca2-c161-4f08-a6f7-7e2ae8720a3b> (Last accessed on Aug 15, 2020).



from defective goods, unfair contracts and restrictive trade practices and promote the rights of the consumers.

After carefully evaluating the provisions of this Consumer protection legislation, it is incumbent upon us to comment that the Act of 2019 has increased accountability of the business companies, product sellers and service providers for any ‘grievous hurt’ caused due to selling of a defective product to the customers. “*Customer is the King*” is a well-known adage that accentuates the significance of a consumer in market dynamics. The Act of 2019 is more consumer-friendly and successfully ventures to protect and promote the interests of the consumers through fair, inexpensive and speedy delivery of justice. The contemporary legislation is more comprehensive, transparent, and people-oriented than the 1986 Act. However, the effectiveness of the Act would be demonstrated on accomplishment in the implementation of the Act and the consummation of its fundamental objective. Except for a few encumbrances, the Act is an exquisite piece of legislation that has tried to secure the interests of the consumers with the changing socio-economic and political standards and would conceivably emerge victorious.



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