

## The Market's Anatomy: Consumers Kingdom on Rise

written by Mirza Aslam Beg | July 27, 2020



The New Consumer Protection Act 2019: All you need to know!

### Analysis of Consumer Protection Act, 2019

The Ministry of Consumer Affairs, Food and Public Distribution has notified the Consumer Protection Act, 2019<sup>[1]</sup> ("new Act") which was passed by the Parliament on 6<sup>th</sup> August, 2019 and it received presidential assent on 9<sup>th</sup> August, 2019. This new Act seeks to replace the three decades old Consumer Protection Act, 1986 ("old Act") in order to address the novel set of challenges faced by the consumers in this era of digital age and e-commerce in order to enhance the consumer welfare, timely and effective administration and settlement of consumer disputes.

Although the old Act proved to be a boon for the consumers, it only looked at consumer protection in a narrow sense. However, this new Act is a comprehensive law looking into the welfare of the consumers by adopting the holistic approach and considering the consumer as the king.

- Definition of Consumer broadened:

Section 2(7) of the new Act has added an explanation (b) which states that consumer means a person who "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

The inclusion of the online transactions or direct selling in the definition of the consumer is the most significant change brought in by this new Act. Thus, now every e-commerce entity will be required to provide information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment and grievance redressal mechanism, among other things to enable the consumer to make an informed decision.

This is a welcoming provision as today most of the people prefer online purchase of goods and services and it will help benefit the consumers at large and will also make the e-commerce websites more reliable.

- Concept of Unfair Contracts introduced:

In Section 2(46) of the new Act, the provision for 'unfair contract' has been added. A contract between a manufacturer or trader and consumer will be deemed as unfair if it causes a significant change in the rights of the consumer. It is pertinent to mention here that the cases against 'Unfair Contract' can only be brought before the State and National Commission under Section 47 & 58 respectively.

This will benefit the consumers taking loans, insurance policies, etc. as now in the contract if there are some terms and conditions, for example, any unreasonable charge, obligation or condition which puts the consumer to any disadvantage which is in favour of the companies or the one sided contracts, the consumer can file the complaint against that.

- Consumer Protection Councils & Central Consumer Protection Authority (CCPA) : Chapter II of the new Act provides for the establishment of the Consumer Protection Councils by the Central & State government at all the three i.e., Central, State & District level to render advice on promotion and protection of the consumers' rights provided under the Act. The new Act under Chapter III also contains the provisions for the establishment of a regulatory authority to protect, promote and enforce the rights of consumers as a class known as the Central Consumer Protection Authority (CCPA).

This is the biggest step as, in the old Act, there was no regulatory authority to prevent the violation of consumer rights in spite of the rights already being given to the consumers. This will ensure the enforcement of the rights of the consumers like the right to be protected against unfair trade practices, etc. Thus, we can say that it has given the teeth to the regulatory authorities as they will have an investigation wing that will conduct inquiry or investigation in case of violation of the law.

They can also initiate class action suits, cancel the licence, recall the products if the complaint is of such a nature which will affect multiple consumers. It will also regulate the cases related to unfair trade practices, misleading advertisements, and violation of consumer rights.

- Review Power given to the District, State & National Commission: Under Sections 40, 50 & 60 of the new Act, the power to review its own order within 30 days from the passing of such order has been given to all three i.e., District, State & National Commission.

Before the passing of this new Act, the District Forum or the State Commission were not given the power to review their own orders. Only the National Commission was bestowed with the review power. Due to this both the parties used to face difficulty as in case ex parte order or in an error apparent on the face of the record the parties only had the option to file an appeal or revision before the upper commission and which would lead to delay in providing the justice and also it acted an extra burden in the form of litigation expenses.

- Limitation period and the statutory amount for filing an Appeal increased: Under Section 41 & 51 of the new Act, the limitation period for filing an appeal before the State & National Commission is increased from 30 days to 45 days, retaining the power to condone the delay. Also, now the aggrieved party has to deposit 50% of the amount ordered by the District or State Commission as the case may be before filing an appeal before the State or National Commission. As per the old Act, the ceiling was for maximum of Rs. 25,000 which has now been removed.

Also, a new clause (3) under Section 51 has been added which states that only first appeal is allowed and no second appeal is allowed unless it involves the substantial question of law.

This provision is added in order to discourage the filing of appeals to some extent as it increases the burden on the judiciary and also resulted in a long litigation. Moreover, now only the genuine appeals will be filed as the aggrieved person who wants to file the appeal will have to deposit the 50%

amount prior to filing of the appeal.

- **Alternative Disputes Resolution Mechanism:**

Section 37 of the new Act states that after the admission of the complaint, the consumer commissions may refer it for mediation where the scope for early settlement exists and parties agree for it the same. The mediation will be held in the mediation cells which have to be established by the State Government under Section 74 of the new Act. Thus, this alternate method for the resolution of disputes will help in the speedier resolution of the disputes; reduce the burden on the consumer commissions by stopping the unnecessary long litigations.

The rules governing the mediation have also been notified<sup>[2]</sup>. Rule 4 provides the list of matters which shall not be referred to mediation including the medical negligence resulting in grievous injury or death, etc. The Rule also gives the power to the commission not to refer the case to the mediation if it appears to the commission that no element of settlement exists.

- **Product Liability Action:**

Under Section 83 of the new Act, a product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, '*for any harm caused to him on account of a defective product*'.

With the introduction of this provision, the traditional rule of Caveat Emptor i.e. let the buyer beware has been shifted on the seller. Under the new Act, manufacturers will be liable in product liability action even where he proves that he was not negligent or fraudulent in making the express warranty of a product.

Also, now the sellers or the e-commerce companies which used to escape their liability by stating that they are the aggregators only and not the manufacturer will also be covered under this. In this digital age when shopping has become online, it was the much-needed provision as now the people who are selling the product either online or offline will have to check the quality, and viability of the product before selling it to the consumer.

- **E-filing of the Complaints and the Jurisdictional Changes:**

**E-Complaints-** Section 35 of the new Act provides flexibility to the consumers; any recognized consumer associations to file complaints electronically and for hearing through video conferencing.

Thus now the justice system will be more accessible to the consumers and this encourages the consumers to file the case right from their home if they are unsatisfied with the goods or services provided.

Sections 34, 47 & 58 of the new Act talks about the territorial & pecuniary jurisdiction of District, State & National Commissions respectively.

**Territorial Jurisdiction-** The flexibility has been given to the consumers for filing the complaints where the consumer resides or personally works for gain as compared to the old Act which required filing it at the place of purchase or where the seller has its registered office address.

The main aim of bringing in these provisions is to provide procedural ease and reduce inconvenience and harassment for the consumers.

**Pecuniary Jurisdiction-** The new Act has also increased the pecuniary jurisdiction of all the three commissions from their existing limits.

District Commission has the jurisdiction to entertain the complaints about the value of the goods or services paid as consideration for upto Rs. 1 crore

from Rs. 20 lakhs; State Commission between Rs.1 crore to Rs.10 crore; and National Commission above Rs. 10 Crore.

This is the welcome change as the access to the District Commissions is easy and better as compared to the State and the National Commissions. It will save the time of the consumers and unnecessary travel and harassment faced by them in order to file the case of exceeding the pecuniary jurisdiction.

But on the other hand, if we see this might '*fail to provide quick relief to homebuyers*'. Thus now only the homebuyers who have paid an amount in excess of Rs. 10 crore might approach the NCDRC and most of the average homebuyers will have to go to the District Commission, increasing the burden resulting in a delay in justice along with additional litigation cost.

- **Punishment for misleading advertisement & liability of endorsers:**

With the advancement of technology and the rise in social media, the nature of advertisement has completely changed. As per Section 89 of the new Act, any manufacturer or service provider who causes a false or misleading advertisement shall be punished with imprisonment which may extend to five years and with fine which may extend to fifty lakh rupees.

This provision will act as a deterrent and the false and misleading advertisement will be stopped to an extent hence ultimately benefitting the consumers.

Section 21 of the new Act has also given the power to the Central Authority to impose a penalty on the endorsers in respect of such false or misleading advertisement upto to ten lakh rupees which may extend to fifty lakh rupees in case of subsequent contravention.

This provision is added so that the endorser acts diligently and verifies the promises or the claims they are making while endorsing a product or liability in order to safeguard the interest of the consumers at large.

#### **Conclusion**

The new Act provides for the protection of consumer interests and deals with current business trends like e-commerce. However, the Ministry of Consumer Affairs has not notified the provisions relating to e-commerce, direct selling and formation of CCPA introduced in the new Act which was much needed in this age of digitisation. With this new Act, there seems to be a shift from Caveat Emptor to Caveat Venditor.

Now the consumer-driven businesses will have to take extra precautions against unfair trade practices and unethical business practices. However, the ultimate success of this new Act depends on how vigilant, aware and educated the consumers are about their rights which this new Act provides. And, moreover, the time taken by the Commissions to dispose off the matter is a matter of concern as no stringent provision is introduced in the new Act to deal with this prevailing provision.

- **[1] <https://consumeraffairs.nic.in/sites/default/files/Act%20into%20force.pdf>**

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