

The Consumer Protection Act, 2019

written by Latha Shanmugam | August 26, 2019

After long

anticipation, the Parliament, after receiving the assent from the President of

India, introduced the new holistic Consumer Protection Act, 2019 ("CP Act, 2019") on August 9, 2019. The Act

has retained some old provisions but also shows the gleam of some new perceptions. The Ministry of Law and

Justice has meticulously framed the Consumer Protection Act, 2019 covering all

the possibilities of defaults that may arise in the new epoch.

SCOPE OF THE CP ACT 2019

While the Act contains

certain old provisions, the Parliament has incorporated certain new clauses with

regard to consumers' grievances attributed to the modernized society, with a view of creating an exhaustive consumer protection law.

Compared to the earlier

CP Act, 1986 which had only 31 sections divided into 4 chapters, the CP Act, 2019 contains 107 sections divided into 8 chapters. The CP Act, 2019 also incorporates new words

for definition such as 'Advertisement', 'Central Authority', 'Consumer Rights',

'Design', 'Direct Selling', 'Director General', 'E-Commerce', 'Electronic Server Provider', 'Endorsement', 'Establishment', 'Express Warranty', 'Harm', 'Injury',

'Mediation', 'Mediator', 'Misleading Advertisement', 'Product and Product Liability', 'Product Liability Action', 'Product Manufacturer', 'Product Seller',

'Product Service Provider' and 'Regulator and Unfair Contract'.

Further a few words have

been given a wider definition such as:

- **COMPLAINANT**

shall also be the central authority and in case of a minor, his parent or legal guardian;

- **CONSUMER**

shall also be a person who buys any goods or avails services, via offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

- **DEFICIENCY**

further includes an act of negligence, omission, commission causing loss or injury to the consumer and deliberate withholding of relevant information.

- The definition of term 'GOODS' has been modified completely to include movable property and food as defined in clause (j) of subsection (l) of

section 3 of the Food Safety and Standards Act, 2006.

- The word telecom has been added in the definition of 'SERVICE'. Further, the object of the Central Council apart from protecting the consumer rights

shall also be to render advice on promotion.

CENTRAL AUTHORITY

The CP Act, 2019 embraces

the establishment of the Central Consumer Protection Authority known as 'Central

Authority', headquarter being established at Delhi and other offices in any place as Central Government may decide. The post of "Chief Commissioner" of the

Central Authority and a number of other Commissioners have been introduced in order to resolve the matters relating to violation of consumer rights such as unfair trade practices, false or misleading advertisements that are prejudicial

to the interest of public. For this purpose, they shall have under them, an investigation wing headed by a Director General who has the power to issue directions to the trader, manufacturer, endorser, advertiser, or publisher to discontinue such advertisement or to modify the same. The central authority shall

also have the power to impose punishment with imprisonment and the penalty varying on the default.

One of the noteworthy

amendment in the CP Act 2019 is that the false and misleading advertisements, made to arouse prejudicial interest of consumer, shall attract the imposition of punishment up to two years and for subsequent contravention up to five years

and penalty up to 10 lakh and for subsequent contravention penalty up to 50 lakh, but no cognizance of offence shall be taken by any court until the complaint is filed by Central Authority or an officer authorized by the Central

Authority.

MEDIATION

The new CP Act, 2019 escalates

the importance of mediation in consumer matter, which has been inserted under the Chapter V to encourage the parties to undergo mediation after the admission

of a complaint or at any later stage. 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 further proceed.

PRODUCT LIABILITY

Under the CP Act, 2019,

the complainant can claim for compensation under a product liability action for

any harm caused by a defective product manufactured, serviced, or sold.

A product manufacturer

shall be liable in a product liability action, if the product has a manufacturing defect, is defective in design, or there is a deviation from manufacturing specifications, or does not conform to the express warranty, or the product fails to contain adequate instructions of correct usage to prevent

any harm or any warning regarding improper or incorrect usage.

A product service

provider shall be liable in a product liability action, if the service provided

was faulty, imperfect, deficient, inadequate in quality, nature or manner or there was an act of omission or commission or negligence or conscious withholding of any information which caused harm; or did not issue adequate instructions or warnings to prevent any harm; or did not conform to express warranty or the terms and conditions of the contract.

A product seller who

is not a product manufacturer shall be liable in a product liability action, 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 and such alteration or modification was the substantial factor in causing the harm; or did not 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 or has made an express warranty of a product independent of any express warranty made by a manufacturer. If such product failed to conform to the express warranty made by the product seller which caused the harm; or the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of

notice or process or warrant cannot be effected on him or he is not subject to

the law enforced in India or the order

passed cannot be enforced against him; or failed to exercise reasonable care in

assembling, inspecting or maintaining such product.

JURISDICTION

The new CP Act, 2019

has protracted the jurisdiction of the District Consumer Forum up to 1 crore, State Consumer Forum from 1 crore to 10 crore and the National Consumer Forum above 10 crore.

CONCLUSION

The new CP Act, 2019

initiates modernized rules for the credit of consumers. By making numerous favourable changes and

implementing the important new measures in relation to various types of consumer grievances, the Act is creating a new structure for the credit of consumers and ensues the obligations to the traders, product manufacturer, service provider, and product seller.

The regulation further imposes mandatory content and format for the parties to undergo mediation in order to sort out the issues before proceeding

with the complaint and at any time if there appear the elements of settlement.

The CP Act, 2019 also

includes the framework for digital marketing and online purchasing which has opened wider room for the consumers for approaching the forums for the deficiency in goods or services even bought online or service availed online.

Now, the property

buyer exclusively has the advantage of approaching either NCLT against the Developer as financial creditor after Amendments[1]

upheld by the Supreme Court on August 09, 2019 which was approved by the Parliament on August 01, 2019, or RERA

Authorities or District Consumer Forum or State Consumer Forum as per the extension of pecuniary jurisdiction up to 1 crore for District Consumer Forum and up to 10 crore for State Consumer Forum for their grievance

with the builders and developers unlike the decision in Ambrish Kumar Shukla Case[2] where it was decided that the consideration shall include compensation and interest claimed by the complainant which was exceeding the pecuniary jurisdiction of both District Consumer Forum and State Consumer Forum and since

the jurisdiction of the complainants seeking relief in property-related matters

were to approach National Consumer Forum only, but that is not the scenario now

as the CP Act, 2019 has extended the jurisdiction level.

The Consumer Protection Act, 2019 allows the District Commission, State Commission and National Commission to review its own orders if there is an error apparent on the face either by its own motion or on application being made within 30 days before filing appeal against such orders. This will give either party to correct the error if reviewable in the same court instead of approaching an appeal.

The only shortcoming of

the new CP Act, 2019 is that the Act does not give provision for the consumers

to approach a forum for the medical negligence which was present under the old

Act.

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- [1] Insolvency and Bankruptcy Code (Amendment) Act, 2019
 - [2] Ambrish Kumar Shukla & Ors. Vs Ferrous infrastructure Pvt Ltd (07.10.2016 - NCDRC) : MANU/CF/0499/2016

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