



We Wish All Our Readers

A Very Happy 74th Independence Day



Vision

"To be a global leader in promoting good corporate governance"

Motto

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Mission

"To develop high calibre professionals facilitating good corporate governance"

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From the Desk of Chairman

CS Parvathi K R
Chairperson
Mysuru Chapter

Dear Professional colleagues,

Greetings from the Mysuru Chapter of ICSI! Happy Independence Day to all of you. Let's salute our great nation and soldiers on this special occasion! Also, I extend warm wishes to the festive season ahead!

Congratulations to all the students for winning / participating in various activities conducted during "ICSI Students Month 2020". This initiative has benefitted the students to sharpen their ace from academic as well as skill development perspective.

Bengaluru, Mysuru and Belagavi Chapter have jointly started online coaching classes for the executive students. I request students to make use of this opportunity. We are continuing with the carrier awareness programme through virtual mode and glad to share that we are getting very good response.

We have conducted programmes for the benefit our members and few are in pipeline. Extend your support by participation.

Feel free to share inputs, feedback and suggestions to continue this journey of growing together!



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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(Under the jurisdiction of Ministry of Corporate Affairs)

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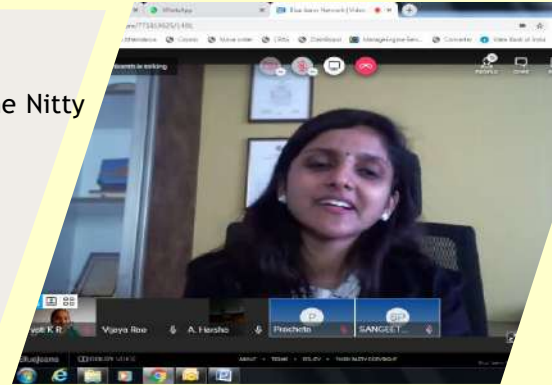
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Chapter Activities

GST Day Celebrations

On 7th July, 2020 Chapter organized a webinar in the topic “GST-A walk through of the Nitty Gritties” on the occasion of GST Day Celebrations. CA Annapurna Srikanth, Practising Chartered Accountant was the speaker for the session. In her address she explained in detail all the nuances of GST and explained all the minor details. It was an excellent interactive session. CS Parvati K R., Chairperson welcomed the participants. CS Harsha A., Secretary proposed the vote of thanks.



Student Month Activities – JULY 2020

S. No	Date	Programme Name	Speaker / Judges	No of Participants
ONLINE CAREER AWARENESS PROGRAMS				
1	02.07.20	Sapient PU College - A Section	CS Parvati K R, Chairperson N. Dhanabal, Chapter In-charge	65
2	02.07.20	Sapient PU College - B Section	CS Phani Datta D N, Treasurer N. Dhanabal, Chapter In-charge	60
3	06.07.20	Vidya Vikas PG College	CS Phani Datta D N, Treasurer N. Dhanabal, Chapter In-charge	60
4	08.07.20	Vidya Vikas First Grade College	CS Harsha A, Secretary N. Dhanabal, Chapter In-charge	50
5	13.07.20	Pramati PU College	CS Parvati K R, Chairperson N. Dhanabal, Chapter In-charge	55
6	23.07.20	SDM PU College - G Section	CS Phani Datta D N, Treasurer N. Dhanabal, Chapter In-charge	75
7	24.07.20	SDM PU College - F Section	CS Harsha A, Secretary N. Dhanabal, Chapter In-charge	75

8	24.07.20	Hindustan First Grade College	CS Parvati K R, Chairperson CS Phani Datta D N., Treasurer	86
9	29.07.20	Manasarovar Pushkarini Vidyashrama	CS Phani Datta D N., Treasurer N. Dhanabal, Chapter In-charge	50
OTHER ACTIVITIES				
10	03.07.20	Online Quiz Competition on Company Law	CS Phani Datta D N, Treasurer	16
11	08.07.20	Inauguration of Online Class for CSEET	CS Parvati K R, Chairperson	13
12	09.07.20	Online Session on Life Skills	Ms. Kavitha Muraliprakash	20
13	13.07.20	Faculty Induction Program	CS Parvati K R., Chairperson CS Phani Datta D N, Treasurer	5
14	18.07.20	Revision Classes for Executive	-	6
15	19.07.20	Samadhan Diwas - Zero Grievance Day	N. Dhanabal	7
16	26.07.20	Essay Writing Competition	CS Sherene Latha	9
17	27.07.20	Session on How to Appear in Interview	CS Madhwesh K, PCS Bengaluru	40
18	28.07.20	Power Point Competition	CS Vijaya Rao, Vice Chairperson CS Harsha A, Secretary CS Phani Datta D N, Treasurer	4
19	30.07.20	Webcast on Direct Tax	CA Kumarpal M Jain, Practising CA	30
20	July 20	Press Release	-	4
21	July 20	Registration of Students in ICSI Blood Bank Portal	-	21

Global Consumer Protection and COVID-19 Consumer Frauds



C.N.Kranthi Kumar

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DEFINE: Labour Laws, Compliance and Audit terms

The consumer movement can be spotted from ancient laws of India, Code of Hamurabi and Old Testament. It is only in the 20th Century, the largest consumer movement was seen in the United States and Europe during early years of 1900 to 1920 followed by the depression in mid of 1930's.

The other notable movements were in England and Australia following the years of Second World War. The women organizations of England, South Korea, European countries and Japanese organizations like Shufuren gave a good support to the consumer movement. Later, the countries of Norway, Ireland, Belgium, Denmark, France, Sweden, South East Asia and other pacific countries established, councils, commissions, organisations, associations and groups for consumer and for their protection.

In the year 1962, the president of United States, Mr.J.F.Kennedy introduced the concept of consumer protection in the United States and spoke about rights of consumers relating to safety, be informed, heard and to choose, and inspired rest of the world.

Intention of guidelines of consumer protection

In 1985, General Assembly of United Nations adopted the guidelines of consumer protection given by Economic and Social Council of United Nations unanimously which were developed by consumer expert groups, industries, governments, and different businesses from all over the world.

The principles of consumer protection were open for voluntary adoption by any member countries but not as a legal requirement, and were circulated to the member countries with an attempt to create an international framework and intended to give practical guidance's in the areas where consumer protection needs to be strengthened and who intend to follow it.

The guidelines helped the member nations to form a basis for drafting their consumer protection laws, policies, procedures, and regulatory mechanisms accordingly to their social, cultural, economic, political and environmental conditions.

Effectively the guidelines became an international practice and basis for legislations in majority of the countries in the world including INDIA for enacting the Consumer Protection Act, 1986.

Global facts of consumer protection

Consumers International, a World Federation of Consumer Rights Group, established in 1960 which works together with more than 250 organizations in more than 120 countries worldwide, has published materials on topics of global consumers, consumer justice, safer products, sustainable consumption, etc., and has published the following facts:

- a) Majority of the countries agree that there is a need for more efficient systems to identify unsafe products which pose threats to consumers and express low levels of satisfaction;
- b) The governance of consumer protection is seen much only in high income countries and very less in low income countries and in African countries it is totally absent;
- c) There is no legal definition of what constitutes a Safe Product or Service, so every country defines their own and form policies accordingly.
- d) Many basic consumer protections of social security, water, sanitation, education, housing, adequate food, health care and energy are still challenging and have a serious gap.
- e) There is lack of surveillance, lack of actions against violations and lack of quality testing for imported secondhand products for resale.
- f) Approximately 25% representatives say that they do not have an official body in their countries to report about unsafe products;
- g) The Consumer Protection Act in many countries does not provide a guarantee of consumer protection as - The Act is badly implemented, for example the country of Brazil; The Act, policies and procedures are not revised, for example Indonesia and France; and The absence of Act and limited plans of government in the country like Germany.

COVID-19 consumer frauds

Fraudsters who were already technologically driven, were very quick, adaptive and on-time to target the citizens, society, state, nation and world as a whole leaving no exemption. They developed the best websites, apps, links, advertisements, sms, telecalls and other material so that the fear can be best exploited either commercially or humanitarily. The following products or services were offered by such fraudsters:

- a) Huge discounts on masks, gloves, hand sanitizers, vaccines, tablets and equipments.
- b) Home delivery of goods purchased online like liquor, tobacco and beetle products.
- c) Online support or contribution or relief or donations to hospitals and other organizations.
- d) Money making chance / Investment opportunity in vaccine or sanitizer making companies or commercial and residential properties and motor vehicles whose owners were dead due to covid virus and were on sale at best price.
- e) Job opportunities/placements/contract works in various public and private companies and especially in healthcare and government companies.
- f) Services of private transportation during restrictions on movement or lockdown situations.
- g) Imitation or make an impression that they are from ministry / public health department / special teams fighting covid-19 for selling products or collecting personal or financial data.
- h) Fake Superannuation polices and Insurance policies.

Online attacks reports

Barracuda Networks Inc, a company providing security, networking and storage products of the United States has reported that out of 4.67 lakhs phishing email attacks approximately 9,200 were related to COVID-19 from March 1 to 23, 2020 and the same is also published in The Economic Times on March 27, 2020. Out of which 23.54% were scams, 34% were imitation or make an impression of brands or authorities.

In April, 2020 Microsoft highlighted that more than 5 lakh accounts of tele-conferencing zoom application were hacked for any reasons including personal, financial and password information.

The Ministry of Home Affairs, Government of India said that there was a rise in internet-related criminal activity of 86%. The ministry officials received more than 8,000 complaints who were trapped by donating to spurious portal of PM CARES fund for COVID-19 relief.

More than USD 3.27 Million were lost by different consumers in US, UK, France, Australia, Spain, Canada, Turkey, Argentina, Hong Kong, and Chile during the COVID-19 global pandemic fraud or scams from Jan to Apr 2020.

Conclusion:

Consumer frauds during COVID-19 global pandemic, was it an exploitation of fear or lack of anticipation or lack of one's strongness? These questions are very sensitive, debatable and can neither be answered commercially nor humanitarily.

Consumer protection is seen much only in high income countries and very less or absent in low income countries and in countries which intend to protect their customers.

The nations with best protection to consumers with best policies, systems and mechanisms of consumer protection in a normal world managed to protect the consumer interests with few complaints, but during the global pandemic times, the best failed, but got alert quickly after massive blow on consumer attacks, and took steps to protect the rest.

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www.consumersinternational.org/

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The Federal State Commission Staff in its Report in August, 2004

Report of The Challenge of protecting Consumers from Unsafe Products, May 2018

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Insights into the New Consumer Protection Act, 2019



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The Consumer Protection Act, 2019 has provided consumers with a patronage as they can better assert their rights and seek legal redressal of their complaints in case of disputes with a player from the market, providing more powers to consumers in the context of current realities.

Gone are the days, where the 'consumer was asked to beware', with the new Act all set to become the law. Hence, consumer driven businesses such as retail, e-commerce need to be mindful of the changes in the legal background and have robust policies dealing with consumer redressal in place. Consumer-driven businesses must strive to take extra precautions against unfair trade practices and unethical business practices. The new Consumer



Protection Act proposes a slew of measures and tightens the existing rules to safeguard consumer rights further. Introduction of a central regulator, strict penalties for misleading advertisements and guidelines for e-commerce and electronic service providers are some of the key highlights.

The Consumer Protection Act, 2019, came into force on July 20, 2020, with the government notifying rules for its implementation. The government has notified rules establishing Central Consumer Protection Authority (CCPA), Central Consumer Protection Council, and Consumer Disputes Redressal Commission, under the Act.

The Indian Parliament approved 'The Consumer Protection Bill 2019' last year, repealing and replacing the Consumer Protection Act 1986. It aims to revamp the process of administration and settlement of consumer disputes, with strict penalties, including jail term for adulteration and misleading ads by firms.

Let's understand a few terms before preceding the article:

- **Consumer:** A consumer is defined as a person who buys any goods or avails a service for consideration. It does not include a person who obtains a good for resale or a good or service for commercial purpose. It covers transactions through all modes including offline, and online through electronic means, teleshopping, multi-level marketing or direct selling.

The new Act broadens the definition of consumer, by recognizing those engaged in offline as well as online multi-level and telemarketing transactions.

- **Central Consumer Protection Authority:** The Central Consumer Protection Authority (CCPA) introduced in the new Act, aims to protect the rights of the consumer by cracking down on unfair trade practices, and false and misleading advertisements that are detrimental to the interests of the public and consumers.

- **Consumer Disputes Redressal Commission:** Consumer Disputes Redressal Commissions (CDCRs) will be set up at the district, State, and national levels.
- **Product Liability:** Product liability is the area of law in which manufacturers, distributors, suppliers, retailers, and others who make products available to the public are held responsible for the injuries those products cause.

What has Changed in the New Act?

Provisions	Consumer Protection Act, 1986	Consumer Protection Act, 2019
Regulator	No Separate regulator	Central Consumer protection Authority
Consumer Court	A complaint could be filed in a consumer court where the seller's {defendant} office is located.	A complaint can be filed in a consumer court where the complainant resides or work.
Product Liability	No provision. A consumer could approach a civil court but not a consumer court.	A consumer can seek compensation for the harm caused by a product or service.
Pecuniary Jurisdiction	District: up to Rs 20 Lakh State: above Rs 20 Lakh up to Rs 1 Crore National: above Rs 1 Crore	District: up to Rs 1 Crore State: above Rs 1 Crore up to Rs 10 Crores National: above Rs 10 Crores
E-Commerce	No provision	All rules of direct selling extended to e-commerce
Mediation Cells	No provision	The court can refer settlement through mediation

Rules for all Registered Electronic Retailers (E-TAILERS).

With market dynamics changing every single day, and with e-commerce platforms becoming a new trend, it was imperative to completely revamp the consumer protection law keeping in mind the challenges and providing effective recourse against the same. The new Act has made a conscious effort to streamline the basic structure of e-commerce platforms to align them with the interest of the consumers.

While e-commerce has opened new avenues and has made transactions faster and more convenient, they have also been prone to unfair trade practices. Although e-commerce platforms tried to resolve the grievance of the customers, there was a need to streamline the functioning of the same. With this perspective, the Central government notified the Consumer Protection (E-commerce) Rules, 2020.

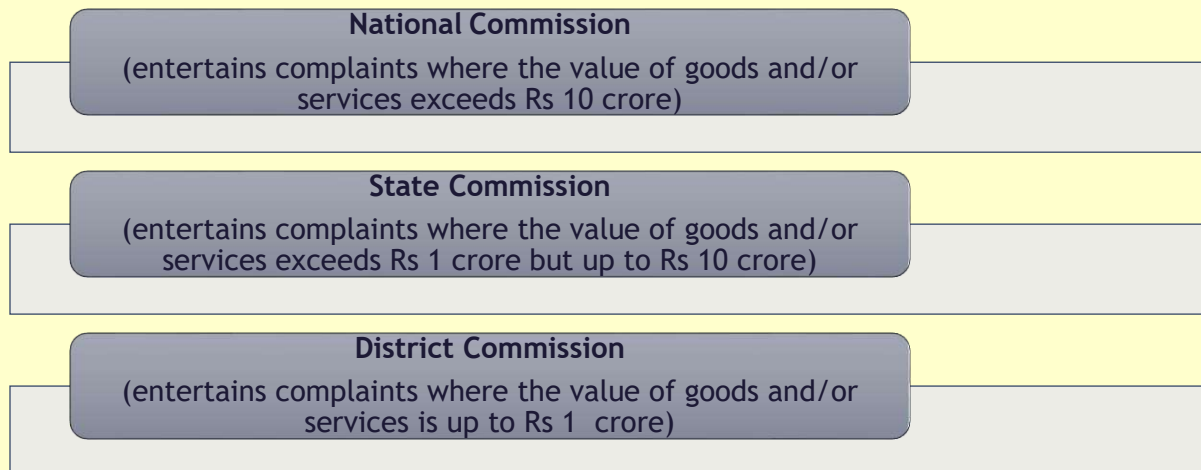
The rule applies to:

1. All goods and services bought or sold over a digital or electronic network including digital products;
2. All models of e-commerce, including marketplace and inventory models of e-commerce;
3. All e-commerce retail, including multi-channel single-brand retailers and single-brand retailers in single or multiple formats; and
4. All forms of unfair trade practices across all models of e-commerce.

No player of the e-commerce space is immune from the application of the Rules. Along with specifying their duties and liabilities, the Rules also ensure the compliance thereof by providing that any contravention of the provision of Rules would attract the penal provision of the Act.

Social Scale of the Consumer Dispute Resolutions Under Consumer Protection Act 2019.

To protect consumer rights, the Act mentions the establishment of three redressal mechanisms wherein the consumers can approach to address their grievances.



Set out Below are some of Key Highlights of the New Act:

- **Establishment of the Central Consumer Protection Authority:**

The authority is being constituted under Section 10(1) of The Consumer Protection Act, 2019. The Act replaced The Consumer Protection Act, 1986, and seeks to widen its scope in addressing consumer concerns. The new Act recognizes offences such as providing false information regarding the quality or quantity of a good or service, and misleading advertisement. It also specifies action to be taken if goods and services are found “dangerous, hazardous or unsafe”.

The CCPA, introduced in the new Act, aims to protect the rights of the consumer by cracking down on unfair trade practices, and false and misleading advertisements that are detrimental to the interests of the public and consumers.

- **Consumer Disputes Redressal Commission:** Consumer Disputes Redressal Commissions (CDRCs) will be set up at the district, State, and national levels.

A consumer can file a complaint with CDRCs about:

- Unfair or restrictive trade practices;
- Defective goods or services;
- Overcharging or deceptive charging; and
- Offering of goods or services for sale which may be hazardous to life and safety.

Complaints against an unfair contract can be filed with only the State, and the State CDRC will hear national Appeals from a District CDRC. The National CDRC will listen to appeals from the State CDRC. The final appeal will lie before the Supreme Court.

- **Submerges E-Commerce Transactions:** With the enlargement of the definition of 'consumer', now it includes any person who buys any goods, whether through offline or online transactions, electronic means, teleshopping, direct selling or multi-level marketing. However, the earlier Act did not specifically include e-commerce transactions, and the New Act has addressed this vacuum.
- **Misleading Advertisement and Unfair Trade Practices:** The CCPA may impose the penalty in the following manner:

PARTICULARS	PENALTY
On a manufacturer or an endorser, for a false or misleading advertisement	INR 1,000,000 and/or imprisonment for up to two years
In case of a subsequent offence	Fine may extend to INR 5,000,000 and imprisonment of up to five years.

The CCPA can also prohibit the endorser of a misleading advertisement from endorsing that particular product or service for a period of up to one year. For every subsequent offence, the period of prohibition may extend to three years.

The new Act also introduces a broadened definition of Unfair Trade Practices.

- **Enhancement of Pecuniary Jurisdiction:** The changes in the pecuniary jurisdiction are as follows:
 - The pecuniary jurisdiction of District Commissions has increased from Rs.20 lakh earlier to up to Rs.1 Crore.
 - The pecuniary jurisdiction of State Commissions increased from Rs.1 Crore to Rs. 10 Crores.
 - National Commission can hear cases above Rs.10 Crores, up from the earlier threshold of Rs.1 Crore.
- **Statutory Status to Mediation:** The New Act provides for mediation as an Alternate Dispute Resolution mechanism, making the process of dispute adjudication simpler and quicker. A complaint will be referred by a

Consumer Commission for mediation, wherever scope for early settlement exists and parties agree for it. This mediation will be held in the Mediation Cells, which is to be established under Consumer Commissions.

- **E-Filing of Complaints:** Under Consumer Protection Act, 2019 consumer can file complaints with the jurisdictional consumer forum located at the place of residence or work of the consumer unlike the current practice of filing it at the place of purchase or where the seller has its registered office address. It also contains enabling provisions for consumers to file complaints electronically and for hearing parties through video conferencing.
- **Conception of Product Liability:** The Consumer Protection Act, 2019 has brought within its scope the concept of product liability, the product manufacturer, product service provider and product seller, for any compensation claim. The term 'product seller' is defined to include a person who is involved in placing the product for a commercial purpose and as such, would consist of e-commerce platforms as well. The argument that e-commerce platforms merely act as 'platforms' will not be accepted. There are increased liability risks for manufacturers as compared to product service providers and product sellers, considering that 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.

The Basis for Product Liability action is:

- Manufacturing defect
- Design defect
- Deviation from manufacturing specifications
- Not conforming to express warranty
- Failing to contain adequate instructions for correct use
- Service provided-faulty, imperfect or deficient

Certain exceptions have been provided under the new Act from liability claims.

Synopsis:

According to the new rules, the e-commerce players will have to display the total price of goods and services offered for sale along with a break-up of other charges. They are also required to mention the 'expiry date' of goods offered for sale and the 'country of origin' of goods and services that are necessary for enabling the consumer to make an informed decision at the pre-purchase stage.

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Consumer Protection Act, 2019



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Introduction:

The Consumer Protection Act, 2019 ('New Act') received the assent of the President of India and was published in the official gazette on 9th August 2019. This New Act will replace the old Consumer Protection Act, 1986 ('Old Act'). In exercise of the powers conferred by sub-section (3) of section 1 of the New Act, MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION (Department of Consumer Affairs) has issued a Notification No. S.O. 2351(E) dated 15th July 2020 ('the Said Notification') whereby the Central Government has appointed the 20th day of July, 2020 as the date on which various provisions of the said Act shall come into force.

Features of Consumer protection act, 2019

Consumer Protection Councils

- Central Consumer Protection Authority (CCPA)
- Simplified Dispute Resolution Process
- Mediation
- Product Liability
- Rules on e-commerce and direct selling
- Penalty for adulteration of products/spurious goods
- Benefits to Consumers- Rules on e-commerce and direct selling
- The CP Act 1986- single point of access to justice, which is time consuming. Additional swift executive remedies provided through CCPA
- Deterrent punishment to check misleading advertisements and adulteration of products
- Product liability provision to deter manufacturers and service providers from delivering defective products or deficient services
- Ease of approaching Consumer Commissions and Simplification of adjudication process
- Scope for early disposal of cases through mediation

- Provision for rules for new age consumer issues: e-commerce & Direct selling

Rules & Regulations

Rules

- General Rules
- Central Consumer Protection Council Rules
- Consumer Disputes Redressal Commissions Rules
- Appointment of President & Member in State/District Commission Rules
- Mediation Rules
- Model Rules for States
- E-Commerce Rules

Regulations

- Consumer Commission Procedure Regulations
- Mediation Regulations
- Administrative control over State Commission & District Commission Regulations

Changes brought in by Consumer Protection Act 2019

The new provisions in the new Act are a step towards betterment of the consumer legal fraternity and strengthen the grips of law towards the consumers while filling up the gaping gaps of the Act of 1986. A lot will now depend on its implementation by the authorities as well as litigants.

1. E Commerce Companies

- Now E-Commerce Companies will fall under the ambit of a structured consumer redressal mechanism, which will be empowered to conduct investigations into violations of consumer rights.
- E-commerce platforms will now have to acknowledge the receipt of any consumer complaint within 48 hours and redress the complaint within a month from the date of receipt.

Read More at- Consumer Protection (E-Commerce) Rules, 2020

2. Consumer Complaints and Redressals

- A consumer can institute a complaint from where he resides and not at the place where the transaction took place.
- There will be no fee for filing cases up to Rs 5 lakh.
- There are provisions for filing complaints electronically, credit of amount due to unidentifiable consumers to Consumer Welfare Fund (CWF).

Read More at- Consumer Protection (Consumer Disputes Redressal Commissions) Rules, 2020

3. New Rules and Regulations

- Introduces the concept of product liability and brings within its scope, the product manufacturer, product service provider and product seller, for any claim for compensation.

- Timely disposal of cases and appeals.
- Provisions like Consumer Protection Councils, Consumer Disputes Redressal Commissions, Mediation, Product Liability and punishment for manufacture or sale of products containing spurious goods.
- Central Consumer Protection Council Rules, Consumer Disputes Redressal Commission Rules, Appointment of President & Members in State/District Commission Rules, Mediation Rules, Model Rules and E-Commerce Rules and Consumer Commission Procedure Regulations, Mediation Regulations and Administrative control over State Commission & District Commission Regulations.

4. Constitution and Adjudication

- The State Commissions will furnish information to central government on a quarterly basis on vacancies, disposal, pendency of cases and other matters, there lease said.
- Empowerment of the State and District Commissions to review their own orders, enabling a consumer to file complaints electronically and file complaints in consumer Commissions that have jurisdiction over the place of his residence, video conferencing for hearing and deemed admissibility of complaints if the question of admissibility is not decided within the specified period of 21 days.
- A complaint will be referred by a Consumer Commission for mediation, wherever scope for early settlement exists and parties agree for it. Mediation will be held in the Mediation Cells to be established under the aegis of the Consumer Commissions. There will be no appeal against settlement through mediation. The Central Consumer Protection Council Rules are provided for constitution of the Central Consumer Protection Council, an advisory body on consumer issues, headed by the Union Minister of Consumer Affairs, Food and Public Distribution with the Minister of State as Vice Chairperson and 34 other members from different fields.

Procedure of filing a complaint by consumer against any misleading advertisement

A consumer can file a complaint with the Central Consumer Protection Authority against any advertisement which gives or conveys false description of a product or service or contains a representation constituting an unfair trade practice etc.

1. **Mode of complaint-** a complaint may be forwarded either in writing or in electronic mode.
2. **Complaint to whom-** to any one of the authorities, namely, the District Collector or the Commissioner of regional office or the Central Authority.

Action against complaint received

- The District Collector may inquire into or investigate complaints regarding violation of rights of consumers as a class, on matters relating to violations of consumer rights, unfair trade practices and false or misleading advertisements, within his jurisdiction.
- He will submit his report to the Central Authority or to the Commissioner of a regional office. [Section 16 of the New Act].
- Where the Central Authority is satisfied after investigation that any advertisement is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights, it may, by order, issue directions to the concerned trader or manufacturer or endorser or advertiser or publisher, as the case may be, to

discontinue such advertisement or to modify the same in such manner and within such time as may be specified in that order.

Penalties & Prohibition

- If the Central Authority is of the opinion that it is necessary to impose a penalty in respect of such false or misleading advertisement, by a manufacturer or an endorser, it may, by order, impose on manufacturer or endorser a penalty which may extend to ten lakh rupees:
- For every subsequent contravention by a manufacturer or endorser, impose a penalty, which may extend to fifty lakh rupees.
- It may, by order, prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to one year.
- For every subsequent contravention, prohibit such endorser from making endorsement in respect of any product or service for a period which may extend to three years.
- If any person is found to publish, or is a party to the publication of, a misleading advertisement, it may impose on such person a penalty which may extend to ten lakh rupees.

Conclusively, the Consumer Protection Act, 2019 when compared with the 1986 Act shows that it provides for greater protection of consumer interests taking into consideration the current age of digitization.

Sources of reference:

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- Tax guru articles
- Mondaq.com - key highlights
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Major provisional change in Consumer Protection Act, 2019



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*If beauty is in the eyes of the beholder, value is in the mind of the consumer”
.....Michele Jennae*

The above quotes truly depict the ideal goal that every producer or seller must create value for the consumer. Profit earning should not be at the cost of destroying the value in the mind of the consumer.

With a view to provide more power to consumer to protect their interest and rights, the Consumer Protection Act, 2019 (for the sake of brevity unless otherwise specified to the contrary and the Consumer Protection Act, 2019 has been referred “the Act” through the entirety of the act) came into force from 20th July, 2020. The Act will work as bulwark for the consumers against the misleading manufacturers, service providers, product sellers and misleading advertisement.

The preamble to the new Consumer Protection Act says “*an act 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 consumer’s disputes and for matters connected therewith or incidental thereto.*”

The Consumer Protection Act, 2019 completely repeals the Consumer Protection Act, 1986 and widen the ambit of Consumer Protection by giving more powers to the Consumer to protect their interests in time-bound manner.

Comparative analysis of the major changes in Provisions Consumer Protection Act, 2019(hereinafter referred to act “New Act”) and Consumer Protection Act, 1986(hereinafter referred to as “Old Act”)

<u>Particulars</u>	<u>Consumer Protection Act, 1986</u>	<u>Consumer Protection Act, 2019</u>
Regulator	There was no separate regulator to regulate matters relating consumer protection in the Old Act.	A regulator, Central Authority known as Central Consumer Protection Authority to be set up regulate matters relating to violation of rights of consumers, unfair trade practice and false or misleading advertisement which are prejudicial to the interests of public and consumer and to promote, protect and enforce the rights of consumer as a class.*

Product liability	There was no such provision in old act. Consumer could only approach civil court but not consumer court which were very time consuming and less effective.	<p>Product liability is defined in Section 2(34) of the new Act “<i>the responsibility of a 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</i>”. Harm in relation to product liability is defined separately in Section 2(22) of the New Act</p> <p>The inclusion of product liability within the ambit of new Act has reverse the traditional rule of <i>Caveat Emptor</i>, where the buyer has to take the responsibility of products or services he buys but now the onus of the same is shifted upon the product manufacturer, seller and service provider. It is big reform and consumer centric approach.</p>
Consumer Court	Consumer can file the complaint in a Consumer Court where the seller office is situated.	More power to the consumer as complaint can be filed electronically in a consumer court where the complainant resides or personally works for gain.
E-commerce	No such provision found in old act	<p>Ecommerce has been defined under section 2(36) of the New Act as “<i>Buying and selling of goods including digital products over digital or electronic network.</i>”</p> <p>Under the e-commerce rules, it has been made compulsory for e-commerce platforms to display details about price, expiry date, return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, grievance redressal mechanism, payment methods, the security of payment methods, charge-back options, etc.</p> <p>Additionally, sellers must also display 'country of origin' which will enable the consumer to make an informed decision at the pre-purchase stage. E-retailers must prominently display details about the 'sellers' offering goods and services, including the name of their business, whether registered or not, their geographic address,</p>

		customer care number, any rating or other aggregated feedback about such seller E-commerce platforms have to acknowledge the receipt of any consumer complaint within forty-eight hours and redress the complaint within one month from the date of receipt. However, the rules will not permit any inventory e-commerce entity, including single-brand retailers and multi-channel single-brand retailers, to "falsely represent itself as a consumer and post reviews about goods and services or misrepresent the quality or the features of any goods and services.
Pecuniary jurisdiction	Under the Old act, the jurisdiction power to entertain complaints for the value of goods or services and the compensation, was : Rs. 20 lakh-for District Commission Rs. 20 lakh to 1 cr-for State commission Above Rs. 1 cr- for National commission	In the new, jurisdiction power to entertain complaints for the value of goods and services paid as consideration is: Rs. 1 cr-District Commission Rs. 1 cr to 10cr-State Commission Rs. Above 10 cr-National Commission Every proceeding before the District Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the District Commission shall be deemed to be a criminal court for the purposes of section 195 of the Code of Criminal Procedure, 1973.
Mediation cells	There were no such provision of mediation where the disputes can be referred for mediation in the old act	The new act introduces the concept of mediation cells in the Consumer courts where the parties will be given the option to settle their disputes via mediation and if not satisfied, they can continue with the court proceedings. It is a welcome step by the consumers and will be a time-saving approach for the aggrieved consumers.

Other major changes brought by the new Act

Advertisement, Misleading advertisement and endorsement

The Act has provided exclusive definition of advertisement, misleading advertisement and endorsement

2(1) of the new act, Advertisement is defined as any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents;

Endorsement is also exclusively defined as, "endorsement", in relation to an advertisement, means—

1. any message, verbal statement, demonstration; or
2. depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or
3. depiction of the name or seal of any institution or organisation, which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement;

"Misleading advertisement" in relation to any product or service, means an advertisement, which—

1. falsely describes such product or service; or
2. gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
3. conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or
4. deliberately conceals important information;

Powers of the Central Consumer Protection Authority (CCPA) or Central Authority

The new Act provides various powers to the Central Authority to provide consumer protection from unfair trade practice and misleading advertisement. The powers of Central Authority are underlined as follows:

- a. inquire or cause an investigation into violation of consumer rights or unfair trade practices, order discontinuance of unfair trade practice and misleading advertisement, impose penalties on manufacturers/endorsers/publishers of misleading advertisement
- b. to refer matter for investigation or to other regulator
- c. Power of Central Authority to recall goods, reimbursement of prices of goods and services
- d. recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights

Consumer Dispute Adjudication Process

With a view to provide consumer much ease, the new act has brought major reform in consumer dispute adjudication process.

Simplifying the consumer dispute adjudication process, empowerment of the State and District Commissions to review their own orders, enabling a consumer to file complaints electronically and file complaints in consumer Commissions that have jurisdiction over the place of his/her residence, videoconferencing for hearing and deemed admissibility of complaints if the question of admissibility is not decided within the specified period.

Establishment of Central Protection Council

The New Act provides for establishment of the Central Consumer Protection Council as an advisory body on consumer issues. It will be headed by the Union Minister of Consumer Affairs with the Minister of State as Vice Chairperson and 34 other members from different fields. The council, which has a three-year tenure, will have Minister-in-charge of consumer affairs from two states from each region- North, South, East, West, and North East

Offences and penalties

Punishment for false and misleading advertisement

Any manufacturer or service provider who causes a false or misleading advertisement to be made which is prejudicial to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

Suspension of license and Cancellation of license

The Consumer court has power to suspend the licence of manufacturers for sale, stores or sells or distributes any product which contain adulterant for first conviction and in case of second and subsequent conviction can cancel the license.

“I have not failed.
I've just found 10,000
ways that won't
work”

Thomas Edison

Thomas Edison

Embracing the New Law of Consumer Protection – A Huge Sigh of Relief for the Consumers



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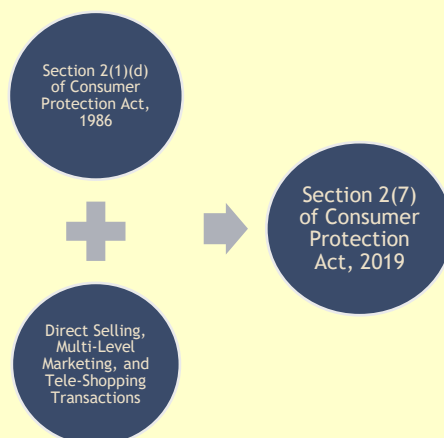
Introduction

The new Consumer Protection Act, 2019 has been brought with effect from July 20, 2020 with the earlier law, Consumer Protection Act, 1986 being repealed and replaced in full effect. With the internet age and the change in the way producers engage in marketing and advertisement of their products and services, the Government of India opined to bring in a fresh legislation and align itself with the current needs of the consumers.

This article aims to brief upon the salient features of the Consumer Protection Act, 2019, including the establishment of the Central Consumer Protection Authority (“CCPA”) to promote, protect and enforce the rights of the consumers.

Ambit of ‘Consumer’ Expanded

The Consumer Protection Act, 2019 has amended the definition of “consumer” by adding an explanation to **Section 2(7)**. This corresponds to Section 2(1)(d) of the erstwhile Consumer Protection Act, 1986. Here, the definition has been expanded to capture online transactions, tele-shopping, direct selling and multi-level marketing transactions. The status-quo of offline transactions remains along with online transactions. As explained above, the Government has made its intentions clear - to protect the vulnerable consumers in the wake of rapidly growing technology.



Introduction of Product Liability

The Consumer Protection Act, 2019 has brought in a new definition of “Product” under Section 2(33). The provision is reproduced herewith -

2(33) “Product” means any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid state possessing intrinsic value which is capable of delivery either as wholly assembled or as a component part and is produced for introduction to trade or commerce, but does not include human tissues, blood, blood products and organs;

With the intent to protect the consumers from spurious or adulterated goods, the Government has introduced the concept of 'product liability' in the new law. Here, product manufacturers, product service providers and product sellers are brought into the ambit and are made liable for punishment by a competent court for manufacture and/ or sale of spurious or adulterated goods.

Here, Section 2(34) should be read with Section 2(22). **Section 2(34)** defines **product liability** as - *“the responsibility of a 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;”*

The word 'harm' is introduced in Section 2(22) and it includes damage to any property, illness, death, personal injury, mental agony or emotional distress, or loss to consortium or services. However, the said provision will not attract if the said harm has been caused to product itself, or the property as a result of breach of warranty conditions or any commercial or economic loss.

Liabilities of Product Manufacturer and Product Service Provider

Under **Section 83** of the Consumer Protection Act, 2020, a **product liability action** may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.

Product Liability Manufacturer (Section 84)	Product Liability Service (Section 85)	Product Liability Seller (Section 86)
Manufacturing Defect or Design Defect	Faulty, Imperfect, Deficient, Inadequate Service in Quality, Nature, Manner of Performance	Exercised Control over Designing, Mfging, Testing, Packaging, Labelling, which caused Harm
Deviation was made from any Manufacturing Specifications	Omission, Commission, Negligence, or Conscious Withholding of Information which causes Harm	Altered or Modified the Product in a Substantial Way which caused the Harm
No Confirmation to Express Warranty	No Confirmation to Express Warranty	Product Sold by him and Identity of Manufacturer is Unknown
Failure to Provide Instructions of Correct Use or Warning of Improper Usage which causes any Harm	Non-Issuance of Warnings of Instructions to Prevent any Harm	Failure to Exercise Reasonable Care in Assembling, Inspecting or Maintaining Product or didn't pass warnings.

Under **Section 87** of the Act, there are however **exceptions to product liability action** which are briefly mentioned as follows:

1. If at the time of harm, the product was misused, altered or modified by the consumer.
2. For failure to provide adequate warnings or instructions, the following actions will not invoke Section 83:
 - a. Product was bought by employer for use in workplace and instructions were provided.
 - b. Product was sold as component or material for end product, and instructions were provided for said product, but harm was caused by use of end product.
 - c. Product was legally meant to be used and dispensed only by or under supervision of an expert and reasonable warnings were given.
 - d. Consumer was using product under influence of alcohol or a drug which was not prescribed by a medical practitioner.
3. The danger of using such product was common to consumer or such consumer which ought to have known after noting the features of the product.

Finally, any product liability action can be brought by the consumer against a product manufacturer, product service provider or product seller in the Consumer Court, unlike a civil court in the erstwhile law for which compensation may be provided.

Advertisement, Endorsements and Misleading Advertisement

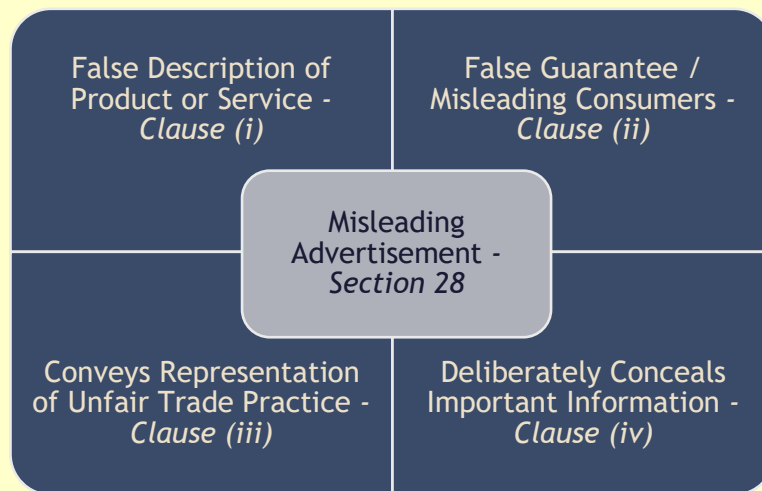
Unlike its predecessor 1986 Act, the 2019 Act has clearly provided a definition of **advertisement** under **Section 2(1)**. Here, advertisement is defined as *“any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents;”*

Under **Section 2(18)** of the Act, **endorsement**, in relation to an advertisement, means—

- (i) Any message, verbal statement, demonstration; or
- (ii) Depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or
- (iii) Depiction of the name or seal of any institution or organisation,

Which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement;”

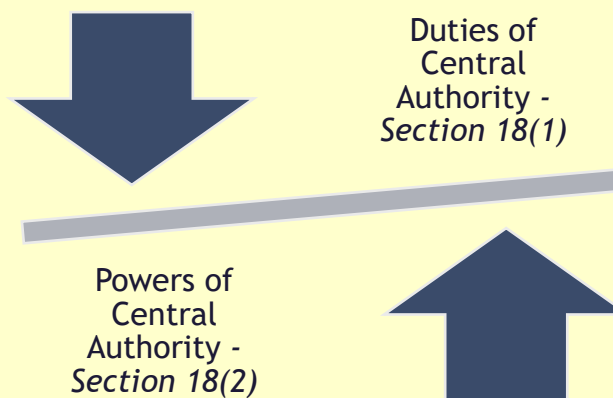
For the first time in the new law, the concept of ‘**misleading advertisement**’ has been introduced under **Section 2(28)** of the Act. A diagrammatic representation of the Clauses under Section 2(28) is shown below:



This was necessary as complaints on advertisements were made to Advertising Standards Council of India (“ASCI”) and by the time they took action, the advertisement already did its work.

Under Section 18(1) of the Act, the Central Authority shall have the following duties:

1. To protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights.
2. To prevent unfair trade practices and ensure that no person engages himself in unfair trade practices.
3. To ensure that no false or misleading advertisement is made of any goods or services.
4. To ensure that no person takes part in the publication of any advertisement which is false or misleading.



However, the duties of the **Central Authority** are counter-balanced with humongous **powers** enshrined under **Section 18(2)** of the Act. Their powers are stated below:

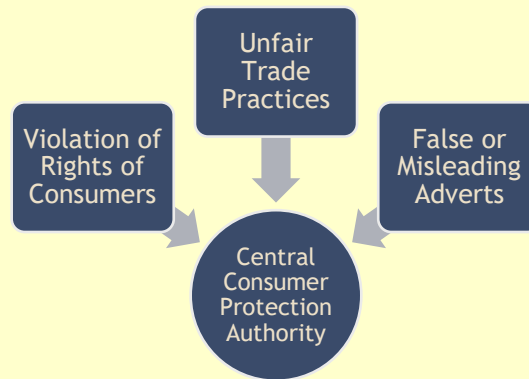
1. Inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either suo-motu or on a complaint received or on the directions from the Central Government.
2. File complaints before the District Commission, the State Commission or the National Commission.
3. Intervene in any proceedings before the District Commission or the State Commission or the National Commission.
4. Review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation.
5. Recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights.

6. Undertake and promote research in the field of consumer rights.
7. Spread and promote awareness on consumer rights.
8. Encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies.
9. Mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest.
10. Issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services.
11. Advise the Ministries and Departments on consumer welfare measures.
12. Issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.

Establishment of Central Consumer Protection Authority

There has been a long-standing demand from the consumers for the establishment of a central regulator under the consumer protection laws. Under **Section 10(1)** of the Consumer Protection Act, 2019 the Central Government has the power to establish the Central Consumer Protection Authority (“CCPA”).

The CCPA is empowered with several functions and duties which will help to protect the rights of the consumers from being violated, curb unfair trade practices and rope in producers for false or misleading advertisements.



Pecuniary Jurisdiction

The new law has revised the monetary limits for filing complaints based on pecuniary basis. Also, earlier, the cause of action dictated that the aggrieved customer must file the case at the jurisdiction of the manufacturer or service provider or seller. Under the new law, the case can be filed at the jurisdiction where the complainant resides or works. **Section 34** of the Act provides for **Jurisdiction of District Commission**.

The pecuniary jurisdiction under the old law vis-à-vis new law is tabled below:

Jurisdiction Level	Monetary Limits (Old Law)	Monetary Limits (New Law)
District Level	Up to Rs. 20 Lakhs	Up to Rs. 1 Crore
State Level	From Rs. 20 Lakhs to Rs. 1 Crore	From Rs. 1 Crore to Rs. 10 Crores

National Level	Above Rs. 1 Crore	Above Rs. 10 Crores
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Option of Settlement between Litigating Parties

In true pursuance of the spirit of de-clogging the Tribunals and Courts, our Government has brought the provisions of settlement by way of **reference to mediation** under **Section 37** of the Act. A case to District Commission moves to State Commission and then to National Commission and finally to the Supreme Court.

Under mediation, the District Commission can take consent of the parties for settlement by mediation and refer the matter to a **Consumer Mediation Cell** under **Section 74** for faster disposal and resolution of the pending consumer cases. But even when mediation does not produce the desired results, the parties can go back to District Commission or State Commission or National Commission.

Views and Opinions

Finally, the author would like to humbly present few personal opinions on the new Consumer Protection Act, 2019. They are mentioned as below:

1. Celebrities will now seek indemnity from product manufacturers or product service providers or product sellers in case of any possible litigation or suit from a consumer from endorsement of any product or service.
2. Since the ambit of the new law is expanded, there might be expansion in the District Commission and State Commission and these vacancies needs to be filled up quickly or effective and efficient implementation of the new law.
3. Onus is on the product manufacturers, product service providers and product seller as they cannot produce the “Buyer Beware” trump card any longer.
4. International e-Commerce companies being brought in the ambit could cause for interesting disputes with their home country and the Republic of India with respect to content published on the website.
5. Whether a consumer can also sue a fellow consumer of false publicity of word-of-mouth publicity which provided results contrary to what was publicised. If yes, the competent court authorised to deal with this issue.

References:

The Hindu: New Consumer Protection Act gives more power to consumers, experts say.

Disclaimer: The content of this article is intended to provide a general guide to the subject matter. Every effort has been made to keep the information cited in this article error-free. Suggestions and feedback to improve the task are welcome. The article and opinions therein are based on my understanding of the GST law and provisions prevailing as on date. The contents of this article are for information purposes only and does not constitute an advice or a legal opinion and are personal views of the author. The opinion may vary according to one’s interpretation of the law. It should not be relied upon as the sole basis for any decision which may affect you or your business.

3 Key Concepts under Consumer Protection Act 2019

Analytical Review with case law



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The Indian government has enacted Consumer Protection Act, 2019 ('Act' or 'Act 2019') which has come into force from July 20, 2020¹ (except few sections notified on July 23, 2020²) thereby repealing the erstwhile Consumer Protection Act 1986. The law was long overdue for change as India adopted its first consumer protection law in 1986 and ever since, has relied upon the same law, despite seeing the country liberalized in 1991. It also became more crucial with rising number of frauds, low quality product complaints, unfair trade practices being common in digital platforms, etc.

This article aims to present an outlook on the newly fangled concepts under the Consumer Protection Act 2019 as against its predecessor law - Consumer Protection Act 1986. The Act has brought such new concepts to cater to the modern era transactions which are taking place in the digital space too. The concepts are:

- 1) **Advertisement:** From being used only 4-5 times in the previous law, this word has found a whole new meaning and emphasis under the Act 2019 with a separate definition. It means *“any audio or visual publicity, representation, endorsement or pronouncement by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents”*.

The definition has been vaguely put down in order to cover all possible manners in which any goods or services can be advertised in the modern era of transactions (including wall graffiti's as indicated by use of words like smoke, gas, paint, etc.). While the attempt of the draftsmen was evidently to ensure that advertisement of any sort be covered in this definition, they have, in my opinion, failed to connect the dots properly. Use of words like publicity, representation, endorsement, pronouncement, etc. without allotting them proper meaning under the Act makes this definition incomplete and open to interpretational issues. It will be interesting to see in case of goods, which are manufactured and produced by chain of manufacturers and then sold / distributed by various vendors, who shall be the person held responsible for endorsement or representation, when marketing or publicity function is performed at almost each level of sale viz. manufacturer to distributor to traders to retailers. In case of services too, whether a social media platform advertising any services can be held for endorsement of services, in case of default by the service provider. Section 89 states imprisonment for a term of 2-5 years and fine up to 50 lakhs, upon manufacturers and service providers, for false or misleading advertisements. Further Section 21 gives Central Consumer Protection Authority (CCPA) powers to investigate and impose penalty on advertiser, publisher, endorser, and trader also. The provisions seem to strictly impose liability on such persons unless they prove they acted with due diligence and do not have any knowledge of orders passed by CCPA in that regard. This term alone shall bring into place awareness for the endorsers or advertisers as it will be their liability too if advertisement is found to be false or misleading.

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

² <https://consumeraffairs.nic.in/sites/default/files/Provisions%20of%20Act%20comes%20into%20force.pdf>

Will the small shopkeepers or big super stores be able to put up brand endorsements at their places? What will happen to the big hoarding of fairness creams or lifestyle products? With the new Act rolling down from 20/07/2020, we shall wait and watch to find our answers.

2) Product Liability: It means *“the responsibility of a 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”*.

This provision was very much the need of the hour amidst the rising unscrupulous practices of producing low quality products or production without express check points of safety and instructions for use. Very often, we have witnessed products using similar or identical design, name, packaging pattern/styles, logo, colors, etc. for boosting their sales upon the credibility of trusted brands existing in market without providing the required quality for such products. For service providers too, unwarranted commitments, false hopes or misleading assurances for their services has become so routine in nature that they never bothered to take consumers seriously for deficiency in their services or negligence in performing them. This went unchecked mostly under the previous law due to lack of statutory provisions, except in certain leading cases like **Coca-Cola India Limited vs Dr. Amarjit Singh (Aug 9, 2011)**, wherein **National Consumer Dispute Redressal Commission** ordered Coca-Cola to pay 2 lakh for its deficiency in services and committing unfair trade practice. Thus, it will be interesting to witness surge of consumer movement now in India. Consumer movement can be linked with the breakthrough judgment in **Carlill v. Carbolic Smoke Ball Company 1893 (1) Q.B. 256** in which manufacturers' liability for minimum quality standard for product was established for the first time, leading to consumer movement in Britain after World War-II. This was followed by consumer movement in the United States of America when the New York Court of Appeal in **Donald C. MacPherson v. Buick Motor Company 217 N.Y. 382, 111 N.E. 1050**, ordered a car manufacturer to compensate its customer who suffered injury due to collapse of wheels due to defect in car. Thereafter, it was a matter of time that such awareness movements picked up pace and gradually India adopted its Consumer Protection Act, 1986 in the aftermath of such movements.

With the Act 2019, product liability has gained the statutory backing it lacked. However, it's important to note that product liability must be established by consumers through “harm” caused to them. Thus, consumers must be equally cautious as they will carry the onus to prove any product liability action. If they do not become aware about their responsibility towards product liability claims, the inclusion of this concept shall be rendered futile in long run. Harm in relation to product liability has also been defined under the Act as an inclusive definition to include any damage to any property (other than damage to product or damage caused due to breach of warranty or commercial or economic loss, etc.) or personal injury, illness or death; or mental agony or emotional distress because of damage to property or personal injury, illness or death. Here again, the consumers are bestowed with responsibility to prove the nature of harm caused to them. Undoubtedly the definition of harm is quite broad, but the exemption provided against this phrase have equally been left open ended, thereby giving scope to litigations.

In cases where product liability is involved, consumers shall be entitled to claim compensation as “product liability action” before the respective forum under this Act upon grounds of defect or deficiency. The strict part is that the product manufacturer, unless covered under the exemptions laid in Section 87, shall be held liable in product liability action, even when he is able to show cause that he did not act negligently or fraudulently. Therefore, the Act emphasizes

on the need for product manufacturers to be more precise in what they produce. Besides that, a product seller (not being product manufacturer) shall also be liable for product liability action, unless he specifically proves his ground of defense. *Be that as it may, the provisions for product liability action only provides for compensation to consumers suffering harm, which means that the provisions which appear so sharp in books, cannot be trusted to also have real teeth for its execution in practical world.*

3) Mediation: It means “the process by which a mediator mediates the consumer disputes”.

As short as it is, the definition, being introduced for the first time in the Act 2019 (as against Consumer Protection Act 1986) does not dwell into the depth of what the term stands for. It simply specifies it to be a process to resolve consumer disputes. Section 79 though seem to describe this process as it states that a mediator shall have regard to the rights and obligations of the parties, the usages of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary and shall be guided by the principles of natural justice while carrying out mediation. This means that the mediator shall have very selected powers and can operate in the above-mentioned boundary lines except for the situations, wherein he can, for the purpose of securing natural justice follow the constitutional provisions too (Article 14 and 21 primarily).

Mediation processes in general has always been regarded to as a method for settlement of disputes in an amicable manner, without following the legal procedure for the same. Mediation as the term goes, aims to arrive at a middle way, where both parties to dispute agree to put down their guard against each other and agree to some common terms, thereby calling it a win-win situation. While every consumer dispute may be referred to mediation by the respective Commission at the first hearing or thereafter at any stage, certain **restricted matters for mediation** have been listed in Mediation Rules³ under the Act 2019, which are:

1. The matters relating to proceedings in respect of medical negligence resulting in grievous injury or death.
2. Matters which relate to defaults or offences for which applications for compounding of offences have been made by one or more parties.
3. Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion.
4. Cases relating to prosecution for criminal and non-compoundable offences.
5. cases which involve public interest or the interest of numerous persons who are not parties before the Commission

Apart from the above matters, the respective Commission has its discretionary power to disallow any other matter from being referred to mediation process, if the respective Commission is of the opinion that the dispute is of such nature, which cannot be resolved through mediation due to absence of elements of settlement or where due to the circumstances or position of the parties, mediation looks inappropriate.

Under the Act 2019, inclusion of mediation process can be a double headed sword, which we shall have to wait and see, whether slices the dispute numbers or bites back at the system itself, as set-up under the Act. The reasons to be unpredictable about the results of this method are simple, first of which is the developing Arbitration and Conciliation

³ <https://consumeraffairs.nic.in/sites/default/files/Mediation%20Rules.pdf>

Act, 1996 (A&C Act). The A&C Act, despite being enacted in 1996 can easily be placed to be in its nascent stage with its major amendments coming in 2015 and 2019 respectively, after which it has gained some muscle. It is quite broadly observed that arbitral awards often end up being challenged in the courts, thereby making the entire process a mockery. Given the strong determination India Inc. has shown, in accepting the amendments to A&C Act in 2015 and 2019, it is a split chance for the mediation process under the Act 2019 to succeed or fail.

Conclusion: The repealing law of consumer protection has come too late in the country given the consumer movement history above. India began its liberalization in 1991 when it opened itself for the global economies and it was pertinent to adopt stricter measures since then to have a robust consumer protection framework in the country. Better late than never, we have our improvised law and it contains the required protection against the digital era of transactions. Though in this dynamic and technological based world, we cannot sit back and hold on from making any further developments to this law. In my opinion, as we proceed to roll out this law, the authorities should constantly work to develop it to cater to wider needs. Very significantly, with concepts of advertisement, product *liability becoming reality now, the old standing rule of “Caveat Emptor” meaning “let the buyer be aware” changes to “Caveat Venditor” meaning “let the seller be aware”*.

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Consumer Protection Act and Role of Professionals - Legal and Regulatory Framework



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Synopsis

The article explains the universal rights and responsibilities of the consumer and important provisions of Consumer Protection Act, 1986, and makes a few suggestions for the benefit of society.

“Customer is the most important visitor to our premises. He is not an interruption on our work. He is the purpose of it. We are not doing him a favour by serving him. He is doing a favour by giving us an opportunity to do so.” - Mahatma Gandhi

Introduction

Consumer is the king because it is he who gives value to the products and services. Products and services have no value in the market, unless purchased by consumers. As such over the world, in recognition of the value of consumers, every year March 15 is celebrated as the “Consumers Right Day”. In India, December 24 is celebrated as the ‘National Consumer Day’ when the Consumer Protection Bill was passed by the Parliament and got the President’s assent. The article explains the universal rights and responsibilities of the consumer and important provisions of Consumer Protection Act, 1986 and recent amendments in 2019, and makes a few suggestions for the benefit of society.

Consumers’ Rights and Responsibilities

The universal rights of consumer are:

- a. The right to information - to know the title, quality, quantity, potency, purity, standard, weight, fitness for the requirement, meeting the description/sample, repair and spares, and price of goods and services being paid for, to prevent unfair trade practices.
- b. Right to safety - to be protected against sale of spurious or hazardous goods and services.
- c. The right to choose - to be assured, whenever possible access to a variety of goods and services at competitive prices.
- d. The right to be heard - to be heard and be assured that consumers interest will receive due consideration at appropriate forum.
- e. The right to seek redressal - to seek legal redressal against unfair or restricted practices or exploitation.
- f. The right to consumer education - to have access to consumer education.

The responsibilities of consumer are:

1. Obtain proper receipt/cash memo for purchases made and guarantee/warranty card duly stamped and signed by the seller, wherever applicable to prove status as consumer.
2. Obtain full information regarding quality, maximum retail price, guarantee, warrantee and after- sale services before making any purchases.
3. Read terms and conditions carefully. There is difference between guarantee and warrantee. In case of guarantee, a consumer has the right to get replacement or money back if the product or service is defective or deficient. On the other hand, in case of warrantee, consider the right to get the defective parts repaired.
4. Be careful, about false and/or misleading advertisement offering discounts and free gifts.
5. Purchase goods having quality marks like ISI, Agmark etc., as, and where available for safety and quality.
6. Raise voice against defective goods and deficient services and make complaint to seller/manufacturer/dispute redressal machinery.

Important Consumer Protection Laws

The Consumer Protection Act, 1986

The Consumer Protection Act, 1986, is one of the most important landmarks in social welfare legislations in the area of consumer protection movement in the country. The Act covers all sectors - public, private and cooperative sectors.

The seminal Act provides for better protection of the interests of consumers in respect of all goods and services, excluding goods for resale or for commercial purposes and services rendered free of charge and under a contract for personal services. The provisions of the Act are compensatory in nature.

What are the subject matters of complaint?

The consumer can approach Consumer Disputes Redressal Forum against sale of defective or hazardous goods or deficient services or adoption of unfair and restrictive trade practices

Who can file complaint?

Complaint can be filed by any consumer (his legal representative in case of his death), voluntary consumer association, Central/State Government and one or more consumers having same consumer interest.

How to file a complaint?

A complaint can be filed on plain paper duly signed by a consumer clearly explaining the following particulars:

- Particulars of consumer and opposite party.
- Details of the goods/services purchased with proof; and
- Defects/deficiencies in goods/services; and
- Reliefs sought.

Where to file the complaint?

The complaint can be filed where the cause of action has arisen or where the opposite party works or resides.

What are the reliefs available?

The Act provides following reliefs:

- ✓ Removal of defective/deficiencies from the goods and services.
- ✓ Replacement of the goods.
- ✓ Refund of price paid.
- ✓ Award of compensation/costs for loss or injury suffered.
- ✓ Discontinuation of unfair and restrictive trade practices.
- ✓ Corrective advertisement to neutralize the effect of misleading advertisement.

What is the time limit for settlement of dispute?

The Act mandates settlement of all cases within 90 to 150 days and award of punitive damages in appropriate circumstances.

Appraise of the function of the Act

(a) Ineffective implementation of the Consumer Protection Act

The Consumer Protection Act, the Magna Carta of consumer rights, which lays down that all cases would be settled in 90-150 days, remains on paper. The official estimates reveal the interesting but conceals the vital aspect. Out of the cases filed so far, the rate of settlement of cases is 91% in the District Forums, 80% in the State Commission and 97% in the National Commission. However, what is concealed is that within the mandatory time limit the settlement of cases was only 46% cases in the Consumer Forum and 38% in the State Commission. The pending cases as per the NCDRC record are as under:

The Consumer Forums, conceived as dedicated and speedier alternative to civil courts, are ineffective due to backlog of cases and there are inadequate judges and staff besides woeful infrastructure. The experience of the functioning of District Forums, State Commissions and the National Commission under the Consumer Protection Act, 1986 is dismal.

The Forums and Commissions have powers of civil courts, but they rarely exercise. As a result, their orders are routinely ignored by defaulters and consumers face enormous difficulties in implementation of the orders.

The Centre and States blame each other for the ineffective functioning of consumer forums. According to states the Consumer Protection Act being the Central Act, the Centre does not provide adequate funds to run the consumer forums. The Centre, on the other hand, points out that 'consumer affairs' is a state subject. It gives grants, but the states neither use these properly nor supplement the grants with their own funds.

Besides poor infrastructure, the remuneration of judges and members is rather low to attract competent persons to work with commitment. As a result, there are large number of vacancies for judges and members in Consumer Forums/Commissions.

In most cases the chairman of the Forums and Commission approach consumer complaints with a legal mindset. Consequently, advocates dominate the proceedings at the Forum and Commission and complicate the issues with legal technicalities and procedures.

The consumer satisfaction level is low due to delays in deciding the cases and difficulties in implementation of the orders. In the present state of affairs, justice delayed and denied.

The Consumer Protection Act, 2019

The Consumer Protection Act, 2019 passed by the Parliament in 2019, will come into effect from, July 20, 2020. The new law aims at further protecting the interest of consumers and strengthening the mandate of consumer courts to act against errant manufacturers, distributors, and sellers. The law will allow consumers to file complaints related to services or products at the consumer courts based in their district or state. Earlier, the consumer could file the complaint only at the court under whose jurisdiction the seller or manufacturer falls. The Act increases the amount of compensation for consumers, while also making the punishment for errant sellers and producers more stringent. Other main features of The Consumer Protection Act, 2019 includes renaming the District forum as District Commission; The Opposite Party needs to deposit 50% of the amount ordered by the District Commission before filing an appeal before the State Commission, earlier the ceiling was maximum of Rs. 25,000/-, which has been removed; The limitation period for filing of an appeal to the State Commission is increased from 30 days to 45 days while retaining the power to condone the delay. Further, mediation is given statutory status by way of the introduction of Section 74 in the new Act.

Consumer Protection (Mediation) Regulations, 2020,

The National Consumer Disputes Redressal Commission (NCDRC) has notified the Consumer Protection (Mediation) Regulations, 2020, which shall come into force on the date of their publication in the Official Gazette 24/07/2020. The Regulations provide for a mediation cell comprising a panel of mediators on the recommendation of a selection committee consisting of the President and a member of that Commission for matters relating to consumer disputes.

The Regulations also include criteria for eligibility and disqualifications for empanelment as a mediator, which include any experts or other professionals with at least fifteen years of experience or a person having experience of at least five years in mediation or conciliation. As per the Regulations, the mediation shall be conducted in the presence of the parties or their authorized representatives or counsel. The Regulations aims at facilitating a voluntary resolution of the disputes between the parties, assist them in removing the misunderstandings, if any, and generating options to resolve their disputes, but shall not impose any term or any settlement upon the parties. The mediator should explain the terms of the agreement, to the parties, before obtaining their respective signatures on it.

Suggestions

Following suggestions deserve careful consideration for consumer protection:

1. The Government should improve the functioning of the consumer forums by enhancing financial assistance to the States and union territories for creation and augmentation of their infrastructure, including new buildings and provision of furniture, office equipment etc. for better working of the forums. There is urgent need for adequate infrastructure, judges and staff to handle the complaints. For this, there should be a clearly defined formula to determine the requirements of funds for efficient working of Forums and Commissions and equal contribution between the Centre and the states. Moreover, the Centre can use the Consumer Welfare Funds, having Rs.130 crore, for paying salaries to the members of the Forums and Commissions.

2. The jurisdiction of forum in case of online shoppers should be the consumer's home where the price is paid by credit card and where goods are delivered.
3. There should be a provision for on-line filing of complaints to reduce delay.
4. Computerize all the forums throughout the country under the `Computerization and Computer Networking of Consumer Forums in Country (CONFONET) for better, transparent and easier functioning to protect consumers from all forms of exploitation.
5. Develop "Consumer Awareness Index" to measure the growth of consumer awareness and "Consumer Satisfaction Index" to assess the impact of the consumer protection laws.
6. The CPA should achieve the intended object of a simple, yet powerful tool against unscrupulous elements empower the masses by providing the speedy and simple redressal of consumer disputes. All consumer cases should be decided within 90 to 150 days and in case of delay, reasons should be recorded in the order.

Conclusion

Gone are the days of `Caveat emptor - let the buyer beware' when consumer was responsible for protecting his interest by prudently negotiating the deal. In olden days the products were less sophisticated and could be inspected and tested before purchase. With globalization, international trade and commerce offers increasing number of new goods and services, involving high level of technology and sophistication about which the consumer knows little. The modern goods and services have been posing great challenges to the consumers in identifying right quality of products and services to meet his requirement. Consequently, the scope for defrauding the innocent consumer is also on the rise.

The company should keep the customer's interest at the helm of affairs. The company's policy should be consumer-centric by offering not only what the consumer needs but the product or service should create significant value for the user. It is the social responsibility of the business to put the customer at the central stage in their policies and management system. There is need for a paradigm shift in marketing strategy. The real challenge for marketing and brand building is how to add value to the products and service to win the patronage of the consumer.

In the present scenario, it is even more important that the consumer should become aware of and vigilant in asserting his rights. He should buy goods of the desired quality, weighed correctly and containing the correct quality at the right price.

The provisions of the 2019 amendment in the Act strengthen and improve the provisions of investor protection by speedy resolution of disputes and punishment to those indulging in unfair practices. In this context, the role of government, professionals and NGOs become important because common consumers lack knowledge, technicalities, and efforts to follow the legal remedies. As such. Professionals, with their training, excellence, and professionalism, can play an important role in strengthening the consumer-corporate dynamics equilibrium. In their interaction with the corporate sector in professional capacity, they can make it clear the difference between "profit as a yardstick of efficiency" and `profiteering as tool of exploitation of consumers'.



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SARFAESI - CAN COOPERATIVE BANKS USE IT?

CONSTITUTION BENCH OF SUPREME COURT IN PANDURANG GANPATI CHAUGULE V. VISHWASRAO PATIL MURGUD SAHAKARI BANK LTD. ANSWERS

With a predicted widespread downturn in the economy, one can expect that many banks to be looking to utilize all the instruments they have at their disposal for recovery of money from their borrowers. One important statutory mechanism available to the banks is the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).

However, the question has repeatedly been raised as to whether Cooperative Banks can also exercise this option. This question, while seemingly technical, is nestled within a larger constitutional question of which legislature, in our federal structure, is competent to legislate upon this issue and hence had to be resolved by nothing less than a Constitutional Bench of the Supreme Court in *Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Ltd.* in its judgment delivered on 5th May 2020. This arose in the context of the fact that while the legislative competence on the field of “Banking” lies with the Parliament by virtue of Entry 45, in List I (Union List) of the Seventh Schedule to the Constitution, the field of “cooperative societies” is within the realm of state legislatures by virtue of Entry 32 in List II (State List) of the said schedule.

It would appear surprising that the question has arisen so late, considering that cooperative banks had been brought within the ambit of SARFAESI seventeen years ago *vide* notification dated 28.01.2003. However, the contextual understanding of the terms “bank”, “cooperative bank”, and other related terms threw up the present conundrum.

BRIEF BACKGROUND

While the definition of these terms is central to the SARFAESI, there are some other legislations which influence the definition and its implications. Recovery of Debts Due to Banks and Financial Institutions Act, 1993, now renamed as The Recovery of Debts and Bankruptcy Act, 1993 is an important statute in this regard. Section 17 of the RDDBFI Act creates the debt recovery tribunal which is conferred authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. Section 18 of the said Act provides that “no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17.”

Hence, if Cooperative Banks were to be termed as banking companies, as defined under Section 5 of the Banking Regulation Act, 1949, they would not be entitled to initiate proceedings under the Cooperative Societies Acts passed by the respective state governments. The Supreme Court in *Greater Bombay Coop. Bank Ltd v. United Yarn Tex (P) Ltd.* had held that Cooperative Banks under the respective state legislations do not fall within the ambit of Banking Company as defined under Section 5 of the Banking Regulation Act, 1949 and as such do not fall within the RDDBFI Act. To counteract this, the Parliament passed the the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2004, inserting Cooperative Societies and Multi State Cooperative societies in the Banking Regulation Act with retrospective effect from 1966.

It is on this basis that the question is raised as to whether the provisions of SARFAESI would apply to cooperative banks.

It was argued on behalf of the appellants, being borrowers of various cooperative banks as follows: -

1. A bank is an entity which carries on a core banking activity.
2. Even if a bank is involved in other activities apart from core banking activity, it is a bank.
3. Only state legislatures have competence to legislate upon cooperative societies.
4. Securitization as relating to SARFAESI is not a core banking activity. To legislate upon securitization capability of cooperative societies is beyond competence of parliament as it does not even fall within the definition of banking.

On behalf of the respondent banks it was argued as follows: -

1. Definition of Bank under Banking regulation act as amended stands incorporated in SARFAESI by reference.
2. If there is a conflict between the Union List and State List, if it cannot be reconciled, the Union List will prevail, and Parliament is deemed to have competence.
3. SARFAESI is a step towards recovery of loans and hence is a core banking activity.

The Court examined the definitions of the terms above mentioned at length. The Court with reference to several decisions pertaining to SARFAESI held that “We find that ‘banking’ relating to co-operatives can be included within the purview of Entry 45 of List I, and it cannot be said to be over inclusion to cover provisions of recovery by co-operative banks in the SARFAESI Act. It cannot be said to be over-inclusion on the anvil of the principles laid down by this Court”.

It would naturally follow that the banking activity under SARFAESI is within the ambit of list I. Thus, the Parliament is competent to legislate on the same and Cooperative Banks do fall within the ambit of SARFAESI.





BRAINY BITS...



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Question of the month: XYZ Private Limited is proposed to issue a preference shares to their technology consultant against the consideration other than cash at par value of Rs.10/- i.e. without any premium. Now the company has question that whether they need to get the Valuation Report from the Registered Valuer for this allotment, if yes whether the valuation has to be for the shares, or for the services that the consultant had given the company, or both.

Please send your answers to, newsletter.icsimysore@gmail.com along with your name, qualification and designation. Name of the person with most appropriate answer with reasoning, shall be published in the next edition of eMagazine.



Regulatory Updates



Compiled by:

Matruka B M

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Companies Act, 2013

Updates on Amended Rules

MCA has amended Companies (Indian Accounting Standards) Rules, 2015, which shall be known as Companies (Indian Accounting Standards) Amendment Rules, 2020.

In Indian Accounting standard (Ind AS) 103, for paragraph 3, following shall be substituted;

“An entity shall determine whether a transaction or other event is a business combination by applying the definition in this Ind AS, which requires that the assets acquired and liabilities assumed constitute a business. If the assets acquired are not a business, the reporting entity shall account for the transaction or other event as an asset acquisition. Paragraphs B5-B12D provide guidance on identifying a business combination and the definition of a business.”

The new rule has given clear definition for the term “Business”, An integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing goods or services to customers, generating investment income (such as dividends or interest) or generating other income from ordinary activities.

The rule has introduced the concept of Optional test to identify concentration of fair value. This facilitates a simplified assessment of whether an acquired set of activities and assets is not a business. Application of this test is not mandatory to the company.

The concentration test has the following consequences:

- a) if the concentration test is met, the set of activities and assets is determined not to be a business and no further assessment is needed;
- b) If the concentration test is not met, or if the entity elects not to apply the test, the entity shall then perform the assessment set out in paragraphs B8-B12D.

The concentration test is met if substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets.

In Indian Accounting Standard (Ind AS) 107, after paragraph 24G, the following shall be inserted,

“Uncertainty arising from interest rate benchmark reform

24H For hedging relationships to which an entity applies the exceptions set out in paragraphs 6.8.4-6.8.12 of Ind AS 109, an entity shall disclose-

- a) The significant interest rate benchmarks to which the entity’s hedging relationships are exposed;
- b) The extent of the risk exposure the entity manages that is directly affected by the interest rate benchmark reform;
- c) How the entity is managing the process to transition to alternative benchmark rates;
- d) A description of significant assumptions or judgements the entity made in applying these paragraphs (for example, assumptions or judgements about when the uncertainty arising from interest rate benchmark reform is no longer present with respect to the timing and the amount of the interest rate benchmark-based cash flows); and
- e) The nominal amount of the hedging instruments in those hedging relationships.

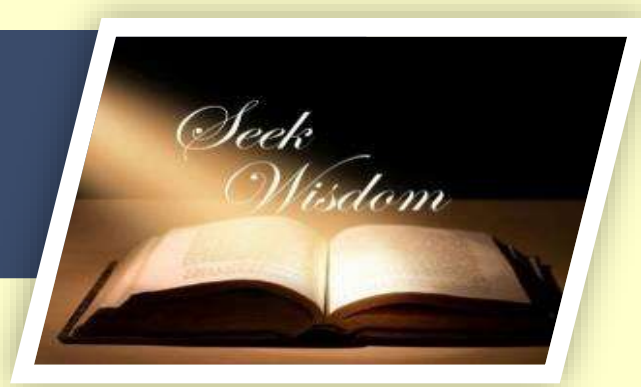
In Indian Accounting Standard (Ind AS) 109,

The following shall be inserted after paragraph 6.7.4,

–6.8 Temporary exceptions from applying specific hedge accounting requirements 6.8.1 An entity shall apply paragraphs 6.8.4-6.8.12 and paragraphs 7.1.8 and 7.2.26(d) to all hedging relationships directly affected by interest rate benchmark reform. These paragraphs apply only to such hedging relationships. A hedging relationship is directly affected by interest rate benchmark reform only if the reform gives rise to uncertainties about-

- a) the interest rate benchmark (contractually or non-contractually specified) designated as a hedged risk; and/or
 - b) the timing or the amount of interest rate benchmark-based cash flows of the hedged item or of the hedging instrument.
- Companies**
- c) **(Indian Accounting Standards) Amendment Rules, 2020, dated 24th July, 2020.**





Questions are from old ICSI question paper answers are compiled and guidance in nature to help students

Que. 1: Can subsidiary company hold shares of holding company?

"A body corporate cannot be a member of a company which is its holding company and any allotment or transfer of shares in a company to its subsidiary shall be void." Explain the statement and comment on the exception to the said general clause.

Vayu Ltd. holds more than 50% of nominal value of the equity capital of Stream Ltd. In these circumstances, Stream Ltd. wants to become a member of Vayu Ltd. Can Stream Ltd. do so? Discuss the rights of the said subsidiary in such a case.

Ans: Subsidiary company not to hold shares in its holding company [Section 19]: Subsidiary company shall not either by itself or through its nominees hold shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Therefore, no company shall hold any interest in its holding company.

Exceptions: In following circumstances, a subsidiary can hold the shares of its holding company:

1. Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company.
2. Where the subsidiary company holds such shares as a trustee.
3. Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company

However, the subsidiary company referred above shall have voting right only in respect of the shares held by it as a legal representative or as a trustee.

Que. 2: Mahesh is a creditor of an unlimited company. The company was wound-up. Mahesh, therefore, wants to sue the members of the company to recover the dues. Advise Mahesh regarding the remedy available to him.

Ans.: As per Section 2(92), unlimited company means a company not having any limit on the liability of its members. Thus, the maximum liability of the member of such a company, in the event of its being wound up, might stretch up to the full extent of their assets to meet the obligations of the company by contributing to its assets.

The members of an unlimited company are not liable directly to the creditors of the company. The liability of the members is only towards the company and in the event of its being wound up only the liquidator can ask the members to contribute to the assets of the company which will be used in the discharge of the debts of the company.

Thus, Mahesh cannot directly sue the members of the company for recovery of his dues. He can file a claim to the liquidator of the company.



Living Room...

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THE CORON ERA....

Humanity indoors wondering what's in store,
Animals and birds now in city; were deprived of equity,
There's social distance while life's still in existence,
There's nothing but silence, while the Nature restores its balance.

Make this down-time the best-time,
Enhance your skill, that's definitely the way uphill,
It's time for introspection to measure our deflection,
From what we dreamt to what we are at present.

The 'new normal' as it's called, has the economy stalled,
But we have to live on, for now or later, it will be gone,
Hygiene is no rocket science and not worthy of defiance,
If one takes care of oneself, the world takes care of itself.

While getting back to routine amidst this pandemic nineteen,
We ought to be responsible and nothing is impossible,
Reduce carbon footprint on the lines of lockdown blueprint,
Our sustainable living should be our thanksgiving!!

Consumer Protection Act, 2019 – Branched out to all corners



Mr. Anil Kumar B

CS (Final)

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The Consumer Protection Act, 2019 gained its assent by The President of India on 09.08.2019. The act has been formulated to protect the rights and interests of the Consumer and to provide most effective and timely administration in dealing and settlement of consumer disputes and other matters related to it.

The earlier act i.e. The Consumer Protection Act, 1986 was made to prevent and protect the consumer from the problems and disputes of the then consumer market. But the market is seldom stable. It changes from time to time, bringing more types of disputes. This made the 1986 Act, unable to meet the challenges of the ever evolving and sophisticated market. Thus, instead of making amendments in the 1986 Act, The Government has altogether introduced a new act to deal with the modern consumer disputes. The new act has taken into consideration of the evolution of the Marketing Sector such as the boom of E-Commerce Industry and also laid its cover on the modern ways of purchasing and selling of goods and services such as online sales, multi-level marketing, telemarketing etc.

What's new?

The major reform of the new act starts with amending the definition of the terms “Consumer” and “Unfair Trade Practice”. The 2019 Act provided a comprehensive definition of the term “Consumer” by covering the E commerce business within its purview and as far as Unfair Trade Practice definition is concerned; now it includes aspects of misleading advertisements in online, customer privacy, not entertaining return of defective products, disputes relating to refund of amount paid etc.

Unfair Contract

The 2019 Act also introduced the concept of “Unfair Contract”, where the contract benefits the manufacturer or trader or service provider against the interests of the Consumer which includes,

- Excessive security deposits to be given by consumer for performance of the contract; or
- Imposing penalty on the Consumer for breach of contract thereof which is entirely disproportionate to the loss occurred due to such breach to the other party of the contract; or
- Refusing to accept early repayment of debt on payment of applicable penalty
- Entitling a party to the contract, to terminate such contract unilaterally, without reasonable cause; or
- Permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer; without his consent; or
- Imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage.

Highlights

Establishment of Central Consumer Protection Authority (CCPA)

The new act has introduced “Central consumer Protection Authority” known as Central Authority to protect the interest of the Consumer against unfair trade practices. The Central Authority has an investigative wing headed by a Director-General for the purpose of enquiry and to act against the violations of consumer rights. Its’ powers also include search and seizure.

It also has power to act against false and misleading advertisements as well as on the person who endorsed such advertisements. Thus now, CCPA has under its purview to act against celebrities who endorse false and misleading advertisements without carrying out any due diligence before participating. The CCPA imposes on the manufacturer or the endorser for false misleading advertisement up to Rs. 10 Lakhs for first contravention and up to Rs. 50 lakhs upon subsequent contravention and may be sentenced to jail for up to 2 years. And, may prohibit the endorser to endorse such misleading advertisements for a period extending up to 1 year on first violation and up to 3 years upon subsequent violation.

Product Liability

The new act introduces the concept of “Product Liability”. It means product liability action can be taken by a complainant for any harm caused by a defective product manufactured by the product manufacturer or serviced by a product service provider and the Product Seller. For this purpose, a Product Seller is not the manufacturer, or the service provider, he means a seller who places the product in the market for sale purpose (may be a brand owner). Under this concept, the product manufacturers, service providers and product seller are liable on certain grounds such as:

- The product has a manufacturing defect or a defective design
- There is deviation from the manufacturing specifications
- Non-conformance of express warranty
- The product fails to contain adequate instructions of usage to prevent harm or incorrect usage
- The act of omission and commission or negligence or conscious withholding of any information which can cause harm
- The product seller has modified or altered the product which is substantial factor in causing harm
- Where the product is sold by the product seller and the identity of the manufacturer is not known
- Where the product seller has failed to take reasonable care in assembling, inspection or maintaining of such product and such failure is the main cause of harm.

There are also certain exceptions enumerated under the new act to not be liable from Product liability actions such as where the product is misused or altered or modified by the consumer, then the product seller shall not be liable.

Enhancement of Pecuniary Jurisdiction of Consumer Dispute Redressal Commissions

Like in the earlier act, there are three commissions under Consumer Dispute Redressal Commissions i.e. District Commission, State Commission and National Commission where they have given their respective pecuniary jurisdiction limits (value of the consumer complaint) in which they entertain consumer disputes. The new act has enhanced such jurisdiction limits far more than the earlier limits as shown below:

S. No	Type of Commission	Jurisdiction limit (Rs.)
1.	District Commission	Not more than One (1) Crore
2.	State Commission	More than One (1) Crore but not more than Ten (10) Crores
3.	National Commission	More than Ten (10) Crores

Alternate Dispute Resolution - Mediation

As there are more and more cases being pending under the Consumer Courts, to reduce the burden, the new act provides “Mediation” as Alternate Dispute Resolution. In this, the mediator shall settle the consumer dispute by reaching an agreement between the parties. Every consumer redressal commission in District, State and National shall be attached with consumer mediation cells. The mediator prepares a report of the settlement and forwards the same to the concerned commission. Through this “Mediation” the dispute adjudication will be simpler and quicker.

E-Filing of Complaints

Another breakthrough of the new act is, enabling the consumer to file complaints electronically. Earlier, the consumer who wishes to file a complaint must file it at the place of work of the opposite party. The act also introduced hearing and examining of parties through Video Conference. This reduces a lot of inconvenience to the parties.

E-Commerce transactions

As stated earlier, the new act widened the definition of the term “Consumer” by including e-commerce transactions into it. In the modern consumer market, majority of the consumer complaints are pertaining to the e-commerce transactions. In these online transactions, the consumer is not aware of the manufacturer of the product or the service provider, thus many disputes arise as receiving of defective product and failing to take back the defective product by the seller, failed to get refund amount or increase in the refund processing time than the stipulated time, etc. By including the online business into the definition of consumer, the act brought in all the e-commerce transactions under its ambit.

Conclusion

The new Consumer Protection Act, 2019 is of this era. The businessmen and the e-retailers who are consumer driven are now should keep in mind the stringent legal liabilities and policies that are in favour of the consumer and should place strict consumer redressal policies in the workplace. In this age of digitization, the new act protects the rights and interests of the consumer for a foreseeable future. But, the market changes from time to time and as said, it is seldom stable. The act must be amended from time to time to be in line with the evolution of the consumer market and the consumer interests.



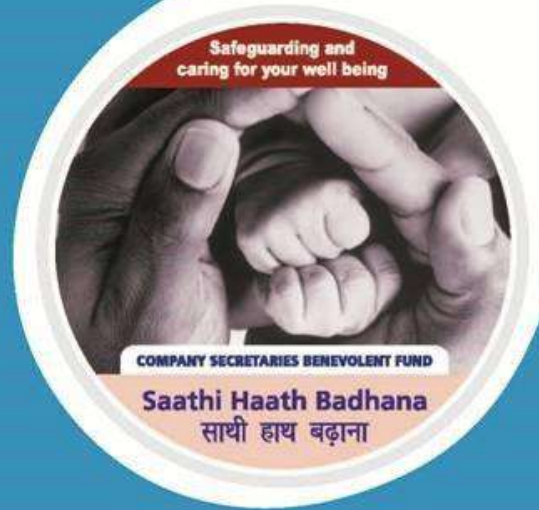
**THE INSTITUTE OF
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Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

CSBF

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BENEVOLENT FUND**



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The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

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2

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3

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