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EMPTOR TO CAVEAT VENDITOR" IN INDIA

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CONSUMER PROTECTION ACT, 2019: PARADIGM SHIFT FROM “CAVEAT EMPTOR TO CAVEAT VENDITOR” IN INDIA

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Abstract

The main aim of the paper is to bring out a comprehensive and comparative analysis of the provisions of the new enactment Consumer Protection Act, 2019 which is replacing more than three-decade old enactment Consumer Protection Act, 1986 in India. The author has adopted a doctrinal, descriptive & comparative analysis throughout the study for the said enactment where in more emphasis will be given to the comparative provisions between the two statute. At the end of the paper, one shall be able to appreciate the new enactment as to how the new enactment of Consumer Protection Act, 2019 as brought a paradigm shift from ‘Caveat Emptor’ to ‘Caveat Venditor’ for protection of consumer rights in India. The most known traditional rule “Caveat Emptor” which means “buyer be aware” in the means where buyer needs to take responsibility & be aware of the product and services that one is purchasing or availing any service but now after the new enactment Consumer Protection Act, 2019 the burden is shifted to seller ‘Caveat Venditor’ which means “seller be aware” where in the seller needs to be aware wherein he shall have a greater responsibility & liability for any defective goods or deficiency in service in India.

I. Introduction

Consumer Protection Act, 2019 (CPA,2019) has been passed by the parliament on 7th August, 2019 and came into force from 20th July, 2020 in India. The major aim of the enactment is to guard the basic consumer rights, establishment of regulator body such as Central Consumer Protection Authority (CCPA), redressal mechanisms to settle any consumer cases specifically relating to consumer issues such as product liability, misleading ads and unfair trade practice¹. These majorly changes were not seen in the parent Act i.e. Consumer Protection Act, 1986. The new Act of 2019 has also introduced majorly three new Chapters such as Central Consumer

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¹ See Consumer Protection Act, 2019 (No. 35 of 2019), Aim & Object of the Act.

Protection Authority in Chapter III, Mediation Cell in Chapter V and Product Liability in Chapter VI of the enactment.

II. Regulatory Mechanism of Central Consumer Protection Authority (CCPA)

The 2019 Act, has recognized a new regulatory authority viz Central Consumer Protection Authority (CCPA) under Section 10² of CPA, 2019 mainly to ensure consumer rights are guarded, protected & are enforced in the interest of the consumers against any exploitation. The primary reason for the establishment of this authority is to have a more stringent regulatory mechanism. In addition to that there is an investigation wing under Section 15³ of the Act which is mainly established to support the CCPA, which shall mainly carry out the investigation and the enquires which are concerned with misleading advertisements, malpractices which mainly lead to consumer exploitation & are infringing basic consumer rights etc⁴.

Under Section 18⁵ of CPA 2019, the Central Authority is empowered and mandated with certain powers and functions such as: In this provision the regulatory authorities are given a wide & comprehensive suo moto powers which they can exercise in any exploitation of consumers interest or unfair trade practices to a larger extend. There is an Investigation Wing which is established under this chapter which has the Director General to carry out such investigations along with the Additional Director, Deputy Director, Assistant Director to carry out enquires, search and seizure with regard to any unfair trade practices. There are various other provisions relating to endorsements of any misleading products which are taken into consideration to impose fine and imprisonment to a greater extend to curb the menace of mislead advertisements.

III. Mediation Cell

In CPA 2019, Chapter V (Section 74-81) deals with Mediation Cell where in it provides for the dispute settlement by the way of mediation any case where in there is a possibility if both the parties agree for mediation and settlement can be made after the complaint is admitted or at any

² *Ibid*, sec. 10

³ *Ibid*, sec. 15

⁴ Darren Punnen, Rahul Rishi, Payel Chatterjee & Gowree Gokhale, *New Consumer Protection Law in India : Broadening the Horizon*, (Nov 11, 2020, 3:31 PM), <http://www.nishithdesai.Com/Information/News-Storage/News-Details/Article/New-Consumer-Protection-Law-In-India-Broadening-The-Horizon.Html>

⁵ *supra* note 1, sec. 18

other stage of mediation. Under Section 74, Mediation Cell shall be associated to every District Commission, State Commission and National Commission for the quick disposal and amicable settlement of the case. Infact, which even reduces the burden of docket explosion on the consumer commission. In any case if the parties do not agree for any settlement in mediation, the respective commission shall continue to adjudicate the dispute as before⁶.

IV. Product Liability

In India, by far there was no any legislation which exclusively dealt with product liability. In the new CPA, 2019, Chapter VI exclusively deals with Product Liability (Sections 82 to 87). Insertion of this chapter and new grounds for filing a complaint against product liability is one of the furthestmost substantial addition to the Act 2019.

Under Section 2(34) “product liability”⁷ – In this definition the liability & responsibility has been set forth on all the manufacturer, producers irrespective of any defective product or deficiency of service which has mainly caused harm to the consumers at large.

Under Section 2(35) “product liability action” is defined as to allow any person to file a complaint before a District Commission, State Commission or National Commission against any manufacturer⁸, seller⁹ or service provider¹⁰ for such defective product. CPA, 2019 has moved one step ahead to define a product manufacture, seller and product service provider to provide clarity and avoid any ambiguity as to who can be held liable in case of defective product or deficiency of service under Chapter VI of CPA, 2019.

Section 84 mentions about the Liability of product manufacturer¹¹: In this section it makes the product manufacturer liable in certain instances where in it may be concerned with the

⁶ Consumer Protection Act, 2019 (No. 35 of 2019), sec. 81.

⁷ “Product liability means the responsibility of a product manufacturer or product seller, of any product or service, related to the product to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating to the product.”

⁸ Consumer Protection Act, 2019 (No. 35 of 2019), sec. 2(36)

⁹ *Ibid*, sec. 2(37)

¹⁰ *Ibid*, sec. 2(38)

¹¹ *Ibid*, sec. 84: Liability of Product Manufacturer wherein a “product manufacturer shall be held liable in a product liability action if:

- (a) the product contains a manufacturing defect; or
- (b) the product is defective in design; or
- (c) there is a deviation from manufacturing specifications; or
- (d) the product does not conform to the express warranty; or
- (e) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.

manufacturing defect, design, deviation from the manufacturing specifications, express warranty or it may be regarding the inadequate warning instructions on the product. Another instance in case even if the producer proves that the manufacturer was not negligent in making the express warranty of the said defective product, he is though not exempted from the liability. Thus, it is clear under the above stated circumstances the product manufacture can be held liable for product liability action. Even if there is absence of negligence or fraud in making express warranty of a product, it cannot be pleaded as a defence under product liability under CPA, 2019

Section 86 deals with “Liability of Product Seller”¹² In this proviso a product seller’s liability has also been envisaged in case the seller has taken due care & was diligent enough to take sufficient control over the overall packaging, testing and labelling of the product and such other instance where the producer did not give adequate warnings and dangers of usage of the product while the sale of the products which was the primary reason of the harm caused to the consumers.

There are few of the exceptions for the product liability in case there is harm caused by product liability action under Section 87¹³, such as if it is misused, modifies or altered or may be in case

(2) A product manufacturer shall be liable in a product liability action even if he proves that he was not negligent or fraudulent in making the express warranty of a product”

¹² *Ibid*, sec. 86: Liability of Product Seller -A product seller who is not a product manufacturer shall be liable in a product liability action, if—

“(a) he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or

(b) he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or

(c) he has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm; or

(d) the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or

(e) he failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm”.

¹³ (1) A product liability action cannot be brought against the product seller if, at the time of harm, the product was misused, altered, or modified.

(2) In any product liability action based on the failure to provide adequate warnings or instructions, the product manufacturer shall not be liable, if—

(a) the product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to such employer;

(b) the product was sold as a component or material to be used in another product and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material, but the harm was caused to the complainant by use of the end product in which such component or material was used;

of inadequate warning instructions about the usage of the product and various other instances where in the liability of the product is purchased by the employer or to be used under the supervision of the expert, product which is to be used with another product as per the warnings or in case if the said product is used under the influence of the alcohol or any medication they are exempted from the same and defences under product liability can be obtained.

Thus, the entire chapter on Product Liability in Chapter VI under CPA 2019 make its more stringent for the product manufacturer, seller and service provider to have a greater responsibility and highest accountability for their action.

V. E-Commerce

E-commerce is defined under Section 2(16)¹⁴ which defines that any product purchased or sold whether goods or services on a digital or electronic platform comes under the ambit of E-Commerce¹⁵. Under Section 94 of the 2019 Act, an express provision is made to avert unfair trade practices in e-commerce, direct selling and also to guard the interest and rights of consumers, the Central Government may take preventive actions & rules¹⁶ in the manner as per Section 94 of Consumer Protection Act, 2019.

VI. Penalty Provisions

In the said enactment of Consumer Protection Act, 2019, the penalty provisions are very strict and stringent as compared to the earlier Act of 1986.

Section	Nature of Offence	Punishment
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(c) the product was one which was legally meant to be used or dispensed only by or under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give the warnings or instructions for usage of such product to such expert or class of experts;

(d) the complainant, while using such product, was under the influence of alcohol or any prescription drug which had not been prescribed by a medical practitioner.

(3) A product manufacturer shall not be liable for failure to instruct or warn about a danger which is obvious or commonly known to the user or consumer of such product or which, such user or consumer, ought to have known, taking into account the characteristics of such product”.

Under Section 2(33) of CPA, 2019 has even “defined as to the scope of ‘product’ which specifically excluded the human tissue not include human tissues, blood, blood products and organs”

¹⁴ E-Commerce means “buying or selling goods or services including digital products over digital or electronic network”

¹⁵ Consumer Protection Act, 2019 (No. 35 of 2019), sec. 2(16).

¹⁶ Consumer Protection Act, 2019 (No. 35 of 2019), sec. 101 (zg): Power of Central Government to make rules.

Section 88	Not complying with the CCPA orders	Imprisonment – 6 months or 20 Lakhs fine or both
Section 89	Misleading Advertainment by Manufacturer Endorser	Manufacturer or endorser -Rs 10 lakh Subsequent offence- 50 Lakhs Imprisonment – 2 years Subsequent offence -5 years
Section 21 (2) & (3)	Misleading Advertisement endorser can be prohibited for a year from making any false or misleading endorsement.	Fine up to 10 lakhs. Subsequent offence- 3 years & Fine up to 10 lakhs
Section 90	manufacturing, selling, storing, distributing or importing adulterated products.	Adulterated good but no injury caused- Fine of up to Rs 1 lakh imprisonment of up to 6 months
		If injury is caused- penalty up to Rs 3 lakhs along with imprisonment of up to 1 year
		In case of grievous - up to Rs 5 lakh and imprisonment up to 7 years
		In case of death, penalty of Rs 10 lakh or more along with a minimum imprisonment of 7 years, extendable to life imprisonment.

Section 91	Penalties for manufacturing, selling, storing, distributing or importing spurious goods.	If injury is caused, penalty to Rs 3 lakh & imprisonment of up to 1 years
		If grievous hurt -Fine up to Rs 5 lakh along with imprisonment up to 7 years
		In case of death, penalty would be Rs 10 lakh or more along with a minimum imprisonment of 7 years, extendable to life imprisonment.

VII. Comparative Chart of Consumer Protection Act, 1986 & Consumer Protection Act, 2019

Consumer Protection Act, 1986	Provisions	Consumer Protection Act, 2019
No separate regulator was established	Regulator	Establishment of regulatory authority Central Consumer Protection Authority (CCPA)
Complaint could be filed in a consumer forum where the seller's (defendant) office is located	Consumer Forum	Complaint can be initiated in a consumer forum where the complainant resides or works for gain
No provision. Consumer could approach a Civil Court but not consumer forum	Product Liability	In case of any harm caused by the product or service, the consumer can seek compensation.

<p>District Forum: Upto Rs 20 Lakhs</p> <p>State Commission: 20 Lakhs to 1 Crore</p> <p>National Commission: Above 1 Crore</p>	<p>Pecuniary Jurisdiction</p>	<p>District: Up to 1 Crore</p> <p>State Commission: 1 Crore to 10 Crore</p> <p>National Commission: Above 10 Crore</p>
<p>No provision</p>	<p>E-Commerce</p>	<p>All rules of direct selling extended to E-Commerce</p>
<p>No legal provision</p>	<p>Mediation Cells</p>	<p>Forums/Commissions can refer settlement through Mediation</p>
<p>All the goods and services which are for a consideration they are within the ambit of the Act.</p> <p>Goods which are free of cost and personal services are excluded from the scope of the Act.</p>	<p>Scope of the Act</p>	<p>All goods and services, whether online or offline purchased are to be considered under the new Act</p> <p>Goods which are free of cost and personal services are excluded from the scope of the Act.</p>
<p>Includes various means of unfair and malpractices such as false representation, misleading advertisements and unfair trade practices.</p>	<p>Unfair trade practices</p>	<p>In addition to the already existing provisions few more instances are added such as</p> <p>In case there is a failure on the part of the seller to issue a bill or receipt or invoice.</p> <p>In case there is a refusal to accept the goods purchased within a timeline of 30 days</p> <p>In case the personal information of the consumer</p>

		<p>is disclosed wherein it was in confidence unless required as per the law in the interest of public.</p> <p>In such instances lotteries and contests are excluded from the clause.</p>
<p>Provision in case any person under the Act does not comply or obey the orders directed by the said Commissions, then the person may be imprisoned with 1 month to 3 years or may be even fined between Rs 2000 to 10,000 or both depending upon the gravity of the offence committed.</p>	<p>Penalties</p>	<p>Provision in case any person under the Act does not comply or obey the orders directed by the said Commissions, then the person may be imprisoned up to 3 years or may be even fined not less than Rs 25,000/- which may be extended to 1 lakhs or both depending upon the gravity of the offence committed.</p>

VIII. Key Issues & Critical Analysis

There is no doubt that the Consumer Protection Act, 2019 is a new way forward step for the protection of the Consumers in India. Looking into few improvised provisions such as wide variety of complaints can be filed whether offline or online on defective goods or deficiency service of varying values. In the said Act, 2019 the pecuniary jurisdiction which is the value of goods or service has been enhanced up to one crore for the District Forum (Section 34), one crore to ten crores for State Commission (Section 47) & above ten crores to National Commission (Section 58). This provision will in fact reduce the burden of docket explosion which means the pendency of cases on State Commissions & National Commission as majority

of the issues which have pecuniary value below one crore would be addressed by District Forum which in fact would also be comfortable for the consumer easy access at district level. Thus, the access to consumer justice can be made at quick disposal & affordable to the common consumers at large. There is also a positive change reflected in the territorial jurisdiction which mainly gives the complainant to file the case where the cause of action had arisen or where the complainant resides or personally works for gain which was not previously present in the parent Act, 1986. This in fact will help the complainant to file the consumer case in his own place of residence or business place wherein he can avoid hassles to compute & cost of litigation for every hearing in case the opposite party is in another city.

There are also few critical issues which also needs to be relooked such as Section 54 which deals with Composition of National Commission & in Section 55 which mainly specify the qualifications of presidents and members wherein the power has been delegated to the Central Government to make the Rules. This said provision does not specify the minimum judicial qualifications for the presidents and members of National Commission. This provision is in contradict to the parent Act which did specify the minimum qualification in the 1986 Act itself. The Central Government mainly makes the rules for qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the President and Members of the National Commission. This new provision leaves it to the discretion of the Central Government which may result in arbitrary appointments or conflict of interest in the said appointments of the President & Members of National Commission. It can be argued that if the executive is to determine the appointment of the Presidents & Members of National Commission that would definitely affect the transparency, accountability & independent functioning of the said Commissions. Thus, the author suggests to have a Selection Committee to be constituted for the appointment of the Presidents & Members of the Commissions which can be chaired by the Judicial Members to keep the Separation of Powers between the Executive & Judiciary intact rather leaving it to the discretion of Central Government to appoint the members of the Commission.

IX. Conclusion

There is no doubt that the provisions of the new enactment CPA, 2019 is the major milestone phase initiated by the Indian Government mainly to protect consumer rights and prevent the

exploitation of consumers through unfair trade practice such as misleading tactics which are played not only by manufacturers or the sellers but also the service providers. With this Act which came into force from 20th July, 2020 there shall be a high alert among the traders, manufacturer and sellers who shall have a greater responsibility and higher accountability in the interest of consumers at large.

It is also very evident that there are several changes which are brought by the new enactment of Consumer Protection Act, 2019 which has broadened the scope of consumer protection regime in India. The new provisions which are mainly highlighted in 2019 would additionally empower the mass consumers and impose a higher responsibility on the chain of manufactures, service providers or sellers but will also apply to endorsers of such misleading products. In addition, the new provisions are more comprehensive, effective, comprehensive and quicker remedy process of consumer dispute. The resolution by mediation while enhancing the pecuniary jurisdiction of the consumer commissions which are attached to the mediation cells, count of members and striking stringent penalties for offences under unfair trade practice are added features. The new enactment of Consumer Protection Act, 2019 has comprehensively covered all the consumer issues when compared with Consumer Protection Act, 1986 and its implementation from 20th July, 2020 is most welcome step which has repealed more than the three-decade old parent Act of Consumer Protection Act 1986.
