CONSUMER PROTECTION ACT, 2019

F.Y.B.COM-I

SEMESTER -I

COURSE NO.-116 D

COURSE / TITLE OF PAPER- CONSUMER PROTECTION AND BUSINESS ETHICS

By

Prof. Ashok Shelke

Mamasheeb Mohol College, Pune
The Indian Parliament, on 9 August 2019, passed the landmark Consumer Protection Bill, 2019 which aims to provide the timely and effective administration and settlement of consumer disputes. The bill was earlier presented and passed in the Lok Sabha on 30 July 2019. This bill would replace the Consumer Protection Act, 1986. This Act is applicable to the whole of India including the UTs of J&K & Ladakh.
IT INCLUDES SOME NEW PROVISIONS AS TO:

1. New definition of consumer include online purchasing.
2. Definition of goods include food.
3. Provisions covering 'endorsement' of goods and services.
4. Definition of 'electronic service provider'.
5. Provisions for 'product liability' and 'product liability action' for goods and services.
6. Wide definition of 'unfair trade practice'.
7. New definition of 'harm'.
10. Civil and Criminal jurisdiction.
11. Electronically filing of complaint.
12. Mediation.
14. Offences and Penalties
<table>
<thead>
<tr>
<th>PROVISION</th>
<th>CONSUMER PROTECTION ACT 1986</th>
<th>CONSUMER PROTECTION BLL 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>REGULATOR</td>
<td>No central regulator</td>
<td>Central consumer protection authority to be set up</td>
</tr>
<tr>
<td>Filing of complaint</td>
<td>A complaint needs to be filed in the consumer court under whom jurisdiction of the seller falls under.</td>
<td>A complaint can be filed from anywhere from where the consumer resides.</td>
</tr>
<tr>
<td>Mediation</td>
<td>No provision</td>
<td>Courts can work towards settlement through mediation cells.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>The jurisdiction at district level was complaints worth of Rs 20 lakh.</td>
<td>District level authorities can take-up complaints with goods and services worth up to Rs 1 crore.</td>
</tr>
<tr>
<td>Product liability</td>
<td>No provision</td>
<td>Consumer have the right to seek compensation for any harm caused.</td>
</tr>
<tr>
<td>E-commerce</td>
<td>No provision</td>
<td>E-commerce transactions will come under the provisions involving district sales.</td>
</tr>
<tr>
<td>Video conferencing</td>
<td>No provision</td>
<td>Consumers can seek hearing through video conference.</td>
</tr>
</tbody>
</table>
Establishment of the Central Consumer Protection Authority (CCPA): The act has the provision of the Establishment of the CCPA which will protect, promote and enforce the rights of consumers. The CCPA will regulate cases related to unfair trade practices, misleading advertisements, and violation of consumer rights.

The CCPA will have the right to impose a penalty on the violators and passing orders to recall goods or withdraw services, discontinuation of the unfair trade practices and reimbursement of the price paid by the consumers.

The Central Consumer Protection Authority will have an investigation wing to enquire and investigate such violations. The CCPA will be headed by the Director-General.
RIGHTS OF CONSUMERS:
The new bill has defined 6 rights of the consumers, which include:

① **Right to Safety**: It means right to be protected against the marketing of goods and services, which are hazardous to life and property. Before purchasing, consumers should insist on the quality of the products as well as on the guarantee of the products and services.

② **Right to be Informed**: It means right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices.

③ **Right to Choose**: It means right to be assured, wherever possible of access to a variety of goods and services at competitive price. This right can be better exercised in a competitive market where a variety of goods are available at competitive prices.

④ **Right to be Heard**: It means that consumer's interests will receive due consideration at appropriate forums. It also includes right to be represented in various forums formed to consider the consumer’s welfare.

⑤ **Right to Seek Redressal**: It means right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers. It also includes right to fair settlement of the genuine grievances of the consumer.

⑥ **Right to Consumer Education**: It means the right to acquire the knowledge and skill to be an informed consumer throughout life. Ignorance of consumers, particularly of rural consumers, is mainly responsible for their exploitation.
Prohibition and penalty for a misleading advertisement:
The Central Consumer Protection Authority (CCPA) will have the power to impose fines on the endorser or manufacturer up to 2-year imprisonment for misleading or false advertisement (Like Laxmi Dhan Warsha Yantra).
Worth to mention that repeated offense, may attract a fine of Rs 50 lakh and imprisonment of up to 5 years.

Consumer Disputes Redressal Commission:
The act has the provision of the establishment of the Consumer Disputes Redressal Commissions (CDRCs) at the national, state and district levels. The CDRCs will entertain complaints related to;
- Overcharging or deceptive charging
- Unfair or restrictive trade practices
- Sale of hazardous goods and services which may be hazardous to life.
- Sale of defective goods or services
The act has defined the criteria of Consumer Disputes Redressal Commission (CDRCs). The National CDRC will hear complaints worth more than Rs. 10 crores. The State CDRC will hear complaints when the value is more than Rs 1 crore but less than Rs 10 crore. While the District CDRC will entertain complaints when the value of goods or service is up to Rs 1 crore.
WHAT IS THE ROLE OF THE CENTRAL CONSUMER PROTECTION AUTHORITY?

One of the important provisions of the new act is the proposal to set up a Central Consumer Protection Authority (CCPA) by the Central Government. The stated purpose of CCPA would be ‘to promote, protect and enforce the rights of the consumers.’

An investigative wing headed by a Director General would conduct inquiries and investigations into any violations relating to consumer rights, unfair trade practices and misleading advertisements. The earlier Consumer Protection Act, 1986 did not have any such provision for a regulator.

Misleading Advertisements: The act gives special focus to stop misleading advertisements. The Section 21 of the Consumer Protection act, 2019 deals with misleading advertisements. Under the Section 21 of the act, the consumer Protection Authority may impose penalty up to Rs 10 lakhs on the advertiser, manufacturer, trader or even the endorser. The Authority has powers to ban the endorser as well.
The important functions of CCPA would include:

- Inquiring into consumer rights violations.
- Investigating these violations and proceeding with prosecution as appropriate.
- Pass orders to recall any goods or withdraw services that are deemed to be hazardous.
- Issue orders in regard to reimbursement of the price paid by customers for such services.
- Issues directions to the appropriate personnel in regard to any false or misleading advertisement to either discontinue or modify it.
- Imposing penalties in respect to any violations.
- Issues notices to educate consumers in regard to unsafe goods and services.

In the statement of objects & reasons of the new bill, it is mentioned that the ‘establishment of an executive agency like the CCPA to promote, protect and enforce the rights of consumers; make interventions when necessary to prevent consumer detriment arising from unfair trade practices and to initiate class action including enforcing recall, refund and return of products, etc. fills an institutional void in the regulatory regime. Currently, the task of prevention of or acting against unfair trade practices is not vested in any authority. This has been provided for in a manner that the role envisaged for the CCPA complements that of the sector regulators and duplication, overlap or potential conflict is avoided.’
Then what about the Consumer Disputes Redressal Commissions?

Like in the case of the 1986 act, Consumer Disputes Redressal Commissions (CDRCs) would be setup at various levels. The CDRCs would be set up at multiple levels – district, state and national.

*Consumers can file complaints with the CDRCs regarding any of the following.*

❖ Defective goods or services
❖ Overcharging or deceptive charging on goods and services
❖ Any unfair or restrictive trade practices
❖ Offering services or sale of goods which can be hazardous to life or not safe

• Complaints for all these can be filed in the district level CDRCs and all these complaints can be made online (electronically).
**Jurisdiction of CDRCs:** Each of these levels of CDRCs have varying jurisdiction based on the value of goods and services for which the complaint is being made.

### About National Consumer Day Why 24 December?

It was on this day, the Consumer Protection Act, 1986 had received the assent of the president and was enacted. The enactment of this Act is considered as a historic milestone in India’s consumer movement.

**Objective:** To provide consumers with effective safeguards against different types of exploitation like defective goods, deficiency in services and unfair trade practices.
WHAT IS THE APPELLATE PROCESS?

The parties involved in the complaint have the right to appeal in the higher forums in respect to any ruling provided in the respective CDRCs.

❖ Any appeals from the district CDRC would be heard in the State CDRC.
❖ Appeals from State CDRCs would be taken up in National CDRC.
❖ The final appeal beyond National CDRC would be taken up by the Supreme Court.

What about product liability?

Product Liability is a key aspect introduced in this bill that would benefit the consumers. Under the provisions of this bill, a manufacturer or a service provider would be required to compensate the consumer in case of any loss or injury due to a manufacturing defect in the product or a poor service.

This differs from the existing provision where only the cost of the product was compensated by the manufacturer or the service provider and not the cost of the loss or injury as in the current proposal. The provision for seeking compensation for the loss or injury was only through the civil courts, which have been observed to take a long time to resolve.
E-Commerce would also be covered

E-Commerce has been gaining traction over the past few years and Consumer Protection Act, 1986 does not have any provisions to deal with these transactions. As per the new act, all the laws that apply for direct selling would also be applicable for E-Commerce.

One of the key guidelines in this regard is that the E-Commerce platforms (Amazon, Flipkart etc.) are required to disclose the details of the sellers. Apart from the manufacturers, product liability would also include the sellers as well as the service providers i.e. the e-commerce aggregators.
• The bill lays down guidelines for any misleading advertisements for a product or service which effects the consumer. It could lead to a prison term of two years and a fine which can be up to Rs. 10 Lakhs. Any subsequent offence could lead to an imprisonment of up to 5 years and a fine extending to Rs. 50 Lakhs.

The new bill, has provisions which allow CCPA to fix the liability even on the endorser of any misleading advertisement. It can also prohibit an endorser from making endorsement for any product or service for a period of one year if found necessary. Any subsequent violation could result in prohibition from endorsing any product or service for a period of 3 years. This is expected to make the brand ambassadors exercise due diligence on the veracity of the claims being made about a product or a service before choosing brands to endorse.

• The bill simplifies consumer litigation and takes cognizance of emerging trends, but implementation remains a challenge

The electronic filing of complaints & permission to attend the hearing through video conference are very important steps in simplifying the process of complaints. Further, the idea of mediation could also help in quicker disposal of cases. With the inclusion of E-commerce under the gambit of consumer laws, the bill takes cognizance of the emerging trends in the marketplace.

However, it remains to be seen how all the new provisions will be implemented since it will require augmenting the physical & human resources at every level and that will require additional allocation of funds both by the Central & State Governments.
HOW IS THE 2019 ACT DIFFERENT FROM THE 1986 ACT?

The 2019 Act adds various provisions for consumer protection that were absent in the 1986 Act. Key among them are the provisions on product liability and unfair contracts. Under product liability, when a consumer suffers an injury, property damage or death due to a defect in a product or service, he can file a claim for compensation under product liability. The new Act outlines cases in which the product manufacturer, service provider and seller will be held guilty under product liability. Under the proposed law, to claim product liability, an aggrieved consumer has to prove any one of the conditions mentioned in the new act with regard to a manufacturer, service provider and seller, as the case may be. An unfair contract has been defined as a contract between a consumer and manufacturer/ service provider if it causes significant change in consumer rights. Unfair contracts cover six terms, such as payment of excessive security deposits in an arrangement, disproportionate penalty for a breach, and unilateral termination without cause. The consumer courts being set up under the new Act will determine contract terms to be unfair and declare them null and void.
KEY ISSUES AND ANALYSIS

✓ The new Act sets up the Consumer Disputes Redressal Commissions as quasi-judicial bodies to adjudicate disputes. The new Act empowers the Central government to appoint members to these Commissions. The new Act does not specify that the Commissions will comprise a judicial member. If the Commissions were to have members only from the executive, the principal of separation of powers may be violated.

✓ The new Act empowers the Central government to appoint, remove and prescribe conditions of service for members of the district, state and National Consumer Disputes Redressal Commissions. The new Act leaves the composition of the Commissions to the Central government. This could affect the independence of these quasijudicial bodies.

✓ Consumer Protection Councils will be set up at the district, state, and national level, as advisory bodies. The state and national councils are headed by Ministers in-charge of Consumer Affairs. The new Act does not specify whom the Councils will advise. If the Councils advise the government, it is unclear in what capacity such advice will be given.

Further, since many sectors have their own regulators, duplication or clashes between CCPA and these bodies may arise.
CONCLUSION

Even than several laws meant to protect consumers against such unfair trade practices, false and misleading advertisements continue exploit the consumers. However, the new Act is commendable for its efforts to move further towards caveat vendor from the days of caveat emptor.

Consumer awareness through consumer education and actions by the government, consumer activists, and associations are needed the most to make consumer protection movement a success in the country. Positively, TV programmes have begun to discuss the problems of consumer protection and consumer’s movement and a separate cell for consumer protection has been formed in the Ministry of Food and Supplies. Therefore, the domestic products should be of high quality to attract the interest and build the trust of consumers and the government should enact certain standards for the quality assurance of not only the domestic but also the imported products.