



Consumer Protection Act, 2019 Vs. CPA, 1986: New Changes

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"The customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption on our work. He is the purpose of it. He is not an outsider on our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us an opportunity to do so"

-Mahatma Gandhi

Constitution of India

3

- ➡ **Article 19 (1)(g)**- Right to Freedom to Carry on Business and Trade
- ➡ **Art 19(6)**- State can impose Reasonable Restrictions on trade
- ➡ **Art 21**- Right to life without exploitation: It is the State's duty to guarantee that every one in this country has a right to live with human dignity and is free from exploitation.

- ➡ **Arti38-** State to secure a social order for the promotion of welfare of the people.
- ➡ **Art 47-** Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

Anita Kushwaha v. Pushap Sudan, [(2016) 8 SCC 509] Constitutional Bench

Supreme Court held that '**Access to Justice**' is a fundamental right and laid down four main facets of the essence of access to justice i.e.,

- (i)** The State must provide an **effective adjudicatory mechanism**;
- (ii)** The mechanism so provided must be **reasonably accessible in terms of distance**;
- (iii)** The process of adjudication **must be speedy**; &
- (iv)** The litigant's access to the adjudicatory process must be **affordable**.

Back Ground of CPA,2019

6

- MCA, Gol working on it since 2010
- CUTS International National Survey, 2012
- Indian Institute of Public Administration National Survey, 2013
- State of U.P. and Ors. Vs. All U.P. Consumer Protection Bar Association (MANU/SC/1504/2016) (3 judges bench) – Justice Arijit Pashayat Committee – Report- appointment-salary-
- NLSIU Students PIL at High Court of Karnataka and Consumer Cases on Misleading advertisements
- During 2010 – 2013 – thinking of Amending CPA, 1986
- CPB, 2015 – Referred to Standing Committee
- CPB, 2018
- CPA, 2019

Consumer Protection Act, 2019

- 8 Chapters and 107 sections
- 1. Preliminary
- 2. Consumer Protection Councils
- 3. **Central Consumer Protection Authority**
- 4. Consumer Dispute Redressal Commission
- 5. **Mediation**
- 6. **Product Liability**
- 7. Offences and Penalties
- 8. Miscellaneous

Consumer Protection Act, 2019

8

- The Consumer Protection (Mediation) Rules, 2020
- The Consumer Protection (Mediation) Regulations, 2020
- The Consumer Protection (E-Commerce) Rules, 2020
- The Consumer Protection (Central Consumer Protection Council) Rules, 2020
- The Consumer Protection (Consumer Dispute Redressal Commission) Rules, 2020
- The Consumer Protection (General) Rules, 2020
- Consumer Protection (Salary, allowances and conditions of service of president and members of the State Commission and District Commission) Model Rules, 2020
- The Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the president and members of the state Commission and District Commission) Rules, 2020

Definitions

- **2(7) "consumer"** means any person who-----

Explanation.—For the purposes of this clause,—

(b) the expressions "buys any goods" and **"hires or avails any services" includes offline or online transactions through electronic means** or by teleshopping or direct selling or multi-level marketing;

S.2(11) "deficiency"

Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes—

- (i) **any act of negligence or omission or commission by such person** which causes loss or injury to the consumer; and
- (ii) **deliberate withholding of relevant information** by such person to the consumer;

➤ **2 (21) "goods"** means **every kind of movable property and includes "food"** as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006;

➤ **2 (47) "unfair trade practice"**

(vii) **not issuing bill or cash memo or receipt** for the goods sold or services rendered in such manner as may be prescribed;

(viii) **refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration** thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;

(ix) **disclosing to other person any personal information given in confidence by the consumer** unless such disclosure is made in accordance with the provisions of any law for the time being in force.

- **S.2(16) "e-commerce"** means buying or selling of goods or services including digital products over digital or electronic network;
- **S.2(17) "electronic service provider"** means a person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online marketplace or online auction sites;

S.2 (1) "advertisement"

"advertisement" means 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;

S.2(18) "endorsement",

14

"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;

2(28) "misleading advertisement"

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

- (i) **falsely describes** such product or service; or
- (ii) 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
- (iii) 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
- (iv) **deliberately conceals** important information;

S. 89. Punishment for false or 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.

2(46) "unfair contract"

"**unfair contract**" means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following,

namely:—

- (i) requiring manifestly **excessive security deposits** to be given by a consumer for the performance of contractual obligations; or
- (ii) **imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss** occurred due to such breach to the other party to the contract; or
- (iii) **refusing to accept early repayment** of debts on payment of applicable penalty; or
- (iv) entitling a party to the **contract to terminate such contract unilaterally, without reasonable cause**; or
- (v) 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
- (vi) **imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage**;

S.34. Jurisdiction of the District

18

Forum: (Similarly in SC, NC)

(1) Subject to the other provisions of this Act, the District Commission shall have jurisdiction to entertain complaints where the **value of the goods or services paid as consideration does not exceed one crore rupees:**

Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit.

(2) A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction,—

- **the complainant resides or personally works for gain.**

S.38. procedure on admission of complaint:

- (1) The District Commission shall, on admission of a complaint, or in respect of cases referred for mediation on failure of settlement by mediation, proceed with such complaint. -----
- (4) For the purposes of sub-sections (2) and (3), the District Commission may, by order, require an **electronic service provider** to provide such information, documents or records, as may be specified in that order.
- (6) Every complaint shall be heard by the District Commission on the basis of affidavit and documentary evidence placed on record:
 - Provided that where an application is made for hearing **or** for examination of parties in person **or through video conferencing**, the District Commission may, on sufficient cause being shown, and after recording its reasons in writing, allow the same.

S.40 Review Powers to DC

20

(similarly for SC & NC)

- ➡ The District Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.

S. 41. Appeal: DC to SC

- ➡ With 45 days
- ➡ Appellant has to Deposit 50% of order
- ➡ No appeal for Mediation settlement

S.2(42) "service"

22

"**service**" means service of any description which is made available to potential users and **includes, but not limited to**, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, **but does not include the rendering of any service free of charge or under a contract of personal service;**

51. Appeal to National Commission

(3) In an appeal involving a question of law, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

58. Jurisdiction of the National Commission

(1) Subject to the other provisions of this Act, the National Commission shall have jurisdiction

(a) to entertain—

(iv) appeals against the orders of the Central Authority

70. Administrative control

- National Commission on State Commission
- State Commission on District Commission
- NC Investigating into any allegations against the President and members of a State Commission and submitting inquiry report to the State Government concerned along with copy endorsed to the Central Government for necessary action;
- There shall be a monitoring cell to be constituted by the President of the National Commission to oversee the functioning of the State Commissions from the administrative point of view.

S.71:Enforcement of orders by the DC, SC & NC

25

- Every order made by a District Commission, State Commission or the National Commission **shall be enforced by it in the same manner as if it were a decree made by a Court in a suit** before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under this Act.

S.72. Penalty for Non-compliance of order

- Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment One month to 3 years or with fine Rs.25000 to 100000 or both

Consumer Protection ACT 2019

Chapter V : MEDIATION

Sec.74: Establishment of Consumer Mediation Cell.

Sec.75: Empanelment of mediators.

Sec.76: Nomination of mediators from panel

Sec.77: Duty of mediator to disclose certain facts.

Sec 78: Replacement of mediator in certain cases.

Sec 79: Procedure of mediation.

Sec 80: Settlement through mediation.

Sec 81: Recording settlement and passing of order.

S.102. Power of State Government to make rules

28

(1) The State Governments may, by notification, make rules for carrying out the provisions of this Act:

Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, **they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they shall conform to such model rules.**

The Consumer Protection (E-Commerce) Rules, 2020.

1. Short title and commencement
2. Scope and Applicability.
3. Definitions.
4. Duties of e-commerce entities.
5. Liabilities of marketplace e-commerce entities.
6. Duties of sellers on marketplace.
7. Duties and liabilities of inventory e-commerce entities:
8. Contravention of rules

Challenges

- Implementation at the State level
- Federal System
- Physical and Digital Infrastructure

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