

Law of Torts

Consumer Protection Act, 2019

The Parliament passed the Consumer Protection Bill, 2019 on 06.08.2019 to replace the Consumer Protection Act, 1986 ("1986 Act"). The President of India gave its assent to the Consumer Protection Act, 2019 ("2019 Act") on 09.08.2019 and the same will come into force on the date it is notified by the Central Government. The 2019 Act has been enacted for the purpose of providing timely and effective administration and settlement of consumer disputes and related matters.

The Government instead of bringing an amendment in the 1986 Act, enacted a new Act altogether so as to provide enhanced protection to the consumers taking into consideration the booming e-commerce industry and the modern methods of providing goods and services such as online sales, tele-shopping, direct selling and multi-level marketing in addition to the traditional methods.

The 2019 Act has brought in some major changes and provides for more protection to the consumers in pari-materia to the earlier 1986 Act which can be seen from the comprehensive definition provided for the term 'Consumer' and 'Unfair Trade Practice'. The 2019 Act expands the scope of the definition of Consumer so as to include the consumers involved in online transactions and it now squarely covers the E-commerce businesses within its ambit. The 2019 Act has also widened the definition of Unfair Trade Practices as compared to the 1986 Act which now includes within its ambit online misleading advertisements; the practice of not issuing bill/memo for the goods and services; failing to take back defective goods or deactivate defective services and refund the amount within the stipulated time mentioned in the bill or memo or within 30 days in the absence of such stipulation; and disclosing personal information of a consumer unless such disclosure is in accordance with law.

The 2019 Act has also introduced the concept of 'unfair contract' which includes those contracts, which favour the manufacturers or service providers and are against the interest of the consumers such as contracts requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; imposing any penalty on the consumer for a breach of the contract, which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; refusing to accept early repayment of debts on payment of applicable penalty; entitlement of a party to the contract to terminate such contract unilaterally, without reasonable cause; 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; and imposing on the consumer any unreasonable charge, obligation or condition which puts such a consumer to any disadvantage. Such unfair consumer contracts are now covered under the 2019 Act and a complaint in this regard can now be filed by a consumer. This would help to keep a check on businesses including banks and e-commerce sites that take advantage of their dominance in the market and mandatorily require the helpless consumers to sign such

unfair contracts and accept their standard terms before selling them goods or providing services.

One of the most significant additions to the 2019 Act is the proposal to establish Central Consumer Protection Authority ("CCPA") so as to regulate, protect and enforce the interest of the consumers and matters related to unfair trade practices. The CCPA has been provided with vast powers to inquire, investigate and take action against violations of the 2019 Act. Another significant power the CCPA has been showered with, is the power to take action and impose penalty against misleading and false advertisement as well as against any endorser of such advertisement, which means the CCPA can now initiate action against the celebrities who have endorsed such misleading and false advertisement provided such celebrities failed to carry out any due diligence before participating in such advertisements. The CCPA may impose a penalty of up to Rs.10 Lakhs for first violation and up to Rs.50 Lakhs on every subsequent violation on a manufacturer or an endorser, for a false or misleading advertisement. In addition to this, such manufacturer or endorser may be sentenced to imprisonment for up to two years. The CCPA has also been granted the authority to initiate Suo-moto proceedings against violators; pass directions to recall products or discontinue services and provide refund to consumers; and file class action suits on behalf of multiple consumers which makes it an effective tool to curb mass violation of consumer interest.

Another major introduction in the 2019 Act is the concept of Product Liability which covers within its ambit the product manufacturer, product service provider and product seller, for any claim for compensation. The term 'product liability' is defined by the 2019 Act as 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. Also, since the product seller has now been defined to include a person who is involved in placing the product for a commercial purpose and as such would include e-commerce platforms as well. Therefore, the ground commonly taken by E-commerce websites that they merely act as 'platforms' or 'aggregators' will now not be tenable before the court anymore. There are increased liability risks for manufacturers as compared to product service providers and product sellers, considering that under the 2019 Act, manufacturers will be liable in product liability action even where they successfully prove that they were not negligent or fraudulent in making the express warranty of a product. However, certain exceptions have been provided under the 2019 Act from liability claims, such as, that the product seller will not be liable where the product has been misused, altered or modified.

As far as the Consumer Redressal Forums are concerned, certain key changes have been brought by the 2019 Act such as:-

- i. *Territorial Jurisdiction* – The 2019 Act now provides an added advantage to the consumers by providing for filing of complaints where the complainant resides or personally works for gain as against the 1986 Act which only provides for filing of complaint where the opposite party resides or carry on business. This would help in

removing the difficulties faced by the consumers in seeking redressal of their grievances against businesses who may not have an office or branch in their state.

- ii. *Pecuniary Jurisdiction* – The 2019 Act also changed the pecuniary jurisdiction for the District, State and National Commissions, respectively. The pecuniary limit for the District Commission has been increased to up to Rs.1 Crore from up to Rs.20 Lakhs; for State Commission it has been increased to up to Rs.10 Crores from up to Rs.1 Crore; and for National Commission the pecuniary jurisdiction has been increased to over and above Rs.10 Crores as against Rs.1 Crore in the 1986 Act. In addition to this, the 2019 Act has also changed the manner for determining the pecuniary jurisdiction for filing the Complaint. Now the pecuniary jurisdiction will be determined on the basis of the value of goods or services paid as consideration as against the 1986 Act wherein, the pecuniary jurisdiction was determined as per the value of goods and services as well as compensation claimed. This would help in doing away the practice of inflating the compensation claimed so as to bring the complaint within the jurisdiction of State or National Commission.
- iii. *Alternate Dispute Resolution* – Another provision introduced by the 2019 Act to ensure speedy resolution of disputes is to provide for referring the disputes to mediation. As per the 2019 Act, the Consumer Forum shall refer the matter to mediation on written consent of both the parties. For this purpose, the 2019 Act also provides for establishment of a consumer mediation cell by the respective State Governments in each District Commission and State Commission as well as at the National Commission by the Central Government.
- iv. *E-Complaints* - The 2019 Act also provides for filing of Complaints before the District Forums electronically in accordance with the rules which are yet to be prescribed by the Government.

Overwhelmingly, 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. The 2019 Act also deals with the technological advancements in the industry, provides for easier filing of complaints and also imposes strict liability on businesses including endorsers for violating the interest of the consumers. However, the test of time will prove the fate of the 2019 Act as and when it is notified by the Central Government, which, prima-facie, appears to be much more consumer-friendly than the 1986 Act and also includes the current industry trends of e-commerce.