

# “CONSUMER PROTECTION ACT, THEN AND NOW— AN ANALYSIS”

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## INTRODUCTION

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*“A 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 in our work. He is the purpose of it. He is not an outsider in our business. He is part of it. We are not doing him a favor by serving him. He is doing us a favor by giving us an opportunity to do so.”*

--- Mahatama Gandhi

India is a democratic country where Rule of Law prevails. The Indian Legislature has created numerous statutes which govern the functioning of the country and at the same time they provide various rights to all citizens for any injustice happening against them. Various rights provided under Constitution of India and there are various other acts that safeguard the rights of citizens at different levels. Consumer Rights and Consumer Protections are a part of those rights. According to John F. Kennedy, “consumer by definition includes everyone. There are the largest economic grope affecting and affected by almost every public and private economic decision”. But sometimes consumer is a victim of unfair and unjust trade practices of traders. Protection against these practices is provided by the Body of Law and Policies framed by the legislature. Therefore, that pertains to protect the exploitation done to the customers. The consumers’ rights are violated through ‘unfair trade practices’ or ‘restrictive trade practices’, ‘defective goods or service’, ‘deficiency in services’, ‘hazardous goods and services’ and ‘price in excess of the price fixed under any law’ etc. and these exploitations can be remedied by codification of welfare laws. Further, instructions and guidelines should be provided to consumers for using goods and risks involved for developing National Consumer Protection. There are some Fundamental rights which are provided to every citizen such as Right to Equality in the Consumer Market, Protection against Discriminatory Marketing Practices, Right to Privacy, Right to Choose, Right to Information, Right to Seek Redressal, Right to Protection, etc.

## HISTORICAL BACKGROUND

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The Consumer Protection Act was passed in 1986 although it came into force form 1 July, 1987. It was passed by the parliament for protecting the rights of the consumers and for redressing

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consumer complaints and to establish a mechanism for resolving consumer disputes. The objective of the act is “to provide for better protection of the interests of the consumers and for that purpose to make provisions for the establishments of the consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith”. Though CPA, 1986 contains remedies for the consumers in the market place, they are not sufficient and consumer finds himself/herself as helpless due to ineffective legal machinery. Many amendments had been done by the legislature from time to time for meeting the changing needs of the consumer. The Consumer Protection Act 1986 was amended in 1991, 1993, 2002 and 2010. Finally for satisfying the current demands of consumers the legislature had passed a new bill which became The Consumer Protection Act, 2019 altogether.

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### **CONSUMER PROTECTION ACT, 2019**

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There is a seismic change in need and demand of the customers due to dynamic environment in the markets. For meeting the standards, entirely new approaches are required to be adopted. For this purpose, the legislature had, instead of amending the old statute, enacted a new law altogether which will provide more enhanced protection to the customers. The Consumer Protection Bill, 2019 was introduced in The Lok Sabha by the Ministry of Consumer Affairs, Food and public Distribution on 08<sup>th</sup> July 2019 and the said act was passed by the Parliament on 06<sup>th</sup> August, 2019 which replaced the Consumer Protection Act, 1986. The President of India gave his assent to the Consumer Protection Act, 2019 ("2019 Act") on 09<sup>th</sup> August, 2019 and the same will come into force on the date notified by the Central Government. By keeping the two acts in juxtaposition it is interpreted that there are major changes done by taking into consideration the booming of e-commerce industries, timely and effective administration against unfair trade practices, providing modern methods of selling goods and services, etc. The gravity of protection to the consumers has been increased as compared to the earlier Act and more comprehensive definition of the term “customer” has been provided.

The key features of the newly enacted Consumer Protection Act, 2019 are as follows:

#### **CONSUMER<sup>1</sup>**

“a person who buys any goods and services for any consideration which has been paid or promised or partly paid or partly promised but does not include a person who obtains goods for resale purpose and goods and services for any commercial purposes. Also, it increases the scope

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<sup>1</sup>Consumer Protection Act, 2019, Section 2(7)

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of a consumer by including a consumer involved in offline and online transactions through electronic means like teleshopping, multi-level marketing or direct selling, etc.”

### UNFAIR TRADE PRACTICES<sup>2</sup>

The said act has also enhanced the broad definition of Unfair Trade Practices. In the earlier Act of 1986, there were six types of unfair trade practices listed. Three more were added into that in the 2019 Act which are as follows:

- i. The practice of failure and non-issuance of bill and memo for goods and services.
- ii. When refusal is done to take back defective goods and withdrawal of defective services and refusal to refund the amount within the stipulated time mention in the bill or cash memo or receipt within 30days in the absence of such stipulation.
- iii. When disclosure of personal information of consumer is done to any other person unless such disclosure is done in accordance with the law for the time being in force and in public interest.

### UNFAIR CONTRACT<sup>3</sup>

Under previous legislature, complaint can only be filed under Unfair Trade Practices but the newly enacted law widened the scope by introducing the concept of ‘Unfair Contracts’ which provides the ground to file complaints and allows consumers to challenge contracts which are unfair, unilateral and unreasonable. Unfair contract has been defined to include contracts 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 entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or

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<sup>2</sup>Consumer Protection Act, 2019, Section 2(47)

<sup>3</sup> Consumer Protection Act,2019, Section 2(6)(i)

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- iv. 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
- v. imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage.<sup>4</sup>

This provision will help in keeping check on the business of financial institutions like banks and also e-commerce platforms that by taking the advantage of their dominance over the market put the parties in mandatorily requirement of accepting their standard terms of availing services.

### CONSUMER RIGHTS<sup>5</sup>

The CPA, 2019 provides six rights to the consumers:

- i. to be protected against marketing of goods and services which are hazardous to life and property;
- ii. to be informed of the quality, quantity, potency, purity, standard and price of goods or services;
- iii. to be assured of access to a variety of goods or services at competitive prices;
- iv. to heard the consumer grievances and assured their interest;
- v. to seek redressal against unfair or restrictive trade practices; and
- vi. to provide proper consumer awareness.

### ESTABLISHMENT OF CENTRAL CONSUMER PROTECTION AUTHORITY<sup>6</sup> (CCPA)

Chapter III, Section 10 of Consumer Protection Act, 2019 seeks to establish regulatory authority known as The Central Consumer Protection Authority which is vested with wide powers to regulate, protect and enforce the interests of the consumers and it also regulates the matters related to unfair trade practices, misleading advertisement etc.

According to CPA, 2019 under the direction of Central Authority there will be an Investigation wing and that will be headed by Director-General for the purpose of conducting inquiries or

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<sup>4</sup>Nishith Desai Associates, *New consumer Protection Law in India: Broadening the horizon* , (Feb.14,2020, 10:52 AM), [http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/new-consumer-protection-law-in-india-broadening-the-horizon.html?no\\_cache=1&cHash=761270d01627de9ff2d1e43c52c5c21b](http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/new-consumer-protection-law-in-india-broadening-the-horizon.html?no_cache=1&cHash=761270d01627de9ff2d1e43c52c5c21b)

<sup>5</sup> Consumer Protection Act, 2019, section 2(9)

<sup>6</sup> Consumer Protection Act, 2019, Section 10

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investigation into consumer law violation<sup>7</sup>. Under the provisions of CPA 2019, CCPA is mandated to carry out the following functions:

- a) inquiring into violations of consumer rights, investigating and launching prosecution at the appropriate forum;
- b) passing orders to recall goods or withdraw services that are hazardous, reimbursement of the price paid, and discontinuation of the unfair trade practices, as defined under the relevant provisions of CPA 2019;
- c) issuance of directions to the concerned trader/ manufacturer/ endorser/ advertiser/ publisher to either discontinue a false or misleading advertisement, or modify it;
- d) imposition of penalties;
- e) issuance of safety notices to consumers against unsafe goods and services and guidelines to prevent unfair trade practices;
- f) spread and promote awareness and research on consumer rights; and
- g) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights.<sup>8</sup>

Further, CPA, 2019 provides - Power of Central Authority to issue directions and penalties against false or misleading advertisements which means CCPA has a significant power to take actions and impose penalty against the manufacturer and the endorser of up to Rs. 10 lakhs for first violation and in addition to this the manufacturer and the endorser may be sentenced to imprisonment for up to two years. Also, for every subsequent offence, fine will extend to Rs. 50 lakhs and imprisonment up to five years<sup>9</sup>. 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.<sup>10</sup> The district collectors have also been empowered to conduct such investigations that affect interests of consumer as a class under CPA 2019. They can investigate or inquire at the instance of a complaint or on a reference made by CCPA. The district collectors have also been provided powers akin to CCPA's but unlike CCPA they cannot initiate action *Suo moto*. The establishment of a central authority and initiating action as a class comes as an additional mode of relief which

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<sup>7</sup> Consumer Protection Act, 2019, Section 15

<sup>8</sup>Nishith Desai Associates, *New consumer Protection Law in India: Broadening the horizon*, (Feb.14,2020, 10:52 AM), [http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/new-consumer-protection-law-in-india-broadening-the-horizon.html?no\\_cache=1&cHash=761270d01627de9ff2d1e43c52c5c21b](http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/new-consumer-protection-law-in-india-broadening-the-horizon.html?no_cache=1&cHash=761270d01627de9ff2d1e43c52c5c21b)

<sup>9</sup> Consumer Protection Act, 2019, Section 21

<sup>10</sup> The Consumer Protection Bill, 2019, PRS Legislative Research, (Feb.14,2020, 11:02 AM) <https://prsindia.org/billtrack/consumer-protection-bill-2019>

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can be exercised along with individual consumers filing complaints to address their grievances thereby having two parallel proceedings.<sup>11</sup>

### PRODUCT LIABILITY

Under Chapter VI product liability is inserted which is a significant addition and it also provides a wide ambit for filing a complaint. Earlier there was no separate statute in India for governing "Product Liability". CPA, 2019 defines Product Liability<sup>12</sup> 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*".<sup>13</sup> CPA, 2019 defines "Product Liability<sup>14</sup> Action" where a person can file a complaint to District Commissioner or State Commissioner or National Commissioner for claiming compensation against the harm caused to him.

### WHO CAN BE HELD LIABLE TO COMPENSATE FOR ANY HARM CAUSED TO A CONSUMER?

The CPA, 2019 has defined Product Manufacturer<sup>15</sup>, Product Seller<sup>16</sup>, and Product Service Provider<sup>17</sup>.

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<sup>11</sup>Nishith Desai Associates, *New consumer Protection Law in India: Broadening the horizon*, (Feb.14,2020, 10:52 AM), [http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/new-consumer-protection-law-in-india-broadening-the-horizon.html?no\\_cache=1&cHash=761270d01627de9ff2d1e43c52c5c21b](http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/new-consumer-protection-law-in-india-broadening-the-horizon.html?no_cache=1&cHash=761270d01627de9ff2d1e43c52c5c21b)

<sup>12</sup> Consumer Protection Act, 2019, Section 2(34)

<sup>13</sup><http://egazette.nic.in/WriteReadData/2019/210422.pdf>

<sup>14</sup> Consumer Protection Act, 2019, Section 2(35)

<sup>15</sup>Consumer Protection Act, 2019, Section 2 (36) - "product manufacturer" means a person who—

- (i) makes any product or parts thereof; or
- (ii) assembles parts thereof made by others; or
- (iii) puts or causes to be put his own mark on any products made by any other person; or
- (iv) makes a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains such product or is otherwise involved in placing such product for commercial purpose; or
- (v) designs, produces, fabricates, constructs or re-manufactures any product before its sale; or
- (vi) being a product seller of a product, is also a manufacturer of such product;

<sup>16</sup>Consumer Protection Act, 2019, Section 2 (37) - "product seller", in relation to a product, means a person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing such product for commercial purpose and includes—

- (i) a manufacturer who is also a product seller; or (ii) a service provider, but does not include—
  - (a) a seller of immovable property, unless such person is engaged in the sale of constructed house or in the construction of homes or flats;
  - (b) a provider of professional services in any transaction in which, the sale or use of a product is only incidental thereto, but furnishing of opinion, skill or services being the essence of such transaction;
  - (c) a person who— (I) acts only in a financial capacity with respect to the sale of the product;
- (II) is not a manufacturer, wholesaler, distributor, retailer, direct seller or an electronic service provider;

### INGREDIENTS REQUIRED TO INITIATE PRODUCT LIABILITY

- i. The Liability of Product Manufacturer on certain grounds<sup>18</sup>: When a product contains a manufacturing defect, when there is a defect in product design, or there is a deviation from manufacturing specification, the product does not conform to the express warranty, or the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage. Also, if there is an absence in making negligence or fraud while making the express warranty of a product on the part of product manufacturer it cannot be taken as a ground of defense.
- ii. The liability of product service provider on certain grounds<sup>19</sup>:
  - a) the service provided was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or
  - b) there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or
  - c) the service provider did not issue adequate instructions or warnings to prevent any harm; or
  - d) the service did not conform to express warranty or the terms and conditions of the contract.
- iii. The Liability of product sellers on certain grounds<sup>20</sup>:
  - a) he has exercised substantial control over the designing, testing, manufacturing, packaging or labeling 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

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(III) leases a product, without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor

<sup>17</sup>Section 2 (38) of CPA 2019- product service provider", in relation to a product, means a person who provides any service in respect of such product.

<sup>18</sup> Consumer Protection Act, 2019, Section 84

<sup>19</sup> Consumer Protection Act, 2019, Section 85

<sup>20</sup> Consumer Protection Act, 2019, Section 86

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- 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.

### CONSUMER DISPUTES REDRESSAL COMMISSION

Chapter IV of the CPA, 2019 continued to have the provisions for the establishment of Consumer Disputes Redressal Commissions at District level<sup>21</sup>, State level<sup>22</sup> and National level<sup>23</sup>. Also, an appeal from District CDRC shall be heard by State CDRC and an appeal from state CDRC shall be heard in National CDRC. And final appeal against National CDRC shall be heard by Supreme Court. Types of complaint a consumer can file under CDRCs are:

- a) Unfair or restrictive trade practices;
- b) Defective goods or services;
- c) Overcharging or deceptive charging; and
- d) The offering of goods or services for sale which may be hazardous to life and safety.

### COMPOSITION OF COMMISSIONS

- District Commission<sup>24</sup>: It is headed by a president and at least two members.
- State Commission<sup>25</sup>: It is headed by a president and at least four members.
- National commission<sup>26</sup>: It is headed by president and at least four members.

Central Government has the power to appoint them through notification. Certain changes have been made under CPA, 2019 in respect of consumer dispute redressal commissions:

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<sup>21</sup> Consumer Protection Act, 2019, Section 28(1)

<sup>22</sup> Consumer Protection Act, 2019, Section 42(1)

<sup>23</sup> Consumer Protection Act, 2019, Section 53

<sup>24</sup> Consumer Protection Act, 2019, Section 28(2)

<sup>25</sup> Consumer Protection Act, 2019, Section 42(2)

<sup>26</sup> Consumer Protection Act, 2019, Section 54

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### PECUNIARY JURISDICTION

The monetary value of dealing the complaints is considerably increased for each commission. The pecuniary limit of District Commissions has been increased to up to Rs.1 Crore from up to Rs.20 Lakhs, for State Commissions 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. 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.<sup>27</sup> It would help in decreasing the burden of Appellant Commission and attract lesser number of claims.

### TERRITORIAL JURISDICTION

CPA, 2019 for removing the problem faced by the complainant in filling the complaint and seeking redressal for their grievances can file the complaint at the place where they reside or personally works for gain. This provision is against the CPA, 1986 which says the complainant can only file complaint where the opposite party resides.

### ALTERNATE DISPUTE RESOLUTION

Chapter V of CPA, 2019 provides the provisions for establishment of mediation cells by the respective State Governments in each District Commission and State Commission as well as at the National Commission by the Central Government. This Alternate Dispute Resolution mechanism will help in speedy resolution of cases. It gives a possibility of disposing of the case at its very initial levels, this will help in reducing burden on commissions. Also, as per the act the written consent of both the parties is required for filling a case to mediation.

### FILLING OF E-COMPLAINTS:

The New Act also contains enabling provisions for consumers to file complaints electronically and for hearing and/or examining parties through video-conferencing. This is aimed to provide procedural ease and reduce inconvenience and harassment for the consumers<sup>28</sup>.

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<sup>27</sup> Gaurang Kanth and Divjot Singh Bhatia, *India: The Consumer Protection Act, 2019: An Overview*, Monday connecting knowledge & people (Feb.14,2020, 10:35AM), <https://www.mondaq.com/india/Consumer-Protection/876600/The-Consumer-Protection-Act-2019-An-Overview>

<sup>28</sup> Stuti Galiya, *Consumer Protection Act, 2019: Key Highlights*, Lexology, (Feb.14,2020, 11:13 AM) <https://www.lexology.com/library/detail.aspx?g=442106a6-90a9-4a5e-9cf0-89fdbcba03d7>

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### A COMPARATIVE ANALYSIS OF SIGNIFICANT CHANGES IN THE PROVISIONS OF CPA, 1986 AND CPA, 2019:

| FEATURES                  | CONSUMER PROTECT ACT, 1986               | CONSUMER PROTECTION ACT, 2019                                                                                                                                                                              |
|---------------------------|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. REGULATOR              | No Separate Regulator                    | A Separate Regulation Authority Has Been Formed. A Central Consumer Protection Authority (Ccpa) To Protect, Promote And Enforce The Rights Of The Consumers.                                               |
| 2. UNFAIR TRADE PRACTISES | It Included Six Types Of Such Practices. | Added Three More Practices Into Such Type Of Practices Given In The Earlier Act.                                                                                                                           |
| 3. UNFAIR CONTRACTS       | No Provision                             | Included contracts between a manufacturer or trader or service provider on one hand, and a consumer on the other. Listed six contract terms which may be considered as unfair, unilateral and unreasonale. |
| 4. PRODUCT LIABILITY      | No Provision                             | Created liability on product manufacturer, product seller or service provider to compensate                                                                                                                |

|                                 |                                                                                                                                                                                                     |                                                                                                                                                                                                         |
|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                 |                                                                                                                                                                                                     | the consumers for any harm caused due to defective product or in deficiency in services.                                                                                                                |
| 5. PECUNIARY JURISDICTION       | <p>Earlier The Pecuniary Jurisdiction Was As Follow:</p> <p>District commission: upto 20 lakhs</p> <p>State commission: between 20 lakhs to 1 crore.</p> <p>National commission: above 1 crore.</p> | <p>Now the pecuniary jurisdiction has been increased as:</p> <p>District commission: upto 1 crore</p> <p>State commission: between 1 crore to 10 crores</p> <p>National commission: above 10 crores</p> |
| 6. ALTERNATE DISPUTE RESOLUTION | No Provision                                                                                                                                                                                        | Provides the establishment of mediation cells in each district, state and national level commissions by the central government and respective state governments.                                        |
| 7. E- COMMERCE                  | No Provision                                                                                                                                                                                        | The central government may prescribe rules for preventing unfair trade practices in e-commerce and direct selling.                                                                                      |

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## CONCLUSION

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Consumer Protection Mechanism aims against unfair and unethical practices in the commercial markets of the society. It is developed for preservation consumer's interests. Through and Consumer Protection Laws, aggrieved people are strengthened to raise their voices against the commercial malpractices. Consumer Rights are to be understood as those rights which every consumer holds by purchasing any good or service. These rights are held by the consumers against the sellers and therefore it is the duty of every seller to protect his consumer's rights. With this concept and to cope up with the problems in respect of the digital markets, on 6<sup>th</sup> August, 2019, The Consumer Protection Bill, 2019 was passed by the Indian Legislature in the Parliament. In addition to the provisions of the 1986 act, this new statute focuses on efficient and speedy disposal of the consumer grievances. CPA, 2019 provides a bigger scope for protection of consumers. The CPA, 2019 provides for an increased pecuniary jurisdiction of the commissions, increased number of members in the commissions, higher penalties and Alternative Dispute Resolution through Mediation Cells. All this is to make disposal of complaints faster and easier. The CPA, 2019 provides for imposition of Strict Liabilities on the Sellers including the endorsers and also endeavors towards making the filing of complaints much easier.

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