

THE CONSUMER PROTECTION ACT, 2019

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PREVIOUS LAW

- The previous law was the Consumer Protection Act, 1986
- So why a new law now ?

STATEMENT OF OBJECTS AND REASONS (SOAR) TO THE CONSUMER PROTECTION BILL, 2018

- The disposal of cases under the 1986 Act has not been fast due to various constraints. Several shortcomings have been noticed in implementation
- Consumer markets for goods and services have undergone drastic transformation
- The modern market place contains a plethora of products and services
- The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers



SOAR CONTD...

- The consumer is vulnerable to new forms of unfair trade and unethical business practices.
- Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-commerce pose new challenges to consumer protection
- Appropriate and swift executive interventions are required to prevent consumer detriment

SOAR CONTD...

Establishment of an executive agency to be known as the Central Consumer Protection Authority (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.

This fills an institutional void in the regulatory regime extant.



SOAR CONTD...

- Provisions for product liability action on account of harm caused to consumers due to a defective product or by deficiency in services.
- Provision of “Mediation” as an Alternate Dispute Resolution Mechanism has also been provided

SOAR CONTD...

Administrative improvements :

- Enhancing the pecuniary jurisdiction of the Consumer Disputes Redressal Agencies
- increasing minimum number of Members in the State Consumer Disputes Redressal Commissions
- Provisions for consumers to file complaints electronically

"DEFICIENCY" DEFINITION REPLACED

- Previous law :

(g) "**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



Under the new Act,

“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



“ DIRECT SELLING ” DEFINED


“direct selling” means marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location



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

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- (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;

PRODUCT LIABILITY


A product manufacturer shall be 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.
- (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




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.



A product service provider shall be liable in a product liability action, if—

- (a) the service provided by him 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.

ENDORSEES CAN BE PENALIZED

- Rs 10 lakh fine for each of manufacturer, advertiser, trader and endorser in case of false or misleading advertisement
- Due diligence (for veracity of claim) is a defence for the endorser

HEAVY PENALTIES

- 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.



CENTRAL CONSUMER PROTECTION AUTHORITY (CCPA)

- To regulate matters relating to violation of consumer rights, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class
- Will have an Investigation Wing headed by a Director General

POWERS OF THE CCPA

a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;

(b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;

(c) ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act or the rules or regulations made thereunder;

(d) ensure that no person takes part in the publication of any advertisement which is false or misleading



FURTHER POWERS OF THE CCPA

- inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either *suo motu* or on a complaint received or on the directions from the Central Government
- review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation
- recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights

CCPA POWERS CONTD...

- encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies
- mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest
- issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services
- pass orders for recall of goods or withdrawal of services which are dangerous, hazardous or unsafe (and also order reimbursement of prices to purchasers)

SEARCH AND SEIZURE POWERS !

- The DG has powers of search and seizure !

(The CCPA may, after receiving any information or complaint or directions from the Central Government or of its own motion, conduct or cause to be conducted a preliminary inquiry as to whether there exists a *prima facie* case of violation of consumer rights or any unfair trade practice or any false or misleading advertisement, by any person, which is prejudicial to the public interest or to the interests of consumers and if it is satisfied that there exists a *prima facie* case, it shall cause investigation to be made by the Director-General or by the District Collector).

GRIEVOUS HURT OR DEATH FOR ADULTERANT USE : PRISON TERMS

- Grievous hurt to consumer : Upto 7 years prison and Rs. 5 lakhs fine
- Death of consumer : Minimum 7 years to Life, and Rs 10 lakhs fine

“Adulterant” means any material including extraneous matter which is employed or used for making a product unsafe;

PECUNIARY JURISDICTION IN RS.

Where	Old law	Under the new Act
District Forum	Upto 20 lakhs	Upto 1 crore
State Commission	Above 20 lakhs and upto 1 crore	Above 1 crore and upto 10 crores And from zero to 10 crores for Unfair Contracts
National Commission	Above 1 crore	Above 10 crores



Q&A

Questions are welcome



THANK YOU !