

Consumer Protection Act, 2019 - A New Challenge to Indian Businesses?

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Introduction

Businesses in India and world-over lure consumers vide advertisements, offers, discounts, etc. There are however instances, wherein the quality of the product/services and associated after sales services do not meet the expectations of the consumers.

The Consumer Protection Act, 1986 (“CPA 1986”) was enacted on the principle of [caveat emptor](#) or ‘let the buyer beware’. However, the digital transformation has profoundly impacted the consumer habits,

changing the ways in which consumers interact with each other, and the marketplace. Through the Consumer Protection Act, 2019 (“CPA 2019”), the prevalent consumer laws have been overhauled. The codification of certain statutory rights applicable to all consumers *vis-a-vis* the quality, quantity, prices, information about the product, etc is a testament to the objectives sought from CPA 2019.

This article seeks to elucidate the important features of CPA 2019, specifically highlighting the additional liabilities imposed on businesses *albeit*, Product Manufacturers, Product Sellers and Service Providers.

(a) Standard Form contracts

The Standard Form contracts are contracts which are prepared by one party without any negotiation between the parties. Its contents often consist of unilateral terms and exclusion clauses which often give benefits and advantage to businesses. The consumers so far have had no recourse against them. The CPA 2019 has sought to resolve this by granting power to the State Commission and the National Consumer Disputes Redressal Commission (“NCDRC”), respectively to declare any terms of contract which is unfair to any consumer to be null and void.

So far, the Indian courts have been of the view that Standard Form contracts cannot be avoided, unless it can establish that the contract vitiates the essential ingredients of a valid contract as per the Contract Act, 1872. However, the CPA 2019 has brought about a seismic shift and businesses would need to have a relook at their Standard Form contracts. For businesses to beat the prescribed test of unfair conditions, it would become a norm for Standard Form contracts to incorporate the codified consumer rights. Thereby providing a reasonable and hassle-free refund policies, ability for consumer to inspect and reject goods and terminate a contract. Having the contracts easily available on e-platforms / websites, for the consumers to get acquainted with its terms and conditions would also be a step in the right direction.

(b) Product liability

Chapter VI of the CPA 2019 introduces the concept of ‘product liability’. It is defined as “the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer”. Pertinently, CPA 2019 imposes strict liability on manufacturers of defective products for harm caused by those products. Interestingly, designing defect of a product has also been codified to be a part of the product liability. This means that even if a product is free from manufacturing defect but has a faulty design, it would be in contravention of CPA 2019.

The CPA, 2019, also holds a ‘product seller’, liable for any defects in the product being sold by it. This would include a seller on an e-commerce platform as well as the e-commerce platforms themselves. The usual defence that e-commerce platforms merely acts as ‘platform’ or ‘aggregator’ would not suffice. Pertinently, the seller would also be liable if the product manufacturer’s identity is unknown. Considering the fact that product manufacturer and product seller, are defined separately, the commission may hold both of them jointly and severally liable, as the case may be.

Comparatively, the expectations from a service provider are higher and standards are stricter. The CPA 2019 provides that a product service provider shall be liable for providing imperfect, deficient, inadequate service or for being negligent.

Assigning of responsibility for a product liability claim is the biggest challenge, if it can be shown that a consumer was negligent in its use, then the doctrine of ‘*res ipsa loquitur*’ would apply, shifting the burden of proof away from the businesses. Consumer voluntarily accepting inherent risks of usage of a product would also limit the liabilities of the businesses.

(c) Unfair Trade practices

The most significant amendment made to the consumer law is the expansion of the term ‘unfair trade practice’. With the increase in transaction on digital marketplace / platforms, one of the major setbacks is protection of personal data provided for such transactions. It has been seen that many organisations, including hospitals, travel companies, banks and supermarkets hold consumers personal data and at times same is misused or shared with third parties.

Now, under CPA 2019, a consumer may file a complaint in the event there has been a disclosure of his / her personal information to any third parties, unless such disclosure is made in accordance with the provisions of any law for the time being in force. For businesses, a robust system to avoid any leakage of personal information of consumers would be required to be developed. Modifying the existing contracts to include a clause on limiting a business’s liability for any such leak and / or waiver of a consumer’s objections towards sharing of their personal information has become the need of the hour.

Furthermore, CPA 2019, also provides for penal action against selling, storing, and distributing adulterous and spurious goods.

The same has been captured below.

Penalty for selling, storing and distributing adulterous and spurious goods	
causing injury not amounting to grievous hurt	Imprisonment upto 1 year and fine upto Rs. 3 lakhs
causing injury resulting in grievous hurt	Imprisonment upto 7 years and fine upto Rs. 5 lakhs
Death of the consumer	Upto life imprisonment and fine not less than Rs. 10 lakhs

In addition to the aforementioned penalty, a person dealing in adulterous goods shall be punished with imprisonment upto 6 months and fine upto Rs. 1 lakh, even if no injury has been caused to the consumer.

(d) Central Consumer Protection Authority (CCPA)

One of the major features of CPA 2019 is the establishment of Central Consumer Protection Authority (**CCPA**). CCPA shall have an Investigation Wing headed by a Director-General for the purpose of conducting inquiry or investigation regarding violations of consumer rights, unfair trade practices and false or misleading advertisements.

Some of the powers of the CCPA which may be crucial for businesses are:

- **Inquiry into violation of consumer rights**

The CCPA will have the power to inquire or investigate into matters relating to violations of consumer rights or unfair trade practices suo motu, or on a complaint received, or on a direction from the central government.

While conducting an investigation after preliminary inquiry, officers of the CCPA's Investigation Wing will have the power to enter any premise and search for any document or article, and to seize them.

- **Product recall**

Earlier, there were no specific rules pertaining to safety-related product recalls or withdrawal of services. Only in the case of food and nutrition products, can the government ask the manufacturer to take them off the shelves for health reasons. Otherwise, product recall, by and large, is a voluntary act in India. Product safety, if ignored, can be devastating to any company's image as well as earnings.

Toyota recalling 3.4 million vehicles worldwide to address a fuel pump issue that could result in engines stalling, is one such instance that attracted worldwide attention.

Section 20 of the CPA 2019 empowers CCPA to order recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe. Pertinently, a party (even in public interest), can file a complaint to CCPA regarding a faulty product. Though the new Act provides a remedy of appeal before the NCRDC within 30 days, however, non-compliance of such recall orders shall be punished with imprisonment upto 6 months or with fine upto Rs. 20 lakhs.

- **Misleading advertisements**

One of the biggest behavioural changes sought to be brought about by the CPA, 2019 is with respect to authenticity and accountability attached to advertisements. CCPA has been empowered to take actions against false or misleading advertisements. CCPA can impose a penalty of upto Rs. 50 lakhs, on the manufacturer or endorser, subject to multiple / subsequent contraventions. Similarly, it may impose a ban on endorsing any products / services upto 1 year, extendable to 3 years. However, the endorser of a product / service, would be exempted from any liability if he / she establishes that they exercised due diligence to verify the veracity of the claims made in the advertisement before endorsing the same.

Conclusion:

The New Act establishes responsibility and affixes liability amongst the product manufacturers, sellers and service providers and aims to punish businesses that engage in fraud on quality or specified unfair trade practices. Further, the setting up of the CCPA, with its in-house machinery to investigate along-with penal provisions has added teeth to the law.

CPA 2019 may have wide ramifications on businesses especially start-ups who are keen on expanding their business. A new challenge has been thrown to the Indian businesses, who would need to optimise their resources, capability and innovation to produce products and provide Services of global standard and quality specifications.