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**ANALYSIS OF THE FUNDAMENTAL CHANGES IN CONSUMER
PROTECTION ACT, 2019**

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ABSTRACT

The Consumer Protection Act (CPA), 1986 was a legislation introduced for the promotion of social welfare. It was aimed and directed towards setting up of consumer councils at different levels based on the need of the consumer. A speedy and effective mechanism is synonymous to resolving consumer related disputes by securing justice.

However, in an era of rampant globalization, consumers are placed at the forefront, leaving them vulnerable to situations such as defective goods, impaired services, or simply unreasonable and excessive prices. Because the CPA 1986 was not equipped to cater to such varied and flourishing situations, the CPA 2019 was introduced to fill in the lacunae of the CPA 1986 and increase its ambit to include facets of electronic commerce and social platforms, in addition to traditional consumer disputes.

CPA 1986 V. CPA 2019 (KEY DEVELOPMENTS):

Below are few of the notable developments in CPA 2019 (which lacked in the CPA 1986 provisions):

1. Introducing a new concept called “Product liability” which poses to hinder any defective goods or deficient services which may be provided by a service provider or a manufacturer.
2. E-commerce transactions are now governed by CPA 2019, thereby offering wide protection to consumers on a much larger scale.

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3. Setting up of a regulating body known as the Central Consumer Protection Authority (CCPA) which plays a pivotal role in imposing penalties and fines and investigates violation of consumer rights.
4. The CPA 2019 has introduced additional grounds to register a complaint. The original grounds mentioned in the 1986 act stand the same, however, the changes include: “Introduction of Unfair contracts and expansion of Unfair trade practices”.
5. There has also been a newly introduced mechanism to ease the process of dispute resolution by way of mediation.
6. There has also been an increase in the pecuniary jurisdiction in the three different Commissions:
 - i. District Commission:
Previously: CPA 1986 (Up to Rs. 20 lakhs)
Currently: CPA 2019 (Up to Rs. 1 crore)
 - ii. State Commission:
Previously: CPA 1986 (Rs. 20 lakhs- Rs. 1 crore)
Currently: CPA 2019 (Rs. 1 crore- Rs. 10 crore)
 - iii. National Commission:
Previously: CPA 1986 (Above Rs. 1 crore)
Currently: CPA 2019 (Above Rs. 10 crore)

If any consumer wishes to appeal to a higher court, the adjudicating body is the Supreme Court.

WHO IS A ‘CONSUMER’?

Section 2 (d) of the CPA 1986² defines ‘consumer’, as, “*a person who buys any goods or hires or avails of any service, for a consideration which has been paid or promised or partly paid and partly promised*”. This is only an extract of the detailed definition. It is important to note that that Section 2 (7) of CPA 2019³ includes the very same definition with an addition in the ‘Explanation’. The purview now extends to “include offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing”. It is also crucial to know that if services are rendered free of cost, then the receiver of such services cannot be considered as a ‘consumer’. Thus, a successful attempt has been made to incorporate an

² Consumer Protection Act, 1986, § 2(d), No. 68, Acts of Parliament, 1986 (India).

³ Consumer Protection Act, 2019, § 2(7), No. 35, Acts of Parliament, 2019 (India).

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exhaustive and holistic explanation to the definition.

Example: If a firm purchases a house or residential property on behalf of its employees, will the company be considered under the definition of a ‘consumer’?

According to the National Consumer Disputes Redressal Commission (NCDRC), if a house is purchased for residential purposes, for the Directors or employees of an organization, the said company will be considered under the definition of a ‘consumer’. However, if an organization purchases a commercial space for conducting company related work, then it shall not fall within the definition of a ‘consumer’. Thus, we can conclude that the underlying reason and intention behind purchasing the property is a determining factor, which establishes whether the buyer is a consumer or not. In the case of ***“Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers and Ors.”***⁴, the appellant was a Medical Trust which purchased 29 flats for residential purposes in two buildings. This was done to provide housing accommodation to nurses who worked in Lilavati Hospital. However, the condition of the building started deteriorating until the nurses had no choice but to vacate. The Trust then filed a complaint against the builder, to be compensated for the loss suffered by the nurses. The Commission dismissed the complaint and held that the Trust did not fall under the meaning of a consumer as there was a presence of commercial purpose. On further scrutiny, it was found that such accommodation facilities were provided in lieu of working for the hospital. The Supreme Court laid down a determining principle which helps to establish whether an activity promotes a commercial purpose or not. *“The purchase of the good or service should have a close and direct nexus with a profit-generating activity”*. This principle is met with, denoting a presence of commercial purpose.

FUNDAMENTAL CHANGES IN CPA 2019:

The amendment in the 2019 Act lays special emphasis on three broad categories:

- A. Advertising claims
- B. Endorsements
- C. Liability of Product Manufacturer

A. ADVERTISING CLAIMS:

⁴ Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers and Ors., AIR 2020 SC 3580.

Section 2 (28) of the CPA 2019⁵, defines the term ‘misleading advertisement’ as one which:

- i. Provides a description of a product or service in a false and inaccurate manner
- ii. Provides tall claims about the guarantee of the product, which is likely to sway consumers whilst engaging in the product or service.
- iii. Subtly or in an implied manner deals or resorts to unfair trade practices.
- iv. Intentionally conceals vital pieces of information

In the case of “*Gillette India Limited vs. Reckitt Benckiser*”⁶, the plaintiff Gillette, is a company known for its blue hair removal razors and is protected under the trademark “VENUS” and “SIMPLY VENUS”. The defendant is into the business of manufacturing creams for hair removal, which too is protected under the trademark “VEET”. An advertisement promoted by the defendant depicted that using “VEET” cream leaves one’s skin soft and supple for a period much longer than a razor. The advertisement showcases a neglected blue razor in the background proving to be a disregarded alternative. The court held that the defendant’s contentions could not be substantiated when asked about the usage of the colour blue. The defendant had plethora of colours to showcase the razor in the advertisement, but by using the colour blue, conscious efforts have been made to draw a connection between a mere blue razor to Gillette’s razor in the minds of the consumer. Thus, it can be concluded that the reputation of Gillette was impinged causing irreversible harm. The Court then instituted a decree of granting interim injunction to the plaintiff and prohibit the defendant from producing *disparaging advertisements* against the plaintiff’s “VENUS” razors.

Section 21 of the CPA 2019 has a provision for penalty for misleading advertisements which ranges from “*a term of up to 2 years and a fine of up to Rs. 10 lakhs*”. If the person has indulged in committing a subsequent offence, then the limit of imprisonment is increased for a term “*up to 5 years and a fine of up to Rs. 5 lakhs*”.⁷

The 2019 Act introduced a regulating authority which is termed as Central Consumer Protection Authority (CCPA) which oversees occurrences relating to unfair trade practices, unfair contracts and misleading advertisements.

⁵ Consumer Protection Act, 2019, § 2 (28), No. 35, Acts of Parliament, 2019 (India).

⁶ *Gillette India Limited vs. Reckitt Benckiser*, 2017 SCC Online Bom 207.

⁷ Consumer Protection Act, 2019, § 21, No. 35, Acts of Parliament, 2019 (India).

B. ENDORSEMENTS:

The meaning of the term “endorser” is not covered under CPA 2019; however, the meaning of the term “endorsement” is covered under Section 2 (18) of the CPA 2019, and covers “*any message, verbal statement or depiction of a name or seal of any institution which makes the consumer believe that it reflects the opinion, or findings of the person making such an endorsement*”.⁸

The Advertising Standards Council of India (ASCI) was set up to safeguard the interests of consumers, by allying with advertisers, related agencies, media and PR companies. The Consumer Complaints Council (CCC) are the determining factor for its operations. Recognizing that consumers are exposed to malpractices, ASCI has rightfully laid down some guidelines for celebrities and guidelines for influencers (newly introduced in 2021), before engaging in any form of promotion of advertisement.

ASCI guidelines for celebrities:

1. Under ASCI, celebrities are those individuals who are primarily from the field of ‘Entertainment and Sports’, and also includes individuals from the medical, literary or educational field, who are compensated in some form.
2. It is important for celebrities to strictly ensure that all guidelines are adhered to. The duty to brief the celebrity about such codes of conduct also lies with the Advertiser and the Agency.
3. The responsibility to do due diligence for any statements, assertions or claims, entirely lies on the Celebrity. These statements or comments must be substantiated to avoid misleading consumers.
4. Celebrities are prohibited from promoting products under “Drugs and Magic Remedies Act 1954”⁹ and “Drugs and Cosmetics Act 1940”¹⁰ and any product which denotes a “injuries to health sign” on its packaging.

ASCI guidelines for influencers:

1. Disclosure label: This label should be mentioned in all posts which are promotional in nature. Such a disclosure must be reflected “within the first two lines” in an advertisement and ensure that users are not required to click on the “see more” option.

⁸ Consumer Protection Act, 2019, § 2 (18), No. 35, Acts of Parliament, 2019 (India).

⁹ Drugs and Magic Remedies Act, 1954, No. 21, Acts of Parliament, 1954 (India).

¹⁰ Drugs and Cosmetics Act, 1940, No. 23, Acts of Parliament, 1940 (India).

2. Disclosure labels under the category of “picture only” and “video only”: For content reflected on social media in the “picture only” category, the label is expected to be “superimposed over the picture”, and for the “video only” category, the label is expected to be “superimposed on the video”, in such a way that it is clearly seen to the user.
3. Duration of a disclosure label “on video only content”: If the total duration of the video is:
 - i. 15 seconds (or less), the label should reflect at least for 2 seconds.
 - ii. Between 15 seconds to 2 minutes, the label should be reflected for “1/3rd the length of the video”.
 - iii. 2 minutes (or longer), the label should be reflected for the entire length of the video.

Dhathri Ayurveda advertisement case (2021):

The District Commission at Kerala held an actor Mr. Anoop Menon responsible for stating false and tall claims regarding a hair cream product without paying any regard to the efficacy of such a product. The aggrieved consumer, Mr. Francis Vadakkan explained to the Commission that he purchased this particular product in the year of 2012 and used the cream for a period of six weeks as stipulated on the instructions and hoped to achieve remarkable results. After the period terminated, he saw no visible signs of improvement and was mocked by his closed ones for his gullible behavior. He then proceeded to court to demand for compensation. On inquiry, it was found that the instructions which were mentioned in the pamphlet along with the product were in such fine print, that if attempts were made to observe it with a magnifying glass would prove to be futile, let alone the naked eye. Subsequently, Mr. Menon along with the manufacturer of the product was ordered by the Commission to compensate aggrieved consumers, by paying a sum of Rs. 10,000 for making “false promises”.

C. LIABILITY OF PRODUCT MANUFACTURER:

Chapter VI ranging from Section 82 to section 87 is associated with the concept of product liability. This Chapter is applicable “to every claim for compensation under a product liability action by a complainant for any harm caused by a defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller”.

Section 84 (1), explains situations when a product manufacturer will be liable if:

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- The product possesses a defect in its manufacturing, or
- The product possesses a design which is defective, or
- Their product has not adhered to the requirements of manufacturing, or
- The product fails to adhere to the expresses warranty that it had claimed, or
- The product was deficient in displaying sufficient instructions with regard to the correct and safe instructions for its use. ¹¹

In the case of "*Mercedes Benz (India) (P) Ltd. vs. Prince Bansal*"¹², the complainant had purchased a Mercedes car worth approximately 40 lakhs. Within a span of a few days, the complainant began to observe and experience few troubles related to the sunroof, doors, and other parts of the car and was left with no option but to send it for servicing several times. After an inspection and inquiry of the vehicle was performed, it was diagnosed that there was an inherent and underlying manufacturing defect in the vehicle. The complainant then approached the State Commission, who granted a decree of Rs. 2 lakhs as compensation, along with Rs. 22,000 as legal proceedings.

In the case of "*K.G. Sathyanarayan vs. Bharat Petroleum Corporation Ltd. and Ors.*"¹³, the plaintiff was fast asleep in his residence, when he awoke to the loud explosion of his gas cylinder. In the attempt of saving two of his family members, he sustained a lot of burns on his body. A police complaint was filed, and based on the investigation conducted; the plaintiff claimed an amount of Rs. 5,00,000. On thorough and detailed inquiry, it was found that there was a defect in the gas cylinder and thus comes in the aspect of contributory negligence of two defendants- Bharat Petroleum Corporation Ltd and M/s Rohan Gas distributors. They were thus, jointly and severally liable to pay: "a sum of Rs. 74,000 with interest at 9% per annum" from the date of the complaint, additionally, a sum inclusive of Rs. 1,48,000 as damages.

In the case of "*Henningsen vs. Bloomfield Motors Inc.*"¹⁴, the plaintiff bought a car from the defendant's dealers. Hardly ten days passed by after the car was delivered, and the steering wheel of the car malfunctioned, which resulted in the plaintiff's wife to meet with a grave accident. The plaintiff then initiated a suit against the defendant- car manufacturer. The dealer

¹¹ Consumer Protection Act, 2019, § 84 (1), No. 35, Acts of Parliament, 2019 (India).

¹² Mercedes Benz (India) (P) Ltd. vs. Prince Bansal, 2019 SCC OnLine NCDRC 76.

¹³ K.G. Sathyanarayan vs. Bharat Petroleum Corporation Ltd. and Ors 2006 (2) C.P.C. 316.

¹⁴ Henningsen vs. Bloomfield Motors Inc 161 A. 2d 69 (N.J. 1960).

defended themselves by saying that there was a particular clause in the warranty, which was signed by the plaintiff, which released the defendant from the possibility of liability that could arise as a result of any personal injuries. The warranty that was given to the customer was for the replacement for any defective parts that could be found within a period of three months from the date of delivery, or within the completion of 4,000 miles. They also reiterated that the defendant couldn't claim damages, as it was the plaintiff's wife who faced damage.

However, the court awarded damages to the plaintiff and held that for every sale of an item or product or object, there stands to be a warranty of implied safety which must be adhered to. Moreover, this safety extends to "every foreseeable user of the product".

CONCLUSION:

The changes that the CPA 2019 has made is bound to revolutionize the consumer market, redressal systems and keep checks on frivolous manufacturers and sellers engaging in malpractices. Laws and guidelines pertaining to affixing liability on even influencers and endorsers have been materialized to make them more conscious of their every action. In this rapid era of digitalization, huge steps and initiatives have been taken to conduct electronic filing of cases, which also reduces the burden in physical courts. Speedy and timely implementation of such provisions will render the act to be far more effective.

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