

THE CONSUMER PROTECTION ACT, 2019: AN OVERVIEW



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❖ **Introduction:-**

The Consumer Protection Act, 2019 (the “Act”) received the President’s assent on 09 August, 2019 and has replaced the Consumer Protection Act, 1986. Certain provisions of the Act were notified on July 15, 2020 and as per the notification they shall come into force on July 20, 2020. The aim of the Act is to provide timely and effective administration and settlement of consumer complaints. The Act consists of a total of Eight Chapters comprising of a total of 107 Sections. The Act extends to whole of India except the state of Jammu and Kashmir. The Act has brought significant changes to the consumer grievances redressal system in India.

❖ **Key Definitions:**

Section 2 of the Act defines various terms in the following manner.

- A. **Section 2(1)** of the Act defines the term “**advertisement**”. It means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents.
- B. **Section 2(5)** of the Act defines the term “**complainant**” which means;
- (i) a consumer; or
 - (ii) any voluntary consumer association registered under any law for the time being in force; or
 - (iii) the Central Government or any State Government; or
 - (iv) the Central Authority; or
 - (v) one or more consumers, where there are numerous consumers having the same interest; or
 - (vi) in case of death of a consumer, his legal heir or legal representative; or
 - (vii) in case of a consumer being a minor, his parent or legal guardian;
- C. **Section 2(6)** of the Act states that a “**complaint**” means any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act, that-
- (i) an unfair contract or unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
 - (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;
 - (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency;

- (iv) a trader or a service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price—
 - (a) fixed by or under any law for the time being in force; or
 - (b) displayed on the goods or any package containing such goods; or
 - (c) displayed on the price list exhibited by him by or under any law for the time being in force; or
 - (d) agreed between the parties;
- (v) the goods, which are hazardous to life and safety when used, are being offered for sale to the public-
 - (a) in contravention of standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
 - (b) where the trader knows that the goods so offered are unsafe to the public;
- (vi) the services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;
- (vii) a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be;

D. Section 2(7) of the Act defines the term “**consumer**” which means any person who

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

E. **Section 2(46)** of the Act defines “**unfair contract**” to mean: 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
- (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.”

F. **Section 2(11)** of the Act expanded the definition of “**deficiency**” to include:

- Any act of negligence or omission or commission by persons who has caused loss or injury to the consumer
- Deliberate withholding of relevant information by such person to the consumer.

G. **Section 2(47)** of the Act expanded the definition of “**unfair trade practice**” to include:

- a. not issuing bill or cash memo or receipt for the goods sold or services rendered
- b. refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days
- c. disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force

❖ **RIGHTS OF A CONSUMER**

The Act also provides certain rights to every consumer. The various rights provided under Section 2(9) under the act are as follows:-

- (i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property;
- (ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;
- (iii) the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;
- (iv) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;
- (v) the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and
- (vi) the right to consumer awareness.

❖ **E-COMMERCE AND ENDORSEMENT OF ADVERTISEMENT:**

The Act defines the term “**E-commerce**” which means buying or selling of goods or services including digital products over digital or electronic network. The Consumer Protection (E – Commerce) Rules, 2020 are applicable to;

- (a) all goods and services bought or sold over digital or electronic network including digital products; (b) all models of e-commerce, including marketplace and inventory models of ecommerce;
- (c) all e-commerce retail, including multi-channel single brand retailers and single brand retailers in single or multiple formats; and
- (d) all forms of unfair trade practices across all models of e-commerce,

However, these rules shall not apply to any activity of a natural person carried out in a personal capacity not being part of any professional or commercial activity undertaken on a regular or systematic basis.

Further the Act also defines an “**Electronic service provider**” which means a person who provides technologies or processes to enable a product seller to engage in advertising or

selling goods or services to a consumer and includes any online market place or online auction sites.

The term “**Endorsement**” in relation to an advertisement means; (i) any message, verbal statement, demonstration; or (ii) depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or (iii) depiction of the name or seal of any institution or organisation, which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement. However, where the central authority is satisfied after investigation that any advertisement is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights, it may, by order, issue directions to the concerned trader or manufacturer or endorser or advertiser or publisher, as the case may be, to discontinue such advertisement or to modify the same in such manner and within such time as may be specified in that order. It also holds power to impose a penalty in respect of such false or misleading advertisement, by a manufacturer or an endorser, it may, by order, impose on manufacturer or endorser a penalty which may extend to ten lakh rupees:

❖ **PROVISION FOR REFERENCE TO MEDIATION:-**

Section 37 of the Act confers power on the District Commission, State Commission (Section 49) and National Commission (Section 59) to refer a party to mediation at the first hearing or at any time during the proceedings if it appears to the Commission that there are possible elements of settlement of disputes between the parties, provided the parties consent to being referred to mediation proceedings. The Consumer Protection (Mediation) Rules, 2020 provide that the following matters shall not be referred to mediation:

- a. Matters relating to medical negligence resulting in grievous injury or death.
- b. Matters relating to defaults or offences for which applications for compounding of offences have been made by one or more parties.
- c. Matters involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion.
- d. Matters relating to prosecution for criminal and non-compoundable offences.
- e. Matters that involve public interest or interest of numerous persons who are not parties to that proceeding.

❖ **JURISDICTION:-**

a. District Commission

Section 34(1) of the Act states that the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees.

Section 34(2)(d) of the Act enlarges the territorial jurisdiction of the District Commission by enabling the Complainant to file complaints at the place of its residence or where he personally works for gain.

b. State Commission

Section 47(a)(i) of the Act states that the State Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore.

Section 47(4)(d) of the Act enlarges the territorial jurisdiction of the State Commission by enabling the Complainant to file complaints at the place of its residence or where he personally works for gain.

c. National Commission

Section 58(1)(a)(i) of the Act states that the National Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration exceeds rupees ten crore.

❖ **LIMITATION PERIOD:-**

a. The District Commission, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen provided proper explanation is given to satisfy commission for not filing complaint within limitation period.

b. The period of filing an appeal against the orders of the District Commission is increased from 30 days to 45 days by Section 41 the Act.

❖ **POWER TO REVIEW:-**

a. Section 40 of the Act has conferred power on the District Commission to review its own orders if there is an error apparent on the face of the record, either of its own motion or by an application of the parties, within 30 days of such orders.

b. Likewise, Section 50 of the Act has conferred power on the State Commission to review its own orders if there is an error apparent on the face of the record, either of its own motion or by an application of the parties, within 30 days of such orders.

❖ **APPEAL AGAINST EX-PARTE ORDERS:-**

Section 51(5) of the Act has conferred power on the National Commission to sit on appeal against ex-parte orders passed by the State Commission.

❖ **EXPERT OPINION TO PROTECT THE CONSUMER INTEREST:-**

Section 66 of the Act sets out the a provision that where the National Commission or the State Commission, as the case may be, on an application by a complainant or otherwise, is of the opinion that it involves the larger interest of consumers, it may direct any individual or organisation or expert to assist the National Commission or the State Commission, as the case may be.

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