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# ***Brief on Consumers and key features of Consumer Protection Act, 2019***

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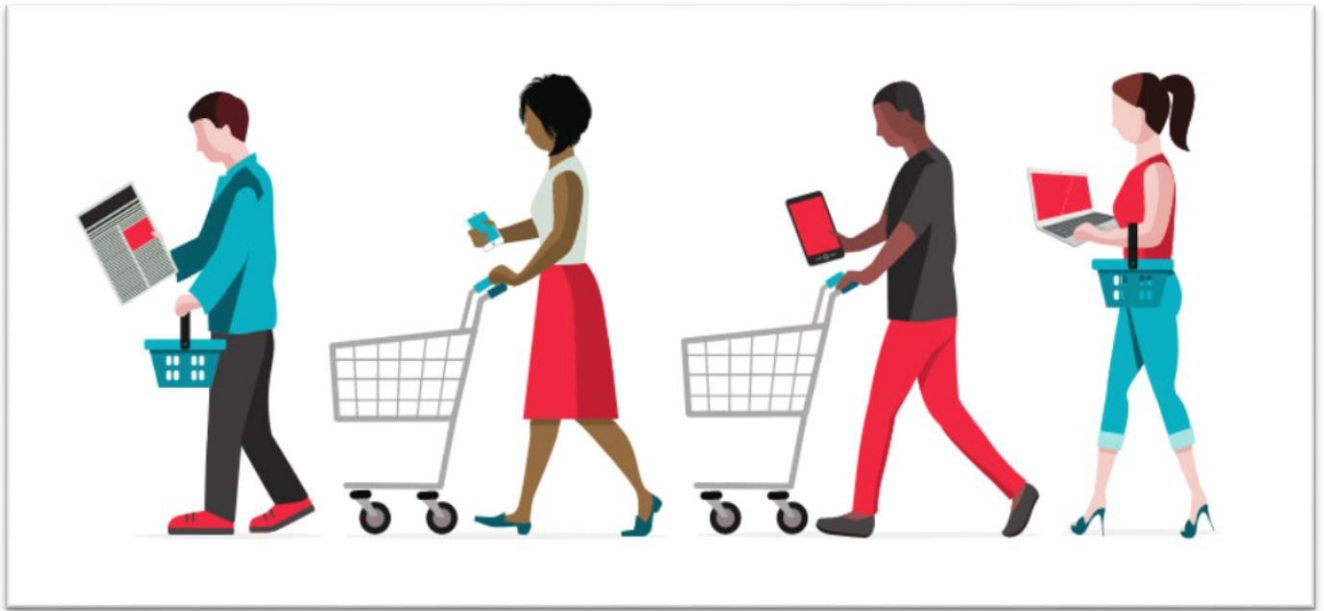
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*Image source: indianfolk.com*

## **1. WHO IS A CONSUMER?**

A consumer is a person or a group who intends to order, orders, or uses purchased goods, products, or services primarily for personal, social, family, household and similar needs, not directly related to entrepreneurial or business activities.

He is the one that buys good for consumption and not for resale or commercial purpose. He can be said as an individual who pays some amount of money for the thing required to consume goods and services.

According to the Consumer Protection Act 2019 Section 2 (7), a consumer is the one who:

- buys goods or hires any service
- uses the goods or hires any service with the approval of any buyer or service provider
- uses goods and services to earn a livelihood by self-employment.
- But does use the goods or services for resale purposes.

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## 2. IMPORTANCE OF CONSUMER IN ECONOMY

Consumer is the pivotal point of all the activities. In fact, he is the very basis which supports superstructure of all operations in the society. Consumer interest, therefore, should be the first concern and should receive first priority of all. As a citizen, as a taxpayer and as a buyer, the consumer should have the right to expect that he will get the right type of goods and right quality at the right time and at the right price.

To describe Consumer/customer in the words of Gandhiji himself, he quoted,

*"A customer is the most important visitor in 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 the part of it, we are not doing him a favour by serving him, he is doing us a favour by giving us an opportunity."*

Consumers, therefore play a very significant role in the economic development of a country. So much so that it can be said *consumers are the pillars of the economy*. Hence, every business organization is required to set its objectives keeping in view the socio-economic and political structure of the society. In practice, however, it is well known that the consumer is not only the most ignored, the most harassed, the most suffered but also most docile citizen. The consumer's plight **with regard to availability of certain items and its quality** is so **deplorable** that he has **resigned himself to his fate and classified himself as an insignificant** person. On the other side of the **spectrum, we get to hear big, attractive and catchy slogans/statement that the "customer is always right"** and the customer is the **"KING"**. The legal position of a buyer has been expressed in the famous expression *"caveat emptor"* or *"Let the buyer beware."*

### 3. WHAT PROTECTION DOES A CONSUMER REQUIRES?



*Image source: worldbank.org*

Consumer protection may be viewed from three angles:

- *Firstly*, the physical protection of the consumer to protect him against products that are unsafe and are endangerous to his health.
- *Secondly*, protection of the consumer's economic interest i.e measures to protect him against deceptive and other unfair trade practices and to provide adequate rights and means of redress.
- *Thirdly*, and equally important aspect is the protection of public interest against the abuse, the monopoly position and restrictive trade practices.

To see it from a clear glass, consumer protection is nothing but providing safeguard for the basic rights of people as consumers. It is important to keep in mind that consumer protection is essential for a healthy economy because this protection alone can give necessary strength and confidence to a consumer in the market and restore the balance in the buyer-seller relationship.

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## 4. CONSUMER PROTECTION LAWS IN INDIA

In recent times one of the most significant areas of economic regulation in all countries has been the adoption of Consumer Protection legislation in a big way. India being a late starter has just reached the take off-stage in consumerism though there have been significant development before this stage. The consumers in India have not yet organized like in many other countries in the West. Consequently the exploitation to which the consumer is subjected to by the organized class continues unchecked. Today, a large number of countries have laws for protecting the interest of the consumer.

A new dimension to the Consumer Protection Laws was provided by the adoption of Constitution in the year 1950, to the legislation making, relating to Citizens in general and consumer in particular. The Constitution itself contained various guarantees to the citizens of India and also provided guidelines-in the form of “Directive Principles of State Policy” to be followed and nurtured by the state in its future legislative activities and the post-independent era has witnessed a large number of 55 enactments meant for the benefit of consumers. The major enactments which have direct bearing upon consumer are:

- (i) The Drugs (Control) Act, 1950*
- (ii) Food Safety & Standards Act, 2006*
- (iii) The Essential Commodities Act, 1955*
- (iv) Competition Act, 2002*
- (v) The Bureau of Indian Standard Act, 1986.*

However, the procedures for bringing the culprits to book under the existing laws were long- drawn and cumbersome. Litigation was/is a costly affair which most consumers cannot afford. We are well aware that the law of torts is not well developed in our present legal system. Besides, there was no common platform for officials and non-officials for discussing the consumer's problems and for advising the Government on policies and measures needed to promote and protect the rights and interests of the consumers.

In the light of such circumstances the Consumer Protection Act of 1986 was enacted and was overwhelmingly passed by the both houses of the parliament. Let's study about it briefly.

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## 5. CONSUMER PROTECTION ACT, 1986

The Consumer Protection Act was enacted in the year 1986 with an aim to provide more protection to consumers against the evil practices of the market.

The Consumer Protection Act establishes a legal framework for safeguarding the rights and interests and to accord socio-economic justice to the people of the Indian Republic. The Court, in the matter of *S.K. Abdul Sarkar vs. State of Orissa*<sup>1</sup>, held that:

*“Through the enactment of this statute, an attempt has been made by the Indian Parliament to provide a speedy and cheap remedy by way of an alternative to the time-consuming and expensive process of civil litigation.”*

However, there have been shortcomings of the Act in today’s socio-legally advanced world. It is discussed below.

### 5.1 LOOPHOLES OF CPA, 1986

The very purpose of the act introduced in 1986 was to protect the interest of the consumers. It was a transit from *caveat emptor* to *caveat venditor principles*. It was neither punitive nor preventive in nature, but merely compensatory. The objective behind the act was to provide easy, speedy and cheap redressal to the consumers. But a change or shift in the consumer’s mindset, development of technology, and delay by Consumer Courts have obstructed the desired effect or purpose sought to be achieved by the said act. This necessitated the need on part of the government to enforce laws that could effectively check consumer frauds and provide necessary amendments in the various provisions of the Act so as to inaugurate a more successful robust mechanism which could dispense justice to consumers and value their rights.

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<sup>1</sup>*K .Abdul Sarkar v. State of Orissa*, CPJ II (1991)

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Perceiving the existing scenarios, a need for change was felt. Consequently, The Consumer Protection Bill, 2019 was passed by the Indian Parliament on Aug 06, 2019, and later on signed by the President of India. This new act replaces the old Consumer Protection Act, 1986.

## 6. THE CONSUMER PROTECTION ACT (CPA), 2019



*Image source: centrik.com*

The new Consumer Protection Act effectively replaces the nearly three decade old Act and tried to mold itself to live up to the expectations of a digitalized-modern-consumer. Set below is the key features of the Act but before that let's throw some light on the rights of consumer as defined by the Act.

### 6.1 THE RIGHTS OF CONSUMERS

The new act has defined some rights of the consumers. They include six rights which are as follows:



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- *Right to be protected against the marketing of goods, products or services which can be hazardous to life and property*
  - *Right to be informed about the quality, quantity, potency, purity, standard and price of goods, products and services*
  - *Right to be assured of access to goods, products and services at competitive prices.*
  - *Right to be heard at appropriate forums*
  - *Right to seek redressal against unfair trade practices that are involved in exploitation of customers*
  - *Right to consumer awareness*

## **6.2 THE KEY FEATURES OF CPA, 2019**

The significant highlights of the CPA act are as follows:

### **1. Establishment of the Central Consumer Protection Authority (CCPA)**

The act has the provision of the Establishment of the CCPA which will protect, promote and enforce the rights of consumers. The CCPA will regulate cases related to unfair trade practices, misleading advertisements, and violation of consumer rights. The CCPA will have an investigation wing, headed by a Director-General, which may conduct inquiry or investigation into consumer law violations.

The CCPA has been vested with wide powers to take suo-moto actions, recall products, order reimbursement of the price of goods/services, cancel licenses and file class action suits, if a consumer complaint affects more than a single individual.

### **2. Penalties for Misleading Advertisements**

The bill contains provisions with respect to misleading advertisements which is defines as per Clause 2(28) of the Act. The New Act fixes liability on endorsers considering that there have been numerous occurrences in the recent past where consumers have fallen prey to unfair trade practices under the influence of celebrities acting as brand ambassadors. In such cases, it becomes important for the endorser to take the onus and exercise due diligence to verify the veracity of the claims made in the advertisement to refute liability claims.

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The CCPA may impose a penalty of up to INR 1,000,000 on a manufacturer or an endorser, for a false or misleading advertisement and imprisonment for up to 2 years for the same. In the 1986 act, the onus of that was only on the manufacturers and the service providers only. Under section 21(2) of the 2019 Act, the commission could even levy a fine of fifty lakhs if the endorser continues to advertise false information about the products even after getting a notice issued by the consumer. The CCPA can also prohibit the endorser of a misleading advertisement from endorsing that particular product or service for a period of up to 1 year. For every subsequent offence, the period of prohibition may extend to 3 years. This is expected to make the brand ambassadors exercise due diligence on the veracity of the claims being made about a product or a service before choosing brands to endorse.

### **3. Unfair Trade Practices**

The Act introduces a specific broad definition of Unfair Trade Practices, which also includes sharing of personal information given by the consumer in confidence, unless such disclosure is made in accordance with the provisions of any other law. Misleading advertisements are also under the ambit of 'Unfair Trade Practices' in the new act.

### **4. Product liability**

Product Liability is a significant aspect introduced in this bill that would work to the advantage of the consumers. Under the provisions of this bill, a manufacturer or a service provider would be required to compensate the consumer in case of any loss or injury due to a manufacturing defect in the product or a poor service.

This is distinguishable from the existing provision where only the cost of the product was compensated by the manufacturer or the service provider and not the cost of the loss or injury as in the current proposal.

The product liability claim can be brought by a complainant against a product manufacturer, product service provider as well as a product seller exercising substantial control over designing, testing or modifying the product.

However, it will not include any harm caused on account of breach of warranty conditions or any commercial or economic loss. The product seller will also cannot be made liable where the product has been misused, altered or modified.

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## **5. Covering E-Commerce transactions**

With the expansion of technologies and living style, there has been increasing buying and selling of things on online platforms (like Amazon, Flipkart, ebay) . The New act successfully throws a cloak of protection to the transactions made online. The definition of a consumer now includes within its ambit any person who buys any goods, whether through offline or online transactions, electronic means, teleshopping, direct selling or multi-level marketing.

## **6. Enabling E-Complaints/hearings through video conferences**

Unlike the previous Act, the new Act enables consumers to file E-complaints sitting right at their homes. The electronic filing of complaints and hearing via video conferences have disentangled and resolved a lot of complexities faced by the consumers during the procedures of filing, going to courts and engaging in time consuming documents. Moreover, in contrast to consumer filing complaint in the jurisdiction where seller falls, the new Act enables consumers to file complaint from anywhere or from where the consumer resides.

## **7. Provision for Mediation**

If the consumers wish to resolve the dispute outside the court, there is a provision for Mediation as well. The dispute can be referred to Mediation as an Alternative Dispute Redressal Mechanism. There is also a provision for setting up of Consumer Mediation Cell. This provision would ease the existing burden of millions of cases on courts and enable quicker disposal of cases at hand.

## **8. Revised Pecuniary Jurisdiction**

The new Act has enhanced the pecuniary jurisdiction of Consumer Courts at various levels. The District Commission shall now entertain with cases where value of goods and services paid are upto 1 crores, State Commission with cases upto 10 crores and National Commission with cases exceeding the value of 10 crores.

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## **CONCLUSION**

The Consumer Protection Act, 2019 is welcomed measure from all quarters of society. The Act seems to be having full and extensive intensity to deal with matters of every kind efficiently. The Act seeks to fill in the shortcomings of the previous Act as to provide speedy and timely redressal of consumer's grievances. The sheer voice of consumers has now become a 'roar' with the enhancement of the old Consumer Act. It is now the consumer which is to be treated as king.

Hence, it is important for consumer driven businesses to be mindful of the changes in the legal landscape and have effective policies dealing with consumer redressal. Consumer driven businesses must also strive to take extra precautions against unfair trade practices and unethical business practices as well. However, it still remains a big challenge before the government for effective implementation of the Act throughout the nation and augmenting the physical & human resources at every level including additional allocation of funds both by the Central & State Governments that works to the best interest of consumers.

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