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# Consumer Protection in India: Archetypal Challenges and Way Forward

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## ABSTRACT

*With the advent of the Consumer Protection Act, 2019, a new consumer protection regime is in place in India. The New Act is undoubtedly more robust and much broader in scope but not without its archetypal challenges. The objective of this article is to highlight these archetypal challenges and provide suggestions to help mitigate them. In doing so, this article aims to elicit varied perspectives on consumer protection in India and provides a critique of the New Act.*

**Keywords:** *Consumer protection, India, Central Consumer Protection Authority, Archetypal features, Duties*

## I. INTRODUCTION

The practice of consumer protection is to prevent consumers from being exploited and harmed by unfair trade practices of businesses. The protection of consumers is laid down in legislation. The concerned law/act in India is designed to prevent companies/businesses from committing fraud or undertaking unfair practices to obtain an advantage over rivals or to deceive consumers. Government regulations require companies to provide comprehensive product information – particularly in areas of public health and safety, such as in case of medical supplies, food, cars, etc. Consumer Protection Law enables consumers to make informed decisions in the marketplace and to prosecute complaints against erring companies. Additionally, certain entities in India are also crucial in supporting protection of consumers. Such entities include government agencies/departments (such as the Department of Consumer Affairs, Consumer Protection Agency/Authority, etc.), self-regulating organisations (such as Consumer Forums), Buyer Co-operatives, Law Firms and Lawyers practicing consumer law, NGOs proposing consumer protection legislation and helping its enforcement, and finally, the Consumer Courts.

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The following are the consumer rights enshrined in the ‘upgraded’ Consumer Protection regime currently in-force in India, i.e., the Consumer Protection Act, 2019<sup>4</sup>:

- the right to be protected against the marketing of goods, products or services which are hazardous to life and property;
- 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;
- the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;
- the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;
- the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and
- the right to consumer awareness.

The next section highlights the key features of the Consumer Protection Act, 2019 (the Act currently in-force). It further highlights the major differences between the previous (Old) Act (Consumer Protection Act, 1986) and the current one. The third section highlights the archetypal challenges of the New Act. The fourth section outlines the suggestions offered by the authors of this article to help mitigate the archetypal challenges highlighted in the third section. The final section of the article provides a brief conclusion.

## **II. KEY FEATURES OF THE CONSUMER PROTECTION ACT, 2019**

The digital age has ushered in a new era of commerce and digital marketing. Digitisation has provided quick access to consumers, a wide range of options, flexible payment systems, better facilities and convenience-based shopping. It has, however, also introduced problems relating to consumer safety along the way. Keeping this in mind and trying to address the new set of challenges facing consumers in the age of digitisation, the Indian Parliament, on 6 August 2019, passed the landmark Consumer Protection Bill, 2019, aimed at providing timely and effective management and resolution of consumer disputes. The Consumer Protection Act, 2019 (New Act) obtained the President of India's assent and was released on 9 August 2019 in the official gazette of India. The New Act entered into force on 20 July, 2020 and has replaced the Consumer Protection Act, 1986.

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<sup>4</sup>The Gazette of India, No. 35 of 2019, 9 August 2019, (35 ed. 2021), <http://egazette.nic.in/WriteReadData/2019/210422.pdf> (last visited Feb 20, 2021).

The key highlights of the Consumer Protection Act, 2019 include the following:<sup>5</sup>

- **E-commerce Transactions:** The concept of 'consumer' has been broadened in the New Act. It now covers offline and online transactions, any electronic means, teleshopping, direct sales or multi-level marketing. The term 'consumer' now also includes any person who purchases any product/service.
- **Enhancement of Pecuniary Jurisdiction:** Under the New Act, amended pecuniary limits have been fixed. The district platform will now resolve grievances where the amount of products or services charged does not exceed INR Ten million. Where such value exceeds INR Ten million but does not exceed INR One Hundred million, the State Commission may enter into disputes and the National Commission may exercise jurisdiction if such value exceeds INR One Hundred million.
- **E-filing of Complaints:** The New Act allows the consumer the flexibility to lodge complaints with a competent consumer forum located at the consumer's place of residence or work. This is unlike the previous practice of filing complaints at the place of purchase or where the registered office address is kept by the seller. The New Act also includes provisions allowing consumers to file grievances electronically and by video conferencing. Video conferencing can also be used for listening to and/or questioning parties involved. This is aimed at ensuring procedural simplicity and reducing consumer inconvenience and abuse.
- **Establishment of a Central Consumer Protection Authority:** The New Act recommends the establishment of a Central Consumer Protection Authority (CCPA), a regulatory authority with strong enforcement powers. An investigative wing, led by a Director-General will be accessible to the CCPA, which can perform and undertake investigations into breaches of consumer law.
  - Broad powers have been given to the CCPA to take suo moto actions, recall products, order refund of the price of goods/services, cancel licenses and file class action suits if more than 1 (one) person is affected by a complaint.
  - Penalties for misleading advertisements: The CCPA may impose on a Manufacturer or an Endorser a penalty of up to INR One million for false or misleading advertising. They can also be sentenced by the CCPA to up to 2 (two) years in prison for the same. The fine can be extended to INR Five million and up to 5 (five) years imprisonment in the event of a subsequent offence. The CCPA may also bar

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<sup>5</sup>The Gazette of India, No. 35 of 2019, 9 August 2019, (35 ed. 2021), <http://egazette.nic.in/WriteReadData/2019/210422.pdf> (last visited Feb 20, 2021).

the Endorser of a misleading advertisement for a period of up to 1 (one) year from endorsing that product or service. The term of prohibition may stretch to 3 (three) years for any subsequent offence.

- **Unfair Trade Practices:** a specific broad concept of unfair trade practices is enforced by the New Act, which also requires the exchange of sensitive personal information provided by the consumer, unless such disclosure is made in compliance with some other regulation.
- **Provision for Alternative Dispute Resolution:** As an Alternate Dispute Resolution tool, the New Act allows for Mediation, making the dispute adjudication process easier and faster. This would help to settle disputes more efficiently and reduce pressure on Consumer Courts, which have several cases pending before them already<sup>6</sup>.

The Consumer Protection Act, 2019 has come into effect (20 July 2020) after the Old Act (Consumer Protection Act, 1986) had been in place for over thirty-three years. During these years, technology, culture and the society at large has evolved immensely. While the Old Act tried to remain relevant with some minor changes (amendments), there was an increasing need for the upgrade of the consumer protection regime in India. In line with this increased need, first and foremost, the New Act has explicitly provided for the protection of the consumer who buys products or services online. The act has also made Endorsers liable for false or misleading advertisements, in addition to the inclusion of online sales. In the 1986 Act, it was just the producers and the service providers that were held liable for the same. Under section 21(2) of the New Act, after receiving a notice from the consumer, the Commission may levy a fine of up to INR Five million on the endorser continuing to endorse false advertisement about the goods/services in question.

Under the New Act, not just the offences, even the redressal agencies have undergone reforms. Although, the 1986 Act provided for the Commissions to either approve or deny a complaint within 21 days of receipt, the 2019 Act went a step further and clarified that if no action has been taken within 21 days, it will be presumed that the complaint has been approved. Additionally, to ease the burden of State and National Commissions, the pecuniary authority of the District Commissions has also been raised. Now, when the value of the damages claimed/sought is up to INR Ten million, an aggrieved consumer can apply to the District Commission itself. Also, the consumer is no more required to file a complaint at the opposite party's home jurisdiction, instead, the consumer can file the complaint where the cause of action

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<sup>6</sup>Galiya S, Consumer Protection Act, 2019 – Key Highlights - Consumer Protection - India Mondaq.com (2021), <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/838108/consumer-protection-act-2019-key-highlights> (last visited Feb 20, 2021).

has occurred.

The Commissions now also have the right to revisit their cases and with the agreement of all parties involved, the Commissions may also refer cases for mediation. The Act also establishes an independent regulator, the Central Consumer Protection Authority (CCPA). Although this authority cannot listen to customer complaints or resolve disputes, but it can take administrative actions such as enforcing obligations on companies/businesses to remedy any unfair trade practice.

### **III. CHALLENGES WITH THE NEW ACT: CRITIQUING ITS ARCHETYPAL FEATURES**

The New Act and its implementation is not without its fair share of challenges. The following are the archetypal ones (and not the structural and infrastructural ones that usually plague the whole Judicial System and its functioning such as lack of adequate courts and personnel, paper work involved, systemic delays, etc.):

- Raju (2020) highlights that to promote, safeguard and develop consumer rights the Central Consumer Protection Authority (CCPA) has been created with its headquarters in the National Capital Region (NCR) while the Government will settle issues at the regional centres. Violation of consumer rights, unfair trade practices, and misleading advertisements are being regulated by the CCPA. The role of upholding and improving this Authority (i.e., the CCPA) will be committed to the Government and its consequences for the 2019 Act will definitely be very relevant. There is, however, less clarity as to how this authority and its roles related to investigations and inquiries will function. Also, considering the investigation wing and the search and seizure functions, there is an overlap with the position of the Director General<sup>7</sup>. The Authority is permitted to issue guidance, order the recall of products, order refund of price and penalize erring manufacturers, suppliers, service providers and/or endorsers. However, interestingly, it is only before the National Commission that appeals pertaining to such orders can be heard. The conditions, by the fulfilment of which, such cases can be treated by the National Commission are also uncertain. It is also uncertain if, due to a shift in pecuniary authority and jurisdiction, current cases will be asked or allowed to be moved. There is, however, speculation that only new cases will fall under the new jurisdiction<sup>8</sup>. It is also necessary to examine the scope of

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<sup>7</sup>Satvik Varma, Consumer Protection Act 2019: Enhancing Consumer Rights Bar and Bench - Indian Legal news | Supreme Court Judgments, High Court Updates, Indian Law Firm News, Law School News, Legal News in India - barandbench.com (2021), <https://www.barandbench.com/columns/consumer-protection-act-2019-enhancing-consumer-rights> (last visited Feb 20, 2021).

<sup>8</sup>Raju C., Consumer Protection Act,2019: Analysis and Challenges for Future LatestLaws.com (2021), <https://www.latestlaws.com/articles/consumer-protection-act-2019-analysis-and-challenges-for-future/> (last

authority and power granted to CCPA in matters of investigation leading to product recall or penalisation of manufacturers. Due to lack of accountability and appeals to be heard only by the National Commission, CCPA orders have the ability of normalising their prejudice against producers. Additionally, there is little or no remedy available to the victims (producers) of product recalls which not only damage the financial position of such companies but also impairs its reputation among the consumers for a long period of time.

- Another big challenge concerns the issue of liability of legal professionals for negligence and deficiency of services that fell within the scope of the Consumer Protection Act, 2019 given its wider definition of ‘Services’<sup>9</sup>. The ‘service of lawyers’ was however clarified by the Consumer Affairs Minister to be kept outside the purview of the Consumer Protection Act, 2019 after facing much scepticism and backlash from the legal community and its representative collectives<sup>10</sup>. Several provisions in other laws/acts and previous attempts to make laws/acts such as the Legal Practitioners (Fees) Act, 1926; Advocates Act, 1961; and Draft Legal Practitioners (Regulations and Maintenance of Standards in Professions, Protecting the Interest of Clients and Promoting the Rule of Law) Act, 2010 have either met a similar fate or have remained ‘toothless’<sup>11</sup>. Thus, consumer protection doesn’t really provide protection to consumers of ‘legal services’. The most crucial point of contention is the question that ‘whether the client (of a lawyer or a law firm) is a consumer or not and whether the consumer fora is the right place to serve the purpose of providing remedies to victims of legal service deficiency without jeopardising the sanctity and privity of lawyer-client relationship, conflict of interest and public policy?’
- In India, the concept of one’s ‘Kartavya’ (Duty) towards the nation building is well established since ancient times. In recent political environment, with the rising discourse around the sanctity of citizens’ rights the importance of duty is being neglected. As Justice N. Kirubakaran said, “When you talk about rights, you should also speak about duties. While rights are being celebrated, duties are forgotten”<sup>12</sup> and hence, realisation of consumer

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visited Feb 20, 2021).

<sup>9</sup>Lakshmi Chodavarapu, Legal loopholes in consumer protection Thehansindia.com (2021), <https://www.thehansindia.com/hans/opinion/news-analysis/legal-loopholes-in-consumer-protection-577903> (last visited Feb 20, 2021).

<sup>10</sup>BUSINESS NEWS & India News, ‘Legal services not under Consumer Protection Act’ - Times of India The Times of India (2021), <https://timesofindia.indiatimes.com/business/india-business/legal-services-not-under-consumer-protection-act/articleshow/74633153.cms> (last visited Feb 20, 2021).

<sup>11</sup>Aditya Ranjan, Why Do Lawyers Enjoy Immunity Against Wrong Practices? Vidhi Centre for Legal Policy (2020), <https://vidhilegalpolicy.in/blog/why-do-lawyers-enjoy-immunity-against-wrong-practices/> (last visited Feb 20, 2021).

<sup>12</sup>‘Rights and duties are equally important’, The Hindu (2021), <https://www.thehindu.com/news/cities/Madurai/rights-and-duties-are-equally-important/article33251900.ece> (last visited Feb 20, 2021).

responsibility towards ensuring protection of their own interest along with development of conscious consumerism is the essence of consumer protection. Unfortunately, the new act does not lay down consumer responsibilities exclusively, although it can be inferred from the intent of the law makers and through judiciary. It is necessary to uphold or recognise the significance of consumer responsibility in the legislation as laws of a state play a parental role in the life of citizens and highly influence their decision making.

#### **IV. WAY FORWARD: SOME SUGGESTIONS FOR MITIGATING THE CHALLENGES**

The archetypal challenges highlighted in the previous section can be mitigated to some extent with some effort from the lawmakers, the Judicial system and to some extent Consumers. Following are the corresponding suggestions for mitigating the highlighted challenges:

- The CCPA, its ambit and functioning is a bit of a grey area in its current avatar. There is an increased need for elaborating the same. Specifically, the CCPA's roles concerning investigations and inquiries and search and seizure operations needs to be outlined (at least a workable template needs to be developed). Given that the CCPA has more 'teeth' in certain crucial matters (such as issuing guidance to producers/companies, in case of product recalls, appeals, etc.), it (the CCPA) should be made increasingly 'approachable' in its truest sense. It is still early days for an authority of such nature to take shape but surely some elaboration and template development can be done.
- The backlash from the legal community especially from the Bar Council of India (BCI) for including legal services within the meaning of services in the New Act is due to two reasons. First, it is not a personal service because it is an integral part of the justice delivery system and has a relationship with the court of law along with the client. Second, the duty of Legal Officers toward 'Law' essentially means that 'lawyers are nothing but the officers of the Hon'ble Court who have a duty to assist the court and not to act as a mouthpiece of the client'<sup>13</sup>. However, this cannot neglect the fact that lawyers are obligated to provide sufficient services to the client and deficiency in such services cannot be excused by the law. Thus, one plausible way to overcome the issue in the New Act is to include legal services to the extent of lawyer and client relationship within the meaning of the new act and defining the meaning of client in a more specified manner. Furthermore, it is the duty of the citizens to question the applicability of the existing laws such as the Advocates Act, 1961 and indulge in conversations extending to activism to uphold the provisions mandated

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<sup>13</sup>Bar Council objects to inclusion of 'Lawyers' under the Consumer Protection Act, 2019., latestlaws.com (2020), <https://www.latestlaws.com/latest-news/bar-council-objects-to-inclusion-of-lawyers-under-the-consumer-protection-act-2019-read-letter-here/> (last visited Feb 20, 2021).



in the said Act. It is also worth noting that spreading awareness regarding the said law and laws in general among the average citizenry of the country also needs to be undertaken on a war footing.

- Rights and duties of a consumer flow from each other and along with demanding and exercising rights, the onus is on the consumers to follow the duties inferred from the New Act. Exercising duties may include, besides awareness, filing complaints, class action suits, indulging in activism to ensure that rights are safeguarded by the institutions in place, etc. It would also be more prudent if the law makers can explicitly mention consumer duties in the legislation. For example, the Jamaican Government recognises both rights and duties of the consumer and publishes these on their official website. The duties included by the Jamaican Government highlight the responsibility to be aware, gather information, think independently, speak out, complain, be an ethical (conscious/responsible) consumer, and to respect the environment. Furthermore, Duties are not just to be explicitly mentioned but imbibed and performed to make the best use of the protection available under a law (any law for that matter). It is the responsibility of the Law makers and the Judicial system to make consumers aware and of the Consumers to rightfully uphold duties first and then indulge in activism for the rights proclaimed in the Act.

## **V. CONCLUSION**

The present article discusses the consumer protection regime currently in-force in India. It highlights the key features of the New Act<sup>14</sup> along with the major differences between the New Act and the Old one. By exploring the archetypal challenges of the New Act and by providing suggestions to mitigate those challenges, this article presents a constructive critique of consumer protection in India. Specifically, this article highlights the issues pertaining to the functioning of the Central Consumer Protection Authority, the doubts regarding the inclusion/exclusion of 'legal services' from the Act, and the lack of emphasis on duties of/as consumers in the Act. Suggestions to help mitigate the three issues are explicated in detail.

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<sup>14</sup>Galiya S, Consumer Protection Act, 2019 – Key Highlights - Consumer Protection - India Mondaq.com (2021), <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/838108/consumer-protection-act-2019-key-highlights> (last visited Feb 20, 2021).