

# Shop Till You Drop

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With the **Consumer Protection Act, 2019** ('CPA') taking effect this July, India has updated its consumer protection laws. The CPA replaces a 1986 legislation that was increasingly inadequate in coping with the legal challenges posed by changing market realities, most particularly, the rapidly growing shift towards e-commerce. The new statute envisages the constitution of new bodies including Consumer Disputes Redressal Commissions at the district, state and national level to provide a full-fledged consumer complaints and disputes redressal organisation. Also, on July 23, 2020, the government notified the **Consumer Protection (E-Commerce) Rules, 2020**, which complement the CPA in making online retailers more accountable and their businesses more transparent.



Key changes introduced by the CPA include:

The **definition of a consumer has broadened** to include purchases made via offline and online transactions, teleshopping, direct selling and multi-marketing. Further, the **definition of 'unfair trade practice' is widened** to include non – issuance of bills, refusal to take back defective goods and unauthorised disclosure of a consumer's personal information (unless required by law) by a manufacturer/seller. Following international jurisprudence, the new law also allows consumers to take **action against unfair contracts**, for example, those that demand excessive security deposits from consumers for performance of contractual obligations or impose penalties on consumers disproportionate to any loss due to breach.

The new statute introduces the concept of **product liability**, the scope of which covers not only the 'product manufacturer/ service provider' but also the 'product seller' for a claim for compensation. 'Product seller' is defined to include a person listing a product for a commercial purpose thus encompassing e-commerce platforms, which previously avoided liability by claiming they were mere 'aggregators'. A manufacturing or design defect, or non-conformity with express warranties could lead to a claim of product liability, regardless of whether or not there is negligence and/or fraud. The following example is helpful to understand how liability can accrue to different stakeholders. If a person purchases a shirt with defective buttons manufactured by X and sold by Y, a complaint may be filed against X (owing to the manufacturing defect). Alternatively, if the identity of manufacturer X is not known or X cannot be subjected to the laws of the country, a complaint can be filed against seller Y. However, liability would not accrue under the statute, if a product was misused, altered or modified at the

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time of harm or if the product warnings had not been heeded by a consumer.

The Act defines **misleading and false advertisements** to include false descriptions of and guarantees relating to a product or services. It also covers information deliberately concealed from consumers. For such advertisements, a penalty of up to INR 1 million (US\$ 13,500) is prescribed *vis-à-vis* a manufacturer as well as an endorser which could be accompanied by a prison term up to 2 years. Subsequent offences would see the monetary fine go up to INR 5 million and imprisonment of up to 5 years. Celebrities are powerful influencers and the new law is empowered to prohibit endorsers found guilty of misleading advertisements from endorsing that particular product or service for a period of up to 1 year; subsequent offences could see the period of prohibition stretch to 3 years.

A **Central Consumer Protection Authority (CCPA)**, an alternate forum for redressal of disputes, with wide powers of enforcement, is to be established. Its investigation wing will be able to undertake conclusive fact finding and the CCPA will be empowered to take *suo-moto* actions, impose penalties, order discontinuation of goods, recall unsafe goods, pass orders for reimbursement of the price of goods/services, cancel licenses and file class action suits. Non-compliance with its orders would be punishable with imprisonment extending to 6 months and/or a fine of INR 2 million (US\$ 26,000).

Additionally, the Act provides for a **simplified dispute resolution mechanism**, with a provision for **mediation** (simpler procedures and quicker resolution than traditional forums bogged by heavy caseloads) and **e-filing** of cases as well as **video-conferencing** for hearings.

Further, consumers can now file **complaints** at a **forum** closest to their office or residence, apart from the place of purchase or the location of the seller's registered office address. Limits of **pecuniary jurisdiction** have also been revised as follows:

- claims valued below INR 10 million (US\$ 1,30,000) must be filed before the district forum;
- claims valued between INR 10 million – 100 million must be filed before the state forum; and
- claims exceeding INR 100 million must be filed at the national forum.

The **Consumer Protection (E-Commerce) Rules, 2020**, which apply to all electronic retailers offering goods and services to Indian consumers, whether registered in India or overseas, provide that:

- every e-commerce entity must prominently display information such as its legal name, addresses of its headquarters and branches and the name and details of its website/s. Customer care and grievance officer contact details are to be published and an effective dispute resolution mechanism provided for;
- e-tailers must display details about returns, refunds (which are to be acted upon in reasonable time), exchanges, warranties and guarantees, delivery (providing break-up of charges if pertinent) and shipment, modes of payment, as well as the 'country of origin' of the goods being retailed;

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- e-commerce marketplaces are to obtain undertakings from sellers to ensure that descriptions, images and other content relating to goods and services are accurate and further, must not manipulate prices to gain unreasonable profits or discriminate between consumers.



These developments are particularly timely as ongoing restrictions have led to a sharp preference for online transactions. By defining a consumer more broadly and introducing product liability under the CPA, e-commerce entities can now be held liable in consumer disputes. Until now, it has been the provisions of the Information Technology Act which have governed intermediary liability - it will be interesting to see the interplay between existing and new provisions in the days ahead.