The Consumer Protection Act, 2019 – A Welcome Relief for the Consumers.

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Scope of Presentation.

Important!

- ✓ The scope of this presentation covers a bird's eye view, or an insight into the new Consumer Protection Act, 2019, the allied Rules and the Regulations which are read with the Act.
- ✓ The author has written a full-scale article on the subject, which can be mailed upon request.

- August 7, 2020 (Friday)

Disclaimer: *Every effort has been made to keep the matter error-free. The deliberations and the matter herein are based on the author's interpretation of the law prevailing as on date. The contents are merely informative and does not constitute a legal advice or a legal opinion. The contents are the personal views of the author. The opinions are subject to one's interpretation and understanding of the law. . Feedback is welcome on the contact details at the end.*

Competition is not only the basis of protection to the consumer, but is the incentive to progress.

“

July 20, 2020

The Act was partially implemented across India except J&K

July 24, 2020

The remaining provisions of the Act were put into force

100%

The Consumer Protection Act, 2019 is in force today

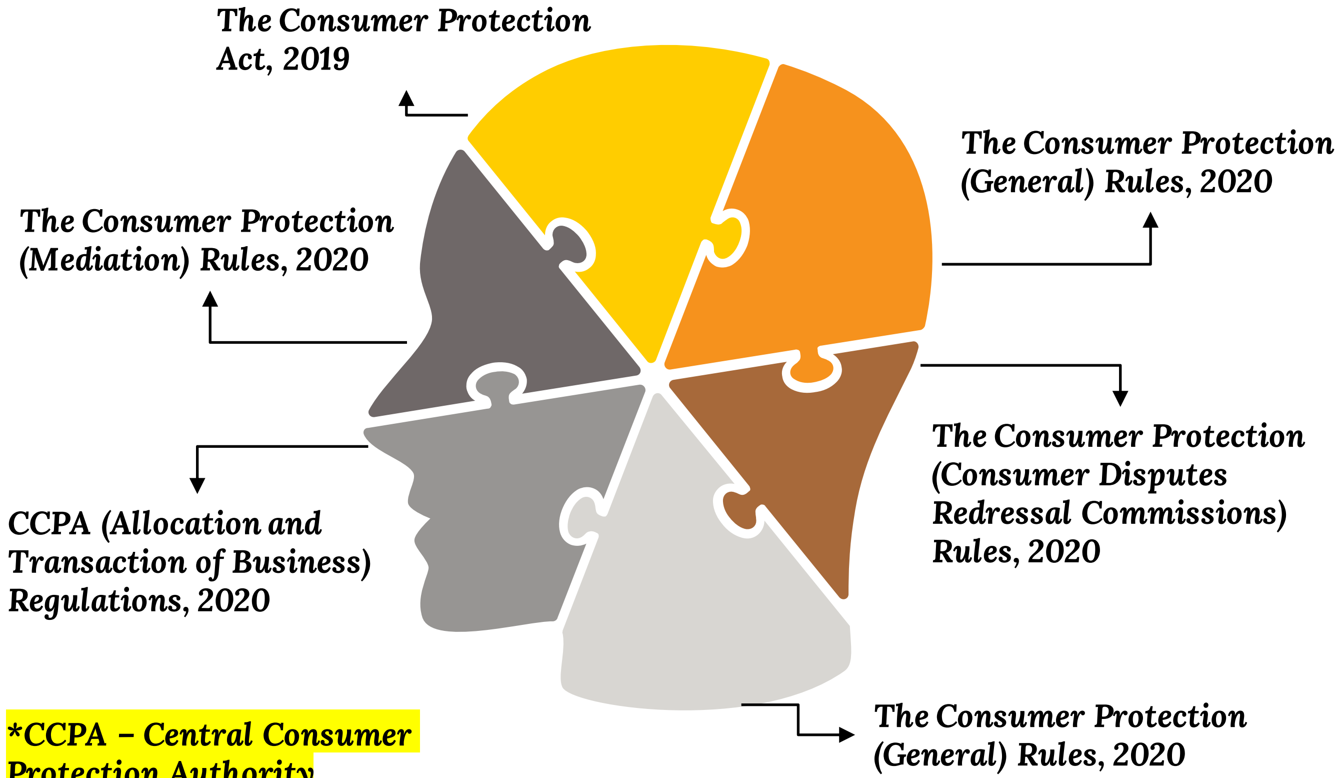
Index.

Index of topics under the new law.

1

Regulatory Framework.

We have mentioned the Acts, Rules, and Regulations governing the new law on Consumer Protection.



*CCPA – Central Consumer Protection Authority

2

Introduction.

The discussion on ‘The Whats’, and ‘The Whys’ of the new law on consumer protection.

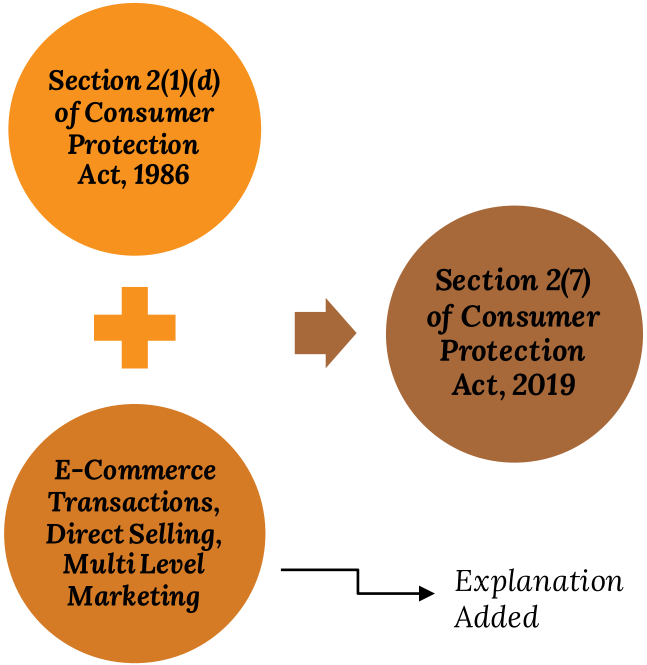
Changes in the New Law.

- Ambit of Consumer has been expanded
- E-Commerce transactions have been covered
- Advertisement, Endorsement has been defined
- Ambit of Unfair Trade Practices has been expanded
- Concept of ‘Product Liability’ has been introduced
- New regulatory authority has been established
- Consumer Redressal Disputes Commission
- Idea of Mediation and Settlement Introduced
- Offences and Penalties

Repeal [Section 107].

Section 107 of The Consumer Protection Act, 2019 provided for the repeal of the Consumer Protection Act, 1986.

Consumer [Section 2(7)].

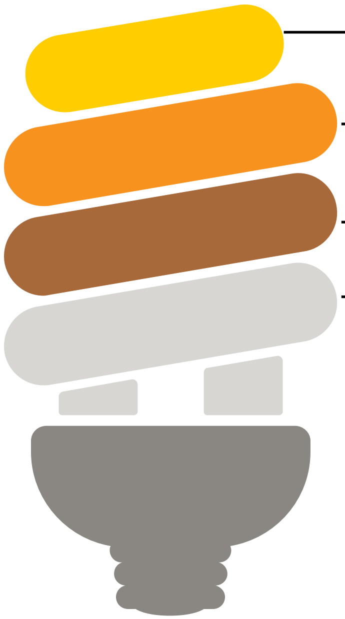


3

E-Commerce.

Embracing the change to include online transactions with offline transactions.

Duties [Rule 4(2)].



Display of Details on its Platform

- *Legal Name of the e-Commerce entity*
- *Principal geographic address of its headquarters and all branches*
- *Name and details of its website*
- *Contact details of customer care and grievance officer*

Duties [*Rule 4(1) and from 4(3) to 4(11)*].

- Appointment of Nodal Person
- No unfair trade practices, or manipulation of prices or discrimination amongst consumers
- Adequate grievance redressal mechanism
- Acknowledgement of complaint within 48 hours and redressal within 1 month
- No cancellation charges to be imposed on consumers after confirmed purchases
- Record the consent of customer only if obtained explicitly and not automatically
- All refund requests effected as prescribed by the RBI

Liabilities of Marketplace E-Commerce Entities [*Rule 5*].

Sellers undertaking as to content and description of goods and services

Descriptions and contact details of sellers, including rating, refund mode

Terms and conditions specifying relationship with sellers

Take reasonable efforts to maintain record of sellers detracted under IPR Law or Info Tech Law

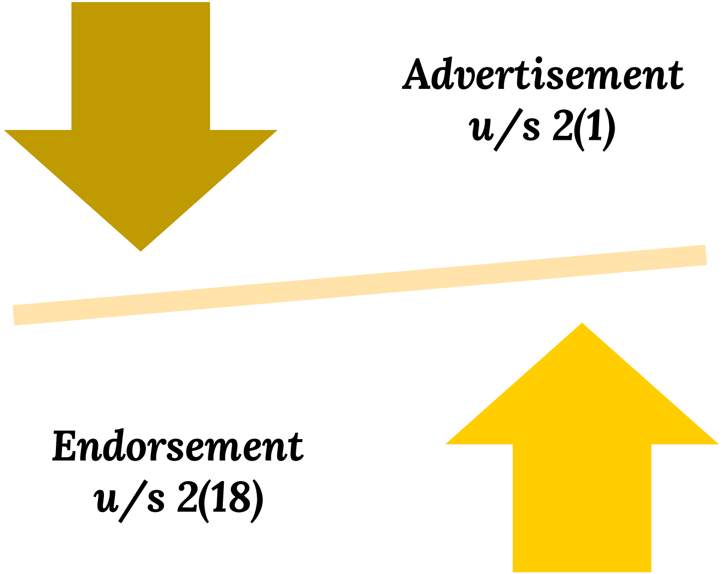
For the sake of brevity, **Rule 6** *(Duties of Sellers on Marketplace and* **Rule 7** *(Duties and liabilities of inventory e-commerce entities) has been* <u>*excluded*</u> *from the scope of this presentation.*

4

Advertisements.

Bringing advertisements, advertisers and endorsements into the net for issuing misleading advertisements.

Advertisement [*Section 2(1)*].



Advertisement [*Section 2(1)*].

- Advertisement was not defined in the Consumer Protection Act, 1986.
- The Consumer Protection Act, 2019 has clearly provided a definition of advertisement.
- Here, **advertisement** is defined as *"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;"*

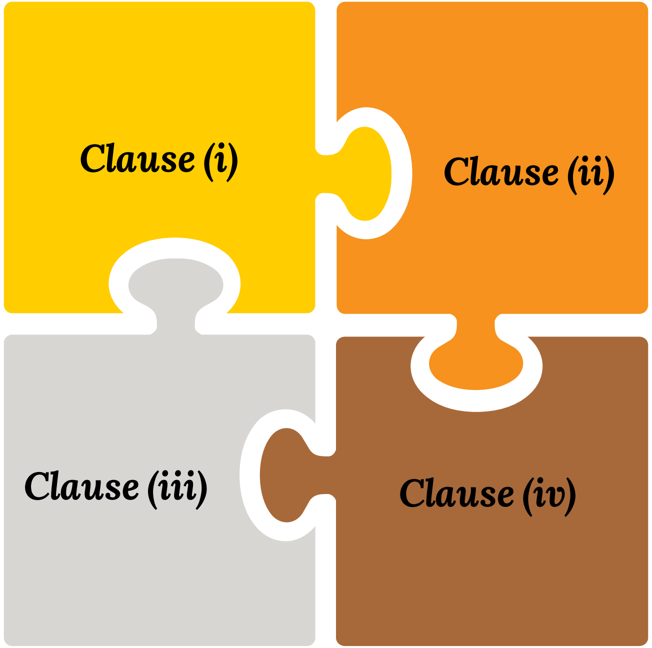
Endorsement [*Section 2(18)*].

- Endorsement was not defined in the Consumer Protection Act, 1986.
- The Consumer Protection Act, 2019 has clearly provided a definition of endorsement.
- Here, **endorsement** in relation to advertisement means
  1. *Any message, verbal statement, demonstration; or*
  2. *Depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or*
  3. *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;"

Misleading Advertisement [Section 28].

False Description of Product or Service



False Guarantee or Misleading Customers

Conveys Representation of Unfair Trade Practice

Deliberately Conceals Important Information

Why is it Important?

Earlier, complaints were made to the Advertisements Standards Council of India (ASCI)

Slow, inefficient and ineffective time of action.

Advertisement solves its purpose.

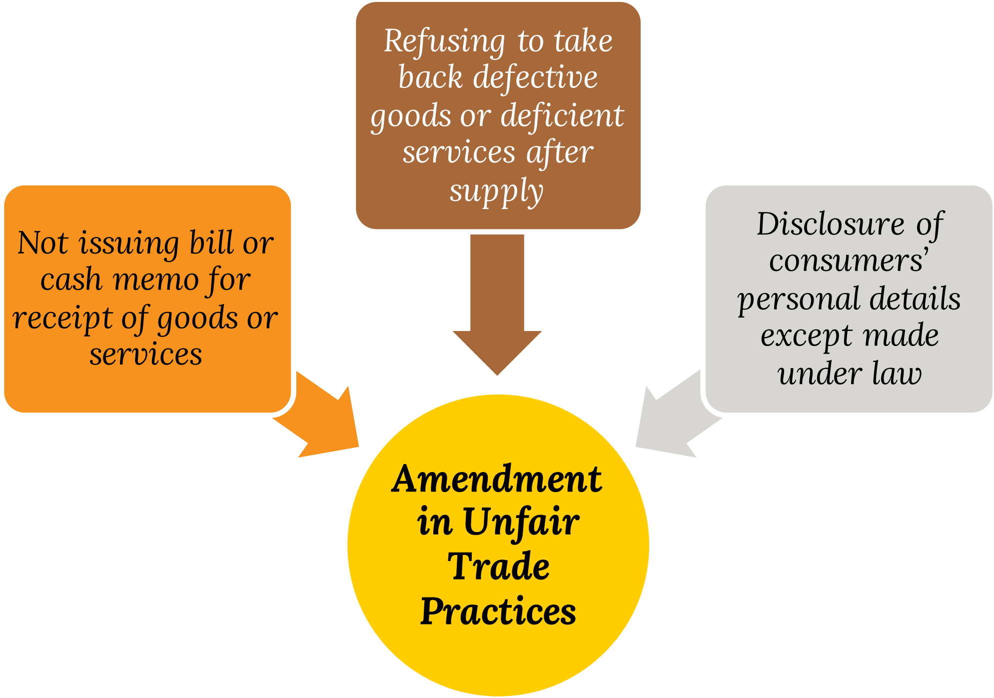
Insufficient monetary penalties.

5

Unfair Trade Practices.

Expansion of the definition of unfair trade practices.

Unfair Trade Practices [Section 2(47)].



Product Liability

6

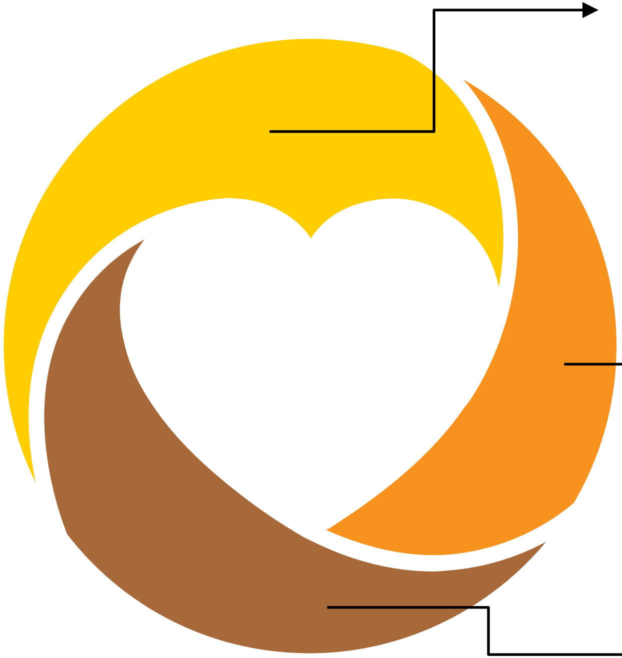
Product Liability.

The legal liability that a product manufacturer, or a product service provider, or a product seller incurs for producing or selling a faulty / defective product or service.

Product Liability [Section 2(34)].

*"**product liability**" means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto;*

Product Liability Action [*Section 83*].



- Product Liability Manufacturer (*Section* 84)
- Product Liability Service Provider (*Section* 85)
- Product Liability Seller (*Section* 86)

Product Manufacturer [Section 2(36)].

"***product manufacturer***" *means a person who—*

(i) makes any product or parts thereof; or

(ii) assembles parts thereof made by others; or

(iii) puts or causes to be put his own mark on any products made by any other person; or

(iv) makes a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains such product or is otherwise involved in placing such product for commercial purpose; or

(v) designs, produces, fabricates, constructs or re-manufactures any product before its sale; or

(vi) being a product seller of a product, is also a manufacturer of such product;

Product Liability Manufacturer [*Section 84*].

Liability for Product Manufacturer:

- Manufacturing Defect or Design Defect
- Deviation was made from any Manufacturing Specifications
- No Confirmation to Express Warranty
- Failure to Provide Instructions of Correct Use or Warning of Improper Usage which causes any Harm

Product Service Provider [Section 2(38)].

"***product service provider***", *in relation to a product, means a person who provides any service in respect of such product;*

Product Liability Service Provider [*Section* 85].

Liability for Product Service Provider:

- Faulty, Imperfect, Deficient, Inadequate Service in Quality, Nature, Manner of Performance
- Omission, Commission, Negligence, or Conscious Withholding of Information which causes Harm
- No Confirmation to Express Warranty
- Non-Issuance of Warnings of Instructions to Prevent any Harm

Product Seller [Section 2(37)].

"***product seller***", *in relation to a product, means a person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing such product for commercial purpose and includes—*

(i) a manufacturer who is also a product seller; or

(ii) a service provider,

… Contd

Product Seller [Section 2(37)] Contd...

... "***product seller***", *but does not include—*

(a) a seller of immovable property, unless such person is engaged in the sale of constructed house or in the construction of homes or flats;

(b) a provider of professional services in any transaction in which, the sale or use of a product is only incidental thereto, but furnishing of opinion, skill or services being the essence of such transaction;

(c) a person who—

> *(I) acts only in a financial capacity with respect to the sale of the product;*
>
> *(II) is not a manufacturer, wholesaler, distributor, retailer, direct seller or an electronic service provider;*
>
> *(III) leases a product, without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor;*

Product Liability Seller *[Section 86]*.

Liability for Product Seller:

- Exercised Control over Designing, Manufacturing, Testing, Packaging, Labelling, which caused Harm
- Altered or Modified the Product in a Substantial Way which caused the Harm
- Product Sold by him and Identity of Manufacturer is Unknown
- Failure to Exercise Reasonable Care in Assembling, Inspecting or Maintaining Product or didn't pass warnings.

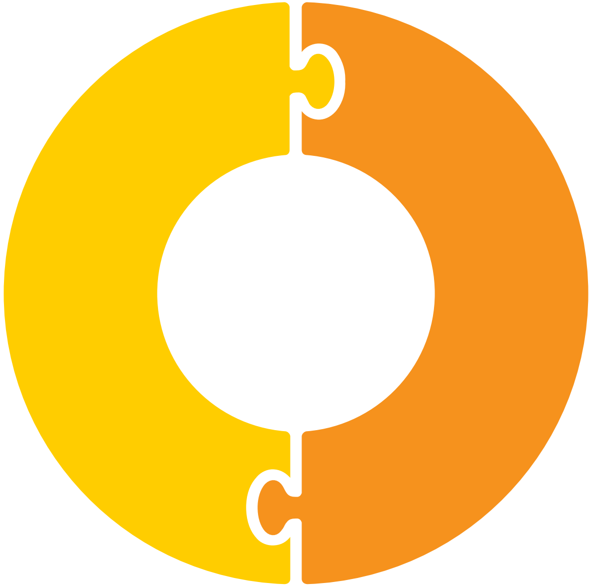
Exceptions to Product Liability [Section 87].

Section 83 of the Consumer Protection Act, 2019

Section 87 of the Consumer Protection Act, 2019

Exceptions to Product Liability [Section 87].

If at the time of harm, the product was misused altered or modified by the consumer.



The danger of using such product was obvious to consumer or the consumer should have known considering the features of the product.

Exceptions to Product Liability [Section 87].

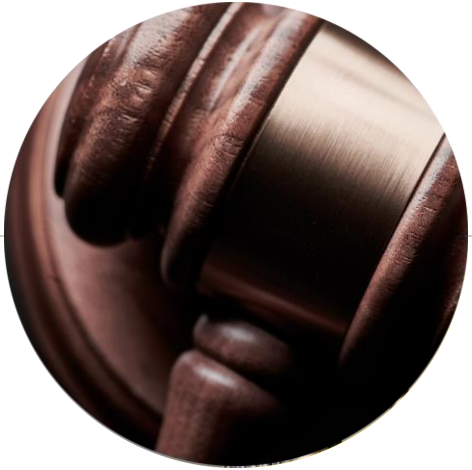
For failure to provide adequate warnings or instructions, the following actions will not invoke Section 83:

1. *Product was bought by employer for use in workplace and instructions were provided.*

2. *Product was sold as component or material for end product, and instructions were provided for said product, but harm was caused by use of end product.*

3. *Product was legally meant to be used and dispensed only by or under supervision of an expert and reasonable warnings were given.*

4. *Consumer was using product under influence of alcohol or a drug which was not prescribed by a medical practitioner.*



Central Consumer Protection Authority (CCPA)

7

Central Consumer Protection Authority.

Establishment of a regulatory body under the law of consumer protection for the first time.

Establishment [Section 10].

The power to establish CCPA was provided u/s 10 of the new Act

Notification to establish CCPA was issued dated July 23, 2020

The CCPA was established vide power in law and notification by Government

Powers & Functions [Section 18(1)].

Protect, promote the rights of consumers and prevent violation of rights

Ensure no misleading advertisement is made for any goods or services

Prevent unfair trade practices and ensures no person engages himself in such practices

Ensure no person takes part in publication of misleading advertisements

Powers & Functions [Section 18(2)].

- *Inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either suo-motu or on a complaint received or on the directions from the Central Government.*
- *File complaints before the District Commission, the State Commission or the National Commission.*
- *Intervene in any proceedings before the District Commission or the State Commission or the National Commission.*
- *Review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation.*
- *Recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights.*
- *Undertake and promote research in the field of consumer rights.*

Powers & Functions [Section 18(2)].

- *Spread and promote awareness on consumer rights.*
- *Encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies.*
- *Mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest.*
- *Issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services.*
- *Advise the Ministries and Departments on consumer welfare measures.*
- *Issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.*

8

Consumer Disputes Redressal Commissions.

Changes made with respect to Consumer Redressal Forums

Consumer Disputes Redressal Commission.

District Commission
(Section 28)

State Commission
(Section 42)

National Commission
(Section 53)

Amendments in CDRC.

Territorial Jurisdiction

Complaints can now be filed where the complainant resides or works for gain instead of opposite party resides or works for gain

Pecuniary Jurisdiction

Amendment in pecuniary limits for filing cases before District Commission, State Commission and National Commission

Alternative Dispute Resolution

Process of mediation introduced for speedy resolution of cases on the written consent of both the parties involved

E-Complaints

Filing of Complaints by the aggrieved consumers electronically which is yet to be prescribed by Government

Alternative Dispute Resolution

8

Mediation.

Introduction of Consumer Protection (Mediation) Rules, 2020

Ineligible Matters for ADRs [*Rule 4*].

- *Medical negligence resulting in grievous injury or death*
- *Matters of defaults or where compounding of offence has been made*
- *Serious allegations of fraud, forgery, impersonation, coercion*
- *Prosecution for criminal and non-compoundable offences*
- *Cases involving public interest, even though the party(ies) aren't before CDRC*

Matters ineligible for Mediation *[Proviso to Rule 4]*.

The Mediation Cell which is set up by the Commission (Rule 3). The Commission has the power to refuse to refer cases for mediation even if it does not fall within the ambit of Rule 4. This decision is enabled on the discretion of the Mediation Cell on cognizance of the fact that either no settlement can be reached before the parties, or the situation does not warrant a mediation.

Offences and Penalties

10

Offences and Penalties.

Coverage of important offences and penalties in the new law.

Offences and Penalties.

False or Misleading Advertisement (Section 89)

Manufacture for Sale or Storage or Import or Distribution of Products containing Adulterant (Section 90)

Non-Compliance of Directions of CCPA (Section 88)

Manufacture for Sale or Storage or Import or Distribution of Spurious Goods (Section 91)

Vexatious Search and Investigation by Director General (Section 93)

9

Miscellaneous Provisions.

Remainder of the provisions which are important as per the scope of the presentation

Goods [Section 2(21)].

"***goods***" *means every kind of movable property and includes "food" as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006;*

Product [Section 2(33)].

"***product***" *means any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid state possessing intrinsic value which is capable of delivery either as wholly assembled or as a component part and is produced for introduction to trade or commerce, but does not include human tissues, blood, blood products and organs;*

Service [Section 2(42)].

*"**service**" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;*

Person [Section 2(21)].

"***person***" *includes–*
(i) an individual;
(ii) a firm whether registered or not;
(iii) a Hindu undivided family;
(iv) a co-operative society;
(v) an association of persons whether registered under the Societies Registration Act, 1860 or not;
(vi) any corporation, company or a body of individuals whether incorporated or not;
(vii) any artificial juridical person, not falling within any of the preceding sub-clauses;

Service [Section 2(42)].

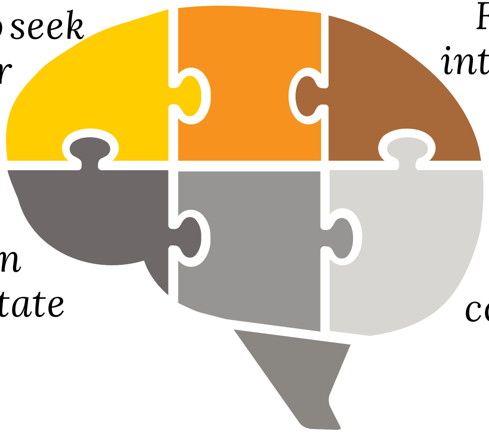
"***service***" *means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;*

Personal Thoughts.

Shift of onus on Manufacturers, Service Providers and Sellers

Celebrities to seek indemnity for protection

Future disputes between international e-commerce companies and India



Employment in District and State Commission

Institution of suit by a consumer against a consumer for false publicity

False cases instituted by 'rogue' consumers to derive pecuniary benefit

Role of Lawyers:

Advisory services

Litigation services

Source of Information.

Department of Consumer Affairs

National Consumer Disputes Redressal Commission (NCDRC)

The Official Gazette of India

Thank You!

Any *feedback* ?

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