

A Study on Consumer Protection Act 2019 and Its Implications on the Pillars of Integrated Communication Channel

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Abstract

The Government of India enacted Consumer protection Act 2019 to provide enhanced protection to the consumers taking into consideration the booming e-commerce industry and the modern methods of providing goods and services such as online sales, tele-shopping, direct selling and multi-level marketing in addition to the traditional methods. Consumer Protection Councils at the Central, State and District levels and the introduction of a new in-house machinery- Central Consumer Protection Authority (CCPA) was the turning point. The new move is undoubtedly beneficial to consumers, but the pillars of integrated communication channels have a very serious implications. The objective of this article is to assess how the implementation of Consumer Protection Act 2019, which is in force from 24th July 2020 would affect the pillars of integrated communication channel, namely; Manufacturers, Service Providers, Advertisers, Sellers (both Offline and Online) Celebrity Endorsers and E-commerce entities based on the terms and conditions of the new Act collected from secondary data sources. This is because the Act is powerful enough to bring fundamental changes in the approach of marketers in India, where aggressive promotion and advertisement were considered to be ideal strategies

(Keywords: *Consumer Protection Act 2019, Manufacturers, Service Providers, Advertisers, E-commerce entities, strategies)*

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I. Introduction

The Consumer Protection Act, 2019, an Act of Parliament, received the assent of the President on 9th August, 2019. But it came into force only on 20 July, 2020. This Act replaced the old Consumer Protection Act, 1986. The Government instead of bringing an amendment in the 1986 Act, enacted a new Act altogether so as to provide enhanced protection to the consumers taking into consideration the booming e-commerce industry and the modern methods of providing goods and services such as online sales, tele-shopping, direct selling and multi-level marketing in addition to the traditional methods. Several consumer activists have welcomed the new Act as it is forward looking with progressive provisions incorporated to protect the interest of innocent consumers. This is a significant move in the context where India is moving to one of the world's largest e-commerce market and government is promoting MSMEs relying more on online promotions. Besides the pandemic situation has also forged the internet transactions heavily across the globe.

Establishment of the Central Consumer Protection Authority (CCPA)

The turning point with regard to this new Act is the establishment of Consumer Protection Councils at the Central, State and District levels and the introduction of a new in-house machinery- Central Consumer Protection Authority (CCPA) which will have wide powers of investigation including the power of search and seizure. The Central Authority has been granted wide powers to take suo-moto actions, recall products, order reimbursement of the price of goods/services and file class-action suits if a consumer complaint affects more than one individual. Establishment of a Central Council, District Consumer Disputes Redressal Commissions, State Consumer Disputes Redressal Commissions and a National Consumer Disputes Redressal Commission

will provide a fully-fledged, and fully resourced, consumer complaints and disputes redressal organization at the Centre, State and District levels.

The new move is undoubtedly beneficial to consumers, making them more powerful as there is going to be a complete shift of onus from buyer to manufacturer/advertiser. Considering the supply chain of good and services, these channels have a very serious implications of Consumer Protection Act 2019. The pillars of integrated communication channel, namely; manufacturers, advertisers, publishers and celebrity endorsers need to take up the liability and safeguard the interest of every consumer as per the regulations of new Act. The objective of this article is to assess how the implementation of Consumer Protection Act 2019, which is in force from 24th July 2020 would affect these four pillars, namely; Manufacturers, Service Providers, Advertisers, Sellers (both Offline and Online) and Celebrity Endorsers of the integrated communication channel.

Consumer Protection Act 1986 vs Consumer Protection Act 2019

The Indian Contract Act, the Sale of Goods Act, the Dangerous Drugs Act, the Agricultural Produce (Grading and Marketing) Act, the Indian Standards Institution (Certification Marks) Act, the Prevention of Food Adulteration Act, the Standards of Weights and Measures Act, etc. had been continued to safeguard the interest of consumers in one way or the other. However, these laws require the consumer to initiate action by way of a civil suit involving lengthy legal proceedings that are expensive and time consuming. The Consumer Protection Act, 1986 was enacted to provide a simpler and quicker access to redressal of consumer grievances. The Act for the first time introduced the concept of ‘consumer’ and conferred express additional rights on him. The protection is meant for the person who fits in the definition of ‘consumer’ given by the Act. The Table 1 shown below clearly explains the value additions of new Act compared to the old one.

TABLE1 VALUE ADDITIONS IN THE NEW ACT, 2019

Provisions	Consumer Protection Act 1986	Consumer Protection Act 2019
Regulator	No separate Regulator	Central Consumer Protection Authority(CCPA)
Consumer Court	Complaint could be filed in a consumer court where the seller’s office is located	Complaint could be filed in a consumer court where the complainant resides or works
Product Liability	No Provision. Consumer could approach a civil court but not consumer court	Consumer can seek compensation for harm caused by a product or service
Pecuniary Jurisdiction	District: up to INR 20 Lakhs State: INR 20 lakh to INR 1 cr National: above INR 1 cr	District: up to INR1 cr State: INR1 cr to INR 10 cr National: above INR 10 cr
E- Commerce	No provision	All rules of direct selling extended to e-commerce
Mediation Cells	No legal provision	Court can refer settlement through mediation

Source: comparative study of the present and past Consumer Protection Act

Consumer Protection Act 2019- Implications on Manufacturers,Service providers, Advertisers, Celebrity Endorsers and Sellers

The Consumer Protection Act, 2019 defines product liability as "*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.*"(Section 2(34)). The consumer can claim compensation for any harm caused by a defective product manufactured by a manufacturer or serviced by a service provider or sold by a seller (Govindarajan, 2020). Therefore impact is that it is not only the manufacturer but also the service provider and seller. As per the new law these intermediaries of business channel are also responsible for misleading advertisements. The manufacturers, service providers celebrity endorsers may be imposed with a penalty of Rs. 1,000,000 for a misleading advertisement and may also be sentenced a two years imprisonment. Subsequent offences have higher penalties of Rs. 5,000, 000 with 5 years’imprisonment (Business insider, July 20, 2020). The Act says that the celebrity endorser has the responsibility to check the authenticity of the claims made in the advertisement before endorsing. The Act can also bar a celebrity from endorsing ads for up to a year, extending it to three years for repeat offenders. The New Act and CCPA will make all stakeholders - brands, agencies, celebrities, influencers and e-commerce players- a lot more responsible (Mansuri, July 21. 2020). Let us specifically address each stakeholder separately in the subsequent sections of the article.

Under Section 87 of the Act, there are however exceptions to product liability action which are briefly portrayed in Table 2 shown below:

TABLE 2PRODUCT LIABILITY

Product Liability -Manufacturer (Section 84)	Product Liability-Service (Section 85)	Product Liability- Seller (section 86)
Manufacturing Defect or Design Defect	Faulty , Imperfect, Deficient, Inadequate Service in quality, Nature, Manner of Performance	Exercised Control over Designing, Manufacturing, Testing, Packaging, Labelling, which caused harm
Deviation was made from any Manufacturing Specifications	Omission, Commission, Negligence or Conscious withholding of Information which causes harm	Altered or modified the product in a Substantial way which caused the harm
No Confirmation to express Warranty	No Confirmation to express Warranty	Product sold by him and identity of Manufacturer is unknown
Failure to provide instructions of correct use or warning of improper usage which causes any harm	Non-issuance of warnings of instructions to prevent any harm	Failure to exercise reasonable care in assembling , inspecting or maintaining product or didn't pass warnings

(Source: Bare Act of Consumer Protection Act, 2019)

Manufacturers

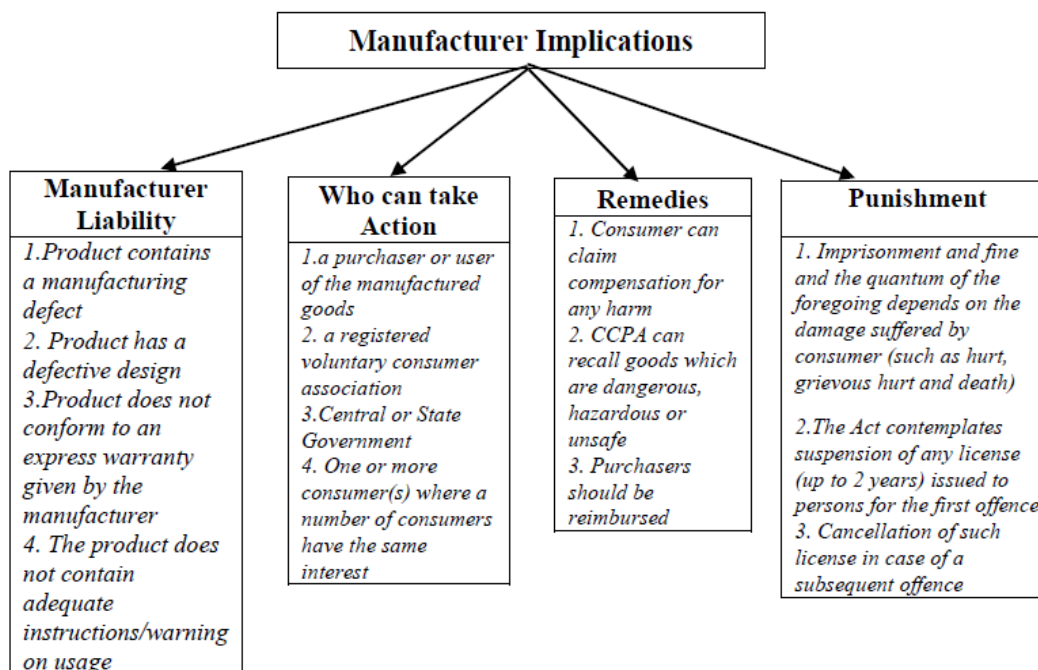
The Act classifies a product manufacturer as an entity that makes goods (or parts thereof) or assembles parts thereof made by another party, or places his own mark on the goods made by a third party, or designs / produces / fabricates / constructs or re-manufactures any product before its sale etc. The Act prescribes separate definitions for 'manufacturer' and 'product manufacturer'. Broadly, all manufacturers may be product manufacturers, however all product manufacturers are not manufacturers (Rana& Gera, 2020). As per the Consumer protection Act, 2019, the product manufacturer will be liable if product contains a manufacturing defect, or defective in design, or there is deviation from manufacturing specifications; or does not conform to the express warranty; or fails to contain adequate instructions of correct usage.

The New Act sets out the following scenarios in which a product manufacturer shall be liable if 1. *Product contains a manufacturing defect*, 2. *Product has a defective design*, 3.*product does not conform to an express warranty given by the manufacturer*, 4. *The product does not contain adequate instructions/warning on usage* (Rana& Gera, 2020).

Further, a product liability action will not be fastened on the product manufacturer if it fails to provide adequate warnings or instructions, if:

1. the product was purchased to be used at a workplace and the product manufacturer had provided warnings to such employer, or
2. the product was sold as a component to be used in another product and necessary instructions and warnings had been given by the manufacturer, and the harm was caused to the complainant from the use of the end product, or
3. the product was one which was legally meant to be used under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give warnings or instructions for usage to such expert or class of experts, or
4. the complainant was under the influence of alcohol or any prescription drug while using the product which was not prescribed a medical practitioner, or
5. Such instructions or warnings are obvious or commonly known to a user or a consumer of such product or which the consumer should have known, taking into account the characteristics of such product.

Fig 1: Consumer Protection Act 2019 and implications on manufacturers



(Source: compilation from the present Consumer Protection Act, 2019)

Manufacturer's liability on misleading advertising

A misleading advertisement under the Act, amongst other things, includes an advertisement which falsely describes a product, deliberately conceals important information, or is likely to mislead the consumers about certain aspects of the products. In relation to misleading advertisements, a manufacturer may be required to discontinue or modify such advertisement and a monetary penalty up to INR 10 lakhs may be imposed on the manufacturer, if the concerned authority is of the opinion that imposition of such penalty is necessary. Subsequent offence is punishable with monetary penalty of up to INR 50 lakhs.

Service Providers

According to the New Act, "product service provider", in relation to a product, means a person who provides any service in respect of such product (Consumer Protection Bill, 2019)

As per Section 85, A product service provider shall be liable in a product liability action, if— (a) the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or (b) there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or (c) the service provider did not issue adequate instructions or warnings to prevent any harm; or (d) the service did not conform to express warranty or the terms and conditions of the contract (Consumer Protection Bill, 2019)

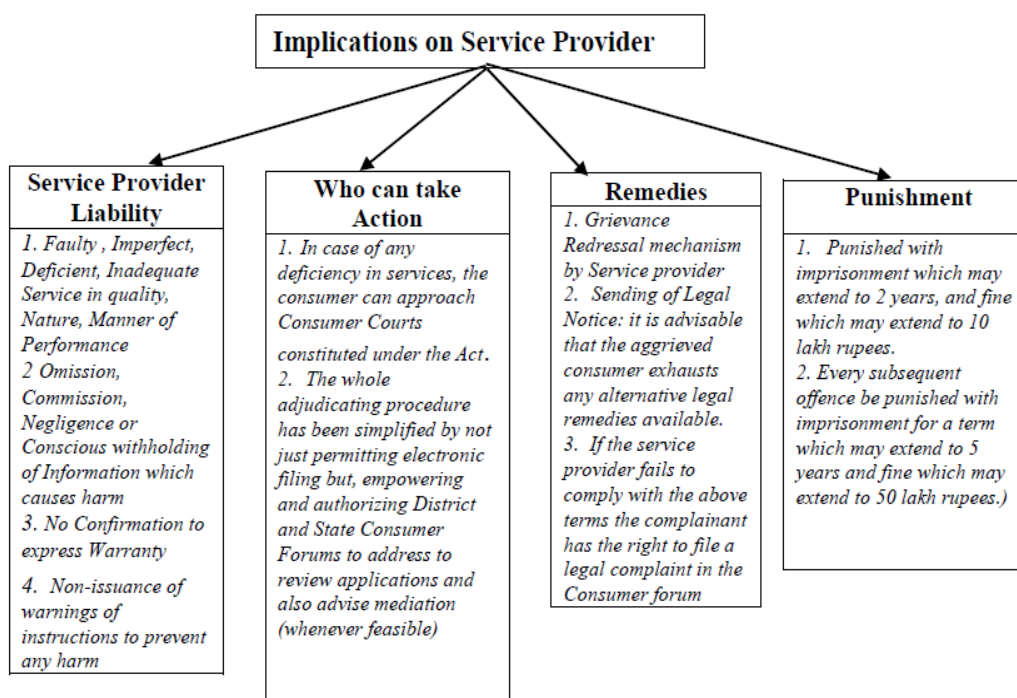
Deficiency of Service

According to the definition under Section. 2(11) of Consumer Protection Act 2019 any sort of imperfection, or defect in the feature, quality, amount, worth, authenticity, its capacity or potential, and standard which is obligatory to be maintained and regulated as per the laws and statutes in function or any agreement/contract claimed by the seller, with respect to the products and goods, is known as deficiency. Wilful and deliberate concealment of important information, omission or negligence of acts by seller which may lead to injury or loss to the consumer(s), also comes under the ambit of *deficiency of service*. Deficiency of service can be witnessed in any service sector where there is buyer-seller relationship, such as, railways, banks, legal aid, electricity, construction, education, transportation, aviation, hospitality, restaurants, entertainment etc. Deficiency of service can have minor to grave consequences, ranging from inconvenience or harassment to mental or physical injury to death, thereby leading to legal consequences.

The Hon'ble Supreme Court through the case *Indian Medical Association v. V.P. Shanth*[3]- included medical profession and medical negligence, within the scope of the Consumer Protection Act. Consequently, empowering the aggrieved (due to medical negligence) to sue for damages for deficiency in services by a medical professional or medical institution, in a Civil Court.

The implications of Consumer protection Act on service providers are explained in Fig 2

Fig 2: Consumer Protection Act 2019 and implications on Service Providers



(Source: compilation from the present Consumer Protection Act, 2019)

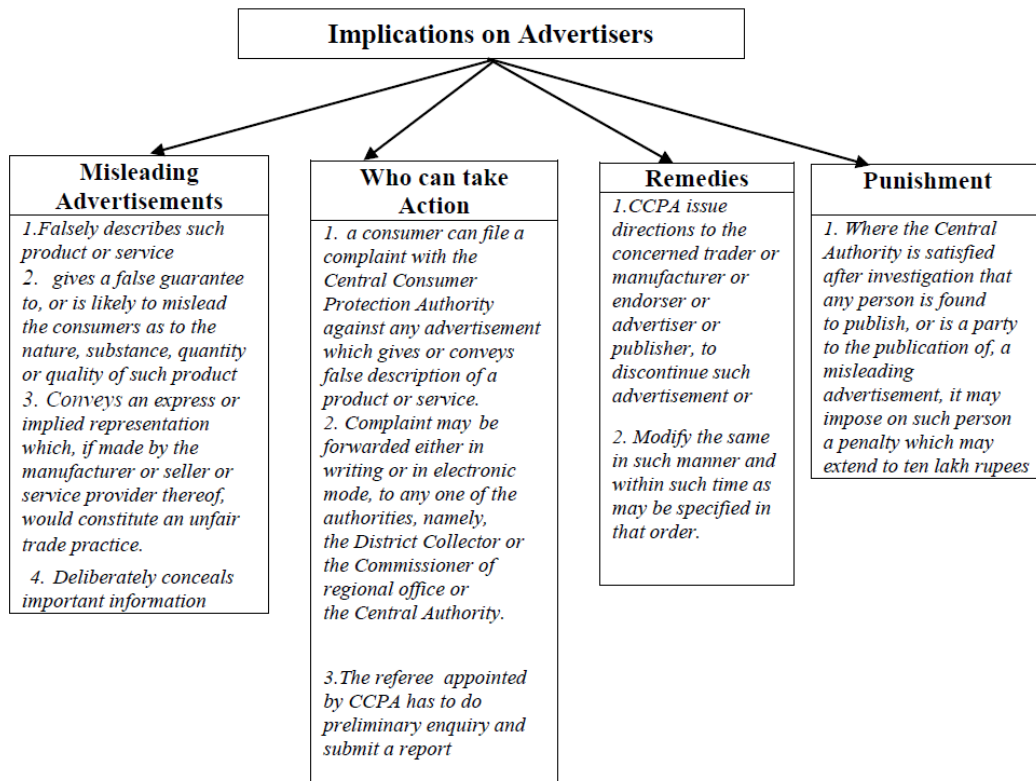
Advertisers

As per the Consumer Protection act 2019, "advertisement" 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(The Gazette of India, August 19, 2019).Section 21 (4) uses the expression "party to the publication" which refers to the creator of an advertisement and the "party" referred in the Act is the Advertiser. The broad brush of 'party' could affect a lot of entities in the advertising value-chain.

The Section 21 (6) provision that "no person shall be liable to such penalty if he proves that he had published or arranged for the publication of such advertisement in the ordinary course of his business". The 'ordinary course of business' is the safety net in some ways in the Act, though all such entities – agencies, media houses, even producers of the ad film – potentially could be in trouble if the transgression is accepted by the various Commissions. This depend on how Commissions at District and State level view the provisions.CCPA will regulate matters related to violation of consumer rights, unfair trade practices, and misleading advertisements. There is also a provision for class action law suit for ensuring that rights of consumers are not infringed upon. The authority will have the power to impose a penalty on a manufacturer or an endorser of up to Rs 10 lakh for a false or misleading advertisement.

As a part of implementation of New Act, if the Ministry of Consumer Affairs is preparing a code of conduct for advertisers, setting guidelines for brands and advertising agencies for the first time in India, the role of ASCI (The Advertising Standards Council of India) would be further eroded. Moreover the support offered by ASCI on surrogate advertisements on certain products like alcohol may not be entertained as per the new Act.

Fig 3: Consumer Protection Act 2019 and implications on Advertisers



(Source: compilation from the present Consumer Protection Act, 2019)

Celebrity Endorsers

The interesting part of the provisions of the Consumer Protection Act are that the endorser:

1. Has been made liable for any 'false or misleading' advertisement.
2. Penalty amounts of INR 10 lakhs (approximately USD 14,000) and one year imprisonment to INR 50 lakhs (approximately USD 70,000) and up to 5 years imprisonment.
3. Ban on endorsing any products/services upto 1 year, extendable to 3 years in case of subsequent contravention. The implications for the endorser (celebrity) of the above provisions are:
4. Need for increased due-diligence before a celebrity takes on an endorsement (product details/product quality/quality compliance), going forward. Ignorance will no longer be an excuse.
5. Celebrities will need to make higher indemnity provisions in the endorsement contracts so as to mitigate any future liability.
6. This may necessarily lead to increased prices for celebrity endorsement – higher fees as risks associated with the endorsement have now gone up manifolds.

But there are counter arguments on this aspect. The new Act requires an endorser to exercise due diligence to verify the veracity of the claims made in the advertisement being endorsed by him. There are concerns that this principle may hold good for the purpose of a theoretical dissertation, but it is difficult for it to be implemented in practice. How does the law expect a celebrity endorser to exercise diligence? Does he have the ability or competence? There are also arguments that the quantum of penalties proposed are meagre compared to what most high profile endorsers would charge for endorsing a product and may not draw the desired result. Endorsers may insure themselves against such penalties or take indemnities from the product manufacturer or service provider.

Product Sellers

A "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,

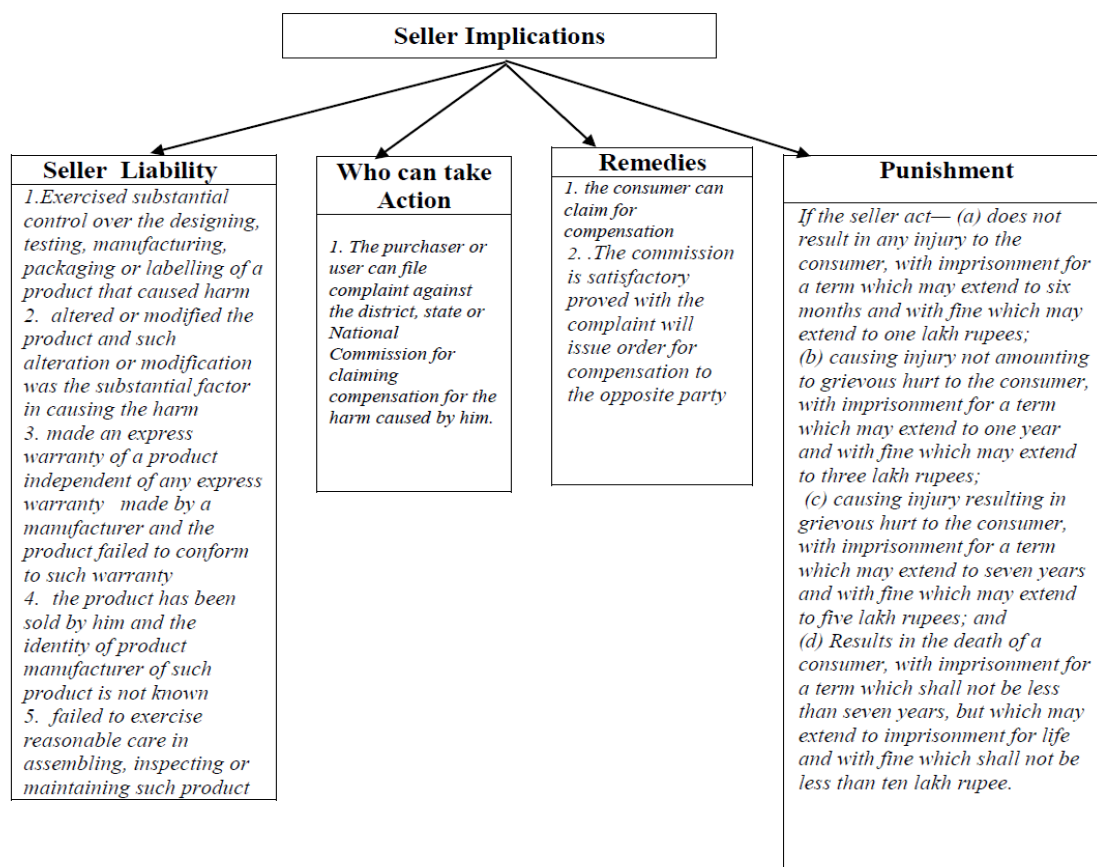
but does not include—

- (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;

A product liability action cannot be brought against the product seller if,

1. The product was misused, altered, or modified at the time of harm.
2. The product was sold as a component or material to be used in another product and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material, but the harm was caused to the complainant by use of the end product in which such component or material was used

Fig 4: Implication on product sellers



(Source: compilation from the present Consumer Protection Act, 2019)

E-Commerce entities

The technology had made the marketplace accessible with a single click and it had been high time to consider the concerns of online consumers legally, though a bit late Consumer Protection Act 2019 has brought certain obligations via E-commerce Rules from the perspective of each of the following key stakeholders in the e-commerce sector – e-commerce entities (marketplace and inventory models), sellers and the consumers. The term “ecommerce entity” is defined under the E-Commerce Rules to mean/include “any person, who owns, operates or manages digital or electronic facility or platform for electronic commerce, but does not include a seller offering his goods or services for sale on a marketplace e-commerce entity”

The rules apply to:

- Goods/Services bought or sold over digital or electronic network
- Includes the marketplace and inventory models of e-commerce;
- Include multi-channel single-brand retailers and single-brand retailers in single or multiple formats; and unfair trade practices across all models of e-commerce.
- B2C, B2B and B2B2C, whether incorporated in or outside India, but offering goods and services to consumers in India (Chawla & Kumar, 2021).
- The above entities are defined under the E-Commerce Rules and consequently will be subject to the legal regime prescribed under the Consumer Protection Act and the E-Commerce Rules.

The Key Obligations Applicable To E- Commerce Entities and Sellers

1. E-commerce entity shall not directly or indirectly influence the sale price of goods or services and shall maintain a level playing field for all sellers without any discrimination.(earlier, this was applicable only in respect of e-commerce entities that had received foreign investment.)
2. E-commerce entities need to obtain an express consent from its consumers for the purchase offered on its platform and this consent can no longer be recorded automatically(not in the form of pre-ticked checkboxes also)
3. Before a consumer checks out with the purchase all e-commerce entities that allow a consumer to checkout as a 'guest'.
4. Price of the goods or services offered cannot be manipulated by the e-commerce entities to gain unreasonable profits.
5. All e-commerce entities in the country (with or without foreign investment) would now need to ensure that all sellers compete without any favouritism or bias in a transparent manner.
6. E-commerce entities have to ensure that there is no discrimination between the consumers of 'same class' or make any classification amongst the consumers, which (directly or indirectly) affects the rights of the consumers.
7. It is also mandatory for e-commerce entities to disclose the terms and conditions governing their relationship with sellers on their platforms including a description of any differential treatment that a marketplace is providing to any particular seller(s) or in respect of any goods or services in the 'same category'.
8. No cancellation charges can be levied on a consumer, even where a consumer wants to cancel a confirmed order, unless similar charges are also borne by the e-commerce entity if it unilaterally cancels an order placed by a consumer for any reason whatsoever
9. All refund requests are required to be completed within a 'reasonable period of time'. Instead of prescribing an outer time limit for processing refund payments, the E-commerce Rules have provided flexibility to do within the overall contour of a reasonability test.
10. It is now mandatory for e-commerce entities to appoint a Grievance Redressal Officer for consumer grievance redressal and the details of such grievance officer, such as name, contact details and the designation are required to be displayed on the online platforms.
11. Also, such officer will need to acknowledge the consumer complaint within 48 hours of receipt of the complaint and redress the complaint within one month from the date of receipt of the complaint.

II. Conclusion

The Consumer protection Act 2019 is indeed a solution to long discussed issues on various changes that happened in the marketplace for past three decades especially the digital consumerism. The new Act has empowered the consumer to greater extent, no doubt, but has the capacity to create serious implication on various channels of business. Though the media and academia had been discussing the Act from consumer empowerment viewpoint, the implications in the various communication channels such as Manufacturers, sellers, e-tailers, advertisers, celebrity endorsers and E-commerce channels are important and worth discussing. This is because the Act is powerful enough to bring fundamental changes in the approach of marketers in India, where aggressive promotion and advertisement were considered to be ideal strategies. Now that the Act has effectively brought the liability to these channels, making them more responsible in delivering the product/service with quality and trust. This would be challenging for the advertisers, service providers and celebrity endorsers that they need to take additional care in the promotional strategies. But the approach can ensure a long term credibility in the service quality. The new Act certainly had uplifted the market quality hitch as it was the need of the hour. The market is becoming more versatile in terms of multiple channels and greater access to goods and services.

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