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ASSESSMENT OF CONSUMER PROTECTION LAWS AND POLICIES TO SUPPORT TOBACCO CONTROL IN INDIA

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PREFACE

Tobacco consumption has become a major social and economic issue since it is creating a burden on the national health care system and economic system. With 268 million active tobacco users, India has been ranked second in tobacco consumption. The consumer, even after paying his hard-earned money for purchasing the product, is getting a product that is injurious to his health. Tobacco consumption is causing certain serious types of diseases including cancer, lung diseases, cardiovascular diseases, and stroke. Consumer knowingly or unknowingly spends his money on a product which is damaging his health and also he is spending for treatment of diseases which are a direct result of its consumption. Being one of the major causes of death, tobacco causes nearly 1.35 million deaths every year. The issue of tobacco needs to be tackled.

The World Health Organization and the National Governments are very serious about the issue of tobacco menace. Various legislations at the national and international levels have been made to curb and control tobacco usage. But, due to jurisdictional issues, lack of awareness, and ignorance of the law, the situation is not being addressed properly.

To discourage tobacco use, the first-ever international public health treaty 'The WHO Framework Convention on Tobacco Control (WHO FCTC)' provides various measures. The Convention expressly provides for Packaging and labeling of tobacco products with effective health warnings so that consumers are made aware of health risks. It also prohibits the use of measures that are unfair, false, misleading, deceptive, or likely to create an erroneous impression about the product's characteristics. Further Consumer Protection Act, 2019 of India which aims for protection of the interests of consumers deals with certain issues of consumers such as Unfair Trade Practice, Misleading Advertisements, Endorser's Liability Adulteration, Defective product, Deficiency in service and Product Liability.

An attempt to familiarise everyone with these provisions has been made through this book. An analysis of the Consumer Protection Act, 2019 for control of tobacco made in this book may facilitate a new tool for controlling and curbing tobacco usage in India.

I truly believe that this book will be very helpful for concerned stake holders, policy makers, enforcement officers, academicians, researchers, legal fraternity, social workers and gives effect to the spirit of law.

It's my pleasure to express my deep sense of gratitude and indebtedness to Mr. Praveen Sinha, National Professional Officer, TFI, for his valuable contributions and suggestions for this book. I am also grateful to, WHO-Country Office for India for their support and encouragement in bringing out this book. I am very thankful to Mr. Ranjit Singh, Senior Law Expert, Advocate Supreme Court of India, New Delhi; Ms. Purva Singh, Legal Consultant WHO-India; Mr. Akshay, Yadav Teaching Associate National Law School of India University, Bengaluru and Mr. Arjun Singal, Student Researcher, National Law School of

India University, Bengaluru for their support. I also wish to express my sincere thanks to the Vice chancellor and the Registrar of National Law School of India University, Bengaluru for being helpful, kind and supportive all the times. I truly believe that this book will be very helpful for policymakers, enforcement officers, consumer activists, academicians, researchers, legal fraternity, social workers, and the concerned stakeholders, and it gives effect to the spirit of the law.

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EXECUTIVE SUMMARY

Tobacco is the foremost preventable cause of death and disease in the world today, killing half of the people who use it¹. Tobacco use is a major risk factor for the four main Noncommunicable Diseases (NCDs) and puts people with these conditions at higher risk for developing severe illness when affected by COVID-19. The use of tobacco products results in unparalleled health, economic, and social losses in all countries². The economic burden of tobacco, as per WHO's Study on the Economic Costs of Diseases and Deaths Attributable to Tobacco use in India, in 2017-18 was estimated to be a staggering INR 1,773. 4 billion, i.e. 1% of the GDP in 2017-18, while the tax collected from tobacco products in the previous year was only 12.2% of this economic cost³.

The WHO Framework Convention on Tobacco Control (FCTC)⁴, the first treaty negotiated under the auspices of the WHO, was developed to implement evidence-based strategies to reduce tobacco consumption across the world. This Convention, its Implementation Guidelines and Protocol aim to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.

The tobacco industry's established and calculated global strategy is designed to attract a new generation of tobacco users. It is well documented and accepted that the tobacco industry's marketing campaigns aim to replace millions of people who die each year from tobacco-attributable diseases, with new consumers. To this end, tobacco and related industries have employed sustained overt and covert tactics to promote the sale of their products and indulge in deceptive practices to disguise their hazardous nature to entice consumers, especially the youth with impressionable minds. Thus, manufacturers and sellers of tobacco products adopt strategies including the use of flavours/adulterants, misleading claims of reduced harm, single stick sales, sale in the close vicinity of educational institutions to make tobacco products easily accessible to youth.

The Consumer Protection Act of 2019 ('CPA')⁵ endeavours to protect a consumer from misleading advertisements, unfair trade practices and use of adulterants, which can be a potent tool to counter tobacco advertisement, promotion and sponsorship. Consumers of all tobacco products have a right to be protected from harmful products, a right to be informed about the quality of the products they are consuming and also have a right to seek redressal against unfair trade practices. Misleading advertisements falsely describe the products, give a false guarantee or are likely to mislead the consumers as to the nature, substance, quantity or quality of such products or services or deliberately conceal important information. Therefore, if a manufacturer of any tobacco or related product makes an advertisement that misleads consumers about the quality of the product, then it is a misleading advertisement under the Consumer Protection Act, 2019.

¹https://www.who.int/tobacco/mpower/mpower_english.pdf

²World Bank Group, *Confronting Illicit Tobacco Trade – A Global Review of Country Experiences* (2019)

³<https://academic.oup.com/ntr/article-abstract/23/2/294/5893458?redirectedFrom=fulltext>

⁴https://www.who.int/fctc/text_download/en/

⁵<http://egazette.nic.in/WriteReadData/2019/210422.pdf>

In this background, an analysis of the provisions of the latest Consumer Protection Act, 2019, and their applicability in the context of tobacco control is critical.

The Consumer Protection Act, 2019⁶ contains broad definitions which confer extensive rights on consumers in relation to goods and services; restricts unfair trade practices and misleading advertisements; introduces endorser's liability and product liability; empowers consumers by allowing them to file complaints in an electronic mode; provides an alternative means of dispute settlement to the consumers (i.e. mediation) and provides measures for speedy and efficient redressal of consumer grievances. The Consumer Protection Act, 2019 also establishes the Central Consumer Protection Authority ('CCPA'), which empowers consumers to file complaints more easily. In addition, CCPA is mandated to regulate unfair trade practices and misleading advertisements that are harmful to consumers and is empowered to investigate, conduct search and seizure, and recall harmful goods.

Any consumer, including a consumer of tobacco or related products, has the right to be protected from the marketing of goods or products which are hazardous to life.

An in-depth legal analysis of the Consumer Protection Act of 2019 reveals that this Act can be used for tobacco control in the following manner:

1. Any person who consumes tobacco and related products will be a consumer under the Consumer Protection Act, 2019.
2. Any consumer, including a consumer of tobacco or related products, has the right to be protected from harmful products, the right to be informed about the quality of the products consumed, and the right to seek redressal against unfair trade practices (including order for recall of defective goods/withdrawal of deficient services; reimbursement of the value of goods/services or discontinuation of unfair trade practices), under the Consumer Protection Act, 2019.
3. A consumer can hold a tobacco manufacturer liable under the Consumer Protection Act, 2019 as well and is not limited to rely only on the provisions of the Cigarettes and Other Tobacco Products Act, 2003⁷.
4. Any manufacturer/endorser/publisher of tobacco and related products who makes a misleading advertisement commits an unfair trade practice under Section 2 (47) of the Consumer Protection Act, 2019 which is punishable under the Act.
5. If a manufacturer of any tobacco and related product makes an advertisement that misleads consumers about the quality of the product, undermine its injurious nature, it amounts to "misleading advertisement", which is prohibited under the Consumer Protection Act, 2019.

A tobacco manufacturer/endorser/publisher who makes a false/misleading advertisement can incur a penalty or imprisonment (for up to 2 years with a fine up to INR 10 lakhs, which for every subsequent offence is extended with imprisonment for up to 5 years with a fine up to INR 50 Lakhs) and can lead to discontinuation of

⁶<http://egazette.nic.in/WriteReadData/2019/210422.pdf>

⁷<https://legislative.gov.in/sites/default/files/A2003-34.pdf>

advertisement and prohibition of the endorser, via an order of the Central Consumer Protection Authority under the Consumer Protection Act, 2019.

6. Further, the sale of tobacco products loose or without the mandatory health warning prescribed under the law, thus depriving the consumer of the knowledge of the injurious nature of the product, is an unfair trade practice prohibited under the Consumer Protection Act, 2019.

Any consumer of tobacco products has the right to seek redressal against unfair trade practices (including order for recall of defective goods/ withdrawal of deficient services; reimbursement of the value of goods/services, or discontinuation of unfair trade practices) under the Consumer Protection Act, 2019.

7. Presence of adulterants to mislead the consumer and make tobacco and related products unsafe which is a punishable offence under Section 90 of the Consumer Protection Act, 2019.

I. INTRODUCTION

Background of the Consumer Protection Act, 2019

Consumers have the sovereign right to choose goods or services according to their preferences and these preferences assume significance in the context of their choice. However, in the present-day scenario, consumer preference has become a myth, as the freedom of choice is limited and is being abused in common market places. Consumers are duped and cheated with deceptive advertisement, false and exaggerated descriptions about the quality of goods/services which they propose to sell. Therefore, protection of the consumers' interest is considered to be of utmost importance all around the world, paving the way for consumer movement. In India, protection of the consumers' interest is as old as the civilization. This was statutorily recognised by the British regime with a number of initiatives and statutory regulations to protect consumers, such as the Indian Contract Act, 1872; Indian Penal Code, 1860; Sale of Goods Act, 1930; Agriculture Procedure (Grading and Marketing Act), 1937; the Drug and Cosmetics Act, 1940.

After independence, Indian Parliament made various enactments from time to time to protect the interest of the consumer such as The Drug and Magic Remedies (Objectionable Advertisement) Act, 1950; Industrial Development and Regulation Act, 1951; Indian Standards Institution (Certification of Marks) Act, 1956; Essential Commodities Act, 1955; Bureau of Indian Standards Act, 2016; Competition Act, 2002, the Legal Metrology Act, 2009; and Food Safety and Standards Act, 2006. However, despite the above enactments the consumer was having to move from pillar to post to avail justice using the redressal mechanism which was expensive and time consuming. Meanwhile, the United Nations Guidelines on Consumer Protection, 1985 were passed in the General Assembly resolution 39/248 on 9th April 1985. Based on the guidelines, the Government of India enacted a special legislation – the 'Consumer Protection Act, 1986,' to better protect consumers' rights and to protect the interest of the consumer from exploitation. This Act has been amended three times - in 1991, 1993 and 2002, and every effort has been made to ensure grant of relief to all the aggrieved consumers in an expeditious manner, keeping in view the provisions of the Act for disposal of cases.

The Consumer Protection Act, 1986 did not address disputes regarding consumer contracts, entered into between consumers and the manufacturers, that contained unfair terms. It had also failed to address emerging challenges, with the advent of e-commerce transactions of good and services, which is the fastest growing market in the world, with an annual growth rate of 51% and the highest in the world. For example issues of privacy, data protection, product returns or refund, delivery of faulty goods etc.

In view of the above, the Law Commission of India recommended that a separate law needs to be enacted, for better protection of consumer interest. The Law Commission of India presented a draft Bill in relation to unfair contract terms. In 2011, a Bill to amend the

1986 Act was introduced in the Parliament which lapsed due to the dissolution of the 15th Lok Sabha. The Consumer Protection Bill, 2015, was introduced in the Lok Sabha, with various new provisions, which included (i) product liability; (ii) unfair contracts; and (iii) setting up of a regulatory body. The Bill was examined by the Standing Committee on Consumer Affairs, which submitted its report in April 2016. The Committee gave several recommendations with regard to: (i) product liability; (ii) powers and functions of the regulatory body (Central Consumer Protection Authority) to be set up; (iii) penalties for misleading advertisements and endorsers of such advertisements; and (iv) pecuniary jurisdiction of the adjudicatory body at the district level. The Consumer Protection Bill, 2019 was introduced in the Lok Sabha by the Minister of Consumer Affairs, Food and Public Distribution on July 8, 2019. This Bill of 2019, like the Consumer Protection Bill, 2018, sought to replace the Consumer Protection Act, 1986. The Consumer Protection Bill, 2019 received the Presidential assent on 9 August 2019 and was published in the official gazette. Recently Ministry of Consumer Affairs, Government of India, in exercise of powers conferred under Section 1(3) enforced the Consumer Protection Act, 2019 w.e.f. 20th July 2020 & 24th July 2020.

Provisions enforced w.e.f from 20th July 2020:

Chapter	Sections
I	Section 2 [Except clauses (4), (13), (14), (16), (40)]
II	Sections 3 to 9 (both inclusive)
IV	Sections 28 to 73 (both inclusive) [Except sub-clause (iv) of clause (a) of sub-section (1) of Section 58.]
V	Sections 74 to 81 (both inclusive)
VI	Sections 82 to 87 (both inclusive)
VII	Sections 90 and 91 [Except sections 88, 89, 92 & 93]
VIII	Sections 95, 98, 100 Section 101 [Except clauses (f) to (m) and clauses (zg), (zh) and (zi) of sub-section 2] Sections 102, 103, 105, 106, 107 [Except sections 94, 96, 97, 99, 104]

Provisions enforced w.e.f from 24th July 2020:

Chapter		Sections
I	Definitions	Section 2 [clauses (4), (13), (14), (16), (40)]
II	Central Consumer Protection Authority	Sections 10 to 27 (both inclusive)
IV	Consumer Disputes Redressal Commission	Sub-clause (iv) of clause (a) of sub-section (1) of section 58
V	Offences and Penalties	Sections 88, 89, 92 and 93
VI	Miscellaneous	Sections 94, 96, 97 and 99 Clauses (f) to (m) of sub-section 2 and clauses (zg), (zh) and (zi) of sub-section 2 of section 101 Section 104

II. CONSUMER PROTECTION ACT, 2019 & TOBACCO CONTROL

The pernicious, inherently vicious and harmful effects of tobacco use are well established and accepted by medical science, and recognized and reaffirmed by judicial pronouncements. The link between use of tobacco products, cancer, cardiac and respiratory diseases etc., is well documented and accepted. Similarly, the calculated approach of tobacco industry designed to attract a new generation of tobacco users is widely accepted. Further, it is well documented and accepted that tobacco industry's marketing campaigns, are specifically aimed at replacing millions of people who die each year from tobacco-attributable diseases, with new consumers.

As aptly commented by Justice Sanjeev Khanna: "Ban and prohibition on direct advertisements of tobacco products has prompted manufacturers and traders to adopt indirect methods or surrogate advertisements to achieve the same result. The fear of falling sales, adverse articles and medical and media reports have prompted the tobacco industry to portray tobacco use as glamorous and socially acceptable, by showing pictures and use by stars and reputed actors, as a stress buster, a habit nurtured by intellectuals, a fashion accessory etc. The list is virtually endless". (WP Nos. 18761/2005), judgment dated 07.02.2008]

Tobacco and related industries have employed sustained tactics to attract a new generation of tobacco users, such as using flavours/adulterants; misleading claims of reduced harm; single stick sales, sale in the close vicinity of educational institutions, to make tobacco products easily accessible to youth. Direct and indirect or surrogate advertisements of tobacco and related products through endorsements by celebrities who are youth icons, have a strong influence on children and young impressionable minds. The effort and desire to attract young and gullible to the world of tobacco has always been the objective of the manufacturers. "Catch them young" being the moto, and projecting the use of tobacco products synonymous with adulthood, modernity, affluence, social class norms and elegance. etc.

The Consumer Protection Act of 2019 endeavours to protect the consumer from misleading advertisements, unfair trade practice and use of adulterants, which can be a potent tool to counter tobacco advertisement, promotion and sponsorship⁸.

⁸Important changes to India's product liability and consumer laws' (Lexology, 27 September 2019) <<https://www.lexology.com/library/detail.aspx?g=8a2ece1d-773a-4a51-bcd4-982d85a064c6>> accessed 4 September 2020

III. IMPORTANT PROVISIONS OF THE CONSUMER PROTECTION ACT, 2019

The Preamble to the Consumer Protection Act, 2019 reads as follows:

“An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers’ disputes and for matters connected therewith or incidental thereto.”

A table of important provisions of the Consumer Protection Act, 2019 which are relevant for the purpose of tobacco control is given below:

Provision	Explanation
Sec. 2(1)	Definition of ‘Advertisement’
Sec. 2(7)	Definition of ‘Consumer’
Sec. 2(9)	Definition of ‘Consumer Rights’
Sec. 2(10)	Definition of ‘Defect’
Sec. 2(11)	Definition of ‘Deficiency’
Sec. 2(18)	Definition of ‘Endorsers’
Sec. 2(28)	Definition of ‘Misleading Advertisement’
Sec. 2(34)	Definition of ‘Product Liability’
Sec. 2 (35)	Definition of ‘Product Liability Action’
Sec. 2(36)	Definition of ‘Product Manufacturer’
Sec. 2(37)	Definition of ‘Product Seller’
Sec. 2(47)	Definition of ‘Unfair Trade Practice’
Sec. 10	Establishment of CCPA

Sec. 15	Investigation Wing under CCPA
Sec. 16	Power of District Collector
Sec. 17	Complaint to Authorities
Sec. 18	Powers & Functions of CCPA
Sec. 19	Power of CCPA to refer matter to for investigation
Sec. 20	Power of CCPA to recall goods
Sec. 21	Power of CCPA to issue directions and penalties against false/misleading advertisements
Sec. 22	Search and Seizure
Sec. 24	Appeal against order of CCPA
Secs. 28, 42, 53	Establishment of District, State & National Consumer Disputes Redressal Commission
Secs. 34, 47, 58	Jurisdiction of District, State & National Consumer Disputes Redressal Commission
Secs. 40, 50, 60	Power of Review of District, State & National Consumer Disputes Redressal Commission
Secs. 41, 51, 67	Appeal against order of District, State & National Consumer Disputes Redressal Commission
Sec. 68	Finality of order of District, State & National Consumer Disputes Redressal Commission
Sec. 69	Limitation Period
Secs. 48, 62	Power to transfer cases by State & National Consumer Disputes Redressal Commission
Sec. 61	Power to set aside ex-parte order by National Consumer Disputes Redressal Commission
Sec. 66	Experts to assist State & National Consumer Disputes Redressal Commission
Sec. 35	Manner in which complaint is to be made

Sec. 36	Proceedings before District Consumer Disputes Redressal Commission
Sec. 37	Reference to Mediation
Sec. 38	Procedure on admission of complaint
Sec. 39	Finding of District Consumer Disputes Redressal Commission
Secs. 49, 59	Procedure given in Sec. 35-39 also applicable to State & National Consumer Disputes Redressal Commission Power to declare terms of contract which is unfair to consumer null and void by State & National Consumer Disputes Redressal Commission
Sec. 71	Enforcement of order of District, State & National Consumer Disputes Redressal Commission
Sec. 72	Penalty for non-compliance of order passed by District, State & National Consumer Disputes Redressal Commission
Sec. 73	Appeal against order passed under Sec. 72
Sec. 79	Procedure for mediation
Sec. 80	Settlement through mediation
Sec. 81	Recording settlement and passing of order
Sec. 88	Penalty for non-compliance with direction of CCPA
Sec. 89	Punishment for false or misleading advertisement
Sec. 90	Punishment for manufacturing for sale or storing, selling or distributing or importing products containing adulterant
Sec. 94	Measure to prevent unfair trade practices in e-commerce, direct selling etc
Sec. 100	Act not in derogation of any other law

Section 2(7)

“**Consumer**” means any person who—

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Explanation — For the purposes of this clause, —

- (a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;
- (b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

Therefore, any person who consumes tobacco products will be a consumer under the Consumer Protection Act, 2019.

Section 2(9)

“**Consumer rights**” includes, —

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

As per Section 2 sub-section 9 of the Act, the Consumer has the right to be protected against the marketing of goods, products or services which are hazardous to life and 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 themselves against unfair trade practices.

Advertisement of tobacco products, whether direct or indirect (surrogate), and sale of tobacco products loose or outside the package, undermines the hazardous nature of these product and conceals from the consumer their injurious nature, which is in contravention of consumer rights.

Therefore, *consumers of all tobacco products have a right to be protected from harmful products, a right to be informed about the quality of the products they are consuming and have a right to seek redressal against unfair trade practices.*

Section 100

Act not in derogation of any other law

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

This provision was also present in Section 3 of the Consumer Protection Act, 1986. As explained by the honorable Supreme Court⁹ in *Secretary, Thirumurugan Co-operative Agricultural Credit Society v. M. Lalitha*, the purpose of the Act is to provide better protection of the interests of the consumers and establishment of appropriate fora for settlement of consumer grievances. In order to achieve this purpose, it is important that the provisions of the Act are interpreted broadly, positively, and purposefully which can confer additional/extended jurisdiction to consumer courts.

Therefore, *a consumer can hold a tobacco manufacturer liable under the Consumer Protection Act, 2019 as well, and is not limited to relying on the provisions of the Cigarettes and Other Tobacco Products Act, 2003.*

Unfair Trade Practice

Section 2 (47)

“**Unfair trade practice**” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

- (i) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which—
 - (a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
 - (b) falsely represents that the services are of a particular standard, quality or grade;
 - (c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
 - (d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

⁹Civil Appeal No. 92 of 1998

- (e) Represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
- (f) Makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- (g) Gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;
- (h) Makes to the public a representation in a form that purports to be—
 - (A) A warranty or guarantee of a product or of any goods or services; or
 - (B) A promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- (i) Materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
- (j) Gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation.—For the purposes of this sub-clause, a statement that is,—

- (A) Expressed on an article offered or displayed for sale, or on its wrapper or container; or
 - (B) Expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or
 - (C) Contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;
- (ii) Permitting the publication of any advertisement, whether in any newspaper or otherwise, including by way of electronic record, for the sale or supply at a bargain price of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation. —For the purpose of this sub-clause, "bargain price" means, —

- (A) A price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or
- (B) A price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(iii) Permitting—

- (A) The offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged, in the transaction as a whole;
- (B) The conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest, except such contest, lottery, game of chance or skill as may be prescribed;
- (C) With holding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure, the information about final results of the scheme.

Explanation. —For the purpose of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspaper in which the scheme was originally advertised;

- (iv) Permitting the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by the competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- (v) Permitting the hoarding or destruction of goods, or refusal to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services;
- (vi) Manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;
- (vii) Not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;
- (viii) Refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;
- (ix) Disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.

Therefore, *any manufacturer of tobacco products who makes a misleading advertisement commits an unfair trade practice under Section 2(47) of the Consumer Protection Act, 2019.*

Manufacturers and sellers of tobacco products adopt various tricks and tactics to promote the sale of their products and also indulge in deceptive practices to disguise the hazardous nature of the products to entice consumers, especially the younger generation with impressionable minds. Unfair trade practices, amongst others, include the following:

1. Surrogate or indirect advertisements, by use of brand name/logo/colours/layout and presentation associated with particular cigarette, bidi and chewing tobacco products, through advertisement of non-tobacco products, point of sale advertising, and via print and electronic media. They are often sold in the same shop, in same product format, under the same brand name, in similar packaging, in similar pricing and similar display.
2. Loose sale of tobacco products, single sticks or outside the package. Thereby, depriving the consumer of the information about the harmful effect of the product through health warning on the package. Display of single stick price by sellers in contravention of prevailing laws.
3. Display/placing of tobacco products with toffees, candies, chocolates and other food articles meant for children. Sale to minors or persons below the age of 18 years, in violation of the law, retailers or sellers placing tobacco products with food articles to influence/entice children.
4. Sale of pan masala conjoint with chewing tobacco. In *Central Areca-Nut Marketing Corporation & Others v. Union of India*¹⁰, the Honorable Supreme Court of India observed: "To circumvent the ban on the sale of gutkha the manufacturers are selling pan masala (without tobacco) with flavoured chewing tobacco in separate sachets but often conjoint and sold together by the same vendors from the same premises, so that consumers can buy the pan masala and flavoured chewing tobacco and mix them both and consume the same."
5. Promotion of cigarettes with tag lines like 'low' tobacco, 'slim' etc. to make a false representation of the tobacco product being less harmful and thereby misleading the consumer about the usefulness of the product and the harm caused by its use.
6. Promotion of herbal cigarettes or herbal hookah as being safer alternatives or cessation aids. Herbal cigarettes are as harmful as conventional tobacco cigarettes, as they contain vegetable matter which when burned produces tar, carbon monoxide and other toxins harmful to health. Similarly, herbal hookah (without tobacco and nicotine) is toxic to health, as the smoke from hookah/shisha is filled with carbon monoxide and other harmful carcinogens. Thus, promotion of herbal cigarettes or herbal hookah as safe products is an attempt to mislead the consumer about their quality and misrepresentation about their usefulness.
7. Sale of tobacco products without issuing bills or cash memos or receipt.
8. Promotion of pan masala through misleading advertisement by undermining its injurious nature and without the mandatory health warning prescribed under the law.

¹⁰(Transfer Case (C) 1 of 2010) order dated 23.09.2016

9. Promotion and sale of pan masala by displaying on the packs and its advertisements that there is “no nicotine or 0% nicotine” or “no magnesium carbonate,” whereas lab test reports confirm presence of adulterants such as nicotine, magnesium carbonate etc. Thus, permitting sale of goods to consumers, contrary to the standards prescribed by the competent authority and mixed with adulterants.

Section 94

Measures to prevent unfair trade practices in e-commerce, direct selling, etc.

For the purpose of preventing unfair trade practices in e-commerce, direct selling and also to protect the interest and rights of consumers, the Central Government may take such measures, in the manner as may be prescribed.

Drugs and Cosmetics Act, 1940

Government of India, on the recommendation of an Expert Committee in the year 1992 banned the use of tobacco in tooth-pastes/tooth-powders under the Drugs and Cosmetics Act, 1940 (Notification GSR 443(E), dated 30th April, 1992).

The said ban was challenged for being violative of the fundamental right to trade under the Constitution of India. In *Laxmikant v. Union of India*¹¹, the Honorable Supreme Court of India, upheld the ban and held: “the view taken by the Government of India imposing total prohibition on the use of tobacco in the preparation of tooth-powder and tooth-paste is well justified in the public interest covered by Article 19(6) of the Constitution, though it offends the right to carry on trade guaranteed under Article 19(1) of the Constitution. The imposition of total ban is in the public interest. However, tobacco is still used in the preparation of tooth-powder and tooth-paste.”

Food Safety and Standards Act, 2006:

The objective of the Food Safety and Standards Act ('FSSA'), 2006, is to lay down standards for articles of food, regulate their manufacture and sale, ensure availability of safe and wholesome food for human consumption¹².

- a. Section 16 of the FSSA explains the duties and function of Food Safety and Standards Authority of India.
- b. Section 18 of the FSSA Act explains general guiding principles.
- c. Section 26 of the FSSA Act explains the responsibilities of the Food Business Operator (FBO) – to provide safe and wholesome food and to ensure protection of human life and health.
- d. Section 30(2)(a) of the FSSA empowers the Commissioner of Food Safety of a State to prohibit in the interest of public health, the manufacture, storage, distribution or sale of any article of food for a year.
- e. Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011, lays down standards for pan masala, which may contain betelnut, lime, coconut, catechu, saffron, cardamom, dry fruits, mulethi, sabnermusa, other aromatic herbs and spices, sugar, glycerine, glucose, permitted natural colours, menthol and non-prohibited flavours.'

¹¹1997(4) SCC 739

¹²Refer to: *M/s. Dhariwal Industries Ltd. & Ors Vs State of Maharashtra & Ors.*, (W.P. No.1631/2012); *Rajiv Kumar Gupta And Ors. vs The State of Maharashtra* (28 October, 2005, 2006 CriLJ 581, 2006 FAJ 135); *Centre for Public Interest Litigation Versus Union of India And Others* (W.P.(C) No. 681/2004)

- f. Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation, 2011, Clause 2.3.4 prohibits the use of tobacco and nicotine as ingredients in any food products.
- g. Food Safety and Standards (Packaging and Labeling) Regulation, 2011 states that every package of supari or pan masala and advertisement relating thereto, shall carry the warning:
“Chewing of Pan Masala or Supari is injurious to health”
- h. Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011, regulates/prohibits the use of anti-caking agents, such as magnesium carbonate.

Misleading Advertisements

Under the Consumer Protection Act, 1986, there was no separate provision for misleading advertisements. However, in the Consumer Protection Act ('CPA'), 2019, it has been mentioned separately. The relevant provisions are as follows:

Section 2 (28)

"misleading advertisement" in relation to any product or service, means an advertisement, which—

- (i) Falsely describes such product or service; or
- (ii) Gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
- (iii) Conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or
- (iv) Deliberately conceals important information;

As per Section 2 sub-section 28 of the Act, misleading advertisement in relation to any product or service means an advertisement, which falsely describes such product or service, and which gives a false guarantee or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service or deliberately conceals important information. *Therefore, if a manufacturer of any tobacco product makes an advertisement which misleads consumers about the quality of the product, then it is a misleading advertisement. For example, claiming that a product is free from tobacco but in reality, it contains tobacco.*

Section 89

'Punishment for false or misleading advertisement'

Any manufacturer or service provider who causes a Punishment for false or misleading advertisement to be made which is prejudicial to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

Pan Masala is labelled as well as advertised with taglines such as 0% nicotine/nicotine-free or no magnesium carbonate. On testing of Pan Masala however nicotine and magnesium carbonate is found in several samples, thereby deliberately concealing important information. Pan Masala is also endorsed by celebrities in print and electronic media with misleading statements about the nature, substance, quality of the product.

The aforesaid misleading tactics to entice consumers, by falsely describing the product and further giving false guarantee about the safety of the product, as well as misleading the consumers by deliberately concealing material facts about the harmful nature of the product, amounts to causing false and misleading advertisement. This is punishable with imprisonment for a term which may extend to two years and with fine which may extend to INR ten lakh; and for every subsequent offence, with imprisonment for a term which may extend to five years and with fine which may extend to INR fifty lakh, under Section 89 of the Consumer Protection Act, 2019.

Pan Masala is a standardized food article under the Food Safety & Standards Act, 2006 and its Regulations and prohibits adding of injurious ingredients such as magnesium carbonate, tobacco and nicotine. Consumption of Pan Masala by itself, is also linked with several cancerous and non-cancerous diseases and is therefore required to be labelled as “*Chewing of Pan Masala is injurious to health*” under the FSS Regulation, 2011.

Therefore, *a tobacco manufacturer who makes a false/misleading advertisement can incur a penalty of imprisonment for upto 2 years with a fine upto INR 10 lakh, which for every subsequent offence is extended with an imprisonment for upto 5 years with a fine upto INR 50 lakh.*

Endorser's Liability

Under the Consumer Protection Act, 1986, endorsers were not liable for misleading advertisements. Some important examples are -

- (i) ‘Maggi’ was found to contain excessive quantity of lead and MSG. Its endorsers were Amitabh Bacchan, Madhuri Dixit and Preity Zinta;
- (ii) Pierce Brosnan endorsed ‘Pan Bahar’ which contained adulterants like magnesium carbonate;
- (iii) Ajay Devgan endorsed ‘Vimal Pan Masala’ which contained adulterants like magnesium carbonate. Similarly, ‘Kamla Pasand Pan Masala,’ ‘Rajshree Pan Masala,’ ‘Mehak Pan Masala’ etc., containing adulterants have also been endorsed by celebrities. Pan Masala is labelled as well as advertised with a tagline, “0% nicotine/nicotine-free or no magnesium carbonate,” despite tests proving the contrary¹³.

Thus, *the Consumer Protection Act, 2019, recognises the liability of an endorser, filling in a gap which had existed in the previous legislation.*

Section 2 (1)

"advertisement" means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media,

¹³Letter No. FSC/22/2012 – 1317(15) dated 12th October 2019

internet or website and includes any notice, circular, label, wrapper, invoice or such other documents;

Section 2 (18)

"endorsement", in relation to an advertisement, means—

- (i) any message, verbal statement, demonstration; or
- (ii) depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or
- (iii) 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

Some important questions arise from the introduction of endorser's liability in the CPA 2019, which have been answered on a plain reading of the provisions:

- a. *Do the provisions only cover commercial advertisements or pro bono/unpaid advertisements as well?*

The definition of 'advertisement' under the CPA 2019 makes no distinction between commercial and pro bono/unpaid advertisements. Further, there is no exception given in the CPA 2019 for endorser's liability.

- b. *Are any objective standards of 'due diligence' or tests prescribed to establish endorsers' liability?*

No, the Consumer Protection Act, 2019 does not lay down any objective standard of 'due diligence'. For example, the US has the 'good reason to believe' test i.e. whether the endorser actually uses or believes in the features of the product. If she/he does not himself believe so, she/he fails the test and is held liable.'

Under Section 21(6), no person shall be liable to such penalty if she/he proves that she/he had published or arranged for the publication of such advertisement in the 'ordinary course of his business'. However, the scope of 'ordinary course,' has not been given in the CPA 2019¹⁵.

In addition, it is possible to see reimbursement clauses and/or robust indemnity provisions in celebrity contracts with companies covering any pecuniary liability arising out of any untoward incident, making the celebrities immune, monetarily¹⁶.

Inter-Jurisdictional Comparison

Other jurisdictions have comprehensive codes for endorser's liability which are especially important for regulating endorsements which happen over the internet. Similarly, international organisations have released their guidelines for endorser's liability and good advertising practices:

¹⁴Chinmoy Pradip Sharma, 'Law governing Endorsements: The Global Perspective and its emergence in India' *Bar and Bench* (8 December 2019) <<https://www.barandbench.com/columns/law-governing-endorsements-the-global-perspective-and-its-emergence-in-india>> accessed 4 September 2020

¹⁵Saket Agarwal, 'Liability of the Endorser of a Brand in Light of the Consumer Protection Bill 2019' (*The RMNLU Law Review Blog*, 22 September 2019) <<https://rmlnlulawreview.com/2019/09/22/liability-of-the-endorser-of-a-brand-in-light-of-the-consumer-protection-bill-2019/>> accessed 4 September 2020

¹⁶India – Celebrity Endorsements And Liability Under the Consumer Protection Act, 2019' (*CoventusLaw*, 4 February 2020) <<http://www.coventuslaw.com/report/india-celebrity-endorsements-and-liability-under/>> accessed 4 September 2020

¹⁷'Advertising codes' <<https://www.asa.org.uk/codes-and-rulings/advertising-codes.html>> accessed 4 September 2020

¹⁸'Was Gemma Collins' Toni & Guy Tweet Misleading' <<https://marketinglaw.osborneclarke.com/online-advertising/was-gemma-collins-toni-guy-tweet-misleading/>> accessed 3 September 2020

(A) UK – The Advertising Standards Authority (ASA) has released the CAP Code (Non-broadcast advertising) and BCAP Code (Broadcast advertising)¹⁷. Certain decisions which display endorser's liability are as follows¹⁸:

OFT v. HPM – Any commercial bloggers who are paid to promote the activities of the advertiser must notify on the blog that it is a sponsored post.

- *ASA v. Toni & Guy* – Ad hoc commercial endorsements by celebrities on social media should be labelled as such.
- *Twitter v. GoNike* – the phrase #ad or #spon should be included in a tweet by celebrity endorsers.

(B) US – The FTC has published the 'Guide Concerning Use of Endorsements and Testimonials in Advertising'¹⁹. Certain decisions which display endorser's liability are as follows:

- *In re Teami LLC* – A settlement of 15 million dollars wherein Teami was alleged to be misleading consumers by paying celebrities and Instagram influencers to make claims about weight loss by using the tea product of the company. The influencers were sent warning letters by the Federal Trade Commission (FTC) due to lack of disclosure about their commercial ties with Teami²⁰.

- *In re Solace Technologies* – Four companies which produced e-liquid products were sent warning letters by the FTC as social media influencers who were paid to promote the product did not have the statutory warning “This product contains nicotine – Nicotine is addictive” as required under 21 C.F.R. § 1143.3²¹.

- *In re Creaxion Corp* – Two companies paid athletes to promote their mosquito repellent product using a media campaign. They settled with the FTC for engaging in misrepresentation as the endorsements were shown as impartial and independent opinions²².

(C) The International Consumer Protection Enforcement Network (ICPEN) is an international organisation comprising consumer protection authorities of over sixty countries. It has released the 'ICPEN Guidelines for Digital Influencers' as a general guideline for digital influencers to act appropriately to achieve a balance between endorsement and consumer protection²³.

(D) The OECD has released the 'Good Practice Guide on Online Advertising' which seeks to elaborate key principles of online advertising and provide practical guidance for the application of these principles²⁴.

¹⁹'Guides Concerning the Use of Endorsements and Testimonials in Advertising' <<https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>> accessed 4 September 2020

²⁰Lesley Fair, 'FTC's Team case: Spilling the tea about influencers and advertisers' (*Federal Trade Commission*, 6 March 2020) <<https://www.ftc.gov/news-events/blogs/business-blog/2020/03/ftcs-team-case-spilling-tea-about-influencers-advertisers>> accessed 4 September 2020

²¹Lesley Fair, 'FTC-FDA warning letters: Influential to influencers and marketers' (*Federal Trade Commission*, 7 June 2019) <<https://www.ftc.gov/news-events/blogs/business-blog/2019/06/ftc-fda-warning-letters-influential-influencers-marketers>> accessed 4 September 2020

²²'PR Firm and Publisher Settle FTC Allegations They Misrepresented Product Endorsements as Independent Opinions, Commercial Advertising as Editorial Content' (*Federal Trade Commission*, 13 November 2018) <<https://www.ftc.gov/news-events/press-releases/2018/11/pr-firm-publisher-settle-ftc-allegations-they-misrepresented>> accessed 4 September 2020

²³International Consumer Protection and Enforcement Network, ICPEN Guidelines For Digital Endorsers (2016) <<https://icpen.org/sites/default/files/2017-06/ICPEN-ORE-Guidelines%20for%20Digital%20Influencers-JUN2016.pdf>> accessed 4 September 2020

²⁴OECD, Good Practice Guide on Online Advertising (DSTI/CP(2018)16/FINAL, 10 September 2019) <[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP\(2018\)16/FINAL&docLanguage=E](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP(2018)16/FINAL&docLanguage=E)> accessed 4 September 2020

Adulterant

Section 90

Punishment for manufacturing for sale or storing, selling or distributing or importing products containing adulterant

- (1) Whoever, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any product containing an adulterant shall be punished, if such act—
 - (a) Does not result in any injury to the consumer, with imprisonment for a term which may extend to six months and with fine which may extend to one lakh rupees;
 - (b) Causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;
 - (c) Causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees; and
 - (d) Results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.
- (2) The offences under clauses (c) and (d) of sub-section (1) shall be cognizable and non-bailable.
- (3) Notwithstanding the punishment under sub-section (1), the court may, in case of first conviction, suspend any licence issued to the person referred to in that sub-section, under any law for the time being in force, for a period up to two years, and in case of second or subsequent conviction, cancel the licence.

Explanation. —For the purposes of this section, —

- (a) "adulterant" means any material including extraneous matter which is employed or used for making the product unsafe;
- (b) "grievous hurt" shall have the same meaning as assigned to it in section 320 of the Indian Penal Code.

As per the prescribed standards of Pan Masala adding of adulterants such as magnesium carbonate and nicotine is prohibited; however, on testing of Pan Masala, nicotine and magnesium carbonate have been found consistently in the samples, despite contrary claims on its label and advertisements of "0% nicotine and no magnesium carbonate".

Presence of adulterants to mislead the consumer and making the product unsafe, is a punishable offence under Section 90 of CPA, 2019.

Defect & Deficiency

Section 2(10)

"defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being

in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly;

Under Section 2(10), a manufacturer is required to adhere to all laws and regulations governing the quality, quantity, potency, purity or standard of goods. If a manufacturer fails to comply, then the consumer can file a complaint under the Consumer Protection Act 2019, because the manufacturer has sold a 'defective' good to the consumer. For example, manufacturing, selling of Pan Masala mixed with adulterants such as magnesium carbonate and nicotine, despite contrary claims on pack/advertisements. The consumer can also file a complaint against a restaurant for giving him defective food, in case of selling, handling, serving of unsafe food contaminated by smoking in the restaurant.

Section 2(11)

"deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes—

- (i) Any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
- (ii) Deliberate withholding of relevant information by such person to the consumer;

Under Section 2(11), a manufacturer is required to ensure that the service provided is free from any fault, imperfection, shortcoming or inadequacy in terms of quality, nature and manner of performance which is required to be maintained. If the manufacturer fails to comply, then the consumer can file a complaint under the Consumer Protection Act, 2019 because the manufacturer has provided deficient service to the consumer. For example, a person goes to a restaurant and the restaurant does not prohibit smoking, which causes the experience of the consumer to be ruined as a result of the smoke. The consumer can then file a complaint against the restaurant for providing him deficient service. Consider the following cases on smoking in hotels. The honorable Karnataka High Court has held that²⁵:

- (i) Any restaurant which has a hookah bar must have a specific designated area for smoking, and the said area can be used only for smoking of tobacco and not any other illicit substance.
- (ii) In any case, smoking should not inconvenience other customers as it is a public place.

Similarly, the Honorable Madhya Pradesh High Court has observed²⁶:

“Hotel and restaurant owners cannot be permitted to offer Hookah or use of tobacco products by pipe or by "any other instrument" on each and every table under the garb of service; in fact it can be permitted in a smoking area or space only. However, it is directed that smoking may be permitted in hotel and restaurants only in the "smoking area or place", otherwise action may be taken in accordance with law.”

²⁵Refer to: M.B. Shivakumar v. State of Karnataka (2019 Indlaw KAR 12563); P and P Ventures v. State of Karnataka (2019 Indlaw KAR 7878); Hangover v. Government of Karnataka (2019 Indlaw KAR 8031); Irfan Mohammed v. State of Karnataka (2019 Indlaw KAR 6476); Nikhil R. v. State of Karnataka (2018 Indlaw KAR 13156); Soundarya Jagadeesh Hospitalities v. State of Karnataka (2018 Indlaw KAR 11781)

²⁶Refer to: Restaurant and Lounge Vyapari Association, Bhopal and one another Vs. State of M.P. And others (W.P. No.15487-2014); Shoeab Aslam Vs Ministry of Health & Family Welfare (W.P. No. 08704/2015)

Hence both the definitions of defective products or deficiency in service provided valid grounds for tobacco control, under the CPA, 2019.

Product Liability

The Consumer Protection Act, 1986 did not have any provisions for product liability which has been introduced by the Consumer Protection Act, 2019 for empowering consumers and it can be utilized for tobacco control as well.

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 there to.

Section 2 (35)

"product liability action" means a complaint filed by a person before a District Commission or State Commission or National Commission, as the case may be, for claiming compensation for the harm caused to him.

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;

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,

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 and Correlation to Tobacco use

As per WHO FCTC Article 4.5 general guidelines “liability as determined by each Party within its jurisdiction is an important part of a comprehensive tobacco control.” Under WHO FCTC Article 19 Member states can take various types of action to hold the tobacco industry liable for the harm caused by the use of their products and to promote international cooperation. Recognizing that legal systems may need to be adapted in order to hold the tobacco industry liable, all the member states were asked to consider developing civil liability clauses in their legislations under Article 19 of the WHO FCTC²⁷.

Product liability essentially covers product defects (in manufacturing or design); failure to warn; breach of warranty; recalls etc.

Synopsis of 50 Years of Tobacco Litigation in the Us²⁸

In 1950s, consumers in the US first cited the connection between smoking and cancer and filed product liability cases against tobacco companies for their failure to make a safe product. The cause of action was based on negligence, strict liability, common-law fraud, and statutory violations of consumer protection laws. Strict liability claims were based on design defect and marketing defect theories, arguing that the cigarettes were unreasonably dangerous and that the manufacturers failed to provide warnings of their risks. However, the tobacco industry defeated most consumers' cases, arguing that the link between smoking and cancer was not sufficiently direct to prove causation and that the consumers assumed the risk of lung cancer by choosing to smoke.

In the 1980s, the focus shifted towards the addictive properties of cigarettes relying on the failure to warn theory, which proved to be only slightly more successful. It was argued that tobacco companies, not only knew about the link between smoking and cancer, but also knew that cigarettes were addictive. Manufacturers revived the assumption of risk defence and also argued that federal laws preempted certain state laws that regulated advertising practices. While consumers won some jury verdicts in lower courts, these cases were generally reversed on appeal, and manufacturers generally prevailed again.

²⁷FCTC's Seventh Session at Delhi in 2016, FCTC/COP7(11) Implementation of Article 19 of the WHO FCTC: "Liability" <https://www.who.int/fctc/cop/cop7/FCTC_COP7_11_EN.pdf?ua=1> accessed 3 September 2020

²⁸WHO, *Towards health with justice: Litigation and public inquiries as tools for tobacco control* (2002) <<https://escholarship.org/content/qt8kj1f6st/qt8kj1f6st.pdf>> accessed 4 September 2020; Richard A Daynard and Eric LeGresley, 'Product Liability' [2012] 21 Tobacco Control 227-228

In the 1990s, newly discovered evidence suggested that manufacturers actually had been aware of the health hazards posed by tobacco. Vast majority of states sued tobacco companies, arguing that their products imposed a significant burden on public health systems because they caused cancer. By suing on the basis of consumer protection laws, the states circumvented the defence that consumers assumed the risk of lung cancer by choosing to smoke. These cases resulted in a settlement with four major tobacco companies, known as the Master Settlement Agreement, which required:

- Tobacco companies to stop advertising cigarettes to minors and to modify other advertising practices;
- To pay hundreds of billions in compensation for health care costs incurred by states in treating smokers and;
- Set up a National Public Health Foundation to combat smoking by young people and fight diseases related to smoking.

In the 2000s, there was more success in suing tobacco companies (including obtaining punitive damages), based on intentional concealment of the health risks posed by cigarettes. However, many of these were appealed and damages were reduced. Efforts to bring these cases as class actions generally were unsuccessful.

Besides these creative legal strategies backed by stronger evidence to support their claims, recently some consumers have found success in lawsuits, including class actions against advertising for “light” cigarettes. “Light” cigarettes create the false perception that they are 'safer than ordinary cigarettes' violating consumer protection laws [“light” actually refers to the taste of the cigarette rather than the volume of smoke inhaled]. Manufacturers' argument that federal laws on marketing cigarettes preempt state laws that regulate advertising, was rejected by the US Supreme Court. Though the plaintiffs still needed to prove the merits of the underlying claim that the manufacturers violated consumer protection laws.

Tobacco Litigation in India

In India, claims against tobacco companies using consumer protection laws have been unsuccessful due to technical requirements of fixing liability on manufacturers and use of the '*volenti non fit injuria*' defence. All manufacturers, producers, distributors and sellers of tobacco products have a moral and legal duty towards consumers to warn them about the dangers of tobacco consumption. It must be noted that since a lot of consumers start to consume tobacco when they are minors, the defence of '*volenti non fit injuria*' or contributory negligence should not be accepted²⁹.

²⁹Amit Yadav and Nisha Yadav, 'Million Preventable Deaths and Liability of The Tobacco Industry in India' [2017] ³ *Amity International Journal of Juridical Sciences* 47, 51

IV. PROCEDURE

The procedure to be followed under the Consumer Protection Act, 2019 by a consumer for filing a complaint is given below.

Who can file a complaint?

As per CPA 2019, a complaint can be filed before a consumer fora by:

- (i) A consumer to whom the goods are sold or delivered, agreed to be sold or delivered, or any service provided or agreed to be provided; or who alleges unfair trade practice in respect of such goods or services.
- (ii) Any recognised consumer association, on behalf of a consumer whether or not they are a member of the association.
- (iii) One or more consumers (when there are numerous consumers with the same interest) with the permission of the District/State/National Commission, on behalf of, or for the benefit of all consumers so interested.
- (iv) The State Government, or the Central Government, or by the Central Consumer Protection Authority.

How to approach a consumer fora?

The complaint can be made on plain paper and you can file it in person or through an authorised agent, after it has been notarised, through registered post or regular post. It is important that a personal or legal notice be served to the opposite party before filing the complaint.

What are the documents needed to file a complaint?

You will need to file four copies, plus additional copies for each opposite party.

To file an appeal, you need the following:

- (a) Documents of record with correct name of all parties and their addresses;
- (b) Certified copy of the district forum order;
- (c) More than four additional copies for each respondent for filing an appeal;
- (d) Any conditional delay, interim orders and other petitions to be submitted along with an affidavit; and
- (e) A statutory deposit of 50 % of the award / compensation amount is to be made by the appellant / opposite parties.

Pecuniary Jurisdiction

The pecuniary jurisdiction of the consumer fora depends on the value of the goods or services paid as consideration:

Forum	Provision	Pecuniary Jurisdiction
District Commission	Sec. 34(1)	Upto INR 1 crore
State Commission	Sec. 47(1)	From INR 1 crore to 10 crore
National Commission	Sec. 58(1)	More than INR 10 crore

Recently the pecuniary jurisdiction of the consumer commissions has been amended lieu of the latest gazette notification.

In exercise of the powers conferred by provisos to sub-section (1) of section 34, sub-clause (i) of clause (a) of sub-section (1) of section 47 and sub-clause (i) of clause (a) of sub-section (1) of section 58 read with sub-clauses (o), (x) and (zc) of sub-section (2) of section 101 of the Consumer Protection Act, 2019 (35 of 2019), the Central Government enacted the Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021 amending the pecuniary jurisdiction of consumer commission

The amended pecuniary jurisdiction of the consumer commission is as follows,

Forum	Provision	Pecuniary Jurisdiction
District Commission	Sec. 34(1) of CPA 2019 read with Rule 3 of Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021.	Up to INR 50 lakh.
State Commission	Sec. 47(1) of CPA 2019 read with Rule 4 of Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021.	From INR 50 lakh to 2 core
National Commission	Sec. 58(1) of CPA 2019 read with Rule 5 of Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021.	More than INR 2 crore

Territorial Jurisdiction

The territorial jurisdiction of the consumer fora is as follows:

- (i) Where the opposite party or each of the opposite parties (when there are more than one) originally resides, or carries on business, or has any branch office, or personally works for gain when the complaint is instituted.
- (ii) Where the opposite party or each of the opposite parties (when there are more than one) actually and voluntarily resides, or carries on business, or has any branch office, or personally works for gain when the complaint is instituted, and permission is granted by the District/State/National Commission.
- (iii) Where the cause of action, either wholly or in part, arises.
- (iv) Where the complainant resides or personally works for gain.

Provisions: Section 34(2), Section 47(2), Section 58(2).

V. CENTRAL CONSUMER PROTECTION AUTHORITY

Section 10 of the Consumer Protection Act, 2019 provides for the establishment of the Central Consumer Protection Authority ('CCPA'). It must be noted that the CCPA is different from the grievance redressal commissions under the Act because it empowers consumers to file complaints more easily. Particularly, if a consumer wants to file a grievance regarding any defect/deficiency/unfair trade practice etc., they must first purchase the good or avail the service before they are legally entitled to file a complaint before the grievance redressal commission. However, in order to file a complaint before the CCPA, a consumer only needs to submit proof along with the complaint, following which the CCPA will conduct its own inquiry into the matter. Its salient features are as follows:

Role of the CCPA

Section 18 lays down the functions of the CPA 2019:

- (i) To protect, promote and enforce the rights of consumers and prevent violation of consumer rights.
- (ii) To prevent unfair trade practices.
- (iii) To prevent any false or misleading advertisement, and to prevent any person from taking part in publication of a false or misleading advertisement.
- (iv) To inquire/investigate into violations of consumer rights or unfair trade practices, either suo moto or on directions from the Central government.
- (v) To file complaints before consumer fora.
- (vi) To review issues faced by consumers and recommend international best practices for promotion of consumer rights.
- (vii) To encourage cooperation between consumer protection agencies and NGOs.
- (viii) To mandate the use of unique and universal identifiers in goods to prevent unfair trade practices.
- (ix) To issue safety notices to consumers against hazardous or unsafe goods and services.

Powers of the CCPA

The powers of the CCPA are as follows:

- (i) Investigation

As per Section 15 of the CPA 2019 has an Investigation Wing for conducting inquiries and investigations. Under Section 16 of the CPA 2019 the District Collector/other designated officials are authorised to inquire into/investigate complaints where there has been an

unfair trade practice or a false/misleading advertisement.

Under Section 19 of the CPA 2019, the CCPA can initiate a preliminary inquiry suo moto or on receiving any complaint or information from the Central Government. If a prima facie case exists, then it can start an investigation into the issue.

(ii) Search & Seizure

As per Section 22 of the CPA 2019, the authorised officer who is conducting the investigation after a preliminary inquiry has been completed can enter the premises of the person who is alleged to have violated consumer rights or engaged in unfair trade practice or made a false/misleading advertisement and then seize any document, record, article or evidence of the same.

Orders

Where the CCPA is satisfied on the basis of the investigation that there is a violation of consumer rights or unfair trade practice, it can pass an order under Section 20 of the CPA, 2019, after providing the person a reasonable opportunity to be heard for:

- (i) Recall of goods and withdrawal or services which are dangerous, hazardous or unsafe.
- (ii) Reimbursement of the prices of goods recalled or services withdrawn to the purchasers of such goods and services.
- (iii) Discontinuation of unfair trade practices.

False or Misleading Advertisements

As per Section 21 of the CPA, 2019, if the CCPA is satisfied on the basis of the investigation that there is a false or misleading advertisement, it can:

- (i) Direct the concerned trader/manufacturer/endorser/advertiser/publisher to discontinue the advertisement or modify it appropriately.
- (ii) Prohibit the endorser of the false or misleading advertisement from endorsing any products or services for upto 1 year.
- (iii) Impose a penalty of upto INR 10 lakh on the manufacturer or endorser, which may be extended to INR 50 lakh for subsequent contraventions.
- (iv) Impose a penalty of upto INR 10 lakh on any person who publishes or is a party to the publication of the false or misleading advertisement.

Appeal against Orders

Under Section 24 of the CPA, 2019, a person who is aggrieved by the order of the CCPA under Section 20 or Section 21 can file an appeal to the National Commission within 30 days from the date of receipt of order.

Penalty for Non-Compliance

Under Section 88 of the CPA, 2019, failure to comply with the order of the CCPA a person will be penalised with imprisonment for upto 6 months and/or with a fine of upto INR 20 lakh.

VI. CONCLUSION

The objective of the Consumer Protection Act, 2019 is to protect and promote the rights and interests of consumers and establish proper mechanisms for settlement of consumer disputes. The rights of a consumer include the right to be protected against hazardous goods, the right to be informed about the quantity and quality of goods, and the right to seek redressal against unfair trade practices.

From a plain reading of the provisions of the Consumer Protection Act, 2019, it is clear that people who consume tobacco products are considered to be 'consumers' under the Act and can accordingly seek redressal for disputes arising out of the unfair practices carried out by the tobacco industry, including misleading advertisements/surrogate advertisements, sale of loose/single-stick cigarettes, attempts to hide the injurious health effect of tobacco consumption, enticing of children, attempts to portray certain tobacco products as 'safer' and false claims about absence of tobacco in products such as pan masala.

Key Features

The key features of the Consumer Protection Act, 2019 are:

1. Broad definitions have been used which confer extensive rights on consumers in relation to goods and services.
2. Unfair trade practices and misleading advertisements have been restricted.
3. Endorser's liability and product liability have been introduced for the first time.
4. Consumers have been empowered by allowing them to file complaints in an electronic mode.
5. Mediation is available as an alternative means of dispute settlement to the consumers.
6. Measures for speedy and efficient redressal of consumer grievances have been provided.
7. The Central Consumer Protection Authority has been given an important mandate to regulate unfair trade practices and misleading advertisements which are harmful to consumers. Further, it has been empowered to investigate, conduct search and seizure, and order a recall of harmful goods.

Use of the CPA 2019 for regulation of tobacco products

The Consumer Protection Act, 2019 can be used for regulating tobacco products:

1. Any person who consumes tobacco products will be a consumer under the Consumer Protection Act, 2019.

2. Any consumer of tobacco products has the right to be protected from harmful products, the right to be informed about the quality of the products they are consuming, and the right to seek redressal against unfair trade practices (including order for recall of defective goods/ withdrawal of deficient services; reimbursement of the value of goods/services or discontinuation of unfair trade practices) .
3. A consumer can hold a tobacco manufacturer liable under the Consumer Protection Act, 2019 as well and is not limited to relying on the provisions of the Cigarettes and Other Tobacco Products Act, 2003.
4. Any manufacturer endorser/publisher of tobacco products who makes a misleading advertisement commits an unfair trade practice under Section 2 (47) of the Consumer Protection Act, 2019.
5. If a manufacturer of any tobacco product makes an advertisement which misleads consumers about the quality of the product.
6. A tobacco manufacturer/endorser/publisher who makes a false/misleading advertisement can incur a penalty of imprisonment (for upto 2 years with a fine upto INR 10 lakhs, which for every subsequent offence is extended with imprisonment for upto 5 years with a fine upto INR 50 lakhs); discontinuation of the advertisement and prohibition of the endorser, via an order of the Central Consumer Protection Authority (CCPA).
7. Presence of adulterants to mislead the consumer and to make the product unsafe is a punishable offence under Section 90 of the Act.

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ANNEXURES

ANNEXURE - I: PROCEDURE

This part contains the other provisions of the CPA 2019 pertaining to procedure.

Procedure followed by the consumer for a

Sections 35 to 39 lay down the procedure to be followed by the District Commission. As per Section 49 and 59, the State Commission and the National Commission follow a similar procedure respectively.

Can the complaint be filed electronically?

As per Section 35, the complaint made to any consumer fora can be made electronically in the manner prescribed.

Admissibility of a complaint

As per Section 36, the admissibility of a complaint shall be decided within 21 days from the date of filing the complaint. If no decision is taken regarding the admissibility of the complaint, it is deemed to be admitted.

Referral to Mediation

As per Section 37, if the Commission believes that the dispute can be resolved by mediation, it can direct the parties to give written consent to settle the dispute by mediation. If the parties agree for settlement by mediation and give their consent, then the Commission shall refer the matter to mediation within 5 days.

Procedure when the complaint is regarding goods

Section 38(2) lays down the procedure to be followed when a complaint regarding goods is admitted:

- (i) A copy of the complaint is sent to the opposite party within 21 days of the date of admission. The opposite party is given 30 days (which can be extended by a maximum of 15 days) to present their version.
- (ii) If the opposite party denies/disputes the allegations, or if it omits/fails to present its case within the time period, then the Commission proceeds to settle the dispute.
- (iii) If a defect in goods is alleged and it requires testing to be verified, then a sample is obtained from the complainant and fees is to be paid by the complainant for carrying out the test. This sample is sent for conducting the appropriate tests to a laboratory. The laboratory submits a report regarding its findings to the Commission within 45 days (which can be extended by the Commission).
- (iv) When the Commission receives the report from the laboratory, it sends copy of **the**

report to the opposite party with remarks.

- (v) If any party disputes the findings of the laboratory report, then it must submit its objections in writing. The complainant/opposite party is also given a reasonable opportunity to give reasons about the correctness of the laboratory report.

Procedure when the complaint is regarding services or when the procedure regarding goods cannot be followed

Section 38(3) lays down the procedure to be followed:

- (i) A copy of the complaint is sent to the opposite party. The opposite party is given 30 days (which can be extended by a maximum of 15 days) to present their version.
- (ii) If the opposite party denies/disputes the allegations, or omits/fails to present its case within the time period, then the Commission settles the dispute as follows -
- On the basis of evidence given by the parties, if the opposite party denies/disputes the allegations.
 - Ex parte on the basis of evidence given by the complainant, if the opposite party omits/fails to present its case within the time period.
 - Decide on the merits of the case if the complainant doesn't appear on the date of hearing.

Important Features of Proceedings before a Consumer Fora

Under Sec. 38, certain important features of proceeding before a consumer fora are as follows:

- (i) Affidavit and documentary evidence must be submitted.
- (ii) If sufficient cause is shown, then the Commission can allow for hearing or examination of parties through video conferencing.
- (iii) The Commission may require an electronic service provider to provide the appropriate information, documents or records.
- (iv) The complaints are to be disposed off within 3 months from the date of receipt of notice by the opposite party, and 5 months where testing of commodities is needed.

Order passed by Consumer Fora

When the Commission is satisfied that the goods are defective, or services are deficient, or the allegations of unfair trade practices are true, or compensation under product liability claims is needed, it can pass an order to the opposite party to direct them to do one or more of the following as per Section 39:

- (i) To remove the defect from the good.
- (ii) To replace the defective good with goods of a similar description.
- (iii) To return to the complainant the price of the good, or charges paid by the complainant, with interest.
- (iv) To pay compensation to the consumer for any loss or injury suffered due to the negligence of the opposite party.

- (v) To pay compensation for a product liability action.
- (vi) To discontinue the unfair/restrictive trade practice and not to repeat it.
- (vii) To not offer the hazardous or unsafe goods for sale.
- (viii) To withdraw the hazardous goods from being offered on sale.
- (ix) To cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature.
- (x) To pay a sum which is a minimum of 25% value of the defective goods or deficient services when the Commission opines that loss or injury has been suffered by a large number of consumers who cannot be identified as per Section. 39(k).
- (xi) To issue a corrective advertisement to neutralise the effect of the misleading advertisement.
- (xii) To cease and desist from issuing any misleading advertisement.
- (xiii) To provide adequate costs to the parties.

Appeal

Parties are entitled to prefer an appeal against the order of the consumer fora:

- (i) An appeal lies against the order of the District Commission to the State Commission within 45 days from the date of order as per Section 41.
- (ii) An appeal lies against the order of the State Commission to the National Commission within 30 days from the date of order as per Section 51.
- (iii) An appeal lies against the order of the National Commission to the Supreme Court within 30 days from the date of that order as per Section 67.

Finality of Orders

As per Section 68, every order passed by the District, State & National Commission shall be final unless an appeal is preferred against them under Sections 41, 51 or 67.

Enforcement of Orders

As per Section 71, every order passed by the District, State & National Commission shall be enforced as if it were a decree made by a court and Order XXI of the First Schedule of the Code of Civil Procedure 1908 will apply.

Penalty for Non-Compliance

As per Section 72, failure to comply with orders passed by the District, State or National Commission attracts a penalty of imprisonment upto 3 years and/or a fine upto INR 1 lakh.

Limitation Period

As per Section 69, the period of limitation for filing a complaint before the District, State or National Commission is 2 years from the date of cause of action.

Power of Review

As per Sections 40, 50 and 60, the District Commission, State Commission and National Commission have the power to review any order passed by it respectively.

Power to transfer cases

- (i) As per Section 48, the State Commission can transfer any complaint pending before a District Commission to another District Commission in the interest of justice.
- (ii) As per Section 62, the National Commission can transfer any complaint pending before a District/State Commission to another District/State Commission in the interest of justice.

Appointment of Experts

As per Section 66, the State Commission or National Commission can appoint an individual or an organization as an expert to assist the fora where the larger interest of consumers is involved.

Setting aside ex-parte orders

As per Section 61, the aggrieved can file an application before the National Commission to set aside an ex parte order passed by the National Commission.

When dispute is referred to Mediation

Chapter V of the Consumer Protection Act 2019 allows for settlement of disputes through mediation. The important features of this process are as follows:

- (i) As per Section 79, the mediation is to be conducted in the consumer mediation cell which is attached to the District, State or National Commission.
- (ii) As per Section 80, if the parties reach an agreement with respect to all issues or some issues, then the agreement is reduced into writing and signed by the parties. The mediator then prepares a settlement report which is sent to the Commission. If no agreement is reached or if the mediator feels that no agreement is possible, then a report is prepared and submitted.
- (iii) As per Section 81, the Commission shall pass an order recording the settlement of dispute between the parties and dispose of the matter within 7 days of receiving the settlement report. If the dispute was settled only in part, then the Commission shall record that settled part and proceed to hear the other issues. If the dispute could not be settled by mediation, the Commission will continue to hear all issues in the dispute.

ANNEXURE-II: GENERAL FAQs³⁰

Q.1 Who is a consumer?

A person who buys any goods or services for a consideration, which has been paid or promised or partly paid and partly promised, or under any system of deferred payment is a Consumer. This includes both offline and online transactions.

A person who obtains such goods for resale or for any commercial purposes will not be a consumer. However, if such goods are bought by a person exclusively for the purpose of earning his livelihood by means of self-employment then such a person will be considered as a consumer.

³⁰< (https://clap.nls.ac.in/?page_id=996) > accessed 3 September 2020

Q.2 Who can make complaint?

- A consumer as defined under Consumer Protection Act, 2019
- A registered Voluntary Consumer Association
- Central Government/State Government
- Central Consumer Protection Authority
- One or more consumers representing numerous consumers having the same interest.

Q.3 When the complaints can be made?

In the following situations complainant can be made

- The article purchased by a consumer is defective.
- If the services availed of by a consumer suffer from any deficiency.
- When the price paid by a consumer is in excess of the price displayed on the goods or when the price is in excess of the price fixed under any law in force.
- Goods, which will be hazardous to life and safety, when used, are being offered for sale to the public in contravention of the provisions of any law.
- When the opposite party has engaged in unfair trade practices in respect of goods and services.

Q.4 What is the Consumer Disputes Redressal Commission?

Consumer Disputes Redressal Commission refers to three tier quasi-judicial bodies established at the District level, State level and National level to provide simple and speedy redressal of consumer disputes.

Q.5 Where complaints can be registered?

Consumer Dispute Redressal Commission—

Complaints can be registered before the appropriate Consumer Dispute Redressal Commission. Value of the goods or services paid as consideration will decide the pecuniary jurisdiction of the Consumer Dispute Redressal Commissions which is as follows:

District Commission: where the value of the goods or services paid as consideration does not exceed INR 50 lakh.

State Commission: where the value of the goods or services paid as consideration exceeds fifty lakh but does not exceed two crore rupees.

National Commission: where the value of the goods or services paid as consideration, exceeds two crore rupees.

Q.6 How complainants can be registered?

Complaint can be registered within 2 years from the date on which the cause of action has arisen.

- No Stamp paper is required for declaration

- Complaint can be registered, in person, by the complainant or through his authorized agent or by post addressed to the Redressal Agency.
- Lawyers are not necessary.

Q.7 What particulars should be furnished along with the complainant?

- The name and complete address of the complainant
- The name and complete address of the opposite party/parties
- The facts relating to the complaint and when and where it arose
- The documents in support of the allegations in the complaint
- The relief sought under the Act.

Q.8 What are the reliefs provided by the district and state commission under the Act?

The District Forum / State Commission can order the following relief's:

- To remove the defects in the goods pointed out.
- To replace the goods.
- To return to the complainant the price of the goods
- To pay such amount of compensation for the loss or injury suffered by the consumer.
- To remove the defects or deficiency in the services
- To discontinue the unfair trade practice or not to repeat it
- To withdraw the hazardous goods from being offered for sale
- To provide the cost of expenditure incurred by the complainant
- To issue corrective advertisement and cease & desist from issuing misleading advertisement.

Q.9. What is the appeal provision?

- Aggrieved by the orders issued by the District Consumer Redressal Forum, appeal petition may be filed before State Consumer Dispute Redressal Commission within 45 days from the date of receipt of orders.
- Aggrieved by the orders issued by the State Consumer Dispute Redressal Commission, appeal petition may be filed before National Consumer Dispute Redressal Commission within 30 days from the date of receipt of orders.
- Aggrieved by the orders issued by the National Consumer Dispute Redressal Commission, appeal petition may be filed before Supreme Court of India within 30 days from the date of receipt of orders
- No fee is charged for registering an appeal petition before State / National Consumer Dispute Redressal Commissions.
- The appeal petition has to be filed with the grounds for appeal with copies of orders of the

lower redressal agencies and registering procedures are same as is being done in the case of registering complaint.

Q.10 What are the Rights conferred on the Consumers under Consumer Protection Act 2019?

Consumers are having following rights under the consumer protection act which are namely:

- Right to Safety
- Right to be Informed
- Right to Choose
- Right to be heard
- Right to seek Redressal
- Right to Consumer Education

Q.11 What is the fee structure for filing the complainant before the district forum and commissions?

Every complainant shall be accompanied by a fee as specified in the table given below in the form of crossed Demand Draft drawn on a nationalised bank or through a crossed Indian Postal Order drawn in favour of the Registrar of the State Commission and payable at the respective place where the State Commission or the National Commission is situated. Fees structure shall be according to the given below table (*Rule 7 of Consumer Protection (Consumer Disputes Redressal Commission) Rules 2020 -*

Sl. No.	Total Value of goods or services and the compensation claimed	Amount of fee payable
	District Commission	
1	Upto five lakh rupees	Nil
2	Above five lakh rupees and upto ten lakh rupees	Rs.200
3	Above ten lakh rupees and upto twenty lakh rupees	Rs.400
4	Above twenty lakh rupees and upto fifty lakh rupees	Rs.1000
	State Commission	
5	Above fifty lakh rupees and upto one crore rupees	Rs.2000

6	Above one crore rupees and upto two crore rupees	Rs.2500
	National Commission	
7	Above two crore rupees and upto four crore rupees	Rs.3000
8	Above four crore rupees and upto six crore rupees	Rs.4000
9	Above six crore rupees and upto eight crore rupees	Rs.5000
10	Above eight crore rupees and upto ten crore rupees	Rs.6000
11	Above ten crore rupees	Rs.7500

ANNEXURE - III: MISLEADING ADVERTISEMENT FAQs

The Central Consumer Protection Authority (CCPA) is considering complaints on misleading advertisements from National consumer Helpline and GAMA . It may take sue moto action on misleading advertisements if it affects the consumers, such as in cases of unfair trade practices.

What is GAMA?

The Department of Consumer Affairs has launched this portal for registering online complaints for Grievances Against Misleading Advertisements (GAMA).

What is a misleading advertisement?

Any advertisement or promotion through Television, Radio, or any other electronic media, Newspapers, Banners, Posters, Handbills, wall-writing etc. to misrepresent the nature, characteristics, qualities or geographic origin of goods, services or commercial activities so as to mislead the consumer could be broadly defined as a misleading advertisement.

In simple terms any advertisement that gives false information, making false claims or contravening any other provision of the advertising code can be termed as a misleading advertisement.

Types of advertisements you can complain about?

Advertisements appearing in News Papers, hoardings, handbills, wall writing as well as advertisements in the electronic media such as TV channels, radio channels, internet sites etc. are some examples.

What do I do as a consumer when I see such advertisements?

As an aware Consumer, you can register a complaint along with a copy / video / audio of such advertisement through the web portal the GOI at <<http://gama.gov.in>>.

How do I register my grievance?

Step 1. A onetime registration is required for lodging a complaint. For registration go to the

web portal <http://gama.gov.in> and click on the login link and then sign up giving details required, verify through your email. The User id and password are created.

Step 2. Using this user id and password, enter into the portal and fill in the required details of complaint attaching necessary audio / video / paper clipping / photograph (if available).

Is there any alternate way for registering my complaints?

You can register a complaint along with the copy / video / audio of such advertisement through the nearest Grahak Suvidha Kendra or designated Voluntary Consumer Organizations (VCOs) who will in turn lodge your grievance through the web portal of the GOI at <http://gama.gov.in> to bring it to the notice of the Government.

What happens to the complaint?

Regional Language and local complaints will be taken up by Grahak Suvidha Kendras / Voluntary Consumer Organizations (VCOs) as the case may be with appropriate local authorities.

National level complaints would be forwarded to the concerned regulator of the sector to which the complaint pertains. Complaints would also be monitored for follow up action by the Department of Consumer Affairs.

Regulators will in turn take up the matter with the concerned Company / Agency for remedial action. All VCOs, regulators and DoCA will update the action taken by them regularly through the web portal.

All unresolved complaints will be placed before the Inter-Ministerial Committee constituted by the Department of Consumer Affairs, for arriving at a logical conclusion.

How do I track the status of my complaint?

Complainants could login using user id and password provided at the time of registering complaint and can track the status. Alternatively, GSK / VCOs would inform the complainant, if the complaint was lodged through them, from time to time.

What Action do I expect on my complaint?

Every complaint is to be registered and a Unique Complaint ID is issued. The complainant can track the status of the complaint using this ID.

The complaint will be forwarded to the concerned regulator / authority for action against those responsible for the misleading advertisement. Action according to the provisions of the existing law will be initiated.

Who are the authorities?

The Government Departments / Self-regulating Authorities / Ombudsmen are the authorities.

Who will be contact person in the Department of Consumer Affairs ?

Deputy Secretary (Publicity)

Department of Consumer Affairs

³¹ <<https://gama.gov.in>> accessed 3 September 2020

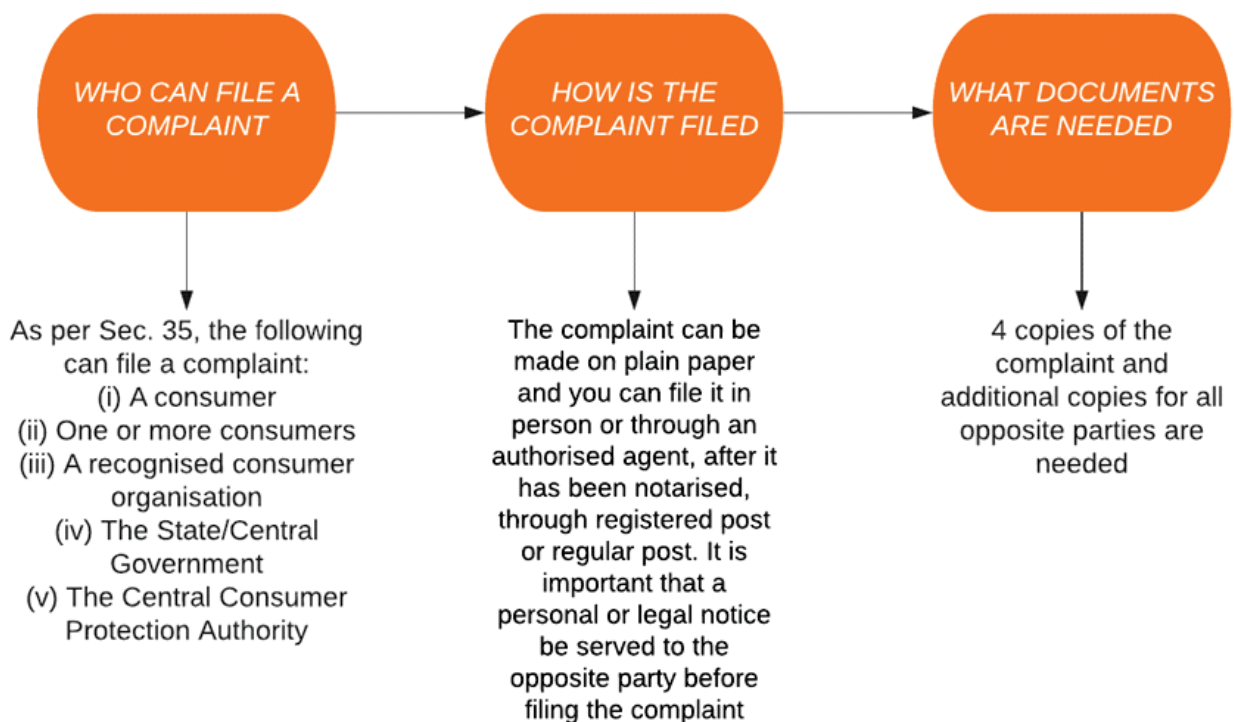
Krishi Bhawan. New Delhi - 110001

Email : dspub-ca@nic.in

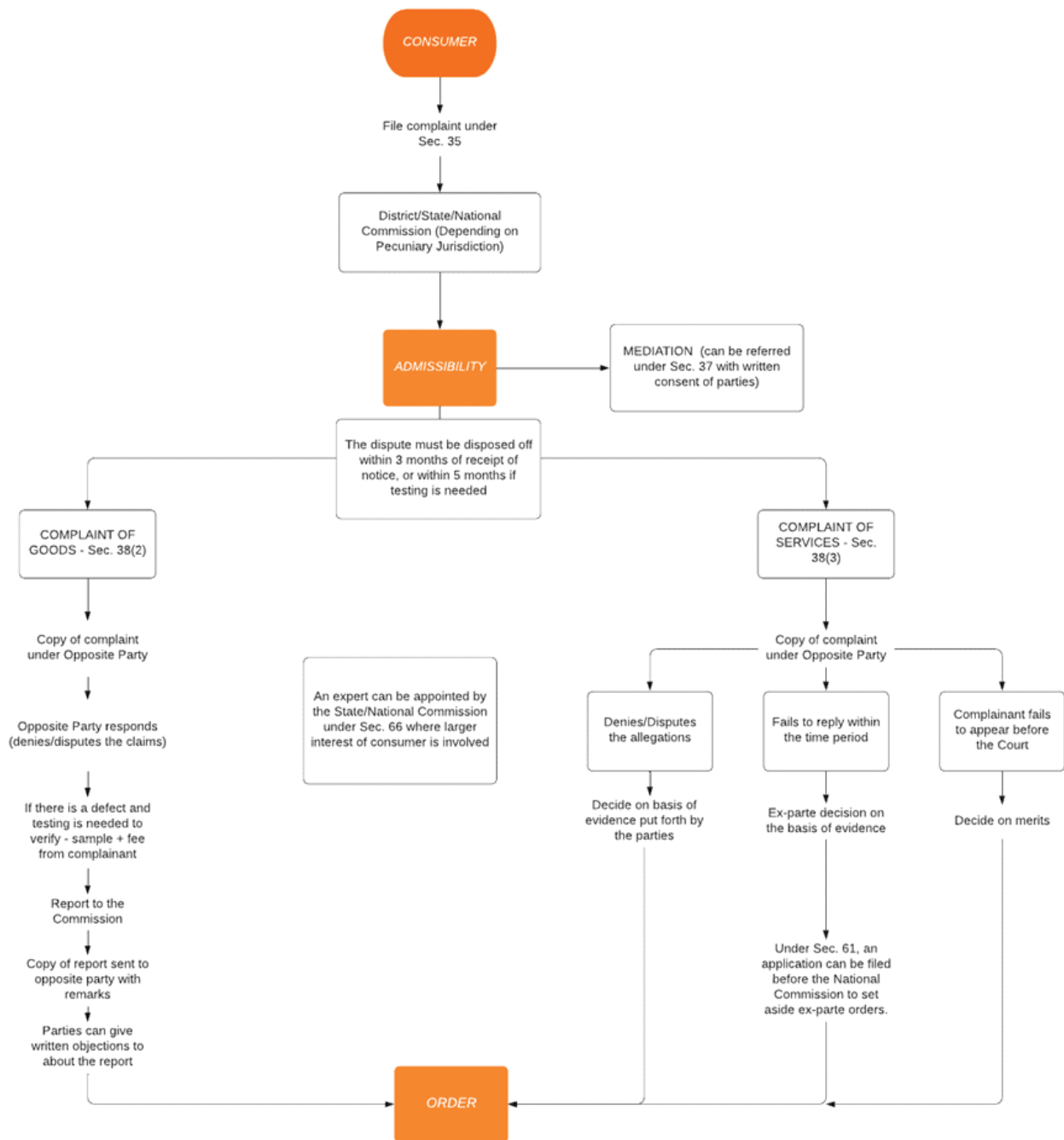
What other option is available for a consumer?

A consumer/complainant has an option to appropriate District Consumer Fora / State Commission / NCDRC when a case is *sub-judice*.

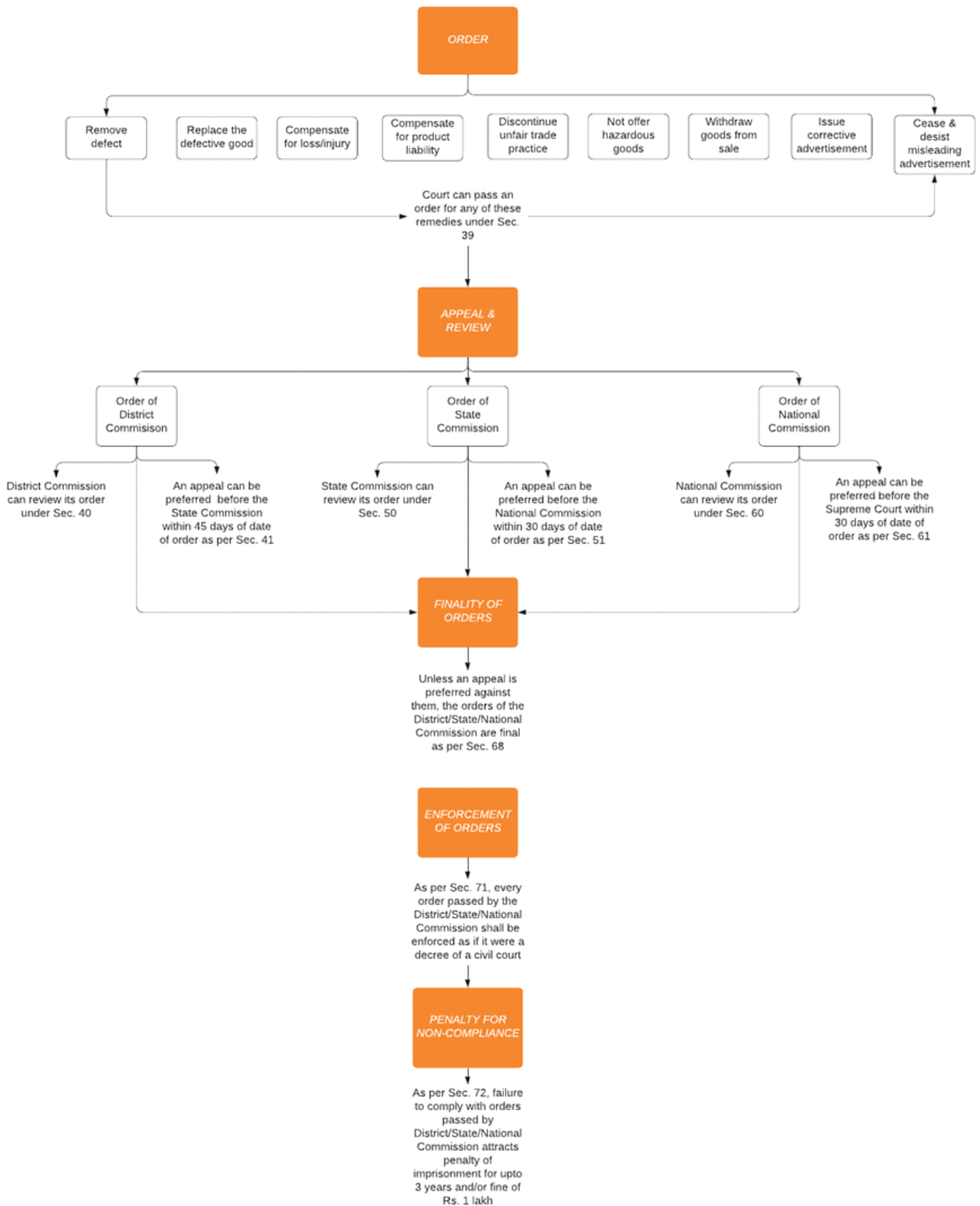
ANNEXURE-IV: FLOWCHART I: FILING A COMPLAINT UNDER CPA 2019



ANNEXURE-V: FLOWCHART II: PROCEDURE FOLLOWED UNDER CPA 2019



ANNEXURE-VI: FLOWCHART III: ORDER PASSED UNDER CPA 2019



ANNEXURE-VII: IMAGES OF MISLEADING ADVERTISEMENTS AND UNFAIR TRADE PRACTICES



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