

## **“Powers of Central Consumer Protection Authority in Protection of Consumer Rights: A Critique”**

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### **ABSTRACT**

The year of 1986 is renowned as *Magna Carta* in Consumer Law because this was the year when the Consumer Protection Act, 1986 was passed with intent to provide better protection of the interest of the consumers. But due to rapid growth of globalization, liberalization and technology, the exploitation of consumer has assumed in numerous forms, additionally the exploitation by e-commerce entity. “*Consumer is sovereign and Customer is the King*” are nothing more than myths in the present scenario particularly in India. Since consumer protection is the socio-economic programme, it is the primary responsibility of the government to protect consumer through appropriate policy measures, legal structure and administrative framework.

Recently, the Government of India on August 9, 2019 received the presidential ascent and published the much awaited Consumer Protection Act, 2019 in Official Gazette. The said Act came into force on 20<sup>th</sup> and 24<sup>th</sup> July, 2020 replacing more than three decade old Consumer Protection Act, 1986. The major changes brought under the Act are including the chapters on Central Consumer Protection Authority which aims to regulate the violation of consumer rights; Mediation to provide speedy disposal of consumer disputes; Product Liability; E-commerce; enhancement of jurisdiction of Consumer Fora etc.,

This paper emphasis on composition, selection procedure, powers, functions and mechanism of the Central Consumer Protection Authority to be established under Consumer Protection Act, 2019 and its role in effective implementation and enforcement of the said Act. The paper is descriptive in nature and is limited to the provisions of Regulatory Authority only. Lastly paper ends with personal analysis and suggestions for better implementation and enforcement of new Act.

### **INTRODUCTION**

The consumer is the foundation which supports the superstructure of the society<sup>1</sup> and it plays a vital role in economy of Nation<sup>2</sup>. The growth in globalisation and technology has been a

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<sup>1</sup>Sansar Singh Janjua, 68(3) “Administrative Machinery for Consumer's Interest: An Analytical Study”, THE INDIAN JOURNAL OF POLITICAL SCIENCE, 523 (2007).

<sup>2</sup> PM Modi, Extending Greetings on World Consumer Rights Day through twitter said that Consumer played important role in the economy available at [https://twitter.com/narendramodi/status/974112267292655616?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E974112267292655616%7Ctwgr%5E&ref\\_url=https%3A%2F%2Fwww.narendramodi.in%2Fgovernment-of-india-is-not-only-focussing-on-consumer-protection-but-also-consumer-prosperity-pm-modi-539318](https://twitter.com/narendramodi/status/974112267292655616?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E974112267292655616%7Ctwgr%5E&ref_url=https%3A%2F%2Fwww.narendramodi.in%2Fgovernment-of-india-is-not-only-focussing-on-consumer-protection-but-also-consumer-prosperity-pm-modi-539318) (accessed on July 07, 2020)

key driver for economic growth. The rising influence of social media and growing purchasing power has enabled the consumer to splurge on varieties of goods. In the year of 2017 the Indian appliance and consumer electronic market has reached Rs. 2.05 trillion and is expected to increase at a 9% CAGR and may reach Rs. 3.15 trillion by 2022<sup>3</sup>. The Indian Consumer market has undergone a radical change and has become as one of the largest growing electronic market in world. However the exploitation of the consumer on the other side has also witnessed in numerous forms such as unfair trade practice, adulteration of food, misleading advertisement, defective product, black marketing and many more. Additionally with the advent of e-commerce, the consumers are exploited by means of cybercrimes, protection of personal data and privacy, error in payments, Deceptive information and marketing practices. The consumer is being methodically victimised by the manufacturers, suppliers, retailer & service providers as regard to quality & price of the product and services.

To protect the consumer the Government of India relying on the United Nations Guidelines on Consumer Protection, 1985<sup>4</sup> enacted Consumer Protection Act, 1986 with an aim to exclusively address the exploitation of the consumer and to provide a platform for speedy redressal of grievance. However, the Act did not come up to aspiration since it suffered various loopholes although it has been amended three time in the year 1991, 1993 and 2002 to achieve the aforesaid objective. The three tier redressal system established at the District, State and National Level are over burdened as time taken for disposal of cases are too long<sup>5</sup>. The Act also did not address the disputes regarding consumer contract entered between Consumer and Product manufacturer of service provider, product liability and e-commerce sector<sup>6</sup>. Whereas e-commerce sector has earmarked as the fastest growing market in India at an annual growing rate of 51% and noted highest in the world.<sup>7</sup>In order to address these challenges, it was required to review and revise the provision in consonance with changing market conditions; effective execution of policies; regulatory body to coordinate and an institutional machinery to ensure optimum protection of consumer interest<sup>8</sup>

The Law Commission of India planning to bring about the drastic changes in Consumer Protection laws recommended that a new and separate law needs to be enacted for the better protection of Consumers.<sup>9</sup> The Consumer Protection Amendment Bill, 2015 was introduced in Lok Sabha and was examined by the Standing Committee on Consumer Affairs. The

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<sup>3</sup> Indian Consumer Durables Industry Report, (May, 2020), available at: <https://www.ibef.org/industry/indian-consumer-market.aspx> (accessed on June 26, 2020)

<sup>4</sup> United Nation Guidelines for Consumer Protection, General Assembly resolution 39/248 of 9 April, 1985.

<sup>5</sup> Standing Committee on Food, Consumer Affairs and Public Distribution, Lok Sabha, THE CONSUMER PROTECTION (AMENDMENT) BILL, 2011 (2012).

<sup>6</sup> Ms. Parul Sinha, *Electronic Contract and Consumer Protection: Does Legislation Provide Adequate Consumer protection*, BLR, 2017, available at: <http://docs.manupatra.in/newslines/articles/Upload/880CF833-0147-488C-8282-4F157FB4F4C5.parul1.pdf> (accessed on June 20, 2020)

<sup>7</sup> Indian E-Commerce Industry Report, October 2019 available at <https://www.ibef.org/industry/ecommerce.aspx> (accessed on July 20, 2020)

<sup>8</sup> Department of Consumer Affairs, *Annual Report 2015-16*, (2016), available at [http://consumeraffairs.nic.in/WriteReadData/userfiles/file/AR\\_2015-16.pdf](http://consumeraffairs.nic.in/WriteReadData/userfiles/file/AR_2015-16.pdf) (accessed on August 01, 2020).

<sup>9</sup> 199th Report of the Law Commission of India: Unfair (Procedural and Substantive) Terms in Contract, August 2006, available at <http://lawcommissionofindia.nic.in/reports/rep199.pdf> (accessed on August 01, 2020)

Standing Committee submitted its report in April 2016 which appreciated setting up of Central Consumer Protection Authority (hereinafter referred as CCPA)<sup>10</sup>. On recommendations of standing committee Consumer Protection Bill, 2019 which introduced in the parliament received presidential assent on 9<sup>th</sup> August 2019 and published in official gazette. The Consumer Protection Act, 2019 (hereinafter referred as new Act) has come into force on partly on 20<sup>th</sup> July, 2020<sup>11</sup> & other part on 24<sup>th</sup> July, 2020<sup>12</sup> replacing the old Consumer Protection Act, 1986<sup>13</sup> through notification in official gazette by Ministry of Consumer Affairs, Food and Public Distribution, Government of India.

The new Act has aimed to bring more holistic and stringent provision so as to protect interest of the consumer. The major changes brought under the new Act include provision for product liability<sup>14</sup> and establishing regulatory authority<sup>15</sup> and empowering it to ask sellers to withdraw services or recall products from the market if the services/product harms public at general or else to cancel licenses<sup>16</sup>. The Act has also introduced a new chapter on Mediation<sup>17</sup> which aims to provide alternate way of resolving consumer disputes. Another important feature of this act is Class Action suits<sup>18</sup> and it has enabled electronic filling of complaints and hearing of matters through video conferencing. This is a type of suit in which one or more persons may sue on behalf of large group of people. It has also enhance pecuniary jurisdiction of redressal agencies<sup>19</sup> and power to state and district commissions to review their own records.

### **NEED FOR CENTRAL CONSUMER PROTECTION AUTHORITY**

In Consumer Protection Act, 1986 there was no authority established to look after the executive and regulatory action specifically for violation of consumer rights, misleading advertisement, unfair trade practices etc., It is seen from the past experience of Consumer Disputes is that the complainant has to prove his claim by adducing the evidence especial in cases of unfair trade practice and misleading advertisement. It was extremely difficult for consumer to collect and produce relevant documents and evidence due to inherent powers asymmetry between the parties. Therefore the consumer commission was lack with power of inquiry and investigation due to which many consumer grievances were remained

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<sup>10</sup> Standing Committee on Food, Consumer Affairs and Public Distribution, Lok Sabha, THE CONSUMER PROTECTION (AMENDMENT) BILL, 2011 (2012).

<sup>11</sup> <https://consumeraffairs.nic.in/sites/default/files/Act%20into%20force.pdf> (accessed on August 01,2020)

<sup>12</sup> <https://consumeraffairs.nic.in/sites/default/files/Provisions%20of%20Act%20comes%20into%20force.pdf> (accessed on August 01,2020)

<sup>13</sup> Sec. 107, Consumer Protection Act, 2019.

<sup>14</sup> Sec.82-87, Consumer Protection Act, 2019

<sup>15</sup> Sec. 10, Consumer Protection Act, 2019

<sup>16</sup> Sec.39, Consumer Protection Act, 2019

<sup>17</sup> Sec.74-81, Consumer Protection Act, 2019

<sup>18</sup> Sec. 2(5), Consumer Protection Act, 2019- Complaint can be filed by one or more consumers, where there are numerous consumers having the same interest.

<sup>19</sup> Sec. 34, 47 & 58, Consumer Protection Act, 2019-The pecuniary jurisdiction of the district commission is where the value of the goods or services paid as consideration is upto Rs. 1 Crore, jurisdiction of State Commission is where the value of the goods or services paid as consideration exceeds Rs.1 Crore but less then Rs. 10 Crore and National Commission is where the value of the goods or services paid as consideration exceeds Rs.10 Crore.

unaddressed. The same has been depicted in various reports that only 3 percent respondents registered their grievances with the company or the producer and only 0.3 percent respondents approached consumer forums for grievance redressal, whereas nearly 93 percent respondents have never actually made a formal complaint.<sup>20</sup> Also the Consumer Protection Act 1986 did not address the dispute regarding the consumer contract entered between Consumers and the manufacturer that contains unfair terms and also challenges like privacy, data protection, product returns or refund, delivery of faulty goods etc that posed due to advent of e-commerce transaction of sale of goods and service<sup>21</sup> which has earmarked as the fastest growing market in India at an annual growing rate of 51% and the highest in the world.<sup>22</sup>

Shri Narendra Modi, the Prime Minister of India while addressing an international conference 2017, referring to the new Act which was undergoing reforms said,

*“A Central Consumer Protection Authority with executive powers will be constituted for quick remedial action.”<sup>23</sup>*

The Consumer Protection Act, 2019 has provided to revamp process of administration and settlements of consumer disputes, with strict penalties including jail term for adulteration and misleading advertisement through establishment of the CCPA on basis of recommendation of Standing Committee<sup>24</sup>. The CCPA has filled with the gap of investigation and inquiry, recall of goods and withdraw services that are hazardous. One more significant change that has brought is that a consumer body or a class of consumer on their own can collect information to sustain a complaint filed before the consumer commissions.

### **CENTRAL CONSUMER PROTECTION AUTHORITY(CCPA)**

The Consumer Protection Act, 2019 has empowered Central Government to establish ‘Central Consumer Protection Authority’<sup>25</sup> along with other two statutory bodies ‘Consumer

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<sup>20</sup> CUTS, International’s Report on State of Indian Consumer 2012 available at [https://cuts-cart.org/pdf/Overview-State\\_of\\_the\\_Indian\\_Consumer-2012.pdf](https://cuts-cart.org/pdf/Overview-State_of_the_Indian_Consumer-2012.pdf)&gt; (accessed on 28-06-2020) – It highlights lack of awareness about the legal remedies amongst consumers in India; ..“State of Consumer Safety in India” 2016, which highlights many problems including laxity in the implementation of the orders passed by authorities under the Act..

<sup>21</sup> Ms. Parul Sinha, Electronic Contract and Consumer Protection: Does Legislation Provide Adequate Consumer protection, BLR, 2017, available at: <http://docs.manupatra.in/newline/articles/Upload/880CF833-0147-488C-8282-4F157FB4F4C5.parul1.pdf> (accessed on June 12, 2020)

<sup>22</sup> Indian E-Commerce Industry Report, October 2019 available at <https://www.ibef.org/industry/e-commerce.aspx> (accessed on June 12, 2020)

<sup>23</sup> International Conference on Consumer Protection for East, South and South-East Countries with the Theme of “Empowering Consumer in New Market” New Delhi (2017), <https://www.narendramodi.in/we-want-to-move-ahead-from-consumer-protection-towards-best-consumer-practices-consumer-prosperity-pm-537502> (accessed on July 09, 2020)

<sup>24</sup> Standing Committee on Food, Consumer Affairs and Public Distribution, Lok Sabha, THE CONSUMER PROTECTION (AMENDMENT) BILL, 2011 (2012)- that the authority will fill an institutional gap in the existing governance on consumer protection.

<sup>25</sup> Sec. 10, Consumer Protection Act, 2019

Councils'<sup>26</sup> and 'Consumer Dispute Redressal Commission'<sup>27</sup> at Central, State and District Level similar to one that exist in Act of 1986. The Consumer Councils is a purely advisory presided over by ex-officio member of executive or minister in charge of Ministry of Consumer Affairs to render advice on promotion and protection of 'consumer rights'<sup>28</sup>. The new Act has also given more teeth to the consumer by broadening the scope of Dispute Redressal Commission pertaining to its jurisdiction and modes to approach Consumer commission by means of online filling of Complaint<sup>29</sup> and hearing through Video Conferencing<sup>30</sup>.

The CCPA is established on 24<sup>th</sup> July 2020 through Gazette notification dated 23<sup>rd</sup> July 2020. The object of the CCPA is to regulate Consumer exploitations which are prejudicial to the 'interest of the public' and consumer and to promote, protect and enforce the consumer rights and it will act as executive agency which have been authorised to make interventions when necessary to prevent consumer detriment arising from unfair trade practices and to initiate class action including enforcing recall, refund and return of products<sup>31</sup>. The term 'interest of the public' is included while granting powers to CCPA is basing upon the similar power authorised to 'Federal Trade Commission of the United States of America' (hereinafter referred as FTC)<sup>32</sup>. The FTC is established under the Federal Trade Commission Act, 1914<sup>33</sup>. Most of the feature of the CCPA is borrowed from Bureau of Consumer Protection, US established by FTC.

The headquarter of CCPA will be situated at National Capital at New Delhi and it shall have regional office in India as the Central Government may decide.<sup>34</sup>

a. Composition of CCPA:

The proposed authority will be headed by the Chief Commissioner<sup>35</sup> and the Central Government in exercise of the powers conferred by Sec. 101(2)(f) & (g) R/w

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<sup>26</sup> Sec. 4-9, Consumer Protection Act 2019, C. II vis-a-vis Sec 4- 8, Consumer Protection Act, 1986 C. II

<sup>27</sup> Sec.28-73, Consumer Protection Act 2019, C. IV vis-a-vis Sec.9-26, Consumer Protection Act 1986, C.III

<sup>28</sup> Sec.2(9) **Consumer Rights** include (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;

<sup>29</sup> Sec. 35(2), Consumer Protection Act, 2019- Every complaint filed under sub-section (1) shall be accompanied with such fee and payable in such manner, including electronic form, as may be prescribed.

<sup>30</sup> Sec. 38(6) Consumer Protection Act, 2019

<sup>31</sup> Annual Report 2018-19, Ministry of Consumer Affairs Food and Public Distribution, Government of India, available at <https://consumeraffairs.nic.in/sites/default/files/file-uploads/annualreport>. (accessed on July 01, 2020)

<sup>32</sup> Sec. 5 of Federal Trade Act, 1914

<sup>33</sup> Federal Trade Commission Act 1914 [Chapter 311 of the 63rd Congress, 38 Stat. 717, September 26, 1914]

<sup>34</sup> Sec. 10(3) Consumer Protection Act, 2019

Sec.10(2) & Sec. 11(Qualification for Appointment of Chief Commissioner and Commissioner). In exercise of the power Central Government appointed Ms. Nidhi Khare as Chief Commissioner of CCPA. Draft Central Consumer Protection Authority (Selection and Term of Office of Chief Commissioner and Other Commissioner) Rules, 2019 (invited for Views/comments/suggestions for various stake holders)<sup>36</sup> made it clear that it shall appoint 5 Central Commissioners & 5 Regional Commissioner to discharge the power and function assigned under the Act. The qualifications of Chief Commissioner and other Commissioner shall have special knowledge of, and professional experience of not less than twenty-five years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, may be useful to the Central Authority<sup>37</sup> and shall hold office for a term of five years and are eligible for reappointment. CCPA shall also consist of officers, experts and professionals in respective subject matter<sup>38</sup> besides an investigation wing headed by Director-General, Additional Director General, Director, Joint Director, Deputy Director and Assistant Director appointed by Central Government and may delegate the power and functions of Central Authority.<sup>39</sup> Decentralisation of the power of Central Authority into Regional Offices across the country will make the consumers more accessible. It will also help CCPA to effectively discharge its function at the grass root level. But the delegation of the power to the District Collector who is already overburdened may prove ineffective whereas he should have given the power to receive the complaint and refer the same to Authority for final verdict.

b. Procedure of CCPA:

The CCPA in exercise of the power conferred by Sec. 104(2)(b) R/w. Sec.14(1)<sup>40</sup> has Drafted CCPA (Allocation and Transaction of Business) Regulations, 2019(invited for Views/comments/suggestions for various stake holders).<sup>41</sup> It lays down the procedure of transaction and business of CCPA. The transaction business of CCPA are related to drafting of regulations, constituting committees, allocating business and

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<sup>35</sup> Sec. 10(2) Consumer Protection Act, 2019- The Central Authority shall consist of a Chief Commissioner and such number of other Commissioners as may be prescribed, to be appointed by the Central Government to exercise the powers and discharge the functions under this Act.

<sup>36</sup> Rule 4, Draft Central Consumer Protection Authority (Selection and Term of Office of Chief Commissioner and Other Commissioner) Rules, 2019 as on 11-11-2019 available at <https://consumeraffairs.nic.in/draft-rule> (accessed on July 01, 2020) (**Composition of Central Authority**).

<sup>37</sup> Rule 5, The Central Consumer Protection Authority (Selection and Term of Office of Chief Commissioner and Other Commissioner) Rules, 2019 as on 11-11-2019 available at <https://consumeraffairs.nic.in/draft-rule> (accessed on July 01, 2020) (**Qualification for appointment of Chief Commissioner and Other Commissioner**).

<sup>38</sup> Sec.13 Consumer Protection Act 2019

<sup>39</sup> Sec. 15 Consumer Protection Act, 2019

<sup>40</sup> Sec. 14(1) Consumer Protection Act 2019- Empowered the Central Consumer Protection Authority to make regulations to regulate the procedure and allocation of its business.

<sup>41</sup> The Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2019, available at <https://consumeraffairs.nic.in/draft-regulations> (accessed on July 01, 2020)

other business shall be carried out in meetings of the CCPA and the Allocation of business of CCPA are in matters relating to administrative the Chief Commissioner shall have the powers and may delegate such power as per Sec.14(2), in matters relating to hearing or passing of orders under Sec.20 & 21, CCPA may allocate a Commissioner to carry the same, and in case of other functions the CCPA may allocate the items of business such a Administration of any Regional Office, Advocacy and consumer rights awareness, capacity building, complaint filing, interventions and litigations, complaint handling, legal metrology etc., among committees and commissioners. The meeting of CCPA shall be hold as many time as may be required for purpose of discharging its functions under the Act at its headquarters. The Rule and Regulations framed there under the Act, 2019 are just the draft copies and have not yet been notified or yet to be published.

c. Powers of CCPA:

1) Power to Protect, Promote and Enforce Rights of 'Consumer as a class'

The CCPA has empowered to inquire either suo-motu or on the direction from the government to inquire into violation of rights of 'Consumer as a class', unfair trade practice, misleading advertisement which are prejudicial to public<sup>42</sup>, and accordingly the CCPA can also bring an action<sup>43</sup> and will be able to launch prosecution on behalf of a class of consumer so affected. Class Action suits are especially beneficial where a defect in a product or deficiency in a service affects interest of the public at large. For example cases involving 'adulterated food items, or a defect in the car engine<sup>44</sup> usually affect a group of consumers as a whole. In such cases, it may not be viable for an individual consumer to approach the court; even if he does, he may get justice for himself but not for the entire class of consumers. It is also authorised to intervene in any proceedings before the Consumer Commission in respect of allegations of violation of consumer rights or unfair trade practice and protect the consumer and further it is also authorised to spread and promote awareness of consumer rights.<sup>45</sup> The awareness among the consumer is an essential for better protection of the consumer. The CCPA for this purpose can sought the assistance from non-governmental organisation and other consumer protection institutions so that large number of consumer can be informed. The CCPA in exercise of the power under section 18(2)(g) shall conduct periodic drives & road shows and shall publish periodic magazines, newsletter, journals, handbooks in vernacular languages to reach a larger audience.

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<sup>42</sup> Sec. 10(1) & Sec. 18(1) of Consumer Protection Act, 2019

<sup>43</sup> Sec.2(5), Consumer Protection Act, 2019

<sup>44</sup> For instance, in April 2017, Toyota Kirloskar Motor announced it was recalling 23,157 units of its sedan Corolla Altis in India, as part of the then ongoing recall of 2.9 million vehicles globally, for defective air bags and also in 2015, the government instituted an action against Nestle India Ltd, with respect to instant noodles sold in India under the brand name "Maggi".

<sup>45</sup> Sec. 18(2)(c) & (g), consumer Protection Act 2019

The *suomotu* powers and power of intervention vested with authority will create fear among the ranks of those indulging in exploitative practices and at the same time, will act as a ray of hope for the consumers by means of an aid to consumer in the administration of justice which is backed by its investigative powers.

## 2) Advisory and Regulatory Power

The Act of 2019 has also empowered the CCPA recommend appropriate remedial measures for effective implementation of protection of consumer rights under any other law for time being in force and factor inhibiting enjoyment of consumer rights.<sup>46</sup> It is also authorised recommend on best international practice on consumer rights and international covenant that can be adopted for effective enforcement rights of consumers<sup>47</sup> and encourage non-Governmental organisations to co-operate and work with consumer protection agencies.<sup>48</sup> Beside advisory the CCPA has also empowered with regulatory power such as to issue necessary guidelines to prevent unfair trade practices and protect consumer interests. The official, professional and subject expertise appointed under sec.13 may frame model rules and regulations & guidelines to regulate the unfamiliar sectors such as e-commerce, misleading advertisement, unfair contract, unfair trade practices etc., The CCPA has also empowered to frame regulations relating to procedure for engaging experts and professional under section 13(3); procedure for transaction and allocation of business of Chief Commissioner and Commissioner under section 14(1); regulation regarding format, manner and time limit for submission of inquiries and investigation report to be submitted by Director General to the Central Authority under section 15(5) and such other matter for which provision is to be or may be made by the regulation. But all these regulation shall be framed with prior approval of Central Government and must be in consistent with the other provision of the Act.<sup>49</sup>

The reviewing the factors affecting the consumer will help the government to address the concerns of Consumers and to facilitate this the international practice on consumer rights can set some standards and provide guidelines to overcome this issue.

## 3) Inquiry & Investigation

The one more comprehensive power of the CCPA is investigation and inquiry for violations of consumer rights, unfair trade practices, false or misleading advertisements. For the purpose of investigation and inquiry it was mandatorily CCPA is required to have investigation wing<sup>50</sup>. The investigation wing shall conduct inquiry and investigation after receiving information or complaint or

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<sup>46</sup> Sec. 18(2)(d), Consumer Protection Act, 2019

<sup>47</sup> Sec.18(2)(e), Consumer Protection Act, 2019

<sup>48</sup> Sec.18(2)(h), Consumer Protection Act, 2019

<sup>49</sup> Sec. 104, Consumer Protection Act, 2019

<sup>50</sup> Sec. 16(1), Consumer Protection Act, 2019

directions from the Central Government or on its own motion or receiving of complaint in written or electronic form for violation of consumer rights<sup>51</sup>. Enabling the consumer to file a complaint in electronic mode will make the authority easily accessible to the consumer. But it could have more stringent if the authority would have provision to acknowledge the receipt of the complaint received for reference and convenience of the consumer.

The investigation on complaint, shall be carried in two stages firstly Preliminary Inquiry and secondly Inquiry by Investigation Wing<sup>52</sup>. The preliminary Inquiry is to verify whether there exist a '*prima facie case*' of violation of consumer rights or any unfair trade practice or any false or misleading advertisement. During the enquiry if the central authority is of opinion that the matter is dealt by a regulator established under any other law such as Telecom Regulatory Authority of India<sup>53</sup>, Food Safety Standard Authority of India<sup>54</sup>, Reserve Bank of India, Insurance Regulatory Development Authority of India<sup>55</sup> etc., then it may refer such matters to concerned regulatory authority. The investigation wing after preliminary inquiry through Director General or District Collector shall cause further investigation through a process of search and seizure on having reason to believe that any person has violated consumer rights or committed unfair trade practice or causes misleading advertisement as per provision of the Code of Criminal Procedure, 1973<sup>56</sup>. The term 'reason to believe' should be based on reasonable facts and circumstance recorded by the authority<sup>57</sup>

The District collector after investigation shall send report to CCPA or to Commissioner of regional office.<sup>58</sup> But if an search and seizure is conducted without reasonable grounds the concerned officials shall be punished with imprisonment upto one year or with fine which may extend upto Rs.10,000/- or with both.

The power of investigation and inquiry has given more teeth to consumer to file their complaint District Collector and now it is very ease for the consumer to prove his case as District Collector or CCPA authorised to call any person and direct him to produce any document.<sup>59</sup> But the Act has not laid any power to CCPA specifically for production of documents, summoning of witnesses, requisitioning public documents and receiving evidence on affidavits. The Act is

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<sup>51</sup> Sec. 17 & 19, Consumer Protection Act, 2019

<sup>52</sup> Sec. 19, Consumer Protection Act, 2019

<sup>53</sup> Sec.3, Telecom Regulatory of India Act, 1997

<sup>54</sup> Sec. 4, Food Safety and Standards Act, 2006

<sup>55</sup> Sec.3, Insurance Regulatory and Development Authority Act, 1999

<sup>56</sup> Sec.91-100, Code of Criminal Procedure, 1973- The provisions relating to the summons to produce documents or other things, search-warrant provisions, and other laws related to search and seizure.

<sup>57</sup> Union of India and Ors. V. Agarwal Iron Industries, (2014) 15 SCC 215 & Chemicals Limited v. Commissioner of Customs (preventive) Jamnagar, (2015) 11 SCC 628

<sup>58</sup> Sec.17, Consumer Protection Act, 2019

<sup>59</sup> Sec. 19(3) Consumer Protection Act, 2019

also lacking, as the investigation process is not followed by trial or a formal adjudication and further taking away the right of the accused to confront evidence. The Act is also silent on powers of injunctions during the pendency of any complaint or investigation process. The Act would have also included levying penalties for non-compliance with the orders of the CCPA that would have helped in ensuring that the orders of the CCPA are strictly complied with.

#### 4) Recall of Goods and Withdrawal of services

The Consumer Protection Act, 1986, obligates the seller to address each aggrieved consumer on case-to-case basis and if the consumer proves that the product is defective then the consumer has the right to only receive the value of the products purchased, along with damages suffered.<sup>60</sup> But there was no provision for recall of defective or faulty or unsafe product.

In Food Safety and Standard Act, 2006 if a food business operator considers or has reasons to believe that a food which he has processed, manufactured or distributed is unsafe for the consumer, he shall immediately inform competent authority and initiate procedures to withdraw the food in question from the market<sup>61</sup> according to the Food Recall Guidelines<sup>62</sup> and Food Safety and Standards (Food Recall Procedure) Regulations, 2017. Along with the Food Safety and Standards Authority of India (FSSAI)<sup>63</sup>, the Central Drugs Standard Control Organisation (CDSCO)<sup>64</sup> and the Society of Indian Automobile Manufacturers (SIAM) these regulatory authorities were authorised for product recall which are defective or unsafe to the consumers. But an integrated regulatory framework for product recalls has been largely absent, unlike other countries.

To overcome with this issue, Consumer Protection Act 2019 has empowered CCPA to recall goods or withdrawal of services which are dangerous, hazardous or unsafe on sufficient evidence and opportunity of being heard is given to a person for violation of consumer rights or unfair trade practice and may pass an order to reimburse the price of goods purchased and service hired & discontinuation of practices which are unfair and prejudicial to consumer interest<sup>65</sup>. This provision will ensure pro-active consumer protection in true sense and protect the number of consumers from defective and unsafe products or services as the authority can take action in the interest of the consumer and further alerting the consumers against unsafe goods and services similarly as mandatorily required under Food Safety and Standards (Food Recall Procedure) Regulations, 2017<sup>66</sup>.

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<sup>60</sup> Sec.14 of Consumer Protection Act, 1986

<sup>61</sup> Sec. 28, Food Safety and Standard Act, 2006

<sup>62</sup> Food Recall Guidelines, 2017, available at [https://fssai.gov.in/upload/uploadfiles/files/Guidelines\\_Food\\_Recall\\_28\\_11\\_2017.pdf](https://fssai.gov.in/upload/uploadfiles/files/Guidelines_Food_Recall_28_11_2017.pdf) (accessed on July 08, 2020)

<sup>63</sup> Established under Food Safety Standard Act, 2006

<sup>64</sup> Established under Drugs and Cosmetic Act, 1940

<sup>65</sup> Sec.20, Consumer Protection Act, 2019

<sup>66</sup> Reg. 8, Food Safety and Standards (Food Recall Procedure) Regulations, 2017

#### 5) Issue Direction and Penalty

The CCPA on satisfaction and following to principles of Natural Justice specifically '*Audi Alteram Partem*' may pass order, issue direction and impose penalty against false or misleading advertisement. The issue of direction may be to discontinue misleading advertisement or false advertisement or to modify within such time the same as may be specified by CCPA. If the authority is of opinion that it is necessary to impose penalty in respect of the same, it may impose on manufacturer or endorser a penalty which may extend to Ten Lakh rupees and for subsequent contravention which may extend upto fifty lakh rupees or it may prohibit endorser from making endorsement of any such product or service for a period which may extend upto one years and for subsequent contravention which may extend upto three years.<sup>67</sup> Any person aggrieved by the decision passed by CCPA under section 20 & 21 may prefer appeal before National Commission with a period of thirty days from the date of such receipt of order.

The cases of misleading advertisements and unfair trade practices are predominantly high as there was lack of stringency in law. This lack of stringency in law is met with inclusion of aforesaid provision. Power to issue order, direction and impose penalty for false or misleading advertisement against the manufacturer, service provider, advertiser, endorser and erring trader alike will create necessary deterrence among them. It has empowered CCPA in putting check on malpractices. In India, we have self-regulatory organisation in advertising called the Advertising Standards Council of India (ASCI), which has been generally accepted in the industry. CCPA can collaborate with the ASCI as a PPP model, which will strengthen the CCPA and ensure pro-active action against misleading advertisements.

### **CONCLUSIONS AND SUGGESTIONS**

The Consumer Protection Act 2019 has brought an additional swift and will be grownup with more teeth to provide relief to the consumer. The legislation has brought the meaning to the quote "Prevention is better than Cure" by means of the deterrent provision for punishment to check misleading advertisement and adulteration of products, the provisions to deter manufacturers and services providers from delivering defective products or deficient services. Now the only need is that an effective implementation of the Consumer Protection Act, 2019 which would fosters the needs of the consumer and their interest.

The CCPA with its power of Investigation, inquiry, recall, search and seizure, power to issue direction and impose penalty as discussed will bring a check on exploitation of consumer

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<sup>67</sup> Sec.21, Consumer Protection Act, 2019

from deceptive practices or unfair trade practices from manufacturers, sellers, service providers and advertisers. However the CCPA has to effectively implement all its envisioned plans in order to achieve its desired aims and make the market safe and secure place for consumers.