

## Assessment of Consumer Protection Act 2019 to Support Tobacco Control in India

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### Abstract

*The use of tobacco products has been clearly established to cause significant medical and economic harm. While specific tobacco control legislation has been enacted in the form of the COTPA 2003, it is important to examine if other legislations can be utilised for regulation of tobacco consumption. One such legislation is the Consumer Protection Act 2019, which significantly expands the rights of consumers and protection given to them in terms of product safety and product quality. Accordingly, this paper provides an in-depth analysis of the Consumer Protection Act 2019 and the scope of utilising this legislation and the jurisprudence on consumer law with the aim of effective regulation of tobacco consumption.*

**Keyword:** *Consumer Protection; Tobacco Control; Public Health; Illicit Trade; Misleading Advertisement.*

### I. Introduction

Tobacco is the foremost preventable cause of death and disease in the world today, killing half of the people who use it.<sup>2</sup> As per Global Adult Tobacco Survey-India (GATS 2) India is home to over 27 crore tobacco users and globally it is the second largest producer and consumer of tobacco products. Available estimates in India show that smoking-attributable annual deaths<sup>3</sup> were about 930,000, while the smokeless tobacco (SLT) attributable annual

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<sup>2</sup> WHO, *MPOWER: A Policy Package To Reverse The Tobacco Pandemic* (2008) [https://www.who.int/tobacco/mpower/mpower\\_english.pdf](https://www.who.int/tobacco/mpower/mpower_english.pdf) (Last Visited Sept. 4, 2020)

<sup>3</sup> Jha P, Jacob B and Gajalakshmi V et al., 'A Nationally Representative Case-Control Study of Smoking and Death in India' 358(10) *New England Journal of Medicine* 1137 (2008)

deaths<sup>4</sup> were about 350,000, together accounting for about 1,280,000 deaths per year or approximately 3500 deaths every day.

Although tobacco control legislations such as the Cigarettes and Other Tobacco Products Act 2003 (COTPA 2003) are in force, it is worthwhile to examine other domestic legislations which can be utilised for further regulation in an attempt to close the loopholes utilised by tobacco companies. One of such legislations is the Consumer Protection Act 2019, which seeks to protect the rights of consumers.

This article seeks to examine the scope of utilising the Consumer Protection Act 2019 and the existing jurisprudence developed on the subject for the effective tobacco regulation. For this purpose, the article is divided into five parts. The first part provides a brief overview about the history of the Consumer Protection Act. The second part discusses the relationship between consumer protection and tobacco regulation. The third part analyses important provisions of the Consumer Protection Act 2019 and other consumer protection legislations. The fourth part explains the procedure under the Consumer Protection Act 2019 and the fifth part discusses the Central Consumer Protection Authority.

## **II. Background of Consumer Protection Act**

The sovereignty of the Consumers is to choose the goods or services according to the preferences and preferences assume significance in the context of his choice. But in the present day scenario it has become the myth, because the consumer's freedom of choice is limited and is been abused in common market places. Consumers are duped and cheated because of deceptive advertisement and false and exaggerated descriptions about the quality of goods/services which they propose to sell. Therefore, protection of the consumer is considered to be the utmost importance and all around the world, it has paved a way to consumer movement. In India, the protection of the consumer was not new to India; but it is as old as the civilization. But it has been statutorily recognised during the period of British regime which has brought out 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

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<sup>4</sup> Sinha DN, Palipudi KM, Gupta PC, et al 'Smokeless tobacco use: a meta-analysis of risk and attributable mortality estimates for India' 51(5) Indian J Cancer 73 (2014)

Procedure (Grading and Marketing Act), 1937; Drugs 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; Food Safety and Standards Act, 2006; but all these were not successful as they were expected to be and under the above enactments consumer was moving from the pillar to post to avail the justice as the redressal mechanism was expensive and time consuming. Meanwhile, the United Nation Guidelines on Consumer Protection, 1985 were passed in General Assembly resolution 39/248 on 9th April 1985. Based upon the guidelines, Government of India enacted a special legislation 'Consumer Protection Act, 1986' for the better protection of Consumer's rights and intended to protect the interest of consumer from exploitation. Meanwhile, the Act has been amended three times in 1991, 1993 and 2002, and every efforts have been taken to ensure to grant relief to all aggrieved consumers in an expedited manner as quickly as possible, keeping in mind the provisions of the Act for disposal of cases.

Major issues with the Consumer Protection Act 1986 were that it did not address the dispute regarding the consumer contract entered between consumers and the manufacturer that contain 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 which has earmarked as the fastest growing market in India at an annual growing rate of 51% and the highest in the world.

In view of the above, Law Commission of India had recommended that a separate law needs to be enacted for the better protection of the consumer. 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 but lapsed due to the dissolution of the 15<sup>th</sup> Lok Sabha. The Consumer Protection Bill, 2015 was introduced in Lok Sabha with various new provision 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) being 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 Lok Sabha by the minister of Consumer Affairs, Food and Public Distribution on July 8, 2019. This bill of 2019 is similar to the Consumer Protection Bill, 2018 to replace the Consumer protection Act, 1986. The Consumer Protection Bill, 2019 received the presidential assent on 9 August 2019 and published in official gazette. But it shall come into force on such date as the Central Government may so notify or on such different dates as may be notified for different States and for different provisions of this Act.

Recently Ministry of Consumer Affairs, Government of India in exercise of the powers conferred under section 2(3) enforced the consumer Protection Act 2019 w.e.f. 20th July 2020 & 24th July 2020.

### **III. Consumer Protection Act and Tobacco Control**

The pernicious, inherent viciousness and harmful effects of tobacco use is well established and accepted medically as well as in judicial pronouncements. The link between use of tobacco products, cancer, cardiac and respiratory diseases etc., is well documented and accepted. Similarly, the calculated approaches of tobacco industry designed to attract a new generation of tobacco users through marketing campaigns which are aimed at replacing the millions of people who die each year from tobacco-attributable diseases with new consumers is also well documented and accepted.

*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.*<sup>5</sup>

Tobacco and related industries have employed sustained tactics to attract a new generation of tobacco users by using flavours/adulterants accompanied with misleading claims of reduced harm and by selling of cigarettes and other tobacco products in single stick and in the close vicinity of educational institutions, thus making 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 youth of 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" is the moto, and use of tobacco products is projected as synonymous with adulthood, modernity, affluence, social class norm, elegance, etc.

The Consumer Protection Act of 2019 (CPA) endeavours to protect a consumer from misleading advertisements, unfair trade practice and use of adulterants, which can be a potent tool to counter tobacco advertisement, promotion and sponsorship.<sup>6</sup>

#### **IV. Important Provisions of the Consumer Protection Act, 2019**

The preamble of the Consumer Protection Act, 2019 which reads as “*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*” makes very clear that it need to protect the consumer by all means. Where "**consumer**" means any person who buys any goods or hires or avails of any services 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 or beneficiary of such service other than the person who buys such goods or for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made

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<sup>5</sup> Justice Sanjeev Khanna (WP Nos. 18761/2005), judgment dated 07.02.2008. (India).

<sup>6</sup> 'Important 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>, (Last Visited Sept. 4, 2020).

with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; 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; and "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;<sup>7</sup> Therefore, any person who consumes tobacco products will be a consumer under the Consumer Protection Act 2019.

The Consumer Protection Act 2019 has empowered consumer with six "consumer rights" which 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;<sup>8</sup>

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 the consumer against unfair trade practices. Further Advertisement of tobacco products whether direct or indirect (surrogate) and sale of tobacco product loose or outside its package, thereby undermining the hazardous nature of the product and concealing from the consumer its injurious nature is in contravention of consumer rights. Therefore, any consumer of

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<sup>7</sup> Consumer Protection Act 2019, s 2(7).

<sup>8</sup> Consumer Protection Act 2019, s 2(9).

tobacco products has a right to be protected from harmful products, has 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.

#### **A. Act to not be in derogation of other laws**

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.<sup>9</sup>This provision was also present in Section 3 of the Consumer Protection Act 1986. As explained by the Supreme Court in *Secretary, Thirumurugan Co-operative Agricultural Credit Society v. M. Lalitha*<sup>10</sup>, 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. 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 COTPA 2003.

#### **B. Unfair Trade Practice**

Any manufacturer of tobacco products who makes a misleading advertisement commits an unfair trade practice under Sec. 2(47) of the Consumer Protection Act 2019. The "**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; etc.,

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<sup>9</sup> Consumer Protection Act 2019, s 100.

<sup>10</sup> *Secretary, Thirumurugan Co-operative Agricultural Credit Society v. M. Lalitha*, Civil Appeal No. 92 of 1998. (India).

Manufacturers and sellers of tobacco products adopt various trick and tactics to promote the sale of their product and also indulge in deceptive practice to disguise the hazardous nature of the product to entice consumers especially the younger generation of impressionable mind. The unfair trade practise amongst others includes 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, at point of sale, print and electronic media. They are often sold in the same shop, in same product format, in same brand name, in similar packaging, in similar pricing and similar display.
2. Selling tobacco products loose, single sticks or outside its package. Thus, depriving the consumer about the harmful effect of the product through health warning on the pack. The sellers often in contravention of prevailing laws display single stick price in the shops.
3. Display/placing of tobacco products with toffees, candies, chocolates and other food articles meant for children. Though sale to minor or person below the age of 18 years is prohibited, however retailer or sellers often place 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*<sup>11</sup>, the Hon`ble 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 cigarette with tag line low tobacco, slim etc., with false representation of it being less harmful and thereby misleading the usefulness of the product.
6. Promotion of herbal cigarettes or herbal hookah as being safer alternatives or aiding cessation. Herbal Cigarette are as harmful as conventional tobacco cigarettes, as they contain vegetable matter that's when burned

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<sup>11</sup> Central Areca-Nut Marketing Corporation & Others v. Union of India, (Transfer Case (C) 1 of 2010) order dated 23.09.2016. (India).

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 monoxides and other harmful carcinogens. Thus, promotion of herbal cigarette or herbal hookah as safe product is an attempt to mislead a consumer about its quality as well misrepresent about its usefulness.

7. Sale of tobacco products without issuing bill or cash memo or receipt.
8. Promotion of pan masala through misleading advertisement by undermining its injurious nature and the mandatory health warning prescribed under the law.
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.

### ***Measures to prevent unfair trade practices***

For the purposes 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.<sup>12</sup> In exercise of the powers conferred on the Central Government under Sec.94 and Sec. 101(2)(zg) the central government has enacted the Consumer Protection (E-Commerce) Rules, 2020 which mandatorily requires the E-commerce entity to provide the accurate information as to contractual information required to be disclosed by law; mandatory notices and information provided by applicable laws; and all relevant details about the goods and services offered for sale by the seller including country of origin which are necessary for enabling the consumer to make an informed decision at the pre-purchase stage;

### **C. 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

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<sup>12</sup> Consumer Protection Act 2019, s 94.

Drugs and cosmetics Act, 1940 (Notification GSR 443(E), dated 30th April, 1992). The said ban was challenged for being violative of fundamental right to trade. In *Laxmikant v. Union of India*<sup>13</sup>, the Hon`ble 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.*

#### **D. Food Safety and Standards Act, 2006**

The objective of the Act, is laying down standards for articles of food/regulate their manufacture and sale/ensure availability of safe and wholesome food for human consumption.<sup>14</sup>

- a) Section 16 explains the duties and function of Food Authority.
- b) Section 18 of the Act explains general/guiding principles.
- c) Section 26 of the Act explains the responsibilities of the Food Business Operator (FBO) to provide safe & wholesome food and to ensure protection of human life and health
- d) Section 30(2)(a) 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) Regulations, 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.

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<sup>13</sup> *Laxmikant v. Union of India*, (1997) 4 SCC 739. (India).

<sup>14</sup> *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). (India).

- f) Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation, 2011, Clause 2.3.4 of the Regulation prohibits the use of tobacco and nicotine as ingredients in any food products.  
Food Safety and Standards (Packaging and Labeling) Regulations, 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”
- g) 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 2019, it has been separately included with intent to make the Act more holistic and stringent. The Act defined the "misleading advertisement" in relation to any product or service, means an advertisement, which *falsely describes such product or service; or 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 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 deliberately conceals important information;*<sup>15</sup> where as "**advertisement**" means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents;<sup>16</sup>

If any manufacturer or seller 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.

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<sup>15</sup> Consumer Protection Act 2019, s 2(28).

<sup>16</sup> Consumer Protection Act 2019, s 2(1).

### ***Punishment for false or misleading advertisement***

Any manufacturer or service provider who causes a 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.<sup>17</sup>

For instances, Pan Masala is labelled as well as advertised with a tagline “0% nicotine/nicotine-free or no magnesium carbonate”. On testing of Pan Masala nicotine and magnesium carbonate is found in several samples of pan masala, 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 consumer 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 punishable which shall under section 89 of the Consumer Protection Act.

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

### ***Endorser's Liability***

Under the Consumer Protection Act 1986, endorsers were not liable for misleading advertisements. Important examples are - (i) Maggi was found to

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<sup>17</sup> Consumer Protection Act 2019, s 89.

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 others like 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 testing proving the contrary. But the Consumer Protection Act 2019 recognised the liability of an endorser, filling in a gap which had existed in the previous legislation. It defines "**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<sup>18</sup>

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?

No, the Consumer Protection Act 2019 does not lay down any objective standard of ‘due diligence’. For ex, 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 he does not himself believe so, he fails the test and is held liable.

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<sup>18</sup> Consumer Protection Act 2019, s 2(18).

Under Sec. 21(6), no person shall be liable to such penalty if he proves that he had published or arranged for the publication of such advertisement in the 'ordinary course of his business'.<sup>19</sup> However, the scope of 'ordinary course' has not been given in the CPA 2019.<sup>20</sup>

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, monetarily.<sup>21</sup>

### 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 guidelines for endorser's liability and good advertising practices. These are given below:

(A) UK –The ASA (Advertising Standards Authority) has released the CAP Code (Non-broadcast advertising) and BCAP Code (Broadcast advertising).<sup>22</sup> Certain decisions which display endorser's liability are as follows<sup>23</sup>:

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<sup>19</sup> Chinmoy 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> (last visited Sept. 4, 2020)..

<sup>20</sup> Saket 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/> (last visited Sept. 4, 2020).

<sup>21</sup> 'India – 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/> (last visited Sept. 4, 2020).

<sup>22</sup> 'Advertising codes' <https://www.asa.org.uk/codes-and-rulings/advertising-codes.html> (last visited Sept. 4, 2020).

<sup>23</sup> 'Was Gemma Collins' Toni & Guy Tweet Misleading' <https://marketinglaw.osborneclarke.com/online-advertising/was-gemma-collins-toni-guy-tweet-misleading/> (last visited Sept. 3, 2020).

1. 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.*
2. ASA v. Toni & Guy – *Adhoc commercial endorsements by celebrities on social media should be labelled as such*
3. 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’.<sup>24</sup> Certain decisions which display endorser’s liability are as follows:

1. In re Teami LLC – Settlement of 15 million dollars. 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 FTC due to lack of disclosure about their commercial ties with Teami.*<sup>25</sup>
2. In re Solace Technologies – 4 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” which is required under 21 C.F.R. § 1143.3.<sup>26</sup>
3. In re Creaxion Corp – 2 companies were paid athletes to promote their mosquito repellent product using a media campaign. They settled

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<sup>24</sup> ‘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> (last visited Sept. 4, 2020).

<sup>25</sup> Lesley 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-teami-case-spilling-tea-about-influencers-advertisers> (last visited Sept. 4, 2020).

<sup>26</sup> Lesley 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> (last visited Sept. 4, 2020).

with the FTC for *engaging in misrepresentation as the endorsements were shown as impartial and independent opinions*.<sup>27</sup>

C) The ICPEN is an international organisation comprising of the consumer protection authorities from over 60 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 protection.<sup>28</sup>

(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 principles.<sup>29</sup>

### ***Adulteration***

Any person 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, 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; 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; 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 results in the death of a consumer, with imprisonment for a term which

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<sup>27</sup> '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> (last visited Sept. 4, 2020).

<sup>28</sup> International 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>, (last visited Sept. 4, 2020).

<sup>29</sup> OECD, 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=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP(2018)16/FINAL&docLanguage=En) (last visited Sept. 4, 2020).

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.<sup>30</sup>

The offence of adulteration resulting injury into grievous hurt and death of the consumer shall be cognizable and non-bailable whereas "grievous hurt shall have the same meaning as assigned to it in Section 320 of Indian Penal Code.

The court may, in case of first conviction may suspend any licence issued to the person, 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.

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 samples of pan masala despite the contrary claims on its label and advertisement of "0% nicotine and no magnesium carbonate". Presence of adulterants to mislead the consumer and make the product unsafe is a punishable offence under Section 90 of the Act.

### ***Defect and Deficiency***

The twin concepts of the Consumer Protection Act also play a vital role in protection of consumers and its rights. The Act defines "**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;<sup>31</sup> It is mandatorily required a manufacturer is required to adhere to all laws and regulations governing the quality, quantity, potency, purity or standard of goods. If they fail 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

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<sup>30</sup> Consumer Protection Act 2019, s 90.

<sup>31</sup> Consumer Protection Act 2019, s 2(10).

on pack/advertisements. Selling, handling, serving of unsafe food contaminated by smoking in the restaurant. The consumer can then file a complaint against the restaurant for giving him defective food.

Whereas "**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 any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and deliberate withholding of relevant information by such person to the consumer;<sup>32</sup>

Similarly, a manufacturer or service provider 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 they fail to comply, then the consumer can file a complaint under the Consumer Protection Act 2019 because the manufacturer has provided them with 'deficient' services to the consumer. For example - a person goes to a restaurant. 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. Numerous decisions of the Karnataka High Court have held that<sup>33</sup>:

- a. 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.
- b. In any case, smoking should not inconvenience other customers as it is a public place.

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<sup>32</sup> Consumer Protection Act 2019, s 2(11)

<sup>33</sup> 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) (India).

Similarly, the Hon`ble Madhya Pradesh High Court has observed<sup>34</sup> that “*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.*”

### ***Product Liability***

The Consumer Protection Act 1986 did not have any provision for product liability. It is a new chapter introduced under the Consumer Protection Act 2019 for empowering consumers and can be utilised for tobacco control as well. The Act defines "**product liability**" as *the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto*<sup>35</sup> and any 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 is called as ‘**product liability action**’.<sup>36</sup>

**The "product manufacturer"** means a person who makes any product or parts thereof; or

assembles parts thereof made by others; or puts or causes to be put his own mark on any products made by any other person; or 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 designs, produces, fabricates, constructs or re-

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<sup>34</sup> 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)

<sup>35</sup> Consumer Protection Act 2019, s 2(34).

<sup>36</sup> Consumer Protection Act 2019, s 2(35).

manufactures any product before its sale; or being a product seller of a product, is also a manufacturer of such product;<sup>37</sup>

**The "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 a manufacturer who is also a product seller; or a service provider, but does not include a seller of immovable property, unless such person is engaged in the sale of constructed house or in the construction of homes or flats; 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; a person who acts only in a financial capacity with respect to the sale of the product; is not a manufacturer, wholesaler, distributor, retailer, direct seller or an electronic service provider; 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;<sup>38</sup>

### ***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 legally 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 enable tobacco industry liability to be pursued, all the member states were asked to consider developing civil liability clauses in their legislations under Article 19 of the WHO FCTC.<sup>39</sup> Product liability essentially covers e.g. Product defects (in manufacturing or design); failure to warn; breach of warranty; recalls etc.

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<sup>37</sup> Consumer Protection Act 2019, s 2(36).

<sup>38</sup> Consumer Protection Act 2019, s 2(37).

<sup>39</sup> FCTC’s Seventh Session at Delhi in 2016, FCTC/COP7(11) *Implementation of Article 19 of the WHO FCTC: “Liability”*,

### ***Synopsis of 50 Years of Tobacco Litigation in the US***<sup>40</sup>

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 defense and also argued that federal laws pre-empted 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.

In the 1990s when 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 defense 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:

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[https://www.who.int/fctc/cop/cop7/FCTC\\_COP7\\_11\\_EN.pdf?ua=1](https://www.who.int/fctc/cop/cop7/FCTC_COP7_11_EN.pdf?ua=1), (last visited Sept. 4, 2020)

<sup>40</sup> WHO, *Towards health with justice: Litigation and public inquiries as tools for tobacco control* (2002), <https://escholarship.org/content/qt8kj1f6st/qt8kj1f6st.pdf> (last visited Sept. 4, 2020); Richard A Daynard and Eric LeGresley, 'Product Liability' 21 *Tobacco Control* 227 (2012)

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

In the 2000s there was more success (including obtaining punitive damages) in suing tobacco companies, 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 and stronger evidence to support their claims, recently some consumer 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 pre-empt state laws that regulate advertising, was rejected by the U.S. Supreme Court. Though the plaintiffs still need 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 accepted.<sup>41</sup>

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<sup>41</sup> Amit Yadav and Nisha Yadav, ‘Million Preventable Deaths and Liability of The Tobacco Industry in India’ 3Amity International Journal of Juridical Sciences 47 (2017)

## V. Procedure

The procedure to be followed under the Consumer Protection Act 2019 by a consumer for filing a complaint is given as follows:

### A. Who can file a complaint?

A complaint can be filed before a consumer forum 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.<sup>42</sup>

### B. How to approach a consumer forum?

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.

### C. 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;

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<sup>42</sup> Consumer Protection Act 2019, s 35.

- (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.

#### **D. 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 Rs. 1 crore
State Commission	Sec. 47(1)	From Rs. 1 crore to 10 crore
National Commission	Sec. 58(1)	More than Rs. 10 crore

#### **E. 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.<sup>43</sup>

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<sup>43</sup> Consumer Protection Act 2019, s 34(2); Consumer Protection Act 2019, s 47(2); Consumer Protection Act 2019, s 58(2).

## **VI. Central Consumer Protection Authority**

The Consumer Protection Act 2019 provides for the establishment of the Central Consumer Protection Authority (CCPA).<sup>44</sup> It must be noted that the CCPA is different from the grievance redressal commissions under the Act because they empower 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. A complaint before the CCPA, may be forwarded in writing or in electronic mode to any one of the authorities namely District Collector or the Commissioner of regional Office or the Central Authority following which the CCPA will conduct its own inquiry into the matter. Its salient features are as follows:

### **A. Role of the CCPA**

The functions of the CCPA are as follows:

- (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.

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<sup>44</sup> Consumer Protection Act 2019, s 10.

- (ix) To issue safety notices to consumers against hazardous or unsafe goods and services.<sup>45</sup>

## **B. Powers of the CCPA**

The powers of the CCPA are as follows:

### *Investigation*

The CCPA has an Investigation Wing for conducting inquiries and investigations.<sup>46</sup> 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.<sup>47</sup> In addition, 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.<sup>48</sup>

### *Search & Seizure*

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.<sup>49</sup>

### 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 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.

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<sup>45</sup> Consumer Protection Act 2019, s 18.

<sup>46</sup> Consumer Protection Act 2019, s 15.

<sup>47</sup> Consumer Protection Act 2019, s 16.

<sup>48</sup> Consumer Protection Act 2019, s 19.

<sup>49</sup> Consumer Protection Act 2019, s 22.

(iii) Discontinuation of unfair trade practices.<sup>50</sup>

#### *False or Misleading Advertisements*

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 Rs. 10 lakh on the manufacturer or endorser, which may be extended to Rs. 50 lakh for subsequent contraventions.
- (iv) Impose a penalty of upto Rs. 10 lakh on any person who publishes or is a party to the publication of the false or misleading advertisement.<sup>51</sup>

#### *Appeal against Orders*

A person who is aggrieved by the order of the CCPA under Sec. 20 or Sec. 21 can file an appeal to the National Commission within 30 days from the date of receipt of order.<sup>52</sup>

#### *Penalty for Non-Compliance*

Failure to comply with the order of the CCPA can cause a person to be penalised with imprisonment for upto 6 months and/or with a fine of upto Rs. 20 lakhs.<sup>53</sup>

## **VII. 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.

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<sup>50</sup> Consumer Protection Act 2019, s 20.

<sup>51</sup> Consumer Protection Act 2019, s 21.

<sup>52</sup> Consumer Protection Act 2019, s 24.

<sup>53</sup> Consumer Protection Act 2019, s 88.

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 - such as misleading advertisements/surrogate advertisements, sale of loose/single-stick cigarettes, attempts to hide the injurious health effect of tobacco consumption, enticement of children, attempts to portray certain tobacco products as ‘safer’, false claims about absence of tobacco in products such as pan masala etc.

For the purposes of regulation of tobacco consumption, the provisions of the Consumer Protection Act 2019 can be utilized as follows:

1. The Act uses broad definitions which confers extensive rights on consumers in relation to tobacco consumption.
2. The Act contains provisions to curb the unfair trade practices of tobacco companies. Particularly, it penalises misleading advertisements and provides for endorser’s liability for the first time.
3. The Act introduces product liability for the first time, which can be used to hold tobacco companies liable to consumers.
4. The Act empowers consumers by allowing easy filing of complaints in an electronic mode.
5. The Act provides mediation as an alternative means of dispute settlement to the consumers.
6. The Act provides for speedy and efficient redressal of consumer grievances.
7. The Act establishes the CCPA, which 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 can order a recall of harmful goods.

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