

India: Consumer protection rules and proposed changes

On 20 July 2019, India enacted its new Consumer Protection Act, 2019 ('CPA'). As the Consumer Protection Act, 1986 ('the 1986 Act') was already in place, the enactment of the CPA begs the question as to why amendments were not made to the same. Indeed, sometimes circumstances necessitate an entirely new law. Given a new market, new dynamics, and new challenges, the legislature took a conscious decision to devise a new law. Siddharth Jain, Co-Founding Partner at PSL Advocates & Solicitors, provides an overview of the CPA and the impact on e-commerce entities.

Legislative efforts to rein in new opportunities for e-commerce

Dynamics of market and interests of consumers have always been intertwined but have never been harmonised. Both factors are always at loggerheads and have been a thin rope to tread on for jurisdictions across the world. Markets have always aimed at profit margins, consumer interests have seldom been a consideration for them, and with the development in technology, new avenues of doing business (such as e-commerce platforms) have opened up. With this new avenue, the gap between the above two factors has only widened.

To rein in the unruly horse of the market and to maintain the sanctity of consumer interests, world governments have enacted their respective legislations. The Indian Government has also been conscious of the challenges and has stepped up to enact the Competition Act, 2002 to ensure fair competition in the market and is in the process of enacting the Personal Data Protection Bill, 2019 ('the Bill') to protect the data of consumers. However, these two statutes operate on a wider horizon. The law which affects the people in their day-to-day needs as consumer is the CPA.

The 1986 Act was effective against the markets of the 1980s but, with technology and e-commerce becoming a norm rather than exception, it was felt that there was a need for a complete revamp of

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the old statute, so as to effectively counter the ever-changing circumstances and provide a potent recourse to consumers. It was with this intention that the CPA came into existence.

Consumer interests have always been at the forefront of consumer laws, but the CPA has widened the sweep to circumscribe the customers even more, and this approach is sprinkled across the statute. For example, the territorial jurisdiction of the fora, which is the first step in an adjudication, has been enlarged. Before 2019, a consumer complaint could be filed only at a place where the opposite party was situated or where the cause of action for the dispute had arisen. However, after the CPA, in addition to the above, the complaint can also be filed where the complainant resides or personally works for gain. This is, indeed, a big step but it, practically, renders other options redundant as the complainant would always choose the place of its residence.

There are many other important additions which are going to render the CPA quite effective against the challenges of consumer rights, for example, the establishment of the Central Consumer Protection Authority, incorporating more stringent provisions for default in complying with the orders, enforcement of every order of the fora as if it were the decree of a Court, adding the provision of second appeal to the National Commission, and the like.

Consumer Protection (E-Commerce) Rules, 2020

As discussed above, an important reason for the enactment of the CPA was to streamline the structure of the e-commerce market and to formally bring it within the sweep of consumer law. Although e-commerce transactions were already within the CPA, the legislature has made a conscious effort to align them with the interest of consumers.

While the CPA provides a broad idea and substantive approach of the statute toward this aspect, the Consumer Protection (E-commerce) Rules, 2020 ('the Rules'), which came into effect in 2020, provide for finer nuances on the subject and saddles duties and liabilities on various players in the e-commerce market.

The e-commerce space has been a double-edged sword for customers. While it has made the transactions easier and faster, it has also exposed the customers to unfair trade practices at the hands of retailers. For example, at a brick-and-mortar store, a customer is in a position to physically examine the product before making the payment for the same. However, in an e-commerce transaction, it is not surprising for a customer to receive a product that does not meet the quality and specification shown in the picture or to not receive that product at all. In all

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fairness, although e-commerce platforms do try to resolve these issues, it was high time that a legal framework streamlined this space and a robust mechanism was evolved.

The CPA provides for enlargement of the definition of 'consumer' under Section 2(7) and includes both online and offline transactions within the scope of 'buying goods' and 'hiring services.' Further, the CPA, categorically, defines relevant e-commerce, electronic service provider, and misleading advertisement while specifically addressing most commonly faced issues such as refusing to take back the defective good or refusing to refund the amount.

The Rules are pretty exhaustive in their sweep and, at the outset, declares its application to:

- all goods and services bought or sold over digital or electronic network including digital products;
- all models of e-commerce, including marketplace and inventory models of e-commerce;
- all e-commerce retail, including multi-channel single brand retailers and single brand retailers in single or multiple formats; and
- all forms of unfair trade practices across all models of e-commerce.

E-commerce and emerging markets are at the heart of the new law and this is also demonstrated from the fact that the Rules clearly define the relevant players of the e-commerce space, such as e-commerce entity, inventory e-commerce entity, marketplace e-commerce entity, and seller.

Duties of e-commerce entities

It is now the duty of every e-commerce entity to appoint a nodal person of contact or an alternate senior designated functionary to ensure compliance with the provisions of the CPA and the Rules.

One of the primary issues faced by customers from all walks of life is that all service providers, including e-commerce platforms, only provide the contact details of their customer care helplines which are trained to furnish their tailor-made responses and are, seldom, able to provide a fruitful solution. Under the Rules, e-commerce entities are bound to clearly display the contact details of their grievance officer along with other particulars such as email, fax, landline, and mobile numbers of customer care.

Along with the same, e-commerce entities are also bound to establish an adequate grievance redressal mechanism, having regard to the number of grievances ordinarily received from India.

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This was necessary because the ground reality of redressal mechanisms of the service sector always leave the customers wanting.

One of the arbitrary actions which the e-commerce platforms resort to is the cancellation charges which are levied on the customer if the order is cancelled. After the notification of the Rules, the e-commerce entities are not allowed to levy the same on the customer unless the e-commerce entity also undertakes to bear the similar charges if it unilaterally cancels the order placed by the customer for any reason whatsoever.

The concept of express consent has found a place in the Rules. The consent of the customer shall be recorded only if that consent is explicit and affirmative action. The e-commerce platforms are not allowed to record automatic consent of the customer.

The legislature has taken ample care to make sure that the goods displayed on their platforms correspond to their actual form and specifications and, for that purpose, the marketplace e-commerce entities are, now, bound to secure an undertaking from the seller that description, images, etc. of the goods on the platform are accurate and correspond directly with the actual goods or services.

While e-commerce platforms act as a facilitator and a bridge between the seller and customer, they have always been shy of connecting the seller and customer directly. Customers were forced to scour the data of the seller from the internet. However, things are to take a different turn after the notification of the Rules. The e-commerce entity is now bound, upon a request being made in this regard, to provide the customer with information such as name and details of its website, email address, and other information required for communication with the seller for dispute resolution.

Duties of sellers and inventory e-commerce entities

The duties and liabilities of e-commerce entities are being discussed in the light of defaults committed by the sellers and, as such, the duties of sellers have been categorically been mapped out in the Rules.

Customers are often met with an emphatic denial by the seller to, either, return the goods or refund the price. Instead, the customer is forced to take a replacement of the same product. It has been specifically laid down that the seller is, now, not entitled to refuse to take back the goods or discontinue services or refuse to refund the consideration if the goods or services turn

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out to be defective or if they do not match the specification displayed on the platform or if the delivery is made later than what was promised.

The seller is also bound to appoint a consumer grievance officer in order to redress the complaints in a clear and effective manner.

Inventory e-commerce entities are also covered within the sweep of the Rules and the rules similar to the seller are also applicable to them.

Committee on subordinate legislation

An effective law is one that changes and adapts to the changing circumstances. This becomes all the more important for a new statute because, for some time after the enactment, it has to undergo the rigours of fine-tuning to take care of fine points which could have been overlooked by the legislature. It is only thereafter that the statute can be ready to tackle the issues it was supposed to deal with.

The CPA is no exception to this requirement. The legislature duly enacted the statute to encompass the space of e-commerce, among others. We have also had the Rules to provide a deeper insight into the subject. However, the Government is alive to the fact that there may still be some areas that may have rough edges. For this purpose, the Committee on Subordinate Legislation ('the Committee') was given the task of analysing the challenges and submitting a report with its recommendations which could be considered by the Government and incorporated, if required.

The Committee held its meetings with the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs), relevant evidence was adduced and, subsequent thereto, it submitted the 245th Report on the Rules. The report was presented on 24 March 2021 and contained the recommendations of the Committee on various issues faced in e-commerce transactions.

Findings of the Committee

The Committee, before coming down to the recommendations, discussed the background in which the CPA and the Rules came into existence, which comprised of various threats and challenges faced by the customer including, but not limited to, cybercrimes, quality issues, and misuse of the behavioural pattern of the customer, etc. For example, telemarketing, although a booming business across the world, has its foundations in the breach of personal data. Whatever

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the justification of the telemarketing companies, they cannot be allowed to compromise the personal data of consumers.

In the later part of the Report, the Committee discussed the history and genesis of the consumer laws. The United Nations Commission on International Trade Law ('UNCITRAL') adopted the Model Law on Electronic Commerce 1996. Based on this model law, India enacted the Information Technology Act, 2000 ('the IT Act') which provides for various offence pertaining to the internet. However, one distinguishing feature is that the IT Act deals with the contractual aspects of the use of electronic records, whereas, India needed a law that sought to protect the interest of consumers in their day-to-day transactions. It is because of this reason that the CPA came into existence.

In the report, the Committee discussed various salient features of the Rules so as to give the reader an understanding of the sweep thereof. The important aspects of the Rules have already been discussed above and are not being repeated herein.

As stated above, to arrive at the recommendations, the Committee held discussions with the concerned Ministry and sought its views on various topics. Keeping in view the evidence placed before it, the Committee recommended as follows:

Protection of personal data

Breach of data is an aspect that has plagued the customers in India to a great extent. The Committee has taken this burning issue into consideration and is of the view that the right to be forgotten is important for a customer. In view of the same, it has recommended that customer data should be categorised as per its level of sensitivity and, accordingly, the appropriate level of protection may be assigned for each level.

Further, the provision of mandating the recording of consumer's consent was considered insufficient by the Committee and it was recommended that the Ministry should ensure a secured and robust payment gateway.

The storing of data beyond Indian borders has been another point of contention with the companies based overseas. Regarding this aspect, the Committee recommended that new economic models should be innovated which promote the establishment of global hyper scale data centres in India and that e-marketplace entities should establish data centres locally.

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Unfair trade practices/monopolies

As already stated, while it makes transactions smoother and faster, e-commerce, unknowingly, gives a new dimension to unfair trade practices. Without taking any names, the Committee threw some light at the *modus operandi* in the e-commerce space, whereby, e-commerce entities, initially, offer lucrative discounts and, once the competition is wiped out, they manipulate the prices to their liking and employ unfair trade practices. In response thereto, Ministry clarified that the CPA, coupled with the Competition Act, deals with this aspect. Along with the same, the Ministry was also informed about clause IX of the Press Note 2 of 2018, issued by the Department of Industrial Policy and Promotion¹ on the foreign direct investment policy in the e-commerce sector which provides that an e-commerce entity providing marketplace will not, directly or indirectly, influence the sale price of goods or services. After consideration, the Committee recommended that there has to be a more clear definition of what constitutes unfair trade practices and there should be a practical legal remedy in place to tackle them.

It goes without saying that e-commerce poses serious threats to brick-and-mortar stores both in terms of ease of use and the discounts that are offered to the customers. This has caused the traditional stores to either diversify to e-commerce or, in the worst case, shut shops. From the point of view of customers, in the long run, the absence of brick-and-mortar stores may mean reduced choice which is detrimental to the market. This consideration did not go unnoticed by the Committee and it was recommended that the Rules should contain sufficient protection for small vendors and that Ministry should devise means, whereby, small vendors may be able to diversify to e-commerce.

Grievance redressal and consumer helplines

Gone are the days when companies had contact details of their corporate offices on its website which details, more often than not, proved helpful in redressing grievances of customers. Presently, all companies operate through customer care helplines. Unfortunately, customer care helplines seldom prove helpful. The Ministry, among other points, informed that Rule 5 of the Rules stipulate that every marketplace entity is liable to provide for a customer care number. However, the Committee observed that duties and responsibilities of customer service are not included in the Rules. In view thereof, it was recommended that duties and responsibilities of the customer service is to be clearly provided in the Rules and that the Rules are to mention various levels at which a customer can approach eventually, if grievance stands unresolved.

The issue of delay in contacting the customer care was also raised by the Committee and, to redress the same, it was recommended that a dedicated customer care number should be

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provided and there should be a mechanism in place to monitor the time taken by the customer care to resolve the issue. The e-commerce entities may, as well, be directed by the Ministry to maintain a record of the same so that it could be presented when asked for.

Conclusion

No player of e-commerce space is immune from the application of the Rules and, along with specifying their duties and liabilities, the Rules also ensure the compliance thereof by providing that any contravention of the provision of Rules would attract the provision of the CPA.

A perusal of the Rules makes it abundantly clear that the legislature has, indeed, walked that extra mile to cover every aspect of e-commerce transactions and has tried to ensure that the consumer gets the accurate information to make an informed decision. The latest incarnation of the CPA, along with the Rules, is, indeed, robust and is at par with the international standards of consumer laws. However, when it comes to e-commerce, it is quite evident that every nook and corner of this vast space has been seen and dusted by the legislature to protect the interests of consumers.

Further, with the recommendations of the Committee in place, the wingspan of the Rules is set to be widened and the areas, hitherto, overlooked are duly circumscribed. In view of the same, it can be said with a reasonable degree of confidence that the interest of the consumers in the e-commerce sector is protected and this effort of the Government would go a long way in streamlining the digital space in India.

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