

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper and a black leather watch with a silver face are also visible. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

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JURISDICTIONAL AND TECHNOLOGICAL ENFORCEMENT
CHALLENGES IN COMBATING COUNTERFEIT LUXURY
GOODS ON GLOBAL E-COMMERCE PLATFORMS: A
COMPARATIVE LEGAL STUDY

AUTHORED BY - SHOBHIT PRADEEP SONI

CHAPTER 3

PROTECTING CONSUMERS IN A COUNTERFEIT DRIVEN MARKET

3.1 Introduction

As a result of the global marketplace that exists today, consumers are presented with a plethora of options when it comes to purchasing items. Even though having a wide selection of products might be beneficial, it also presents a number of obstacles, particularly in the form of counterfeit goods. The rights of consumers are essential to the process of ensuring that transactions between firms and customers are both fair and secure. Consumers, however, are exposed to considerable risks as a result of the proliferation of counterfeit items, which include both potential health problems and financial losses. In order to protect both customers and legitimate businesses, it is of the utmost importance to have a solid understanding of consumer rights and to take measures to defend against the sale of counterfeit goods. The significance of consumer rights and the effective actions can be taken to safeguard consumers against purchase of counterfeit goods.⁷⁵

The term "**consumer rights**" refers to the collection of entitlements that individual consumers are entitled to. These rights are intended to protect customers from unfair business practices, guarantee the quality and safety of products, and offer legal options for consumers to pursue in the event that they have a problem. There are a number of fundamental consumer rights, including the right to safety, the right to be informed, the freedom to choice, and the right to seek remedy. In order to safeguard themselves from the risks and hazards that are connected with purchasing counterfeit goods, consumers are afforded essential rights.

Consumers have the right to assume that the things they buy are safe for use and free from any potential hazards. This right allows them to exercise their right to safety. Products that are

counterfeit frequently do not satisfy safety regulations and may provide concerns such as the presence of poisonous substances, components that are defective, or quality control that is insufficient.

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[/www.vcqr.com/blog/consumer-rights-and-protection-against-counterfeit-products.aspx](https://www.vcqr.com/blog/consumer-rights-and-protection-against-counterfeit-products.aspx)(Last Visited March 2026).



Consumers have the right to get information that is both truthful and transparent on the things that they purchase under the right to information. In many cases, counterfeit goods are sold with information that is either deceptive or completely untrue regarding their origin, ingredients, manufacturing techniques, and other relevant details. Customers are misled by counterfeit goods through the use of misleading claims and labelling, which prevents them from being able to make choices based on accurate information.

The right to seek restitution and compensation for damages is available to consumers in the event that they are harmed or suffer financial loss as a result of purchasing counterfeit products. However, due to the intricate nature of the counterfeit trade, it is becoming increasingly difficult for customers to hold counterfeiters accountable and seek recompense for any harm that they may have experienced. It is possible that this will require requesting refunds, product replacements, or legal action against the parties responsible for the production or distribution of the counterfeit items.

Consumers have the right to pick from a wide selection of authentic products without being influenced by alternatives that are counterfeit. Goods that are counterfeit impede market competitiveness and restrict the options available to consumers.

Consumers have the right to access educational tools and awareness campaigns that are designed to educate them to recognize and steer clear of products that are counterfeit. It is possible for consumers to guard themselves from falling prey to counterfeit frauds by arming them with knowledge so that they can make decisions based on accurate information.

3.1.1 Overview of consumer vulnerability in counterfeit Market

The consumers are being deceived and let down simply because they have placed their trust in the product photographs that are featured on the e-commerce website and placed their orders at the same time. In the event that a consumer places an order for a product solely on the basis of the image that is displayed, the following are the repercussions that they will face.

1) The product's grade and its overall appearance

When it comes to purchasing a product from an online e-commerce website, the quality of the product is of the utmost importance because it is the only factor that contributes to the satisfaction and loyalty of the customers. The quality is what that concerns everything and it must be the single pledge given by the sellers to the buyers and such kind of quality products are said to usually called as the premium products. On the other hand, there is a possibility that the product will not function properly after it has been acquired. This is due to the fact that the photographs of the goods that are displayed on e-commerce websites do not provide any information regarding the product's manufacturing quality. The product might not live up to the expectations outlined in the description that can be found on the internet. Some examples of the quality that is indicated here are the product's size, color, and the sort of material it is made of.

Because the looks and sizes of the image can change depending on the position or angle at which the image is taken, it is not possible for customers who are vulnerable to make an accurate determination of the size of the property based solely on the images that are provided. Additionally, the color of the product may differ from the image that was initially exhibited for a variety of reasons, including the lighting conditions that were present when the images were acquired with a high resolution to begin with. As a consequence of this, individuals base their evaluation of the product's quality on its outward appearance.

2) **Infirmity of the body**

Furthermore, e-commerce companies are being accused of selling defective and broken items, which is some thing that accounts for the fact that more than 20% of the goods that are delivered are returned due to physical problems. Concurrently, a small percentage of customers will acquire products online that they are unable to return because they would have done so if the vendors of e-commerce websites had provided them with a discount or free shipping instead. This is happening as a result of the fact that people were purchasing the product only on the basis of the images that were presented for the product, despite the fact that any physical problems in the product might be concealed or not obvious. According to the online records of the vendor, there is a possibility that a financial risk will be involved in the event that the service does not reach the required quality standards.⁷⁶

3) **Items that are reimbursed**

Because of the fact that certain merchants or dealers offer significant price reductions for reimbursed products, it will be difficult to resist the temptation to purchase an item of premium quality at a price that is considered to be "throwaway expensive." It is possible that enterprises who engage in e-commerce have lower administrative expenses than traditional merchants; nevertheless, this market difference would not be significant when it comes to the products that are being advertised.

4) **Improving the image's natural quality and appearance**

It is often true that the quality of the product photograph is more important than the actual quality of the items. This is due to the fact that customers' decisions regarding whether or not to purchase a product from an e-commerce website are influenced by the overall appearance of the picture. There is a possibility that customers would abandon the website and cease purchasing items if the image of the product is of low quality. Consequently, it is imperative that vendors take the necessary precautions to ensure that the images they give are of a high resolution and enhance the natural beauty of the product image. On the other hand, in actuality, vendors were not paying attention to the quality of the goods that they displayed or advertised.

5) **A product that does not quite match the display**

Customers have occasionally reported receiving a product that is different from what they had seen while they were placing the transaction. Although the goods should be exactly as agreed upon or ordered on the product image that is shown, this has been known to happen on occasion. One of the things that can make customers upset with the sellers or vendors on e-commerce websites is the possibility that they will receive defective goods or the incorrect c

⁷⁶ Rania Abdullah & Yahya Saleh, Factors Affecting Buyers' Trust In E-

Commerce In Palestine, 6 MIDDLE EAST JOURNAL OF MANAGEMENT 597 (2019).

olor instead of what they had ordered. As a consequence of this, they start to have reservations about shopping online.

6) **Additional or supplementary items that come with the order**

Among the products that could be included in the displayed product image are the goods and other products. There is a possibility that this will convince shoppers to buy products. As a result, customers who anticipate that the product would appear precisely the same as it does on the display face the possibility of being let down.⁷⁷

3.1.2 **Consumer protection from Business and Legal Angle**

People who sell things and services usually know more, have more power, or have more resources than people who buy them. Companies that make goods may use this to control how their customers use them, which is bad for customers. This is especially true when there isn't much or any competition, meaning that customers don't have many or any other options besides the product or service being sold. On the other hand, strong competition can push sellers to hide the real prices of their goods and services in order to get an edge over their competitors.

Consumers may also have trouble making choices that are logical and in their own best interests. Consumers may not fully understand how a financial product works or what will happen if they can't follow the rules completely when it comes to digital financial services, for example. Consumers may also make bad decisions because of weaknesses, like psychological biases or their place (and ability to make decisions) in their own homes, which providers can use against them. Information and buying power gaps between consumers and providers, which are made worse by some psychological traits of people, make it hard for consumers to make the best choices.

There is an information asymmetry when a source knows more about the goods or services being sold or the market in general than the customer, and the customer doesn't have the time to learn more about competing information. For instance, people who need to borrow money

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may find it hard to figure out the real cost of a loan with flat interest vs. a loan with decreasing balance interest. Also, people may find it hard to choose between two remittance services that have different fees and forex rates when they are trying to decide which forex broker to use.

3.2 Consumer Right Framework

Counterfeiting is an increasing problem for Intellectual Property Rights protection worldwide. In this era of digitalization, counterfeit goods are flooded in the market globally, and technological advancement has made it easier for counterfeiters. Counterfeiting has grown rapidly because the activities offer huge profits and low risks⁷⁸. It is no more limited to the territories in which they are produced, but now the counterfeit goods are exported through multiple jurisdictions.

In recent times, it is increasing at an alarming rate, costing billions of dollars to countries all over the world, including India. Adopting stringent rules and regulations to combat illicit activity is critical in protecting rightful owners and the government, which loses money due to tax evasion. The customer's interest is also jeopardized because counterfeit products frequently deceive and dissatisfy them. Like many other developing countries, India lacks separate laws and regulations to address the issue of counterfeiting. Different IP and non-IP laws, on the other hand, provide remedies. The Customs Act regulates the cross-border circulation of counterfeit goods to preserve the proprietors' intellectual property rights.

Consumers are one of the major stakeholders hugely affected by counterfeit goods. Counterfeiting is not only the infringement of the legal rights of an owner of intellectual property but also violates consumers' rights. The rights of the consumers in India are protected under India's Constitution. At the international platform, United Nations has also provided for consumer protection which includes; right to choose, right to safety, right to information, right to redress, right to heard, right to education, right to basic needs, and right to a healthy environment¹⁸.

The protection of consumer rights and their interests very well find a place in the preamble of the Constitution of India. One of the laudable objectives of the Indian Constitution is to ensure social, economic, and political justice for all citizens, and consumer justice falls under so

⁷⁸ The Office Of United States Trade Representative, Special 301 Report (2009).



cial and economic justice.

3.2.1 Consumer Protection Act, 1986

Understanding consumer rules and rights is crucial in India's vibrant market. Indian consumer rights are centered on the Consumer Protection Act, 1986. This Act addresses consumer issues and provides dispute resolution to promote and defend consumer interests.

Consumer complaints should be resolved quickly, cheaply, and easily under the Consumer Protection Act, 1986. Indian Parliament passed the Act for this reason. Except for government-exempt products and services, the Act includes them all. This encompasses private and public goods and services. The Act focuses on protecting consumer rights and providing effective methods to settle complaints and disputes about defective products, inferior services, deceptive ads, etc.

The Consumer Protection Act protects customers by regulating corporations and service providers and creating consumer tribunals for easy recourse.

An Act to provide better protection for the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

The Indian government has passed various consumer protection laws to prevent shortages, unjust prices, adulteration, and other issues. Consumer law includes Parliament-made laws like MRTP 1969, the Prevention of Food Adulteration act, 1954, and the Essential Commodities Act 1955, among others. The passage of the Consumer Protection Act in December 1986 under the leadership of late Mr. Rajiv Gandhi, then Prime Minister of India, was a major advance in consumer rights. Losing consumer rights and improving complaint resolution were judged necessary. The government issued a draft consumer protection bill and received feedback from several Consumer Advocacy organizations and agencies after carefully reviewing consumer protection legislation in other nations and speaking with consumers, traders, and industry representatives. Indian Parliament approved the act in 1986. The act was amended in 1991 and 1993, 2002 to broaden and reinforce it.

Applicability of Act:

Knowing which sectors, services, and individuals the Consumer Protection Act applies to is

vital. The Act covers all sales transactions, online and offline. Specifically, the Act covers: Items bought for personal use.



- Services include banking, transportation, and insurance.
- Any sale, online or offline, regardless of price.
- Trade practices that are unfair or restricted.

This wide applicability provides a uniform set of rules and legal procedures for consumer rights in India.

Objective of the Act

As its preamble states, the Act aims to better safeguard consumer interests by establishing consumer councils and other bodies to resolve consumer disputes and other problems. The statement of objects and reasons states that the Act aims to resolve consumer complaints quickly and easily. District, state, and central quasi-judicial machinery is desired. The quasi-judicial organizations will follow natural justice and can provide particular reliefs and compensate consumers when necessary. They can also impose fines for non-compliance.

Definitions

Consumer⁷⁹ means any person who buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised, or under any system of deferred payment when such use is made with the approval of such persons, but does not include a person who obtains such goods for resale or for any commercial purpose.

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 beneficiary of such services other than the person who 'hires or avails' of the services for considerations paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes.

⁷⁹ Section 2(D), The Consumer Protection Act, 1986.

Consumer dispute⁸⁰ means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

Defect⁸¹ 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 good;

Deficiency⁸² 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;

Restrictive Trade Practice⁸³ denotes any trade activity that requires a consumer to buy, hire, or use products or services before buying, hiring, or using others.

Service⁸⁴ means any service made available to potential users, including banking, financing, insurance, transport, processing, electrical or other energy supply, board or lodging or both (housing construction), entertainment, amusement, or news or other information, but not free or under a personal service contract.

Spurious goods and services⁸⁵ mean such goods and services which are claimed to be genuine but they are actually not so;

Unfair trade Practice⁸⁶ 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 practice as (to mention few of them) –

- Falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model,

⁸⁰ Section 2(E), The Consumer Protection Act, 1986.

⁸¹ Section 2(F), The Consumer Protection Act, 1986.

⁸² Section 2(G), The Consumer Protection Act, 1986.

⁸³ Section 2 (Nnn), The Consumer Protection Act, 1986.

⁸⁴ Section 2(O), The Consumer Protection Act, 1986.

⁸⁵ Section 2(Oo), The Consumer Protection Act, 1986.

⁸⁶ Section 2(R), The Consumer Protection Act, 1986.



- Falsely represents that the services are of a particular standard, quality or grade,
- Falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods,
- Represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have,
- Makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services.
- Gives public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on a proper test thereof; product fails to delivered according to expectations,
- Gives false or misleading facts disparaging the goods, services or trade of another person,
- Permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, “Bargain price” is a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or a price that a person who reads, hears or sees the advertisement, would reasonable understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold,

Manufacture of spurious goods or offering such goods for sale or adopts deceptive practices in the provision of services. Overall, this act provides the base to protect consumer's interest. The provisions incorporated in this act are very useful for settlement of consumer disputes and let market transactions workout in a hassle-free environment.

Establishment of Consumer Disputes Redressal Agencies.

Authority of the redressal mechanism, quasi redressal mechanism, as mentioned in the Consumer Protection Act, 1986, establishes a three quasi-judicial system for resolving complaints at national, state, and district levels based on the value of consideration for disputed goods or services. Consumers can file complaints at the appropriate level for prompt. The District Consumer Redressal Commission⁸⁷ forum handles

⁸⁷ Section 11, The Consumer Protection Act, 1986.



complaints up to ₹20 lakhs, while the State Consumer Dispute Redressal Commission⁸⁸ handles cases between ₹20 lakhs and ₹1 crore, while the National Consumer Dispute Commission

⁸⁹ If a trader or complainant fails to comply with a District Forum, State Commission, or National Commission order, they may face imprisonment for one to three years or a fine of two thousand rupees to ten thousand rupees.⁹⁰

The Consumer Protection Act, 1986 is considered a milestone in the history of socio-economic legislation to protect the interests of consumers in India. Unlike other laws, which are punitive and preventive, the provisions of this Act are compensatory. They have made comprehensive provisions for resolving consumer disputes. Despite a plethora of measures taken by the government to protect the interest of consumers, consumers are still facing hardships.

3.2.2 Consumer Protection Act ,2019

The Consumer Protection Act, 2019 strengthened consumer rights and improved grievance resolution. Over three decades old Consumer Protection Act, 1986 was replaced. Online shopping, e-commerce, and digital platforms have changed the consumer market, and the revised Act addresses modern consumer issues with additional provisions.

The digital transformation has profoundly impacted consumer habits, changing how consumers interact and the marketplace. We presently live in a world where there is an ever-growing dependency on online marketplaces. The entire Indian consumer diaspora, irrespective of their economic status or age factor, is participating in this online market system either while gaining knowledge through the educational apps like Byju's or Unacademy or while ordering food watching YouTube or making a purchase from Flipkart, Amazon, or Blinkit or while signing in to the Netflix or Amazon Prime or while booking cabs through Ola or Uber or gaining through Swiggy or Zomato or making payments through Paytm or Google Pay.

Misleading commercials, telemarketing, multi-level marketing, direct marketing, and e-retailing are providing new difficulties to consumer rights as the media and internet is being

⁸⁸ Section 17, The Consumer Protection Act, 1986.

⁸⁹ Section 21, The Consumer Protection Act, 1986.

⁹⁰ Section 27, The Consumer Protection Act, 1986.



used widely. As a result, customers have been subject to new types of unfair trade and immoral commercial activities.

There has been no dearth of cases filed against various online market aggregators and service providers before various consumer forums. The majority of such cases were premised on the grounds of defect in goods, deficiency of services, and unfair trade practice⁹¹. It is high time to change the consumer protection law to address the current economic and commercial conditions and the changing markets. The Consumer Protection Act, 2019, along with the Rules, has strived to fill in the gaps in the existing framework under the 1986 Act in order to meet the needs of India's rapidly developing online consumer industry and has incorporated many of the general principles put forth by OECD Council⁹² and United Nations in their recommendations or guidelines respectively.

In the last few years, there has been exponential growth in E-Commerce, leading to the threat of counterfeits greater than ever, resulting in consumer deception at a large scale. Therefore, it has become one of the biggest challenges to protect the consumers from the exposure of counterfeit goods, which poses significant health and safety risks. This part of the chapter analyzes the consumer laws with respect to the counterfeiting of goods.

The new Act has revised the definitions and added new definitions to it, and enhanced the protection of consumers from purchasing online and offline both as it is known that India does not have specific legislation which deals with online counterfeiting (E-Commerce) but through this Act, consumers are empowered to protect their rights. **“Complaint”**⁹³ is a written allegation made by a complainant to obtain relief under this Act, alleging: (i) an unfair contract or trade practice; (ii) defective goods or services; (iii) deficiency in services; and (iv) a trade practice.

“Consumer Dispute”⁹⁴ A disagreement occurs when the person accused disagrees or argues the claims in the complaint.

⁹¹ Rediff.Com V. Urmil Munjal, Rp No. 4656/2012

⁹² Consumer Protection In E-Commerce: Oecd Recommendation (2016).

⁹³ Section 2(6), The Consumer Protection Act, 2019.

⁹⁴ Section 2(8), The Consumer Protection Act, 2019.



“**Consumer Rights**”⁹⁵ i Section 2(9), The Consumer Protection Act, 2019. nclude the following:

(i) th e right to be safe from the marketing of dangerous goods, products, or services; (ii) the right to know about the quality, quantity, potency, purity, standard, and price of goods, products, o r services, as the case may be, so that the consumer is protected against unfair trade practices;

(iii) the right to have access to a variety of goods, products, or services at competitive prices;

(iv) the right to be heard and believe that one's interests will be taken into account in the right places; (v) the right to file a complaint against unfair trade practices, restrictive trade practi ces, or dishonestly taking advantage of consumers; and (vi) the right to be aware of consume r rights.

“**Defect**”⁹⁶ refers to any flaw, imperfection, or lack in the quality, quantity, potency, purity, or standard that must be maintained by any law in effect at the time, by any contract, whether it's written or unwritten, or by the trader in any way regarding any goods or products; the word "defective" should also be understood in this way.

“**Deficiency**”⁹⁷ refers to any flaw, imperfection, shortcoming, or lack of suitability in the quality, nature, or manner of performance that is required by or under any law in effect at the time; or that has been agreed to be performed by a person in accordance with a contract or otherwise in relation to any service. It includes (i) any act of negligence, omission, or commission by that person that causes loss or injury to the consumer; and (ii) that person knowingly withholds relevant information from the consumer.

The definition of the **Consumer** is widened as it includes the consumers of e-commerce. It defines a consumer as a person who purchases goods primarily for his consumption or personal purposes rather than for resale or any commercial purposes. A price has to be paid for those goods, either whole or in instalments.

In this regard, the new Act also incorporated the definition of **E-**

Commerce⁹⁸ means buying or selling goods or services over a digital or electronic netw

⁹⁵ Section 2(9), The Consumer Protection Act, 2019.

⁹⁶ Section 2(10), The Consumer Protection Act, 2019.

⁹⁷ Section 2(11), The Consumer Protection Act, 2019.

⁹⁸ The Cpa, 2019, Section 2(16); "E-

Commerce" Means Buying Or Selling Of Goods Or Services Including Digital Products Over Digital Or Electron ic Network



ork, including digital goods;

⁹⁹ “**Electronic or person or business**” that makes it possible for a product seller to advertise or sell goods or services to a customer. This includes online market places and auction sites.

“**Endorsement**”¹⁰⁰ in this case refers to (i) any message, spoken statement, or demonstration; (ii) any picture of a person's name, signature, likeness, or other recognizable personal traits; or

(iii) any picture of the name or seal of a business or organization that makes the consumer think it represents the opinion, finding, or experience of the person endorsing it.

According to the new definition, **goods**¹⁰¹ means every movable property, including food. This would assist in putting a more significant number of food delivery services under consumer protection.

“**Manufacturer**”¹⁰² refers to someone who: (i) makes goods or parts of goods; (ii) puts together goods or parts of goods made by other people; or (iii) marks goods made by someone else with his own name or makes someone else do it.

“**Mediation**”¹⁰³ refers to the process by which a third party settles an argument between two consumers.

“**Misleading Advertisement**”¹⁰⁴ refers to any ad for a product or service that: (i) misrepresents the product or service in a way that isn't true; (ii) gives consumers a false promise about the nature, substance, quantity, or quality of the product or service; or (iii) makes a statement that, if made by the manufacturer, seller, or service provider, would be unfair business practice; or (iv) tries to hide important information.

⁹⁹ Section 2(17), The Consumer Protection Act, 2019.

¹⁰⁰ Section 2(18), The Consumer Protection Act, 2019.

¹⁰¹ According To The Consumer Protection Act, 2019,Section 2(21), "Goods" Means Every Kind Of Movable Property And Includes "Food" As Defined In Clause (J) Of Sub-Section (1) Of Section 3 Of The Food Safety And Standards Act, 2006.

¹⁰² Section 2(24), The Consumer Protection Act, 2019.

¹⁰³ Section 2(25), The Consumer Protection Act, 2019.

¹⁰⁴ Section 2(28), The Consumer Protection Act, 2019.



“Product”¹⁰⁵ refers to any item, good, substance, or raw material, or any extended cycle of such a product, whether it's gaseous, liquid, or solid, has value on its own, can be delivered either fully assembled or as a component part, and is made for trade or commerce. It does not include human tissues, blood, blood products, or organs.

“Product Liability”¹⁰⁶ means that the person who makes or sells a product is responsible for making up for any harm that a defective product or poor service related to that product causes to a customer.

“Product Liability Action”¹⁰⁷ is a complaint that a person files with a District Commission, State Commission, or National Commission, depending on the situation, to get money for the harm that the product caused.

“Product Manufacturer”¹⁰⁸ is someone who: (i) creates a product or parts of a product; (ii) puts together parts of a product that were made by someone else; or (iii) puts his own mark on a product that was made by someone else; or (iv) creates a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or is otherwise involved with putting that product on the market; or (v) designs, produces, fabricates, constructs, or re-manufactures a product before it goes on sale; or (vi) is both a product seller and a product manufacturer.

“Product Seller”¹⁰⁹ is someone who, as part of their job, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise puts a product on the market. This includes (i) a manufacturer who is also a product seller; or (ii) a service provider, but not (a) a seller of real estate, unless they are selling a house that is already built; (b) a provider of professional services in a deal where the product isn't the main thing they do; or (c) someone who (I) is only financially involved in the sale of the product; (II) isn't a manufacturer, wholesaler,

¹⁰⁵ Section 2(33), The Consumer Protection Act, 2019.

¹⁰⁶ Section 2(34), The Consumer Protection Act, 2019.

¹⁰⁷ Section 2(35), The Consumer Protection Act, 2019.

¹⁰⁸ Section 2(36), The Consumer Protection Act, 2019.

¹⁰⁹ Section 2(37), The Consumer Protection Act, 2019.



distributor, retailer, direct seller, or an electronic service provider;

(III) leases a product without having a fair chance to check it out and find problems with it, under a lease agreement where someone other than the lessor controls the choice of the product, its possession, upkeep, and use.

“Product service provider”¹¹⁰ is someone who does any kind of work for a product.

“Restrictive Trade Practices”¹¹¹ refers to any business action that makes it harder for customers to get goods or services or changes the flow of goods or services in the market in a way that makes customers pay more or has more restrictions than they should. Examples of restrictive trade practice are: (i) not delivering goods or services on time or later than agreed; (ii) making customers buy or rent one good or service before they can buy or rent or use another good or service; and (iii) making customers wait longer than agreed upon to get another good or service.

¹¹²**“Service”** means any kind of service that is offered to potential users. This includes, but isn't limited to, facilities for banking, financing, insurance, transportation, processing, the supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement, or the spreading of news or other information. It doesn't include providing any service for free or under a contract of personal service.

The definition of **“Spurious Goods”**¹¹³ is also provided under the new Act, 2019, which says goods that are not genuine but claimed to be genuine.

“Trader”¹¹⁴ refers to a person who sells or distributes goods for sale. This includes the person who makes the goods and the person who packs them if the goods are sold or distributed in packages.

¹¹⁰ Section 2(38), The Consumer Protection Act, 2019.

¹¹¹ Section 2(41), The Consumer Protection Act, 2019.

¹¹² Section 2(42), The Consumer Protection Act, 2019.

¹¹³ According To The Consumer Protection Act, 2019, Section 2(43), "Spurious Goods" Means Such Goods Which Are Falsely Claimed To Be Genuine.

¹¹⁴ Section 2(45), The Consumer Protection Act, 2019.



“Unfair Contract”¹¹⁵ means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following, namely:-

(i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or (ii) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or (iii) refusing to accept early repayment of debts on payment of applicable penalty; or (iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or (v) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or (vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage.

The Act 2019 also provided a broad definition of “Unfair Trade Practices”¹¹⁶. This concept encompasses a wide variety of misleading or unfair activities used to promote the sale, or usage of any products or services. This involves making deceptive assertions about goods and services, making false representations, providing assurances not based on adequate testing, and deceiving the public. Thus, by revising the definitions which are important with respect to the counterfeiting of goods, this new act has given more clarity to these terms, and in a way, it has strengthened the protection of consumers.

Key Consumer Protection Act, 2019 Features and Provisions

1. Creation of the Central Consumer Protection Authority (CCPA)¹¹⁷

The 2019 Act established a Central Consumer Protection Authority (CCPA). The CCPA is a regulatory body established by the Act, endowed with the jurisdiction to conduct investigations, inquiries, and initiate injunctive proceedings. The principal aim of the CCPA is to govern issues related to the infringement of consumer rights, unethical trade practices, and deceptive or misleading ads detrimental to the interests of the public and consumers. The CCPA promot

¹¹⁵ Section 2(46), The Consumer Protection Act, 2019.

¹¹⁶ Section 2 (47), The Consumer Protection Act, 2019, Available At: <https://Egazette.Nic.In/Writereaddata/2019/210422.Pdf>.

¹¹⁷ Section (10), The Consumer Protection, 2019.



es and protects Indian consumer rights. It can investigate, complain, and act on unfair trade practices, misleading advertising, and product flaws.

The CCPA is entitled to do the following:¹¹⁸

1. Can file class action lawsuits.
2. Punish deceptive advertising.
3. Recall dangerous products and services.

Moreover, the 2019 Act significantly tackles the problem of deceptive ads. The Consumer for a and CCPA possess the authority to impose directives and sanctions for deceptive or misleading advertisements.¹¹⁹ Any manufacturer or service provider or endorser responsible for creating a false or misleading advertisement detrimental to consumer interests is subject to imprisonment for up to two years and a fine of up to ten lakh rupees. In the event of a subsequent offense, the imprisonment may extend to five years, with a fine of up to fifty lakh rupees.

The CCPA is authorized to instruct the relevant party whether a merchant, manufacturer, endorser, advertiser, or publisher to cease a false advertisement or amend it accordingly.¹²⁰ The Act also offers safe harbor for endorsers and publishers in some instances. An endorser is absolved from penalty under Section 21 of the 2019 Act if he or she took due diligence to ascertain the truthfulness of the statements made in the advertisement concerning the endorsed goods or service. A person shall not be held accountable if they published or facilitated the publication of a false or misleading advertising in the regular course of business. Nonetheless, this defence would be inapplicable if the individual possessed prior knowledge of an order issued by the CCPA concerning the retraction or modification of the advertisement.

To enforce adherence to the CCPA mandate, Section 88 of the 2019 Act criminalizes noncompliance with CCPA directives, with a penalty of up to six months' imprisonment, a fine of up to twenty lakh rupees, or both. The 2019 Act stipulates penalties, including imprisonment, fines, or both, for the creation, storage, sale, distribution, or importation of products containing adulterants or counterfeit goods.

¹¹⁸ Section (18), The Consumer Protection, 2019.

¹¹⁹ Section (21), The Consumer Protection, 2019.

¹²⁰ Section (22), The Consumer Protection, 2019.



2. **Consumer Dispute Redressal Commissions:**

In addition to the Consumer Protection Act, there are various consumer dispute redressal agencies at the district, state, and national levels, such as the District Consumer Disputes Redressal Commission also known as District Commission¹²¹. Its Jurisdiction subject to the other rules in this Act, the District Commission can hear cases where the value of the goods or services given in exchange for money does not go over one crore rupees.¹²²

State Consumer Disputes Redressal Commission also known as State Commission¹²³. Its Jurisdiction¹²⁴ if the goods or services paid for are worth more than one crore rupees but less than ten crore rupees, you can file a protest.

The National Consumer Disputes Redressal Commission also known as National Commission¹²⁵. Its jurisdiction¹²⁶ is that it handles complaints over ₹10 crore.

If the subject is national importance, the new Act authorizes direct complaints to the National Commission.

Limitation of the period¹²⁷ for filing a case in the District Commission, State Commission, National Commission, shall only be entertained if the case is filed within 2 years from the date of action has risen.

Penalty for non-

compliance of order¹²⁸: If someone doesn't follow the order of the District Commission, the State Commission, or the National Commission, depending on the case, they will be jailed for at least one month and up to three years, fined at least twenty-five thousand rupees and up to one lakh rupees, or both.

¹²¹ Section 28, The Consumer Protection Act,2019

¹²² Section 34, The Consumer Protection Act,2019.

¹²³ Section 42, The Consumer Protection Act,2019.

¹²⁴ Section 47, The Consumer Protection Act,2019.

¹²⁵ Section 53, The Consumer Protection Act, 2019.

¹²⁶ Section 58, The Consumer Protection Act, 2019.

¹²⁷ Section 69(1), The Consumer Protection Act, 2019.

¹²⁸ Section 72, The Consumer Protection Act, 2019.



Consumers can approach these agencies to seek redressal for their grievances related to fake products in online retail. It is advisable for consumers to gather evidence of the fraud, such as order receipts, communication with the seller, product images, and any other relevant documents or information, before approaching the relevant authorities for redressal. Additionally, consumers can consider reporting the fraudulent incident to the online retail platform, their payment service provider, or lodging a complaint with the appropriate government authorities, such as the Ministry of Consumer Affairs or the Competition Commission of India, if applicable. It is recommended that consumers seek legal advice or assistance from consumer advocacy organizations to understand the specific legal options available to them based on their circumstances.

3. **Alternative Dispute Resolution (ADR)**¹²⁹:

The Act promotes mediation and conciliation to resolve conflicts without lengthy, costly litigation.

A Consumer Mediation Cell has been established at national, state, and district Consumer Commissions to help resolve conflicts amicably.

Settlement through mediation:

- 1) As part of mediation, if the parties can come to an agreement on any or all of the issues in the consumer dispute, that agreement must be put in writing and signed by all parties or their authorized representatives.
- 2) The referee must write up a report on the settlement and send it along with the signed agreement to the authority in charge.
- 3) If the parties cannot come to an understanding within the time limit or if the mediator thinks that a settlement is not possible, he must write up a report with that information and send it to the appropriate Commission.

4. **Product Liability:**

This chapter applies to anyone who files a product liability claim and wants to get paid for any harm caused by a faulty product made by a product maker, serviced by a product service

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¹²⁹ Section 74, The Consumer Protection Act, 2019.



rovider, or sold by a product seller.¹³⁰

To claim liability, a customer must show the entire fault or malfunction factors, as laid forth by the Act. A product manufacturer, product service provider, and product retailer might be held accountable for any damage done by a faulty product made by the supplier, repaired by the service provider, or sold by the vendor, depending on the situation or case. The chapter, dealing with product liability, pertains to any claim for compensation in a product liability lawsuit brought by a complaint for any damage caused by a faulty product created by a supplier or manufacturer, serviced by a product service provider, or provided by a product seller.

Product liability action¹³¹: If a customer is hurt by a bad product, he can file a product liability claim against the person who made the product, provided the service for the product, or sold the product, depending on the situation.

Liability of a Product Manufacturer¹³²

Section 84 of the Act delineates the circumstances under which a product manufacturer shall be held accountable in a compensation claim arising from a product liability lawsuit due to harm inflicted by a faulty product produced by the manufacturer. The circumstances are as follows:

- The product possesses a manufacturing flaw;
- The product exhibits a design fault.
- The product fails to meet the production criteria.
- A claim for reimbursement against a product manufacturer may arise when the product fails to conform to an express warranty. It is important to recognize that under the 2019 Act, a product liability case may be initiated against the manufacturer if the product fails to meet an express claim, irrespective of any negligence or fraudulent intent on the part of the manufacturer in providing such assurance.

A product liability case may be initiated against the manufacturer if the product lacks sufficient instructions for proper use to avert harm or fails to provide warnings about improper usage.

¹³⁰ Section 82, The Consumer Protection Act, 2019.

¹³¹ Section 83, The Consumer Protection Act, 2019.

¹³² Section 84, The Consumer Protection Act, 2019.



Liability of a Product Service Provider¹³³

Section 85 of the Act delineates the circumstances under which a product service provider shall be held accountable in a product liability lawsuit for harm resulting from a faulty product serviced by the provider. The instances are as follows:

- If the service rendered was flawed, substandard, poor, or inadequate in quality, character, or execution. The evaluation must be conducted in accordance with the stipulations of applicable law or pursuant to any contractual agreement already in effect.
- A product service provider shall also be accountable if an act of omission, commission, negligence, or deliberate withholding of information resulted in harm.
- Liability will also be imposed on the product service provider if it fails to provide sufficient instructions or warnings to avert any harm.
- Likewise, a product service provider shall be accountable in a product liability action if the service fails to adhere to the express warranty or the contractual terms and conditions.

Liability of a Product Seller¹³⁴

Section 86 of the Act delineates the circumstances under which a product seller, who is not the product manufacturer, shall be held accountable in a product liability case for harm resulting from a faulty product sold by the seller. They are as follows:

- if the product seller has exerted significant control over the design, testing, manufacturing, packing, or labelling of a product that resulted in injury.
- if the product seller alters or modifies the product, and such alteration or modification becomes the primary cause in producing the harm.
- if the product seller has provided an express warranty for a product, separate from any express guarantee issued by the manufacturer, and the product does not conform to the express warranty provided by the product seller, resulting in harm.
- if a product has been sold by the seller and the identity of the manufacturer is unknown, or if known, the service of notice, process, or warrant cannot be executed on the m

¹³³ Section 85, The Consumer Protection Act, 2019.

¹³⁴ Section 86, The Consumer Protection Act, 2019.

manufacturer, or the manufacturer is not subject to the laws in force in India, or any orders issued cannot be enforced against the manufacturer.

- if the product seller neglects to exercise due diligence in assembling, inspecting, or maintaining the product, or if they fail to convey the manufacturer's warnings or instructions concerning potential hazards or proper usage during the sale, and such negligence directly causes the harm.

