



A CRITICAL ANALYSIS ON THE ROLE OF CCPA

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ABSTRACT

The Central Consumer Protection Authority (CCPA) was formed by the Consumer Protection Act, 2019, to act as the country’s watchdog over the Dispute Resolution System and Consumer Rights. According to its charter, the CCPA can act as an independent authority that is endowed with comprehensive Regulatory, Consultative, and Administrative capabilities. Aiming to critically analyse such powers and draw attention to the CCPA’s limitations while also explaining the reasons for these limitations, this paper conducts a quantitative and qualitative investigation of the CCPA’s structure, operational areas, and requirements for a Dispute Resolution System in India.

Keywords: Consumer, Buyer, Seller, CCPA, CPA.

INTRODUCTION

When it comes to the effectiveness of the Consumer Dispute Resolution System in India, the Consumer Protection Act, 2019 (CPA) has been hailed as a significant improvement over its predecessor, which received widespread criticism for its ineffectiveness. In the Dispute Resolution System, the new Act has shifted the trend in the right direction, as it recognises the critical importance of including the internet in the realm of consumer protection. Important areas that were previously not adequately covered by the Act, such as e-commerce, have now been thoroughly investigated and addressed. Protection of the Rights of Consumers as a class is one such subject area that has not been adequately addressed in the previous law but has been addressed by Section 10 of the CPA, which established the Central Consumer Protection Authority (Central Authority).¹

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¹ The Consumer Protection Act, § 10, 2019 (Act 35 of 2019).

The CCPA satisfies the requirements of a critically needed regulatory system, which is necessary to administer justice in a congruent manner in the service of the greater public good. A sufficient amount of autonomy has been granted to the Authority for it to carry out its functions in the areas of investigations, inquiries, and actions, allowing it to operate in a larger geographic area while also addressing deficiencies in the Consumer Forums and the Consumer Protection Councils.² Everything mentioned above, combined with the discretion to pass orders, declare penalties for “first-time violators and repeat offenders,” and intervene in proceedings before Dispute Resolution Commissions, gives the Central Consumer Protection Authority a reputation as a formidable guardian of consumer’s rights in India. However, the theoretical cross-sectional overlap of functions and jurisdictions caused by the establishment of the Central Authority, in conjunction with indeterminate and unascertained limitations on the foregoing powers, raises serious concerns about the potential inability of the Legislature to draw clear lines of demarcation between the various powers.

STRUCTURE OF THE CCPA

There are a Chief Commissioner and an unlimited number of additional commissioners (as may be chosen by the Central Government), as well as an unlimited number of officials and other personnel, all of whom are essential for the proper fulfilment of its tasks. A separate investigation wing, headed by a Director-General and consisting of the number of Additional Director-Generals, Directors, Joint Directors, Deputy Director and Assistant Directors appointed by the Central Government and who have the necessary experience and qualifications to carry out their responsibilities, is also part of the organisation, as is the Central Government's investigation wing. Additionally, the Authority may choose to collaborate with the District Collector to undertake a preliminary inquiry or investigation in the event of a complaint about the infringement of consumer rights or a report of unfair trade practices that have been made.

LOCUS OF OPERATION

Section 18 of the CPA outlines the basic boundaries of the authority's powers, which are defined in detail in Section 19. According to the CCPA, the primary directive is concerned with cases involving the infringement of consumer rights, unfair commercial practices, and deceptive or

² Vijay Vir Singh & Siddhartha Mitra, ‘Regulatory Management and Reform in India’ (2008) 6 OECD <<https://www.oecd.org/gov/regulatory-policy/44925979.pdf>> accessed 28 December 2021.

misleading advertising.³ The Central Authority is given sufficient authority to perform the functions of a Regulatory, Advisory, and Administrative Authority. A Regulator has the authority to safeguard and enforce consumer rights as a 'Class,' enquire or probe problems either on its initiative or in response to consumer complaints, file complaints with, and even intervene in current disputes before the District/State/National Commission. CCPA's mandate as an advisory authority is to research and endorse the adoption of international covenants and practices on consumer rights, raise awareness of consumer rights in the country, and encourage non-governmental organisations (NGOs) and other institutions working in the field of consumer protection to collaborate and work with consumer protection agencies. Its administrative functions include the authority to issue orders for the recall of goods, the reimbursement of prices, and the discontinuation of any unfair means of trade, as well as the authority to impose penalties if it determines that there is sufficient evidence to support the claims of consumer rights violations. If advertising is deemed to be false or misleading in any way, the authority may issue instructions to delete or alter the advertisement in question.

The authority serves as a link between the Consumer Redressal Commissions' administrative functions, which are now separated by enormous gaps in their administrative functioning. Individual cases piled up, and compensation awards were low, allowing corporations to adopt a cavalier attitude toward the system, knowing that major infractions would either result in the accumulation of cases that would allow them to profit from the plight of individual consumers who are unlikely to be bothered or unable to afford the legal costs, or it would result in long, drawn-out proceedings that would delay payment of compensation and thus allow the corporation to profit from the plight of individual consumers who are unlikely to be bothered or unable. When the Central Consumer Protection Authority (CCPA) was established as a guardian of public interest, it was able to deal with the ramifications of the previous system by bringing class actions and working towards resolving the issues mentioned above. The results of these efforts would lay down effective practises and models that could be used as guidelines by the District, State, and National Commissions in the future.⁴

A testimony to the Legislature's goal to establish a robust and independent regulator in Canada's Dispute Resolution system is the broad investigation and inquiry powers granted to the CCPA by the Constitution. The establishment of a separate investigative wing, led by a Director-General,

³ The Consumer Protection Act, § 10, 2019 (Act 35 of 2019).

⁴ Bradley J Schaufenbuel, 'E-Discovery and the Federal Rules of Civil Procedure' [2007] PL 10.

demonstrates the Authority's independence and freedom of governance concerning the scope of the authority's jurisdiction. However, these powers are only applicable in situations where the greater public interest (in one way or another) is jeopardised, as demonstrated by the repeated use of the words 'Public Interest' and 'Class' by the Legislature. As a result, the Authority is prohibited from taking up or intervening in disputes involving a single customer unless the greater public interest is at stake. Recent use of the CCPA's authority may be inferred from its referral of the Honey Adulteration problem to the FSSAI and extension of assistance in the creation of a 'Class-Action' lawsuit against a honey manufacturer.⁵

IS THE CREATION OF THE CCPA A NECESSITY?

The District, State, and National Commissions were already dealing with some of the problems that the CCPA was dealing with before the introduction of the Consumer Protection Act 2019. While the establishment of the Central Authority has filled in the gaps left by the previous legislation, its inclusion raises certain questions regarding the need for the authority's continued existence. The CPA has increased the financial restrictions of the Commissions while also bringing about some significant modifications in terms of the Commissions' geographical authority.

However, the legislature has opted to address the inadequacies of the commissions by creating an authority that operates in areas that overlap and duplicate those of the commissions to remedy those problems. The presence of such overlap may result in several levels of litigation for the same infractions in various areas of the nation. As if this weren't confusing enough, although the individual accused of a breach is given a chance to be heard, the law fails to specify what kind of legal actions are to be pursued (i.e. the Act fails to tackle the vague area of operation of the Quasi-Judicial Proceedings of the CCPA and whether they will follow the same procedure followed by the commissions). The advisory role of the Central Consumer Protection Council has also been significantly eclipsed by the advisory duties of the Consumer Protection Agency, resulting in a needless coextension of activities between the two entities and the repeating of outcomes.⁶

When looking at the CCPA from a hopeful perspective, it would emerge that it has specialised inquiry and investigation duties, which have always been lacking from the Commissions' areas of operation, enabling for the efficient administration of justice. In the meanwhile, it would be

⁵ Richard A Posner, 'The Federal Trade Commission: A Retrospective' [2005] PL 761.

⁶ Gaurang Kanth and Divjot Singh Bhatia, 'The Consumer Protection Act, 2019: An Overview' Mondaq (India, 14 January 2020) <<https://www.mondaq.com/india/dodd-frank-consumer-protection-act/876600/the-consumer-protection-act-2019-an-overview>> accessed 28 December 2021.

imprudent to disregard the duplication of labour and resources that has not been addressed by the legislative branch of government yet. An alternative method of approaching systemic gaps could have been an increase in the autonomy of the pre-existing Central Council, rather than the creation of an entirely new authority embodied with the powers of the pre-existing Council; for example, the Central Council could have been revamped to serve the purposes the CCPA currently serves. Moreover, the unfettered powers of interference in the proceedings of the Commissions jeopardise the authority of the Quasi-Judicial Bodies in carrying out their administrative responsibilities.

The prior Act had various shortcomings, many of which have been remedied as a result of the establishment of the CCPA; but, as previously stated, these flaws may have been handled more effectively. As a result, although the resolution of these difficulties seemed to be a pressing requirement, the establishment of a separate authority did not appear to be an urgent necessity.⁷

LOOPHOLES IN CCPA

As a result of the existing ambiguity of the language used by the legislature as well as inherent operational deficiencies that become prevalent while delineating its functions, the Central Consumer Protection Authority, which was established to address some of the flaws in the 1986 legislation, itself suffers from several shortcomings. One of the most important selling points of the CCPA is the presence of experts who can assist in the development of innovative models and standards for the commissions to follow.

However, the criteria for determining ‘integrity,’ ‘ability,’ and ‘special expertise’ have not yet been specified. Whether it comes to determining when and under what circumstances the National Commission would hear an appeal against an order issued under Sections 20 and 21 of the CCPA, the terminology employed by that body is likewise confusing. The repeated use of the terms ‘Public Interest’ and ‘consumers as a class’ limits the authority of the CCPA if a company succeeds in dissolving a class action because continuing to pursue individual cases of customers would be considered acting against the ‘Public Interest,’ and this would place the authority in a bind and prevent it from taking any action. It also raises problems as to whether the Authority has the discretion to act on a report of investigations conducted by the Director-General or District Collector under Section 16 of the Act, due to ambiguity over the report's binding character under that section. There is also a question about the drafting of S.19, which concerns the duplication of efforts by the District Collector if the complaint is made directly to him, as the District Collector

⁷ *Ibid.*

would be required to conduct a preliminary inquiry, which could result in further investigation, either by the District Collector or by the investigation wing of the Authority, which is headed by the Director-General.

While the powers of inquiry granted to the CCPA may be regarded as extensive, the inclusion of the word 'person referred to in sub-section (1)' in sub-section (3) of Section 19 significantly decreases the likelihood of the authority being used in practice. Section 3 of the Consumer Protection Act permits the Director-General or the District Collector to call on evidence from a person who is accused to have infringed the rights of consumers, engaged in unfair trade practices, or issued false or misleading advertising to support their claims. A small sub-set of persons who 'can' be researched is separated from a large group of people who must or 'need to be investigated to reach an inferable conclusion, and the latter group is separated from the former. In addition to the restrictions put on the CCPA's investigative powers, the CPA does not include any provisions for the delegation of Rulemaking authority to the CCPA, preventing it from being seen as a completely self-governing body.⁸

CCPA: THE FUTURE AHEAD

The inclusion of an independent regulator in the Consumer Dispute Redressal System has provided consumers with a stronger feeling of confidence, as they now have a powerful custodian of their rights protecting their interests. The legislature's goal was to establish a self-governing regulatory, consultative, and administrative body that would be able to act in the best interests of the general public whenever the situation demanded it. Because of provisions for suo motu cognizance, extensive powers of investigation and intervention, harsh penalties for repeat offenders, and an overwhelming discretion to pass orders in the interest of natural justice, the CCPA appears to be an intimidating roadblock for corporations seeking to exploit the comparatively low-resourced customers of the country. However, as previously stated, there are limitations to the capabilities of the CCPA, which may be used by these businesses to their advantage.⁹

While the ability to investigate and issue orders imposing damages on those who have engaged in unlawful conduct is an effective method of dispensing justice on time, the CCPA must be given the discretion to issue Temporary Restraining Orders (TROs) and Interim Injunctions during the

⁸ Peter R Darke, Laurence Ashworth and Robin JB Ritchie, 'Damage from Corrective Advertising: Causes and Cures' [2008] PL 81.

⁹ Jodie Z Bernstein and David A Zeetony, 'A Retrospective of consumer protection initiatives' [2005] PL 970.

investigation to ensure that the accused party's allegedly unlawful conduct does not affect any more consumers during the investigation. During the investigation and the hearing, it may be necessary to temporarily halt the activities of an organisation or seller who is accused of engaging in unfair trade practices to alleviate the harm done to the general public if the practices are determined to be unfair. In addition, while subsection (1) of section 21 gives the CCPA the authority to issue directions for the discontinuation or modification of an advertisement, which may include removing a section that is misleading or false, it does not give the Authority authority to issue guidelines for the stricter punishment of a "Corrective Advertisement," which requires the wrongdoer to issue a new advertisement that highlights the errors in the previous advertisement. As long as the legislation tackles the uncertainty that exists in the laws that control the commissioners' and Authority's cross-field authorities, corrective advertising may be transformed into a very powerful proactive reform tool in their hands, according to the CCPA. In certain cases, operational confusion and hesitation might result as a result of the overlapping tendencies of Chapter III of the CPA with Chapters II and IV. The newly proposed e-commerce laws must also contain an indicative list of unfair trade practices rather than just barring "some" actions, as is the case with current standards.¹⁰

FINAL REMARKS

A substantial overhaul of India's dispute resolution system has been set in action by the Consumer Protection Act, 2019, which modifies the pecuniary and territorial jurisdictions and establishes the Central Consumer Protection Authority (CCPA). The formation of the Central Authority has opened up possible avenues for the building of equality between huge multinational corporations and consumers. The real exploitation of such potential, on the other hand, is dependent on the effectiveness of action, as well as the diligent application of the Authority's authorities. If the available resources are not used in a balanced way, the CCPA faces a significant risk of becoming a stale organisation. A failure to maintain harmony in the functioning of the consumer commissions and the CCPA has the potential to destabilise the whole system.¹¹

In addition, if additional flaws in the Authority's operations are not rectified as quickly as possible, they might undermine its operations as a whole. The very nature of the CCPA's powers places it in a state of delicate equilibrium, where a misapplication could degrade the entire Dispute

¹⁰ *Ibid.*

¹¹ David Balto, 'Returning to the Elman Vision of the Federal Trade Commission: Reassessing the Approach to FTC Remedies' [2005] PL 1113.

Resolution System in the country, resulting in a highly sensitive yet perfectly balanced structure, a deviation from which could have a significant impact on the system's very fabric.¹²

Even if other choices may have been examined to a greater degree by the legislature, the founding of the CCPA was a positive move in the right direction by the legislature. So, in hindsight, putting forward the premise of the Central Authority's dispensability does appear to be unnecessary and short-sighted, as there is still a long road ahead for the Central Authority to strive to excel as a watchdog of the Consumer Dispute Redressal System, and despite its shortcomings, the Central Authority's powers appear to ensure a secure future for Consumerism in India.

¹² *Ibid.*