

# Consumer Protection in India through Criminalisation of Consumer Grievances

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*Every person is consumer in one or other way; even a person who is seller in one transaction, in another transaction he is consumer. Consumer grievances now days have become very serious and rate is also alarming which with passing time are becoming more graver challenge. In such situations now consumer grievances do not remain only a matter to be remedied under civil justice dispensation system but for effective tackling need is to under criminal justice system. In case of consumer grievances two pronged actions are required, for providing justice to individual injured consumer there should be civil remedy and to provide justice to consumers collective, thereby, to society there should be providing of criminal justice. Preventive measures are most effective measures for consumer protection which can be attained by criminalisation of consumer grievances. Prescription and infliction of punishment creates deterrence in potential wrongdoers, thereby, they get lesson for future behaviour. In India sufficient penal provisions are provided for criminalisation of consumer grievances; criminal justice system through effective enforcement and infliction of punishment may tackle the problem of consumer grievances and attain the goal of consumer protection. This paper will analyse Indian laws to find out use of measure of criminalisation of consumer grievances for consumer protection.*

**Keywords:** Adulteration; Consumer; Consumerism; Consumer grievance; Criminal Justice System; Deterrence; False property mark; Preventive measure; Spurious

## Introduction

Criminal justice system is evolved and developed by the society for protection of society and members of society. Whenever any unwanted act poses graver problem by infliction of serious impacts to the interests of common citizenry, criminal justice is used to tackle the problem. But criminal justice application functions through criminalisation of activities against which it is used, thereby, in private and personal inter-actions of individuals criminal justice system is not used like in case of supply of goods and services on payment of considerations but matter is tried to be dealt under civil law. Criminal law defines unwanted act as crime and prescribes punishments. Use of criminal procedure in the proceeding and dealing of alleged person by formal criminal instrumentalities and ultimately infliction of punishment causes branding of person as criminal.

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In personal interactions of individuals which do not affect society at large but to individual, generally, criminal justice system is not used. Such precautions of avoiding use of criminal justice system involvement are observed in business transactions and related aspects. Branding of business concerns and bad reputation attached thereon may affect the business and ultimately economy of the country. Further, person affected in business transaction is in need of return of his money, or providing to him goods without defect and services without deficiency, and compensation for loss incurred and harm suffered, and thereby, appropriate law applicable may be civil law, forum available be civil forum and procedure used be civil procedure.

Sometimes bad business practices impacts are not limited to individual but also seriously affect the society at large; in such situation need arise to create deterrence, give lesson to potential wrongdoers and ultimately prevent future wrongdoings. Deterrence creation, lesson giving, and prevention of wrongdoings can only be achieved by use of criminal justice system. For effective dealing with such civil wrongs, proper and effective measure is to use the civil and criminal law both. Consumer grievances are civil wrongs committed by business concerns in supply of goods or services which are primarily dealt by civil forum under civil law. Increasing rate and aggravated nature of consumer grievances which not only seriously affect the consumer but also the society at large require use of criminal justice system along with civil justice dispensation system. The Consumer Protection Act 2019 (hereinafter referred to as CPA 2019) is important, crucial and beneficial legislation enacted to provide proper and effective remedies to consumers. For a longer period need was felt to make Consumer Protection Act, 1986 (hereinafter referred to as CPA 1986) more effective and suiting to modern market practices. Ultimately, CPA 1986 was repealed and CPA 2019 was enacted. Before enactment of Consumer Protection Act, consumer grievances were mainly dealt under Law of Torts, in which disposal of case was much delayed, pursuing of case was expensive, and remedy available was not so effective. Consumer Protection Act emphasises on speedy and effective justice available without incurring expenses. Section 100 of CPA 2019 explicitly provides that remedies under this Act are in addition to and not in derogation of remedies available under any other law, therefore, on his case covered by CPA and Law of Tort any other law covering the case, aggrieved consumer has options available to file his complaint under CPA 2019 or Law of Torts or any other law covering the case.

Consumer is not a simple purchaser, now every person is consumer in one way or other; every consumer citizen, thereby, consumer collectively form the consumer citizenry. Consumer is defined in Section 2(7) of CPA 2019 which includes four persons in its ambit, first is purchaser of goods, second is user of goods with the permission of purchaser of goods, third is hirer of services, and fourth is person who avail services with permission of hirer of services. Definitions of consumer in Section 2(7) and service in Section 2(42) expressly settle that a person can be a consumer when goods or services are obtained by payment of considerations which may have been paid or promised or partly paid and partly promised, thereby, consumer sale may be cash sale or credit sale. Only purchase of goods or services may be sufficient means consideration is paid, it is completely

immaterial that what means of purchase was used; even purchase of goods or hiring of services may be through offline or online by electronic means or teleshopping or direct selling or multilevel marketing. Further, a person can be consumer when goods or services are obtained for final consumption; if any person has obtained goods or services even after payment of consideration but for commercial purpose, such person shall not be consumer; Explanation (a) to Section 2(7) of CPA 2019 creates one exception for use of goods for profit when purchaser is using such purchased goods for earning his livelihood by means of self-employment; in such case sale will not be treated as trade sale but it shall be consumer sale and such person shall be consumer.

In welfare state policy considerations country has solemn responsibility to protect its citizenry which is now consumer by citizenry by enactment and enforcement of appropriate legal regime based on effective justice concept. When civil justice system use is not sufficient for protection of consumers and redressal of consumer grievances, need is to use criminal justice system also to teach lesson, create deterrence, and prevent the committing of act causing consumer grievances. Consumer grievances are increasing continuously, and further, its impacts are also aggravating day by day in both references to nature and extent. Furthermore, in consumer dispute one party, consumer, is weaker in comparison to the other party, goods or service provider. In such situations only civil justice dispensation system concerned with compensating the consumer cannot be effective measure to tackle the problem of consumer grievances but need is to use criminal justice system too. Criminal justice system use may create deterrence to potential violators of consumer interests, thereby, ultimately consumer grievances may be dealt with in effective manner.

### **Consumerism and Consumer Grievances**

Consumerism term is used to refer varied aspects relating to consumer and consumption. Consumerism in common parlances considered as ideology concerned with accumulation and consumption of goods and services. It is taken as extension of capitalism in which manufacturers and sellers attempt to market the produce with continuous increase and augment profit without any limitations. Consumerism also denotes a new kind of emerging culture in which purchase and consumption of goods and services in market are always a desirable goal of individual in modern society and. In consumerist society it is considered that individual's happiness and wellbeing depend and calculated on the basis of purchasing capacity, purchase, consumption, possession and acquisition. In economic perspective consumerism is considered as main cause to run the market, manufacturing, economy, and determinative for wellbeing of the society. But in legal perspective meaning of consumerism is not taken as profit earning; here consumerism refers to better protection of consumer interests through the legal regime. Whenever any interest is protected through any instrumentality of society, it becomes right; interest protected by law becomes legal right; thereby, in legal references consumerism is better, proper and effective protection of consumer

rights. Main objective of consumerism in legal regime is to effectively protect the consumers against violations of his rights by unscrupulous persons operating in the market, thereby, to redress the problem of consumer grievances. The whole concern of consumerism is effective consumer grievance redressal concern. Consumer grievances may appear to be of an individual but such individual forms the whole citizenry and in such situation his unsatisfactory consumer grievance redressal may cause dissatisfaction of whole citizenry, and further, justice system may also fail in attaining its prime goal to provide justice to each person and to protect weaker against exploitations committed by stronger. Ultimately, failure in consumer grievance redressal badly affects the whole economy.

In *Donoghue v Stevenson*<sup>1</sup> the House Lords and in *Grant v. Australian Knitting Mills Ltd*<sup>2</sup> the Privy Council ushered a new era for consumer protection by giving verdict that manufacturer owes duty to take care directly towards ultimate consumer and such duty is completely independent from contractual obligations. In *Donoghue v Stevenson* case the court provided remedy to user of goods who did not purchase but used the material with the permission of purchaser, thereby, ambit of protection was widened to include purchaser and user both. Presently, both purchaser and user form the consumer. Major in the legal regime initiative for consumer protection was taken in the United States of America on 15<sup>th</sup> March 1962 by declaration of right to safety, right to be informed, right to choose and right to be heard as consumer rights. In India for protection of consumer a major step was taken in 1986 by enactment of CPA 1986, which declared six rights and it was comprising all the rights declared in USA in 1962 and two more rights - the Right against unfair Trade Practices and Restrictive Trade Practices, and the Right to Consumer Education. Even before the enactment CPA 1986 many laws were providing protection to consumer as purchaser but there was no specific declaration of consumer rights, available forum and procedure was not effective and proper; CPA 1986 provided provisions in aforesaid regards.

Consumer grievances closely relates to manufacturing process, product specifications, expertise and technicalities of services, business practices, and advertisements. Thereby, with passing time nature and gravity of consumer grievances change; in such situation laws regulating the business practices and affording protection for consumer interests become ineffective, needed to be scrutinised and modified accordingly. In the 21<sup>st</sup> century the need has been felt for prescription of preventive measures, thereby arising of consumer grievances itself has to be avoided. Preventive measure may be two pronged, administrative actions and penal actions. Most effective preventive measure is to give lesson to potential wrongdoer for his future probable behaviour; potential wrongdoer comprises two persons, one who has committed wrongful act and other who has yet not committed but have mentality prone for committing wrongful act, only need is to have opportunity for it. Criminalisation of wrongful act and infliction of punishments to create deterrence in potential wrongdoers, thereby, ultimately they will not dare to commit wrongful act in the future. CPA 1986 lacked preventive measures; in 2019, CPA1986 was repealed by CPA 2019. CPA 2019 widens

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<sup>1</sup>(1932) AC 562 (HL).

<sup>2</sup>(1936) AC 85.

ambit of consumer to include purchaser through online mode and prescribes for online filing of complaints before the consumer grievance redressal forum. Furthermore, CPA 2019 emphasises on prevention of consumer grievances rather than providing measures for actions only after arising of consumer grievances and in this regards the Act establishes administrative body, Consumer Protection Authority, with effective measures for effective administrative actions, provides provisions for product liability, and creates offences with prescription of severe punishments to create deterrence in potential wrongdoers.

### **Declaration of Serious Consumer Grievances as Crime**

Consumer dispute basically in its nature is civil dispute as consumer rights are given to consumer as individual, and further, consumer transaction is one kind of business transaction with one difference that goods or services are obtained by consumer not for obtaining any profit but for final consumption.<sup>3</sup> Therefore, generally for consumer grievance redressal civil law, civil forum and civil remedies are provided. In CPA 1986 only civil redressal was provided<sup>4</sup> but it was identified that only civil measures are not sufficient to deal with the problem in effective manner. By Section 107(1) of CPA 2019 the CPA 1986 was repealed and presently CPA 2019 is in force to protect the consumer interests and to deal with problem of consumer grievances. CPA 2019 provides three pronged actions - civil redressal through filing complaint before consumer forum or through mediation, administrative actions, and criminalisation of consumer grievances.

Criminal law provides ultimate measure to deal with serious problems. Major and effective manner to deal with problem is to prevent it and it is possible effectively by use of criminal justice enforcement measure; by imposition of penal sanctions deterrence is created. Even when a case is decided by civil justice dispensation ultimately for enforcement of order or decree of forum most effective measure used is criminal justice enforcement measure. Chapter VII of CPA 2019 creates some offences for providing justice to consumers and prescribes severe punishments on wrongdoers who commit infringements of consumer interests. In addition to CPA 2019 some other special penal statutes like Food Safety and Standard Act 2006, Drugs and Cosmetics Act, 1940, Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, and general Penal Act Indian Penal

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<sup>3</sup>Consumer obtains goods or services by providing considerations for final consumption. Whenever any person has obtained goods or services for commercial purposes means to obtain profit, the person so obtaining material or services is not consumer and he will not have any protection under CPA 2019. There is one exception in India created by Explanation (a) to Section 2(7) of CPA 2019 that when person obtaining material or services does not make final consumption but uses for further transaction which is for earning his livelihood by self-employment then such person is also taken as consumer. Here person is not obtaining profit but simply earning his livelihood.

<sup>4</sup>In CPA 1986, redressal procedure was civil; as and when consumer grievance was caused, aggrieved person could file complaint before the consumer forum which could provide remedies mentioned in Section 14 (1) of the Act. Procedure applicable, forum and remedies available under Act 1986 were civil. One exception to the aforesaid general situation as being civil in nature was Section 27 of CPA 1986, which provided penal provisions applicable against the person who did not observe order passed by consumer forum.

Code declares serious consumer grievances affecting society at large as offence and prescribe severe punishments to effectively deal with and protect the consumers.

### **Non-observance of directions of Consumer Protection Authority:**

Non observance of directions of Consumer Protection Authority and non-payment of penalty imposed by such Authority is declared as an offence under Section 88 of CPA 2019. Consumer Protection Authority is administrative body established under Section 10 of CPA 2019 by Central Government which by administrative actions prevents the committing of consumer grievances; in earlier Act enacted for consumer protection such body was lacking, thereby, earlier Act was not providing complete measures for consumer grievance redressal. Consumer transactions are technical, consumer goods and services in modern era are produced by use of modern know-how, and seller and traders are socio-economically stronger party in comparison to consumer; in such aforesaid situation as it is in other civil cases it is not possible for consumer to collect evidences and for it one expert investigating agency is needed. In Consumer Protection Authority an investigation wing is established consisting Director-General, Additional Director-General, Joint Director, Deputy Director and Assistant Directors<sup>5</sup>; investigation wing has responsibility to make inquiry and investigation *suo motu* or on direction of Central Government or on receiving information about violation of consumer rights or unfair trade practices or false or misleading advertisements.<sup>6</sup> Information to Consumer Protection Authority may be given through offline or online.<sup>7</sup> Investigation wing submits report to Consumer Protection Authority headed by Chief Commissioner and other Commissioners. Investigations are generally made with a view to take administrative actions. During investigation Directors or any officer authorised by him may enter in any premises and may make search there. But for entry and search in any premises such officers must have reasonable ground available for it. When without reasonable ground search and seizure is made by officers, it shall be offence punishable under Section (abbreviated as under section) 93 of the Act and punishment prescribed for it is imprisonment extending up to one year or fine extending up to ten thousand rupees or both. Consumer Protection Authority may file complaint before the Consumer Forum. Further, Consumer Protection Authority has power to take administrative actions and impose penalty on wrong-doer causing consumer grievances.

Section 20 of CPA 2019 empowers Consumer Protection Authority that on the basis of investigation, it may direct for recall or withdrawal of dangerous goods or services, reimbursement of prices of recalled or withdrawn goods or

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<sup>5</sup>Section 15 of CPA 2019

<sup>6</sup>Section 17, 18 and 19 of CPA 2019

<sup>7</sup>Section 17 of CPA 2019. Complaint to Consumer Protection Authority may be given in writing or electronic mode in reference to causing consumer grievances which may be relating to violation of consumer rights, unfair trade practices, or false or misleading advertisements.

services to purchasers, and discontinuance of unfair and prejudicial practices.<sup>8</sup> Consumer Protection Authority may initiate actions even when any individual consumer is not affected or information is not given even after causing of harm as it has power for *suo motu* action. Further, when Consumer Protection Authority, is satisfied by investigation that the advertisement given by manufacturer or advertiser is false or misleading and prejudicial to consumer interest or in contravention of consumer rights, may by order direct to discontinue or modify such advertisement.<sup>9</sup> In addition to order to discontinue or modify the advertisement Consumer Protection Authority under section 21 (2) CPA 2019 may also impose penalty on manufacturer, advertiser and endorser, for first time contravention penalty imposed may extend up to ten lakh rupees and for every subsequent contravention penalty may extend up to fifty lakh rupees. Endorser of product has brand value which is utilised and it makes major measure to sale substandard goods and services, thereby, endorsers have their own responsibility to have proper information about product in the advertisement and only then have to endorse it. To check the problem of false and misleading advertisement necessity is to take actions against endorsers and it is provided under section 21(1) of CPA 2019 endorser may be directed to discontinue the false or misleading advertisement and under section 21(2) penalty up to 10 lakh rupees for first time contravention and for every subsequent contravention of giving false or misleading advertisement penalty up to 50 lakh rupees may be imposed, and further, for first time contravention prohibition on endorsement for period extending up to one year may be imposed and for every subsequent contravention prohibition on endorsement for period extending up to three years may be imposed. Endorser may be absolved from the responsibility on establishing his due diligence in verifying of veracity of the claims made in the advertisement regarding product or service endorsed by him.<sup>10</sup> Before imposition of penalty opportunity of hearing shall be provided to alleged person. For determination of penalty amount Consumer Protection Authority has to consider population or area impacted by wrongful act, frequency or duration of wrongful act, vulnerability of class of person affected, and gross revenue obtained from sales effected by wrongful act. Order passed by Consumer Protection Authority is appealable; such appeal may be filed before National Commission within thirty days from the date of receipt of such order.<sup>11</sup>

Consumer Protection Authority has greater responsibility to protect the consumers by taking administrative actions, thereby, prevent the occurrence of consumer grievances. Orders passed by consumer Protection Authority must be respected and observed; persons are considered law abiding, thereby, whenever any order is passed, it is considered that ordered person obey. Further, for ensuring

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<sup>8</sup>Chapter VI of CPA 2019 particularly under Section 84 and 85 imposes product liability on manufacturer and service providers respectively that product and services provided must be safe, without defective, according to specifications and warranty provided, and complete instruction be provided regarding usage. In case of non-observance of aforesaid product liability actions may be initiated by filing complaint. Here Consumer Protection Authority is well empowered to take actions particularly as preventive actions.

<sup>9</sup>Section 21(1) of CPA 2019

<sup>10</sup>Section 21(5) of CPA 2019.

<sup>11</sup>Section 24 of CPA 2019.

observance of such orders, non-observance of order is criminalised by declaring it as an offence under Section 88 of CPA 2019. Section 88 CPA 2019 provides that the non-observance of direction of Consumer Protection Authority passed under Sections 20 and 21 of CPA 2019 shall be punished with imprisonment extending up to six months or with fine extending up to twenty lakh rupees or with both. To check the misuse of criminal justice system, Section 92 of the Act clearly specifies that the competent court can take cognisance of the offence only on filing of complaint by Central Consumer Protection Authority.

### **False and misleading Advertisement**

For protection of consumers most essential requisite is to have sufficient information about the goods or services to be purchased. Considering importance of availability of information, it is accepted as consumer right under section 2(9) of CPA 2019. All other consumer rights depend on Right to information. On the basis of various information relating to goods and services, consumer considers and decides about his need and by what material or what services it may be satisfied. Consumer gets information about products from the advertisements provided by manufacturer or service provider. Prevention of consumer grievance may be attained through ensuring of advertisements without any false claim therein and providing true information about product. Under Section 21 of CPA 2019, Consumer Protection Authority is empowered to take action against false and misleading advertisements and in this reference it may impose penalty on manufacturer, advertiser, endorser and publisher; in case penalty is not paid then under section 88 it will also be an offence. For false and misleading advertisement in addition to availability of jurisdiction to consumer Protection Authority such wrongful act is declared as an offence under section 89 of CPA 2019.

Whenever any manufacturer or service provider causes a false or misleading advertisement to be made which is prejudicial to consumer interest, he has committed offence under section 89 of CPA 2019; such offence on commission in first instance is punishable with term of imprisonment extending up to two years and fine extending up to ten lakh rupees, and for every subsequent commission of such offence shall be punishable with term of imprisonment extending up to five years and with fine extending up to fifty lakh rupees. Here it has to be cleared that so far administrative action under Section 21 of the Act for imposition of penalty is concerned, it may be imposed on manufacturer or service provider, advertiser, endorser, and publisher but offence is created under section 89 of the Act and punishment is created for false and misleading advertisement only against manufacturer or service provider. Prescription of punishment, and further, ultimately infliction of punishment may create deterrence and give lesson to consumer goods manufacturer or service provider, as the case may be, thereby, such criminalisation of wrongful act may prevent the consumer grievances and effectively protect the consumer interests. Some vested interest may misuse the criminal justice system by unnecessary moving the court, to check such misuse Section 92 of CPA 2019



clearly provides that the competent court can take cognisance of the offence only on filing of complaint by Central Consumer Protection Authority.

Offences punishable under Sections (abbreviated as under sections) 88 (non-observance of directions of Consumer Protection Authority) and 89 (giving false and misleading advertisement) of CPA 2019 are under section 96 of CPA 2019 declared as compoundable offences on payment of such sum of amount as may be prescribed. On amount payable on compounding ceiling is fixed by second proviso to the Section 96 of the Act that it cannot be more than maximum amount of fine which may be imposed under the Act for offence so compounded. For compounding of offence leave of the court, before which complaint is filed under section 92 of the Act, is necessary. When a person has committed offence under section 88 or 89 and it is compounded as provisions are provided under section 96(1) of the Act and now within three years of compounding in first case he has committed same or similar offence, this later offence shall not be compoundable.<sup>12</sup> When such second offence is committed after expiry of three years period counted from compounding of first offence then second offence shall be taken as fresh offence and accordingly compounding shall be considered.<sup>13</sup>

Medicines have to be used under medical prescription and self-medication has to be discouraged. Use of medicines is not simple thing but it is issue of life saving and side effects may be life endangering. Advertisements of medicines given by manufacturer are only with a view to encourage self-medication. Advertisement of medicine cannot be equated with advertisement of simple materials, thereby, regulated under special statute Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. Section 3 of the Act imposes complete prohibition on advertisement of drugs for procurement of miscarriage or prevention of conception; improvement of sexual pleasure capacity; diagnosis, cure, prevention or treatment of disease mentioned in the schedule of the Act and in the schedule of the Act various disease like Cancer, Epilepsy, Appendicitis, Leprosy etc are mentioned. Medicines have to be prescribed by medical practitioner; therefore prohibition has been imposed on advertisement by manufacturer and participation of any person in such advertisement. Usually in advertisements false claims are made regarding performance and character of any product. Even when drug does not come under specific enumerated heads under section 3 of the Act, advertisement containing false claim regarding performance and character of medicine is prohibited.<sup>14</sup> Section 5 of the Act imposes complete prohibition on advertisement of magic remedies; magic remedy is defined in Section 2 (c) according to which it is claim for talisman, mantra or other charm possessing miraculous powers for or in diagnosis, cure, mitigation, treatment or prevention of disease of human being or animals. Section 6 of the Act imposes prohibition on import and export of advertisements mentioned in Sections 3, 4 and 5 of this Act. Violation of directions under sections 3,4,5 and 6 of the Act is declared as an offence under Section 7 of the Act which shall be on first conviction punishable with imprisonment extending to six months or fine or both and on

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<sup>12</sup>Section 96(3) of CPA 2019.

<sup>13</sup>Explanation to Section 96(3) of CPA 2019.

<sup>14</sup>Section 4 Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

subsequent conviction punishable with imprisonment up to one year or fine or both. Offences punishable under Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 are cognisable offences,<sup>15</sup> thereby, for taking action against persons indulged in prohibited advertisements under the Act need not take any direction from the Judicial Magistrate. In case of *Hamdard Dawakhana v Union of India*<sup>16</sup> the Supreme Court decided that regulation of advertisement under provisions of this Act is not violative to Freedom of Speech and expression guaranteed under Art 19(1)(a) of Constitution of India, such regulation of advertisement relates to regulation of trade and business.

### **Adulterated or Spurious Goods**

Adulterated and spurious materials are dangerous for life and health of the person. In Chapter VI of CPA 2019 product liability is imposed on the product manufacturer, product service provider, and product seller,<sup>17</sup> whenever harm resulted due to defective product complaint for redressal may be filed under the Act<sup>18</sup>. Adulterated and spurious material supply in the market is violations of provisions relating to product liability. Acts relating to adulterated and spurious materials supply are declared as offences under sections 90 and 91 of CPA 2019.

Section 90 of CPA 2019 penalises manufacturer, seller, distributor, importer and person storing the adulterated products.<sup>19</sup> Product is defined in Section 2 (33) of the Act accordingly it refers to any article, goods, substance, or raw material which may be in liquid, gaseous or solid state and which is capable of delivery as wholly assembled or as a component part and is produced for trade or commerce. Section 2(33) of CPA 2019 clearly provides that product term does not include human tissue, blood, blood products and organs; whenever any material supplied relates to these things then matter shall not be dealt under CPA 2019, thereby such will be dealt under other relevant Act. Human blood and blood products are used and supplied for medicinal purpose, it is excluded from category product, thereby, in case of grievances in reference this material affected person will not get remedy under this Act, it will affect the aggrieved person and he will be deprived from effective forum, procedure and remedy. According to Section 2(33) Product word used in the Act is inclusive for goods, Goods word is defined in Section 2(21) of the CPA 2019 and it clears that it is referred to every kind of movable property and includes 'food'. In Section 90 'product' word is used in reference to adulterated material and in Section 91 for spurious material 'goods' word is used, thereby, provisions in section 90 and 91 of the Act are also applicable for food. In case of

<sup>15</sup>Section 9-A Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

<sup>16</sup>AIR 1960 SC 554.

<sup>17</sup>Section 84, 85 and 86 of CPA 2019.

<sup>18</sup>Section 82 and 83 of CPA 2019.

<sup>19</sup>Adulterated products are those which contain adulterants and in its turn adulterants are substances which are added in any product but not listed as an ingredient. Adulterant adding makes the product harmful or lower the quality of the product. Explanation to Section 90 of CPA 2019 defines Adulterant that adulterant means any material including extraneous matter which is employed or used for making a product unsafe.

adulterated and spurious food material in addition to Food Safety and Standard Act 2006 case shall be covered also under CPA 2019. When same act amounts to two or more offences under same Act or different Acts, person may be punished for all such offences which are proved but one limitation is given under section 71 Indian Penal Code that punishments inflicted cannot be severe than punishment provided for any one of such offences; suppose one act is committed and it is coming under two definitions, in one punishment prescribed is five years and for other punishment is four years, court may impose punishment for all such offences but it cannot exceed five years which is severe punishment prescribed for both offences, in this case court may impose concurrent running of punishments for offences or it may impose consecutive running of punishment by such way determining that sum of punishments is not exceeding five years in aggregate. In case of spurious food and adulterated food as the act may be punishable under two Acts of CPA 2019 and Food Safety and Standard Act 2006 same aforesaid rule for determination punishment provided by Section 71 Indian Penal Code will be used.

Section 90 of CPA 2019 declares acts of manufacturer, person storing, seller, distributor and importer whether done himself or through some other person in reference to adulterated product as offence. Severity of punishments prescribed for offence relating to adulteration varies according to gravity to injury caused to consumer. When by adulterated material no injury is caused to consumer, offender may be punished with term of imprisonment extending to six months and fine extending to one lakh rupees.<sup>20</sup> This situation clears the stern action on part of law to create deterrence in reference to adulteration that even when simply a person produces, stores, and distributes adulterated material, it shall be penal offence. When simple hurt is result of adulteration, offender shall be punished with imprisonment up to one year and fine up to three lakh; and when grievous hurt is resulted to consumer by offence of adulteration, Section 90(1)(c) of CPA 2019 prescribes imprisonment extending to seven years and fine extending to five lakh rupees. Whenever death of consumer is caused by adulterated material then offence of adulteration under section 90(1)(d) of CPA 2019 is punishable with minimum and maximum punishments both that offence shall be punishable with imprisonment which shall not less than seven years but which may extend to life imprisonment and fine which shall not be less than ten lakh rupees; here for fine only minimum punishment is prescribed which is much higher in itself and for determination of maximum limit of fine complete jurisdiction is provided to the court, thereby actual amount of fine imposed may be much higher and deterrent. In case of adulterated products criminalisation of consumer grievances may create effective deterrence and teach lessons to offenders as to effectively prevent the causing of consumer grievances.

Spurious materials are duplication of original material prepared by some other person or manufacturing unit; it is produced by a person but he claims as it is produced by some other person. Spurious material preparation also amounts to intellectual property rights violation. Section 2(43) of CPA 2019 defines spurious goods that spurious goods mean such goods which are falsely claimed to be genuine. Section 91 of CPA 2019 prescribes punishments for acts relating to

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<sup>20</sup>Section 90 (1) (a) CPA 2019.

spurious goods and the provisions under Section 91 prescribe punishments only when such material has caused injury to consumer. Manufacturer, seller, distributor, importer, or person storing spurious material whether himself or through some other person shall be punished when such act causes hurt, grievous hurt or death; in case hurt offence is punishable with imprisonment up to one year and fine up to three lakh, in case of grievous hurt offence is punishable with imprisonment extending to seven years and fine extending to five lakh rupees, and when spurious material causes death of a person the offender is punished with imprisonment not less than seven years but which may extend to life imprisonment and also with fine which shall not less than ten lakh rupees. In Section 90 in reference to adulterated material merely manufacturing, storing, selling, importing and distributing may be sufficient for punishment infliction and in case of injury causing severe punishment is prescribed but in case of spurious material under section 91 punishment is prescribed only when injury is caused.

Adulterated and spurious materials are major causes of consumer grievances, therefore, acts relating to such materials are criminalised and severe punishments are inflicted. To deter wrongdoers, thereby, prevent the consumer grievances in addition to imposition of punishment one more action on conviction that is of closure of business by cancel of license is prescribed. Closure of business is major action, business man has committed offence for getting more profit that is also by wrongful acts and now he has lost his business itself, even not available for mere getting earnings. Sections 90(3) and 91(3) for adulterated material and spurious material respectively provides that in case first conviction licence issued under any Act shall be suspended for a period up to two years and in case of second or subsequent conviction licence is cancelled. Whenever offences relating to adulterated and spurious materials cause grievous hurt or death of consumer, offences are declared as cognisable and non-bailable.<sup>21</sup>

Food Safety and Standard Act, 2006 is a special Act enacted to protect the consumers of food and related materials. This Act provides complete measures needed to take effective actions in reference to violations of food standards and commission of wrongful acts against the person consuming the eatables. For ensuring standards of food and food materials in the market Food Safety and Standard Act, 2006 declares the wrongful acts as offence in Chapter IX of the Act and prescribes punishments of term of imprisonment and fine. Generally, in criminal law compensation is given out of fine imposed on convict or it is paid by the state;<sup>22</sup> compensation in criminal law is not directly paid by convict to the victim. But Food safety and Standard Act, 2006 is exception to aforesaid general rule and under Section 65 of the Act direction may be given to person indulged in food adulteration to pay compensation directly to the victim when such victim has suffered injury or victim has died. Section 65 of Food safety and Standard Act, 2006 prescribes compensation amount directly payable to victim shall be – in case of injury not exceeding one lakh rupees, in case of grievous hurt not exceeding three lakh rupees, and in case of death not less than five lakh rupees. Presently in

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<sup>21</sup>Sections 90(2) and 91(2) of CPA 2019; such declarations are made for offences relating to adulterated material and spurious materials respectively.

<sup>22</sup>Sections 357 and 357-A Code of Criminal Procedure, 1973.

crimes commissions new developments are taking place that legal persons have greater involvements; either companies or other legal persons uses employees and resources. Food safety and Standards Act, 2006 provides provisions for dealing with challenges of crime commission by companies and for this purpose it imposes imputed liability on in-charge of company who is responsible for conduct of business of company. When any offence under this Act is committed, deeming provision is given in Section 66 (1) of the Act that offence shall be taken as committed by company and also by in-charge of conduct of business of company accordingly both shall be punished. But when company is decentralised and different units are established and in such case any unit of company has committed offence then in-charge of such unit shall be liable.<sup>23</sup> When in-charge of company or unit of company, as the case may be, proves that offence was committed without his knowledge or he exercised due diligence to prevent commission of such offence, such officer shall not be liable.<sup>24</sup>

Indian Penal Code also penalises adulteration and spurious material production particularly food materials and medicines. Section 272 IPC provides that whoever adulterates any article of food or drink as to make such article noxious as food or drink and intending to sell or knowing that it is likely to be sold, his offence is punishable with term of imprisonment extending up to six months or fine up to one thousand rupees or both. In Section 272 IPC selling of material is not needed but only requirement is intentional or with knowledge adulteration of food material. When such noxious material is sold or offered or exposed for sale and person knows or has reason to believe that such material has become noxious, the person under section 273 IPC may be inflicted with term of imprisonment up to six months or fine up to one thousand rupees or both. Drugs have always been available in pure form without any adulteration and also it must not be spurious one because drugs are life-saving materials. Whoever adulterated drugs is liable for punishments under section 274 IPC; whoever sells, offers or exposes for sale such adulterated drugs is liable for punishment under section 275 IPC; and person who sells any drug or medical preparation as a different drug or medicinal preparation is liable for punishment under section 276 IPC, here in this case he is committing cheating by selling different drug and pretending as being some other drug but it has to be cleared that this section does not prescribe provision for spurious drugs in which drug prepared by one is shown as prepared by some other; in all these cases prescribed punishments prescribed under respective sections of IPC are imprisonment extending up to six months or fine up to one thousand rupees or both. When a person uses property marks belonging to other person on his goods to show that goods belong to this other person, it is case of use of false property marks which is elaborated in Section 481 IPC. Use of false property marks is case relating to spurious material, actually goods belong to one person but by use of false property mark he shows that such goods belong to other person, hereby counterfeit goods is prepared and marketed. Section 486 IPC prescribes punishment for sell of goods with such counterfeiting property marks with imprisonment up to one year or fine or both, and Section 487 IPC prescribes

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<sup>23</sup>First Proviso to Section 66(1) Food Safety and Standards Act, 2006.

<sup>24</sup>Second Proviso to Section 66(1) Food Safety and Standards Act, 2006.

punishments for making a false mark upon any case package or other receptacle containing the goods with imprisonment extending up to three years or fine or both.

Drugs and Cosmetics Act, 1940 (hereinafter referred to as DCA 1940) is special Act enacted to regulate import, manufacture, distribution and sale of drugs and cosmetics. Drugs manufactured and available in the market and hospital must be pure and up to standard; it is needed to be ensured strictly. Section 9, 9A, 9B, 9C and 9D of DCA 1940 defines misbranded drugs, adulterated drugs, spurious drugs, misbranded cosmetics respectively for the purpose of import and in reference to manufacturing these are defined in Section 17, 17A, 17B, 17C and 17D respectively. Section 10 of CA 1940 empowers Central Government may prohibit any drug or cosmetics which is not of standard, misbranded, spurious or adulterated. Any person who imports adulterated, misbranded, spurious drugs or cosmetics is offence punishable with imprisonment up to three years and fine up to five thousand rupees and on subsequent conviction with imprisonment five years fine up to ten thousands rupees or both.<sup>25</sup> When any person imports drug which import is prohibited under Section 10, he is on first conviction liable for imprisonment extending up to six months or fine extending up to five hundred rupees or both and on subsequent conviction liable for imprisonment up to one year or fine up to one thousand rupees or both.<sup>26</sup> Whoever manufactures, sells, stocks, exhibits or offers for sale or distribution any misbranded, adulterated, or spurious drugs or cosmetics, he is liable for punishments under section 27 of DCA 1940; when such use is likely to cause death or grievous hurt, convict may be punished with imprisonment not less than five years but which may extend to life imprisonment and fine not less than ten thousand rupees; when drug is not likely to cause death or grievous hurt and it is adulterated drugs convict may be punished with imprisonment not less than one year which may extend up to three years and fine not less than five thousands; when such drug is spurious, convict may be punished with imprisonment not less than three years which may be extended up to five years and fine not less than five thousand rupees.

### **Offences relating to Weight and Measures**

Use of false weight and measures is common and traditional method used by sellers to give lesser quantity of goods to consumer and thereby they obtain undue profit. To check this problem one preventive measure is provided in Section 153 of the Criminal Procedure Code, 1973 which empowers officer in charge of police station that whenever he has reason to believe about keeping false weights, measures, or instruments for weighing, he may without warrant enter in such premises and make search. If in search police officer finds false weight, measures or instruments for weighing, he may seize it and about seizure forthwith inform the jurisdiction Magistrate.

Indian Penal Code (hereinafter referred to as IPC) is general penal law which was enacted in 1860 but even after more than 160 years of its enactment still

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<sup>25</sup>Section 13(1)(a) read with 13(2) (a) of DCA 1940.

<sup>26</sup>Section 13(1)(a) read with 31 (2)(b) of DCA 1940.

relevant and effective in dealing with crime and criminality. Various provisions contained in IPC criminalise the consumer grievances. Chapter XIII of the IPC declares use or possession or making or selling of false weight or measure as offence. Whenever any person fraudulently uses false instrument for weighing, weight, or measure of length or capacity, his offence is punishable under Section 264 and 265 the IPC with imprisonment extending up to one year or fine or both. Even possession of false weight, instrument for weighing or any measure of length or capacity may be sufficient for infliction of punishment and it is punishable with imprisonment up to one year or fine or both.<sup>27</sup> Manufacturers and sellers involved in manufacturing and dealing with false weight, instrument for weighing, or measure for length or capacity are liable for punishments of imprisonment up to one year or fine or both.<sup>28</sup>

### **Concluding Remarks**

Society is dynamic. It changes with passing time and place, thereby, with passing time new interest may emerge or lesser important interest may become more important. Consumer goods and services creation, production and marketing are directly related to industrialisation, science and technology use, and modern know-how application, thereby, societal dynamism ultimately as consequence of emergence and importance variation of consumer interest is speedier. It is continuous process to identify crucial and important consumer interests to provide legal protection. Legal protection does not remain only to identify consumer interests and declare them as consumer rights but more important is to provide effective forum, procedure and remedy for redressal of consumer grievances. Thereby, legal regime has to be continuously reviewed to identify consumer interest, and availability of effective forum, procedure and remedy. In modern era of information and communication major challenge in consumer grievance redressal is consumer information gap; consumers do not have sufficient information about their rights and justice available to them, and further they do not have information about quality, quantity, and performance of consumer goods and services. If any information about goods and services is available, it comes from manufacturer, service provider and seller who are interested in sell of product rather than to provide proper information to consumer. Sellers and traders mostly use advertisements through mass media to attract the consumers and augment the sell; such advertisements are now source of information to consumers about the products. Advertisements in mass media particularly through electronic, print, and social media have enormous impact on consumers, and further, for such impact persons with brand value are used in the advertisements.

One more major issue in consumer grievances redressal is complexity of goods and services; consumer goods are produced by use of modern science and technology, and consumer services are provided by expert persons by use of modern know-how. In such situation a common consumer himself is completely

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<sup>27</sup>Section 266 of IPC.

<sup>28</sup>Section 267 of IPC.

unable to know about consumer goods and services, in absence of any impartial information and due to lack of his own capability he has to depend on information provided to him by sellers and traders. Consumer is in need of protection at three stages – pre-purchase stage, purchase stage and post-purchase stage. At pre-purchase stage consumer should get proper and effective information about the product and services, thereby, he has to know that which product or service may satisfy his objective behind the purchase and ultimately he may take decision about purchase. Then after, at purchase stage need is to protect the consumer by ensuring that there should not be use of unfair trade practices and restrictive trade practices. Whenever at aforesaid stages any improper act is committed by seller or product is not of merchantable quality then at post-purchase stage effective forum, procedure and remedy should be available for consumer grievance redressal.

No doubt consumer who has suffered loss has to be compensated and in this regard civil forum, civil procedure and civil remedy may be justice requirement for individual consumer but now in modern era consumer grievances are not individual problem but impacts are graver for society at large, and further, waiting for injury resulting to consumer may not be appropriate method of dealing the problem but need is to avoid occurrence of consumer grievance itself. Such prevention is possible only by criminalisation of consumer grievances and infliction of severe punishments on guilty persons. In CPA 1986, which was repealed in 2019, provisions were provided only to provide civil remedy; it did not provide provisions to prescribe penal remedy but in CPA 2019, presently in force, provisions are provided to inflict punishments for violations of consumer interests; such a shift in law is to recognise efficacy of criminal justice system to effectively deal with consumer grievances and attain the goal of consumer protection. Further, Indian Penal Code, general penal law in India, and some special Acts declare some acts producing consumer grievances as offence and prescribe punishments. Consumer goods producers, sellers, and consumer service providers are capable enough and situations to shift their civil monetary liabilities on consumers itself by increasing consumer goods and services prices, thereby, they may not have any problem in imposition of civil liabilities. Criminal liabilities imposition may affect reputation, goodwill, and stigmatise as criminal, thereby, consumer goods producers, sellers, consumer service providers fear the penal actions ultimately their wrongful activities may be effectively dealt with.

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