

UNIT 3 COMPETITION AND CONSUMER LAWS

CONSUMER PROTECTION ACT, 1986

OBJECTIVE

The main objective of the Consumer Protection Act, 1986 is to

i) Protect the interest and safeguard the rights of the consumers which are as follows:

a) Right to be protected against the marketing of goods and services which are hazardous to life and property.

b) Right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumer against unfair trade practices.

c) Right to be assured, wherever possible, access to a variety of goods and services at competitive prices

d) Right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums

e) Right to seek redressal against unfair trade practices and unscrupulous exploitation of consumers
Right to consumer education.

ii) Establishment of Consumer Dispute Redressal Agencies.

CHAPTER I

PRELIMINARY

1) Short title, extent, commencement and application.—(1) This Act may be called the Consumer Protection Act, 1986.

2) It extends to the whole of India except the State of Jammu and Kashmir.

3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.

(4) Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.

DEFINITIONS

1. Appropriate laboratory

Appropriate laboratory" means a laboratory or organisation—

- (i) recognised by the Central Government;
- (ii) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or
- (iii) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;

2. Complainant

"Complainant" means—

- (i) a consumer; or
- (ii) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force; or
- (iii) the Central Government or any State Government,
- (iv) one or more consumers, where there are numerous consumers having the same interest;
- (v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;

3. Complaint

"Complaint" means any allegation in writing made by a complainant that—

- (i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
- (ii) the goods bought by him or agreed to be bought by him; suffer from one or more defects;
- (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
- (iv) a trader or service provider, as the case may be, has charged for the goods or for the service mentioned in the complaint a price in excess of the price –
 - (a) fixed by or under any law for the time being in force
 - (b) displayed on the goods or any package containing such goods ;
 - (c) displayed on the price list exhibited by him by or under any law for the time being in force;
 - (d) agreed between the parties;

(v) goods which will be hazardous to life and safety when used or being offered for sale to the public,--

(a) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

(b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;”;

4. Consumer

“Consumer” means any person who buys any goods for a consideration which has been paid or promised, or partly paid and partly promised, or under a system of deferred payment.

Hires any services for a consideration which has been paid or promised, or partly paid and partly promised, or under a system of deferred payment.

5. Consumer Dispute

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

6. Defect

"Defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods;

7. Deficiency

“Deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

8. Restrictive Trade Practice

“Restrictive trade practice” means a trade practice which tends to bring about manipulation of price or conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—

(a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;

(b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services;

9. Unfair Trade Practice

Unfair trade practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely;—

- (1) the practice of making any statement, whether orally or in writing or by visible representation which,—
 - (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
 - (ii) falsely represents that the services are of a particular standard, quality or grade;
 - (iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
 - (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
 - (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
 - (vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
 - (vii) gives to the 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 an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(viii) Makes to the public a representation in a form that purports to be—

- (i) a warranty or guarantee of a product or of any goods or services; or
- (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- (ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods

or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation. - For the purposes of clause (1), a statement that is—

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(2) 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, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation .—For the purpose of clause (2), "bargaining price" means—

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

(b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(3) permits—

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;

(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(3A) withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme.

Explanation. — For the purposes of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time, published, prominently in the same newspapers in which the scheme was originally advertised;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

(6) manufacture of spurious goods or offering such goods for sale or adopts deceptive practices in the provision of services.

CHAPTER II **CONSUMER PROTECTION COUNCILS**



The Central Consumer Protection Council.—

(1) The Central Government *shall*, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).

(2) The Central Council shall consist of the following members, namely:—

(a) the Minister in charge of the consumer affairs in the Central Government, who shall be its Chairman, and

(b) such number of other official or non-official members representing such interests as may be prescribe

Procedure for meetings of the Central Council.—(1) The Central Council shall meet as and when necessary, but at least one meeting of the Council shall be held every year.

(2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

Objects of the Central Council.—The objects of the Central Council shall be to promote and protect the rights of the consumers such as,—

- (a) the right to be protected against the marketing of goods and services which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
- (d) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- (f) the right to consumer education.

The State Consumer Protection Councils.-

(1) The State Government shall, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council for. (hereinafter referred to as the State Council).

(2) The State Council shall consist of the following members, namely:—

- (a) the Minister incharge of consumer affairs in the State Government who shall be its Chairman;
- (b) such number of other official or non-official members representing such interests as may be prescribed by such number the State Government.
- (c) of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

(3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

Objects of the State Council. — The objects of every State Council shall be to promote and protect within the State the rights of the consumers

The State Government shall establish for every district, by notification, a council to be known as the District Consumer Protection Council with effect from such date as it may specify in such notification.

District Consumer Protection Council-

The District Consumer Protection Council (hereinafter referred to as the District Council) shall consist of the following members, namely:—

- (a) the Collector of the district (by whatever name called), who shall be its Chairman; and
 - (b) such number of other official and non-official members representing such interests as may be prescribed by the State Government.
- (3) The District Council shall meet as and when necessary but not less than two meetings shall be held every year.
- (4) The District Council shall meet at such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

The objects of every District Council shall be to promote and protect within the district the rights of the consumers.

CONSUMER DISPUTE REDRESSAL AGENCIES



District Forum

Under the COPRA, the State Government has to set up a district Forum in each district of the State. The government may establish more than one District Forum in a district if it deems fit.

COMPOSITION

Each District Forum consists of:

- (a) A person who is, or who has been, or is qualified to be, a District Judge who shall be its President
- (b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely:—
 - (i) be not less than thirty-five years of age,
 - (ii) possess a bachelor's degree from a recognised university,
 - (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that a person shall be disqualified for appointment as a member if he—

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the state Government involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- (e) has, in the opinion of the state Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualifications as may be prescribed by the State Government;

(1A) Every appointment under sub-section (I) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:—

- (i) the President of the State Commission — Chairman.
- (ii) Secretary, Law Department of the State — Member.
- (iii) Secretary incharge of the Department dealing with
consumer affairs in the State — Member.

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may

refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

Every member of the District Forum holds office for 5 years or up to the age of 65 years, whichever is earlier and is not eligible for re-appointment. A member may resign by giving notice in writing to the State Government whereupon the vacancy will be filled up by the State Government.

The District Forum can entertain complaints where the value of goods or services and the compensation, if any, claimed is less than rupees twenty lakhs. However, in addition to jurisdiction over consumer goods services valued upto Rs.20 lakhs, the District Forum also may pass orders against traders indulging in unfair trade practices, sale of defective goods or render deficient services provided the turnover of goods or value of services does not exceed rupees twenty lakhs.

A complaint shall be instituted in the District Forum within the local limits of whose jurisdiction-

- (a) The opposite party or the defendant actually and voluntarily resides or carries on business or has a branch office or personally works for gain at the time of institution of the complaint; or
- (b) Any one of the opposite parties (where there are more than one) actually and voluntarily resides or carries on business or has a branch office or personally works for gain, at the time of institution of the complaint provided that the other opposite party/parties acquiescence in such institution or the permission of the Forum is obtained in respect of such opposite parties; or
- (c) The cause of action arises, wholly or in part.

Finding of the District Forum. —

(1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:—

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;

- (e) to remove the defects in goods or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;

of the opposite party responsible for issuing such misleading advertisement;

- (i) to provide for adequate costs to parties.

(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

State Commission

The Act provides for the establishment of the State Consumer Disputes Redressal Commission by the State Government in the State by notification.

COMPOSITION

Each State Commission shall consist of:

- (a) A person who is or has been a judge of a High Court appointed by State Government (in consultation with the Chief Justice of the High Court) who shall be its President;
- (b) Two other members who shall be persons of ability, integrity, and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom must be a woman.

Every appointment made under this is made by the State Government on the recommendation of a Selection Committee consisting of the President of the State Commission, Secretary - Law Department of the State and Secretary in charge of Consumer Affairs in the State.

Every member of the District Forum holds office for 5 years or upto the age of 65 years, whichever is earlier and is not eligible for re-appointment. A member may resign by giving notice in writing to the State Government whereupon the vacancy will be filled up by the State Government.

The State Commission can entertain complaints where the value of goods or services and the compensation, if any, exceeds Rs. 20 lakhs but does not exceed Rs. 1 crore.

The State Commission also has the jurisdiction to entertain appeal against the orders of any District Forum within the State

The State Commission also has the power to call for the records and appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State if it appears that such District Forum has exercised any power not vested in it by law or has failed to exercise a power rightfully vested in it by law or has acted illegally or with material irregularity.

National Commission

The Central Government provides for the establishment of the National Consumer Disputes Redressal Commission.

COMPOSITION

The National Commission shall consist of:-

- (a) A person who is or has been a judge of the Supreme Court, to be appointed by the Central Government (in consultation with the Chief Justice of India) who be its President;
- (b) Four other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman

Appointments shall be by the Central Government on the recommendation of a Selection Committee consisting of a Judge of the Supreme Court to be nominated by the Chief Justice of India, the Secretary in the Department of Legal Affairs and the Secretary in charge of Consumer Affairs in the Government of India

Every member of the National Commission shall hold office for a term of five years or upto seventy years of age, whichever is earlier and shall not be eligible for reappointment.

The National Commission shall have jurisdiction:

- (a) to entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds rupees one crores
- (b) to entertain appeals against the orders of any State Commission; and

(c) to call for the records and pass appropriate orders in any consumer dispute which is pending before, or has been decided by any State Commission where it appears to the National Commission that such Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.