

# CONSUMER PROTECTION LAWS OF INDIA

## Consumer Rights



**BY**

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## 1. INTRODUCTION

“It is good to have money and the things that money can’t buy, but it’s good too, to check up once in a while and make sure you haven’t lost the things money can’t buy.” – *George Lorimer, American editor & writer*

When we buy a good or service, we rarely have adequate knowledge about its quality and safety. We are quite concerned about getting cheated. This is when the need for consumer protection arises. In the past few years, the subject of consumer protection has become a matter of increasing public concern because unscrupulous business tactics seriously affect the nation’s well-being by contributing to social unrest and by causing undue financial distress to consumers.

The consumer is the one who pays to consume the goods and services produced. As such, consumers play a vital role in the economic system of a nation. In the absence of their effective demand, the producers would lack a key motivation to produce, which is to sell to consumers.

Economic activity flourishes when consumers can trust producers, but the consumer must have reasonable grounds for trust. Consumers will then value, not only quality and safety, but also the assurance of quality and safety. Therefore trust depends on assurance. Producers generally gain by providing assurance, so they seek to build, expand and project a good reputation. Producers demonstrate quality and safety and make the content of promises clear and publicly understood by means of advertisements, displays, sales assistance, labeling and packaging etc. But when some form of damage or undue hazard arises, then the trust of the consumer goes off.

Generally consumer protection comes in the form of government regulations. Consumer protection is a group of laws and organizations designed to ensure the rights of consumers as well as fair trade, competition and accurate information in the marketplace. The laws are designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors. They may also provide additional protection for those most vulnerable in society.

### **1.1. Who is a consumer?**

A consumer is defined as someone who acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing.

A consumer is one who decides whether or not to buy an item at the store, or someone who is influenced by advertisement and marketing. Every time someone goes to a shop and buys a thing, they make a decision as a consumer.

In the fields of economics, marketing and advertising, a consumer is generally defined as the one who pays to consume the goods and services produced by a seller (i.e., company, organization). A consumer can be a person (or group of people), generally categorized as an end user or target demographic for a product, good, or service.

Consumer means any person who - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; (but does not include a person who avails of such services of any commercial purpose). (Sec.2(d) of the Consumer Protection Act, 1986)

According to this definition, a person to be a consumer of goods should satisfy that –

- The goods are bought for consideration.
- Any person who uses the goods with the approval of the buyer is a consumer.
- Any person who obtains the goods for resale or commercial purposes is not a consumer.

- Person buying goods for self-employment is a consumer.

A person is a consumer of services if –

- The services are hired or availed of.
- Consideration must be paid or payable.
- Beneficiary of services is also a consumer.

Goods are those products which are manufactured or produced and sold to consumers through wholesalers and retailers.

Service means service of any description which is made available to the potential user with respect to the provision of facilities in connection with banking, finance, insurance, transport, supply of electrical or other energy, housing, construction, water supply, health, entertainment, amusement etc. It does not include any service rendered free of charge or under a contract of personal service.

## **1.2. Consumer Advocacy**

Consumer advocacy refers to actions taken by individuals or groups to promote and protect the interests of the buying public. Historically, consumer advocates have assumed a somewhat adversarial role in exposing unfair business practices or unsafe products that threaten the welfare of the general public. Consumer advocates use tactics like publicity, boycotts, letter-writing campaigns, and lawsuits to raise awareness of issues affecting consumers and to counteract the financial and political power of the organizations they target. Since even large businesses can be visibly wounded when their mistreatment of consumers or other constituencies arouses the ire of consumer advocacy organizations, it should be obvious to small business owners that they can ill-afford to engage in business practices that might draw the attention of consumer advocates.

Periods of vocal consumer advocacy around the turn of the twentieth century and in the late 1960s have left a legacy of legislations and agencies intended to protect consumers. The rights of consumers have expanded to include product safety, the legitimacy of advertising claims, the satisfactory resolution of grievances, and a say in government decisions. In the early days of industry, companies could afford to ignore consumers' wishes because there

was so much demand for their goods and services. As a result, they were often able to command high prices for products of poor quality. The earliest consumer advocates to point out such abuses were called "muckrakers," and their revelations of underhanded business practices spurred the creation of several federal agencies and a flurry of legislation designed to curb some of the most serious abuses. At the same time, increased competition began to provide consumers with more choices among a variety of products of higher quality.

### **1.3. Consumer Awareness**

The market today is flooded with very large number as well as varieties of goods and services. The number of producers and final sellers of the commodities have also increased many folds. So it has become very difficult to know as to who is a genuine producer or seller? It is practically not possible for consumers to personally come in contact with a producer or seller. Moreover in the age of advanced information technology the physical distance between consumer and producer/seller has also increased, since consumers can get their commodities at door step by booking orders over telephone or through internet etc. Similarly from among large varieties of commodities, it has become very difficult to know as to which one is genuine. People think that a product which has appeared in some advertisement must be good or the producer whose name is known through advertisement must be selling the right product. But this may not be true always. Much information is deliberately hidden in certain advertisements to mislead the consumers.

Consumer awareness refers to the following:

- (i) The knowledge of the product purchased by the consumers in terms of its quality. For example the consumer should know whether the product is good for health or not, whether the product is free of creating any environmental hazard or not etc.
- (ii) The education about the various types of hazards and problems associated with marketing of a product - For example, one way of marketing a product is advertisement through newspapers, television etc. Consumers should have proper education about the bad effects of advertisement. They must also verify the contents of the advertisement.
- (iii) The knowledge about 'Consumer Rights' - This means that, first, the consumer must know that he/she has the right to get the right kind of product. Secondly, if the

product is found out to be faulty in some manner, the consumer should have knowledge of claiming compensation as per the law of the land.

- (iv) The knowledge about consumer's own responsibilities - This implies that consumers should not indulge in wasteful and unnecessary consumption.

#### **1.4. Consumer Rights**

The purchase of goods and services entitles the consumer to certain rights which are as follows –

- 1) Right to Safety - A consumer has the right to safety against such goods and services that are hazardous to his health, life and property.  
For example, counterfeit and substandard drugs; appliances made of low quality raw material, such as iron, pressure cooker, etc. and low quality food products like bread, milk, jam, butter, etc. The consumers have the right to safety against the loss caused by such products.
- 2) Right to be informed - A consumer has the right to be provided with all the information on the basis of which he decides to buy goods or services. Such information may relate to quality, purity, potency, standard, date of manufacture, method of use, etc. of the commodity. Thus, a producer is required to provide all these information in a proper manner, so that the consumer is not cheated.
- 3) Right to choose - A consumer has the absolute right to buy any goods or services of his choice from among the different goods or services available in the market. In other words, no seller can influence his choice in an unfair manner. If any seller does so, it will be deemed as interference in his right to choice.
- 4) Right to be heard - A consumer has the right that his complaint be heard. This right also empowers the consumers to fearlessly voice their complaints against the defective products and the erring producer/company /seller.
- 5) Right to seek redressal - This right provides compensation to the consumers against unfair trade practice of the seller. For instance, if the quantity and quality of the product do not conform to those promised by the seller, the buyer has the right to claim compensation. Several redressals are available to the consumer by



way of compensation, such as free repair of the product, taking back of the product with refund of money, changing of the product by the seller.

- 6) Right to consumer education - It means to have access to programs and information that help consumers make better decisions before and after purchase. Instructions and guidelines for consumers are issued by the government departments and NGOs.

### **1.5. Consumers' Responsibilities**

Consumer protection is not only about consumers' rights but also about the responsibilities of the consumers. Some of them are given hereunder –

- 1) Dealing with Advertisements - Advertisements have become a part and parcel of our lives and even if we try we cannot avoid them. Companies are trying to sell their products by making attractive audio-visuals, publishing only that part which may be eye catching and hiding other crucial information and so on. Consumers need to be cautious of such deceptive advertisements.
- 2) Buying Quality Certified Products - There are lot of products which are certified by recognised agencies as safe to consume and good in quality. For example the Indian Standard Institute (ISI) conducts quality testing of many consumer goods. If found proper the product is labelled with ISI mark on it. For many food products the quality assurance is certified by seal called AGMARK. Consumers should choose products with ISI mark and AGMARK. A very important thing before purchasing food products or medicines etc. is that the consumer must see the expiry date.
- 3) Demanding Bill of the Purchase - Every consumer must demand the bill after purchase of goods and services. The bill is the proof of purchase and can be used to seek justice if the consumer feels cheated after buying the commodity. Through the bill the consumer also ensures that the government receives tax on the product because it is mandatory for the seller to mention the tax amount on the bill. Such act of the consumer makes him/her a responsible citizen of the country.
- 4) Being a Green Consumer - A consumer must consume those products which do not cause damage to our environment. People should use biodegradable products which can easily mix with soil and water after they are disposed off. Similarly people should

save electricity, gas etc. by judicious use. Consumers are also responsible for automobile pollution in town and cities. They should use public transport system and eco-friendly vehicles.

- 5) Consumers as Managers - Consumers can unite together to provide themselves and the community at large of a locality or village some basic needs such as drinking water supply, health, education etc.

## **2. CONSUMER PROTECTION – INTERNATIONAL SCENARIO**

The consumer organisations play a vital role in the developed countries like United States, United Kingdom, Sweden, Japan, Germany, France, Belgium etc. for protection of consumers. In developed nations, due to strong consumerism, the consumers are organized and aware of fluctuations of market price and quality of commodity. The slogan of 'seller beware' is prevalent there and emphasis is given to strong consumer movement.

### **1) United States**

In the United States, the rapid industrialization after the end of Civil War in 1865 led to mergers and amalgamations and to formation of trusts and cartels, which advanced a great deal by 1880s. The concentration of corporate power at such an early stage of economic development and the awareness to check the economic power promoted the passing of the first antitrust legislation as early as 1890 which came to be known as the Sherman Act. The Act declared every contract, combination in the form of trust or otherwise or, conspiracy in restraint of trade or commerce, to be illegal. Every party to any such contract, combination or conspiracy was made punishable with fine or imprisonments. While this Act was of great use in curbing the wave of mergers that had marked the industrial scene of the United States towards the end of the nineteenth century of this century, there were certain monopolistic and restrictive practices to which the Act did not reach. In order to remove these infirmities, two major legislations were passed in 1914 namely the Federal Trade Commission Act, 1914 and the Clayton Act.

The Federal Trade Commission Act set up new machinery, the Federal Trade Commission which shared with the department of justice the responsibility for enforcement of all anti-trust legislation. The Act prohibited unfair methods of competition.

The Clayton Act was designed specially to deal with the problems of mergers and to prohibit certain types of individual conduct which were beyond the reach of the Sherman Act. Illegal attempts at circumvention of the Clayton Act resulted in passing of the Robinson Patman Act, 1936 which tightened up the law on price

discrimination. All this legislation collectively provides the framework of the antitrust law in the United States. In addition to these anti-trust legislations there are a number of other legislations on consumer protection e.g. the Consumer Credit Protection Act, 1968 which requires certain disclosures in consumer credit sales and loans; the Consumer Leasing Act, 1970 which deals with consumer leases; the Fair Credit Billing Act, 1974 which contains provisions relating to credit billing practices, and the Magnuson-Moss Warranty Act, 1975, which establishes certain minimum requirements for written warranties offered by suppliers of consumer products. The Fair Packaging Act, 1972 and the Consumer Product Safety Act, 1972 provide protection to the consumer in several ways.

The Consumer Products Safety Act, 1972 extended federal control over general consumer products and granted to the government, authority to set safety standards for general products and to ban those products which present real hazards to the consumers. The legislation followed a two years study by a bipartisan National Commission on product safety. The final report of the Commission led to the creation of a new federal independent regulatory Commission, the bipartisan Consumer Product Safety Commission. The United States has even today, the most comprehensive and well established anti-trust and consumer protection law in the world.

At the state level, many states have adopted the Uniform Deceptive Trade Practices Act including, but not limited to, Delaware, Illinois, Maine, and Nebraska. The deceptive trade practices prohibited by the Uniform Act can be roughly subdivided into conduct involving either a) unfair or fraudulent business practice and b) untrue or misleading advertising.

Also, the majority of states have a Department of Consumer Affairs devoted to regulating certain industries and protecting consumers who use goods and services from those industries. For example, in California, the California Department of Consumer Affairs regulates about 2.3 million professionals in over 230 different professions, through its forty regulatory entities.

## 2) **Canada**

Canada had enacted an anti-trust legislation in 1889 for prevention and suppression of combines in restraint of trade. The purpose of the legislation was to stamp with

illegality the agreements which had been carried into effect for preventing and lessening competition. The scope of the legislation was extended by the enactment of Combines Investigation Act, 1910 which also covered mergers, trusts and monopolies operating to the common detriment. Towards the end of World War-I there was strong public demand to check rising prices. In response to that demand the board of Commerce Act and the Combines and Fair Prices Act were passed in 1919. In 1923, a new Combines Investigation Act was passed which was amended many a times in 1951, 1962, 1960, 1969 and 1976. The scope of the Act is extended to cover resale price maintenance, prohibition of collusive, arrangements, unfair trade practices etc. The Act is directed against preventing, limiting or lessening unduly the manufacture or production of an article, or to enhance unreasonable the price thereof, to restrain or injure trade or commerce in relation to any article formation of a merger or monopoly; discrimination as between purchasers etc. Misleading advertisements and other deceptive practices were considered and the Combines Investigation Act, 1969 was codified. The Act was further amended to make the provisions of Unfair Trade Practices more stringent and effective.

### 3) **United Kingdom**

In the United Kingdom, the anti-monopoly legislations came immediately after the World War-II. Between 1948 and 1973 a number of statutes were passed for this purpose. These statutes were the Monopolies and Restrictive Practices Enquiry and Controls Act, 1948 amended by the Monopolies and Restrictive Practices Act, 1953, the Restrictive Trade Practices Act, 1968; the Resale Price Act, 1964; the Monopolies and Mergers Act, 1965 and the Fair Trading Act, 1973. All these legislations except the Fair Trading Act, 1973 have been repealed by the consolidating enactments, the Restrictive Trade Practices Act, 1976 the Resale Price Act, 1976 and the Restrictive Practices Court Act 1976. The Restrictive Trade Practices Act, 1976 has been supplemented by the Restrictive Trade Practices Act, 1977. The Fair Trading Act, 1973 introduced new and comprehensive legislation. It extended the scope of the existing laws on monopolies and mergers and restrictive trade practices. The Act is wide enough to cover even professions, businesses, nationalized industries and public undertaking. It envisages twin machinery for its enforcement - Director General of Fair Trading and Consumer Protection Advisory Committees. The Act seeks to

protect the consumers from Consumer Trade Practices, and Unfair Practices. It also lays down the provisions in respect of pyramid selling and similar trading schemes. It has enlarged the powers and functions of the office of Registrar of Restrictive Trading Agreements which is now merged in the office of the Director General of Fair Trading. Further the Competition Act, 1980 has been enacted to make provisions for the control of anti-competitive practices in supply and acquisition of goods, and the supply and securing of services; to provide for the investigation of prices and charges by the Director General of Fair Trading, and to make some amendments with respect to the Fair Trading Act, 1973 and the Restrictive Trade Practices Act, 1976.

Apart from the aforesaid enactments, the United Kingdom has a number of other legislations to protect the interest of the consumers. The Unfair Contracts Terms Act, 1977 which has various provisions to protect the consumers from unfair terms in the standard form of contracts; the Price Commission Act, 1977 which requires that the firms with large turnover should notify price increases and periodical report on profits, and the smaller firms to keep appropriate financial records. The Consumer Protection Act; 1987 has been passed by the Parliament of Great Britain after extensive debate on the same. This is a legislation of wide range which creates both civil as well as criminal liability. This Act deals mainly with product liability, unsafe goods and misleading price indications.

#### 4) **Australia**

In Australia, the first anti-trust legislation had been passed in the year 1906. The Australian Industries Preservation Act was based on the Sherman Act, 1890 of the United States. The Act was amended in 1911, but still it remained ineffective. In 1965, another Act was passed following the Restrictive Trade Practices Act, 1956 of the United Kingdom. Finally, the Trade Practices Act, 1974 was passed which replaced the 1965 Act. The Trade Practices Act, 1974 provides very strong legislative measures to promote efficiency and competition in business, to control restrictive trade practices and to protect the consumers from unfair trade practices. It prohibits contracts, arrangements and understandings in restraint of trade, monopolization exclusive dealings; resale price maintenance, price discriminations; and mergers. It also prohibits, misleading or deceptive conduct; false representations; offering gifts and prizes with the intention of not providing them; bait advertising referral selling;

and supply of hazardous and risky goods which do not comply with the safety standards.

5) **Japan**

The Anti-Monopoly Act was enacted in Japan in 1947. The Act has sought to prevent excessive concentration of economic power by prohibiting formation of any holding company or operation of any company as a holding company. The Act has laid down provisions to check acquisition of business, assets or management of another company; mergers of directorship. The Act contains provisions against discrimination of prices, imposing of undue conditions etc. It also attempts to protect the interest of the consumers from misleading representation, prize competition etc. In addition to the Anti-monopoly Act, there are four supplementary legislations, viz. The Marine Transport Act, 1949; The Export and Import Trading Act, 1952; The Small and Medium sized Enterprise Organisation Act, 1957, and Act against The Unjustifiable Premium and Misleading representations 1962 to deal with the problems of Monopolies, Restrictive and Unfair Trade Practices.

**2.1. United Nations Guidelines for Consumer Protection**

The United Nations Guidelines for Consumer Protection is a declaration of best practices in consumer protection law and policy. The Guidelines are not binding, but do provide a set of basic consumer protection objectives upon which governments have agreed, thereby serving as a policy framework for implementation at a national level. Whilst directed primarily at governments, some provisions of the Guidelines are also directed at businesses.

The earliest known statement of consumer rights at a political level was given on 15 March 1962, when President John F Kennedy of the United States delivered a speech to Congress in which he outlined four consumer rights: the right to safety, the right to be informed, the right to choose and the right to be heard.

In 1981, the United Nations Economic and Social Council (ECOSOC) requested the Secretary-General to continue consultations on consumer protection with a view to elaborating a set of general guidelines for consumer protection, taking particularly into account the needs of the developing countries.

In 1983, draft guidelines for consumer protection were submitted to ECOSOC in response to its request. Following extensive discussions and negotiations, the Guidelines were adopted by consensus resolution of the United Nations General Assembly on 9<sup>th</sup> April 1985. They have since been amended by the addition of a new section on sustainable consumption on 26<sup>th</sup> July 1999.

The UN Guidelines complement the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, both instruments contributing to global efforts to promote consumer welfare by protecting consumers against, inter alia, anti-competitive behaviour by firms and undertakings. The two instruments also place particular emphasis on the need to protect the interests of developing countries.

The United Nations Conference on Trade and Development (UNCTAD), which is the subsidiary body of the UN General Assembly that holds responsibility for consumer protection and competition policy, states that the Guidelines "take into account the interests and needs of consumers, particularly those in developing countries".

### **Objectives of the Guidelines**

The UN Guidelines are articulated around eight main objectives namely –

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international cooperation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices;
- (h) To promote sustainable consumption.



## **General Principles**

The UN Guidelines embrace an approach that encourages countries to design their consumer protection policies in accordance with the needs of their own populations and economic, social and environmental circumstances, rather than a universal approach based on harmonization of laws and policies across all countries. The UN Guidelines provide a framework of principles to assist countries in the development of their legislations and policies and are intended to meet seven key legitimate needs for consumers:

- (a) The protection of consumers from hazards to their health and safety;
- (b) The promotion and protection of the economic interests of consumers;
- (c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- (d) Consumer education, including education on the environmental, social and economic impacts of consumer choice;
- (e) Availability of effective consumer redress;
- (f) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them;
- (g) The promotion of sustainable consumption patterns.

## **Guidelines**

The following guidelines should apply both to home-produced goods and services and to imports –

- (a) Physical safety
- (b) Promotion and protection of consumers' economic interests
- (c) Standards for the safety and quality of consumer goods and services
- (d) Distribution facilities for essential consumer goods and services
- (e) Measures enabling consumers to obtain redress
- (f) Education and information programmes
- (g) Promotion of sustainable consumption

### **2.2. Consumers International (CI)**

Consumers International (CI) is the world federation of consumer groups that serves as the only independent and authoritative global voice for consumers. It is based in London, England.

Founded on 1<sup>st</sup> April 1960, currently with over 240 member organisations in 120 countries around the world, the organisation continues to build a powerful international movement to empower and protect consumers everywhere.

In campaigning for the rights of consumers across the world, CI seeks to hold corporations to account and acts as a global watchdog against any behaviour that threatens, ignores or abuses the principles of consumer protection.

The organisation was first established in 1960 as the International Organisation of Consumers Unions (IOCU) by national consumer organisations. The original members recognised that they could build upon their individual strengths by working across national borders. The organisation then rapidly grew and soon became established as the voice of the international consumer movement on issues such as: product and food standards, health and patients' rights, the environment and sustainable consumption, and the regulation of international trade and public utilities.

### **3. HISTORICAL BACKGROUND OF CONSUMER PROTECTION LAWS IN INDIA**

The concept of consumerism was active even in the ancient period. As per the Arthshastra of Kautilya, it was the duty of Superintendents to put the Government product in the market under favourable conditions and to supervise their sales at reasonable rates. Businessmen who cheated or interfered generally with the normal functioning of the market prices were open to heavy punishment. Similarly, Narada and Brahaspati have also laid down numerous laws and regulations to safeguard the interest of buyers and sellers. Similarly, Mahatma Gandhi attached great importance to what he described as “Poor Consumer” who according to him, should be the principal beneficiary of the consumer movement. Therefore, the consumer protection jurisprudence of India as understood and developed in modern times owes its genesis to the ancient period and the concept of providing protection to consumers through laws relates back to the time immemorial.

#### **Consumer protection laws during ancient period**

In Kautilya’s Arthshastra, the laws of that time relating to weights and measures are depicted. Similarly Yajanvalkyya had also given views on weights and measures in Yajanvalkyya-Samhita. The provision about adulteration in Arthshastra has been also made. Manu Smriti contains the views on adulteration and punishment therefore. Yajanvalkyya expresses his views of adulteration.

Main provisions of “Yajanvalkyya -Samhita” are with regard to transaction of sale and purchase. “Yajanvalkyya” took into account such hard conditions and framed rules for the protection of purchaser providing him some time to judge the utility of purchased goods and permitting him to return the goods in case the goods were found unsuitable to his needs. The sale of sample is also regulated by “Yajanvalkyya” when he provided punishment to the trader who deceived a purchaser by showing a different article and changing it subsequently at the time of sale or delivery. In “Yajanvalkyya Samhita” one finds elaborate mechanism regarding pricing – policy, and profit – ratio charged by the traders on the sold goods. Principle of caveat emptor and breach of warranty is the modern principle of law applicable in sale of goods – Caveat Emptor (Buyer Beware) – finds place in “Narda-Samriti”.

In “Manu’s” code which lays down that: If same commodity is sold or meant to be sold is not delivered, the contract is not made good. It must be of the same quality as contracted for.

Ancient Hindu Code also contains some rules regarding deficient services rendered by the professional persons like Physicians. For instance “Yajanvalkya -Samhita” provided professional norm to be adhered by the physicians and any dereliction of duty on their part was declared to be severely punishable.

Serious efforts had been made by the law makers in the ancient period of civilization in India to protect the different interests of consumers by providing rules and regulation prescribing certain duties and the violators of these rules/regulations were in most of the cases, subjected to punishment by fine.

### **Consumer protection laws during ancient period**

Although Ancient Hindu Law continued to govern Hindu populace particularly in the field of personal law, the legal principles of Muhammadan laws were engrafted in the Indian judicial system with the advent of Islam in India. The “Holy Quran” is the first and foremost source of Islamic Law in which also serious concern is found, like Hindu scriptures, for the problems faced by the consumers of the modern days. The use of unjust weights and measures has been condemned by the prophet in the passages found in the Quran. In the Quran men are taught to abstain from dishonest dealing lest they be deprived of God’s blessing. Prophet Mohammad impressed upon his followers, the duty of strictly fulfilling their contracts.

The problem of excessive rate of interest, charged by the traders from the purchasers particularly in matters of purchase by hire, is a serious one faced by the consumers all over the world. Everywhere laws have been passed to protect consumers from this menace known as Usury. In India, the Usurious Loans Act 1918 and the Hire-purchase Act of 1972, intend to protect the consumers from excessive rates of interest. Interestingly, the Holy Quran took up this matter seriously and the practice of usury was condemned in the severest term.

Thus, it is clear that the genesis of consumerism dates back to ancient period starting from Vedic era. The need to protect consumers from the malpractices indulged into by the traders had always been felt since the dawn of civilization. During the ancient period “Vedas,” Code of “Kautilya”, “Manu Smriti”, “Yajnavalkya-Samhita”, “Narada Smriti”, and various other ancient codes contained provisions with a view to cater and protect the interests of the

consumers and provided punishment in case of the violations of those provisions containing directives.

In the medieval period before the emergence of democratic governments with the advent of Muslim invaders, both Islamic Law based on “Holy Quran” and Hindu Law based on Hindu scriptures were administered side by side. Similar to ancient Hindu scriptures, the “Holy Quran” also contained various prohibitive injunctions, prescription and directives for the purposes of protecting consumers from the malpractices indulged into by the traders.

The basic principles of law provided the foundation of the modern laws of consumer protection in India during the period of British rule and, thereafter, in the post-independence period. In the modern times also, similar to ancient period, a consumer is virtually equated with the term citizen.

Efforts to protect consumers through laws were made in Ancient Hindu Codes and “Holy Quran” with the advent of British rule in India, the common law system of administration of justice was also implanted on the Indian soil and during 17th, 18th and first half of 19 centuries, the rights and interest of consumers were mainly regulated and protected by common law of Tort or Law of Contracts.

### **Consumer Protection prior to Independence**

Since the advent of British rule in India along with the application of English Common Law, various legislative measures were also taken, from time to time, since 1600, with a view to protect the interest of public at large (which indirectly covered consumers interests) but most of them were by and large and overshadowed by Common Law Principles in their contents, however inspite of these enactments, principles of Common Law also continued to be applied through the judgments of the Privy Council and the High Courts as and when necessity arose for either interpreting or clarifying these statutes or for dealing with those subjects which were not covered by these statutes. However, the main Legislative Enactments which either wholly or partially have direct bearing upon the protection of consumers are:

The Punishment Related to Weight and Measures are given in chapter XIII of the Indian Penal Code. Chapter XIII of the code is captioned as “of offence relating to weights and measures” and is consisted of section 264 to section 267”. Section 272 and Section 273 provide punishment related to adulteration of an article of food or drink.

In addition to above stated provisions which have direct concern with the protection of consumers or users, the code contains several provisions under which certain types of

negligent conduct have been declared as offence and in such cases the aggrieved person can, in addition to seeking remedy under law of torts also initiate criminal proceedings against the person guilty of such negligent act.

To protect interest of contracting parties, The Indian Contract Act, 1872 was passed. The essence of contract is the 'meeting of minds'. It was in the later part of the first half of the 20th century that it was realized that meeting of minds may not in every case be real. It may happen that one of the two parties to a contract has in fact no freedom, no volition, he merely signs on dotted lines. This is literally what happens in standard form of contract and in many other deals.

It is pertinent to note in this connection that the Indian Contract Act, 1872, was based on most of the principles and doctrines of English Common law and initially it also contained the provisions regulating the sale of goods and partnership. Later on, in order to define and amend the law relating to sale of goods and partnership, two separate Acts were enacted namely the Indian "Sale of Goods Act, 1930" and "Indian Partnership Act, 1932". Besides sale of goods and partnership for which separate legislations were made, the other forms of specific contracts like contract of Indemnity, Contract of Guarantee, Contract of Bailment, Contract of Bailment or Pledge and Contract of Agency, still continue to be governed and regulated by the Indian Contract Act, 1872.

When a person purchases goods or uses the same or hires the services or avails the same, he becomes a consumer and the entire gamut of his contractual relationship is normally governed by the general principles of Law of Contract with regard to the determination of his rights and obligations in addition to the specific provisions made in the other laws dealing with certain specific transaction. The "Sale of Goods Act, 1930", with a view to protect a buyer/consumer, attached some implied conditions or warranties with every transaction of a sale.

In the year 1940, on the recommendations of the Drugs Enquiry Committee, the DRUGS ACT, 1940 was passed in British India by the Governor General which may be termed as consumer protection legislation. Later on by an "Amending Act of 1962", (the word cosmetic was added in the title and other relevant places in the Act, along with 'Drugs' and the Act was renamed as "The Drugs and Cosmetic Act", 1940. The Act provides for regulation of import manufacture and Sale of drugs and Cosmetics.

### **Consumer Protection post-Independence period**

When India attained independence, it adopted the Anglo-Saxon system of administration of justice and most of the legislative enactments dealing with the protection of consumer continued to operate. However, a new dimension was provided by the adoption of Constitution in the year 1950, to the legislation making, relating to Citizens in general and consumer in particular. The Constitution itself contained various guarantees to the citizens of India and also provided guidelines-in the form of “Directive Principles of State Policy” to be followed and nurtured by the state in its future legislative activities and the post-independent era has witnessed a large number of enactments meant for the benefit of consumers. Article. 14 of the constitution guarantees equality before law and equal protection of laws. Therefore, manufacturers, producers, traders, sellers and consumers enjoy equal treatment before law either for receiving reward or punishment.

Under Article 21 which guarantees right to life and personal liberty, denial of an essential service by the state might amount to violation of this right. Further, the consumer is entitled to constitutional Protection under Art. 38, which reads as – “The state shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic, and political, shall inform all the institution of the national life. Under clause (b) and (c) of Article 39, the state is duty bound to direct its policy towards securing the distribution of the ownership and control of the material resources of the community in such away as “to serve the common good”.

Article 43 directs that state shall endeavour to build an economic organization or to make suitable legislation to ensure a decent standard of life to all the workers who constitute the bulk of the consumers.

Article 46 of the Constitution of India mandates that state shall promote with special care the educational and economic interest of the weaker sections of the people and shall protect them from social injustice and all forms of exploitation. The expression “Protection from all form of exploitation” would when applied in the context of consumers means that the consumers should be saved from all kinds of harassment and fraud at the market place.

In order to transform the constitutional mandates into reality and fulfil the aspirations of the people of India, several legislations have been enacted during the post independent era dealing with and protecting the rights of consumers and other inter-related persons.

The chronic shortage of certain necessities of life and their non-availability at reasonable rates to everyone, the growing tendency in the conduct of unscrupulous traders and distributors to hoard essential commodities with a view to profiteering, the illiteracy,

ignorance and the poor purchasing capacity of the vast majority of population – particularly rural folk, the absence of competitive market and many other factors alike, necessitated to empower the Government to regulate production, price, supply and distribution of essential commodities. The need for enactment of a suitable legislation had been felt, even before the partition of the country, to curb certain undesirable tendencies of unscrupulous elements in the trade and commerce. The Essential Commodities Act was first enacted in 1946. In 1955, on the basis of the constitution adopted by the country the essential commodities Act, 1955 was enacted. The objective of the legislation was, and continuous to be, to regulate the production, supply and distribution of those commodities which are essential for the people and to ensure that the unscrupulous elements of the trade do not corner the stocks or unduly inflate the prices which would disable the common people from procuring them.

The Monopolistic Restrictive and Unfair Trade Practices Act, 1969 (MRTP Act) was the only legislative device meant for providing relief in respect of monopolistic and restrictive trade practices prejudicial to public interest or prejudicial to consumers. The MRTP Act initially lacked in containing effective provisions relating to Protection of Consumers and therefore the Sachar Committee in the year 1978 had to recommend for its complete overhauling, the committee gave various suggestions with regard to protection of interests of consumers. However the recommendations made by the committee did not find place in the statute book for approximately 5 years and at last in the year 1984, major amendments were made in the “Monopolistic Restrictive and Unfair Trade Practices Act, 1969”, two year later by another amendment “a consumer” and a ‘registered consumer association” were also given Locus Standi to make a complaint. The Amendment of 1986 added an important and valuable right in the armoury of consumers.

The year 1986 may be said to be the golden year for consumers as not only the consumer protection act, 1986 was enacted in that year, a new legislation namely– The Bureau of Indian Standards Act, 1986 was also enacted which repealed the earlier act made on the subject. The Consumer Protection Act, 1986 provides an extremely good opportunity to the consumers for the quick redressal of their grievances and it is rightly considered to be a milestone in the history of socio-economic legislation in India. For this purpose a three tier quasi-judicial machinery was set up at the National, State and District level to deal with the consumer disputes in the fields of defective goods, deficient services, unfair trade practices, restrictive trade practices, over charging and hazardous goods, etc.



Although in the year 1986, the “Consumer Protection Act, 1986” was enacted with a view to provide better protection to consumers. The Consumer Protection Act, 1986 deals only with the problems of an individual consumer. It does not deal with the issue and problems related to “maintaining or increasing supplies of any essential commodity or for securing their equitable distribution, and availability at fair prices or dealing with persons indulging in hoarding and black-marketing of, and profiteering in, essential commodities and with the evil of vicious inflationary prices” for which the Essential Commodities (Special Provisions) Act 1981, and “Prevention of Black-Marketing and Maintenance of Supply of Essential Commodities Act, 1980” were enacted and are still in operation.

#### 4. CONSUMER PROTECTION LEGISLATIONS IN INDIA

Consumer protection laws or Consumer Laws are designed to ensure fair competition and the free flow of truthful information in the marketplace. Consumer Protection laws are a form of government regulation which aim to protect the interests of consumers.

The Consumer movement in India is a socio-economic movement which seeks to protect the rights of the consumers in relation to the goods purchased and services availed.

##### **Legislations related to consumer protection in India**

The Consumer Protection Act, 1986 is the main legislation pertaining to Consumer protection.

Other Legislations governing Consumer Protection include:

- Agricultural Products (Grading and Marketing) Act, 1937
- Industries (Development and Regulation) Act, 1951
- The Essential Commodities Act, 1955
- Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980
- The Consumer Protection Rules, 1987
- Bureau of Indian Standards (Recognition of Consumers' Associations) Rules, 1991
- Consumer Welfare Fund Rules, 1992
- Competition Act, 2002
- The Consumer Protection Regulations, 2005
- Right to Information Act, 2005
- The Legal Metrology Act, 2009

- Consumer Protection (Amendment) Bill, 2011
- The Consumer Protection Bill, 2015

**Consumer Protection Rules of various states**

- 1) Andaman and Nicobar Islands, Consumer Protection Rules, 1987
- 2) Andhra Pradesh State Consumer Protection Rules, 1987
- 3) Arunachal Pradesh Consumer Protection Rules, 1987
- 4) Assam State Consumer Protection Rules, 1989
- 5) Bihar Consumer Protection Rules, 1987
- 6) Chandigarh Consumer Protection Rules, 1987
- 7) Dadra and Nagar Haveli Consumer Protection Rules, 1987
- 8) Delhi Consumer Protection Rules, 1987
- 9) Goa Consumer Protection Rules, 1987
- 10) Gujarat Consumer Protection Rules, 1988
- 11) Haryana Consumer Protection Rules, 1988
- 12) Himachal Pradesh Consumer Protection Rules, 1988
- 13) Karnataka Consumer Protection Rules, 1988
- 14) Kerala Consumer Protection Rules, 1987
- 15) Lakshadweep Consumer Protection Rules, 1989
- 16) Madhya Pradesh Consumer Protection Rules, 1987
- 17) Maharashtra Consumer Protection Rules, 2000
- 18) Nagaland consumer protection rules, 1987

- 19) Orissa consumer protection rules, 1987
- 20) Pondicherry consumer protection rules, 1987
- 21) Punjab consumer protection rules, 1987
- 22) Rajasthan consumer protection rules, 1987
- 23) Tamil Nadu consumer protection rules, 1987
- 24) Uttar Pradesh consumer protection rules, 1987
- 25) West Bengal consumer protection rules, 1987

## **5. CONSUMER PROTECTION ACT, 1986**

The Consumer Protection Act, 1986 is a social welfare legislation which was enacted as a result of widespread consumer protection movement. It was enacted to provide a simpler and quicker access to redressal of consumer grievances. The main object of the Act is to provide for the better protection of the interests of the consumer and to make provisions for establishment of consumer councils and other authorities for settlement of consumer disputes and matter therewith connected. The Act for the first time introduced the concept of 'consumer' and conferred express additional rights on him

The Consumer Protection Act, 1986, applies to all goods and services, excluding goods for resale or for commercial purpose and services rendered free of charge and under a contract for personal service. The provisions of the Act are compensatory in nature. It covers public, private, joint and cooperative sectors. It ensures justice which is less formal, involves less paperwork, cut delays and is less expensive.

The Act enshrines the rights of the consumer such as right to safety, right to be informed, right to be heard, and right to choose, right to seek redressal and right to consumer education.

The Act consists of 31 sections.

The implementation of the Act is supported by the Consumer Protection Rules of 1987.

### **5.1. History of Consumer Protection Act**

The industrial revolution and the development in the international trade and commerce has led to the vast expansion of business and trade, as a result of which a variety of consumer goods have appeared in the market to cater to the needs of the consumers and a host of services have been made available to the consumers like insurance, transport, electricity, housing, entertainment, finance and banking. A well organised sector of manufacturers and traders with better knowledge of markets has come into existence, thereby affecting the relationship between the traders and the consumers making the principle of consumer sovereignty almost inapplicable. The advertisements of goods and services in television, newspapers and magazines influence the demand for the same by the consumers though there

may be manufacturing defects or imperfections or short comings in the quality, quantity and the purity of the goods or there may be deficiency in the services rendered. In addition, the production of the same item by many firms has led the consumers, who have little time to make a selection, to think before they can purchase the best. For the welfare of the public, the glut of adulterated and sub-standard articles in the market have to be checked. In spite of various provisions providing protection to the consumer and providing for stringent action against adulterated and sub-standard articles in the different enactments like Code of Civil Procedure, 1908, the Indian Contract Act, 1872, the Sale of Goods Act, 1930, the Indian Penal Code, 1860, the Standards of Weights and Measures Act, 1976 and the Motor Vehicles Act, 1988, very little could be achieved in the field of Consumer Protection. Though the Monopolies and Restrictive Trade Practices Act, 1969 and the Prevention of Food Adulteration Act, 1954 have provided relief to the consumers yet it became necessary to protect the consumers from the exploitation and to save them from adulterated and sub-standard goods and services and to safe guard the interests of the consumers. In order to provide for better protection of the interests of the consumer the Consumer Protection Bill, 1986 was introduced in the Lok Sabha on 5th December, 1986.

## **5.2. Objective of the Act**

The Consumer Protection Act, 1986 seeks to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer disputes and for matter connected therewith.

The Consumer Protection Act, 1986 seeks to promote and protect the rights of consumers such as –

- (a) the right to be protected against marketing of goods which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;
- (d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;

- (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
- (f) right to consumer education.

### 5.3. Important terms under the Consumer Protection Act

**Consumer:** According to Section 2(1)(d) of the Consumer Protection Act, 1986, consumer means any person who - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; (but does not include a person who avails of such services of any commercial purpose).

*Explanation* — For the purposes of the sub-clause (i), “commercial purpose” does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

**Goods:** Goods mean any movable property and also include shares, but do not include any actionable claims.

**Service:** Service means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. (Sec.2 (1)(o))

**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. (Sec.2 (1)(f))

**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. (Sec.2 (1)(g))

**Manufacturer** means a person who--

- (i) makes or manufactures any goods or parts thereof; or
- (iii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or
- (iv) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer. (Sec.2(j))

#### 5.4. **Who is a Consumer?**

Section 2(1)(d) of the Consumer Protection Act defines consumer as a person who –

- i. buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose;
- ii. hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are



availed of with the approval of the first mentioned person; (but does not include a person who avails of such services of any commercial purpose).

For the purpose of this definition, commercial purpose does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood by means of self-employment.

From the above definition, it is clear that the person to be a consumer of goods should satisfy the following conditions –

a) Goods are bought for consideration –

There should be a sale transaction between the seller and buyer. The sale should be of goods and the buying of goods should be for consideration.

b) Person who uses the goods with the approval of the buyer –

When a person buys goods, it may be used by his family members, relatives and friends. Any person who actually uses the goods may come across the defects in goods. Thus the law ensures the users of the goods as consumers although they may not be buyers at the same time.

For example – A person X purchases a car which was used by his brother Y. The brother Y was using it and taking it to the seller for repairs and service etc. Later on the brother Y had a complaint with the car and sued the seller. The seller pleaded that since Y did not buy the car, he was not a consumer under the Consumer Protection Act, 1986. The Delhi State Commission held that Y, the complainant was using it with the approval of X, the buyer, and therefore he was a consumer under the Act. [*Dinesh Bhagat v. Bajaj Auto Ltd.* (1992) III CPJ 272]

c) Person does not use the goods for resale or commercial purpose –

When the goods are bought to resell or commercially exploit them, then such buyer or user will not be a consumer under the Act.

For example - A car was purchased to run it as a taxi. The question was whether the buyer of the car was a consumer under the Act. The Rajasthan State Commission held that to use the car as a taxi with the object to earn profits was a commercial purpose,

and therefore, the buyer/user was not a consumer within the meaning of the Act. [*Smt. Pushpa Meena v. Shah Enterprises (Rajasthan) Ltd.* (1991) 1 CPR 229]

Hence, if a particular good is used for commercial purpose, then the buyer/user will not be a consumer under the Consumer Protection Act, 1986.

d) Person buying goods for self-employment –

When goods are bought for commercial purposes and such purchase satisfies the following criteria:

- the goods are used by the buyer himself;
- exclusively for the purpose of earning his livelihood;
- by means of self-employment

then such use would not be termed as use for commercial purposes under the Act and the user would be recognised as a consumer.

For example – X buys a car for using it as a taxi by driving it by himself. X will be considered as a consumer. If he hires a driver to drive the taxi, then he will not be considered as a consumer.

The intention of the legislature is to exclude big business houses carrying on business with profit motive from the purview of the Act. At the same time it is pertinent to save the interests of small consumers who buy goods for self-employment to earn their livelihood, like a rickshaw puller buying rickshaw for self-employment, or a farmer purchasing fertilizer for his crops, or a taxi driver buying a car to run it as a taxi, etc.

A person to be a consumer of services should satisfy the following conditions –

a) Person hires or avails of services –

The term hire has not been defined under the Act. But ultimately, consumer of service may be a person who avails or uses such service. What constitutes hiring has been dealt with in many consumer disputes! For example –

- i. A goes to a doctor to get himself treated for an illness. Here A is hiring the services of the doctor. Thus he is a consumer.

- ii. A passenger getting railway reservation after payment is hiring service for consideration is a consumer.
- iii. A landlord neglected and refused to provide the agreed amenities to his tenant. He filed a complaint against the landlord under the Consumer Protection Act. The National Commission dismissed the complaint saying that it was a case of lease of immovable property and not of hiring services of the landlord. [*Smt. Laxmiben Laxmichand Shah v. Smt. Sakerben Kanji Chandan* [1992] 1 Comp. LJ 177 (NCDRC)].

b) Consideration should have been paid or is payable –

Consideration is essential for hiring or availing any service. However, its payment need not necessarily be immediate and could be in instalments. A person will not be a consumer for services provided without charging anything in return. For example –

- i. A hires an advocate to file a suit for recovery of money from his employer. He promises to pay fee to the advocate after settlement of the suit. A is a consumer under the Act.
- ii. X was paying property tax for his house to the local corporation. This corporation was responsible for proper water supply to the premises under its work area. X raised a consumer dispute over the inadequacy of water supply by the corporation. The National Commission held that it was not a consumer dispute as water supply was made by the corporation out of its statutory duty and not by virtue of payment of taxes by X. - *Mayor, Calcutta Municipal Corporation v. Tarapada Chatterjee*(1994) 1 CPR 87 (NCDRC).

c) Person is beneficiary of such service –

When a person hires services, he may hire it for himself or for any other person. In such cases the beneficiary (or user) of these services is also a consumer. For example - A takes his son B to a doctor for his treatment. Here A is hirer of services of the doctor and B is beneficiary of these services. For the purpose of the Act, both A and B are consumers.

M applied to Electricity Board for electricity connection for a flour mill. There was a delay in releasing the connection. M made a complaint for deficiency in service. He was held a consumer under the Act. - *Shamsher Khan v. Rajasthan State Electricity Board* (1993) II CPR 6 (Raj)

In case of goods, buyer of goods for commercial purpose will not be a consumer under the Consumer Protection Act, whereas a consumer of service for commercial purpose will be a consumer under the Act.

### **5.5. Complaint**

An aggrieved consumer can seek redressal under the Consumer Protection Act by filing a complaint. According to Sec.2(1)(c) of the Consumer Protection Act, 1986, 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 the service provider, as the case may be, has charged for the goods or for the services 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, are being-offered for sale to the public-

(a) in contravention of any standard 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;

with a view to obtaining any relief provided by or under this Act.

Hence complaint is basically a statement in writing containing the allegations in detail, in order to obtain relief provided under the Consumer Protection Act.

### **Who can file a complaint?**

Only a person who is termed as a consumer under the Consumer Protection Act, 1986 can file a complaint. Hence the following persons can file a complaint –

- i. a consumer; or
- ii. any voluntary consumer association registered under the Companies Act 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 ;

Apart from the above mentioned persons, the following persons can also be considered as consumers and file complaint –

- i. beneficiary of goods / services
- ii. legal representative / heir of the deceased consumer
- iii. husband of the consumer

iv. relative of consumer

v. insurance company

### **Contents of the Complaint**

A complaint should contain any of the following allegations –

- a) An unfair trade practice or a restrictive trade practice that has been adopted by any trader. For example: X sold a six months old bike to Y representing it to be a new one. Here Y can make a complaint against X for following an unfair trade practice.
- b) The goods bought by him or agreed to be bought by him suffer from one or more defects. For example - A bought a computer from B. It was not working properly since day one. A can make a complaint against B for supplying him a defective computer.
- c) The services hired or availed of or agreed to be hired or availed of by him suffers from deficiency in any respect. For example - X hired services of an advocate to defend himself against his landlord. The advocate did not appear every time the case was scheduled. X can make a complaint against the advocate.
- d) Trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods. For example - A bought a sack of cement from B who charged him Rs.100 over and above the actual price of the cement declared by the Government. Here A can make a complaint against B.
- e) Goods which will be hazardous to life and safety when used are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods. For example - X bought a tin of disinfectant powder. It had lid which was to be opened in a specific manner, which the trader did not inform. While opening the lid in the ordinary way, some powder flew in the eyes of X which affected his vision. Here X can file a complaint against the trader.

### **Time frame within which a complaint should be filed**

According to Sec.24A of the Consumer Protection Act, a complaint should be filed within a period of 2 years from the date on which the cause of action has arisen.

The point of time when cause of action would arise is an important factor in determining the time period available to file a complaint. There are no set rules to decide such time. It depends on the facts and circumstances of each case. For example –

- i. A got his eye operated by B in 1989. He got a certificate of blindness on 18th December, 1989. He was still in hope of gaining his sight and went for second operation in 1992 and was discharged on 21-1-1992. He filed a complaint against B on 11-1-1994. B opposed on the ground that more than 2 years were over after 18-12-1989, thus the complaint is not maintainable. The Commission held that here the cause of action for filing the complaint would arise after the second operation when A lost entire hope of recovery. Thus the suit is maintainable. (*Mukund Lal Ganguly v. Dr. Abhijit Ghosh* III 1995 CPJ 64)
- ii. A house was allotted on 1-1-1999. Defects appeared in the house on 10-1-1999. Here the cause of action will arise on 10-1-1999.

If the Consumer Forum is satisfied that there was sufficient cause for not filing the complaint within the prescribed period, it can entertain a complaint beyond limitation time. However the Forum must record the reasons for condonation of delay. For example - A deposited some jewellery with a bank. Bank lost it. Bank kept giving her false sense of hope to retrieve the jewellery, and thus A was put in a state of inaction. Later on when A filed a suit on the Bank, it claimed that the suit was not maintainable as the limitation time after the cause of action arose has lapsed. The Commission reprimanded the bank and admitted the case - *Agnes D'Mello v. Canara Bank* [1992] I CPJ 335 (NCDRC).

### **Relief available against the Complaint**

The following reliefs can be sought by the complainant (Sec.14) –

- (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 is 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;
- (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 them;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (i) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- (j) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently, provided that the minimum amount of sum so payable should not be less than five per cent of the value of such defective goods sold or services provided, as the case may be, to such consumers. The amount so obtained should be credited in favour of such person and utilized in such manner as may be prescribed;
- (k) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;
- (l) to provide for adequate costs to parties.

**When a complaint cannot be filed?**

A complaint on behalf of the public which consists of unidentifiable consumers cannot be filed under the Consumer Protection Act.

For Example - A complaint was filed on the basis of a newspaper report that passengers travelling by flight No. 1C-401 from Calcutta to Delhi on May 13, 1989 were made to stay at the airport and the flight was delayed by 90 minutes causing great inconvenience to the passengers. It was held that such a general complaint cannot be entertained. No passenger who boarded that plane came forward or authorised the complainant to make the complaint - *Consumer Education and Research Society, Ahmedabad v. Indian Airlines Corporation, New Delhi* (1992) 1 CPJ 38 NC.

An unregistered association cannot file a complaint under the Act.



A complaint after expiry of limitation period is not permitted. A complaint cannot be filed after the lapse of two years from the date on which the cause of action arise unless the Forum is satisfied about the genuineness of the reason for not filing complaint within the prescribed time.

#### **5.6. Unfair Trade Practice**

The term Unfair Trade Practice broadly refers to any fraudulent, deceptive or dishonest trade practice or business misrepresentation of the products or services that are being sold which is prohibited by a statute or has been recognised as actionable under law by a judgement of the court.

According to Sec.2(1)(r) of the Consumer Protection Act, 1986, “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;

(jii) 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;

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 purpose 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 newspaper 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 adopting deceptive practices in the provision of services;

(2) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.”

For example –

Persons buying goods either for re-sale or for use in large scale profit making activity will not be 'consumers' entitled to protection under the Act. (Raj Kumar v. S.C. Verma, 2001 (1) CPR 437)

The insurance company is not a consumer. Hence the consumer complaint by insurance company is not maintainable. (Savani Road Lines v. Sundaram Textiles Ltd., AIR 2001 SC 2630)

Medical services are covered under the definition of "service". Service includes rendering of consultation, diagnosis and treatment, both medical and surgical. (Indian Medical Association v. VP. Shantha, 1995 SCALE 273)

A lottery ticket holder is not "consumer" within the ambit of the definition of "consumer" under the Act. (Jagdish Chand v. Director, Sikkim State Lottery, 1994 (I) CPR213)

Undue delay in declaration of examination result is obviously deficiency in service. (Secretary, Board of School Education, Haryana v. Mukesh Chand, 1994 (I) CPR 269)

The student is a consumer of service of educational institute. (Sushant Yuvaraj Rode v; Shri Ramdeobaba Engineering College, 1993 (III) CPR 624)

### **5.7. Restrictive Trade Practice**

According to Sec.2(1)(nn) of the Consumer Protection Act, 1986, "restrictive trade practice" means a trade practice which tends to bring about manipulation of price or its 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.

Hence according to the above definition, where sale or purchase of a product or service is made conditional on the sale or purchase of one more other products and services, it amounts to restrictive trade practice.

The effect of such an arrangement is that a purchaser is forced to buy some goods or services which he may not require along with the goods or services which he wants to buy. Thus

where a buyer agrees to purchase product 'X' upon a condition that he will also purchase product 'Y' from the seller, the sale of product 'Y' (tied product) is tied to the sale of product 'X' (tying product). The buyer has to forego his free choice between competing products. This results in neutralizing healthy competition in the 'tied' market. This arrangement is known as tying arrangement.

For example –

- i. A, a gas distributor instead his customers to buy gas stove as a condition to give gas connection. It was held that it was a restrictive trade practice - *Re. Anand Gas* RTPE 43/1983
- ii. A is a furniture dealer. He is selling Sofa at Rs.20,000 and Bed at Rs.15,000. He has an offer that whoever will buy Sofa and Bed both, he will charge Rs.30,000 only. Here the choice is open to the customer to buy the products single or composite. This is not a restrictive trade practice.

### **5.8. Defective Goods**

A consumer can make a complaint when he comes across any defective goods. Hence the term goods and defect under the Consumer Protection Act needs to be understood.

Under the Consumer Protection Act, goods mean goods as defined in the Sale of Goods Act, 1930.

Section 2(7) of the Sale of Goods Act, 1930, defines 'goods' as - "Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."

Hence goods mean any movable property and also include shares, but do not include any actionable claims.

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 or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods. (Sec.2 (1) (f))

It means that the Act recognises only those defects which are covered by the definition. Any type of defect not mentioned here will not be entertained by Consumer Forums.

For example –

- i. A Pressure Cooker burst and caused injury to the user. It was held to be a manufacturing defect - *T.T. (P.) Ltd. v. Akhil Bhartiya Grahak Panchayat II* [1996] CPJ 239 NC.
- ii. Where laboratory test report showed that soft drink was not fit for human consumption, it was held defective - *Narayanan Vyankatkrishnan Iyengar v. Shakti Foods* [1994] 2 CPJ 652 (Mah.).
- iii. Electric household appliances which are not in accordance with the standards prescribed by ISI, being unsafe are defective - *Farooq Hazi Ismail Saya v. Gavabhai Bhesania* (1991) 2 CPJ 452 (Guj.).
- iv. Gas Cylinder with excessive gas is defective goods - *Dayanand A Avasare v. Bharat Petroleum Corporation Ltd.* (1993) 1 CPR 278 (Mah.).
- v. Development of cracks of half inch to three and a half inch in walls and mosaic floor in a flat after taking possession from a Housing Board - *R. Shanmugasundaram v. Tamil Nadu Housing Board* (1998) 1 CPJ 96 NC

### **5.9. Deficiency in service**

When a service is found deficient by a consumer, he can make a complaint under the Act. Thus the prime requirement is that the matter must fall within the definition of service, and it must entail a deficiency as per the norms given by the Act.

According to Sec.2(1)(o) of the Act, service means service of any description which is made available to potential (users and includes the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

Service may be of any description and pertain to any sector if it satisfies the following criteria:

1. Service is made available to the potential users, i.e., service not only to the actual users but also to those who are capable of using it.
2. It should not be free of charge, e.g., the medical service rendered free of charge in Government hospital is not a service under the Act;
3. It should not be under a contract of personal service.

Service under the Act considers only a regular commercial transaction. The services rendered under the contract of personal service are specifically excluded from the definition. The expression 'contract of personal service' is not defined under the Act. In common parlance, it means - a contract to render service in a private capacity to an individual. For example, where a servant enters into an agreement with a master for employment, or where a landlord agrees to supply water to his tenant, these are the contracts of personal service. The idea is that under a personal service relationship, a person can discontinue the service at any time according to his will; he need not approach Consumer Forum to complaint about deficiency in service.

It does not make a difference whether the service provider is a Government body or a Private body. Thus even if a statutory corporation provides a deficient service, it can be made liable under the Act. For example - X applied for electricity connection for his flour mill to Rajasthan State Electricity Board. The Board delayed in releasing the connection. It was held deficient in performing its service.

Some other sectors/professionals/services which are not specified in the definition of service but which have been considered by the Consumer Forums as service sectors from time to time are - Advocates, Airlines, Chartered Accountants, Courier, Chit Fund, Education, Gas Cylinder/LPG, Medical services, Postal services, Railways, Investment related services, and Telephone services.

According to Sec.2(1)(g) of the Act, 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.

From the above definition –

- Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance.
  - Dr. A treated P under Allopathic system, though he himself was a Homoeopathic practitioner. Later on P alleged A for wrong treatment. The Commission held it as deficiency in service - *Poonam Verma v. Ashwin Patel* [1996] II CPJ 1 SC.
  - A booked a car for B and promised to deliver it within one month of booking. The car was not delivered even after four months. Here A could be held liable for deficiency in service.
- Such quality and manner of performance of service should have been required to be maintained by or under any law for the time being in force or undertaken to be performed by a person in pursuance of a contract or otherwise.
  - A, the builder, promised under written agreement to provide a flat to B. Subsequently he expressed his inability to give possession of the flat and entered into a fresh agreement to pay Rs. 9,51,000 to B in place of flat. A didn't even pay this money. B sued A. The Commission held that since A had not even paid the money as per subsequent contract, the rights of earlier contract can be involved by B. And that there was a deficiency of service on the part of builders - *Lata Construction v. Dr. Rameshchandra Ramniklal Shah* AIR 2000 SC 380 (384).
- The deficiency must be in relation to a service.
  - A deposited Rs. 100 with B as application fee and executed bond for the purpose of drilling tubewell. B did not drill the tubewell because it was not feasible. A alleged deficiency in service. It was held that depositing Rs. 100 as application fee and executing a bond does not amount to hiring of services, thus the deficiency of service cannot be complained of in the matter - *Mangilal v. Chairman District Rural Development Agency* [1991] 1 CPJ 474 (Raj.).

**5.10. Trader / Manufacturer**



When a person finds any defect in the goods, be it manufacturing defect, or excessive price, or lack of information about hazardous nature, or restrictive or unfair trade practice, he can make a complaint against the trader.

According to Sec.2(1)(q) of the Act, trader in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof.

According to Sec.2(1)(j) of the Act, manufacturer means a person who –

- (i) makes or manufactures any goods or parts thereof; or
- (ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or
- (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer.

Thus a manufacturer is a person who either himself manufactures goods, or assembles any goods manufactured by others, or puts his own mark or trade mark on the goods manufactured by others.

For example –

- i. M Ltd. was into manufacturing of Pressure Cookers. N bought a Cooker which burst out while using. N sued M Ltd. for compensation. Here M Ltd. being manufacturer of the Cooker is liable for the loss.
- ii. X Ltd. used to buy components and assemble computers therefrom. They were selling them under the brand name 'R'. Y bought a R computer which turned out to be defective. Here Y can hold X Ltd. Liable for the loss as they will be considered manufacturer of R computer under the Act.
- iii. A Ltd. based in Delhi was having a branch office in Chennai. It used to send components of computers to its Chennai branch which was assembling and selling them. B purchased a computer from Chennai branch which turned out to be defective. Here A Ltd. is responsible for the loss, and not the Chennai branch.

Generally when a consumer finds defect in the goods, he sues the person from whom he bought the goods. If the defect is a manufacturing defect, the consumer may sue the manufacturer also along with the seller. This is an option with the consumer. Thus the manufacturer is a possible party, and not a necessary party.

A complaint may be made against a trader who has charged a price in excess of the price:

- (a) fixed by or under any law for the time being in force, or
- (b) displayed on the goods, or
- (c) displayed on any package containing the goods.

For example –

- i. Government fixed control rate of milk at Rs.15 per litre in the month of June. A sold it at the rate of Rs.18 per litre in the same period. Price charged by A was excessive.
- ii. The price displayed on a one Kg. packet of salt was Rs.4. Suddenly there was paucity of salt in the market. A started selling the same at Rs.6 per kg. The price charged by A is excessive.

But when price of an article is not fixed by law, or when the same is not displayed on goods or on the package containing goods, no complaint can be made under the Act for excess pricing.

### **5.11. Hazardous Goods**

Hazardous means dangerous or risky. The term has not been defined under the Act.

The complainant has the right to file a complaint under the Act, if the goods that are hazardous to life and safety when used, are being offered for sale to the public, in contravention of any standard relating to safety of such goods as required to be complied with, by or under any law for the time being in force or if the trader could have known with due diligence that the goods so offered are unsafe to the public.

The complainant can also complain against the service provider for providing services that are hazardous to life and safety of the public when used and which the service provider could have known with due diligence to be injurious to life and safety.

### **5.12. Procedure to file Complaint**

The general procedure for filing a consumer complaint –

- Send a notice to the opposite party mentioning a time limit to settle the grievance though it is not compulsory.
- Prepare a complaint with the required details.
- Get the complaint affidavit notarized through a notary.
- Make required number of photocopies after notarizing.
- Prepare a bank draft from a nationalized Bank to pay court fee.
- Submit the complaint and court fee to the receiving clerk in the consumer court who will give the date for admission hearing and complaint reference number.
- On admission hearing, the complainant would be informed whether or not his matter is admitted. If admitted he will be given the date for next hearing.
- The court will send a notice with the complaint copy to the opposite party seeking reply within 30 days, and asking it to attend the hearing.
- The hearings will continue till the matter is decided.
- A copy of the court order will be communicated to all the parties by registered post.

#### **Jurisdiction for filing complaints**

- i. Where the value of goods or services and compensation, if any claimed is below Rs.20 lakhs, then it can be filed before the District Forum.
- ii. Where the value of goods or services and compensation, if any claimed is above Rs.20 lakhs but does not exceed Rs.1 crore, it can be filed before the State Commission.
- iii. Where the value of goods or services and compensation, if any claimed is above Rs.1 crore, it can be filed before the National Commission.

It is necessary for the person filing the complaint to get an acknowledgement indicating the date of filing the complaint, so as to show the Forum that the same has been filed within the period of limitation in terms of the provisions contained in the Act.

### **Procedure to file a complaint before the District Consumer Forum**

According to Sec.12, a complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by –

- (a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;
- (b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;
- (c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or
- (d) the Central or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

Where value of the goods or services and compensation exceeds Rupees up to 20 lakhs, the complaints can be filed with the Registry of District Consumer Forum. The Complaint should be accompanied by the necessary documents and verified affidavit of the Complainant

- Required copies: 4 +Sufficient additional sets for each Opposite Parties.
- Limitation: Complaint is to be filed within two years.
- Pecuniary Jurisdiction: up to Rs.20 lakhs.
- Court Fee:

- Up to one lakh Rupees – NIL who are under the Below Poverty Line holding Antyodaya Anna Yojana cards.
- up to Rs.1 Lakh : Rs.100/-
- Above Rs.1 lakh up to Rs.5 Lakhs : Rs.200/-
- Above Rs.5 lakhs up to Rs.10 Lakhs : Rs.400/-
- Above Rs.10 lakhs up to Rs.20 Lakhs : Rs.500/-

### **Procedure to file a complaint before the State Commission**

Where value of the goods or services and compensation exceeds Rupees from 20 lakhs up to one crore, the complaints can be filed with the Registry of State Commission. Complaint should be accompanied by the necessary documents and verified affidavit of the Complainant.

- Required copies: 4 + Sufficient additional Copies for each Opposite parties.
- Limitation: Complaint filed within two years from the cause of action arisen (personal/legal notice must serve to other side before filing the Case)
- Court Fee:
  - Above twenty lakhs and up to fifty lakhs : Rs. 2,000/-
  - Above fifty lakhs and up to one crore : Rs. 4,000/-

### **Procedure to file first appeal**

According to Sec.15, first appeal can be filed against the order of any District Forum within the State.

- Memorandum of grounds of Appeal along with correct name of parties their Addresses
- Certified copy of the District Consumer Forum order.
- No. Of copies required for filing the appeal: 4 + Sufficient additional Copies for each Respondents.

- Appeal to be filed within 30 days from the Date of receipt of District Consumer Forum Order
- Any Condone Delay/interim orders/Other Petitions to be submitted along with Affidavit with despondent signatures
- Statutory Deposit: Rs. 25,000/- or 50% of Award/Compensation amount whichever is less to be deposited by Appellant/Opposite Parties.
- Court fee is not required to file Appeal.

### **Procedure to file a Revision Petition**

According to Sec.17(1)(b), revision petition can be filed by challenging the Interlocutory Applications Orders of the District Consumer Fora while Complaint is pending at District Consumer Fora.

- Memorandum of Grounds of Revision Petition
- Certified copy of the IA order along with Petition, Complaint and counter on the file of District Consumer Forum
- No. of copies required for filing the Revision Petition: 4 + Sufficient Additional Copies for Respondents.
- Revision Petition to be filed within 90 days.
- Court fee is not required to file Revision Petition.

### **Procedure to file a complaint before the National Commission**

Consumer Complaint as provided under Section 21(a)(i) of the Consumer Protection Act, 1986, where the value of the goods or services and compensation, if any, claimed, exceeds Rupees One Crore, is to be filed in with the Registry of the National Commission within a period of two years from the date on which the cause of action has arisen. Complaint can be filled on all working days (Monday to Friday) between 10:00 A.M. to 4:30 P.M. at Ground Floor 'Upbhokta Nyay Bhawan', 'F' Block, General Pool Office Complex, INA, New Delhi-110 023. Consumer Complaint should be signed by the complainant and supported by a Notarised attested affidavit with 1+3 sets + Number of Opposite Parties. (with file cover).

The Consumer Complaint along with all the copies should be appropriately numbered and duly indexed in the following manner –

- i. Index
- ii. List of Dates
- iii. Memo of Parties (with fresh complete addresses)
- iv. Complaint with Notarised attested affidavit
- v. Supporting documents in favour of complaint e.g. receipt, voucher etc. (All the Annexures must be attested as True Copy on the last page with name & signature)
- vi. Application for condonation of delay with Notarised attested affidavit, if beyond limitation. (2 years from cause of action)
- vii. Fee for Rs.5,000/- for making Consumer Complaint (Demand Draft in favour of “The Registrar, NCDRC, New Delhi”)

The following also need to be followed while filing a complaint -

- i. The documents should be filed in English only or translated copy of any other language, duly typed in double space on one side of the paper. If any supporting documents are not legible the same will not be accepted until clear legible/photo copies are filed.
- ii. If the documents are not filed as per in the format mentioned above the same will be returned to the parties at the counter itself without acknowledgement and will only be registered after removing the defects.
- iii. After the issue of notice, any documents in a case, the same has to be served on the other side and 1+3 sets be filed with proof of service. No document will be accepted unless filed two days (working days) in advance from the date of hearing.
- iv. The counsel or the parties appearing in person are filing a common petition / appeal against common order passed by the State Commission in a bunch of appeals / complaints. It causes inconvenience to the Hon’ble Benches to decide the independent issues pertaining to each matter, such as award of different amounts to different

parties, etc. Hence, the Hon'ble President is pleased to direct the parties / Counsel to file independent or separate appeals/revision petitions, against each appeal/complaint decided by the State Commission in the common order.

- v. Number of copies to be filed in the Commission 1+3 sets + Number of Opposite Parties (with File cover).
- vi. Caveat Application filed in the Commission in Revision Petition and First Appeal has to be filed in 1+3 sets along with proof of service on Opposite Parties and also copy of order of the State Commission.
- vii. Application for Certified copy of order must be made on Letter Head with signature & Rubber stamp by counsel with a statement that first free certified copy has not been received either by the party-in-person or their counsel.
- viii. Duplicate certified copy shall be issued on payment basis as per Regulation with a clear endorsement that earlier first free certified copy was sent by post at the address of the party-in-person or to their Counsel / Authorized Representative.



## **6. CONSUMER PROTECTION BILL, 2015**

With a view to widen the ambit and amplify the scope of the Consumer Protection Act and to modernise the legislation on consumer protection to keep pace with the changes in markets; ensure fair, equitable and consistent outcomes for consumers; enable swift executive intervention in the nature of class action both to prevent consumer detriment and to provide redress to consumers, it has been felt necessary to replace the existing Consumer Protection Act, 1986 by way of introducing a fresh Bill, namely, the Consumer Protection Bill, 2015 by repealing the Consumer Protection Act, 1986.

The Consumer Protection Bill, 2015, was introduced in Lok Sabha on August 10, 2015 by the Minister of Consumer Affairs, Food and Public Distribution. The Bill has been referred to the Parliamentary Committee on August 26<sup>th</sup> 2015 and is expected to submit its report within three months.

The Consumer Protection Bill, 2015 provides for the establishment of an executive agency to be known as the Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers; make interventions when necessary to prevent consumer detriment arising from unfair trade practices and to initiate class action including enforcing recall, refund and return of products. This fills an institutional void in the regulatory regime extant. Currently, the task of prevention of or acting against unfair trade practices is not vested in any authority. This has been provided for in a manner that the role envisaged for the CCPA complements that of the sector regulators and duplication, overlap or potential conflict is avoided.

In the Bill, provisions for “product Liability” action for or on account of personal injury, death, or property damage caused by or resulting from any product has been added. The basis for product liability action and the liability of a manufacturer to a claimant have been provided. The provision of “Mediation” as an Alternate Dispute Resolution Mechanism has been added. This is aimed at giving legislative basis to resolution of consumer disputes through mediation, thus making the process less cumbersome, simple and faster. This will be done under the aegis of the consumer courts.

The Bill provides for several provisions aimed at simplifying the consumer dispute adjudication process of the Consumer Grievance Redressal Agencies. These include, among others:—

- (i) enhancing the pecuniary jurisdiction of the Consumer Grievance Redressal Agencies;
- (ii) increasing minimum number of Members in the consumer courts to facilitate fast disposal of complaints;
- (iii) power to review their own orders by the State and District Commission;
- (iv) constitution of 'Circuit Bench' to facilitate faster disposal of complaints;
- (v) reforming the process for the appointment of the President and Members of the District Commission;
- (vi) enabling provisions for consumers to file complaints electronically; and,
- (vii) file complaints in consumer courts that have jurisdiction over the place of residence of the complainant, and deemed admissibility of complaints, if the question of admissibility is not decided within the specified period of 21 days.

## **7. RIGHT TO INFORMATION ACT, 2005**

The basic object of the Right to Information Act (RTI Act) is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

Right to Information has been given the status of a fundamental right under Article 19(1) of the Constitution. Article 19(1) under which every citizen has freedom of speech and expression and have the right to know how the government works, what role does it play, what are its functions and so on.

Under the provisions of the RTI Act, any citizen may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerise their records for wide dissemination and to act proactively for certain categories of information so that the citizens need minimum recourse to request for information formally.

### **Who is a public authority?**

Public authorities are the repository of information which the citizen have right to have under the Right to Information Act, 2005. Right to Information and Obligations of Public Authorities are covered under Chapter II of the RTI Act.

A "public authority" is any authority or body or institution of self-government established or constituted by or under the Constitution; or by any other law made by the Parliament or a State Legislature; or by notification issued or order made by the Central Government or a State Government. The bodies owned, controlled or substantially financed by the Central Government or a State Government and non-Government organisations substantially financed by the Central Government or a State Government also fall within the definition of

public authority. The financing of the body or the NGO by the Government may be direct or indirect. (Sec.2(h) of the RTI Act, 2005)

The Act casts important obligation on public authorities so as to facilitate the citizens or the country to access the information held under their control. The obligations of the authority are basically the obligations of the head of the authority, which should ensure that these are met in right earnest.

### **What is Information?**

Information is any material in any form. It includes records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form. It also includes information relating to any private body which can be accessed by the public authority under any law for the time being in force. . (Sec.2(f) of the RTI Act, 2005)

### **Right to Information under the Act**

1. A citizen has the right to seek such information from a public authority which is held by the public authority or which held under its control. This right includes inspection on work, documents and records; taking notes, extracts or certified copies of documents or records; and taking certified samples of material held by the public authority or held under control of the public authority.
2. The Act gives the citizen a right to information at par with the Members of Parliament and the Members of State Legislatures. According to the Act, the information, which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person.
3. A citizen has a right to obtain an information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print-outs provided such information is already stored in a computer or in any other device from which the information may be transferred to diskettes etc.
4. The information to the applicant should ordinarily be provided in the form in which it is sought. However, if the supply of information sought in a particular form would disproportionately divert the resources of the public authority or may cause harm to

the safety or preservation of the records, supply of information in that form may be denied.

5. The Act gives the right to information only to the citizen of India. It does not make provision for giving information to Corporations, Associations, and Companies etc. which are legal entities/persons, but not citizens. However, if an application is made by an employee or office - bearer of any Corporation, Association, Company, NGO etc. indicating his name and such employee/office bearer is a citizen of India, information may be supplied to him/her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation etc.
6. Only such information is required to be supplied under the Act which already exists and is held by the public authority or held under the control of the public authority, It is not required under the Act to create information; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.

### **Information exempted from disclosure**

Sec.8 covers the types of information that is exempted from disclosure.

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

Subject to the provisions of above, any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section.

### **Maintenance and Computerisation of Records**

Proper management of records is of utmost importance for effective implementation of the provisions of the Act. A public authority should, therefore, maintain all its records properly. It should ensure that the records are duly catalogued and indexed in such a manner and from that it may facilitate the right to information.

The public authority should computerize all its records which are appropriate to be computerized. Record so computerized should be connected through a network on different systems so that access to such records is facilitated.

### **Suo Motu Disclosure by Public Authority**

Every public authority should provide as much information suo motu to the public through various means of communications so that the public have minimum resort to the use of the Act to obtain information. Internet being one of the most effective means of communications, the information may be posted on the website.

Section 4(1)(b) of the RTI Act, requires every public authority to publish following sixteen categories of information:

- i. the parliament of its organization, functions and duties;
- ii. the powers and duties of its officers and employees;
- iii. the procedure followed in the decision making process, including channels of supervision and accountability;
- iv. the norms set by it for the discharge of its functions;
- v. the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- vi. a statement of the categories of document that are held by it or under its control;
- vii. the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- viii. a statement of the boards, councils, committees and other bodies consisting of two more persons constituted as part or for the purpose of its advice, and as to whether

meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

- ix. directory of its officers and employees;
- x. the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- xi. the budget allocated to each of its agency, indicating the particulars of all plans, proposes expenditures and reports on disbursements made;
- xii. the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- xiii. particulars of recipients of concessions, permits or authorizations granted by it;
- xiv. details in respect of the information, available to or held by it, reduced in an electronic form;
- xv. the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- xvi. the names, designations and other particulars of the Public Information Officers;

**Besides the categories of information enumerated above, the Government has issued guidelines that the following categories of information may be published by the public authorities:**

- i. Information relating to procurement
- ii. Public Private Partnerships
- iii. Transfer Policy and Transfer Orders
- iv. RTI Applications
- v. CAG & PAC paras
- vi. Citizens Charter
- vii. Discretionary and Non-discretionary grants



viii. Foreign Tours of PM/Ministers and senior officers

Another important point to note is that it is not sufficient to publish the above information once. The public authority is obliged to update such information every year. It is advisable that, as far as possible, the information should be updated as and when any development takes place. Particularly, in case of publication on the internet, the information should be kept updated all the time.

It need be stressed that publication of the information as referred to above is not optional. It is a statutory requirement which every public authority is bound to meet.

Proactive disclosure should be done in the local language so that it remains accessible to public. It should be presented in a form that is easily understood and if technical words are used they should be carefully explained. As provided in section 4, disclosure should be made in as many mediums as feasible such as notice boards, newspapers, public announcements, media broadcast, the internet or any other means. The disclosures should be kept up to date. The disclosure of Information may be made keeping in mind the provisions of Section 8 to 11 of the RTI Act.

(Sec.8 - Exemption from disclosure of information; Sec.9 - Grounds for rejection to access in certain cases; Sec.10 – Severability; Sec.11 - Third party information)

Every public authority should keep in view that Proactive disclosures on its website are complete, easily accessible, technology and platform neutral and in a form which conveys the desired information in an effective and user-friendly manner.

Each Central Ministry/ Public Authority should get its proactive disclosure package audited by third party every year. Such audit should be communicated to the Central Information Commission annually through publication on their own websites. All Public Authorities should proactively disclose the names of the third party auditors on their website. For carrying out third party audit through outside consultants also, Ministries/Public Authorities should utilize their plan/non-plan funds.

Each Central Ministry/ Public Authority should appoint a senior officer not below the rank of a Joint Secretary and not below rank of Additional HOD in case of attached offices for ensuring compliance with the proactive disclosure guidelines.

### **Publication of facts**

Public authorities formulate policies and take various decisions from time to time. As provided in the Act, while formulating important policies or announcing the decisions affecting the public, the public authority should publish all relevant facts about such policies and decisions for the information of public at large.

### **Reasons for decisions**

The public authorities take various administrative and quasi-judicial decisions which affect the interests of certain persons. It is mandatory for the concerned public authority to provide reasons for such decisions to the affected persons. It may be done by using appropriate mode of communication.

### **Designation of PIOs, APIOs & Appellate Authority**

Every public authority is required to designate Public Information Officers in all the administrative units or offices under it. Every public authority is also required to designate Assistant Public Information Officers at each sub-divisional level.

All the public authorities should also designate the First Appellate Authorities and publish their particulars along with the particulars of the Public Information Officers.

### **Creation of RTI Cell**

Section 5(1) of the Right to Information Act, 2005 mandates all public authorities to designate as many Public Information Officers as necessary to provide information under the Act. Where a public authority designates more than one Public Information Officer (PIO), an applicant is likely to face difficulty in approaching the appropriate Public Information Officer. The applicants would also face problem in identifying the officer senior in rank to the Public Information Officer to whom an appeal under sub-section (1) of Section 19 of the Act can be made. Therefore all public authorities with more than one PIO should create a RTI Cell within the organisation to receive all the RTI applications and first appeals and to route them to the concerned PIOs/FAAs.

## **8. OVERVIEW OF THE MRTP ACT, 1969**

The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) was an Act that provided that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto. The Act was later repealed after the enactment of the Competition Act, 2002.

### **Objectives of MRTP Act**

The principal objectives sought to be achieved through the MRTP Act were:

- (a) Prevention of concentration of economic power to the common detriment;
- (b) Control of monopolies;
- (c) Prohibition of monopolistic trade practices;
- (d) Prohibition of restrictive trade practices;
- (e) Prohibition of unfair trade practices.

Out of these five, the first two were de-emphasized, after the 1991 amendment to the Act. The emphasis not only shifted to the last three mentioned objectives but they were re-emphasized to the extent that monopolies tend to bring about monopolistic trade practices and the Act provides for their surveillance. Briefly, the Act was designed to guard against different aspects of market imperfections. For instance, a merger, which can increase the dominance of the combine or has resulted in a large share in the market, can be looked at in terms of the provisions of the Act and the objectives governing them.

### **Restrictive Trade Practices (RTPs)**

A restrictive trade practice is generally one which has the effect of preventing, distorting or restricting competition. In particular, a practice which tends to obstruct the flow of capital or resources into the stream of production is an RTP. Likewise, manipulation of prices,

conditions of delivery or flow of supply in the market which may have the effect of imposing on the consumer unjustified costs or restrictions are regarded as restrictive trade practices.

Certain common types of restrictive trade practices enumerated in the Act which do not have an element of competition are:

- a) Refusal to deal;
- b) Tie-up sales;
- c) Full line forcing;
- d) Exclusive dealings;
- e) Concert or collusion-cartel;
- f) Price discrimination;
- g) Re-sale price maintenance;
- h) Area restriction;
- i) Predatory pricing.

### **Unfair Trade Practices (UTPs)**

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. (Section 36A of MRTP Act)

Essentially unfair trade practices fall under the following categories:

- a) Misleading advertisement and false representation;
- b) Bargain sale, bait and switch selling;
- c) Offering of gifts or prizes with the intention of not providing them and conducting promotional contests;
- d) False representation of the product's safety standards;

- e) Hoarding or destruction of goods.

Making false or misleading representation of facts disparaging the goods, services or trade of another person is also an unfair trade practice under MRTP Act.

### **Monopolistic Trade Practices (MTPs)**

Monopolistic Trade Practice is a trade practice which has or is likely to have the effect of:

- i. maintaining the prices of goods or charges for the services at an unreasonable level by limiting, reducing or otherwise controlling the production, supply or distribution of goods or the supply of any services or in any other manner;
- ii. unreasonably preventing or lessening competition in the production, supply or distribution of any goods or in the supply of any services;
- iii. limiting technical development or capital investment to the common detriment or allowing the quality of any goods produced, supplied or distributed, or any services rendered, in India to deteriorate;
- iv. increasing unreasonably:
  - a. the cost of production of any goods; or
  - b. charges for the provision, or maintenance of any services;
- v. Increasing unreasonably:
  - a. the prices at which goods are, or may be, sold or re-sold, or the charges at which the services are, or may be, provided; or
  - b. the profits which are, or may be, derived by the production, supply or distribution (including the sale or purchase) of any goods or in the provision or maintenance of any goods or by the provision of any services;
- vi. preventing or lessening competition in the production, supply or distribution of any goods or in the provision or maintenance of any services by the adoption of unfair methods or unfair or deceptive practices.

### **Merger and amalgamation**

The MRTP Act did not prohibit mergers, amalgamations or takeovers but sought to ensure that the arrangement served the public interest. Before the 1991 amendment, the Act frowned upon expansion of giant undertakings so as not to permit them to acquire power to put a stranglehold both on the market as well as on consumers and further industrial expansion of the country. After the 1991 amendment, the Act was restructured and pre-entry restrictions with regard to prior approval of the Government for amalgamation, merger or take-over were removed. But in relation to concentration of economic power, the law retained provisions relating to the power of the Government to direct division of an undertaking and severance of interconnection between undertakings if the working of an undertaking is prejudicial to public interest or is likely to lead to the adoption of any monopolistic or restrictive trade practices. While the power to conduct an enquiry in this regard was vested with the MRTP Commission, the order for division of undertaking or severance of interconnection could be passed only by the Government. Thus, the role of the Commission was advisory.

## **9. OVERVIEW OF THE COMPETITION ACT, 2002**

As the Indian economy moved from a regulated regime towards an open market regime, there was an urgent requirement to enact legislation for fostering competition and preventing anti-competition activities. In line with the international trend and to cope up with the changing realities, the existing Monopolies and Restrictive Trade Practices Act, 1969 was repealed and the Competition Act, 2002 was enacted.

The objective of Competition Act, 2002 is to position the competition policy with pragmatic options to promote the spirit of competition and harmonize the conflicts caused by the volatility of globalised markets. The Act provides for a regulatory framework of rules covering the critical areas of competition namely:

- Anti-competitive agreements among enterprises
- Abuse of dominant position in the market
- Combinations / mergers between enterprises

Competition Act, 2002 aims at promoting free and fair competition in India and to protect the interests of consumers. The act provides for the establishment of a regulatory body called the “Competition Commission of India” with the basic functions of administration and enforcement of law and competition advocacy. Competition Act, 2002 is a comprehensive enactment addressing contemporary concerns of competition and future possibilities that impact the sustainable economic development. Apart from dealing with the competition misconduct, the Act also envisages a promotional role. The Competition Commission of India has an advocacy role in advising Government and creating awareness and imparting training on competition issues.

### **Important provisions under the Competition Act, 2002**

#### **Prohibition of Anti-Competitive Agreements**

The Act assertively prohibits agreements which cause or are likely to cause an appreciable adverse effect on competition within India. Anti-competitive agreements fall under two major categories namely Horizontal Agreements and Vertical Agreements.

### **1) Horizontal Agreements**

Horizontal agreements are agreements among competitors which are at the same stage of production and in the same market. The following acts come under Horizontal agreements:

- Price fixing
- Limited production, supply
- Bid rigging / collusive bidding
- Market Sharing

### **2) Vertical Agreements**

Vertical agreements on the other hand, denote an actual or potential relationship of buying or selling to each other which are at different stages or levels of production chain and therefore in different markets. It is not necessary that agreements in question should be a formal or written agreement. Proof of circumstantial evidence is sufficient. The following is a list of Vertical agreements:

- i. Tie-in-agreements – requiring the purchaser of goods to purchase different goods not required by the purchaser. (Sec.3(4)(a))
- ii. Exclusive supply agreements – restraining any dealing in goods other than those of seller. (Sec.3(4)(b))
- iii. Exclusive distribution agreements – limits or restricts output or supply of goods, allocation of area or market (Sec.3(4)(c))
- iv. Refusal to deal – restricts the classes of customer or sellers (Sec.3(4)(d))
- v. Resale price maintenance – price stipulated by seller to the purchaser on onward resale. (Sec.3(4)(e))

### **3) Cartels**

Cartels are bad per se and pose grave threat to competition by distorting free trade. Cartels affect the developing countries more as favorable conditions exist when there are few competitors; products are uniform and leave little scope for competition; existence of communication chances between members; market is hit by either excess capacity or general recession.



Sec.2(c) of the Competition Act, 2002 defines Cartel as – “an association of producers, sellers, distributors, traders or service providers who by agreement among themselves limit, control or attempt to control production, distribution sale or price of trade in goods or provision of services.”

Anti-competitive agreements among cartels engaged in identical or similar trade of goods or provision of services in the following areas are prohibited. (Sec.3(3))

- Determining purchase or sale prices (Sec.3(3a))
- Limiting or controlling production / supply markets technical development, investment or provision of services (Sec.3(3b))
- Sharing of market / sharing of source of production by allocation of geographical areas, number of customer or types of goods or services (Sec.3(3c))
- Resorting to bid rigging or collusive bidding (Sec.3(3d))

### **Prohibition of abuse of dominant position**

Abuse of dominant position refers to the market power of an enterprise to exercise leverage through exploitative and protective business practices. If an enterprise indulges in maneuvers of imposing unfair or discriminatory pricing and imposes barriers for new entrants into relevant market, it attracts the penal provisions of the Act. Sec.4 of the Act explicitly prohibits the abuse of dominant position. There will be an abuse of dominant position, if an enterprise or group acts in the following manner:

- i. Conditioning purchase or sale of goods or service;
- ii. Predatory pricing of goods or services;
- iii. Restricting production of goods or provision of services or market there for;
- iv. Restricting technical or scientific development relating to goods or services to the prejudice of consumers;
- v. Indulging in practice or practices resulting in denial of market access;
- vi. Concluding contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts;

- vii. Using its dominant position in one relevant market to enter into, or protect, other relevant market.

"Dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to -

- (i) Operate independently of competitive forces prevailing in the relevant market; or
- (ii) Affect its competitors or consumers or the relevant market in its favour.

Predatory price means the sale of goods or provision of services at a price which is below the cost, as may be determined by regulations, of production of goods or provision of services, with a view to reduce competition or eliminate the competitors.

"Group" means two or more enterprises which, directly or indirectly, are in a position to - (i) exercise twenty-six per cent. or more of the voting rights in the other enterprise; or

(ii) appoint more than fifty per cent. of the members of the board of directors in the other enterprise; or

(iii) control the management or affairs of the other enterprise;

### **Regulation of combinations**

Sec.5 of Competition Act, 2002 provides for pre-empting the potential abuse of dominance. A combination is required to be notified to the Competition Commission of India for its approval. For this purpose, the combinations are classified into two groups.

- i. Acquisition of one or more enterprises
- ii. Merger or amalgamation

The test of validity of acquisition is based on the size of assets and turnover of the parties:

Group I – Parties to the acquisition have assets of more than rupees one thousand crores or turnover more than rupees three thousand crores, (Sec.5(a)(i)(A), or assets of the value of

more than Five hundred million US dollars, including at least Rupees Five hundred crores in India or turnover more than fifteen hundred million US dollars, including at least Rupees fifteen hundred crores in India. (Sec.5(a)(i)(B).

Group II - Assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores (Sec.5 (a)(ii)(A), or, assets of the value of more than two billion US dollars, including at least Rupees five hundred crores in India or turnover more than six billion US dollars, including at least Rupees fifteen hundred crores in India. (Sec.5(a)(ii)(B).

The test of validity of merger is based on the size of assets and turnover of the parties:

Group I – Acquisition value of assets of more than rupees one thousand crores or turnover more than rupees three thousand crores after acquisition, (Sec.5(c)(i)(A), or, after acquisition jointly owned assets of five hundred million US dollars, including at least Rupees five hundred crores in India or turnover more than fifteen hundred million US dollars, including at least Rupees fifteen hundred crores in India, (Sec.5(c)(i)(B).

Group II – Assets of value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores, (Sec.5(c)(ii)(A), or, assets of value more than two billion US dollars including at least Rupees five hundred crores in India or turnover more than six billion US dollars including at least Rupees fifteen hundred crores in India, (Sec.5(c)(ii)(B).

### **Agreements not anti-competitive**

Agreements permitted by law are not anti-competitive. The Act gives due recognition to intellectual property rights, wherein the prohibition against anticompetitive agreements will not restrict the right of any person to restrain any infringement of, or to impose reasonable conditions as may be necessary for protecting, any rights under the following legislations:

- a. The Copyright Act 1957,
- b. The Patents Act, 1970
- c. The Trade Marks Act, 1999

- d. The Geographical Indications of Goods (Registration and Protection) Act, 1999
- e. The Designs Act, 2000
- f. The Semi-conductor Integrated Circuits Layout-Design Act, 2000

Thus any agreement for the purpose of restraining infringement of such Intellectual Property Rights or for imposing reasonable conditions for protecting such rights will not be subject to the prohibition against anticompetitive agreements. (Section 3(5)(i) of Competition Act, 2002).

Similarly, exports enjoy exemptions from such prohibition, which will not apply to the right of any person to export goods from India to the extent to which the agreement relates exclusively to the export of goods or services. (Section 3(5)(ii) of Competition Act, 2002).

#### **Inquiry by Competition Commission**

Section 19 empowers the Commission to inquire in to any alleged contravention of the **prohibition of anti-competitive agreements** under Sec.3 of the Competition Act, 2002. It can do on its own motion or on receipt of a complaint from any person, consumer or their association or trade association; or a reference made to it by the Central Government or a State Government or a statutory authority.

While determining whether an agreement has an appreciable adverse effect on competition, the Commission will take into consideration all or any of the following factors, namely:—

- a. creation of barriers to new entrants in the market;
- b. driving existing competitors out of the market;
- c. foreclosure of competition by hindering entry into the market;
- d. accrual of benefits to consumers;
- e. improvements in production or distribution of goods or provision of services;
- f. promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Where after inquiry the Commission finds that any agreement is in contravention of section 3, it may pass all or any of the following orders, namely:—

- (a) Direct any enterprise or association of enterprises or person or association of persons, as the case may be involved in such agreement to discontinue and not to re-enter such agreement;
- (b) Impose such penalty, as it may deem fit which shall not be more than ten per cent of the average annual turnover of the last three preceding financial years, up on each such person or enterprises which are parties to such agreement.
- (c) Direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order of the Commission;
- (d) Direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;
- (e) Pass such orders as it may deem fit.

Section 19 empowers the Commission to inquire in to any **alleged contravention of abuse of dominant position** under section 4 of the Competition Act, 2002. It can do on its own motion or on receipt of a complaint from any person, consumer or their association or trade association; or a reference made to it by the Central Government or a State Government or a statutory authority. Where after inquiry the Commission finds that action of an enterprise in a dominant position is in contravention of section 4, it may pass all or any of the following orders, namely:—

- (a) Direct any enterprise or association of enterprises or person or association of persons, as the case may be involved in abuse of dominant position to discontinue such abuse of dominant position.
- (b) Impose such penalty, as it may deem fit which shall not be more than ten per cent of the average annual turnover of the last three preceding financial years, up on each such person or enterprises which are parties to such abuse.

(c) Direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any.

(d) Pass such orders as it may deem fit.

Section 20(4) of the Competition Act, 2002 stipulates that the Competition Commission while inquiring whether a **combination** would have an appreciable adverse effect on competition in the relevant market should consider all or any of the following factors, namely:—

- (a) actual and potential level of competition through imports in the market;
- (b) extent of barriers to entry into the market;
- (c) level of combination in the market;
- (d) degree of countervailing power in the market;
- (e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- (f) extent of effective competition likely to sustain in a market;
- (g) extent to which substitutes are available or are likely to be available in the market;
- (h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- (i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
- (j) nature and extent of vertical integration in the market;
- (k) possibility of a failing business;
- (l) nature and extent of innovation;

(m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;

(n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

### **Appeals**

The Central Government has notified a Competition Appellate Tribunal (COMPAT) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under specified sections of the Act, such as orders relating to notification of combination, inquiry by the Commission and penalties. An appeal has to be filed within 60 days of receipt of the order / direction / decision of the Commission.

## **10. AUTHORITIES / ORGANISATIONS RELATED TO CONSUMER PROTECTION**

### **10.1. Department of Consumer Affairs (DCA)**

Department of Consumer Affairs (DCA) is one of the two Departments under the Ministry of Consumer Affairs, Food & Public Distribution. It was constituted as a separate Department in June 1997 as it was considered necessary to have a separate Department to give a fillip to the nascent consumer movement in the country.

The Department has been entrusted with the following work -

- Internal Trade
- The Essential Commodities Act, 1955 (Supply, Prices and Distribution of Essential Commodities not dealt with specifically by any other Department)
- Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980
- Regulation of Packaged Commodities
- Training in Legal Metrology
- The Emblems and Names (Prevention of Improper Use) Act, 1952
- Implementation of Standards of Weights and Measures - The Legal Metrology Act, 2009
- Implementation of Bureau of Indian Standards Act, 1986
- Laying down specifications, standards and codes and ensuring quality control of bio-fuels for end uses
- Consumer Cooperatives
- Implementation of Consumer Protection Act, 1986
- Monitoring of prices and availability of essential commodities
- National Test House



### **10.1.1. CONFONET Scheme**

The CONFONET project (Computerization and Computer Networking of Consumer Forums in Country) has been implemented in the backdrop of The Consumer Protection Act, 1986. Under the provision of the Act, quasi-judicial machinery, namely, Consumer Forums at the district level and Consumer Dispute Redressal Commissions at the State and National Level were setup. The project was initiated and an Executive Finance Committee (EFC) was prepared to provide a turnkey solution at each of the district forum, state commission & national level, including linkages with respective state and central governments.

The project aims at improving operational efficiency, co-ordination, accessibility, speed in judicial administration and to set Information Communication Technology (ICT) infrastructure at Consumer Redressal forums all over India. It aims at providing:

- E- Governance
- Efficiency
- Transparency
- Systematizing of working
- To achieve time bound delivery of justice to the consumers.

The Confonet Project is a technical solution for development and implementation of a computer network based system for the application areas with main focus on Case Monitoring.

The activities undertaken as part of the project include:

1. System study, design & development of Case Monitoring System, the standardized application software for NCDRC, SCDRCs and District Forums
2. Specification finalization and supply of suitable Hardware for each of the 629 locations in phases depending on the readiness of the site
3. Procurement & supply of system software
4. Networking including both LAN & WAN
5. Training of staff on computer awareness & application usage
6. Onsite deployment support through trained technical manpower posted at field locations

### **10.1.2. National Consumer Helpline**

National Consumer Helpline (NCH) is a project of the Union Ministry of Consumer Affairs that operates under the Centre for Consumer Studies at Indian Institute Of Public Administration. The Project recognizes the need of consumers for a Telephone Helpline to deal with multitude of problems arising in their day-to-day dealings with business and service providers.

NCH provides a National Toll Free No-1800-11-4000. SMS can also be sent to +918130009809 (charges apply) mentioning the name and city. A consumer can call to seek information, advice or guidance for his queries and complaints.

National Consumer Helpline supports consumers by –

- Guiding consumers in finding solutions to problems related to Products & Services.
- Providing information related to Companies and Regulatory Authorities.
- Facilitating consumers in filing complaints against defaulting Service Providers
- Empowering consumers to use available Consumer Grievances Redressal Mechanisms, Educating Consumers about their Rights and Responsibilities

It advises consumers on dealing with problems related to defective products, deficiency in services and unfair trade practices. The Helpline follows a three-tier approach.

- 1) First the consumer is informed of his rights in a particular consumer problem and who she/he should approach in the concerned company or the organization.
- 2) If the problem remains unresolved he/she would be directed to take up the matter with industry level bodies or chambers of commerce, industry regulators (as they exist in sectors like insurance and banking) or Govt. officials who are in charge of the relevant industrial sector.
- 3) As a last resort, the consumers will be advised to take their case to consumer courts under the Consumers Protection Act. This helpline is designed to promote avenues of out of court settlement of consumer disputes and resultantly helps to reduce the burden on consumer courts.

### **10.1.3. Council for Fair Business Practice**

The CFBP is the brainchild of leading industrialists like Mr. J. R. D. Tata, Mr. S. P. Godrej, Mr. Ramakrishna Bajaj, Mr. Arvind Mafatlal, Mr. Harish Mahindra and Mr. S. L. Kirloskar who recognized the imperative need for business and industry to regulate itself. Born on October 2, 1966, it is probably the only organization of businessmen and professionals who function for the benefit of the consumers.

The CFBP seeks to create an environment where business confidence is built through best business practices and fostered in an atmosphere of trust and respect between business and professionals, on the one hand, and consumers and other stakeholders on the other hand. Towards this end, it works to promote the highest ethical standards in business and professions, maximum transparency, objective consideration of consumers' viewpoints as well as satisfying consumers with prompt, efficient and friendly service at a reasonable price. A Code of Conduct for businessmen to this effect has been formulated.

The Department of Consumer Affairs, Ministry of Food & Agriculture, Government of India, has recognized the CFBP and extended a grant to enable it to step up redressal of consumer complaints and conduct education programmes for the benefit of consumers. An MOU has been signed between the Department of Consumer Affairs and the CFBP at the Office of the Department in New Delhi.

The relevance of the CFBP could not be greater than it is today, especially in the prevailing climate in the country. Indeed, it was a crucial time to reiterate the importance of fair business practices. This is simply not because fair business practices had become something desirable or good to do but because there is a more pragmatic and immediate reason. The perception of a company as being well governed, fair and ethical has become a definite differentiator in ensuring higher valuation of that company. Companies have now recognized that they are not answerable to their shareholders alone and that responsibility to stakeholders - employees, suppliers, customers and the community around - makes a vital difference. They have also realized that good governance extends to the environment, not simply because doing it looks good, but because of the impact on a company's reputation and the huge payouts in compensation that could ensue.

Many companies are lagging behind in their ability to deal with customers and have tended to take customers for granted or misuse situations to get as much as they can out of them. There is need for a greater consciousness to ensure happy, long term relationships with customers as well as not just customer satisfaction but customer delight.

Companies have realized that service has become a key differentiator and that, irrespective of how good a product is; service after a sale makes the difference between good or adverse word-of-mouth publicity. As a result, service levels have consequently increased. Consumers have also become more demanding because competition has increased and have sought to make companies accountable for lapses in service and performance. Resolution of disputes between consumers and companies has become more crucial today.

In the light of the above, it is imperative that the fair business practices movement and safeguarding of consumer rights should be given even greater impetus.

## **10.2. Consumer Courts**

The Consumer Protection Act, 1986 provides for a three tier approach in resolving consumer disputes. There are 3 levels of consumer courts namely:

- a) National Consumer Dispute Redressal Commission or National Commission: Value of claims above Rs.1 crore
- b) State Consumer Dispute Redressal Commission or State Commission: Value of claims from Rs.20 lakhs to Rs.1 crore
- c) District Consumer Disputes Redressal Forum or District Forum: Value of claims upto Rs.20 Lakhs

District Forum and State Commission are formed by States with the permission of the Central Government while the National Commission is formed by the Central Government. Presently there are 629 District Forums and 35 State Commissions with the National Consumer Disputes Redressal Commission (NCDRC) at the apex.

Each District Forum is headed by a person who is or has been or is eligible to be appointed as a District Judge and each State Commission is headed by a person who is or has been a Judge of High Court.

The National Commission was constituted in the year 1988. It is headed by a sitting or retired Judge of the Supreme Court of India. The National Commission is presently headed by Hon'ble Mr. Justice D. K. Jain, former Judge of the Supreme Court of India as President and has ten Members,

Consumer Fora proceedings are summary in nature. The endeavour is made to grant relief to the aggrieved consumer as quickly as in the quickest possible, keeping in mind the provisions of the Act which lay down time schedule for disposal of cases.

If a consumer is not satisfied by the decision of a District Forum, he can appeal to the State Commission. Against the order of the State Commission a consumer can come to the National Commission.

In order to help achieve the objects of the Consumer Protection Act, the National Commission has also been conferred with the powers of administrative control over all the State Commissions by calling for periodical returns regarding the institution, disposal and pendency of cases. The National Commission is empowered to issue instructions regarding (1) adoption of uniform procedure in the hearing of the matters, (2) prior service of copies of documents produced by one party to the opposite parties, (3) speedy grant of copies of documents, and (4) generally over-seeing the functioning of the State Commissions and the District Forums to ensure that the objects and purposes of the Act are best served, without interfering with their quasi-judicial freedom.

**Total number of consumer complaints filed/disposed since inception under Consumer Protection Law (as on 01/06/2015)**

<b>Name of Forum</b>	<b>Cases filed since inception</b>	<b>Cases disposed of since inception</b>	<b>Cases pending</b>	<b>% of total disposal</b>
National Commissions	95380	85434	9946	89.57%
State Commissions	679742	590320	89422	86.84%
District Forums	3536770	3263760	273010	92.28%

### **10.3. Consumer Protection Councils**

The Consumer Protection Councils are created to advise and assist the consumers in seeking and enforcing their rights. Consumer Protection Councils have been created both at the Centre level and State level; that is one Central Council and many State Councils.

These councils work towards the promotion and protection of consumers. They make investigations and give publicity to the matters concerning consumer interests, take steps towards furthering consumer education and protecting consumer from exploitation, advice the Government in the matter of policy formulation keeping consumer interest as pivotal concern, etc. Although their suggestions are recommendatory in nature, they have significant impact in policy making.

While deciding about the composition of these councils, the State keeps in mind that it should have proper representation from all the possible areas affecting consumer interests.

The objects of the Central Consumers Protection Council and State Consumers Protection Councils are to promote and protect the rights of the consumers, such as:

- (a) The right to be protected against 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 consumers' interest will receive due consideration at appropriate forum.
- (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 objects of a State Consumer Protection Council are to promote and protect within the state the rights of the consumers.

#### **Central Council (Sec. 4 of Consumer Protection Act, 1986)**

The Central Council will be composed of the following members –

- The Minister in charge of Consumer Affairs of the Central government will be the Chairman of the Central Council.
- The Minister of State (where he is not holding independent charge) or Deputy Minister (in charge of Consumer Affairs in the Central Government] will be the Vice-Chairman of the Central Council;
- Minister in-charge of Consumer Affairs in States;
- eight Members of Parliament - five from the Lok Sabha and three from the Rajya Sabha;
- the Secretary of the National Commission for Scheduled Castes and Scheduled Tribes;
- representatives of the Central Government Departments and autonomous organisations concerned with consumer interests-not exceeding twenty;
- representatives of the Consumer Organisations or consumers-not less than thirty-five;
- representatives of women-not less than ten;
- representatives of farmers, trade and industries-not exceeding twenty;
- persons capable of representing consumer interest not specified above-not exceeding fifteen;
- the Secretary in-charge of Consumer Affairs in the Central Government will be the member-secretary of the Central Council.
- Such members, official and non-official representing such interests as may be prescribed.

The Central Council meets as and when necessary. At least one meeting shall be held every year. The time and place of the meeting will be fixed by the Chairman. The procedure in regard to the transactions of the business shall also be determined by the Chairman. (Sec 5) the term of the Council will be three years.

**State Council (Sec. 7 Consumer Protection Act, 1986):**

A State Council shall be composed of the following members, namely,

- The Minister in charge of Consumer Affairs of the state government will act as Chairman.
- Such members, official and non-official representing such interests as may be prescribed by the state government.

The State Council shall meet as and when necessary. The time and place of the meeting shall be fixed by the Chairman. The Council shall observe such procedure regard to the transactions of its business as may be prescribed by the state government. At least two meetings shall be held every year.

**Working groups (Rule 3 of Consumer Protection Rules, 1987)**

For the purpose of monitoring the implementation of the recommendations of the Central Council and to suggest the working of the Council, the Central Government may constitute from amongst the members of the Council, a Standing Working Group, under the chairmanship of the Member Secretary of the Council. The Standing Working Group shall consist of not exceeding 30 members and shall meet as and when considered necessary by the Central Government.

**10.4. Consumer Care Guidance Centers (Grahak Suvidha Kendra)**

A new initiative of the Government is the Grahak Suviha Kendra as a One Stop Center catering to a spectrum of services for consumer welfare. It will function as an extended arm of State Helpline and will function on a Common IT platform of National and State consumer Helplines. It will have local language, English & Hindi service. It will have trained personnel, experienced in counselling, drafting complaints, providing information, and also appearing on behalf of consumers in consumer courts.

Consumer Care Guidance Centers (Grahak Suvidha Kendra) operating as 'single window' are effective nodal points in raising the awareness on consumer rights through campaigns and solving consumer problems.

Its functions are –

- ✓ Advise on consumer rights and obligations while shopping /ordering goods online (pre-purchase advice and guidance),
- ✓ Give practical pre purchase consumer tips, which will help save money, get value for money and avoid problems,
- ✓ Build and maintain data and knowledge base on issues relating to consumers within the state,
- ✓ Identify a pool of accredited non-advocates to act as legal representative (e.g. in forum/commission) and handle consumer complaints,



- ✓ Liaison between the consumers, VCOs, state/ central government and other agencies on matters relating to consumer welfare,
- ✓ Help redress consumer complaint against a trader based in another State (for instance, if one is claiming a refund which the trader has refused and which the consumer believes he/she is entitled to),
- ✓ Ask counterpart center in the State of the trader/ service provider to contact the trader on consumer's behalf and try to find a solution to his/her complaint,
- ✓ Advise on further action if an amicable solution is not possible – for example, out-of-court settlements, or other legal action.

### **10.5. Centre for Consumer Studies (CCS)**

In view of the emerging global markets and concerns for good governance coupled with rising expectations of the people for better services, quality goods, availability of choice and value for money, there is universal emphasis for protection and promotion of Consumers' rights and interests. It is well recognised, world over, that protection of Consumers' rights and interests not only promotes the interests of business but also of the state as well. To give boost to the efforts of the Government in the area of Consumer Protection and Consumer Welfare the need of a dedicated Centre was felt at the Government level. It was further realised that the involvement and convergence of various stakeholders particularly the institutions of local self-government in the area of consumer protection will certainly prove to be beneficial in furtherance of the policy objectives of the Department of Consumer Affairs. In view of the above, the Department of Consumer Affairs, Ministry of Consumer Affairs, Food, and Public Distribution, GoI, has established a dedicated Centre for Consumer Studies (CCS) at the Indian Institute of Public Administration (IIPA), New Delhi. The Centre operates within the legal framework of the IIPA and the policy directions of the Monitoring Committee chaired by the Secretary, CA, GoI. The role of the Centre is both operational as well as promotional.

The Centre for Consumer Studies keeps abreast of the long- term policies, to position itself as a major contributor to the identification of issues and priorities as well as solutions to ensure better protection of the consumers. Its success largely depends on close networking, cooperation, teamwork and shared knowledge with not only government organizations, but also by building up partnerships with various other institutions and organizations. The vision

is to create a professional organization, which allows the government to govern better and to create opportunities to maximize the benefit to the consumers.

The Centre seeks to network, with national and international agencies and interface with other stakeholders by serving as a bridging “think tank”, with an intensive advocacy role. It acts as a forum for creating dialogue among policy-makers, service providers, representatives of various business establishments and their associations, professional bodies/associations, civil society organisations, educational/ research institutions, economic and social development organizations as well as leading NGOs. It also acts as a storing and clearing-house for the exchange and constant flow of information, ideas and activities relating to consumer protection and welfare. The Centre closely works in association with the Department of Consumer Affairs, GoI, National/ State Consumer Disputes Redressal Commissions and District Forums.

The CCS is envisaged as a Centre functioning with flexibility and openness. Its broad areas of focus comprise;

- Advocacy , Policy Analysis and Research
- Advisory and Consultative Services
- Capacity Building, and
- Networking and Information Exchange

The Centre performs the following activities:

- i. In-depth action research in the area of consumer protection and consumer welfare with a special emphasis on rural areas;
- ii. Training of personnel engaged in administration and adjudication of consumer justice in the country and the elected representatives of the local bodies;
- iii. Networking with the other institutions/ organisations, nationally and internationally;
- iv. Organise seminars/ workshops/ conferences/ round tables on the contemporary issues relating to consumer protection;
- v. Sensitize trade and industry and the service providers to the requirements of the consumers;
- vi. Create resource centre for future research;

- vii. Publish books/ monographs/ occasional papers to fill up existing knowledge gap and
- viii. Provide policy inputs to the Department of Consumer Affairs from time to time.

## **11. IMPORTANT WEBSITES AND ADDRESSES**

[www.consumeraffairs.nic.in](http://www.consumeraffairs.nic.in) – Department of Consumer Affairs, Govt. of India

<http://www.nationalconsumerhelpline.in> – National consumer helpline

<http://www.consumereducation.in/> - Centre for Consumer Studies

[www.cfbp.org](http://www.cfbp.org) - Council for Fair Business Practices

<http://www.consumersinternational.org/> - Consumers International (CI)

## **About the Author**



### **Rajkumar S. Adukia**

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Mr. Rajkumar Adukia is an eminent business consultant, advisor, author, and speaker. He is a rank holder from Bombay University, winner of most coveted award of his college Sydenham College of Commerce & Economics (at that point of time Best College of Asia) as best student of college namely Jeejeebhoy Cup for Proficiency and Character winner and did his graduation with Gold Medal for highest marks in Accountancy & Auditing . He is throughout gold medalist and passed the Chartered Accountancy, Company secretary and Cost Accountancy Course and was among the top rank holders in all the courses.

Mr. Adukia also holds a degree in law and is an MBA , Dip in IFRS(UK) & Diploma in Labour Law & Labour Welfare , IPR and Criminology. He has been involved in the activities of the Institute of Chartered Accountants of India since 1984 as a convenor of Kalbadevi CPE study circle. He was the Chairman of the Western Region of Institute of Chartered Accountants of India in 1997 and has been actively involved in various committees of ICAI. He became a member of the Central Council in 1998 and ever since he has worked tirelessly towards knowledge sharing, professional development and enhancing professional opportunities for members.

He has served on the Board of Directors in the capacity of independent director at BOI Asset management Co. ltd. SBI mutual funds management Pvt. Ltd. He is also a member of IFRS SME implementation Group of International Accounting Standards Board.

Mr. Adukia is Senior & Founder partner of Adukia & Associates established in 1984 handles assignments on internal audit, business advisory and planning, commercial law compliance, project work, taxation and trusts. His clientele include large corporations, owner-managed companies, small manufacturers, service businesses, property management and construction, exporters and importers, and professionals.

Based on his rich experience, he has written numerous articles on most aspects of corporate laws, income tax specially survey, search & seizure, finance-accounting, auditing, taxation, valuation, public finance. His authoritative articles appear regularly in financial papers like Business India, Financial Express, Economic Times and professional and business magazines. He has authored several accounting and auditing manuals. He has authored more than 100 books on vast range of topics including Internal Audit, Bank Audit, SEZ, CARO, PMLA, Anti-dumping, Income Tax Search, Survey and Seizure, IFRS, Carbon Credit, Private Equity, etc. Some of his books are on topics like time management, stress management etc. His books are known for their practicality and for their proactive approaches to meeting practice needs.

Mr. Adukia is a frequent speaker on trade and finance at seminars and conferences organized by the Institute of Chartered Accountants of India, various chambers of Commerce, income tax offices and other professional associations. He has also lectured at the S.P. Jain Institute of Management, Intensive Coaching Classes for Inter & Final CA students and Direct Taxes Regional Training Institute of CBDT. He also develops and delivers short courses, seminars and workshops on changes and opportunities in trade and finance. He has extensive experience as a speaker, moderator and panelist at workshops and conferences held for both students and professionals across the country and abroad.

He was member of many committees of Government of India including J J Irani committee which drafted initial version of Companies Act, 2013. He was member of all 3 standards board namely Accounting Standards Board, Cost Accounting Standards Board and Secretarial Standards Board respectively of ICAI, ICWAI, & ICSI. He is founder president of Rotary Club of Bombay Sea Pearl, Bombay Gateway Junior Chamber and Giants Club of Kalbadevi.

Mr. Adukia has been actively involved in various committees to name a few.

- Member Regional Advisory Committee of Central Board of Excise & Customs
- Member of Standards Setting Committee of Bureau of Indian Standards.
- Member – Working Group constituted by the Competition Commission of India
- Member – Steering Committees for Reports on the observance of Standards and Codes (ROSC) Study on Insolvency and Creditors Right and Corporate Governance.
- Ex Hon. Secretary to All India Manufacturers' Organisation, All India Importer's and Exporter's Association and Western India Chamber of Commerce
- Hon. Consultant to Bombay Industries Association.
- Faculty member for Entrepreneurship Development Programme of Ministry of Industrial Development, Government of India.
- President - Association of Indian Investors (A Section 25 Company)
- Associated as Chairman/member of Income Tax Appellate Tribunal Bar Association, All India Manufacturers' Organisation.

He has delivered lectures abroad at forums of the International Federation of Accountants and has travelled very extensively three fourth of the globe. Currently he is in his 6th term as the Central Council Member and Chairman of the following Committees namely, Committee on Cooperatives and NPOs and Committee on Information Technology. He is recently appointed as member of Audit Advisory Board of Office of Principal Director of Audit (Central), Mumbai, part of office of the Comptroller and Auditor General of India (C&AG).