

Consumer Protection Act

Know the Consumer Protection Act as advocated in India

Many of us do not know our rights as a consumer and often hesitate to complaint or even stand up to unfair practices. It is time that we indulge ourselves and motivates others to do the same. To start with here are some facts and rules that you could refer to as starters.

We invite SME's (subject matter experts) or people having knowledge or even experiences of personal case to share with us and put their comments.

MISCELLANEOUS

- (i) To Sue Manufacturers and (or) Sellers - Normally when a consumer find the goods to be defective, he sue the seller of such goods. But if the defect of goods relates to manufacturing, the consumer may sue manufacturer also along with the seller. The option is with the consumer to sue both of them or only the seller.
- (ii) Cause List on Web - The cause list in respect of a Consumer Forum having a website is hosted on its website also. It is very convenient for litigants to see their date of hearings on the website.
- (iii) Summons - In Civil and Criminal cases, the service of summon to other parties is quite complicated. A person can delay the case by using many tactics by not receiving summons for a long time. The case cannot proceed further until the required summon is received by all the parties. The Consumer Protection Act, 1986 provides for serving of summons through Speed Post, Courier or even by Fax. In case, the party refuses to accept the notice, the Consumer Court can declare that notice is duly served on the party and can proceed further.
- (iv) Adjournment - It is normally practice to seek dates from Courts (Adjournment) for one reason or another. Consumer Protection Law to stop such delay tactics has imposed a cost of minimum Rs. 500/- for one such adjourning which can go to more than Rs. 500/- on the basis of value and nature of case.
- (v) Cost to Complainant - A Consumer Court as a routine allow cost to complainant for expenses incurred by him for filing complaint – Court proceedings etc. – While in other Courts this is done in very less cases.
- (vi) Frivolous or Vexatious Complaints - Consumer Protection Act is a liberal, Welfare Law. There is possibilities of persons misusing its liberal provisions – To stop them Consumer Courts can burden, Complainant of frivolous and vexatious complaints, with cost up to Rs. 10,000/-
- (vii) Court Atmosphere - Finally Courts has different atmosphere than other Courts – its Judges do not require wearing usual Black Coats – Advocates also not required wearing Black Gown. The chairs of Judges are simple, persons coming to Consumer Courts are treated well. They had atmosphere of openness, simple but impressive. Persons visiting them feel better in such courts.
- (viii) Illiterate Person - Where a party appears in person and is illiterate, the Court Master or Bench Clerk shall give to that party the next date of hearing in writing.
- (ix) Priority Cases - The cases filed by or against the senior citizens, physically challenged, widows and persons suffering from serious ailments shall be listed and disposed of on a priority basis.

PENALTIES

Consumer Courts are empowered to punish the person who fails to comply with their orders with an imprisonment up to three years or fine up to Rs. 10,000/- or with both.

ENFORCEMENT OF ORDER

The Consumer Courts (District Court, State Commission and National Commission) are given vast powers to enforce their orders.

In case of non compliance of any interim order, they can attach the property of the person non complying their order. In case, non compliance continue for more than six months, the Consumer Courts can sold such attached property.

In case, any amount is due from any person under an order of Consumer Court. The person entitle to that amount can apply to consumer court and court can issue a certificate for the said amount to the Collector of the District (by whatever named called) and the Collector after receiving that certificate from court shall proceed to recover the amount in the same manner as arrear of land revenue. After recovery by Collector, the amount is paid to entitle person.

APPEAL

Appeal is a legal instrumentality whereby a person not satisfied with the findings of a court has an option to go to a higher court to present his case and seek justice. In the context of Consumer Forums –

1. An appeal can be made with the State Commission against the order of the District Forum within 30 days of the order which is extendable for further 15 days. [Section 15]
2. An appeal can be made with the National Commission against the order of the State Commission within 30 days of the order or within such time as the National Commission allows. [Section 19]
3. An appeal can be made with the Supreme Court against the order of the National Commission within 30 days of the order or within such time as the Supreme Court allows. [Section 23]

Now after 2002 amendment, the appellant has to deposit fifty percent amount which he is required to pay in terms of an order of consumer court or twenty five thousand rupees in State Commission/fifty thousand rupees in National Commission whatever is less.

PROCEDURE

Procedure to be followed by the National Commission
[Section 22]

Section 22 of the Act provides that the National Commission shall follow such procedure as prescribed by the Central Government. The Consumer Protection Rules, 1987 framed by the Central Government lay down the procedure which is as follows:

(1) A complaint containing the following particulars shall be presented by the complainant in person or by his agent to the National Commission or be sent by registered post, addressed to the National Commission:

- (a) the name, description and the address of the complainant;
- (b) the name, description and address of the opposite party or parties, as the case may be, so far as they can be ascertained;
- (c) the facts relating to the complaint and when and where it arose;
- (d) documents in support of the allegations contained in the complaint;
- (e) the relief which the complainant claims.

(2) The National Commission shall, in disposal of any complaint before it, as far as possible, follow the procedures laid down section 13 of the Act. (discussed in para 33.4-1)

(3) On the date of hearing, it shall be obligatory on the parties or their agents to appear before the National Commission. Where the complainant or his agent fails to appear, the National Commission may either dismiss the complaint for default or decide it on merits. Where the opposite party or its agent fails to appear on the date of hearing the National Commission may decide the complaint ex parte.

(4) The complaint shall be decided as far as possible within a period of three months from the date of notice received by opposite party where complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities.

(5) After the proceedings, the National Commission shall issue the orders accordingly.

PROCEDURE

Procedure to be followed by the Consumer Courts

[Section 13]

The following procedure is equally applicable to the District Forum, State Commission with required modifications, and National Commission with additional procedures required by the rules.

Where Laboratory Test is Required - A consumer is supposed to file as many copies of the complaint as there are number of judges, with all essential information, supporting papers like correspondence, and specifying the compensation demanded.

On receipt of such complaint –

(a) The District Forum should refer a copy of the complaint to the opposite party directing him to give his version of the case within a period of thirty days which can be extended to forty five days.

(b) The District Forum may require the complainant to deposit specified fees for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question.

(c) The District Forum will obtain a sample of the goods, seal it, authenticate it and refer the sample so sealed to the appropriate laboratory for an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect.

The District Forum will remit the fees to the appropriate laboratory to enable it to carry out required analysis or test.

The laboratories supposed to report its findings to the District Forum within a period of fifty-five days. This period is extendible by the District Forum.

(d) Upon receiving laboratory's report, its copy will be forwarded by the District Forum to the opposite party along with its own remarks.

(e) In the event of any party disputing the correctness of the findings, or the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the objecting party to submit his objections in writing.

(f) The District Forum will give an opportunity of hearing to the objecting party.

(g) The District Forum shall issue appropriate order after hearing the parties.

Where No Laboratory Test is required or Complaint Relates to Services –

(a) On receiving the complaint, the District Forum should refer a copy of the complaint to the opposite party directing him to give his version of the case within a period of thirty days which can be extended to forty five days.

(b) The opposite party on receipt of a complaint referred to him may-

(i) admit the complaint

(ii) deny or dispute the allegations contained in the complaint, or

(iii) omits or fails to respond within the time given by the District Forum.

(c) Where the opposite party admits the allegation, the District Forum should decide the matter on the basis of the merits of the case and the documents before it.

Where the opposite party denies or disputes the allegations made in the complaint, the District Forum will proceed to settle the dispute on the basis of evidence brought to its notice by both the parties.

Where the opposite party omits or fails to respond within the time given by the Forum, the District Forum will proceed to settle the dispute on the basis of evidence brought to its notice by the complainant.

(d) The District Forum shall issue an appropriate order after hearing the parties and taking into account available evidence.

PROCEDURE

Now a question should appear in everyone's mind that what procedure Consumer Courts adopt in order to deal with the consumer disputes.

Section 13 of the Act has detailed the procedure in context of District Forum only. For State Commission, section 18 says that it will follow the same procedure as followed by District Forum with such modifications as necessary, and for the National Commission, section 22 gives power to the Central Government to make rules in this regard. These rules in turn have included therein the procedure given by section 13. In addition, these rules have prescribed some procedures to be followed by the parties to the complaint.

A complaint may be made with respect to the goods or services. When complaint relates to goods, the criteria for the decision is - whether the goods are defective or not. Now the question is - how to hold that the goods are defective. The most logical way is to get the goods tested to determine the defect. However, in certain cases defect can be determined without technical support or it may happen that the test is not feasible. These are -

a) The opposite party admits the defect.

b) The defect is obvious and is visible to naked eyes, like in a complaint about contamination of water, the sample of water given was so dirty that the Forum did not consider it necessary to send it for test.

c) When the complainant is not in possession of the subject matter of the complaint, e.g., in a matter the complainant had given to the dealer the tyre and tube which had burst, the dealer sent the same to the manufacturer. Thus the complainant was not in possession of the same.

d) When subject matter of the complaint gets destroyed, like in case a pressure cooker burst, its remains can't be send to the laboratory for testing.

e) In case of complaint regarding deficiency in service there is no question of testing or analysis.

Thus the procedure to be followed by the Forums can be discussed under the two heads -

1. Where laboratory test is required to determine the defect in goods.

2. Where no laboratory test is required to determine the defect in goods or the complaint relates to services.

COMPLAINT

When a complaint cannot be filed

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

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 authorized the complainant to make the complaint - Consumer Education and Research Society, Ahmedabad v. Indian Airlines Corporation, New Delhi (1992) 1 CPJ 38 NC.

A complaint by an individual on behalf of general public is not permitted - Commissioner of Transport v. Y.R. Grover 1994 (1) CPJ 199 NC.

An unregistered association cannot file a complaint under the Act.

Example: The complainant was an association formed in the Gulf and was unregistered in India. It was held that since the petitioner was not a voluntary organization registered under any law in force in India, cannot come within clause (d) of section 2(1) of the Act and hence can't file a complaint - Gulf Trivendrum air Fare Forum v. Chairman & Managing Director, Air India 1991 (2) CPR 129.

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.

Example: A supplied defective machinery to B on 12-1-1998. B filed a suit against A on 10-3-2001. It was not admitted before the Forum for the reason that the time available to make complaint lapsed.

COMPLAINT

Fees

Under the original un-amended Act of 1986, no requirement of payment of Court-fee or any other formal procedure of Court was contemplated. However, after the amendment of 2002, there is a nominal fee you may have to pay for filing a complaint.

Value of goods, Service & Compensation Claimed determines the amount of fee payable. Which is as follows; -

District Forum (w.e.f. 10-2-2005) -

VALUE OF GOODS AND COMPENSATION AMOUNT PAYABLE

Less than Rs. one lakh Rs. 100

Rs. one lakh and above, but less than Rs. five lakh Rs. 200

Rs. five lakh and above, but less than Rs. ten lakh Rs. 400

Rs. ten lakh and above Rs. 500

State Commission (w.e.f. 10-2-2005) -

VALUE OF GOODS AND COMPENSATION AMOUNT PAYABLE

Rs. twenty lakh and above, but less than Rs. 50 lakh Rs. 2000

Rs. 50 lakh and above, but less than Rs. 1 crore Rs. 4000

National Commission (w.e.f. 10-2-2005) -

VALUE OF GOODS AND COMPENSATION AMOUNT PAYABLE

Above Rs. 1 crore Rs. 5000

The fees amount is to be deposited at the time of filing the Complaint . The payment should be through a Nationalised Bank Demand Draft duly crossed, drawn in favour of "Registrar", of the court.

COMPLAINT

Relief available against complaint

[Sections 14 and 22]

A complainant can seek any one or more of the following relief under the Act:

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;
- (e) to remove the defects or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (i) to provide for adequate costs to complainant.

COMPLAINT

Time frame within which a complaint can be filed

Section 24A of the Act provides that a consumer dispute can be filed within two years from the date on which the cause of action arises.

The point of time when cause of action arises 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.

Example: 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.

It may be noted that these time frames are not absolute limitations. 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.

COMPLAINT

What a complaint must contain

[Section 2(1)(c)]

A complaint must contain any of the following allegations:

(a) An unfair trade practice or a restrictive trade practice has been adopted by any trader;

Example: A sold a six months old car to B representing it to be a new one. Here B can make a complaint against A 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;

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 suffer from deficiency in any respect.

Example: A hired services of an advocate to defend himself against his landlord. The advocate did not appear every time the case was scheduled. A can make a complaint against the advocate.

(d) A 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.

Example: A bought a sack of cement from B who charged him Rs. 100 over and above the reserve 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.

Example: A bought a tin of disinfectant powder. It had lid which was to be opened in a specific manner. Trader did not inform A about this. While opening the lid in ordinary way, some powder flew in the eyes of A which affected his vision. Here A can make a complaint against the trader.

COMPLAINT

Who can file a complaint?

[Sections 2(b) & 12]

At the outset it is clear that a person who can be termed as a consumer under the Act can make a complaint. To be specific on this account, following are the persons who can file a complaint under the Act:

(a) a consumer; or

(b) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force, or

(c) the Central Government or any State Government,

(d) one or more consumers, where there are numerous consumers having the same interest.

(e) in case of death of a consumer, his legal heir or representative.

In addition to the above following are also considered as a consumer and hence they may file a complaint:

Beneficiary of the goods/services - The definition of consumer itself includes beneficiary of goods and services.

Where a young child is taken to the hospital by his parents and the child is treated by the doctor, the parents of such a minor child can file a complaint under the Act - Spring Meadows Hospital v. Harjot Ahluwalia JT 1998(2) SC 620.

Legal heirs of the deceased consumer - A legal heir of the deceased consumer can well maintain a complaint under the Act - Joseph Alias Animon v. Dr. Elizabeth Zachariah (1) 1997 CPJ 96.

Husband of the consumer - In the Indian conditions, women may be illiterate, educated women may be unaware of their legal rights, thus a husband can file and prosecute complaint under the Consumer Protection Act on behalf of his spouse - Punjab National Bank, Bombay v. K.B. Shetty 1991 (2) CPR 633.

A relative of consumer - When a consumer signs the original complaint, it can be initiated by his/her relative - Motibai Dalvi Hospital v. M.I. Govilkar 1992 (1) CPR 408.

Insurance company - Where Insurance company pays and settles the claim of the insured and the insured person transfers his rights in the insured goods to the company, it can file a complaint for the loss caused to the insured goods by negligence of goods/service providers. For example, when loss is caused to such goods because of negligence of transport company, the insurance company can file a claim against the transport company - New India Assurance Company Ltd. v. Green Transport Co. II 1991 CPJ (1) Delhi

COMPLAINT

What constitutes a complaint?

[Section 2(1)(c)]

Complaint is a statement made in writing to the National Commission, the State Commission or the District Forum by a person competent to file it, containing the allegations in detail, and with a view to obtain relief provided under the Act.

COMPLAINT

What can be complained

An aggrieved consumer seeks redressal under the Act through the instrumentality of complaint. It does not mean that the consumer can complain against his each and every problem. The Act has provided certain grounds on which complaint can be made. Similarly, relief against these complaints can be granted within the set pattern.

CONSUMER COURTS

Consumer Protection Act, 1986 provides three tier Courts for the adjudication of Consumer Disputes. The lowest level courts are constituted at District level which are called District Courts. Above them State level Consumer Courts are constituted which are called State Commission and on National level there is National Commission.

District Forum - They are constitute in all the districts of India. They can hear the case involving amount of Rs. Twenty Lacs. It is situated in the District head quarters.

District Forum consist of one president and two other members (one of whom is to be a woman).The president of the Forum is a person who is, or has been qualified to be a District Judge, and other members are persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

State Commission - A State Commission has jurisdiction in whole of the State for which it is constituted. It can hear the cases involving the amount more than rupees twenty lacs and up to rupees one crore. It has

also jurisdiction to hear appeal against the orders of District Forum of that particular State. It is situated in the capital of the State.

State Commission consists of a president and two members one of whom is to be a woman. President is a person who is or has been a Judge of a High Court, and the members, are persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

National Commission - National Commission is on the top hierarchy of Consumer Courts. It is only one for whole India and situated in Delhi the capital of India.

It can hear cases involving amount above rupees once crore. It can also hear appeals against the order of State Commission.

The National Commission consists of a president, and four other members (one of whom is to be a woman). The president should be the one who is or has been a Judge of the Supreme Court, and the members should be the persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

RELEVANT TERMS

RESTRICTIVE TRADE PRACTICE

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

(a) delay beyond the period agreed to be 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.

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

Technically, this type of arrangement is called ‘tie-up sales’ or ‘tying arrangement’. The effect of such an arrangement is that a purchaser is forced to buy some goods or services which he may not require alongwith 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.

Example:

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 (MRTPC).

However, where there is no such precondition and the buyer is free to take either product, no tying arrangement could be alleged even though the seller may offer both the products as a single unit at a composite price.

Example:

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.

Amendment of 2002 give one more weapon in the hands of consumer it has declare delay beyond agreed period for supply of goods or providing services also as restrictive trade practice on condition that such delay has led or is likely to lead to rise in the price.

RELEVANT TERMS
UNFAIR TRADE PRACTICE

The Act says that, “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 particular standard, quality, quantity, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes false or misleading statement 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;

(viii) makes to the public a representation in a form that purports to be a warranty or guarantee of a product or of any goods or services; or 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 other representation is made;

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

Note: A statement is said to be made to public when it 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, 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.

Note: “Bargain 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 bargain price having regard to the prices at which the product advertised or like products are ordinarily sold.

(3) Permits 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; or 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;

(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 good for sale or adopting deceptive practices in the provision of Services.

RELEVANT TERMS **HAZARDOUS GOODS**

The term "Hazardous goods" has not been defined in the Act. The dictionary meaning of the term is - dangerous or risky. However, the term is used in context of 'goods' only, i.e., a person can make a complaint if he is not informed about the hazardous nature of the goods but the same is not true in case of hazardous services.

The law seeks to ensure that those responsible for bringing goods to the market, in particular, suppliers, exporters, importers, retailers and the like should ensure that while in their care these goods are not rendered unsafe through improper handling or storage.

Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers.

Example:

A bought an insecticide from B. B did not inform A that touching this insecticide with bare hands can create skin problem. A, while using the insecticide came in contact with it and suffered from skin problem consequently. Here B can be held liable under the Act.

RELEVANT TERMS **CHARGING EXCESSIVE PRICE**

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.

Examples:

1. Government fixed control rate of milk at Rs. 15 per litre in the month of June 2001. A sold it at the rate of Rs. 18 per litre in the same period. Price charged by A are excessive.

2. 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 @ Rs. 6 per kg. The price charged by A is excessive.

It may be noted that 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.

Example:

Mahaboobnagar Milk Chilling Centre charged 15 paise extra per half litre of milk supplied in sachets in comparison to the other varieties of milk. The National Commission held that in the absence of any law requiring an article to be sold at or below a particular price fixed thereunder, and when there was no declaration of the price on the packet containing the goods, a case for excessive pricing may not be construed.

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RELEVANT TERMS
MANUFACTURER

In terms of clause (j) of section 2(1) 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 and claims the end-product to be goods manufactured by himself; or
- (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself.

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

Examples:

A Ltd. were into manufacturing of Pressure Cookers. B bought a Cooker which burst out while using. B sued A Ltd. for compensation. Here A Ltd. being manufacturer of the Cooker is liable for the loss.

RELEVANT TERMS

TRADER

Section 2(1)(q) of the Act says that “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”;

Examples:

1. A got an agency of ‘Indana’ products. He sells and distributes these products in North India. He is a trader under the Act.
2. A manufactures combs. He is a trader under the Act.
3. A provide bottles to pack the perfume manufactured by B. Here A is also a trader under the Act.

Note: “Trader” is a wider term which includes a manufacturer also.

RELEVANT TERMS

CONSIDERATION

Consumer Protection Act defined the consideration in the same manner as in Indian Contract Act, which defines Consideration as - When, at the desire of the promisor, the promisee, or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

The basic meaning of the above definition is that if as a consumer you promise to pay or do anything that can be reasonably construed as a payment or part of a payment (for a good or a service) then you have given adequate consideration for the good you wish to buy or the service you wish to avail of. The same is true for lending of your goods to a third party or letting a third party avail of the services for which you have paid.

RELEVANT TERMS

SPURIOUS GOODS AND SERVICES

“Spurious goods and services” mean such goods and services which are claimed to be genuine but they are actually not so.

RELEVANT TERMS

APPROPRIATE LABORATORY

Section 2(1)(a) of the Act defines an “appropriate laboratory” as a laboratory or organisation -

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

RELEVANT TERMS
DEFICIENCY IN SERVICE

Section 2(1)(g) of the Act provides that, “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 this definition it can be said that

- (i) “Deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance
- (ii) 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.
- (iii) The deficiency must be in relation to a service

Deficiency in service due to circumstances beyond control - In normal course, if the service is found deficient as per the above criteria, it is held deficient and the compensation is awarded. However there may be abnormal circumstances beyond the control of the person performing service. If such circumstances prevent a person from rendering service of the desired quality, nature and the manner, such person should not be penalized for the same.

RELEVANT TERMS
DEFECT

Section 2(1)(f) of the Act provides that, “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 of 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.

This definition clearly tells that Any type of defect not mentioned here will not be entertained by Consumer Forums. Moreover the defect has to be in relation to goods only, i.e., if an item does not fall within the definition of ‘Goods’, no defect can be complained therein.

RELEVANT TERMS
SERVICE

Section 2(1)(o) of the Act provides that “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.

The definition provides a list of eleven sectors to which service may pertain in order to come under the purview of the Act. The list of these sectors is not an exhaustive one. Service may be of any description and pertain to any sector if it satisfy 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.

When we talk about 'service' under the Consumer Protection Act, we take it as a regular commercial transaction. Thus 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.

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 listed below:

Advocates, Airlines, Chartered Accountants, Courier, Chit Fund, Education, Gas Cylinder/LPG, Medical services, Postal services, Railways, Investment related services, and Telephone services.

RELEVANT TERMS

GOODS

The term "goods" under the Consumer Protection Act means goods as defined in the Sale of Goods Act, 1930.

The sale of Goods Act defines goods as 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.

The definition reveals that -

- (a) Goods must be movable;
- (b) Things attached to or forming part of land which can be severed satisfy the movability criteria;
- (c) Actionable claim and Money have been specifically excluded from definition of goods.

RELIEFS AVAILABLE TO CONSUMERS

Depending on the facts and circumstances, the Redressal Forums may give order for one or more of the following relief.

1. Removal of defects from the goods;
2. Replacement of the goods;
3. Refund of the price paid;
4. Award of compensation for the loss or injury suffered;
5. Removal of defects or deficiencies in the services;
6. Discontinuance of unfair trade practices or restrictive trade practices or direction not to repeat them;
7. Withdrawal of the hazardous goods from being offered to sale; or
8. Award for adequate costs to parties.

There is no limit on amount of compensation you can claim, but it has to be proportionate & rational with the loss or injury suffered by you. Always be reasonable in the amount you want to claim as this will make it easier for the court to make a finding in your favor

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WRONGS AGAINST CONSUMER

- i) Defect in Goods
 - ii) Deficiency in Service
 - iii) Charging of excess price
 - iv) Hazardous Goods
 - v) Unfair trade practice of restrictive trade practice
- For detail see "Relevant Terms" or Section 2 of Consumer Protection Act.

WHO CAN NOT TAKE BENEFIT OF CONSUMER PROTECTION ACT

As per definition of "Consumer", "Goods" and "Services" given in Act, following cannot take benefit of Consumer Protection Act -

- i) Free Goods/Services - Person having Goods/ Services free of cost is not Consumer and cannot be benefited by this Act.
- ii) Reseller - Person Purchaser of Goods for resale cannot take benefit of this Act.
- iii) Commercial Purpose - Person purchasing Goods/ Services for commercial purpose is also out of preview of this Act.
- iv) Personal Services - Definition of Service exclude personal services also from the preview of this Act. Personal Services means where relation of Employer-Employee exists. An Employer though paid Employee for his services so costing to the definition of Consumer he can also be termed as "Consumer" but definition of "Service" in Consumer Protection Act specifically exclude this relation out of the definition of Service and thus out of the preview of the Act.
- v) Statutory Services - Through various pronouncements of Supreme Court and Consumer Courts now it is also clear that various services given by State i.e. "Registration of Documents", "Approval of Construction Plan" etc. do not fall under "Service" as the fees paid for them is not consideration by statutory levy, so user of such services also cannot take benefit of this Act.

WHO IS CONSUMER

The Consumer Protection Act is for "Consumer". Here question arises who is Consumer. The Act itself gives the definition of Consumer only those who falls into the definition of Consumer given in Act can take benefit of this Act - This definition is somewhat different than dictionary/literal meaning. It also specifically excludes some kind of consumers from its preview.

The definition of Consumer is given in two parts:

- 1) Consumer of Goods
- 2) Consumer of Services

The basic features of consumer definition is :

- i) The Goods or Services must not be free. Some consideration (Price) should be paid for them. It includes purchase on credit or part payment or in installments.
- ii) Second important feature is that it is not necessary that only purchase is consumer - Condition is that Goods/Services are brought for consideration - Definition of Consumer clearly states that any person through consideration is not paid by him but if he uses Goods with the consent of Purchaser or is beneficiary is also a Consumer i.e. A purchase some goods and gifted to B here B is also a consumer. A telephone connection in the name of father used by son her son is also consumer.
- iii) Third important feature is that it excludes commercial dealings or goods purchased for resale from the definition of consumer with exception of goods and services purchased for self employment - It means

reseller and commercial dealings except for self employment cannot take benefit of Consumer Protection Act.

For more clarity the reader should know that it is not necessary that purchaser is commercial concern but such goods and services should be used for commercial purpose. For example if a commercial concern purchases a Car for the use of its own staff, it did not uses that Car as a Taxi or hiring to others etc. then such use cannot be termed as commercial. The purchaser of such car though a commercial concern but here he is consumer because car is not used for commercial purpose.

INTRODUCTION

In Pre Civilization period there is no Consumer as we see in modern times. There is no manufacturing - No services and no purchase system. Civilization creates multi Requirements of men. One person himself is not capable to fulfill all of his requirements, he needs help of other. He is now under compulsion to purchase Goods/Services. He do not get honest dealings every time. Here now Law comes to help consumer it gives certain rights to consumer. In case of violation of such laws it provides provisions to enforce those rights.

The moment a person comes into this world, he starts consuming. He needs Food Clothes, House and many more things and these needs keep taking one form or the other all along his life. Thus we all are consumers in the literal sense of the term. When we approach the market as a consumer, we expect value for money, i.e., right quality, right quantity, right prices, information about the mode of use, etc. But there may be instances where a consumer is harassed or cheated.

Earlier Position - Before the enactment of Consumer Protection Act, 1986 there are many other laws which are related to Consumer. Some of them are Indian Contract Act, Sale of Goods Act, Prevention of Food Adulteration Act, the Standards of Weights and Measures Act, etc. They protect consumer interests to some extent. But these laws require the consumer to initiate action by way of a civil suit involving lengthy legal process which is very expensive and time consuming.

The earlier principle of "Caveat Emptor" or "Let the buyer beware" which was prevalent has given way to the principle of "Consumer is King". The origins of this principle lie in the fact that in today's mass production economy where there is little contact between the producer and consumer, often sellers make exaggerated claims and advertisements which they do not intend to fulfill. This leaves the consumer in a difficult position with very few avenues for redressed. The onset on intense competition also made producers aware of the benefits of customer satisfaction and hence by and large, the principle of "consumer is king" is now accepted.

The Consumer Protection Act, 1986 was enacted to provide a simpler and quicker access to redress of consumer grievances. The Act for the first time introduced the concept of 'consumer' and conferred express additional rights on him. It is interesting to note that the Act doesn't seek to protect every consumer within the literal meaning of the term. The protection is meant for the person who fits in the definition of 'consumer' given by the Act.

This Act has provided machinery whereby consumers can file their complaints which will be entertained by the Consumer Forums with special powers so that action can be taken against erring suppliers and the possible compensation may be awarded to consumer for the hardships he has undergone.

Consumer Protection Act, 1986 seeks to promote and protects the interest of consumers against deficiencies and defects in goods or services. It also seeks to secure the rights of a consumer against unfair or restrictive trade practices, which may be practiced by manufacturers and traders. This Act has provided machinery whereby consumers can file their complaints which will be entertained by the Consumer Forums with special powers so that action can be taken against erring suppliers and the possible compensation may be awarded to consumer for the hardships he has undergone.

The consumer under this law is not required to deposit huge court fees, which earlier used to deter consumers from approaching the Courts. The rigors of court procedures have been dispensed with and replaced with simple procedures as compared to the normal courts, which helps in quicker redressal of grievances. The provisions of the Act are compensatory in nature.

The Act applies to all goods and services unless specifically exempted by the Central Government. It covers all the sectors whether private, public or cooperative. The provisions of the Act are compensatory in nature. The provisions of this Act are in addition to and not in derogation of the provisions of any other law for the time being in force.

The consumer himself need not necessarily file complaint. Any recognized consumers association can espouse his cause. Where a large of consumers has a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government or State Government can act on his/their behalf.