

# Consumer Affairs & Sovereignty

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# SYLLABUS

## B.Com. (Hons.): Semester-V Paper DSE-5.3: CONSUMER AFFAIRS & SOVEREIGNTY

| Course title & Code                       | Credit | Credit distribution of the course |          |                     | Eligibility criteria | Pre-requisite of the course (if any) |
|---|--------|-----------------------------------|----------|---------------------|----------------------|--------------------------------------|
|   |        | Lecture                           | Tutorial | Practical/ Practice |                      |                                      |
| DSE 5.3- Consumer Affairs and Sovereignty | 4      | 3                                 | 1        | 0                   | Pass in XII          | NIL                                  |

### Learning Objectives

This course seeks to familiarize the learners with their rights and responsibilities of a consumer and the procedure to redress their complaints. The learner should be able to comprehend the business firms' interface with consumers and the related regulatory and business environment.

### Learning outcomes

After completion of the course, learners will be able to:

1. Describe the concept of consumer and post-purchase voicing of consumer grievances.
2. Demonstrate how to exercise the consumer rights provided under Consumer Protection Act, 2019.
3. Discuss the filing, hearings, and appeal provisions.
4. Identify the role of industry regulators in consumer protection.
5. Discuss the recent developments in consumer protection in India.

### Unit 1: Introduction

(9 hours)

Concept of Consumer, Consumer Buying Process, Post-Purchase Behaviour, Factors affecting voicing of consumer grievances, Alternatives available to dissatisfied consumers: Private Action and Public Action. Complaint handling process : ISO 10000 suite

Nature of markets: Liberalization and Globalisation of the Indian Consumer Market, Socio Economic Classification of Indian Consumers, online and offline markets; Organized and unorganized market, Grey market Concept of price in retail and wholesale, MRP, Fair price, labelling and packaging: legal aspects.

### Unit 2: The Consumer Protection Act, 2019

(11 hours)

Genesis of the Consumer Protection law in India; Basic concepts: Consumer, goods, service, defect in goods, deficiency in service, spurious goods, unfair trade practice, restrictive trade practice, unfair contract, product liability, consumer rights.

Organisational Set up under the CPA, 2019: Advisory bodies: Consumer Protection Councils at the Central, State, and District level: Composition and role. Central Consumer Protection Authority: Composition and Powers; Adjudicatory bodies: District Commission, State Commission, and National Commission: Composition and Jurisdiction (Territorial and Pecuniary). Role of Supreme Court under the CPA with relevant case laws. Consumer Mediation Cell.



### **Unit 3: Grievance Redress Mechanism under the CPA, 2019 (9 hours)**

Who can file a Complaint? Grounds of Filing a Complaint, Limitation Period, and Procedure for Filing and Hearing of Complaint, Reliefs provided Appeal, Enforcement of Order, Offences and Penalties.

Leading cases decided by the National Commission/Supreme Court under the CPA in: Medical service, Banking, Insurance, Housing Construction, Education, defective product, Unfair Trade Practices.

### **Unit 4: Role of Industry Regulators in Consumer Protection (9 hours)**

Banking: Banking Ombudsman Scheme, Insurance: Insurance Ombudsman, Food Products: FSSAI, Advertising: ASCI, Housing Construction: RERA, Telecom: Role of TRAI, Role of Central Consumers Protection Authority (CCPA): under CPA, 2019

### **Unit 5: Developments in Consumer Protection in India (7 hours)**

Consumer Movement in India; Voluntary Consumer Organisations (VCOs); National Consumer Helpline, GAMA, CONFONET, E-daakhil, Quality and Standardisation: AGMARK, ISI mark, Hallmarking, Consumer Grievance Redressal under the BIS Act, 2016. Role Of Energy Rating and Energy standards, Role of ISO and international Standards.

#### **Exercises:**

The learners are required to:

1. Talk to people in their community and find out what they do when they are dissatisfied with a product or service.
2. Share personal experiences with respect to unfair trade practices and infringement of any of the consumer rights.
3. Visit the [www.ncdr.nic.in](http://www.ncdr.nic.in) and pick any two case judgments on deficiency in services. Examine who was the complainant, ground of complaint, appeal filed, and where filed and final order passed by the concerned Consumer Commission.
4. Observe the advertisements given by builders and verify whether they are registered under the RERA.
5. Visit the website of ASCI and find out the nature of complaints received and what action was taken by ASCI.
6. Identify products which are using ISI mark. Check whether it is genuine or fake
7. Identify the product categories for which standards are mandatory under the BIS.
8. Discuss case studies on recent developments in consumer protection in India.

#### **Suggested Readings:**

- Aggarwal, V. K. (2021). *Law of Consumer Protection*, (4<sup>th</sup> ed.). Delhi, India: Bharat Law House.
- Khanna, S. R., & Hanspal, S. (2020). *Consumer Affairs & Customer Care* (1<sup>st</sup> ed.). Delhi, India: Prowess Publishing.
- Kapoor, S. (2024). *Consumer Affairs and Customer Care*, Delhi, India: Scholar Tech Press.
- Rao, R. (2022). *Consumer is King*. Delhi, India: Universal Law Publishing Company.
- Patil, A. R. (2022). *Landmark Judgments on Consumer Protection and Law: 2008- 2020*. Delhi, India: Ministry of Consumer Affairs, Food & Public Distribution, Government of India. E-book: [www.consumeraffairs.nic.in](http://www.consumeraffairs.nic.in).
- The Bureau of Indian Standards, 2016
- The Consumer Protection Act, 2019
- Real Estate (Regulation and Development) Act, 2016



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## CHAPTER

# 1

## INTRODUCTION

### LEARNING OUTCOMES

Concept of Consumer, Consumer buying process and Post-Purchase behaviour, Factors affecting voicing of consumer grievances, Alternatives available to Dissatisfied Consumers: Private action and Public Action; Complaint handling process: ISO 10000 suite

Consumer Affairs today encompasses all aspects of consumer protection and has been recognised globally in recent times. Before 1991 India had a closed economy and we had been protecting our own Indian industries. Due to globalization and opening of Indian markets to foreign players Indian consumers today have access to innumerable brands. In every industry whether it is fast moving consumer goods (FMCG) or durable goods or service industry there are more than twenty brands at national level catering to the needs of the consumers. This situation of plenty is giving the consumer an opportunity to choose goods and services from a wide spectrum. Consumer constitutes the market and consumerism is a social force to aid and protect consumers by legal, administrative and economic policy measures. A country's economy revolves around its markets. When it is a seller's market the consumer exploitation is the maximum. When there are large number of buyers and sellers, consumers enjoy a number of choices.

But is the consumer getting value for money, why is consumer protection becoming more important in today's scenario and does the concept 'let the buyer beware' still exist or are we moving towards consumer sovereignty. In this chapter we discuss the concept of consumer, characteristics of consumer buying and consumer buying process, consumer satisfaction, value for money and consumer surplus.

### 1.1 CONCEPT OF CONSUMER

The term 'consumer' or 'Grahak' in Hindi plays an important role in the economic system of a country. Without consumer demand, manufacturers would lack one of the key motivations

to produce: and to sell to consumers. The consumer thus plays an important role in the market. Many times consumers are equated to Gods in India. We come across statements written in many shops as "Consumer is King", "Consumer is Always right", "Grahak Devo Bhava". Mahatama Gandhi also mentioned about the importance of consumers in market.

*"A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption in our work - he is the purpose of it. We are not doing him a favour by serving him. He is doing us a favour by giving us the opportunity to serve him."*

—Mohandas Karam Chand Gandhi

According to the definition in the dictionary consumer refers to an individual who buys products or services for personal use and not for manufacture or resale as a consumer. In the present scenario a consumer is a person engaged in evaluating, acquiring, and using goods and services to satisfy his needs and wants. A consumer is a key figure in the market and all activities are carried on around this person.

- "According to Wikipedia, "Consumer is a broad label for any individuals or households that use goods and services generated within the economy."
- The Oxford dictionary defines **consumer** as "a purchaser of goods or services".
- According to John F. Kennedy, "Consumer by definition, includes us all. They are the largest economic group affecting and affected by almost every public and private economic decision. If a consumer is offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and national interest suffers."

The Consumer Protection Act defines the term consumer through 'goods' and 'services'.

Under the Consumer Protection Act, 2019 the definition of 'consumer' has been broadened to include both online and offline consumers in the definition of consumer. According to it "consumer" means any person who—

- buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under 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 service 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 service 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 service for any commercial purpose.

Further under CPA, 2019 the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood,

by means of self-employment. The expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

Thus, the New Act, ie CPA, 2019 has broadened the scope of the term 'consumer' as compared to the definition of 'consumer' under CPA, 1986, the term 'consumer' includes the following heads:

- 1. Buyer of goods or Purchaser of goods:** Any person who purchases products for consideration that has been paid, or promised or partly paid and partly promised, or under any system of deferred payment for final consumption is a consumer. The position of the buyer depends upon the 'contract of sale'. In Lucknow Development Authority vs M K Gupta case the Supreme Court in its decision noted that the word "Consumer" is a comprehensive expression. It extends from a person who buys any commodity as eatable or otherwise from a shop, business house, corporation, store, fair price shop to use for private or public services'. In Arindam Kar vs Proprietor Rupashi Cinema Hall case the complainant went to watch a movie and purchased four cans of Coca-Cola, for which he was charged a sum of 160/-, @40/- for each can. The shop was inside the movie hall but didn't have any separate identity and no receipt was given to him. During interval, one of their colleagues noticed that the maximum retail price (MRP) of the Coca-Cola can was mentioned as 25/- on each can. The complainant went to the food outlet again, enquiring about overcharging for the cold drinks, but he was told that they had to pay some cost and other expenses etc. to Rupashi Cinema Hall and hence, they were charging more than the MRP printed on the product. The complainant who was a purchaser and consumer filed a case in district forum and an appeal which was dismissed in the State Commission. Finally, a compensation of Rs 50,000/- was awarded as compensation to the complainant, along with interest @ 9% p.a. from the date of filing of the complaint till realisation<sup>1</sup>.

In Mohan Sharma v. Chandigarh Bottling Co<sup>2</sup>, the complainants purchased 5 crates of Limca for ₹ 440/- to be served in their daughter's marriage. After consuming them the guests were taken ill and started vomiting. The bottles were examined and found to be infected. The District Forum directed the refund of the amount paid and ₹ 200/- as compensation. In appeal the State Commission increased the amount of compensation to ₹ 5,000.

- 2. User of the goods:** Any person who uses goods with the approval of the buyer, who has bought goods for consideration is a consumer. Thus, all family members are beneficiaries of a contract and included as consumers. In Dr. Sr. Louie and Am V. Kannoli Pathumma and Another<sup>3</sup> the National Commission has held that the legal heirs who are entitled to the estate of the deceased consumer and can file a complaint under the Act.
- 3. Hirer of services:** Any person who hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment is included as a consumer. The service sector includes

<sup>1</sup> (1995) III CPJ 296

<sup>2</sup> (1993) CPJ 302 (NC)



banking, telecom service, postal service, insurance, railways, air travel, doctors, caterers, contractors, transport operators, etc. In *Mohd. Suleman Ansari V. Shankar Bhardari*, 2006: Mohd Ansari<sup>3</sup> suffered a fracture in his hand and was taken to a medical practitioner for the treatment. He bandaged the fractured hand and gave some medicines. Later on when the problem continued for a long time he was taken to other doctors for further treatment but unfortunately the affected hand became permanently damaged. The District Forum rejected the case taking the view that dispute should be settled in the civil court. The State Commission allowed the appeal and ordered for a compensation of ₹ 1, ₹ 50,000 and ₹ 20,000 more for treatment and ₹ 5,000 as cost for filing the complaint. The opposite party appealed in the National Commission which rejected the appeal and asked the medical practitioner to pay ₹ 80,000 as full and final payment.

4. **Beneficiary of services:** In respect of services, the beneficiary of such service is also a consumer. According to *Indian Medical Association v. V. P. Shanta case*<sup>4</sup> it was decided that medical practitioners are not immune from a claim for damages on the ground of negligence. The patients who are rendered free service are the beneficiaries of the services hired by the patients who paid for the services. In *Spring Meadows Hospital vs. Harjot Ahluwalia* (1998) (2), the Supreme Court held that a consumer would mean a person who hires or avails of any services and includes any beneficiary. Therefore, when a young child is taken to a hospital by his parents and treated by the doctor then the parents and the child would come under the definition of a consumer.
5. A trader or businessmen who buys the goods or services for resale is not a 'consumer'. In *Laxmi Engineering Works v. Industrial Institute II* (1995) the Supreme Court observed that commercial purpose is a question of fact and should be decided based on the basis of facts of the case.<sup>5</sup> The Consumer Protection Act Amendment in 2002 excludes persons who buy goods or services for a 'commercial purpose'. However, 'commercial purpose' does not include the following:
  - (a) Goods bought and used for the purposes of earning livelihood by means of self-employment. This means that if an individual or a family buys goods for professional or vocational use s/he will be a 'consumer'. Recently, Supreme Court in its judgement dated 1-10-2019 in *Sunil Kohli & Anr. Vs M/s. Purearth Infrastructure Ltd.* observed that if the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods is yet a 'consumer'.
  - (b) Services availed for the purpose of earning livelihood by means of self-employment. This means that if a person or family buys services for professional or vocational use s/he will be a 'consumer'. Thus, any person who buys goods either for resale or for making profit is not a 'consumer' under the Consumer Protection Act. In *Raj Kumar vs. S. C. Verma*, 2001 (1) CPR 437 it was held that persons buying goods either for resale or for use in large scale profit-making activity would not be 'consumers' entitled relief under the Act.

<sup>3</sup> *Mohd. Suleman Ansari V. Shankar Bhardari*, 2006 CTJ 105 (Supreme Court)  
<sup>4</sup> *Indian Medical Association v. V. P. Shanta* (1995) 6 SCC 651; AIR 1996 SC 550  
<sup>5</sup> *Laxmi Engineering Works v. Industrial Institute II* (1995) CPJ 1 SC 1995

### Are the following 'Consumer' under the Consumer Protection Act?

Buyer of machinery will be treated as 'consumer' only if it operates it directly and not through labour/employees. For example, person purchasing an auto rickshaw to earn its livelihood. Further, railway passengers travelling on payment of 'fare' are consumers. Further allottees of a house are consumers and can file a case against the builders in case of deficiency of service. Even Development Authorities if they do not perform well and are deficient in services then the allottees are 'consumers' under the Consumer Protection Act. A person getting water from government agency such as Delhi Jal Board or Haryana Jal Board, etc and paying bills is a consumer. If a farmer sells its produce to a middleman and does not get its money he is not a consumer and cannot file a case in consumer commissions under the Consumer Protection Act.

### Is student a Consumer?

Complaints pertaining to the education sector largely fall into three groups:

- (a) Firstly, they pertain to examination-related issues like, errors in answer sheets and report cards, caused by careless assessment and calculation,
- (b) Second variety pertains to a wide range of unfair practices, including false and misleading advertisements; and the
- (c) Thirdly they are about the lack of safety consciousness in educational institutions, resulting in fatal accidents.

Excepting some initial ambivalence in respect of examination related matters, the National Consumer Disputes Redressal Commission took to job educational institutions on a number of issues and awarded compensation for the loss and suffering undergone by the students and parents, one of the most notable being the award of damages to the parent of a three year old girl who drowned in a septic tank left open on the school premises. The Commission here made it clear that safety of students was an integral part of the service provided by educational institutions (*S. Somasundaram Vs Sri Chakravarthy International Matriculation Academy*, 2001).

As education falls in the ambit of 'service' under the Consumer Protection Act, therefore colleges and Universities fall under the Consumer Protection law, this was the interpretation which was given by many landmark judgements by Supreme Court/National Commission. In case of deficiency of service or unfair trade practice the student/ parents/ guardians have the right to file a complaint in the consumer Commissions against them.

One of the landmark decisions given by National Commission was in the case of *Bhupesh Khurana & Ors. Vs. Vishwa Buddha Parishad*, Vol II (2001) CPJ 74 (NC) where the question raised was whether imparting education for consideration is service under the Consumer Protection Act. The facts of the case were that Vishwa Buddha Parishad an educational institute, had advertised in the national newspapers inviting applications from students for admission in BDS Course. The Parishad wrote that the college was affiliated "under Magadh University, Bihar, and Dental Council of India, New Delhi".

The students in bona fide and good faith, accepted the information of the Parishad as

authentic and correct and sought admission in the BDS Course and paid a substantial amount as demanded by the Opposite party under various heads. They attended their classes regularly for full session. However, the eleven complainant students got worried when the University examinations due to be held were not in sight. The complainants along with their parents, made enquiry from the opposite party about the reasons why the annual examination was not conducted in time by the Magadh University. In spite of number of requests and reminders made by the complainants, no date-sheet for examinations was declared. The complainants lastly, approached the Governing Authority and they came to know that the college was neither affiliated to Magadh University nor recognized by the Dental Council of India and thereby unable to hold the examinations. Complainants alleging to have suffered irreparable loss and injury because of such acts of the opposite party filed a complaint before National Commission claiming compensation to the tune of ₹ 1,21,94,000/-.

The College pleaded that they had taken all the possible steps for getting the recognition of the college. In spite of its efforts the affiliation could not be obtained for the reason beyond the control of the opposite party. The reason for not conducting the examination was on account of the delay on the part of Dental Council of India to carry out its inspection.

Rejecting contentions of the opposite party the National Commission was of the view that the representation given in the advertisement that the college was under Magadh University and by the Dental Council of India could be taken by a common person to mean that the college had been given recognition by the Dental Council of India and was affiliated to the Magadh University.

The National Commission laid down that imparting education by an educational institution for consideration falls within the ambit of 'Service' as defined in the C.P. Act. Also that, fees was paid by students for services to be rendered by way of imparting education by the educational institution. The complainants had hired the services of the respondent for consideration so they were consumers as defined in the C.P. Act. Therefore, the Commission directed the college to refund the admission fees paid by the students at the time of admission with interest at the rate of 12% p.a. from the date of receipt of the fees till the date of payment and also directed the institute to pay ₹ 20,000/- to each student for compensation for mental agony and harassment.

#### Education is not a Commodity

However, in PT Koshy Vs Ellen Charitable Trust (2012), the Supreme court categorically held that education is not a commodity and educational institutions are not providing any kind of service and therefore such matters cannot be entertained by the consumer forum under the CP Act, 1966. In a couple of earlier cases in 2009 and 2010 also it had held that an examination board discharging its statutory function was not a service provider, nor the examinee, a consumer.

But in P.Sreenivasulu Vs P.J Alexander (2015) the Apex Court reiterated that educational institutions come under the purview of the CP Act. However in 2017 in Anupama College of Engineering Vs Gulshan it retracted to its position in the P.T.Koshy case.

So when Manu Solanki and eight others filed a complaint against Vinayaka Mission University, a large Bench of the National Commission examined in detail the decisions of the Supreme

Court and concluded that all educational institutions and related activities were outside the purview of the CP Act and dismissed it. On the same grounds, it also dismissed the appeal of the father who had sought compensation for the death of his child by drowning in a school swimming pool (Rajendra Kumar Gupta Vs Dr Virendra Swarup Public School).

Both the cases went before the Supreme Court. While granting leave in a special leave petition filed by Rajendra Kumar on October 29, 2021, the Supreme Court observed that an appeal pertaining to the issue of whether education is a service within the CP Act was already pending before the court (Civil Appeal of Manu Solanki was admitted in 2020) and that this should be tagged with that. Further coaching institutes are excluded from this petition and any deficiency by them the consumer can file a complaint under CPA, 2019.

## 1.2 CHARACTERISTICS OF CONSUMER BUYING

The aim of any manufacturer/marketer is to meet and satisfy target customers' needs and wants better than competitors. Consumer behaviour is the study of how individuals, groups and organizations select, buy, use and dispose of goods, services, ideas or experiences to satisfy their needs or wants. Consumer buying differs greatly for the purchase of a toothpaste, to an LCD or an insurance policy. More complex decisions usually involve more buying participants and more buyer deliberation. Characteristics of consumer buying includes the types of buying decision behaviour and the buying decision process.

### Types of Consumer Buying Behaviour

There are four types of consumer buying behaviour based on the degree of buyer involvement and the degree of differences among brands.

Table 1.1: Four Types of Buying Behaviour

| Differences between brands ↓          | Level of Involvement → | High Involvement                     | Low Involvement                  |
|---------------------------------------|------------------------|--------------------------------------|----------------------------------|
| Significant difference between brands |                        | Complex buying behaviour             | Variety seeking buying behaviour |
| Few Differences between brands        |                        | Dissonance reducing buying behaviour | Habitual buying behaviour        |

Source: Henry Assael, Consumer Behaviour and Marketing Action (Boston: Kent Publishing Co., 1987), P. 87

The four types of buying behaviour are as follows:

1. **Complex Buying Behaviour:** Consumers undertake complex buying behaviour when they are highly involved in a purchase and perceive significant differences among brands. Consumers may be highly involved when the product is expensive, risky, purchased infrequently and self expressive. In this situation the consumer does not know much about the product category. For example while purchasing an LCD television the buyer may not know about what attributes to consider. He would pass through a learning process, first developing beliefs about the product, then attitudes and then making a thoughtful purchase choice. The marketers need to understand the following:
  - The information-gathering and evaluation behaviour of high involvement consumers.



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- Helping buyers to learn about product-class attributes and their relative importance.
- Print media with a long copy can be used to differentiate brand's features.
- Store salespeople and opinion leaders can play an important role in influencing the final brand's choice.

2. **Dissonance Reducing Buying Behaviour:** Consumer goes through such behaviour when they are highly involved in the purchase and see little difference among brands. Consumers may be highly involved when the product is expensive, infrequent, or risky purchase. For example, when consumers purchase furniture, upholstery, or curtain material they face a high-involvement decision because the purchase is expensive and self-expressive. Since perceived brand differences are not large buyers shop around to learn what is available but buy relatively quickly. They react to good price or to purchase convenience.

After the purchase the consumers face post purchase dissonance which marketers of such products can reduce by highlighting the good points of the brand and by providing strong after-sales service and by building long term relationship with the customers.

3. **Variety Seeking Buying Behaviour:** Consumers undertake variety seeking buying behaviour in situations characterized by low consumer involvement and significant perceived brand differences. In such cases, consumers do a lot of brand switching. For example, when consumers buy biscuits they evaluate it during consumption. But the next time, he may buy another brand because he has got bored with the existing one. Brand switching occurs for the sake of variety rather than for dissatisfaction. In such cases the marketing strategy of brands would differ from the market leader to smaller brands. Smaller firms would encourage variety seeking by making use of sales promotion schemes, such as, samples, coupons, lowering prices.

4. **Habitual Buying Behaviour:** This behaviour occurs under conditions of low-consumer involvement and little significant brand difference. For example, when consumers buy salt they have very less involvement in it. They go to the store and ask for the same brand which is not because of strong brand loyalty but out of habit. Consumers have low-involvement with most low-cost frequently purchased products.

In such cases consumers do not pass through the belief-attitude-behaviour sequence. They never do extensive research for purchase of such products as they are low-ticket items. They passively receive information through watching television or reading through print media. Ad repetition creates brand familiarity rather than brand conviction. Consumers generally buy a brand because they are familiar with it for example, Tata salt. Since buyers for low-priced items are not loyal to a particular brand marketers in this product category make use of price and sales promotion schemes to induce product trial. Generally television is a better medium for promoting such products than print.

#### Buying Roles

There are multiple roles enacted within a household's buying process. Some roles are more important than the others depending on the product and situation. Also, it is possible for the

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same person to play all the roles or for many members to be involved at various stages<sup>6</sup>. Five of the most important buying roles identified by Kotler are:

- Initiator:** A person who first suggests the idea of buying the particular product or service.
- Influencer:** A person whose views or advice carries some weight in making the final decision.
- Decider:** A person who decides on any component of a buying decision: whether to buy, what to buy, how to buy, or where to buy.
- Buyer:** The person who makes the actual purchase.
- User:** A person who consumes or uses the product or service.

An individual does not play the same role all the times. He may be an initiator for one product and decider for another; or he may just be the user of a product without actually participating in its purchase. For example, children use many products but they are not usually the buyers or payers for the same.

A study by Jagdish N Sheth and Sisodia found that as users, customers seek two types of value:

- Performance value:** It refers to how well and consistently a product serves its principal function. The product's performance heavily depends on the quality of its design, engineering and manufacturing. As the performance of products improves consumer's expectations also rise to the point where there is no tolerance for error.
- Social/Emotional Value:** Products are bought and consumed not just for their physical characteristics, but also for social and emotional benefits they provide. They include sensory enjoyments, attainment of desired mood states, achievement of social goals such as acceptance by one's reference groups<sup>iii</sup>.

#### Consumer Buying Process

The buying process plays an important role in consumer's actual buying decisions. Smart companies try to fully understand consumer's buying decision-making process—all the experiences in learning, choosing, using and even disposing of a product. It answers to various questions which each company should know such as, who buys the product or service, who makes the decision to buy and who are the influencers, why do the consumers buy a particular brand, how is the product perceived by the customers, what social factors influence the purchase decision, how does the demographic, personal, psychographic or economic factors influence the purchase decision. The buying process consists of five stages which are:

1. Need Recognition
2. Information Search

<sup>6</sup> John C. Mowen, *Consumer Behaviour*, 3<sup>rd</sup> ed. (Macmillan Publishing Company, New York, 1993), pp.598-608.

3. Evaluation of alternatives
4. Purchase Decision
5. Post-purchase behaviour

Generally, for the purchase of high-involvement products such as car, laptop, LCD television consumers pass through all the five stages. But for the purchase of low-involvement products consumers may skip any of the 1-3 stages and may go for impulse purchase as the cost of the item is very low. For example, the purchaser of salt or biscuits or toothpaste may directly go to the purchase decision without considering the previous stages. In case of an online consumers the buying process would contain the above mentioned five steps with the only difference in execution and channels involved.

A brief description about the consumer buying process is as follows:

1. **Need Recognition:** The buying process starts with need recognition-i.e when the buyer recognizes a problem or need. The need can be triggered by internal stimuli when one of the person's normal needs such as, hunger, thirst drive him to buy some product or service. A need can also be triggered by external stimulus such as, an advertisement or a discussion with a friend. The greater the discrepancy between unsatisfied need and actual need the greater would be the need recognition. At this stage the marketers should research to find out what triggers consumers interest. For products such as, luxury goods, vacation package and entertainment options consumer motivation research is being used to find out potential prospects of the product.
2. **Information Search:** Research says that consumers often search for limited information. For a durable purchase, half of the consumers visit only one store and only 30 per cent look for more than one brand of appliances. An aroused consumer is inclined to search for more information. The search can be at a milder level or at an active level. An active search involves collecting information from print, television, radio, visiting store and collecting reading material, friends, etc. The major information sources used by consumers are:
  - Personal sources: Family, friends, neighbours, acquaintances
  - Internet Searches: Reviews on social media, websites of companies
  - Commercial Sources: Advertising (radio, tv, print), websites, sales persons, packages, dealers, displays
  - Public Source: Mass media, consumer-rating organizations
  - Experiential sources: Handling, examining, using the product

The consumers receive most of the information from external sources but the most trustworthy sources are personal and public which are independent sources. For example, if a consumer has to buy a laptop then he would list down the total brands which are available in the market i.e, Apple, Dell, HP, Compaq, Toshiba, Lenovo out of that he would come to the awareness set, i.e the brands which he is familiar with (Apple, Dell, HP, Lenovo and Compaq). From that he would finally list down three brands which

are there in the consideration set ( Apple, Lenovo and HP). As the consumer gathers more information only two brands such as Apple and Lenovo would remain strong contenders. The consumer makes a final choice from these.

Similarly, if consumer has to buy a television in the price range of ₹ 20,000, then he would list down the total brands which are available in the market out of that he would come to the awareness set, i.e the brands which he is familiar with. From that he would finally list down four brands which are there in the consideration set (LG, Samsung, Sony and Panasonic). As he gathers more information only two brands such as LG and Samsung would remain in his choice set.

3. **Evaluation of Alternatives:** The consumer at this stage has to choose amongst the alternative brands. No single process is used by all consumers or by one consumer in all situations. The consumer arrives at attitudes towards different brands through some evaluation criteria. Consumer evaluation process may vary from individual consumers and buying situations. He may make use of careful thinking and logic in certain cases. For example, if he has narrowed his choices to two brands as mentioned in point 2 to purchase a television and what he is looking at are certain attributes such as, picture quality, warranty, price and features and sales promotion schemes. By this time the consumer forms beliefs about how each brand rates on each attributes. Most buyers consider several attributes before purchasing a product. Consumers pay the most attention to attributes that deliver the sought-after benefits. The market for a product can be segmented according to attributes that are important to different consumer groups.
4. **Purchase Decision:** The consumer may form an intention to buy the most preferred brand. In executing a purchase intention the consumer may make up five decisions:
  - Brand Decision (Buying Apple or Lenovo) or (Buying LG or Samsung)
  - Dealer decision (Dealer A or B)
  - Quantity (one Laptop) or (One TV)
  - Timing (Weekend)
  - Payment Method (credit card or cash or installments)

Generally the consumer's purchase decision involves buying the most preferred brand but two factors can come between the purchase intention and the purchase decision. The first factor is the attitude of others. A person's attitude towards a particular brand depends on:

1. The intensity of the other person's negative attitude towards the consumer's preferred alternative
2. The consumer's motivation to comply with the other person's wishes.

The second factor is the unanticipated situational factors that may change the purchase intention. For example, losing a job, Drop in price by a competitor brand, some other purchase might become important, or a retail salesperson may not attend the customer properly.



5. **Post Purchase Behaviour:** The marketer's job does not end when the product is bought. After purchasing the product, the consumer will be satisfied or dissatisfied with it and will engage in post purchase behaviour of interest to the marketer.

There are three possible post purchase outcomes:

- Customer Satisfaction
  - Post purchase Cognitive Dissonance
  - Post purchase loyalty
- (a) **Consumer Satisfaction:** The factor which determines the buyer is satisfied or dissatisfied with a purchase is the relationship between the consumer's expectations and product's perceived performance. If the product falls short of expectations, the consumer is disappointed, if it meets expectations, the consumer is satisfied and if it exceeds expectations the consumer is delighted. The larger the gap between the expectations and performance, the greater the consumer's dissatisfaction and the potential for negative word of mouth. Marketers can take several steps to ensure post purchase satisfaction:
- Building realistic expectations, not too high and not too low.
  - Demonstrating correct product use.
  - Standing behind the product or service by providing money-back guarantees and warranties.
  - Encouraging consumer feedbacks, which cut down on negative word of mouth and marketers adjust their offerings.
  - Periodically make contact with customers and thank them for their support.
- (b) **Post purchase Cognitive Dissonance:** Almost all purchases result in cognitive dissonance which is a psychological disturbance in the minds of the consumers after purchasing a product. It is an internal conflict that arises from inconsistency between two beliefs or between beliefs and behavior. For example, after purchasing an expensive television consumer may question himself whether the high price version offers appreciably better quality than a set of similar size but at a lower price TV or whether one needs a television at all. Post purchase cognitive dissonance generally occurs when a consumer questions the appropriateness of a purchase after his or her decision has been made.
- The probability and magnitude of such dissonance is a function of:
- The degree of commitment or irrevocability of the decision: the easier the consumer can alter its decision, the less likely it is to experience dissonance.
  - The importance of the decision to the consumer: the more important the decision, the more likely dissonance will result.
  - The difficulty amongst choosing of alternatives: The more difficult it is to choose amongst alternatives, consumers are more likely to face dissonance.

- The individual's tendency to experience anxiety: Higher the anxiety more likely such consumers would experience post purchase dissonance.

Thus, in order to avoid post purchase cognitive dissonance (or PPCD), marketers need to concentrate on **truths**. What does the product do? How does it do it? Can the marketer prove it does it? What do existing customers think about it? How will new customers be instantly rewarded by their purchase from the marketer? What after-sales care does the manufacturer provide? Is there an after-sales cost (if so, clearly mention it)? Does the manufacturer have sufficient marketing to boost the product in the customer's mind after they have purchased? What communications have been prepared to send to new customers so they feel happy in their own mind they bought the right thing? Crucially, will their peers and friends think they have made the right decision?

Thus, companies should try to reduce post-purchase dissonance amongst people by making them feel good about what they purchase before they buy, during purchase, and after purchase and to give rewards for their loyalty. But if the customers are cheated, if they have been made to feel like a fool, they will blame the company. They will be writing negative feedback, complaints to friends and cause significant long-term damage to business.

Post purchase cognitive dissonance, is likely for the products that are expensive, infrequently purchased, do not work as intended and are associated with high levels of risk. To reduce the dissonance the marketer needs to send a letter to purchasers reinforcing the customer that he made a wise decision, pay attention to positive information such as looking up ads and articles about the particular product, more positive feedback from friends, talk about product quality.

Thus, truth, honesty and credibility are crucial for companies to maintain a long-term relationship with customers.

- (c) **Post purchase loyalty:** loyalty In the post purchase stage of the decision-making process marketers attempt to solidify a loyal relationship with their customers. They want customers to be satisfied with their purchase and buy from the same company again. Loyal customers would buy only certain brands and shop at certain stores and they would include no other brands in their evolved set. Customers are therefore very important for the marketer and marketers should design customer relationship management (CRM) programs specifically to acquire and retain them.

### 1.3 FACTORS AFFECTING VOICING OF CONSUMER GRIEVANCES

All of us have consumer rights. As consumers we have the right to know what we will receive before we pay for a product or service, obtain what we pay for, complain when we are dissatisfied, and get our money back when we have a legitimate complaint. After receiving a product/service a consumer may detect a shortcoming. Some buyers may not want the flawed product, others will be indifferent to the flaw. Some shortcomings can be dangerous to consumers. Companies making automobiles, toys and pharmaceuticals quickly recall their products if there is a slightest danger of injuring the consumers. Product liability is a new

concept which has been added in Consumer Protection Act, 2019 to protect the Indian consumers and provide relief and compensation to every claim for compensation under a product liability action by a complainant for any harm caused by a defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller. A product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.

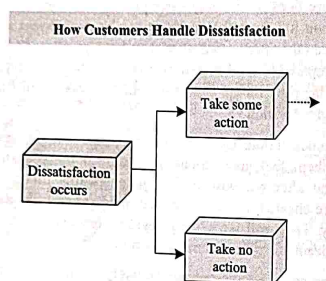


Fig. 1.1: How Consumers Handle Dissatisfaction

Companies should be aware of the full range of ways of handling consumer dissatisfaction. Consumers have a choice between taking and not taking any action. Further they can take public action or private action. Fig 1.1 and 1.2 shows how consumers handle dissatisfaction.

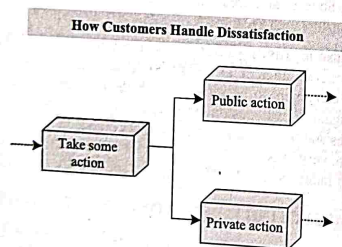


Fig 1.2: Public and Private Action

Public action includes complaining to the company, going to a lawyer, or complaining to other groups that might help the buyer get satisfaction such as business, private or government agencies. Or the buyer may simply stop buying the product, boycott it and use the exit option or alternatively choose to use the voice option. In all these cases the

marketer loses its brand image having done a shoddy job of trying to satisfy the customer. Fig 1.3 and Fig 1.4 shows private and public action taken by customers to voice their grievances.

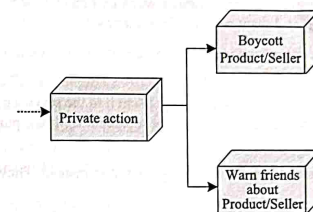


Fig 1.3: How Customers Handle Dissatisfaction: Private Action

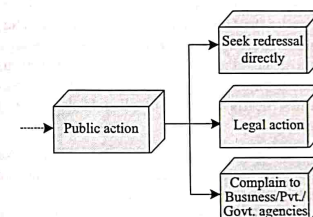


Fig 1.4: How Customers Handle Dissatisfaction: Public Action

Private actions as mentioned above are boycotting the product/service or warning friends and relatives about the defective product or service. Public action includes seeking redressal directly, taking legal action and complaining to business, which are elaborately mentioned in the Section on public action in the end of this Chapter. During pandemic also we saw how consumers faced problems related to non-availability of essential medicines or gas cylinders or being sold at inflated costs and hoarding of many products. From receiving a defective product such as television, refrigerator to deficiency in service such as banking, insurance, unfair trade practices or restrictive trade practices the consumer has the right to complain in case he is dissatisfied. These days consumer commissions are receiving enormous complaints related to real estate developers, online shopping and financial services. The dramatic advancement of the communications industry (telecommunications and internet) has played a significant role in providing new opportunities for consumers and businesses. Since the consumer cannot check or verify the claimed features of the product or service by the website he has to rely on the representation of the e-portals and many times he makes payment before receiving the product. Further many times the consumer has very less knowledge about the address of the seller and sometimes has no means to verify the address



mentioned on the website. Some of the frequently reported problems faced by consumers while doing online shopping are:

- "I had purchased a product from a popular website. I paid ₹ 3,066/ for that product. I did not receive the product. I want refund of my money."
- "A travel portal has not refunded my money despite many reminders."
- "I purchased a mobile phone worth ₹ 19,900/ from a popular retail outlet. When I received the handset, I found out it was not charging. I sent it to the service centre, where I was told that it is a defective product. They could not replace it as it was purchased from the retail website."
- "I had ordered a branded power bank but got another instead. They are not responding to my emails."

#### Gold Bond Schemes and Duping Investors-A Case Study

Just before Diwali in October, 2019 consumers who had invested their hard earned money with Goodwin Jewellers under the Gold Bond scheme for quick returns, where majority of consumers are from Mumbai and Pune were reeling under the shock of losing their money. They had been saving in a scheme that required investors to put in money every month for purchasing gold, which has been hovering around Rs 39,000 per gram range since last two years. According to research nearly a fourth of all gold purchases happen through gold schemes offered by jewellers.

Buyers used to walk into the store of Goodwin Jewellers to buy jewellery and they were offered many attractive schemes such as paying only for 20 months and rest instalments to be paid by the company and luring people. One of the consumers who lost its money in the Gold Bond Scheme remarked "Since most staff members were Malayalees, I was amazed at the number of common friends that the sales staff handling our purchase had back in our native village. They informed us about the savings scheme, wherein we would have to accumulate money for 12 months and two months' worth instalment amount would be offered by the jeweller. I didn't sense anything illegal in it." The lavish Vashi store of Goodwin Jewellers was inaugurated as recently as September 2017 with much fanfare by actor Anil Kapoor, and stationed a decked-up life-size elephant figurine at the store's door to catch more eyeballs.

#### The insatiable love for gold

Indians are the biggest consumers of gold worldwide and they love their jewellery more than they do bars and coins. According to the World Gold Council, consumer demand for jewellery stood at 168.6 tonnes, as against bar and coin demand of 44.5 tonnes in the June 2019 quarter.

#### Packages as bonus return schemes

But why would people use these schemes offered by jewellers instead of just purchasing the expensive jewellery using a credit card and converting it into a regular EMI or any other

<sup>7</sup> www.moneycontrol.com

finance scheme offered by non-banking finance institutions? That's because a gold savings scheme is much more than just an instalment payment plan. Jewellers offered returns in terms of waiver/discount worth the last month's instalment - in the case of Goodwin Jewellers, the last two months' instalment was offered as "bonus." Benefits in terms of lower making charges were also clubbed with these schemes.

#### What do investors do?

Investors need to understand the demarcation of regulated and unregulated entities before handing them their hard-earned money in the lure of attractive interest or returns. "Investors too are to be blamed for investing their money without understanding the contingent liability of a jeweller or a company. One should always assess the contingent liability, brand value and stability of a company before investing."

#### 1.4 EXPERIENCING DISSATISFACTION: PRIVATE AND PUBLIC ACTION

Satisfaction is a person's comparative judgment resulting from product's perceived performance or outcome in relation to his or her expectations. If the performance falls short of expectations, the customer is disappointed. If the performance matches expectations, the customer is satisfied and if the performance exceeds expectations, the customer is delighted. Therefore, it is very important for marketers to satisfy customers. Customer satisfaction is a key to building profitable relationships with customers and to add more consumers who are loyal to its brand and to reap their customer lifetime value. Some of the qualities of a satisfied consumers are:

1. They buy the same product and the brand again and are loyal to it.
2. They talk favourably to others about the product.
3. They pay less attention to competing brands and advertising.
4. They may buy other products also offered from the same company.

Therefore, companies and their dealers go to all extremes to satisfy customers and to make them coming back to their shops or showrooms.

A dissatisfied consumer talks in negative terms about the brand and also warns its friends and relatives not to use the same. He may abandon or return the product. He may also seek information that confirms its high value. The consumer may even take public action by complaining about the product to the company or going to a lawyer or complaining to other groups (such as business, private or government agencies). Private actions include making a decision to stop buying the product or warning friends.

#### Public Action

##### A. Making a complaint heard by the Business

'The squeaky wheel gets the grease', this proverb means that noise gets attention. If consumers don't let a shopkeeper or vendor or service provider or manufacturer know that they are dissatisfied with their goods or services, they have no chance of resolving the

problem. First consumers should ask themselves if their complaint is legitimate. Why are they dissatisfied? What went wrong? Is it a question of losing money because goods they received were not what was promised, or was there even outright fraud? Or, did a representative of the company treat the customer rudely or unfairly?

Taking the time to consider whether a consumer has a valid and timely complaint would save the time and effort. But, consumers need to check if there is a deadline for making the complaint. Under the Consumer Protection Act, 1986 a consumer can file a complaint within two years from the cause of action. Further, the consumer should look for a reasonable solution to their problem.

Thus, the first step is to take the complaint directly to the business or manufacturer before taking other action. Often, the problem can be resolved quickly by doing so, and consumers should not forget to ask to "escalate" their call if the customer service representative is not helpful. Further, consumers should let the appropriate authorities know when they have been a victim of fraud. There is a chance that they can recover their money, and we should help prevent other consumers from falling victim to the same scam.

Thus, as consumers we should know the following:

- Complete knowledge about consumer rights.
- Complaint to be made in time.
- Prepare a folder or file to keep documents and notes about the complaint.
- Write out three or four sentences that describe the complaint clearly and concisely.
- Be clear about the nature of compensation, whether a refund or replacement is required.
- Be persistent and not to lose their cool.
- Seek assistance from a third party.
- Consider going to consumer forums as the last resort.

These days consumers can make use of social media platforms to share their complaints against business. Companies are very conscious about their image and a negative comment on twitter, Facebook and other social platforms would make the company conscious about the problem faced by the consumer and it would try to rectify the same immediately and also give compensation to the consumer.

### B. Corporate Redressal Systems

In case the consumer gets any defective goods or deficiency in service they should go back to the shopkeeper or the dealer and put pressure on them to either refund their money or replace their goods by new one. If the shopkeeper or dealer does not listen to him then the consumer should send a notice to the opposite party by registered post to resolve the complaint within a specified time. The complaint should be addressed to the Customer Care Department or the officer concerned of the company dealing with the complaints. It has been generally seen that the consumer writes to the CEO or MD of the company but the same remains un-responded for want of communication to the officer concerned. Many companies have set up in house customer care center to deal with the complaints promptly.

Unfortunately, these centers have failed to meet the expectations of the complainants for reasons of lack of follow up at their end as well as no response to the complainant. There seems to be lack of monitoring of complaints at the corporate level to ensure that the consumer is not left high and dry and ultimately forced to go to the Forum for redressal. There are Voluntary Consumer Organizations (VCOs), which take up consumer complaints with the opposite party to avoid litigation.

Thus, the first step in complaining is to clearly present the problem. Failure to communicate effectively often makes it difficult to resolve complaints. Consumers should have all the relevant information at hand when they contact the company, including: a description of the item; account number or other facts to help the company identify the transaction; receipt, billing statement or cancelled cheque; and a clear and brief explanation of what is wrong and what they want the company to do.

Consumers should not get emotional and speak calmly and politely. They should think about how the person they are speaking to, would react. If consumers raise their voice, that person would probably get angry and yell back or simply hang up. Handling complaints can be a tough job. If consumers make the complaint handler's job harder by getting angry, that person is likely to respond negatively to her/him.

Making notes about all conversations and about the complaint is required, including the time and date of calls, names of everyone at the company consumers spoke to and what they said. Consumers can complain by phone, in person, or in writing by email or mail. Phone or email should be used first to tell the company about the problem and asking them to resolve it.

Consumers can go to the company to return the purchase, or if there is a need to meet with someone to examine the item, receipts or statements should be carried along with you. Complaining in person helps to force the issue, but is not always necessary. Consumers can ask a friend to go with them if they are concerned about being harassed or want a witness.

Sometimes problems can be resolved with one call, email or visit. But when consumers realize that their attempts to contact the company are being ignored, or the company refuses to help them, they can start putting their communications in writing. Sometimes businesses ignore complaints until they see them in writing. Even if consumers email, it's a good idea to print out a copy of the message and send it through the mail. Consumers should send their hard-copy complaint letters by registered mail and request for return receipt. This way consumers will have a record that the company received their communication.

**Complaint through emails and letters are important because they:**

- create a written record of consumers complaint with the company
- protects consumers rights under law
- helps the business understand consumers side of the story
- involves government agencies and alerts them of the wrong practices of the company
- lays the groundwork for a future legal case
- let's the company know that consumers are serious about the matter



Thus, consumer complaints should not be long. A long letter can be a drawback as representatives may not have the time to read every word and may even choose to ignore it. Problem should be explained in 250 words or less. It should include complainant name, address and phone number, and account or invoice number, if any. Further relevant documents, receipts, invoices, bills should be attached. A copy of all communications sent and received should be kept. If the first letter does not bring some response, consumers should send another and create a record.

### C. Conciliation and Intermediation for out-of-court Redressal

Certain government departments such as, telecommunications water, and electricity organize Lok Adalats from time to time so that the grievances of consumers relating to their departments can be handled. This is a practical method to handle consumer grievances and seek a solution. Six categories of public utility services are included in the jurisdiction of permanent Lok Adalats under Section 22 A in the Clause B of the notification of permanent Lok Adalats. They are transport service for the carriage of passenger or goods by air, road or water, postal, telegraph or telephone service, supply of power, light or water to the public or any establishment, system of public conservancy or sanitation, service in hospital or dispensary and insurance sector.

Some departments such as, railways have made their services efficient and guide the consumers through their customer care number 139 and toll free number 1800-111-321. In three service sectors viz. banking, insurance and electricity Ombudsman have been created for free and fast redressal of consumer complaints. The Banking Ombudsman addresses 27 grounds of complaints regarding deficiency in banking services. 3.08 lakh complaints were received by Banking Ombudsman in the Financial Year 2020 which were 57.5% higher than previous year. In food sector Food Safety and Standardisation Authority has been created. Due to growing number of problems of home buyers Real Estate Regulatory Authority (RERA) has been created.

The government by now has enacted 24 pro-consumer Acts to control buyer-seller relations at the market place. The major consumer protection legislations in India are:

- The Indian Penal Code, 1860
- The Indian Contract Act, 1872
- The Sale of Goods Act, 1930
- The Agricultural Produce (Grading and Marking) Act, 1937
- The Drugs and Cosmetics Act 1940
- The Drugs (Control) Act, 1950
- The Emblems and Names (Prevention of Improper Use) Act, 1952.
- The Essential Commodities Act, 1955
- The Consumer Protection Act, 2019
- The Trade Marks Act, 1999

- The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980
- The Bureau of Indian Standards Act, 2016
- The Competition Act, 2002
- The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003
- Right to Information Act 2005
- The Food Safety and Standards Act, 2006
- The Legal Metrology Act, 2009

### Alternative Dispute Resolution (ADR) Mechanisms such as Mediation Centres

To provide consumers with an alternate channel to resolve their complaints, Government of India has set up a National Consumer Helpline (NCH) with its toll free number 1800-11-4000 or 1915 to provide advice and guidance and empower consumers and persuade businesses to reorient its policy and management system to address consumer concerns and grievances adopting global standards. The NCH has partnered with 325 major companies to whom complaints are transferred online for resolution and getting feedback from them.

ADR refers to a mechanism of resolution of disputes of conflicting parties without resorting to adjudicatory process. The concept of mediation is ancient and deep rooted in our country. In olden days disputes used to be resolved in a panchayat at the community level. Panch used to be called Panch Parmeshwarie were equated to God. Our judicial system is one of the best in the world and is highly respected, but there is lot of criticism on account of long delays in the resolution of disputes in civil court and consumer forums. Many times consumers are wary of approaching the consumer forums or civil courts for a decision of their dispute. Hence, Alternative Dispute Resolution mechanisms are available to consumers. ADR Refers to a mechanism of resolution of disputes of conflicting parties without resorting to adjudicatory process.

#### (a) Statutory Provision Regarding ADR

Section 89 of the Code of Civil Procedure CPC provides settlement of disputes outside the Court and includes the following:-

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement including settlement through Lok Adalat; or
- (d) mediation.

#### (b) ADR-In other Countries

- In other countries ADR has been very successful.

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- In USA it has been practiced for about 30 years and 90% cases settled through ADR in USA.
- UK, Australia and other countries for about 20 years.

**(c) Mediation Process**

Mediation is a negotiation process in which a neutral third party assists the disputing parties in resolving their disputes. A Mediator uses special negotiation and communication techniques to help the parties to come to a settlement. The parties can appoint a Mediator with their mutual consent or a mediator can be appointed by the Court in a pending litigation. Mediation always leaves the decision making power with the parties. A Mediator does not decide what is fair or right, does not apportion blame, nor renders any opinion on the merits or chances of success if the case is litigated. Rather, a mediator acts as a catalyst to bring the two disputing parties together by defining issues and limiting obstacles to communication and settlement. The Mediation Process consist of:

- Structured Process
- Neutral third party
- Facilitates resolution of disputes
- Mutually acceptable to parties
- Specified negotiation and communication techniques

Delhi Mediation Project is a unique model. It is a pilot project and is running under the guidance of the Supreme Court of India. The Mediation Centre is manned by Additional District Judges who have been given extensive training to act as mediator. The Consumer Protection Act, 2019 envisages setting up of mediation centres at District Commission, State Commission and National Commission, as an alternate dispute resolution mechanism. A new chapter V providing for "Mediation" as an Alternate Dispute Resolution (ADR) 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 quicker. This will be done under the aegis of the consumer commissions.

Section 74-80 of the Consumer Protection Act, 2019 contains provisions for "Mediation" as an Alternate Dispute Resolution (ADR) mechanism. It aims to provide legislative basis to resolution of consumer disputes through mediation thus, making the process less cumbersome, simple and quicker. The mediation centres would work under the aegis of the Consumer Commissions and the State Government and the Central Government would decide the composition of the mediation cell.

Sec 74 of the CPA, 2019 mentions that the State Government to establish a consumer mediation cell attached to the consumer courts and each of the regional benches. Every consumer mediation cell would submit a quarterly report to the District Commission, State Commission or the National Commission to which it would be attached. Thus, every consumer mediation cell would maintain:

- (a) a list of empanelled mediators;

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- (b) a list of cases handled by the cell;
- (c) record of proceeding; and
- (d) any other information as may be specified by regulations.

The tenure of the panel of mediators is valid for a period of five years, and the empanelled mediators shall be eligible to be considered for re-empanelment for another term, subject to such conditions as may be specified by regulations. The mediation shall be held in the consumer mediation cell attached to the various consumer Courts (Section 75).

**1.5 ISO 10000 SUITE: INTERNATIONAL STANDARDS ON HANDLING OF CONSUMER COMPLAINTS BY ORGANIZATIONS<sup>iv</sup>**

The ISO 10000 series, developed by the International Organization for Standardization (ISO), contains a series of standards focused on customer satisfaction and quality management. These standards provide guidelines and frameworks to help organizations thoroughly manage and improve customer satisfaction, which is a vital aspect of quality management systems (QMS).

Thus, ISO 10000 suites is a set of standards designed to advise organizations who want their consumers to be satisfied with their goods and services. ISO 10000 Series regards customer satisfaction is compatible with ISO 9001 and supports the objectives of this standard through the effective and efficient application of a process to develop and implement a code of conduct related to customer satisfaction.

This International Standard series can also be used independently of ISO 9001 and ISO 9004; or in conjunction with each other. When used together, they can be a part of a broader and integrated framework for enhanced customer satisfaction through codes of conduct, complaints handling and dispute resolution. ISO 10004 complements ISO 10001, ISO 10002 and ISO 10003 by providing guidance on the monitoring and measuring of customer satisfaction. The information gained can guide the organization to take actions which can help to sustain or enhance customer satisfaction.

**1. ISO 10001:2018 - Quality Management - Customer Satisfaction - Guidelines for Codes of Conduct for Organizations**

It provides guidance on global best practice for organizations who want to maintain high level of customer satisfaction. These guidance standards show how a company can create and implement a 'customer satisfaction code of conduct'. It Covers the principles and framework for creating, maintaining, and improving codes of conduct that reflect the organization's commitment to customer satisfaction.

**Key Aspects:**

- Defining the scope of the code of conduct.
- Ensuring the code aligns with organizational values and customer expectations.
- Mechanisms for communicating and reinforcing the code of conduct.
- Regular review and updates of the code.



## 2. ISO 10002:2018 - Quality Management - Customer Satisfaction - Guidelines for Complaints Handling in Organizations

It provides guidelines for the design and implementation of an effective complaints-handling process. It focuses on how organizations can manage complaints efficiently and effectively to enhance customer satisfaction. Even though this is a guidance standard, a number of Indian Companies have been certified against this standard.

### Key Aspects:

- Establishing a complaints-handling policy.
- Planning and designing the complaints-handling process.
- Operating the complaints-handling process with accountability and transparency.
- Monitoring, reviewing, and improving the complaints-handling process.

## 3. ISO 10003:2018 - Quality Management - Customer Satisfaction - Guidelines for Dispute Resolution External to Organizations

It provides guidance for organizations to plan, design, operate, maintain and improve an external dispute resolution system for its customers/consumers. Where complaints cannot be resolved inside the company, this standard helps to set up a company mandated external dispute resolution system. This helps to avoid time consuming adversarial procedures and helps in saving time of the consumer. It offers guidance on dispute resolution processes that occur outside the organization, such as through third-party mediators or arbitration.

### Key Aspects:

- Selection and appointment of external dispute resolution providers.
- Procedures and practices for effective dispute resolution.
- Ensuring transparency, fairness, and efficiency in the dispute resolution process.

## 4. ISO 10004:2018 - Quality Management - Customer Satisfaction - Guidelines for Monitoring and Measuring

It provides guidelines on tracking and measuring customer satisfaction to inform decision-making and continuous improvement. Focuses on methods and practices to collect and analyze customer feedback.

### Key Aspects:

- Planning and implementing customer satisfaction measurement processes.
- Identifying metrics and indicators of customer satisfaction.
- Collecting and analyzing customer satisfaction data.
- Using the results to drive improvements and enhance customer experiences.

## 5. ISO 10005:2018 - Quality Management - Guidelines for Quality Plans

It provides guidance on developing quality plans that are tailored to the specific needs of

a project or product. Helps organizations to plan and execute activities that meet quality objectives.

### Key Aspects:

- Identifying objectives and scope of the quality plan.
- Defining roles, responsibilities, and resources.
- Establishing quality control and assurance measures.
- Documenting and communicating the quality plan.

## 6. ISO 10006:2017 - Quality Management - Guidelines for Quality Management in Projects

It offers guidance on applying quality management principles to project management. It is designed to help organizations ensure that their projects meet quality standards and achieve their intended outcomes.

## 7. ISO 10007:2017 - Quality Management - Guidelines for Configuration Management

It Provides guidelines for the implementation of configuration management, a process for managing changes in products or services. Focuses on maintaining consistency of product performance and functional and physical attributes with design, operational information, and requirements.

### Key Aspects:

- Planning and implementing configuration management.
- Identifying configuration items and baselines.
- Managing changes and maintaining the integrity of configurations.
- Recording and reporting on configuration status.

## 8. ISO 10008:2013 - Quality Management - Customer Satisfaction - Guidelines for Business-to-Consumer Electronic Commerce Transactions

It provides guidelines for enhancing customer satisfaction in business-to-consumer (B2C) electronic commerce transactions. Focuses on best practices for managing customer interactions and transactions over electronic platforms.

### Key Aspects:

- Ensuring secure and reliable electronic commerce processes.
- Protecting consumer rights and data privacy.
- Facilitating clear and effective communication with customers.
- Handling transactions and after-sales service efficiently.

## 9. ISO 10009:2023 - Quality Management - Customer Satisfaction - Guidelines for Complaint Management in Organizations

It offers updated guidance on the entire complaint management process within organizations. Covers all aspects of complaint handling, from receipt to resolution, and continual improvement of the complaint management system.

#### Key Aspects:

- Establishing policies and objectives for complaint management.
- Designing and implementing complaint management processes.
- Ensuring accountability, accessibility, and responsiveness.
- Evaluating and improving complaint management practices.

#### Significance of ISO 10000 Suite

1. **Improved Customer Satisfaction:** ISO 10000 suite helps organizations to systematically manage and improve customer interactions which leads to higher customer satisfaction and loyalty.
2. **Uniformity in Quality:** By providing structured guidelines, the ISO 10000 series ensures that organizations can maintain consistent quality across their products and services.
3. **Risk Management:** Effective complaint and dispute resolution processes reduces the risk of legal issues and reputational damage.
4. **Continuous Improvement:** Regular monitoring and measurement of customer satisfaction and quality processes enable organizations to identify areas for improvement and drive continuous enhancement.
5. **Compliance and Credibility:** Adhering to international standards builds credibility and trust with customers, stakeholders, and regulatory bodies.

#### Applicability of ISO 10000 Suite

The ISO 10000 series is applicable across various industries, including manufacturing, services, retail, and e-commerce. Organizations of all sizes can implement ISO 10000 standards to improve their quality management and customer satisfaction processes.

#### Conclusion

Thus, many new schemes have been started by the government to empower the Indian consumers. The cost and time involved in litigation is so much that ADR started by the government is helpful. The efficient and effective programme of consumer protection is of special significance to all of us since all of us are consumers. Even the marketer, producer or the service provider is a consumer of some other goods and services. Only alert consumers can protect themselves and the society.

#### SUMMARY OF THE CHAPTER

- Consumer Affairs today encompasses all aspects of consumer protection and has been globally recognised in recent times. A consumer is a key figure in the market and all activities are carried on around this person. The Consumer Protection Act defines the term 'consumer' through 'goods' and 'services'.

- As per the Consumer Protection Act the term 'consumer' includes the buyer of goods or purchaser of goods, user of the goods, hirer of services and beneficiary of services. Any person who buys goods either for resale or for making profit is not a 'consumer' under the Consumer Protection Act. Under CPA 2019 the definition of consumer has become comprehensive to include both online and offline consumers.
- Consumer behaviour is the study of how individuals, groups and organizations select, buy, use and dispose of goods, services, ideas or experiences to satisfy their needs or wants. Consumer buying differs greatly for the purchase of a toothpaste, to an LCD or an insurance policy. More complex decisions usually involve more buying participants and more buyer deliberation.
- There are four types of consumer buying behaviour based on the degree of buyer involvement and the degree of differences among brands. These are complex buying behavior, dissonance reducing buying behavior, variety seeking buying behavior and habitual buying behavior.
- There are multiple roles enacted within a household's buying process. Some roles are more important than the others depending on the product and situation.
- Consumer buying process consists of five stages which are need recognition, information search, evaluation of alternatives, purchase decision and post-purchase behavior.
- There are three possible post purchase outcomes, customer satisfaction, post purchase cognitive dissonance and post purchase loyalty. Customers are therefore very important for any company and marketers should design customer relationship management (CRM) programs specifically to acquire and retain them.
- Customer satisfaction is a key to building profitable relationships with customers and to add more consumers who are loyal to its brand and to reap their customer lifetime value.
- A dissatisfied consumer talks in negative terms about the brand and also warns its friends and relatives not to use the same. He may abandon or return the product. He may also seek information that confirms its high value. The consumer may even take public action by complaining about the product to the company or going to a lawyer or complaining to other groups (such as business, private or government agencies). Private actions include making a decision to stop buying the product or warning friends.
- Companies should be aware of the full range of ways of handling consumer dissatisfaction. Consumers have a choice between taking and not taking any action. Further they can take public action or private action.
- Forms of Complaint to a business may differ on the basis of goods and services. A dissatisfied consumer may make a complaint heard by the business, go for corporate redressal systems, intermediation for out-of-court redressal and ADR.
- ISO 10000 suite is a set of standards designed to advise organizations who want their consumers to be satisfied with their goods and services. ISO 10000 Series regards customer satisfaction is compatible with ISO 9001 and supports the objectives of this



standard through the effective and efficient application of a process to develop and implement a code of conduct related to customer satisfaction.

### QUESTIONS FROM THIS CHAPTER

- Q1 Who is a consumer? Explain it from business and legal perspective?
- Q2 Mention the terms buyer, user, hirer and beneficiary as defined in the definition of consumer under the Consumer Protection Act?
- Q3 "A consumer by definition includes us all." Explain this with reference to the Consumer Protection Act. What are the exemptions under the term 'consumer' under CPA? Can a student be considered a consumer under this Act? Substantiate with a relevant case.
- Q4 Briefly explain the stages in the consumer buying process. Do all consumers pass through all the stages in buying, say, toothpaste or a new car?
- Q5 "Consumers buy products and services for various reasons and different people can have different reasons for purchasing the same product". What motivates consumers to buy: Elucidate the statement?
- Q6 In the light of post purchase behavior explain the following:
1. Customer Satisfaction
  2. Post purchase Cognitive Dissonance
  3. Post purchase loyalty
- Q7 Why is a satisfied consumer very important for the marketer? List down the various qualities of satisfied consumers?
- Q8 Mention how customers handle dissatisfaction. What are the Alternatives available to Dissatisfied Consumers? Explain private action and public Action?
- Q9 Explain the various forms of consumer complaints to a business? In case of online purchasers discuss the nature of complaints reported by them?
- Q10 What are the methods available to consumer for intermediation for out of court redressal of his complaint?
- Q11 Discuss how companies can give redressal to consumers through corporate redressal system?
- Q12 What is ADR? How can mediation help in easy resolution of consumer complaints?
- Q13 Explain ISO 10000 Suite?

### References

- i Lucknow Development Authority vs M K Gupta (1994) 1 SCC 243, 253
- ii Arindam Kar vs Proprietor Rupashi Cinema Hall (2016) NC 2301
- iii Sheth N Jagdish and Rajendra S. Sisodia (2017) The 4 A's of Marketing, Routledge Special Indian Edition, pp. 26-29.
- iv <https://www.iso.org/standard/71580.html>

## CHAPTER

# 2

## CONSUMER AND MARKETS

### LEARNING OUTCOME

Nature of markets: Liberalization and Globalisation of the Indian Consumer Market, Socio economic Classification of Indian Consumers, online and offline markets; Grey market, Concept of price in retail and wholesale, MRP, Fair price, labelling and packaging: legal aspects.

### 2.1 WHAT IS A MARKET

Originally the term market stood for the place where buyers and sellers meet and interact in order to facilitate an exchange of goods and services. With e commerce and online marketing, the term 'market' is no more limited to physical spaces but includes virtual markets also. The concept 'market' is based on exchange of products and services which are demanded by the consumers and sold by the sellers. A country's economy revolves around its markets. According to Kotler and Armstrong, "A market is the set of actual and potential buyers of a product. These buyers share a particular need or want that can be satisfied through exchange relationships."

#### 2.1.1 Nature of Markets

In the case of a monopoly market or a seller's market the consumer does not enjoy any choices and its exploitation is at its peak. Earlier traders were only concerned about making a product and doing aggressive marketing of it, they believed that by this the product would sell on its own. No attempt was made by them to understand the needs and desires of the customers. Henry Ford in 1909 himself remarked when he offered the Model T Ford to all buyers "Any customer can have a car painted any colour that he wants so long as it is black."

Similarly till the 1960s Coca Cola produced only one drink for the whole market, presuming it would appeal everyone. But gradually marketers have moved from mass marketing to segmenting the market and customer is the pivot around which all good companies take their decisions.

Further when the market constitutes a large number of buyers and seller's consumers are sovereign. In a free market economy, the consumers enjoy huge choices in the marketplace. Whenever there is a demand for a product, the seller readily supplies it in the market. The

consumer enjoys the choice of returning the purchased product on the ground of unsatisfactory service.

Markets can be divided into various business models as:

1. **Business to Business (B2B):** as the name suggests is a business model which facilitates business transactions from one business to the other. For example, tyre dealers which supply tyres to Car Companies is a b-b market model. The B2B marketplace requires a greater emphasis on customer education and proof of benefit than on desirability, status or other emotional sales pitches. Business-to-business selling often consists of garnering larger orders from fewer customers, with more personal interaction, rather than use of advertising and promotions. Within the B2B market are subsets of the marketplace focusing on the sale of industrial products, consulting services and financial services. Business buyers purchase products for commercial purpose. They buy goods either for their utility, to enable them to make or resell a product to others in order to make profits.
2. **Business-to-Government (B2G):** It is a derivative of B2B marketing and often referred to as a market definition of "public sector marketing" which encompasses marketing products and services to various government levels - including national, state and local - through integrated marketing communications techniques such as strategic public relations, branding, advertising, and web-based communications. Working with governments provides a variety of opportunities and challenges. These are known as institutional markets.
3. **Business to Consumer Market (B2C):** A Business to consumer model consists of both offline and online retailers which sell to the consumers. The Retail Market comprises of the Supermarkets, Departmental Stores, Food Chain Outlets, Specialty Stores and Franchise Stores. This is also called as Consumer Market from which consumers buy products and services for their own consumption and marketers constantly study consumer behaviour and develop new products based on the rapidly changing lifestyle and spending pattern of the consumers. Even in the suburban areas and in small towns, Departmental Stores are coming up from the big retail chain houses. This type of market generates low profit margins but has high growth potential. If the customers receive enough value for money, only then they will be loyal to the brands and will make repeated purchase. Companies selling mass products and services, such as, toothpaste, soaps, television sets, air tickets, etc. for personal consumption of the consumer-individuals and families constitute consumer markets.
4. **Consumer to Consumer (C2C):** Customer to customer (C2C) is a business model that facilitates an environment where customers can trade with each other. Two implementations of C2C markets are auctions and classifieds. C2C marketing has soared in popularity with the arrival of the internet, as companies such as eBay and Craigslist, Auction site, eBay have fostered greater interaction between customers.
5. **Consumer to Business (C2B):** It is a business model in which consumers (individuals) create value and businesses consume that value. For example, when a consumer

writes reviews or when a consumer gives a useful idea for new product development then that consumer is creating value for the business C2B model, also called a reverse auction or demand collection model, enables buyers to name or demand their own price, which is often binding, for a specific good or service.

## 2.2 LIBERALIZATION AND GLOBALISATION OF THE INDIAN CONSUMER MARKET

Before 1991 India had a closed economy and protection by way of subsidies was given to Indian industries. Due to liberalization, privatization and globalization and opening of Indian markets to foreign players in 1991 Indian consumers today have an access to innumerable brands. In every industry whether its fast moving consumer goods (FMCG) or durable goods or service industry there are more than twenty brands at national level catering to the needs of the consumers. This situation of plenty is giving the consumer an opportunity to choose goods and services from a wide spectrum.

Liberalisation, privatisation and globalisation (LPG) in India are the three pillars on which policy changes were made aiming at opening the Indian economy with the aim of making it more market-oriented and consumption driven. The goal was to expand the role of private and foreign investment, which was seen as a means of achieving economic growth and development.

### Liberalisation of the Indian Markets

The basic aim of liberalization is to put an end to those restrictions which became hindrances in the development and growth of the economy. It is a process where government lifts restrictions on some private individual activities. It is a situation in which State regulations and restrictions are eased to make space for economic expansion.

Some of the features of the liberalisation of the Indian market are:

- (a) **Economic Reforms:** In 1991, India undertook a significant shift in its economic policy, marking the initiation of market liberalization. This was categorized by the removal of restrictions on foreign investments, reduction in tariffs, and deregulation of domestic industries.
- (b) **Effect on Consumer Market:** The reforms provided a win-win situation for the Indian consumer and led to increased competition, availability of international products, and growth of private enterprises. This expanded the consumer choice and improved the quality of goods and services available in the Indian market.
- (c) **Increase in Disposable Income:** With the growth of the Indian economy, the disposable income of Indian households has increased. This shift enabled a larger segment of the population to access a variety of consumer goods and services.
- (d) **Growth of New Market Segments:** Liberalization has enabled the start of new market segments such as luxury goods, branded apparel, and modern retail formats like shopping malls and online marketplaces.



### Privatisation of the Indian Markets

This is the second pillar of the three policies of LPG made by the government for opening up Indian economy. To improve financial situation of the government and to reduce the workload of public sector undertakings this step was taken. It is the augmentation towards the dominating role of private sector companies and the reduced role of public sector companies. In other words, it is the reduction of ownership of the management of a government-owned enterprise. Government companies can be converted into private companies in two ways:

- By disinvestment
- By withdrawal of governmental ownership and management of public sector companies.

### Globalisation of the Indian Markets

Globalisation refers to the integration of global economics, industries, markets, culture and policies making around the world free from socio-political control and reduces distances between regions/countries through a global network of trade, communication, immigration, and transportation. Globalisation started in India in the early 1990s, when the government of India opened all of India's markets to foreign investments. Globalisation was initiated in various sectors such as pharmaceutical, petroleum, steel, textiles, chemicals, retail, cement and Business Process Outsourcing (BPO). Some of the features of globalization are:

- (a) Integration with Global Markets:** With the opening up of the Indian markets for foreign competition India became more integrated with the global economy. This integration resulted in increased foreign direct investment (FDI), the entry of multinational corporations, and a rise in exports and imports.
- (b) Cultural Influence:** Globalization brought about a cultural shift in Indian consumer behaviour where influence of Western brands has become more prevalent in consumer preferences, particularly among the urban and younger demographics. This has resulted in a higher demand for global brands and products.
- (c) Technological Expansions:** The globalization wave has corresponded with rapid technological advancements, particularly in telecommunications and internet penetration. This has revolutionized how consumers access information and purchase goods and services.
- (d) Supply Chain and Retail Evolution:** Indian supply chains and retail sectors have reformed, adopting global best practices in logistics, customer service, and digital retailing. The e-commerce boom is a direct result of these changes.

### Socio-Economic Classification of Indian Consumers

Socioeconomic classification helps brands and advertising agencies better understand their target audience's profile and behaviour, and launch products, innovations and ad campaigns accordingly. Such data is especially critical in a diverse, populous market such as India. The Market Research Society of India (MRSI) has turned out a new socio-economic classification framework called the Indian Socio-Economic Classification (ISEC) in February 2024, which

will replace the New Consumer Classification System (NCCS) introduced in 2011. ISEC is representative of India's socioeconomic strata and captures both urban and rural household data<sup>iii</sup>.

### 1. Traditional Socio-Economic Classifications

- (a) Income-Based Segmentation:** Traditionally, income levels were the criteria on which Indian consumers were classified as follows:
  - Lower Income Group: Families in the subsistence marketplaces with minimal disposable income, often focusing on essential needs.
  - Middle Income Group: Characterized by a moderate level of disposable income, balancing essential and discretionary spending.
  - Upper Income Group: Families with significant disposable income, allowing for luxury and non-essential consumption.
- (b) Rural vs. Urban:** There is a distinct difference between rural and urban consumers, primarily in terms of access to goods and services, income levels, and lifestyle.

### 2. NCCS (New Consumer Classification System)

Introduced in 2011, this system classifies consumers based on the education of the chief earner and the number of consumer durables owned. The list has 11 items, ranging from 'electricity connection' and 'agricultural land' to cars and air conditioners. It aims to provide a more contemporary and nuanced view of the Indian consumer market<sup>iii</sup>.

- **Consumer Durables Ownership:** Reflects the consumer's purchasing power and lifestyle, with durables such as refrigerators, TVs, and cars being key indicators.
- **Categories:** Ranges from A1 (highest) to E3 (lowest), providing a granular view of consumer segments.

### 3. Modern Socio-Economic Classification by MRSI

**SEC (Socio-Economic Classification) System:** Developed by the Market Research Society of India (MRSI) and other organizations, this system segments consumers based on education and occupation of the chief earner. The SEC system uses a matrix to categorize households into socio-economic segments from A1 (highest) to E3 (lowest).

- **Education and Occupation:** These are considered reliable indicators of purchasing power and consumer behavior.
- **Urban SEC Grid:** Classifies urban households based on the combination of the chief wage earner's education and occupation, ranging from A1 (uppermost) to E3 (lowest).
- **Rural SEC Grid:** Uses the combination of the chief wage earner's education and type of house to classify rural households, from R1 to R4.

### 4. Psychographic and Behavioral Segmentation

The study, designed based on VALS (Values and Lifestyle Survey), uses cluster analysis to segment the Indian metropolitan consumers into six behavioral categories, namely Well

Settled, Strugglers, Enjoyers, Conservatives, Self Concerned and Realist. MTV, in collaboration with IMRB International, conducted a study on 18-34 years old in India and segmented the Indian youth into six segments - Cultural Misfits, Style Bhai's, Middle Class Majnu's, Main Bhi NRI, Rich Brats and Nerdy Nandu's (Businessworld Editorial Team 2005)<sup>9</sup>. Pantaloon's Retail classified India into three segments - India I, India II and India III (Biyani and Baishya 2007) for its own internal usage<sup>10</sup>.

- **Psychographic Segmentation:** Focuses on the values, lifestyles, and attitudes of consumers. This is particularly useful for understanding consumer preferences in urban and affluent segments.
- **Behavioral Segmentation:** It is based on consumer behaviour such as purchasing patterns, brand loyalty, and usage rates. This segmentation helps in targeting marketing efforts more effectively.

#### Impact on Business Strategy

- **Product Diversification:** To cater to the varying needs and preferences of different socio-economic classes businesses diversify their product portfolios.
- **Market Expansion:** Companies have expanded into both urban and rural markets, with tailored strategies to address the specific needs of each segment.
- **Pricing Strategies:** Dynamic pricing models have been adopted to make products accessible to a broader consumer base, from premium pricing in urban centres to affordable pricing in rural markets.
- **Digital Transformation:** With the rise of internet penetration and smartphone usage, businesses are leveraging digital platforms to reach and engage with consumers across socio-economic strata.

#### 2.2.1 Offline Markets

Offline markets or marketplace is a physical location of buyer and seller interaction. At the marketplace, the sellers and buyers meet each other individually and share information. Thereafter, negotiations take place and exchange of product or service occurs. Examples of marketplace are retail stores, outlets, supermarkets, etc. A marketplace would have a physical address and the buyers may routinely visit a marketplace to have a look around of what's in store. Also, at a given single marketplace, the number of buyers and sellers are limited due to demographic factors, which relate to physical presence, for example, South Extension, Sarojini Nagar, Kamala Nagar, Karol Bagh markets in Delhi.

In a marketplace, brand equity is created by manipulating the content, context, and infrastructure, using the traditional marketing mix. These three elements are usually interconnected and inseparable if the buyer is to access the product or service. Customer perceived value is a combination of product or service, pricing, communication, and supply chain activity related to the product or service. For example, a furniture is an aggregated collection of content (raw material, product design), context (organization, logo, style), and infrastructure (production plant, physical distribution system). In order to create value to customers, marketers need to aggregate all three into a single value proposition.

#### 2.2.2 Online Markets

At the marketplace also known as online markets, the traditional marketplace transaction is eliminated. Online markets can be defined as the virtual markets where information and communication technology (ICT) based electronic or online exchange takes place between buyers and sellers. Physical boundaries do not possess any interference for such transactions. The buyers and sellers interact and transact in an online environment where direct physical communication is not required. The sellers may exhibit their products on their own websites or dedicated sales engines such as Amazon, Myntra, Flipkart, eBay while buyers can perform a targeted search query to find their relevant requirements.

For an online selling platform, the numbers of buyers and sellers are not decided by demographic factors as no physical boundaries exist. So, the demand and supply is decided by a large number of people in a virtual environment. In a marketplace, value creation and value proposition are revolutionized and due to digitization consumers are asking for more personalised dominion. In the online markets, the content, context, and the infrastructure can be disaggregated to create new ways of value additions, lowering costs, building relationships, and rethinking ownership. These three elements of content, context, and infrastructure can be easily separated in a marketplace. For example, the same furniture sold via eBay, an online portal will have different content as large number of sellers will be exhibiting their products (variety) while, context would be that of eBay itself such as prominent sellers listed prominently or allows customizations. The infrastructure is not fully company owned; it also belongs to customers such as PC, modem, and telephone also, eBay infrastructure facilitates the transaction. Here, though the transaction occurs at eBay, the delivery is the responsibility of the seller. Therefore, the value dynamics are varied and can be managed in different ways.

Thus, with the development of internet and e-commerce purchases can be made by viewing the products on the website itself. While consumers in large metros are opting for online retail, the trend is slowly penetrating in small towns in India, where online demand from consumers picked up during the pandemic. Sale of online clothing and retail products ranks amongst the top amongst the online purchases. E-wallets and safe net banking are playing a major role in changing consumer behaviour. Also, the changing lifestyle, heavy discounts and time crunch are playing a major role in shift of consumers towards online shopping. But some consumers still believe in the touch and feel factor and visiting the stores and demonstration before purchasing which makes offline purchases preferable as they are skeptical in using the online platforms. Therefore, the markets are no more physical places where buyers and sellers meet each other but consist of both online and offline buyers.

#### Problems of Online Consumers

1. **Hacking of Private Information:** Information plays an important role in the concept of privacy especially in context of e-marketing. Therefore, conflicts regarding how data should be collected and used arises. In March 2018 Facebook was charged for breach of user's data by US and UK during the Presidential elections in both the countries. Mark Zuckerberg the founder of Facebook on 26th March 2018 said sorry for the data leak of billions of consumers and breach of trust by



the social media platform. It recently ran full page ads in nine major US and UK newspapers apologising for a huge data privacy scandal. He explained that there was a quiz developed by a University researcher that leaked Facebook data of millions of people in 2014. The University of Cambridge researcher Kogan created a lifestyle app for Facebook which was downloaded by 2,70,000 people but allowed access to tens of millions of their contacts. There have been rows in US and Europe about data scandal and misuse of private data. The US consumer protection agency has opened an investigation against Facebook. The Federal Trade Commission is also doing an enquiry about how the millions of Facebook users' data was misused by the British Consulting Group Cambridge Analytica. The FTC takes very seriously raising concerns about the privacy practices of Facebook. EU has also questioned Facebook about the data of EU citizens with regard to the recent scandal and required the company to be more transparent towards users and regulators.

In another incident in 2000 US government, public and media received reports that Double Click an online advertising firm was engaged in an effort to collect and compile large amounts of personal consumer information. Double Click established 11,000 websites with advertising that, when clicked enabled users to visit product sites. The system also recorded the responses, known as clickstreams, within its own databases. Clickstream was then available to form a user profile, allowing the transmission of individually targeted advertising. Users were not required to give active consent to this collection. By this Double Click accumulated 1,00,000 online profiles. Further it acquired Abacus Direct and acquired an online list of addresses of a huge American population without asking for their consent (Strauss Judy and Raymond Frost 2016). Google purchased the company in 2008 and mandated to follow privacy rules of its users.

2. **Plagiarism:** The use, without giving reasonable and appropriate credit to or acknowledging the author or source, of another person's original work, whether such work is made up of code, formulas, ideas, language, research, strategies, writing or other form. Types of plagiarism includes:

- **Cut & Paste:** Copying someone else's work and pass it off as your own
- **Patchwork plagiarism:** Borrowing phrases and clauses from the original source without putting the phrases in quotation marks or citing the author.
- **Paraphrasing plagiarism:** Paraphrasing or summarizing another's work without citing the source. Even changing the words a little or using synonyms but retaining the author's essential thoughts, sentence structure, and/or style without citing the source is still considered plagiarism
- **Unintentional plagiarism:** writer incorrectly cites or quotes the source

3. **Copyright** may include

- The right to reproduce (copy) a work.
- The right to create derivative works based upon it.

- The right to distribute copies of the work to the public.
- The right to publicly display or perform the work.

Law allows authors and inventors copyright protection in order to promote 'the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries'

Copyrighted work may be used for purposes such as criticism, comment, news reporting, teaching or scholarship without seeking permission from the creator or publisher and without paying copyright fees.

4. **Web Tracking:** E-marketing companies should not misuse the user's data by hacking how users are getting access to the web. Companies having the facility to track individual user's movement through many software related to tracking. Cookies related to browser may reveal much information about the users.
5. **Fictitious Websites:** Consumers are many times duped by fly-by-night operators and therefore do shopping from reputed e-commerce platforms. A buyer paid 'Craze and Trends' for a designer lehenga through Razorpay. When it wasn't delivered for a month she discovered that she had been conned. As consumers one should check the credentials of the website before shopping and use strong passwords and a credit card for making payments.
6. **Spam Emails:** One should also be careful about these fictitious emails luring consumers having won a lottery or any other gratification which later can involve losing your hard earned money.

### 2.3 URBAN AND RURAL MARKETS

Indian consumer market is broadly segregated into urban and rural markets and attracts marketers from across the world. Multinational corporations consider India as one of the key markets from where future growth is likely to emerge. The growth in India's consumer market is primarily driven by a young and huge middle class and increasing disposable incomes. A recent study by the McKinsey Global Institute (MGI) suggests that if India continues to grow at the current pace, average household incomes would triple over the next two decades, making the country the world's fifth-largest consumer economy by 2025, up from the current 12th position.

According to a report by Boston Consulting Group (BCG) and the Confederation of Indian Industry (CII), India's robust economic growth and rising household incomes would increase consumer spending to US\$ 3.6 trillion by 2020. The maximum consumer spending is likely to occur in food, housing, consumer durables, transport and communication sectors. The report further stated that India's share of global consumption would expand more than twice to 5.8 per cent by 2020<sup>1</sup>.

India remained the leader among all nations in the global consumer confidence index with a score of 131 points for the quarter ending December 2015, followed by the Philippines

<sup>1</sup> <http://www.ibef.org/industry/indian-consumer-market.aspx>

Consumer confidence in India has remained high (117), Indonesia (115) and Thailand (114). Further, in the discretionary spending and savings category, for nine consecutive quarters. Further, in the discretionary spending and savings category, nearly three out of every five respondents from India indicated that next 12 months as being good to buy, thus ensuring once again that India leads the global top 10 countries for this parameter during the quarter.

The markets can further be divided on the basis of geography and sociological characteristics into two broad areas. These include:

#### A. Urban Markets

#### B. Rural Markets

**A. Urban Markets:** The urban market is characterized by large contiguous settlement units of town or agglomerations, mostly concentrated. Further urban markets have sophisticated infrastructures (such as roads, electricity) having a high density of population per square kilometer and good physical connectivity and mobility. The Census of India defines urban areas having the following features<sup>2</sup>:

- a minimum population of 5,000;
- at least 75 per cent of male working population engaged in non-agricultural pursuits; and
- a density of population of at least 400 per sq. km. (1,000 per sq. mile).

An urban consumer is totally dependent on the market for meeting his basic needs, such as, food, water, clothing, etc. When there is a shortage of electricity s/he buys, inverters, generators, etc. From purchasing tooth paste, to bread and butter to medical care, electricity supply, water, etc. the consumers requirements are met by the market. S/he enjoys more choices of products and services as compared to its rural counterparts. Some of the common characteristics prevalent in urban consumers are:

- **Market Dependence:** Urban consumers are dependent on the market from morning to evening to fulfill their needs. From basic necessities, to education, entertainment, etc he relies on the market.
- **Purchasing Power:** Urban consumers have more disposable income with which they can afford to buy goods and services which they don't really need. The market recognizes this factor and offers many luxury products, to make them splurge money.
- **Excessive Consumption:** There is a paradigm shift in the lifestyle of urban consumers. In the Year 2013 in urban India credit card spending (in value terms) has been ₹ 1.23 lakh crore and debit card spending (in value) has risen six times to ₹ 74,400 crore. The number of processing terminals also has doubled to 9.5 lakh in 2013<sup>3</sup>.

<sup>2</sup> Information from Census of India, 2011

<sup>3</sup> [http://articles.economictimes.indiatimes.com/2013-10-06/news/42745678\\_1\\_credit-cards-debit-card-payments](http://articles.economictimes.indiatimes.com/2013-10-06/news/42745678_1_credit-cards-debit-card-payments)

- **Waste Generation:** Excessive purchasing power leads to over consumption and generation of waste. Urban consumers are de linked from the environment and make use of 'buy and throw' approach. India's urban population which is around 320 million generates major non-biodegradable waste. Discarded paper, plastics, cardboard, tin, metal packaging are a part of waste generated in urban areas.
- **Media Influence:** Urban consumers are strongly influenced by advertising through mass media such as, television, radio, newspapers, magazines, internet, etc. The use of internet, e-commerce and social media sites also have an impact on the buying behavior of urban consumers. Urban consumers are highly image conscious and tries to imitate celebrities in its lifestyle. The media on the one hand gives him information of the latest products and services available in the market and on the other hand, shows a glamorous picture of comfort and prestige associated with the product. This leads to excessive consumption, hoarding products not required, which ultimately changes the buying habits. Now in urban India mobile phones have penetrated into each household.

#### Paradigm Shift in the Urban Consumers Lifestyle

A recent study by the McKinsey Global Institute (MGI) suggests that if India continues to grow at the current pace, average household incomes would triple in the next two decades and it would become the world's 5th-largest consumer economy by 2025, up from 12th now<sup>4</sup>. Growing urbanization, increasing incomes and rising aspiration for a better life, especially, among the lower economic strata are some of the factors reshaping the Indian consumer market. The result of this change is a new Indian consumer who is more discerning than ever, ready to spend money on expensive brands, looks for quality and convenience and is willing to explore the organized retail market. Some of the factors which are bringing this shift are:

- With high rate of industrialisation, better employment opportunities and increased disposable income, a drastic change has come in the lifestyle of Indian consumers. Urban Indians are becoming more brand conscious and desire a better standard of living. According to Census Report 2011, there are about 500 million Indians who are below 25 years. Easier access to money has given them a significant purchasing power and driving growth and demand for products. The mantra followed by them today is "working hard and spending luxuriously".
- Availability of easier consumer credit and loans are other factors which are leading younger generation to splurge money on real estate, consumer durables and luxury products.
- Indian retailing is totally changing and the forces which are leading to this changes are the changing needs and aspirations of the consumers. According to the KPMG report, the working age group of 15-54 years is the largest spender on retail and as per the

<sup>4</sup> [http://www.cccindia.co/corecentre/Database/Docs/DocFiles/INDIAN\\_CONSUMER\\_MARKET.pdf](http://www.cccindia.co/corecentre/Database/Docs/DocFiles/INDIAN_CONSUMER_MARKET.pdf)



Census Report of 2011, more than 50 per cent of India's total population falls under this group, indicating the significant influence by this segment.

- With growing employment opportunities and a huge English speaking population a number of jobs are outsourced in India and the young Indians are making good money. With good pay packages the youth need certain place during weekends to hang out or to splurge.
- There is a drastic shift in the Indian consumer's mindset. The Indian consumer, market which is dominated by young customers which are highly brand conscious. They are spending less on food and day to day items and more on clothing and durable goods. There is an emergence of a consumer who does not blink while buying a pair of sports shoes for ₹ 5,000 or more.
- The growth of malls has led the consumers to go for impulse purchases or buying items which they might not need immediately.
- Some of the consumers are attracted to these malls because of freebies and once they are inside the mall they don't mind splurging on items, which are not for immediate needs. Though the dynamic transformation is going on but definitely retail stores and malls have been transforming the retail industry from unorganized to organized.
- India has a large and aspirational middle class and its disposable income has increased significantly, which is resulting in a substantial change in their spending habits and purchasing power. Other factors such as rising internet penetration of the retailers offering a high class shopping experience, rapid real estate infrastructure development, new product innovation, growing interest of investors have brought changes in urban markets.

#### Changing Lifestyle of Urban Consumers

Malls have changed the shopping experience of Indians. Doing shopping in the scorching heat of the sun has been replaced by mall shopping which is air conditioned. Visiting malls and buying branded products satisfies consumers need for better quality of life. Shopping malls are bringing in a new culture in India which is different from the traditional culture as far as shopping is concerned. Malls are seen as shopping centres as well as family entertainment centres having amusement section, food court, and retail.

Further in India, festivals and religious sentiments are very strong and people many high value products during that time. As more and more young people start living in the present, not saving for the future unlike their parents (a behaviour consumer researchers call "Hinduistic self denial") the festivals are becoming commercialised with a lot of activity everywhere to attract the consumers to make most of the festivals such as, Karva Chauth, Dusshera, Diwali, Teej, Rakhi are becoming commercialized. DurgaPuja Pandals are congregated around counters selling life insurance, pharmaceuticals that relieve stress, DVD music stalls and promotions for home appliances. A similar lack of reverence is apparent at the Navratri festival in Gujarat, another regional festival, in which people perform traditional "dandiya" dances until dawn. Marketers try to promote their brands or give their products

as prizes to the winners. Almost two-thirds of annual urban Indian consumer spending takes place in the festival months of October, November and December<sup>5</sup>.

#### Rural Markets<sup>6</sup>

The buying preferences of India's rural consumers are changing fast and several factors such as economic, psychological and technological are bringing this transformation. The monthly per capita spending among rural consumers has increased 17 per cent from 2010 to 2017 as compared to urban consumers where there has been rise of 12 per cent. Disposable incomes have risen from 40 per cent of the total spend in FY 2005 to 50 per cent in the FY 2012. In terms of output rural India accounts for almost half (48%) of the country's economy, and the rural markets have the potential to reach \$500 billion by 2020.

"The spirit of India lives in its villages" has been rightly said by Mahatma Gandhi. 70% of India's consumers live in rural areas and almost half of the national income is generated here. Our country is classified around 655 districts and approximately 6,40,000 villages, which can be classified on the basis of different parameters such as, literacy levels, accessibility, income levels, penetration, distances from nearest towns, etc. There is no specific definition which defines what a rural area is. Definitions for rural India abound while the most convenient one is, 'anything that is not urban,' is considered as rural<sup>7</sup>.

In the 1970s, Nirma launched its low-priced detergent for consumers who had low income, especially for the rural population. Till then most of the products manufactured were aimed for the urban middle class and elite. But there existed a huge potential for low-priced products targeted for rural population. This concept was then extended and explained in a brilliant way by C.K. Prahalad in his book "The Fortune at the Bottom of the Pyramid" according to whom the world population can be represented in the form of a Pyramid with the elite class lying at the tip of the pyramid, the middle and the upper-middle class lying in the mid-area of the pyramid and the lower class, which consists mainly population in rural areas, lying at the Bottom of the Pyramid.

Rural marketing has become a key area of focus of the corporate sector, off late due to the vast potential it has mainly in terms of marketing of Fast Moving Consumer Goods (FMCG), durable products, telecom, electronics. Companies such as, Hindustan Unilever, Dabur, Coca Cola, Pepsi, Britannia, Colgate Palmolive, Samsung, Airtel, Vodafone are coming up with new strategies and concentrating their activities in the rural markets.

#### Characteristics of Rural Markets

- **Large and Scattered Market:** The rural market of India is large and nearly 50% of the villages in the country do not have proper roads.
- **Low Literacy:** It is difficult to educate the potential consumers in rural market about products due to low level of literacy.

<sup>5</sup> Kapoor Sheetal, "Festival Spending", Consumer Voice, November-December, 2005.

<sup>6</sup> Kapoor Sheetal, "Growing Consumerism in Rural India", Consumer Voice, July-August, 2005.

<sup>7</sup> Kotler Philip and Prafulla Agnihotri et al, Principles of Marketing: A South Asian Perspective (Pearson 2011), Appendix 3

- **Seasonal Demand:** Monsoon being the harvesting season in India and agriculture being the primary occupation of majority of the rural population the demand for goods is majorly restricted in during the monsoons when the income is comparatively high.
- **Major Income from agriculture:** Nearly 60% of the rural income is from agriculture. Hence rural prosperity is tied with agriculture.
- **Traditional outlook:** The vast majority of rural consumer's value old customs and traditions.
- **Diverse Socio-economic Backwardness:** Rural consumers have diverse socio-economic backwardness which is different in different parts of the country.
- **Many Languages and Dialects:** the number of languages and dialects vary widely from state to state, region to region, and from district to district. Even though the number of recognized languages are only 16, the dialects are estimated to be around 850. People are not educated enough to know one common language like Hindi or English and it is difficult for the companies to prepare promotional advertisements in every local language.
- **Transportation and Distribution:** The poor state of rural infrastructure is one of the major concerns of most of the companies planning to invest in this sector. Though the rural population is vast it is not possible to form an effective distribution system and reach out to a considerable number of target consumers.

#### Opportunities Available in the Rural Markets

The Indian rural market with its vast size and demand base offers a huge opportunity for the marketers. With 128 million households, the rural population is nearly three times the urban. Because of certain socio-economic changes the rural consumer has become aware about its needs and upgradation of its standard of living. Information technology, government policies, corporate strategies and satellite communications are the factors responsible for development of the rural markets.

The rural market accounts for around 70% of toilet soap users and 38% of all two-wheeler purchased. Some of the FMCG companies such as Procter and Gamble, Reckitt Benckiser, Adani Wilmar, Dabur, Eveready Industries, Johnson & Johnson and Godrej have reaped huge because of the rural boom.

#### A Dramatic Change

Villagers who used to crack open peanuts are now demanding chocolates, charcoal teeth are a rare sight, so is the case with twigs of neem and babul tree. Today, the ultra bright shine of Colgate or some international brand holds more appeal than the traditional methods of cleaning teeth (like tooth powder or 'Dant Manjan') in rural areas. Consumerism and globalisation is invading parts of rural India and the villages which were once inconsequential dots on maps, are now connected with telephone and internet getting the attention of global marketing and media planners.

#### Features of Indian rural market

The Indian rural market with its vast size and demand base offers a huge opportunity for the marketers. Almost 70% of the Indian population lives in villages and rural areas. Rural India consumes almost 60% of the total goods manufactured in India with majority of the products coming from FMCG sector. Because of certain socio-economic changes the rural consumer has become aware about its needs and up gradation of its standard of living. Information technology, government policies, corporate strategies and satellite communications are the factors responsible for the development of the rural markets.

#### A Case Study of Sachet Marketing

Sachet marketing is selling products in small amounts which has motivated the attention of the rural consumers. Marketers have found that the rural consumers who cannot afford products in large containers that would last weeks to finish, would buy them in small, single-serve sizes. It was the brand CavinCare which came out with an innovative idea of manufacturing small sachets of shampoo priced at 50 paise. Suddenly shampoo which was not at all a popular product in rural areas had high demand in the market.

One key reason why sachet marketing is popular in rural markets is that small package sizes involve lower costs per purchase and less "capital" bound in the storage rooms of poor households. Since rural households have to struggle to manage their cash flow on a daily basis, these factors have made sachets attractive for rural customers, allowing them to purchase quality products such as sachets of shampoos, soaps, creams, hair dye, tooth paste, detergents, tea, coffee, etc. further sachets are cheaper on a per-unit basis such as per-gram, or per-litre basis as compared to products sold in larger packs. A 2009 study by Ramendra Singh, found shampoo in India to be up to 50 percent cheaper per ml when sold in sachets. Some of the FMCG companies such as Procter and Gamble, Reckitt Benckiser, Adani Wilmar, Dabur, Eveready Industries, Johnson & Johnson and Godrej have reaped huge profits because of the rural boom but there is a need to use this concept further for selling micro-credits, mobile phone offerings, farming materials.

#### Problems Faced by Rural Consumers Regarding Unethical Marketing Practices

Many rural consumers are illiterate and are easily vulnerable to the unscrupulous and unethical marketing practices of the greedy marketers.

- **Prevalence of Spurious Brands and Seasonal Demand:** for any branded product there are a multitude of 'local variants' which are cheaper and therefore more desirable to villagers. Sub-standard and spurious products are being passed on to the rural consumers under the brand name which are deceptively similar to the popular brand names. For example, 'Calgote' for Colgate, thus violating the provisions of the Trade and Merchandise Marks Act.
- **The Drugs and Cosmetics Act** forbids the making of any tall claims or magical effect about any drug. Severe penalty is provided for an offence under the Act. However, the rural consumer is gullible to quacks, fake ayurvedic drugs and cosmetics.
- **Misleading and Deceptive Pricing:** since the rural consumers lack product and price



information and possess less bargaining power and buying insight they are being deceived by the traders. On the pack of the products the 'MRP' the maximum retail price is printed but many rural consumers do not check that. As provided by the Consumer Protection Act no dealer can charge more than the MRP of an item although they can reduce the price to any extent.

- **Misleading Advertisements:** The prohibition of drugs and magic remedies is often openly flouted in the rural areas where the quacks and unscrupulous traders play with the lives of people with impunity.
- **Distribution of Goods:** Certain products which are advertised in the rural areas or through the local media are not available with the vendors and sometimes the in-transit time may even be more than 15 days, so that the villagers have to go for some other substandard brand.

Thus, there are specific problems of consumers related to both the markets and as marketers are increasingly penetrating to the rural markets protecting the consumers against counterfeits, sub-standard and spurious brands is a big challenge.

#### 2.4 CONCEPT OF PRICE IN RETAIL AND WHOLESALE

The word **wholesale** simply means selling in bulk quantities and retail stands for selling merchandise in small quantities. Wholesale and retail are two distribution arrangement that constitutes a major part of the supply chain. When the goods are manufactured, they are sold in large quantities (wholesale) to the wholesalers who further sells them to the retailers who finally sells them to the ultimate customers. While a wholesaler sells goods to the businesses, as they purchase goods to sell it further. On the other hand, a retailer targets final consumer and sells goods to them.

In this way, these two business forms are one of the important intermediaries of the marketing channel. In the absence of these two links, the whole chain would get disturbed.

##### Concept of Wholesale

Wholesale refers to the selling of goods to the customers like retailers, industries, and others in bulk, at a low price. It is a type of business in which goods are being purchased from the producers by the wholesaler in big lots, and then the bulk is split into comparatively smaller lots. Finally, they are repacked and resold to the other parties.

Wholesalers do not pay much attention to the location of the shop and its appearance, and display of goods because they sell only a specific type of items, and their customers are generally retailers or other businesses who purchase the goods for the purpose of resale. These things do not matter to them at all.

In wholesale business, the wholesaler gives more emphasis on the quantity of goods, not on the quality. For starting a wholesale business, there is a huge capital requirement as the business size is large. It does not require any publicity or advertisement.

However, the customers of a wholesale business are spread in various cities, towns or even

in different states. Most goods are sold on credit to the customers of the wholesale business. The price of purchased on wholesale is lower as it consists of less profit margin.

##### Concept of Retail

Retail means selling goods in small lots. When the goods are sold to the final customer, for consumption and not for the purpose of resale, in small quantities, then this business type is known as Retail. Retailers are the middleman between wholesalers and customers. They purchase goods from wholesalers in bulk and sells it to the ultimate consumer in small lots.

The prices of goods purchased in retail are relatively high. The first and foremost reason behind this is the advertisement cost, and the profit margin is high. Moreover, they include other expenses in the price of goods on a proportionate basis, like the rent of premises, salary to the workers, electricity expenses, etc.

Due to extreme competition, it is quite difficult to retain customers for a long time, so the retailer should know the techniques of handling different kinds of customers. In this way, shop location, the appearance of the shop, goods displayed, quality of products and service provided is given much importance because it leaves an impact on the customer's mind. Moreover, the goodwill of the retailer depends on these parameters. By virtue of this, the retail business person always goes with the quality products. They reject the defective or inferior quality products and pick the best one.

##### Key Differences Between Wholesale and Retail

The fundamental differences between wholesale and retail trade:

- Wholesale means the sale of goods in voluminous quantity, at a low price. The business of selling goods to end consumers in small lots at a profit is known as Retail.
- Wholesale creates a link between the manufacturer and retailer whereas Retail creates a link between retailer and customer.
- There are wide differences between wholesale and retail price of a particular commodity, i.e. the wholesale price is always less than the retail one.
- In wholesale business, there is no requirement of an art of selling the goods which are a must in case of retail business.
- The size of a wholesale business is larger than a retail business.
- In the retail business, the retail shopkeeper can choose the goods freely which is not possible in wholesale business because the goods are to be purchased in bulk.
- In wholesale business, the capital requirement is higher than in retail business.
- The location is of utmost important in retail, but in wholesale, the location does not matter at all.
- While selling the goods in retail the appearance of the shop and the display of items should be good to attract more and more customers. However, in wholesale, there is no such kind of need.

- There is no requirement of advertising in wholesale but retail business requires advertising to grab the attention of customers.

| Basis for Comparison   | Wholesale  | Retail   |
|------------------------|--|--|
| Meaning                | Wholesale is a business in which goods are sold in large quantities to the retailers, industries and other businesses. | When the goods are sold to the final consumer in small lots, then this type of business is termed as retail. |
| Creates link between   | Manufacturer and Retailer  | Wholesaler and Customer  |
| Price                  | Lower  | Comparatively higher   |
| Competition            | Less   | Very high  |
| Volume of transaction  | Large  | Small  |
| Capital Requirement    | Huge   | Little   |
| Deals in               | Limited products   | Different products   |
| Area of operation      | Extended to various cities   | Limited to a specific area   |
| Art of selling         | Not Required   | Required   |
| Need for advertisement | No   | Yes  |

### Prices in Wholesale and Retail

Wholesale price may be lower than the retail price as wholesalers buy products directly from the manufacturers and sell it to the retailers. The consumers purchase goods from the retail markets and some retail outlets are able to give heavy discounts, freebies based on their network with distributors. Retailing Stores in India can be categorised as:

- Mom and Pop Stores:** They are stand alone stores owned by individuals and their families. They carry fewer products and offer discounts. They are located very close to the consumers. Kirana shops in India also examples of Mom and Pop stores.
- Category Killers:** They offer limited merchandise categories with greater breadth and depth of assortment usually in large stores. They specialise in their field and offer huge merchandise at lower prices that they can kill a category. Such as Sports (Decathlon), Furniture (IKEA).
- Convenience Stores:** Convenience is offered to the customers through easily accessible store locations and small store size that allows the customers to do quick shopping and fast checkout. The product selection offered by these retailers is very limited and the price of the products is high.
- Supermarkets:** A supermarket is a grocery store which deals in food and household goods. They offer a fairly huge range of products and self service. People usually go to the supermarkets to buy goods in large quantities so that they can stock those goods for later consumption. They provide products for reasonable prices and of medium to high quality.

### Consumer and Markets

- Department Store:** Department stores are classified as general merchandisers. Some carry a more selective product line. For instance, while Sears carries a wide range of products from hardware to cosmetics, Nordstrom focuses their products on clothing and personal care products.
- Discount Stores:** Discount stores offer product at lower price than market price. The main reason behind this low price is the additional stock left over towards the end of any season. Discount stores sell their goods at a reduced rate with an aim of drawing bargain shoppers.
- Mass Discounters:** These are general and specialty store that provide huge discounts on their merchandise to finish block stock and its small difference between discount stores and mass discounters is that it provide lesser services to customers.
- Warehouse Stores:** These offer mass discounts and charge comparatively less price than the traditional mass discounters. Moreover, these stores often require the buyers to make the purchases in quantities that are greater than what can be purchased at mass discount stores. These retail outlets provide few services and product selection can be limited. Some forms of warehouse stores called warehouse clubs require customers to purchase memberships in order to gain access to the outlet.
- Street Vendors:** The Street Vendors or hawkers who sell products on the streets are quite popular in India. They try to attract the customers' attention through shouting out about their product mix. Street vendors are found in almost every city in India. These hawkers not only sell just clothes and accessories but also local food.
- Kiosks:** Kiosks are box-like shops which sell small and cheap items like cigarettes, toffees, newspapers and magazines, water packets, tea and coffee. These are most commonly found on every street in a city and target primarily to the local residents.
- Hypermarkets:** Hypermarkets in India are a combination of supermarket and department store. These are large retailers that provide all kinds of groceries and general goods. Big Bazaar and Reliance Fresh are hypermarkets that attract enormous crowds.
- Malls:** These are the largest retail format in India. Malls provide everything that a person wants to buy under one roof. From clothes and accessories to food or cinemas, malls provide all of this, and more. Examples include Pacific Mall in West Delhi, Ambience Mall, Gurgaon, Plaza in Chennai, Alpha one in Amritsar and Viva collage in Jalandhar.

### 2.5 MAXIMUM RETAIL PRICE (MRP)

MRP is fixed by the manufacturer and is inclusive of taxes unless otherwise mentioned. Thus, when a consumer buys a packaged commodity in the market, he is required to pay the maximum retail price (MRP) as indicated on the cover inclusive of all taxes. When the MRP marking was introduced, the purpose was that the retailer should not charge more price than the MRP but the retailer/shopkeeper/dealer is free to sell products to the consumers at a lesser price. MRP already includes Goods and Services Tax (GST) and charging more than the MRP is an offence under the Legal Metrology Act, 2009.



**Definition of MRP under Legal Metrology Act**

According to the Rule 6 (1) (c) of the Legal Metrology (Packaged Commodity) Rules, 2011, formulated under the Legal Metrology Act, 2009 mandate that every package meant for retail sale should mention the retail sale price.

The retail sale price has been defined in the Rules 2(r) as follows: "Retail sale price means the maximum price at which the commodity in packaged form may be sold to the ultimate consumer and where such price is mentioned on package, there shall be printed on the packages, the words Maximum or Max retail price—inclusive of all taxes or in the form MRP ₹—inclusive of all taxes." in the form MRP ₹.....incl., of all taxes.

Explanation: For the purposes of the clause 'maximum price' in relation to any commodity in packaged form shall include all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing forwarding and the like, as the case may be;

Rule 18 (2) prohibits the sale of packed goods at a price exceeding the printed price or the retail price specified on the package.

Rule 18 (5) and 18 (6) mentions provisions relating to manufacturer, wholesale dealer and retail dealers.

According to Legal Metrology Rules:

- (1) No wholesale dealer or retail dealer shall sell, distribute, deliver, display or store for sale any commodity in the packaged form unless the package complies with, in all respects, the provisions of the Act and these rules.
- (2) No retail dealer or other person including manufacturer, packer and wholesale dealer shall make any sale of any commodity in packed form at a price exceeding the retail sale price thereof.
- (3) Where, after any commodity has been pre-packed for sale, any tax payable in relation to such commodity is revised, the retail dealer or any other person shall not make any retail sale of such commodity at a price exceeding the revised retail sale price, communicated to him by the manufacturer, or where the manufacturer is not the packer, the packer, and it shall be, the duty of the manufacturer or packer as the case may be, to indicate by not less than two advertisements in one or more newspapers and also by circulation of notices to the dealers and to the Director in the Central Government and Controllers of Legal Metrology in the States and Union Territories, the revised prices of such packages but the difference between the price marked on the package and the revised price shall not, in any case, be higher than the extent of increase in the tax or in the case of imposition of fresh tax higher than the fresh tax so imposed.
- (4) Provided that publication in any newspaper, of such revised price shall not be necessary where such revision is due to any increase in, or imposition or, any tax payable under any law made by the State Legislation:  
Provided further that the retail dealer or other person, shall not charge such revised prices in relation to any packages except those packages which bear marking indicating that they were pre-packed in the month in which such tax has been revised or fresh tax has been imposed or in the month immediately following the month aforesaid.

Provided also that where the revised prices are lower than the price marked on the package, the retail dealer or other person shall not charge any price in excess of the revised price, irrespective of the month in which the commodity was pre-packed.

- (5) Nothing in sub-rule (4) shall apply to a package which is not required, under these rules to indicate the month and the year in which it was pre-packed.
- (6) No retail dealer or other person shall obliterate, smudge or alter the retail sale price, indicated by the manufacturer or the packer, as the case may be, on the package or on the label affixed thereto.
- (7) The manufacturer or packer shall not alter the price on the wrapper once printed and used for packing.

Thus, altering the price is a clear violation of the Packaged Commodities Rules and because the state governments enforce the rules, and a consumer can complain to the department of legal metrology. At the website of the Ministry of consumer affairs (consumeraffairs.nic.in), one can get the telephone numbers and addresses of the controllers of legal metrology in the states.

**Salient Features of the Legal Metrology Rules**

- Declaration on food products harmonised with regulations under the Food Safety and Standards Act.
- Country of origin of the product to be declared.
- Upto 30-4-18 the State Controllers of Legal Metrology advised not to take coercive action against industry for font size.

The salient features of the Legal Metrology Rules as amended on 1.1.18 are:

- Goods displayed by the seller on e-commerce platform shall contain declarations required under the Rules regarding MRP, Net quantity, consumer care details, etc.
- Ban on Dual MRP on identical pre-packaged commodity.
- Font size of letters and numerals for making declaration increased for easy reading.
- Medical devices declared as drugs brought within the purview of these rules.

**Seeking Redressal under Legal Metrology Act**

Altering the price is a clear violation of the Packaged Commodities Rules and because the state governments enforce the rules, and a consumer can complain to the department of legal metrology. At the website of the Ministry of consumer affairs (consumeraffairs.nic.in), one can get the telephone numbers and addresses of the controllers of legal metrology in the states.

**Overcharging can fetch penalty**

Under Section 36 (1) of the Packaged Commodity Rules 2011 if any manufacturer, packs, imports, sells, distributes, delivers or otherwise transfers, offers, any pre-packaged commodity which does not conform to the declarations on the package including charging a price higher

than MRP he shall be punished with fine which may extend to twenty-five thousand rupees, for the second offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both. Bringing up the issue of overcharging, Mumbai Grahak Panchayat chairperson Shirish Deshpande had once remarked, "If 35 lakh litres of milk is traded in Mumbai daily and 70 per cent (24 lakh) of it is overcharged by ₹ one, consumers are fleeced for an estimated ₹ 24 lakhs daily." That is a huge amount of untaxed money the vendors are charge illegally causing a loss not just to consumers but also to the government.

#### Goods and Service Tax (GST) and MRP

Goods and Service Tax (GST) came into effect on July 1, 2017. It was rolled out jointly by President Pranab Mukherjee and Prime Minister Narendra Modi.

*The aim of this tax is to have "One Nation - One Tax - One Market". It is largely technology driven and has been implemented in 29 states and 2 Union territories. GST has subsumed many indirect taxes such as, Central excise, VAT, customs duty.*

The MRP on a pre-packaged commodity is inclusive of all taxes that can be levied from the consumer, including the GST. No retailer can charge GST over MRP. In a recent notification by the government after GST came into effect from 1st July 2017, companies should print the revised MRP of goods they manufacture or face punishment, including a year in prison and a fine upto 1 lakh. Manufacturers and retailers have been asked to reprint revised rates on unsold goods. Fines upto ₹ 50,000 for the first two offences and ₹ 1 Lakh as well as a year in jail for repeat offenders. Fresh goods are now mandated to carry revised MRP by the government.

#### Whether Goods and Service Tax (GST) is included in MRP?

Yes, The MRP on a pre-packaged commodity is inclusive of all taxes that can be levied from the consumer, including the GST. No retailer can charge GST over MRP.

The Department of Consumer Affairs released a notification issuing permission to display revised MRP by manufacturers due to reduction of rates of GST up to 31st December, 2017 and subsequently extended upto 31st March, 2018.

- On account of implementation of GST w.e.f. 1st July, 2017, there are instances where the retail sale price of a pre-packaged commodity is required to be changed.
- In this context, Hon'ble Minister for Consumer Affairs, Food & Public Distribution had allowed the manufacturers or packers or importers of pre-packaged commodities to declare the revised retail sale price (MRP) in addition to the existing retail sale price (MRP), for three months w.e.f. 1st July 2017 to 30th September, 2017.
- Declaration of the changed retail sale price (MRP) was allowed to be made by way of stamping or putting sticker or online printing, as the case may be, after taking into account the input tax credit.

- Use of unexhausted packaging material/wrapper had also been allowed up to 30th September, 2017 after making necessary corrections.
- Considering the requests received to extend the permission for some more time, display

#### MRP-A Deceptive Price

- Surprisingly, the MRP has become Minimum Retail Price as few retailers give marginal cut in the MRP.
- The MRP is fixed by the manufacturers. The difference between ex-factory price and the MRP is normally very high.
- The government suffered losses in computing excise duty on the ex-factory price. Therefore, the government, amended the Central Excise Act 1976 empowering it to levy excise duty on MRP, rather than on the manufacturing price or ex-factory price for goods falling under the purview of the Legal Metrology Act, 2009.
- Very few retailers give discounts to consumers on MRP and the consumer continues to be at the mercy of the retailers who sell the products at MRP without any discounts.
- MRP is fixed by the manufacturers and is inclusive of a number of items such as taxes, freight transport charges, commission payable to dealers, all charges towards advertisement, delivery, packing, forwarding and the like. While inclusion of some of the items such as taxes, freight and delivery and packing charges in the sale price is understandable, the addition of commission payable to dealers, and advertisement charges, etc. which are not fixed by the government but the manufacturer according to their sales promotion policy, is always out of proportion and exorbitant. This results in escalation of the sale price to the detriment of the consumer.
- As a matter of fact MRP printed on the packaged commodities is often used by the manufacturers for profiteering, such as giving impression that MRP is fixed by the government. In some cases MRP is followed by 'local taxes extra' which is totally illegal.

#### Remedies

- Selling of the package at prices more than MRP attracts penal provision, however selling below the MRP depends on various factors such as competition, freight elements, taxes, etc. Consumer should use his bargaining power and ask for discounts on MRP.
- The Rules indicate that MRP once declared on the wrapper and used for packing cannot be altered on the higher side. The retailer cannot affix stickers on it for increasing the price.
- MRP should be fixed on a fair basis and there should be total transparency so that a consumer does not feel cheated.
- The manufacturers should be asked to follow dual pricing system, i.e. to mention on the package of the commodities, the ex-factory price and the MRP both for consumer transparency.



**Supreme Court Exemption to Hotels with Regard to MRP (December 2017)**

Honourable Supreme Court has allowed hotels and restaurants to sell bottled water and other packaged products at above the maximum retail price, saying they also render a service and cannot be governed by the Legal Metrology Act. In a judgement passed in mid December 2017 on a special leave petition filed by the Federation of Hotel and Restaurant Associations of India against the Union of India, the apex court said when hotels and restaurants sell food and drinks, they also render a service.

The court rejected the government's argument that overcharging for pre-packed or packaged products was an offence under the Legal Metrology Act, which attracts a fine of ₹ 25,000 or a jail term. A bench headed by Justice Rohinton Nariman said the provisions of the law will not apply to hotels and restaurants, and these establishments cannot be prosecuted for selling such items above the MRP.

"It is not a case of simple sale. Nobody goes to a hotel to buy or take away a bottle of mineral water," the bench observed, hearing a petition by the Hotels and Restaurant Association of India. Advocate Sameer Parikh, appearing for the hoteliers' association, said the law does not apply as selling packaged drinking water or food "involves a service element, including ambience, cutlery and service".

The ministry of consumer affairs, which had filed an affidavit before in the case, had argued that selling above the MRP could lead to tax evasion and loss of revenue for the government. "Sale of packaged water over MRP by hotels and restaurants may have implications regarding tax evasion as a bottle purchased by a hotel at cost price, which should be sold at MRP or less, is being sold at much higher prices, leading to possible loss of additional revenue to the government in the form of service tax or excise duty," it said.

The sale of bottled drinking water above the MRP has been a subject of intense debate since 2003 when the hoteliers' association approached the Delhi high court challenging penal provisions of the law. The high court ruled in 2007 that Delhi's hotels and restaurants cannot sell bottled mineral water above the MRP. The hoteliers' association challenged the order in the top court and a single-judge ruled in favour of the petitioner.

But the government filed an appeal and a division bench of the Supreme Court said in 2015 that the government can prosecute hotels and restaurants selling such items above the MRP, if they want to. The hoteliers' association appealed again in the Supreme Court which on 12th December 2017 said that the hotels and restaurants cannot be prosecuted for charging more for bottled water.

**2.6 FAIR PRICE**

A fair and reasonable price is the price point for a good or service that is fair to both parties involved in the transaction. This amount is based upon the agreed-upon conditions, promised quality and timeliness of contract performance. In government contracting, a fair and reasonable price is subject to both statutory and regulatory framework. A fair price is ultimately defined by "what the market would bear". Most customers feel it is unfair for sellers to charge excessively high prices, even if the majority of buyers are willing to pay those prices.

Although, consumers always feel that they have a right for a reasonable price, and that sellers have a right to a reasonable profit. Thus, prices which appear to customers which are beyond reasonable levels would always be viewed as unfair. Thus, marketers should constantly do research and surveys to find out the consumer's perception about the product and the actual worth and value of its products.

These days many private hospitals have been found making profits ranging from 275% to 525% on the sale of disposable syringes by purchasing them at a discounted rate and billing them to the patient at MRP. Consumers have been complaining about how hospitals charge ₹ 1,100 for an injection that is priced ₹ 200. It is the same in the case of consumables. The hospitals buy gloves for ₹ 6.50 and bill patients ₹ 50 per glove. An enquiry has been ordered by the government in this regard.

**Service Charges are Not Mandatory**

The government on 1st January 2018 said that restaurants billing 'service charges' in addition to taxes is optional and the consumer has discretion to pay 'service charge' or not. The Department of Consumer Affairs in a notification asked the states to "advise the Hotels and Restaurants to disseminate information through display at the appropriate place in the hotels and restaurants that the 'service charges' are discretionary and voluntary and a consumer dissatisfied with the services can have it waived off".

The move came in the wake of a number of complaints which have come against hotels and restaurants following the practice of charging "service charge" in the range of 5-20 per cent, in lieu of tips, which a consumer is forced to pay irrespective of the kind of service provided to him.

Following the complaints the Department of Consumer Affairs called for clarification from the Hotel Association of India, which have replied that the service charge is completely discretionary and should a customer be dissatisfied with the dining experience he or she can have it waived off. Therefore, it is deemed to be accepted voluntarily.

The Consumer Protection Act, 1986 provides that a trade practice which, for the purpose of promoting the sale, use or the supply of any goods or for the provision of any service, adopts any unfair method or deceptive practice, is to be treated as an unfair trade practice and that a consumer can make a complaint to the appropriate consumer forum established under the Act.

**2.7 GREY MARKET**

Grey market is the trade of a commodity through distribution channels that are legal but unintended by the original manufacturer. Grey market products are products sold by a manufacturer or their authorized agent outside the terms of the agreement between the reseller and the manufacturer. Grey market goods are legal, non-counterfeit goods sold outside normal distribution channels by entities which may have no relationship with the producer of the goods. This form of parallel import frequently occurs when the price of an item is significantly higher in one country than another. This commonly takes place with electronic equipment such as cameras. Entrepreneurs buy the product where it is available cheaply.

often at retail but sometimes at wholesale, and import it legally to the target market. They then sell it at a price high enough to provide a profit but below the normal market price. International efforts to promote free trade, including reduced tariffs and harmonised national standards, facilitate this form of arbitrage whenever manufacturers attempt to preserve highly disparate pricing. Because of the nature of grey markets, it is difficult or impossible to track the precise numbers of grey market sales. Grey market goods are often new, but some grey market goods are used goods.

The two main types of grey markets are those of imported manufactured goods that would normally be unavailable or more expensive in a certain country and unissued securities that are not yet traded in official markets. Sometimes the term dark market is used to describe secretive, unregulated trading in commodity futures, notably crude oil in 2008. This can be considered a third type of "grey market" since it is legal, yet unregulated, and probably not intended or explicitly authorised by oil producers.

The import of legally restricted or prohibited items such as prescription drugs or firearms, on the other hand, is considered black market, as is the smuggling of goods into a target country to avoid import duties. A related concept is bootlegging; the smuggling or transport of highly regulated goods, especially alcoholic beverages. The term "bootlegging" is also often applied to the production or distribution of counterfeit or otherwise infringing goods.

Grey markets sometimes develop for video game consoles and mobile phones whose demand temporarily exceeds their supply causing authorised local suppliers to run out of stock. In such situations, the grey market price may be considerably higher than the manufacturer's suggested retail price. Online auction sites such as eBay have contributed to the emergence of the video-game grey market.

#### Grey Market in Delhi

Delhi is the metropolis of glitzy malls but it also boasts several markets of different leagues, the most popular being Gaffar Market located in Karol Bagh, New Delhi. It is one of the favourite shoppers stop of Delhiites and people who love to buy things at throwaway prices.

More popularly known as the grey market but it is a treat for people who wish to buy 'imported' goods at less than the 'official prices'. Clothing, cosmetics, crockery, electronics and electricals, toys, shoes, bags are all sold here. The market sells China goods without any difficulty. Electronic goods like air-conditioners, cameras, televisions, mobiles and other accessories are sold at 'unbelievable prices' without bills and without guarantee and warranty.

The most astonishing fact about this market is that some products are sold here before they are launched in India. The iPhone launched in Europe was declared as the discovery in that year by a global magazine but it could be easily purchased from Gaffar Market several months before its initiation. PS3 was sold in this market much before it was released in India.

The market inhabits almost 500 shops and gives a thousand options to the buyers. The shoes are mostly imported from China while the garments are imported majorly from Thailand. Shopkeepers in this market deal and sell a variety of fake goods and confidently claim that

these possessions are as good as originals. Gaffar Market is undoubtedly the hub of fake first and second copies of popular brands in the world. Several luxury brands like LV, Gucci, Burberry, MK etc. are sold here at extremely pocket-friendly prices. Other goods like jackets, suits, lehengas, chinaware, crockery, crystals are sold here at extremely low rates and attracts thousands of customers every day.

The market is one of the favourite junction for college-goers as it allows them to buy branded looking stuff at affordable prices. The market with its numerous shades; good or bad witnesses a carnival like atmosphere every day. It provides employment to thousands of people and is a heaven for people with extremely low-budgets.

Undoubtedly, the goods are sold here at steal away prices, but you must be a skilful negotiator to get the best deals. A lot of counterfeit goods and knockoffs are sold here without any hesitation and fear. The counterfeit electronics can be extremely fatal to the users and should be purchased at owners' risk.



Gaffar Market in Delhi

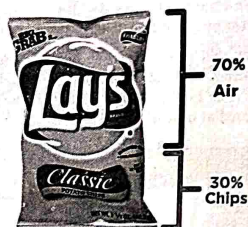
#### 2.8 LEGAL ASPECTS IN LABELLING AND PACKAGING

Packaging involves designing and producing the container or wrapper for a product. It is an integral part of the product as it grabs the attention of the buyer, describes the product and helps in the sale. A good package breaks the clutter in the retail outlet and encourages



product choice. Labels range from simple tags attached to products to complex graphics that are part of the package.

Deceptive packaging is a 'product packaging intentionally designed to deceive the consumers'. When packages or labels are camouflaged, do not disclose mandatory information and the intention of the marketer is to cheat consumers then they are considered as misleading or deceptive. Packaging makes the buyers believe that they would get larger quantity or higher quality of the product.



#### Examples of Deceptive Packaging

Some of the examples of deceptive packaging and labelling are:

1. Many times packages are used by manufacturers as camouflage to deceive consumers, especially as regards the quantity of the product contained in the packet. For example, a consumer should only pay for the sweets and not for the box.
2. Under the Packaged Commodities Rules, all packages must carry the retail price inclusive of all taxes. But many times, this price is either obliterated or is overwritten by another price.

3. Many manufacturers carry the brand name of some reputed manufacturer. The brand name may be an exact imitation with some slight change in spelling or logo. Technically this practice is known as product cloning and is very rampant during festival season.
4. Unless the package is transparent, the buyer cannot judge the contents by appearance. If quality and ingredients information on the package label is absent, the buyer has to purchase almost blindly.
5. There is no feasible way to check the weight and volume of the contents unless the buyer opens the package to ascertain the weight. During festivals many of the items are being bought for gifting purposes.

#### Legal Aspects of Packaging and Labeling in India

Packaging in India is a crucial aspect regulated to ensure consumer safety, environmental protection, and compliance with international standards. The legal framework governing packaging involves multiple laws and regulations that address various sectors, including food, pharmaceuticals, consumer goods, and hazardous materials. Consumers can lodge a complaint against the manufacturer if the packaging is deceptive under the Consumer Protection Act, 2019 or under the Legal Metrology Act, 2009. In the case of food items, the complaint can be lodged under the Food Safety and Standards Act, 2006 also.

The legal aspects of packaging in India are:

#### (a) Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011

The Legal Metrology Act came into force on 01.04.2011 and has repealed the Standards of Weights & Measures Act, 1976 & Standards of Weights & Measures (Enforcement) Act, 1985. Amendments were made in the Legal Metrology (Packaged Commodities) Rules, 2011 to safeguard the interest of consumers and to promote ease of doing business. This has come into force w.e.f. 01.01.2018. The salient features are as under:

- Goods displayed by the seller on e-commerce platform shall contain declarations required under the Rules.
- Specific mention is made in the rules that no person shall declare different MRPs (dual MRP) on an identical pre-packaged commodity.
- Size of letters and numerals for making declaration is increased, so that consumer can easily read the same.
- The net quantity checking has been made more scientific.
- Bar Code has been allowed on voluntary basis.
- Provisions regarding declarations on Food Products have been harmonized with regulation under the Food Safety & Standards Act.
- Medical devices which are declared as drugs, are brought into the purview of declarations to be made under the rules.

Scope: Applies to all pre-packaged commodities.

**Key Requirements:**

- **Standardization:** Packaging must conform to prescribed standards regarding weight, measure, and labelling.
- **Mandatory Declarations:** Information such as the name and address of the manufacturer, the net quantity, the retail sale price (MRP), and the month and year of manufacture must be declared on the package.
- **Pack Sizes:** Specific commodities have regulated pack sizes to ensure uniformity and prevent consumer deception.

**Purpose:** To protect consumer rights and ensure accurate representation of goods.

**Penalties:** Non-compliance can result in fines or imprisonment.

**(b) Consumer Protection Act, 2019<sup>vi</sup>**

**Scope:** Applies to all goods and services.

**Labelling and Advertising:** Prevents misleading advertisements and ensures product labels are truthful.

**Purpose:** Protects consumer rights and promotes fair trade practices.

**Penalties:** Non-compliance can result in penalties, compensation to consumers, and other legal actions.

**(c) Bureau of Indian Standards (BIS):**

**Scope:** Establishes standards for product labelling.

**ISI Mark:** Products meeting BIS standards are marked with the ISI certification.

**Purpose:** Ensures product quality and safety.

**Penalties:** Non-compliance can result in penalties and prohibition of sale.

**(d) Safety and Standards Act, 2006 and Food Safety and Standards (Packaging) Regulations, 2018**

**Scope:** Applies to the packaging of food products.

**Key Requirements:**

- **Material Standards:** Packaging materials must be food-grade and comply with safety standards to prevent contamination.
- **Specific Labelling:** Details such as the ingredients, nutritional information, manufacturer details, and expiry date must be clearly visible.
- **Primary and Secondary Packaging:** Both levels must meet the safety and regulatory standards.
- **Sustainable Packaging:** Encourages the use of eco-friendly and recyclable materials.

**Purpose:** To ensure food safety and prevent health hazards from packaging materials.

**Penalties:** Violations can lead to product recalls, fines, and severe penalties.

**(e) Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1945**

**Scope:** Applies to the packaging of pharmaceuticals and cosmetics.

**Key Requirements:**

- **Tamper-proof Packaging:** Essential for drugs to ensure the integrity and safety of the product.
- **Information on Packaging:** Must include the drug's name, batch number, manufacturing date, expiry date, dosage, and storage instructions.
- **Child-Resistant Packaging:** Required for certain hazardous drugs to prevent accidental ingestion.

**Purpose:** To safeguard public health and ensure the safety and efficacy of medicinal products.

**Penalties:** Non-compliance can result in product confiscation, fines, and legal action.

**(f) Plastic Waste Management Rules, 2016**

**Scope:** Governs the use and disposal of plastic in packaging.

**Key Requirements:**

- **Extended Producer Responsibility (EPR):** Producers are responsible for the post-consumer stage of plastic products, ensuring collection and recycling.
- **Banning of Certain Plastics:** Prohibits the use of non-recyclable, multi-layered plastic packaging.
- **Use of Recyclable Plastic:** Encourages the use of recyclable or biodegradable plastics.

**Purpose:** To reduce environmental impact and manage plastic waste effectively.

**Penalties:** Violations can lead to fines and sanctions.

**(g) Environment Protection Act, 1986**

**Scope:** Covers packaging materials that may impact the environment.

**Key Requirements:**

- **Environmental Standards:** Packaging materials must comply with standards set to minimize environmental harm.
- **Hazardous Substances:** Strict regulations on the packaging of hazardous materials to prevent leakage or contamination.
- **Sustainable Practices:** Encourages the use of environmentally friendly and recyclable packaging materials.

**Purpose:** To ensure environmental protection and sustainable packaging practices.

**Penalties:** Non-compliance can result in fines, legal action, and mandatory corrective measures.



**Sector-Specific Packaging Regulations****(a) The Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008**

**Scope:** Applies to the packaging of tobacco products.

**Key Requirements:**

- **Graphic Warnings:** Packaging must include specified health warnings and pictorial depictions of the harmful effects of tobacco.
- **Standardized Packaging:** Certain standardizations in color, shape, and size of the packaging to discourage use.

**Purpose:** To deter tobacco use and inform consumers about health risks.

**Penalties:** Non-compliance results in penalties, including fines and product seizure.

**(b) The Export and Import Policy of India (EXIM Policy)**

**Scope:** Governs packaging for export and import.

**Key Requirements:**

- **Compliance with International Standards:** Packaging must meet the regulatory requirements of destination countries.
- **Markings and Certifications:** Specific markings, such as ISPM-15 for wooden packaging, are mandatory.
- **Phytosanitary Regulations:** Packaging must be free from pests and contaminants.

**Purpose:** To facilitate international trade and ensure product safety and compliance.

**Penalties:** Non-compliance can lead to detention of goods and financial losses.

**Compliance and Enforcement**

- **Regulatory Authorities:** Various bodies, such as the Ministry of Consumer Affairs, Food Safety and Standards Authority of India (FSSAI), Central Drugs Standard Control Organization (CDSCO), and the Ministry of Environment, Forest and Climate Change (MoEFCC), oversee compliance.
- **Inspections and Audits:** Regular monitoring and inspections ensure adherence to packaging regulations.
- **Consumer Complaints and Redressal:** Mechanisms are in place for consumers to report violations and seek redressal.

**Recent Trends and Developments****(a) Eco-Friendly Packaging**

- **Increased Focus on Sustainability:** Push towards reducing plastic use and promoting biodegradable and recyclable packaging.

- **Government Initiatives:** Incentives and regulations encouraging sustainable packaging practices.

**(b) Digital and Smart Packaging**

- **QR Codes and RFID:** Use of digital technologies for providing additional product information and enhancing traceability.
- **Smart Labels:** Innovations such as temperature-sensitive labels for perishable goods.

**(c) Health and Safety**

- **Enhanced Safety Standards:** Stricter regulations on packaging materials in contact with food and drugs to ensure consumer safety.
- **Child-Safe and Tamper-Evident Packaging:** Increasing use in pharmaceuticals and hazardous goods.

The Government ensures through the Act that all weight and measure used for trade or commerce or for protection of human health and safety are accurate and reliable so that users are guaranteed for correct Weighment and Measurement. Provisions of the Act also empower regulatory and enforcement actions for ensuring that the consumer get the right quantity for which he has paid for.

**SUMMARY OF THE CHAPTER**

- A market is a set of actual and potential buyers of a product. These buyers share a particular need or want that can be satisfied through exchange relationships. The definition of market has now changes and they are no more physical places where buyers and sellers come in contact with each other and include online and offline markets.
- A marketplace has a physical address and the buyers routinely visit a marketplace to have a look around of what's in a store. The buyers and sellers interact and transact in a virtual environment where direct physical communication is not required.
- Indian consumer market is broadly segregated into urban and rural markets. The urban consumer is more informed about consumer rights as compared to the rural consumers.
- Wholesale price may be lower than the retail price as wholesalers buy products directly from the manufacturers and sell it to the retailers. The consumers purchase goods from the retail markets and some retail outlets are able to give heavy discounts, freebies based on their network with distributors.
- MRP is fixed by the manufacturer and is inclusive of taxes unless otherwise mentioned. MRP already includes Goods and Services Tax (GST) and charging more than the MRP is an offence under the Legal Metrology Act, 2009. Surprisingly, the MRP has become Minimum Retail Price as few retailers give marginal cut in the MRP.
- Grey market goods are legal, non-counterfeit goods sold outside normal distribution channels by entities which may have no relationship with the producer of the goods. This form of parallel import frequently occurs when the price of an item is significantly higher in one country than another.

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- Deceptive packaging and label is a product packaging intentionally designed to deceive the consumers. Thus, it is a fraudulent or misleading package, which induces the consumer of a good to make a purchase. The packaging may make the consumer believe that they would get larger quantity or the product has superior quality.
- Consumers can lodge a complaint against the manufacturer if the packaging is deceptive under the Consumer Protection Act, 2019 or under the Legal Metrology Act, 2009.

### QUESTIONS FROM THIS CHAPTER

- Q1 What is a market? How would you classify consumer markets in India?
- Q2 Explain the difference between market place and market space?
- Q3 Discuss the nature of problems faced by rural consumers?
- Q4 Enumerate the difference between wholesale and retail distribution networks. Also mention the nature of pricing policy under wholesale and retail?
- Q5 What is MRP? What is the penalty levied on the vendor if the marketer charges more than the MRP?
- Q6 How is MRP considered a deceptive price?
- Q7 Can a restaurant charge a consumer more than the MRP?
- Q8 What are the remedies available to a consumer if on airport/mall/train he is charged more for a bottled water by saying that the 'extra price is for keeping it cold in a refrigerator'?
- Q9 Meena went to Andaman and she purchased a soft drink and chips from a local vendor? The vendor charged her ₹ 15 more than the MRP? Since she was thirsty and was on a vacation she bought it after showing the MRP to the seller. The seller said that since goods come from Kolkata he has to bear the cost of ferry and storage and handling cost? Was the seller right in overcharging the products by ₹ 10? Comment.
- Q10 Write about the following:
- (a) Grey Markets
  - (b) Fair Price
- Q11 When is packaging and labelling said to be deceptive? Mention the laws which regulate the packaging and labelling in India?

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## CHAPTER

# 3

## THE CONSUMERS PROTECTION ACT

### LEARNING OUTCOMES

*Genesis of the Consumer Protection law in India; Basic concepts: Consumer, goods, service, defect in goods, deficiency in service, spurious goods, unfair trade practice, restrictive trade practice, unfair contract, product liability, consumer rights.*

### INTRODUCTION

With the growing marketing activities, the relationship between the consumer and seller is also changing. Does the maxim 'Consumer is king' holds true or not in today's marketing scenario is debatable. On one hand, the consumer has 24 pro consumer legislations to protect its rights in the market and is considered as the 'King of the Market' as it is assumed that the marketer would provide him/her the appropriate product or service at the right price and in case of any problem would immediately redress it. But many times we observe that with the aim of maximizing their profits, the sellers and manufacturers tend to exploit the consumers.

A recent study by ASSOCHAM revealed that 40% of Indians are not aware about how and where to file a complaint if the manufacturer gives them a defective product or deficiency in service or an adulterated food item. The consumer movement in India is still in its nascent stage in the second decade of 21<sup>st</sup> Century. It requires a big fillip to become a mass movement.

To protect consumers from such exploitation, a key milestone in consumer advocacy was the enactment of Consumer Protection Act, 1986 in India which has now been replaced by Consumer Protection Act, 2019. CPA provides a legislative framework for better protection of the interests of the consumer by creating a formal but quasi-judicial dispute resolution mechanism exclusively for consumers. This progressive legislation establishes a three-tier quasi-judicial consumer dispute redress machinery at the National, State and District levels aimed at providing simple, speedy and affordable redress to consumers. As on date 680 District Commissions out of which 630 are operational, 35 State Commissions and the National Commission at the apex level are functioning in the country.

The Consumer Protection Act is a benevolent social legislation that lays down the rights of the consumers and provides for promotion and protection of the rights of the consumers. The Consumer Protection Act is the only Act of its kind in India, which has enabled ordinary consumers to secure less expensive and often speedy redressal of their grievances. By defining the rights



3.2

and remedies of the consumers in a market so far dominated by organized manufacturers and traders of goods and providers of various types of services, the Consumer Protection Act makes the dictum, *caveat emptor* ('buyer beware') a thing of the past. This chapter discusses, the objectives and basic concepts of the Consumer Protection Act, 2019.

### 3.1 OBJECTIVES OF THE CONSUMER PROTECTION ACT

The main objective of the Consumer Protection Act is to ensure the better protection of consumers. Unlike existing laws which are punitive or preventive in nature, the provisions of this Act are compensatory in nature. The Act is also intended to provide simple, speedy and inexpensive redressal to the consumers' grievances, and relief of a specific nature and award of compensation wherever appropriate to the consumer. CPA 2019 extends the coverage of consumer protection and scope and enhances the powers of the redressal machinery. The objectives of the CPA:

- The main object of the act is to provide for better protection of interests of consumers
- Consumer councils and other authorities provide for settling the consumers' disputes and other matters.

### 3.2 SCOPE OF THE CONSUMER PROTECTION ACT

The Consumer Protection Act applies to all goods and services in private, public or co-operative sector. The act is concerned to protect the consumer against:

- an unfair trade practice or restrictive trade practice adopted by any trader or service provider;
- the goods bought by him or agreed to be bought by him suffer from one or more defects;
- the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
- a trader or service provider has charged a price in excess of the price fixed under the law, displayed on the goods or agreed between the parties
- goods and services which are hazardous to life and safety are being offered for sale to the public

#### National Consumer Day-Genesis

24<sup>th</sup> December is a landmark day in the history of consumer movement in India as on this day the Consumer Protection Act, 1986 came into existence. The Consumer Protection Act, 1986 was enacted by the Parliament to protect the interests of consumers against substandard products, increased prices through market manipulation, failed warranties, poor after sales service and unfair trade practices. Thus, 24<sup>th</sup> December is observed as National Consumer Day in India.

Consumer Protection Act (CPA) is considered as a benevolent social legislature for protecting consumers from the malpractices of the manufacturers. CPA provides simple, speedy and

3.3

inexpensive redressal to the grievances of the consumers. This Act is not only preventive but also compensatory in nature. Unlike other laws, it is civil and focuses on undoing the wrong to a consumer by way of remedial action or payment of compensation or damages to the aggrieved consumer. The Act has set in motion a revolution in the field of consumer rights that perhaps cannot be paralleled anywhere else in the World. The Act applies to all goods and services unless specially exempted by the Central Government, in all sectors whether Private, Public or Co-operative.

In order to meet the changing requirements of consumers in the emerging market environment the Consumer Protection Act, 2019 which repeals and replaces the Consumer Protection Act, 1986, received its assent from the President on 9th August 2019 and was implemented on 20<sup>th</sup> July 2020. The New Act provides more teeth to consumer protection and cuts down delays in disposal of cases by the Consumer Courts at various levels. It provides mechanisms for making the consumer complaint system more robust. Innovative methods such as mediation, Central Consumer Protection Authority, product liability, mediation centres attached to consumer commissions, unfair contracts, class action suits are now a part of the Consumer Protection Act, 2019. The Central Consumer Protection Authority has been established w.e.f. 24<sup>th</sup> July 2020.

#### World Consumers' Rights Day- Genesis

15<sup>th</sup> March is observed as the World Consumers' Day in different parts of the World. This day has a historic importance as it was on this day in 1962, when the Bill for Consumer Rights was moved in the US Congress by John F. Kennedy. John F. Kennedy had equated the rights of the ordinary American consumer with national interest. During his speech President John F. Kennedy had remarked: "If a consumer is offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and national interest suffers." He gave the American consumers four basic rights such as, right to safety, right to choose, right to information, right to be heard.

The Consumers International (CI), formerly known as International Organisation of Consumer Unions (IOCU), the umbrella body, for 240 organisations in over 120 countries, began observing 15<sup>th</sup> March as an occasion to promote basic rights of consumers since 1983.

### 3.3 UNITED NATIONS GUIDELINES ON CONSUMER PROTECTION (UNGCP)

UNGCP launched in 1985 was revised, after due deliberations by all stakeholders, in December 2015. The UN General Assembly on 22nd December 2015 approved the revised UNGCP 2015. India had actively participated in the process of revision of the UNGCP in 2015 and emphasized for having an oversight mechanism, which has been set up in the form of the Intergovernmental Group of Experts (IGE) under Guideline 95 of the revised UNGCP 2015. All the member states are de-facto members of the IGE. The first session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy was held at the Palais des Nations in Geneva, on 17 and 18 October 2016 under the aegis of UNCTAD. Representatives from 66 countries and 5 intergovernmental organizations, including the heads

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of competition and consumer protection authorities, attended the high-level discussions. In the meeting, the Minister of State for Consumer Affairs, Food and Public Distribution, India, stated that the Intergovernmental Group of Experts provided a forum that facilitated engagement and mutual understanding, as well as the development of appropriate strategies to improve consumer protection. The Second IGE meeting held in July 2017, recognised the important role of relevant stakeholders, particularly with regard to the inclusive consumer protection policies to achieve the Sustainable Development Goals; It underlined the importance of designing and implementing specific measures aimed at the protection of vulnerable and disadvantaged consumers, recognizing that member States may adopt differing definitions to address specific domestic needs, and suggested further research in particular for this category of consumers in developing countries; It emphasized the importance of harnessing e-commerce to increase the welfare of consumers worldwide while limiting its potential risks and stressed the need to strengthen international cooperation, including informal collaboration, among agencies, to enhance consumer trust in e-commerce, and the initiatives taken to build trust in the digital economy.

Aimed at promoting the international cooperation in the field of Consumer Protection among the Asian countries, for mutual sharing of best practices, India in partnership with UNCTAD hosted an International conference on Consumer Protection on 26<sup>th</sup> and 27<sup>th</sup> October, 2017. Honourable Prime Minister Narendra Modi inaugurated the conference and mentioned that the "Protection of consumer interests is a priority of the government. This is also reflected in our resolution of the New India. Moving beyond Consumer Protection, New India will have Best Consumer Practices and Consumer Prosperity."

The United Nations Guidelines for Consumer Protection are a valuable set of principles that set out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems. Furthermore, the Guidelines assist interested Member States in formulating and enforcing domestic and regional laws, rules and regulations that are suitable to their economic, social and environmental circumstances; they also help promote international enforcement cooperation among Member States and encourage the sharing of experiences in consumer protection. The Guidelines were first adopted by the General Assembly in resolution 39/248 of 16 April 1985, later expanded by the Economic and Social Council in resolution 1999/7 of 26 July 1999, and revised and adopted by the General Assembly in resolution 70/186 of 22 December 2015.

#### United Nations Guidelines for Consumer Protection-2015<sup>1</sup>

##### Objectives

The United Nations guidelines for consumer protection have the following objectives:

- To assist countries in achieving or maintaining adequate protection for their population as consumers.
- To facilitate production and distribution patterns responsive to the needs and desires of consumers.
- To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers.

<sup>1</sup> UNGCP Guidelines 2015

3.5

- To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers.
- To facilitate the development of independent consumer groups.
- To further international cooperation in the field of consumer protection.
- To encourage the development of market conditions which provide consumers with greater choice at lower prices.
- To promote sustainable consumption.

#### Scope of the Application of the UNGCP Guidelines

These guidelines apply to business-to-consumer transactions, including the provision of goods and services by State-owned enterprises to consumers. For the purpose of these guidelines, consumer protection policies include the laws, regulations, rules, frameworks, procedures, decisions, mechanisms and programmes of Member States, as well as private sector standards and recommendations that protect

consumer rights and interests and promote consumer welfare. For the purpose of these guidelines, the term "consumer" generally refers to a natural person, regardless of nationality, acting primarily for personal, family or household purposes, while recognizing that Member States may adopt differing definitions to address specific domestic needs.

#### Principles for Good Business Practices under UNGCP

The principles that establish benchmarks for good business practices for conducting online and offline commercial activities with consumers are as follows:

- Fair and Equitable Treatment:** Businesses should deal fairly and honestly with consumers at all stages of their relationship, so that it is an integral part of the business culture. Businesses should avoid practices that harm consumers, particularly with respect to vulnerable and disadvantaged consumers.
- Commercial Behaviour:** Businesses should not subject consumers to illegal, unethical, discriminatory or deceptive practices, such as abusive marketing tactics, abusive debt collection or other improper behaviour that may pose unnecessary risks or harm consumers. Businesses and their authorized agents should have due regard for the interests of consumers and responsibility for upholding consumer protection as an objective.
- Disclosure and Transparency:** Businesses should provide complete, accurate and not misleading information regarding the goods and services, terms, conditions, applicable fees and final costs to enable consumers to take informed decisions. Businesses should ensure easy access to this information, especially to the key terms and conditions, regardless of the means of technology used.
- Education and Awareness-raising:** Businesses should, as appropriate, develop programmes and mechanisms to assist consumers to develop the knowledge and skills necessary to understand risks, including financial risks, to take informed decisions and to



access competent and professional advice and assistance, preferably independent when needed.

- (c) Clear and timely information regarding the goods or services offered by businesses and the terms and conditions of the relevant transaction.
- (f) Clear, concise and easy to understand contract terms that are not unfair.
- (g) A transparent process for the confirmation, cancellation, return and refund of transactions.
- (h) Secure payment mechanisms.
- (i) Fair, affordable and speedy redressal mechanisms.
- (j) Consumer privacy and data security.
- (k) Consumer and business education.

Member States should work towards ensuring that consumer protection enforcement agencies have the necessary human and financial resources to promote effective compliance and to obtain or facilitate redress for consumers in appropriate cases.

#### Salient Features of the Consumer Protection Act (CPA):

- (a) The Act enshrines six rights of consumers namely, right to safety; right to be informed; right to choose; right to be heard; right to seek redress & right to consumer education (called right to consumer awareness in CPA, 2019).
- (b) The provisions of the Act are in addition to and not in derogation of the provisions of any other law for the time being in force.
- (c) It is an umbrella legislation covering goods and services, but excluding transactions not involving consumers from the purview of the Act.
- (d) A consumer can seek redress against any manufacturer and trader of goods/service provider, so long as the goods purchased or service availed of was for a consideration.
- (e) The Act provides for simple, inexpensive and timely redress of consumer complaints.
- (f) The provisions of the Act are not only compensatory in nature but also preventive and punitive in character.
- (g) The Act also provides for setting up of Consumer Protection Councils at the Central, State, District level, which are advisory bodies to promote and protect the rights of the consumers.

### 3.4 BASIC CONCEPTS UNDER THE CONSUMER PROTECTION ACT

This section discusses the definitions of the various terms used under the Consumer Protection Act. These are: consumer, goods, service, defect in goods, deficiency in service, spurious goods and services, unfair trade practice and restrictive trade practice.

- (a) **Consumer:** The Consumer Protection Act 2019 defines the term consumer through 'goods' and 'services'. Under CPA, 2019 the definition of consumer is more elaborate

and includes both online and offline buyers and users of the goods and services. Thus "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 service 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 service 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 service for any commercial purpose
- the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;
  - the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

#### (More explanation in Chapter 1 of the Book)

- (b) **Goods:** Under CPA, 2019 Sec 2(21) "goods" means every kind of movable property and includes "food" as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006.

The term 'goods' under CPA, 2019 has the same meaning as under the Sale of Goods Act and a special mention of 'food' as defined under FSSAI Act have also been included. The Sales of Goods Act defines 'goods' "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.

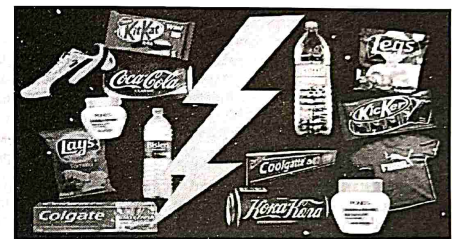
- (c) **Service:** The term 'service' means service of any description made available to potential users and includes banking, financing, housing construction, insurance, entertainment, transport, supply of electrical and other energy, boarding and lodging, amusement, etc. The services of doctors, engineers, architects, lawyers etc. are included under the provisions of Consumer Protection Act, but does not include the rendering of any service free of charge or under a contract of personal service. Contract of personal service includes master and servant relationship and are excluded under CPA.
- (d) **Consumer Dispute** means a dispute where the person against whom a complaint has

been made, denies or disputes the allegations contained in the complaint. Consumer Protection Rules provides that where opposite party admits the allegations made by the complainant, the District Commission will decide the complaint on the basis of the merit of the case and documents present before it.

- (e) **Defect in Goods** 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; For example, if a consumer buys a mobile phone after paying to the dealer and later on finds that the phone is not working properly, the consumer can lodge a complaint under 'defective product' in the consumer forum against the shopkeeper and manufacturer. The trader has to maintain the promised standards of quality, quantity, etc. electric appliances where ISI mark is mandatory and if they are found not in accordance to standards are defective.
- (f) **Deficiency in Service** 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. Under CPA, 2019 deficiency in service includes:
- any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
  - deliberate withholding of relevant information by such person to the consumer. For example, if the bank wrongly debits money from consumer's account, cases of medical negligence, insurance and non-delivery of possession by the builder fall under the term 'deficiency in service'. Where the supply of electricity to the complainant was disconnected illegally and without prior notice, was held to be deficiency in service.
- (g) **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;
- 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;
  - 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;
- Manipulating market conditions in order to escalate the prices of goods is a common restrictive trade practice. Stocking of goods, hoarding them and creating artificial scarcity in the markets and then selling them at inflated prices are common restrictive trade practices. In case of rural markets where there is a single chemist or kirana shop consumers have to bear the brunt of paying higher prices as very few shops are there

in the vicinity. If a gas distributor, asks its customers to buy a gas stove as a condition for taking a gas connection it is a restrictive trade practice.

- (h) **Spurious Goods** are such goods which are falsely claimed to be genuine but they are actually not so. This involves look alike, counterfeits which look like the branded product but may have a wrong spelling. Many times consumers are deceived after buying such spurious goods. For example, Colgate would be sold as "Calgot", 'Vaseline' as 'Vasoline' and the packaging and other things are so similar that the consumer gets confused and buys them as a genuine branded product. The government has launched a mobile application "Smart Consumer" to enable the consumer to scan the bar code of the product and get all the details about the product to check against spurious goods.



- (i) **Unfair Trade Practice:** It means a 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 actionable under law or by judgement of the court. Under the Consumer Protection Act, 1986 Unfair Trade Practice under Sec 2(1) (r) 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. CPA, 2019 has extended the definition of unfair trade practice under Sec 2(47) to include all oral, in writing and electronic records which adopts any unfair method or unfair or deceptive practice and include any of the following practices, namely:-
- Misleading Statement:** The practice of making any statement, whether orally or in writing or by electronic records by visible representation which falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model. It falsely represents that the services are of a particular standard, quality or grade. Falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods. Or represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have. Represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have or makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services. Giving 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 claim is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such claim shall lie on the person raising such claim. Making to the public a representation in the form of:

- (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;

Further materially misleading 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; It would also include false or misleading facts disparaging the goods, services or trade of another person.

2. **False Offer of Bargain Price:** It includes the publication of any advertisement whether in any newspaper or otherwise, or electronic record 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. 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. **Offering of Gifts/Prizes:** 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. Withholding from the participants of any scheme offering gifts, prizes or other items free of charge, the information about final results of the scheme. For the purposes, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time, published, prominently in the same newspapers in which the scheme was originally advertised;
4. **Non Compliance of Standards:** 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. **Hoarding, destruction or Refusal:** 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. **Spurious Goods and Deceptive Services:** manufacturing of spurious goods (duplicates) or offering such goods for sale or adopting deceptive practices in the provision of duplicate services. FICCI has formed CASCADE (Committee Against Smuggling and Counterfeiting Activities Destroying the Economy) where the Report in 2019 reveals that 1.17 Lakh crore loss to the Indian economy and business happened due to counterfeits.
7. Not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;
8. Refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;
9. Disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force

*If a manufacturer, shopkeeper, dealer or service provider makes tall claims through its advertisement and later does not fulfil them it would be considered as an unfair trade practice.*

- (j) **Unfair Contracts:** It means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following:
  - (i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations.
  - (ii) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract.
  - (iii) refusing to accept early repayment of debts on payment of applicable Penalty.
  - (iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause.
  - (v) permitting or has the effect of permitting one party to assign the contract to the

detriment of the other party who is a consumer, without his consent.

(vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage.

(k) **Product Liability:** Chapter VI applies to every claim for compensation under a product liability action by a complainant for any harm caused by a defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller. A product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.

A product manufacturer shall be liable in product liability action, if-

- the product contains a manufacturing defect; or
- the product is defective in design; or
- there is a deviation from manufacturing specifications; or
- the product does not conform to the express warranty; or
- the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.

### 3.6 CONSUMER RIGHTS UNDER CPA

Consumers nowadays look for value for money, and the product or service bought should meet reasonable expectations, should be safe in use and should have full disclosure of the product specification. These expectations are termed as 'Consumer Rights'.

Section 2 (9) of the Consumer Protection Act 2019 mentions the six consumer rights available to Indian consumers to seek remedy against seller in case of goods and services. Online consumers can also avail of these consumer rights and can complain in the consumer commissions if they have been cheated by an online portal by giving him defective or substandard product or service or by false and misleading advertisements. These are:

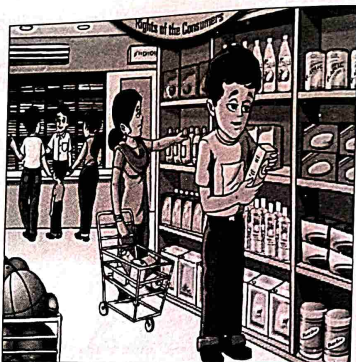
- Right to Safety:** The Consumer Protection Act mentions right to safety as the first and foremost consumer right. This is a right to be protected against the marketing of goods and services, which are hazardous to life and property. The purchased goods and services should not only meet their immediate needs, but also fulfil long term interests. Before purchasing, consumers should insist on the quality, bill, guarantee and warranty of the products and services. They should preferably purchase quality marked products and check the label carefully before purchasing. ISI, AGMARK, Hallmark, FSSAI, BEE marks should be checked by the consumer. Buying an energy efficient electronic appliance can reduce the consumer's electricity bill. Faulty electrical appliances, adulterated food, poor sanitary facilities, substandard building material, etc are the causes of many accidents. Earlier, the interpretation of the right to safety was limited to electrical products but now it includes services also. During festival seasons adulteration in sweets happens and consumers face numerous problems such as food poisoning, etc.

Therefore, one should do a market survey before purchasing, always buy from a reputed shop and take a bill of the commodity.



- Right to be Informed:** Means the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices. Consumers should insist on getting all the information about the product or service from the shopkeeper/dealer/manufacturer before making a buying decision. This would enable them to act wisely and responsibly and enable them to desist from falling prey to high pressure selling techniques. Sometimes the manufacturers reduce the quantity of the products, but the price remains the same and many times consumers only reading the price buy commodities believing that they are getting the same quantity. Consumers should read the label very carefully and there are six things which they need to check in the label, which are, the brand name, MRP, quantity, best before or expiry date, ingredients and toll-free number of the manufacturer. Sometimes consumers are allergic to certain food items in that case reading the label is very helpful. The government of India has enacted Right to Information Act in 2005. This Act ensures all the information's about the functions of the government departments. It can be used as an effective tool for the protection of consumers against exploitation by manufacturers.
- Right to Choose:** Means right to be assured, wherever possible of access to variety of goods and services at competitive price. In case of monopolies, it means right to be assured of satisfactory quality and service at a fair price. It also includes right to basic goods and services at competitive prices. This right can be better exercised in a competitive market where a variety of goods are available at competitive prices. The manufacturer should make sure adequate availability of customer care centres, reliable after-sales service and spare parts. The right to choose is based on the concept of customer satisfaction. The consumer has a very important weapon of boycotting the products if the brands are not of their choice. In case of rural consumers where there is one shop selling essential items with very few choices of brands available to consumers this right is often violated.





4. **Right to be Heard:** Means that consumer's interests should receive due consideration at appropriate forums. Whenever consumer feels that he has been cheated by the unscrupulous practices of the manufacturer he should report to the shopkeeper/vendor from where he has bought the product/service. It also includes right to be represented in various forums formed to consider the consumer's welfare. The Consumers should form non-political and non-commercial consumer organizations which can be given representation in various committees formed by the Government and other bodies in matters relating to consumers.
5. **Right to Seek Redressal:** Means right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers. It also includes right to fair settlement of the genuine grievances of the consumer. Consumers must make complaint for their genuine grievances. Many a times their complaint may be of small value but its impact on the society as a whole may be very large. They can also take the help of consumer organisations in seeking redressal of their grievances. Consumers from all over the country can access the toll-free number 1800-11-4000 or short code 14404 and seek telephonic counselling for problems that they face as consumers relating to various sectors. The service is available in English and Hindi. In India, we have a redressal machinery called Consumer Commissions constituted under the Consumer Protection Act, functioning at national state and district levels. A study by ASSOCHAM found that only 40% consumers are aware about how to seek redressal in case of consumer disputes.
6. **Right to Consumer Education/Consumer Awareness:** An aware consumer is an asset for any society. Right to consumer awareness means becoming aware about consumer rights ourselves and spreading the word to others. Thus, it means the right to acquire knowledge and skill to be an informed consumer throughout life. In this regard consumer organisations, radio, television programme, Consumer Clubs, Consumer awareness camps, Workshops and Conferences play a very important role. Ignorance of consumers, particularly of rural consumers, is mainly responsible for their exploitation. They should know their

consumer rights and must exercise them, only then real consumer protection can be achieved with success.

Although the Consumer Protection Act only discusses first six rights whereas the last two consumer rights are vital especially for developing nations, such as, India. The last two rights are not included in the Consumer Protection Act because the protection of these rights are provided for under other laws administered by the Ministry of Health and Family Welfare and the Ministry of Environment and Forests.

7. **The Right to Basic Needs:** Access to food, water and shelter are the basis of any consumer's life. Without these fundamental amenities, life cannot exist. When a person is denied of his right to basic needs, the provisions of all other rights become meaningless. Thus, the right to basic needs is an important right which has been conferred by the UN for developing countries for consumers to lead a normal life.
8. **The Right to a Healthy and Sustained Environment:** The need for environmental conservation is seen as a necessary defence against deteriorating quality of life worldwide. We are all victims of contaminated food and water supply, pesticide-ridden food, adulterated milk and choking exhaust fumes emitting from vehicles. Children often fall ill due to polluted environments, it leads to increased health costs and discomfort for consumers. Valuable resources and man-days are lost due to polluted environment and living conditions. Consumer's need to understand that only a safe environment can ensure the fulfillment of their consumer rights. Thus, working towards a healthy and sustainable environment involves preserving the natural resources not only for the present generation but also for the future generation.

Having examined the consumer rights and the purpose served by them, it is necessary to consider whether consumers should also be responsible enough to be entitled to exercise their rights. For instance, to be able to exercise their right to be heard, consumers should avail of the opportunities to know and keep informed about consumer problems. To exercise their right to seek redressal of complaints, consumers must take all precautions to choose the right goods at the right price and learn how to use the products to prevent injury or loss. Some of the consumer problems can be avoided if we act responsibly in the following manner:

- **Before Buying:** As a responsible consumer we should plan our purchases in advance so that we get the right value for our money. We should try to enquire about the past performance of a product/service and also try to find out the reputation of the producer/seller/service provider. Thus, self-help is the biggest tool in the hands of the consumers and they should make an informed choice. In this regard we can make use of comparative testing reports as published by voluntary consumer organizations for getting reliable and unbiased information about various brands which have been tested at various government approved laboratories.
- **While Buying:** Consumers should shop around and collect information from various dealers regarding price and quality features before purchasing high-involvement products such as, cars, refrigerators, computers, etc. The proof of purchase and documents relating to purchase of durable goods should be obtained and preserved. For example, it is important to get a

cash memo with serial number, address and phone number on purchase of goods because in case of complaint regarding defective product or deficiency in service it would serve as a proof in consumer courts. Similarly, durable consumer goods like TV, refrigerator, etc. carry warranty/guarantee cards issued by the dealers. The cards entitle the consumers to get the service for repairs and replacement of parts free of cost during a certain period after purchase. Consumers should never sign a contract without reading it first. They should never sign a blank contract that a salesperson says will be completed later. If there is anything they do not understand, they can insist that it should be explained to them. They can always ask them to show the contract to a friend for advice before signing.

- **After Purchase:** It is the responsibility of the consumer to use products as per instructions given in user manual. Further receipts, guarantee cards, terms of contract (photocopies), should be kept safely. In case of fault the dealer or the service center should be informed. Consumers should not meddle with the products themselves and should keep records for all correspondences and file them. Some consumers, especially during the guarantee period, make rough use of the product, thinking that it will be replaced during the guarantee period. This is not fair on their part. They should always use the products properly. Besides the above mentioned pre-purchase and post purchase advisories, consumers should be conscious of some other responsibilities. They should stick to the agreement made with manufacturers, traders and service providers. Make timely payment in case of credit purchases, especially if they have bought something on credit card, they should immediately pay it otherwise they can fall in debt trap. According to Supreme Court consumers can be charged 36% annually for any default they make on their credit card payments. Further consumers should not tamper with the electric and water meters, bus and train seats, etc. Recently, railways reported that many passengers took away bedsheets, pillows, blankets while travelling in sleeper class and they had to bear huge costs for the same. Consumers should remember that they can exercise their rights only when they are willing to fulfill their responsibilities. As a dutiful consumer we should reduce waste, reuse and recycle products and think in terms of sustainable consumption. Many electronic items such as, old mobile phones, durable products, old laptops are lying at consumer's home as with the change in technology they have become redundant. Consumer's should try to contact the manufacturer and ask how they can be recycled or reused. We should also be conscious about what we buy as with enormous sales and freebies consumers for berserk and buy things which they do not need.

#### SUMMARY OF THIS CHAPTER

- To protect consumers from such exploitation, a key milestone in consumer advocacy was the enactment of Consumer Protection Act, 1986 in India which has now been replaced by Consumer Protection Act, 2019. CPA provides a legislative framework for better protection of the interests of the consumer by creating a formal but quasi-judicial dispute resolution mechanism exclusively for consumers. This progressive legislation establishes a three-tier quasi-judicial consumer dispute redress machinery at the National, State and District levels aimed at providing simple, speedy and affordable redress to consumers.

- The main objective of the Consumer Protection Act is to ensure the better protection of consumers. Unlike existing laws which are punitive or preventive in nature, the provisions of this Act are compensatory in nature.
- Consumer councils and other authorities provide for settling the consumers' disputes and other matters.
- The Consumer Protection Act applies to all goods and services in private, public or co-operative sector.
- 24<sup>th</sup> December is observed as National Consumer Day in India whereas 15<sup>th</sup> March is celebrated globally as World Consumer Right's day.
- UNGCP launched in 1985 was revised, after due deliberations by all stakeholders, in December 2015. The UN General Assembly on 22nd December 2015 approved the revised UNGCP 2015. India actively participated in the process of revision of the UNGCP in 2015 and emphasized for having an oversight mechanism, which has been set up in the form of the Intergovernmental Group of Experts (IGE) under Guideline 95 of the revised UNGCP 2015.
- Further the basic concepts such as the definition of consumer, goods, service, defect, deficiency, consumer dispute, restrictive trade practice, spurious goods, unfair trade practice have been discussed.
- There are eight consumer rights available to Indian consumers. Amongst them six consumer rights, i.e., right to safety, information, choose, heard, seek redressal and consumer education/awareness are mentioned under The Consumer Protection Act, 1986/2019. The other two consumer rights are right for basic needs and sustainable environment.

#### QUESTIONS FROM THIS CHAPTER

- Q1 Mention the objectives and scope of The Consumer Protection Act, 2019?
- Q2 Who is a 'consumer' under the Consumer Protection Act, 2019?
- Q3 Which of the following is not a consumer under the Consumer Protection Act, 2019?
  - (a) A user of goods
  - (b) A buyer of goods for resale
  - (c) A buyer of goods for commercial purpose
- Q4 Mohan buys a car and drives it as a taxi to earn his livelihood. The car breaks down often due to manufacturing defects. Can Mohan sue the manufacturer for supply of defective products?
- Q5 Write the various consumer rights available to consumers under The Consumer Protection Act?
- Q6 What are the two additional consumer rights available to consumers in the developing nations?
- Q7 Write the genesis of World Consumer Right's Day and National Consumer Day?



3.18

- Q8 Explain UN Guidelines 2015 on Consumer Protection?
- Q9 By giving suitable examples explain defective goods and deficiency in service?
- Q10 In rural markets we find many counterfeits and spurious goods and services? By giving suitable examples explain what are they?
- Q11 During festivals we find that many shops which are not genuine also start selling sweets, etc. If a consumer is deceived he can complain under the Consumer Protection Act under which sections?
- Q12 When is a trade practice said to be restrictive or unfair? Misleading advertisements fall under which trade practice?
- Q13 If a builder through its brochure promises to deliver a flat with all amenities such as swimming pool, lifts, parking facilities, power back up, parks and later does not deliver it? The consumer can complain in the consumer forum under which section of The Consumer Protection Act?
- Q14 Define the following:
- (a) Unfair contracts
  - (b) Product liability

## CHAPTER

# 4

## ORGANIZATIONAL SET UP UNDER CONSUMER PROTECTION ACT

### LEARNING OUTCOMES

Organizational Set up under the CPA, 2019: Advisory bodies: Consumer Protection Councils at the Central, State, and District level: Composition and role. Central Consumer Protection Authority: Composition and Powers; Adjudicatory bodies: District Commission, State Commission, and National Commission: Composition and Jurisdiction (Territorial and Pecuniary). Role of Supreme Court under the CPA with relevant case laws. Consumer Mediation Cell.

The Consumer Protection Act mandates establishment of Consumer Protection Councils at the Centre as well as in each State and District, with a view to promote consumer awareness. The Central Council is headed by Minister, In-charge of the Department of Consumer Affairs in the Central Government and the State Councils by the Minister In-charge of the Consumer Affairs in the State Governments. It also provides for a 4-tier structure of Supreme Court, the National and State Commissions and District Commissions for speedy resolution of consumer disputes. The organizational set up under the Consumer Protection Act, 2019 comprises of Advisory and Adjudicatory bodies. This chapter discusses the advisory and adjudicatory bodies established under the Consumer Protection Act, 2019.

### 4.1 ADVISORY BODIES-CONSUMER PROTECTION COUNCILS (CHAPTER II)

Chapter II of the Consumer Protection Act, 2019 discusses the formulation of Consumer Protection Councils which is similar to what was already laid down in the older Consumer Protection (Amendment) Act, 2002 in CPA, 1986. Further the amendment in 2002 in CPA provided for the establishment of the District Consumer Protection Council in each District. Thus, the Act provides for establishment of Advisory councils at three levels: National, State and District. These are:

1. The Central Consumer Protection Council
2. The State Consumer Protection Council
3. The District Consumer Protection Council

The object of the Councils is to promote and protect the rights of the consumers. These Councils are constituted on public-private partnership basis. The purpose of these bodies is to review the consumer related policies of the government and suggest measures for further improvements.

The Councils are very important and potent deliberative bodies for the consumers and play an important role in spreading the consumer movement, especially in rural areas. The Councils act as the catalyst for change so that the present market system functions for the welfare of the consumers and for satisfying their needs. They make investigations and give publicity to the matters relating to the problems of consumers and advice the Government in matters of consumer policy and consumer protection.

#### The Central Consumer Protection Council (CCPC)

The Consumer Protection Act empowers the Central Government to establish a Council to be known as the Central Consumer Protection Council. The Central Council consists of the following members:

- (a) the Minister in charge of the Consumer Affairs in the Central Government, as its Chairman and;
- (b) such number of other official or non-official members representing such interests as may be prescribed

Central Consumer Protection Council functions as an advisory body on consumer issues.

- As per the notified Central Consumer Protection Council Rules, the Central Consumer Protection Council is headed by the Union Minister of Consumer Affairs, Food and Public Distribution with the Minister of State as Vice Chairperson and 34 other members from different fields.
- The Council, has a three-year tenure, having a Minister-in-charge of consumer affairs from two States from each region – North, South, East, West, and NER. There is also a provision for having working groups from amongst the members for specific tasks.

#### Composition of Central Council

The Central Government shall, by notification in the Official Gazette, establish the Central Council which shall consist of the following members, not exceeding thirty-six, namely:—

- (a) the Minister in-charge of Consumer Affairs in the Central Government who shall be the Chairperson of the Central Council;
- (b) the Minister of State (where he is not holding independent charge) or Deputy Minister in charge of Consumer Affairs in the Central Government who shall be the Vice-Chairperson of the Central Council;
- (c) the Minister in-charge of Consumer Affairs of two of the States from each region as mentioned in Schedule I to be changed by rotation on expiration of the term of the Central Council on each occasion;

- (d) an administrator (whether designated as administrator or Lieutenant Governor) of a Union territory, to represent that Union territory, as mentioned in Schedule II, to be changed by rotation on expiration of the term of the Central Council on each occasion;
- (e) two Members of Parliament—one from the Lok Sabha and one from the Rajya Sabha;
- (f) representatives of Departments of the Central Government, autonomous organisations or regulators concerned with consumer interests, not exceeding five to be nominated by the Central Government;
- (g) the Chief Commissioner of the Central Consumer Protection Authority;
- (h) the Registrar, National Consumer Disputes Redressal Commission, New Delhi;
- (i) representatives of consumer organisations not exceeding five, to be nominated by the Central Government;
- (j) representatives with proven expertise and experience who are capable of representing consumer interests, drawn from amongst consumer organisations, consumer activists, research and training organisations, academicians, farmers, trade or industry, not exceeding five, one from each of the regions specified in Schedule I, of whom at least one shall be a woman;
- (k) the Secretaries in-charge of Consumer Affairs in the States, not exceeding three, to be nominated by the Central Government;
- (l) the Secretary in-charge of Consumer Affairs in the Central Government shall be the Member-Secretary of the Central Council.

#### Term of Central Council

The term of the Central Council shall be for three years: Provided that the Central Council shall continue to function for a further period of three months or till it is reconstituted, whichever is earlier.

#### Resignation of members of Central Council

Any member may, by notice in writing under his hand addressed to the Chairperson of the Central Council, resign from the Central Council.

#### Procedure for Meetings of the Central Council

1. The Central Council is required to meet as and when necessary, but at least one meeting of the Council needs to be held every year.
2. The Central Council can meet at such time and place as the Chairman may think fit and shall observe such procedure regarding the transaction of its business as may be prescribed.



### Objects of the Central Consumer Protection Council

The objects of the Central Consumer Protection Council are to promote and protect the rights of the consumers such as,—

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

### The State Consumer Protection Council

The Consumer Protection Act empowers the State Government to establish a Council to be known as the State Consumer Protection Council. The State Consumer Protection Council consists of the following members:

- (a) the Minister in charge of Consumer Affairs in the State Government as its Chairman.
- (b) such number of other official or non-official members representing such interests as may 'be prescribed by the State Government.
- (c) such number of other official or non-official members, **not exceeding ten**, as may be nominated by the Central Government.
- (3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.
- (4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

### Objects of the State Consumer Protection Council

The objects of every State Council shall be to promote and protect the rights of the Consumers as mentioned under the Act within the State.

### The District Consumer Protection Council

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

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

### Objects of the District Consumer Protection Council

The objects of every District Council shall be to render advice on promotion and protection within the district the rights of the consumers laid down under the Act within the district.

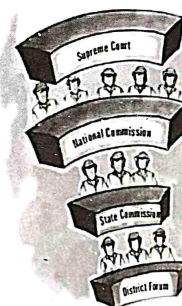
### 4.2 ADJUDICATORY BODIES (CHAPTER IV)

To provide inexpensive, speedy and summary redressal of consumer disputes, quasi-judicial bodies have been set up in each District and State and at the national level, called the District Forums, the State Consumer Disputes Redressal Commissions and the National Consumer Disputes Redressal Commission respectively. At present, there are more than 673 District Commissions, 35 State Commissions with the National Consumer Disputes Redressal Commission (NCDRC) at the apex. NCDRC has its office at Janpath Bhawan, A Wing, 5<sup>th</sup> Floor, Janpath, New Delhi.

Thus, there is a three-tier system in the Act, which has been set up at District, State and National levels. They are:

1. District Consumer Disputes Redressal Commission also known as District Commission Under CPA, 1986 the word District Forum was used but under CPA 2019, in order to avoid confusion between 'Forum' and 'Commission' now the word forum has been replaced with 'Commission'.
2. A State Consumer Disputes Redressal Commission also known as the "State Commission"
3. A National Consumer Disputes Redressal Commission also known as the "National Commission"

While the National Commission is set up by the Central Government, the State Commissions and District Commissions are set up, in each, State and District,



respectively by the State Government concerned. Provided that the state government may, if it deems fit, establish more than one District Forum in a state. For example, in Delhi there:

#### Composition of the District Commission

District Commission under CPA 2019 consists of—

- (a) President
- (b) and not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.

#### Qualifications for Appointment of President and Member of District Commission

Qualifications for appointment of President and member under CPA, 2019 are as follows:

1. The President is a person who has been or is qualified to be a District judge.
2. A person shall not be qualified for appointment as member unless he—
  - (a) is of not less than thirty-five years of age;
  - (b) possesses a bachelor's degree from a recognised University; and
  - (c) is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than fifteen years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine.
3. At least one member or the President of the District Commission shall be a woman.

Under CPA, 2019 the President and every member of the District Commission shall hold office for a term of four years or up to the age of sixty-five years, whichever is earlier and shall be eligible for reappointment for another term of four years subject to the age limit of sixty five years, and such reappointment is made on the basis of the recommendation of the Selection Committee.

#### Procedure for appointment of President and members of the State Commission and District Commission CPA, 2019

- (1) The President and members of the State Commission and the District Commission shall be appointed by the State Government on the recommendation of a Selection Committee, consisting of the following persons, namely:
  - (a) Chief Justice of the High Court or any Judge of the High Court nominated by him—Chairperson;
  - (b) Secretary in charge of Consumer Affairs of the State Government – Member;
  - (c) Nominee of the Chief Secretary of the State—Member.
- (2) The Secretary in charge of Consumer Affairs of the State Government shall be the convener of the Selection Committee
- (3) No appointment of the President, or of a member shall be invalid merely by reason of any

vacancy or absence in the Selection Committee other than a vacancy or absence of the Chairperson.

- (4) The process of appointments shall be initiated by the State Government at least six months before the vacancy arises.
- (5) If a post falls vacant due to resignation or death of a member or creation of a new post, the process for filling the post shall be initiated immediately after the post has fallen vacant or is created, as the case may be.
- (6) The advertisement of a vacancy inviting applications for the posts from eligible candidates shall be published in leading newspapers and circulated in such other manner as the State Government may deem appropriate.
- (7) After scrutiny of the applications received till the last date specified for receipt of such applications, a list of eligible candidates along with their applications shall be placed before the Selection Committee.
- (8) The Selection Committee shall consider all the applications of eligible applicants referred to it and if it considers necessary, it may shortlist the applicants in accordance with such criteria as it may decide.
- (9) The Selection Committee shall determine its procedure for making its recommendation keeping in view the requirements of the State Commission or the District Commission and after taking into account the suitability, record of past performance, integrity and adjudicatory experience.
- (10) The Selection committee shall recommend a panel of names of candidates for appointment in the order of merit for the consideration of the State Government.
- (11) The State Government shall verify or cause to be verified the credentials and antecedents of the recommended candidates.
- (12) Every appointment of a President or member shall be subject to submission of a certificate of physical fitness as indicated in the annexure appended to these rules, duly signed by a civil surgeon or District Medical Officer.
- (13) Before appointment, the selected candidate shall furnish an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as a President or member.

#### Jurisdiction of the District Commission

1. In CPA, 2019 the District Commission has jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed fifty lakh rupees. Whereas in older CPA, 1986, the District Forum had jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed did not exceed rupees twenty lakhs.
2. Regarding territorial jurisdiction of the complaint, a complaint can be filed in a District Commission under CPA, 2019 which includes:



- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or
- (c) the cause of action, wholly or in part, arises; or
- (d) the complainant resides or personally works for gain. Point (d) is a new addition in CPA, 2019 whereas in CPA, 1986 only point (a) to (c) have been mentioned. Earlier where cause of the action or opposite parties had place of business from there, the complaint could be filed. But now the complainant can file a complaint from anywhere and also online through e-Daakhil website.

#### Complaints and Procedure before District Commission

Section 38 under CPA, 2019 provides for the manner for making the complaint. The Act defines who can file a complaint and explains the procedure on admission of complaint (Explained in Chapter 5 in depth). It is also to be noted that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received. Where a complaint is allowed to be proceeded, the District Forum may proceed with the complaint in the manner provided under this Act.

The District Commission shall, on admission of a complaint, if it relates to any goods:

- (a) **In Case of Dispute Relating to Goods:** Where a complainant alleges a defect in the goods which cannot be determined without analysis or test, it is mandatory to get the goods analysed in an appropriate laboratory. The District Commission shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Commission. The Commission may require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question; It may remit the amount deposited to its credit to the appropriate laboratory to enable it to carry out the analysis or test mentioned and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as it may feel appropriate to the opposite party.
- (b) **In Case of Dispute Relating to Goods not Requiring Testing Analysis/Dispute Relating to Services:** The District Commission may refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of

thirty days or such extended period not exceeding fifteen days as may be granted by the District Commission. Where the opposite party, on receipt of a copy of the complaint, denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, it shall proceed to settle the consumer dispute on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or *ex parte* on the basis of evidence. Where the complainant fails to appear on the date of hearing before the District Commission, the District Commission may either dismiss the complaint for default or decide it on merits. **Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months, if it requires analysis or testing of commodities.** Provided that no adjournment shall be ordinarily granted by the District Commission unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by it.

The District Commission shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

In the event of a complaint being disposed of after the period so specified, the District Commission shall record in writing, the reasons for the same at the time of disposing of the said complaint. Where during the pendency of any proceeding before the District Commission, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

#### Findings of the District Commission

If, after the proceeding conducted under section 37 and 38 of CPA, 2019, the District Commission is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to [do] one or more of the following things, namely:-

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant along with such interest on such price or charges as may be decided;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party: Provided that the District Commission shall have the power to grant punitive damages in such circumstances as it deems fit;
- (e) to pay such amount as may be awarded by it as compensation in a product liability action under Chapter VI;
- (f) to remove the defects in goods or deficiencies in the services in question;

- (g) to discontinue the unfair trade practice or restrictive trade practice and not to repeat them;
- (h) not to offer the hazardous or unsafe goods for sale;
- (i) to withdraw the hazardous goods from being offered for sale;
- (j) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- (k) 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 shall not be less than twenty-five per cent. of the value of such defective goods sold or service provided, as the case may be, to such consumers;
- (l) to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;
- (m) to provide for adequate costs to parties;
- (n) to cease and desist from issuing any misleading advertisement.

#### Composition of the State Commission (CPA, 2019)

Each State Commission shall consist of—

- (a) a President; and
- (b) not less than four or not more than such number of members as may be prescribed in consultation with the Central Government

#### Qualifications for Appointment of President and Members of the State Commission (CPA, 2019) —

- (1) A person shall not be qualified for appointment as President, unless he is, or has been, a Judge of the High Court;
- (2) A person shall not be qualified for appointment as a member unless he is of not less than forty years of age and possesses—
  - (a) an experience of at least ten years as presiding officer of a district court or of any tribunal at equivalent level or combined service as such in the district court and tribunal: Provided that not more than fifty percent of such members shall be appointed; or
  - (b) a bachelor's degree from a recognised university and is a person of ability, integrity and standing, and has special knowledge and professional experience of not less than twenty years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine;
- (3) At least one member or the President of the State Commission shall be a woman.

#### Disqualification for Appointment of President or Member of State Commission and District Commission —

A person shall be disqualified for appointment as the President or a member of a State Commission or District Commission if he—

- (1) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or
- (2) has been adjudged to be insolvent; or
- (3) is of unsound mind and stands so declared by a competent court; or
- (4) has been removed or dismissed from the service of the State Government or Central Government or a body corporate owned or controlled by such Government; or has, in the opinion of the State Government, such financial or other interest as is likely to prejudicially affect his functions as the President or a member.

#### Resignation by President or Member of State Commission or District Commission —

The President or any member may, by writing under his hand addressed to the State Government, resign his office at any time:

Provided that the President or member shall, unless he is permitted by the State Government to relinquish office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as a successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

#### Removal of President or Member of State Commission or District Commission from office —

- (1) The State Government shall remove from office any President or member, who—
  - (a) has been adjudged as an insolvent; or
  - (b) has been convicted of an offence which involves moral turpitude; or
  - (c) has become physically or mentally incapable of acting as such member; or has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or
  - (e) has so abused his position as to render his continuance in office prejudicial to public interest:

Provided that where a President or member is proposed to be removed on any ground specified in clauses (c) to (e), the President or member shall be informed of the charges against him and given an opportunity of being heard in respect of those charges.

#### Jurisdiction of the State Commission (CPA, 2019)

The State Commission shall have jurisdiction—

- (a) to entertain—
  - (i) complaints where the value of the goods or services paid as consideration, exceeds



- rupees fifty lakhs, but does not exceed rupees two crore: Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;
- (ii) complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees;
  - (iii) appeals against the orders of any District Commission within the State; and (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the State, where it appears to the State Commission that such District Commission has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.
- (2) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof, and a Bench may be constituted by the President with one or more members as the President may deem fit: Provided that the senior-most member shall preside over the Bench.
  - (3) Where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall Qualifications, etc., of President and members of State Commission. Salaries, allowances and other terms and conditions of service of President and members of State Commission. Transitional provision. Officers and employees of State Commission. Jurisdiction of State Commission be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it: Provided that the President or the other members, as the case may be, shall give opinion on the point or points so referred within a period of one month from the date of such reference.
  - (4) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—
    - (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or
    - (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided in such case, the permission of the State Commission is given; or
 Or (c) the cause of action, wholly or in part, arises;
    - or (d) the complainant resides or personally works for gain

**Procedure for filing and hearing of appeal before State Commission-**

- (1) A Memorandum shall be presented by the appellant or his authorized agent to the State Commission in person or sent by a registered post with acknowledgment due addressed to the State Commission.
- (2) Every memorandum filed under sub-rule (1) shall preferably be typed, or be in legible handwriting, and shall set forth concisely under distinct heads, the grounds of appeal without any argument or narrative and such grounds shall be numbered consecutively.
- (3) Each memorandum shall be accompanied by the certified copy of the order of the District Commission appealed against and such of the documents, as may be required to support grounds of appeal mentioned in the memorandum.
- (4) When the appeal is presented after the expiry of the period of limitation as specified in section 41, the memorandum shall be accompanied by an application supported by an affidavit setting forth the facts on which appellant relies upon to satisfy the State Commission that he has sufficient cause for not preferring the appeal within the period of limitation.
- (5) The appellant shall submit four copies of the memorandum to the State Commission for official purposes.
- (6) On the date of hearing or any other day to which hearing may be adjourned, the parties or their authorised agents shall appear before the State Commission, and where (a) the appellant or his authorised agent fails to appear, State Commission may, in its discretion, either dismiss the appeal or decide it ex-parte on the merits of the case; (b) the respondent or his authorised agent fails to appear, the State Commission shall proceed ex-parte and decide the appeal on the merits of the case.
- (7) The appellant shall not, except by the leave of the State Commission, urge or be heard in support of any ground of appeal not set forth in the memorandum, but the State Commission in deciding the appeal, need not confine itself to the grounds of appeal set forth in the memorandum or taken by leave of the State Commission under this rule: Provided that the State Commission shall not rest its decision on any other grounds unless the party who may be affected thereby, has been given, at least the opportunity of being heard by the State Commission.
- (8) No adjournment shall ordinarily be granted at any stage by the State Commission, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the State Commission: Provided that the State Commission shall not ordinarily grant more than one adjournment and shall ensure, as far as possible, that the appeal is decided within ninety days from the date of admission: Provided further that in the event of an appeal being disposed of after the period specified in the first proviso, the State Commission shall record in writing the reasons for the same at the time of disposal of the said appeal.
- (9) The order of the State Commission on appeal shall be signed and dated by the members

of the State Commission constituting the Bench and shall be communicated to the parties concerned free of cost.

#### Composition of the National Commission (CPA, 2019)

The National Commission shall consist of—

- (a) a President; and
- (b) not less than four and not more than eleven members of whom at least one member shall be a woman.

#### Qualifications of President and Members of National Commission (CPA, 2019)

- (1) The Central Government may, by notification, make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the President and members of the National Commission: Provided that the President and members of the National Commission shall hold office for such term as specified in the rules made by the Central Government but not exceeding five years from the date on which he enters upon his office and shall be eligible for re-appointment: Provided further that no President or members shall hold office as such after he has attained such age as specified in the rules made by the Central Government which shall not exceed,—

- (a) in the case of the President, the age of seventy years; 7
- (b) in the case of any other member, the age of sixty-seven years.

- (2) Neither the salary and allowances nor the other terms and conditions of service of President and members of the National Commission shall be varied to his disadvantage after his appointment.

#### Composition of the National Commission

In case of National Consumer Disputes Redressal Commission under the Consumer Protection Act, 2019 (35 of 2019), a person shall not be qualified for appointment as,—

- (a) President, unless he, —
  - (i) is, or has been, a Judge of the Supreme Court; or
  - (ii) is, or has been, Chief Justice of a High Court.
- (b) Member unless he,—
  - (i) is, or has been, a Judge of a High Court; or
  - (ii) has, for a combined period of ten years, been a District Judge and Additional District Judge; or
  - (iii) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in economics, business, commerce, law, finance, accountancy, management, industry, public

affairs, administration or any other matter which is useful to the National Consumer Disputes Redressal Commission.

#### Jurisdiction of National Commission (CPA, 2019)

The National Commission shall have jurisdiction—

- (a) to entertain—
  - (i) complaints where the value of the goods or services paid as consideration exceeds rupees two crore: Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;
  - (ii) complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;
  - (iii) appeals against the orders of any State Commission;
  - (iv) appeals against the orders of the Central Authority;
- and
- (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

#### Review by National Commission in Certain Cases (CPA, 2019)

The National Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.

**Power to Set aside ex parte orders (CPA, 2019)** Where an order is passed by the National Commission ex parte, the aggrieved party may make an application to the Commission for setting aside such order.

#### Transfer of Cases (CPA, 2019)

On the application of the complainant or of its own motion, the National Commission may, at any stage of the proceeding, in the interest of justice, transfer any complaint pending before the District Commission of one State to a District Commission of another State or before one State Commission to another State Commission.

#### Vacancy in Office of President of National Commission (CPA, 2019)

When the office of President of the National Commission is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior-most member of the National Commission: Provided that where a retired Judge of a High Court or a person who has been a Judicial Member is a member of the National Commission, such member or where the number of such members is more than



one, the senior-most person amongst such members, shall preside over the National Commission in the absence of President of that Commission.

#### Procedure in respect of complaints before National Commission

- (1) A complaint shall be presented to the National Commission by the complainant in person or by his agent, or be sent by a registered post, addressed to that Commission, containing the following particulars, namely:-
  - (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) the documents in support of the allegations contained in the complaint;
  - (e) the relief which the complainant claims.
- (2) Every complaint under sub-rule (1) shall be accompanied by a fee as specified in rule 7.
- (3) The National Commission shall, while disposing of any complaint before it, follow the procedure and conditions provided under sections 37 and 38, with such modifications as may be considered necessary by it.
- (4) On the date of hearing or any other date to which hearing may be adjourned, the parties or their authorised agents shall appear before the National Commission, and where-
  - (a) the appellant or his authorised agent fails to appear, the National Commission may, in its discretion, either dismiss the complaint for default or decide it on merits;
  - (b) the respondent or his authorised agent fails to appear, the National Commission may decide the complaint ex-parte on the merits of the case.
- (5) The National Commission may, on such terms as it deems fit and at any stage of the proceedings, adjourn the hearing of the complaint, but the complaint shall be decided as far as possible within a period of-
  - (a) three months from the date of notice received by the opposite party where such complaint does not require any analysis or testing of commodities; and
  - (b) five months if such complaint requires analysis or testing.
- (6) In the event of a complaint being disposed of after the period specified in sub-rule (5), the National Commission shall record in writing, the reasons for such delay.
- (7) If after conducting the proceedings, the National Commission is satisfied with the allegations contained in the complaint, it shall issue order to the opposite party or parties, as the case may be, directing him or them to take one or more of the actions mentioned in sub-section (1) of section 39.

- (8) The National Commission shall also have the power to direct that any order passed by it, where no appeal has been preferred under section 67 or where the order of the National Commission has been affirmed by the Supreme Court under that section, be published on its website or through any other media and no legal proceedings shall lie against the National Commission or any media for such publication.
- (9) The State Commission and the District Commission shall follow the procedure specified in this rule, with such modifications as may be necessary, in respect of the complaint before them.

#### 4.3 TOTAL NUMBER OF CASES DISPOSED BY CONSUMER FORUMS SINCE INCEPTION

Till 31-8-2022 the Consumer courts at National, State and District level have together registered 5634693 cases and 5014314 cases have been disposed. Thus, there are still 620379 cases which are pending within various consumer courts and the disposal rate is 88.99%.

Table 4.1 depicts that 143928 cases were registered since inception up to 31<sup>st</sup> August 2022 with the National Commission out of which 83.98% cases were disposed of, while 17% were still pending with the National Commission. In case of State Commission 881388 cases were registered since inception up to Aug 2022 and 87.56% percent cases were disposed of. A staggering number of 4609377 cases were registered throughout the District Commissions in the country and performance of District Commissions was better as 89.42% cases were disposed of. This indicates that consumer redressal system is now being utilized at the district levels, which is a positive sign of generating awareness to seek redressal. But the number of cases pending in the various Commissions is more than 6.2 lakh which is an alarming figure. When these consumer forums were formed the main purpose was speedy redressal of consumer cases, where a consumer could itself plead its cases. Consumer Protection Act, 2019 implementation is the good news for all aggrieved consumers.

**Table 4.1: Total Number of Consumer Complaints Filed/Disposed since inception Under Consumer Protection Law as on 31-8-2022**

| Sl. No. | Name of Agency       | Cases filed since inception | Cases disposed of since inception | Cases Pending | % of total Disposal | Remarks  |
|---------|----------------------|-----------------------------|-----------------------------------|---------------|---------------------|----------|
| 1       | National Commission  | 143928                      | 120877                            | 23051         | 83.98%              | -        |
| 2       | State Commissions    | 881388                      | 771737                            | 109651        | 87.56%              | -        |
| 3       | District Commissions | 4609377                     | 4121700                           | 487677        | 89.42%              | -        |
|         | <b>TOTAL</b>         | <b>5634693</b>              | <b>5014314</b>                    | <b>620379</b> | <b>88.99%</b>       | <b>-</b> |

Annual Report: Department of Consumer Affairs

#### Role of Supreme Court under the CPA: (Five recent cases on consumer protection decided by Supreme Court)

Under the Constitution of India an order of Supreme Court of India is binding on all courts and legal authorities including government of India. The Supreme Court comes into the picture when an affected party appeals to it against an order passed by the National Commission. The order of the Supreme Court in such appeal becomes binding on all consumer Commissions from District to National level. Therefore, Supreme Court judgments are very important for consumers, business, government and all others having to do with consumer laws.

The Supreme Court has in a number of cases propounded that the quasi-judicial bodies / authorities / agencies created by the Consumer Protection Act known as District Commissions, State Commission and the National Commission are not courts though invested with some of the powers of a civil court. They are quasi judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. The Act is aimed to protect the interest of a consumer as understood in the commercial sense of the term as purchaser of goods and in the larger sense, user of services. Further the various authorities constituted under the Consumer Protection Act were in fact made functional following directions of the Supreme Court in exercise of its jurisdictional powers under Art 32 of the Constitution of India in the case of *Common Cause Vs Union of India & others* (1993 (1) C.P.J. SC 1). The decision of the Supreme Court has given guidance to the Forums and Commission in developing consumer jurisprudence as well as liberal interpretation of the provisions of the Act to the benefit of the consumers.

The Consumer Protection Act is a social benefit oriented legislation. It is called Magna Carta of the Indian Consumer movement. The Supreme Court has therefore time and again held that the Act is to be constructed in favour of the consumer to achieve the purpose of the enactment to ensure that goods and services conform to acceptable health and safety standards and protection of the consumer's interest.

Section 67 of the Act provides that any person aggrieved by the order of NCDRC can file an Appeal before the Supreme Court within a period of 30 days from the date of the order. The Supreme Court may entertain the Appeal after the said period of 30 days if it is satisfied that there was sufficient reason for not filing it within that period. Appeal by a person, who is required to pay any amount in terms of the order of the NCDRC, shall be entertained only if he deposits 50% of that amount.

It is pertinent to note that the Appeal to the Supreme Court does not lie from the order of NCDRC if the order has been passed by NCDRC in an appeal from the order of the State Consumer Disputes Redressal Commission. Also, an Appeal from the order of the NCDRC cannot be filed to the Supreme Court if the former has passed the order in the course of execution proceedings under Section 71 of the Act. Therefore, under Section 67 the Appeal from order of NCDRC can only be filed in cases of complaints and unfair contracts where the value of goods and services exceeds Rupees 10 Crores. However, in a case where an Appeal from the order of NCDRC does not lie, the person aggrieved by the order can always approach the Supreme Court by way of Special Leave Petition under Article 136 of the Constitution.

#### 4.4 SOME OF THE LANDMARK CASES DECIDED BY THE SUPREME COURT

##### 1. V. KRISHNAKUMAR ———— APPELLANT

vs

STATE OF TAMIL NADU & ORS. (Decided on 1 July, 2015)

##### Brief Summary of the Case

The Supreme Court ordered one of the largest compensations so far in the India in a case of medical negligence, ie, ₹ 1.8 crore. The Tamil Nadu government was asked to pay the compensation to Sharanya, an eighteen year-old girl who lost her vision at birth due to medical negligence at a government-run hospital.

The girl, who was 18 years old (in 2015), was born prematurely at the government hospital in Chennai's Egmore. But she was discharged from the hospital without a retinopathy test, a must for preemies. By the time the family discovered the lapse, the girl had lost her vision.

Her father then approached the National Consumer Commission, which awarded ₹ 5 lakh. Unhappy with the compensation, the family then approached Supreme Court. The Tamil Nadu government, too, challenged the order of the consumer forum. The Supreme Court dismissed the state government's appeal and directed it to pay the higher compensation.

##### Facts of the Case

On 30.8.1996, the appellant V. Krishnakumar's wife Laxmi was admitted in Government Hospital for Women and Children, Egmore, Chennai. Against the normal gestation period of 38 to 40 weeks, she delivered a premature female baby in the 29th week of pregnancy. The baby weighed only 1250 grams at birth. The infant was placed in an incubator in intensive care unit for about 25 days. The mother and the baby were discharged on 23.9.1996. A fact which is relevant to the issue is, that the baby was administered 90-100% oxygen at the time of birth and underwent blood exchange transfusion a week after birth. The baby had apneic spells during the first 10 days of her life. She was under the care of Dr. S.Gopaul, Neo-paediatrician and Chief of Neo Natology and Dr. Duraiswamy of the Neo Natology Unit of the Hospital. The baby and the mother visited the hospital on 30.10.1996 at the chronological age of 9 weeks. Follow up treatment was administered at the home of the appellant by

Respondent No.4, the Government Doctor, Dr. Duraiswamy during home visits. The baby was under his care from 4 weeks to 13 weeks of chronological age. Apparently, the only advice given by him was to keep the baby isolated and confined to the four walls of the sterile room so that she could be protected from infection. What was completely overlooked was a well known medical phenomenon that a premature baby who has been administered supplemental oxygen and has been given blood transfusion is prone to a higher risk of a disease known as the Retinopathy of Prematurity (hereinafter referred to as 'ROP'), which, in the usual course of advancement makes a child blind.

Dr. S. Gopaul, who was also a Government Doctor, checked up the baby at his private clinic at Purassaiwakkam, Chennai when the baby was 14-15 weeks of chronological age also did not



suggest a check up for ROP. One thing about the disease, and was not contested by the respondents was, that the disease occurs in infants who are prematurely born and who have been administered oxygen and blood transfusion upon birth and further, that if detected early enough, it can be prevented. It is said that prematurity is one of the most common causes of blindness and is caused by an initial constriction and then rapid growth of blood vessels in the retina. When the blood vessels leak, they cause scarring. These scars can later shrink and pull on the retina, sometimes detaching it.

The disease advances in severity through five stages - 1, 2, 3, 4 and 5 (5 being terminal stage). Medical literature suggests that stage 3 can be treated by Laser or Cryotherapy treatment in order to eliminate the abnormal vessels. Even in stage 4, in some cases, the central retina or macula remains intact thereby keeping intact the central vision. When the disease is allowed to progress to stage 5, there is a total detachment and the retina becomes funnel shaped leading to blindness. "All infants with a birth weight less than 1500 gms or gestational age less than 32 weeks are required to be screened for ROP." These facts were reported in the AIIMS Report dated 21.8.2007. NCDRC in its order revealed that all infants who had undergone less than 29 weeks of gestation or weigh less than 1300 gms should be examined regardless of whether they have been administered oxygen or not. It is further observed that ROP is a visually devastating disease that often can be treated successfully if it is diagnosed in time. After a stay of 25 days in the hospital, it was for the hospital to give a clear indication as to what was to be done regarding all possible dangers which a baby in these circumstances faces. It is obvious that it did not occur to the respondents to advise the appellant that the baby is required to be seen by a paediatric ophthalmologist since there was a possibility of occurrence of ROP to avert permanent blindness.

The discharge summary either disclosed a warning to the infant's parents that the infant might develop ROP against which certain precautions must be taken, nor any signs that the Doctors were themselves cautious of the dangers of development of ROP. It is a gross negligence in not examining the child for the onset of ROP, which is a standard precaution for a well known condition in such a case. The doctors visited the patient's house but never felt the need for getting ROP, whereas when the mother took the baby for a DPT dosage an independent doctor suspected ROP and after examination by numerous doctors and even taking the child abroad to US Dr. Michael Tresse, a renowned expert in Retinopathy it did not help.

National Commission found that the appellant - V. Krishna Kumar, Sharanya's father was the sole earning member of a middle class family. His wife, a qualified accountant, had to sacrifice her career to attend to the constant needs of Sharanya. Sharanya's treatment and the litigation that ensued for almost two decades has been very burdensome on account of the prolonged physical, mental and financial hardships, which her parents had to undergo. Thus, the National Commission jointly held the hospital and the doctors responsible for deficiency in service and gave a compensation of ₹ 8,13,240/- on 27-5-2009.

Aggrieved by the meagre compensation the appellant filed an appeal in Supreme Court. The apex court increased the compensation to ₹ 1,38,00,000.

#### Apportionment of Liability by Supreme Court

- (a) ₹ 1,30,00,000/- shall be paid jointly and severally by The State of Tamil Nadu and the Director, Government Hospital for Women & Children, Egmore, Chennai; and

- (b) ₹ 8,00,000/- shall be paid by Dr. S. Gopaul, Neopediatrician, Government Hospital for Women & Children, Egmore, Chennai and ₹ 4,00,000/- by respondent no. 4 i.e. Dr. Duraisamy, Neo Natology Unit, Government Hospital for Women & Children, Egmore, Chennai.

Supreme Court mentioned that the amount of ₹ 1,38,00,000/- shall be paid by Respondent Nos. 1 to 4 within three months from the date of this Judgment otherwise the said sum would attract a penal interest at the rate of 18% p.a.

Directed that the amount of ₹ 42,87,921/- in lieu of past medical expenses, shall be apportioned in the following manner:

- (a) Respondent Nos. 1 and 2 are directed to pay ₹ 40,00,000/- jointly, along with interest @ 6% p.a. from the date of filing before the NCDRC; and  
(b) Respondent Nos. 3 and 4 are directed to pay ₹ 2,87,921/- in equal proportion, along with interest @ 6% p.a. from the date of filing before the NCDRC.

In the event the Respondent Nos. 1 and 3 have made any payment in accordance with the award of the NCDRC, the same to be adjusted.

Comments: "At last, justice has prevailed," the girl's father, Mr Krishna Kumar, told NDTV. "After 18 years of legal fight, it is a big relief. But the compensation can't match the sufferings still there."

B Momna Gauri—Appellant

vs

Regional Manager and Others—Respondent

#### Supreme Court Judgement in March, 2017

The appellant who was physically challenged person, purchased a Vikram 750 Delux three wheeler from Nawal Auto Sales, Morena by availing loan of ₹ 1,95,000. She started using the vehicle for earning her livelihood. When the vehicle was serviced by the dealer, the appellant noticed cracks in the chassis. She brought this to the notice of the dealer and demanded replacement of the vehicle with new one. However, instead of making available new vehicle, the dealer repaired and returned the vehicle to the appellant. After sometime the chassis of the three-wheeler again broke. This time the dealer neither carried the repair nor replaced them.

The appellant gave a legal notice dated 9-8-2007 upon the respondents and claimed replacement of the vehicle and compensation of ₹ 10,000. The appellant filed a complaint in the District Forum under Section 12 of the Consumer Protection Act, 1986 and requested for replacement of the vehicle by the manufacturer and the dealer. The District Forum considered the pleadings and the documents produced by the parties and held that the vehicle purchased by the appellant had manufacturing defect and that was the reason that the chassis had broken more than once. The respondents pleaded that the cracks had developed in the chassis because of overloading but it was rejected as no tangible evidence was produced to substantiate this assertion. The District Forum directed the respondents to make new vehicle available to the appellant and the appellant was directed to deposit the old vehicle. At this the respondents filed



an appeal in the State Commission which was rejected because of deficiency in service. The National Commission modified the judgement and said that the chassis of the new three wheeler broke down within a short period therefore, replacement of the defective chassis by a new one and providing the requisite fresh warranty would be done by the respondents. Further any repairs required to make the vehicle road worthy would be carried by the respondents free of cost. Further ₹ 10,000 were awarded as the litigation cost to the appellant.

But aggrieved by the order of the National Commission the appellant approached Supreme Court. Where the apex court was of the opinion that the National Commission transgressed limits of its jurisdiction under Section 21 of the Act. Thus, the order passed by National Commission was set aside and the order passed by the District Forum and State Commission was restored. The respondents were asked to implement the order of the District Forum ie to make new vehicle available to the appellant and the appellant was directed to deposit the old vehicle, within a period of two months from the date of the order.

**C Indian Medical Association vs V.P. Shantha & Ors on 13 November, 1995: (1996 AIR 550, 1995 SCC (6) 651)**

In this landmark case the issue whether medical practitioners fall under the definition of 'service' under the Consumer Protection Act, 1986 was clarified by the Supreme Court. The medical practitioners said that since they are governed by the provisions of the Indian Medical Council Act, 1956 and the Code of Medical Ethics made by the Medical Council of India, as approved by the Government of India under Section 3 of the Indian Medical Council Act, 1956 which regulates their conduct as members of the medical profession and provides for disciplinary action by the Medical Council of India and/or State Medical Councils against a person for professional misconduct, they should not fall under the definition of 'service' in Sec 2(1) (o) of the Consumer Protection Act, 1986.

#### Judgement

The Supreme Court observed that the medical practitioners, though belonging to the medical profession, are not immune from a claim for damages on the ground of negligence. The fact that they are governed by the Indian Medical Council Act and are subject to the disciplinary control of Medical Council of India and/or State Medical Councils is no relief to the person who has suffered on the part of the negligence of the medical practitioner and the right of such person to seek redress is not affected. The Supreme Court did not agree to the view that merely because medical practitioners belong to the medical profession they are outside the purview of the provisions of the Act and the services rendered by medical practitioners are not covered by Section 2(1)(o) of the Act. The following conclusions were drawn:

1. Service rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in Section 2(1) (o) of the Act.
2. The fact that medical practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils

constituted under the provisions of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Act.

3. A 'contract of personal service' has to be distinguished from a 'contract for personal services'. In the absence of a relationship of master and servant between the patient and medical practitioner, the service rendered by a medical practitioner to the patient cannot be regarded as service rendered under a 'contract of personal service'. Such service is service rendered under a 'contract for personal services' and is not covered by exclusionary clause of the definition of 'service' contained in Section 2(1) (o) of the Act.
4. The expression 'contract of personal service' in Section 2(1) (o) of the Act cannot be confined to contracts for employment of domestic servants only and the said expression would include the employment of a medical officer for the purpose of rendering medical service to the employer. The service rendered by a medical officer to his employer under the contract of employment would be outside the purview of 'service' as defined in Section 2(1) (o) of the Act.
5. Service rendered free of charge by a medical practitioner attached to a hospital/Nursing home or a medical officer employed in a hospital/Nursing home where such services are rendered free of charge to everybody, would not be "service" as defined in Section 2(1) (o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.
6. Service rendered at a non-Government hospital/Nursing home where no charge whatsoever is made from any person availing the service and all patients (rich and poor) are given free service - is outside the purview of the expression 'service' as defined in Section 2(1) (o) of the Act. The payment of a token amount for registration purpose only at the hospital/Nursing home would not alter the position.
7. Service rendered at a non-Government hospital/Nursing home where charges are required to be paid by the persons availing such services falls within the purview of the expression 'service' as defined in Section 2(1) (o) of the Act.
8. Service rendered at a non-Government hospital/Nursing home where charges are required to be paid by persons who are in a position to pay and persons who cannot afford to pay are rendered service free of charge would fall within the ambit of the expression 'service' as defined in Section 2(1) (o) of the Act irrespective of the fact that the service is rendered free of charge to persons who are not in a position to pay for such services. Free service, would also be "service" and the recipient a "consumer" under the Act.
9. Service rendered at a Government hospital/health centre/dispensary where no charge whatsoever is made from any person availing the services and all patients (rich and poor) are given free service - is outside the purview of the expression 'service' as defined in Section 2(1) (o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.
10. Service rendered at a Government hospital/health centre/dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing



such services would fall within the ambit of the expression 'service' as defined in Section 2(1) (o) of the Act irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be "service" and the recipient a "consumer" under the Act.

11. Service rendered by a medical practitioner or hospital/nursing home cannot be regarded as service rendered free of charge, if the person availing the service has taken an insurance policy for medical care whereunder the charges for consultation, diagnosis and medical treatment are borne by the insurance company and such service would fall within the ambit of 'service' as defined in Section 2(1) (o) of the Act.
12. Similarly, where, as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, the service rendered to such an employee and his family members by a medical practitioner or a hospital/nursing home would not be free of charge and would constitute 'service' under Section 2(1) (o) of the Act.

C SpiceJet — Respondent

vs

Ranju Aery — Appellant

Supreme Court Judgement on 4<sup>th</sup> August, 2017

In Ranju Aery Vs SpiceJet Ltd, the Supreme Court held that the provisions of Consumer Protection Act and the Information Technology Act, 2000 apply where contracts for services and/or goods are entered into over the Internet. In case of redressal of online consumer complaints, part of the cause of action arises inter alia, at the complainant's place of business, if acceptance of the contract is communicated to her through the Internet, including the medium of email. Further, irrespective of whether or not the contract is one made over the Internet, cause of action would also continue to arise at any of the places:

- (a) where the contract is performed or is to be performed, or
- (b) where money under the contract is either payable or paid, or
- (c) where repudiation of the contract is received, if any.

As such, a consumer forum can admit a consumer complaint, even if an infinitesimal part of the cause of action arises within its territorial jurisdiction and which could be at any place where the causes of action mentioned above arise. This is in addition to all other places where a consumer may choose to file a complaint in accordance with the other provisions of Section 11 (2) of the CPA, 1986. This was reiterated in the case of MD Air Deccan Vs Shri Ram Gopal Agarwal where the State consumer disputes redressal forum interpreted Section 13 of the IT Act along with Section 11 of the CPA.

#### Brief Facts of the Case

The facts of the case are that the complainant and her family members, purchased air tickets online, through internet from Chandigarh, for a holiday to Bagdogra. The tickets were booked

through yatra.com, for journey on 23.06.2015. Tickets for return journey were booked from Bagdogra to Kolkata and connecting flight of the appellant was from Kolkata to New Delhi, for 30.06.2015. She paid an amount of ₹70,900/-, through debit card, for the said purpose.

At the time of her return journey, when she along with her family members were waiting at Kolkata Airport, for boarding connecting flight to New Delhi on 30.06.2015, she came to know that the flight has been cancelled. Alternative flight was not offered/arranged. Staff of the Spice jet Airlines was non-cooperative. The complainant and her husband had to join duties on 01.07.2015. After arranging money from their relatives at Kolkata, they purchased tickets of another airlines from Kolkata to New Delhi via Mumbai, after spending an amount of ₹80,855/-. They reached Chandigarh through bus. It was further stated by her that she got information under the Right to Information Act, 2005, from Airport Authority of India, showing that 'the only flight' of the appellant was not operated, whereas other 128 flights departed as per schedule. Seven flights were late and only flight of the appellant was cancelled, due to operational reasons. It was also averred that her amount paid to the complainant was not refunded.

The complainant approached the State Commission in Chandigarh and secured an order against Spicejet. In the appeal, the airline claimed that Chandigarh State Commission did not have jurisdiction to hear the case as the place of business of the company was at Gurugram. The airline relied on Section 11 of Consumer Protection Act which allows a complaint to be instituted by a consumer within the local limits of where the opposite party resides or carries on business or where cause of action arises.

Rejecting this argument, the NCDRC in its order of February 7, 2017 found the company guilty of cancelling her flight without reason when on that day 128 flights took off from Kolkata without any delay. The NCDRC noted that the airline gave no explanation for cancellation and failed to make any alternative arrangements. The consumer also stated her grief wherein she discloses that she purchased the ticket at a cost of ₹ 80,855 after borrowing money from her relatives at Kolkata. Besides the compensation, the NCDRC directed the airline to refund the consumer ₹ 80,855 with interest at the rate of nine per cent after deducting the airfare between Kolkata and Delhi. The company was also to compensate ₹ 10,000 towards litigation cost. Further, the Supreme Court found no reasons to interfere with the National Commission's order.

D Dr Balram Prasad — Appellant

vs

Dr. Kunal Saha — Respondent

Decided by Supreme Court on 24<sup>th</sup> October 2013

On October 21, 2011, NCDRC awarded a total of ₹ 1.7 crores compensation against the Kolkata doctors and AMRI Hospital but deducted more than ₹ 40 lakh on ground of alleged "interference" by Dr. Saha. Although this was the highest compensation ever awarded in India for death of a patient due to "medical negligence", Dr. Saha challenged the said order passed by NCDRC on numerous grounds including the fact that the NCDRC did not follow settled principles for calculating compensation in "medical negligence" cases while dismissing more than 98% of Dr. Saha's claim. The NCDRC also used the "Multiplier" method for calculation of compensation

which has never been used any case of "medical negligence" until now. In fact, "Multiplier" method is used under Section 163A of the Motor Vehicle Accident Act for awarding compensation to auto accident victims in "no fault" accident.

Dr. Kunal Saha approached Supreme Court, where the hearing to all parties ran over a period of two weeks. While several senior advocates (Mr. Vijay Hansaria, Mr. Ramji Srinivasan) appeared on behalf of the guilty doctors and AMRI Hospital, Dr. Saha appeared in person to argue on his own behalf. Many new concepts that prevail for the victims of "medical negligence" in developed countries including compensation for "punitive damages" and "inflation" were strenuously argued before the Apex Court. The Apex Court was also urged to frame new guidelines for determination of "just compensation" for the victims of medical malpractice.

#### Facts of the Case

In 1998 Dr. Kunal Saha and his wife Anuradha Saha were living in the United States, and Dr. Saha, a medical doctor, was working as an HIV/AIDS researcher at Ohio State University. Mrs. Saha had finished a graduate degree in child psychology at Columbia University in New York. They had bought a five-bedroom house in America also in 1998.

On 24<sup>th</sup> March 1998, the couple travelled to Kolkata, where Mrs. Saha's parents lived, to attend a wedding. They arrived in Kolkata on 1st April, 1998. While in Kolkata, Anuradha developed fever along with skin rash on 25th April, 1998. On 26th April, Dr. Sukumar Mukherjee, Respondent No. 1 herein attended and examined Anuradha at her parental residence on a professional call. Dr. Mukherjee assured the patient and her husband of a quick recovery and advised her to take rest but did not prescribe her any specific medicine. However, two weeks thereafter, i.e., on 7th May, 1998, the skin rash reappeared more aggressively. The couple visited his clinic on May 7, 1998, when Mrs. Saha's rash worsened. Dr. Mukherjee prescribed Depo-Medrol to be injected into Mrs. Saha's muscles so that the long-acting glucocorticoid could suppress her immune system's inflammatory response, which was presumably causing her rash. Depo-Medrol's chemical structure ensures it stays in the blood for a long time. It takes the body six days to get rid of just half the drug. As such, it is usually given to patients who suffer from chronic conditions like rheumatoid arthritis, and even those patients receive just one injection a week.

The maximum dosage recommended by the drug's Indian manufacturer, Pharmacia India Ltd., is 40 to 120 milligrams once a week. Dr. Mukherjee prescribed two injections of Depo-Medrol at 80 milligrams every day.

Anuradha's condition deteriorated rapidly from bad to worse over the next few days. Accordingly, she was admitted at the Advanced Medicare Research Institute (AMRI) in the morning of 11th May, 1998 under Dr. Mukherjee's supervision. Anuradha was also examined by Dr. Baidyanath Halder, Respondent No. 2 herein. Dr. Halder found that she had been suffering from Erythema plus blisters. Her condition, however, continued to deteriorate further. Dr. Abani Roy Chowdhury, Consultant, Respondent No. 3 was also consulted on 12th May, 1998. On or about 17th May, 1998, Anuradha was shifted to Breach Candy Hospital, Mumbai as her condition further deteriorated severely. She breathed her last on 28th May, 1998.

By May 12, 1998, as reported large sheets of Mrs. Saha's skin had separated from her back and limbs. The Supreme Court noted in its 2009 judgment that she had lesions on her tongue and

mouth, which made it difficult to eat or drink. Yet the nursing staff at AMRI hospital did not set up a feeding tube, nor did they give her any painkillers.

Dr. Saha fought from September, 1998 to hold the Kolkata doctors and hospitals accountable for his wife's death, filing criminal and civil lawsuits in India. He educated himself on toxic epidermal necrolysis and assembled an international panel of experts. Dr. Saha shuttled between the United States and India for 15 years, appearing at various trials and racking up attorney fees, which the Supreme Court calculated as 150,000 rupees. His prolonged absences cost him his job at Ohio State University in 2005. He filed for bankruptcy in 2011, and his home was foreclosed. The Supreme Court's ruling in 2009 found Dr. Mukherjee, Dr. Prasad, Dr. Halder and AMRI Hospital negligent in the civil case but dismissed the criminal complaint. The doctors are allowed to keep practicing since the West Bengal Medical Council has not canceled their licenses.

The Supreme Court's 60.8 million rupee award took into consideration the complex socioeconomic conditions of Dr. Saha, the pain his wife endured, the doctor's loss of income and his copious legal expenses.

**Comments:** Proving medical negligence in India is difficult, and the burden rests solely with the claimant. It is still difficult in India for a common man, to take up a case to that extent without understanding medical science. Since Dr. Kunal Saha was a doctor, he could convince the court.

#### E. Case on Unfair Trade Practice

General Motors (I) Private ... — Appellant

vs

Ashok Ramnik Lal Tolat & Anr — Complainant

Decided by Supreme Court on 9 October, 2014

**Facts of the Case** The complainant Ashok Ramnik Tolat was deceived by misleading advertisement and the brochure when he bought a Chevrolet Forester believing the advertisement given by the manufacturer. He had a passion for driving and dreamt to visit Leh Ladakh, Jammu & Kashmir and Nepal by driving a motor car. He was seventy year old and wanted a safe and enjoyable ride to these destinations and by surfing the internet, read an advertisement given by the appellant as follows :

"Introducing a world without borders, an SUV to end all SUVs. That's the new Chevrolet Forester. With the Power of 120 horses under its borne unique All-Wheels (AWD), it literally puts the four corners of the earth within your easy reach. It won't just get you there. But get you there. But get you there in unmatched comfort and luxury by-road, off-road or no- road."

Relying upon the same, he visited the agents of the appellant and was given a book titled "for a special journey called life". He was assured that the vehicle offered for sale will realise his dream. The brochure also assured that "the vehicle in question is an SUV to end all SUVs. And ..... it will put the four corners of the earth within your reach and ..... it won't just get you there every time. But get you're there in unmatched comfort, by road, off-road or no road". He was also shown visual presentation of the vehicle and was also given a copy of the



VCD. Accordingly, he purchased the vehicle on 1st May, 2004 for ₹14 Lakhs and got accessories worth ₹1,91,295/- fitted and also got the vehicle insured and-registered.

Thereafter he realised that the vehicle was not fit for "off-road, no road and dirt road" driving as represented and had defects. Accordingly, he approached the appellant and its dealers who referred to the owner's manual at pages 8-6 column 1 & 3 printed by the Company to the effect: "off-road driving ..... But now he was told that AWD Chevrolet is a passenger car and is neither a conventional off-road vehicle nor an all-terrain vehicle ..... If the driving through water such as when crossing shallow streams, first check the depth of the water and the water stream bed for firmness and ensure that the bed of stream is flat ..... the water should be shallow enough that it does not reach under carriage."

Thus, he found that the owner's manual was contrary to the assurance in the brochure, internet and the book titled "for a special journey called life". He also realised that the vehicle was not SUV but a mere passenger car, not fit for "off-road, no road and dirt road" driving. He could not realise his dream to drive it to Leh Ladakh, Jammu & Kashmir and Nepal. The action of the appellant was thus, "unfair trade practice". He sought permission to remove "unfair trade practice" and deficiencies in service and also to refund a sum of ₹14 Lakhs the price of the vehicle and ₹1,91,295/- the price of accessories with 18% interest from the date of purchase till the date of payment and also to pay compensation for physical and mental pain shock, suffering, agonies, hardships, inconvenience and expenses suffered by the complainant, to the tune of ₹50,000/- or as thought fit in the interest of justice and the costs. The District Forum directed refund of ₹14 Lakhs plus ₹1,91,295/- towards cost of accessories with interest @ 9% per annum from the date of complaint to the date of payment subject to the return of the vehicle, apart from compensation of ₹5,000/- for mental agony and ₹2,000/- as costs of litigation.

The said order of the District Forum was challenged by the appellant before the State Commission. The State Commission held that the vehicle had no mechanical or manufacturing defect but the advertisement that car was SUV amounted to "unfair trade practice". Accordingly, in substitution of the order of the District Forum, the complainant was held entitled to ₹50,000/- as compensation which included costs of litigation. But at the same time, the complainant was required to pay ₹5,000/- towards costs for undeserving claim. The appellant was directed not to describe the vehicle in question as SUV in any form of advertisement, website, literature etc. and to make the correction that it is a passenger car as mentioned in the manual.

Accordingly, the appellant complied with the said direction by issuing a disclaimer. The respondent preferred a revision petition against the Order of the State Commission while the appellant filed a cross revision petition. The National Commission held that the appellant could not be allowed to contest the finding of committing "unfair trade practice" in view of its conduct in voluntarily complying with the order of the State Commission and filing cross revision without any justification and belatedly. Referring to the material on record, particularly, the undisputed correspondence, the said finding was also affirmed on merits. After referring to the definition of "unfair trade practice" under Section 2(1) (r) of the Consumer Protection Act, 1986 (for short "the Act"), it was concluded: "Keeping in view the above definition of unfair trade practice and the material obtaining on record more particularly the representations made and held out by the respondent in their brochures relating to the vehicle in question, the owner's manual as also the clarification rendered by the manufacturer of the vehicle, there can be hardly any doubt that

the motor vehicle Chevrolet forester AWD model was not a vehicle of the said description in as much as it was not a SUV vehicle. Therefore, the petitioner must have been misled on that score to believe that the vehicle offered for sale was a SUV. This act of the respondent would clearly fall within the mischief of unfair trade practice as envisaged in section 2(r). We therefore, affirm the findings of the State Commission in this behalf."

Accordingly, the National Commission restored the relief given by the District Forum with slight modification. "Keeping in view that the vehicle was used by the petitioner for a period of about one year and it had run approximately 14,000 kms, we consider it appropriate that the respondent should refund a sum of ₹12,50,000 (Rupees twelve lacs fifty thousand only) to the petitioner subject to the condition that the vehicle in question, without the accessories, which the petitioner got fixed at a cost of ₹1,91,295/-, is returned to the respondent."

The National Commission also considered the issue of punitive damages for "unfair trade practice" in selling the said vehicles to about 260 consumers. It was held that though the consumers had not approached the National Commission and a period of four years had passed, the appellant should pay punitive damages of ₹25 lakhs and out of the said amount, a sum of ₹5 Lakhs be paid to the complainant while the rest be deposited in the "Consumer Welfare Fund" of the Central Government to be utilized for the benefit and protection of the interests of the consumers generally. Final operative order passed by the National Commission was that the respondents were directed to pay a sum of ₹12,50,000 to the petitioner towards price of the vehicle subject to the petitioner returning the vehicle in question without accessories to the respondents. The respondents were further called upon to deposit a sum of ₹25 lacs (Rupees Twenty Five Lacs) as punitive damages with this Commission. Out of the said deposited amount, a sum of ₹5 lacs (rupees five lacs) shall be paid to the petitioner-complainant and rest of the amount shall be credited to the "Consumer Welfare Fund" of the Central Government to be utilized for the benefit and protection of the interests of the consumers generally. An award a sum of ₹50,000/- (rupees fifty thousand) in favour of the complainant to meet his cost of litigation before the three consumer fora. The liability to pay and deposit the amounts shall be joint and several on the respondents. We grant six weeks to the respondents to comply with the directions given herein above."

#### Final Order Passed by the Supreme Court:

General Motors challenged the jurisdiction of the National Commission in Supreme Court. Supreme Court found that the concurrent findings recorded by the District Forum, the State Commission and the National Commission with regard to "unfair trade practice" committed by the appellant were based on adequate material on record, and do not require any interference by them and affirmed them.

The company's appeal required consideration that there was no claim before the National Commission for the punitive damages nor the appellant had an opportunity to meet such claim and that part of the order needs to be set aside.

The Supreme Court found merit in this submission and Vide interim order of this Court dated 17th July, 2009, the operation of the impugned order awarding punitive damages was stayed. Learned counsel for the appellant undertook to deposit the amount awarded in favour of

the respondent-complainant towards his claim. The said order was allowed to continue, vide order dated 20.11.2009, with the following modifications :

- (i) Respondent No.1 shall return the vehicle to the appellant within a period of four weeks from today. The latter shall arrange for accepting delivery of the vehicle at Ahmedabad.
- (ii) After return of the vehicle to the appellant, respondent No.1 shall be entitled to withdraw the amount of ₹12,50,000/- together with litigation cost deposited by the appellant before the District Forum in terms of order of this Court dated 17th July, 2009 subject to his furnishing security to the satisfaction of the District Forum.
- (iii) It will be open to the appellant to sell the vehicle and keep the sale proceeds in a separate interest bearing account. Respondent No.1 shall cooperate with the appellant by signing the documents necessary for selling the vehicle.

The Supreme Court proceeded to deal with the issue of correctness of finding recorded by National Commission for awarding punitive damages of ₹100 crores and also damages for dragging General Motors in the Court. Supreme Court found no merit being beyond the claim of the complainant in the complaint filed by him. Moreover, no litigant can be punished by way of punitive damages for merely approaching this Court, unless its case is found to be frivolous. Thus, the final order passed by the Supreme Court reversed the order of the National Commission with regard to the punitive damages.

#### 4.5 CONSUMER MEDIATION CELL

The term mediation is defined as a voluntary dispute resolution process where the third party facilitates negotiation between the disputed parties to negotiate for their rights and interests by themselves. The third party who facilitates the negotiation between the disputed parties is called mediator. Mediation is an informal and non-adversarial method of dispute resolution proposed to back the disputing parties to reach a mutually acceptable resolution. The role of the mediator is facilitative rather than suggestive in any mediation proceeding. Mediator being an impartial and neutral third person facilitates the resolution of a dispute without suggesting what should be the solution. The mediator has greater role to play in mediation proceedings, he facilitates proper communication between the parties, removes obstacles in communication, assists in the identification of issues and the exploration of options and facilitates mutually acceptable agreements to resolve the dispute. He performs all these functions without violating the 'right of self-determination' of the parties. The role of the mediator on the basis of his functions can be classified in to two heads (i) Facilitative role to facilitate the process of mediation (ii) Evaluative role to assist parties to evaluate the case to arrive at a settlement.

Mediation mechanism has been introduced which aims at giving legislative basis to resolution of consumer disputes through mediation thus making the process less cumbersome, simple and quicker. This is being done under the aegis of the consumer courts. (For more details please refer to Chapter 1)

#### Conclusion

The remedy under the Consumer Protection Act is an alternative in addition to that already available to the aggrieved persons/consumers by way of civil suit. In the complaint/appeal/

petition submitted under the Act, a consumer is not required to pay any court fees but only a nominal fee. Consumer Fora proceedings are summary in nature. The endeavor 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. Functioning of District Forum, State Commission and National Commission is consumer friendly, and a consumer can file a complaint and also address arguments in person without engaging a lawyer.

#### SUMMARY OF THIS CHAPTER

- The Consumer Protection Act mandates establishment of Consumer Protection Councils at the Centre as well as in each State and District, with a view to promote consumer awareness. The Central Council is headed by Minister, In-charge of the Department of Consumer Affairs in the Central Government and the State Councils by the Minister In-charge of the Consumer Affairs in the State Governments. It also provides for a 4-tier structure of Supreme Court, the National and State Commissions and District Commissions for speedy resolution of consumer disputes.
- The object of the Councils is to promote and protect the rights of the consumers. These Councils are constituted on public-private partnership basis. The purpose of these bodies is to review the consumer related policies of the government and suggest measures for further improvements.
- To provide inexpensive, speedy and summary redressal of consumer disputes, quasi-judicial bodies have been set up in each District and State and at the national level, called the District Commissions, the State Consumer Disputes Redressal Commissions and the National Consumer Disputes Redressal Commission respectively.
- Some of the landmark judgements decided by the Supreme Court have been discussed in the Chapter.
- Mediation is defined as a voluntary dispute resolution process where the third party facilitates negotiation between the disputed parties to negotiate for their rights and interests by themselves. The third party who facilitates the negotiation between the disputed parties is called mediator.



### QUESTIONS FROM THIS CHAPTER

- Q1 Explain the organisational set up comprising of advisory and adjudicatory bodies under the Consumer Protection Act, 2019?
- Q2 Discuss the objects and the working of the Central Consumer Protection Council under the CPA, 2019?
- Q3 Mention the objects and the working of the State Consumer Protection Council?
- Q4 Write the objects and the working of the District Consumer Redressal Commission?
- Q5 Discuss the composition and jurisdiction of the District Consumer Redressal Commission?
- Q6 Write the composition and jurisdiction of the State Consumer Redressal Commission?
- Q7 Mention the composition and jurisdiction of the National Consumer Redressal Commission?
- Q8 Explain the role of Supreme Court under the Consumer Protection Act?
- Q9 Mention any legal case on medical negligence decided by the Supreme Court of India?
- Q10 Are E-Commerce companies covered under the Consumer Protection Act, 2019?
- Q11 List down any legal case decided by the Supreme Court of India on E-Commerce?
- Q12 Write about the role of consumer mediation cell in resolving consumer complaints?

#### References

- i. [https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Consumer\\_Handbook\\_Mediation.pdf](https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Consumer_Handbook_Mediation.pdf)

## CHAPTER

# 5

## GRIEVANCE REDRESSAL MECHANISM UNDER THE CPA

### LEARNING OUTCOMES

Who can File a Complaint? Grounds of Filing a Complaint, Limitation Period, Procedure for Filing and Hearing of Complaint, Reliefs provided, Appeal, Enforcement of Order, Offences and Penalties. Leading cases decided by the National Commission/Supreme Court under the CPA in: Medical service, Banking, Insurance, Housing Construction, Education, defective product, Unfair Trade Practices.

### Introduction

The Consumer Protection Act, 2019 aims to simplify and expedite the complaint process for consumers, ensuring that their grievances are addressed efficiently. Under the Consumer Protection Act, 2019 a written complaint, can be filed before the District Commission for pecuniary value of upto Rupees fifty lakhs, State Commission for value from fifty lakh upto Rupees two crore and the National Commission for value above Rupees two crore, in respect of defective goods, deficiency in service or restrictive trade practice and unfair trade practice. However, no complaint can be filed for alleged deficiency in any service that is rendered free of charge or under a contract of personal service. This Chapter discusses the grievance redressal mechanism under the Consumer Protection Act, 2019.

### 5.1 WHO CAN FILE A COMPLAINT?

The Consumer Protection Act (CPA) of 2019 in India provides a framework for addressing consumer grievances and disputes. Under this Act, consumers are empowered to file complaints. Here's who can file a complaint:

#### 1. Consumer:

- (i) to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided; or
- (ii) who alleges unfair trade practice in respect of such goods or service;

Thus, the complaint can be filed regarding defective goods, deficiency in service, unfair trade practices, or restrictive trade practices.

**2. Recognised Consumer Association:**

Any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or who alleges unfair trade practice in respect of such goods or service, is a member of such association or not;

**3. Central or State Government:**

The Central Government, the Central Authority or the State Government, as the case may be: Provided that the complaint under this sub-section may be filed electronically in such manner as may be prescribed.

**4. Legal Heir or Representative:**

- (i) In case of the consumer's death, their legal heir or representative can file or continue a complaint.
- (ii) in case of a consumer being a minor, his parent or legal guardian.

**5. Multiple Consumers with the Same Interest:**

One or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested;

**6. Non-Profit Organizations:**

"Recognised Consumer Association" means any voluntary consumer association registered under any law for the time being in force. Any person can file a complaint if they are part of a non-profit organization registered under the law and the complaint is related to the organization's objectives to protect consumer interests.

**7. Consumer Rights Organizations:**

- (i) Organizations formed for the protection of consumer rights can also lodge complaints under the Act.

**5.2 GROUNDS OF FILING A COMPLAINT**

Consumer should not tolerate the inconvenience or wrong done to them and file appropriate complaints to ensure the same is not repeated by the unscrupulous traders to them and others in the society.

Section 2(6) of CPA, 2019 defines "complaint" as any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act, that—

- (i) an unfair contract or 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 any deficiency;

- (iv) a trader or a 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; or
  - (b) displayed on the goods or any package containing such goods; or
  - (c) displayed on the price list exhibited by him by or under any law for the time being in force; or
  - (d) agreed between the parties;
- (v) the goods, which are hazardous to life and safety when used, are being offered for sale to the public—
  - (a) in contravention of standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
  - (b) where the trader knows that the goods so offered are unsafe to the public;
- (vi) the services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;
- (vii) a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be.

Thus, on following grounds a complaint can be filed in consumer courts:

- Adoption of unfair contract, or unfair trade practices or restrictive trade practices by the service provider,
- Defective goods,
- Deficiency in services,
- Overcharging of goods or services,
- Selling hazardous goods or services.

**5.3 LIMITATION PERIOD FOR FILING COMPLAINT**

Under CPA, 2019 the limitation period is the same as in CPA, 1986. Thus, a complaint can be filed **within two years** from the date on which the cause of action has arisen. However, a complaint may be entertained after the period if the complainant had sufficient cause for not filing the complaint within such period by recording its reason for condoning such delay.

Section 69 of CPA, 2019 mentions that:

- (a) The District Commission, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.



- (b) A complaint may be entertained after the period specified, if the complainant satisfies the District Commission, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period: Provided that no such complaint shall be entertained unless the District Commission or the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.

#### 5.4 PROCEDURE FOR FILING AND HEARING A COMPLAINT

##### Step 1: Intimation via Notice (Optional step)

The aggrieved individual must send a notice to the service provider informing them about the defects in the goods, the deficiency in the service, and the consumer's intention to resort to litigation. Before filing the case a personal or legal notice should be given by the consumer to the opposite party.

##### Step 2: Draft the Consumer Complaint

A formal complaint must be drafted under the Consumer Protection Act, 2019 if the service provider does not offer compensation or any other remedy. The complaint should contain following information

- The name, description and address of the complainant;
- The name, description and address of the opposite party or parties;
- Cause of action, approximate date, time, and venue.
- The facts relating to the complaint and when and where it arose;
- Documents 'if any' in support of allegations and
- The relief or remedy which the complainant is seeking.
- Signature and verification by the complainant or authorised agent.

##### Step 3: Gathering of Certain Documents

Relevant documents containing material evidence that supports the case must be gathered first. Documents which consumers need to gather:

- Consumer complaint drafted as per the guidelines of the Act,
- Copies of material evidence such as bills, receipts, warranty/guarantee certificates,
- Copies of written complaints and notices sent to the service provider,
- Affidavit stating the facts presented are true.

A prescribed fee is required to be paid depending on the consideration paid by the consumer. Moreover, ensure that the complaint is filed within two year. The complaint should be signed by the Complainant or his/ her authorised agent. No lawyer is required for filing a case in the Consumer Commissions. The Consumer Protection Act, 2019, which came into force from 20th July, 2020, has provision for e-filing of consumer complaints in the

Consumer Commissions and online payment of the fees for filing a complaint. A web application for E-filing of consumer complaints named "edaakhil.nic.in" has been developed by National Informatics Centre (NIC) for the purpose. Thus, consumers have the option to file their complaint either offline or online through E-Daakhil platform.

#### 5.5 RELIEFS AVAILABLE TO CONSUMERS

Following reliefs are available to the Consumers under the Act:

- Removal of defects from the goods;
- Replacement of the goods;
- Return to the complainant the price, or, as the case may be, the charges paid by the complainant along with such interest on such price or charges as may be decided;
- 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.
- to pay such amount as may be awarded by it as compensation in a product liability action under Chapter VI.
- Refund of the price paid;
- Discontinue and not to repeat unfair trade practice or restrictive trade practice;
- not to offer hazardous goods for sale;
- to withdraw hazardous goods from sale;
- to cease manufacture of hazardous goods and desist from offering services which are hazardous in nature;
- 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 shall not be less than twenty-five per cent. of the value of such defective goods sold or service provided, as the case may be, to such consumers
- to issue corrective advertisement to neutralise the effect of misleading advertisement;
- to provide adequate costs to parties.
- to cease and desist from issuing any misleading advertisement.

#### 5.6 JURISDICTION OF APPEALS

##### Appeal against Order of District Commission

- Under CPA 2019, Section 41, any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order, in such form and manner, as may be prescribed.

- (b) Provided that the State Commission may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period.
- (c) Further that no appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.
- (d) Provided also that no appeal shall lie from any order passed under sub-section (1) of section 81 by the District Commission pursuant to a settlement by mediation under section 80.

#### Appeal against Order of State Commission CPA, 2019

1. Any person aggrieved by an order made by the State Commission in exercise of its powers may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed.
2. Provided that the National Commission shall not entertain the appeal after the expiry of the said period of thirty days unless it is satisfied that there was sufficient cause for not filing it within that period.
3. Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.
4. Same as otherwise expressly provided under this Act or by any other law for the time being in force, an appeal shall lie to the National Commission from any order passed in appeal by any State Commission, if the National Commission is satisfied that the case involves a substantial question of law.
5. In an appeal involving a question of law, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal. (4) Where the National Commission is satisfied that a substantial question of law is involved in any case, it shall formulate that question and hear the appeal on that question.

#### Appeal against Order of National Commission (CPA, 2019)

1. Sec 67 mentions any person, aggrieved by an order made by the National may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order.
2. Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.
3. Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme

Court unless that person has deposited fifty per cent. of that amount in the manner as may be prescribed.

Whereas under CPA, 1986 an appeal could be filed in State Commission against the order of the District Forum within 30 days from the date of order. Appeals against order of State Commission can be filed only in case of original order by State Commission within 30 days from the date of order. No appeal can be filed to National Commission in case where State Commission has passed order in appeal against original order of District Forum. Appeal against order of National Commission lies with Supreme Court only in matters where it exercises original jurisdiction i.e. when matter is over 1 crore within 30 days from the date of order. There is no provision for appeal in cases where National Commission decides appeal against order of State Commission. Thus, in all cases only one appeal is provided. However, revision petition can be filed.

#### Appeals before National Commission

Where an appeal is filed under section 51, the amount to be deposited by the appellant as provided in the second provision to the said section shall be remitted in the form of a crossed Demand Draft drawn on a nationalised bank in favour of the Registrar, National Commission, payable at New Delhi.

**Finality of orders** Every order of a District Commission, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

**Credit of amount payable for loss or injury suffered by consumers who are not identifiable conveniently –**

- (1) Where an order is passed under clause (k) of sub-section (1) of section 39 by the District Commission, or the State Commission, or the National Commission, in the exercise of its powers vested under subsection (1) of section 49 respectively or sub-section (1) of section 59, directing the opposite party to pay such amount as may be determined by it on account of loss or injury suffered by a large number of consumers, who are not identifiable conveniently, such sum shall be credited by the District Commission and the State Commission in the Consumer Welfare Fund established by the State Government, and by the National Commission in the Consumer Welfare Fund established by the Central Government.
- (2) The amount credited to the Consumer Welfare Fund of the Central Government under sub-rule (1) shall be utilised in accordance with rule 97 of the Central Goods and Services Tax Rules, 2017 and the amount credited to the Consumer Welfare Fund of the State Government under sub-rule (1) shall be utilised in accordance with the rules framed under the State Goods and Service Tax Act, 2017.

#### Advantages of Approaching the Consumer Commissions

The advantages of filing a complaint in consumer forum are:

- (a) No lawyer required for filing a consumer complaint. A complaint can be filed by any



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individual, group of consumers and consumer organizations and now online filing of complaint is also possible.

- (b) Nominal charges
- (c) Speedy redressal – All complaints are to be heard and disposed off within 90 days (150 days if lab testing is involved) from date of receipt of notice by the opposite party. No adjournments should be ordinarily granted.
- (d) No adjournment shall ordinarily be granted. If granted, reasons to be recorded.
- (e) A consumer, who is aggrieved by the decision of the National Commission, can prefer an appeal in the Supreme Court of India.

#### 5.7 FEE STRUCTURE

The fee structure for filing a complaint in consumer Commissions after the implementation of the Consumer Protection Act, 2019 and applicable since 20<sup>th</sup> July 2020 is as follows:

| Value and Compensation claimed    | Fee     |
|-----------------------------------|---------|
| <b>District Commission</b>        |         |
| Upto 5 Lakh                       | Nil     |
| ₹ 5 lakh & above but < ₹ 10 Lakh  | ₹ 200   |
| ₹ 10 lakh & above but < ₹ 20 Lakh | ₹ 400   |
| ₹ 20 lakh & above but < ₹ 50 Lakh | ₹ 1000  |
| <b>State Commission</b>           |         |
| ₹ 50 lakh & above but < ₹ 1 Crore | ₹ 2000  |
| Above ₹ 1 crore but < ₹ 2 Crore   | ₹ 2,500 |
| <b>National Commission</b>        |         |
| Above ₹ 2 crore but < ₹ 4 Crore   | ₹ 3,000 |
| Above ₹ 4 crore but < ₹ 6 Crore   | ₹ 4,000 |
| Above ₹ 6 crore but < ₹ 8 Crore   | ₹ 5,000 |
| Above ₹ 8 crore but < ₹ 10 Crore  | ₹ 6,000 |
| Above ₹ 10 Crore                  | ₹ 7,500 |

#### 5.8 DISMISSAL OF FRIVOLOUS OR VEXATIOUS COMPLAINTS

In CPA, 2019 the Section on frivolous or vexatious complaints has been deleted. Whereas in old law, CPA, 1986, (Section 26) discussed that where a complaint instituted before the District Forum, the State Commission or the National Commission, as the case may be, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order.

5.9

#### 5.9 ENFORCEMENT OF ORDERS OF DISTRICT COMMISSION, STATE COMMISSION AND NATIONAL COMMISSION

Section 71 states that every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under this Act.

#### Penalty for Non-compliance of Order (CPA, 2019)

Section 72 states as follows:

- Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.
- Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973.
- All offences under this Act shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.

#### 5.10 CASES DECIDED BY NATIONAL COMMISSION UNDER CONSUMER PROTECTION ACT

- A. Medical Negligence
- B. Banking and Financial Service
- C. Housing & Real Estate
- D. Electricity, Water, and Telecom Services.
- E. Education & Training Service
- F. Defective Product
- G. Unfair Trade Practice

##### A. Medical Negligence

A case of medical negligence is considered to be deficiency in service under the Consumer Protection Act as mentioned in the landmark judgement by Supreme Court in Indian Medical Association vs V P Shantha case. Some recent cases related to medical negligence are mentioned as follows.

5.10

(a) A Nageswar Rao ————— Petitioner  
vs  
ESI Hospital ————— Respondents

Decided on 6-10-2016

The facts of the case are that the complainant, being a retired employee was member of the Scheme run by the Employees State Insurance Corporation (ESIC) for the year 2006-2007 and he was enlisted for the benefit of medical treatment for himself and his family under the said scheme. The wife of the complainant was taken to the ESIC hospital on 17-1-2007, where she remained admitted and was discharged on 25-1-2007. During her period of admission she was sent to Government Hospital Vijaywada for an Echo test on 24<sup>th</sup> January 2007. It was discovered by the cardiologist that she was suffering from heart enlargement and other multiple problems. However, despite that she was discharged from the hospital on 25-1-2007. The patient suffered from serious problems on 31-1-2007 again and was brought to the ESI hospital and admitted to the general ward, rather than referring her to the super-specialty hospital. On 4-2-2007, she died in the hospital. The case of the complainant was that there were no proper facilities in the hospital where the condition of the patient could be monitored.

Alleging deficiency in service the complainant filed a case in District Forum and asked for a compensation of ₹ 10 lakh as damages along with interest of 24% per annum and litigation cost. The opposite party said that as the patient was symptomatically better, she was discharged on 25<sup>th</sup> January 2007 after prescribing medicines. Hospital said that without an eligibility letter issued by the management they cannot refer a single patient to Super Specialty Hospitals, therefore they were not deficient in their services. District Forum asked the ESI Corporation to pay a compensation of ₹ 2 lakh and ₹ 5,000 as cost of litigation to the complainant. Aggrieved by this the hospital filed appeal in State Commission. State Commission set aside the order of the District Forum and dismissed the complaint and said that the hospital was not negligent. At this the petitioner filed a revision petition in National Commission. National Commission found that the hospital was deficient in its services as the patient had heart problem and her tests were not normal. Even then they discharged the patient. The Commission set aside the order of the State Commission and restored the order of the District Forum, asking the ESI Corporation to pay a compensation of ₹ 2 lakh and ₹ 5,000 as cost of litigation to the complainant.

(b) Samira Kohli ————— Complainant  
vs

Dr. Prabha Manchanda & Anr. ————— Opposite Party

Decided on 16-1-2008

The Supreme Court held as follows:-

- (i) A doctor should seek and secure the consent of the patient before commencing a 'treatment' (the term 'treatment' includes surgery also). The consent so obtained should be real and valid, which means that the patient should have the capacity and competence to consent; his consent should be voluntary; and his consent should be on the basis of adequate information concerning the nature of the treatment procedure, so that he knows what he is consenting to.

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(ii) The 'adequate information' to be furnished by the doctor (or a member of his team) who treats the patient should enable the patient to make a balanced judgement as to whether he should submit himself to the particular treatment or not. This means that the doctor should disclose (a) nature and procedure of the treatment and its purpose, benefits and effect; (b) alternatives if any, available; (c) an outline of the substantial risks; and (d) adverse consequences of refusing treatment. But there is no need to explain remote or theoretical risks involved, which may frighten or confuse a patient and result in refusal of consent for the necessary treatment. Similarly, there is no need to explain the remote or theoretical risks of refusal to take treatment, which may persuade a patient to undergo a fanciful or unnecessary treatment. A balance should be achieved between the need for disclosing necessary and adequate information and at the same time avoid the possibility of the patient being deterred from agreeing to a necessary treatment or offering to undergo an unnecessary treatment.

(iii) Consent given only for a diagnostic procedure cannot be considered as consent for therapeutic treatment. Consent given for a specific treatment procedure will not be valid for conducting some other treatment procedure. The fact that the unauthorized additional surgery is beneficial to the patient, or that it would save considerable time and expense to the patient, or would relieve the patient from pain and suffering in future, are not grounds of defence in an action in tort for negligence or assault and battery. The only exception to this rule is where the additional procedure through unauthorized, is necessary in order to save the life or preserve the health of the patient and it would be unreasonable to delay such unauthorized procedure until patient regains consciousness and takes a decision.

(iv) There can be a common consent for diagnostic and operative procedures where they are contemplated. There can also be a common consent for a particular surgical procedure that may become necessary during the course of surgery.

(v) The nature and extent of information to be furnished by the doctor to the patient to secure the consent need not be of the stringent and high degree mentioned in Canterbury but should be of the extent which is accepted as normal and proper by a body of medical men skilled and experienced in the particular field. It will depend upon the physical and mental condition of the patient, the nature of treatment, and the risk and consequences attached to the treatment."

The Supreme Court in the judgement quoted further held that there was no consent by the appellant for performing hysterectomy and Salpingo-oophorectomy, performance of such surgery was an unauthorized invasion and interference with appellant's body, which amounted to a tortious act of assault and, therefore, a deficiency in service.

Another judgment by Supreme Court discussed about the rights of the doctors/surgeons.

(c) Dr. Martin F. D'souza

vs

Mohd. Ishfaq, 2009 CTJ 352(SC), 2009 3 SCC 1

Mohd. Ishfaq suffered from chronic renal failure and was awaiting kidney transplant and had undergone treatment for a brief period with the physician Martin F. D'souza for urinary track and



blood infection. He alleged that due to administration of the anti-biotic 'Amikacine', he suffered hearing impairment. National Commission awarded ₹7 lakhs towards compensation. On appeal by Dr. Martin F. D'souza the Supreme Court ruled that the doctor was faced with a situation to choose between choosing to save the life of the patient or his hearing. In this case, the expert evidence was obtained from the AIIMS which stated that there are several factors that can cause loss of hearing and regarding the deafness of the patient, doctors filed notes that they freely conversed with the patient in several meetings. The Supreme Court observed that the consumer fora must avail the expert opinion before taking a decision and must not substitute their own view over that of the specialists. Complaint was dismissed and Apex Court also directed –

Para 106 "We, therefore, direct that whenever a complaint is received against a doctor or hospital by the consumer fora (whether District, State or National) or by the Criminal Court, then before issuing notice to the doctor or hospital against whom the complaint was made, the consumer forum or criminal court should first refer the matter to a competent doctor or committee of doctors, specialized in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a *prima facie* case of medical negligence, should notice be then issued to the concerned doctor/hospital. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in Jacob Mathew's case, otherwise the policemen will themselves have to face legal action."

However, this judgement is applicable only to cases which are filed after this judgement was delivered and not to the cases which are already pending in the various consumer fora. This judgement worked for some time as a protective shield to the medical fraternity against the vexatious litigation by the patients and their family members.

(d) **Martin D'souza Judgment reversed**: This Judgement has been overruled by the Hon'ble Supreme Court in a recent judgment in the case of *V. Krishna Rao vs. Nikhil Super Specialty Hospital & Another* (Civil Appeal No.2641/2010 decided on March 8, 2010) (2010-5 Supreme Court Cases 513).

The Hon'ble Apex Court in Nikhil Super Specialty case held that the general directions given in para 106 in *D'Souza* cannot be treated as a binding precedent and those directions must be confined to the particular facts of the case. The Supreme Court was of the opinion that the directions in *D'Souza* were contrary to:

- (a) the law laid down in para 37 of Indian Medical Assn.
- (b) and para 19 in *J.J. Merchant (Dr.)*,
- (c) those directions in para 106 of *D'Souza* equate medical negligence in criminal trial and negligence festening civil liability whereas the earlier larger Bench in *Mathew* elaborately differentiated between the two concepts,
- (d) those directions in *D'Souza* are contrary to the said Act which is the governing statute,
- (e) those directions are also contrary to the avowed purpose of the Act, which is to provide a speedy and efficacious remedy to the consumer. If those general directions are followed then in many cases the remedy under the said Act will become illusory,

- (f) those directions run contrary to the principle of *res ipsa loquitur* which has matured into a rule of law in some cases of medical negligence where negligence is evident and obvious.
- (g) When a judgment is rendered by ignoring the provisions of the governing statute and earlier larger Bench decision on the point such decisions are rendered per incuriam. Per incuriam' are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

Supreme Court further said that when the Fora finds that expert evidence is required, the Fora must keep in mind that an expert witness in a given case normally discharges two functions. The first duty of the expert is to explain the technical issues as clearly as possible so that it can be understood by a common man. The other function is to assist the Fora in deciding whether the acts or omissions of the medical practitioners or the hospital constitute negligence. In doing so, the expert can throw considerable light on the current state of knowledge in medical science at the time when the patient was treated.

In most of the cases the question whether a medical practitioner or the hospital is negligent or not is a mixed question of fact and law and the Fora is not bound in every case to accept the opinion of the expert witness. Although in many cases the opinion of the expert witness may assist the Fora to decide the controversy one way or the other. Thus, Supreme Court held that it is not bound by the general direction given in para 106 in *D'Souza*. It further held that the facts and circumstances of the case would determine whether expert evidence is required or not.

#### B. Banking and Financial Service

**Vijaya Bank vs Gurnam Singh on 2 December, 2009**

**Facts of the Case:** The respondent had a savings bank account with the appellant bank. He lost his cheque book containing one unused leaf and the requisition slip required for issue of a new cheque book. On 24th September, 1999, when the complainant visited the bank to draw money, he was surprised to find that there was only a balance of ₹1682.93 in his account. On enquiries being made, it transpired that the requisition slip had been used to get a new cheque book issued from the bank and the left over cheque in the lost cheque book had been misused to draw an amount of ₹2,500/- from complainant's account. It was also discovered that an amount of ₹3,50,000/- had been withdrawn from the account by using a cheque leaf of the newly issued cheque book.

Having failed to get the amount so withdrawn from his account reimbursed by the bank, the complainant filed a complaint with the District Forum, Chandigarh, alleging deficiency in service by the Bank. Upon consideration of the material before it, which included examination of complainant's account opening form; the requisition slip; and the cheque in question, vide order dated 4th December, 2001, the District Forum came to the conclusion that there was gross deficiency in the service by the bank which resulted in loss to the complainant. The District Forum found that specimen signatures on the account opening form and the cheque used for withdrawal of money were different and more significantly when cheque in the sum of ₹ 3,50,000/- was presented, balance in the account of the complainant was only 3,46,682.93/- and yet it was honoured by recording a debit entry of ₹ 3,317.07/- as recoverable from the complainant.

Consequently, the District Forum accepted the complaint and directed the bank to credit the amounts of ₹2,500/- and ₹3,50,000/- less ₹5,000/- in the account of the complainant along with interest @ 10 per cent per annum w.e.f. 17th August, 1999 till the date of the correct entry.

Being aggrieved, the appellant preferred appeal to the State Commission but was not successful. The State Commission affirmed the findings of the District Forum. Not satisfied, the appellant preferred revision petition before the National Commission. The National Commission dismissed the revision petition on the ground that both the forums below have recorded a concurrent finding of fact that there is negligence on the part of the bank in rendering the services.

On a query by the National Commission that in the absence of any overdraft facility being enjoyed by the complainant, a cheque for the amount which was in excess of the balance amount in the account of the complainant could be honoured, the appellant could not furnish any satisfactory explanation. The National Commission found that it was a glaring example of negligence/deficiency of service by the bank. Thus, the orders of the District Forum were accepted and the appeal, being bereft of any merit, was dismissed accordingly with costs quantified at ₹10,000/-.

#### C. Housing and Real Estate

Most agreements that consumer's sign with builders stipulate a hefty rate of interest for delayed payments from their side. But if consumers look at the contract for a similar penalty clause for delays on the part of the builder in handing over possession, they will find none. Fortunately, despite such one-sided clauses in the agreement, consumers can get compensation from builders for construction delays. The Supreme Court in the landmark judgement in the case of Lucknow Development Authority Vs M K Gupta made it clear "when possession of property is not delivered within the stipulated period, the delay so caused is denial of service" and a consumer who is a victim of such delay is entitled to compensation. Another important point that the SC made in this case was that compensation awarded by the consumer courts in such cases should serve the dual purpose of recompensing the individual while simultaneously bringing about a qualitative change in the attitude of manufacturers and service providers towards consumers.

**Case: Rajesh Bathija** ————— **Complainant**

vs

**Unitech Ltd and others** ————— **Opposite Parties**

**Decided on 6-9-17**

The complainant booked a residential flat with the opposite party in a project 'The Harmony' which Unitech builder had to develop in Sector-50 of Gurgaon. The application dated 29.8.2006, Flat No.0403 in Tower No.8 of the aforesaid project was allotted to the complainant for a total consideration of ₹1,22,04,547/-. The parties then entered into a Buyers Agreement dated 13.09.2006, incorporating their respective obligations and as per Clause 4(a) of the said Agreement, the possession was to be delivered by 30.9.2009. Since the possession of the flat was not given within the stipulated time the complainant approached the National Commission with the following request:

- (a) to direct the builder to handover the possession of the aforesaid apartment complete in all respects to the complainants immediately as per the Buyer's Agreement and execute all the necessary and required documents in respect of the said apartment in favor of the complainants or in alternative ' provide a ready to move in apartment to the complainants which is of identical size and in similar locality or in alternative pay a sum of ₹2,47,10,000/- (Rupees Two 'Crore forty seven Lakhs and Ten thousand only) being the available market rate of the similar house @ ₹10,000/per sq. ft., the apartment being of the size 2471 sq. ft., to enable the complainants to purchase another house on their own.
- (b) to direct the builder to pay interest @ 12% pa on the sum collected by the builder towards the house from the date of possession as per the buyer's agreement till the actual possession.
- (c) Grant immunity from escalation from any cost including service tax incurred after the proposed date of possession as per the builder buyers agreement.
- (d) Direct the Opposite Party to pay a sum of ₹50,000/- (Rupees Fifty Thousand Only) to the Complainant towards the cost of litigation."

The builder did not file their written version within the prescribed period the national Commission started the procedure of hearing. The complainant stated that the matter was covered several decisions of this Commission including its recent decision dated 16.11.2017 in Consumer Complaint No.625 of 2017 - Sudhir K. Gupta Vs. M/s. Unitech Ltd. & Anr., M/s. Gannon Dunkerley & Co. Vs. M/s. Unitech Ltd. & Anr. and the earlier decisions - Consumer complaint No. 760 of 2016 and connected matters, including Consumer Complaint No.2 of 2014 Mohit Chopra Vs. M/s. Unitech Ltd., decided on 30.5.2017, CC No.1088 of 2015, Raja Balasubramanian Vs. M/s. Unitech Ltd., & Anr. Decided on 18.4.2017 and CC No. 368 of 2014 Shweta Kapoor & Anr. Vs. M/s. Unitech Ltd. & Anr. decided on 14.1.2016.

The complainants also stated that the builder was restricting his claim to the refund of the principal amount paid by him, along with compensation in the form of simple interest @ 10% per annum. The National Commission after hearing both the parties disposed of the complaint with the following directions:

- (i) The builder was asked to refund the entire principal amount of ₹1,14,61,269/- to the complainant, along with compensation in the form of simple interest @ 10% per annum from the date on which the payment is made till the date on which the entire amount payable to the complainants along with compensation in terms of this order is actually paid.
- (ii) The opposite parties to pay ₹25,000/- as the cost of litigation to the complainant.
- (iii) The payment in terms of the order to be made within three months.

#### Decisions regarding Payment of Interest

In the order of the National Consumer Disputes Redressal Commission in the case of Shri J.L. Sethi Vs Senior Citizen Home Complex Welfare Society decided on (August 21, 2006) the Commission dealt in detail with the question of payment of interest to consumers in cases of delayed construction and the percentage of interest that can be paid.



In this case, the District Consumer Disputes Redressal Forum had awarded 18% interest on the ground that the builder was charging 18% for delayed payment from consumers. While upholding this, the National Commission quoted two SC orders: In the case of *Sovintorg India Ltd vs State Bank of India*, (1999), the apex court had held that interest can be awarded in lieu of compensation or damages in appropriate cases. It can also be granted on equitable grounds.

Of course, one has to show that the builder delayed the possession process much beyond the stipulated time, on the basis of the time-frame given by the builder (or the promise made by the builder) towards completion of the project and handing over the property. Further one needs to show the loss suffered by him as a result of such delay in terms of the loss of interest on the amount deposited with the builder (beyond the stipulated time) and also the amount being spent by him on a rented accommodation.

#### D. Electricity

Andhra Pradesh Eastern Power Distribution Co Ltd — Petitioner

Gali Kondamma & others — Respondent

Decided in 2016 by NG

#### Facts of the Case

Gali Surya Rao was a labourer and resident of Arigipalem village. On 2-5-2007 while inserting an electrical plug in his house received electrical shock due to supply of high voltage and and sustained severe burn injuries and died. Respondents/Complainants are legal heirs of deceased. Since, due to the negligence on the part of petitioner deceased died, a police case was also registered. It is stated, that deceased was working as a labourer and was earning ₹200/- per day. After his death, respondents have suffered financial loss and also lost the love and affection of the deceased. They got issued a legal notice on 18.09.2009, asking the petitioner to pay compensation of ₹4,50,000/- together with interest at 12% per annum and costs, but there was no reply. Hence, a consumer complaint was filed seeking direction to the petitioners to pay ₹4,50,000/- towards compensation and ₹50,000/- towards damages and costs.

Petitioner stated, that there was no high voltage of electricity supply to the residents of that village. Further, it is the responsibility of the respondents to maintain proper internal wiring. They also stated that there is no evidence to show that deceased Surya Rao was earning ₹200/- per day. Further, it is not a consumer dispute and there is no deficiency in service. It is only because of the negligence of the deceased in maintaining proper internal wiring, the accident had occurred. District Forum, Vizianagaram vide order dated 06.03.2012, allowed the complaint and directed the opposite parties to pay compensation of ₹2,55,000/- with interest @ 9% p.a. from the date of complaint till the date of realization of the amount. Out of the amount so awarded the 1 complainant was entitled for ₹80,000/- towards loss of earnings of the deceased and ₹15,000/- towards loss of consortium totaling ₹95,000/-. The complainants 2 and 3 were entitled for ₹80,000/- each. The opposite parties are directed to pay the amount to the complainants within two months from today. The opposite parties are further directed to pay ₹2,000/- towards costs. Complainants advocate fee is fixed at ₹1,000/-. Being aggrieved,

petitioner filed an appeal before the State Commission, which dismissed the same vide its impugned order.

At this the respondents filed a revision petition to National Commission. The petitioner submitted that there was not even a single complaint from any person in the locality about alleged supply of high voltage. The respondents witnesses were interested persons and they had deposed without any documentary proof of the alleged supply of high voltage. It is further submitted, that it is the duty of the consumer (owner of the house) to choose better quality of service wire with strong insulation and also the GI wire from pole to meter, which has to be got done through a professional private electrician. The only duty conferred on the Petitioners Company is to supply energy after service wire is laid by the consumer. In the present case, respondents were themselves negligent and wrong doer. Hence, no compensation can be granted.

The Commission stated that the deceased was having electric connection to his house and was paying the consumption charges every month. Therefore, the deceased was conscious of the meaning of Section-2 of Consumer Protection Act. The death of G. Surya Rao was due to deficiency in service of the electricity department. Therefore, the electricity department is liable to compensate the death of G. Surya Rao. To arrive at compensation, 1/3 of the income of the deceased shall be deducted from his annual income. The balance amount is to be multiplied with the multiplier applicable to the age group of the deceased. The multiplier which ever is less.

As per the complaint and Post mortem certificate, the deceased was aged about 45 years on the date of his death. The commission said that a person of 45 years of age is not capable of doing any work. He would do some work and earn less than ₹100/- per day as claimed by the complainants. Now-a-days an unskilled labourer earns less than ₹100/- per day. Considering the facts and circumstances and the availability of the deceased, the commission fixed the monthly income of the deceased was fixed at ₹2,000/-. If ₹2,000/- is taken as monthly income his annual income worked out to ₹24,000/-. If 1/3 of the annual income is deducted from ₹24,000/-, balance amount worked out to ₹16,000/-. As per the complaint and postmortem certificate the deceased was aged about 45 years. That means the age of the deceased does not exceed 45 years. As per Item-II of 2 Schedule of M.V. Act the multiplier applicable to the age group between 40 to 45 is 15, if ₹16,000/- is multiplier with 15 the compensation works out to ₹2,40,000/-, thus the complainants are entitled for compensation of ₹2,40,000.

Thus, the complainants were given ₹2,55,000/- towards compensation. National Commission in its order blamed the petitioner for deficiency in service and the decision of the District Forum was upheld.

#### E. Education

Commercialisation of education in India demands that students and parents need to be cautious about educational institute. While taking admissions in a school or college or technical institute one should never be in a hurry. Always check the credentials of the institute before seeking admission in it and don't be swayed by misleading statements made by the educational institutes.

Under the Consumer Protection Act, 1986 if an institute fails to provide proper service or is

involved in an unfair trade practice and gives wrong statements in its brochures, prospectus and advertisements a legal case can be filed against the institute under 'deficiency in service' and 'unfair trade practice'.

Sri Chaitanya Educational Institution ————— Petitioner

vs

Govind Prasad Rath ————— Respondent

Decided in 2016 CPJ 35 NC

The facts of the case are that the complainant Govind Prasad Rath admitted his son Anjan Kumar Rath to Sri Chaitanya Educational Institution in a course which had to last for two years. He paid ₹ 90,000 to the Institution towards admission fees, boarding charges, etc. The student was withdrawn from the college on account of his ill-health and food problem. The petitioner mentioned in its complaint that the food in the hostel was prepared in unhygienic conditions which resulted in the student developing food problem. On withdrawing his son from the institution, the complainant asked the institution to refund the money, which he had deposited. Since the institution refused to refund the fees, the complainant filed a consumer complaint in District forum alleging deficiency in service.

The complaint was resisted by the Institute and they denied any unhygienic condition in preparation of the hostel food. It was further stated that once a student is admitted, there is no scope for admission of another student on his seat for the next two years and in case they are made to refund the fee on withdrawal of the student they would suffer financial loss in running the Institution.

The District Forum after hearing both the parties directed the Institute to refund the amount of ₹ 90,000 along with interest @ 12% p.a. being aggrieved by the order passed by the District Forum, the opposite party filed an appeal in the State Commission which was dismissed. The State Commission noted from the record that due to poor quality of food served to students, a number of students including the son of the complainant suffered from food poisoning. Had the son of the complainant not suffered from food poisoning on account of unhygienic food served in the hostel, the complainant in all probability would not have withdrawn his son from the institution in which admission was taken by him.

After that the complainant filed a revision petition in National Commission. The Commission found that due to poor quality of food many students including the complainant's son suffered from food poisoning and therefore the complainant had withdrawn him from the Institute. Further the petitioner could not produce any rule of the Institution prohibiting the filling of vacant seats on account of withdrawal of students. Thus, the National Commission upheld the order passed by the District Forum.

#### F. Defective Product

Godrej & Boyce Mfg Co. ————— Petitioner

vs

Raj Kumar Maini & Others ————— Respondents

Decided in 2016 CPJ 111NC

Sh Raj Kumar Maini, the complainant purchased a window AC from Bhuvan Retail through its proprietor, for a consideration of ₹ 20,500. Warranty was granted for five years for compressor and one year for other parts. On 15-4-2013, the complainant asked the petitioner to provide free service. On 16-4-2013, two representatives from the dealer visited his premises and inspected the Air Conditioner. While they were taking out the AC they damaged its gas pipe and earth-wire. The respondents then showed it to an official of the dealer and the two representatives admitted their negligence and asked him to sign the satisfaction voucher. He did not do so.

On 20-4-2013, the AC started giving trouble through the night. Complaint was lodged to rectify the problem. Though no employee visited the house but a message was received that the complaint was addressed. The complainant asked for the cost of the AC and ₹ 75,000 on account of harassment.

The company and the dealer admitted that gas pipe was ruptured when AC was taken out and being re fitted in the cabinet at the time of the repair. However, the complaint was attended and the repairs were effected. Further, the dealer said that leakage of small gas will not cause any harm. The service provider visited the house of the complainant on 22.4.2013, 25.4.2013 and 27.4.2013 and found that the AC was going in perfect condition. The service manager also confirmed from the complainant about proper service of the complainant's AC.

The District Forum dismissed the complaint. The State Commission accepted the appeal and passed the following order by setting aside the District Forum order and directed to repair the AC free of cost and any other charges. The company and dealer are also required to pay ₹ 30,000 for physical harassment and mental agony and ₹ 11,000 as litigation expenses to the complainant. At this the petitioner filed a revision petition in National Commission. The Commission found that the report shown by the petitioner was not full and the endorsement made by the complainant that "I am not satisfied with the service. All the defects are still existing. Smoke and fuel/burning smell is regularly coming out of AC and spreads in the entire room. Swings are also not repaired, cooling is also very less." Moreover, when the pipe was broken it had to be replaced with a new one. Defects started cropping up from the broken gas pipe. The National Commission modified the order of the State Commission and asked the petitioner to pay ₹ 20,500, the price of the AC plus ₹ 30,000 for physical harassment and ₹ 11000 for litigation cost. The petitioner can deposit the amount and take back their AC within seven days of the order.

#### G. Unfair Trade Practice

Tesol India ————— Petitioner

vs

Govind Singh Patwal & Ors. ————— Complainant

Decided on 14 September, 2010

#### Facts of the case:

The petitioner/opposite had published an advertisement in newspapers offering a course by the name of 'Learn to Earn with Overseas Job Guaranteed' luring the prospective candidates by indicating their overseas placement with handsome pay package on completion of the



programme so offered. On being attracted by the same, the complainants sought admission in the said course, deposited the fee prescribed and completed the course. The complainants claimed that though they were issued certificates to this effect by the petitioner but no action was taken by it for their placement.

After waiting for a considerable period when the complainants approached the petitioner, it not only refused to do anything for their placement but also denied refund of the fee. The complainants claimed that at the time of admission, they received a brochure of Global Tesol College, Canada, which, inter alia, stated job-guarantee, fee refund and e-mails of successfully placed students. The logo of Global Tesol College, Canada was used by the petitioner/opposite party stating that they were also a part of this college and now on completion of the course when they had to provide placement to the complainants they are refusing to do anything on the pretext that their policies have nothing to do with the Global Tesol College, Canada.

Claiming deficiency in service on the part of petitioner, the complainants filed their separate complaints before the District Forum, which, on appreciation of rival submissions of both the parties, while allowing the complaints directed the petitioner to refund the fee deposited by the complainants (in some cases with 9% interest per annum from the date of institution of the complaint till payment made), besides compensation varying between ₹7500/- to ₹20,000/- and cost of litigation varying between ₹2500/- to ₹5,000/-. It was also directed by the District Forum that in case the payment is not made by the petitioner/opposite party within 30 days from the receipt of the order, it shall also be liable to pay penal interest @ 12% to 18% per annum from the date of the order till realization.

Feeling aggrieved with the order of the District Forum, the petitioner/opposite party preferred appeals before the State Commission. The State Commission did not find any force in their appeals and accordingly dismissed them with cost of ₹5000/- in each appeal.

Dissatisfied with the order of State Commission, that petitioner filed Revision Petitions in National Commission. The petitioner, argued that she had nowhere given any commitment to provide jobs abroad. According to her, the commitment was only for providing assistance to secure a job only if the complainants had followed the step-by-step process after completion of the Tesol Course. In other words, the petitioner/opposite party said that they have satisfactorily discharged their part of the service in conducting the Foundation Tesol Course and having issued the certificate of completion of the study programme/course, it could not be said that there has been any deficiency on their part.

With regard to the findings of District Forum the petitioner/opposite party said that the fora below have erroneously relied upon only, the advertisement. According to her, the same had to be read along with the terms stated in the brochure and the registration form wherein the procedure has been elaborated, according to which the complainants had to follow the step-by-step process for getting a job. Further, the advertisement being in the nature of providing information with regard to the conduct of the certificate course should not have been made the sole criteria for holding that the petitioner/opposite party had resorted to unfair trade practice. Any lacuna in the advertisement is due to the mistake of graphic designer.

The National Commission checked the advertisement published in the Times of India, Chandigarh on the 2nd of June, 2007, below the words Get Certified in 120 hrs. in very bold letters states Overseas Job Guaranteed) and further re-emphasised in the form of a round stamp which stated Job 100% Guaranteed. They further found that the brochure on its very first page at the bottom stated [www.globaltesol.com](http://www.globaltesol.com) Jobs Guaranteed.

National Commission did not find any foot note in these documents to indicate if the guarantees stated were subject to any terms & conditions separately given. In view thereof, the National Commission agreed and affirmed the view of the State Commission that these documents leave no doubt in any body's mind that the opposite party (the present petitioner) had allured the complainants to join the institute with a 100% job guarantee. These documents more than eloquently prove that they were not only misleading in nature but also totally false, inasmuch as the petitioner/opposite party failed to provide assured jobs and is now taking recourse to apportioning the blame on the complainants. This certainly amounts to unfair trade practice as defined under Section 2(1)(r)(vi) of the Consumer Protection Act, 1986.

The explanations now being offered that the petitioners commitment was limited to completion of Tesol Course only and that it was for the complainants to apply for the jobs to prospective employers in foreign countries is only a camouflage to evade the commitment. As rightly observed by the State Commission, the petitioner/opposite party has failed to provide any evidence to prove that they aggressively helped the complainants to secure jobs or that they had any system of tie-up with the foreign employers for their placements.

In view of the above National Commission dismissed the revision petition and the petitioner/opposite party was directed to comply with the order passed by the State Commission within a period of two months.

#### SUMMARY OF THIS CHAPTER

- Under the Consumer Protection Act, 2019 a written complaint, can be filed before the District Commission for pecuniary value of upto Rupees fifty lakhs, State Commission for value upto Rupees two crore and the National Commission for value above Rupees two crore, in respect of defective goods, deficiency in service or restrictive trade practice and unfair trade practice. However, no complaint can be filed for alleged deficiency in any service that is rendered free of charge or under a contract of personal service.
- A consumer to whom goods are sold or delivered or agreed to be sold or delivered or such services provided or agreed to be provided. Any recognized Voluntary Consumer Organisation, The Central Government, the State Governments or Union Territory Administration; the Central Authority, one or more consumers, where there are numerous consumers having the same interest in case of death of a consumer, his legal heir or legal representative; or in case of a consumer being a minor, his parent or legal guardian can file a complaint under the Consumer Protection Act, 2019.
- The Complaint should contain the name, description and address of the complainant and the

opposite party or parties; the facts relating the complaint and when and where it arose; documents 'if any' in support of allegations and the relief which the complainant is seeking. The complaint should be signed by the Complainant or his/ her authorised agent. A web application for E-filing of consumer complaints named "edaakhil.nic.in" has been developed by NIC for the purpose.

- There are fourteen reliefs available to aggrieved consumers under the Consumer Protection Act, 2019 as compared to twelve in CPA, 1986.
- A complaint can be filed within two years from the date on which the cause of action has arisen. However, a complaint may be entertained after the period if the complainant has sufficient cause for not filing the complaint within such period by recording its reason for condoning such delay.
- Every order of a District Commission, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.
- No lawyer required for filing a consumer complaint. A complaint can be filed by any individual, group of consumers, consumer organizations and now online also.
- The Section on frivolous or vexatious complaints has now been deleted in CPA, 2019.
- All offences under this Act are tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.
- Further various cases decided by the National Commission under The Consumer Protection Act, have been discussed.

#### QUESTIONS FROM THIS CHAPTER

- Q1 Who can file a complaint? What is the limitation period for filing a complaint? Explain the various reliefs available to the consumers under the Consumer Protection Act, 2019?
- Q2 Explain the procedure for filing and hearing of a complaint under the Consumer Protection Act, 2019?
- Q3 What information should be filled in the complaint by a consumer before filing it in a consumer forum under the Consumer Protection Act, 2019?
- Q4 What is the procedure and jurisdiction of appeals under the Consumer Protection Act, 2019?
- Q5 Cite any leading case related to medical negligence, decided by the Supreme Court of India/National Commission under the Consumer Protection Act?
- Q6 Elucidate any case on unfair trade practice decided by the Supreme Court of India/National Commission?
- Q7 Discuss any case on defective goods decided by the Supreme Court of India/National Commission?
- Q8 Cite any leading case related to housing and real estate, decided by the Supreme Court of India/National Commission under the Consumer Protection Act?
- Q9 Cite any leading case related to banking and insurance, decided by the Supreme Court of India/National Commission under the Consumer Protection Act?

#### CHAPTER

## 6

### SECTORAL REGULATORS THEIR CONSUMER PROTECTION REGULATIONS AND CONSUMER COMPLAINT REDRESSAL MECHANISMS-I

#### LEARNING OUTCOMES

Banking: Banking Ombudsman Scheme, Insurance: Insurance Ombudsman, Food Products: FSSAI

#### 6.1 BANKING OMBUDSMAN

The Indian banking system, with one of the largest banking networks in the world, has witnessed a series of reforms over the past few years like the deregulation of interest rates, dilution of the government stake in public sector banks (PSBs), and the increased participation of private sector banks. The growth of the retail financial services sector has been a key development on the market front. Indian banks (both public and private) have not only been keen to tap the domestic market but also to compete in the global market place. New foreign banks have been equally keen to gain a foothold in the Indian market. With the opening up of the Indian markets in 1991, banking sector has received maximum number of foreign players. Now we have both nationalized as well as foreign players providing a variety of services in the banking sector.

'Ombudsman' is a Swedish word, meaning 'legal representative'. Worldwide it stands for an official appointed by the government to investigate individuals' complaints against public authorities. In India, there is a fast track alternate dispute resolution mechanism for banking sector known as the Banking Ombudsman. In exercise of the powers conferred by Section 35A of the Banking Regulation Act 1949 (10 of 1949) the Reserve Bank of India formulated the Banking Ombudsman Scheme on 14<sup>th</sup> June 1995. The Banking Ombudsman is appointed by the Reserve Bank of India (RBI) to redress, through reconciliation or mediation, customer complaints against certain deficiency in the banking services.

The Banking Ombudsman is in the rank of Chief General Manager or General Manager and is a quasi-judicial authority. This scheme creates a redressal system of grievances against deficiency in banking services of all commercial banks, regional rural banks and scheduled



primary co-operative banks. In public interest and in the interest of banking policy, the extent and scope of the authority and functions of the Banking Ombudsman were enlarged on 14<sup>th</sup> June 2002, empowering the Ombudsman to act as an Arbitrator for specified disputes and putting regional Rural Banks also under the umbrella of the Banking Ombudsman Scheme.

Thereafter, in 2006 Reserve Bank once again enlarged the extent and scope of authority and functions of Banking Ombudsman by revising the Scheme with effect from 1<sup>st</sup> January 2006. The scope of the Scheme has been enlarged to include customer complaints in credit cards, debit cards and ATM and also deficiency in services provided by banks sales agents and non-adherence to the fair practices code. The complaint should be made before the expiry of the period of one year (after the cause of action has arisen) and it should not be for the same subject matter that was settled through the Banking Ombudsman in any previous proceeding. The complaint cannot be made even if the case is pending before any court, tribunal or any other forum. This is a free service provided by Reserve Bank of India for facilitating consumers and the complainants can file their complaint in any form including online.

#### Integrated Ombudsman Scheme

The Reserve Bank of India, in its notification dated 12<sup>th</sup> Nov 2021 in order to make the alternate dispute redress mechanism simpler and more responsive to the customers of entities regulated by it, hereby integrated the three Ombudsman schemes—(i) the Banking Ombudsman Scheme, 2006, as amended up to July 01, 2017; (ii) the Ombudsman Scheme for Non-Banking Financial Companies, 2018; and (iii) the Ombudsman Scheme for Digital Transactions, 2019 into the Reserve Bank-Integrated Ombudsman Scheme, 2021.

Some of the salient features of the Scheme are:

- (i) It will no longer be necessary for a complainant to identify under which scheme he/she should file complaint with the Ombudsman.
- (ii) The Scheme defines 'deficiency in service' as the ground for filing a complaint, with a specified list of exclusions. Therefore, the complaints would no longer be rejected simply on account of "not covered under the grounds listed in the scheme".
- (iii) The Scheme has done away with the jurisdiction of each ombudsman office.
- (iv) A Centralised Receipt and Processing Centre has been set up at RBI, Chandigarh for receipt and initial processing of physical and email complaints in any language.
- (v) The responsibility of representing the Regulated Entity and furnishing information in respect of complaints filed by customers against the Regulated Entity would be that of the Principal Nodal Officer in the rank of a General Manager in a Public Sector Bank or equivalent.
- (vi) The Regulated Entity will not have the right to appeal in cases where an Award is issued by the ombudsman against it for not furnishing satisfactory and timely information/documents.

The Executive Director-in charge of Consumer Education and Protection Department of RBI would be the Appellate Authority under the Scheme.

Complaints can continue to be filed online on <https://cms.rbi.org.in>. Complaints can also be filed through the dedicated e-mail or sent in physical mode to the 'Centralised Receipt and Processing Centre' set up at Reserve Bank of India, 4th Floor, Sector 17, Chandigarh - 160017 in the format. Additionally, a Contact Centre with a toll-free number - 14448 (9:30 am to 5:15 pm) - is also being operationalised in Hindi, English and in eight regional languages to begin with and will be expanded to cover other Indian languages in due course. The Contact Centre will provide information/ clarifications regarding the alternate grievance redress mechanism of RBI and to guide complainants in filing of a complaint.

#### Categories of Complaints:

- Failure to meet commitments, non-observance of fair practices code, BCSBI Codes together accounted for 34 % of the complaints received.
- ATM/Credit and Debit card complaints together represented 18.9% of complaints.
- Pension payment related complaints accounted for 6.5% of total complaints while the remaining categories including loans and advance and remittance which were all below 5% of total complaints.

#### The Banking Ombudsman Scheme, 2006, as amended up to July 01, 2017

The Scheme, so far, has been revised five times since its inception, the latest being in July 2017. Since the Scheme is a speedy, effective and inexpensive means for complaint redressal, the Reserve Bank has continuously fine-tuned the BOS, to suit the emerging requirements of the customers. In this context, several measures have been introduced during 2016-17, to enhance consumer protection. These are summarized below:

- The scope of the Scheme has been expanded by adding new grounds of complaints viz. mis-selling of financial products through banks and deficiency in banking services provided through mobiles are additional grounds for lodging complaints.
- The pecuniary limit of the BO for passing an award is doubled to Twenty Lakhs.
- The grounds for filing an appeal against the decision of the BO have been expanded to enhance the opportunity available to the aggrieved customers. As such, cases closed by the BOs on the grounds that the complaint requires detailed investigation or elaborate oral/documentary evidence which earlier fell under the non-appealable category has been made appealable to increase the opportunity available to the aggrieved customer.
- Compensation upto ₹10,000 for loss of time, expenses incurred, harassment and mental anguish suffered by the complainant, available for credit card related complaints has been extended to all categories of complaints.
- In order to deepen and widen the reach of the Scheme, five new offices of BO (OBOs) were operationalized during the year, raising the total number of OBOs to

20 covering all 29 States and seven Union Territories.

- In order to address the rising complaints of the consumers of services of NBFCs, the Ombudsman Scheme for the NBFCs has been approved for implementation.
- Offices of the Banking Ombudsman organized 20 Town Hall Events and 68 Awareness programmes/outreach activities in rural and semi-urban areas in their respective jurisdictions. They also conducted advertisement campaigns to spread awareness about the Scheme.

The grounds for lodging a complaint with OBO have been specified under Clause 8 of the BOS 2006. There are 30 grounds of complaints as per the BOS 2006. Complaints received under these grounds are grouped into broad categories regarding deficiency in banking services covering almost entire gamut of banking services which are handled by Banking Ombudsman. Periodically these grounds are reviewed to cater to various new products and services in the banking sector.

Table 8.1 shows the nature of consumer complaints handled by Banking Ombudsman. During 2019-2020, in line with the trend observed over the last three years, the average cost of handling a complaint declined from ₹ 3,145/- to ₹ 2,412/-. The decline was largely due to the increase in the volume of complaints with the human resources for handling these complaints remaining at the same level. Despite an increase of 64.97% in the receipt of complaints under the three Ombudsman Schemes, disposal rate of more than 92% was achieved. During the year 2019-20, 44.66% (1,37,823) of the total complaints (3,08,630) against banks received under BOS, 2006 related to digital services like ATM/Debit/Credit Card and Mobile/Electronic transactions.

Table 6.1 Category wise receipt of complaints at ORBIOs

| Nature of Complaints           | 2020-21#<br>(Apr-Mar) | 2021-22\$<br>(Apr-Mar) | 2022-23&<br>(Apr-Mar) |
|--------------------------------|-----------------------|------------------------|-----------------------|
| <b>Complaint against banks</b> |                       |                        |                       |
| Mobile/electronic banking      | 44,385<br>12.99%      | 30,388<br>14.69%       | 30,855<br>20.27%      |
| Loans and advances             | 20,218<br>5.92%       | 24,507<br>9.14%        | 39,579<br>20.13%      |
| Deposit Accounts related       | 8,580<br>2.51%        | 16,388<br>6.11%        | 33,612<br>17.09%      |
| ATM/Debit Cards                | 60,203<br>17.62%      | 41,375<br>15.43%       | 28,635<br>14.56%      |
| Credit Cards                   | 40,721<br>11.92%      | 32,162<br>12.00%       | 24,549<br>12.48%      |
| Pension payments               | 4,966<br>1.45%        | 6,179<br>2.30%         | 4,377<br>2.23%        |

|                 |                   |                   |                  |
|-----------------|-------------------|-------------------|------------------|
| Remittances     | 3,394<br>0.99%    | 3,233<br>1.21%    | 2,937<br>1.49%   |
| Para banking    | 1,236<br>0.36%    | 1,480<br>0.55%    | 2,476<br>1.26%   |
| Notes and Coins | 332<br>0.10%      | 296<br>0.11%      | 505<br>0.26%     |
| Others          | 157,712<br>46.15% | 103,075<br>38.45% | 20,110<br>10.23% |
| Total (Banks)   | 3,41,747          | 2,68,085          | 1,96,635         |

#### Annual Report on Banking Ombudsman Scheme 2022-2023

Complaints on mobile banking/electronic banking were higher in the Year 2020-21 as compared to the Year 2021-22 and 2022-23. However, in the year 2022-23, complaints related to loans and advances were more than the previous years. The upsurge in complaints related to deposit accounts in the Year 2022-23 was also observed. Although there has been an increase in number of complaints received from credit card holders, but the number of complaints regarding ATM/debit card holders dropped in the Year 2022-23. Thus, the grievance redressal mechanism under Banking Ombudsman is more useful for customers. Consumers are advised to file complaints before Ombudsman in banking service related disputes. If the complainant is not satisfied with the order of the Banking Ombudsman he can still file a complaint before the consumer forums.

#### Scope of Banking Ombudsman Scheme

22 Banking Ombudsman have been appointed and their offices are mainly in State Capitals. The Scheme provides a free, fair and speedy forum to consumers and it is the procedural characteristics which make it a success. Minimal paperwork, no expenses, no repeated visits, no legal wrangles – these continue to be striking features of the Scheme. Coupled with this, is the fact that a mechanism has been put in place whereby the voice of an individual can be pitted against Institutions which till 1995 seemed impervious and invincible.

Under the RBI-Integrated Ombudsman Scheme (RB-IOS), 2021, 7,03,544 complaints were received at the Office of the RBI Ombudsman and the Centralised Receipt and Processing Centre (CRPC) between April 1, 2022 and March 31, 2023, showing an increase of 68.24% over last year. Of these, 2,34,690 complaints were allocated to and handled by the 22 Office of the RBI Ombudsman (ORBIOs), whereas 4,68,270 complaints were closed by CRPC as non-complaints / non-maintainable complaints. Around 85.64% of the total complaints were received through digital modes, including on the online Complaint Management System (CMS) portal, email, and Centralised Public Grievance Redress and Monitoring System (CPGRAMS). The overall disposal rate for the year at the ORBIOs stood at 97.99% with an average Turn Around Time (TAT) of 33 days. RB-IOS, 2021 envisages settlement of complaints through facilitation / conciliation / mediation and thereby, majority of the maintainable complaints (57.48%) disposed by ORBIOs were resolved through mutual settlement / conciliation / mediation. During the year, a total of 122 Appeals were received against the decisions of the RBI Ombudsmen, of which 119 Appeals were received under



the RB-IOS, 2021 and the remaining three were received under the erstwhile Ombudsman Schemes.

#### Salient Points about the Banking Ombudsman Scheme 2017

The Reserve Bank has released a Notification dated June 16, 2017 amending the Banking Ombudsman Scheme 2006. The amended Scheme has come into force from July 1, 2017. Its non-adherence to RBI instructions with regard to Mobile Banking/Electronic Banking services in India. The pecuniary jurisdiction of the BO to pass an Award has been increased from existing rupees one million to rupees two million. Compensation not exceeding ₹0.1 million can also be awarded by the BO to the complainant for loss of time, expenses incurred as also, harassment and mental anguish suffered by the complainant. The procedure for complaints settled by agreement under the Scheme has also been revised. Appeal has now been allowed for the complaints closed under Clause 13 (c) of the existing Scheme relating to rejection of complaints which was not available earlier.

Under these amendments the scope of the Scheme has been widened to include, inter alia, deficiencies arising out of sale of insurance/mutual fund/other third party investment products by banks.

The Banking Ombudsman is a quasi-judicial authority and has the power to summon both the parties - bank and its customer, to facilitate resolution of complaint through mediation. Any person may file a complaint with the Banking Ombudsman having jurisdiction on any one of the following grounds alleging deficiency in banking including internet banking or other services.

- (a) Non-payment or inordinate delay in the payment or collection of cheques, drafts, bills etc.;
- (b) Non-acceptance, without sufficient cause, of small denomination notes tendered for any purpose, and for charging of commission in respect thereof;
- (c) Non-acceptance, without sufficient cause, of coins tendered and for charging of commission in respect thereof;
- (d) non-payment or delay in payment of inward remittances;
- (e) failure to issue or delay in issue of drafts, pay orders or bankers' cheques
- (f) non-adherence to prescribed working hours;
- (g) Failure to provide or delay in providing a banking facility (other than loans and advances) promised in writing by a bank or its direct selling agents;
- (h) Delays, non-credit of proceeds to parties' accounts, non-payment of deposit or non-observance of the Reserve Bank directives, if any, applicable to rate of interest on deposits in any savings, current or other account maintained with a bank;
- (i) Complaints from Non-Resident Indians having accounts in India in relation to their remittances from abroad, deposits and other bank-related matters;
- (j) Refusal to open deposit accounts without any valid reason for refusal;

- (k) Levying of charges without adequate prior notice to the customer;
- (l) Non-adherence to the instructions of Reserve Bank on ATM/Debit Card and Prepaid Card operations in India by the bank or its subsidiaries on any of the following:
  - (i) Account debited but cash not dispensed by ATMs
  - (ii) Account debited more than once for one withdrawal in ATMs or for POS transaction
  - (iii) Less/Excess amount of cash dispensed by ATMs
  - (iv) Debit in account without use of the card or details of the card
  - (v) Use of stolen/cloned cards
  - (vi) Others
- (m) non-adherence by the bank or its subsidiaries to the instructions of Reserve Bank on credit card operations on any of the following:
  - (i) Unsolicited calls for Add-on Cards, insurance for cards etc.
  - (ii) Charging of Annual Fees on Cards issued free for life
  - (iii) Wrong Billing/Wrong Debits
  - (iv) Threatening calls/inappropriate approach of recovery by recovery agents including non-observance of Reserve Bank guidelines on engagement of recovery agents
  - (v) Wrong reporting of credit information to Credit Information Bureau
  - (vi) Delay or failure to review and correct the credit status on account of wrongly reported credit information to Credit Information Bureau.
  - (vii) Others
- (n) non-adherence to the instructions of Reserve Bank with regard to Mobile Banking/Electronic Banking service in India by the bank on any of the following:
  - (i) delay or failure to effect online payment/Fund Transfer,
  - (ii) unauthorized electronic payment/Fund Transfer,
- (o) non-disbursement or delay in disbursement of pension (to the extent the grievance can be attributed to the action on the part of the bank concerned, but not with regard to its employees);
- (p) refusal to accept or delay in accepting payment towards taxes, as required by Reserve Bank/Government;
- (q) refusal to issue or delay in issuing, or failure to service or delay in servicing or redemption of Government securities;
- (r) forced closure of deposit accounts without due notice or without sufficient reason;

6.8

- (s) refusal to close or delay in closing the accounts;
- (t) non-adherence to the fair practices code as adopted by the bank;
- (u) non-adherence to the provisions of the Code of Bank's Commitments to Customers issued by Banking Codes and Standards Board of India and as adopted by the bank;
- (v) non-observance of Reserve Bank guidelines on engagement of recovery agents by banks;
- (w) non-adherence to Reserve Bank guidelines on para-banking activities like sale of insurance/mutual fund/other third party investment products by banks with regard to following:
  - (i) improper, unsuitable sale of third party financial products
  - (ii) non-transparency/lack of adequate transparency in sale
  - (iii) non-disclosure of grievance redressal mechanism available
  - (iv) delay or refusal to facilitate after sales service by banks
- (x) any other matter relating to the violation of the directives issued by the Reserve Bank in relation to banking or other services.
- (y) A complaint on any one of the following grounds alleging deficiency in banking service in respect of loans and advances may be filed with the Banking Ombudsman having jurisdiction:
  - (a) non-observance of Reserve Bank Directives on interest rates;
  - (b) delays in sanction, disbursement or non-observance of prescribed time schedule for disposal of loan applications;
  - (c) non-acceptance of application for loans without furnishing valid reasons to the applicant; and
  - (d) non-adherence to the provisions of the fair practices code for lenders as adopted by the bank or Code of Bank's Commitment to Customers, as the case may be;
  - (e) non-observance of Reserve Bank guidelines on engagement of recovery agents by banks; and
  - (f) non-observance of any other direction or instruction of the Reserve Bank as may be specified by the Reserve Bank for this purpose from time to time.
- (z) The Banking Ombudsman may also deal with such other matter as may be specified by the Reserve Bank from time to time in this behalf.

#### Filing of Complaint

For filing a complaint before the Banking Ombudsman, it is essential for a complainant to first attempt to find a satisfactory solution directly with his bank by making a written representation to the bank named in the complaint. A consumer can file his complaint before the Banking Ombudsman if :

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- (a) the reply is not received from the bank within a period of one month, after the bank concerned has received his representation,
- (b) the bank rejects the complaint,
- (c) the complainant is not satisfied with the reply given to him by the bank.

Consumer's complaint will not be considered if:

- (a) Consumer has not approached his bank for redressal of his grievance first.
- (b) Consumer has not made the complaint within one year from the date of receipt of the reply of the bank or if no reply is received, and the complaint to Banking Ombudsman is made after the lapse of more than one year and one month from the date of complaint made to the bank.
- (c) The subject matter of the complaint is pending for disposal/has already been dealt with at any other forum like court of law, consumer court etc.
- (d) Frivolous or vexatious complaints.
- (e) The institution complained against is not covered under the scheme.
- (f) The subject matter of the complaint is not pertaining to the grounds of complaint specified under Clause 8 of the Banking Ombudsman Scheme. If the complaint is for the same subject matter that was settled through the office of the Banking Ombudsman in any previous proceedings.

#### Non-Resident Indians

The Banking Ombudsman can consider complaints from Non-Resident Indians having accounts in India in relation to their remittances from abroad, deposits and other bank-related matters.

#### Procedure of Filing a Complaint

The complaint should be made before the expiry of the period of one year (after the cause of action has arisen) and it should not be for the same subject matter that was settled through the Banking Ombudsman in any previous proceeding. The complaint cannot be made even if the case is pending before any court, tribunal or any other forum.

A complainant can file a complaint with the Banking Ombudsman simply by writing on a plain paper. He can also file it online (at [www.bankingombudsman.rbi.org.in](http://www.bankingombudsman.rbi.org.in)) or by sending an email to the Banking Ombudsman. There is also a prescribed form for filing a complaint, which is available with all the branches of the banks along with details of the scheme in our website. However, it is not mandatory to use this format.

#### Who Should File a Complaint

The complaint can be filed by the following persons

- (a) consumer himself
- (b) An authorized representative (other than an advocate) of the complainant.



- (c) One may lodge his/her complaint at the office of the Banking Ombudsman under whose jurisdiction, the bank branch complained against is situated.
- (d) For complaints relating to credit cards and other types of services with centralized operations, complaints may be filed before the Banking Ombudsman within whose territorial jurisdiction the billing address of the customer is located.

#### Cost of Filing a Complaint with the Banking Ombudsman

This is a free service provided by Reserve Bank of India for facilitating consumers. The Banking Ombudsman does not charge any fee for resolving customer complaints.

#### Limit on the Amount of Compensation as Specified in an Award

The amount, if any, to be paid by the bank to the complainant by way of compensation for any loss suffered by the complainant is limited to the amount arising directly out of the act or omission of the bank or ₹ 20 lakhs (₹ Two Million), whichever is lower.

#### Can Compensation be Claimed for Mental Agony and Harassment

The Banking Ombudsman may award compensation not exceeding ₹ 1 lakh (₹ One Hundred Thousand) to the complainant for mental agony and harassment. The Banking Ombudsman will take into account the loss of the complainant's time, expenses incurred by the complainant, harassment and mental anguish suffered by the complainant while passing such award.

#### The Essentials of a Complaint

The complaint should contain:

1. The name and address of the complainant.
2. The name and address of the branch or office of the bank against which the complaint is made.
3. Facts giving rise to the complaint supported by documents, if any.
4. The nature and extent of the loss caused to the complainant.
5. The relief sought from the Banking Ombudsman.
6. A declaration about the compliance of conditions which are required to be complied with by the complainant.

#### Resolution of Complaints

The Ombudsman would pass an order only if the terms of settlement offered by it are acceptable to the complainant in full and final settlement of his complaint.

#### Rejection of a Complaint by the Banking Ombudsman

Yes. The Banking Ombudsman may reject a complaint at any stage if it appears to him that a complaint made to him is:

- not on the grounds of complaint referred to above

- compensation sought from the Banking Ombudsman is beyond ₹ 20 lakh (₹ Two Million).
- requires consideration of elaborate documentary and oral evidence and the proceedings before the Banking Ombudsman are not appropriate for adjudication of such complaint
- the complaint is without any sufficient cause
- the complaint that it is not pursued by the complainant with reasonable diligence
- in the opinion of the Banking Ombudsman there is no loss or damage or inconvenience caused to the complainant.

#### Process Followed at the Banking Ombudsman:

1. Through conciliation or mediation, the banking ombudsman tries to promote a settlement between the consumer and the bank named in the complaint.
2. If the terms of settlement (offered by the bank) are acceptable to the complainant in full and final settlement of his complaint, the Banking Ombudsman will **pass an order** as per the terms of settlement which becomes binding on the bank and the complainant.
3. If a complaint is not settled by an agreement within a period of one month, the Banking Ombudsman proceeds further to pass an award. Before **passing an award**, the Banking Ombudsman provides reasonable opportunity to the complainant and the bank, to present their case.

#### Passing an Award

In passing an award the Banking Ombudsman takes into consideration the following:

- Documentary evidence placed before him by the parties.
- The principles of banking law and practice.
- Directions, instructions and guidelines issued by the Reserve Bank of India.
- Any other factors, which in his opinion are necessary in the interest of justice.

#### Procedure Followed after the Passing of an Award:

1. A copy of the award is sent to the complainant and the bank named in the complaint. It is open to the complainant to accept the award in full and final settlement of his complaint or to reject it.
2. If the award is acceptable to the complainant, he is required to send to the bank concerned, a letter of acceptance of the award in full and final settlement of his complaint, within a period of 15 days from the date of receipt of the copy of the award by him. (A complainant can make a written request to the Banking Ombudsman, for extension of time with the reasons for seeking such extension—he can be granted a further period of fifteen days for compliance)
3. If the bank is satisfied with the award, within a period of one month (from the date of receipt of letter of acceptance from the complainant of the award in full and final settlement of his claim in the matter), the bank is required to comply with the award

and intimate the compliance to the Banking Ombudsman. For complete compendium of cases handled by Banking Ombudsman please follow the following links<sup>1</sup>.

#### What Happens if the Complaint is not Settled by Agreement

If a complaint is not settled by an agreement within a period of one month, the Banking Ombudsman proceeds further to pass an Award. Before passing an award, the Banking Ombudsman provides reasonable opportunity to the complainant and the bank, to present their case. It is up to the complainant to accept the award in full and final settlement of or to reject it.

#### If One Rejects the Banking Ombudsman's Decision

Any person aggrieved by an Award issued under Clause 12 or the decision of the Banking Ombudsman rejecting the complaint for the reasons specified in sub-clause (d) to (g) of Clause 13 of the Banking Ombudsman Scheme 2006 (As amended up to July 1, 2017) can approach the Appellate Authority. The Appellate Authority is vested with a Deputy Governor of the RBI.

Other recourse and/or remedies available to him/her as per the law can also be explored. The bank also has the option to file an appeal before the Appellate Authority under the Scheme.

#### Time Limit for Filing an Appeal

One can file the appeal against the award or decision of the Banking Ombudsman rejecting the complaint within 30 days of the date of receipt of the Award. The Appellate Authority may, if he/she is satisfied that the applicant had sufficient cause for not making an application for appeal within time, also allow a further period not exceeding 30 days.

#### How does the Appellate Authority Deal with the Appeal

The appellate authority may:

- (i) dismiss the appeal; or
- (ii) allow the appeal and set aside the Award; or
- (iii) send the matter to the Banking Ombudsman for fresh disposal in accordance with such directions as the appellate authority may consider necessary or proper; or
- (iv) modify the Award and pass such directions as may be necessary to give effect to the modified award; or pass any other order as it may deem fit.

#### Rejection of Award by Consumer

If the complainant is not satisfied with the award passed by the Banking Ombudsman, he can approach the appellate authority (Deputy Governor in the Reserve Bank of India.) against the Banking Ombudsman's decision within 45 days of the receipt of the award.

<sup>1</sup> [www.rbi.org.in](http://www.rbi.org.in) - For bank customers-Banking Ombudsman Scheme- Compendium of Cases handled by the Banking Ombudsman offices

The rejection of an award by the complainant does not affect any other recourse and/or remedies available to him as per the law and s/he can approach the consumer courts.

#### Appeal by Bank against the Award

Within 45 days of the date of receipt of the award the bank has the option to file an appeal before the appellate authority (Deputy Governor in the Reserve Bank of India) under the scheme. The banks can appeal only with the prior sanction of their Chairman or, in his absence, the Managing Director or the Executive Director or the Chief Executive Officer or any other officer of equal rank.

#### Options Available to the Appellate Authority I.E. Deputy Governor of RBI

Appellate Authority may:

- (i) dismiss the appeal
- (ii) allow the appeal and set aside the award.
- (iii) send the matter to the Banking Ombudsman for fresh disposal in accordance with such directions as the appellate authority may consider necessary or proper.
- (iv) modify the award and pass such directions as may be necessary to give effect to the modified award.
- (v) pass any other order as it may deem fit.

#### Activities under the Ombudsman Schemes

- (i) The volume of complaints received under the Ombudsman Schemes/ Consumer Education and Protection Cells during the year 2021-22 increased by 9.39 per cent over the previous year and stood at 4,18,184 during the reported period.
- (ii) Of these, 3,04,496 complaints were handled by the 22 Offices of RBI Ombudsman (ORBIOS), including the complaints received under the three erstwhile Ombudsman Schemes till November 11, 2021.
- (iii) Since establishment of Centralised Receipt and Processing Center (CRPC) under the RB-IOs, 2021, of the 1,49,419 complaints handled at the CRPC, 1,43,552 complaints had been disposed as at the end of March 31, 2022.
- (iv) Complaints relating to the digital modes of payment and transactions were the highest in number, constituting 42.12 per cent of the total complaints received during the year.
- (v) The rate of disposal of complaints by RBIOs improved to 97.97 per cent in 2021-22 from 96.59 per cent in 2020-21. vi) Majority (63.63 per cent) of the maintainable complaints were resolved through mutual settlement /conciliation /mediation.

Thus, 'Customer is the king' and effective complaint management should be the top priority and the Mantra for any banking industry.



## 6.2 THE FOOD SAFETY AND STANDARDS ACT (FSSA) 2006

The food that we consume should be safe for our consumption. Unsafe food can make us all fall ill and can cause different types of diseases, neurological and hormonal damage as well as cancer. From production to consumption, it is the responsibility of the government, food industry and consumers themselves to ensure food is safe. Globally there has been a paramount change in the food needs of consumers and there is a change from 'procuring food' to 'safe to eat food'. Consumers expect that domestic and imported foods meet the basic quality and safety standards and requirements related to food hygiene, labeling and certification, use of food additives, limits for pesticide residues etc. Scientific developments have allowed a better understanding of the nutritional qualities of foods and their health implications. This has led consumers to become more discriminating in food matters and to demand protection from inferior quality and unsafe foods.

### Food Safety and Standards Act (FSSA) 2006

The Act envisages regulation of manufacture, storage, distribution, sale and import of food to ensure availability of safe and wholesome food for human consumption and for consumers connected therewith. The Food Safety and Standards Authority of India (FSSAI) has been established under this Act for laying down scientific standards for articles of foods and to regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption. The Food Safety and Standards (FSS) Act, 2006 was operationalized with the notification of Food Safety and Standards Rules, 2011 and six Regulations w.e.f the 5 August 2011. The setting of food standards is undertaken through a number of Scientific Panels and the Scientific Committee of the FSSAI and final approval by the Authority.

Before 2006 there were a large number of laws and standards which regulated the food market in India. The FSS Act is a bucket for all the older laws, rules and regulations for food safety. The FSS Act has taken eight older acts into one umbrella.

- Prevention of Food Adulteration Act, 1954
- Fruit Products Order, 1955
- Meat Food Products Order, 1973
- Vegetable Oil Products (Control) Order, 1947
- Edible Oils Packaging (Regulation) Order 1988
- Solvent Extracted Oil, De-Oiled Meal and Edible Flour (Control) Order, 1967
- Milk and Milk Products Order, 1992.

All these multiple laws and regulations prescribed various standards regarding food additives, contaminants, food colours, preservatives and labelling which lead to a system which was over regulated and under-administered. Therefore, in order to rationalise the multiplicity of food laws and bring out a single reference point in relation to regulation of food products, a group of ministries was set up to suggest legislative and other changes to formulate an integrated food law that could protect the consumers and provide a regulatory environment conducive to industry in general as well as consumers' protection. Based on the

recommendations of the group of ministries, the ministry of food processing industries enacted **The Food Safety and Standards Act (FSSA) 2006**.

### Objectives of the FSSA, 2006

The two main objectives of the FSSA are:

- (i) To introduce a single statutory body relating to food and
- (ii) To provide for a scientific development of the food processing industry.

The objective of the Food Safety and Standards Act are "An act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto."

### Principle of Harmonisation

The FSSA 2006 incorporates the salient provisions of the Prevention of Food Adulteration Act, 1954, and is based on the international legislation, imbibed in CODEX Alimentarius Commission. The principle of harmonisation is also enshrined in the Food Safety and Standards Act. The Act clearly specifies that

FSSA will be aided by several scientific panels and a Central Advisory Committee to lay down standards for food safety. These standards will include specifications for ingredients, contaminants, pesticide residues, biological hazards and labels.

The law is enforced through State Commissioners of Food Safety and local level officials.

### Definitions under the Food Safety and Standard Act 2006:

- (a) **"Food"** means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs, and medicinal products, cosmetics, narcotic or psychotropic substances;  
Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;
- (b) **"Food Business"** means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage or manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients.
- (c) **"Food Safety"** means assurance that food is acceptable for human consumption according to its intended use;

(d) **"Misbranded Food"** means an article of food-

- (i) if any article is offered or promoted for sale with false, misleading or deceptive claims either on the label of the package or through advertisement, or
  - (ii) sold by a name which belongs to another article of food; or
  - (iii) offered or promoted for sale under the name of a fictitious individual or company as the manufacturer or producer of the article as borne on the package containing the article or the label on such package; or if the article is sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer bearing his name and address but -
    - (i) the article is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and it not plainly and conspicuously labeled so as to indicate its true character; or
    - (ii) the package containing the article or the label on the package bears any statement, design or device regarding the ingredients or the substances containing therein, which is false or misleading in any material particular, or if the package is otherwise deceptive with respect to its contents; or
    - (iii) the article is offered for sale as the product of any place or country which is false; or if the article contained in the package-
      - (i) contains any artificial flavouring, colouring or chemical preservative and the package is without a declaratory label stating that fact or is not labeled in accordance with the requirements of this Act or regulations made thereunder or is in contravention thereof; or
      - (ii) is offered for sale for special dietary uses, unless its label bears such information as may be specified by regulation, concerning its vitamins, minerals or other dietary properties in order sufficiently to inform its purchaser as to its value for such use; or
      - (iii) is not conspicuously or correctly stated on the outside thereof within the limits of variability laid down under this Act.
- (e) **"Unsafe Food"** means an article of food whose nature, substance or quality is so affected as to render it injurious to health;
- (i) by the article itself, or its package thereof, which is composed, whether wholly or in part, of poisonous or deleterious substance; or
  - (ii) by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance; or
  - (iii) by virtue of its unhygienic processing or the presence in that article of any harmful substance; or
  - (iv) by the substitution of any inferior or cheaper substance whether wholly or in part; or
  - (v) by addition of a substance directly or as an ingredient which is not permitted; or

- (vi) by the abstraction, wholly or in part, of any of its constituents; or
- (vii) by the article being so coloured, flavoured or coated, powdered or polished, as to damage or conceal the article or to make it appear better or of greater value than it really is; or
- (viii) by the presence of any colouring matter or preservatives other than that specified in respect thereof; or
- (ix) by the article having been infected or infested with worms, weevils, or insects; or
- (x) by virtue of its being prepared, packed or kept under insanitary conditions;
- (xi) by virtue of its being mis-branded or sub-standard or food containing extraneous matter.
- (xii) by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations.

**Packaging and Labelling**

Under Section 23 of the Food Safety and Standards Act, mentions that no person shall manufacture, distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labeled in the manner as may be specified by regulations.

The labels shall not contain any statement, claim, design or device which is false or misleading in any particular concerning the food products contained in the package or concerning the quantity or the nutritive value implying medicinal or therapeutic claims or in relation to the place of origin of the said food products.

Every food business operator should ensure that the labelling and presentation of food, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, does not mislead consumers.

**Advertisements and Unfair Trade (Section 24):**

1. It mentions that no advertisement should be made of any food which is misleading or deceiving or contravenes the provisions of this Act, the rules and regulations made thereunder.
2. Further no person should engage himself in any unfair trade practice for purpose of promoting the sale, supply, use and consumption of articles of food or adopt any unfair or deceptive practice including the practice of making any statement, whether orally or in writing or by visible representation which -
  - (a) falsely representing that the foods are of a particular standard, quality, quantity or grade-composition;
  - (b) making false or misleading representation concerning the need for, or the usefulness



- (c) giving the public any guarantee of the efficacy that is not based on an adequate or scientific justification thereof
- (d) Provided where justification is required, the burden of proof of such defence shall lie on the person raising such defence.

**Special Responsibilities as to Food Safety:** It includes the following:

Sec 26 mentions the Responsibilities of Food Business Operators, Sec 27 mentions liabilities of manufacturers, packers, wholesalers, distributors and sellers and Sec 28 contains food recall procedures.

#### Commissioner of Food Safety

Each state should have a Commissioner of food safety who would be responsible to:

- prohibit in the interest of public health, the manufacture, storage, distribution or sale of any article of food, either in the whole of the State or any area or part thereof for such period, not exceeding one year, as may be specified in the order notified in this behalf in the Official Gazette;
- carry out survey of the industrial units engaged in the manufacture or processing of food in the State to find out compliance by such units of the standards notified by the Food Authority for various articles of food;
- conduct or organize training programmes for the personnel of the office of the Commissioner of Food Safety and, on a wider scale, for different segments of food chain for generating awareness on food safety;
- ensure an efficient and uniform implementation of the standards and other requirements as specified and also ensure a high standard of objectivity, accountability, practicability, transparency and credibility;
- sanction prosecution for offences punishable with imprisonment under the FSS Act;
- such other functions as the State Government may, in consultation with the Food Authority, prescribe

#### Prohibition Orders

If Food Business Operator is convicted to offense under the act and if the court is satisfied that there is a real health risk, court may impose prohibitions:

1. On use of the process or treatment for the purpose of the food business
2. On use of the premises or equipment for the purpose of a specific food business or any food business

#### Liability of Food Safety Officer (Sec 39)

Any Food Safety Officer exercising powers under this Act or the rules and regulations made thereunder who vexatiously and without any reasonable ground seizes any article of food

or adulterant; or commits any other act to the injury of any person without having reason to believe that such act is necessary for the execution of his duty shall be guilty of an offence under this Act and shall be liable to a penalty which may extend to **one lakh rupees**. Provided that in case any false complaint is made against a Food Safety Officer and it is proved so, the complainant shall be guilty of an offence under this Act and shall be punishable with fine which shall not be less than **fifty thousand rupees** but may extend to **one lakh rupees**.

#### Purchaser may get Food Analysed

Section 40, gives the powers to the purchaser to get the food analysed by public analyst, after paying the fees specified. Purchaser has to inform the Food Business Operator, at the time of purchase, that it is for analysis. Refund of fees if sample fails.

Failing sample will lead to prosecution as per procedure given in section 42.

#### Sec 48: General Provisions for Offenses

A person may render any article of food injurious to health by means of one or more of the following operations, namely:-

- (a) adding any article or substance to the food
- (b) using any article or substance as an ingredient in the preparation of the food;
- (c) abstracting any constituents from the food; or
- (d) subjecting the food to any other process or treatment;

with the knowledge that it may be sold or offered for sale or distributed for human consumption. In determining whether any food is unsafe or injurious to health, regard shall be had to -

- (i) the normal conditions of use of the food by the consumer and its handling at each stage of production, processing and distribution;
- (ii) the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods not only to the probable, immediate or short-term or long-term effects of that food on the health of a person consuming it, but also on subsequent generations.
- (iii) to the probable cumulative toxic effects;
- (iv) to the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers; and
- (v) also to the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities;

| Offences and Penalties  |  |
|---|--|
| • Selling food not of the nature or substance or quality demanded | Not exceeding 2 lakh rupees  |
| • Sub-standard food   | May extend to 5 lakh rupees  |
| • Misbranded food   | May extend to 3 lakh rupees  |
| • Misleading advertisement  | May extend to 10 lakh rupees   |
| • Food containing extraneous matter                               | May extend to 1 lakh rupees  |
| • Failure to comply with the directions of food safety officer    | May extend to 2 lakh rupees  |
| • Unhygienic or unsanitary processing or manufacturing of food    | May extend to 1 lakh rupees  |
| • Possessing adulterant   | Not exceeding 2 lakhs (where adulterant is not injurious to health),<br>Not exceeding 10 lakh rupees (where adulterant is injurious to health) |
| Penalties for Unsafe food   |  |
| Failure doesn't result in injury                                  | Not exceeding 6 months but may extend to 1 lakh)   |
| Failure results in non-grievous injury                            | May extend to 1 yr., may extend to 3 lakh  |
| Failure results in a grievous injury                              | May extend to 6 yrs., but may extend to 5 lakh   |
| Failure results in death  | Not less than 7 yrs. & may extend to imprisonment for life, Fine not less than 10 lakh   |

#### Section 65: Compensation in case injury or death of consumer

If any person himself or through any other person on his behalf, manufacture/process/imports/sell/or distributes any article of food inducing injury to the consumer or to his death, shall be lawful for the Adjudicating Officer or as the case may be, the court to direct him to pay compensation to the victim or the legal representative of the victim, a sum—

- not exceeding three lakh rupees in case of grievous injury
- not less than five lakh rupees in case of death
- not exceeding one lakh rupees in all other cases of injury

**Note:** The compensation is processed six months from the date of occurrence of the incident and as early as possible. If the case reaches death, an interim relief shall be paid to the next of kin within thirty days of the incident.

#### Adjudication of Complaints

- (1) For the purposes of adjudication an officer not below the rank of Additional District Magistrate of the district where the alleged offence is committed, shall be notified by the State Government as the Adjudicating Officer for adjudication in the manner as may be prescribed by the Central Government.

- (2) The Adjudicating Officer shall, after giving the person a reasonable opportunity for making representation in the matter, and if, on such inquiry, he is satisfied that the person has committed the contravention of provisions of this Act or the rules or the regulations made thereunder, impose such penalty as he thinks fit in accordance with the provisions relating to that offence.
- (3) The Adjudicating Officer shall have the powers of a civil court and—
  - (a) all proceeding before him shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860);
  - (b) shall be deemed to be a court for the purpose of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).
- (4) while adjudicating the quantum of penalty under this Chapter, the Adjudicating Officer shall have due regard to the guidelines specified in section 49.

#### Sec 70: Food Safety Appellate Tribunal

1. The Central Government or the State Government would have a Food Safety Appellate Tribunal to hear appeals from the decisions of the Adjudicating Officer.
2. The Central Government or the State Government, can prescribe, the matters and areas in relation to which the Tribunal may exercise jurisdiction.
3. The Tribunal consists of one person to be appointed as the Presiding Officer and he shall be qualified for appointment as a Presiding Officer to the Tribunal unless he is or has been a District Judge.
4. The qualifications, appointment, term of office, salary and allowances, resignation and removal of the Presiding Officer would be prescribed by the Central Government.
5. The procedure of appeal and powers of the Tribunal would be as prescribed by the Central Government.

#### Conclusion

The food we eat should be safe for consumption as unhealthy food can make us sick. On one hand we are coming across many incidence where unhealthy and substandard food have been served to passengers while travelling. Cold sandwiches without any filling and in one incidence a chopping blade was found by a customer while eating food in a flight. Further growing incidence of improper labeling in case of processed food have been reported. Companies such as Nestle, Bournvita have come in news for the wrong reasons. Nestlé has been criticised for adding sugar and honey to infant milk and cereal products sold in Asian and African countries. The Swiss food giant controls 20% of the baby-food market, valued at nearly US\$70 billion. Bournvita and other health drinks have been found to have high e-sugar and therefore in the letter, dated 10 April, the Ministry of Commerce advised the e-commerce companies to remove Bournvita and other beverages from 'health drinks' category. The FSSAI, earlier this month, also instructed e-commerce portals against labelling dairy-based or malt-based beverages as health drinks.



### 6.3 INSURANCE OMBUDSMAN

The insured is always exposed to many kinds of risks such as, failure of the product to meet its forecast or perceived performance or the promises made by the agent about the product and its benefits, delay in services or not attending to the customer's request/queries/objections. Further there can be expectations based on perception of the Insured and rejection of the claims/delay in settlement of claims.

Insurance is a matter of solicitation. The individual has considerably less knowledge about the product than the Agent/Financial Advisor. Individuals, therefore, heavily rely on the insurer/Agent/Advisor or its intermediary for guidance and support. Proposal papers are generally completed by Agents but the Insured/Claimant has to face its implications. Medical Reports/Agents Reports are filled in a routine manner. This requires a regulated market with proper control to buy a product in a truly competitive market with the confidence that there is a regulatory system that will provide an environment of trust and even if something goes wrong, he can approach an independent body to get his grievance redressed. Insurance Ombudsman scheme was created by the Government of India for individual policyholders to have their complaints settled out of the courts system in a cost-effective, efficient and impartial way.

There are at present 17 Insurance Ombudsman in different locations and any person who has a grievance against an insurer, may himself or through his legal heirs, nominee or assignee, make a complaint in writing to the Insurance ombudsman within whose territorial jurisdiction the branch or office of the insurer complained against or the residential address or place of residence of the complainant is located.

The Govt. of India introduced the Insurance Ombudsman Scheme in the Insurance Sector through a notification of "Redressal of Public Grievance Rules 1998" (RPG Rules) under Section 114 of the Insurance Act 1938. At that time, IRDA had not come into existence. In exercise of the powers conferred by the Insurance Regulatory and Development Authority Act, 1999 and in accordance with the Redressal of Public Grievances Rules, 1998, the office of Insurance Ombudsman was established by the Central Government. Its powers, functions, terms of office etc. were revised in Insurance Ombudsman Rules, 2017 and further amended by Insurance Ombudsman (Amendment) Rules 2021 which have come into force from 2nd March, 2021. The insurance ombudsman disposed of over 92 per cent of the complaints it received from the insured during 2022-23. The 17 insurance ombudsmen offices across the country received 55,946 complaints during the year across its offices in the country, of which 51,625 were disposed of. The Delhi centre disposed of all the 5,257 complaints it got during the year, according to a press statement issued by the Delhi office of the Insurance Ombudsman.

The scope of complaints has been enlarged. Earlier it was only disputes now the amended rules covers even the deficiencies in service on the part of insurers, agents, brokers and other intermediaries. Further Introduced ICT enabled complaint redressal system includes:

- Making complaints electronically.

- Complaints management system to enable policyholders to track the status of their complaints online.
- Video-conferencing for hearings.

These amendments intend to strengthen the timeliness and cost-effectiveness of the mechanisms. Thus, Insurance Ombudsman handles complaints of aggrieved insured persons. This institution is of great importance and relevance for the protection of interests of policy holders and also in building their confidence in the system. It has helped to generate and sustain the faith and confidence amongst the consumers and insurers.

#### Appointment of Insurance Ombudsman

According to Insurance Ombudsman (Amendment) Rules 2021 the Insurance Ombudsman shall be appointed by the Council for Insurance Ombudsmen on the recommendations of the Selection Committee consisting of the following members, namely:—

- the Chairperson of the Authority, or such other whole-time member of the Authority entrusted with matters relating to the general or life insurance business as the Chairperson may authorise — chairperson;
- one individual drawn from amongst the non-official members of the Banks Board Bureau possessing necessary expertise and experience in matters relating to general insurance business — member;
- one individual drawn from amongst the non-official members of the Banks Board Bureau possessing necessary expertise and experience in matters relating to life insurance business — member;
- one individual with a track record of promoting consumer rights or advancing the cause of consumer protection in the insurance sector — member; and
- the representative of the Central Government referred to in clause (v) of sub-rule (2) of rule 5

The governing body of insurance council issues orders of appointment of the insurance Ombudsman on the recommendations of the committee comprising of Chairman, IRDA, Chairman, LIC, Chairman, GIC and a representative of the Central Government. Insurance council comprises of members of the Life Insurance council and general insurance council formed under Section 40 C of the Insurance Act, 1938. The governing body of insurance council consists of representatives of insurance companies. Ombudsman are drawn from Insurance Industry, Civil Services and Judicial Services.

#### Terms of Office

An Insurance Ombudsman shall hold office for a term of three years or till he attains the age of sixty-eight years, whichever is earlier, and shall not be eligible for reappointment: Provided that every Insurance Ombudsman holding office as such as on the 2nd day of March, 2021, may continue to hold office for the term specified at the time of his appointment or till he attains the age of seventy years, whichever is earlier.

### Territorial Jurisdiction of Ombudsman

The governing body has appointed twelve Ombudsmen across the country allotting them different geographical areas as their areas of jurisdiction. The Ombudsman may hold sitting at various places within their area of jurisdiction in order to expedite disposal of complaints. The offices of the twelve insurance Ombudsmen are located at (1) Bhopal, (2) Bhubaneswar, (3) Noida, (4) Pune, (5) Chandigarh, (6) Delhi, (7) Chennai, (8) Kolkata, (9) Ahmedabad, (10) Lucknow, (11) Mumbai, (12) Hyderabad 13. Guwahati, 14. Ernakulam, 15. Bengaluru 16. Jaipur, 17. Patna. The areas of jurisdiction of each Ombudsman has been mentioned in the list of Ombudsmen.

### Power of Ombudsman

Insurance Ombudsman has two types of functions to perform

- (1) Conciliation
- (2) Award making

The insurance Ombudsman is empowered to receive and consider complaints in respect of personal lines of insurance from any person who has any grievance against an insurer. The complaint may relate to any grievance against the insurer i.e. (a) any partial or total repudiation of claims by the insurance companies, (b) dispute with regard to premium paid or payable in terms of the policy, (c) dispute on the legal construction of the policy wordings in case such dispute relates to claims; (d) delay in settlement of claims and (e) non-issuance of any insurance document to customers after receipt of premium. Ombudsman's powers are restricted to insurance contracts of value not exceeding ₹ 30 lakhs. The insurance companies are required to honour the awards passed by an Insurance Ombudsman within three months.

Manner in which complaint to be made. —

- (1) Any person who has a grievance against an insurer, may himself or through his legal heirs, nominee or assignee, make a complaint in writing to the Insurance Ombudsman within whose territorial jurisdiction the branch or office of the insurer complained against or the residential address or place of residence of the complainant is located.
- (2) The complaint shall be in writing, duly signed by the complainant or through his legal heirs, nominee or assignee and shall state clearly the name and address of the complainant, the name of the branch or office of the insurer against whom the complaint is made, the facts giving rise to the complaint, supported by documents, the nature and extent of the loss caused to the complainant and the relief sought from the Insurance Ombudsman.
- (3) No complaint to the Insurance Ombudsman shall lie unless—
  - (a) the complainant makes a written representation to the insurer named in the complaint and—
    - (i) either the insurer had rejected the complaint; or

- (ii) the complainant had not received any reply within a period of one month after the insurer received his representation; or
- (iii) the complainant is not satisfied with the reply given to him by the insurer;
- (b) The complaint is made within one year —
  - (i) after the order of the insurer rejecting the representation is received; or
  - (ii) after receipt of decision of the insurer which is not to the satisfaction of the complainant;
  - (iii) after expiry of a period of one month from the date of sending the written representation to the insurer if the insurer named fails to furnish reply to the complainant.
- (4) The Ombudsman shall be empowered to condone the delay in such cases as he may consider necessary, after calling for objections of the insurer against the proposed condonation and after recording reasons for condoning the delay and in case the delay is condoned, the date of condonation of delay shall be deemed to be the date of filing of the complaint, for further proceedings under these rules.
- (5) No complaint before the Insurance Ombudsman shall be maintainable on the same subject matter on which proceedings are pending before or disposed of by any court or consumer forum or arbitrator.

### How Consumers can Approach the Ombudsman

Consumers who have first approached their insurance company with the complaint and

- (a) They have rejected it
- (b) Not resolved it to their satisfaction or
- (c) Not responded to it at all for 30 days
  1. Your complaint pertains to any policy you have taken in your capacity as an individual and
  2. The value of the claim including expenses claimed is not above ₹ 30 lakhs.

### Consumer's Complaint to the Ombudsman can be about:

- (a) Delay in settlement of claims, beyond the time specified in the regulations, framed under the IRDAI Act, 1999.
- (b) Any partial or total repudiation of claims by the Life insurer, General insurer or the Health insurer.
- (c) Any dispute about premium paid or payable in terms of insurance policy
- (d) Misrepresentation of policy terms and conditions at any time in the policy document or policy contract.
- (e) Legal construction of insurance policies in so far as the dispute relates to claim.



- (f) Policy servicing related grievances against insurers and their agents and intermediaries.
- (g) Issuance of life insurance policy, general insurance policy including health insurance policy which is not in conformity with the proposal form submitted by the proposer.
- (h) Non issuance of insurance policy after receipt of premium in life insurance and general insurance including health insurance and
- (i) Any other matter resulting from the violation of provisions of the Insurance Act, 1938 or the regulations, circulars, guidelines or instructions issued by the IRDAI from time to time or the terms and conditions of the policy contract, in so far as they relate to issues mentioned at clauses (a) to (f)

#### The Settlement Process and Recommendation

The Insurance Ombudsman acts as a mediator and

- Arrives at a fair recommendation based on the facts of the dispute
- If consumers accept the award as a full and final settlement, the Ombudsman informs the company which complies with the terms in 15 days.
- If a settlement by recommendation does not work, the Ombudsman passes an award within 3 months of receiving all the requirements from the complainant and which will be binding on the insurance company.

#### Once the Award is Passed

- The Insurer shall comply with the award within 30 days of the receipt of award and intimate the compliance of the same to the Ombudsman.

#### Time limit to Approach the Insurance Ombudsman

- The time limit to approach Insurance Ombudsman is one year. the Insurance Ombudsman, may, if considered necessary, can condone the delay and after calling for objections of the insurer against the proposed condonation and after recording the reasons for condoning the delay, can entertain a complaint which is received after the expiry of the specified time limit. In such cases, the date of condonation is considered as the date of filing of complaint.

#### Financial Jurisdiction of an Insurance Ombudsman

Ombudsman can:

- (i) award any compensation up to the loss suffered by the complainant as a direct consequence of the cause of action; or
- (ii) award compensation not exceeding Thirty lakhs (including relevant expenses, if any)

#### Circumstances a Complaint cannot be filed before Insurance Ombudsman

No complaint to the Insurance Ombudsman shall lie unless—

- the complainant makes a written representation to the insurer named in the complaint and—
  - o either the insurer had rejected the complaint; or
  - o the complainant had not received any reply within a period of one month after the insurer received his representation; or
- The complainant is not satisfied with the reply given to him by the insurer;
- No complaint before the Insurance Ombudsman can be maintainable on the same subject matter on which proceedings are pending before or disposed of by any court or consumer forum or arbitrator.

#### Time for Complaint Disposal

In case both parties agree for mediation, the Ombudsman gives his Recommendation within 1 month; otherwise, he passes an Award within 3 months from the date of receipt of all requirements from complainant. No fees/charges are required to be paid. If necessary, the Insurance Ombudsman conducts hearing of both the parties so as to provide them with reasonable opportunity of being heard before an award is passed.

#### Appeal against an Award of Insurance Ombudsman

In case a complainant is not satisfied with the Award of an insurance Ombudsman he can exercise his right to take recourse to the normal process of law against the insurance company. However, the award of Insurance Ombudsman shall be binding on the insurers.

#### SUMMARY FROM THIS CHAPTER

- 'Ombudsman' is a Swedish word, meaning 'legal representative'. Worldwide it stands for an official appointed by the government to investigate individuals' complaints against public authorities. In India, there is a fast track alternate dispute resolution mechanism for banking sector known as the Banking Ombudsman. In exercise of the powers conferred by Section 35A of the Banking Regulation Act 1949 (10 of 1949) the Reserve Bank of India formulated the Banking Ombudsman Scheme on 14<sup>th</sup> June 1995. The Banking Ombudsman is appointed by the Reserve Bank of India (RBI) to redress, through reconciliation or mediation, customer complaints against certain deficiency in the banking services.
- Complaints on mobile banking/electronic banking were higher in the Year 2020-21 as compared to the Year 2021-22 and 2022-23. However, in the year 2022-23, complaints related to loans and advances were more than the previous years. The upsurge in complaints related to deposit accounts in the Year 2022-23 was also observed. Although there has been an increase in number of complaints received from credit card holders, but the number of complaints regarding ATM/debit card holders dropped in the Year

2022-23. Thus, the grievance redressal mechanism under Banking Ombudsman is more useful for customers. Consumers are advised to file complaints before Ombudsman in banking service related disputes. If the complainant is not satisfied with the order of the Banking Ombudsman he can still file a complaint before the consumer forums.

- The Food Safety and Standards FSS Act, 2006 was operationalized with the notification of Food Safety and Standards Rules, 2011 and six Regulations w.e.f the 5 August 2011. The setting of food standards is undertaken through a number of Scientific Panels and the Scientific Committee of the FSSAI and final approval by the Authority.
- Before 2006 there were a large number of laws and standards which regulated the food market in India. The FSS Act is a bucket for all the older laws, rules and regulations for food safety. The FSS Act has taken eight older acts into one umbrella.
- The objective of the Food Safety and Standards Act are "An act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto."
- Under Section 23 of the Food Safety and Standards Act, mentions that no person shall manufacture, distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labeled in the manner as may be specified by regulations. The labels shall not contain any statement, claim, design or device which is false or misleading in any particular concerning the food products contained in the package or concerning the quantity or the nutritive value implying medicinal or therapeutic claims or in relation to the place of origin of the said food products.
- There are at present 17 Insurance Ombudsman in different locations and any person who has a grievance against an insurer, may himself or through his legal heirs, nominee or assignee, make a complaint in writing to the Insurance ombudsman within whose territorial jurisdiction the branch or office of the insurer complained against or the residential address or place of residence of the complainant is located.
- In exercise of the powers conferred by the Insurance Regulatory and Development Authority Act, 1999 and in accordance with the Redressal of Public Grievances Rules, 1998, the office of Insurance Ombudsman was established by the Central Government. Its powers, functions, terms of office etc. were revised in Insurance Ombudsman Rules, 2017 and further amended by Insurance Ombudsman (Amendment) Rules 2021 which have come into force from 2nd March, 2021.
- Insurance Ombudsman can award any compensation up to the loss suffered by the complainant as a direct consequence of the cause of action; or award compensation not exceeding ₹ Thirty lakhs (including relevant expenses, if any)

### QUESTIONS FROM THIS CHAPTER

- Q1 Who is an Ombudsman? Under which sectors do we have the ombudsman scheme in India?
- Q2 What is the Banking Ombudsman Scheme? When was this scheme launched?
- Q3 What is the procedure for filing a case under the Banking Ombudsman?
- Q4 What are the nature of complaints taken by the Banking Ombudsman?
- Q5 What is the financial jurisdiction of the Banking Ombudsman?
- Q6 Explain the objectives and scope of the Food Safety and Standard Act, 2006?
- Q7 What is the principle of harmonisation enshrined in the Food Safety and Standards Act, 2006?
- Q8 Explain the following terms:
  - (a) Misbranded food
  - (b) Unsafe Food
  - (c) Packaging and Labelling
  - (d) Misleading advertisement and unfair trade under FSSA, 2006
- Q9 How does the adjudication of complaints take place in the Food Safety and Standards Act, 2006 and explain the role of Food Safety Appellate Tribunal?
- Q10 What is insurance ombudsman? What is the procedure for filing a case under the Insurance Ombudsman?
- Q11 What are the nature of complaints taken by the Insurance Ombudsman?
- Q12 What is the financial jurisdiction of the Insurance Ombudsman?
- Q13 Explain the salient features of the Insurance Amendment Rules 2021?



## CHAPTER

# 7

## SECTORAL REGULATORS THEIR CONSUMER PROTECTION REGULATIONS AND CONSUMER COMPLAINT REDRESSAL MECHANISMS-II

### LEARNING OUTCOMES

Advertising: ASCI, Housing Construction: RERA

#### 7.1 ETHICS IN ADVERTISING

In advertising ethical issues are broadly divided into two categories, ie, ethical dilemma and ethical lapse<sup>1</sup>. The first is **ethical dilemma** that arises when the pros and cons regarding a particular issue are even, where ethics are concerned. For example, the use of advertorials to promote a company's products or services. The advertorial attracts readers' attention and the ad copy has a bigger impact on the minds of the reader than an ordinary advertisement. The appearance or layout of an advertorial is similar to that of magazine or newspaper editorials and readers are beguiled into thinking that they are reading an article.

An **ethical lapse** occurs when there is violation or deviation from standards knowingly. For example, conveying an inaccurate message while being well aware that it is wrong is an ethical lapse. For example, the Vim ultra dishwashing powder claimed that it contained pure lemon juice, but the laboratory test proved that the claim was false. There are three parameters, which help in deciding whether an advertisement is ethical, or not are:

1. **Advocacy:** It refers to what an advertisement is trying to say and whether this is objective or neutral.
2. **Accuracy:** It refers to whether the claim made by the company is true and verifiable.
3. **Acquisitiveness:** It refers to whether advertisement is promoting materialism.

#### When is Advertising Deceptive

The Constitution of India guarantees freedom of speech. Special restraint is needed in commercial speech including advertising. An advertisement is called deceptive when it

misleads people, alters the reality and affects buying behaviour. According to Federal Trade Commission (USA) deception occurs when<sup>ii</sup>

1. There is misrepresentation, omission, or a practice that is likely to mislead.
2. The consumer is acting responsibly in given circumstances
3. The practice is material and consumer injury is possible because consumers are likely to have chosen differently if there is no deception.

Deception exists when an advertisement is introduced into the perceptual process of the audience in such a way that the output of that perceptual process differs from the reality of the situation. It includes a misrepresentation, omission or a practice that is likely to mislead.

#### Social and Ethical Aspects of Advertising

Advertisements can be grouped into various categories where the intention of the advertiser is to dupe consumers and have an increase in its sale and profits. Many advertisers make use of celebrities as endorsers who have a hold on the masses and have an emotional effect on the minds of the consumers. Many products such as fairness creams, chocolates, cars, mobile phones, durable products are advertised by well known faces, especially sports and Bollywood stars who are able to convince the masses to purchase the products.

During the months of August and September 2019, ASCI investigated complaints against 564 advertisements, of which 179 advertisements were promptly withdrawn by the advertisers on receipt of communication from ASCI. The independent Consumer Complaints Council (CCC) of ASCI evaluated 385 advertisements, of which complaints against 344 advertisements were upheld. Of these 344 advertisements, 259 belonged to the education sector, 50 belonged to the healthcare sector, eight to personal care, eight to the food & beverages sector, and 19 were from the 'others' category.

ASCI reported that several prominent brands in the Food and Beverage sector made comparative claims regarding the product composition, taste preferences, health benefits or market leadership. Many of the claims were not adequately substantiated. The comparisons were found to be unfairly denigrating the entire category in which the advertiser brands were competing in. Amul dairy brand presented their butter cookies to be superior due to presence of 25% butter and 0% vegetable oil. However, they made a sweeping statement that "other" butter cookies contain only 0.3% to 3% butter and 20% to 22% Vegetable Oil without presenting any verifiable evidence. Nestle India Ltd: Maggi Nutrilicious New Masala Oats and Maggi Nutrilicious New Masala Veg Atta snack brand, endorsed by Virat Kohli, a prominent cricket celebrity claimed that up to 60% of people said that their baked snack was tastier than other fried snack brands. However, this claim was not conclusively proven. This was considered to be a violation of FSSAI Regulation, 2011 which states that "instant noodle product shall be presented as 'Fried Noodles or Non-Fried Noodles'. The information needs to be "presented" as required by the FSSAI within the advertisement - regardless of where it appears (i.e. on pack, digital advertisement, YouTube advertisement). Virat Kohli, also endorsed a leadership claim for a food supplement brand "No. 1 Supplement for Men". As this ranking was achieved in the UK and not in India, the claim was considered to be misleading. Advertisement by an edible oil brand implied that consumers should switch

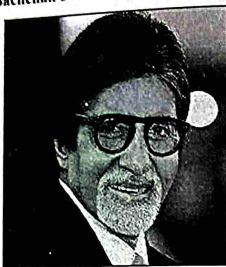
from their current heart oil to their product as it takes "Complete care of their heart". Their claim stating that consumer's current heart oil cannot fight against heart problems was considered to be disparaging as well as it seemed likely to scare the consumer into buying the product. ASCI continues to receive consumer complaints regarding misleading advertisements in the Food and Beverages sector. One complaint was against a brand positioned to be Diabliss Tea with Low GI for diabetics and pre-diabetics. The CCC opined that even though the product contained low GI sugar, it still was sugar and should not have been positioned "diabetes friendly" as it was likely to do more harm. One of India's oldest biscuit manufacturers Parle Happy Happy Biscuits claimed "33% extra" on their product packaging, without mentioning the basis of comparison alongside the offer claim. The advertisement also violates ASCI Guidelines for Disclaimers which states that for comparative claim, the basis of comparison must be stated in a font size that is at least 25% of the size of the claim, which is being qualified and positioned immediately next to or immediately below the claim.

The YouTube advertisement featuring Bollywood celebrities Alia Bhatt and Ranveer Singh that claimed "60 Minutes Resolution Else Free Stay" was misleading by ambiguity, omission and implication. The advertisement categorically states that "MakeMyTrip provides 24X7 Hotline and resolution in 60 minutes for any problem for hotel booking...." It makes a blanket claim of "hotel" implying any / all hotel and does not specify on "MMT Assured Hotels only". The advertiser did not provide any evidence showing that the celebrities had done due diligence prior to the endorsement, hence violating ASCI's Guidelines for Celebrities in Advertising as well. The website advertisement claim of Ajanta wall clock being sold at the discounted price of Rs.149, when the actual MRP of the product is INR 499 (70% off), is false, distorts facts and is misleading. The website advertisement was promoting 'Deal of the Day' offers on various products of which one of the product was an 'Ajanta' wall clock. However, the actual price at which this was being sold was above INR 400 and not for Rs 149. The claim offer was qualified to mention that "Restrictions apply". However, the advertiser did not provide the details of restrictions (rules about limits) applicable for the offer. The website also did not make reference to terms and conditions that consumers might peruse before availing the said offer, nor was any evidence provided of any of their consumers having availed the offer. Balaji Telefilms Ltd (Judgementall Hai Kya): The Facebook and print advertisement depicted actors of the movie - a boy and a girl holding a razor blade with the sharp edge resting on the tip of their tongue. The CCC concluded that the visual in the poster shows a dangerous act and manifests a disregard for safety, which is also likely to encourage minors to emulate such act which could cause harm or injury. One 97 Communications Limited (PayTM): The PayTM application advertisement claim "Free Movie Tickets Worth Rs.1200 on PayTM" is misleading by ambiguity and omission of the offer being over a period of 12 months and violated ASCI Guidelines for Disclaimers. The advertiser's application did not make any reference by way of (\*) / (T&C Apply) to terms and conditions that consumers might peruse before availing the said offer. The details of the offer were made available only once the membership was purchased. The advertisement contravened ASCI Guidelines for Disclaimers. Grofers India Private Limited (Grand Orange Bag Days): The website advertisement's claim "Flat 100% Cashback Up to Rs.5000/-" was qualified with T&C; However, the disclaimer was not prominent in the advertisement nor



did it correspond to any asterisk. The advertisement contravened ASCI Guidelines for Disclaimers.

#### Amitabh Bachchan's "Publicity Rights" as a celebrity<sup>iii</sup>



Recently the Delhi High Court in November, 2022 conferred an interim injunction restricting people from breaching veteran actor Amitabh Bachchan's "publicity rights" as a celebrity. Senior Advocate Harish Salve who appeared for Bachchan, contended that there were many people who were using the actor's name, voice and image without his consent to advertise their own goods and services. Advocates Pravin Anand and Ameet Naik also appeared for Bachchan in the matter.

Salve mentioned that while some people were running a lottery using Bachchan's name and the KBC logo, others were selling T-shirts with his image. "This nonsense has been going on for a while...there is a lottery in Gujarat where the defendant has brazenly copied (the) logo of KBC where his photographs are all over it...it appears to be scam...There is no lottery...no one wins," Salve said.

Some of the defendants were selling posters with Bachchan's name, Salve further said, adding that there was also an Amitabh Bachchan video call app, where the caller could speak to a person who sounded like Bachchan. The explanation of the mobile facility, named 'Amitabh Bachchan Video Call', is open for download on mobile phones and mentions that "Amitabh Bachchan is a fake video call app and can also do voice chatting but that too prank call. Amitabh Bachchan is one of the biggest superstars of Bollywood. Amitabh Bachchan also plays cubs (sic) and entertains people", the plea pointed out.

The advocate also submitted that there were people who had also registered "domain names" in Bachchan's names and all these activities had taken place without his understanding and permission. "We have also sought a John Doe action also as we don't know how many other people are there involved in this..." Salve said. "We seek an injunction, and we have given notice to all defendants but none have appeared," Salve added.

Salve said that his client had sought an interim injunction restraining the defendants from violating the "publicity, personality rights" and infringing on Bachchan's name, voice and image for any commercial purpose.

Advertising is criticized in relation to the following:

1. **Advertising contents carrying inappropriate information:** Use of untrue paid testimonials to convince buyers, quoting misleading prices, disparaging a rival product in a misleading manner are some examples of misleading. Advertisers of anti-aging creams, complexion improving creams, weight loss programs, anti-dandruff shampoos, and manufacturers of vitamins or dietary supplements are usually guilty of making exaggerated product claims. Some of the examples of advertisements in this category are:

- A fairness cream is advertised with the claim that its user will get a fair complexion within a month. The television commercial of 'Fair and Lovely' cream where a father commented 'Kash mera beta hota' because the daughter was dark skinned and was not getting good job was banned after the issue was raised in parliament.
- Parle G Original Gluco Biscuits puts a tall claim of being 'the World's largest selling biscuits' on its package on the basis of the results of a survey done in the Year 2003 by A. C. Nielsen.
- Wheel Active's advertisement in 2006 as "World's largest selling detergent" was asked to modify the claim by ASCI as it was highly misleading.
- Advertisements by some financial companies such as doubling money in a given time without base to justify claim are deceptive in nature.
- Many colleges misrepresent in their prospectus that the institution is affiliated to a particular university and an accredited one. In one of the cases decided in 2004 the complainant took admission believing representations made in prospectus that college was recognized by the government of Punjab and was also approved by the Central Council of Indian Medicine for the whole course of five and a half years\*. The complainant deposited Rs.1,00,000/- as donation and Rs. 65,000 as admission fees. Four years after 1996-97 no exams were being held. The Punjab University, CCIM and Baba Farid University did not grant any affiliation for want of requisite infrastructure. It was held to be a case of unfair trade practice and deficiency in service.

In the case of Bhupesh Khurana vs Vishwa Buddha Parishad a class action suit was filed by twelve students who had joined the BDS course offered by the Buddhist Mission Dental College run by Vishwa Buddha Parishad. The students' complaint was that the college, in its advertisement and prospectus inviting applications for the course, had given the impression that it was affiliated to Magadh University, Bodh Gaya and recognized by the Dental Council of India and was fully equipped to give the degree of Bachelor of Dental Science. However, after joining the college and attending classes, the students found to their dismay that the annual examinations were not being held because the college was neither affiliated to Magadh University, Bodh Gaya and nor recognized by the Dental Council of India. As a result the students lost two precious academic years, but also spent money on fees, hostel charges, etc. holding the college to be deficient the National Commission directed it to refund the admission expenses of all the twelve students along with interest of 12 percent<sup>iv</sup>.

2. **Products being advertised and safety issues:** When an advertisement for cooking oil says that using the said oil frees the user from heart problems, then such an advertisement is misrepresenting the facts. Companies advertise products highlighting health cures and drugs of questionable efficacy and health gadgets of unknown values. Tempted and lured by an advertisement, claiming to increase a person's height, Nadiya, a Class VIII student having a height of 135 cms got admitted to Fathima Hospital for surgery, on 24-7-1996, for increasing her height. The surgery was conducted and a ring fixator was fixed on the legs which had to be adjusted every six hours. To her dismay Nadiya found her left leg shorter by ½ inches, and therefore she could not walk. By September 1996, the pain had increased and the complainant was bed-ridden till March, 1998, the Commission held the hospital and the doctors negligent and deficient in their service and directed them to pay Rs. 5,00,000 with costs amounting to Rs. 2,000 to the complainant<sup>iii</sup>.

Many of the juice, sharbat, wafer manufacturing companies do not mention the ingredients used in it. For example, Haldiram offers many types of sharbats which are artificially flavoured but the front side of the package has big and attractive pictures of the fruit itself, creating misunderstanding amongst the consumers.

3. **Advertisements Violating Consumers' Right to Choice:** When material facts which are likely to influence buying decisions are not disclosed the advertisement becomes deceptive. In several advertisements it is stated that 'conditions apply' but these conditions are not stated. Not disclosing material facts amounts to deception. For example, the recent print ad for a well known brand mentions a 1-ton split-AC available for Rs. 15,990/-, a very attractive offer. But there is a small asterisk which mentions three things in small font. They are:

- Conditions apply
- Prices valid in Delhi and NCR under exchange only
- Actual products may differ from those displayed in the offer.

Such ads not only mislead consumers by concealing important information from them. Advertisements for general medicines available over the counter, never talk of the side effects that may result from their frequent use. An advertisement "Diwali Dhamaal" offering a free Reliance mobile set besides other guaranteed gifts for the purchase of goods valued between Rs. 1,000 to Rs. 10,000/- and more. When Shivpuri bought goods worth Rs.14,178/- he was denied a reliance mobile and the dealer said that it would be provided only if he took a Reliance connection on payment of required charges. The National Commission held the advertisement to be highly misleading as no such condition was spelt out in the advertisement<sup>iii</sup>.

4. **Advertisements directed at children:** Children in India constitute 18.7% of the World kids population and one-third of our country's population is under the age of 15 years. Thus, in India, children form a massive 30% of the total population and this segment is growing at a rate of 4% per annum. This means a huge target market of 300 million is available to advertisers and they are already focusing on the kid channels.

A survey by A C Nielsen UTV's research partner showed that an average child watches TV for about three hours on week days and 3.7 hours on weekends, the time spent on television goes up with age, and the preferred language of viewing is Hindi across all age groups. Apart from the programmes children also view a lot of the advertisements.

In India the advertising expenditure per year on products meant for children but purchased by parents, like health drinks, is 12 to 15 per cent of the total Rs. 38,000 million. Ad expenditure per year on products meant for children and also bought by them such as chocolates is seven to eight per cent. The advertisers rely on the children's pester power on their parents. The ethical issues involved are advertisers try to exploit Young children by advertising products that are not conducive to their health.

- Children are naïve and gullible and are vulnerable to advertiser's enticements. The general behaviour of children is affected due to advertising.
- Children lack independent judgment and experience and their purchase behaviour is affected. They cannot distinguish between fantasy and reality.

• Children learn certain norms which are unacceptable and want to imitate the celebrities in the ads. They start demanding products such as fast food, chocolates and ice creams everyday. This careless diet with trans fat leads to obesity increasing the risk of cancer by 40%, diabetes by 50%, also the cardio vascular problems, becoming an alarming issue these days. The Consumers International revealed that the most aggressive advertisers are from the junk food sector.

5. **Puffery:** Puffery means making exaggerated claims about the product being advertised. The claims cannot be supported by evidence. The advertisers use them to boast of the merits of their products (best, finest, number one, etc.). Even law permits trade puffing or exaggeration. In 1997 MRTP Commission asked Hindustan Lever company to stop its campaign that its Pepsodent toothpaste was 102 per cent better than the Colgate toothpaste. Hindustan Lever was restrained from "referring to any Colgate Toothpaste in any manner, either directly or indirectly, by means of any allusion or hint in its TV commercials or newspaper advertisements or hoardings, by comparison of its New Pepsodent with any product of Colgate in general, and Colgate Dental cream in particular". Even the Lay's potato chips slogan, "Bet You Can't Eat Just One" involves puffery.

6. **Advertising's Influence on the Media:** Advertisers exercise undue control over media is based on the media's dependence on advertising for their support. The average daily newspaper receives about 75% of its revenue from advertising. Most television and radio stations depend entirely on advertising for support. Thus, the support from advertisements tends to compromise the independence of media.

7. **Promoting Unhealthy Products:** Advertisements which promote the consumption of products such as tobacco, alcohol, and habits such as gambling in casinos are unethical. Despite a ban imposed by government on advertisements for cigarettes, liquor, paan masala, products that are harmful to the public continue to find a place in outdoor advertisements, private channels, cable, and through the use of surrogates.



### How Advertising Can be Regulated

The process of regulating advertising can be divided into three areas:

- I. Self Regulation by the advertising industry
- II. Externally imposed either by the aggrieved parties themselves or by the policing authority
- III. Regulation by Government

#### I. Self regulation by the advertising industry

It is undertaken by the advertisers themselves on a broader perspective. Some advertisers feel that if some advertising is deceptive it must be regulated and they owe a duty towards consumers. Thus, with the increasing criticism of advertising, advertisers have devised self regulation to ensure true and accurate

messages. Moreover, with the advent of new communication and information technologies, the national policy makers have also become less willing and less able to intervene. Since print and audio-visual media exercise the essential freedom of speech and they are financed by advertising revenues, media has always resisted curbs thereby constraining the capacity of national governments to influence media. Further, the business also realizes that the long term profitability of the organisation depends upon acting responsibly. Advertisers also feel that if they regulate advertising on their own government would stay away from them because if government comes in between the pressure would be more.

#### Agencies Involved in Self Regulation

A number of agencies are involved. These can be classified into the following:

1. **Individual companies and their Code of Advertising:** For example, Mudra an advertising agency of Reliance has its own Code of practice, similarly companies such as Lintas, McCann Ericsson, O&M have their own code of conduct
  2. **Advertising trade associations**
    - Advertising Standards Council of India (ASCI)
    - Advertising Association of India (AAAI)
    - Indian Newspaper Society (INS)
    - Press Council of India
    - Prasar Bharti
  3. **Individual media and media groups**
    - i. Code for commercial advertising on Doordarshan
    - ii. All India Radio Code for commercial advertising
- II. Externally imposed either by the aggrieved parties themselves or by the policing authority: This regulation is done by consumers who either individually or collectively seek action against the defaulting advertisers either by writing to companies which carry the

deceptive ad, or through consumer organizations. Sometimes these consumers succeed and if they don't succeed, they go for redressal by taking legal route.

### III. Regulation by Government:

There are more than fifteen laws which regulate advertising. These are:

- (a) The Consumer Protection Act, 2019
- (b) The Emblems and Names (Prevention of Improper Use) Act, 1950
- (c) Trade and Merchandise Marks Act, 1958.
- (d) Cable Television Networks (Regulation) Act, 1995
- (e) Indecent Representation of Women (Prohibition) Act, 1986.
- (f) Competition Act, 2002
- (g) Motor Vehicles Act, 2019
- (h) Drugs and Cosmetics Act, 1940
- (i) Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- (j) Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.
- (k) Food Safety and Standards Act, 2006
- (l) Prize Chits and Money Circulation Schemes (Banning) Act, 1978.
- (m) Prize Competition Act, 1955
- (n) The Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 and Amendment Act, 2002.
- (o) Transplantation of Human Organs Act, 2014
- (p) The Young Persons (Harmful Publications) Act, 1956

The following Regulatory authorities have power to regulate advertising in their respective domain.

- Insurance Regulatory Development Authority
- Telecom Regulatory Authority of India
- Securities and Exchange Board of India
- Reserve Bank of India
- Medical Council of India

Some of the important features of various laws concerning advertising are:

1. **The Consumer Protection Act, 2019:** The Consumer Protection Act applies to advertisements for all products in the market place. A consumer may file a complaint related to false and misleading advertisements, which are included under the definition of unfair

trade practice under Section 2 (47) in which various classes of unfair trade practices have been mentioned. The consumer commissions can however, take the following actions

- Issue interim orders stopping such advertisements pending disposal
- To pass cease and desist orders.
- Award compensation for loss or suffering, punitive damages and cost of litigation to the affected party.
- Direct the advertiser to issue corrective advertisement.

Under the Consumer Protection Act, 2019, **Central Consumer Protection Authority (CCPA)** has been established to promote, protect and enforce the rights of consumers, to investigate and intervene when necessary to prevent consumer detriment arising from unfair trade practices, and to initiate class action including enforcing recall, refund and return of products. Thus, CCPA can act on:

- (a) complaints of unfair trade practices,
- (b) issue safety guidelines,
- (c) order product recall or discontinuation of services,
- (d) refer complaints to other regulators,
- (e) have punitive powers such as imposing penalties, and
- (f) can file actions before consumer commissions
- (g) Intervene in proceeding in matters of consumer rights or unfair trade practices

The Central Authority now has an Investigation Wing headed by a Director-

General for the purpose of conducting inquiry or investigation under the Act. For false and misleading advertisements CCPA may issue a penalty upto 10 lakh on a manufacturer and endorser and includes online marketing. For a subsequent offence, the fine may extend to Rs 50 lakh. For every subsequent offence, the period of prohibition may extend to three years. However, there would be certain exceptions when an endorser will not be held liable for such a penalty. The CCPA has the authority to direct the removal of a misleading advertisement.

**2. The Food Safety and Standards Act, 2006:** The Act envisages regulation of manufacture, storage, distribution, sale and import of food to ensure availability of safe and wholesome food for human consumption and for consumers connected therewith. Section 24 of the Act deals with unfair trade practices and mentions that no advertisement should be made of any food which is misleading or deceiving or contravenes the provisions of the Act, the rules and regulations made thereunder. No person shall engage himself in any unfair trade practice for purpose of promoting the sale, supply, use and consumption of articles of food or adopt any unfair or deceptive practice including the practice of making any statement, whether orally or in writing or by visible representation which -

- (a) falsely represents that the foods are of a particular standard, quality, quantity or grade-composition;

- (b) makes a false or misleading representation concerning the need for, or the usefulness;
- (c) gives to the public any guarantee of the efficacy that is not based on an adequate or scientific justification thereof.

Section 53 of the Act mentions the liability of a person who publishes deceptive advertisement of food or misleads consumer about quality or gives false guarantee the consumer would be liable with a fine which may extend upto ten lakhs.

**3. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954:** The Act controls advertising of drugs in India. It prohibits advertisements of drugs and remedies that claim to have magical properties, and makes doing so a cognizable offence. The act defines "magic remedy" as any talisman, mantra, amulet or any other object, which is claimed to have miraculous powers to cure, diagnose, prevent or mitigate a disease in humans or animal. It also includes such devices that are claimed to have power to influence structure or function of an organ in humans or animals. It prohibits advertisements of drugs and remedies that claim to have magical properties, and makes doing so a cognizable offence. prohibits advertisements for products and services claiming to cure certain medical conditions. As per the law, no advertisement should promise magical cure for any ailments or disease and the rules specify the diseases and ailments that cannot be advertised promising cure or remedies. However, the enforcement of the Act by the state authorities is poor because one finds a number of advertisements in the print media. The Act also does not cover advertisements that appear in various media pertaining to health gadgets of unproven efficacy, like tummy trimmers, bands for blood pressure control, and gadgets to increase height. This Act does not provide for issuing corrective advertisements.

**4. The Competition Act, 2002:** The Act governs Indian competition law. It replaced the Monopolies and Restrictive Trade Practices Act, 1969. Under this legislation, the Competition Commission of India was established to prevent the activities that have an adverse effect on competition in India. It is a tool to implement and enforce competition policy and to prevent and punish anti-competitive business practices by firms and unnecessary Government interference in the market. Competition law is equally applicable on written as well as oral agreement, arrangements between the enterprises or persons. The MRTP Act had been the most effective Act in the eighties and nineties to regulate undesirable advertising. In the year 1984, the government brought, through an amendment, "unfair trade practices" under the purview of the MRTP Commission and the Office of the Director General (Investigation and Registration). However, this Act is being replaced by the Competition Act, 2002 and the MRTP Commission has been abolished with effect from 14<sup>th</sup> October 2009 vide the Competition Act, 2009. The MRTP Act has been very effective in hauling a number of advertisers to stop advertisements which are prejudicial to consumer interest through its 'cease and desist orders'.

**5. Cable Television Networks (Regulation) Act, 1995:** This law lays down the procedure for registration of a cable television network and also regulates the programmes and advertisements transmitted on cable network in India. The registering authority is the Head Post Master of a Head Post Office of the area within whose territorial jurisdiction the office of the cable operator is situated.



## 6. Drugs and Cosmetics Act, 1940 as Amended in 1995

The Act regulates the import, manufacture and distribution of drugs and cosmetics in India. The primary objective of the act is to ensure that the drugs and cosmetics sold in India are safe, effective and conform to state quality standards. The Drugs and Cosmetics Rules, 1945 framed under the Act contain provisions for classification of drugs under given schedules and there are guidelines for the storage, sale, display and prescription of each schedule. The Act defines the standards of quality for drugs and defines "misbranding". A drug is considered misbranded if it claims to be of more therapeutic value than it actually is. The manufacturer of such a drug may be asked to suspend manufacture of the drug. The Act also deals with fake and adulterated drugs.

The Act was amended to impose more strict penalties for manufacture and sale of adulterated or spurious drugs or drugs not of standard quality which are likely to cause death or grievances or hurt the user.

This law regulates the production, manufacture and sale of all drugs and cosmetics in the country. The Act prescribes a fine of up to Rs. 500 for any person using any report or extract of report of a test or analysis made by the Central Drugs Laboratory or a government analyst for advertising of a drug or cosmetic.

7. Section 292 and Section 293 of the Indian Penal Code, 1860, prohibits the dissemination of any obscene matter. The Indian Post Office Act, 1898, imposes a similar prohibition on the transmission of obscene matter through the post. The Customs Act, 1962, allows the detention and seizure of any obscene matter sought to be imported into the country.

8. The Children's Act, 1960, prohibits the disclosure of names and address and other particulars of any child involved in any proceedings.

9. The Indecent Representation of Women (Prohibition) Act, 1986 forbids the depiction of women in an indecent or derogatory manner in the mass media. No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

10. The Emblems and Names (Prevention of Improper Use) Act, 1950, This is an act to prevent the improper use of certain emblems and names for commercial and professional purposes. It extends to the whole of India and also applies to citizens of Indian living outside India. The name, emblem or official seal of the following organizations cannot be used as mentioned in Section 3 of the Act. By the time of revising the Book government had invited comments regarding introducing penalty of Rs 1 Lakh for misusing Section 3. In case of repeat offence the penalty would be increased to Rs 5 Lakh and imprisonment of 6 months.

11. Motor Vehicles Act, 1939: This law affects outdoor advertisements, like bill boards, posters, neon signs, etc. The Act, grants powers to remove such advertisements which may distract drivers and have the potential of causing road accidents.

Unfortunately, despite several laws meant to protect consumers against such unfair trade practices, false and misleading advertisements continue to exploit the consumer. Outdated

laws, poor enforcement of them are some of the lacunas in order to control advertising. The need of the hour is better laws in keeping with the times, better enforcement, corrective advertisements, better self-regulation by industry — independent regulator to regulate health and children — related advertisements. If consumers feel that an advertisement is not true they can lodge a complaint at [www.gama.gov.in](http://www.gama.gov.in) which are directly transferred to Advertising Standard Council of India for action. In case of non-compliance the complaints are escalated to a sub-committee of the Intern ministerial monitoring committee, headed by the Joint Secretary, Department of Consumer Affairs, which in turn will forward them to the regulators/government departments concerned for suitable action.

## 7.2 ADVERTISING STANDARD COUNCIL OF INDIA

ASCI is a voluntary self-regulatory organization, registered as a not-for-profit Company under section 25 of the Indian Cos. Act. The sponsors of the ASCI, who are its principal members, are firms of considerable repute within industry in India, and comprise advertisers, media, advertising agencies and other professional /ancillary services connected with advertising practice. Thus, ASCI is not a Government body. It is a voluntary Self Regulatory Organization. However, ASCI is represented in all committees working on advertising content in every Ministry of the Government of India. ASCI receives and processes 120-140 complaints against advertisements, from a cross section of consumers and the general public, and this covers individuals, practitioners in advertising, advertiser firms, media, ad. agencies, and ancillary services connected with advertising.

### ASCI Code of Conduct

Advertising Standards Council of India (ASCI) (1985) has adopted a Code for Self-Regulation in Advertising. It is a commitment to honest advertising and to fair competition in the market-place. It stands for the protection of the legitimate interests of consumers and all concerned with advertising - advertisers, media, advertising agencies and others who help in the creation or placement of advertisements.

ASCI has one overarching goal: to maintain and enhance the public's confidence in advertising. ASCI seeks to ensure that advertisements conform to its Code for Self-Regulation which requires advertisements to be:

- I. To ensure the truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements.
- II. To ensure that advertisements are not offensive to generally accepted standards of public decency.
- III. To safeguard against the indiscriminate use of advertising for the promotion of products which are regarded as hazardous to society or to individuals to a degree or of a type which is unacceptable to society at large.
- IV. To ensure that advertisements observe fairness in competition so that the consumer's need to be informed on choices in the market-place and the canons of generally accepted competitive behaviour in business are both served.

**Does ASCI follow the Principles of Natural Justice when Handling Complaints?**

Yes. ASCI gives the Advertisers every opportunity to explain their point of view. If an advertisement has to be reviewed for its likely impact on the sensibilities of individual viewers of TV, or readers of press publications (as in the case of your complaint), ASCI requires to convey to the Advertiser concerned, the substantial issues raised in the complaint, in the exact context of the specific advertisement, as conveyed by the perception of the complainant. It usually gives the Advertiser two weeks to respond by way of comments. Only then the Consumer Complaints Council (CCC), of the ASCI, is in a position to deliberate meaningfully on the issues involved, and to arrive at a fair and objective conclusion, which would stand the scrutiny of all concerned with the right to freedom of expression, and the freedom of consumers to choose the products /services made available to them in the market-place.

**Time taken for Decision**

It takes 4 to 6 weeks for ASCI to take decision after receiving a "complete" complaint. This includes full particulars of the Print Ad, the name and date of Publication, and clipping or copy of the print Ad. In case of a TVC airing, it requires the Channel, date and time of the TVC, reasonable description of an A/V, specific claims or visual depictions which are considered to be false, misleading or objectionable and the reasons for the same.

**Protecting the Confidentiality**

As a policy ASCI does not disclose the identity of the complainant to the Advertiser or anyone other than the members of the CCC, at the time of their meeting, which is usually held once a month.

**Consumer Complaints Council (CCC)**

Pertinent details on complaints which have been decided on by ASCI's Consumer Complaints Council (CCC) and published in the Quarterly Compilation reports (normally sent to members of the ASCI), are made available to the Media on request (as in this instance), can be quoted verbatim, with mention of the source ie. "ASCI report on complaints decided by their CCC."

**ASCI Proactively Ensures that Ads Conform to its Code**

When a complainant makes a complaint by itself, it is treated as a suo motu complaint. Any Board member, CCC member or staff of the Secretariat can register a complaint which is considered to be a suo motu complaint. It goes through the same process as other complaints, ensuring that the Advertiser is given an opportunity to explain its view point.

**Decisions of ASCI**

In the case of complaints which are upheld by the CCC, 85 to 90 % of such Ads have been withdrawn or modified appropriately by the Advertisers/Agencies involved. The concerned Media also confirmed that they would not carry such offending Ads/TVC. Complainants do not have to pay anything to register a complaint.

**Does ASCI have any Guidelines or Rules for a Particular Category?**

ASCI has Guidelines on Advertising of Food & Beverages directed at children under 13 years of age. Children's choice of diet (food and beverages) and level of physical activity, can impact their general health and well being. It can have a positive influence by encouraging a healthy, well balanced diet, sound eating habits and appropriate physical activity. Caution and care therefore should be observed in advertising of Foods & Beverages especially ones containing relatively high Fat, Sugar and Salt.

**ASCI's Guidelines on Advertisements for Automotive Vehicles**

Advertisements have a significant influence on people's behaviour. As such, Advertisers are encouraged to depict advertisements, in a manner which promotes safe practices, eg wearing of helmets and fastening of seatbelts, not using mobiles/cell phones when driving, etc.

Specifically, advertisements should not portray violation of the Traffic Rules, show speed maneuverability in a manner which encourages unsafe or reckless driving, which could harm the driver, passengers and/or general public, show Stunts or actions, which require professional driving skills, in normal traffic conditions which in any case should carry a readable cautionary message drawing viewer attention to the depiction of stunts

**Power of ASCI**

ASCI's role has been acclaimed by various agencies including the Government. However, it lacks the force of legal recognition. The Government of India has at last, taken note of this and on 2nd August 2006 vide a notification in The Gazette of India: Extraordinary (Part II—sec. 3(i)), made sure that at least as far as TV Commercials go, they abide by the ASCI code. The amendment made in Cable Television Networks Rules, 1994 through a Notification dated August 2nd, 2006 now states:

"No advertisement which violates the Code for Self-Regulation in Advertising, as adopted by the Advertising Standards Council of India (ASCI), Mumbai for public exhibition in India, from time to time, shall be carried in the cable service". Any consumer can contact them regarding misleading advertisement through its WhatsApp number: 7710012345 or complaint on the website: [https://www.ascionline.org/LLIB\\_HTML\\_CLOAKING](https://www.ascionline.org/LLIB_HTML_CLOAKING)

**ASCI's Special Guidelines or Rules for a Particular Category**

ASCI's Guidelines on Advertising of Food & Beverages directed at children under 13 years of age. Children's choice of diet (food and beverages) and level of physical activity can impact their general health and wellbeing. It can have a positive influence by encouraging a healthy, well-balanced diet, sound eating habits and appropriate physical activity. Caution and care therefore should be observed in advertising of Foods & Beverages especially ones containing relatively high Fat, Sugar and Salt. For example, ASCI took a suo motu action against Cadbury's Bournvita Ad that "Real Achievers Grow Upon Bournvita" and the company was asked to substantiate its claim as it was highly exaggerated. The advertisement was discontinued in 2006.

ASCI also has Guidelines on advertisements for automotive vehicles.



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ASCI's code of Self-Regulation says: "Advertisements should be truthful and fair to consumers and competitors within the bounds of generally accepted standards of public decency and propriety. Not used indiscriminately for the promotion of products, hazardous or harmful to society or to individuals particularly minors, to a degree unacceptable to society at large".

#### ASCI Guidelines on Deceptive Design Patterns in Digital Media Advertisements

Advertising Standards Council of India (ASCI) published new comprehensive guidelines in June 2023 for 'Online Deceptive Design Patterns in Advertising', to empower businesses, designers, and stakeholders to create user-centric experiences while promoting transparency, trust, and ethical standards in the digital landscape. According to ASCI, 'dark commercial patterns' are "business practices employing elements of digital choice architecture, in particular in online user interfaces, that subvert or impair consumer autonomy, decision-making or choice. They often deceive, coerce or manipulate consumers and are likely to cause direct or indirect consumer detriment in various ways, though it may be difficult or impossible to measure such detriment in many instances".

The ASCI Guidelines identify four types of deceptive techniques which are used in online advertising namely drip pricing, bait and switch, false urgency, and disguised ads. The ASCI Guidelines are self-regulatory and cite few examples of online deceptive patterns in order to make stakeholders aware of what amounts to Dark Pattern in digital advertising<sup>vi</sup>.

Further ASCI has also finalized guidelines regarding green washing, curbing surrogate advertising, to check the menace of private coaching institutes.

#### 7.3 RERA ACT, 2016

The Real Estate (Regulation and Development) Act, 2016 (RERA) is an Act passed by the Indian Parliament. RERA seeks to protect the interests of home buyers and also boost investments in the real estate sector. The Government of India enacted the Real Estate (Regulation and Development) Act 2016 on 26th March 2016 and all its provisions came into effect, from May 1, 2017. The Act has given the Indian real estate industry its first regulator. It is now mandatory for each state and union territory to frame its own regulator and frame the rules that will govern the functioning of the regulator, on the basis of the model rules framed under the Central Act.

For long, home buyers have complained that real estate transactions were lopsided and heavily in favour of the developers. RERA and the government's model code, aims to create a more equitable and fair transaction between the seller and the buyer of properties, especially in the primary market. RERA, it is hoped, will make real estate purchase simpler, by bringing in better accountability and transparency, provided that states do not dilute the provisions and the spirit of the central act.

One of the primary reasons for delay of projects was that funds collected from one project, would invariably be diverted to fund new, different projects. To prevent such a diversion, promoters are now required to park 70% of all project receivables into a separate reserve account. The proceeds of such account can only be used towards land and construction expenses and are required to be certified by a professional.

#### Objects/Advantages of The Act

- (a) Promote transparency and accountability of developers in real estate sector.
- (b) To bring uniformity in regulatory environment of the real estate sector.
- (c) To ensure speedy adjudication of disputes.
- (d) Reduce litigation.
- (e) To promote growth of the real estate sector.
- (f) Boosting domestic and foreign investment in the real estate sector.
- (g) Ensure timely and efficient project execution.
- (h) Introduce professionalism & standardization in real estate sector.

#### How can Consumer's File a Complaint under RERA

Complaints can be filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016, either with the Real Estate Regulatory Authority or the adjudicating officer. Such complaints may be against promoters, allottees and/or real estate agents. Many state government have laid out the procedures for filing applications under the RERA. The complaint must be in the form prescribed as per the respective state government rules.

The complaint can be filed with respect to a project registered under RERA, within the prescribed time limit, for violation or contravention of provisions of the act or the rules or regulations framed under RERA in the format provided by the respective state government. Buyer needs to visit the RERA portal of the respective state government. The fee for filing a complaint under RERA varies from State to State. For example, in Maharashtra the fees is Rs 5,000 while in Karnataka and Uttar Pradesh it is Rs 1,000.

RERA law states that the Regulatory Authority should endeavour to dispose of the complaints within 60 days from the date of filing. However, the Authority can take more time and is only required to record the reasons for not completing the proceeding within the 60-day period. A major benefit for consumers included in the Act is that builders will have to quote prices based on carpet area not super built-up area, while carpet area has been clearly defined in the Act to include usable spaces like kitchen and toilets.

**Registration of Real Estate Projects**

A promoter cannot advertise, market, book, sell or offer for sale, or invite persons to purchase any plot, apartment or building, in any real estate project without registering the real estate project with the Real Estate Regulatory Authority.

Note: The projects that were ongoing on the date of commencement of this Act and for which the completion certificate was not issued, the promoter was required to make application for registration within a period of 3 months from the date of commencement of this Act.

**Projects which do not Require Registration**

The following projects do not require to be registered under the Act:-

1. Area of land does not exceed 500 Sq. Metres.
2. Number of apartments does not exceed 8.
3. Projects for which promoter has received completion certificate prior to commencement of this Act.

**Rights of Allottees**

- To obtain information in relation to the promoter and the real estate project.
- To know stage-wise time schedule of completion of the project and in relation to various services as agreed to be provided by the promoter to the allottees in accordance with the terms and conditions of the Agreement for Sale.
- To claim possession once the project is completed by the promoter. Also, the Association of Allottees can claim possession of common areas.
- To claim refund along with interest at prescribed rate and compensation as provided under the Act in the event the promoter fails to comply with or due to non-completion of the project as per the terms of Agreement for Sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.
- To obtain documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

**Duties of Allottees**

- To make payments as per the Agreement for Sale.
- To pay interest at a prescribed rate in case of delay in payments as specified above.
- To participate towards the formation of society/association.
- To take physical possession of the apartment, plot or building, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.
- To participate in the registration of Conveyance Deed.

**Functions of RERA (Sec 34)**

1. To register and regulate real estate projects and real estate agents.
2. To publish and maintain a website of records, publicly accessible, of all projects with details.
3. To maintain a database online, publicly accessible, of defaulter promoters with their names and photographs.
4. To maintain a database online, publicly accessible, of registered real estate agents and a list of those whose registration has been rejected or revoked.
5. To advise and make recommendations to the Government to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector.
6. To ensure compliance of the provisions of the Act.

**Power of the Authority (Sec 35)**

1. To impose penalty or interest on Promoter/Allottee/Agent in regard of any contravention of obligations.
2. To regulate its own procedure.
3. Suo motu make reference to Competition Commission of India of any matter that has effect of market power of monopoly situation being abused for adversely affecting the interest of allottees.
4. Suo motu or upon a complaint, call upon Promoter/Allottee/Agent at any time and order to furnish in writing information or explanation.
5. Authority may appoint one or more persons to investigate and inquire in relation to the affairs of Promoter/Allottee/Agent.
6. Authority may have the following powers, same as a civil court, namely:-
  - (a) Direct the discovery and production of books of accounts and other documents
  - (b) Summon and enforce the attendance of persons and examine them on oath
  - (c) Issue commissions for the examination of witnesses or documents.
7. It may pass Interim Orders.
8. To give directions to Promoter/Allottee/Agent, that would be binding on them.
9. To amend orders passed by it, only within 2 years of the date of passing of order.
10. To recover interest/penalty/compensation from Promoter/Allottee/Agent.
11. To enforce orders or directions of any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be.

Until 2017, most consumers aggrieved by real estate developers used to file their case under the Consumer Protection Act. With RERA the consumers can look forward for expeditious



disposal and early resolution of their complaints. For cases pending before any consumer fora, the complainants/allottees can withdraw the case and approach the authority under the RERA.

#### SUMMARY OF THIS CHAPTER

- When an advertisement is introduced into the perceptual process of the audience in such a way that the output of that perceptual process differs from the reality of the situation, the advertisement is said to be misleading. It includes a misrepresentation, omission or a practice that is likely to be deceptive.
- There are around twelve Acts which regulate misleading advertisements in India. Amongst them the Consumer Protection Act, 2019, Food Safety and Standards Act, 2006, Drugs and Magic Remedies (objectionable Advertisements), The Competition Act, 2002 are some of them.
- ASCI is a voluntary self-regulatory organization, registered as a not-for-profit Company under section 25 of the Indian Cos. Act. Advertising Standards Council of India (ASCI) (1985) has adopted a Code for Self-Regulation in Advertising. It is a commitment to honest advertising and to fair competition in the market-place. It stands for the protection of the legitimate interests of consumers and all concerned with advertising - advertisers, media, advertising agencies and others who help in the creation or placement of advertisements.
- The Real Estate (Regulation and Development) Act, 2016 (RERA) is an Act passed by the Indian Parliament. RERA seeks to protect the interests of home buyers and also boost investments in the real estate sector. The Government of India enacted the Real Estate (Regulation and Development) Act 2016 on 26th March 2016 and all its provisions came into effect, from May 1, 2017. The Act has given the Indian real estate industry its first regulator. It is now mandatory for each state and union territory to frame its own regulator and frame the rules that will govern the functioning of the regulator, on the basis of the model rules framed under the Central Act.

#### QUESTIONS FROM THIS CHAPTER

- Q1 What are misleading advertisements? What are ethical and legal remedies available to consumers to curb the menace of deceptive advertisements? Explain ASCI's role in curbing misleading advertisements? Mention its code of conduct?
- Q2 Explain ASCI's role in curbing misleading advertisements? Mention its code of conduct?
- Q3 Describe ASCI's guidelines for Influencer Advertising in Digital Media?
- Q4 "RERA seeks to protect the interests of home buyers and also boost investments in the real estate sector". In the light of this explain the main objects, functions and powers of Real estate authority?
- Q5 How can consumer's file a complaint under RERA? What are the rights and duties of allottees?

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## DEVELOPMENTS IN CONSUMER PROTECTION IN INDIA

### LEARNING OUTCOME

Consumer Movement in India; Voluntary Consumer Organisations (VCOs); National Consumer Helpline, GAMA, CONFINET, e-daakhil, Comparative Product Testing

### 8.1 CONCEPT OF CONSUMERISM

In the olden days the principle of 'Caveat emptor' which meant 'let the buyer beware' governed the relationship between the sellers and the buyers. With the opening up of the markets and globalization of goods and services the maxim no more holds true. Thus, with manufacturing, sales and marketing becoming more organized the principle of 'Caveat venditor' i.e., 'let the seller beware' holds true. With the rapid development of digital technologies and the increasing penetration of e-business, smart phones, cloud and internet there is a change in how the Indian consumers are buying products. Increasing internet and mobile penetration, growing acceptability of digital payments and favourable demographics have provided the unique opportunity for digital marketing companies to connect with Indian consumers. But shopping online sometimes poses problems related to cross-border transactions, risks of poor quality and unsafe products, predatory prices, exploitative and unfair trade practices. By the click of a mouse consumers can purchase products anywhere in the World, it is necessary that businesses are careful and do not exploit or mislead and dupe them.

Consumerism or consumer movement is a social movement. It refers to the collective power of consumers to take a country forward with respect to awareness, education and development. Consumerism attempts to improve the quality of living of the people by enhancing the economic well-being and bargaining power of consumers. According to McMillan dictionary, "Consumerism is concerned with protecting consumers from all organisations with which there is exchanged relationship. It encompasses the set of activities of government, business, independent organisations and concerned consumers that are designed to protect the rights of consumers". The Chamber's dictionary defines "Consumerism as the protection of the interests of buyers of goods and services against defective or dangerous goods".



According to Philip Kotler, "Consumerism is a social movement for government agencies to improve the buyer's rights and powers in relation to sellers." Consumerism or consumer movement is basically directing the market to be a buyer's market instead of being a sellers' market and empowering the consumers about their consumer rights. According to Cravens and Hills, "Consumerism is a social force within the environment designed to aid and protect the consumer by exerting legal, moral and economic pressure on business". The basic idea behind the consumer protection movement is protection of the rights of consumers.

### 8.1.1 Consumer Protection: International Developments

It was the US President John F Kennedy who declared the consumers' rights for the first time in his message to the American Congress on 15<sup>th</sup> March 1962 and called for the right to product safety, information, the right to choose and the right to be heard for consumers. In 1965 Ralph Nader published a book titled *Unsafe at Any Speed: The Designed-In Dangers of the American Automobile* where he accused the car manufacturers for lacking the safety features such as seat belts, and their resistance and reluctance to spend money on improving safety. Ralph Nader through his book brought up a change and a new law was designed in the area of auto safety.

In Great Britain the consumer movement began to gain momentum after the World War II through voluntary action taken by women organisations. In 1955 the Labour Party in UK came out with a pamphlet titled "Battle for the Consumer". It was argued as the case for quality marketing of goods also the setting up of consumer's council. The Consumer Protection Act, 1987 was passed by the British Parliament after an extensive debate on it. It is a wide ranging piece of legislation, creating both civil and criminal liability and of importance to industry and consumers.

From 1947 to 1957 consumer movement started in Germany, Denmark, Switzerland, France, Japan, Kenya, Hungary, Italy, Canada, and Belgium. Consumer protection received significant attention both at Federal and State levels in Australia. Later, International Organisation of Consumers' Union presently Consumers International (CI) coordinated the global consumer movement. CI is an independent, non profit organization of consumer groups and nongovernmental organizations (NGOs). CI, originally called the International Organization of Consumers Unions, was founded in 1960 to unify the voices of consumers worldwide. CI's mission is "to build a powerful international consumer movement to help protect and empower consumers everywhere."

CI helped devise, and currently supports, the implementation of the *United Nations Guidelines for Consumer Protection*, which was adopted by the United Nations in 1985 and further revised in 2015. These UN guidelines expanded on the four consumer rights named by President John F. Kennedy in his 1962 Consumer Bill of Rights for Americans, and added four more rights, viz, the right to redress, the right to consumer education, the right to healthy environment and the right to basic needs. These rights were incorporated in the United Nations Charter of Consumer Rights. The Government of India also recognised these rights later.

The consumer movement exercises a considerable influence on the socio-economic environment of business. In a country like India where there is a high percentage of illiteracy among people, where people are less informed and where critical goods are always in short supply, the Government has a significant role in safeguarding the interests of consumers by promoting a climate of fair competition and preventing exploitation of consumers.

### 8.1.2 Consumer Movement in India

India has an old history of consumer protection. Consumer protection was part of its ancient culture and formed the core of its political administration. Kautilya's 'Arthashastra' was the basic law of ancient India and the same was strengthened with provisions to protect consumers. Sale of commodities was organized in such a way that general public was not put to any trouble. If high profits put general public in trouble, then that trade activity was stopped immediately. For traders, profit limit was fixed. Even for services timely response was prescribed; e.g. for architects, carpenters, tailors, washer men, rules for the protection of consumer interest were given. Ancient literature also mentions that in India there were regulators who supervised weights and measures. For shortfall in weighing or measuring, sellers were fined heavily. Weights and measures used in trade were manufactured only by the official agency responsible for standardization and inspected every four months. Sellers passing off inferior products as superior were fined eight times the value of articles thus sold. For adulterated things, the seller was not only fined but also compelled to make good the loss.

After Independence from colonial rule in 1947 Indian economic policy was based on giving protection to domestic industries and not opening of domestic markets for foreign competition. In India, the consumer movement as a 'social force' began with the necessity of protecting and promoting the interests of consumers against unfair trade practices which was very different from how the consumer movement started in Western countries. In western countries, consumer movement was the result of post-industrialization and affluence of goods and services.

The basic reasons for the birth of the consumer movement in India are:

- Rampant food shortages, hoarding, black marketing, adulteration of food and edible oil, rising prices brought the consumer movement in an organised form, in the 1960s. The problem became particularly acute during the time of Indo-China war of 1962 and Indo-Pak war of 1965.
- Further lack of product choices due to poor development in technology and growing inflation in 1970's which lead to consumer unrest. It is believed that women in different states, especially Mumbai came together and raised their voice against the rise of prices of essential commodities.
- The consumer movement since then put pressure on business firms, as well as the government to correct business conduct that caused consumer detriment.
- A major step taken in 1986 by the Indian government was the enactment of the Consumer Protection Act 1986.

## 8.2 CONSUMER ORGANISATIONS

Our first Prime Minister Pandit Jawahar Lal Nehru remarked that "Law and constitutions do not by themselves make a country great. It is the enthusiasm, energy and constant effort of the people that make it a great nation". As per Article 19, Part III of the Indian Constitution all citizens have the right to form association or unions to further their group interests. Every citizen who is also a consumer can combine with other consumers to form associations, and exercise this right to work solving problems of the consumers. Thus, **Consumer organizations** are advocacy groups that seek to protect consumers from companies or dealers or service providers abuse regarding unsafe products, predatory pricing, misleading advertising, and protect the rights of consumers. A consumer organisation/association is a membership-based non-governmental non-profit body created to promote the interests of consumers of goods and services, by disseminating information and lobbying for laws to protect consumers against producers or sellers, who may usually be better organised or have more resources.

Consumer organizations make use of methods such as, protests, campaigning or lobbying and testing of products or services. They engage in single-issue advocacy or they may set themselves up as more general consumer watchdogs. They provide consumers useful information about independent surveys or test of products or services, address to problems of consumers, do advocacy, give them guidance and also file cases in the consumer forum on behalf of the consumers.

They make consumers aware about their rights and organise them by helping them in solving their problems by keeping them informed about consumer rights and redressal mechanism. The current standards on mandatory labelling, in various countries, have been shaped by past lobbying by consumer organisations. Thus, the aim of consumer organizations is to establish and to enforce consumer rights. They also keep a check on the unethical and unfair trade practices of companies through bad publicity. Consumer organizations attempt to serve consumer interests by relatively direct actions such as creating and/or disseminating market information, and prohibiting specific acts or practices, or by promoting competitive forces in the markets which directly or indirectly affect consumers (such as transport, electricity, communications, etc.). They help consumers to be well-informed about important aspects that they tend to ignore such as verifying the accuracy of the information given on product labels.

Consumer organizations have actively played an important role in India in establishing various laws for the protection of consumer rights. They also work at the grass root level and act as mediator between the consumer and the government. In India there are more than 600 consumer organisations and some of them are working and educating the rural consumers how to read a label, filing a case in consumer forums. Since there is high rate of illiteracy in rural India poor farmers fall prey and many times are cheated by defective seeds, fertilizer, pesticides spurious goods and misleading advertisement. In the hinterlands

it is required that the consumer organisations play a proactive role. Thus, Consumer Organizations are advocates of consumer rights which attempt to enforce consumer rights and protect people from corporate abuse. Following are some of the major Consumer Organizations in India:

1. Consumer Voice
2. CERC (Consumer Education and Research Centre)
3. FEDCOT (Federation of Consumer Organisations in Tamil Nadu)
4. Citizen Consumer and Civic Action Group
5. Consumer Guidance Society of India
6. CUTS (Consumer Unity of Trust Society)
7. Mumbai Grahak Panchayat

### 1. Consumer VOICE

Consumer VOICE was founded in 1983-84. Till mid-1986, Consumer VOICE functioned as an unregistered voluntary consumer association. On 28 June 1986, it was registered as a Public Charitable Trust. In 1988 the Department of Company Affairs, Govt. of India accorded recognition to Consumer VOICE under the MRTP Act. The trust has since been granted exemption under section 80-G of the Income Tax Act and, donations made to the Trust are exempt from Tax. However the organization does not accept donations from private enterprise in order to ensure objectivity, or from individuals except when the donor is genuinely committed to espouse the cause of consumer protection. In 1988 a proposal was sent by Consumer Voice to Ministry of Civil Supplies for a grant to test Coloured Televisions at government approved ERTL (N) labs set up with German assistance. In 1991 comparative product testing was started in a full fledged way for and 200 copies of Buying Guide to Colour TVs was published in 1993. In 1997 Consumer Voice started its bi-monthly English magazine named Consumer Voice by disseminating information through product testing, knowledge about how to buy, best price of products and services.

Further Consumer Voice raises awareness in consumers about malpractices perpetuated in the market place and empowers consumers about the consumer rights. Consumer VOICE enables consumer's to make informed choices by comparative testing of products and services and also influences decision makers in up-gradation of National Standards. They help the consumers to fight for their rights and get value for their money. They also inform manufacturers for improvement required in their products. Since 1997, VOICE has been publishing Consumer VOICE, magazine in English, Hindi and also digitally, that focuses on bringing information regarding tested products and empowers them to make informed choice.



## 2. Consumer Education and Research Centre (CERC)

Consumer Education and Research Centre (CERC) was set up in 1978, at Ahmedabad, which is dedicated to the education and empowerment of consumers as well as promotion and protection of consumer interests through effective uses of education, research, the media and law. CERC has three major goals – to make consumers aware of their rights, to help them protect themselves and to make providers of goods and services accountable.

Its activities include, comparative testing of products, complaints handling, legal advice and litigation, consumer education and awareness programmes, library and information service, publication, advocacy, investor and environment protection. At CERC's in-house laboratory, comparative testing is conducted in four product categories, viz. food, pharmaceuticals, personal care products and domestic electrical appliances.

## 3. FEDCOT (Federation of Consumer Organisations in Tamil Nadu)

The Federation of Consumer Organisations of Tamil Nadu and Pondicherry, well known by its acronym, FEDCOT, is a nation-wide non-governmental organization, established in 1990. It is an umbrella body of more than 350 registered consumer associations in Tamil Nadu and Pondicherry. It is one of the largest consumer organisations in the country and in Asia working at grass-roots level. It embraces people from different walks of life. It's sixty percentage of the member councils are organized in rural areas. FEDCOT acts as a research, training, education, awareness creating and advocacy group. It builds linkages and works in partnership with community-based organisations and grass-roots communities to strengthen their capacity and empower them to participate through initiatives in socio-economic accountable governance, sustainable agriculture, gender equalisation and ecological endeavours.

## 4. Citizen Consumer and Civic Action Group

CAG came into existence on 7 October 1985 as a non-profit, non-political, non-religious, voluntary and professional citizens group based in Chennai, India.

The Group was originally christened Consumer Action Group. After nearly a decade of their existence, they changed it to CAG (Citizen, consumer and civic Action Group). They deal with issues affecting the common citizen such as extreme pollution, lack of access to information, poor quality health care and civic amenities have emerged as priorities in the work undertaken by CAG.

## 5. Consumer Guidance Society of India

The Consumer Guidance Society of India (CGSI) is a consumer rights organisation based in Mumbai, India. It was founded by nine women in 1966, and became the first to conduct formal product testing in 1977. CGSI publishes a magazine, Keemat. It

works in the area of consumer rights and raises its voice against sub-standard products, very high prices, hazardous drugs, never ending shortage of goods and many more injustices.

## 6. Consumer Unity of Trust Society

CUTS International (Consumer Unity & Trust Society) was formed in 1983 in Rajasthan. The organisation today has five programme centres and one resource centre in India (at Jaipur with headquarters, Chittorgarh, Calcutta and New Delhi), two resource centres in Africa (at Lusaka, Zambia and Nairobi, Kenya) and one resource centre in London, UK. CUTS is probably the only Indian NGO with such overseas operations.

CUTS is registered since 1984, under the Rajasthan Societies Registration Act, 1958, the FCRA and under Sec: 80G of the Income Tax Act. It is governed by a 12-member Executive Committee, which are elected every three years from a general body of 350 life members and 150 institutional members. The activities of CUTS comprise research, advocacy and networking. Its working on several areas such as

1. Consumer protection,
2. International trade and development,
3. Competition, investment and economic regulation,
4. Human development, and
5. Consumer safety

## 7. Mumbai Grahak Panchayat

Mumbai Grahak Panchayat (MGP) is a registered voluntary consumer organization established in 1975. It has more than 20,000 members in and around Mumbai (Bombay) to whom it supplies about 75 essential commodities at their door-step, every month. MGP's joint purchase and distribution system has been acclaimed by Consumers International which supports, links and represents consumer organizations all over the world. To enable consumers to exercise their choice, especially before festivals, MGP also has Consumer Plazas at different locations in the city, for 10 days every year. Items like readymade clothes, bed sheets, bags, sarees, utensils, crockery are sold at reasonable rates.

MGP's Consumer Protection Wing has filed a number of public interest petitions to protect consumers' interests. MGP's Consumer Education Wing organizes consumer awareness camps, workshops, seminars for students and teachers.

## 8.3 NATIONAL CONSUMER HELPLINE

Government of India has set National Consumer Helpline (NCH), with a toll-free number 1800-11-4000 or 1915, which provides advice, information and guidance to empower consumers and persuade businesses to reorient their policy and management systems to

address consumer concerns and grievances adopting global standards. The National Consumer Helpline is operated by the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India. NCH 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. A consumer can call NCH to seek information, advice or guidance for its queries and complaints. The primary objective of the National Consumer Helpline is to provide a platform where consumers can seek information, guidance, and redressal of their grievances related to consumer rights and protection.

**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.
- The helpline also aims to educate consumers about their rights and responsibilities through awareness campaigns and information dissemination.

#### NCH VISION

*"A Nation of awakened, empowered and responsible consumers and socially and legally responsible Corporations."*

#### NCH MISSION

*"To provide telephonic advice, information and guidance to empower Indian consumers and persuade businesses to reorient their policy and management systems to address consumer concerns and grievances adopting world class standards."*

NCH responds to more than 40,000 complaints in a month, and it has partnered with more than 370 major companies to whom complaints are transferred online for resolution and getting feedback from them. An Integrated Grievance Redress Mechanism (INGRAM) portal was launched for bringing all stakeholders such as consumers, Central and State Government Agencies, private companies, regulators, Ombudsmen and call centres etc. on to a single platform. The portal helps in creating awareness among consumers to protect their rights and inform them of their responsibilities. Consumers can register online their grievances through this portal. The National Consumer Helpline is accessible now through this portal.

**Umang app** (Unified Mobile Application for New-Age Governance) is a new method developed for registering complaints related to consumer grievances. The helpline operates with trained personnel who assist consumers in multiple languages and provide personalized guidance based on the nature of the issue.

**State Consumer Helplines:** State Consumer Helplines have been set up by State Governments with the objective to encourage Alternate Consumer Disputes Redressal mechanism at State level and help in resolving cases through mediation.

It is relevant to note that e-commerce continues to occupy the highest proportion of all grievances registered on NCH. Major types of consumer grievances at NCH relating to e-commerce include delivery of defective products, failure to refund paid amount, delay in delivery of product etc.

**Jagruti the New Mascot:** Department of consumer Affairs has launched its new mascot Jagruti which is an aware consumer about its rights and responsibilities. Further a short new code '1915' has been launched by the Department of Consumer Affairs, where more and more consumers have been found registering their grievances on the National Consumer Helpline.



Overall, the National Consumer Helpline serves as a crucial resource for Indian consumers to assert their rights, seek redressal for grievances, and contribute to enhancing consumer awareness and protection across the country.

#### 8.4 GAMA PORTAL

**Grievances Against Misleading Advertisements (Gama) Portal:** In its endeavor to address the problems of misleading advertisements, the Government of India under the aegis of the Department of Consumer affairs has launched a portal called "Grievances Against Misleading



Advertisements (GAMA)" for registering complaints online. A Consumer can register a complaint along with a copy / video / audio of such advertisement through the web portal

### 8.5 CONFONET<sup>1</sup>

Confonet stands for "Consumer Information and Services Portal," which is an online platform developed by the Government of India to provide information and services related to consumer rights and protection. Some of the key aspects of it are:

1. **Purpose:** Confonet serves as a centralized resource for consumers to access information about their rights, consumer laws, and procedures for redressal of consumer grievances.
2. **Features:**
  - o **Information Repository:** It contains comprehensive information about consumer rights, laws, regulations, and consumer forums.
  - o **Complaint Filing:** Consumers can file complaints online through the portal, which helps streamline the process of seeking redressal for consumer grievances.
  - o **Updates and Notifications:** Confonet provides updates and notifications related to consumer protection laws, judgments, and important developments in the field of consumer rights.
  - o **Resources:** It serves as a resource hub with links to relevant documents, reports, and guidelines related to consumer protection.
3. **Accessibility:** Confonet is accessible to consumers across India and aims to empower them by providing transparent and easy access to information and services related to consumer protection.
4. **Support:** The portal is supported by the National Consumer Helpline and various consumer organizations to ensure effective dissemination of information and support for consumer advocacy.

Overall, Confonet plays a crucial role in enhancing consumer awareness, facilitating complaint resolution, and promoting consumer rights protection in India through its user-friendly online platform.

### 8.6 E-DAAKHIL PORTAL

**E-Daakhil portal** is presently functional and attending complaints regarding consumer grievances in 33 States/UTs for corresponding National Commission, State Commission, 13-Circuit Benches, 651-District Commissions. On 7th September 2020 E-filing was launched by National Consumer Dispute Redressal Commission (NCDRC). Delhi became the first state to implement it on 8th September, 2020. Later Maharashtra, Andaman & Nicobar Islands, Bihar, Chhattisgarh, Jharkhand, Gujarat, Chandigarh, Andhra Pradesh, Odisha, Uttar Pradesh, Madhya Pradesh, Punjab, Karnataka & Haryana implemented facility of e-filing in their respective States/UTs. Department of Consumer Affairs has been proactive in following up with the States/UTs to launch e-filing facility for consumers.

A web application for E-filing of consumer grievances called "**e-daakhil.nic.in**" was established by National Informatics Centre so that consumers can lodge consumer related complaints sitting at home. The digital software for filing consumer complaints has many innovative features such as e-Notice, case document download link and video conferencing hearing link, filing written response by opposite party, filing rejoinder by complainant and alerts via SMS/Email. The e-daakhil portal empowers the consumer and their advocates to file the consumer complaints along with payment of requisite fees online from anywhere for the redressal of their complaints. It also enables the consumer commissions to analyze the grievances digitally whether to accept, reject or forward the complaint to the involved commission for additional processing. To facilitate the marginalized and rural consumers in remote areas under the digital India program for e-filing, e-daakhil portal has been integrated with the Common Service Centre (CSC). As many consumers at Gram Panchayat level do not have access to electronic modes of communication or are incompetent to use ICT tools, they can seek help from the neighbourhood CSCs in filing their complaints in the concerned Consumer Commission. The work for integration of this portal with CSC has been done and for registration the users have to pay Rs 50/. Video tutorials and modules have been developed in English and Hindi language to facilitate consumers in teaching how to file a complaint under e-daakhil portal.

As of August 2022 after two years of inception of the e-daakhil portal 84,657 users registered themselves on it, out of which a total of 23,640 complaints were filed and 5,590 complaints were admitted and 889 cases disposed of and 4701 cases are still pending. For the past two years since E-Daakhil portal has become operational 766 cases have been disposed by district commissions, 50 by State Commissions and 73 by NCDRC. Several cases have made success stories which have been disposed through e-daakhil.

#### How to file a Consumer Complaint under E-Daakhil

Consumers should log in the E-Daakhil portal. To file a new case, users must have a valid email id so that they can get their complaint registered on e-daakhil portal. In addition, they are required to have soft copies of id proofs which can be voter id/PAN card/passport/ration card/driving licence. Document format for uploading should be pdf. After that go to <http://edaakhil.nic.in> and click on enter website button. In the menu box complainant/advocate section is there where users need to click on registration. User registration is a three-step process: where step 1 is to register email id, step 2 to get an OTP on your registered mobile number and step 3 involves activating account in order to login to the e-daakhil application. Here the user needs to mention e-mail id which it had given at the time of registration and also create a strong alpha numeric with a special character password and confirm it. Valid mobile number needs to be mentioned in the application to get notifications, with uploading id proof and current location, address, state and other personal details and write captcha code before clicking on submit button. After that users receive an OTP on their mobile phones which is valid for 15 minutes. The second step is to receive activation link on email using OTP. On user activation form write email id and the OTP received on mobile phone and click on continue to get activation link on email. After that the user account would be activated after User Id is verified.

After successful login the User Home Screen would show username on extreme right. This menu can be used for filing a new complaint, knowing case status, rejoinder, case status and approved case list. The documents required for filing a case include index, list of dates, Memo of parties, complaint with notarized attested affidavit, fee payable, supporting documents such as bill, voucher which should be attested by name and signature of the complainant. For condonation of delay beyond the limitation period an application can be sent to respective consumer commissions as they attend cases where the cause of action is within two years. All the scanned copies need to be uploaded therefore complainant should keep them ready. The different sections in e-filing are case details, additional complainant details, additional opposite party details, upload documents and finalise and submit the application after which the case cannot be edited. The fee structure for filing a complaint in consumer Commissions after the implementation of the Consumer Protection Act, 2019 and applicable since 20<sup>th</sup> July 2020 are as follows:

| Value and Compensation claimed      | Fee       |
|-------------------------------------|-----------|
| <b>District Commission</b>          |           |
| Upto 5 Lakh                         | Nil       |
| Rs 5 lakh & above but < Rs 10 Lakh  | Rs. 200   |
| Rs 10 lakh & above but < Rs 20 Lakh | Rs. 400   |
| Rs 20 lakh & above but < Rs 50 Lakh | Rs. 1000  |
| <b>State Commission</b>             |           |
| Rs 50 lakh & above but < Rs 1 Crore | Rs. 2000  |
| Above Rs 1 crore but < Rs 2 Crore   | Rs 2,500  |
| <b>National Commission</b>          |           |
| Above Rs 2 crore but < Rs 4 Crore   | Rs 3,000  |
| Above Rs 4 crore but < Rs 6 Crore   | Rs 4,000  |
| Above Rs 6 crore but < Rs 8 Crore   | Rs 5,000  |
| Above Rs 8 crore but < Rs 10 Crore  | Rs 6,000  |
| Above Rs. 10 Crore                  | Rs. 7,500 |

The complainant after filing the necessary details in the application form has to fill the pecuniary value of claim amount, cause of action includes State and district where the consumer wants to file the case. The consumer can check the pre details filled in by it earlier, after that it can fill case detail section where complainant details, opposite party details and advocate details if any are filled. Further documents in pdf format needs to be uploaded and the complainant can save its draft by clicking on preview button and select the commission where it wants to submit its case and it can cross check all the steps before submitting its application. Once case filing is finalized by the user it would receive OTP on mobile number and once details have been finalized the case cannot be edited.

E-filing was launched by National Consumer Dispute Redressal Commission (NCDRC) on 7th September, 2020. Delhi was the first state to implement it on 8th September, 2020. Later Maharashtra, Andaman & Nicobar Islands, Bihar, Chhattisgarh, Jharkhand, Gujarat,

Chandigarh, Andhra Pradesh, Odisha, Uttar Pradesh, Madhya Pradesh, Punjab, Karnataka & Haryana implemented facility of e-filing in their respective States/UTs. Department of Consumer Affairs had been proactively following up with the States/UTs to launch e-filing.

Several cases have made success stories which have been disposed through e-daakhil. Mainpuri District lead by Hon'ble Justice Subhash Chandra Kulshrestha has the quickest disposal of cases on e-daakhil platform. Mandatory Acknowledgement of Consumer Complaints by e-Commerce Entity within 48 hours is established to redress complaints.

The efficacious provisions of the Consumer Protection Act 2019, allows the aggrieved consumers to seek compensation for injury. It also contemplates provisions for penalizing the violators by competent court. The Act also encompasses provisions of hearing the complaints through video conferencing in consumer commissions. Thus, consumers can make use of the online portal E-Daakhil as an option against offline filing of cases.

### 8.7 COMPARATIVE TESTING (CT)

Comparative testing of branded products and services involves evaluating and comparing various attributes of similar products or services to help consumers make informed choices. In India, there are several organizations and initiatives that conduct comparative testing to ensure quality, safety, and reliability of products and services. Thus, CT means an unbiased testing of different brands of a product category by an independent organization to help consumers make fair decision while purchasing different products and services. It helps consumers to make informed choice by comparing various brands in the same product category on various factors such as quality, price, quantity, product features, performance. Thus comparative testing results provide consumers with impartial information on quality characteristics of branded products to make a fair decision out of numerous brands available in the market.

In many developed countries such as USA, Germany the concept of comparative testing is not new. In USA, it has been practiced for more than 75 years. The laboratories of Consumer Union have been coming out with product test reports since 1936 and their first publication was regarding bottled milk in their monthly magazine Consumer Reports. The Consumer Union's tests now called as Consumer's International test results range from cars to coffee to vitamin tablets. 'Which' magazine from UK, the 'Choice' of Australia and 'The Consumer' from New Zealand have all been actively involved in comparative testing and publishing test results and have been reckoned by many consumers.

Organisations which are primarily involved in comparative testing in India are:

- **Consumer VOICE<sup>®</sup>:** It conducts extensive product testing and publishes comparative reports on various consumer goods ranging from electronics to household items. They assess products based on performance, safety, durability, and value for money.
- **Consumer Reports India and Concert:** They aim to provide unbiased reviews and comparisons of products across different categories, helping consumers make informed decisions.



### How Comparative Testing is Done

A product is selected on nation-wide availability, market share and price range. CT tests different brands offered for the same purpose. Test results provide consumers with unbiased information. Each characteristic of a product useful for consumers is tested. The results of testing are compared and rated against one another.

For example, if comparative testing of soap is done then for testing purposes based on the nation-wide availability, market share of the brands at least ten different brands of soap bars would be bought from the market such as

- Pears
- Dettol
- Dove
- Savlon
- Santoor
- Cinthol
- Mamaearth
- Biotique
- Fiam Di Wills
- Mysore sandal bar

After that a sticker is put on the name of the brands and the label is codified by giving names such as A, B, C and so on. After that they would be sent to the lab for testing. The laboratory based on the nature of the product is selected to do the testing of various brands on quality parameters. For example, in case of a soap it would be

- Cleaning efficiency
- Surface Damage
- Mushiness
- Foam/Lather
- Matter insoluble in alcohol
- Moisture
- Alkanity
- Retention

Further results would be communicated by the laboratory to the organization which would show which brand has stood first, second and so on. Since it is third party certification it helps the companies to improve themselves and empowers consumers to make the right choice. As these organisations are supported by government they do not accept any commercial

advertising. Choice of products for Comparative Testing by an organisation depends upon their nationwide availability, market share and price range.

When there are various brands available in the market which offer very similar features, making a rational decision is a tough task for the consumer. For buying products and services consumers require updated information about the quality, durability, after sales service offered by the retailer. Comparative testing helps the consumers in making a logical purchase decision and enables them to influence and bend the market to their demands. The demands from consumers can force a review of production processes as well as redress mechanisms.

The Ministry of Consumer Affairs has been financing various Voluntary Consumer Organizations for conducting comparative tests of Products and services. This helps the consumers to compare the products and take purchase decisions diligently. It confirms and protects the "Right to choose" which is guaranteed to Indian Consumers in the Consumer Protection Act, 1986. The test results are based on the findings of laboratory tests conducted by the concerned NGOs/VCOs.

Testing is crucial to the protection of consumer rights for it serves as a powerful link between the consumers, the government and the manufacturers. It brings the consumer to the center-stage of product manufacturing and selling, thus strengthening consumer position in the wider perspective of product conceptualisation, manufacturing and quality maintenance. The comparative testing programme started in India with the Sathi Nair Committee of the Ministry of Civil Supply and Public Distribution supporting comparative testing of products in 1991. With this VOICE started comparative product testing during the early nineties on television sets.

### Major Recommendations of the Sathi Nair Committee on Comparative Testing

- Manufacturers should agree to procedures being followed in comparative testing.
- A weighting and grading plan to be evolved to suit Indian conditions.
- Comparative testing would be done on 10-15 models purchased from market.
- Samples from market to be based on market share of the company.
- In case of litigation, it is to be ascertained if people who do testing are obliged to come to witness box and depose.

### How Comparative Testing Protects Consumers

- Enables Consumers to Choose Better and Safer Alternative Products at Competitive Prices.
- Serves as a Link Between Consumers, the Government and the Manufacturers.
- Brings Consumer Concerns to the Centre-stage of Product Manufacturing, Selling and policy making.
- Right to Safe Product - Informing consumers on Unsafe products
- Right to Complete Information About the Product - Brand Specific Information

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- Right to Choose Among a Variety of Products - Price and Quality Comparisons
- Right to Consumer Education - Educates consumers regarding markets

#### Objectives of Comparative Testing

- To provide consumers unbiased information that will enable them to make a rational choice among major brands available in the metropolitan markets. This will help them to get good value for their money.
- To raise the standards of manufactured goods and services by increasing public awareness and consequently to pressurise the manufacturers to improve the quality of the products they supply. Thus, the standard of goods improve.
- To serve as a basis for campaigns to persuade Government to introduce policies which protect the rights of consumers.
- To communicate to government, regulatory and standard authorities the test-results for appropriate action against malpractices.
- To educate consumers about the types of products that will be most likely to suit their needs. Consumers would then pressure producers to improve the quality of their products.
- To draw public attention to unsafe goods and unfair trade practices.
- To verify the product claims of different brands of health related products as per available National Standards.

The testing is done by VCO through NABL Accredited Laboratories and the test results are shared with Regulatory Authorities, concerned State Governments and media. The same are disseminated through Consumer magazines and also the report is linked with the website of Department of Consumer Affairs.

In India Consumer Voice and Concert, consumer organisations are actively involved in comparative testing of products. Unlike the West, quality consciousness is not yet the way of life in India. The concepts of Comparative testing, consulting a magazine before purchasing a brand would always help in empowering the consumers.

### 8.8 RECENT DEVELOPMENTS IN CONSUMER PROTECTION IN INDIA

Some of the recent developments in Consumer Protection include the following:

**A. The Consumer Protection Act, 2019:** The Consumer Protection Act, 1986 in present times has thus, become archaic and it has been repealed and replaced with the Consumer Protection Act, 2019. The New Act received its assent from the President on 9th August 2019 and was implemented on 20th July 2020. The Consumer Protection Act, 2019, provides mechanisms for making the consumer complaint system more robust. The earlier Act faced huge anomalies where the problems of consumers related to e-commerce, product liability, more than 6.2 lakh pending consumer cases in the consumer courts, misleading advertisements were not attended instantly. Since, Justice delayed is justice denied' any delay in seeking redressal by consumers reduces their trust in the system.

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Innovative methods such as mediation, Central Consumer Protection Authority, product liability, mediation centres attached to consumer commissions, unfair contracts, class action suits are now a part of the Consumer Protection Act, 2019. The new techniques provide speedy redressal to consumers and would be a gamechanger. It is believed that the New legislature would be able to overcome the anomalies in the Old Act and would be a pathbreaker. Salient features of the Consumer Protection Act, 2019 are:

Some of the key highlights of the Consumer Protection Act, 2019 Act which proposes slew measures for protection of consumers are:

- 1. Establishment of Consumer Commissions:** To provide inexpensive, speedy and summary redressal of consumer disputes, quasi-judicial bodies have been set up in each District and State and at the national level, which now would be called as the District Commissions, the State Commissions and the National Commissions respectively. At present, there are more than 600 District Forums and 35 State Commissions with the National Consumer Disputes Redressal Commission (NCDRC) at the apex. NCDRC has its office at Janpath Bhawan, A Wing, 5th Floor, Janpath, New Delhi. Thus, the three-tier system in the New Act would be the same as set up in the Consumer Protection Act, 1986 at district, state and national levels. As per the rules revised pecuniary jurisdiction for entertaining consumer complaints in respect of goods and services paid as consideration are as follows:

- (a) District Commission up to ₹ 50 lakhs
- (b) State Commission More than ₹ 50 lakh to ₹ 2 Crore
- (c) National Commission More than ₹ 2 Crore

Since the access to District commissions is better compared to state and national commissions, the increase in limit to ₹ 50 lakhs of District Commissions is a welcome step in terms of convenience and accessibility.

- 2. Central Consumer Protection Authority (CCPA):** The Act envisages establishment of a central regulator, Central Consumer Protection Authority (CCPA), similar to Federal Trade Commission in US. The Authority addresses matters related to consumer rights, unfair trade practices, misleading advertisements and imposes penalties for selling faulty and fake products. As a regulator CCPA has the powers to take suo motu actions towards the manufacturers, sellers and service providers. Thus, CCPA can act on:

- (a) complaints of unfair trade practices,
- (b) issue safety guidelines,
- (c) order product recall or discontinuation of services,
- (d) refer complaints to other regulators,
- (e) has punitive powers such as imposing penalties, and
- (f) can file actions before consumer commissions
- (g) Intervene in proceeding in matters of consumer rights or unfair trade practices

The Central Authority also has an Investigation Wing headed by a Director-General for



the purpose of conducting inquiry or investigation under the Act which is a new addition in the Consumer Protection Act, 2019.

For false and misleading advertisements CCPA can issue a penalty upto ₹ 10 lakh on a manufacturer and endorser and includes online marketing. For a subsequent offence, the fine may extend to ₹ 50 lakh. For every subsequent offence, the period of prohibition may extend to three years. However, there are certain exceptions when an endorser will not be held liable for such a penalty. CCPA has the authority to direct the removal of a misleading advertisement and can take Suo-motu actions.

Recently, CCPA has directed E Commerce companies to recall the pressure cookers and reimburse their prices to the consumers and submit a compliance report of the same within 45 days. The company has also been directed to pay a penalty of ₹ 1,00,000 for allowing sale of such pressure cookers on its e-commerce platform and violating rights of consumers. The Domestic Pressure Cooker (Quality Control) Order, which came into force on 01.02.2021 mandates conformity to IS 2347:2017 for all domestic pressure cookers. Therefore, since 01.02.2021, all pressure cookers are required to conform to IS 2347:2017 and due diligence is required to be done whether the pressure cookers are offered for sale online or offline.

To raise cognizance and quality awareness among consumers, CCPA has launched a country-wide campaign to prevent sale of spurious and counterfeit goods that violate QCOs issued by the Central Government. Everyday usage products classified as part of the campaign consist of helmets, domestic pressure cookers and cooking gas cylinders. CCPA has written to District Collectors across the country to investigate unfair trade practices and violation of consumer rights concerning manufacture or sale of such products and submit Action Taken Report. Bureau of Indian Standards also conducted search and seizure of a number of non-standard helmets and pressure cookers where 1,435 pressure cookers and 1,088 helmets which did not conform to mandatory standards have been seized by them.

3. **Consumer Councils:** Chapter II of the Consumer Protection Act, 2019 envisages setting up of the Consumer Protection Councils at the Centre, in all the States and in each district. As in the 1986 Act the New legislature also provides for establishment of Advisory councils at three levels: National, State and District. The object of the Councils is to promote and protect the rights of the consumers. The Councils are very important and potent deliberative bodies for the consumers and play an important role in spreading the consumer movement, especially in rural areas. The Councils act as the catalyst for change so that the present market system functions for the welfare of the consumers and for satisfying their needs.

4. **Product Liability:** Chapter VI applies to every claim for compensation under a product liability action by a complainant for any harm caused by a defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller. A product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.

A product manufacturer shall be liable in product liability action, if—

- (a) the product contains a manufacturing defect; or
- (b) the product is defective in design; or
- (c) there is a deviation from manufacturing specifications; or
- (d) the product does not conform to the express warranty; or
- (e) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.

5. **Mediation:** Chapter V of the Act introduces the concept of mediation for providing speedy redressal to consumers. The State Government, by notification, would open a consumer mediation cell which would be attached to each of the District Commissions and the State Commissions of that State. The Central Government would also establish, by notification, a consumer mediation cell to be attached to the National Commission and each of the regional Benches. A consumer mediation cell would consist of persons as may be prescribed who would act as mediators and try to resolve complaints between the business and the consumers with a win-win situation for both the parties. Every consumer mediation cell would maintain—

- (a) a list of empanelled mediators;
- (b) a list of cases handled by the cell;
- (c) record of proceeding; and
- (d) any other information as may be specified by regulations.

Every consumer mediation cell would submit a quarterly report to the District Commission, State Commission or the National Commission to which it would be attached.

6. **Unfair Contracts:** It means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following:
  - (i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations.
  - (ii) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract.
  - (iii) refusing to accept early repayment of debts on payment of applicable Penalty.
  - (iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause.
  - (v) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent.

(vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage.

7. **Ease in Filing of Complaints:** Several provisions aimed at simplifying the consumer dispute adjudication process in the consumer commissions have been added. These include, among others, enhancing the pecuniary jurisdiction of the consumer disputes redressal agencies, increasing minimum number of members in the consumer fora to facilitate quick disposal of complaints, power to review their own orders by the state and district commission, constitution of 'circuit bench' to facilitate quicker disposal of complaints, reforming the process for the appointment of the president and members of the district commission, and deemed admissibility of complaints if the question of admissibility is not decided within the specified period of 21 days.

The Act now allows consumers to file their complaints with the consumer courts from anywhere. This is a big relief as earlier consumers were required to file complaint in the area where the seller or service provider was located or where the transaction had taken place. This is a welcoming change, especially with the rise in e-commerce purchases, where the seller could be located anywhere. In addition, the Act also enables the consumer to file complaints electronically through e-Daakhil App and in the Consumer Commissions and seek a hearing through video conferencing, saving both money and time and a big respite to physically challenged consumers.

8. **E-Commerce and Direct Selling Guidelines:** The Consumer Protection (E-commerce) Rules, 2020 are mandatory and are not advisories. It mandates e-tailers to display details of sellers supplying goods and services on their websites and moot the procedure to resolve consumer complaints. They apply to all e-commerce retailers, whether registered in India or abroad, offering goods and services to Indian consumers. The e-commerce companies are required to ensure that personally identifiable information of customers are protected. Display terms of contract between e-Commerce entity and the seller relating to return, refund, exchange, warranty / guarantee, delivery / shipment, mode of payments, grievance redressal mechanism etc. to enable consumers to make informed decisions. All relevant details about the goods and services offered for sale by the Seller including country of origin and in case of imported goods the name and details of the importer and guarantees related to the authenticity or genuineness of the imported products need to be provided to enable the consumer to make an informed decision at the pre-purchase stage. Marketplaces, as well as sellers, need to appoint a grievance officer. No e-commerce entity shall manipulate the price of goods or services to gain unreasonable profit or discriminate between consumers of the same class or make any arbitrary classification of consumers affecting their rights or post fake reviews.
9. **Strict Penalties for Endorsers:** Under the New legislature if the Central Consumer Protection Authority is satisfied after investigation that any advertisement is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights, it may issue directions to the concerned trader or manufacturer or endorser or advertiser or publisher, as the case may be, to discontinue such advertisement or to modify the same.

The Central Authority has the powers to impose a penalty in respect of false or misleading advertisement, by a manufacturer or an endorser, which may extend to ten lakh rupees. For every subsequent contravention by a manufacturer or endorser, it may impose a penalty, which may extend to fifty lakh rupees. Further, the Central Authority if it deems it necessary, it may, by order, prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to one year.

It is believed that the Consumer Protection Act, 2019 would play a key role in strengthening the consumer movement in India. The innovative methods added in the New Act would act serve as a deterrent to any trader or service provider or E-Commerce company who would think twice before cheating consumers.

**B. SMART CONSUMER APPLICATION:** The Government has launched a mobile application "Smart Consumer" to enable the consumer to scan the bar code of the product and get all details of the product such as name of the product, details of manufacturer, year and month of manufacture, net content and consumer care details for making complaint in case of any defect.

**C. Consumer App:** In order to help consumers to seek advice and register their complaints the Department of Consumer Affairs has launched a Consumer App on 01-10-2019. The App is available in both Hindi and English on Android as well as iOS platform. Through the Consumer App, a consumer can register its complaint/grievance and also give suggestions. In the month of October, almost 3020 complaints were received, out of which 2000 complaints have been resolved. The App aims at giving a fair resolution within 60 days.

**D. Online Dispute Resolution:** An Online Consumer Mediation Centre, established at the National Law School of India University, Bengaluru under the aegis of Ministry of Consumer Affairs, Government of India aims to provide for a state-of-the-art infrastructure for resolving consumer disputes both through physical as well as online mediation through its platform. The center will provide innovative technology for consumers and organisations to manage and resolve conflicts and to propel online mediation as a first choice to resolving consumer disputes. This is an innovative tool that affords consumers better access to justice through quick and easy redressal mechanism and at the same time provide opportunity for businesses to maintain good customer relations.

**E. Online Consumer Communities:** In association with the Local Circles, a social media platform, the Government has launched a platform 'Online Consumer Communities' for citizens to discuss and opine about governance and daily life issues. Through this, a citizen can get connected with their Government, City, Causes, Neighborhood, Interest, needs and any other communities they are a part of it.

**F. Campaign on Internet Safety:** India has currently one of the largest number of internet users. With the rapid increase in digitization across all spheres, the message of internet safety needs to be integrated into the everyday tasks that the consumer undertakes online. Government in association with a Partner Company has initiated a year-long campaign organizing 'Digital Literacy, Safety & Security' workshops to educate users about the challenges of internet safety and security.



**H. Consumer Awareness:** The Government has been conducting a countrywide multimedia awareness campaign since 2005 on various issues related to consumer rights and responsibilities across diverse subjects. "Jago Grahak Jago" [Awake Consumers awake] has today become a household axiom. In order to create awareness among the people living in rural and backward areas, the Government has decided to take part in important fairs/festivals of various states/UTs, in view of the fact that such fairs/festivals draw a large number of people from rural and backward areas.

**K. Citizen Charter:** It has been recognised the world over that good governance is essential for sustainable development, both economic and social. The three essential aspects emphasised in good governance are transparency, accountability and responsiveness of the administration. The "Citizen's Charters initiative" is a response to the quest for solving the problems which a citizen encounters, day in and day out, while dealing with organisations providing public services.

The concept of Citizen's Charter enshrines the trust between the service provider and its users. The concept was first articulated and implemented in the United Kingdom by the Conservative Government of John Major in 1991 as a national programme with a simple aim: to continuously improve the quality of public services for the people of the country so that these services respond to the needs and wishes of the users. The programme was re-launched in 1998 by the Labour Government of Tony Blair which rechristened it "Services First".

The basic objective of the Citizen's Charter is to empower the citizen in relation to public service delivery. The six principles of the Citizen's Charter movement as originally framed were:

- (i) Quality: Improving the quality of services;
- (ii) Choice: Wherever possible;
- (iii) Standards: Specifying what to expect and how to act if standards are not met;
- (iv) Value: For the taxpayers' money;
- (v) Accountability: Individuals and Organisations; and
- (vi) Transparency: Rules/Procedures/Schemes/Grievances.

These were later elaborated by the Labour Government as the nine principles of Service Delivery (1998), which are as follows:-

- (i) Set standards of service;
- (ii) Be open and provide full information;
- (iii) Consult and involve;
- (iv) Encourage access and the promotion of choice;
- (v) Treat all fairly;
- (vi) Put things right when they go wrong;

- (vii) Use resources effectively;
- (viii) Innovate and improve;
- (ix) Work with other providers.

#### Citizen Charter: The Indian Scenario

At a Conference of Chief Ministers of various States and Union Territories held on 24 May, 1997 in New Delhi, an "Action Plan for Effective and Responsive Government" at the Centre and State levels was adopted. One of the major decisions at that Conference was that the Central and State Governments would formulate Citizen's Charters, starting with those sectors that have a large public interface (e.g., Railways, Telecom, Posts, Public Distribution Systems and the like). These Charters were to include first, standards of service as well as the time limits that the public can reasonably expect for service delivery, avenues of grievance redressal and a provision for independent scrutiny through the involvement of citizen and consumer groups.

The Department of Administrative Reforms and Public Grievances in Government of India (DARPG) initiated the task of coordinating, formulating and operationalising Citizen's Charters. The guidelines for formulating the Charters as well as a list of do's and don'ts were communicated to various government departments/organisations to enable them to bring out focused and effective charters. For the formulation of the Charters, the government agencies at the Centre and State levels were advised to constitute a task force with representation from users, senior management and the cutting edge staff.

The Charters are expected to incorporate the following elements :-

- (i) Vision and Mission Statements;
- (ii) Details of business transacted by the organisation;
- (iii) Details of clients;
- (iv) Details of services provided to each client group;
- (v) Details of grievance redressal mechanism and how to access it; and
- (vi) Expectations from the clients.

Primarily an adaptation of the UK model, the Indian Citizen's Charter has an additional component of 'expectations from the clients' or in other words 'obligations of the users'. Involvement of consumer organisations, citizen groups, and other stakeholders in the formulation of the Citizen's Charter is emphasised to ensure that the Citizen's Charter meets the needs of the users. Regular monitoring, review and evaluation of the Charters, both internally and through external agencies has been enjoined.

As on March, 2005, 107 Citizen's Charters had been formulated by the Central Government Ministries/Departments/Organisations and 629 Charters by various agencies of State Governments & Administrations of Union Territories. Most of the national Charters are posted on the government's websites and are open to public scrutiny. The organisations with Citizen's Charters have been advised to give publicity to their Charters through such means as print/electronic media and awareness campaigns.

### The Ministry of Consumer Affairs Citizen Charter

Citizens' Charter of the Department of Consumer Affairs is a declaration of commitment of the Department to achieve excellence in the formulation and implementation of policies and procedures of the Department of Consumer Affairs for the benefit of consumers and the public at large. Department of Consumer Affairs is the nodal agency for formulation of National Consumer Policy, implementing various consumer related programmes, formulating standards through Bureau of Indian Standards (BIS), and Testing & Evaluation through National Test House, a sub ordinate a subordinate office for fulfilment of all other objectives as mentioned in the vision of the Department. In this process the department consults and collaborates with the following stakeholders state governments and union territories from Food, Consumer Protection and Legal Metrology department. Full two responsibility centres namely Bureau of Indian Standards and National Test House, National Consumer Disputes Redressal Commission (NCDRC), Indian Institute of Public Administration and National Law Schools, Federation of Indian Chamber of Commerce (FICCI) and industry and leading voluntary consumer organisations and all consumers under various disciplines across the country are consulted. The document mentions how consumers can get speedy redressal and the Charter is updated every year.

### SUMMARY OF THIS CHAPTER

- Consumer movement refers to the collective power of consumers to take a country forward with respect to awareness, education and development. Consumer movement is a social movement which attempts to improve the quality of living of the people by enhancing the economic well-being and bargaining power of consumers.
- Rampant food shortages, hoarding, black marketing, adulteration of food and edible oil, rising prices gave birth to the consumer movement in an organised form, in the 1960s.
- Consumer organizations are advocacy groups that seek to protect consumers from companies or dealers or service providers abuse regarding unsafe products, predatory pricing, misleading advertising, and protect the rights of consumers. Consumer organizations make use of methods such as, protests, campaigning or lobbying and testing of products or services.
- A comprehensive up-gradation of the existing Consumer Protection Act, 1986, by way of introduction of the Consumer Protection Act, 2019 and for strengthening the rights of consumers and providing a mechanism for redressal of their complaints regarding defects in goods and deficiency in services has received the assent of the President of India on 9th August 2019.
- The Government has launched a mobile application "Smart Consumer" to enable the consumer to scan the bar code of the product and get all details of the product such as name of the product, details of manufacturer, year and month of manufacture, net content and consumer care details for making complaint in case of any defect.
- Many new schemes such as GAMA portal, Online communities have been launched by the Department of Consumer Affairs. The Government has been conducting a

countrywide multimedia awareness campaign since 2005 on various issues related to consumer rights and responsibilities across diverse subjects. "Jago Grahak Jago" [Awake Consumers awake] has today become a household axiom.

- Government of India has set National Consumer Helpline (NCH), with a toll-free number 1800-11-4000 or 1915, which provides advice, information and guidance to empower consumers and persuade businesses to reorient their policy and management systems to address consumer concerns and grievances adopting global standards.
- Department of consumer Affairs has launched its new mascot Jagriti which is an aware consumer about its rights and responsibilities. Further a short new code '1915' has been launched by the Department of Consumer Affairs, where more and more consumers have been found registering their grievances on the National Consumer Helpline.
- Confor: stands for "Consumer Information and Services Portal," which is an online platform developed by the Government of India to provide information and services related to consumer rights and protection. Comparative testing of branded products and services involves evaluating and comparing various attributes of similar products or services to help consumers make informed choices.
- A web application for E-filing of consumer grievances called "edaakhil.nic.in" was thus established by National Informatics Centre so that consumers can lodge complaint sitting at home. The digital software for filing consumer complaints has many innovative features such as e-Notice, case document download link and video conferencing hearing link, filing written response by opposite party, filing rejoinder by complainant and alerts via SMS/Email. The e-daakhil portal empowers the consumer and their advocates to file the consumer complaints along with payment of requisite fees online from anywhere for the redressal of their complaints. It also enables the consumer commissions to analyze the grievances digitally whether to accept, reject or forward the complaint to the involved commission for additional processing.

### QUESTIONS FROM THIS CHAPTER

- Q1 Describe the concept of consumerism? Mention the various International and National developments leading towards consumer movement?
- Q2 What are consumer organisations? Explain how they work at grassroot level in protecting consumer rights?
- Q3 Name any five consumer organisations working for empowering consumers in India?
- Q4 "Consumers are cheated because they are unorganised". In the light of the above statement explain the role and importance of empowering consumers in India?
- Q5 What are consumer organisations? Explain the functioning of some major consumer organisations in India?
- Q6 Write a case study on how consumer organisations involve in comparative testing of products?
- Q5 Enumerate any Recent Developments in Consumer Protection in India?



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- Q6 Mention the salient features of the Consumer Protection Act, 2019?
- Q7 What is National Consumer Helpline? Explain its objectives and functions?
- Q8 Write a short note on E-daakhil portal?
- Q9 Explain the following:
- GAMA App
  - Confonet
  - Umang App
  - Ingram App
  - Smart Consumer App

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## CHAPTER

## 9

## QUALITY AND STANDARDIZATION

## LEARNING OUTCOMES

Quality and Standardisation: AGMARK, ISI mark, Hallmarking, Consumer Grievance Redressal under the BIS Act, 2016. Role of Energy rating and Energy Standards, Role of ISO and international standards

## 9.1 INTRODUCTION

Quality means conformance to requirements. Standards form the fundamental base for the development of goods, articles, process, system and services by establishing consistent protocols which can be universally understood and adopted. Much before India got Independence in 1947, the role, relevance and the importance of standardization was understood by the manufacturing sector in the country. The early manufacturing industry adhered to the then benchmarks of specifications and quality control. The Indian Standards Institution (ISI) came into existence on 6 January 1947. The objective of setting ISI is for promoting standardization and quality control. The Indian Standards Institution formulated standards and checked quality by drawing on different facets of the economic community, namely, industrialists, scientists, administrators and consumers. ISI accommodated all legitimate interests of the stakeholders through consensus.

With the expansion of standards formulation and consequent to the spurt in the manufacturing of diverse range of products in the economy, it was felt necessary to introduce the Certification Marks Scheme. The authority for this was derived from the *ISI (Certification Marks) Act*, 1952. The Certification Marks Scheme was launched in 1955. The growth and popularity of this scheme led to unscrupulous sections of market forces adopting unethical means by misusing the popular ISI mark. The legal and the regulatory framework to deal with this menace, however, lacked teeth to either deter or punish the wrongdoers. This structural weakness led to the enactment of the *Bureau of Indian Standards (BIS) Act*, 1986, with a broader scope added to its mandate and enhanced powers to curb the misuse of the ISI mark. The Bureau assumed the assets, liabilities and functions of the Indian Standards Institution (ISI). The economic reform process in India initiated in the 1990's and subsequent financial and real sector reforms unshackled the domestic economy and accelerated the pace of economic growth. This led to Standardization increasingly becoming a common tool for creating competitive advantage, spreading best practices and entering new markets.

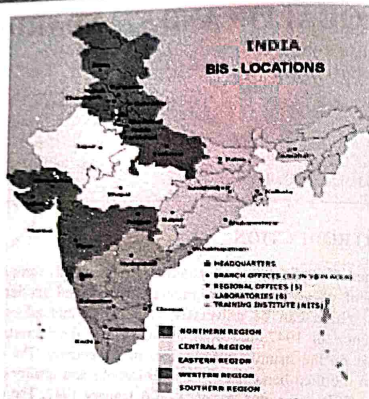
The BIS Act, 1986 broadly focused on the harmonious development of the activity of standardization, marking and quality certification of goods and other related matters. The success, popularity and growth of organisation and the changing marketing environment has necessitated the promulgation of the new Bureau of Indian Standards Act, 2016.

### BIS - National Standards Body

Indian Standards Institution  
1947

BIS Act  
1986

BIS Act  
2016



#### 9.2 THE BUREAU OF INDIAN STANDARDS (BIS) ACT 2016

The Bureau of Indian Standards (BIS) Act 2016 establishes BIS as the National Standards Body of India. Besides containing provisions for establishing voluntary standards, the Act also contains provisions to bring under compulsory certification regime any article, process or service which it considers necessary from point of view of health, safety, environment, prevention of deceptive practices, security etc. Enabling provisions have also been made for making hallmarking of the precious metal articles mandatory. The Act allows multiple types of conformity assessment schemes, including Self Declaration of Conformity against any standard which provides simplified options to manufacturers to adhere to the standards and get certificate of conformity. It enables the Central Government to appoint any authority, in addition to the BIS, to verify the conformity of products and services to a standard and issue certificate of conformity.

BIS Act, 2016 has been notified by the Central Government on 22 March 2016 to enable BIS align its policies and programmes to provide further fillip to domestic production and growth of trade.

The main features of the BIS Act, 2016, includes:

- (i) Establishing the Bureau of Indian standards (BIS) as the National Standards Body of India
- (ii) Allowing multiple types of conformity assessment schemes
- (iii) Enabling the Government to bring under the mandatory certification regime such goods, article, process system or service which it considers necessary from the point of view of public interest; human, animal, or plant health, safety of the environment, prevention of unfair trade practices, and national security
- (iv) To enable the Government to make hallmarking of precious metal articles, mandatory
- (v) To provide for recall of products bearing the Standard Mark, but not conforming to relevant Indian Standards and
- (vi) To strengthen penal provisions, enable compounding of offences, and also make certain offences as cognizable.

Through the New BIS Act, the Government envisages building a climate for quality culture and consciousness and greater participation of consumers in formulation and implementation of National Standards. The Bureau, in its present form, is a body corporate consisting of 25 members representing both the Central and the State Governments. Members of Parliament, industries, scientific and research institutions, consumer organizations and professional bodies. The Union Minister of Consumer Affairs, Food and Public Distribution is the President and the Minister of State for Consumer Affairs Food and Public Distribution is the Vice-President of the Bureau. BIS has introduced different schemes for conformity assessment of products and systems. Schemes for the Hallmarking of jewellery items of gold and silver were introduced in 2000 and 2005, respectively. Its headquarters are in New Delhi, with regional offices in Kolkata, Chennai, Mumbai, Chandigarh and Delhi, and 20 branch offices which serve as effective links between State Governments, industries, technical institutions, consumer organizations, etc of the region. It also works as WTO-TBT enquiry point for India.

#### Activities of BIS:

The activities of BIS can be broadly grouped under the following heads:

- (a) Standards Formulation: Formulation of National Standards
- (b) Product Certification Scheme Product/Systems product, hallmarking and management systems
- (c) Compulsory Registration Schemes
- (d) Foreign Manufacturers Certification Schemes
- (e) Hallmarking Scheme
- (f) Laboratory Services
- (g) Sales of Indian Standards/ other publications



- (h) International Activities
- (i) Consumer Related Activities
- (j) Training at National and International Level
- (k) Information Services
- (l) Project Management

**Objectives of BIS:****OVERVIEW**

- Harmonious development of the activities of standardization, marking and quality certification of goods.
- To provide thrust to standardization and quality control for growth and development of industry on one hand and to meet the needs of consumers on the other.

**9.3 FORMULATION OF NATIONAL STANDARDS**

Providing the need-based globally relevant Indian standards in a time-bound manner to the industries and consumers has always been the endeavour of BIS. For formulation of such Indian Standards, BIS functions through the Technical Committee structure in terms of Sectional Committees, Subcommittees and Panels set up for dealing with specific group of subjects under their respective Division Councils. These Technical Committees include representatives of various interests such as organized consumers, consumer bodies, regulatory and other government bodies, industries, scientists, technologists, testing organizations and individual experts. It also includes concerned officials of BIS.

The appropriate Sectional Committee of BIS takes up a subject for formulation of Indian Standard(s) based on proposals which may be submitted by any Ministry of the Central Government, State Governments, Union Territory Administrations, Consumer Organizations, Industrial Units, Industry Associations, Professional Bodies, Members of the Bureau and Members of its Technical Committees with the approval of the concerned Division Council. It is the policy of BIS to formulate Indian Standards on emerging technologies and to withdraw obsolete standards. During 2017, 609 (new 336 and revised 273) standards were formulated. The total number of standards in force, as on 31 March 2016 were 18,781.

**9.4 REVIEW OF STANDARDS**

Indian Standards are reviewed as and when considered necessary, but at least once in five years to establish whether these standards are still relevant and also to take appropriate action for reaffirmation, revision, issuing amendments, declare obsolescence or withdrawal.

**Harmonisation of Standards**

The role of standards in international competitiveness and their potential to act as non-tariff barriers to trade is being more widely recognized. To sustain competitiveness in the global

markets it is important to harmonize Indian Standards, as far as possible, with International Standards formulated by International Organization for Standardization (ISO) and the International Electro-technical Commission (IEC). Further, India is a signatory to the WTO Agreement on Technical Barriers to Trade (TBT). As per the agreement, member countries of WTO are required to align their National Standards with International Standards. However, country specific concerns on health, safety, environment, national security and prevention of deceptive practices can be considered/ incorporated while formulating National Standards. BIS considers International Standards, wherever they exist as a basis for standards development. During 2017 Year, 129 Indian Standards were harmonized with International Standards.

**CONFORMITY ASSESSMENT SCHEMES OF BIS****PRODUCT CERTIFICATION SCHEME****MANAGEMENT SYSTEM CERTIFICATION SCHEMES****HALLMARKING OF GOLD & SILVER****A. Product Certification Schemes**

BIS operates one of the largest product certification scheme in the World. Presence of BIS standard mark (popularly known as ISI mark) on a product indicates its conformity to the relevant Indian Standard. Licence is granted to the manufacturers for the use of Standard Mark (ISI Mark).

**CONFORMITY ASSESSMENT – PRODUCT****PRODUCT CERTIFICATION SCHEME**

Domestic Manufacturer

Foreign Manufacturer

Since 1955

Since 1993

**REGISTRATION SCHEME**

(Self Declaration of Conformity – SDoC) Since 2013 Domestic Manufacturer Foreign Manufacturer



Before granting licence to any manufacturer, BIS ascertains the availability of required infrastructure and capability of the manufacturer to produce and test the product conforming to the relevant Indian standard on a continuous basis. Samples are also drawn from the production line as well as from market and tested in independent laboratories to ensure their conformance to the relevant Indian Standard.

The certification scheme is basically voluntary in nature, but for a number of products, in public interest, it has been made mandatory by the Central Government under various statutes such as *The Food Safety & Standards Act, The Essential Commodities Act, The Explosive Substances Act, The Atomic Energy Regulation Board, the Environment Protection Act, The Infant Milk Substitutes, Feeding Bottles and Infant Food Act and The Bureau of Indian Standards Act*, etc.

Some of the items under mandatory certification are LPG cylinders valves and regulators, milk powder, condensed milk, cereal food for infant, skimmed milk powder, infant milk substitute, hexane food grade, clinical thermometers, packaged drinking water, packaged natural mineral water, safety requirements for electric iron and immersion water heater, cables, switches, electric lamps and CFLs, circuit breakers, energy meters, dry batteries, steel tubes, oil pressure stoves, X-Ray equipment, plastic feeding bottles, cement, steel and steel products, pneumatic tyres and tubes for automotive vehicles, centrally cast ductile iron pressure pipes, ductile iron fittings for pressure pipes, electrical transformers, etc.

The total number of Indian Standards which have been covered under BIS Certification Marks Scheme are 960. The total number of operative licences as on 2017-18 were 34457.

#### Product Certification Scheme

Basically Voluntary in nature  
About 960 Products under Certification  
136 Products under Mandatory Certification  
Total – 34457 (2017-18)  
12445 (36%) – Mandatory, 22012 (64%) – Voluntary

First licence granted on 8 August 1955.  
Operated through a network of  
5 Regional, 33 Branches offices throughout India with Headquarters at  
New Delhi

#### Mandatory Certification

|   |
|---|
| Packaged Drinking Water and Natural Mineral Water                         |
| Infant Milk Products and Milk Powder                                      |
| Feeding Bottles   |
| Cement  |
| Electrical Appliances, Switchgear, Dry Cell Batteries, Capacitors, Cables |
| Gas Cylinders, Valve Fittings and Regulators                              |
| Steel & Stainless steel Coil, Sheets and products                         |
| Steel Tubes   |
| Automotive Tyres and Tubes  |
| Pressure Stoves   |
| Clinical Thermometers   |
| Diagnostic Medical X-Ray equipment  |

#### Major Product categories under certification

| PRODUCT CATEGORY                               | NO. OF LICENCE (APPROX)                           | PRODUCT CATEGORY                               | NO. OF LICENCE (APPROX) |
|--|---|--|-------------------------|
| Packaged Drinking water                        | 5500  | Plywood, Blockboard & related wood products    | 2500                    |
| Steel/stainless steel and products             | 2000  | PVC, HDPE pipes & fittings                     | 2450                    |
| Electrical Cables & Conductors                 | 2250  | Pumps & Motors                                 | 1600                    |
| Electrical appliances, Switches, sockets, MCBs | 1450  | Automotive tyres & Tubes                       | 350                     |
| Distribution Transformers                      | 500   | LPG Cylinders, Valves & Regulators, LPG Stoves | 600                     |
| Cement   | 1900  | Concrete Products — Pipes, Paver Blocks        | 1400                    |
| Protective Helmets                             | 220   | Pressure Cooker                                | 330                     |
| <b>Major products</b>                          | <b>About 23000 out of total 34457 BIS licence</b> |  |                         |



### BIS REGISTRATION SCHEME

49 products have been brought under Compulsory Registration Scheme based on the compliance of the Products to Indian Safety Standards

Major products include Mobile phones, Laptops, Automatic Data Processing Machines, LCD/LED TVs, Printers, Scanners, Rechargeable cells/batteries, Microwave Oven, UPS, Solar PV modules etc.

#### B. Management Systems Certification Scheme (MSCS)

- Bureau of Indian Standards has been operating Management Systems Certification Scheme since 1991.
- Initially, BIS started the scheme with Quality Management System Certification (IS/ISO 9001) and over the years it has gradually expanded its activities to various other Management Systems.
- NABCB, QCI has accredited Quality Management System Certification Schemes and Environmental Management System Certification Schemes of BIS.
- The Management Systems Certification Department at New Delhi is the policy making department which also coordinates the Systems Certification activities from the country in a uniform and impartial manner as per ISO/IEC 17021
- The Management Systems Certification activities are de-centralized to its five regional offices: the central region located in Delhi, the eastern region located in Kolkata, the northern region located in Chandigarh, the southern region located in Chennai and the western region located in Mumbai. The Deputy Director General (Region) is the granting, renewing and cancellation authority of the licence and this activity is coordinated by the Management Systems Certification Officer of the region.

#### Features of Management Systems Certification Scheme (FMSCS):

- BIS is the only organization in India which operates Management Systems Certification Scheme under an Act of Parliament.
- BIS is the National Standards Body (NSB) of India and represents the country in the international forum on standardization including International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC)
- Being member of ISO, BIS takes part in the deliberations of the Technical Committee such as ISO/TC 176 and ISO/TC 207 responsible for formulation of ISO 9000 series of standards and 14000 series.
- ISO is not operating any certification scheme. However, it has compiled a directory of certification bodies world over and as expected, the name of BIS is included in the directory.

- BIS has large resources of auditors & experts throughout the country leading to more economic operation of certifications scheme.
- BIS has a wide network of regional offices and branch offices for providing timely and efficient and economical service.
- BIS is a non-profit organization and hence certification services are very cost effective.

#### (i) Quality System Certification: Certification Scheme as per IS/ISO 9001:2015

BIS Quality Management System Certification Scheme (QMCS) was launched in September 1991. The Scheme is being operated in accordance with standard ISO/IEC 17021 'Conformity assessment -Requirements for bodies providing audit and certification of management systems'.

During 2015-16, 43 new QMCS licences were granted. As on 31 March 2016, a total of 893 QMCS licences are in operation, covering industrial sectors such as chemicals, metal and metal products, cement, construction, dairy plants, education, electricity generation, engineering services, mining, machinery, petroleum, plastic, pharmaceuticals, textiles, etc. QMCS licences have also been taken by organizations in the service sectors such as financial sector, health sector, insurance, information technology, telecommunications, transport, etc.

#### (ii) Environmental Management System (EMS) Certification Scheme as per IS/ISO 14001:2004

The Environmental Management System (EMS) Certification Scheme was launched by BIS as per IS/ISO 14001 and it is being operated as per the International criteria laid down in ISO/IEC 17021. During the year, 8 new EMS licenses were granted, bringing the total number of operative licences to 205. These licences cover technology areas like integrated steel plants, thermal power plants, aeronautical industries, atomic power, wagon workshops, pharmaceuticals, machinery, mining, public administration, etc.

#### (iii) Occupational Health and Safety Management System (OHSMS) Certification Scheme as per IS 18001:2007

BIS has launched Occupational Health and Safety Management System (OHSMS) Certification Scheme as per IS 18001:2007. This essentially enables an organization to define, plan and manage policies and objectives, taking into account the legislative requirements and the information about significant hazards and risks, which the organization can control and with a view to protect its employees and others, whose health and safety may be affected by the activities of the organization.

18 new OHSMS licences were granted during the year, bringing the total operative licenses to 98 as on 31 March 2016. The licences cover technology areas like thermal power plants, ceramic industry, cycle industry, gas power stations, health services and employee development centres, textiles, plastic, cement, construction, electrical and telecommunication cables, petroleum refinery, insecticides, industrial and explosive chemicals, railways etc.

- Hazards Analysis and Critical Control Point (HACCP) Scheme as per IS 15000:1998**  
 (iv) BIS also offers a standalone HACCP Certification Scheme as per IS 15000:1998. As on 31 March 2016, two HACCP stand-alone licences and 39 licences integrated with QMS, were in operation.
- Food Safety Management System (FSMS) Certification Scheme as per IS/ISO 22000:2005**  
 (v) BIS has launched Food Safety Management System (FSMS) as per IS/ISO 22000. This system is designed to allow all types of organization within the food chain to implement a food safety management system. As on 31 March 2016, 10 FSMS licences were in operation.
- Service Quality Management System (SQMS) Certification Scheme as per IS 15700:2005**  
 (vi) The Service Quality Management System (SQMS) Certification was launched by BIS in April 2007, based on the Indian Standard IS 15700. This standard focuses on delivery of quality service across the counter by public service organisations and the organizations implementing this standard can be certified by BIS. 37 new licences were granted during the year 2015-16. Total number of 77 licences were operative as on 31 March 2016.
- Energy Management System (EnMS) Certification Scheme as per IS/ISO 50001:2011**  
 (vii) BIS launched the Energy Management Systems Certification Scheme as per IS/ISO 50001:2011 in 2013. Implementation of this scheme essentially enables an organization to achieve and maintain optimum energy procurement and utilization, thereby minimizing energy costs and mitigating environmental effects. As on 31 March 2016, 12 EnMS licences were in operation.

### C. Hallmarking of Jewellery

India's total consumption of gold is 800-850 tonnes out of which 60% comes from the rural markets. To provide third party assurance and satisfaction that consumers are getting right purity of gold (or silver) for the given price (value for money) the hallmarking scheme has been introduced by BIS. Hallmarking is the accurate determination and official recording of the proportionate content of precious metals. Hallmarks are thus official marks used in many countries as a guarantee of purity or fineness of precious metal articles. In India, at present two precious metals namely gold and silver have been brought under the purview of Hallmarking.

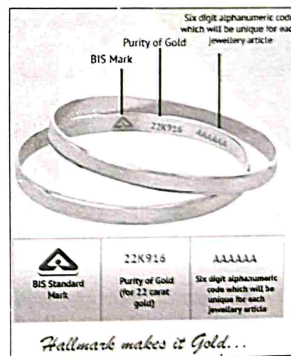
Hallmarking of gold Jewellery is a Purity Certification Scheme of BIS. Hallmarking indicates the caratage or number indicating gold content on a scale of 1000. Hallmarked Jewellery has to go through stringent norms of manufacture and quality control. It is assessed and marked by BIS recognized Assaying and Hallmarking Centres only. Assaying is a rigorous process for testing the purity of gold.

Hallmarking is the accurate determination and official recording of the proportionate content of precious metal in the jewellery/artefacts or bullion/coins. Hallmarking Scheme is currently voluntary. However, Quality control order for mandatory hallmarking of gold jewellery/artefacts has been issued on 15 Jan 2020 by the Govt. of India. Mandatory hallmarking of gold jewellery/artefacts has come into force with effect from 16<sup>th</sup> June 2021 in a phased manner.

Hallmarking of gold jewellery was started by BIS in April 2000 to provide third party assurance to consumers on the purity of gold jewellery or its fineness. The scheme for Hallmarking of silver jewellery/artefacts was launched in October 2005. Under the Scheme, while the jewellers are granted licence to sell hallmarked jewellery, Assaying & Hallmarking (A&H) centres are recognized to assay the purity of the jewellery submitted by the licensed jeweller and to apply hallmark on such jewellery which conforms to relevant Indian Standard. For hallmarking of jewellery, a jeweller who wants to sell hallmarked jewellery has to obtain a registration from BIS. The registration of jeweller's process has been made online. The jeweller fills the application form online, uploads the requisite documents, pays the fees online and the registration is granted instantly and can be downloaded by the jeweller. The same procedure is applicable for renewal of registration.

The registered jeweler submits the jewellery for hallmarking to BIS recognized Assaying & Hallmarking (A&H) centre. A&H centres are the testing centres where the jewellery is tested. After testing, the A&H centre applies hallmark on the jewellery which is found meeting the requirement of the standard. The A&H centre can apply for recognition to BIS online. The recognition is granted to A&H centres for hallmarking of jewellery/artefacts after verifying the infrastructure requirements, capability and competency of personnel to carry out assaying & hallmarking. Entire process of recognition, which involves audit of the centres, submission of audit report, and grant of recognition or renewal, has been automated. The list of registered jewellers and BIS recognised A&H centres is available on the BIS website [www.bis.gov.in](http://www.bis.gov.in). Hallmark indicates that the Jewellery articles have been independently tested and assures that it conforms to the marked fineness.

Hallmark serves as third party assurance. Consumers can get their jewellery/sample tested from any of the BIS Recognized Assaying & Hallmarking Centre. The Assaying and Hallmarking Centres undertake the testing of Jewellery/Samples of consumers on priority basis by charging fees. The Assaying and Hallmarking centres are required to issue Assay Report giving proper identifications as marked on article. In case Hallmarked Jewellery brought by the consumer is found to be of lesser purity than that marked on jewellery, the testing charges would be refunded to the consumer by the centre who had hallmarked the jewellery. The jeweller shall be obliged to satisfy the consumer through replacement as envisaged in the existing scheme. For getting a gold article hallmarked charges are Rs. 35/- per article and minimum charges for a consignment should be Rs. 200/- (Services Tax and other levies as applicable shall be extra). To get a silver article hallmarked hallmarking charges are Rs.25/-per article and Minimum charges per consignment is Rs





150.00. (Services Tax and other levies as applicable shall be extra).  
With the introduction of six digit alphanumeric code from 1 July 2021, the four marks have now been replaced by three marks for gold jewellery/ artefacts as given below BIS Mark Purity in carat and fineness for gold (e.g. 22K916, 18K750, 14K585) Six digit alphanumeric code AAAAAA

### Hallmarking Rules Before 2021

Before 2021 consumers had to look for the following in a hallmarked gold article

- (a) BIS Mark
- (b) Purity in carat and Fineness (it can be any of the following)
  - 1) 22K916 Corresponding to 22 Carat
  - 2) 18K750 Corresponding to 18 Carat
  - 3) 14K585 Corresponding to 14 Carat
- (c) Assaying/Hallmarking Centre's Identification Mark/Number
- (d) Jeweller's Identification Mark/number

Also, before 2021 consumers had to look for the following identification marks while purchasing a hallmarked silver article

#### • BIS Mark Silver

- o Purity grade/fineness (it can be any one of the following)

| Grade |                                       | Fineness |
|-------|---------------------------------------|----------|
| 9999  | Fine Silver                           | 999.9    |
| 9995  |                                       | 999.5    |
| 999   |                                       | 999.0    |
| 990   | Silver alloys for jewellery artefacts | 990.0    |
| 970   |                                       | 970.0    |
| 925   |                                       | 925.0    |
| 900   |                                       | 900.0    |
| 835   |                                       | 835.0    |
| 800   |                                       | 800.0    |

- Assaying/Hallmarking Centre's Identification Mark/Number
- Jeweller's Identification Mark/number

In order to avoid frauds in gold and silver jewellery consumers should buy hallmarked jewellery and should keep the authentication certificate safely.

### Hallmarking scheme operation

Certificate to Jeweller as per IS1417 for Gold or IS 2112 for Silver - valid for 5 year

- Self Marking Rights not available to Jeweller for Hallmark
- To submit all jewellery to be hallmarked to Assaying & Hallmarking Centre
- Pay Hallmarking Charges to A & H Centre
- 23,599 Gold Jewellers, 1,911 Silver Jewellers

Recognition to Assaying & Hallmarking Centre (AHC) as per IS 15820 and relevant standards for gold or silver— valid for 3 years

- Receipt of Jewellery from Licensed Jeweller
- Testing as per relevant IS and against declared purity
- Hallmarking of Jewellery
- 757 AHC Centres

The hallmark logo consists of the BIS logo which is marked on BIS Hallmarked Jewellery along with fineness (916 for 22 carat), A&HMC's logo (Assaying and Hallmarking Centre's Mark) — where the Jewellery has been assayed.




Earlier (Before 1 July 2021) hallmarked Jewellery consist of following four marks:

BIS Mark Purity in carat and fineness for gold (e.g. 22K916, 18K750, 14K585) In case of silver only fineness of 990, 970, 925, 900, 835, 800 Assay centre's identification mark / number Jewellers identification mark/number.

### Hallmark

#### Four Components of Hallmark on Gold Jewellery

|   |   |  |                               |
|---|---|--|-------------------------------|
|  | Purity in Carat and Fineness<br>e.g. 22K916 | Assaying and Hallmarking Centre's Mark | Jewellers Identification Mark |
|---|---|--|-------------------------------|

Purity grades to be marked in carat and Fineness can be any of the following

|        |                           |
|--------|---------------------------|
| 22K916 | Corresponding to 22 Carat |
| 18K750 | Corresponding to 18 Carat |
| 14K585 | Corresponding to 14 Carat |

Hallmarks protect consumers against victimization due to irregular gold quality or impure gold. The consumer should look for four things while buying gold jewellery: the BIS mark, the caratage and fineness number and the mark of the BIS recognised Assaying and Hallmarking and jeweller's identification mark.

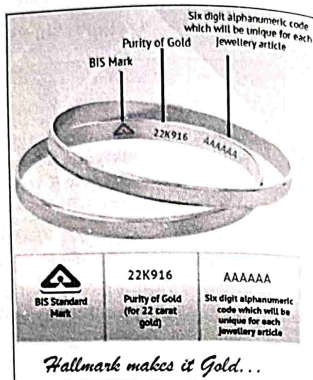
The recognition of an Assaying and Hallmarking Centre is done against IS 15820:2009. The Indian Standard on Gold Hallmarking IS 1417:2016 specifies three grades for hallmarking of gold jewellery/artefacts which are 14 Carat, 18 Carat and 22 Carat and Indian standard on Silver hallmarking IS 2112: 2014 specifies six grades of silver alloys viz 990, 970, 925, 900, 835, 800 used in the manufacture of jewellery/artefacts of silver. Hallmarking charges for the jewellery are – Rs.35/- +GST per piece for gold jewellery and Rs.25/- +GST per piece for silver jewellery irrespective of the weight of the jewellery. After grant of registration to jeweller, BIS periodically visit the sales outlet(s) and randomly draws sample of Hallmarked article as on sale and gets it tested according to the relevant Indian Standard at its own referral assay labs at Chennai, Sahibabad and Kolkata to ascertain the purity of the precious metal content in the sample. In case of failure of sample, action is taken on both the jeweller and the assaying and hallmarking centre. BIS also carries out periodic surveillance audit of the A&H centre to ascertain its continuation with the specified requirements. For hallmarking of gold bullion and coins of fineness 995 and 999 parts per thousand a refinery or a mint obtains a license and applies hallmark during the manufacturing.

### 9.5 GROWTH OF HALLMARKING SCHEME

As on 31 December 2021, around 1 lakh 30 thousand Jewellers had taken registration from BIS for selling hallmarked jewellery and artefacts while 1004 BIS recognized assaying and hallmarking centers are operative in the country. In the past, in a year maximum number of jewellery hallmarked was 4.49 crore in the year 2018-2019. However, after the launch of automation software, around 5.5 crore jewellery have been hallmarked with HUID in the period from 1st July 2021 to 31 December 2021.

#### What are the New Rules?

The government has made it mandatory for jewellers to hallmark gold jewellery, but with some relaxations. Jewellers with an annual turnover of up to Rs 40 lakh will be exempted from the mandatory hallmarking. Similarly, jewellery for international exhibitions, jewellery for government-approved business-to-business domestic exhibitions are also exempted. Watches, fountain pens, and special types of jewellery such as Kundan, Polki, and Jadau



have also been given relaxation under the new regulation. It will also allow hallmarking of additional carats 20, 23, and 24.

Quality control order for mandatory hallmarking of gold jewellery/artefacts has been issued on 23 June 2021 by the Govt. of India which makes hallmarking mandatory in 256 districts of the country where there is atleast one assaying and hallmarking centre. The mandatory hallmarking order is applicable on 14, 18 and 22 carats of gold jewellery/artefacts only.

#### Why has the Government taken the Step towards Hallmarking?

Government's move towards hallmarking will help consumers ensure quality of gold jewellery they are buying, and help the country become a hub for buying gold in the world. "The hallmarking of jewellery/artefacts is required to enhance the credibility of gold jewellery and customer satisfaction through third party assurance for the marked purity/fineness of gold, consumer protection," the Ministry of Consumer Affairs, Food and Public Distribution said in a press release. "This step will also help to develop India as a leading gold market centre in the world," it added.

India is the second-largest consumer of gold in the world and in the first quarter of 2021, the country consumed 140 tonnes of gold, according to a report by the World Gold Council.

#### How will end Consumers be Impacted due to Hallmarking?

The development will be beneficial for the consumers because this will bring accountability in the sector and hence, they can be assured about the quality of their gold. The new rules will not hurt the end consumer as the government has allowed jewellers to buy back old gold jewellery without hallmarks from the consumer. Old jewellery can be hallmarked as it is, if feasible by the jeweller or after melting and making new jewellery.

In terms of pricing also, the consumer won't be impacted much, say experts, as the hallmarking charges will make a small portion of the overall price. "We might see a small hallmarking fee initially but over time jewellers will find ways to absorb it through making charges and other means," said Neelesh Hundekari, Partner, Consumer and Retail Practice, Kearney.

#### Impact on the Jewellers and the Industry at Large

Large jewellery retail chains such as Tanishq, Kalyan Jewellers, will not be impacted by the new rule as they are already running organised operations and hallmark their jewellery. "Over 400 stores of Tanishq, Mia and Zoya, across 215 towns are registered under BIS and have the hallmarking license and 100 percent of the inventory being sold from all our stores is hallmarked," said Ajoy Chawla, CEO, Titan Jewellery, Titan Company. The development, however would make the industry more organised. "Mandatory hallmarking will standardise the purity of gold jewellery and take the industry towards being more structured as well as further push the ongoing shift of business and customers from the unorganised to the organised jewellery segment," said Ramesh Kalyanaraman, Executive Director – Kalyan Jewellers.

#### Consumer Protection and Hallmarking Scheme

Consumer should buy Hallmarked Jewellery from BIS registered jewellers and the following points should be taken care off:



9.16

- Check the BIS certificate of registration displayed in the shop.
- Check the BIS certificate of registration displayed in the shop.
  - Check Hallmark, consisting of four marks, on the article with the help of a magnifying glass of 10 X magnification available in the shop.
  - Need not pay Hallmarking cost more than Rs.35/- +GST per piece for gold jewellery and Rs.25/- +GST per piece for silver jewellery.
  - Take the bill which should mention hallmarking cost, net weight of precious metal, purity in carat and fineness on the bill.
  - BIS follows a well-established complaint redressal procedure. Complaints are recorded centrally at Complaints Management and Enforcement Department (CMED). Complaints can be made both offline and online. Online complaint can be made through mobile app BIS CARE or by use of Consumer Engagement Portal at BIS website [www.bis.gov.in](http://www.bis.gov.in).
  - Consumers can get their hallmarked jewellery tested from any of the BIS Recognized A&H Centre on chargeable basis and can lodge a complaint with BIS in case of shortage in purity is observed. BIS ensures its redressal by the registered jeweller. In case of shortage of purity, consumer is entitled to get the compensation calculated on two times the shortage in purity for the weight of the article sold.

#### D. Foreign Manufacturers Certification Scheme (FMCS)

**Certification Schemes for Imported Goods:** BIS also operates two Certification Schemes for imported goods; one for the foreign manufacturers and the other for Indian importers. The Schemes are essentially similar to BIS Product Certification Schemes for domestic industry barring slight modifications necessary for operation of such schemes.

BIS has been operating separate scheme for foreign manufacturers. Under this scheme, foreign manufacturers can seek certification from BIS for use of BIS Standard Mark on their product(s). During 2015-16, 68 licences were granted under FMCS, taking the total number of operative licences to 511 against 73 Indian Standards. The licences granted covered various products such as steel and steel products; cement; PVC insulated cables; tyres and tubes for automobile vehicles; plastic feeding bottles; switchgear products; plugs and socket-outlets and switches; HDPE and UPVC pipes; infant formula; a.c. static energy meters etc. from around 45 countries.

#### E. Compulsory Registration Scheme (CRS)

Department of Electronics and Information Technology (DeitY) in consultation with BIS, notified 'Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012' on 3 Oct 2012 mandating Compulsory Registration from BIS for 15 Electronics and IT products based on its safety compliance to Indian Standards. A second Order was notified on 13 November 2014, bringing 15 more electronics and IT products under the ambit of the Scheme. The Compulsory Registration Scheme is being operated by BIS under the BIS Act, 1986 and the Rules framed thereunder. The introduction of this Scheme is an alternative mechanism to the Compulsory Certification to facilitate growth of fast growing sectors like IT and protect consumers from spurious and substandard imports. The scheme envisages that no person shall manufacture or import or sell or distribute Goods which do not conform to the Specified Standards and do not bear the words 'Self declaration

9.17

— conforming to IS....'. Such Goods can be imported after obtaining Registration from the Bureau. Thus, 30 electronic products as notified by Deity are covered under Compulsory registration Scheme.

The major products under the Scheme are:

- LED fixtures, lamps and drivers
- Mobile phones, portable power banks
- Rechargeable cells/batteries
- UPS and invertors of capacity 5 kVA and below
- Microwave ovens
- Plasma/LCD/LED TVs/visual display units/monitors of screen size 32" and above
- Adapters for IT, AV and electronic products
- Point-of-sale terminals, ADP machine
- Laptop/notebook/tablet
- Printers and plotters, photocopiers, scanners
- Set top box

The first registration was granted by BIS on 12 June 2013. As on 31 March 2016, BIS has granted 4 279 registrations to manufacturers in various countries. During the period the system for grant of registration was streamlined, forms and procedures simplified to facilitate ease of doing business and the time for grant of registration was reduced to almost 12 days. Figure below shows the logo of the Self Declaration of Conformity.



#### 9.6 WORKING OF BIS

In order to support the activities of the product certification marks scheme, BIS has established eight laboratories in the country to cater to the testing need of samples. The first BIS Central laboratory was established at Sahibabad in 1962. Subsequently, four regional laboratories at Mohali, Kolkata, Mumbai and Chennai and three branch office laboratories at Patna, Bangalore and Guwahati were established. BIS laboratories have facilities for testing of products in the field of chemical, microbiological, electrical and mechanical discipline.

In order to ensure that BIS laboratories are abreast with the latest developments at the International level, the laboratories at Mumbai, Kolkata, Chennai, Mohali, and Sahibabad have been accredited by the National Accreditation Board for Calibration and Testing Laboratories (NABL) as per the international standard IS/ISO/IEC 17025.

BIS labs have complete test facilities for 374 Indian Standards and in addition, partial test facilities are also available for 362 Indian Standards. During 2016, the BIS laboratories have tested 15 815 samples of various products covered under Certification. In addition, to support the Hallmarking Scheme of gold and silver jewellery/ artefacts, the Gold Referral Assaying Laboratory at Chennai has issued 2 559 test reports in the Year 2015-16.

### 9.7 CONSUMER GRIEVANCE REDRESSAL UNDER BIS

All complaints about BIS certified products or services provided by BIS can be sent to Public Grievance Officers (PGOs) appointed by BIS at all locations where BIS offices exist. The PGOs after necessary verification of supporting documents forward the complaint to Consumer Affairs Department (CAD) at New Delhi for recording of the complaint centrally.

Complaints can be lodged in writing, online on BIS website [www.bis.gov.in](http://www.bis.gov.in) or through Mobile Application CARE, available on the BIS website/Google Playstore. For all recorded complaints against ISI marked products or services relating to its activities such as Product Certification, Standard Formulation, Management System Certification, Sale of Standards and Publications, Training etc, redressal is done in a time bound manner.

Monitoring of complaints is done centrally by Consumer Affairs Department. In case, complainant is not satisfied with the redressal of the complaint, he/she may prefer an appeal before Additional Director General of BIS. BIS receives complaints or grievances on products certified by BIS, services rendered by BIS and procedural aspects of BIS through mail, hard copy, web portal and mobile app which are analysed, recorded, investigated, redressed and disposed. Further, BIS also receives consumer grievances through CPGRAMS Portal. Actions are taken on the CPGRAMS and the action taken report is uploaded for information of the consumer. During the period April to December 2017, 52 Product Quality complaints, 113 Miscellaneous Complaints, 147 CPGRAMS grievances have been received. During this period 55 Product Quality complaints, 46 Miscellaneous complaints and 137 CPGRAMS grievances have been disposed.

#### Obligations of Manufacturers/Sellers

##### Section 18 - Manufacturers responsibility for goods carrying Standard Mark :

- 18 (1) Conformity of the product including labelling and marking details
- 18 (4) Furnish information and samples to BIS for monitoring

##### Section 18 - Sellers responsibility for goods carrying Standard Mark :

- 18 (2) Goods are purchased from certified manufacturer
- 18 (3) Goods bear labelling and marking details

#### Obligations of Manufacturers

Section 18 - After establishment of non-conformity of goods carrying Standard Mark, BIS may

- 18 (5) publicise its findings and give directions to manufacturer which are :
- 18 (6) Stop the sale and/or supply and/or recall
- 18 (7)(a) Repair/Replace/Reprocess goods
- 18 (7)(b) Pay compensation to the consumer
- 18 (7)(c) and 31 Liable for the injury caused

#### Penalty for Contravention

Section 29(2) - For violation of Section 14, 15 (Hallmarking)  
Imprisonment  $\leq$  1 year and/or  
Rs. 1 lakh  $\leq$  Fine  $\leq$  5  $\times$  Value of goods

Section 29 (3) - For violation of Section 17 (Product Certification)  
Imprisonment  $\leq$  2 year and/or  
Rs. 2 lakh  $\leq$  Fine  $\leq$  10  $\times$  Value of goods (1<sup>st</sup> instance)  
Rs. 5 lakh  $\leq$  Fine  $\leq$  10  $\times$  Value of goods (Afterwards)

If value of goods cannot be determined, one year's production & the annual turnover in previous financial year presumed  
Section 29 (4) - Offence shall be cognizable

**Enforcement:** The BIS Standard Mark (ISI Mark / Hallmark) is a mark of quality. Consumers as well as the organized purchasers prefer ISI marked products. During the period, April - December 2017, BIS carried out 87 successful search and seizures all over the country on the firms which were indulging in the misuse of BIS Standard mark, based on 102 complaints received through various sources. BIS issued press releases pertaining to the enforcement raids for giving wide publicity with the intention to create awareness among the consumers about the unscrupulous manufacturers misusing the BIS Standard Mark.

Recently addressing the media the Union Minister of Consumer Affairs Mr. Ram Vilas Paswan said that the hallmarking of gold jewellery would become mandatory at one go across the nation from January 15, 2020, and will not be implemented in phases, as was expected earlier. However, the Centre has given a year's time to comply with the new norm, which means that while the notification will be issued by January 15 next year, jewellers would be given time until January 2021, after which it would be mandatory to sell hallmarked ornaments.

The BIS (Bureau of Indian standards) Act 2016 has provisions under Sections 14 and 16 for making hallmarking of mandatory by the Central Government. This will make it compulsory for all jewellers selling gold ornaments and artefacts to register with BIS and sell only hallmarked products. The draft Quality Control Order for mandatory hallmarking of gold jewellery and artefacts was issued on October 10, 2019, and offered for comments from stakeholders for a period of 60 days.



### 9.8 AGMARK

AGMARK is a certification mark for agricultural produce, assuring that they conform to a grade standard notified by Directorate of Marketing & Inspection (DMI), Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture & Farmers Welfare under Agricultural Produce (Grading and Marketing) Act, 1937. These standards differentiate between quality and 2-3 grades are prescribed for each commodity. Till date, grade standards for 222 agricultural commodities have been notified. These include fruits, Vegetables, cereals, pulses, oilseeds, vegetable oils, ghee, spices, honey, creamery butter, wheat, atta, besan, etc.

While framing the standards, the existing standards in The Food Safety and Standards Act, 2006, Codex Alimentarius Commission, International Organization for Standardization, etc. are considered. Trade Associations, Research Institutions, etc. are also consulted.

#### Regulatory Requirements and Procedure for Certification

While the certification scheme is essentially voluntary, Food Safety and Standards (Prohibition and Restriction on Sale) Regulations 2011 have prescribed mandatory certification under AGMARK for certain products viz. Blended Edible Vegetable Oil, Fat Spread. In case of Til Oil, Carbia Callosa, Honey dew, Tea and Ghee FSSAI has prescribed few conditional restrictions.

The certification scheme is implemented through 11 Regional Offices, 26 Sub Offices, 11 Regional Agmark Laboratories and Central Agmark Laboratory (Apex laboratory) of the Directorate. Out of twelve laboratories, 09 laboratories are accredited with the National Accreditation Board for testing and Calibration Laboratories (NABL) as per the International Standard ISO 17025. Persons desirous of grading and certifying a notified agricultural commodity under Agmark can apply to the nearest field office of the DMI.

### 9.9 DIFFERENCE BETWEEN FSSAI AND AGMARK

The basic difference between them is that AGMARK is a certification mark which is given to the agricultural products in order to conform to the Agriculture Produce (Grading and marketing) Act of India, 1937 (Amended in 1986) whereas, FSSAI (Food Standard and Safety Authority of India) is an autonomous body established under the Ministry of Health & Family welfare. AGMARK is thus employed on the agricultural products for assurance of the quality of the product which is the supervising agency. The Directorate of the Marketing & Inspection, Government of India acts as a Certifying Agency in order to Certify the product conformity. It is a logo for use on agricultural, horticulture, forestry and livestock products. The use of this logo ensures the standard of natural and prescribed products. This logo is on agricultural products such as, oil, fats, cereals, pulses, spices and honey.

FSSAI helps to regulate and it also supervises the functioning of the food businesses in India, and in order to monitor and to promote public health. It is thus mandatory for all the food business operators, distributors, retailers and the storage houses to get an FSSAI license.

AGMARK was established under the Agriculture Produce (Grading and marketing) Act of India, 1937 (Amended in 1986), while FSSAI was established under the Food Safety and Standard Act, 2006. AGMARK, at present, covers the quality guidelines of 222 agricultural

products, spanning from pulses to fresh fruits. The Department of Agriculture & Co-operation that is a division of the Directorate of Marketing & Inspection; implements the agricultural policies, the training of personnel in agricultural, promoting of good storage practices, and also the agricultural reforms to promote awareness.

FSSAI lays down science-based standards for the food products and it also oversees the conditions of manufacturing, storing and for warehousing, distribution, developing of sanitary standards and also for promoting awareness among the consumers. In conclusion, AGMARK is a certification mark while FSSAI is a government agency.



*fssai*

Fig. : Logo of Agmark and FSSAI



### 9.10 ROLE OF ENERGY RATING AND ENERGY STANDARDS

The primary energy demand in India has grown from about 450 million tons of oil equivalent (toe) in 2000 to about 770 million toe in 2012. This is expected to increase to about 1250 (estimated by International Energy Agency) to 1500 (estimated in the Integrated Energy Policy Report) million toe in 2030. This increase is driven by a number of factors, the most important of which are increasing incomes and economic growth which lead to greater demand for energy services such as lighting, cooking, space cooling, mobility, industrial production, office automation, etc. In India, energy ratings and energy standards play a critical role in promoting energy efficiency, reducing energy consumption, and addressing environmental challenges. These mechanisms are essential for managing the country's growing

energy demand and for achieving sustainable development goals.

The Ministry of Power, through Bureau of Energy Efficiency (BEE), has initiated a number of energy efficiency initiatives in the areas of household lighting, commercial buildings, standards and labeling of appliances for empowering the consumers as by using an energy efficient appliance our electricity bill can be reduced. Therefore, its time to change our fifteen year old fans, refrigerators, etc with energy efficient appliances.

### Schemes to Promote Energy Conservation and Energy Efficiency

#### (i) Standards and Labeling

The Bureau of Energy Efficiency (BEE) initiated the Standards and Labeling programme for equipment and appliances in 2006 to provide the consumer an informed choice about the energy saving and thereby the cost saving potential of the relevant marketed product. The scheme is invoked for 19 equipment/appliances, i.e. Room Air Conditioners, Fluorescent Tube Lights, Frost Free Refrigerators, Distribution Transformers, Induction Motors, Direct Cool Refrigerator, electric storage type geyser, Ceiling fans, Color TVs, Agricultural pump sets, LPG stoves, Washing machine, Laptops, ballast, floor standing ACs, office automation products, Diesel Generating sets & Diesel operating pumpsets of which the first 4 products have been notified under mandatory labeling from 7th January, 2010. The other appliances are presently under voluntary labeling phase. The energy efficiency labeling programs under BEE are intended to reduce the energy consumption of appliance without diminishing the services it provides to consumers. Further, the standards and label for refrigerators and air-conditioners have been periodically made more stringent. As a result, the least-efficient products are removed from the market and more efficient products are introduced.

#### Key Functions of Energy Rating in India are:

##### 1. Consumer Guidance

- **BEE Star Labeling:** The BEE's star rating system, ranging from 1-star (least efficient) to 5-star (most efficient), provides consumers with clear information on the energy efficiency of appliances like refrigerators, air conditioners, and washing machines.
- **Informed Choices:** This system helps consumers make informed decisions, encouraging them to opt for products that consume less energy and cost less to operate over time.

##### 2. Market Transformation

- **Promoting Efficient Products:** High energy ratings push manufacturers to improve their products to meet higher efficiency standards, thereby transforming the market towards greater energy efficiency.
- **Consumer Demand:** The awareness and demand for higher-rated products incentivize manufacturers to innovate and produce more energy-efficient technologies.

##### 3. Economic Benefits

- **Cost Savings:** Consumers benefit from reduced electricity bills by choosing higher-rated appliances, leading to significant savings over the lifespan of the product.

- **Payback Period:** Despite a potentially higher initial cost, the payback period for energy-efficient appliances is often short due to the lower operating costs.

#### 4. Environmental Impact

- **Reduction in Emissions:** Energy-efficient appliances contribute to lower energy consumption, thereby reducing greenhouse gas emissions and helping mitigate climate change.
- **Resource Conservation:** Efficient use of energy resources supports India's sustainability goals and reduces the strain on energy infrastructure.

#### Examples of BEE Star Labeling Program:

- **Air Conditioners:** Higher star-rated ACs consume less power, leading to significant energy savings.
- **Refrigerators:** Efficient refrigerators help in reducing household energy consumption.
- **Ceiling Fans:** BEE-rated ceiling fans offer better performance with lower electricity usage.



#### (ii) Energy Conservation Building Codes (ECBC)

The Energy Conservation Building Code (ECBC) was developed by Govt. of India for new commercial buildings on 27th May 2007. ECBC sets minimum energy standards for new commercial buildings having a connected load of 100kW or contract demand of 120 KVA and above. While the Central Government has powers under the EC Act 2001, the state governments have the flexibility to modify the code to suit local or regional needs and notify them. Currently eight States and Union Territories (Rajasthan, Odisha, UT of Puducherry, Uttarakhand, Punjab, Karnataka, Andhra Pradesh & Telangana) notified and adopted the code for their states. In order to promote a market pull for energy efficient buildings, Bureau of Energy Efficiency developed a voluntary Star Rating Programme for buildings which is based on the actual performance of a building, in terms of energy usage in the building over its area expressed in kWh/sq. m/year. Currently, Voluntary Star Labelling programme for 4 categories of buildings (day use office buildings/BPOs/Shopping malls/Hospitals) has been developed and put in public domain.

#### Energy Standards in India

Energy standards in India set mandatory minimum performance criteria for a range of



products and systems. These standards ensure that only energy-efficient products enter the market and are widely used across various sectors.

#### Key Functions:

##### 1. Regulatory Framework

- **Minimum Energy Performance Standards (MEPS):** These standards establish the baseline energy efficiency that products must meet to be sold in India.
- **Compliance and Enforcement:** BEE monitors compliance through a robust framework, ensuring that manufacturers adhere to the prescribed efficiency criteria.

##### 2. Market Regulation

- **Eliminating Inefficient Products:** By setting minimum efficiency standards, India gradually phases out less efficient products, pushing the market towards more sustainable options.
- **Standards Harmonization:** Aligning Indian standards with international benchmarks facilitates global trade and ensures consistent product performance.

##### 3. Economic and Energy Security

- **Energy Savings:** Implementing standards leads to substantial energy savings at the national level, reducing the need for additional power generation capacity.
- **Cost Reduction:** Lower energy consumption translates to reduced operational costs for businesses and households, boosting economic efficiency.

##### 4. Environmental and Social Impact

- **Emissions Reduction:** Energy standards contribute significantly to reducing carbon emissions and other pollutants, supporting India's climate action commitments.
- **Improved Public Health:** Lower emissions and improved energy efficiency enhance air quality and public health outcomes.

#### Examples of Energy Standards in India:

- **Lighting Products:** Standards for LEDs and other lighting products ensure high energy efficiency and longevity.
- **Building Codes:** The Energy Conservation Building Code (ECBC) sets energy efficiency criteria for new commercial buildings.
- **Industrial Equipment:** Standards for industrial motors, transformers, and boilers help in reducing energy consumption in the industrial sector.

### 9.11 ISO-AN OVERVIEW<sup>1</sup>

The International Organization for Standardization (ISO) is an international standard-setting body composed of representatives from various national standards organizations.

<sup>1</sup> www.iso.org

Founded on 23 February 1947, the organization promotes worldwide proprietary, industrial and commercial standards. It is headquartered in Geneva, Switzerland, and works in 162 countries.



It was one of the first organizations granted general consultative status with the United Nations Economic and Social Council. It is the world's largest developer of voluntary international standards and facilitates world trade by providing common standards between nations. Over twenty thousand standards have been set covering everything from manufactured products and technology to food safety, agriculture and healthcare.

Use of the standards aids in the creation of products and services that are safe, reliable and of good quality. The standards help businesses increase productivity while minimizing errors and waste. By enabling products from different markets to be directly compared, they facilitate companies in entering new markets and assist in the development of global trade on a fair basis. The standards also serve to safeguard consumers and the end-users of products and services, ensuring that certified products conform to the minimum standards set internationally.

ISO 9001 is a popular **Quality Management Systems**, and is the World's most recognised business management standard, which has been adopted across all industry types, from manufacturing through professional service organizations. Some of the benefits include helping an organisation to achieve consistent business processes and drive measurable, cost-saving performance improvements.

Since the first release ISO 9001 over 30 years ago, by ISO (International Organization for Standardization), more than one million organizations worldwide have adopted the principles and achieved certification to the requirements of ISO 9001, Quality Management System. It provides organizations with a comprehensive process-focused framework upon which organisations can build business processes that can lead to the successful achievement of their objectives.

Organizations that implement an effective business management system create a confidence among their stakeholders in the capability of their processes and the reliability of their products and/or services; while at the same time, benefiting from improved risk management. In addition, an effective business management system serves to create the basis for continual improvement leading to increased customer satisfaction and ultimately to the success of the organization.

The ISO 9001 certificate is suitable for all sizes of organisation and is well established around the world as an invaluable quality management system. It is suitable for organisations in all industry sectors and helps the organisation to improve management processes to compete locally and/or globally.

ISO 10000 Suite: International standards on handling of consumer complaints by Organizations

ISO 10000 suites is a set of three standards designed to advise organizations who want their consumers to be satisfied with their goods and services. ISO 10000 Series regards customer satisfaction is compatible with ISO 9001 and supports the objectives of this standard through the effective and efficient application of a process to develop and implement a code of conduct related to customer satisfaction.

This International Standard series can also be used independently of ISO 9001 and ISO 9004; or in conjunction with each other. When used together, they can be a part of a broader and integrated framework for enhanced customer satisfaction through codes of conduct, complaints handling and dispute resolution. ISO 10004 complements ISO 10001, ISO 10002 and ISO 10003 by providing guidance on the monitoring and measuring of customer satisfaction. The information gained can guide the organization to take actions which can help to sustain or enhance customer satisfaction.

**ISO 10001:** provides guidance on global best practice for organizations who want to maintain high level of customer satisfaction. These guidance standard shows how a company can create and implement a 'customer satisfaction code of conduct'.

**ISO 10002:** provides guidance for design and implementation of an in-company consumer complaint handling process. It aims to address customer complaints and other interested parties. Even though this is a guidance standard, a number of Indian Companies have been certified against this standard.

**ISO 10003:** Provides guidance for organizations to plan, design, operate, maintain and improve an external dispute resolution system for its customers/consumers. Where complaints cannot be resolved inside the company, this standard helps to set up a company mandated external dispute resolution system. This helps to avoid time consuming adversarial procedures and helps in saving time of the consumer.

For more details please read chapter 1.

## SUMMARY FOR THIS CHAPTER

- Quality means conformance to requirements. Standards form the fundamental base for the development of goods, articles, process, system and services by establishing consistent protocols which can be universally understood and adopted.
- The *BIS Act, 1986* broadly focused on the harmonious development of the activity of standardization, marking and quality certification of goods and other related matters.
- The success, popularity and growth of organisation and the changing marketing environment has necessitated the promulgation of the new Bureau of Indian Standards Act, 2016. The Bureau of Indian Standards (BIS) Act 2016 establishes BIS as the National Standards Body of India.
- BIS enables the Government to bring under the mandatory certification regime such goods, article, process system or service which it considers necessary from the point of view of public interest, human, animal, or plant health, safety of the environment, prevention of unfair trade practices, and national security. Further to make hallmarking of precious metal articles, mandatory, to provide for recall of products bearing the Standard Mark, but not conforming to relevant Indian Standards and to strengthen penal provisions, enable compounding of offences, and also make certain offences as cognizable.
- Consumer should buy Hallmarked Jewellery from BIS registered jewellers Check Hallmark,

consisting of three marks, on the article with the help of a magnifying glass of 10 X magnification available in the shop. Need not pay Hallmarking cost more than Rs.35/- +GST per piece for gold jewellery and Rs.25/- +GST per piece for silver jewellery.

- AGMARK is a certification mark which is given to the agricultural products in order to conform to the Agriculture Produce (Grading and marking) Act of India, 1937 (Amended in 1986) whereas, FSSAI (Food Standard and Safety Authority of India) is an autonomous body established under the Ministry of Health & Family welfare.
- Ministry of Power, through Bureau of Energy Efficiency (BEE), has initiated a number of energy efficiency initiatives in the areas of household lighting, commercial buildings, standards and labeling of appliances for empowering the consumers as by using an energy efficient appliance our electricity bill can be reduced. Therefore, its time to change our fifteen year old fans, refrigerators, etc with energy efficient appliances.
- The International Organization for Standardization (ISO) is an international standard-setting body composed of representatives from various national standards organizations. Founded on 23 February 1947, the organization promotes worldwide proprietary, industrial and commercial standards. It is headquartered in Geneva, Switzerland, and works in 162 countries.
- ISO 10000 suites is a set of three standards designed to advise organizations who want their consumers to be satisfied with their goods and services. ISO 10000 Series regards customer satisfaction is compatible with ISO 9001 and supports the objectives of this standard through the effective and efficient application of a process to develop and implement a code of conduct related to customer satisfaction.

## QUESTIONS FROM THIS CHAPTER

- Q1 Mention the role of BIS in standardisation?
- Q2 List down the main features and objectives of the BIS Act, 2016?
- Q3 Describe the product certification scheme by BIS?
- Q4 Write about the hallmarking scheme started by the BIS for quality and standardisation of gold jewellery?
- Q5 Mention the Compulsory Registration Scheme (CRS) by BIS?
- Q6 What is the system certification Scheme by BIS?
- Q7 Explain the working and consumer grievance redressal under BIS?
- Q8 What is Agmark? How is it different from FSSAI?
- Q9 Give an overview of International Organisation for Standardisation (ISO)?
- Q10 Mention the International standards on handling of consumer complaints by Organizations?
- Q11 What are the schemes to promote energy conservation and energy efficiency in India?
- Q12 Explain the functions of energy rating in India? Mention BEE Star Labelling Scheme.



**Consumer Affairs and Customer Care (2019)**  
**B.Com. (Hons.) DSE, Semester -VI**

**Maximum Marks : 75 Marks**

**Duration : 3 hours**

*Attempt any four questions. All questions carry equal marks.*

1. (a) Briefly describe any one ADR mechanism for out of court settlement of consumer disputes. (8)
- (b) What is Maximum Retail Price? How does a consumer gain from the provisions of MRP? (7)

*Or*

- (a) What is "misleading advertising"? State the major laws regulating advertising in India. (8)
- (b) What is the role of BIS in consumer protection? (7)
2. (a) Who can file a complaint under the CPA, 1986 and on what grounds can he do so? (8)
- (b) Enumerate the six rights provided under Section 6 of the CPA. (7)

*Or*

Briefly explain the following terms as mentioned in the Consumer Protection Act (attempt any five):

- (a) Appeal
  - (h) Defect in goods
  - (c) Consumer
  - (d) Limitation period
  - (e) Spurious goods and services
  - (f) Unfair trade practice.
3. (a) What is the procedure for filing and hearing of a complaint at a consumer forum? (8)
  - (b) What action can be taken by a consumer court in following cases: (8)
    - (i) Frivolous and vexatious complaints (7)
    - (ii) Non-compliance of the order of Consumer Forum. (7)

*Or*

- (a) State the composition, powers and jurisdiction of District Forums. (8)

Q.2

- (b) Cite any leading case of medical negligence decided by the National Commission under the CPA. (7)
4. (a) What kinds of agreements are presumed to have an appreciable adverse effect on competition in India? (8)
- (b) Briefly list any four recent developments in the field of consumer protection in India. (7)

Or

- (a) State the conditions which indicate an abuse of dominant position by an enterprise as per the Competition Act. (8)
- (b) List the provisions of Competition Act relating to regulation of combinations. (7)
5. Write short notes on any three of the following:
- (a) Role of Supreme Court under CPA
- (b) National Consumer Helpline
- (c) Product Testing
- (d) Food Safety Standards (7)

Or

- (a) What is "misleading advertising"? State the major laws regulating advertising in India. (8)
- (b) What is the role of BIS in consumer protection? (7)

Q.3

Consumer Affairs and Customer Care (2020)  
B.Com. (Hons.) DSE, Semester -VI

Maximum Marks : 75 Marks

Duration : 3 hours

Attempt any four questions. All questions carry equal marks.

- Q1. "Customer satisfaction is a key in building long term relationships by marketers". In light of this statement comment on why a satisfied consumer is important for any marketer. By giving suitable examples discuss the forms of complaints received by businesses and how consumers can make their complaints heard to them?
- Q2. As the Second wave of covid continues and the number of corona cases are galloping we find that many vendors are selling spurious medicines, injections and many essential medicines, oxygen cylinders are either out of stock or sold above MRP? As an aware consumer, advise the government and voluntary consumer organisations regarding the problems faced by consumers and also mention the consumer protection laws under which consumers can seek redressal?
- Q3. Raj bought an expensive side-by-side door refrigerator last year. After just a few days of purchase it stopped working and the dealer replaced the compressor. However, in the last one year, the refrigerator has undergone several repairs and still continues to give trouble. When Raj asked the retailer to give him a replacement, he said that the particular model has been discontinued and he will have to buy a different model, for which he will have to pay the price difference. Advise the options which are available to Raj for seeking redressal and can he file a complaint in a consumer forum?
- Q4. Who can file a complaint under the Consumer Protection Act, 1986? What actions can be taken by a consumer court in case of frivolous and vexatious complaints? Also mention a leading case on medical negligence decided by the Supreme Court/National Commission under the Consumer Protection Act, 1986?
- Q5. "The Bureau of Indian Standards Act 2016 establishes BIS as the National Standards Body of India." Comment by mentioning the role of BIS in formulating national standards and give a brief note about the various conformity assessment schemes by BIS?
- Q6 (a) A dynamic and competitive environment, underpinned by sound competition law and policy is an essential characteristic of a successful market economy". Do you agree, give reasons? Can cartelisation by 20 cement dealers not to sell below the stipulated price be considered as a violation of the anti-competitive agreements under the Competition Act, 2002. Comment.
- (b) Discuss the role of ASCI in curbing misleading advertisements?



Q.4

Consumer Affairs and Sovereignty

**Consumer Affairs and Customer Care (2021)**  
B.Com. (Hons.) DSE, Semester -VI

Maximum Marks : 75 Marks

Duration : 3 hours

*Attempt any four questions. All questions carry equal marks.*

- Q1. As per the observations of the Competition Commission of India, flat buyers in India are often dissatisfied and left to fend for themselves in a market which is largely unregulated. 20 builders were found to be alleged for unfair practices and forming cartels and not disclosing crucial information about built up area and actual sizes of the apartments. However, due to lack of enough evidence, the case was closed by the Commission. Is this practice of the builder anti-competitive or abuse of dominance? According to you, in this case, what other options are left for the buyers to voice out their grievances against such builders?
- Q2. Ms. Yukta, a post-graduate from Patna University and having experience of 12 years in Corporation Bank applies in September, 2019 for appointment as member in the National Commission. Is she eligible for the post? Justify. If she is appointed at Delhi State Commission, highlight the scope of powers and jurisdiction of the Commission in handling of consumer complaints.
- Q3. During the present Covid-19 lockdown situation in India, list down the common problems faced by rural and urban consumers. Also, evaluate its impact on your consumer rights.
- Q4. Buying of precious jewelry is generally considered auspicious in India, whether for weddings, festivals, or as an investment. Considering that a major part of the jewelry market is an unorganized sector, describe the significant initiatives taken by the Department of Consumer Affairs to promote and protect interest of such consumers.
- Q5. The husband of Mrs. Osama had taken a life insurance policy of Rupees 20,00,000/- on 26.11.2010 and on that date he was in good health, and which was also confirmed by the LIC's doctor. After four months of the issue of the policy, Mr Osama got admitted to Ganga Ram Hospital, Delhi, with a complaint of stomach pain. It was diagnosed as intestinal cancer for which a minor operation was performed on 20.3.2011. He was again admitted to the hospital on 26.11.2011, discharged on 25.12.2011 and died on 4.1.2012 at his hometown, in Meerut. Soon after the wife and the nominee submitted a claim for the amount of insurance policy which was rejected by the opposite party on grounds of non-disclosure of true facts about his health. Is the wife or nominee eligible to file a complaint under the CPA, 1986 or the Insurance Ombudsman? Suggest which of the two will a better option for her to redress her grievances and why?
- Q6. Advertisements of foods high in salt, sugar or fat in social media and other new-age media platforms need to be regulated. Do you agree? Why? Suggest by yourself the most suitable measures in this regard.

Question Papers

Q.5

Consumer Affairs and Customer Care (2022)

**Consumer Affairs and Customer Care (2022)**  
B.Com. (Hons.) DSE, Semester -VI

Maximum Marks : 75 Marks

Duration : 3 hours

*Attempt any Five questions. All questions carry equal marks.*

1. (a) Briefly describe the stages in the consumer buying process. Also explain the implications of post, purchase behavior for a marketing manager? (8)
- (b) What are consumer organisations? Explain the functioning of any two major consumer organisations in India? (7)
- Or*
- (a) "Consumers suffer because of huge malpractices by sellers involving making quick returns." Comment about what factors affect 'voicing' of consumer grievances? Also mention the various alternatives available to dissatisfied consumers. (8)
- (b) Write any four recent developments in consumer protection in India? (7)
2. (a) Explain the terms 'unfair trade practice' and 'restrictive trade practice' as per the Consumer Protection Act, 2019? (8)
- (b) Mention any four consumer rights available to consumers under the Consumer Protection Act, 2019? (7)
- Or*
- (a) Cite any leading case on unfair trade practice decided by the Supreme Court/National Commission under the Consumer Protection Act? (8)
- (b) Give an overview of the organizational set up under the Consumer Protection Act, 2019? (7)
3. (a) Explain the procedure for filing and hearing of a complaint under the CPA, 2019. (8)
- (b) Discuss the objects and working of the Central Consumer Protection Council under CPA, 2019? (7)
- Or*
- (a) What is the procedure for filing an appeal against order of District Commission under the Consumer Protection Act, 2019? (8)
- (b) What action can be taken by consumer commission for non-compliance of its order under the Consumer Protection Act, 2019? (7)
4. (a) Mention any two conformity assessment schemes run by Bureau of Indian Standards, 2016? (8)

Q.6

- (b) What is the role of Insurance Ombudsman in speedy redressal of consumer complaints in the Insurance sector? (7)

Or

- (a) Explain the role of Real Estate Regulatory authority (RERA) in regulating the Real Estate industry in India? (8)

- (b) India is the largest consumer of gold in the World. Discuss the initiatives taken by the government so that quality and standardized gold items are being sold to Indian consumers? (7)

5. (a) Explain the composition and powers of the Competition Commission of India? (8)

- (b) Write about ASCI's role in curbing misleading advertisements? (7)

Or

- (a) Explain the objectives, purpose and features of the Competition Act, 2002. (8)

- (b) Compare the concept of 'consumer' under CPA, 2019 with old Act (CPA, 1986)? (7)

6. Write short notes on any two :

- (a) MRP a deceptive price

- (b) Role of FSSAI in food safety.

- (c) Evolution of Consumer Movement in India

- (d) CCPA.

Q.7

Maximum Marks : 75 Marks

Duration : 3 hours

Attempt any Five questions. All questions carry equal marks.

1. Explain the meaning of the term 'consumer' under CPA 2019. 'An individual is motivated to buy products and services for different reasons.' In the light of the above statement, explain the various types of buying motives. (5+10)

OR

Explain the concept of 'Maximum Retail Price (MRP)'. Why is it considered deceptive? Also explain the concept of price in wholesale and retail. (5+5+5)

2. Explain the term 'deficiency in service' as defined in the Consumer Protection Act, 2019. Explain a case decided by the National Commission as per CPA, 2019. (5+10)

OR

Write a short note on the National Consumer Helpline. Explain the meaning of the term 'Unfair Trade Practice' as defined under CPA, 2019 in detail. (5+10)

3. List a few recent developments in the field consumer protection in India. Cite and explain any leading case decided by the Supreme Court of India or the National Commission under the Consumer Protection Act, related to any one of the following:

- (a) Education services

- (b) Misleading advertising

- (c) Medical services

(7+8)

OR

Who can file a complaint under CPA 2019? What are the grounds for filing such a complaint? Also explain the limitation period for filing complaints under CPA 2019. (5+5+5)

4. What is an Anti-Competitive Agreement under the Competition Act 2002? List the provisions of the Competition Act 2002 relating to regulation of combinations. (5+10)

OR

- (a) Explain the composition and powers of the competition Commission of India. (8)

- (b) Briefly explain a case which has been decided under the Competition Act 2002. (7)

5. (a) What are the objectives or FSSA 2006? What are the offences and penalties under this Act? (7)



Q.8

(b) What is the role of BIS in consumer protection?

(8)

OR

Write short notes on any 3 of the following:

(5×3)

- (a) Integrated Ombudsman Scheme
- (b) Power, functions and Financial jurisdiction of an Insurance Ombudsman
- (c) Advertising Standards Council of India
- (d) RERA Act 2016

