

# Consumer Protection Act

**How does it affect Company Secretaries**

# Sunday Times of India - 14/09/2022

## Tirupati shrine repeatedly turned down devotee's special puja requests

- ▶ A consumer court in Salem has directed the Tirumala Tirupati Devasthanams to either facilitate “**Vastralankara Seva**” or pay **Rs.50 lakhs** to a devotee in a year for making him wait for a special puja for **14 years**, causing mental agony to him and his family.
- ▶ Court also asked the temple body to **refund the booking fee of Rs.12,250/-** to the complainant **along with interest at 24% per annum from 2006 till date**.
- ▶ This is the **first time a devotee has approached a consumer court** against the TTD on ground of **deficiency in service** since its inception, almost nine decades ago.

# Why CS should study CPA

- ▶ Company Secretary as Consumer
- ▶ Company Secretary as KMP
- ▶ New Opportunity to PCS
- ▶ New Opportunity for Social Service
- ▶ Company Secretary as Service Provider

# Chartered Secretary - July 2022

## Ved Prakash Aggarwal v/s Rajesh Singh (Advocate)

- ▶ Consumer Protection Act, 1976 - **deficiency of service** - professional services by advocate to client - whether complaint maintainable - Held Yes.
- ▶ The complainant filed consumer complaint against, for directing Rajesh Singh, Advocate, alleging **deficiency in service with respect to conducting his case in the court** and claimed damages and compensation.
- ▶ District Forum dismissed the complaint on the ground that the **service rendered by an advocate to his client is personal service** and the complainant is not a consumer and the complaint is not maintainable.

# Ved Prakash Aggarwal v/s Rajesh Singh (Advocate) (Cont.)

- ▶ On appeal State Commission held that **the complainant has already made a complaint before Bar Council Uttar Pradesh, which would be decided in accordance with law and dismissed the appeal.** Hence revision application was filed (S. 50 of CPA 2019). The decision in revision application went in favour of the complainant.
- ▶ **Personal service stems from a master and servant relationship, which is totally different from a lawyer-client relationship or other professional or technical relationship.**
- ▶ The reason for excluding the rendering of service ‘under a **contract of personal service**’ under the Act is obvious. **Such an employee can be turned out of service by the master at will** and therefore, no occasion can arise for the master to complain about the deficiency in the rendering of service by the employee.

# Ved Prakash Aggarwal v/s Rajesh Singh (Advocate) (Cont.)

- ▶ The ambit and scope of S. 2(1)(o) of the CPA, which defines 'service' is very wide and by this time well established. It covers all services, except rendering of services free of charge or a contract of personal service.
- ▶ Undisputedly, Lawyers are rendering service. They are charging fees. It is not a contract of personal service. Therefore there is no reason to hold that they are not covered by the provisions of CPA.
- ▶ Revision succeeds and order is passed against the Advocate.

# History of Consumer Movement - Need for Separate Legislation

- ▶ In spite of number of laws to **check the supply of substandard products, check profiteering and pursuing the industry and trade to take care of the consumers**, much could not be achieved.
- ▶ Economic law of demand and supply - When **demand is more than the supply naturally consumer is neglected** as was the case in India. Till the middle of 80's; it was sellers market. There were no special marketing efforts required as consumer was coming to seller rather the opposite which is the trend in other countries. Particularly in Western Countries and Japan, the position is just the opposite as they have to compete with each other to attract customers for all types of goods and services.
- ▶ **In India consumer has to buy what is offered and he has no choice** even if the price is high. The quality and service is poor and terms of sales are unattractive and sometimes even unreasonable compared to situation prevailing in free economy countries.

- ▶ In USA or Japan or Europe, consumers are not required to book a car or a bike by making a deposit with the company, rather the manufacturer offers credit to the buyer. Now that has started in India too in case of certain consumer durables where competition is severe. But there is also a matter of culture and business ethics.
- ▶ **The Indian industry and trade completely ignored the consumer even in the matter of after sales service or keeping to their promise to repair or replacement.** Consumers often felt helpless because our legal system is very complicated, costly and time consuming and requires an advocate to plead the case.
- ▶ Often it was felt wise to get a thing repaired by incurring extra cost rather than endless requesting for company engineer to look into it. When these problems started growing with the enlargement of market for consumer durables, consumers and government woke up.



# Consumer Protection Act, 1986

- ▶ In 1986 the Consumer Protection Act was passed
  - to provide for the better protection of the interest of consumers
  - for that purpose to make provisions for the establishment of consumer's councils and other authorities for the settlement of the consumers disputes and for matters connected therewith.
- ▶ Thus the **basic objectives** of the Act are
  - to provide **better protection to consumers**, and
  - to **establish suitable machinery** specially consumer councils to settle disputes.

# 1993 Amendments

- ▶ As the Act could not fully protect consumers, after seven years, the Act was thoroughly revised in 1993, which became effective from 18<sup>th</sup> June 1993.
- ▶ The most important change was to **protect users of services**. The Act **applied both** - to goods and services.
- ▶ The Act protects not only **buyer but user** in the case of goods and **any beneficiary** in case of services.

# Consumer Protection Act, 2019

- ▶ No. 35 of 2019 - 9<sup>th</sup> August, 2019
- ▶ District Forum is now known as District Commission.
- ▶ Provision for Mediation (Chapter V)
- ▶ Provision for Product Liability (Chapter VI)
- ▶ Establishment of Central Authority
- ▶ Power of Central Authority to recall Goods etc. (S. 20)
- ▶ Power of Central Authority to issue directions and penalties against false or misleading advertisement (S. 21)
- ▶ Penalty for non-compliance of direction of Central Authority (S. 88)

# Consumer Protection Act, 2019 (cont.)

- ▶ **Punishment for false or misleading advertisement (S. 89)**
- ▶ Punishment for manufacturing for sale or storing, selling or distributing or importing products containing adulterant. (S. 90)
- ▶ Punishment for manufacturing for sale or for storing or selling or distributing or importing spurious goods. (S. 91)
- ▶ Punishment for vexatious search (S. 93)

# Authorities & their role

- ▶ **Central Consumer Protection Council (CCPC)** - set up by Central Government. It is advisory council, headed by Union Minister-in-charge of Department of Consumer Affair. Other members are either official or non-official representing such interest as may be prescribed.
- ▶ At least one meeting should be held every year. Can meet as many times, when necessary. The time and place of meeting is decided by the Chairperson.
- ▶ The objects of CCPC is to render advice on promotion and protection of the consumers' rights under CPA.
- ▶ **State Consumer Protection Council** is set up by concerned State Government. Requires to hold at least two meetings every year.
- ▶ State Government also requires to set up **District Consumer Protection Council**, which is headed by the Collector of the concerned District. Requires to hold at least two meetings every year.

# Authorities & their role (cont.)

- ▶ **Central Consumer Protection Authority, known as Central Authority - set up by Central Government (S.10)**
- ▶ It is **regulating matters relating to violation of rights of consumers, unfair trade practices and false and misleading advertisements** which are prejudicial to the interests of public and consumers and to **promote, protect and enforce the rights of consumers as a class.**
- ▶ It is headed by **Chief Commissioner** and assisted by other commissioners. Appointments are made by Central Government. Powers and other functions are prescribed under CPA. Its headquarter is in the National Capital Region of Delhi.

# Authorities & their role (cont.)

- ▶ The Central Authority is having an **Investigation Wing** headed by a Director- General for the purpose of **conducting inquiry or investigation** under this Act as may be directed by the Central Authority.
- ▶ The **District Collector**, on a complaint or on a reference made to him by the Central Authority or the Commissioner of a regional office, **inquire into or investigate complaints regarding violation of rights of consumers as a class**, on matters relating to violations of consumer rights, **unfair trade practices and false or misleading advertisements**, within his jurisdiction and **submit his report** to the Central Authority or to the Commissioner of a regional office, as the case may be.

# Functions of Central Authority (S.18)

- (a) protect, promote and enforce** the rights of consumers as a class, and **prevent violation** of consumers rights under this Act;
- (b) prevent unfair trade practices** and ensure that no person engages himself in unfair trade practices;
- (c) ensure that no false or misleading advertisement is made of any goods or services** which contravenes the provisions of this Act or the rules or regulations made thereunder;
- (d) ensure that no person takes part in the publication of any advertisement which is false or misleading.**



## Methodology followed by Central Authority (S. 18)

- (a) **inquire** or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either *suo motu* or on a complaint received or on the directions from the Central Government;
- (b) **file complaints** before the District Commission, the State Commission or the National Commission, as the case may be, under this Act;
- (c) **intervene in any proceedings** before the District Commission or the State Commission or the National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;
- (d) **review the matters** relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and **recommend appropriate remedial measures for their effective implementation**;

## Methodology followed by Central Authority (S. 18) (Cont.)

- (e) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;**
- (f) undertake and promote research in the field of consumer rights;**
- (g) spread and promote awareness on consumer rights;**
- (h) encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies;**
- (i) mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest;**

## **Methodology followed by Central Authority (S. 18) (Cont.)**

**(j) issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;**

**(k) advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;**

**(l) issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.**

## Other Specific Powers of Central Authority

**Power of Central Authority to refer matter for investigation or to other Regulator (S. 19)**

The Central Authority may, after receiving any information or complaint or directions from the Central Government or of its own motion, conduct or cause to be conducted a preliminary inquiry as to whether there exists a *prima facie* case of violation of consumer rights or any unfair trade practice or any false or misleading advertisement, by any person, which is prejudicial to the public interest or to the interests of consumers.

If it is satisfied that there exists a *prima facie* case, it shall cause investigation to be made by the Director- General or by the District Collector.

## Power of Central Authority to recall goods, etc. (S. 20)

Where the Central Authority is satisfied on the basis of investigation that there is sufficient evidence to show violation of consumer rights or unfair trade practice by a person, it may pass such order as may be necessary, including—

- (a) recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe;
- (b) reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and
- (c) discontinuation of practices which are unfair and prejudicial to consumers' interest:

The Central Authority is required to give the person an opportunity of being heard before passing an order.

## Power of Central Authority to issue directions and penalties against false or misleading advertisements. (S.21)

Where the Central 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, by order, **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** in such manner and within such time as may be specified in that order.

If the Central Authority is of the opinion that it is necessary to **impose a penalty** in respect of such false or misleading advertisement by a manufacturer or an endorser, it may, by order, impose on manufacturer or endorser a **penalty** which may **extend to ten lakh rupees**. For **every subsequent contravention** by a manufacturer or endorser, impose a penalty, which may **extend to fifty lakh rupees**.

## Power of Central Authority to issue directions and penalties against false or misleading advertisements. (S.21) (cont.)

The Central Authority can 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**. For every **subsequent contravention**, prohibit such endorser from making endorsement in respect of any product or service for **a period which may extend to three years**.

Where the Central Authority is satisfied after investigation that any **person is found to publish**, or is a party to the publication of, a misleading advertisement, it may impose on such person a **penalty which may extend to ten lakh rupees**.

# **Power of Central Authority to issue directions and penalties against false or misleading advertisements. (S.21) (cont.)**

**No endorser shall be liable to a penalty if he has exercised due diligence to verify the veracity of the claims made in the advertisement regarding the product or service being endorsed by him.**

**No person shall be liable to such penalty if he proves that he had published or arranged for the publication of such advertisement in the ordinary course of his business.**

**No such defence shall be available to such person if he had previous knowledge of the order passed by the Central Authority for withdrawal or modification of such advertisement.**



# Power of Central Authority to issue directions and penalties against false or misleading advertisements. (S.21) (cont.)

While **determining the penalty** regard is to be made to the following, namely:—

- (a) the **population and the area impacted or affected** by such offence;
- (b) the **frequency and duration of such offence**;
- (c) the **vulnerability of the class of persons likely to be adversely affected** by such offence; and
- (d) the **gross revenue from the sales effected** by virtue of such offence.

The Central Authority shall give the person an **opportunity of being heard** before an order under this section is passed.

# Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022

- ▶ Objective to curb misleading advertisements and protect the consumers, who may be exploited or affected by such advertisement.
- ▶ To ensure that consumers are not being fooled with unsubstantiated claims, exaggerated promises, misinformation and false claims.
- ▶ Such advertisements violets various rights of consumers such as rights to be informed, right to choose and right to be safeguarded against potentially unsafe products and services.
- ▶ Central Consumer Protection Authority, set up under S. 10, may charge penalty of Rs.10 lakhs and for subsequent violation Rs.50 lakhs for such violation.

## **Powers of Search & seizure (S. 22)**

For the purpose of conducting an investigation after preliminary inquiry the **Director-General** or any other officer authorised by him in this behalf, or the **District Collector**, as the case may be, may, if he has any reason to believe that any person has violated any consumer rights or committed unfair trade practice or causes any false or misleading advertisement to be made, shall,—

- (a) enter at any reasonable time into any such premises and search for any document or record or article or any other form of evidence and seize such document, record, article or such evidence;**
- (b) make a note or an inventory of such record or article; or**
- (c) require any person to produce any record, register or other document or article.**

# Complaint by Consumer

Definition of Consumer - S. 2(7)

“**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.**

## Complaint by Consumer (cont.)

“**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**.

“**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.

“**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. [S.2(21)]

“**Service**” means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service [S.2(42)]

## Complaint by Consumer (cont.)

Definition of "**person**" [S.2(31)] includes—

- (i) an individual;
- (ii) a firm whether registered or not;
- (iii) a Hindu undivided family;
- (iv) a co-operative society;
- (v) an association of persons whether registered under the Societies Registration Act, 1860 or not;
- (vi) any corporation, company or a body of individuals whether incorporated or not;
- (vii) any artificial juridical person, not falling within any of the preceding sub-clauses;

## Complaint by Consumer (cont.)

“Consumer dispute” [S.2(8)] means a dispute where the person against whom a complaint has been made, **denies or disputes the allegations contained in the complaint;**

“Consumer rights” [S.2(9)] includes,—

(i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property;

(ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;

(iii) the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;

(iv) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;

(v) the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and

(vi) the right to consumer awareness.

## Definition of Complaint [S.2(6)]

**“Complaint”** means 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**;



## Definition of Complaint [S.2(6)] (cont.)

(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;

## Unfair Contract [S.2(46)]

“Unfair contract” 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, namely:—

(i) requiring manifestly **excessive security deposits** to be given by a consumer for the performance of contractual obligations; or

(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; or

(iii) **refusing to accept early repayment** of debts on payment of applicable penalty; or

(iv) **entitling a party to the contract to terminate** such contract unilaterally, **without reasonable cause**; or

(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; or

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

## Restrictive Trade Practice [S.2(41)]

**“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—

(i) **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;

(ii) 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** for buying, hiring or availing of **other goods or services**.

## Unfair Trade Practice [S.2(47)]

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

(i) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which—

(a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

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

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

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

## Unfair Trade Practice [S.2(47)] (cont.)

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

(f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

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

## Unfair Trade Practice [S.2(47)] (cont.)

(h) makes to the public a representation in a form that purports to be—

(A) a warranty or guarantee of a product or of any goods or services; or

(B) 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;

(i) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

## Unfair Trade Practice [S.2(47)] (cont.)

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

*Explanation.*—For the purposes of this sub-clause, a **statement** that is,—

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

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

(C) **contained in or on anything that is sold,** sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

## Unfair Trade Practice [S.2(47)] (cont.)

(ii) **permitting the publication of any advertisement**, whether in any newspaper or otherwise, including by way of 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.

*Explanation.*—For the purpose of this sub-clause, "bargain price" means,—

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

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



## Unfair Trade Practice [S.2(47)] (cont.)

(iii) permitting—

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

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

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

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

## Unfair Trade Practice [S.2(47)] (cont.)

(iv) permitting 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 the 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;

(v) permitting the **hoarding or destruction of goods**, or refusal 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;

(vi) manufacturing of **spurious goods** or offering such goods for sale or adopting deceptive practices in the provision of services;

## Unfair Trade Practice [S.2(47)] (cont.)

(vii) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;

(viii) 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;

(ix) 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.

# Who can file Complaint?

## Definition of Complainant [S.2(5)]

“**Complainant**” means—

- (i) a consumer; or
- (ii) any **voluntary consumer association** registered under any law for the time being in force; or
- (iii) the **Central Government** or any **State Government**; or
- (iv) the **Central Authority**; or
- (v) **one or more consumers**, where there are numerous consumers having the same interest; or
- (vi) in case of death of a consumer, his **legal heir or legal representative**; or
- (vii) in case of a consumer being a **minor**, his **parent or legal guardian**.

# Dispute Redressal Commission

**District Consumer Dispute Redressal Commission** - set up by State Government for each district of the State.

**Jurisdiction** - Value of the Goods or services paid as consideration does not exceed Rs. 1 crore (earlier Rs.20L).

**Quorum** - President and two members.

**Geographical Jurisdiction** - A complaint shall be instituted in a District Commission within the local 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 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.**

# Dispute Redressal Commission (cont.)

**State Consumer Dispute Redressal Commission** - set up by the respective state government.

**Jurisdiction** - Value of the goods or services paid as consideration exceeds Rs.1 crore but less than Rs.10 crores.

Each State Commission has a **President** and **not less than four members**. The number can be increased.

**An appeal against the order of any district commission.**

The State Commission can **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.

## Dispute Redressal Commission (cont.)

The **National Consumer Disputes Redressal Commission**, known as the National Commission is set up by the Central Government.

The National Commission ordinarily functions at the National Capital Region and perform its functions at such other places as the Central Government may in consultation with the National Commission notify in the Official Gazette.

The Central Government may, by notification, **establish regional Benches** of the National Commission, at such places, as it deems fit.

The National Commission entertains

(i) complaints where the value of the goods or services paid as **consideration exceeds rupees ten crore.**

(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**

## Dispute Redressal Commission (cont.)

The National Commission can 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.



## Manner in which complaint shall be made (S.35)

A complaint, in relation to any **goods sold or delivered or agreed to be sold or delivered** or any **service provided or agreed to be provided**, may be filed with a District Commission

A complaint can be filed by:-

(a) the 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.

(b) 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.

## Manner in which complaint shall be made (S.35) (cont.)

(c) 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; or

(d) the Central Government, the Central Authority or the State Government, as the case may be.

The complaint **may be filed electronically** in prescribed manner.

“Recognised consumer association” means any voluntary consumer association registered under any law for the time being in force.

Every complaint filed has to be accompanied with such fee and payable in prescribed manner, including electronic form.

## Manner in which complaint shall be made (S.35) (cont.)

1. Index - Mention last page number.
2. Gist of the Complaint
3. Complaint -
  - (a) Name and other details of the complainant
  - (b) Complaint in short
  - (c) Brief facts leading to the filing of the complaint.
4. List of supporting documents.
5. Claim such as value reimbursement, cost for action arising out of deficiency etc., mental agony.
6. Fact that there is no other matter pending before any other court.
7. Prayer
8. Verification
9. Affidavit & Verification
10. Memorandum of Registered Address of the Complainant
11. Supporting documents.

# Proceedings before District Commission (S.36)