UNIT 18 CONSUMER RIGHTS AND PROTECTION

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18.0 OBJECTIVES

This unit is to make you aware of your rights as consumers, and the mechanisms available for protection of consumer interests as provided by Consumer Protection Act. After reading this unit you will be able to know:

- who is a consumer;
- the basic features of consumer Protection Act;
- the rights available to consumers;
- the mechanism available for redressal of consumer grievances; and
- how and where to file complaints against violation of consumer rights.

18.1 INTRODUCTION

We all are consumers as we purchase goods and services. As consumers we are concerned with our money, health, safety and social environment. However, most of the time, as consumers we feel cheated or are taken for granted. False or misleading advertisements, bargain effort, and gifts, non-compliance of product safety standards, hoarding of goods or no response to complaints, etc. ultimately make us victims of sellers market.

The situation is changing now. In many ways Consumers are getting aware of the need to get proper value of money. World over there has been growing movements for protection of consumer interests. The governments are also responding positively.
Consumers are now protected by several laws. These laws confer a number of rights on consumer and impose duties on manufacturers, sellers and service providers. Government of India in 1986 enacted the Consumer Protection Act for better protection of the interests of consumers. This Act gives to consumers certain rights and also provides a simple mechanism for redressal of their complaints.

With the enactment of Consumer Protection Act, 1986 the scenario has undergone a change. Rights of consumers have been given a statutory recognition. Three-tier grievance redressal machinery at the District, State and National levels has been constituted. Consumer is sought to be installed as a king.

18.2 CONSUMER PROTECTION ACT (CPA) 1986

The Consumer Protection Act can be considered a significant achievement of the consumer movement.

With the growing awareness among consumers about protection of their interests and demands from consumer movement a need for laws for consumer rights and dealing with their complaints in an easier and effective manner was felt. The Parliament of India, therefore, enacted the Consumer Protection Act in 1986. All the provisions of the Act came into force with effect from 1 July 1987. The Act was amended in 1991 and 1993. To make the Consumer Protection Act more functional and purposeful a comprehensive amendment was carried out in December 2002 and brought into force from 15 March 2003. As a sequel the Consumer Protection Rules 1987 were also amended and notified on 5 March 2004. The main objective of this Act is to provide for better protection of the consumers. Unlike some of the existing laws which are punitive or preventive in nature, the provisions of this Act are comprehensive in nature. That means a consumer can get a faulty item replaced or refund of the cost paid. The Consumer may also get compensation for any loss suffered. The Act intends to provide simple, speedy and inexpensive redressal to consumer grievances.

18.2.1 Salient Features of the C.P. Act

Salient features of the Act are:

1) The Act aims to provide better and all-round protection to consumers.

2) In terms of geographical application, it applies to the whole of India except the State of Jammu and Kashmir.

3) It applies to all goods and services unless otherwise expressly notified by the Central Government.

4) It is indeed a very unique and highly progressive piece of social welfare legislation and is acclaimed as the magna carta of Indian consumers. The Act has made the consumer movement really going and more powerful, broad-based and effective and people oriented. In fact, the Act and its amendments have brought fresh hopes to the beleaguered Indian consumer. This is the only law which directly pertains to market place and seeks to redress complaints arising from it. Even prior to 1986, there were in force a number of laws which could be interpreted in favour of the consumers. But, this Act is most powerful piece of legislation the consumer has.
Its provisions are very comprehensive and highly efficacious. In fact, it provides more effective protection to consumers than any corresponding legislation in force even in countries which are considered to be much more advanced.

5) It provides effective safeguards to the consumers against different types of exploitation such as defective goods, unsatisfactory (or deficient) services and unfair trade practices.

### 18.3 SOME DEFINITIONS AND TERMS

To be able to use the provisions of C.P. Act you should know the terms used in the Act for use. These are as given below

**Who is a Consumer?**

A consumer is anyone who buys or agrees to buy any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment. Consumer also includes any user of such goods other than the person who actually buys goods and such use is made with the approval of the purchaser. However, a person is not a consumer if he/she obtains such goods for re-sale or for any commercial purpose. It has been held in a case where a lady purchased a photocopier for the sole purpose of earning her livelihood and not for large scale business or trading activity that it was not a commercial activity and she was considered a consumer (the secretary, Consumer Guidance & Research Society of India vs. M/s BPL India Ltd.-1 (1992) CPJ 140 NC). The Amendment Act 1993 also has added that “commercial purpose” does not include use by a consumer of goods bought and used by him exclusively for purpose of earning his livelihood by means of self employment.

In the case of “services” a “consumer” means a person who hires or avails of any service or services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment. It also includes any beneficiary of such service other than the one who actually hires or avails of the service for consideration and such services are availed with the approval of such person. It does not include the rendering of any service free of charge or under a contract of personal service.

**What is a service?**

The “service”, in the Act, means service of any description which is made available to its potential users and includes provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment or amusement or the supply of news or other information etc. The definition, thus is very wide and extends to any or all actual or potential users of course with the consent of the person who has paid for that.

Under the Consumer Protection Act, a consumer can lodge complaints about his doctor, lawyer, tax consultant, tailor-master or another services for which he has paid and feels that he has not been given his due. In all these matters the grievances of the consumers have been attended and the consumer forums in different parts of the country have issued suitable directions. Some examples:
Service rendered by private doctors is covered by the provisions of the Act. Education is also a service within the purview of the act. Hiring of Marriage Hall also involves rendering of services.

Who is a Trader?

Any person who sells or distributes any goods for sale or a manufacturer of such goods and in case of goods sold in package form, the packer thereof is a trader.

Who is Manufacturer?

'Manufacturer' means a person who makes or manufactures goods or parts thereof. Even if he only assembled parts thereof made or manufactured by others and claims the end product to be goods manufactured by himself, he is a manufacturer. Finally, if a person puts, or causes to be put, his own mark on any goods made by any other manufacturer and claims same as his own, he is also a manufacturer. However, a branch office shall not be deemed to be a manufacture even though it assembled parts of goods dispatched to it by the manufacturer's head office.

Who is a person?

Law protects the rights but rights are protected of entities. Under the Act, a firm, whether registered or not, HUF (Hindu Undivided Family), a cooperative Society and every other association of persons whether registered under the Societies Registration Act, 1860 or not, are included in the definition of a person.

18.3.1 Defect, Deficiency and Unfair Trade

"Defect" means any fault, imperfection or shortcoming in the quality, quantity, nature and manner of performance which is required to be maintained by or under any law or as is claimed by the trader in any manner whatsoever in relation to any goods. Suppressing facts regarding the goods' transaction/sale amounts to defects in goods.

What is an unfair trade practice?

"Unfair trade practice" means a trade practice, which for the purpose of promoting the sale, use, or supply of any goods, or for the provision practices and thereby causing injury to the consumer of such goods or services. These include:

1) Falsely representing goods about their standard, grade, style, model or composition,

2) Falsely representing that the services are of a particular standard, quality or grade,

3) Falsely representing any rebuilt, secondhand, renovated, reconditioned, old goods as new goods,

4) Falsely representing that goods or services have sponsorship, approval, performance, characteristics, accessories use or benefits, which they do not have,

5) Misleading statement/representation concerning the need for or usefulness of any goods or services,

6) Giving any warranty or guarantee of the performance, efficiency or length or life of any goods and not fulfils his obligation,
7) Misleads the public about the price of any goods, service or trade of another person,
8) Any trade practice which deceives public through bargain price by advertisement.

18.4 RIGHTS OF CONSUMERS

By Consumer rights we mean those rights which are, provided legally to protect consumer interests. In other words it can be said that these are rights designed to ensure that all consumers obtain goods and services of reasonable quality at fair prices. In legal terms protection of consumer interest by provision of rights also means imposition of duties on the sellers, manufactures and providers of services. Therefore violation of these rights and duties may entail legal action.

For the first time in India, the Consumer Protection Act, 1986 extended a statutory recognition to the rights of consumers. Section 6 of the Act recognizes the following six rights of consumers:

1) Right to Safety

Right to safety means the right to be protected against marketing of goods and services which are hazardous to life and property. In other words purchased goods or services should meet standards of safety.

2) Right to be Informed

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. It means that consumer can insist on getting all the information about the product or service before making a choice or decision. The manufacturer or traders is duty bound to provide this information.

The right to be informed now goes beyond avoiding deception and the protection against misleading advertising, labeling or other practices. Consumers should be provided with adequate information enabling them to act wisely and responsibly.

3) Right to Choose

It means right to be assured, wherever possible, access to a variety of goods and services at competitive price. In other words a buyer has a right to buy a product of his/her choice and get satisfaction out of a number of products available in terms of quality and price of goods. In case a particular product is manufactured by only one producer that is a monopoly product say, railways, telephone, etc, it means right to be assured of satisfactory quality and service at a fair price.

4) Right to be Heard

The Right to be heard means that the consumers’ interests will receive due consideration at appropriate forum. It also includes rights to be represented in various fora established to consider the consumers’ welfare.

5) Right to Seek Redressal

It means the right to seek redressal against unfair practices or restrictive trade practices or unscrupulous exploitation of consumers. It also includes right to fair
settlement of the genuine grievances of the consumers and right to receive compensation for faulty goods or services. Redressal is the natural follow-up of hearing of complaints and making a settlement in a manner that is acceptable to the consumer as well as the seller.

6) Right to Consumer Education

It means the right to acquire the knowledge and skill to be an informed consumer.

For this availability of information at various levels and through various means is essential. This will help consumers in protecting themselves against fraudulent, deceitful and grossly misleading information, advertisement or other practices.

18.4.1 Duties of Consumers as a Corollary to Rights

It is also a fact of social life that rights and duties are two sides of the same coin. As consumers we have two types of duties. One, duties which are required for enforcement of our own rights. For instance, for meaningful enforcement of rights to safety and healthy environment it is our duty to buy only ISI marked goods, particularly where safety is most important, for example, electric/electronic items, helmet etc. Similarly, for eatables, particularly, spices, oils, ghee, atta, etc., it is our duty to buy packed foods with an AGMARK certification. The AGMARK products ensure the four rights (1) the right to safety (2) the right to be informed (3) the right to choose and (4) the right to be heard. It is also our duty to check out the batch number and date of manufacturing etc. when buying packed items.

Second type of duties are duties towards others. These can be called our social and ecological responsibility. It means that as consumers we should make responsible choices about our purchases and consumption in relation to society and the environment. Pollution, exhaustion of resources and energy, and the proliferation and hazardous wastes are all problems associated with irresponsible consumption. Purchase of a sub-standard vehicle emitting too much smoke affects other’s right for healthy environment. Over purchasing of goods which are in short supply affects others rights to availability and fair price, etc. Therefore, let us not forget that the choices we make as consumers affect others and in particular the environment.

Check Your Progress 1

1) Describe the salient features of Consumer Protection Act.

2) According to CPA who is a Consumer?
3) What do you understand by Deficiency and Unfair Trade Practice?

4) Describe the rights provided to consumers by the Consumer Protection Act?

18.5 GRIEVANCE REDRESSAL MACHINERY

To provide simple, speedy and inexpensive redressal of consumer grievances under CP Act, a three tier quasi-judicial machinery, popularly known as consumer courts, at the national state and district levels have been set up. These courts are designed to render free redressal to the consumers disputes against any defective goods and deficient services which include unfair and restrictive trade practices. The redressal machinery consists of the following agencies, namely,

a) Consumer Disputes Redressal Forum known as the ‘District Forum’

b) Consumer Disputes Redressal Commission known as the ‘State Commission’

c) National Consumer Disputes Redressal Commission known as the ‘National Commission’

District Forum

A consumer redressal forum, known as a District Forum is established by the State Government in each district. There can be more than one forum in a district.

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

Every appointment to the District Forum is made by the State Government on recommendation of selection committee consisting of

i) The president of State Commission – Chairman

ii) Secretary, Law Department of the State – Member

iii) Secretary incharge of the Department dealing with Consumer Affairs in the State – Member
Jurisdiction

1) The ‘District Forum’ has jurisdiction to entertain complaints where the value of goods, services, and compensation claimed (if any) does not exceed Rs. five lakhs.

2) A complaint can be filed in the District Forum in whose territorial jurisdiction the opposite party or parties, at the time of instruction of complaint, actually and voluntarily resides, carries on business, has a branch office or personally works for gain.

3) If any of the opposite parties does not voluntarily reside, carry on business, have a branch office or personally works for gain the District Forum should grant permission or the opposite parties should consent to such an institution.

4) The complaint can also be filed before the District Forum in whose jurisdiction the cause of action, wholly or in part, arises.

State Commission

State Commission consists of three members. One of them is the President and one of the members should be a woman. The President of the State Commission is a person who is or has been a judge of the High Court. The two other members are person of ability, integrity and standing and have adequate knowledge or experience or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. The Consumer Protection (amendment) Act, 1993 has provided that no appointment is to be made except after consultation with the Chief Justice of High Court. The other two members are appointed by the State Government on the recommendation of a Selection Committee consisting of

i) President of State Commission – Chairman

ii) Secretary of the Law Department of the State – Member

Jurisdiction of the State Commission

The state commission can entertain the complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees five lakh but does not exceed rupees twenty lakhs.

The state commission also listens appeals against the orders of any District Forum within the state. It can call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise on its jurisdiction illegally or with material irregularity.

National Commission

The National Commission consists of a President and four other members. The person to be appointed President is one who has been a judge of the Supreme Court. Four other members shall be persons of ability, integrity and standing having adequate knowledge of consumer affairs.
The President is appointed by the Central Government after consultation with the Chief Justice of India. The other members are appointed by the Central Government on the recommendation of a Selection Committee consisting of:

a) a person who is a judge of the Supreme Court, nominated by the Chief Justice of India – Member.
b) Secretary of the Department dealing with consumer affairs in the Government of India – Member.

**Jurisdiction**

The National Commission can entertain complaints directly where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs.

It also hears appeals against the orders of any state commission. It 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 had acted in the exercise of its jurisdiction illegally or with material irregularly.

An appeal against the decision of the National Commission can be made in the Supreme Court of India within a period of thirty days from the date of such orders.

**18.6 COMPLAINTS BEFORE THE CONSUMER COURTS**

If you have purchased something and the same is deficient in quality and if you have hired somebody for rendering services and the services are not to your satisfaction and have paid for the same, you are eligible to file a complaint before the consumer court. As said before, there are three types of consumer courts: The District Forum, The State Commission and the National Commission.

Depending on the amount of money involved, any consumer, which feels he/she has been genuinely cheated, duped, or otherwise harassed can file a complaint at the appropriate forum, available.

- If the cost of the goods or services and compensation asked for is up to rupees five lakh, then the complaint can be filed in the District Forum where the cause of action has partly or fully arisen or where the opposite party resides. A complaint can also be filed at a place where the opposite party carries on his business or where the branch office of the opposite party is located.
- If the cost of goods or services and compensation asked for is more than rupees five lakh but up to twenty lakh, the complaint can be filed before the State Commission.
- If the cost of goods or services and compensation asked for exceed rupees twenty lakh, the complaint can be filed before the National Commission at New Delhi.

Apart from this the Supreme Court of India is the final court of appeal. Even otherwise under Article 236 and 32 of the Constitution of India remedy of writ
jurisdiction is always open in case any of the provisions of the act itself are impugned or challenged before the High Court or Supreme Court respectively.

18.6.1 What Constitutes a Complaint?

Under the Act, a complaint means any allegation in writing made by a complainant in regard to one or more of the following:

- Any unfair trade practice as defined in the Act or restrictive trade practices like – tie up sales adopted by any trader.
- One or more defects in the goods. The goods hazardous to life and safety, when used, are being offered for sale to public in contravention of provision of any law for the time being in force.
- Deficiencies in services.
- A trader charging excess of price
  i) fixed by or under any law for the time being in force; or
  ii) displayed on goods; or
  iii) displayed on any packet containing such goods;

Who can file a complaint?

The following can file a complaint under the Act:

- A consumer
- Any voluntary consumer organization registered under the Societies Registration Act, or Companies Act, 1956 or under any law for the time being in force.
- The Central Government
- The State Government or Union Territory Administrations
- One or more consumers on behalf of numerous consumers who are having the same interest (class action complaints).

A complaint can be filed by either of the aforesaid entities. One can go to the court as individual or for a grievance of public nature through an association or through one or more consumers in case the dispute involves a grievance of common interest. The concept of public interest litigation is also available in case of matters of general and greater public interest. Finally government may, suo moto initiate action under the Act.

18.6.2 Procedure for Filing Complaints

- There is no court fee required for filing a complaint before the District Forum, the State Commission or the National Commission.
- The complainant or any of his/her authorized agent/person can present the complaint in person. It is not obligatory/necessary to engage a lawyer, even a consumer organization can be authorized to represent the case.
- The complaint can be sent by post to the appropriate Forum/Commission.

What a Complaint should contain?

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, as far as they can be ascertained;
c) the facts relating to complaint and when and where it arose;
d) documents, if any, in support of the allegations contained in the complaint;
e) the relief which the complainant is seeking
   - The Complaint should be signed by the complainant or his/her authorized agent.
   - The complaint is to be filed within two years from the date on which cause of
     action has arisen. This period can be condoned on merits by the Redressal
     Agency.

Procedure for filing appeals:

- Appeal against the decision of a District Forum can be filed before the State
  Commission within a period of thirty days. Appeal against the decision of a State
  Commission can be filed before the National Commission within thirty days. Appeal
  against the orders of the National Commission can be filed before the Supreme
  Court within a period of thirty days from the date of the order. The Redressal
  Forum can condone this limitation of period on merits.
- There is no court fee for filing appeal before the State Commission or the
  National Commission.
- Procedure for filing the appeal is the same as that of complaint, except that the
  application should be accompanied by the orders of the District Forum/State
  Commission as the case may be and grounds for filing the appeal should be
  specified.

Speedy Disposal:

To ensure speedy disposal of consumer grievances.

- It is obligatory on the complainant or appellant or their authorized agent and the
  opposite parties to appear before the Forum/Commission on the date of hearing or
  any other date to which hearing could be adjourned.
- The National Commission, State Commissions and District Forums are required
to decide complaints, as far as possible, within a period of 90 days from the date
of notice received by the opposite party where complaint does not require
analysis or testing of the commodities and within 150 days if it requires analysis
or testing of commodities.
- Where the opposite party or its agent fails to appear on the date of hearing, the
  Commission/Forum may decide the complaint ex-parte.
- Not more than one adjournment shall ordinarily be given.

Advantage of approaching consumer courts:

- Provides simple, speedy and inexpensive redressal compared to the Civil Courts,
  aggrieved consumers with small claims need not wait for long to get justice.
- Simple complaint is enough explaining facts of the case with supporting documents
  for seeking relief.
- Complaint can be filed in person or by post.
Complaint can be filed where the cause of action partly or fully arose or where the opposite party resides, carries on business or has a branch office.

- Justice free of cost, court fees not required.
- Engaging lawyer is not compulsory, any authorized agent can appear on behalf of consumer/opposite party.
- Time bound disposal of cases, i.e. as far as possible, within 90 days from the date of notice received by the opposite party case needs to be decided, in 150 days where testing is involved.
- There is a court in every district, in addition to a State Commission in each State and a National Commission which is located in New Delhi.

Precautions

From the above it becomes clear that Consumer Protection Act provides a very useful, easy and less time consuming mechanism for consumers for redressal of their grievances. It is important for consumers to make use of the same. At the same time it must be kept in mind that consumer courts admit a complaint only if it is filed within two years from the date on which the course of action arose. A complaint filed after a period of two years is entertained only if the complainant is able to satisfy the members of the consumer forum that he or she had sufficient reasons for not filing the complaint within the stipulated period. Such a complaint cannot be entertained unless the concerned Consumer Forum records its reasons for condoning such a delay.

Another important point that needs to be taken care of is that if the complaint filed is found to be frivolous and vexatious, the redressal agency can dismiss a complaint and order the complainant to pay the opposite party such cost up to Rs. 10,000/-.

It is therefore, important that false complaints are not filed just to settle scores with some trader or service provider. Of course in genuine cases consumers should not feel shy to file complaints.

Check Your Progress 2

1) Describe the three tier redressal machinery provided by CPA.

2) According to CPA What constitutes a Complaint? Who can file a Complaint?

3) What procedure needs to be followed to file a complaint?
4) What are the advantages in filing complaints under CPA?

18.7 LET US SUM UP

In this unit you have read about the Rights which are given to Consumers by the Consumer Protection Act. These rights include Right to Safety, Right to be informed, Right to Choose, Right to be heard, Right to seek Redressal and Right to Consumer Education. For meaningful implementation of these rights the CPA also provides for a three tier Redressal machinery consisting of District Forum, State Commission and National Commission. It is very easy and almost free to file complaints in these consumer court. You have also learnt in what cases complaint can be filed, who can file complaint and what is the procedure for filing the same. You as a consumer can use this information to protect your rights as Consumer and get proper value for your money.

18.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) The Act (a) provides better and all round protection (b) gives consumers their rights (c) applies to all goods and services including provided by the government (d) provides an easy and effective machinery for redressal of grievances, (e) is operative all over India except in the state of Jammu and Kashmir.

2) Refer to sub-section 18.3.

3) a) Deficiency means any fault, imperfection, shortcoming or inadequacy in service, performed by a person, for which he/she has been paid

    b) See sub-section 18.3.1.

4) Rights of Consumers are

    i) Right to Safety (ii) Right to be Informed (iii) Right to Choose (iv) Right to be Heard (v) Right to seek Redressal (vi) Right to Consumer Education.

Check Your Progress 2

1) Three Tier Redressal machinery consists of District Consumer Forum, State Commission and National Commission. For their constitution and jurisdictions refer to section 18.5.
2) An allegation in writing made by a complainant about unfair practice, defects in goods, deficiency in service, charging excess price etc. is complaint.

3) See Sub-section 18.6.2.

4) It provides simple, speedy and effective redressal mechanism, justice provided is free of cost, engaging lawyer is not compulsory, procedure is time bound and provision for appeals is also provided.