
UNIT 15 CONSUMER PROTECTION ACT, 1986 - BASIC FEATURES

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15.1 OBJECTIVES

After studying this unit, the learner shall be able to:

- understand the basic and essential features of the Consumer Protection Act, 1986;
- learn the meanings of various terms and expressions used in the Consumer Protection Act, 1986;
- explain the various consumer dispute redressal machineries provided under the Consumer Protection Act, 1986; and
- distinguish between the terms i.e. defect vis-à-vis deficiency, goods vis-à-vis services, restrictive trade practices vis-à-vis unfair trade practices.

15.2 INTRODUCTION

In earlier units, you have studied about the evolution and growth of consumer protection laws in India. Despite a plethora of legislations identifying specific consumer issues and seeking to protect the consumer in such issues, these were not adequate to protect the consumer in several cases.

These laws existed on the statute books before the enactment of the Consumer Protection Act, 1986. But they were found to be grossly inadequate in redressing several grievances of consumers. Hence, the need for introducing a comprehensive consumer protection law was felt.

In the early 1980's, consumers of goods and services in India were agitated that they were not getting their money's worth and were being exploited by traders, service providers, and manufacturers. The time and cost for seeking remedies in conventional courts were a deterrent to consumers. Understandably, therefore, when work on the legislation began, it raised the expectation and enthusiasm of consumers as it was seen as a path-breaking benevolent legislation intended to protect the consumers from exploitation by unscrupulous manufacturers and traders of consumer goods.

The design of an omnibus 'consumer protection' legislation depends on the identification of market practices where a consumer suffers or loses on the one hand and the ability of legislation to protect the interest of consumers in such situations. For social, economic and political reasons, these differ in different jurisdictions.

For instance, it is common for sellers to advertise "seconds sales" or "export rejects sales," where products that were found defective or faulty are sold for lesser costs. Should the consumer be protected from buying faulty products in such situations? One can argue that a consumer who chooses to buy products at an "export reject sale" does so fully aware of the risks involved. On the other hands, not all consumers will be aware in countries with high illiteracy rates and low consumer knowledge. Therefore, there is no single legislative response to such situations. The laws take into account the social and economic position of the consumer and seeks to protect a particular type of average consumer. This is an inherent limitation in any consumer protection legislation.

However, Section 3 of the Consumers Protection Act, 1986 provides that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. It also means that the machinery provided under the act is an additional machinery for redressal of the grievances that may be available in addition to those available under other statutes or general provisions of law. It is an additional machinery, and it is more effective and speedy remedy available to the consumers. The Act has not overridden or repealed the earlier laws. This section underscores the supplementary nature of the Consumer Protection Act and recognises the previous legislative efforts made to protect the rights and interest of consumers.

With the enactment of Consumer Protection Act, 1986 the scenario changed. Rights of consumers have been given statutory recognition. Independent three-tiered grievance redressal machinery at the District, State, and National level has been constituted.

The Indian Parliament enacted this legislation on 24th December 1986. It came into force on April 15, 1987. By July 1987, all the provisions came into operation.

The object of the legislation, as the Preamble of the Act proclaims, is for better protection of the interests of consumers. As a consumer, you must become aware of the provisions of this Act and learn how to use them in your everyday life as a consumer in the market place. The Supreme Court of India in the case

of Lucknow Development Authority v. M. K. Gupta (AIR 1994 SC 787) has observed that the Consumer Protection Act, 1986 is a social benefit oriented legislation, hence, courts while construing the provisions of the Act have to adopt a constructive approach in favour of consumer in accordance with the stated objective of the enactment.

The Consumer Protection Act, 1986 is regarded as unique and highly progressive social welfare legislation. The Act has not only strengthened the consumer movement in the country but also become a model law for consumer protection statutes in the developing world. The independent 3-tiered dispute settlement system, the statutory recognition given to voluntary consumer organisations and the wide powers given to the Forums and Commissions – all prove the significance of the law for consumer protection. Its provisions are seen as comprehensive and highly efficacious.

15.3 SALIENT FEATURES OF THE CONSUMER PROTECTION ACT, 1986

In this unit, you will study the basic provisions of the Consumer Protection Act, 1986. The detailed rights of the consumers and how can those rights be enforced shall be studied in the next unit.

The Preamble to the Consumer Protection Act, 1986 declares that its purpose is to provide “for better protection of the interests of consumers”. The Act sets about achieving its purpose by a two-pronged approach. The first is the creation and establishment of National, State and District Consumer Protection Councils to develop consumer policy and the second is the creation of National, State and District Consumer Disputes Redressal Commissions/Forums.

The Act extends to the entire territory of India except to the State of Jammu and Kashmir.

15.3.1 Prominent Provisions of the Act, 1986

- i) It seeks to provide informal, inexpensive and expeditious justice to consumers.
- ii) It seeks to promote and further the rights of consumers by establishing Consumers Protection Councils at the National, State and District Level.
- iii) It establishes a three-tier Quasi-judicial Redressal Machinery for the redressal of consumer grievances.
- iv) It allows class-action litigation when some consumers encounter a similar grievance or a problem. In such a case all such persons may file either a joint complaint or any one of them may file a complaint on behalf of all of them.
- v) It provides a wide range of remedies and relief to aggrieved consumers against defective goods: deficiency in services: charging of excess price: unfair trade practices and restrictive trade practices indulged in by the seller; the offering of hazardous goods for sale and loss suffered on account of negligence of manufactures, suppliers and sellers, etc.
- vi) It recognises at least six important rights of consumers-1) the right to safety, 2) right to be informed, 3) right to choice, 4) Right to representation, 5) right to redressal and 6) right to consumer education.

- vii) It covers within its ambit, all suppliers of goods and services, in all the private, public and the co-operative sector.

15.3.2 No Bar on other Remedies

Section 3 of the Consumer Protection Act, 1986 envisages that the provisions of the Act are in addition to and not in derogation of the provisions of any other law. Hence, for instance, the existence of arbitration clause in an agreement would not prevent an aggrieved consumer from filing her complaint before the Consumer forum even without exhausting such remedy. Section 3 of the act is arguably the most significant section since it states that the remedies provided under the Act are in addition to the remedies provided under any other law prevailing in our country and therefore, it does not take away such additional remedies assured under various laws. Consequently, a consumer may still decide to initiate proceedings in a civil court under the Indian Contract Act or the Sale of Goods Act even after the coming into force of the Consumer Protection Act, 1986.

Check Your Progress 1

- 1) Highlight the key features of the Consumer Protection Act, 1986.

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15.3.3 Who is a Consumer?

The definition of ‘Consumer’ assumes significance as the beneficial provisions of the Act can only be enjoyed by persons falling within its ambit as defined in the Act.

Generally speaking, every person is a consumer. However, the Act defines the word “Consumer” in a restrictive and limited sense to make the availability of its beneficial provisions only to those persons who buy goods and hire services for consideration either for their use or the use and benefit of others (beneficiaries).

Section 2 (1) (d) defines the term ‘Consumer’ as follows:

- a) **A person who buys any goods for a consideration paid or promised or partly paid and partly promised or under any system of deferred payment.**

It also includes any user of such goods when such use is made with the approval of the original or real buyer. But it does not include a person who purchases such goods for re-sale or any “commercial purpose.” The phrase “commercial purpose” does not include use by a consumer of goods bought and used by her exclusively to earn her livelihood using self-employment.

- b) **A person who hires or avails of any services for a consideration paid or promised or partly paid and partly promised or under any system of deferred payment.**

This also includes any beneficiary or such services other than the person who hires or avails of the services for consideration paid when such services are

availed of with the consent of the first mentioned person. The Supreme Court in the case of Regional Provident Fund Commissioner v. Shiv Kumar Joshi (AIR 2000 SC 331) held that the administrative charges paid by the Central Government for running the provident fund scheme for its employees would be sufficient for employees to be treated as beneficiaries within the meaning of the word used in the definition of “consumer”.

A consumer of services does not include any person who hires or avails any service under the contract of personal service or gratuitously. As in the case of a consumer of goods, a person is hiring or availing any service for a “commercial purpose” is also excluded from the scope and purview of the definition.

Thus, the definition of the consumer has two parts. The first part deals with the consumer of goods while the second part defines consumer of services. Further, it is not only the purchaser of goods or hirer of services who would fall within the ambit of the definition of consumer, but even those who use the goods or who are beneficiaries of services with the approval of the person who had actually bought the goods, or hired the services are also covered within the definition of consumer.

The National Commission also in the case of Shri Laxmi Cotton Traders Ltd. v. Central Warehousing Corporation [(1996) 3 CPJ 22 (NC)] set aside the debate on whether a company can be a consumer, by holding that since the Consumer Protection Act uses the word “person”; and since a “person includes a company or association or body of individuals”, a company is also a consumer. Consequently, a “consumer” could also include artificial entities like companies, corporations, trusts and co-operative societies.

Examples of ‘Consumer’:

1) EPABX covered by warranty

The National Commission in the case of C.P.Moosa v. Chowgle Industries Ltd. (2001) 3 PCJ held that a hotel that purchases an EPABX system with warranty and annual maintenance contract is a consumer and would be entitled to protection under the Consumer Protection Act, 1986.

2) Delay in delivery of Tractors

The National Commission in the case of Raghbir Singh Yadav v. Zimindra Engineering Co. Ltd. [(1996) 2 CPJ 245] held that farmers who had filed a complaint seeking compensation for the delay in delivery of tractors were consumers. The tractor manufacturers had argued that the farmers were not consumers since the tractors were for a commercial purpose, however the National Commission dismissed the said argument of Tractor manufacturers on the ground that the tractor purchased by farmers for agricultural cultivation cannot be treated as for commercial purpose, however, the National Commission dismissed the said agreement of Tractor manufacturers on the Tractor purchased by farmers for agricultural cultivation cannot be treated as for commercial purpose.

3) Subscribers of Telephones

Subscribers of telephones are ‘consumers’ under the Act and accordingly are entitled to seek relief from Forums wherever necessary, held in the case of District Manager, Telephones Patna v. Lalith Kumar Bajila (1991 CPC53).

4) User of Electricity

The Users of electricity are “consumers” under the Consumer Protection Act, 1986. The National Commission in Secretary, Kerala State Electricity Board v. Hotel Maria, affirmed the decision of the State Commission directing the Electricity Board to withdraw an excess bill raised on the consumer for 26th months of usage recorded by a defective electric meter.

15.3.4 Who is not a Consumer?

The definition of “consumer” would not include the following categories of persons.

- i) Any person is purchasing goods or availing services for a “commercial purpose”, except if it is to earn livelihood through a self-employment. The National Commission in the case of Kores (India) Ltd. v. Samir Purkayastha [1996] 2 CPJ 71 (NC)] has observed that “the word ‘commercial purpose’ has a wide connotation, and the determination of purpose in a consumer case should be done by taking into account a number of factors, viz. the scope of business, the investment involved, the motive and intention behind the business, whether it is in the nature of earning a livelihood or earning substantial profits, currently as well as in future”. On the issue of what amounts to “earning a livelihood through self-employment”, the Supreme Court in the case of Cheema Engineering Services v. Rajan Singh [(1997) 1 SCC 131] has observed “the word self-employment is not defined. Therefore, it is a matter of evidence”. In the same case, the Supreme Court held that if a machine is used only for self-employment to earn the buyer’s livelihood and not for commercial gain by her employing workmen on a regular basis, it would be self-employment. However, “the burden is on the respondent (buyer) to prove it...” In the said case, though the buyer had employed two persons to assist him in the operation of the machine, he was held to be covered by the exception “purchased for self-employment”.
- ii) Any buyer of immovable property like land, buildings, etc. are not covered under the definition of Consumer. But the Transactions about apartments and plots could fall within the ambit of the Act as the substantial part of these transactions is the service component. For instance, housing and development boards allotting plots are rendering services as held in the case of U.P. Housing and Development Board v. Garima Shukla [1992 CPC 79(NC)] by National Commission as well as by Supreme Court in several other cases.
- iii) A person is getting any goods or avails any service free or gratuitously is not falling within the definition of Consumer. However, the Supreme Court in the case of Indian Medical Association v. Dr. V.P Shanta (AIR 1996 SC 550) clarified that if certain services are availed for consideration by other patients, the non-paying or free patients should be construed as beneficiaries of the paying group of patients.
- iv) As per Section 2(1) (d) of the act, any person availing any service under the contract of personal service is not a Consumer.
- v) Any recipient of governmental services under its Sovereign functions including, for example, a person presenting documents for registration by paying stamp duty and the registration fee is not a consumer as held by Supreme Court in the case of S.P Goel v. Collector of Stamps [(1996) 1 SCC 573].
- vi) Participants in a lottery.

15.3.5 Who can File a Complaint?

According to Section 2(1)(b) of the Consumer Protection Act, any of the following persons may file a complaint and the persons filing a complaint shall be designated as “complainant.”

- a) A Consumer; or in the event of her death, his/her legal heir or representative;
- b) Any voluntary consumer association registered under the Companies Act, 1956 or under any law other law for the time being in force; or
- c) One or more consumers, where there are numerous consumers having the same interest.

The term complainant refers to the persons who are legally authorised under the Consumer Protection Act to file a Complaint. They need not necessarily be consumers or customers. The law authorises voluntary organisations, Central and State Governments also to file cases on behalf of millions of rural people and or people who are not otherwise in a position to fight for their causes.

15.3.6 What can be the Subject Matter of a Complaint?

The Act aims to safeguard the interest of consumers against certain exploitative and unfair trade practices. However, this does not mean that every type of complaint can be filed before the Consumer Forum. At the same time, a complaint in respect of a matter not covered under the definition will not be entertained by the Consumer Forum.

As per the provisions of the Act, the complaint must always be in writing, and it must be about any one or more of the following matters:

- a) An unfair trade practice or restrictive trade practice or such practice has been adopted by any trader or service provider;
- b) The goods bought or agreed to be bought suffered defects;
- c) The services hired or availed of or agreed to be hired or availed of suffered from deficiency any respect;
- d) Price charged for goods or services more than what has been agreed by the parties or fixed by law or displayed on the package or price list exhibited;
- e) Hazardous goods and services are being offered for sale in a manner injurious to the safety and health of consumers.

Check Your Progress 2

- 1) Explain the term Consumer with the help of decided case laws.

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- 2) Explain the subject matters of complaint.

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15.3.7 Consumer Dispute

According to Section 2 (1) (e) of the Consumer Protection Act, a “consumer dispute” means a dispute where the person against whom a complaint has been made, either denies or disputes the allegations leveled against the supplier of goods or service provider. Services under a tenancy contract or other landlord-tenant transactions are not consumer disputes as held by the National Commission in the case of *Lakshmiben Lakshmidhand Shah v. Saketben Kanji Chandan* [1992 CPC 29 (NC)].

15.3.8 Defect

Section 2(1)(f) of the Consumer Protection Act, 1986 defines “defect” as any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard of goods, where such standard is required to be maintained by law or contract or is claimed by the trader in relation to any goods. For a “defect” to be proved in a product, it is, therefore, necessary that (a) a standard required to be maintained exists; (b) the standard relates to quality, quantity, potency or purity; (c) the standard is established by law or contract or claimed by the trader and; (d) the goods suffer from a fault, imperfection or shortcoming. This could include imperfections or shortcoming from standards claimed by the trader in advertisements and promotional material.

A complaint was filed against a manufacturer/seller of a defective jeep that repeatedly gave the consumer problems. The State Commission appointed an engineer to inspect the vehicle and give the report. On the basis of the report, the State Commission directed manufacturer/seller that the money paid for the jeep is refunded to the consumer along with compensation and interest. One appeal, the National Commission affirmed the State Commission order for refund of money paid for the effective jeep but reduced the quantum payable because the consumer had driven the jeep for 50,000/- km. For further details, the case of *Mahindra and Mahindra Ltd. v. Mahesh Sukthankar* [(2004) 2 CPJ 27 (NC)] may please be referred.

Res Ipsa Loquitur – Translated to mean “the thing speaks for itself”, this legal principle states that the occurrence of an accident implies negligence if circumstances were such that it would not ordinarily otherwise have happened. Several consumer disputes have been resolved using this principle. For example, when a consumer purchases a bottle of packaged drinking water from a local shop and finds it contaminated with particulate matter, the consumer could file a complaint under the Consumer Protection Act. Since “the thing spoke for itself” and the foreign particles in the water were visible to the naked eye, the defect in the product will be proved.

Similarly, where a consumer finds an insect embedded in her packet of biscuits, she could file a complaint before the Consumer Forum. Since several such defects “speak for themselves”, the onus of proving that the product was free from defect shifts to the manufacturer.

15.3.9 Deficiency

Perhaps, the section more frequently used in the Consumer Protection Act is Section 2(1)(g) dealing with “deficiency”. As in the definition of ‘defect’ in goods, ‘deficiency’ means any fault, imperfection, shortcoming or inadequacy in the quality, nature, and manner of performance, which is required to be maintained

by law or contract or otherwise about any service. For a “deficiency” to be proved, therefore, it is necessary that (a) some standard for performance of the service is required to be maintained by law or contract or otherwise in relation to the service; (b) the service hired or availed suffers from a fault, imperfection, shortcoming or inadequacy and; (c) such fault, imperfection, etc. relates to quality, nature or manner of performance.

As mentioned above, some judicial decisions focus on “deficiency of service”. Some of these are being given here under:

- 1) *Maina Devi Bairalia v. Life Insurance Corporation of India.* (1993 (2) CPR 263). In this case, Maina Devi’s husband took a life insurance policy for Rs. 50,000/-. Before the second premium fell due, he died due to a sudden illness. The claim made by Maina Devi, the widow of the insured, was not entertained for as long as 14 years. It was only when she got her miseries published in newspapers, and certain MPs took up the matter in Parliament that the claim was taken up. The Insurance company offered to make payment exgratia, but the National Commission held that a delay of 14 years to repudiate or allow the claim constituted a “deficiency of service”. The Insurance Company was directed to pay 12% interest on the exgratia payment of Rs. 50,310/- from 3 months from the death of the insured till the date of payment and further compensation of Rs. 15,000- for mental agony and harassment.
- 2) *Skypack Couriers Pvt. Ltd. v. Ms. Anupama Bagla* (1991 (2) CPJ 191). In this case, non-delivery of a video cassette by courier service company resulting in the complainant losing admission to the desired college was held to be ‘deficiency’ in service as the complainant was put to serious hardship and loss by reason of the neglect and failure on the part of the courier to deliver the article entrusted to the for carriage. Accordingly, compensation of Rs. 10,000/- was awarded to the complainant.
- 3) *In Lucknow Development Authority v. Roop Kishore Tandon* (1992 (2) CPJ 503 (NC), the failure on the part of a Housing Board to give possession of the flat after receiving the full payment and after registering it in favour of the buyer was held to be a deficiency in service. The National commission also observed that any dispute between the Housing Board and its contractors were an internal matter and cannot constitute a valid explanation for the delay.
- 4) *In United India Insurance Co. Ltd. v. D.V. Deo* (2003 (1) CPJ 104 (NC), the National commission (affirming an order by the State Commission) held that where an insurance company appointed the second surveyor without any valid reason, the consumer was entitled to interest on the claim amount from the date of the report of the first surveyor. The appointment of the second surveyor was to delay the settlement of the claim and constituted a deficiency of service.
- 5) *In Peerless General Finance and Investment Co. Ltd. v. P. Narayana* (2002 (1) CPR 49 (NC), the decision of a finance company not to allow premature withdrawal of money deposited with their company was held to be a deficiency in service. The company was ordered to refund the money with interest @ 15 per cent per annum.

Check Your Progress 3

- 1) What constitute 'Consumer Dispute'?

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- 2) Explain the meaning of terms 'Defect' and 'Deficiency'?

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15.3.10 District Forum, State Commission, and National Commission

The Consumer Protection Act established a 3-tiered consumer disputes redressal system beginning at the lowest form, the District Forum. Section 9(a) of the Consumer Protection Act, 1986 provides that a Consumer Disputes Redressal Forum to be known as the District Forum will be established by the State Government in each District of the State. The State Government may, if it deems fit, may establish more than one District Forum in a District. The pecuniary jurisdiction of District Forum for claims is up to rupees twenty lakh.

The next tier in the consumer disputes redressal system is the State Commission. Section 9(b) of the Consumer Protection Act, 1986 provides that a Consumer Disputes Redressal Commission to be known as the State Commission will be established by the State Government in the State. The State Commission hears appeals against orders of the District Forum in the State as well as original complaints. The pecuniary jurisdiction of State Commission for claims is more than twenty lakh rupees but less than one crore rupees.

The third tier in the consumer disputes redressal system is the National Commission. Section 9(c) of the Consumer Protection Act, 1986 provides that a National Consumer Disputes Redressal Commission to be known as the National Commission will be established by the Central Government. The National Commission hears appeals against orders of the State Commissions as well as original complaints. The pecuniary jurisdiction of the National Commission for claims is more than one crore rupees.

The claims in all the above mentioned three cases refer to the value of goods or services and the compensation claimed if any.

Check Your Progress 4

- 1) Discuss the composition of District Forum, State Commission and National Commission.

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15.3.11 Manufacturer and Traders

Section 2(1)(j) of the Consumer Protection Act defines ‘manufacturer’ as a person who:

- i) Makes or manufactures any goods or parts thereof; or
- ii) Does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or
- iii) Puts or causes to be put her mark on any goods made or manufactured by any other manufacturer.

The explanation to this definition clarifies that where a manufacturer sends any goods or parts to any branch office maintained by it, such branch office shall not be a “manufacturers” even though the parts so dispatched are assembled at and sold or distributed from such branch office.

Section 2(1)(q) of the Consumer Protection Act defines a trader about any goods as a person who sells or distributes any goods for sale and includes the manufacturer. Where such goods are sold or distributed in package form, then the term “trader” shall include the packer of those goods as well.

15.3.12 Restrictive Trade Practices

Unscrupulous trade practices are common in the market place, and it is to curb and regulate these practices that the Consumer Protection Act, 1986 was enacted. The Consumer Protection Act defines such unscrupulous trade practices that adversely impact the consumer’s choice to take informed decisions about products and services the consumer needs into two categories – those that restrict his/her choice by controlling the market and those that unfairly manipulate his/her decision through misleading information and the like.

The first category of the above mentioned unscrupulous trade practices are called “Restrictive Trade Practice” and are defined under Section 2(1)(nnn) of the Act to mean:

- i) Any trade practice which tends to bring about manipulation of price, or conditions of delivery;
- ii) Any trade practice that tends to affect the flow of supplies in the market relating to goods or services in such a way as to impose unjustified costs or restriction on consumers of such goods and services;
- iii) A delay in providing services or supplying goods beyond what was agreed to by a trader, if such delay leads to or is likely to lead to a rise in the price of such goods or services;
- iv) Any trade practice requiring the consumers to buy, hire or avail services or goods as a condition precedent to buying, hiring or availing of other goods or services.

Thus, compelling a consumer to buy insurance cover while purchasing a vehicle, or insisting on the purchase of gas-stove as a pre-condition to release gas connection are examples of restrictive trade practices.

15.3.13 Services

As mentioned earlier, “services” are also covered under the purview of the Consumer Protection Act, 1986. A comprehensive definition of “service’ is incorporated under Section 2(O) of the Act. As per this section, “Service means

service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing, construction, entertainment or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.” The words ‘any’ and ‘potential’ are important since both are of having wider amplitude. “Potential user” means that the definition is to restricted to current or actual users, but extends to those who are capable of using it and therefore any future user as well as held by the Supreme Court in the case of Lucknow Development Authority v. N.K. Gupta (AIR 1994 SC 787). “Service of any description in the definition clarifies that virtually all services are covered within the sweep and ambit of the Consumer Protection Act, 1986, except services rendered gratuitously and under the contract of personal service”. Though the services relating to banking, financing, insurance, transport, processing, the supply of electrical and other energy, boarding or lodging or both, housing construction, entertainment or purveying of news or other information are explicitly mentioned the definition, it is important to note that the definition is an inclusive definition.

The Supreme Court has repeatedly observed that the Consumer Protection Act is a socially beneficial legislation and therefore its provisions should be interpreted in a manner beneficial to consumers. Hence, all the services would be covered under the act, except services rendered gratuitously and under the contract of personal service. Therefore, even the services of professionals like doctors, lawyers, engineers, architects, lawyers, etc. are covered by definition. For instance, deficient services rendered by a lawyer for a consideration contain all the ingredients required for a complaint, and therefore, the aggrieved client can file a complaint against the lawyer before the Consumer Forum.

15.3.14 Unfair Trade Practices

The informed choice of consumers is often manipulated and deceived by traders and service providers who put out false and misleading advertisements. Such advertisements may be given by any mode and in any media. To regulate and prohibit this practice and related practices, the Consumer Protection Act defines the term “Unfair Trade Practice’ in a comprehensive manner to include such misleading and deceptive advertising. Section 2(1)(r) of the Consumer Protection Act defines as “Unfair Trade Practice” as:

As trade practice consisting of any unfair method, unfair practice or deceptive practice adopted for promoting the sale, use or supply of any goods or services by making any oral or written statement or visible representation that falsely represents:

- i) Goods of a particular standard, quality or grade, composition, style or model;
- ii) Services of a particular standard, quality or grade;
- iii) Any second-hand renovated or reconditioned or old goods as new;
- iv) Such goods and services having sponsorship, approval, performance, characteristics, accessories, uses or benefits where such attributes are not possessed;

- v) The seller or supplier having a sponsorship, approval or affiliation which it does not have;
- vi) The need for or usefulness of such goods and services, when there is none;
- vii) The product or goods containing a warranty or guarantee of performance, efficacy or length of life that is not based on adequate or proper test;
- viii) The product or services containing a warranty or guarantee or promise that an article or any part of it will be replaced, maintained or repaired when such warranty or guarantee is materially misleading, or there is no reasonable prospect that the warranty, guarantee or promise will be carried out;
- ix) The price at which a product or like products or goods or services are sold.

Thus, a consumer can protect himself against say, food adulteration or short-weighting and file complaints directly to the District Forum. A consumer could also file complaints against sellers for charging more than the price of a product displayed on the package. However, the Supreme Court in *Morgan Stanley Mutual Fund v. Kartick Das* (1994(2) CPJ 7 (SC)) held that allotment of shares by a company is not a practice relating to carrying on any trade, and hence allegations in that regard do not constitute unfair trade practice.

Check Your Progress 5

- 1) What constitute the term 'Services'.
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- 2) Highlight the difference between 'Restrictive Trade Practices' and 'Unfair Trade Practices'.
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**15.4 THE CONSUMER PROTECTION BILL
(NO. 226 OF 2015), 2015**

At the initiative of the Ministry of Consumer Affairs Food & Public Distribution, Government of India (GOI), the Consumer Protection Bill (226 of 2015), 2015 stand introduced in the Lok Sabha but is still pending for clearance. This Bill, once passed by both the houses of Parliament would automatically repeal the earlier Consumer Protection Act, passed in the year 1986.

The salient features of the Proposed Consumer Protection Bill, 2015 are as under:

- 1) The scope and object of the proposed Consumer Protection Act have been enlarged, *inter-alia*, to include, prevention of unfair trade practices.

- 2) Several new definitions such as (i) advertisement, claimant, consumer Rights, electronic intermediary, electronic record, express warranty, harm, product, product liability, product seller, recognised agents, Regular for and unfair Contract, etc. have been added to the Act, 1986.
- 3) The following chapters have been newly added.
 - i) Chapter III.
 - ii) Chapter V. Mediation
 - iii) Chapter. VI Product liability.
- 4) The Chapter III Central Consumer Protection Authority (CCPA) provided for the following:
 - a) The establishment of Central Consumer Protection Authority. The objective of this authority is to promote, protect and enforce the rights of consumers. The CCPA will consist of one Commissioner and five Deputy Commissioners. The qualification and experience for the selection of Commissioners and Deputy Commissioners have been specified in the proposed bill. The Commissioners and Deputy Commissioners have to be appointed on selection basis by a Selection Committee constituted for the purpose.
 - b) Constitution and composition of Selection Committee are also clearly stated in the bill.
 - c) The objects, powers, and functions of the Central Consumer Protection Authority to inquire into Unfair Trade Practices and Misleading Advertisement, prohibition of sale and distribution of articles of food containing extraneous have matter, etc. have been enlarged.
- 5) Changes made in respect of Consumer Disputes Redressal Agencies are as under:
 - 5(a) **District Commission:**
 - i) The nomenclature of District Forum is proposed to be changed into District Consumer Grievance Redressal Commission, to be referred as District Commission in short.
 - ii) The strength of District Commission is proposed to be enhanced to not less than two and not more than the number of Members to be prescribed, in addition to a President qualified to be a District Judge.
 - iii) The District Commission will have jurisdiction to entertain complaints where **the billed value of the goods or services claimed does not exceed rupees fifty lakhs or up to thrice the limit of such value.**
 - 5(b) **State Commission:**
 - i) The President of the Commission will be a judge of the High Court and will have to be appointed by the State Government after having a consultation with the chief justice of the High Court concerned.
 - ii) The strength of State Commission is proposed to be enhanced from not less than four to not more than the number of Members to be prescribed by the State government.

- i) The State Commission will have jurisdiction to entertain complaints where the billed value of the goods or services, exceeds rupees 50 lakhs but does not exceed rupees 10 crores or up to thrice the limits of the said value.

5(c) National Commission:

- The President of National Consumer Commission is proposed to be appointed by the Central government, of course, in consultation with chief justice of India.
- The strength of National Commission is proposed to be enhanced to not less fifteen and not more than such number of Members as prescribed.
- Out of the said total, one each is proposed to be reserved for Women, Scheduled Caste, Scheduled Tribe, Other Backward Class and Minority Communities.
- The constitution and composition of the selection committee are clearly spelled out in the proposed bill.
- The National Commission will have the jurisdiction to entertain complaints where the billed value of goods or services claimed exceeds rupees ten crores or up to thrice the limit of the said value.

6) Common Grounds applicable to all the forums:

- i) The appointment of Members of District Commission and State Commission will have to be appointed by the State Government on the recommendation of the State Public Service Commission of the concerned State.
- ii) Every Member of the District Commission, State Commission, and National Commission will hold the office for a term of five years, or up to the age of Sixty five years, whichever is earlier, including re-appointment.
- iii) The age and education qualification for members have been prescribed as not less than forty years of age and possess a bachelor's degree from a recognised university respectively.
- iv) The procedure in connection with the admission of complaint has been enlarged by taking into consideration the present prevailing situation and circumstances.
- v) The District Commission, State Commission, and National Commission have been vested with the power to direct the parties to the Consumer Dispute to opt for settlement of Dispute by process of Mediation if it appears that there exists an element of a settlement acceptable to the parties concerned.
- vi) The constitution and composition of the Selection Committee are also specified therein.
- vii) Provision has been made to assist the National Commission or State Commission by either any individual or organisation or experts if the issue involves larger interest of consumers.

- viii) **The finality of Orders:** The orders passed by District Commission, State Commission and National Commission will become final if no appeal is preferred by either of the party.
- 7) **New Chapter (VI) on Mediation:** The State government in the case of State Commission, District Commission and Central government in the case of National Commission have been authorised to establish District, State and National Consumer Mediation cell attached with National, State and District Commission respectively.
- The National, State and District Commission is also authorised to prepare a panel of Mediators for the purpose of appointing the Mediators between the parties.
 - The consent of Persons to be included in the panel will have to be obtained before the empanelment.
 - The validity of the panel will be for 5 years or up to the age of 70 years, as the case may be.
 - The Consumer Commissions should consider the suitability of the Mediator for solving the consumer dispute involved and also give the preference to those who have proven record of successful Mediation or having special qualification or experience in the field of Mediation.
 - The proposed law has also prescribed the procedure to be followed during the process of Mediation.
- 8) **The chapter on Product liability:**
- i) The proposed law stipulated that the manufacturer or producer of products will be held liable for the product in product liability action for personal injury, death damage to property is caused to the consumer due to defect or deficiency occurred in the goods purchased or services hired.
- The grounds for holding the manufacturer as well as a seller of product liable in any product liability action is specified along with exceptions from the above.

15.5 LET US SUM UP

In this unit, you have been exposed to the important and salient features of the Consumer Protection Act, 1986 in general and the following aspects in particular.

- The inclusive and exclusive definition of Consumer.
- Who is competent to file a complaint
- What constitutes the complaint, Consumer dispute, defect and deficiency.
- Composition and Jurisdiction of Consumer Forums.
- The role and responsibility of manufacturers, Traders, and Service Providers.
- The difference between Restrictive Trade Practice and unfair Trade Practice.

15.6 SOME USEFUL BOOKS AND REFERENCES

- 1) Dr. R. K. Bangia- Law of Torts
- 2) Dr. J. N Pandey- Law of Torts
- 3) Consumer Protection Act, 1986- Bare Act
- 4) Students' Guide to Economic Laws by V. S. Datey

15.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Please refer Sub-section 15.3

Check Your Progress 2

- 1) Please refer Sub-section 15.3.3
- 2) Please refer Sub-section 15.3.6

Check Your Progress 3

- 1) Please refer Sub-section 15.3.7
- 2) Please refer Sub-section 15.3.7 and 15.3.8

Check Your Progress 4

- 1) Please refer Sub-section 15.3.10

Check Your Progress 5

- 1) Please refer Sub-section 15.3.13
- 2) Please refer Sub-section 15.3.12 and 15.3.14

15.8 TERMINAL QUESTIONS

- 1) What in your opinion are the four most important features of the Consumer Protection Act, 1986?
- 2) State, if the following are the consumers under the Consumer Protection Act, 1986.
 - i) The purchaser of a sewing machine for earning her livelihood.
 - ii) A person registered for gas-connection but before allotment of the same.
 - iii) User of electricity
- 3) Are the following 'goods' under the Consumer Protection Act, 1986:
 - i) Standing crops
 - ii) Shares before allotment
- 4) Are the following services be covered under Consumer Protection Act, 1986:
 - i) Services rendered by doctors of a private nursing home.
 - ii) Professional services of a lawyer engaged by a client.
 - iii) Services rendered by a lawyer appointed on a salary by a company.