

## **RIGHTS OF CONSUMERS**

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### 9.0 OBJECTIVES

Modern world is known as age of consumers. The slogans like ‘Consumer is King’ have been in fashion for quite some time. Unfortunately in India, the awareness about consumers’ rights is quite low. This unit is aimed at giving students ideas about their rights as consumers, where could they approach if they have any complaints, etc. This unit not only covers the details of Consumer Protection Act, it also talks about various allied laws like Contract act, etc.

### 9.1 INTRODUCTION

India passed Consumer Protection Act in the year 1986. This clearly means that before this Act came, Indian consumers had no protection from law. Though there were laws like Sales of Goods Act in 1930, there was no specific law to protect consumers. Also India, being a poor and largely illiterate country, protecting the interests of Consumers is a big challenge. The unit will explain the

students what are the consequences of violating consumer protection act.

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## 9.2 CONSUMER PROTECTION ACT

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In modern world consumers are regarded as King. But in India the Consumer Protection Act came very late. In our country the consumer movement started in the 1960s. But only in January 1986 this Act was passed in our country, which has given Indian consumers some rights about the goods they purchase and the services they buy.

It is interesting to note that such law has existed in advanced democracies like USA, UK for years. In those societies, during the first half of the 20th century, the development of consumer welfare societies was established. Those days the consumer was helpless person who had no right against the manufacturers and unscrupulous traders who could often and easily cheat consumers. One must credit the USA for starting consumer right movement in 1927. Out of this movement came the 'Union of Consumer of United States of America' established in 1936. Years later the President of USA Mr. John Kennedy outlined four rights of the consumers [1] Right to safety [2] Right to be informed [3] Right to choose [4] Right to be heard. This bill later became the base for many countries to follow.

Then came the initiative from the United Nations which had passed a resolution indicating certain guidelines under which the government should make laws for consumer protection. Since in developing countries literacy levels and awareness levels are rather poor, such laws are all the more necessary.

Our act seeks to promote and protect the rights of consumers such as:

[a] right to be protected against marketing of goods which are hazardous to life and property [b] the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices. [c] right to be assured, wherever possible, access to an authority of goods at competitive prices [d] right to be heard and to be assured that consumers interests will receive due consideration at appropriate fora [e] right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers [f] right to consumer education.

The mechanism for this purpose would be the Consumer Protection Councils to be established at the Central and State level. Not only this, for speedy and simple redressal to consumer disputes, a quasi-judicial body is to be set up at districts, state and central levels. These bodies should function according to the principles of natural justice.

This act was passed for the benefit of unprotected consumers. The idea is to create inexpensive system for trial and disposal of consumer disputes.

The law made in 1986 had to be amended in the light of changes that have taken place. Accordingly the Consumer Protection [Amendment] Act, 2002 was passed which became effective from 17th December 2002. The important feature of this amendment was that it provided for establishment and composition of Consumer Protection Council at district level.

#### Violations of Consumer Protection Act

The law has defined various concepts associated with this law. Concepts like ‘complainant’, ‘consumer’, ‘complaint’, ‘medical negligence’, etc. are explained in the act. For instance ‘complaint’ means any allegation in writing made by a complainant against a trade practice or a restrictive trade practice which has been adopted by any trader, the goods bought by him or agreed to be bought by him, which suffers from one or more defects, the services hired or availed of or agreed to be hired or availed of by him which suffers from deficiency in any respect, where a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time in force or displayed on the goods or any package containing such goods; if goods which will be hazardous to life and safety when used, are being offered for sale to public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the regards to the contents, manner and effect of use of such goods, with a view of seeking any relief before the forum/commission as provided under the Consumer Protection Act.

There has been amendment to the Consumer Protection Act in 2002 according to which now the service provider is also required to display the list of cost of services rendered like the traders of goods.

It is however necessary that the complaint must be supported by the documentary or other proper evidence.

In the similar manner in this act all other concepts are exhaustively defined in legal terms.

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### 9.3 CONSUMERS AND INDIAN CONTRACT ACT:

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The Indian Contract Act is one of the oldest act in our country. This came into existence in 1872 and has been amended from time to time. Historically speaking the word ‘contract’ is derived from the Latin word ‘contractum’, which means drawing together. The word ‘contract’ is normally used to describe a series of promises constituting the contract, documents constituting or evidencing that series or their performance; legal relations resulting from that series. In simple language, contract means an agreement between competent parties, upon a lawful consideration to do or not to do some act which is binding. Here the word ‘binding’ is quite important as it creates some obligations and some rights. If the contract is not performed the consumers or manufactures can go to court.

This is not a new issue. For centuries people have been buying and selling goods and services. It also means the dispute about these issues are equally old. The Indian Contract Act takes into account all these issues and frames responsibilities and duties for manufacturers/ service providers and consumers. Some of the important issues are as under:

- 1] The Indian Contract Act,1872 extends to the whole of India [except the state of Jammu and Kashmir] and has been in force since 1st September 1872.
- 2] An agreement not enforceable by law is said to be void

- 3] An agreement enforceable by law is a contract. [This shows that Contract has force of law behind it.]

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#### 9.4 CONSEQUENCES OF BREACH OF CONTRACT:

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When a contract has been broken, the person who suffers due to such breach is entitled to receive compensation from the person who has broken the contract. However while estimating the compensation, the means which existed of remedying the loss caused by non-performance of the contract must be taken into account.

These are some of the examples that we face in our daily life. In addition to these provisions, there are many provisions in the Indian Contract Act which ensures smooth transactions in the country between the buyer and the seller. Some of the provisions of the Contract Act can be read to interpret the Consumer Protection Act.

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#### 9.5 CONSUMERS AND THE SALE OF GOODS ACT 1930:

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While discussing the consumers and their rights, we need to understand some important provisions of the Sale of Goods Act which came into force in 1930 in India. Historically speaking, before the British settled down in India, there was no uniform law for sale of goods or movables in the country. There used to be many disputes about this. In 1870, the various branches of law were codified. This process got final shape in 1893. In the early decades of 20th century, a draft bill was prepared on the lines of the English Sale of Goods Act 1893. This was introduced in the Legislative Assembly in September 1929. It came into force from 1st July 1930. It extends to the whole of India except the state of Jammu and Kashmir.

The act defines basic concepts like ‘\_buyer’, ‘\_delivery of goods’, ‘\_price’, ‘\_seller’, etc. The act has detailed provisions about

buying and selling activities between the buyer and the seller. For example, a contract of sale may be absolute or conditional. Similarly there are provisions for protecting the quality of the goods or services. If the buyer expressly or by implication makes known to the seller the particular purpose for which the goods required, so as to show that the buyer relies on the seller's skill or judgment, there is an implied condition that the goods shall be reasonably fit for such purpose.

The act covers various aspects of buying and selling. For example the sale by person who is not owner. If the seller has sold goods he does not own or who does not have authority to sell the goods, in that case the buyer does not get the title to the goods. This too has an exception. The sale by an agent is valid as he is acting on behalf of the principal.

Similarly the act specifies the duties of the buyer and the seller. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, according to the terms of the contract of sale. Normally the delivery of the goods and payment of the price are concurrent conditions i.e. the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

If the seller delivers to the buyer a quantity of goods less than the contracted quantity, the buyer may reject them. In case the buyer accepts the goods so delivered he shall pay for them at the contract rate.

Similarly quite often we encounter situations when the whole price has not been paid. In this act seller of such goods is described as 'unpaid seller'. Such unpaid seller enjoys certain rights. He has a lien on the goods for the price while he is in possession of them. In case the delivery of the goods has not taken place, the unpaid seller has to withhold delivery and stoppage in transit where the property has passed to the buyer.

When the contract is not fulfilled, suits can be filed for breach of the contract. If according to contract of sale, the goods has passed to the buyer and the buyer neglects or refuses to pay such price, the seller may sue him for the price of the goods. Similarly when the buyer neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. And if the seller neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. There are many such provisions in the Sale of Goods Act which Indian consumers must know.

## CONSUMER AND THE ESSENTIAL COMMODITIES ACT 1955:

Theoretically market is a place where the buyers and sellers exchange goods and services for a price voluntarily. This definition of market is valid even today but somewhat inadequate. The modern state is committed to the welfare of the people. In this context it means it must be active in market place to ensure that consumers get steady supply of essential commodities. If such intervention is not ensure the traders lobby could indulge in black-marketing by hoarding the commodities. This is why we have the Essential Commodities Act 1955 which has been amended from time to time. Not only this, in 1980 India has passed The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980. The act of 1980 is to control black marketing of essential commodities. Such laws are indeed necessary to ensure the steady supply of essential commodities like edible oil, milk, etc.

This legal has been in existence from pre-independence days. The precursor of the Essential Commodities Act 1955 was The Essential Supplies [Temporary Powers] Act. 1946. The Essential Commodities Act 1955 extends to the whole of India. The act covers many commodities essential for modern living. Commodities like coal, drugs, cattle-fodder, foodstuffs, iron and steel, petrol and petroleum products, components and parts and accessories of automobiles, etc. are covered under this act.

Though this law has been made by the Parliament, each state government is authorized to make relevant changes in the act to be applicable to the conditions of the particular state. Under the provisions of this act, the State can control, regulate the price at which any essential commodity may be bought or sold. The provisions of this act could be used to stop the excessive profit making by putting upper limit beyond which profit making could be considered act illegal and an offence.

In addition to this act, in 1980 we have also passed ‘The Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act 1980’. This act extends to whole of India except the state of Jammu and Kashmir. Under this act, the government gets the power of detaining a person who is acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community. If the person is to be detained has absconded or is concealing himself, so that the order cannot be executed, then Government can issue a warrant for his arrest.

In other words, the purpose of these acts is to ensure that the people get a steady supply of essential commodities at reasonable price. The traders should not be able to hold up the supply of essential commodities and make unreasonable profits. Modern government is duty-bound to look after the welfare of its people.

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## 9.7 CONSUMER AND THE STANDARDS OF WEIGHTS AND MEASURES ACT 1976

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The act has been passed to regulate inter-State trade or commerce in weights, measures and other goods which are sold or distributed by weight, measure or number. The act extends to the whole of India.

The act discusses important concepts like ‘\_commodity in packaged form’, ‘\_dealer’, ‘\_export’, ‘false package’, etc. The ‘\_commodity in packaged form’ means commodity packaged whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail.

The act ensures that every unit of weight or measure shall be based on the units of the metric system.

The base unit of length: it shall be ‘\_metre’.

The base unit of mass: it shall be ‘\_kilogram’.

The base unit of time: It shall be ‘\_second’.

The government is empowered by this act to appoint legal authority to ensure the compliance of the provisions of this act. The government appoints ‘\_Director of Legal Metrology’ and such other staff as deemed necessary to help the Director. The Director or any person authorized by him has powers to enter any premises and search for and inspect any weight, measure or other goods in relation to which inter-State trade or commerce has taken place or is likely to take place. If the goods seized are subject to speedy or natural decay, the Director may dispose of such goods in such manner as may be prescribed.

Not only this, every false or unverified weight or measure and every false package used in the course of any inter-State trade or commerce and seized shall be liable to be forfeited to the Central Government.

When a commodity is sold in a packaged form, the manufacturer must give statutory details in the prescribed format. These details cover [1] the identity of the commodity in the package [2] the net quantity of the commodity in the package, in terms of the standard unit of weight or measure [3] where the commodity is packaged or sold by number, the accurate measure, of the

commodity contained in the package [4] the unit price of the commodity in the package [5] the sale price of the package.

The act has elaborate provisions for export and import business. Any good to be exported must have [1] quotation of any price [2] issue of any price list, invoice or cash memo [3] indication of the weight or measure or number of net contents of any package on any label, carton or other thing.

For the import purpose, the non-metric weight or measure is not to be imported. The article to be imported must conform to the standards of weight or measure established under this Act.

When any commodity, machinery is to be imported from a country in which metric system of weight or measure is not in force, before importing, the importer shall make an endeavour to obtain the weight or measurement expressed in terms of the standard unit of weight or measure established under this Act.

If any person uses any weight or measure or makes numeration other than established under this Act, shall be punished with imprisonment which may extend to six months or with fine which may extend to Rs.1000/- or with both.

This is how consumer gets further protection according to the provisions of this act.

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## 9.8 CONSUMER AND THE PREVENTION OF FOOD ADULTERATION ACT 1954:

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In poor country like India, the traders and merchants are quite prone to make quick profits by means fair and foul. This is why the food adulteration is rampant in our country. This is also why the importance of the act of 1954 which was passed to prevent food adulteration. This extends to the whole of India.

In India, many states have passed such laws to prevent of food adulteration. Historically the need for such law was felt in 1937 when a Committee appointed by the Central Advisory Board of Health recommended such legislation. Now in India ‘adulteration of food-stuffs and other goods’ is an issue included in the Concurrent List in the Constitution of India. This is why the Central government can make an all-India law. By 1960 the inadequacies of this law came to surface.

Like any act, this too has given definition of ‘adulterant’, ‘adulterated’, etc. Adulterant means ‘any material which is or could be employed for the purpose of adulteration. ‘Adulterated’ has been defined in an exhaustive manner covering all aspects of this issue. It also defines what is not adulterated. It says ‘where two or more articles of primary goods are mixed together and resultant article of food [1] is stored, sold or disturbed under a name which denotes the ingredients thereof and [2] is not injurious to health, then such resultant article shall not be deemed to be adulterated within the meaning of the act.

This act has also created various authorities to protect consumers from adulterated food. Under section 4 of the act, we have ‘Central Food Laboratory’. The Central government can appoint one or more Central Food Laboratories to carry out the functions entrusted to the Central Food Laboratory by this Act. Right now there are four such laboratories in our country located at Kolkata, Mysore, Pune and Ghaziabad. Some states come under each Central laboratory.

Under section 3, we have ‘Central Committee for the Food Standards’. This committee advises the Central government and State governments on matters arising out of the administration of this Act.

Similarly we have ‘Food [Health] Authority’ which looks after the related issues. The Central government can ban import of

certain articles of food. No person shall import into India [1] any adulterated food [2] any misbranded food [3] any article of food for the import of which a license is prescribed, except in accordance with the conditions of the license and [4] any article of food in contravention of any other provisions of this act.

Similarly the Central or State government appoints Food Inspectors for specific locality. These Food Inspectors have enough powers to ensure that adulterated food is not available in market. They can take samples of any article of food from any person selling such article; any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser. A Food Inspector can enter and inspect any place where any article of food is manufactured or stored for sale. If his finds any malpractices he can take appropriate action.

There are separate provisions for offences committed by companies. If company has committed any crime under this act, it shall be punished accordingly.

When a person has been convicted under this act, the article of food for which he has been punished, shall be forfeited to the government.

This shows the importance of this act to protect the consumer in our country.