

Unit II : Part B: Organizational set-up under the Consumer Protection Act

Objectives and Basic Concepts: Consumer rights and UN Guidelines on consumer protection, Consumer goods, defect in goods, spurious goods and services, service, deficiency in service, unfair trade practice, restrictive trade practice.

Organizational set-up under the Consumer Protection Act: Advisory Bodies: Consumer Protection Councils at the Central, State and District Levels; Adjudicatory Bodies: District Forums, State Commissions, National Commission: Their Composition, Powers, and Jurisdiction (Pecuniary and Territorial), Role of Supreme Court under the CPA with important case law.

2.10 The Consumer Protection Law in India/ उपभोक्ता संरक्षण विधेयक, 2019/ CPA 2019 / COPRA 2019

2.10.12 Functions of the CCPA:

Focus of CCPA, structure, penalties and power

Powers of CCPA

Under Section 20 of The Consumer Protection Act, the proposed authority will have powers to:

1. recall goods or withdrawal of services that are “dangerous, hazardous or unsafe;
2. pass an order for refund the prices of goods or services so recalled to purchasers of such goods or services and
3. discontinuation of practices which are unfair and prejudicial to consumer’s interest

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Deal with false or misleading advt

- Section 21 of the new Act defines the powers given to the CCPA to crack down on false or misleading ads.
- The CCPA may **issue directions** to the trader, manufacturer, endorser, advertiser, or publisher to discontinue a misleading advertisement, or modify it in a manner specified by the authority, within a given time.
- It may also **impose a penalty** on the manufacturer or endorser of false and misleading advertisements.
- CCPA may ban the endorser of a false or misleading advertisement from making endorsement of any products or services in the future, for a period that may extend to one year.
- Ban may extend up to 3 years in every subsequent violation of the Act.

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CCPA other powers...

- While conducting an investigation after preliminary inquiry, officers of the CCPA's Investigation Wing will have the powers to enter any premise and search for any document or article, and to seize these.
- For search and seizure, the CCPA will have similar powers given under the provisions of The Code of Criminal Procedure, 1973.
- The CCPA can file complaints of violation of consumer rights or unfair trade practices before the District, State, and the National Consumer Disputes Redressal Commission.
- It will issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services.

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2.10.13 A comparative chart of the substantive changes in the provisions of CPA 1986 and CPA 2019:

S. No.	Consumer Protection Act, 1986	Consumer Protection Act, 2019
1	No separate regulator	CCPA to be formed.
2	Compliant could be filed in a consumer court basis the site of the defendant/ seller's office.	Compliant can be filed in a consumer court where the complainant either resides or works
3	No specific provision of product liability existed earlier.	Consumer can now seek compensation for harm caused by a defective product or a deficient service.
4	Jurisdiction District: up to INR 20 lakhs State: INR 20 lakhs to INR 1 crore National: above INR 1 crore	Jurisdiction District: up to INR 1 crore State: INR 1 crore to INR 10 crore National: above INR 10 crore
5	No legal provisions for mediation existed earlier	Courts can now refer settlement through mediation.

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2.11 Role of Supreme Court under the CPA with important case law

CASE TITLE	Om Prakash vs Assistant Engineer, Haryana Agro Industries Corporation Ltd. and Others [1986-1995 Consumer 1042 (NS)]
ISSUES RAISED	<ul style="list-style-type: none"> • Whether delay in delivery of goods by a trader constitutes unfair trade practice. • Whether right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers is maintainable under COPRA?
GIST	<ul style="list-style-type: none"> • A complaint under COPRA was filed on behalf of the complainant, Om Prakash, before the District Forum which held that the respondent, Haryana Agro, Industries failed to deliver tractor to the complainant, although he was at the top in the booking list and also prepared to purchase it. • Due to the delay made by the respondent, the complainant had to pay extra amount of Rs 40,690 due to rise in prices. Haryana Agro was directed by the District Forum to refund Rs 40,690 along with the interest at the rate of 18 percent per annum and pay compensation of Rs 2000 to Om Prakash for harassment and mental agony. • The appeal filed on behalf of Haryana Agro before the State Commission was dismissed, affirming the findings of the District Forum. It went in appeal before the National Commission which held that the mere fact that there has been delay in the delivery of the tractor will not constitute 'unfair trade practice' under COPRA. The National Commission did not point out in its order as to why in the facts and circumstances of the case it shall not constitute 'unfair trade practice'. • Om Prakash thus went in appeal to the Supreme Court.
OUTCOME	Consumer can now seek compensation for harm caused by a defective product or a deficient service.

Unit - III

Grievance Redressal Mechanism under the Indian Consumer Protection Law



Who can file a complaint?
Grounds of filing a complaint;
Limitation period;
Procedure for filing and hearing of a complaint;
Disposal of cases, Relief/Remedy available;
Temporary Injunction, Enforcement of order, Appeal, frivolous and vexatious complaints;
Offences and penalties.
Leading Cases decided under Consumer Protection law by Supreme Court/National Commission:
Medical Negligence;
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Unfair Trade Practices.

3.1 Who can file a complaint?

1. A consumer; or
2. Any voluntary consumer association registered under any law for the time being in force; or
3. The central government or any state government; or
4. The central authority; or
5. One or more consumers, where there are numerous consumers having the same interest; or
6. In case of death of a consumer, his legal heir or legal representative; or
7. In case of a consumer being a minor, his parent or legal guardian.

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3.2 Grounds of filing a Complaint

1. an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider ;
2. the goods bought by him or agreed to be bought by him suffer from one or more defects;
3. the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency;
4. A trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price-
 - Fixed by or under any law for the time being in force;
 - displayed on the goods or any package containing such goods;
 - displayed on the price list exhibited by him by or under any law for the time being in force;
 - agreed between the parties
5. goods which will be hazardous to life and safety when. used, are being-offered for sale to the public-
 - in contravention of any standard relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
 - where the trader knows that the goods so offered are unsafe to the public;
6. the services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;

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3.3 Definition of important terminologies

2(6) "Complaint"

"complaint" means any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act.

2(8) "consumer dispute"

"consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

2(10) "defect"

"defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression. "defective" shall be construed accordingly;

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2(11) "deficiency"

"deficiency" means in service availed, any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force—

- a) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
- b) deliberate withholding of relevant information by such person to the consumer;

2(21) "goods"

"goods" means every kind of movable property and includes "food" as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006

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2(37) "product seller"

"product seller", in relation to a product, means a person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing such product for commercial purpose and includes—

- a) a manufacturer who is also a product seller; or
- b) a service provider,

but does not include—

- 1) a seller of immovable property, unless such person is engaged in the sale of constructed house or in the construction of homes or flats;
- 2) a provider of professional services in any transaction in which, the sale or use of a product is only incidental thereto, but furnishing of opinion, skill or services being the essence of such transaction;

a person who—

- I. acts only in a financial capacity with respect to the sale of the product;
- II. is not a manufacturer, wholesaler, distributor, retailer, direct seller or an electronic service provider;
- III. leases a product, without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor;

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2(38) "product service provider"

"product service provider", in relation to a product, means a person who provides any service in respect of such product;

2(41) "restrictive trade practice"

"restrictive trade practice" means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—

- (i) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;
- (ii) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent for buying, hiring or availing of other goods or services;

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2(42) "service"

"service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

2(45) "trader"

"trader", in relation to any goods, means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;

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2(46) "unfair contract"

"unfair contract" means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following, namely:—

- a. requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or
- b. imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or
- c. refusing to accept early repayment of debts on payment of applicable penalty; or
- d. entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or
- e. permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or
- f. imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage;

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3.3 Definition of important terminologies

2(47) "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 of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

- i. making any statement, whether orally or in writing or by visible representation including by means of electronic record, which—
 - a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
 - b) falsely represents that the services are of a particular standard, quality or grade;
 - c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
 - d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
 - e) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
 - f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
 - g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

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2(47) "unfair trade practice" contd..

- h) makes to the public a representation in a form that purports to be—
- A. a warranty or guarantee of a product or of any goods or services; or
 - B. a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,
 - C. if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- (i) gives false or misleading facts disparaging the goods, services or trade of another person.

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

- A. expressed on an article offered or displayed for sale, or on its wrapper or container; or
- B. expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or
- C. contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

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3.3 Definition of important terminologies

2(47) "unfair trade practice" contd..

ii) permitting the publication of any advertisement, whether in any newspaper or otherwise, including by way of electronic record, for the sale or supply at a bargain price of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

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

- A. a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or
- B. a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

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2(47) "unfair trade practice" contd..

iii) permitting—

- a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged, in the transaction as a whole;
- b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest, except such contest, lottery, game of chance or skill as may be prescribed;
- c) withholding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure, the information about final results of the scheme.

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

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2(47) "unfair trade practice" contd..

- iv. permitting the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by the competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- v. permitting the hoarding or destruction of goods, or refusal to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services;
- vi. manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;
- vii. not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;
- viii. refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days/specified on the product;
- ix. disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.

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3.4 Consumer Dispute Redressal Commissions

3.4.1 Composition of Redressal Agencies

