

# UN Guidelines on consumer protection

## Objective:

- a) To assist countries in achieving or maintaining adequate protection for their population as consumers
- b) To facilitate production and distribution patterns responsive to the needs and desires of consumers
- c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers
- d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers
- e) To facilitate the development of independent consumer groups
- f) To further international cooperation in the field of consumer protection
- g) To encourage the development of market conditions which provide consumers with greater choice at lower prices
- h) To promote sustainable consumption.

### UN Guidelines on consumer protection

#### Scope of application:

These guidelines apply to business-to-consumer transactions, including the provision of goods and services by State-owned enterprises to consumers. For the purpose of these guidelines, consumer protection policies include the laws, regulations, rules, frameworks, procedures, decisions, mechanisms and programmes of Member States, as well as private sector standards and recommendations that protect consumer rights and interests and promote consumer welfare.

For the purpose of these guidelines, the term “consumer” generally refers to a natural person, regardless of nationality, acting primarily for personal, family or household purposes, while recognizing that Member States may adopt differing definitions to address specific domestic needs

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.

### UN Guidelines on consumer protection

1. National policies for consumer protection
2. Physical safety
3. Promotion and protection of the economic interests of consumers
4. Standards for the safety and quality of consumer goods and services
5. Distribution facilities for essential consumer goods and services
6. Dispute resolution and redress
7. Education and information programmes
8. Promotion of sustainable consumption
9. Electronic commerce
10. Financial services
11. Measures relating to specific areas

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# Consumer goods, defect in goods, spurious goods and services

## Consumer goods

Consumer goods are products bought for **consumption** by the average consumer. Alternatively called final goods, consumer goods are the end result of production and manufacturing and are what a consumer will see stocked on the store shelf. Clothing, food, and jewellery are all examples of consumer goods

## Defect in goods

Consumer Protection Act, 1986 defines defect in goods. The defect is defined as any imperfection, fault, a shortcoming in certain parameters of the good which are as follows: Quality. Quantity. Purity.

## Spurious goods and services

"Spurious goods and services" mean such goods and services which are claimed to be genuine but they are actually not so. These goods are outwardly similar or corresponding to something without having its original qualities. Thus such goods are intended to deceive the customers

### Service, deficiency in service

A **service** is a transaction in which no physical goods are transferred from the seller to the buyer. The benefits of such a service are held to be demonstrated by the buyer's willingness to make the exchange. Public services are those that society as a whole pays for.

**Deficiency** means 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 time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

For instance:

A agreed to supply water to B for irrigation of crops. He failed to do so because of a power breakdown due to the burning of a transformer. As a result crop damaged. B sued A for providing deficient service. The National Commission held that it was duty of A to get the transformer repaired immediately. Since he was negligent in doing so, he is liable for the deficiency in service

### Unfair trade practice

The New Act introduces a specific broad definition of Unfair Trade Practices, which also includes sharing of personal information given by the consumer in confidence, unless such disclosure is made in accordance with the provisions of any other law.

The New Act fixes liability on endorsers considering that there have been numerous instances in the recent past where consumers have fallen prey to unfair trade practices under the influence of celebrities acting as brand ambassadors. In such cases, it becomes important for the endorser to take the onus and exercise due diligence to verify the veracity of the claims made in the advertisement to refute liability claims.

- **Falsely represents that the goods are of a particular standard**
- **Makes a false or misleading representation**
- **manufacturing of spurious goods or offering such goods for sale**
- **not issuing bill or cash memo or receipt for the goods sold or services rendered**
- **refusing, after selling goods to take back or withdraw defective goods**
- **permitting the hoarding or destruction of goods to raise their cost**





**Restrictive trade practices** are targeted at the consumers who are burdened with restriction and unjustified costs through the practices of the trader. The trader manipulates the price or the conditions of delivery of the product which results in 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.

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

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

- Earlier Consumer Protection Act was passed in 1986. Then many amendments were made to meet the need of the time. And later due to growth of internet, digital technology, new marketing and distribution methods, advertisement, ecommerce, there was need of a complete new Act providing more strict provisions.
- The Indian Parliament, on 9 August 2019, passed the landmark Consumer Protection Bill, 2019 which repeals previous act and aims to provide the timely and effective administration and settlement of consumer disputes



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

#### Introduction

- On 9th August, 2019, President gave assent to the Consumer Protection Act, 2019.
- The new Act, which would replace the Consumer Protection Act, 1986, is not an amendment to the 1986 law, but a new consumer protection law.
- It aims to address consumer vulnerabilities to new forms of unfair trade and unethical business practices in the fast-changing new-age economy.
- The new Act proposes a slew of measures and tightens the existing rules to further safeguard consumer rights.
- Introduction of a central regulator, strict penalties for misleading advertisements and guidelines for e-commerce and electronic service providers are key highlights.

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### Objectives of CPA 2019

An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto.

### Consumer Protection Councils

Consumer Protection Councils will be established at the district, state and national levels.

Central Consumer Protection Council shall be setup by central government. State Council and District Council shall be setup by state government.

The objects of the Council shall be to render advice on promotion and protection of the consumers' rights under this Act.

### Meaning of Consumer

A consumer is defined as a **person who buys any good or avails a service for a consideration.**

It does not include a person who obtains a good for resale or a good or service for **commercial purpose.**

The expression "**commercial purpose**" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment

It covers transactions through all modes including offline, and online through electronic means, **teleshopping, multilevel marketing or direct selling.**

### Rights of Consumers

- The **right to be protected** against the marketing of goods, products or services which are hazardous to life and property;
- The **right to be informed** about the quality, quantity, potency, purity, standard and price of goods, products or services, as case may be, so as to protect consumer against unfair trade practices;
- the **right to choose / be assured**, wherever possible, access to a variety of goods, products or services at competitive prices;
- The **right to be heard** and to be assured that consumer's interests will receive due consideration at appropriate fora;
- The right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous
- The **right to consumer awareness**

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### SALIENT FEATURES OF THE CPA 2019

**Covers E-Commerce Transactions:** The New Act has widened the definition of 'consumer'. The definition now includes any person who buys any goods, whether through offline or online transactions, electronic means, teleshopping, direct selling or multi-level marketing. The earlier Act did not specifically include e-commerce transactions, and this lacuna has been addressed by the New Act.



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## SALIENT FEATURES OF THE CPA 2019

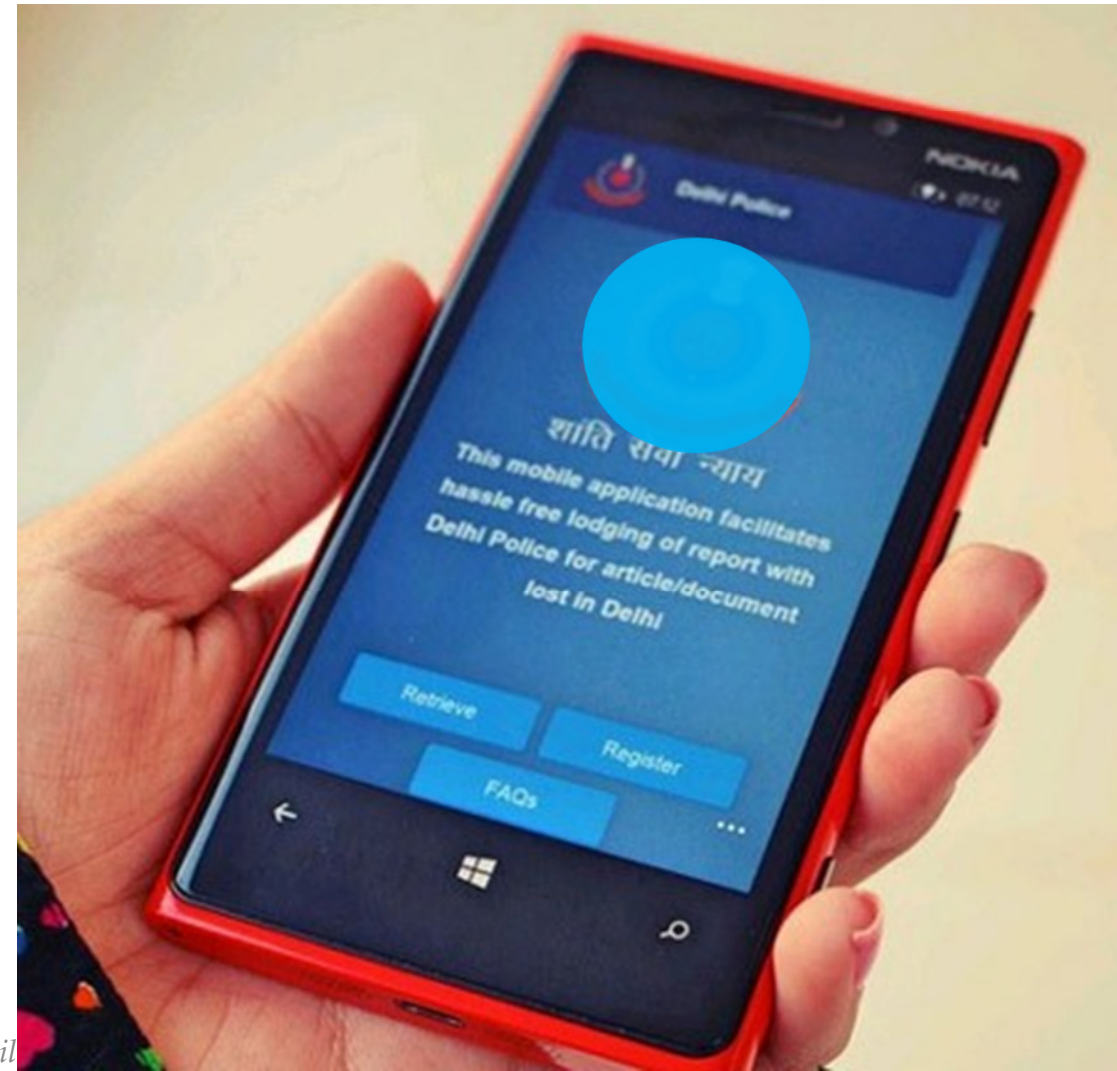
**E-Filing of Complaints:** The New Act provides flexibility to the consumer to file complaints with the jurisdictional consumer forum located at the place of residence or work of the consumer. This is unlike the current practice of filing it at the place of purchase or where the seller has its registered office address.

The New Act provides **flexibility to the consumer to file complaints with the jurisdictional consumer forum located at the place of residence or work of the consumer.**

This is **unlike the current practice of filing it at the place of purchase or where the seller has its registered office address.**

The New Act also **contains enabling provisions for consumers to file complaints electronically** and for hearing and/or examining parties through video-conferencing.

This is aimed to provide **procedural ease and reduce inconvenience and harassment for the consumers.**



## Territorial Jurisdiction

As far as territorial jurisdiction is concerned, National Commission can entertain all complaints from all the States of Indian except Jammu and Kashmir, but complaint comes from outside India cannot be entertained by National Commission under this Act.

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## Enhancement of Pecuniary Jurisdiction:

Revised pecuniary limits have been fixed under the New Act. Accordingly, the district forum can now entertain consumer complaints where the value of goods or services paid does not exceed INR 1,00,00,000 (Indian Rupees One Crore). The State Commission can entertain disputes where such value exceeds INR 1,00,00,000 (Indian Rupees One Crore) but does not exceed INR 10,00,00,000 (Indian Rupees Ten Crores), and the National Commission can exercise jurisdiction where such value exceeds INR 10,00,00,000 (Indian Rupees Ten Crores).





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## Consumer Dispute redressal commissions

Consumer dispute redressal commissions (CDRC), aka consumer courts, are present at the **district, state and national levels to address consumer complaints.**

<https://consumerhelpline.gov.in/>

The Act has **increased the pecuniary jurisdiction**, which means ability of courts to take up cases depending on the value of the case, of the consumer courts.

. Appeals from a District CDRC will be heard by the State CDRC. Appeals from the State CDRC will be heard by the National CDRC <http://ncdrc.nic.in/>. Final appeal will lie before the Supreme Court.





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## Consumer Dispute redressal commissions

# Composition of Redressal Agencies

## National Commission

President

(a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Govt.)

Member Member Member Member

## State Commission

President

(a person who is or has been a Judge of a High Court, appointed by the State Govt.)

Member Member

## District Forum

President

(a person who is, or has been, or is qualified to be a District Judge)

Member Member

### Establishment of Central Consumer Protection Authority:

The New Act proposes the establishment of a regulatory authority known as the Central Consumer Protection Authority (CCPA), with wide powers of enforcement. The CCPA will have an investigation wing, headed by a Director-General, which may conduct inquiry or investigation into consumer law violations. The CCPA has been granted wide **powers to take suo-moto actions, recall products, order reimbursement of the price of goods/services, cancel licenses and file class action suits, if a consumer complaint affects more than 1 (one) individual.**



### Central Consumer Protection Authority (CCPA)

- New Act seeks to establish a Central Authority i.e. the **Central Consumer Protection Authority**.
- It looks into matters which relates to violation of consumer rights, false and **misleading advertisements, unfair trade practices**.
- The said Authority would also have a **dedicated Investigation wing** which will be responsible for conducting various inquiries/ investigations and it will also have the power of search and seizure.
- CCPA has been granted wide powers to take **suo-moto actions, recall products, order reimbursement** of the price of goods/services, **cancel licenses and file class action suits**, if a consumer complaint affects more than 1 (one) individual.

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### Product Liability

The New Act has introduced the concept of product liability and brings within its scope, the product manufacturer, product service provider and product seller, for any claim for compensation. The term 'product seller' is defined to include a person who is involved in placing the product for a commercial purpose and as such would include e-commerce platforms as well. The defense that e-commerce platforms merely act as 'platforms' or 'aggregators' will not be accepted. There are increased liability risks for manufacturers as compared to product service providers and product sellers, considering that under the New Act, manufacturers will be liable in product liability action even where he proves that he was not negligent or fraudulent in making the express warranty of a product. Certain exceptions have been provided under the New Act from liability claims, such as, that the product seller will not be liable where the product has been misused, altered or modified.



### Product Liability

**Product liability means the liability of a product manufacturer, service provider or seller to compensate a consumer for any harm or injury caused by a defective good or deficient service.**

**For instance, if a pressure cooker explodes due to a manufacturing defect and harms the consumer, the manufacturer is liable to compensate the consumer for the injury.**

**Earlier, the consumer would only be compensated with the cooker's cost by consumer forum. The consumer could ask for compensation, but through a civil court.**

**The most significant impact of this provision will be on e-commerce platforms as it also includes service providers under its ambit.**

### Unfair Trade Practices:

The New Act introduces a specific broad definition of Unfair Trade Practices, which also includes sharing of **personal information given by the consumer in confidence**, unless such disclosure is made in accordance with the provisions of any other law.

The New Act **fixes liability on endorsers** considering that there have been numerous instances in the recent past where consumers have fallen prey to unfair trade practices under the influence of celebrities acting as brand ambassadors. In such cases, it becomes important for the **endorser to take the onus and exercise due diligence to verify the veracity of the claims made in the advertisement to refute liability claims.**



### Provision for Alternate Dispute Resolution:

The New Act provides for mediation as an Alternate Dispute Resolution mechanism, making the process of dispute adjudication simpler and quicker. This will help with the speedier resolution of disputes and reduce pressure on consumer courts, who already have numerous cases pending before them. The CPA, 2019 thus, allows for settlement of disputes by way of mediation in case there is a possibility of settlement at the stage of admission of complaint or at any later stage, if acceptable to both parties. A mediation cell will be attached to each district, state and National Commission and its regional Benches for quick resolution. {Section 74-81 of CPA 2019 (Chapter V)}



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### Introduction Of Central Consumer Protection Authority As The Regulator

Section 10 of CPA 2019 seeks to establish a central authority, the Central Consumer Protection Authority (“CCPA”) to promote, protect, and enforce the rights of consumers qua misleading advertisements and unfair trade practices as a class. One of the primary reasons for establishing CCPA is to fill an institutional void in the existing regulatory regime. An investigative wing is envisaged to be formed under the aegis of CCPA, which shall carry out inquiries and investigations in matters relating to consumer rights, unfair trade practices and misleading advertisements.





### Functions of the CCPA

CCPA is mandated to carry out the following functions:

1. Inquiring into violations of consumer rights, investigating and launching prosecution at the appropriate forum;
2. Passing orders to recall goods or withdraw services that are hazardous, reimbursement of the price paid, & discontinuation of the unfair trade practices, as defined under the relevant provisions
4. Issuance of directions to the concerned trader/ manufacturer/ endorser/ advertiser/ publisher to either discontinue a false or misleading advertisement, or modify it; imposition of penalties, and;
5. issuance of safety notices to consumers against unsafe goods and services and guidelines to prevent unfair trade practices,
6. spread and promote awareness and research on consumer rights (Jago Grahak and
7. recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights.

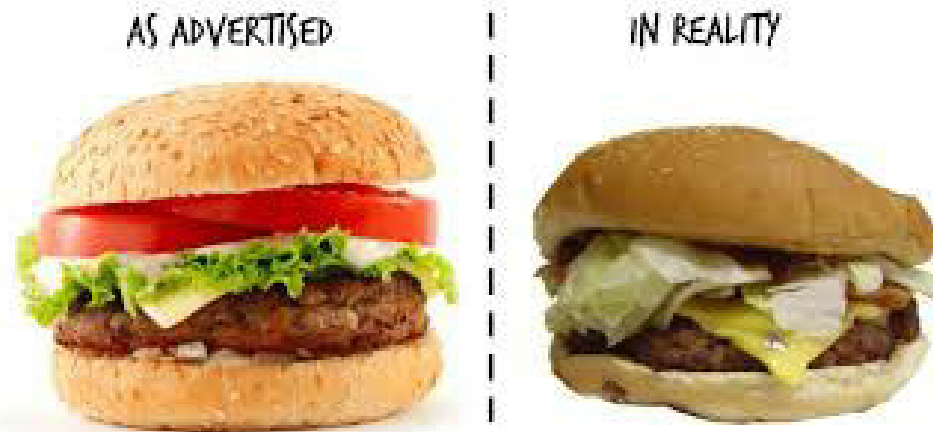
### Functions of the CCPA

The district collectors have also been empowered to conduct such investigations that affect interests of consumer as a class under CPA 2019. They can investigate or inquire at the instance of a complaint or on a reference made by CCPA. The district collectors have also been provided powers akin to CCPA's but unlike CCPA they cannot initiate action *suo moto*. The establishment of a central authority and initiating action as a class comes as an additional mode of relief which can be exercised along with individual consumers filing complaints to address their grievances thereby having two parallel proceedings.



### False Or Misleading Advertisements

CCPA has also been empowered to take actions against false or misleading advertisements. CCPA can impose a penalty of up to INR10 lakhs, and up to INR 50 lakhs for every subsequent violations. It is important to note that such penalty can be imposed on endorsers too, thereby bringing actors/actresses in the scope of penalty. However, the endorser would be exempted from any liability if s/he establishes that they undertook due diligence to verify the veracity of the claims before endorsing the same. Therefore, endorsers/actors/celebrities will also have to conduct a thorough due diligence/research before sign



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### False Or Misleading Advertisements

- CCPA may impose a penalty on a manufacturer or an endorser of up to Rs 10 lakh and imprisonment for up to 2 years for a false or misleading advertisement.
- It is important to note that such penalty can be imposed on endorsers too, thereby bringing actors/actresses in the scope of penalty.
- **However**, the endorser would be exempted from any liability if s/he establishes that they undertook due diligence to verify the veracity of the claims before endorsing the same.

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### Some Highlights of False or Misleading Advt.

**Maggi:** The Maggi noodle controversy is most likely one of the biggest ones to hit a popular food item. While the advertisements claimed the noodle to be a healthy and fast food option for children, Maggi samples collected from different states found monosodium glutamate (MSG) and lead in excess of the prescribed limit in the instant noodles.

While the manufacturers, Nestle have been taken to consumer court by the government, a court had directed an FIR to be lodged against celebrities Madhuri Dixit, Amitabh Bachhan and Priety Zinta for acting in these ads for a fee.





### Some Highlights of False or Misleading Advt.

**Idea** Idea Cellular has been coming out with various ads which constantly claim that their network is the best. Recently, Idea went a step further by making the internet theirs in a series of ad campaigns which featured characters who join achieve their dreams of learning engineering, algebra, cooking, foreign languages, etc, through **Idea's IIN**. These ads have led a number of people to believe that Idea has an Institute which teaches people different things, when, in actual, IIN just refers to the internet and is not different from what is provided by other network providers. A complaint was also filed with the ASCI on a particular ad where a girl from Haryana empowers herself through IIN, giving people the false impression that IIN can provide education.



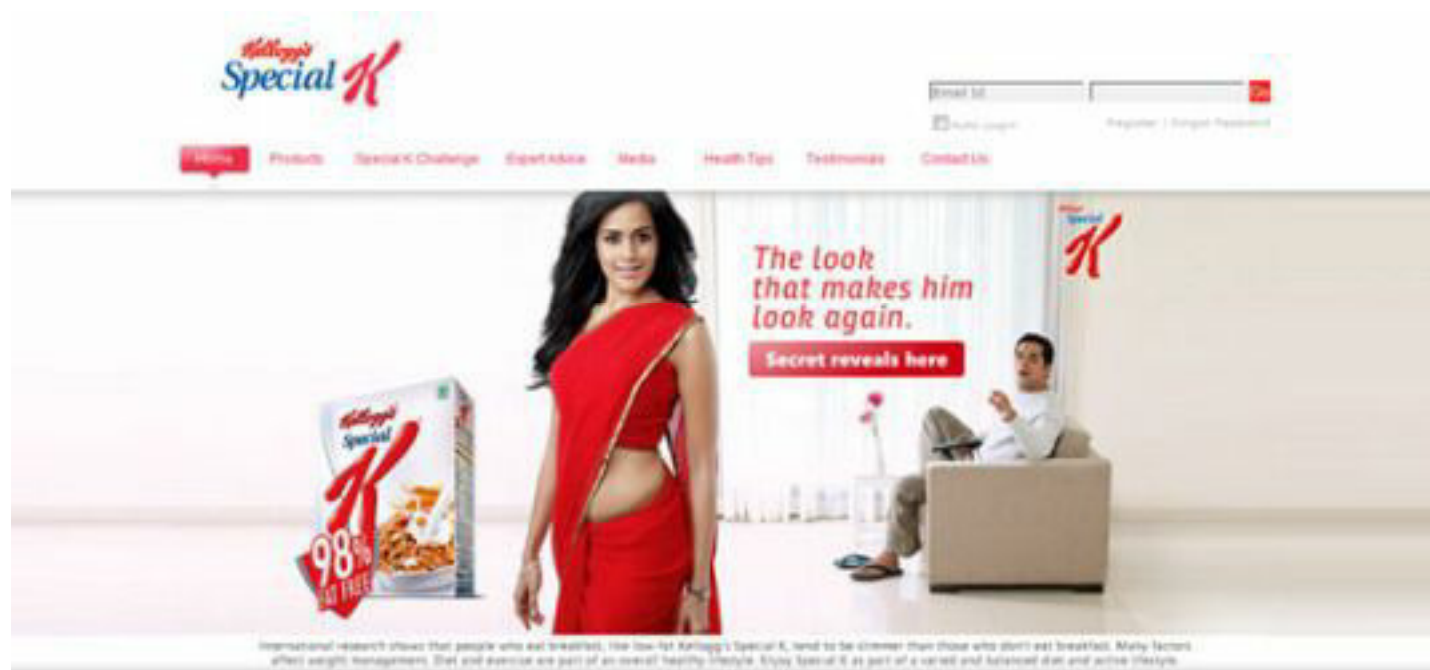
### Some Highlights of False or Misleading Advt.

**Dabur Chyawanprash:** An ad released by Dabur, which claimed that Dabur Chyawanprash gave children three times more immunity and power to fight diseases, was slammed by the ASCI for making claims that are unsubstantiated.



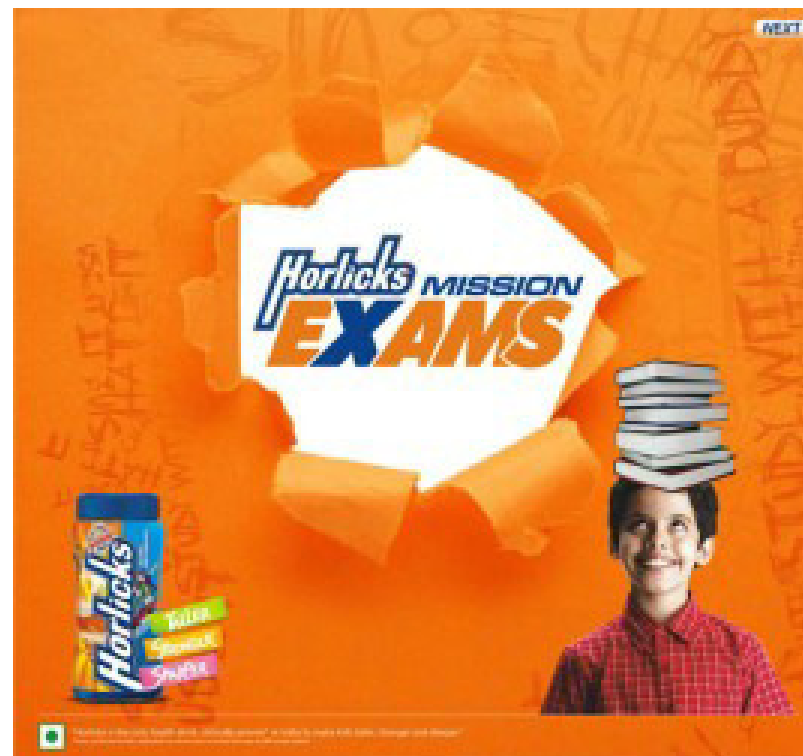
### Some Highlights of False or Misleading Advt.

**Kellogg's Cornflakes** The Kellogg's Special K advertisement was also under the scanner with the Food Safety and Standards Authority of India (FSSAI) for making false health claims. In the ad, the company claimed that people who eat low fat Kellogg's for breakfast can lose weight as it adds only 114 calories to a person's diet.



### Some Highlights of False or Misleading Advt.

**Horlicks** The health drink brand has been claiming to make children taller, stronger and sharper in all its ads. A complaint was filed against Horlicks for one of its ads which said that Horlicks improves concentration, and thus can help students score better during exams. The complaint stated that there was no proof that the health drink had the potential to do this, and by targeting the exam season, the company was using people's apprehensions to sell their product.





### Some Highlights of False or Misleading Advt.

**Dettol:** Reckitt Benckiser Healthcare India's Dettol claims, in its ad, that 'Only Dettol gives 10x more protection against germs.' This was found to be misleading as the soap, which contains germicidal actives was compared to products which does not have germicidal actives. The claim was not substantiated by comparing it with products which have germicidal actives.





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## PENALTIES FOR MISLEADING ADVERTISEMENT

### MANUFACTURER

Jail up to two years with fine of up to

**₹10 lakh**

for first offence

Consequent offence to attract jail up to five years with fine up to ₹50 lakh

### PUBLISHER/ ADVERTISER

Fine up to

**₹10 lakh**

if Central Consumer Protection Authority finds the publisher or advertiser guilty

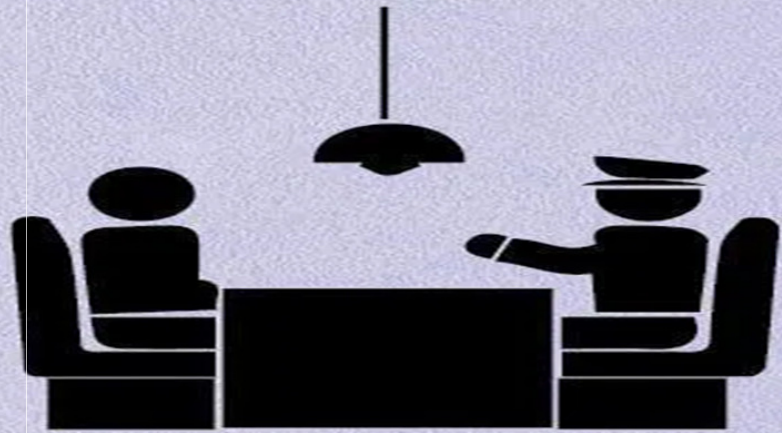
### ENDORSER

Up to

**₹10 lakh**

fine & one year ban on future endorsement for first offence

Repeat offence to attract fine up to ₹50 lakh & ban on future endorsement up to three years



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### Focus of CCPA, structure, penalties and power

#### Focus of CCPA

- The new Act recognizes offences such as providing false information regarding the quality or quantity of a good or service, and misleading advertisements.
- It also specifies action to be taken if goods and services are found “dangerous, hazardous or unsafe”.
- The CCPA will have the powers to inquire or investigate into matters relating to violations of consumer rights or unfair trade practices suo motu, or on a complaint received, or on a direction from the central government.

# 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.

Focus of CCPA, structure, penalties and power

## Proposed Structure of CCPA

- The proposed authority will have a **Chief Commissioner as head**, and only two other commissioners as members.
- One of the members will deal with matters relating to goods while the other will look into cases relating to services.
- It will be headquartered in the National Capital Region of Delhi but the central government may set up regional offices in other regions.
- The CCPA will have an **Investigation Wing** that will be headed by a Director General.
- District Collectors will have the power to investigate complaints of violations of consumer rights, unfair trade practices, and false or misleading ads.

**BAMA18H, 28-04-2021, 03:00 p.m. – 05:00 p.m., Group-2**





### 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

Focus of CCPA, structure, penalties and power

### Penalties

For manufacture, selling, storage, distribution, or import of adulterated products, the penalties are:

If injury is not caused to a consumer, fine up to Rs 1 lakh with imprisonment up to six months; life.

If injury is caused, fine up to Rs 3 lakh with imprisonment up to one year;

If grievous hurt is caused, fine up to Rs 5 lakh with imprisonment up to 7 years;

In case of death, fine of Rs 10 lakh or more with a minimum imprisonment of 7 years, extendable to imprisonment for





Focus of CCPA, structure, penalties and power

### 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.

### Focus of CCPA, structure, penalties and power

#### 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.

06-04-2021, 03:00 p.m. – 05:00 p.m., Group-2