

# Law relating to Consumer Protection

## Lesson 9

### KEY CONCEPTS

■ Consumer Rights ■ Consumer ■ Commercial Purpose ■ E-Commerce ■ Electronic Service Provider ■ Express Warranty ■ Misleading Advertisement ■ Product Liability ■ Restrictive Trade Practice

### Learning Objectives

#### To understand:

- Consumer Protection in India
- Rights of Consumers
- Consumer Dispute Redressal Forums
- Central Consumer Protection Authority
- Nature and Scope of Remedies
- Consumer Disputes Redressal Commission

### Lesson Outline

- Consumer Rights
- Meaning of Consumer
- Commercial purpose
- Defect in Goods
- Deficiency in Service
- Contract of Service
- Contract for Service
- District Forum
- State Consumer Protection Council
- Central Consumer Protection Council
- Jurisdiction of Protection Council
- Limitation Period for Filing Complaint
- Administrative Control
- Appeal
- Nature and Scope of Remedies
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

## REGULATORY FRAMEWORK

- Consumer Protection Act, 2019
- Consumer Protection (Consumer Disputes Redressal Commissions) Rules, 2020
- Consumer Protection (General) Rules, 2020
- Consumer Protection (Central Consumer Protection Council) Rules, 2020
- Consumer Protection (E-Commerce) Rules, 2020
- Consumer Protection (Consumer Commission Procedure) Regulations, 2020
- Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2020.
- Consumer Protection (Administrative Control over the State Commission and the District Commission) Regulations, 2020
- Consumer Protection (Mediation) Regulations, 2020
- Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission and District Commission) Rules, 2020

## INTRODUCTION

Consumer justice is a part of social and economic justice enshrined in the Constitution. India has been a pioneer in consumer advocacy with the Consumer Protection Act, 1986, enacted in 1986, a path breaking socio economic legislation and most important milestones in the area of consumer movement in India. The Act provides the legislative framework to promote and protect the rights of consumers and a three-tier quasi-judicial consumer disputes redressal machinery at the District, State and National levels, popularly known as Consumer Courts aimed at providing simple, speedy and affordable redress to consumers. The consumer courts adjudicate complaints relating to defects in goods and deficiencies in services and are meant to provide simple, inexpensive and speedy redressal of consumers' grievances. The Consumer Protection Act, 1986 also provides for establishment of Consumer Protection Councils at the Central, State and District levels to function as Advisory Bodies on consumer advocacy. Based on the experience gained from implementation on the ground, the Act has been amended thrice in the years 1991, 1993 and 2002. Although, the working of the consumer dispute redressal agencies has served the purpose to a considerable extent, the disposal of cases has not been fast due to various constraints. Several shortcomings have been noticed while administering the various provisions of the Consumer Protection Act, 1986.

Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1986. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-commerce pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment and to counter unfair trade practices. Therefore, it has become inevitable to modernise the Consumer Protection Act in 1986 to address the myriad and constantly emerging vulnerabilities of the consumer in the market economy extant.

In this backdrop, the Consumer Protection Bill, 2019 was passed by the Lok Sabha on 30th July, 2019 and by Rajya Sabha on 06th August, 2019. The Consumer Protection Act, 2019 received the assent of the President on the 9th August, 2019. The Consumer Protection Act, 2019 replaced the more than three decades old Consumer Protection Act, 1986.

***Preamble of the Consumer Protection Act, 2019 provides 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 Act, 2019, certainly create a consumer-friendly ecosystem in the country and strengthen the consumer rights with timely and effective administration of consumer disputes.***

In the case of *Om Prakash vs. Reliance General Insurance and Anr. Civil Appeal No. 15611 of 2017, (Arising out of SLP (C) No.742 of 2015)* Judgement dated October 4, 2017 Civil Appellate Jurisdiction of the Hon'ble Supreme Court of India inter-alia observed that it needs no emphasis that the Consumer Protection Act aims at providing better protection of the interest of consumers. It is a beneficial legislation that deserves liberal construction. This laudable object should not be forgotten while considering the claims made under the Act.

In the case of *M/S Emaar Mgf Land Limited vs. Aftab Singh Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos. 23512-23513 of 2017 Civil Appellate Jurisdiction, Judgement dated 10 December, 2018* the Hon'ble Supreme Court of India held that the Consumer Protection Act, 1986 has been enacted to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matter connected therewith. This Court had occasion to consider the object and purpose of the Act in *Lucknow Development Act vs. M.K. Gupta, (1994) 1 SCC 243*, this Court elaborately noticed the object and purpose of the Act in the following words:

*“To begin with the preamble of the Act, which can afford useful assistance to ascertain the legislative intention, it was enacted, to provide for the protection of the interest of consumers. Use of the word protection furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision. In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interest of the consumers have become a heaven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, a network of rackets or a society in which, producers have secured power to rob the rest and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot”.*

In the case of *Alpha G184 Owners Association (Appellant) Vs. Magnum International Trading Company Pvt. Ltd (Respondent) Civil Appeal No. 4718 of 2022 with Civil Appeal Nos. 329-332 OF 2023 judgement dated May 15th, 2023*, Hon'ble Supreme Court of India inter alia observed that the Consumer Protection Act, 1986; 68 of

1986 (hereinafter referred to as “the 1986 Act”) and the Consumer Protection Act, 2019; 35 of 2019 (hereinafter referred to as “the 2019 Act”) have got a laudable objective. The 2019 Act facilitates the consumers to approach the forums by providing a very flexible procedure. It is meant to encourage consumerism in the country. Any technical approach in construing the provisions against the consumer would go against the very objective behind the enactment. Hon’ble Supreme Court of India placed reliance on the recent decision of this Court in *National Insurance Co. Ltd. v. Harsolia Motors*, 2023 SCC OnLine SC 409,

**“21. The Act, 1986 is a social benefit-oriented legislation and, therefore, the Court has to adopt a constructive liberal approach while construing the provisions of the Act. To begin with the Preamble of the Act, 1986 which can afford useful assistance to ascertain the legislative intention, it was enacted to provide for the protection of the interests of consumers. Use of the word “protection” furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled law that a Preamble cannot control otherwise plain meaning of a provision.**

**22. In fact, the law meets long felt necessity of protecting the common man from such wrong for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interests of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively and inefficiently for reasons which are not necessary to be stated.**

**23. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. A scrutiny of various definitions such as “consumer”, “service”, “trader”, “unfair trade practice” indicates that legislature has attempted to widen the ambit and reach of the Act. Each of these definitions are in two parts, one explanatory and the other inclusive. The explanatory or the main part itself uses expressions of amplitude indicating clearly its wide sweep within its ambit to widen such things which otherwise would have been beyond its natural import. 24. The provisions of the Act, 1986 thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit-oriented legislation. The primary duty of the Court/Commission while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to attempted objective of the enactment.”**

#### Main Features of Consumer Protection Act, 2019

- E- commerce
- Direct selling
- Establishment of Central Consumer Protection Authority (CCPA)
- Strict Norms for Misleading Advertisement
- Strict Norms for product liability
- Pecuniary Jurisdiction
- Unfair Trade Practice
- Unfair Contract
- Alternate Dispute Resolution through mediation

**IMPORTANT DEFINITION****Complainant**

Complainant means –

- (i) a consumer; or
- (ii) any voluntary consumer association registered under any law for the time being in force; or
- (iii) the Central Government or any State Government; or
- (iv) the Central Authority; or
- (v) one or more consumers, where there are numerous consumers having the same interest; or
- (vi) in case of death of a consumer, his legal heir or legal representative; or
- (vii) in case of a consumer being a minor, his parent or legal guardian. [Section 2(5)]

**Complaint**

Complaint means any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act, that –

- (i) an unfair contract or unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
- (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;
- (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency;
- (iv) a trader or a 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 –
  - (a) fixed by or under any law for the time being in force; or
  - (b) displayed on the goods or any package containing such goods; or
  - (c) displayed on the price list exhibited by him by or under any law for the time being in force; or (d) agreed between the parties.
- (v) the goods, which are hazardous to life and safety when used, are being offered for sale to the public –
  - (a) in contravention of standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
  - (b) where the trader knows that the goods so offered are unsafe to the public.
- (vi) 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;
- (vii) a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be. [Section 2(6)]

**How to Make the Complaint?**

- **Every complaint filed before District Commission/ State Commission/ National Commission.**
- **Accompanied by a fee as specified, in the form of crossed Demand Draft drawn on a nationalized bank or through a crossed Indian Postal Order drawn in favour of the Registrar of the State Commission and payable at the respective place where the State Commission or the National Commission is situated.**
- **Name, description and address of the complainant.**
- **Name, description and address of the opposite party or parties.**
- **Facts relating the complaint and when and where it arose.**
- **Documents, if any in support of allegations.**

**Consumer**

Consumer means any person who –

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

*Explanation.* – For the purposes of this clause, –

- a. 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;
- b. the expressions “buys any goods” and “hires or avails any services” includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing. [Section 2(7)]

It may be noted that a Person includes, –

- (i) an individual;
- (ii) a firm whether registered or not;
- (iii) a Hindu undivided family;
- (iv) a co-operative society;
- (v) an association of persons whether registered under the Societies Registration Act, 1860 or not;

- (vi) any corporation, company or a body of individuals whether incorporated or not;
- (vii) any artificial juridical person, not falling within any of the preceding sub-clauses. [Section 2(31)]

A purchase of goods can be said to be for a 'commercial purpose only if the goods have been purchased for being used in some profit making activity on a large-scale, and there is close and direct nexus between the purchase of goods and the profit-making activity.

In *Laxmi Engineering Works vs. P.S.G. Industrial Institute*, Supreme Court held that the explanation to Section 2(1)(d) is clarificatory in nature. It observed that whether the purpose for which a person has bought goods is a 'commercial purpose' is always a question of facts and to be decided in the facts and circumstances of each case. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment such purchaser of goods would yet be a consumer. The Supreme Court further observed that if a person purchased a machine to operate it himself for earning his livelihood, he would be a consumer. If such person took the assistance of one or two persons to assist him in operating the machine, he would still be a consumer. But if a person purchases a machine and appoint or engage another person exclusively to operate the machine, then such person would not be a consumer.

In *Bhupendra Jang Bahadur Guna vs. Regional Manager and Others (II 1995 CPJ 139)*, the National Commission held that a tractor purchased primarily to till the land of the purchaser and let out on hire during the idle time to till the lands of others would not amount to commercial use.

The question as to whether the widow of the deceased policy holder was a 'consumer' under the Act was decided in the affirmative by the State Commission in Andhra Pradesh in the case of *A Narasamma vs. LIC of India*. The State Commission held that as the term 'consumer' includes any beneficiary of service other than the person who hires the services for consideration, the widow being the beneficiary of services is a 'consumer' under the Act entitled to be compensated for the loss suffered by her due to negligence of the LIC.

In *Laxmiben Laxmichand Shah v. Sakerben Kanji Chandan and others 2001 CTJ 401 (Supreme Court) (CP)*, the Supreme Court held that the tenant entering into lease agreement with the landlord cannot be considered as consumer under Section 2(1)(d) of the Act. Where there was no provision in the lease agreement in respect of cleaning, repairing and maintaining the building, the rent paid by tenant is not the consideration for availing these services and therefore, no question of deficiency in service.

*Supreme Court in Northern Western Railway and Another vs. Sanjay Shukla judgement dated September 8, 2021, held that railways are liable to pay compensation for late arrival of trains if delay is not explained or justifiable. The railways were required to lead the evidence and explain the late arrival of train to establish and prove that delay occurred because of the reasons beyond their control. At least the railways were required to explain the delay which the railways failed. It cannot be disputed that every passenger's time is precious and they might have booked the tickets for further journey, like in the present case from Jammu to Srinagar and thereafter further journey.*

*Therefore, unless and until the evidence is laid explaining the delay and it is established and proved that delay occurred which was beyond their control and/or even there was some justification for delay, the railway is liable to pay the compensation for delay and late arrival of trains.*

*"The Apex Court observed that these are the days of competition and accountability. If the public transportation has to survive and compete with private players, they have to improve the system and their working culture. Citizens/passengers cannot be at the mercy of the authorities/administration. Somebody has to accept the responsibility."*

## Goods

In terms of Section 2(1)(i) goods has been defined to mean goods as defined in the Sale of Goods Act, 1930. As per Section 2(7) of the Sale of Goods Act, 1930 Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. Therefore, most consumer products come under the purview of this definition.

In *Morgan Stanley Mutual Fund v. Kartik Das (1994) 3 CLJ 27*, the Supreme Court held that an application for allotment of shares cannot constitute goods. It is after allotment, rights may arise as per the articles of association of the company. At the stage of application there is no purchase of goods for consideration and again the purchaser cannot be called the hirer of services for consideration.

### *Who is a not a Consumer?*

**A person who :-**

- *obtains goods free of charge.*
- *obtains avails services free of charge.*
- *obtains goods for resale or for any commercial purposes.*
- *who avails services for any commercial purposes.*
- *who avails services under contract of service.*

*{As per the provisions of the Act, commercial purpose does not include use by a person of goods bought and used by him exclusively for the purposes of earning his livelihood by means of self-employment.}*

### *What are the Consumer Rights?*

**Consumer Rights include –**

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

### 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. [Section 2(10)]

### Deficiency

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 the 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 and includes –

- (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
- (ii) deliberate withholding of relevant information by such person to the consumer. [Section 2(11)]

*In the case of SGS India vs. Dolphin International Ltd. (CA 5759 of 2009) judgement dated 6 October 2021, Hon'ble Supreme Court of India inter alia observed that the onus of proof that there was deficiency in service is on the complainant. If the complainant is able to discharge its initial onus, the burden would then shift to the respondent in the complaint. The rule of evidence before the civil proceedings is that the onus would lie on the person who would fail if no evidence is led by the other side. Therefore, the initial burden of proof of deficiency in service was on the complainant.*

*The Hon'ble Supreme Court. Dr. Harish Kumar Khurana vs. Joginder Singh (CA 7380 of 2009) judgement dated September 8, 2021 held that medical professionals cannot be held negligent merely because the treatment is not successful or patient dies during surgery. Every death of a patient cannot on the face of it be considered as death due to medical negligence unless there is material on record to suggest to that effect. It is necessary that the hospital and the doctors are required to exercise sufficient care in treating the patient in all circumstance. However, in unfortunate cases though death may occur and if it is alleged to be due to medical negligence and a claim in that regard is made, it is necessary that sufficient material or medical evidence should be available before the adjudicating authority to arrive at a conclusion. The accident during the course of medical or surgical treatment has a wider meaning. Ordinarily an accident means an unintended and unforeseen injurious occurrence, something that does not occur in the usual course of events or that could not be reasonably anticipated.*

### 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. [Section 2(41)]

## 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. [Section 2(42)]

The Supreme Court in the case of *Indian Merchants Association vs. V P Shantha*, (CA No. 688 of 1993 decided on 13th November 1995) observed that a contract for service implies a contract whereby one party undertakes to render services e.g. professional or technical services to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion. A contract of service on the other hand implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance. The Parliamentary draftsman was well aware of this well-accepted distinction between 'contract of service' and 'contract for services' and had deliberately chosen the expression 'contract of service' instead of the expression 'contract for service' in the exclusionary part of the definition of 'service', this being the reason being that an employer could not be regarded as a consumer in respect of the services rendered by his employee in pursuance of contract of employment. By affixing the adjective 'personal' to the word 'service' the nature of the contracts which were excluded were not altered. The adjective only emphasised that what was sought to be excluded was personal service only. The expression contract of personal service in the exclusionary part of Section 2(1)(o) must, therefore, be construed as excluding the services rendered by an employee to his employer under the contract of personal service free from the ambit of the expression service.

## 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:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

- (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, 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) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
- (j) 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.

- (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.

- (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.

- (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;
- (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. [Section 2(47)]

### Councils and Dispute Redressal Commission

<b>CONSUMER PROTECTION COUNCIL</b>	<b>COMMISSIONS DISPUTE REDRESSAL COMMISSION</b>
District Consumer Protection Council	District Consumer Dispute Redressal Commission
State Consumer Protection Council	State Consumer Dispute Redressal Commission
Central Consumer Protection Council	National Consumer Dispute Redressal Commission

## CONSUMER PROTECTION COUNCIL

### Central Consumer Protection Council

The Central Government is empowered to establish the Central Consumer Protection Council to be known as the Central Council. The Central Council shall be an advisory council and consist of the Minister-in-charge of the Department of Consumer Affairs in the Central Government, who shall be the Chairperson; and such number of other official or non-official members representing such interests as may be prescribed.

The Central Council shall meet as and when necessary, but at least one meeting of the Council shall be held every year. The Central Council shall meet at such time and place as the Chairperson may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

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

### State Consumer Protection Councils

Every State Government is empowered to establish a State Consumer Protection Council for such State to be known as the State Council. The State Council shall be an advisory council and consist of the Minister-in-charge of Consumer Affairs in the State Government who shall be the Chairperson; such number of other official or non-official members representing such interests as may be prescribed and such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

The State Council shall meet as and when necessary but not less than two meetings shall be held every year. The State Council shall meet at such time and place as the Chairperson may think fit and shall observe such procedure in regard to the transaction of its business, as may be prescribed.

***The objects of every State Council shall be to render advice on promotion and protection of consumer rights under the Act within the State.***

### District Consumer Protection Council

The State Government is empowered to establish for every District with effect from such date as it may specify in such notification, a District Consumer Protection Council to be known as the District Council. The District Council shall be an advisory council and consist the Collector of the district (by whatever name called), who shall be the Chairperson; and such number of other official and non-official members representing such interests as may be prescribed.

The District Council shall meet as and when necessary but not less than two meetings shall be held every year. The District Council shall meet at such time and place within the district as the Chairperson may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

***The objects of every District Council shall be to render advice on promotion and protection of consumer rights under the Act within the district.***

### Establishment of Central Consumer Protection Authority

Section 10 empowers the Central Government to establish a Central Consumer Protection Authority to be known as the Central Authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.

The Central Authority shall consist of a Chief Commissioner and such number of other Commissioners as may be prescribed, to be appointed by the Central Government to exercise the powers and discharge the functions under the Act.

The headquarters of the Central Authority shall be at such place in the National Capital Region of Delhi, and it shall have regional and other offices in any other place in India as the Central Government may decide.

### **Qualifications, method of recruitment, etc., of Chief Commissioner and Commissioners**

The Central Government may, by notification, make rules to provide for the qualifications for appointment, method of recruitment, procedure for appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of the service of the Chief Commissioner and Commissioners of the Central Authority.

### **Vacancy, etc., not to invalidate proceedings of Central Authority**

No act or proceeding of the Central Authority shall be invalid merely by reason of –

- (a) any vacancy in, or any defect in the constitution of, the Central Authority; or
- (b) any defect in the appointment of a person acting as the Chief Commissioner or as a Commissioner; or
- (c) any irregularity in the procedure of the Central Authority not affecting the merits of the case.

### **Appointment of officers, experts, professionals and other employees of Central Authority**

Section 13 of the Act deals with Appointment of officers, experts, professionals and other employees of Central Authority. It states that:

- (1) The Central Government shall provide the Central Authority such number of officers and other employees as it considers necessary for the efficient performance of its functions under this Act.
- (2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Central Authority appointed under this Act shall be such as may be prescribed.
- (3) The Central Authority may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and ability, who have special knowledge and experience in the areas of consumer rights and welfare, consumer policy, law, medicine, food safety, health, engineering, product safety, commerce, economics, public affairs or administration, as it deems necessary to assist it in the discharge of its functions under this Act.

### **Procedure of Central Authority**

The Central Authority shall regulate the procedure for transaction of its business and allocation of its business amongst the Chief Commissioner and Commissioners as may be specified by regulations. The Chief Commissioner shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Central Authority.

Chief Commissioner may delegate such of his powers relating to administrative matters of the Central Authority, as he may think fit, to any Commissioner (including Commissioner of a regional office) or any other officer of the Central Authority.

### **Investigation Wing of Central Authority**

- The Central Authority shall have an Investigation Wing headed by a Director General for the purpose of conducting inquiry or investigation under this Act as may be directed by the Central Authority.

- The Central Government may appoint a Director General and such number of Additional Director General, Director, Joint Director, Deputy Director and Assistant Director, from amongst persons who have experience in investigation and possess such qualifications, in such manner, as may be prescribed.
- Every Additional Director General, Director, Joint Director, Deputy Director and Assistant Director shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director-General.
- The Director General may delegate all or any of his powers to the Additional Director General or Director, Joint Director or Deputy Director or Assistant Director, as the case may be, while conducting inquiries or investigations under this Act.
- The inquiries or the investigations made by the Director General shall be submitted to the Central Authority in such form, in such manner and within such time, as may be specified by regulations.

### Power of District Collector

Section 16 of the Act provides that the District Collector (by whatever name called) may, on a complaint or on a reference made to him by the Central Authority or the Commissioner of a regional office, inquire into or investigate complaints regarding violation of rights of consumers as a class, on matters relating to violations of consumer rights, unfair trade practices and false or misleading advertisements, within his jurisdiction and submit his report to the Central Authority or to the Commissioner of a regional office, as the case may be.

### Complaints to Authorities

A complaint relating to violation of consumer rights or unfair trade practices or false or misleading advertisements which are prejudicial to the interests of consumers as a class, may be forwarded either in writing or in electronic mode, to any one of the authorities, namely, the District Collector or the Commissioner of regional office or the Central Authority.

### Powers and functions of Central Authority

According to section 18(1), the Central Authority empowers to:

- (a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;
- (b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;
- (c) ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act or the rules or regulations made thereunder;
- (d) ensure that no person takes part in the publication of any advertisement which is false or misleading.

Section 18(2) states that without prejudice to the generality of the provisions contained in Section 18 (1), the Central Authority may, for any of the purposes aforesaid –

- (a) inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either *suo motu* or on a complaint received or on the directions from the Central Government;
- (b) file complaints before the District Commission, the State Commission or the National Commission, as the case may be, under this Act;
- (c) intervene in any proceedings before the District Commission or State Commission or National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;

- (d) review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation;
- (e) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;
- (f) undertake and promote research in the field of consumer rights;
- (g) spread and promote awareness on consumer rights;
- (h) encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies;
- (i) mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest;
- (j) issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;
- (k) advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;
- (l) issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.

#### **Power of Central Authority to refer matter for investigation or to other Regulator**

Section 19(1) of the Act provides that the Central Authority may, after receiving any information or complaint or directions from the Central Government or of its own motion, conduct or cause to be conducted a preliminary inquiry as to whether there exists a prima facie case of violation of consumer rights or any unfair trade practice or any false or misleading advertisement, by any person, which is prejudicial to the public interest or to the interests of consumers and if it is satisfied that there exists a prima facie case, it shall cause investigation to be made by the Director General or by the District Collector.

According to Section 19(2) where, after preliminary inquiry, the Central Authority is of the opinion that the matter is to be dealt with by a Regulator established under any other law for the time being in force, it may refer such matter to the concerned Regulator along with its report.

Section 19 (3) states that for the purposes of investigation, the Central Authority, the Director General or the District Collector may call upon a person referred to in Section 19(1) and also direct him to produce any document or record in his possession.

#### **Power of Central Authority to recall goods**

As per section 20 of the Act, where the Central Authority is satisfied on the basis of investigation that there is sufficient evidence to show violation of consumer rights or unfair trade practice by a person, it may pass such order as may be necessary, including –

- (a) recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe;
- (b) reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and
- (c) Discontinuation of practices which are unfair and prejudicial to consumers' interest: Provided that the Central Authority shall give the person an opportunity of being heard before passing an order under this section.

**Power of Central Authority to issue directions and penalties against false or misleading advertisements**

Section 21 provides that where the Central Authority is satisfied after investigation that any advertisement is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights, it may, by order, issue directions to the concerned trader or manufacturer or endorser or advertiser or publisher, as the case may be, to discontinue such advertisement or to modify the same in such manner and within such time as may be specified in that order.

If the Central Authority is of the opinion that it is necessary to impose a penalty in respect of such false or misleading advertisement, by a manufacturer or an endorser, it may, by order, impose on manufacturer or endorser a penalty which may extend to ten lakh rupees. The Central Authority may, for every subsequent contravention by a manufacturer or endorser, impose a penalty, which may extend to fifty lakh rupees.

Where the Central Authority deems it necessary, it may, by order, prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to one year. Central Authority may, for every subsequent contravention, prohibit such endorser from making endorsement in respect of any product or service for a period which may extend to three years.

Where the Central Authority is satisfied after investigation that any person is found to publish, or is a party to the publication of, a misleading advertisement, it may impose on such person a penalty which may extend to ten lakh rupees.

Misleading Advertisement in relation to any product or service, means an advertisement, which –

- (i) falsely describes such product or service; or
- (ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
- (iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or
- (iv) deliberately conceals important information. [Section 2(28)]

No endorser shall be liable to a penalty, if he has exercised due diligence to verify the veracity of the claims made in the advertisement regarding the product or service being endorsed by him.

No person shall be liable to such penalty if he proves that he had published or arranged for the publication of such advertisement in the ordinary course of his business: Provided that no such defence shall be available to such person if he had previous knowledge of the order passed by the Central Authority for withdrawal or modification of such advertisement.

**While determining the penalty, regard shall be had to the following, namely:–**

- (a) the population and the area impacted or affected by such offence;
- (b) the frequency and duration of such offence;
- (c) the vulnerability of the class of persons likely to be adversely affected by such offence; and
- (d) the gross revenue from the sales effected by virtue of such offence.

The Central Authority shall give the person an opportunity of being heard before an order under this section is passed.

Endorsement in relation to an advertisement, means –

- (i) any message, verbal statement, demonstration; or
- (ii) depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or
- (iii) depiction of the name or seal of any institution or organisation, which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement. [Section 2(18)]

### Search and Seizure

According to section 22 of the Act, for the purpose of conducting an investigation after preliminary inquiry under section 19(1), the Director General or any other officer authorised by him in this behalf, or the District Collector, as the case may be, may, if he has any reason to believe that any person has violated any consumer rights or committed unfair trade practice or causes any false or misleading advertisement to be made, shall, –

- (a) enter at any reasonable time into any such premises and search for any document or record or article or any other form of evidence and seize such document, record, article or such evidence;
- (b) make a note or an inventory of such record or article; or
- (c) require any person to produce any record, register or other document or article.

The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, for search and seizure under this Act.

Every document, record or article seized or produced shall be returned to the person, from whom they were seized or who produced the same, within a period of twenty days of the date of such seizure or production, as the case may be, after copies thereof or extracts therefrom certified by that person, in such manner as may be prescribed, have been taken.

Where any article seized are subject to speedy or natural decay, the Director General or such other officer may dispose of the article in such manner as may be prescribed. In the case of articles other than the articles of speedy or natural decay, provisions contained in section 38(2) shall *mutatis mutandis* apply in relation to analysis or tests.

Section 38(2)(c) provides that if the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, obtain a sample of the goods from the complainant, seal it and authenticate it in the manner as may be prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory to make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by it.

#### Vexatious Search

The Director General or any other officer, exercising powers under section 22, who knows that there are no reasonable grounds for so doing, and yet–

- (a) Searches, or causes to be searched any premises; or
- (b) Seizes any record, register or other document or article, shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees or with both.

### Designation of any statutory authority or body to function as Central Authority

Section 23 empowers the Central Government which may, if it considers necessary, by notification, designate any statutory authority or body to exercise the powers and perform the functions of the Central Authority referred to in section 10.

### Appeal

Section 24 provides that a person aggrieved by any order passed by the Central Authority under sections 20 and 21 may file an appeal to the National Commission within a period of thirty days from the date of receipt of such order.

### DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION

Section 28 of the Act, empowers the State Government to establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State. State Government may also, if it deems fit, establish more than one District Commission in a district.

Each District Commission shall consist of – (a) a President; and (b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.

### Qualifications of President and members of District Commission

The Central Government may, by notification, make rules to provide for the qualifications, method of recruitment, procedure for appointment, term of office, resignation and removal of the President and members of the District Commission.

### Jurisdiction of District Commission

According to section 34, the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees.

A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction, –

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or
- (c) the cause of action, wholly or in part, arises; or
- (d) the complainant resides or personally works for gain.

The District Commission shall ordinarily function in the district headquarters and may perform its functions at such other place in the district, as the State Government may, in consultation with the State Commission, notify in the Official Gazette from time to time.

### Manner in which complaint shall be made

Section 35 provides that a complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Commission by –

- (a) the consumer, –
  - (i) to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided; or

- (ii) who alleges unfair trade practice in respect of such goods or service.
- (b) any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or who alleges unfair trade practice in respect of such goods or service, is a member of such association or not;
- (c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested; or
- (d) The Central Government, the Central Authority or the State Government, as the case may be.

It may be noted that the **complaint may be filed electronically** in the prescribed manner.

Every complaint filed shall be accompanied with such fee and payable in such manner, including electronic form, as may be prescribed.

#### **What is the Procedure for Filing the Complaint before Consumer Commission?**

##### **A complaint:**

- **Should be in writing**
- **Can be filed in a regular way (offline)**
- **Can be filed online – <http://edaakhil.nic.in/>**

**A complaint can be presented by the complainant in person or by his agent. It can even be sent by registered post along with the court fee.**

**Normally three copies of the complaint are required to be submitted out of which one retained for the official purpose, one is forwarded to the opposite party and one is the for the complainant. In case the number of opposite parties is more correspondingly more copies of the complaint are required.**

*“Recognised Consumer Association” means any voluntary consumer association registered under any law for the time being in force.*

*In the case of Sobha Hibiscus Condominium vs. MW Soshia Developer’s Ltd., judgement dated February 2020, Hon’ble Supreme Court observed that in essence voluntary consumer association will be a body formed by group of person’s coming together, of their own will and without any pressure or influence from anyone and without being mandated by any other provisions of law.*

#### **Proceedings before District Commission**

According to Section 36, every proceeding before the District Commission shall be conducted by the President of that Commission and at least one member thereof, sitting together.

It may be noted that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

On receipt of a complaint made under section 35, the District Commission may, by order, admit the complaint for being proceeded with or reject the same.

A complaint shall not be rejected unless an opportunity of being heard has been given to the complainant. The admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was filed.

Where the District Commission does not decide the issue of admissibility of the complaint within the period so specified, it shall be deemed to have been admitted.

### Reference to mediation

According to Section 37, at the first hearing of the complaint after its admission, or at any later stage, if it appears to the District Commission that there exists elements of a settlement which may be acceptable to the parties, except in such cases as may be prescribed, it may direct the parties to give in writing, within five days, consent to have their dispute settled by mediation in accordance with the provisions of Chapter V.

Where the parties agree for settlement by mediation and give their consent in writing, the District Commission shall, **within five days of receipt** of such consent, refer the matter for mediation, and in such case, the provisions of Chapter V, relating to mediation, shall apply.

### Procedure on admission of complaint

Section 38 deals with procedure on admission of complaint by the District Commission. Section 38 provides that:

- (1) The District Commission shall, on admission of a complaint, or in respect of cases referred for mediation on failure of settlement by mediation, proceed with such complaint.
- (2) Where the complaint relates to any goods, the District Commission shall, –
  - (a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by it;
  - (b) if the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);
  - (c) if the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, obtain a sample of the goods from the complainant, seal it and authenticate it in the manner as may be prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory to make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by it;
  - (d) before any sample of the goods is referred to any appropriate laboratory under clause (c), require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

- (e) remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, it shall forward a copy of the report along with such remarks as it may feel appropriate to the opposite party;
  - (f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, require the opposite party or the complainant to submit in writing his objections with regard to the report made by the appropriate laboratory;
  - (g) give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 39.
- (3) The District Commission shall, if the complaint admitted by it under section 36 relates to goods in respect of which the procedure specified in sub-section (2) cannot be followed, or if the complaint relates to any services, –
- (a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Commission;
  - (b) if the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, it shall proceed to settle the consumer dispute –
    - (i) on the basis of evidence brought to its notice by the complainant and the opposite party, if the opposite party denies or disputes the allegations contained in the complaint, or
    - (ii) ex parte on the basis of evidence brought to its notice by the complainant, where the opposite party omits or fails to take any action to represent his case within the time given by the Commission.
  - (c) decide the complaint on merits if the complainant fails to appear on the date of hearing.
- (4) For the purposes of sub-sections (2) and (3), the District Commission may, by order, require an electronic service provider to provide such information, documents or records, as may be specified in that order.
- (5) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.
- (6) Every complaint shall be heard by the District Commission on the basis of affidavit and documentary evidence placed on record: Provided that where an application is made for hearing or for examination of parties in person or through video conferencing, the District Commission may, on sufficient cause being shown, and after recording its reasons in writing, allow the same.
- (7) Every complaint shall be disposed of as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities. Provided that no adjournment shall ordinarily be granted by the District Commission unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Commission. Provided further that the District Commission shall make such orders as to the costs occasioned by the adjournment as may be specified by regulations.

Provided also that in the event of a complaint being disposed of after the period so specified, the District Commission shall record in writing, the reasons for the same at the time of disposing of the said complaint.

- (8) Where during the pendency of any proceeding before the District Commission, if it appears necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.
- (9) For the purposes of this section, the District Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely: –
  - (a) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
  - (b) requiring the discovery and production of any document or other material object as evidence;
  - (c) receiving of evidence on affidavits;
  - (d) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
  - (e) issuing of commissions for the examination of any witness, or document; and
  - (f) any other matter which may be prescribed by the Central Government.
- (10) Every proceeding before the District Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the District Commission shall be deemed to be a criminal court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.
- (11) Where the complainant is a consumer referred to in sub-clause (v) of clause (5) of section 2, the provisions of Order I Rule 8 of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Commission thereon.
- (12) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

*In the case of Brigade Enterprises Limited v. Anil Kumar Virmani & Ors. Civil Appeal No.1779 of 2021 dated December 17, 2021, Supreme Court inter alia observed that Section 35(1)(c) enables one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, to file a complaint, on behalf of or for the benefit of all consumers so interested. It is needless to point out that the sine qua non for invoking Section 35(1)(c) is that all consumers on whose behalf or for whose benefit the provision is invoked, should have the same interest. Interestingly, Section 35(1) (c) uses the disjunction “or” in between two sets of words, namely, (i) “on behalf of”; and (ii) “for the benefit of”. Therefore, a complaint filed under Section 35(1)(c) could either be “on behalf of” or “for the benefit of” all consumers having the same interest.*

*Section 38(11) of the Consumer Protection Act, 2019 makes the provisions of Order I Rule 8 of the First Schedule to the Code of Civil Procedure, 1908 applicable to cases where the complainant is a consumer referred to in Section 2(5)(v), which defines a ‘complainant’ to mean one or more consumers, where there are numerous consumers having the same interest.*

*Order I Rule 8, CPC, unlike Section 35(1)(c) operates both ways and contains provisions for a twoway traffic. It not only permits plaintiffs to sue in a representative capacity but also permits people to be sued and to be defended in an action, in a representative capacity.*

*In simple terms, the salient features of the stipulations contained in Order I Rule 8 CPC can be summed up as follows:*

- (i) where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue on behalf of or for the benefit of all persons so interested;*
- (ii) where there are numerous persons having the same interest in one suit, one or more of such persons may be sued or one or more such persons may defend such suit, on behalf of or for the benefit of all persons so interested;*
- (iii) the Court itself may, without the plaintiffs or defendants seeking any permission under Order I Rule 8(1)(a), direct that one or more such persons may sue or be sued or may defend the suit on behalf of and for the benefit of all persons interested;*
- (iv) notice of the institution of the suit to all persons so interested either by personal service or by public advertisement should be ordered by the Court in both categories of cases, namely, where permission is given by the Court on the application of the individuals or direction is issued by the Court itself;*
- (v) any person on whose behalf or for whose benefit the suit is instituted or defended may seek to be made a party to the suit;*
- (vi) abandonment of the whole or part of the claim, withdrawal of the suit or the recording of any agreement, compromise or satisfaction shall not be allowed by the Court unless notice to all persons interested in the matter is issued either by personal service or by public advertisement;*
- (vii) the Court may at any time substitute the person suing or defending in a representative capacity, with any other person, if the former was not prosecuting the suit or defence with due diligence;*
- (viii) the decree passed in the suit covered by this Rule will be binding on all persons.*

Further in the case of *Brigade Enterprises Limited v. Anil Kumar Virmani & Ors.* Civil Appeal No.1779 of 2021 judgement dated December 17, 2021, Hon'ble Supreme Court inter alia observed that a careful reading of the provisions of Section 35(1) would show that there is no scope for the contention that wherever there are more consumers than one, they must only take recourse to Order I Rule 8 CPC, even if the complaint is not on behalf of or for the benefit of, all the consumers interested in the matter. There may be cases where only "a few consumers" and not "numerous consumers" have the same interest. There is nothing in the Act to prohibit these few consumers from joining together and filing a joint complaint. A joint complaint stands in contrast to a complaint filed in a representative capacity. For attracting the provisions of Section 35(1)(c), the complaint filed by one or more consumers should be on behalf of or for the benefit of numerous consumers having same interest. It does not mean that where there are only very few consumers having the same interest, they cannot even join together and file a single complaint, but should take recourse only to independent and separate complaints. (Para 34)

Therefore, the proper way of interpreting Section 35(1) read with section 2(5), would be to say that a complaint may be filed: (i) by a single consumer; (ii) by a recognised consumer Association; (iii) by one or more consumers jointly, seeking the redressal of their own grievances without representing other consumers who may or may not have the same interest; (iv) by one or more consumers on behalf of or for the benefit of numerous consumers; and (v) the Central Government, Central Authority or State Authority.(Para 38)

It must be remembered that the provisions of the Consumer Protection Act are in addition to and not in derogation of the provisions of any other law for the time being in force, by virtue of Section 100. Even Section 38 which prescribes the procedure to be followed by the Commission for enquiring into the complaint, does not expressly exclude the application of the provisions of CPC. Though Subsections (9), (11) and (12) of Section 38 make specific reference only to a few provisions of the Code of Civil Procedure, the principle behind Order I Rule 1 enabling more than one person to join in a suit as plaintiff is not expressly excluded. (Para 39)

Therefore, Supreme Court is of the considered view that while the National Commission was wrong in this case, in the peculiar facts and circumstances in permitting an application under Section 35(1)(c) read with Order I Rule 8 CPC, it does not mean that the complaint filed by the respondents itself is liable to be thrown out. The complaint filed by the respondents may have to be treated as a joint complaint and not a complaint in a representative capacity on behalf of 1134 purchasers. The purchasers of other flats, such as the intervenors herein may join as parties to the consumer complaint, if they so desire. As a matter of fact, it is stated by the intervenors that pursuant to the impugned order, advertisements were issued and the intervenors have already filed impleadment application before the National Commission. They are entitled to be impleaded. (Para 40)

### Findings of District Commission

Section 39(1) of the Act states that where the District Commission is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services or any unfair trade practices, or claims for compensation under product liability are proved, it shall issue an order to the opposite party directing him to do one or more of the following, namely: –

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant along with such interest on such price or charges as may be decided;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party: Provided that the District Commission shall have the power to grant punitive damages in such circumstances as it deems fit;
- (e) to pay such amount as may be awarded by it as compensation in a product liability action under Chapter VI;
- (f) to remove the defects in goods or deficiencies in the services in question;
- (g) to discontinue the unfair trade practice or restrictive trade practice and not to repeat them;
- (h) not to offer the hazardous or unsafe goods for sale;
- (i) to withdraw the hazardous goods from being offered for sale;
- (j) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- (k) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently. it may be noted that the minimum amount of sum so payable shall not be less than twenty-five per cent. of the value of such defective goods sold or service provided, as the case may be, to such consumers;

- (l) to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;
- (m) to provide for adequate costs to parties; and
- (n) to cease and desist from issuing any misleading advertisement.

Section 39(2) provides that any amount obtained shall be credited to such fund and utilised in such manner as may be prescribed.

According to Section 39(3), in any proceeding conducted by the President and a member and if they differ on any point or points, they shall state the point or points on which they differ and refer the same to another member for hearing on such point or points and the opinion of the majority shall be the order of the District Commission. However, the other member shall give his opinion on such point or points referred to him within a period of one month from the date of such reference.

Every order made by the District Commission shall be signed by the President and the member who conducted the proceeding. Provided that where the order is made as per majority opinion under sub-section (3), such order shall also be signed by the other member.[Section 39(4)]

### Review by District Commission in Certain Case

Section 40 empowers the District Commission to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.

### Appeal against order of District Commission

According to Section 41 of the Act, any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of **forty-five days** from the date of the order, in such form and manner, as may be prescribed. It may be noted that the State Commission may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period.

#### There are certain restriction on appeal, unless the person fulfil the following conditions namely-

- No appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.
- No appeal shall lie from any order passed under sub-section (1) of section 81 by the District Commission pursuant to a settlement by mediation under section 80.

### STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Section 42 empowers the State Government to establish a State Consumer Disputes Redressal Commission, to be known as the State Commission, in the State. The State Commission shall ordinarily function at the State capital and perform its functions at such other places as the State Government may in consultation with the State Commission notify in the Official Gazette. State Government also empowers to establish regional benches of the State Commission, at such places, as it deems fit.

#### Each State Commission shall consist of–

- (a) a President; and
- (b) not less than four or not more than such number of members as may be prescribed in consultation with the Central Government.

**Jurisdiction of State Commission**

According to Section 47(1) of the Act, State Commission shall have jurisdiction –

- (a) to entertain –
  - (i) complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore: Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;
  - (ii) complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees;
  - (iii) appeals against the orders of any District Commission within the State; and
- (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the State, where it appears to the State Commission that such District Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

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: –

- (i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or
- (ii) 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
- (iii) refusing to accept early repayment of debts on payment of applicable penalty; or
- (iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or
- (v) 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
- (vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage.

Section 47(2) provides that the jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof, and a Bench may be constituted by the President with one or more members as the President may deem fit. It may be noted that the senior-most member shall preside over the Bench.

Section 47(3) states that where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it. The President or the other members, as the case may be, shall give opinion on the point or points so referred within a period of one month from the date of such reference.

According to Section 47(4), a complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided in such case, the permission of the State Commission is given; or
- (c) the cause of action, wholly or in part, arises; or
- (d) the complainant resides or personally works for gain.

### Review by State Commission in Certain Case

Section 50 empowers the State Commission to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.

### Appeal to National Commission

Section 51(1) provides that any person aggrieved by an order made by the State Commission in exercise of its powers conferred by Section 47(1)(a)(i) or section 47(1)(a)(ii) may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed. National Commission shall not entertain the appeal after the expiry of the said period of thirty days unless it is satisfied that there was sufficient cause for not filing it within that period. Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.

Section 51 (2) states that save as otherwise expressly provided under this Act or by any other law for the time being in force, an appeal shall lie to the National Commission from any order passed in appeal by any State Commission, if the National Commission is satisfied that the case involves a substantial question of law.

According to Section 51(3), in an appeal involving a question of law, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

Section 51(4) provides that where the National Commission is satisfied that a substantial question of law is involved in any case, it shall formulate that question and hear the appeal on that question. Further, nothing in this sub-section shall be deemed to take away or abridge the power of the National Commission to hear, for reasons to be recorded in writing, the appeal on any other substantial question of law, if it is satisfied that the case involves such question of law.

*An appeal may lie to the National Commission from an order passed ex parte by the State Commission.*

*The Hon'ble Supreme Court in the case of Manohar Infrastructure and Constructions Private Limited vs. Sanjeev Kumar Sharma & Ors. dated December 07, 2021 held that the condition of pre-deposit for entertaining appeal under Section 51 of the Consumer Protection Act, 2019 is mandatory. Section 51 of the Consumer Protection Act, 2019 provides that no appeal by a person, who is required to pay any amount in terms of order of the State Commission shall be entertained by the NCDRC unless the appellant has deposited 50 percent of that amount.*

*The Court in answering the question laid down the following:*

1. *Pre-deposit of 50 per cent of amount as ordered by the State Commission under second proviso to Section 51 of the Consumer Protection Act, 2019 is mandatory for entertainment of an appeal by the National Commission;*
2. *The object of the said pre-deposit condition is to avoid frivolous appeals;*
3. *The said pre-deposit condition has no nexus with the grant of stay by the NCDRC.*

*It then held that the NCDRC can grant a conditional stay directing the appellant to deposit the entire amount and/or any amount higher than 50 per cent of the amount determined by the State Commission.*

*However, while doing so, the NCDRC has to assign some cogent reasons and pass a speaking order either as an ex parte order or after hearing both sides and considering the facts and circumstances of the case.*

*“It must reflect an application of mind by the National Commission why the order passed by the State Commission is to be stayed on condition of deposit of the entire amount and/or any amount higher than 50 per cent of the amount awarded by the State Commission,” the Court ruled.*

### **Hearing of appeal by State Commission or National Commission**

According to Section 52 of the Act, an appeal filed before the State Commission or the National Commission, as the case may be, shall be heard as expeditiously as possible and every endeavour shall be made to dispose of the appeal within a period of **ninety days** from the date of its admission.

Adjournment shall not ordinarily be granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission.

State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment, as may be specified by regulations.

In the event of an appeal being disposed of after the period so specified, the State Commission or the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

### **NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

Section 53 empowers the Central Government to establish a National Consumer Disputes Redressal Commission, to be known as the National Commission. The National Commission shall ordinarily function at the National Capital Region and perform its functions at such other places as the Central Government may in consultation with the National Commission notify in the Official Gazette. Central Government may also establish regional Benches of the National Commission, at such places, as it deems fit.

#### **Composition of National Commission**

Section 54 provides that the National Commission shall consist of—

- (a) a President; and
- (b) not less than four and not more than such number of members as may be prescribed.

### Jurisdiction of National Commission

Section 58(1) of the Act provides that subject to the other provisions of this Act, the National Commission shall have jurisdiction –

- (a) to entertain –
  - (i) Complaints where the value of the goods or services paid as consideration **exceeds rupees ten crore**. Further, where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;
  - (ii) Complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;
  - (iii) Appeals against the orders of any State Commission;
  - (iv) Appeals against the orders of the Central Authority; and
- (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

According to Section 58(2), the jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof and a Bench may be constituted by the President with one or more members as he may deem fit. The senior-most member of the Bench shall preside over the Bench.

Section 58(3) states that where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it. The President or the other member, as the case may be, shall give opinion on the point or points so referred within a period of two months from the date of such reference.

### Procedure Applicable to National Commission

Section 59 provides that the provisions relating to complaints under sections 35, 36, 37, 38 and 39 shall, with such modifications as may be considered necessary, be applicable to the disposal of complaints by the National Commission.

National Commission may also declare any terms of contract, which is unfair to any consumer to be null and void.

### Review by National Commission in Certain Cases

Section 60 empowers the National Commission to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.

### Power to set aside ex parte Orders

Where an order is passed by the National Commission ex parte, the aggrieved party may make an application to the Commission for setting aside such order.

### Procedures for Service of Notice

Section 65(1) states that all notices, required by this Act to be served, shall be served by delivering or transmitting a copy thereof by registered post acknowledgment due addressed to opposite party against whom complaint is made or to the complainant by **speed post or by such courier service**, approved by the District Commission, the State Commission or the National Commission, as the case may be, or by any other mode of transmission of documents including electronic means.

Section 65 (2) provides that without prejudice to the provisions contained in sub-section (1), the notice required by this Act may be served on an electronic service provider at the address provided by it on the **electronic platform** from where it provides its services as such and for this purpose, the electronic service provider shall designate a nodal officer to accept and process such notices.

According to Section 65 (3), when an acknowledgment or any other receipt purporting to be signed by the opposite party or his agent or, as the case may be, by the complainant is received by the District Commission, the State Commission or the National Commission, as the case may be, or postal article containing the notice is received back by such District Commission, State Commission or the National Commission, with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the opposite party or his agent or complainant had refused to take delivery of the postal article containing the notice or had refused to accept the notice by any other means specified in sub-section when tendered or transmitted to him, the District Commission or the State Commission or the National Commission, as the case may be, shall declare that the notice has been duly served on the opposite party or to the complainant, as the case may be.

Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgment due, a declaration referred to in this sub-section shall be made notwithstanding the fact that the acknowledgment has been lost or misplaced, or for any other reason, has not been received by the District Commission, the State Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice.

Section 65 (4) states that all notices required to be served on an opposite party or to complainant, as the case may be, shall be deemed to be sufficiently served, if addressed in the case of the opposite party, to the place where business or profession is carried on, and in case of the complainant, the place where such person actually and voluntarily resides.

### Experts to Assist National Commission or State Commission

Section 66 of the Act provides that where the National Commission or the State Commission, as the case may be, on an application by a complainant or otherwise, is of the opinion that it involves the larger interest of consumers, it may direct any individual or organisation or expert to assist the National Commission or the State Commission, as the case may be.

### Appeal against Order of National Commission

According to Section 67 of the Act, any person, aggrieved by an order made by the National Commission may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order.

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

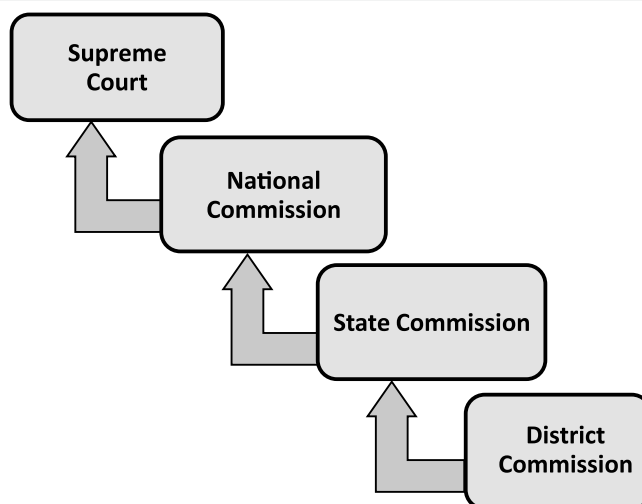
Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited fifty per cent. of that amount in the manner as may be prescribed.

**What if the Consumer is Not Satisfied with the Order of the Consumer Commission?**

*Any consumer who is aggrieved by the order of a commission can prefer an appeal in the higher commission within a period of thirty days from the date of the order. The appeal can be preferred*

- *Against order of the District Commission before the State Commission within 30 days*
- *Against order of the State Commission before the National Commission within 30 days*
- *Against order of the National Commission before the Supreme Court, within 45 days*

### Appeal



### Finality of Orders

Section 68 states that every order of a District Commission or the State Commission or the National Commission, as the case may be, shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

### Limitation Period

Section 69 provides that the District Commission, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

A complaint may be entertained after the period specified above, if the complainant satisfies the District Commission, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period.

A complaint shall not be entertained unless the District Commission or the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.

**What is the Time Limit for Filing the Complaint?**

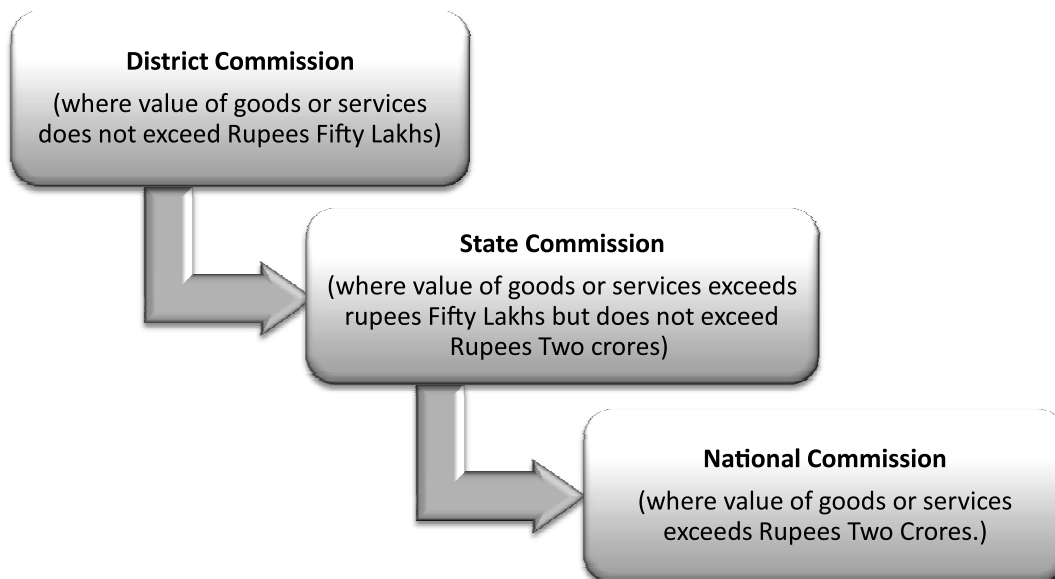
- *The complaint shall be filed within two years from the date on which the cause of action has arisen.*
- *This would mean two years from the day the deficiency in service or defect in goods has arisen/detected.*
- *This is also known as the limitation period for filing the complaint.*

Pecuniary jurisdiction of Commissions	
Commissions	Pecuniary jurisdiction
District Commission	Upto 1 cr
State Commission	1 cr – Upto 10 cr
National Commission	Above 10 cr

**According to Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021 Vide Notification dated 30th December, 2021 prescribed the following Pecuniary Jurisdiction:**

- **District Commission: Does not exceed fifty lakh rupees.**
- **State Commission: Exceeds fifty lakhs but does not exceed two crore rupees.**
- **National Commission: Exceed two crore rupees.**

**Pecuniary Jurisdiction under Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021**



**Enforcement of Orders of District Commission, State Commission and National Commission**

According to the Section 71 of the Act, every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under the Act.

### ***What Reliefs are Provided by Consumer Commissions?***

- ***Removal of defects from the goods;***
- ***Replacement of the goods;***
- ***Refund of the price paid;***
- ***Removal of defects or deficiencies in the services;***
- ***Award of compensation for the loss or injury suffered;***
- ***Discontinue and not to repeat unfair trade practice or restrictive trade practice;***
- ***To withdraw hazardous goods from being offered for sale;***
- ***To cease manufacture of hazardous goods and desist from offering services which are hazardous in nature;***
- ***If the loss or injury has been suffered by a large number of consumers who are not identifiable conveniently, to pay such sum (not less than 25% of the value of such defective goods or services provided) which shall be determined by the Commission;***
- ***To issue corrective advertisement to neutralize the effect of misleading advertisement;***
- ***To provide adequate costs to parties.***

### **Penalty for Noncompliance of Order**

Section 72(1) provides that whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.

According to Section 72(2) of the Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of First Class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of First Class for the purposes of the Code of Criminal Procedure, 1973.

Section 72(3) states that save as otherwise provided, the offences under sub-section (1) shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.

### **Appeal against Order Passed under Section 72**

Section 73 provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, where an order is passed under section 72(1), an appeal shall lie, both on facts and on law from –

- (a) the order made by the District Commission to the State Commission;
- (b) the order made by the State Commission to the National Commission; and
- (c) the order made by the National Commission to the Supreme Court.

Every appeal shall be preferred within a period of thirty days from the date of order of a District Commission or a State Commission or the National Commission, as the case may be.

It may be noted that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period of thirty days.

Appeal shall not lie before any court, from any order of a District Commission or a State Commission or the National Commission, as the case may be.

## MEDIATION

### Establishment of Consumer Mediation Cell

Section 74 empowers the State Government to establish a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State.

Further the Central Government is empowered to establish a consumer mediation cell to be attached to the National Commission and each of the regional Benches.

A consumer mediation cell shall consist of such persons as may be prescribed. Every consumer mediation cell shall maintain—

- (a) a list of empanelled mediators;
- (b) a list of cases handled by the cell;
- (c) record of proceeding; and
- (d) any other information as may be specified by regulations.

Every consumer mediation cell shall submit a quarterly report to the District Commission, State Commission or the National Commission to which it is attached, in the manner specified by regulations.

### Duty of Mediator to Disclose Certain Fact

According to the Section 77 of the Act, it shall be the duty of the mediator to disclose—

- (a) any personal, professional or financial interest in the outcome of the consumer dispute;
- (b) the circumstances which may give rise to a justifiable doubt as to his independence or impartiality; and
- (c) such other facts as may be specified by regulations.

### Replacement of Mediator in Certain Cases

Section 78 of the Act provides that where the District Commission or the State Commission or the National Commission, as the case may be, is satisfied, on the information furnished by the mediator or on the information received from any other person including parties to the complaint and after hearing the mediator, it shall replace such mediator by another mediator.

### Procedure for Mediation

Section 79 states that the mediation shall be held in the consumer mediation cell attached to the District Commission, the State Commission or the National Commission, as the case may be.

Where a consumer dispute is referred for mediation by the District Commission or the State Commission or the National Commission, as the case may be, the mediator nominated by such Commission shall have regard to the rights and obligations of the parties, the usages of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary and shall be guided by the principles of natural justice while carrying out mediation.

The mediator so nominated shall conduct mediation within such time and in such manner as may be specified by regulations.

### Settlement through Mediation

Section 80(1) provides that pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.

Section 80(2) states that the mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission.

Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.

### Recording Settlement and Passing of Order

According to Section 81(1) the District Commission or the State Commission or the National Commission, as the case may be, shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.

Section 81(2) provides that where the consumer dispute is settled only in part, the District Commission or the State Commission or the National Commission, as the case may be, shall record settlement of the issues which have been so settled and continue to hear other issues involved in such consumer dispute.

Where the consumer dispute could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, shall continue to hear all the issues involved in such consumer dispute.

## PRODUCT LIABILITY

Chapter VI contains Section 82 to 87 deal with Product Liability. According to section 82 Chapter VI shall apply to every claim for compensation under a product liability action by a complainant for any harm caused by a defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller.

Harm in relation to a product liability, includes –

- (i) damage to any property, other than the product itself;
- (ii) personal injury, illness or death;
- (iii) mental agony or emotional distress attendant to personal injury or illness or damage to property; or
- (iv) any loss of consortium or services or other loss resulting from a harm referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii);

but shall not include any harm caused to a product itself or any damage to the property on account of breach of warranty conditions or any commercial or economic loss, including any direct, incidental or consequential loss relating thereto. [Section 2(22)]

### Product Liability Action

According to Section 83 of the Act, a product liability action may be brought by a complainant against a **product manufacturer or a product service provider or a product seller**, as the case may be, for any harm caused to him on account of a defective product.

**Liability of Product Manufacturer**

Section 84 states that a product manufacturer shall be liable in a product liability action, if –

- (a) the product contains a manufacturing defect; or
- (b) the product is defective in design; or
- (c) there is a deviation from manufacturing specifications; or
- (d) the product does not conform to the express warranty; or
- (e) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.

A product manufacturer shall be liable in a product liability action even if he proves that he was not negligent or fraudulent in making the express warranty of a product.

**Liability of Product Service Provider**

Section 85 provides that a product service provider shall be liable in a product liability action, if –

- (a) the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or
- (b) there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or
- (c) the service provider did not issue adequate instructions or warnings to prevent any harm; or
- (d) the service did not conform to express warranty or the terms and conditions of the contract.

**Liability of Product Sellers**

Section 86 states that a product seller who is not a product manufacturer shall be liable in a product liability action, if –

- (a) he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or
- (b) he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or
- (c) he has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm; or
- (d) the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or
- (e) he failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm.

### Exceptions to Product Liability Action

According to Section 87, of the Act a product liability action cannot be brought against the product seller if, at the time of harm, the product was misused, altered, or modified.

In any product liability action based on the failure to provide adequate warnings or instructions, the product manufacturer shall not be liable, if –

- (a) the product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to such employer;
- (b) the product was sold as a component or material to be used in another product and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material, but the harm was caused to the complainant by use of the end product in which such component or material was used;
- (c) the product was one which was legally meant to be used or dispensed only by or under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give the warnings or instructions for usage of such product to such expert or class of experts; or
- (d) the complainant, while using such product, was under the influence of alcohol or any prescription drug which had not been prescribed by a medical practitioner.

A product manufacturer shall not be liable for failure to instruct or warn about a danger which is obvious or commonly known to the user or consumer of such product or which, such user or consumer, ought to have known, taking into account the characteristics of such product.

## OFFENCES AND PENALTIES

### Penalty for Non-compliance of Direction of Central Authority

Section 88 provides that whoever, fails to comply with any direction of the Central Authority under sections 20 and 21, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty lakh rupees, or with both.

It may be noted that Sections 20 deals with power of Central Authority to recall goods, etc. and Sections 21 deals with power of Central Authority to issue directions and penalties against false or misleading advertisements.

### Punishment for False or Misleading Advertisement

Section 89 states that any manufacturer or service provider who causes a false or misleading advertisement to be made which is prejudicial to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

### Punishment for False or Misleading Advertisement

Section 92 provides that no cognizance shall be taken by a competent court of any offence under sections 88 and 89 except on a complaint filed by the Central Authority or any officer authorised by it in this behalf.

### Compounding of Offences

According to Section 96(1) of the Act, any offence punishable under sections 88 and 89, may, either before or after the institution of the prosecution, be compounded, on payment of such amount as may be prescribed.

It may be noted that no compounding of such offence shall be made without the leave of the court before which a complaint has been filed under section 92.

Further, such sum shall not, in any case, exceed the maximum amount of the fine, which may be imposed under this Act for the offence so compounded.

Section 96(2) provides that the Central Authority or any officer as may be specially authorised by him in this behalf, may compound offences under sub-section (1).

Section 96(3) states that nothing in sub-section (1) shall apply to person who commits the same or similar offence, within a period of three years from the date on which the first offence, committed by him, was compounded.

Any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

Section 96(4) provides that where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded.

Section 96(5) states that the acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Central Authority or an officer of the Central Authority empowered in this behalf shall be deemed to amount to an acquittal within the meaning of the Code of Criminal Procedure, 1973.

### **Punishment for Manufacturing for Sale or Storing, Selling or Distributing or Importing Products Containing Adulterant**

Section 90(1) provides that whoever, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any product containing an adulterant shall be punished, if such act –

- (a) does not result in any injury to the consumer, with imprisonment for a term which may extend to six months and with fine which may extend to one lakh rupees;
- (b) causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;
- (c) causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees; and
- (d) results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.

Section 90(2) states that the offences under clauses (c) and (d) of sub-section (1) shall be cognizable and non-bailable.

Notwithstanding the punishment under sub-section (1), the court may, in case of first conviction, suspend any licence issued to the person referred to in that sub-section, under any law for the time being in force, for a period up to two years, and in case of second or subsequent conviction, cancel the licence.

Explanation.– for the purposes of this section,–

- (a) “Adulterant” means any material including extraneous matter which is employed or used for making a product unsafe;
- (b) “Grievous hurt” shall have the same meaning as assigned to it in section 320 of the Indian Penal Code.

### **Punishment for Manufacturing for Sale or for Storing or Selling or Distributing or Importing Spurious Goods**

Section 91(1) provides that whoever, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any spurious goods shall be punished, if such act –

- (a) causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;
- (b) causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees;
- (c) results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.

Section 91(2) states that the offences under clauses (b) and (c) of sub-section (1) shall be cognizable and non-bailable.

Notwithstanding the punishment under sub-section (1), the court may, in case of first conviction, suspend any licence issued to the person referred to in that sub-section, under any law for the time being in force, for a period up to two years, and in case of second or subsequent conviction, cancel the licence.

### **Measures to Prevent Unfair Trade Practices in E-Commerce, Direct Selling**

Section 94 empowers the Central Government to take such measures in the prescribed manner for the purposes of preventing unfair trade practices in e-commerce, direct selling and also to protect the interest and rights of consumers.

## **E-COMMERCE**

*E-Commerce means buying or selling of goods or services including digital products over digital or electronic network.*

In exercise of the powers conferred by section 101(1)(zg) of the Consumer Protection Act, 2019 Central Government notified the Consumer Protection (E-Commerce) Rules, 2020.

#### **Scope and Applicability of the Consumer Protection (E-Commerce) Rules, 2020 :**

- all goods and services bought or sold over digital or electronic network including digital products;
- all models of e-commerce, including marketplace and inventory models of e-commerce;
- all e-commerce retail, including multi-channel single brand retailers and single brand retailers in single or multiple formats; and
- all forms of unfair trade practices across all models of e-commerce.

*Consumer Protection (E-Commerce) Rules, 2020 shall not apply to any activity of a natural person carried out in a personal capacity not being part of any professional or commercial activity undertaken on a regular or systematic basis.*

### **Duties of E-Commerce Entities**

“E-Commerce Entity” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce, but does not include a seller offering his goods or services for sale on a marketplace e-commerce entity.

***An e-commerce entity shall:***

1. Where an e-commerce entity is a company incorporated under the Companies Act, 1956 (1 of 1956) or under the Companies Act, 2013 or a foreign company covered under clause (42) of section 2 of the Companies Act, 2013 or an office, branch or agency outside India owned or controlled by a person resident in India as provided in sub-clause (iv) of clause (v) of section 2 of the Foreign Exchange Management Act, 1999, it shall appoint a nodal officer or an alternate senior designated functionary who is resident in India, to ensure compliance with the provisions of the Act or the rules made thereunder.
2. Every e-commerce entity shall provide the following information in a clear and accessible manner on its platform, displayed prominently to its users, namely:--
  - i. legal name of the e-commerce entity;
  - ii. principal geographic address of its headquarters and all branches;
  - iii. name and details of its website; and
  - iv. contact details like e-mail address, fax, landline and mobile numbers of customer care as well as of grievance officer.
3. No e-commerce entity shall adopt any unfair trade practice, whether in the course of business on its platform or otherwise.
4. Every e-commerce entity shall establish an adequate grievance redressal mechanism having regard to the number of grievances ordinarily received by such entity from India, and shall appoint a grievance officer for consumer grievance redressal, and shall display the name, contact details, and designation of such officer on its platform.
5. Every e-commerce entity shall ensure that the grievance officer referred to in sub-rule (4) acknowledges the receipt of any consumer complaint within forty-eight hours and redresses the complaint within one month from the date of receipt of the complaint.
6. Where an e-commerce entity offers imported goods or services for sale, it shall mention the name and details of any importer from whom it has purchased such goods or services, or who may be a seller on its platform.
7. Every e-commerce entity shall endeavour on a best effort basis to become a partner in the convergence process of the National Consumer Helpline of the Central Government.
8. No e-commerce entity shall impose cancellation charges on consumers cancelling after confirming purchase unless similar charges are also borne by the e-commerce entity, if they cancel the purchase order unilaterally for any reason.
9. Every e-commerce entity shall only record the consent of a consumer for the purchase of any good or service offered on its platform where such consent is expressed through an explicit and affirmative action, and no such entity shall record such consent automatically, including in the form of pre-ticked checkboxes.
10. Every e-commerce entity shall effect all payments towards accepted refund requests of the consumers as prescribed by the Reserve Bank of India or any other competent authority under any law for the time being in force, within a reasonable period of time, or as prescribed under applicable laws.
11. No e-commerce entity shall--
  - (a) manipulate the price of the goods or services offered on its platform in such a manner as to gain unreasonable profit by imposing on consumers any unjustified price having regard to the prevailing market conditions, the essential nature of the good or service, any extraordinary

circumstances under which the good or service is offered, and any other relevant consideration in determining whether the price charged is justified;

- (b) Discriminate between consumers of the same class or make any arbitrary classification of consumers affecting their rights under the Act.

### Liabilities of Marketplace E-Commerce Entities

*Marketplace E-Commerce Entity means an e-commerce entity which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers.*

- (1) A marketplace e-commerce entity which seeks to avail the exemption from liability under sub-section (1) of section 79 of the Information Technology Act, 2000.
- (2) Every marketplace e-commerce entity shall require sellers through an undertaking to ensure that descriptions, images, and other content pertaining to goods or services on their platform is accurate and corresponds directly with the appearance, nature, quality, purpose and other general features of such good or service.
- (3) Every marketplace e-commerce entity shall provide the following information in a clear and accessible manner, displayed prominently to its users at the appropriate place on its platform:
  - (a) details about the sellers offering goods and services, including the name of their business, whether registered or not, their geographic address, customer care number, any rating or other aggregated feedback about such seller, and any other information necessary for enabling consumers to make informed decisions at the pre-purchase stage.

Provided that a marketplace e-commerce entity shall, on a request in writing made by a consumer after the purchase of any goods or services on its platform by such consumer, provide him with information regarding the seller from which such consumer has made such purchase, including the principal geographic address of its headquarters and all branches, name and details of its website, its email address and any other information necessary for communication with the seller for effective dispute resolution;

- (b) a ticket number for each complaint lodged through which the consumer can track the status of the complaint;
  - (c) information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, and grievance redressal mechanism, and any other similar information which may be required by consumers to make informed decisions;
  - (d) information on available payment methods, the security of those payment methods, any fees or charges payable by users, the procedure to cancel regular payments under those methods, charge-back options, if any, and the contact information of the relevant payment service provider;
  - (e) all information provided to it by sellers under sub-rule (5) of rule 6; and
  - (f) an explanation of the main parameters which, individually or collectively, are most significant in determining the ranking of goods or sellers on its platform and the relative importance of those main parameters through an easily and publicly available description drafted in plain and intelligible language.
- (4) Every marketplace e-commerce entity shall include in its terms and conditions generally governing its relationship with sellers on its platform, a description of any differentiated treatment which it gives or might give between goods or services or sellers of the same category.

- (5) Every marketplace e-commerce entity shall take reasonable efforts to maintain a record of relevant information allowing for the identification of all sellers who have repeatedly offered goods or services that have previously been removed or access to which has previously been disabled under the Copyright Act, 1957 the Trade Marks Act, 1999 or the Information Technology Act, 2000.

Provided that no such e-commerce entity shall be required to terminate the access of such seller to its platform pursuant to this sub-rule but may do so on a voluntary basis.

### Duties and Liabilities of Inventory E-Commerce Entities

*Inventory E-Commerce Entity means an e-commerce entity which owns the inventory of goods or services and sells such goods or services directly to the consumers and shall include single brand retailers and multi-channel single brand retailers.*

- (1) Every inventory e-commerce entity shall provide the following information in a clear and accessible manner, displayed prominently to its users:
- (a) accurate information related to return, refund, exchange, warranty and guarantee, delivery and shipment, cost of return shipping, mode of payments, grievance redressal mechanism, and any other similar information which may be required by consumers to make informed decisions;
  - (b) all mandatory notices and information required by applicable laws;
  - (c) information on available payment methods, the security of those payment methods, the procedure to cancel regular payments under those methods, any fees or charges payable by users, charge back options, if any, and the contact information of the relevant payment service provider;
  - (d) all contractual information required to be disclosed by law;
  - (e) total price in single figure of any good or service along with the breakup price for the good or service, showing all the compulsory and voluntary charges, such as delivery charges, postage and handling charges, conveyance charges and the applicable tax; and
  - (f) a ticket number for each complaint lodged, through which the consumer can track the status of their complaint.
- (2) No inventory e-commerce entity shall falsely represent itself as a consumer and post reviews about goods and services or misrepresent the quality or the features of any goods or services.
- (3) Every inventory e-commerce entity shall ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services.
- (4) No inventory e-commerce entity shall refuse to take back goods, or withdraw or discontinue services purchased or agreed to be purchased, or refuse to refund consideration, if paid, if such goods or services are defective, deficient spurious, or if the goods or services are not of the characteristics or features as advertised or as agreed to, or if such goods or services are delivered late from the stated delivery schedule.

Provided that in the case of late delivery, this sub rule shall not apply if such late delivery was due to force majeure.

- (5) Any inventory e-commerce entity which explicitly or implicitly vouches for the authenticity of the goods or services sold by it, or guarantees that such goods or services are authentic, shall bear appropriate liability in any action related to the authenticity of such good or service.

**DIRECT SELLING**

*Direct Selling means marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location.*

In exercise of the powers conferred by Section 101(2)(zg) read with Section 94 of the Consumer Protection Act, 2019, the Central Government notified the Consumer Protection (Direct Selling) Rules, 2021.

**Applicability**

- (a) all goods and services bought or sold through direct selling;
- (b) all models of direct selling;
- (c) all direct selling entities offering goods and services to consumers in India;
- (d) all forms of unfair trade practices across all models of direct selling.

*Consumer Protection (Direct Selling) Rules, 2021 shall also apply to a direct selling entity which is not established in India, but offers goods or services to consumers in India.*

**Mandatory Maintenance of Records**

Every direct selling entity shall maintain at its registered office, either manually or electronically, all such documents as are required under any law for the time being in force, including the following documents or records, as may be applicable, namely:–

- (a) Certificate of Incorporation;
- (b) Memorandum of Association and Articles of Association;
- (c) Permanent Account Number and Tax Deduction and Collection Account Number;
- (d) Goods and Services Tax registration;
- (e) Income Tax Returns;
- (f) Balance Sheet, Audit Report and such other relevant reports;
- (g) Register of direct sellers;
- (h) Certificate of Importer-Exporter code (in case of imported goods);
- (i) License issued under the Food Safety and Standards Authority of India Act, 2006 (34 of 2006) for the purposes of manufacture or sale of food items;
- (j) License and Registration Certificate issued under the Drugs and Cosmetics Act, 1940 (23 of 1940) for the purposes of manufacture or sale of drugs, including Ayurvedic, Siddha and Unani drugs and Homoeopathic Medicines;
- (k) Certificate of Registration of Trademark.

**Obligations of Direct Selling Entity**

*Direct Selling Entity means the principal entity which sells or offers to sell goods or services through direct sellers, but does not include an entity which is engaged in a Pyramid Scheme or money circulation scheme.*

- (1) Every direct selling entity shall—
  - (a) if a company, be incorporated under the Companies Act, 2013 or if a partnership firm, be registered under the Partnership Act, 1932 or if a limited liability partnership, be registered under the Limited Liability Partnership Act, 2008;
  - (b) have a minimum of one physical location as its registered office within India;
  - (c) make self-declaration to the effect that it has complied with the provisions of these rules and is not involved in any Pyramid Scheme or money circulation scheme;
  - (d) maintain proper and updated website with all relevant details of that entity, including the documents or records specified in rule 4, the self-declaration specified in clause (c), contact information which is current and updated, details of its nodal officer, grievance redressal officer, its management, products, product information, price and grievance redressal mechanism for consumers;
  - (e) own, hold or be the licensee of a trademark, service mark or any other identification mark which identifies that entity with the goods or services to be sold or supplied, but shall not give commissions, bonus or incentives on sale of goods or services of which it is not the owner, holder or licensee of trademark, service mark or other identification marks;
  - (f) obtain all applicable trade registrations and licenses, including Permanent Account Number and Goods and Services Tax Registration;
  - (g) **get all information provided by it on its website duly certified by a Company Secretary. It may be noted that “Company Secretary” means a person as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980;**
  - (h) have a prior written contract with its direct sellers in order to authorize them to sell or offer to sell its goods or services, and the terms of such agreement shall be just, fair and equitable;
  - (i) ensure that all its direct sellers have verified identities and physical addresses and issue identity cards and documents only to such direct sellers;
  - (j) create adequate safeguards to ensure that goods and services offered by its direct sellers conform to applicable laws;
  - (k) be liable for the grievances arising out of the sale of goods or services by its direct sellers.
- (2) Every direct selling entity shall provide the following information on its website in a clear and accessible manner, which shall be displayed prominently to its users, namely:—
  - (a) registered name of the direct selling entity;
  - (b) registered address of the direct selling entity and of its branches;
  - (c) contact details, including e-mail address, fax, land line and mobile numbers of its customer care and grievance redressal officers;
  - (d) a ticket number for each complaint lodged through which the complainant can track the status of the complaint;
  - (e) information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, grievance redressal mechanism and such other information which may be required by the consumers to make informed decisions;
  - (f) information on available payment methods, the security of those payment methods, the fees or charges payable by users, the procedure to cancel regular payments under those methods, charge-back options, if any, and the contact information of the relevant payment service provider;

- (g) total price of any goods or service in single figure, along with its break-up price showing all compulsory and voluntary charges, including delivery charges, postage and handling charges, conveyance charges and the applicable tax;
  - (h) provide correct and complete information at pre-purchase stage to enable buyers to make informed purchase decisions, and such information shall, in addition to the mandatory declarations to be provided under the Legal Metrology (Packaged Commodities) Rules, 2011, contain the following information, namely:–
    - (i) the name of purchaser and seller;
    - (ii) description of goods or services;
    - (iii) quantity of goods or services;
    - (iv) the estimated delivery date of goods or services;
    - (v) the process of refund;
    - (vi) warranty of the goods;
    - (vii) exchange or replacement of goods in case of it being defective;
    - (viii) all contractual information required to be disclosed by or under any law for the time being in force.
- (3) No direct selling entity shall adopt any unfair trade practice in the course of its business or otherwise, and shall abide by the requirements specified in any law for the time being in force.
- (4) All products of a direct selling entity shall comply with the declarations to be made under the Legal Metrology Act, 2009.
- (5) Every direct selling entity shall store sensitive personal data within the jurisdiction of India, in accordance with the applicable law for the time being in force and shall take appropriate steps to ensure protection of such data provided by a consumer and also ensure adequate safeguards to prevent access or misuse of such data by any unauthorized person.
- (6) Every direct selling entity shall, having regard to the number of grievances ordinarily received by such entity from persons in India, establish an adequate grievance redressal mechanism and appoint one or more grievance redressal officers for redressal of consumers' grievances and display the current and updated name, contact details including telephone number, email address and designation of such officer on its website, and the details of its website shall also be prominently printed on the product information sheet or pamphlet.
- (7) Every direct selling entity shall ensure that the grievance redressal officer referred to in sub-rule (6) acknowledges the receipt of any consumer complaint within forty-eight working hours of receipt of such complaint and redresses the complaint normally within a period of one month from the date of receipt of the complaint and in case of delay of more than a month, reasons for the delay, and the actions taken on the complaint, are informed to the complainant in writing.
- (8) Every direct selling entity shall appoint a nodal officer who shall be responsible for ensuring compliance with the provisions of the Act and the rules made thereunder, and to ensure compliance with any order, or requisition, made in accordance with the provisions of any other law for the time being in force or the rules made thereunder.
- (9) Every direct selling entity shall establish a mechanism for filing of complaints by consumers through its offices or branches or direct sellers, either in person or through post, telephone, e-mail or website.
- (10) Every direct selling entity shall maintain a record of all its direct sellers, including their identity proof, address proof, e-mail and such other contact information.

- (11) Every direct selling entity shall, on the request in writing made by a consumer after the purchase of any goods or services, provide him with the information regarding any direct seller from whom such consumer has made a purchase, and such information shall include the name, address, e-mail, contact number and any other information which is necessary for making communication with such direct seller for effective dispute resolution.
- (12) Every direct selling entity shall ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services.
- (13) No direct selling entity shall, directly or indirectly, falsely represent itself as a consumer and post reviews about its goods or services or misrepresent the quality or features of any of its goods or services.
- (14) A direct selling entity which explicitly or implicitly vouches for the authenticity of the goods or services sold, or guarantees that such goods or services are authentic, shall bear the liability in any action related to the authenticity of such goods or services.
- (15) Notwithstanding the distribution system adopted by it, a direct selling entity shall monitor the practices adopted by its direct sellers and ensure compliance with these rules by means of legally binding contract with such direct sellers.
- (16) Every direct selling entity shall maintain a record of relevant information allowing for the identification of all direct sellers who have been delisted by the direct selling entity and such list shall be publicly shared on its website.
- (17) Every direct selling entity shall become a partner in the convergence process of the National Consumer Helpline of the Central Government.

### Obligations of Direct Seller

*Direct Seller means a person authorized by a direct selling entity through a legally enforceable written contract to undertake direct selling business on principal to principal basis.*

- (1) Every direct seller shall–
  - (a) have a prior written contract with the direct selling entity for undertaking sale of, or offer to sell, any goods or services of such entity;
  - (b) at the initiation of any sale representation, truthfully and clearly identify himself, disclose the identity of the direct selling entity, the address of place of business, the nature of goods or services sold and the purpose of such solicitation to the prospect;
  - (c) make an offer to the prospect providing accurate and complete information, demonstration of goods and services, prices, credit terms, terms of payment, return, exchange, refund policy, return policy, terms of guarantee and after-sale service;
  - (d) provide an order form to the consumer at or prior to the time of the initial sale, which shall identify the direct selling entity and the direct seller and shall contain the name, address, registration number or enrollment number, identity proof and contact number of the direct seller, complete description of the goods or services to be supplied, the country of origin of the goods, the order date, the total amount to be paid by the consumer, the time and place for inspection of the sample and delivery of goods, consumer's rights to cancel the order or to return the product in saleable condition and avail full refund on sums paid and complete details regarding the complaint redressal mechanism of the direct selling entity;
  - (e) obtain goods and service tax registration, Permanent Account Number registration, all applicable trade registrations and licenses and comply with the requirements of applicable laws, rules and regulations for sale of a product;

- (f) ensure that actual product delivered to the buyer matches with the description of the product given;
  - (g) take appropriate steps to ensure the protection of all sensitive personal information provided by the consumer in accordance with the applicable laws for the time being in force and ensure adequate safeguards to prevent access to, or misuse of, data by unauthorized persons.
- (2) A direct seller shall not–
- (a) visit a consumer's premises without identity card and prior appointment or approval;
  - (b) provide any literature to a prospect, which has not been approved by the direct selling entity;
  - (c) require a prospect to purchase any literature or sales demonstration equipment;
  - (d) in pursuance of a sale, make any claim that is not consistent with claims authorized by the direct selling entity.

It may be noted that the direct sellers as well as the direct selling entities using e-commerce platforms for sale shall comply with the requirements of the Consumer Protection (e- Commerce) Rules, 2020.

### **Duties of Direct Selling Entity and Direct Seller**

Subject to the provisions of Chapter VI of the Consumer Protection Act, relating to Product Liability, the following shall be the duties of direct selling entity and direct seller, as may be applicable, namely:–

- (i) Every direct selling entity and every direct seller shall ensure that–
  - (a) the terms of the offer are clear, so as to enable the consumer to know the exact nature of offer being made and the commitment involved in placing any order;
  - (b) the presentations and other representations used in direct selling shall not contain any product description, claim, illustration or other element which, directly or by implication, is likely to mislead the consumer;
  - (c) the explanation and demonstration of the goods or services offered are accurate and complete, particularly with regard to price and, if applicable, to credit conditions, terms of payment, cooling-off periods or right to return, terms of guarantee, after-sales service and delivery;
  - (d) the descriptions, claims, illustrations or other elements relating to verifiable facts are capable of substantiation;
  - (e) any misleading, deceptive or unfair trade practices are not used;
  - (f) direct selling is not represented to the consumer as being a form of market research;
  - (g) the promotional literature, advertisement or mail contain the name and address or telephone number of the direct selling company, and include the mobile number of the direct seller;
  - (h) direct selling shall not state or imply that a guarantee, warranty or other expression having substantially the same meaning, offers to the consumer any rights in addition to those provided by law, when it does not;
  - (i) the terms of any guarantee or warranty, including the name and address of the guarantor, shall be easily available to the consumer and limitations on consumer rights or remedies, where permitted by law, shall be clear and conspicuous;
  - (j) the remedial action open to the consumer shall be clearly set out in the order form or other accompanying literature provided with the goods or service;

- (k) the presentation of the offer does not contain or refer to any testimonial, endorsement or supportive documentation unless it is genuine, verifiable and relevant;
  - (l) when after-sales service is offered, details of the service are included in the guarantee or stated elsewhere in the offer and if the consumer accepts the offer, information shall be given on how the consumer can activate the service and communicate with the service agent;
  - (m) products, including, where applicable, samples, are suitably packaged for delivery to the consumer and for possible return, in compliance with the appropriate health and safety standards;
  - (n) unless otherwise stipulated in the offer, orders shall be fulfilled within the delivery date proposed to the consumer at the time of purchase and the consumer shall be informed of any undue delay as soon as it becomes apparent or comes within the knowledge of the direct selling entity or the concerned direct seller;
  - (o) in cases of delay under clause (n), any request for cancellation of the order by the consumer shall be granted, irrespective of whether the consumer has been informed of the delay, and the deposit, if any, shall be refunded as per the cancellation terms proposed to the consumer at the time of purchase, and if it is not possible to prevent delivery, the consumer shall be informed of the right to return the product at the direct selling company's or the direct seller's cost as per the procedure for return of the goods proposed to the consumer at the time of purchase;
  - (p) right of return offered by that entity shall be in writing;
  - (q) whether payment for the offer is on an immediate sale or installment basis, the price and terms of payment shall be clearly stated in the offer together with the nature of any additional charges such as postage, handling and taxes and, whenever possible, the amounts of such charges;
  - (r) in the case of sales by installment, the credit terms, including the amount of any deposit or payment on account, the number, amount and periodicity of such installments and the total price compared with the immediate selling price, if any, shall be clearly shown in the offer;
  - (s) any information needed by the consumer to understand the cost, interest and terms of any other form of credit is provided either in the offer or when the credit is offered;
  - (t) unless the duration of the offer and the price are clearly stated in the offer, prices shall be maintained for a reasonable period of time;
  - (u) the procedure for payment and debt collection shall be determined in writing before any contract is signed and it shall be such as to avoid undue inconvenience to the consumer, making due allowance for delays outside the consumer's control;
  - (v) the provisions of the Legal Metrology Act, 2009 and the rules framed thereunder shall be followed.
- (ii) A direct selling entity or direct seller shall not–
- (a) indulge in fraudulent activities or sales and shall take reasonable steps to ensure that participants do not indulge in false or misleading representations or any other form of fraud, coercion, harassment, or unconscionable or unlawful means;
  - (b) engage in, or cause or permit, any conduct that is misleading or likely to mislead with regard to any material particulars relating to its direct selling business, or to the goods or services being sold by itself or by the direct seller;
  - (c) indulge in mis-selling of products or services to consumers;
  - (d) use, or cause or permit to be used, any fraudulent, coercive, unconscionable or unlawful means, or cause harassment, for promoting its direct selling business, or for sale of its goods or services;

- (e) refuse to take back spurious goods or deficient services and refund the consideration paid for goods and services provided;
- (f) charge any entry fee or subscription fee.
- (iii) A direct selling entity and a direct seller shall comply with the requirements of all relevant laws, including payment of taxes and deductions thereunder.
- (iv) A direct selling entity and a direct seller shall not induce consumers to make a purchase based upon the representation that they can reduce or recover the price by referring prospective customers to the direct sellers for similar purchases.

*It may be noted that "Miss-Selling" means selling a product or service by misrepresenting in order to successfully complete a sale and includes providing consumers with misleading information about a product or service or omitting key information about a product or providing information that makes the product appear to be something it is not.*

### Prohibition of Pyramid Scheme and Money Circulation Scheme

Direct Selling Entity or Direct Seller shall not–

- (a) promote a Pyramid Scheme or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing direct selling business;
- (b) participate in money circulation scheme in the garb of doing direct selling business.

**Money Circulation Scheme means the schemes defined in clause (c) of section 2 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.**

**"Pyramid Scheme" means a multi layered network of subscribers to a scheme formed by subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, as a result of enrolment or action or performance of additional subscribers to the scheme, in which the subscribers enrolling further subscribers occupy a higher position and the enrolled subscribers a lower position, resulting in a multi-layered network of subscribers with successive enrolments.**

### Protection of Action Taken in Good Faith

According to Section 98 of the Act, no suit, prosecution or other legal proceeding shall lie against the Presidents and members of the District Commission, the State Commission and the National Commission, the Chief Commissioner, the Commissioner, any officer or employee and other person performing any duty under this Act, for any act which is in good faith done or intended to be done in pursuance of this Act or under any rule or order made thereunder.

### Act not in derogation of any other law

Section 100 states that the provisions of Consumer Protection Act, 2019 shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

### LESSON ROUND-UP

- Consumer Protection Act, 2019 provides 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 means any person who (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any 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 and the expressions “buys any goods” and “hires or avails any services” includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.
- Direct selling means marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location.
- E-Commerce means buying or selling of goods or services including digital products over digital or electronic network.
- Electronic service provider means a person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites.
- Endorsement in relation to an advertisement, means any message, verbal statement, demonstration; or depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or depiction of the name or seal of any institution or organisation, which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement.
- Express warranty means any material statement, affirmation of fact, promise or description relating to a product or service warranting that it conforms to such material statement, affirmation, promise or description and includes any sample or model of a product warranting that the whole of such product conforms to such sample or model.
- Product liability means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto.
- Section 10 empowers the Central Government to establish a Central Consumer Protection Authority to be known as the Central Authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.
- District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees.
- State Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore.
- National Commission shall have jurisdiction to entertain Complaints where the value of the goods or services paid as consideration exceeds rupees ten crore.



### KEY CONCEPTS

■ Legal Metrology ■ International Organization of Legal Metrology ■ Pre-packed Commodity ■ Counterfeit

### Learning Objectives

**To understand:**

- Standard Weights and Measures
- Enforce Standards of Weights and Measures
- Power of Inspection and Seizure
- Declarations on Pre-packaged Commodities
- Offences and Penalties

### Lesson Outline

- Legal Metrology
- International Organisation of Legal Metrology
- Standard Weight and Measure
- Appointment and powers of Director and Legal Metrology Officer
- Verification and Stamping of Weight and Measure
- Maintain Records and Registers
- Pre-packed Commodities
- Declaration on Pre-packed Commodities
- Forfeiture
- Power of the Central Government to make Rules
- Power of the State Government to make Rules
- Compounding Offence
- Penalty for Counterfeiting
- Offences by Companies
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

## REGULATORY FRAMEWORK

- Legal Metrology Act, 2009
- Legal Metrology (Packaged Commodities) Rules, 2011
- Essential Commodities Act, 1955

## INTRODUCTION

Legal metrology is the application of legal requirements to measurements and measuring instruments. Very often, small errors in either direction average out over a large number of measurements. But biased errors can create considerable financial prejudice and can have serious economic consequences for the end consumer.

Legal Metrology is the name by which the law relating to weights and measures is known in international parlance. Legal Metrology is very vital for scientific, technological and industrial progress of any country. The establishment of national standards of weights and measures and their proper enforcement aim at ensuring accuracy of measurements and measuring instruments and thus legal metrology strengthens the national economy in a broader sense besides being a potential instrument of consumer protection. The scope of legal metrology according to international practice extends to three broad fields of human activities, namely, commercial transactions, industrial measurements and measurements needed to ensure public health and human safety. The coverage of legal metrology varies from country to country. In some, almost all practical measurements are brought under the purview of legal metrology, whereas in other countries legal metrology finds restricted application in a few quantities like mass, length and volume used in trade and commerce. In most of the countries, however, legal metrology encompasses measurements which have a bearing on the protection of individuals from the financial and environmental points of view.

**Legal metrology can be defined as that part of metrology which deals with units of measurement, methods of measurement and measuring instruments in so far as they concern statutory, technical and legal requirements which have the ultimate object of assuring public guarantee from the point of view of security and of appropriate accuracy of measurements.**

## International Organization of Legal Metrology (OIML)

The International Organization of Legal Metrology (OIML) is an intergovernmental treaty organization whose membership includes Member States, countries which participate actively in technical activities, and Corresponding Members, countries which join the OIML as observers. It was established in 1955 in order to promote the global harmonization of legal metrology procedures. Since that time, the OIML has developed a worldwide technical structure that provides its Members with metrological guidelines for the elaboration of national and regional requirements concerning the manufacture and use of measuring instruments for legal metrology applications.

**According to OIML, Legal Metrology is the entirety of the legislative, administrative and technical procedures established by, or by reference to public authorities, and implemented on their behalf in order to specify and to ensure, in a regulatory or contractual manner, the appropriate quality and credibility of measurements related to official controls, trade, health, safety and the environment.**

The OIML develops model regulations, International Recommendations, which provide Members with an internationally agreed-upon basis for the establishment of national legislation on various categories of measuring instruments. Given the increasing national implementation of OIML guidelines, more and more manufacturers are referring to OIML International Recommendations to ensure that their products meet international specifications for metrological performance and testing.

***The International Organization of Legal Metrology is an intergovernmental treaty organization which:***

- develops model regulations, standards and related documents for use by legal metrology authorities and industry;
- provides mutual recognition systems which reduce trade barriers and costs in a global market;
- represents the interests of the legal metrology community within international organizations and forums concerned with metrology, standardization, testing, certification and accreditation;
- promotes and facilitates the exchange of knowledge and competencies within the legal metrology community worldwide;
- cooperates with other metrology bodies to raise awareness of the contribution that a sound legal metrology infrastructure can make to a modern economy.

### **OIML Certificate System for Measuring Instruments**

The OIML Certificate System for Measuring Instruments was introduced in 1991 to facilitate administrative procedures and lower the costs associated with the international trade of measuring instruments subject to legal requirements. The System provides the possibility for a manufacturer to obtain an OIML Certificate and a Test Report indicating that a given instrument type (pattern) complies with the requirements of the relevant OIML International Recommendations. Certificates are delivered by OIML Member States that have established one or several Issuing Authorities responsible for processing applications by manufacturers wishing to have their instrument types (patterns) certified.

Certificates issued by OIML are accepted by national metrology services on a voluntary basis, and as the climate for mutual confidence and recognition of test results develops between OIML Members, the System serves to simplify the type (pattern) approval process for manufacturers and metrology authorities by eliminating costly duplication of application and test procedures.

***The objectives of the OIML Certification System are:***

- (a) to promote the global harmonization, uniform interpretation and implementation of legal metrological requirements for measuring instruments and/or modules;***
- (b) to avoid unnecessary re-testing when obtaining national type evaluations and approvals, and to support the recognition of measuring instruments and/or modules under legal metrological control, while achieving and maintaining confidence in the results in support of facilitating the global trade of individual instruments; and***
- (c) to establish rules and procedures for fostering mutual confidence among participating OIML Member States and Corresponding Members in the results of type evaluations that indicate conformity of measuring instruments and/or modules, under legal metrological control, to the metrological and technical requirements established in the applicable OIML Recommendation(s).***

### **DEFINITIONS**

Section 2 contains definitions of various terms used in the Legal Metrology Act. Some of the important definitions are reproduced hereunder.

#### **Dealer**

According to section 2(b) Dealer in relation to any weight or measure, means a person who, carries on, directly or otherwise, the business of buying, selling, supplying or distributing any such weight or measure, whether for

cash or for deferred payment or for commission, remuneration or other valuable consideration; and includes a commission agent, an importer, a manufacturer, who sells, supplies, distributes or otherwise delivers any weight or measure manufactured by him to any person other than a dealer.

### **Export**

According to section 2(d) “export” with its grammatical variations and cognate expressions, means taking out of India to a place outside India.

### **Import**

According section 2(e) “import” with its grammatical variations and cognate expressions, means bringing into India from a place outside India.

### **Label**

Under clause (j) of section 2 “label” means any written, marked, stamped, printed or graphic matter affixed to, or appearing upon any pre-packaged commodity.

### **Legal Metrology**

As per section 2(g) “legal metrology” means that part of metrology which treats units of weighment and measurement, methods of weighment and measurement and weighing and measuring instruments, in relation to the mandatory technical and legal requirements which have the object of ensuring public guarantee from the point of view of security and accuracy of the weighments and measurements.

### **Manufacture**

As per section 2(i) “manufacturer” in relation to any weight or measure, means a person who-

- (i) manufactures weight or measure;
- (ii) manufactures one or more parts, and acquires other parts, of such weight or measure and, after assembling those parts, claims the end product to be a weight or measure manufactured by himself or itself, as the case may be;
- (iii) does not manufacture any part of such weight or measure but assembles parts thereof manufactured by others and claims the end product to be a weight or measure manufactured by himself or itself, as the case may be;
- (iv) puts, or causes to be put, his own mark on any complete weight or measure made or manufactured by any other person and claims such product to be a weight or measure made or manufactured by himself or itself, as the case may be.

### **Protection**

Section 2(k) define “protection” as to mean the utilisation of reading obtained from any weight or measure, for the purpose of determining any step which is required to be taken to safeguard the well-being of any human being or animal, or to protect any commodity, vegetation or thing, whether individually or collectively.

### **Pre-packed Commodity**

Section 2(l) define “pre-packaged commodity” as to mean a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity.

**Person**

As per section 2(m) the term “person” includes,-

- (i) a Hindu undivided family;
- (ii) every department or office;
- (iii) every organisation established or constituted by Government;
- (iv) every local authority within the territory of India;
- (v) a company, firm and association of individuals;
- (vi) trust constituted under an Act;
- (vii) every co-operative society, constituted under an Act;
- (viii) every other society registered under the Societies Registration Act, 1860.

**Premises**

As per section 2 (n) the term “premises” includes—

- (i) a place where any business, industry, production or transaction is carried on by a person, whether by himself or through an agent, by whatever name called, including the person who carries on the business in such premises;
- (ii) a warehouse, godown or other place where any weight or measure or other goods are stored or exhibited;
- (iii) a place where any books of account or other documents pertaining to any trade or transaction are kept;
- (iv) a dwelling house, if any part thereof is used for the purpose of carrying on any business, industry, production or trade;
- (v) a vehicle or vessel or any other mobile device, with the help of which any transaction or business is carried on.

**Repairer**

Section 2 (P) defines “repairer” as to mean a person who repairs a weight or measure and includes a person who adjusts, cleans, lubricates or paints any weight or measure or renders any other service to such weight or measure to ensure that such weight or measure conforms to the standards established by or under this Act.

**Sale**

“Sale”, with its grammatical variations and cognate expressions, means transfer of property in any weight, measure or other goods by one person to another for cash or for deferred payment or for any other valuable consideration and includes a transfer of any weight, measure or other goods on the hire-purchase system or any other system of payment by instalments, but does not include a mortgage or hypothecation of, or a charge or pledge on, such weight, measure or other goods. [Section 2 (r)]

**Seal**

As per section 2(s) “seal” means a device or process by which a stamp is made, and includes any wire or other accessory which is used for ensuring the integrity of any stamp.

### Stamp

Section 2(t) defines “stamp” as to mean a mark, made by impressing, casting, engraving, etching, branding, affixing pre-stressed paper seal or any other process in relation to, any weight or measure with a view to-

- (i) certifying that such weight or measure conforms to the standard specified by or under this Act, or
- (ii) indicating that any mark which was previously made thereon certifying that such weight or measure conforms to the standards specified by or under this Act, has been obliterated.

### Transaction

Under section 2(u) “transaction” means,-

- (i) any contract, whether for sale, purchase, exchange or any other purpose, or
- (ii) any assessment of royalty, toll, duty or other dues, or
- (iii) the assessment of any work done, wages due or services rendered.

### Verification

As per section 2(v) “verification”, with its grammatical variations and cognate expressions, includes, in relation to any weight or measure, the process of comparing, checking, testing or adjusting such weight or measure with a view to ensuring that such weight or measure conforms to the standards established by or under this Act and also includes re-verification and calibration.

### Weight and measure

Under section 2(w) “weight or measure” means a weight or measure specified by or under this Act and includes a weighing or measuring instrument.

## STANDARD WEIGHTS AND MEASURES

Chapter II of the Act containing sections 4 to 12 deals with standard weight and measure. Section 4 provides units of weights and measures to be based on metric system. Section 5 provides the base unit of weights and measures. Section 6 deals with base unit of numeration. Section 7 provides the standard units of weights and measures. Section 8 states standard weight, measure or numeral. Section 9 provides the reference, secondary and working standard. Section 10 deals with use of weight or measure for particular purposes. Section 11 contains prohibition of quotation, etc., otherwise than in terms of standard units of weight, measure or numeration.

Section 4 of the Act provides that every unit of weight or measure shall be in accordance with the metric system based on the international system of units.

Section 5 of the Act provides that the base unit of length shall be the meter; mass shall be the kilogram; time shall be the second; electric current shall be the ampere; thermodynamic temperature shall be the Kelvin; luminous intensity shall be the candela; and amount of substance shall be the mole.

Section 6 states that the base unit of numeration shall be the unit of the international form of Indian numeral. Every numeration shall be made in accordance with the decimal system. The decimal multiples and sub-multiples of the numerals shall be of such denominations and be written in such manner as may be prescribed.

As per section 7 of the Act the base units of weights and measures specified in section 5 shall be the standard units of weights and measures. The base unit of numeration specified in section 6 shall be the standard unit of numeration. For the purpose of deriving the value of base, derived and other units mentioned in section 5, the Central Government shall prepare or cause to be prepared objects or equipments in such manner as

may be prescribed. The physical characteristics, configuration, constructional details, materials, equipments, performance, tolerances, period of re-verification, methods or procedures of tests shall be such as may be prescribed.

Section 8 provides that any weight or measure which conforms to the standard unit of such weight or measure and also conforms to such of the provisions of section 7 as are applicable to it shall be the standard weight or measure. Any numeral which conforms to the provisions of section 6 shall be the standard numeral.

No weight, measure or numeral, other than the standard weight, measure or numeral, shall be used as a standard weight, measure or numeral. No weight or measure, shall be manufactured or imported unless it conforms to the standards of weight or measure specified under section 8.

However, the aforesaid provisions shall not apply for manufacture done exclusively for export or for the purpose of any scientific investigation or research.

Section 11 of the Act provides that no person shall, in relation to any goods, things or service, quote, or make announcement of, whether by word of mouth or otherwise, any price or charge, or issue or exhibit any price list, invoice, cash memo or other document, or prepare or publish any advertisement, poster or other document, or indicate the net quantity of a pre-packaged commodity, or express in relation to any transaction or protection, any quantity or dimension, otherwise than in accordance with the standard unit of weight, measure or numeration.

It may be noted that the provisions mentioned above shall not be applicable for export of any goods, things or service.

Section 12 provides that any custom, usage, practice or method of whatever nature which permits a person to demand, receive or cause to be demanded or received, any quantity of article, thing or service in excess of or less than, the quantity specified by weight, measure or number in the contract or other agreement in relation to the said article, thing or service, shall be void.

### **Appointment and Power of Director, Controller and legal metrology officers**

Chapter III of the Act containing sections 13 to 23 of the Act deals with appointment and powers of director, controller and legal metrology officers.

Section 13 of the Act empowers the Central Government to appoint (by Notification) a Director of legal metrology, Additional Director, Joint Director, Deputy Director, Assistant Director and other employees for exercising the powers and discharging the duties conferred or imposed on them by or under this Act in relation to inter-State trade and commerce.

The Director and every legal metrology officer, appointed, shall exercise such powers and discharge such functions in respect of such local limits as the Central Government may, by notification, specify. Every legal metrology officer shall exercise powers and discharge duties under the general superintendence, direction and control of the Director.

The Director, the Controller and every legal metrology officer authorised to perform any duty by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. No suit, prosecution or other legal proceeding shall lie against the Director, the Controller and legal metrology officer authorised to perform any duty by or under this Act in respect of anything which is in good faith done or intended to be done under this Act or any rule or order made there under.

The Central Government may, with the consent of the State Government and subject to such conditions, limitations and restrictions as it may specify in this behalf, delegate such of the powers of the Director under this Act as it may think fit to the Controller of legal metrology in the State, and such Controller may, if he is of opinion

that it is necessary or expedient in the public interest so to do, delegate such of the powers delegated to him as he may think fit to any legal metrology officer and where any such delegation of powers is made by such Controller, the person to whom such powers are delegated shall exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by way of delegation.

Section 14 of the Act, provides that the State Government may, by notification, appoint a Controller of legal metrology, Additional Controller, Joint Controller, Deputy Controller, Assistant Controller, Inspector and other employees for the State for exercising the powers and discharging the duties conferred or imposed on them by or under this Act in relation to intra State trade and commerce.

The Controller and every legal metrology officer so appointed shall exercise such powers and discharge such functions in respect of such local limits as the State Government may, by notification, specify. Every legal metrology officer shall exercise and discharge the duties under the general superintendence, direction and control of the Controller.

### **Power of inspection, seizure**

Section 15 of the Act confer powers of inspection on the Director, Controller or any legal metrology officer may, if he has any reason to believe, whether from any information given to him by any person and taken down in writing or from personal knowledge or otherwise, that any weight or measure or other goods in relation to which any trade and commerce has taken place or is intended to take place and in respect of which an offence punishable under this Act appears to have been, or is likely to be, committed are either kept or concealed in any premises or are in the course of transportation.

The powers include entry at any reasonable time into any such premises and search for and inspect any weight, measure or other goods in relation to which trade and commerce has taken place, or is intended to take place and any record, register or other document relating thereto. The power also include seizure of any weight, measure or other goods and any record, register or other document or article which he has reason to believe may furnish evidence indicating that an offence punishable under the Act has been, or is likely to be, committed in the course of or in relation to, any trade and commerce.

Where any goods seized are subject to speedy or natural decay, the Director, Controller or legal metrology officer may dispose of such goods in such manner as may be prescribed. Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating to searches and seizures.

### **Forfeiture**

Every non-standard or unverified weight or measure and every package used in the course of, or in relation to, any trade and commerce and seized under section 15, shall be liable to be forfeited, to the State Government. However, such unverified weight or measure shall not be forfeited to the State Government if the person from whom such weight or measure was seized gets the same verified and stamped within such time as may be prescribed. Every weight, measure or other goods seized under section 15 but not forfeited shall be disposed of by such authority and in such manner as may be prescribed.

### **Manufacturers, etc., to maintain records and registers**

Section 17 of the Act provides that every manufacturer, repairer or dealer of weight or measure shall maintain such records and registers as may be prescribed. The records and registers maintained shall be produced at the time of inspection to the persons authorised for the purpose of Inspection.

***Under the Legal Metrology (Packaged Commodities) Rules, 2011 certain mandatory declarations are required to be made on all pre-packaged commodities in the interest of consumers like name and address of the manufacturer/packer/importer, country of origin, name of the commodity, net quantity, month and year of manufacturing, retail sale price in the form of Maximum Retail Price (MRP) Rs. (inclusive of all taxes) and consumer care details etc.***

***The penalty provisions are made under section 36(1) of the Legal Metrology Act, 2009 for the violation in respect of the mandatory declarations on the label. Under the provisions of the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011, State Governments take action for violations of the Rules.***

#### ***What is Pre-Packaged Commodity?***

***“Pre-packaged commodity” means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity.***

<b><i>Declarations on Pre-Packaged Commodities</i></b>	<b><i>Manner in which Declaration Shall be Made</i></b>
<p>Section 18 states that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed. Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.</p>	<p>Rule 9 of the Legal Metrology (Packaged Commodities) Rules, 2011 deals with manner in which declaration shall be made. It provides that:</p> <ol style="list-style-type: none"> <li>(1) Every declaration which is required to be made on a package under these rules shall be:               <ol style="list-style-type: none"> <li>(a) legible and prominent;</li> <li>(b) numerals of the retail sale price and net quantity declaration shall be printed, painted or inscribed on the package in a colour that contrasts conspicuously with the background of the label.</li> </ol> <p>It may be noted that (i) where any label information is blown, formed or molded on a glass or plastic surface such information need not be required to be presented in a contrasting colour; (ii) where any declaration on a package is printed either in the form of hand-writing or hand-script, such declaration shall be clear, unambiguous and legible.</p> </li> <li>(2) No declaration shall be made so as to require it to be read through any liquid commodity contained in the package.</li> <li>(3) Where a package is provided with an outside container or wrapper such container or wrapper shall also contain all the declarations which are required to appear on the package except where such container or wrapper itself is transparent and the declarations on the package itself are easily readable through such outside wrapper. Provided that no such declarations on the inner package is required if the inner package does not contain any declaration on its outer cover.</li> </ol>

	<p>(4) The particulars of the declarations required to be specified under this rule on a package shall either be in Hindi in Devnagri script or in English.</p> <p>It may be noted that nothing contained in this sub-rule shall prevent the use of any other language in addition to Hindi or English language.</p>
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#### ***What is Principal Display Panel?***

***In relation to a package means the total surface area of package where the information required under these rules are to be given in the following manner:***

- (i) All the information could be grouped together and given at one place; or***
- (ii) The pre-printed information could be grouped together and given in one place and on-line information grouped together in other place.***

#### ***What is the Area prescribed for Principal Display Panel for Declaration?***

***The area not including the top, bottom, flange at top and bottom of cans, and shoulders and neck of bottle and jar shall be determined as follows:***

- (i) In the case of a rectangular package, where one entire side can properly be considered to be the principal display panel side, the product of the height multiplies by the width of that side.***
- (ii) In the case of a cylindrical or nearly cylindrical package, prescribed percent of the product of the height of the package multiplied by the circumference.***
- (iii) In the case of any other shaped package, prescribed percent of the total surface of the package, or an area considered to be a principle display panel of the package.***

### **Registration for importer of weight or measure**

Section 19 provides that no person shall import any weight or measure unless he is registered with the Director in such manner and on payment of such fees, as may be prescribed. No weight or measure, whether singly or as a part or component of any machine shall be imported unless it conforms to the standards of weight or measure established by or under this Act (Section 20).

### **Approval of model**

Every person, before manufacturing or importing any weight or measure shall seek the approval of model of such weight or measure in such manner, on payment of such fee and from such authority as may be prescribed. However, such approval of model may not be required in respect of any cast iron, brass, bullion, or carat weight or any beam scale, length measures (not being measuring tapes) which are ordinarily used in retail trade for measuring textiles or timber, capacity measures, not exceeding twenty litre in capacity, which are ordinarily used in retail trade for measuring kerosene, milk or potable liquors.

It may be noted that the prescribed authority may, if he is satisfied that the model of any weight or measure which has been approved in a country outside India conforms to the standards established by or under this Act, approve such model without any test or after such test as he may deem fit.

**Prohibition on manufacture, repair or sale of weight or measure without licence**

Section 23 of the Act provides that no person shall manufacture, repair or sell, or offer, expose or possess for repair or sale, any weight or measure unless he holds a licence issued by the Controller. However, no licence to repair shall be required by a manufacturer for repair of his own weight or measure in a State other than the State of manufacture of the same. The Controller shall issue a licence in such form and manner, on such conditions, for such period and such area of jurisdiction and on payment of such fee as may be prescribed.

Section 24 provides for verification and stamping of weight or measure. Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or is likely to be, used by him in any transaction or for protection, shall, before putting such weight or measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf, on payment of such fees as may be prescribed.

The Central Government may prescribe the kinds of weights and measures for which the verification is to be done through the Government approved Test Centre. The Government approved Test Centre shall be notified by the Central Government or the State Government, as the case may be, in such manner, on such terms and conditions and on payment of such fee as may be prescribed.

**Offences and Penalties**

Chapter V of the Act deals with offences and penalties.

Section 25 of the Act provides for penalty for use of non-standard weight or measure. The section stipulates that whoever uses or keeps for use any weight or measure or makes use of any numeration otherwise than in accordance with the standards of weight or measure or the standard of numeration, as the case may be, specified by or under this Act, shall be punished with fine which may extend to twenty-five thousand rupees and for the second or subsequent offence, with imprisonment for a term which may extend to six months and also with fine.

Under section 26 whoever tampers with, or alters in any way, any reference standard, secondary standard or working standard or increases or decreases or alters any weight or measure with a view to deceiving any person or knowing or having reason to believe that any person is likely to be deceived thereby, except where such alteration is made for the correction of any error noticed therein on verification, shall be punished with fine which may extend to fifty thousand rupees and for the second and subsequent offence with imprisonment for a term which shall not be less than six months but which may extend to one year or with fine or with both.

Section 27 provides that every person who manufactures or causes to be manufactured or sells or offers, exposes or possesses for sale, any weight or measure which does not conform to the standards of weight or measure specified by or under this Act; or which bears thereon any inscription of weight, measure or number which does not conform to the standards of weight, measure or numeration specified by or under this Act, except where he is permitted to do so under this Act, shall be punished with a fine which may extend to twenty thousand rupees and for the second or subsequent offence with imprisonment for a term which may extend to three years or with fine or with both.

Section 30 dealing with penalty for transaction in contravention of standard weight or measure provides that whoever, in selling any article or thing by weight, measure or number, delivers or causes to be delivered to the purchaser any quantity or number of that article or thing less than the quantity or number contracted for or paid for; or in rendering any service by weight, measure or number, renders that service less than the service contracted for or paid for; or in buying any article or thing by weight, measure or number, fraudulently receives, or causes to be received any quantity or number of that article or thing in excess of the quantity or number contracted for or paid for; or in obtaining any service by weight, measure or number, obtains that service in

excess of the service contracted for or paid for, shall be punished with fine which may extend to ten thousand rupees, and; for the second or subsequent offence, with imprisonment for a term which may extend to one year, or with fine, or with both.

Under section 31, Whoever, being required by or under this Act or the rules made thereunder to submit returns, maintain any record or register, or being required by the Director or the Controller or any legal metrology officer to produce before him for inspection any weight or measure or any document, register or other record relating thereto, omits or fails without any reasonable excuse, so to do, shall be punished with fine which may extend to five thousand rupees and for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Section 35 provides that whoever renders or causes to be rendered, any service through means other than the weight or measure or numeration or in terms of any weight, measure or number other than the standard weight or measure, shall be punished with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees and for the second or subsequent offence, with imprisonment for a term which shall not be less than three months but which may extend to one year, or with fine, or with both.

Under section 36 whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged commodity which does not conform to the declarations on the package as provided in this Act, shall be punished with fine which may extend to twenty-five thousand rupees, for the second offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both. Whoever manufactures or packs or imports or causes to be manufactured or packed or imported, any pre-packaged commodity, with error in net quantity as may be prescribed shall be punished with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees and for the second and subsequent offence, with fine which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.

Section 42 provides for vexatious search and empowers the Director, the Controller or any legal metrology officer, exercising powers under this Act or any rule made thereunder, who knows that there are no reasonable grounds for so doing, and yet searches, or causes to be searched, any house, conveyance or place; or searches any person; or seizes any weight; measure or other movable property shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees or with both.

### Penalty for counterfeiting or seal

Section 44 provides that whoever counterfeits any seal specified by or under this Act or the rules made thereunder, or sells or otherwise disposes of any counterfeit seal or possesses any counterfeit seal, or counterfeits or removes or tampers with any stamp, specified by or under this Act or rules made thereunder, or affixes the stamp so removed on, or inserts the same into, any other weight or measure, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to one year and for the second or subsequent offence, with imprisonment for a term which shall not be less than six months but which may extend to five years.

**“Counterfeit” shall have the meaning assigned to it in section 28 of the Indian Penal Code.**

A person is said to “counterfeit” who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced.

Whoever obtains, by unlawful means, any seal specified by or under this Act or the rules made thereunder and uses, or causes to be used, any such seal for making any stamp on any weight or measure with a view to representing that the stamp made by such seal is authorised by or under this Act or the rules made thereunder shall be punished with imprisonment for a term which shall not be less than six months but which may extend to one year and for the second or subsequent offence, with imprisonment for a term which shall not be less than six months but which may extend to five years.

Whoever, being in lawful possession of a seal specified by or under this Act or the rules made thereunder, uses, or causes to be used, such seal without any lawful authority for such use, shall be punished with imprisonment for a term which shall

not be less than six months but which may extend to one year and for the second or subsequent offence, with imprisonment for a term which shall not be less than six months but which may extend to five years.

Whoever sells or offers or exposes for sale or otherwise disposes of any weight or measure which, he knows or has reason to believe, bears thereon a counterfeit stamp, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to one year and for the second or subsequent offence, with imprisonment for a term which shall not be less than six months but which may extend to five years.

**Explanation 1.** It is not essential to counterfeiting that the imitation should be exact.

**Explanation 2.** When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practice deception or knew it to be likely that deception would thereby be practiced.

### Compounding of offence

In terms of offence punishable under section 25, sections 27 to 39, sections 45 to 47 either before or after the institution of the prosecution, be compounded, on payment for credit to the Government of such sum as may be prescribed.

However, the Director or legal metrology officer as may be specially authorised by him in this behalf, may compound offences punishable under section 25, sections 27 to 39, or any rule made under sub-section (3) of section 52. The Controller or legal metrology officer specially authorised by him, may compound offences punishable under section 25, sections 27 to 31, sections 33 to 37, sections 45 to 47, and any rule made under sub-section (3) of section 52:

Provided that such sum shall not, in any case, exceed the maximum amount of the fine, which may be imposed under this Act for the offence so compounded.

### Offences by companies

Section 49 provides that where an offence under this Act has been committed by a company, the person, if any, who has been nominated to be in charge of, and responsible to, the company for the conduct of the business of the company (hereinafter in this section referred to as a person responsible); or where no person has been nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

However, such person shall not be liable to any punishment, if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

Any company may, by order in writing, authorise any of its directors to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Director or the concerned Controller or any legal metrology officer authorised

in this behalf by such Controller in such form and in such manner as may be prescribed, that it has nominated such director as the person responsible, along with the written consent of such director for being so nominated.

It may be noted that where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this subsection in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.

Where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to the neglect on the part of, any director, manager, secretary or other officer, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Where any company is convicted under the Act for contravention of any of the provisions thereof, it shall be competent for the court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact that the company has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in such newspaper or in such other manner as the court may direct. No publication shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of. The expenses of any publication shall be recoverable from the company as if it were a fine imposed by the court.

**Explanation.-**

- (a) "company" means any body corporate and includes a 'firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm but excludes nominated directors, honorary directors, Government nominated directors.

### Power of the Central Government to make rules

Section 52 of the Act empowers the Central Government to make rules, by notification, for carrying out the provisions of the Act.

In making any rule the Central Government may provide that a breach thereof shall be punishable with fine which may extend to five thousand rupees.

Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

### Power of State Government to make rule

Section 53 empowers the State Government to make rules, by notification, and after consultation with the Central Government, to carry out the provisions of the Act.

In making any rule under this section, the State Government may provide that a breach thereof shall be punishable with fine which may extend to five thousand rupees. The power to make rules under this section shall be subject to the condition of the rules being made after previous publication in Official Gazette. Every

rule made under this section shall, as soon as may be after it is made, be laid before each House of State Legislature, where there are two Houses and where there is one House of State Legislature, before that House.

### THE ESSENTIAL COMMODITIES ACT, 1955

The Essential Commodities Act, 1955 was enacted to regulate the production, supply and distribution of, and trade and commerce in, certain commodities which are declared as essential commodities and specified in the Schedule to that Act.

Schedule to the Act lists out following commodities: (1) drugs: The explanation clarifies that for the purposes of this Schedule, “drugs” has the meaning assigned to it in clause (b) of Section 3 of the Drugs and Cosmetics Act, 1940; (2) fertilizer, whether inorganic, organic or mixed; (3) foodstuffs, including edible oilseeds and oils; (4) hank yarn made wholly from cotton; (5) petroleum and petroleum products; (6) raw jute and jute textiles; (7) (i) seeds of food-crops and seeds of fruits and vegetables; (ii) seeds of cattle fodder; and (iii) jute seeds.

The Essential Commodities Act, 1955 was enacted to ensure easy availability of essential commodities to the consumers and to protect them from exploitation by unscrupulous traders. The Act provides for regulation and control of production, distribution and pricing of commodities, which are declared as essential for maintaining or increasing supplies or for securing their equitable distribution and availability at fair prices. The Essential Commodities Act is being implemented by the State Governments/UT Administrations by availing of the delegated powers under the Act. The State Governments/ UT Administrations have issued various Control Orders for regulation, production and distribution of Essential Commodities such as food grains, edible oils, pulses kerosene, sugar etc. The Central Government regularly monitors the action taken by State Governments/ UT Administrations to implement the provisions of the Essential Commodities Act, 1955. The items declared as essential commodities under the Essential Commodities Act, 1955 are reviewed from time to time in the light of liberalized economic policies in consultation with the Ministries/ Departments administering the essential commodities and particularly with regard to their production, demand, and supply.

***The Preamble to the Act says that it is an Act to provide in the interest of the general public for the control of the production, supply and distribution of, and trade and commerce in, certain commodities. The dominant object and intendment of the Act is to secure equitable distribution and availability at fair prices of essential commodities in the interest of the general public. The interest of the general public necessarily connotes the interest of the consuming public and not the interest of the dealer (1958 Andh. LT587).***

The Central Government having been vested with power under Section 3 can issue order in the following circumstances providing for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein: (i) when it is necessary or expedient for maintaining or increasing supplies of any essential commodity; (ii) for securing the equitable distribution and availability of essential commodities at fair price; or (iii) for securing any essential commodity for the defence of India or the efficient conduct of military operations.

The Essential Commodities Act, 1955 envisages two independent proceedings against a person charged with contravention of the provisions of the Act. Under the Act, the Collector can confiscate the seized commodity. Confiscation of essential commodities is a sharp weapon which the Act has provided to the Central Government under of the Act. Any person aggrieved by an order of confiscation may appeal to the State Government.

The Act declares that notwithstanding anything contained in the Criminal Procedure Code, 1971, every offence punishable under the Act shall be cognizable. A cognizable offence is one, where, under the Criminal Procedure Code or any other law in force, a police officer may arrest a person without a warrant. Court can take cognizance

of any offence punishable under the Act, the following three conditions must be satisfied, viz. (i) there must be a report in writing, (ii) the report must be made by a public servant, as defined in Section 21 of Indian Penal Code, or any aggrieved person or any recognised consumer association.

The Act provides that if the person contravening an order under Section 3 is, a company, every person who, at the time of the contravention, was in charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the contravention, and shall be liable to be punished accordingly. In such cases, the company itself is also liable to be proceeded against. Any such person, can, however, escape liability if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it. It may be noted that the term 'company' as used above, refers to anybody corporate, and even includes a firm or other association or individuals. In the case of a firm, the term 'Director' would mean a partner in the firm.

#### LESSON ROUND-UP

- Weights and measures may be ranked among the necessities of life to every individual of human society. They enter into the economical arrangements and daily concerns of every family.
- Legal metrology Act, 2009 intend to establish and enforce standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and for matters connected therewith or incidental thereto.
- "Legal Metrology" means that part of metrology which treats units of weighment and measurement, methods of weighment and measurement and weighing and measuring instruments, in relation to the mandatory technical and legal requirements which have the object of ensuring public guarantee from the point of view of security and accuracy of the weighments and measurements.
- Every unit of weight or measure to be in accordance with the metric system based on the international system of units.
- A person shall not manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.
- Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.
- Legal Metrology Act provides for penalty for use of non-standard Weight or measure.
- Label means any written, marked, stamped, printed or graphic matter affixed to, or appearing upon any pre-packaged commodity.
- A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced.
- Legal Metrology Act empowers the Central Government and State Governments to make rules for carrying out the provisions of this Act.
- The Essential Commodities Act, 1955 was enacted to regulate the production, supply and distribution of, and trade and commerce in, certain commodities which are declared as essential commodities and specified in the Schedule to that Act.



