

# Global role of Chartered Accountants in the protection of Consumers in India & abroad



By



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**Introduction:**

A person who buys a product or consumes a service in exchange of monetary consideration is a consumer. The Consumer Protection Act, 2019 replacing its

predecessor the Consumer Protection Act, 1986 is intended to protect consumers from getting cheated or harassed by suppliers. The question arises how a consumer will seek protection?

The article is intended to provide you with in depth knowledge of consumer protection laws, so that the professionals like chartered accountant may consider this as yet another service area to provide their excellent assistance to the victim/ consumer fallen victim of fraudulent practices played on by the person in superior position and as well they can provide an assistance to government mechanism combating fraudulent practices like market competition.

The aforementioned act has provided machinery whereby consumers can file their complaints which will be entertained by the Consumer Forums with special powers so that action can be taken against erring suppliers and the possible compensation may be awarded to consumer for the hardships he has undergone. No court fee is required to be paid to these forums and there is no need to engage a lawyer to present the case.

The professional services may include consultation, advisory and handholding to such consumers.

Consumers often face issues if the product is of low quality, not adhering to MRP, or if there is any adulteration, etc. This is because the **consumer and the company or retailer is rarely on a level playing field**. This unequal power balance tends to give the seller/company undue authority to exploit the consumer.

There have been several laws enacted in India to overcome these issues. This article aims to elucidate the history of the concept of Consumer Protection Laws, by plotting the progression of the same in chronological order. Safeguarding the consumer's rights and assuring quality service should be a priority for any company in retail as well as the Government.

## **1. HISTORY**

### **1.1. Consumer Protection in Ancient India:**

Consumer Protection has its deep roots in the rich soil of Indian civilization, which dates back to 3200 B.C. In ancient India, human values were cherished and ethical practices were considered of great importance. However, the rulers felt that the welfare of their subjects was the primary area of concern. They showed keen interest in regulating not only the social conditions but also the economic life of the people, establishing many trade restrictions to protect the interests of buyers. This article examines the historical perspective of consumer protection in India from the Vedic age<sup>1</sup> (ancient period) to the modern period. It also briefly analyzes the development of consumer law in India. Finally, an attempt is made to discuss the legal Historical Evolution of Consumer Protection and Law in India framework of the Indian Consumer Protection Act of 1986 which led to the evolution of a new legal culture in India

In ancient India, all sections of society followed Dharma-sastras (“Dharma”), which laid out social rules and norms, and served as the guiding principle governing human relations. The principles of Dharma were derived from Vedas. Vedas were considered the words of God, and law was said to have divine origin which was transmitted to society through sages. Thus, Vedas were the primary sources of law in India. Many writers and commentators of the ancient period documented the living conditions of the people through their innovative and divine writings, including Smriti (tradition) and sruti (revelation), and also prescribed codes to guide the kings and rulers about the method of ruling the State and its subjects. Consumer protection was also a major concern in their writings. Among the Dharmas, the most authoritative texts are a) the Manu Smriti (800 B.C. to 600 B.C.); b) the Yajnavalkya Smriti (300 B.C. to 100 B.C.); c) the Narada Smriti (100 A.D to 200 A.D.); d) the Bruhaspati Smriti (200A.D. to 400 A.D.); and e) the Katyayana Smriti (300 A.D. to 600 A.D). Among these, Manu Smriti was the most influential.

## **1.2. History and Development of Consumer Protection Laws in India**

The notion of consumer protection has been present since the very beginning of human civilization. Consumer Protection is a pursuit of socio-economic nature, by the

government. Businesses need to prioritize consumer satisfaction which can be ensured only when the government steps in to provide protection to all consumers.

The government fulfils that onus through a structure of **policies, regulations, and legislation**. To understand the process that led to the drafting of the Consumer Protection Act 1986, one must understand that before this act came into force, there were a string of other laws created for the same objective. However, none of them successfully shielded the consumers from exploitation to the degree that was required.

In the absence of an effective consumer protection law, the onus of being careful when assessing the quality of the product was placed upon the buyer. It helped the sellers shirk their responsibility. The sellers had the leeway to get away with substandard or faulty products due to the lack of a legal framework conceptualized to protect consumers.

If a buyer found a defect in a product, he would simply avoid buying it from the same brand or shop in the future. This is due to a lack of redressal mechanisms, as well as limited access to the existing ones. It took years of activism to generate awareness regarding this issue. This culminated into the Consumer Protection Act 1986.

To understand the evolution in greater detail, the history of consumer protection can be segregated into three parts –

1. Pre – 1950
2. 1950 – 198
3. 1986- present

### **1. Pre 1950**

In the era preceding 1950, the matter of consumer protection was managed through the regulations enforced in the English common law. The British legal structure generated various categorizations, such as **a) Tort b) Contract c) Fiduciary laws** that

all dealt with different aspects of Consumer Protection, **without titling it explicitly**. These categorizations continue to stay relevant to Indian law in present times.

**Torts** are civil wrongs. To establish the different kinds of torts, various tests were designed by the English Courts. Consequently, they were adopted in India. The complainant could file a suit on the grounds of misrepresentation, deceit, negligence, fraud, etc. The compensation was either monetary in nature or a replacement of the product.

**Contracts** are essentially a binding agreement that had been entered into by two or more individuals. It spelt out their duties toward each other and the corresponding reliefs available to each party in case any breach occurs. The dissatisfied customer could approach trial courts for justice in case the seller had committed an unfair practice. The customer could use the Principle Agent rule to take the manufacturer to court. This would be within the vicarious liability rule.

**Fiduciary obligations** only emerged in limited circumstances if it could be established that there was a trust-based association between the company/shopkeeper and the customer. It had to be proved that the buyer was made to believe they could place faith in the seller, and that trust had been violated.

## **2. 1950 – 1986**

Once the Indian Constitution came into force, in 1950, the Central Government enacted multiple legislations to tackle the issue of consumer protection. The scope of these provisions was limited to the subject matter of each statute. The consumer had to establish the applicability and relevance of at least one of these statutes. If he was unable to do that, he would have to file the matter as a tort, contract or under fiduciary law.

The legislation enacted in the duration of 1950-1986 for consumer protection included the following –

1. The Drugs Control Act, 1950
2. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
3. The Prevention of Food Adulteration Act, 1954
4. The Essential Commodities Act, 1956
5. The Trade and Merchandise Marks Act, 1958
6. The Monopolies and Restrictive Trade Practice The Cigarettes (Regulation of Production, Distribution, and Supply) Act, 1975
7. The Prevention of Black Marketing and Maintenance of Supplies of Essential Act 1980
8. The Standards of Weights and Measures (Enforcement) Act, 1985
9. The Bureau of Indian Standards Act, 1986

However, none of these Acts were fully able to overcome the malaise of unjust trade practices that exploited the consumer. Although the government had initiated various legislative policies to safeguard the interests of the consumers, they had been unable to achieve their objective.

### **International Influence**

The Consumer Protection Act 1986 was **inspired from the framework laid down by the United Nations**. A National Consumer Protection Council, comprised of 28 members and multiple ministry officials, held two meetings to discuss and draft consumer protection guidelines. They organized a National Workshop in this regard, on March 11 and 12<sup>th</sup> 1985.

Instructions, recommendations and suggestions, rooted in these guidelines, were propagated by the spokespersons of State Government, Consumer Groups, Government officials and bureaucrats of different government agencies. Consequently, a bill was drafted at the national seminar. That bill had drawn inspiration from and made parallels to the laws of multiple common law countries. For instance, the United States of America, United Kingdom, Australia and New Zealand.

After a series of meetings, the final draft was forwarded to the Lok Sabha on 9<sup>th</sup> December 1986 by **HKL Bhagat**. He was the then Minister of Parliamentary Affairs, Food and Civil Supplies. At the same time, multiple changes were introduced in the existing consumer protection legislation. This was done to empower consumers and their right to sue offenders.[4]

### **3. 1986 – 2019**

With the objective of ensuring effective protection to the rights of the buyer, the Consumer Protection Bill 1986 was first discussed in the Lok Sabha on 5<sup>th</sup> December 1986. Consequently, both the Houses of Parliament passed the Consumer Protection Bill, 1986. It received the assent of the President on 24<sup>th</sup> December 1986. Thus, the Consumer Protection Act (COPRA) came into effect in 1986.

It was milestone legislation since it was the first of its kind when it came to consumer protection. Instead of the acts enacted since 1950 and before 1986 which were singular in nature in terms of the product or service they were dealing with, this act sought to bring various goods and services within its ambit. The 1986 Act was drafted as to create an **additional layer of protection for consumers** and not the derogation of the laws that existed prior to it.

It also created a different platform for redressal by mandating a separate series of Courts. The framework of the Consumer Courts is as follows –

In order to grant quick and effective relief to the aggrieved customer, the courts declare their verdict within three months from the date of receiving the notice sent by the opposing litigant. **The statutes include both monetary compensation as well as correctional damages.** Either or both can be awarded to the aggrieved customer.

The Consumer Protection Act 1986 underwent a series of amendments in **1991, 1993** and **2002**. These amendments widened the scope of the authority given to consumer courts. For instance, the 2002 amendment introduced a provision that enabled the



court for attaching and selling the property of an individual if they were disobeying with the court orders.

#### **4. 2019 and, thereafter**

On **6<sup>th</sup> August 2019**, the Consumer Protection Bill was passed by the Parliament. The President granted his assent on **9<sup>th</sup> August 2019**. Consequently, the **Consumer Protection Act of 2019** came into effect. It replaced the earlier legislation- the Consumer Protection Act, 1986.

The 2019 Act aims to manage consumer grievance in a quick and efficient manner. The intent of the legislature in creating a new act altogether, instead of simply initiating further amendments in the 1986 Act, was to grant a higher degree of security to the interests of the consumer. In the drafting of this act, the government took into account the **progress of the e-commerce industry** and the **new ways of selling and consuming of goods and services**. For instance, **online purchase and macro-level marketing** are a relatively new phenomenon, witnessed only in the last couple of decades.



#### **Steps taken towards enhancing Transparency**

##### **I. Central Consumer Protection Authority (CCPA)**

The **Central Consumer Protection Authority (CCPA)** [11] is a body created to govern, secure and enforce the rights of the consumer. The CCPA looks after matters of unfair trade practices. It has been given authority to inquire and initiate action against those who disobey the 2019 Act. It is also empowered with investigative powers.

They may enforce a sanction against misleading advertisements, including against those who endorse those advertisements. This essentially means that even a celebrity who is simply hired to act in a commercial may be held liable. This has placed the onus of due diligence on those actors before they propagate any misrepresentative advertisement.

The CCPA can enforce a fine of Rs. 10 lakh upon the first transgression, and up to Rs. 50 lakh on every transgression that follows. Punishment may also include imprisonment up to two years. The CCPA also has the ability to initiate a class-action suit or give instructions to cancel services and give a refund to consumers.

## **II. Consumer Redressal Forums: Major Amendments**

Consumer Protection Act 2019 instituted some fundamental changes in the Consumer Redressal Forums –

### **I) Territorial Jurisdiction**

This Act grants consumers more access to justice. Earlier, consumers endured hardships if the business did not have an office in their state because jurisdiction was restricted to the area where the seller lived or conducted business. Unlike the 1986 Act, this act permits consumers to file a complaint based on where they live or work.

## **ii) Pecuniary Jurisdiction**

The 2019 Act brought changes in this aspect for the District, State and National Commissions. Earlier the limit for District Commission was Rs. **20 Lakhs** but now it is Rs. **1 Crore**. The limit for State Commission used to be Rs. **1 Crore** but is now extended till Rs. **10 Crore**. Likewise, the limit for the National Commission has increased above and beyond Rs. **10 Crore**. As the 1986 Act, the limit for National Commission was restricted to Rs. **1 Crore**.

## **(iii) Online registration of complaints**

The 2019 Act permits consumers to file a complaint before the District Forum through electronic means. This makes the process easier and less time-consuming.

## **(iv) Alternate Dispute Resolution**

The 2019 Act has certain provisions that help refer a consumer dispute to mediation in order to reach a settlement in a more time-effective manner.

The Consumer Forum will have to refer the case for mediation if both parties have given their written consent. For the same objective, the 2019 Act emphasizes the need to institute a consumer mediation cell in every District and State Commission. This is the responsibility of the State Governments. Likewise, it **demand a mediation cell in the National Commission**, by the Union Government.

## **4. Consumer's Protection around the world:**

### **Organisation for Economic Cooperation and Development (OECD)**

The OECD mission is to promote policies that will improve the economic and social well-being of people around the world. The OECD provides a forum in which governments can work together to share experiences and seek solutions to common

problems. It works with governments to understand what drives economic, social and environmental change.

The OECD addresses a wide range of issues relevant for consumers, in particular through its Committee on Consumer Policy (CCP).

The OECD is an observer organisation of ICPEN.

### **United Nations Conference on Trade and Development (UNCTAD)**

UNCTAD's overall objective of its programmes is to promote inclusive and sustainable development through international trade.

It offers analysis and advice and seeks to build consensus, strengthen capacity and promote partnerships for trade policy, trade negotiations, trade in goods and services, competition law and consumer protection, and managing issues arising at the intersection of trade, the environment and climate change

The objective of UNCTAD's work on competition and consumer policies is to ensure that partner countries enjoy the benefits of increased competition, open and contestable markets, private sector investment in key sectors and ultimately that consumers achieve improved welfare.

The UNCTAD is an observer organisation of ICPEN.

### **EU Consumer Protection Cooperation Network (CPC)**

The CPC is the grouping of national authorities responsible for the enforcement of consumer protection laws across the European Union (EU), Iceland and Norway assist each other in exchanging information and investigating possible breaches of consumer law to protect the collective interest of consumers.

The legal basis for the Network is Regulation 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on Consumer Protection Cooperation).

## **European Consumer Centre Network (ECC-Net)**

ECC-Net is a network of 30 offices in the 28 EU Member States, Norway and Iceland.

ECC's are co-financed by the European Commission and national governments, as part of the European policy to assist every citizen in Europe to take advantage of the single market.

The aim of the network is to provide free of charge help and advice to consumers on their cross-border purchases, whether online or on the spot within these 30 countries.

The EC is an observer organisation of ICPEN.

## **ASEAN Coordinating Committee on Consumer Protection (ACCCP)**

The ACCCP promotes consumer protection in Southeast Asia. Among the initiative's objective are:

- providing consumers with proper information and redress;
- stopping rogue traders and unfair commercial practices;
- Ensuring that only safe products are placed in the market.

The goal of consumer protection against substandard products and unethical and unfair trading is achieved by networking and information-sharing by representatives from Brunei Darussalam, Cambodia, Malaysia, Myanmar, Indonesia, Laos, Philippines, Singapore and Thailand. These participants seek to create a cross-border redress system to advise and assist with the resolution of consumer claims, and a rapid alert system on hazardous consumer products to inform member states of banned, restricted, or recalled goods

The ACCCP is not currently an observer organisation of ICPEN.

## **Unsolicited Communications Enforcement Network (UCENet)**

UCENet formerly known as the London Action Plan (LAP) is an informal network of government and non-government organisations collaborating on global unsolicited communications enforcement.

UCENet is not currently an observer organisation of ICPEN.

## **Global Privacy Enforcement Network (GPEN)**

GPEN was formed in June 2007, when OECD governments adopted a Recommendation on Cross-border Cooperation in the Enforcement of Laws Protecting Privacy. The Recommendation called for member countries to foster the establishment of an informal network of Privacy Enforcement Authorities. It further specified a number of tasks for the network:

- Discuss the practical aspects of privacy law enforcement co-operation;
- Share best practices in addressing cross-border challenges;
- Work to develop shared enforcement priorities; and
- Support joint enforcement initiatives and awareness campaigns.

In the summer of 2008, privacy authorities began to exchange experiences and discuss the practical aspects of enforcement cooperation via a Web utility.

GPEN is an observer organisation of ICPEN.

## **Consumers International**

Consumers International is a not-for-profit, non-government organisation. Consumers International works with its members and partners globally, to empower and champion the rights of consumers, and ensure they are treated safely, fairly and honestly.

Founded in 1960, Consumers International advocates for a fair, safe and sustainable future for all consumers in a global marketplace increasingly dominated by

international corporations. With over 200 member organisations in 100 countries, Consumers International is building a powerful international movement to help protect and empower consumers everywhere.

Consumers International is not currently an observer organisation of ICPEN.

### **5. Defining the consumer in legislation:**

In the majority of countries, the legal definition of the consumer clearly defines consumption as only relating to the supply and household use of goods and services. In a recent example, a draft law currently under discussion in Afghanistan defines the consumer as: “a person to whom a Good or Service is Supplied, or to whom an offer to Supply a Good or Service is made, and such Good or Service is:(a) of a kind ordinarily acquired for personal, domestic and household consumption; and (b) not purchased for: (I) re-supply, re-sale or redistribution in the course of Business; or (II) use or consumption in manufacturing.”

Certain jurisdictions do not define the consumer explicitly, as indeed is also the case in the UNGCP. Australia, France and the UK do not have single definitions. Belgium, Quebec and Uruguay explicitly exclude all professional use of products. The EU Directive on Consumer Rights (which will come into effect in June 2014) defines the consumer in Part 2.1 as: ‘any natural person who is acting for purposes which are outside his trade, business, craft or profession’. However, the Directive also states in its preamble that: ‘where the contract is concluded for purposes partly within and partly outside the person’s trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer.’ This kind of flexibility is also (and most clearly) demonstrated in Latin America.

The terms ‘persona natural o juridica’ (El Salvador, Chile, Panama, Peru), ‘persona individual o juridica’ (Guatemala), and ‘persona fisica o juridica’ (Argentina) all indicate the possibility of extending the concept of consumer beyond the realms of the personal. Some Latin American jurisdictions also refer to small artisans (Costa Rica)

or micro-enterprises (Mexico). The strict separation of business from personal life is a product of the 19th and 20th Century industrial revolutions and is not found to the same extent in emerging and developing countries, especially in rural areas. Where consumers are, for example, engaged in small-scale production and live and work in the same place ('above the shop', as it were), it becomes almost impossible to draw a clear distinction between purchases of goods and services for business or for personal use. With the return of 'home-working' due to developments in communications technologies, this blurring has now become a feature of advanced economies too. This has interesting implications for the scope of national consumer protection law.

## **6. The Importance of the UN Guidelines on Consumer Protection**

### **A Global Minimum Level of Consumer Protection**

The year 2020 is an important year for international consumer law. This year will mark thirty-five years since the adoption of the first version of the UN Guidelines for Consumer Protection. Thirty-five years later, the UN Guidelines still remain the most important global instrument in the area of consumer protection, contributing to building of trust of both consumers and traders acting on the market. Accordingly, the two principal questions are what the contribution of the UN Guidelines to the development of consumer law has been, and how much the UN Guidelines have contributed in practice to the internationalization of consumer law during the thirty-five years of their existence. Interestingly enough, despite being the most important international document in the area of consumer protection, the UN Guidelines have attracted surprisingly little attention from legal scholars and, generally speaking, any kind of assessment. In practice, very little has been written about these Guidelines. One might argue that this lack of interest might mean that the practical relevance of the UN Guidelines is actually minor, so they do not deserve any assessment. However, the reason behind this lack of interest in consumer protection probably lies in the fact that, from a comparative perspective, there was never a proper empirical study about the real impact of the UN Guidelines in practice, so their real influence is difficult to



assess. However, what is certain is that they have had some impact on the development of consumer laws in the developing countries (Harland 1997). A more precise understanding of their impact on the national consumer laws is still unclear. Likewise, in reality more focus was dedicated to follow other supranational consumer law regimes, such as EU Consumer Law, because these are much more advanced, and have accordingly been used extensively as a model throughout the world (Stuyck and Durovic 2016). It should also be noted that other international organizations besides the UN, such as the Organisation for Economic Co-operation and Development (OECD), World Bank or G20 have also been involved in some of the consumer law developments. However, the proper global representative character of these organizations is questionable as they seem to be rather exclusive international organizations for economically developed countries. In addition, their activity in consumer protection is neither complete nor horizontal, but rather focused on specific elements of consumer law, such as consumer credit law.

## **I. Objectives**

1. Taking into account the interests and needs of consumers in all Member States, particularly in developing ones, recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection, these guidelines for consumer protection have the following objectives:

- (a) To assist countries in achieving or maintaining adequate protection
- (b) To facilitate production and distribution patterns responsive to the
- (c) To encourage high levels of ethical conduct for those engaged in the
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely

- (e) To further international cooperation in the field of consumer
- (g) To encourage the development of market conditions which provide?
- (h) To promote sustainable consumption.

## **II.Scope of application**

These guidelines apply to business-to-consumer transactions, including the provision of goods and services by State-owned enterprises to consumers.

2. For the purpose of these guidelines, consumer protection policies include the laws, regulations, rules, frameworks, procedures, decisions, mechanisms and programmes of Member States, as well as private sector standards and recommendations that protect consumer rights and interests and promote consumer welfare.

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

## **III.General principles**

4. Member States should develop, strengthen or maintain a strong consumer protection policy, taking into account the guidelines set out below and relevant international agreements. In so doing, each Member State must set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, and bearing in mind the costs and benefits of proposed measures.

5. The legitimate needs which the guidelines are intended to meet are the following:

- a) The promotion and protection of the economic interests of consumers
- b) Access by consumers to adequate information to enable them to rationale purchase.

- c) Consumer education, including education on the environmental, social a
- d) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-
- e) A level of protection for consumers using electronic commerce that
- f) The protection of consumer privacy and the global free flow of information.

6. Unsustainable patterns of production and consumption, particularly in industrialized countries, are the major cause of the continued deterioration of the global environment. All Member States should countries should take the lead in achieving sustainable consumption patterns in their development process, having due regard for the principle of common but differentiated responsibilities. The special situation and needs of developing countries in this regard should be fully taken into account.

7. Policies for promoting sustainable consumption should take into account the goals of eradicating poverty, satisfying the basic human needs of all members of society and reducing inequality within and between countries.

8. Member States should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population and people living in poverty.

9. All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed. (Hereinafter, references to international standards in the guidelines should be viewed in the context of this paragraph.)

10. The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies.

#### **IV.Principles for good business practices**

11. The principles that establish benchmarks for good business practices for conducting online and offline commercial activities with consumers are as follows:

(a) Fair and equitable treatment. Businesses should deal fairly and honestly with consumers at all stages of their relationship, so that it is an integral part of the business culture. Businesses should avoid practices that harm consumers, particularly with respect to vulnerable and disadvantaged

(b) Commercial behaviour. Businesses should not subject consumers to illegal, unethical, discriminatory or deceptive practices, such as abusive marketing tactics, abusive debt collection or other improper behaviour that may pose unnecessary risks or harm consumers. Businesses and their authorized agents should have due regard for the interests of consumers and responsibility for upholding consumer

(c) Disclosure and transparency. Businesses should provide complete, accurate and not misleading information regarding the goods and services, terms, conditions, applicable fees and final costs to enable consumers to take informed decisions. Businesses should ensure easy access to this information, especially to the key terms and conditions,

(d) Education and awareness-raising. Businesses should, as appropriate, develop programmes and mechanisms to assist consumers to develop the knowledge and skills necessary to understand risks, including financial risks, to take informed decisions and to access competent and professional advice and assistance.

(e) Protection of privacy. Businesses should protect consumers' privacy through a combination of appropriate control, security, transparency and consent mechanisms relating to the collection.

(f) Consumer complaints and disputes. Businesses should make available complaints-handling mechanisms that provide consumers with expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary cost or burden. Businesses should consider subscribing to domestic and international standards pertaining to internal complaints handling, alternative dispute resolution services and customer satisfaction codes.

## **V.Guidelines**

12. The following guidelines should apply both to home-produced goods and services and to imports.

13. In applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligation

### **Quasi-Judicial Machinery**

The quasi-judicial machinery is set up at each District, State and National levels called

- District Forums <http://ncdrc.nic.in/districtlist.html>
- State Consumer Disputes Redressal Commission <https://grahak.maharashtra.gov.in/> and <http://ncdrc.nic.in/statelist.html>
- National Consumer Disputes Redressal Commission <http://ncdrc.nic.in/>

At present, there are **610 District Forums, 35 State Commissions with apex body as a National Consumer Disputes Redressal Commission (NCDRC)** having its office at Jan path Bhawan, A Wing, 5th Floor, Janpath, New Delhi.

For giving effect to the provisions of the Act, the following rules have also been notified and made effective from 20<sup>th</sup> July, 2020:

- i. The Consumer Protection (General) Rules, 2020
- ii. The Consumer Protection (Central Consumer Protection Council) Rules, 2020.

- iii. The Consumer Protection (Consumer Disputes Redressal Commissions) Rules, 2020.
- iv. The Consumer Protection (Mediation) Rules, 2020.
- v. The Consumer Protection (Salary, allowances and conditions of service of President and Members of the State Commission and District Commission) Model Rules, 2020.
- vi. The 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.

The National Consumer Disputes Redressal Commission has also notified the following Regulations effective from 24<sup>th</sup> July, 2020:

- i. The Consumer Protection (Consumer Commission Procedure) Regulations, 2020.
- ii. The Consumer Protection (Administrative Control over the State Commission and the District Commission) Regulations, 2020.
- iii. The Consumer Protection (Mediation) Regulations, 2020.

The complaint under the consumer act either is filed by the complainant himself or through the authorised representative. It is not necessary the only advocate to appear or represent before the consumer forum as the Consumer Protection (Procedure for Regulation of Allowing Appearance of Agents or Representatives or Non-Advocates or Voluntary Organisations Before the Consumer Forum), Regulations, 2014 provides that Any person who is not registered as an Advocate under the Advocates Act, 1961(25 of 1961) and is not debarred from practicing by way of penalty, may apply for accreditation as an Agent or non advocate or representative to practice as an Agent or non-advocate or representative before the Consumer Forum.

Regulation 9 provides for the strict adherence of the authorised representative the code of conduct prescribed under schedule I of the same Regulation.

## CODE OF CONDUCT

- (i) An Agent or non-advocate or representative shall not indulge in doubts.
- (ii) An Agent or non-advocate or representative shall appear before the Consumer Forum in moderate dress and shall make submissions in such a manner so as to maintain proper decorum of the Commission.
- (iii) An Agent or non-advocate or representative shall not charge any excessive fee from the party.
- (iv) An Agent or non-advocate or representative shall not directly accept any amount for and on behalf of the party from the opponent without due written authority made by the party on behalf of such Agent or non-advocate or representative appearing.
- (v) An Agent or non-advocate or representative shall not make any attempt to fabricate any document or make any false statement of fact on behalf of the concerned party.
- (vi) An Agent or non-advocator representative shall not act contrary to the interest of the party to whom he represents.

**E-daakhil online portal** [www.edaakhil.nic.in](http://www.edaakhil.nic.in)

**E-daakhil** is a web application introduced by the National Consumer Dispute Redressal Commission (NCDRC) on 7th September, 2020 where the consumer complaints can be filed online. The portal has many features including the e-notice, case documents download link and Virtual hearing link, filling of written and responses by the opposite party, filling rejoinder by the complainant and alerts via email/sms

The main intention of the initiative is to make possible to the rural consumers for whom manual filling of complaint may have been difficulty due to reason of distance, time, expense etc.

**The Competition Commission of India** <https://www.cci.gov.in/>

The Competition Act, 2002 effective from 13<sup>th</sup> January 2003 was enacted in order to prevent certain practices that have an adverse effect over competition in the market

and that certainly not well with the objective of safeguarding the interest of consumer. The brief objective of the act can be listed below

1. To prevent the practice having an adverse effect over competition in market
2. To prevent practice that jeopardize the safe gaurd of the consumers
3. To ensure the freedom of trade

The competition in market could certainly means

- In common parlance, competition in the market means sellers striving independently for buyers' patronage to maximize profit (or other business objectives).
- A buyer prefers to buy a product at a price that maximizes his benefits whereas the seller prefers to sell the product at a price that maximizes his profit.

Whereas an Unfair competition means the one that involves practices such as collusive price fixing, deliberate reduction in output in order to increase prices, creation of barriers to entry, allocation of markets, tie-in sales, predatory pricing, discriminatory pricing, etc.

Section 3 and 4 of the act:

The Competition Act prohibits anti-competitive agreements amongst manufacturers and producers like agreements for price fixing, market allocation, output restriction, bid rigging and collusive tendering, which are presumed by the Act to have negative effect on consumer interests. Besides such agreements, there are certain agreements which are likely to have adverse effect on competition. Such agreements may include tie-in-arrangements, exclusive supply and distribution agreements, refusal to deal and resale price maintenance. The Competition Act also prohibits abuse of dominant position by enterprises by identifying categories of abusive use of dominant position. Abusive use includes unfair or discriminatory trade practices, limiting production or technical or scientific development, denial of access to market, barriers to entry and expansion, imposition of supplementary obligation and protection of other markets. The Competition Act reduces barriers to entry in the market making the environment conducive for growth of business. The Act also prohibits combinations of enterprises



which are likely to appreciable adverse effect on competition in India. Therefore, before any merger or amalgamation if the emerging enterprise is likely to cross thresholds limits for money value of asset or turnover, sanction of Competition Commission of India becomes mandatory. The Commission may approve, reject or suggest modifications in order to get approval to the scheme of merger or amalgamation. The Commission also has the power to order for division of an enterprise which is likely to appreciable adverse effect on competition in India.

In order to curb such unfair competition practices and ultimately implementing the objective of the Competition Act, 2002, the Competition Commission of India was set up under section 6 of the Act [chapter III].

The commission was in force since 14<sup>th</sup> October 2003 and it consists of the Chairperson along with six other members appointed by the central government. The competition commission of India in exercising of its establishment objective conducts a inquiry/investigation against the enterprise as to whether the same is engaged in any dominant position or unfair competition practice and the commission may passed order under section 27 against such enterprise it is also empowered to impose of penalty.

The act under section 35 specifies that A person or an enterprise may either appear in person or through any of its officers or authorize one or more

- chartered accountants or
- company secretaries or
- cost accountants or
- legal practitioners

to represent his or its case before the Commission.

Other than representing the party in under section 35 of the act, **the professional in below category of area can also show their exellency as an expert to be appointed by the commission.**

Such are:

1. chartered accountancy
2. cost accountant
3. law
4. company secretary
5. engineering
6. economist
7. medical
8. business management
9. science
10. other sector

Simply speaking section 17 of the act empowers the commission to appoint such experts or professionals which it considered necessary for the effective performance of its function under the act.

The competition commission under section 64 is empower to make regulations consistent with the act and the rules made thereunder. Under subsection (2) of the said section certain matters are prescribed over which the commission may enact regulations. It is in this context, the competition commission of India by invoking power under section 64(2) read with section 17 of the act made the regulation namely the **Competition Commission of India (Procedure for Engagement of Experts and Professionals) Regulations, 2009** effective from 15<sup>th</sup> May 2009. Regulation 3 of the said regulations, 2009 provides that

“The Commission may engage such number of experts and professionals in the fields of economics, law, business or such other disciplines related to competition, as it may deem fit.”

- **Chartered Accountant:** Required expertise of the Chartered Accountant to be appointed as an Expert by the Competition Commission.

Essential	Desirable	Experience	Desirable
Chartered Accountant in	Chartered Accountants having	Must have worked as a Chartered	Experience of handling

terms of the Chartered Accountants Act, 1949	qualified the Post qualification course in International Trade Laws and WTO with competition law as a subject.	Accountant in reputed organization handling financial ventures of large enterprises or undertakings.	acquisitions, mergers& amalgamations etc. under competition law.
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- **Cost Accountant:** Required expertise of the Cost Accountant to be appointed as an Expert by the Competition Commission.

Essential	Desirable	Experience	Desirable
The Cost and Works Accountants in terms of the Cost and Works Accountants Act, 1959(23of 1959)	Post membership qualification in competition law or related areas.	Must have worked as a Cost and Works Accountant in reputed organization handling business ventures of large enterprises or undertakings.	Experience of handling acquisitions, mergers& amalgamations, etc. under competition law

- **Company Secretaries:** Required expertise of the Company Secretaries to be appointed as an Expert by the Competition Commission.

Essential	Desirable	Experience	Desirable
The Company Secretary in terms of the Company Secretaries Act,	The Company Secretaries having qualified the Post Membership	Must have worked as a Company Secretary in reputed organization	Experience of handling acquisitions, mergers &

1980 (56 of 1980).	Qualification (PMQ) course in Corporate Governance including competition law as a subject	handling financial ventures of large enterprises or undertakings.	amalgamations, etc. under competition law.
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- **Advocate:** Required expertise of an Advocate to be appointed as an Expert by the Competition Commission.

Essential	Desirable	Experience	Desirable
(i)Degree of LL.B or equivalent from a recognized University and/or Institute in India or abroad, recognized by the Bar Council of India. (ii)Qualified to be registered as an advocate in any State Bar Council of India in terms of Advocate's Act, 1961,	Higher qualification with specialization in competition law or regulatory laws or laws relating to Intellectual Property Rights or International Trade Laws.	Experience in judicial or legal work, in Supreme Court, High Court or any other court, government or a Regulatory Authority or a Tribunal or any similar forum. Or, Professor/Reader/Lecturer of Law of any recognized University/Professional Institute of India or abroad with specialization in teaching competition law, Or, Legal Manager or above in the Corporate sector having experience of handling acquisitions, mergers& amalgamations etc. under competition	

		law	
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- **Buisness management**

Essential	Desirable	Experience	Desirable
Post graduate degree and/ or Post graduate diploma in Master of Business Management from a recognized University in India or from a foreign University, duly recognized by a competent authority in the country, with specialization in financial management and having experience in applying principles of financial management to	Higher qualifications with consistent excellent academic record	Must have worked as a Business Manager or Financial Manager in reputed organization handling financial ventures of large enterprises or undertakings or Professor/Reader/Lecturer of Business Management of any recognized University/Professional Institute of India or abroad .	Experience of handling acquisitions, mergers,, amalgamations, etc. under competition law.

the conduct of business			
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• **Economist**

Essential	Desirable	Experience	Desirable
Post Graduate degree in Economics from either a recognized University in India or abroad, with specialization in Industrial Economics/Industrial Organization/International Trade/Econometrics//Mathematical Economics/Quantitative Economic methods/Law and Economics.	(i) Consistent high academic performance. (ii) A doctoral degree, from a reputed University/Institution in India or from a University or Institution duly recognized in India, in Economics in the area of competition policy or closely related areas	In analysis of microeconomic problems, including International trade, investment, project evaluation and appraisal, industrial organization, Industrial economics or economic regulation including competition assessment, using quantitative economic techniques in government, public sector, private sector, Non Governmental Organizations or regulatory authorities or regional/international/multilateral organization(s) Or, - in universities/reputed research institutions, as Professor/ Reader/ Lecturer in of Microeconomics/ Industrial Economics/Industrial	

		Organization/International trade/Econometrics/Mathematical Economics/Quantitative Economic methods or closely related subjects.	
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- **Engineer**

Essential	Desirable	Experience	Desirable
Post graduate degree in Engineering from any University or Institute of India or abroad, duly recognized in India	Higher qualifications with consistent excellent academic record .	Worked at senior level positions in large Organizations or Corporations dealing with technical and engineering matters, or Professor/Reader/Lecturer of Engineering of any recognized University/Professional Institute of India or abroad	

- **Medical professional**

Essential	Desirable	Experience	Desirable
MD or MS from a University in India or abroad duly recognized by the Medical	Higher qualifications with consistent excellent academic record	Professor/Reader/Lecturer of medicine of any recognized University/Professional Institute of India or	

Council of India.		abroad, or a person of eminence in the medical profession.	
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- **Science professional**

Essential	Desirable	Experience	Desirable
Essential – Post graduate degree in pure or applied sciences from a recognized University of India or abroad.	Desirable – Higher qualifications with consistent excellent academic record.	Of having worked at senior level positions in large Government Organizations or organizations in private sector dealing with technical and scientific matters, or Professor/Reader/Lecturer of sciences of any recognized University/Professional Institute of India or abroad.	

- **Professional of other sector**

Essential –	Desirable –	Experience	Desirable –
Graduate degree from a duly recognized University in India or abroad	Higher qualifications with consistent excellent academic record.	(1)Of having worked at senior level position in a leading industry in private or public sector, in the specific sector of	Experience of dealing with regulators.



in the relevant field.		economy, in which expertise is claimed and/or (2) recognition as an expert in the relevant sector of the market by majority of the market players either through publication of articles or awards or public acclaim to the satisfaction of the Commission; or. (3) Professor/Reader/Lecturer of Business Management of any recognized University/Professional Institute of India or abroad.	
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• **International trade**

Essential	Desirable	Experience	Desirable
Degree of LL.B or equivalent from a recognized University and/or Institute in India or abroad, recognized by the Bar Council of India with International trade as a subject, or Post	Higher qualifications with consistent excellent academic record.	Must have worked as a International Trade Manager in reputed organization handling International Trade ventures involving imports or exports in large enterprises	Experience of handling acquisitions, mergers, amalgamations, etc. under competition law.

graduate degree in Economics with microeconomics and specialization in International Trade from recognized University in India or from a foreign University.		or undertakings.	
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The excellency of such professionals shall be categorise into levels in accordance with their experience

<b>Category of expert and professional</b>	<b>Preferred experience in years</b>
Level I	Upto three years
Level II	Three to five years
Level III	Five to ten years
Level IV	Ten to fifteen years
Level V	Fifteen years or more

While looking at objective of both laws it can be said that the aim of Consumer Protection Act is to protect the right of the consumer to be assured of access to variety of goods and services at competitive prices whereas the Competition Act assures availability of goods and services at competitive prices for consumers. It ensures better and new products/services and lower prices.