

Consumer Protection Laws in India



Consumers form an integral part of the growth of a business and the economy at large. Consumer protection laws focus on controlling the standard of products and services and safeguarding the interest of the consumers to help them in making informed decisions. Keeping in view the rapid change in the industry and commerce across the globe, the (Indian) Consumer Protection Act, 1986 has been amended with a new enactment with wider scope which came into effect in the year 2020 along with new rules and regulations.

In this primer, we have set out below an overview of the consumer protection laws in India and the key provisions relating to consumer rights and duties and obligations of manufacturers / sellers, advertisers and e-commerce entities operating in India.

1. What are the applicable laws governing protection of consumer rights in India?

In India, protection of consumer rights is primarily governed by the Consumer Protection Act, 2019 (**Consumer Protection Act**), and the rules and regulations made thereunder. Some of the rules and regulations made under the Consumer Protection Act include Consumer Protection (E-Commerce) Rules, 2020, Consumer Protection (Mediation) Regulations, 2020, the Consumer Protection (Consumer Dispute Redressal Commissions) Rules, 2020 and the Consumer Protection (General) Rules, 2020.

Other than the Consumer Protection Act, there are various other laws and regulations which have been enacted with respect to protection of consumer interests covering specific subject matters such as food, drugs and cosmetics.

2. Which is the governing authority with respect to consumer protection in India?

The Department of Consumer Affairs of the Ministry of Consumer Affairs, Food and Public Distribution, and the Consumer Protection Authority.

3. To whom does the consumer protection laws apply to?

The consumer protection law applies to various players and entities including:

- (i) consumers;
- (ii) product manufacturers;
- (iii) product sellers;

- (iv) product service providers;
- (v) traders;
- (vi) advertising agencies;
- (vii) endorsers; and
- (viii) e-commerce market players such as e-commerce entities, e-commerce sellers.

4. Who is a consumer as per the Consumer Protection Act?

Consumer means any person who: buys any goods or hires or avails of any service, for a consideration, either online or through offline modes. Further, any person who uses any goods or hires or avails any services with the approval of any other person who has paid consideration for such goods or services, is also considered to be a consumer under the Consumer Protection Act.

5. Who is not a consumer under the Consumer Protection Act?

Any person who obtains goods for resale or for any commercial purpose or a person who avails any services for any commercial purpose is not considered to be a consumer under the Consumer Protection Act.

The expression "commercial purpose" does not include buying or using any goods or services by a person for the purposes of earning his/ her livelihood, by means of self-employment.

6. What are the rights of a consumer under the Consumer Protection Act?

Some of the major rights of a consumer under the Consumer Protection Act include:

- (i) protection against the misleading advertising or marketing of goods, products or services which are hazardous to life and property;
- (ii) access to adequate information relating to quality, quantity, potency, purity, standard and price of goods, products or services;
- (iii) access to a variety of goods, products or services at competitive prices; and
- (iv) seek redressal against any practice detrimental to the interest of the consumer or against unfair trade practice.





7. What is a product?

A product means any article or goods or substance or raw material in any physical state which is produced for introduction to trade or commerce.

8. Who is liable for a defective product?

Under the Consumer Protection Act, for a defective product, the product manufacturer or the product service provider or a product seller may be held liable.

9. Who is a product manufacturer / product service provider / product seller?

A product manufacturer is a person who (a) is a manufacturer; or (b) makes a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains such product or is otherwise involved in placing such product for commercial purpose; or (c) designs, produces, fabricates, constructs or re-manufactures any product before its sale; or (d) a product seller of a product, who is also the manufacturer of such product.

A product service provider is a person who provides any service in respect of such product.

A product seller is a person, who imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing such product for commercial purpose.

10. What are the liabilities of a product manufacturer?

A product manufacturer shall be liable for any harm caused to a consumer if the product:

- (i) contains a manufacturing defect;
- (ii) is defective in design;
- (iii) deviates from manufacturing specifications;
- (iv) does not conform to the express warranty; or

- (v) fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.

11. What are the liabilities of a product seller?

A product seller shall be liable for any harm caused to a consumer in the following events:

- (i) If the product seller has exercised substantial control over the alteration or modification, designing, testing, manufacturing, packaging or labelling of a product that caused harm;
- (ii) If the product seller has made an express warranty of a product independent of any express warranty made by a manufacturer and such product fails to conform to the express warranty;
- (iii) If the identity of product manufacturer of such product is not known, or the service of notice or process or warrant cannot be effected on the manufacturer or the manufacturer is not subject to the applicable laws in India;
- (iv) If the product seller fails to exercise reasonable care in assembling, inspecting or maintaining such product resulting in a harm; or
- (v) If the product seller does 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.

12. What are the liabilities of a product service provider?

A product service provider shall be liable for any harm caused to a consumer in the following events:

- (i) If the service provided by the product service provider was faulty, imperfect, deficient or inadequate in quality, nature or manner of performance which is required to be provided as per applicable laws or under a contract;
- (ii) If there was an act of omission or commission or negligence or conscious withholding any information which caused harm;
- (iii) If the product service provider did not issue adequate instructions or warnings to prevent any harm; or
- (iv) If the service did not conform to express warranty or the terms and conditions of the contract.





13. What is an advertisement under the Consumer Protection Act?

It means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents.

14. What are the guidelines relating to advertisements in India?

14.1. Advertisements in India are generally required to comply with the standards set by Advertising Standard Council of India (ASCI). The standards set out by the ASCI include the following:

- (i) The advertisement should be a truthful and honest representation;
- (ii) The advertisement should encourage fairness in competition;
- (iii) The advertisement should not be offensive to generally accepted standards of public decency in India;
- (iv) The advertisement should not be similar to any other advertisement; and
- (v) The advertisement should not encourage promotion of harmful/ dangerous products.

14.2. Further, the Ministry of Consumer Affairs has issued a draft guideline on advertisement the Central Consumer Protection Authority (Prevention of Misleading Advertisements and Necessary Due Diligence for Endorsement of Advertisements) Guidelines, 2020 (**Draft Guidelines**).

14.3. The Draft Guidelines, when finalised and implemented will be applicable to the manufacturers / service providers whose products / services are the subject of the advertising / marketing communications, as well as to advertisement agency and endorser (wherever applicable) of the product/service. The Draft Guidelines provide certain standards which should be complied with in order to make an advertisement valid. Some of the standards prescribed under the Draft Guidelines include:

- (i) advertisement should contain truthful and honest representation;
- (ii) advertisement should not mislead consumers;
- (iii) advertisement should be offensive to generally accepted standards of public decency in India; and
- (iv) advertisement should not exaggerate the capability or performance or service of the product.

14.4. In this regard, it is also important to note that advertisements in India are also required to comply with the standards set by ASCI.

15. What is a misleading advertisement?

A misleading advertisement shall include any advertisement, which:

- (i) falsely describes a product or service;
- (ii) gives a false guarantee to consumers;
- (iii) is likely to mislead the consumers with respect to the nature, substance, quantity or quality of the product or service;
- (iv) conveys a representation which would constitute an unfair trade practice; or
- (v) deliberately conceals important information.

16. What is an endorsement and what are the liabilities of an endorser?

16.1. Endorsement means any message or depiction with respect to a seller / manufacturer or its products or services to consumers to indicate any opinion, finding or experience of the endorser with respect to such seller / manufacturer or its products / services.

16.2. Endorser has not been expressly defined under the Consumer Protection Act. As a general understanding, an endorser shall mean any person who makes an endorsement.

16.3. Under the provisions of the Consumer Protection Act, an endorser can be held liable for false and misleading advertisements and penalty will be imposed on such endorser which may extend up to INR 1,000,000. In addition to monetary penalty, the endorser may also be prohibited from making an endorsement for a period up to one (1) year.

17. What is an unfair contract?

An unfair contract means a contract between a manufacturer or trader or service provider and a consumer, having such terms which cause significant change in the rights of the consumer.





18. What are unfair trade practices and restrictive trade practices?

- 18.1. 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.
- 18.2. 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.
- 18.3. In the event of any unfair or restrictive trade practices, the Central Authority will have the power to pass an order for discontinuation of such practices. Whoever fails to comply with such order, shall be liable to be punished with imprisonment up to 6 months or fine up to INR 2 million or both.

19. What are the regulations governing e-commerce entities?

- 19.1. The Department of Consumer Affairs of the Ministry of Consumer Affairs, Food and Public Distribution has issued the Consumer Protection (E-Commerce) Rules, 2020 (**E-Commerce Rules**).
- 19.2. The E-Commerce Rules are applicable to (a) all goods and services brought or sold over digital or electronic network including digital products; (b) all models of e-commerce, including marketplace and inventor models of e-commerce; (c) all e-commerce retails; and (d) all forms of unfair trade practices across all models of e-commerce.

20. Who are the key players covered under the E-Commerce Rules?

Some of the key players covered under the E-Commerce Rules are:

- (i) E-commerce entity that is, any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.
- (ii) Inventory e-commerce entity that is, an e-commerce entity which owns the inventory of

- goods or services and sells such goods or services directly to the consumers. For example, single brand retailers and multi-channel single brand retailers.
- (iii) Marketplace e-commerce entity that is, an e-commerce entity which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers.
 - (iv) Seller that is, a product seller as defined under the Consumer Protection Act.
 - (v) User that is, any person who accesses or avails any computer resource of an e-commerce entity.

21. What are the key duties of a marketplace e-commerce entity?

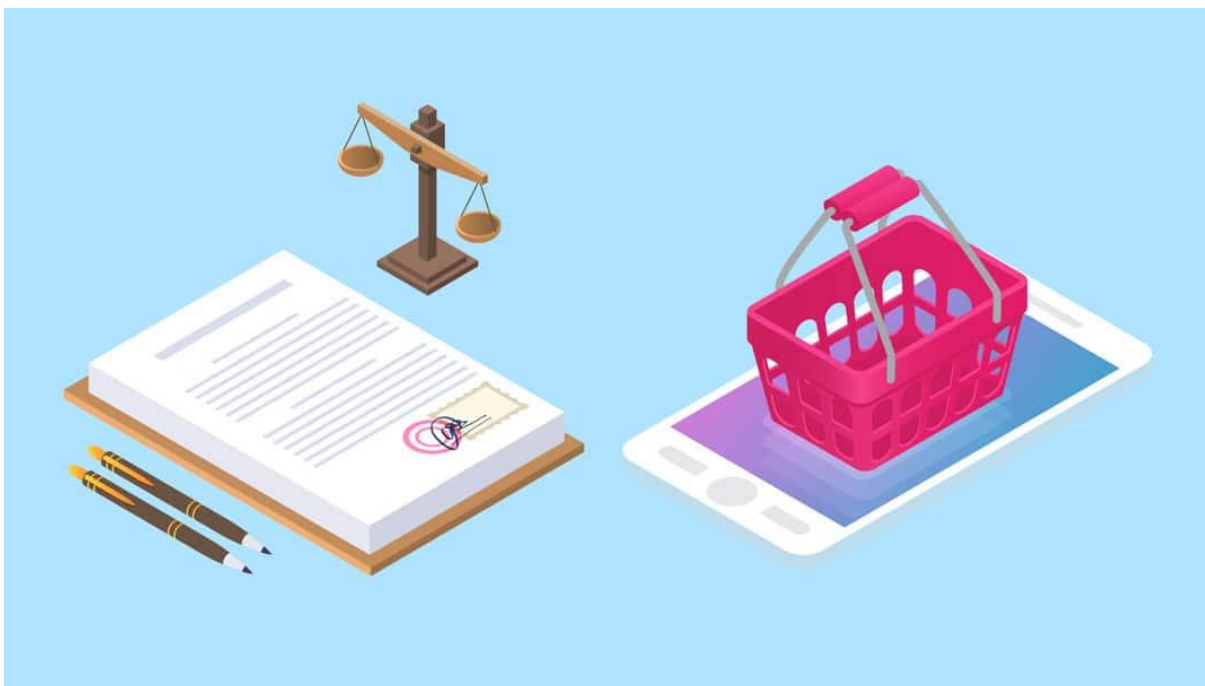
Some of the key duties of an e-commerce entity are:

- (i) appointing a nodal person of contact or an alternate senior designated functionary who is resident in India, to ensure compliance with applicable laws;
- (ii) provide its legal name, principal address of headquarters and all branches, and contact details on its platform in a clear and accessible manner;
- (iii) adopt fair trade practices in its course of business or on its platform;
- (iv) establish grievance redressal mechanism;
- (v) disclose details of the importers and sellers; and
- (vi) not discriminating among the consumers or manipulating the price of the goods or services offered on its platform.

22. What are the key duties of a seller in respect of sale of products through e-commerce mode?

Following are some of the key duties of a seller under the E-Commerce Rules:

- (i) adopt fair trade practices;
- (ii) Not make any false representation about the product;
- (iii) not refuse to take back products, or withdraw or discontinue services in case there is a defect or deficiency arising because of the product seller;
- (iv) not refuse to refund consideration in case of defect or deficiency arising because of the product seller;





- (v) appoint a grievance redressal officer;
- (vi) ensure advertisement of the goods or services are consistent with the actual product or service; and
- (vii) provide information relating to price in single figure along with breakup price, expiry dates, country of origin, name and details of the importer, guarantees, to the e-commerce entity to be displayed on such e-commerce platform.

23. What are the key duties of the inventory e-commerce entities?

The key duties of an inventory e-commerce entity are:

- (i) Providing accurate information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, costs and any other similar information which may help consumer to make informed decision;
- (ii) Disclosing notices and information as required under applicable laws;
- (iii) Providing information on payment methods;
- (iv) Providing information on pricing of good or services, in single figure or with the breakup price;
- (v) Disclosing contractual information as required to be disclosed under applicable laws;
- (vi) Ensure advertisements of the good or service are in consistent with the actual good or service; and
- (vii) Accept to take back goods or withdraw or discontinue services if such goods or services are defective or deficient.

24. Who can make a complaint for a defective product or service?

Following person can make a complaint:

- (i) A consumer;
- (ii) Any voluntary consumer association registered under any law;
- (iii) The Central Government or any State Government;
- (iv) The Central Authority established under the Consumer Protection Act;
- (v) Legal heir or legal representatives of a consumer in case of death of a consumer; or
- (vi) Parents or legal guardian of a consumer in case such consumer is a minor.

25. What are the grounds for making a complaint?

A complaint can be made on grounds 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.

26. What is the mechanism of making a complaint?

26.1. A complaint can be made under the Consumer Protection Act before the Consumer Dispute Redressal Commissions established at:

- (i) District level having jurisdiction over matters involving amount upto INR 10 million;
- (ii) State level having jurisdiction over matters involving amount between INR 10 million to INR 100 million; and
- (iii) National level having jurisdiction over matters involving amount more than INR 100 million.

26.2. A complaint relating to violation of consumer rights or unfair trade practice or false or misleading advertisements may be made to any one of the authorities, namely, the district collector or the commissioner of regional office or the central authority.

26.3. A complaint should be made in writing and can be made before the competent forum in offline or online mode after paying the requisite fees. 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. An online complaint can be made at <http://edaakhil.nic.in/>.

26.4. A complaint should be filled within two (2) years from the date on which the cause of action has arisen.

27. What is the procedure for making an appeal?

27.1. Any consumer who is aggrieved by the order of a commission can make an appeal before the higher commission subject to the timelines prescribed in the Consumer Protection Act.

27.2. An appeal against the order of district commission can be made before the state commission on grounds of facts or law within a period of forty-five (45) days from the date of the order. Similarly, an appeal against the order of state commission can be made before the national commission within a period of thirty (30) days from the date of such order. The national commission shall also be the competent forum for an appeal against the order of the central authority established under the Consumer Protection Act and such an appeal should be made within thirty (30) days from the date of receipt of such order. An appeal before the state or national commission shall be heard and disposed within a period of ninety (90) days from the date of admission.

27.3. An appeal against the order passed by the national commission shall be made before the Supreme Court of India within a period of thirty (30) days from the date of the order.



28. Is there any alternate dispute resolution mechanism under the Consumer Protection Act?

- 28.1. Under the provision of the Consumer Protection Act, the State Government is required to establish a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State. The National or State or the District Commission shall prepare a panel of the mediators to be maintained by the consumer mediation cell.
- 28.2. At the first hearing of the complaint after admission or at any later stage, the National or State or the District Commission, as the case may be, may direct the parties to settle the dispute by mediation if there exist any elements of a settlement which may be acceptable by the parties to the dispute. And where a dispute could not be settled by mediation, the concerned Commission shall continue to hear all the issue and dispose the said dispute.

29. What are various penalties under the Consumer Protection Act?

Offences	Penalty
Non-Compliance of direction of Central Authority	Imprisonment up to 6 months or fine up to INR 2 million or with both.
False and misleading advertisement	Manufacturer or the service provider shall be punished with imprisonment up to 2 years and fine up to INR 1 million. For subsequent offence, imprisonment up to 5 years or with fine up to INR 5 million.
Manufacturing for sale or storing, selling or distributing or importing products containing adulterant:	

(i) Not resulting in any injury to the consumer	(i) Imprisonment up to 6 months and fine up to INR 100 thousand.
(ii) Causing injury not amounting to grievous hurt to the consumer	(ii) Imprisonment up to 1 year and fine up to INR 300 thousand.
(iii) Causing injury amounting to grievous hurt to the consumers	(iii) Imprisonment up to years 7 and fine up to INR 500 thousand.
(iv) Resulting in death of the consumer	(iv) Imprisonment of at least 7 years and which may extend up to life and fine of at least INR 1 million.
Manufacturing for sale or for storing or selling or distributing or importing spurious goods:	
(i) Causing injury not amounting to grievous hurt to the consumer	(i) Imprisonment up to 1 year and fine up to INR 300 thousand.
(ii) Causing injury amounting to grievous hurt to the consumers	(ii) Imprisonment up to years 7 and fine up to INR 500 thousand.
(iii) Resulting in death of the consumer	(iii) Imprisonment of at least 7 years and which may extend up to life and fine of at least INR 1 million.



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