

## Consumer: Defect in Goods

Consumer is defined under Section 2(7) of the Consumer Protection Act, 2019.

- **Definition of Consumer:** A consumer is any person who buys goods or services for personal use, not for resale or commercial purposes. The term includes:
  - A person who obtains goods or services for consideration, even if the goods or services are used by others on the consumer's behalf.
  - A person who buys goods or services through a contract of service or hire-purchase.
  - **Key Points:**
    - The consumer must have purchased goods or services for personal use, and not for re-sale or any commercial purpose.
    - A person who buys goods or services and uses them for personal purposes (e.g., a consumer using a car for personal transportation).
    - It also covers those who get goods for free or at discounted prices, provided that they are using them for personal use.
- **Defect in Goods:** Under the Consumer Protection Act, a defect in goods refers to any fault, imperfection, or shortcoming in the quality, quantity, potency, or purity of goods that renders them unfit for the purpose they are intended for.
  - Section 2(11) of the Consumer Protection Act, 2019 defines "defect" as:
    - A defect in the goods purchased by a consumer.
    - A defect in the quality of goods, which means the goods fall short of expectations or are inferior to what was promised or expected.
    - A defect in the packaging of goods, leading to damage or poor condition of goods at the time of delivery.



**Case Law: S. P. Chengalvaraya Naidu v. Jagannath (1994) 1 SCC 1**

The case dealt with a situation where the goods delivered were not as per the contract. The Court ruled that a defect in goods could lead to the goods being rejected and the contract being voidable.

**Case Law: Indian Medical Association v. V.P. Shantha (1995)**

In this case, the Supreme Court held that even medical services fall under the definition of "services" under the Consumer Protection Act, 1986 (now Consumer Protection Act, 2019). It also clarified that a defect in goods (like medicines) can be a valid ground for a consumer complaint.

## Services: Types of Services, Deficiency-Meaning, Denial of Services, Commercial & Professional Services, Medical Services

Services under the Consumer Protection Act, 2019 are defined in Section 2(42). The Act provides a broad understanding of services, ensuring that various types of service-related disputes are covered.

- **Types of Services:**

1. **Commercial Services:** These are services provided for commercial purposes and are generally related to business transactions, like selling goods, repairs, and maintenance services.
2. **Professional Services:** These are specialized services that require a high level of expertise and knowledge. Examples include legal, medical, engineering, and financial services. Professionals offering these services are bound by the quality and ethical standards related to their profession.
3. **Medical Services:** Medical services refer to those provided by healthcare professionals, such as doctors, nurses, clinics, hospitals, and other health



## Notes by Dr. Shonal John

service providers. These services are governed by separate laws (like medical ethics and the Medical Council of India), but they also come under the Consumer Protection Act.

4. **Other Services:** These include transport services, telecommunication, hotel services, educational services, and repair and maintenance services.
- **Deficiency in Services:** Section 2(11) of the Consumer Protection Act defines deficiency in services. It refers to:
    - Shortcoming or imperfection in the quality of services provided.
    - Failure to meet the standards of service which were agreed upon or expected.
    - Inadequate or unsatisfactory performance of a service provider, such as a delay in delivery or failure to provide the agreed services.

### Case Law: Laxmi Engineering Works v. P.S.G. Industrial Institute (1995)

In this case, the Court held that a deficiency in service can be claimed if the service is not rendered in a satisfactory manner, and the consumer suffers loss due to this deficiency. This case primarily focused on the interpretation of "deficiency in service" under the Act.

- **Denial of Services:** Denial of service refers to a situation where a service provider refuses to offer the agreed-upon service. It may involve situations such as:
  - A refusal to honor a contract.
  - In situations of medical services, it could involve refusal to provide care based on discrimination or other unfair practices.
  - Refusal to provide services that have already been paid for.

### Case Law: State of Karnataka v. Ranganayakamma (1973)

In this case, the Court observed that denial of service constitutes an unfair trade practice, and consumers can seek remedy under the relevant consumer protection laws.



- Commercial & Professional Services:
  1. **Commercial Services:** These include services provided for profit, such as car repairs, the sale of goods, or transport services. Such services are also covered under the Consumer Protection Act.
  2. **Professional Services:** These require specific qualifications and certifications. Examples include legal advice, medical treatment, architectural services, etc. Under the Act, even professional negligence, such as poor treatment or legal advice, can be challenged as deficiency in service.

### Case Law: V.P. Shantha v. Indian Medical Association (1995)

This case confirmed that medical services come under the definition of services under the Consumer Protection Act, and consumers can file complaints against medical professionals or institutions for deficiency or negligence.

### Case Law: Indian Medical Association v. V.P. Shantha (1995)

In this case, the Court held that medical services fall under the Consumer Protection Act and that doctors cannot claim exemption from liability for negligence under the Act.

- **Medical Services:** As mentioned earlier, medical services, including treatment, surgeries, and other healthcare-related services, are covered under the Act. Medical negligence, including substandard care or failure to meet expected standards of care, constitutes deficiency in service under the law.
  - Example: A patient undergoing a surgery and later suffering due to substandard medical treatment may file a complaint under the Consumer Protection Act, claiming deficiency in medical service.

### Case Law: Jacob Mathew v. State of Punjab (2005)

In this case, the Supreme Court clarified that medical negligence falls under the purview of the Consumer Protection Act. It set the guidelines for what constitutes medical negligence and how courts should approach such cases.



### Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole (1969)

In this case, the Court ruled that medical practitioners are liable for negligence in providing services under the Consumer Protection Act if their services fail to meet the expected standards.

#### Summary of Key Points:

1. Consumer under the Consumer Protection Act, 2019, refers to anyone who buys goods or services for personal use, not for resale. Defects in goods (quality, purity, or packaging) can be grounds for a complaint under the Act.
  2. Deficiency in Services includes poor performance, delay, or unsatisfactory services provided by service providers, whether commercial, professional (e.g., legal or medical), or otherwise.
  3. Denial of Services refers to the refusal by a service provider to offer agreed-upon services, and it is also a valid ground for filing a complaint under the Act.
  4. Types of Services covered under the Consumer Protection Act include:
    - Commercial Services (e.g., repair services).
    - Professional Services (e.g., legal, medical, engineering).
    - Medical Services, where deficiency or negligence can lead to a consumer complaint.
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## Consumer Protection Councils

The Consumer Protection Councils play an essential role in promoting consumer rights and protecting consumers' interests. They operate at the Central, State, and District levels to raise awareness and coordinate action on consumer-related issues.

### **Key Features of Consumer Protection Councils:**

#### **1. Central Consumer Protection Council (CCPC):**

- Establishment: Under Section 4 of the Consumer Protection Act, 2019, the Central Government is empowered to establish the Central Consumer Protection Council (CCPC).
- Composition: The CCPC is headed by the Union Minister of Consumer Affairs, and its members include representatives from various sectors like business, legal experts, and consumer organizations.
- Functions:
  - To promote and protect the rights of consumers in the country.
  - To advise the central government on consumer protection policies and programs.
  - To review the working of various consumer protection laws and suggest amendments.
  - To encourage and support the establishment of consumer organizations at all levels.

#### **2. State Consumer Protection Council (SCPC):**

- Establishment: Under Section 5 of the Act, each state can establish a State Consumer Protection Council.
- Composition: The State Council is headed by the State Minister in charge of consumer affairs. The members include representatives from state government, trade organizations, consumer organizations, and experts.
- Functions:
  - To promote the consumer rights and interests at the state level.



- To advise the state government on matters of consumer welfare and policy.
- To look into grievances and consumer rights within the state jurisdiction.

### 3. District Consumer Protection Council (DCPC):

- Establishment: District councils are set up by the state government under Section 6 of the Act.
- Composition: The District Consumer Protection Council is headed by the District Collector or the District Magistrate and includes representatives from the local government, consumer organizations, and other relevant stakeholders.
- Functions:
  - To work for the promotion of consumer welfare at the district level.
  - To advise the district authority on consumer-related issues and raise awareness among consumers about their rights.

#### General Functions of All Consumer Protection Councils:

- To promote consumer education, awareness, and rights.
  - To raise public awareness about consumer issues through seminars, workshops, campaigns, etc.
  - To make representations to the government on consumer-related matters.
  - To assist in the establishment of consumer organizations and associations at the local, state, and national levels.
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## Consumer Disputes Redressal Agencies: District Commission, State Commission & National Commission, Judicial Review

The Consumer Protection Act, 2019 establishes a multi-tiered system of Consumer Dispute Redressal Agencies designed to provide speedy and effective resolution of consumer grievances at different levels.

### 1. District Commission (Section 30-33):

- Jurisdiction: The District Commission is the lowest tier in the consumer dispute redressal hierarchy. It handles complaints where the value of goods or services, along with any compensation claimed, does not exceed ₹1 crore.
- Establishment: A District Commission is established for each district by the State Government.
- Composition: The commission consists of:
  - One President, who is a judicial officer or a person with knowledge of law.
  - Two members: One must be a person with expertise in the field of economics, commerce, or industry, and the other may be a consumer rights advocate or expert.
- Functions:
  - To hear complaints and disputes related to consumer rights violations.
  - To issue orders to businesses or service providers in case of deficiencies or unfair practices.

#### Case Law: Narayana Das v. New India Assurance Co. Ltd. (2001)

This case established the importance of a quick and efficient redressal mechanism at the district level. The District Forum was deemed to be an accessible first step for consumers.



### 2. State Commission (Section 17-22):

- Jurisdiction: The State Commission handles cases where the claim value exceeds ₹1 crore but is less than ₹10 crore.
- Establishment: A State Commission is established in each state.
- Composition:
  - One President, who is a person with judicial experience or knowledge of law.
  - Two members: They must be persons with expertise in the field of commerce, economics, law, etc.
- Functions:
  - To hear appeals from District Commissions.
  - To handle cases referred directly to them, where the value of the dispute exceeds ₹1 crore.
  - To pass orders or awards for compensation.

#### Case Law: Tata Motors Ltd. v. The State Commission, Tamil Nadu (2014)

The case examined the jurisdiction of the State Commission and clarified the role of the commission in hearing cases involving consumer disputes of significant monetary value.

### 3. National Commission (Section 21-22):

- Jurisdiction: The National Commission is the highest authority in consumer dispute redressal and handles cases where the claim value exceeds ₹10 crore. It also hears appeals against the orders of the State Commissions.
- Establishment: The National Commission is established by the Central Government and is based in New Delhi.
- Composition:
  - One President, who must be a sitting or retired judge of the Supreme Court of India.
  - Four members, each with expertise in fields like law, economics, commerce, or consumer affairs.



- **Functions:**
  - To hear appeals from State Commissions.
  - To directly hear cases involving significant consumer disputes (where the value of the dispute exceeds ₹10 crore).
  - To issue final orders for compensation and penalties in large-scale consumer complaints.

### Case Law: Isha Mehta v. B.P. Singh (2008)

In this case, the National Commission clarified the scope of its powers and its appellate jurisdiction over State Commissions.

## Judicial Review of Consumer Disputes Redressal Agencies

Judicial review refers to the power of the judiciary to review the decisions made by the Consumer Dispute Redressal Agencies (District, State, and National Commissions) to ensure that they comply with the law and legal principles.

- **Appeals to Higher Courts:**
  - A party dissatisfied with the decision of a District Commission can appeal to the State Commission.
  - Similarly, a party dissatisfied with the decision of a State Commission can appeal to the National Commission.
  - If the party is still dissatisfied, it can file a revision petition before the Supreme Court or the appropriate High Court under Article 136 (Special Leave Petition) or under the relevant provisions of the Consumer Protection Act.
- **Grounds for Judicial Review:**
  - Error of law: If the Commission has committed a mistake in applying the law.



- Excess of jurisdiction: If the Commission has acted beyond its jurisdiction or authority.
- Violation of natural justice: If the proceedings were conducted in a manner that violated the principles of natural justice, such as not giving an opportunity to the other party to present its case.

### Case Law: Consumer Education & Research Centre v. Union of India (1995)

This case reinforced the need for judicial oversight in the enforcement of consumer rights and clarified that a Consumer Disputes Redressal Agency's decision can be challenged in higher courts under limited circumstances.

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#### Summary of Key Points:

1. Consumer Protection Councils at the Central, State, and District levels help promote consumer rights and raise awareness through various programs and recommendations.
2. Consumer Disputes Redressal Agencies are multi-tiered bodies designed to provide timely redressal of consumer complaints at the District, State, and National levels based on the monetary value of the claim.
3. Judicial Review allows higher courts to review decisions made by consumer redressal agencies to ensure fairness, adherence to law, and the protection of consumer rights.



## Unfair Trade Practices under the Consumer Protection Act, 2019

Definition of Unfair Trade Practices: Section 2(47) of the Consumer Protection Act, 2019 defines unfair trade practices as a trade practice that, for the purpose of promoting the sale, use, or supply of goods or services, involves any of the following:

- False or misleading advertisements: Misleading representations made about the quality, quantity, or price of goods and services.
- Deceptive practices: Practices that mislead consumers into buying something they wouldn't have bought if they had full and honest information.
- Bait and switch advertising: Promoting goods or services that aren't available and trying to sell something else instead.
- Non-disclosure of essential information: Failure to provide critical information about a product or service that would help consumers make an informed decision.
- Offering goods or services at an unfairly low price to attract customers and later selling at a higher price.

### Lack of Proper Information in Advertising

#### **Case Law: Tata Sky Ltd. v. M/s. Maxx Media Pvt. Ltd. (2012)**

The National Consumer Disputes Redressal Commission (NCDRC) dealt with a case where Tata Sky advertised its DTH services, but the representation was found to be misleading about the packages and services offered. The Court held that such misleading advertisements qualify as unfair trade practices under Section 2(47) of the Consumer Protection Act, 2019.



### Misleading Advertisements

#### **Case Law: M/S. Emami Ltd. v. Consumer Education & Research Society (2017)**

In this case, the NCDRC ruled that the advertisements issued by Emami for their Fair and Handsome cream, claiming that it would make users "fairer" in a short period, amounted to unfair trade practices because the representations were deemed misleading and not substantiated by scientific evidence.

### Defective Products and Misrepresentation

#### **Case Law: Cement Corporation of India Ltd. v. State of Kerala (2004)**

This case involved allegations of misrepresentation and substandard quality of cement supplied by the Corporation. The court ruled that selling defective products without informing the consumer amounts to unfair trade practices.

## Restricted Trade Practices under the Consumer Protection Act, 2019

Definition of Restricted Trade Practices: Section 2(46) of the Consumer Protection Act, 2019 defines restricted trade practices as practices that may cause harm to the public or consumers and are therefore prohibited by the law. These include practices that:

- Impose unfair restrictions on the consumer's ability to freely choose goods or services.
- Force a consumer into a particular transaction that they may not have otherwise agreed to.
- Tie-in arrangements: Forcing a consumer to buy a product they do not need in order to buy the product they want.
- Exclusive dealings: Agreements that prevent a consumer from purchasing from others or restrict their freedom of choice.



Tie-in Arrangement

**Case Law: Competition Commission of India v. M/s. Coca-Cola India Pvt. Ltd. (2006)**

The Competition Commission of India found that Coca-Cola had imposed a tie-in arrangement by selling certain products only if consumers purchased other products. This was ruled as a restricted trade practice because it limited consumer freedom and violated the principles of the Consumer Protection Act, 2019.

Unfair Commercial Terms and Conditions

**State Consumer Disputes Redressal Commission, Chandigarh v. M/s. Hindustan Petroleum Corporation Ltd. (2018)**

The State Consumer Commission dealt with a case involving Hindustan Petroleum. The consumer was made to sign an agreement with unfair terms that restricted their rights and created conditions that harmed consumers. The case was ruled in favor of the consumer, and the court held the unfair conditions to be a restricted trade practice.

Exclusive Dealings

**Case Law: M/s. TATA Motors Ltd. v. M/s. G.S. Motors (2018)**

In this case, TATA Motors imposed a restrictive agreement on its dealers by preventing them from selling competing brands. The consumer forum held that such exclusive dealing amounted to a restricted trade practice, as it limited the dealer's ability to sell competing brands, thereby restricting consumer choice.



Excessive Terms in Service Contracts

**Case Law: Consumer Education & Research Centre v. Union of India (1995)**

The Supreme Court of India considered the case of unfair and restrictive trade practices by insurance companies, where terms and conditions were not clearly communicated to the customers, thereby creating disadvantageous situations for consumers. The Court held such practices to be unlawful under the Consumer Protection Act, as they restricted the consumer's ability to freely access and choose insurance services.

**Conclusion:**

Both unfair and restricted trade practices are prohibited under the Consumer Protection Act, 2019, and the relevant case laws illustrate how these provisions are applied to protect consumers from deceptive, restrictive, and unfair business practices. These provisions ensure that consumers are not misled, coerced, or unfairly restricted in their rights, and they provide avenues for compensation in case such practices occur.

- Unfair trade practices focus on misleading, fraudulent, or deceptive practices like false advertisements, while
- Restricted trade practices address restrictions or coercion in business practices that limit consumer freedom.

