

**MBA SECOND SEMESTER (207)**

**UNIT-VI**

**Business Legislation**

**1.1 The Salient Features of the Consumer Protection Act, 1986**

1. An Act for Better Protection of the Interests of Consumers

The Consumer Protection Act, 1986, as its Preamble says, is meant for the better protection of the interests of consumers and for quick settlement of consumer disputes.

2. The Consumer Rights Envisaged and Incorporated in the 1986 Act

According to the provisions of the Consumer Protection Act, 1986, the Act seeks to promote and to protect the following rights of consumers: (i) The right to be protected against marketing of goods and services which are hazardous to life and property; (ii) The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumers against unfair trade practices; (iii) The right to be assured, wherever possible, access to a variety of goods and services at competitive prices; (iv) The right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums; (v) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and (vi) The right to consumer education

3. Establishment of the Consumer Disputes Redressal Agencies

A Three Tier Consumer Disputes Redressal Mechanism has been envisaged and established by the Consumer Protection Act 1986 for the purposes of redressal of consumers' grievance against goods and services. At the lowest level is the District Consumer Disputes Redressal Forum; at the middle level is the State Consumer Disputes Redressal Commission; and at the apex level is the National Consumer Disputes Redressal Commission. And the final appellate authority is the Hon'ble Supreme Court of India. All three Consumer Dispute Redressal Agencies can entertain complaints against defective goods and deficient services.

4. Establishment of the Consumer Protection Councils at the National, State and District Levels

According to section 4(1) of the Consumer Protection Act, 1986, the Central Government, by way of issuing notification, shall establish a Central Consumer Protection Council which shall consist of the following members: (i) The Minister in charge of the consumer affairs in the Central Government, who shall be its Chairman; and (ii) Such number of other official or non-official Members representing such interests as may be prescribed.

**1.2 Objectives of Consumer Protect Act 1986**

Consumer protection is essential for a healthy economy. We need Consumer Protection Act for the following:-

Physical protection of the consumer

. Protection against deceptive and unfair trade practices.

Protection against all types of pollution.

Protection against the abuse of monopoly position and/or restrictive trade practices.

Protection of enjoying the rights. .

The consumer interest in the market place is the focus or the art of enlightened marketing mix. The business and consumerism both aim at the protection of consumer interest-business through self-regulation and consumerism through self-help. Consumerism invokes government assistance when business misbehaves and fails to fulfill special responsibilities

*(Source: <https://www.caclubindia.com/forum/consumer-protection-act-objectives-5423.asp>)*

### **1.3 Different Consumer Redressal Forums**

Consumer Forums have been established across country at the different levels with view to provide speedy, less expensive and simple (hassle-free) dispute redressal to the consumers. For achieving the objectives, section 9 of the Consumer Protection Act provides three tier dispute redressal agencies. A 'National Consumer Dispute Redressal Commission' established by Central Government by the notification. This Court is known as "National Commission". A 'State Consumer Dispute Redressal Commission' established by State Government with prior approval of the Central Government, by notification. And this Court is known as "State Commission". A Consumer Dispute Redressal Forum established by the State Government in each district of the State by notification. And this Court is known is 'District Forum'. Thus, the Act proposed to set up the hierarchy of three redressal agencies. (1) National Commission, (2) State Commission, (3) District Forum. All these agencies are quasijudicial in terms of nature and power.

**1.3.1 National Commission** The National Commission was established at the top of the hierarchy of three redressal Forums, it is considered as an apex court; because it oversees the functioning of State Commissions and District Forums also.

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

According to section 20(1) of Consumer Protection Act, the National Commission consists of following members-

One person who is or has been the judge of Supreme Court.

⊖ Four other members, neither more than four nor less than prescribed and one of them must be a woman, the members are appointed only when they fulfill the following conditions, namely. None of them should be less than 35 year of age.

- b. All of them should possess a bachelor degree from a recognized university.
- c. All of them should be the person of ability, integrity and standing.
- d. All of them should have adequate knowledge and experience of at least ten years in dealing with the problems relating economics, law, commerce, accountancy, industry, public affairs or administration.

Apart from that, among the members, not more than fifty percent of the members should be from judicial background. An experience person having judicial background is supposed to have at least ten years of experience as a presiding officer at the district level court or any tribunal.

According to section 20 (1A), jurisdiction and authority of National Commission can be exercised by the constituted Bench and a Bench can be constituted by the president with one or more members as president may deem fit.

### **Jurisdiction of National Commission**

Jurisdiction of National Commission has been categorized in five parts i.e. pecuniary, territorial, appellate, revisional and review of jurisdiction.

- 1) Pecuniary Jurisdiction -Being an apex court, National Commission can entertain all the matters where the value of service or goods exceed Rs, 1 crore.
- 2) Territorial Jurisdiction As far as territorial jurisdiction is concerned, National Commission can entertain all complaints from all the States of Indian except Jammu and Kashmir, but complaint comes from outside India cannot be entertained by National Commission under this Act
- 3) Appellate Jurisdiction National Commission has jurisdiction to entertain appeals against the order of State Commissions and appeal can be filled within 30 days from the order of the State Commission. Appeals after 30 days may also be entertained if cause of delayed is justified
- 4) Revisional Jurisdiction This Commission can ask for the records in any consumer dispute which is in pending or has been in pending before any State Commission, if National Commission think that the State Commission-

Has exercised jurisdiction for which it was not authorized

⊖ Has failed to exercise jurisdiction for which it was entitled.

⊖ Has exercised jurisdiction illegally.

The very important point to be noted is this revisional jurisdiction can be exercised by National Commission only when some wrong doings have come out against the orders of State Commissions.

### **Orders of National Commission**

The orders of the National Commission are like the orders given by Civil Court and Commission's orders are treated as final if no appeal has been made against the orders. Every order made by the Commission must be signed by the president and two other members who conclude the case. If there is any difference between the opinions of two members regarding a particular judgment, matter should be referred to third member for final decision and decision taken by majority will be final.

### **Appeals against the Orders**

An appeal is a legal instrument through which any party (opposite or complainant), if not satisfied with judgment given by National Commission, can make appeal with the Supreme Court. There is a procedure for filling an appeal against the order of National Commission.

- An appeal can be made with the Supreme Court against the order of National Commission within 30 days from the date of order and this period can be extended for further 15 days.
- Supreme Court entertains the appeal only when the appellant has deposited in prescribed manner fifty percent of that amount or fifty thousand rupees or whichever is less.

### **Finality of orders**

If no appeal has been made against the order made by National Commission, the order is treated as final.

### **Penalties**

Each and every order made by National Commission is enforceable as enforced by Civil Court, if there is a non-compliance of the order, the concerned person will be charged with any one or all of the following penalties. Imprisonment for a term from one month to three years, Monetary punishment from Rs. 2,000 to Rs. 10,000, Or With both

### **1.3.2 State Commission**

According to section 16 of CPA, State Commission has been established at the State level and State Commission is next, after District Forum in the hierarchy of Consumer Dispute Redressal Forums under the Act. There are 35 State Commissions at present in India.

### **Composition of State Commission**

According to section 16(1) of Consumer Protection Act, the State Commission consists of following members

**A.** One person who is or has been the judge of High Court and this person will be the president of the State Commission.

**B.** Two other members, neither more than two nor less than prescribed and one of them must be a woman, the members are appointed only when they fulfill the following conditions, namely.

- a) None of them should be less than 35 year of age. f.
- b) Both of them should possess a bachelor degree from a recognized university.
- c) Both of them should be the person of ability, integrity and standing. h.
- d) Both of them should have adequate knowledge and experience of at least ten years in dealing with the problems relating economics, law, commerce, accountancy, industry, public affairs or administration.

### **Appointment Authority**

According to section 16 (1A) of the Act, State Government appoints every member of the State Commission on the recommendation of the selection committee comprising, namely

- a) President of the State Commission—known as Chairman.
- b) Secretary, Law department of the state—Member
- c) Secretary in- charge of the department of the state consumer affair—Member.

### **Terms of office**

According to section 16 (3) of Act, every member of this Commission is appointed for the term five years or upto the age of 67 years, whichever is earlier. With the amendment in the Act, 2002, members of Forum can be re-appointed on the recommendations of the selection committee. Prior to amendment, 2002, re-appointment was not possible

### **Powers of State Commission**

Section 13(4) of the Consumer Protection Act has given some powers of civil court to the State Commission and apart from these powers; some additional powers have also been given to this Commission under the Rules 10 of the Consumer Protection Act, 1987. At the end, section 14 has empowered the State Commission to issue an order.

Power akin to those of Civil Court ⊗ Power like a Criminal Court

:⊗ Power to make summary judgment:

⊗ Additional powers of the Consumer Forums

⌘ Power to issue an order⌘ Executive Powers⌘

The above mentioned powers are exercised by District Forum under its own territory likewise all these powers are also exercised by the State Commission under its own jurisdiction

### **Orders of State Commission**

The orders of the State Commission are like the orders given by Civil Court and Commission's orders are treated as final if no appeal has been made against the orders. Every order made by the Commission must be signed by the president and one other member who concludes the case. If there is any difference between the opinions of two members regarding a particular judgment, matter should be referred to third member for final decision and decision taken by majority will be final.

### **Appeals against the Orders**

As it was explained earlier that an appeal is a legal instrument through which any party (opposite or complainant), if not satisfied with judgment given by State Commission, can make appeal with the National Commission. There is a procedure for filling an appeal against the order of State Commission.

- An appeal can be made with the National Commission against the order of State Commission within 30 days from the date of order and this period can be extended for further 15 days.
- National Commission entertains the appeal only when the appellant has deposited in prescribed manner fifty percent of that amount or thirty five thousand rupees or whichever is less.

### **Penalties**

Each and every order made by State Commission is enforceable as enforced by Civil Court, if there is a non-compliance of the order, the concerned person will be charged with any one or all of the following penalties.

- Imprisonment for a term from one month to three years
- Monetary punishment from Rs. 2,000 to Rs. 10,000,
- or⌘ With both.

### **1.3.3 District Forum**

A District forum is a place in a district where Complainant can lodge a complaint if he or she is cheated or misguided or deceived by any service provider or trader. District Forum is the lowest Consumer Court in the hierarchy of three redressal Forums and under section 10 of CPA, there is a

provision to constitute at least a District Forum in each and every district of the country. At present, there are 629 District Forums across the country.

### **Composition of District Forum**

According to section 10(1) of Consumer Protection Act, the District Forum consists of following members

A. One person who is or has been the district judge and this person would be the president of the District Forum. B. Two other members, neither more than two nor less than prescribed and one of them must be woman, the members are appointed only when they fulfill the following conditions, namely

- a. None of them should be less than 35 year of age.
- b. Both of them should possess a bachelor degree from a recognized university.
- c. Both of them should be the person of ability, integrity and standing.
- d. Both of them should have adequate knowledge and experience of at least ten years in dealing with the problems relating economics, law, commerce, accountancy, industry and public affairs or administration.

### **Terms of office**

According to section 10 (2) of Act, every member of Consumer Forum is appointed for the term five years or upto the age of 65 years, whichever is earlier. With the amendment in the Act, 2002, members of Forum can be re-appointed on the recommendations of the selection committee. Prior to amendment, 2002, re-appointment was not possible

### **Orders of the District Forums**

The orders of the Consumer Court are like the order given by Civil Court and Forum's orders are treated as final if no appeal has been made against the orders of the Forum. Any party, if not satisfied with judgment, can appeal with the senior forum against the order of District Forum. However, prescribed norms and guidelines should be complied with before giving final judgement

If there is any difference between the opinions of two members regarding a particular judgment, matter should be referred to third member for final decision and decision taken by majority will be final.

**Appeals against orders** An appeal is a legal instrument through which any party (opposite or complainant), if not satisfied with judgment given by lower Forum, can take his or her case to the higher court. But there is a provision for filing an appeal against the order of District Forum.

**A.)** An appeal can be made to the State Commission against the order of District Forum within 30 days from the date of order and this period can be extended for further 15 days.

**B.)** State Commission entertains the appeal only when the appellant has deposited in prescribed manner fifty percent of that amount or twenty five thousand rupees or whichever is less.

### **Finality of orders**

If no appeal has been made against the order made by the District Forum, such order is treated as final.

### **Penalties**

Each and every order made by District Court is enforceable as enforced by Civil Court, if there is a non-compliance of the order, the concerned person will be charged with any one or all of the following penalties.

Imprisonment for a term from one month to three years

⊗ Monetary punishment from Rs. 2,000 to Rs. 10,000, or

⊗ With both.⊗

### **1.3.4 Consumer Protection Councils**

Consumer Protection councils established in India under CPA at three level, like Consumer Forums, with the objective to advice and assist consumers in seeking and enforcing their rights in the appropriate Consumer Forum. These Councils not only advice or assist the consumers but also promote and make the consumers enlightened about their basics rights given under the Consumer Protection Act. For achieving the said objectives, these Councils function like a promoter, investigator and protector of the interests of consumers. Councils are authorized to investigate and publicize the matters having interests of consumers.

(Source: [https://shodhganga.inflibnet.ac.in/bitstream/10603/14559/12/12\\_%20chapter%203.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/14559/12/12_%20chapter%203.pdf))

## **MBA SECOND SEMESTER (207)**

### **UNIT-VII**

## **Laws relating to Competition, Cyber Laws.**

### **1.Objectives:**

This chapter presents the meaning and definition of cyber crime, the legislation in India dealing with offences relating to the use of or concerned with the abuse of computers or other electronic gadgets. The Information Technology Act 2000 and the I.T. Amendment Act 2008 have been dealt with in detail and other legislations dealing with electronic offences have been discussed in brief.

Cyber Crime is not defined in Information Technology Act 2000 nor in the I.T. Amendment Act 2008 nor in any other legislation in India. In fact, it cannot be too. Offence or crime has been dealt with elaborately listing various acts and the punishments for each, under the Indian Penal Code, 1860 and quite a few other legislations too. Hence, to define cyber crime, we can say, it is just a combination of crime and computer. To put it in simple terms 'any offence or crime in which a computer is used is a cyber crime'. Interestingly even a petty offence like stealing or pick-pocket can be brought within the broader purview of cyber crime if the basic data or aid to such an offence is a computer or an information stored in a computer used (or misused) by the fraudster. The I.T. Act defines a computer, computer network, data, information and all other necessary ingredients that form part of a cyber crime, about which we will now be discussing in detail. In a cyber crime, computer or the data itself the target or the object of offence or a tool in committing some other offence, providing the necessary inputs for that offence. All such acts of crime will come under the broader definition of cyber crime.

The Information Technology Act -2000 and the I.T. Amendment Act 2008 in general and with particular reference to banking and financial sector related transactions.

Objectives of I.T. legislation in India: . It is against this background the Government of India enacted its Information Technology Act 2000 with the objectives as follows, stated in the preface to the Act itself.

“to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.”

The Information Technology Act, 2000, was thus passed as the Act No.21 of 2000, got President assent on 9 June and was made effective from 17 October 2000.

The Act essentially deals with the following issues:

- Legal Recognition of Electronic Documents
- Legal Recognition of Digital Signatures
- Offenses and Contraventions
- Justice Dispensation Systems for cyber crimes.

**2.Applicability:** The Act extends to the whole of India and except as otherwise provided, it applies to also any offence or contravention there under committed outside India by any person. There are some specific exclusions to the Act (ie where it is not applicable) as detailed in the First Schedule, stated below:

**a)** negotiable instrument (Other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881; **b)** a power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882; **c)** a trust as defined in section 3 of the Indian Trusts Act, 1882 **d)** a will as defined in clause (h) of section 2 of the Indian Succession Act, 1925 including any other testamentary disposition **e)** any contract for the sale or conveyance of immovable property or any interest in such property; **f)** any such class of documents or transactions as may be notified by the Central Government

**3.Definitions:** The ITA-2000 defines many important words used in common computer parlance like 'access', 'computer resource', 'computer system', 'communication device', 'data', 'information', 'security procedure' etc. The definition of the word 'computer' itself assumes significance here.

a)'Computer' means any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;

b) Digital Signature: Digital signature was defined in the ITA -2000 as "authentication of electronic record" as per procedure laid down in Section 3 and Section 3 discussed the use of asymmetric crypto system and the use of Public Key Infrastructure and hash function etc.

c)"Cyber cafe" means any facility from where access to the Internet is offered by any person in the ordinary course of business to the members of the public. (Sec.2(1)(na) of IT Act, 2000).

d) "Cyber Security" means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorized access, use, disclosure, disruption, modification or destruction. (Sec.2(1)(nb) of IT Act, 2000)

e) "Data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer. (Sec.2(1)(o) of IT Act, 2000)

(Source: <http://www.iibf.org.in/documents/Cyber-Laws-chapter-in-Legal-Aspects-Book.pdf>)

#### 4. Penalties and Offences

| <b>Cyber Crime</b>                            | <b>Brief Description</b>                                       | <b>Relevant Section in IT Act</b> | <b>Punishments</b>                             |
|---|--|-----------------------------------|--|
| Cyber Stalking                                | Stealthily following a person, tracking his internet chats.    | 43, 65, 66                        | 3 years, or with fine up to 2 lakh             |
| Cyber Pornography including child pornography | Publishing Obscene in Electronic Form involving children       | 67, 67 (2)                        | 10 years and with fine may extends to 10 lakh  |
| Intellectual Property Crimes                  | Source Code Tampering, piracy, copyright infringement etc      | 65                                | 3 years, or with fine up to 2 lakh             |
| Cyber Terrorism                               | Protection against cyber terrorism                             | 69                                | Imprisonment for a term, may extend to 7 years |
| Cyber Hacking                                 | Destruction, deletion, alteration, etc in a computer resources | 66                                | 3 years, or with fine up to 2 lakh             |
| Phishing                                      | Bank Financial Frauds in Electronic Bankin                     | 43, 65, 66                        | 3 years, or with fine up to 2 lakh             |
| Privacy                                       | Unauthorized access to computer                                | 43, 66, 67, 69, 72                | 2 years, or with fine upto 1 lakh              |