

CONSUMER PROTECTION ACT - 1986

Consumer Protection Act, 1986

India with majority of poor, helpless consumers and disorganised markets felt that there is a need for a law to protect the consumers from cheating. In order to protect the consumers, the Central Govt. enacted the law in the year 1986 to promote the welfare of the society.

The Consumer Protection Act extends to the whole of India except J & K. The act came into force on 15th April 1987. It covers all the sectors whether private, public or cooperative. The act was amended three times in 1991, 1993 and 2002. The amendments stipulate a specific time frame of 21 days within which the court has to decide the admissibility of the complaint.

Objectives / Rights

- (i) Right to Consumer Education
- (ii) Right to Safety.
- (iii) Right to seek redressal.
- (iv) Right to be heard.

(v) Right to choose.

(vi) Right to Information

Definitions

1) Appropriate laboratory

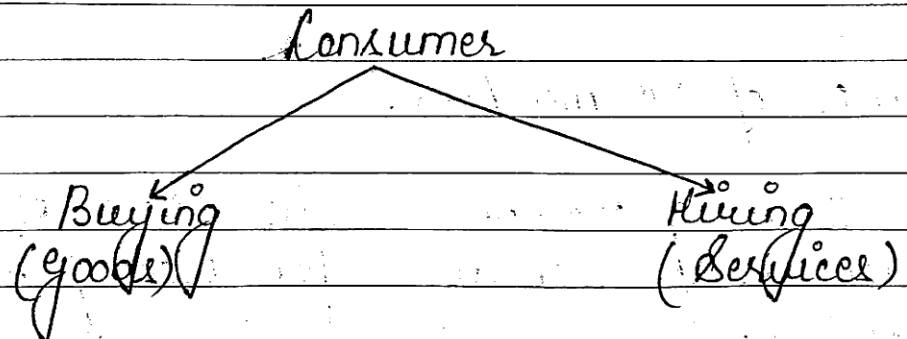
2) Complaint : Filed by complainant, Sec. 2(1)(b).

(i) A consumer or any voluntary consumer association registered under Company's Act - 1956 or the Central govt. or state govt.
OR

(ii) Where one or more consumers exists, then a consumer representative.

(iii) In case of death of the consumer, the legal heir or representative.

* 3) Consumer :



4) Defect : Any imperfections or short-comings in the goods w.r.t standards, purity etc.

5) Deficiency : Any imperfections or short-comings in the services.

6) Manufacturer : Sec. 2(1)(j)

CONSUMER PROTECTION COUNCILS.

5 Central Consumer
Protection Council

State Consumer
Protection Council.

1) Sec 4 - Through
notification by
10 Central govt.

Sec 7 - Through
notification by
State govt.

2) It shall consist of
following members:

It shall consist of :

(i) 15 Minister incharge of
consumer affairs (Chairman)

Minister incharge of
consumer affairs of state
and any no. of official
or non official members.

(ii) Any no. of official or non-
official members as
20 prescribed.

(iii) Consist of 150 members.

3) The term of ~~members~~
25 office is for three
years.

The term of office is
for two years.

4) No. of meetings : Once
30 in a year.

No. of meetings : Two
times a year.

* ✓/amp CONSUMER REDRESSAL MACHINERY

Basix	District Forum	State Commission	National Commission
1) Act	Sec. 9(a) (CPA - 1986)	Sec. 9(b)	Sec. 9(c)
2) Estb. by:	State Government - notification in official gazettee	State Government - notification in official gazettee	Central Govt - notification in official gazettee
3) Composition	(i) A qualified district judge. (ii) Two other members of which one shall be a woman.	(i) A high-court judge appointed by the State govt. (ii) (Same)	(i) Judge of a Supreme Court appointed by Central Govt in consultation with Chief Justice of India
	<u>Qualifications:</u>	<u>Qualifications:</u>	
	(i) Not less than the age of 35. (ii) Should possess a bachelor's degree from a recognized university. (iii) The person should have ability, integrity and standing and should have adequate knowledge and experience of atleast 10	(i) (✓) (ii) (✓) (iii) (✓) } (Same)	(ii) Not less than 2, one of which shall be women.
			<u>Qualifications:</u> (i) } (ii) } (Same) (iii) }

	yrs in dealing (with problems) associated with trade, commerce, accountancy, law, economics, public affairs etc.		
4) Age of Judge	65 years Term of judge - 5 yrs.	67 years 5 yrs.	70 years 5 yrs.
5) Juris- diction.	The compensation is accepted upto ₹ 20 lakhs	₹ 20 lakhs - ₹ 1 crore.	₹ 1 crore and Above.
6) Appeals to be made.	Appeal can be made to State Commission with a payment of ₹ 125,000.	Appeal will be made to National Commission with a payment of ₹ 35,000	Appeal will be made to Supreme Court with a payment of ₹ 50,000

Limitation of Time Period for Filing of a Complaint [Sec (A)] :-

Provides that the District Forum, SC, NC shall not admit a complaint unless it is filed within 2 yrs. from the date on which the cause of action has taken place. In case of any analysis or testing is required then 45 days is granted and the report of the same should be submitted within 21 days.

The appeals are to be made within 30 days and in case any genuine problems arise then 15 days is given as a grant.

18 Sept '18.

THE FACTORIES ACT - 1948

1881

- Health and safety
- Protected Child Labour

1911

110

The Factories Act is a comprehensive piece of legislation providing provisions relating to approvals, licensing and registration of factories, health, safety and welfare of employees.

Employment rules regarding adult, women and children offenses and penalties etc. The main objectives of the act are:

- (i) to regulate working conditions
- (ii) health and safety of workers.

The act is applicable to the whole of India.

FACTORY [Sec 2(M)]

A factory means any premises including the precincts thereof -

- (i) where 10 or more workers are working in any part of which manufacturing process is carried out with the help of power in preceeding 12 months.

Power means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.

(iii) where in 20 or more workers carry out any manufacturing process in any part without the help of power in the preceding 12 months, is called as a factory.

OCCUPIER OF THE FACTORY.

The occupier of a factory means a person who has ultimate control over the affairs of the factory. In case of a firm or other associations of individuals, then individual, partners or members are deemed (considered) as the occupier.

In case of a company, the director shall be the occupier. In case of a factory owned and controlled by Central Govt, State Govt and local authority, then the person appointed by CG, SG and LA will be considered as employee.

In case of a ship, the owner of the dock or ship or his agent or master of the ship or any other officers in charge of the ship shall be deemed as the occupier.

Duties of Occupier.

(i) The occupier shall ensure health and safety and welfare of all the workers while at work.

(ii) Provision and maintenance of plant and systems of work and safe without risk to the health of workers.

(iii) Make arrangements for ensuring safety and absence of risk in connection to handling, storage

(iv) The occupier should provide supervision, training, information and instructions as and when required.

(v) To maintain safe conditions with regards to means of access, egress etc., safe and without risk.

(vi) The provision, maintenance or monitoring of such working environments in a factory for safety of workers and provision of adequate facilities and arrangement of welfare of workers.

APPROVAL, LICENSING AND REGISTRATION.

(i) The SG is empowered to make rules for the purpose of approval, licensing and registration under the Factories Act.

(ii) The occupier under Sec. (6) of the act as stated by the State Govt. is required to obtain previous permission in writing from SG and chief ~~in~~ inspectors of the factories.

(i) Submission of plans of any class or description of factory.

(ii) Location

(iii) Construction or Extension of the factory.

10 Section - 7 - Notice by the occupier.

The license will not be granted or renewed unless a notice alongwith prescribed fees are paid to the chief inspector. The occupier is required to serve a notice atleast 15 days prior he begins to occupy or use any premises of a factory to the chief inspector.

The notice contains the following particulars:

(i) Name and location of the factory.

(ii) Name and address of the occupier as well as the owner.

(iii) Address to which communication relating to the factory may be set.

(iv) The nature of manufacturing process, which is to be carried on.
(Horse power).

30 (v) Total rated HP installed, or to be installed.

(vi) No. of workers likely to be employed in the factory.

INSPECTING STAFF

The govt. through notifications in the official gazette may appoint any person as chief inspector and he shall enjoy all the powers of an inspector, in addition to the specific powers granted under the act. The govt. is also authorised to appoint additional chief inspector, joint chief inspector, deputy chief inspector as it thinks fit to assist the chief inspector.

Every C.I., AdCI, joint.CI, deputy C.I shall be deemed to be public servant within the meaning of Indian Penal Code. The govt. shall also appoint any person with prescribed qualifications as inspectors through a notification in the official gazette.

* Section 9 - Power of Inspectors.

The inspector has the following powers within the local limits (jurisdiction) for which he is appointed.

- (i) He may enter any premises or place which he believes is a factory along with any assistance who are govt. servants, local or public authority or with an expert.
- (ii) Make examinations of the premises, plant, machinery, substance or articles.

- (iii) ~~He~~ Enquire any accident or dangerous occurrence.
- (iv) May ask the concern people to produce any prescribed documents or registers relating to the factory but cannot demand production of registers that are kept outside the premises of a factory.
- (v) The inspector can seize or take copies of registers, documents, records for any inspection purposes.
- (vi) He can direct the occupier that any premises or any part to be left untouched as long as it is necessary for the purpose of examination.
- (vii) To take measurements and photographs for examination and take necessary instruments and equipments with him.
- (viii) Can ask the occupier or owner to dismantle any articles or machinery if such an article or machinery is likely to cause danger to health and safety of employees.
- (ix) Exercise any other powers as maybe prescribed by law.

Penalty for Obstructing the Inspector. (Sec. 95).

Whoever willfully obstructs an inspector -

In performing any powers granted under the law or if the occupier fails to produce any registers or documents in demand by the inspector or conceals or prevents any worker in a factory appearing ~~before~~ or being examined by an inspector, then the person shall be imprisoned for upto 6 months or a fine upto ₹10,000 or both.

PROVISIONS RELATING TO HEALTH.

Health - Sections 11 to 20, Chapter 3 of Factories Act

- (i) Cleanliness - Section 11.
- (ii) Disposal of Waste and Effluents - Section - 12.
- (iii) Ventilation and Temperature - Section - 13.
- (iv) Dust and Fumes - Section - 14.
- (v) Artificial Humidification - Section - 15.
- (vi) Overcrowding - Section - 16.
- (vii) Worker distances - 9.9 cubic metres - Those factories set prior to 1948.
14.2 cubic metres.
- (viii) Drinking Water - Section - 18.
- (ix) Lighting - Section - 17.
- (x) Urinals - Section - 19.
- (xi) Spittoons - Section - 20.

SAFETY - Sec. 21 - Sec. 41.

- (i) Fencing of Machinery - Sec. 21.
- (ii) Working on or near machinery in motion - Sec. 22.
- (iii)₅ Employment of young persons on dangerous machines - Sec. 23.
- (iv) Striking gears for cutting off power - Sec. 24.
- (v) Self-acting machinery - Sec. 25.
- (vi) Lading of new machinery - Sec. 26.

Note : All machines installed in a factory after 1949 needs to be mandatorily enclosed.

- (vii)₁₅ Prohibition of employment of women and children near cotton openers - Sec. 27.

1st Oct '18

SHELTERS, REST ROOMS AND LUNCH ROOMS.
(Section 47).

Creeches (Section 48).

Welfare Officers (Section 49).

Working Hours of Adults.

(i) Sec. 51 - Not more than 48 hours a week.

(ii) Sec. 54 - Daily hours of work - restricts the daily hours of work to 9 provided the approval of the chief inspector is taken. The management has the power to vary the working hours within the prescribed limits.

(iii) Interval during daily hours of work (Sec. 55):
No adult worker is required to work for a period exceeding 5 hours for an interval of rest for at least half an hour. This section also permits to increase work hours upto 6 at a stretch.

(iv) Ahead over period (Section 56) : 10½ hours

(v) Weekly holidays (Section 52) : Sundays.

(vi) Compensatory Holidays (Section 53) : Workers are allowed in lieu of some due holidays on which the worker has worked.

(vii) Night shifts (Section 57).

(viii) Restriction on double employment (Section 60).

EMPLOYMENT OF WOMEN.

The provisions of Factory's Act are applicable to both male and female workers but few provisions relating to adult female workers have been incorporated.

(i) Work on or near a machinery in motion (Sec. 22).

(ii) Prohibition of employment of women near cotton openers (Sec. 27).

(iii) Creches (Sec. 48). <http://www.a2zsubjects.com>

(iv) Restriction on employment of women (Sec. 66)

~~17~~ • Should not work more than 48 hours a week or 9 hours on any day.

~~18~~ • No women workers should be allowed to work in any factory except between 6 am to 7 pm (but) women workers may be permitted to work in night in fish canning and fish curing factories.

~~19~~ • No change in shifts for women workers except after a weekly holiday or any other holiday.

(v) Dangerous operations (Sec. 87).

EMPLOYMENT OF YOUNG PERSONS.

Article 24 of the Constitution of India lays down that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any hazardous employment.

The various provisions relating to the employment of young persons in factories are as follows:

(i) Prohibition of young children from employment (Sec. 67)

(ii) Non-adult workers to carry tokens (Sec. 68)

• Certified surgeons : Certificate of fitness

(iii) Certificate of fitness (Sec. 69).

Valid for 12 months, subject to re-examination.

(iv) Working hours for children

• Not more than $4\frac{1}{2}$ hours in a day.

• Should not be allowed to work during the night, i.e. between 10 pm to 6 am.

• Not permitted to work on any day on which he has already been working in any other factory (Sec. 71)

9th Oct '18

* ANNUAL LEAVE WITH WAGES (Important).

1) No of working days : 240 days in a year or more.

240 days

Adults

Child

• One day for every 20 days worked during the previous year.

• One day for every 15 days worked.

2) Computation of no. of days : The 240 days are calculated as follows :

I. (i) Days of layoff

(ii) Maternity leave upto 12 weeks.

(iii) Leave earned in the previous year.

II. Where a worker has started his ~~work~~ service on a day other than 1st day of January, then he shall be entitled to ~~LWP~~ LWP (leave with pay) only if he has worked for $\frac{2}{3}$ rd no. of days in the remaining days of the year.

III. If a worker is wrongfully suspended, then his days of suspension will be computed for arriving at 240 days.

3) Discharge, Dismissal, Termination or leaving the Employment:

Even if the employee has not worked for 240 days, still the payment shall be made.

(i) Before the expiry of 2nd working day, in case of discharge, dismissal, quits employment.

(ii) In case of death or retirement - Before the expiry of 2 months.

4) Carry forward of leave : The unavailed leave gets carried forward to the leave of the following year.

For adult workers - 30 days leave will be carried forward.

For child-workers - 40 days leave will be carried forward.

5) Procedure to avail annual leave :

Application in writing to the manager - not less than 15 days in advance before the commencement of leave but in case of Public Utility services an application should be made within 30 days in advance.

6) Others :

(i) Payment in lieu of leave shall be made before the expiry of second working day.

(ii) Mode of recovery of unpaid wages - Chapter VIII of Factories Act - 1948.

PENALTIES AND PROCEDURES

(Chapter - X of Factories Act - 1948)

(Sec. 92)

- 1) General Penalty for Offenses - ~~Very~~ Violation of any provisions of the act, the occupier and the manager of the factory if found guilty then -

Imprisonment - 2 years (maximum)

or with a fine of Re 1 lakh. or with both.

Penalty of ₹ 1,000 if offenses continue after conviction.

- 2) Enhance Penalty after previous conviction:
(Sec. 94)

Imprisonment for 3 years

Fine - not less than ₹ 10,000 - maximum of ₹ 2 lakhs or both.

- 3) Penalty for obstructing the inspector.
(Sec. 95) - Re 10,000

- 4) Penalty for contravention of provision or section.

Sec. 41 (B), Sec. 41 (c), Sec. 41 (H)

Penalty of Re 2 lakhs and ₹ 5000 on daily basis if the contravention continues

Imprisonment - 7 years.

- 5) Offense by workers (Sec. 97).
- Re 500

- 6) Penalty for issuing false certificate of fitness
(Sec. 98)

Imprisonment - 2 months

Fine - ₹ 1000 ~~or~~
or Both.

5th Oct '18

UNIT - V

Workmen's Compensation Act - 1923.

The WCA - 1923 is the oldest measure adopted to benefit the workers. It was the first step towards social security in India.

The workers nowadays are invariably exposed to risks of accidents due to technological developments and automation in factories. Prior to WCA - 1923, the employer could avoid liability by pleading defence of common employment or assumed risks or negligence. The act imposes statutory liability upon an employer to discharge his moral obligations towards his employees when they suffer from physical disabilities and diseases during the course of employment.

The act extends to whole of India including the state of Jammu and Kashmir. The act does not apply to those areas which are covered by the Employee's State Insurance Act. The act does not apply to members of armed forces.

Definitions :

1) Dependent Sec [1(d)].

(i) A widow

(ii) a minor legitimate or adopted son

(iii) an unmarried or legitimate daughter

(iv) A widowed mother.

(v) A son or daughter who have attained the age of 18 and are infirm.