

Legal And Ethical issues in Business

Unit : 2 SALE OF GOODS AND CONSUMER
ACT

INTRODUCTION

- It is one of the special types of contract. Initially, it was the part of the Indian Contract Act, 1872. Later it was deleted and a separate sale of Goods Act was passed in 1930. It came into force on 1st July, 1930. It extends to whole of India except the State of Jammu & Kashmir.

CONTRACT OF SALE OF GOODS

- As per Section 4
- (i) of the Sale of Goods Act, 1930, Contract of sale of Goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.
- Essential Elements: -
- There must be at least two parties. (Bilateral Contracts)
- - The subject matter of the contract must be goods.
- - A price in money should be paid or promised.
- - A transfer of property in goods from seller to the buyer must take place.
- - It must be absolute or conditional. - All other essentials of a valid contract must be present.

- **Definition of Sale of Goods:**

- ☐ According to Section 4(3) of the Act, a "contract of sale of goods" refers to a contract by which the seller transfers or agrees to transfer the ownership of goods to the buyer for a price.
- ☐ Two essential elements of a contract of sale:
 - transfer of ownership and
 - a price paid or agreed to be paid.

- ☐ The Act differentiates between a "sale" and an "agreement to sell."
- ☐ Sale: The property in the goods passes to the buyer immediately upon making the contract.
- ☐ Agreement to Sell: The property in the goods transfers at a later date or upon the fulfilment of certain conditions.

- **Distinction between Sale and Agreement to Sell:**

- ☐ **1. Definition:**

- ☐ **Sale:** A "sale" refers to a contract where the seller transfers or agrees to transfer the ownership of goods to the buyer for a price. It is an executed contract, and the ownership of the goods immediately passes to the buyer upon making the contract.

- ☐ **Agreement to Sell:** An "agreement to sell" is a contract by which the seller agrees to transfer the ownership of goods to the buyer at a future date or upon the fulfillment of certain conditions. It is an executory contract, and the ownership of the goods remains with the seller until the agreed-upon conditions are met.

- ☐ **2. Transfer of Ownership:**

- ☐ **Sale:** In a sale, the transfer of ownership is immediate and absolute. Once the contract is made, the buyer becomes the owner of the goods, and the seller's rights and obligations are generally terminated.
- ☐ **Agreement to Sell:** In an agreement to sell, the transfer of ownership is deferred and conditional. Ownership will pass to the buyer only when the agreed-upon conditions are fulfilled or the future date arrives.

- ☐ **3. Risk of Loss:**

- ☐ **Sale:** After the sale, the risk of any damage or loss to the goods shifts to the buyer. The buyer is responsible for the goods' safety, and the seller is no longer liable for any damages.
- ☐ **Agreement to Sell:** Until the ownership is transferred to the buyer, the seller bears the risk of loss or damage to the goods. If any harm occurs to the goods before the ownership transfer, the seller will be responsible for it.

- **4. Nature of Contract:**

- ☐ **Sale:** A sale creates an executed contract, meaning that all obligations are completed at the time of making the contract. The buyer has full legal title to the goods.
- ☐ **Agreement to Sell:** An agreement to sell creates an executory contract, meaning that some obligations are yet to be performed. The full transfer of ownership is pending, and the buyer has an equitable interest in the goods until the transfer occurs.

- **5. Right to Reclaim Goods:**

- ☐ **Sale:** Once the goods are sold, the seller cannot reclaim them from the buyer, except in cases where the buyer has not paid the full price and is in breach of the contract.
- ☐ **Agreement to Sell:** If the buyer defaults in paying the price or meeting other agreed-upon conditions, the seller has the right to reclaim the goods before the ownership is transferred.

- ☐ **6. Insolvency:**
- ☐ **Sale:** If the buyer becomes insolvent after the sale but before taking delivery, the seller cannot reclaim the goods from the official receiver or assignee in the buyer's insolvency.
- ☐ **Agreement to Sell:** If the buyer becomes insolvent after the agreement but before taking delivery and paying the price, the seller can reclaim the goods from the official receiver or assignee in the buyer's insolvency.

- ☐ **7. Legal Remedies:**
- ☐ **Sale:** In case of a breach of a sale contract, the innocent party can sue for damages and claim specific performance if applicable.
- ☐ **Agreement to Sell:** If the buyer breaches the agreement to sell, the seller can sue for damages but cannot claim specific performance as the transfer of ownership is still pending.

- ☐ **8. Applicability:**

- ☐ **Sale:** Sale applies when there is an immediate transfer of ownership of the goods to the buyer.
- ☐ **Agreement to Sell:** Agreement to sell applies when the transfer of ownership is contingent on certain conditions being fulfilled or at a future date.
- ☐ In conclusion, the key distinctions between "Sale" and "Agreement to Sell" lie in the timing of the transfer of ownership, risk of loss, nature of the contract, right to reclaim goods, insolvency implications, and legal remedies available in case of a breach. Understanding these differences is crucial for businesses and individuals engaged in commercial transactions involving the sale of goods under the Sale of Goods Act, 1930.

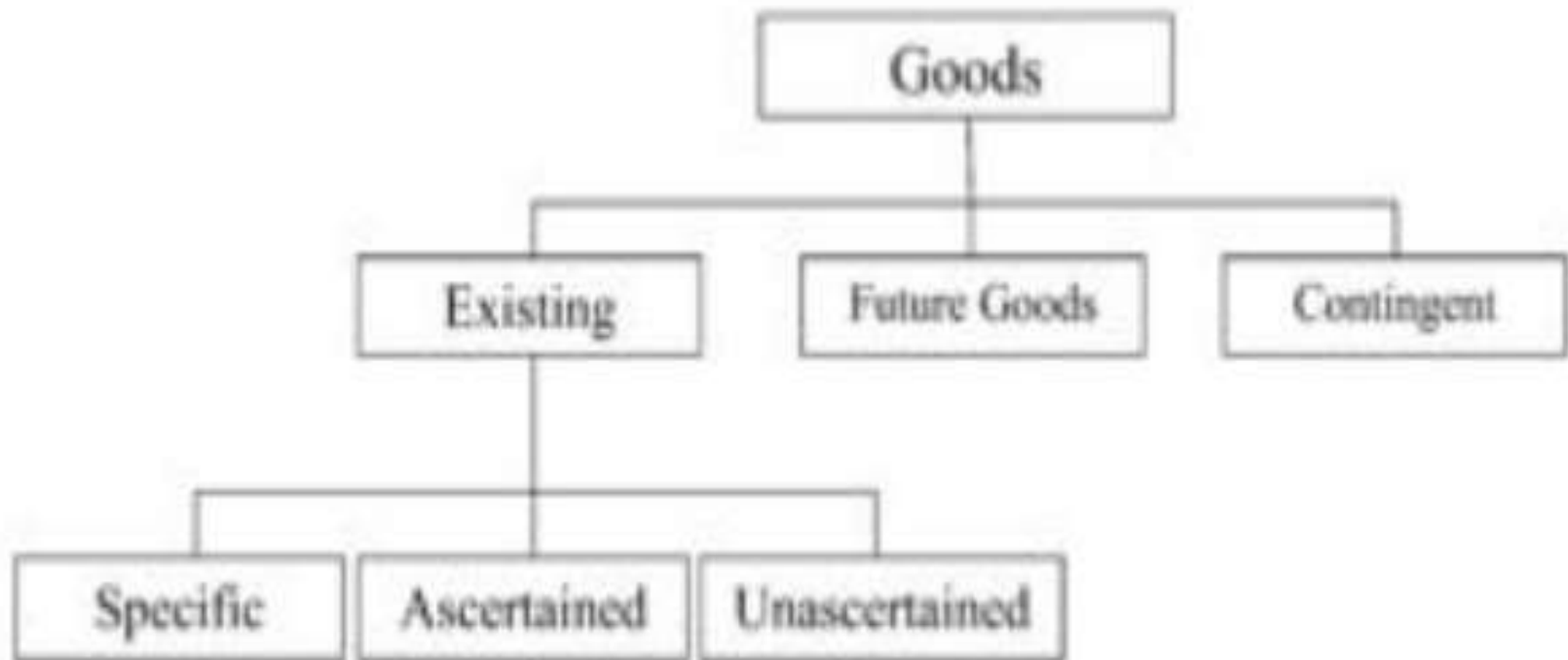
- **Essential Elements of a Contract of Sale:**

- ☐ Under the Sale of Goods Act, 1930, a contract of sale is legally binding and enforceable if it satisfies certain essential elements. These essentials are crucial for the validity of the contract and must be present for it to be considered a valid contract of sale.
- The five essential elements for a contract of sale under the Sale of Goods Act, 1930 are as follows:
 - ☐ 1. Offer and Acceptance (Mutual Consent):
 - ☐ 2. Goods:
 - ☐ 3. Price
 - ☐ 4. Transfer of Ownership:
 - ☐ 5. Intention to Create Legal Relations:

GOODS - MEANING

- As per Sec 2(7), it means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.
- - Money means current money and it includes rare and old coins.
- - Actionable claim means what a person cannot make a present use of or enjoy, but can recover it by means of a suit or an action. Thus, a debt due to a man from another is an actionable claim and cannot be sold as goods, although it can be assigned.

Types of Goods:



Existing Goods:

- **It means such goods which are in existence at the time of the contract of sale i.e. owned or possessed by the seller**
- **Example : 'X' sells two Motorcycles to 'Z' which are standing in front of his door.** here in this example motorcycles are existing goods, which are owned and possessed by 'X'.

Specific or Ascertained Goods:

- **It means goods identified and agreed upon at the time the contract of sale has been made.**
- X has three mobile phones Nokia, Samsung, and Micromax. X offers to sell Samsung , Y accepts to purchase it . Here Samsung phone is considered Specific Goods.

Unascertained goods :

- Unascertained goods are those goods which are not identified at the time of making of the contract of sale are called 'Unascertained Goods'

Example :

X has 5 horse , he offers to sell 2 horse to 'Y' but without specifying which of them to be delivered. Y accepts to purchase. It is sale of unascertained goods.

Future Goods :

- According to Section 2 (6) of the Sale of Goods Act, 1963 "future goods" means which are to be manufactured or produced or acquired by the seller after the making of the contract of sale .

Example :

X agrees to sell Z the grass to be ;grown on his land next month.

Contingent Goods :

Contingent goods means goods the acquisition of which by the seller depends upon a contingency of happening or non-happening of an event.

Example

A agrees to sell a Property to B if he wins the case . A's title is subject to the contingency of winning and hence the Property is called 'Contingent goods'.

document of title to goods

- “includes a bill of lading, dockwarrant, warehouse keeper’s certificate, wharfingers’ certificate, railway receipt, 5 [multimodal transport document,]
- warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise,
- either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

The Effect of Perishing Goods on a Contract of Sales

- Perishing goods affect sales contracts in different ways, depending on at what point the goods become unfit for sale. Generally, whoever owns the goods is responsible for them, meaning parties take on varying degrees of risk throughout the sales process.
- However, if the goods are negatively affected because of the action or inaction of one of the parties, liability can shift accordingly.

Goods perishing before making a contract

- - Where in a contract of sale of specific goods, the goods without the knowledge of the seller have perished at the time of making the contract, the contract is void.
- - If the seller was aware of the destruction and still entered into the contract, he is stopped from disputing the contract. Moreover, perishing of goods not only includes loss by theft but also where the goods have lost their commercial value.

Goods perishing after agreement to sell

- - Where there is an agreement to sell specific goods, and subsequently the goods without any fault of any party perish before the risk passes to the buyer, the agreement is thereby avoided. The provision applies only to sale of specific goods.
- - If the sale is of unascertained goods, the perishing of the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver.

Formalities of the contract of sale of goods

- Except where specifically mentioned by the law, there is no prescribed form required to draft a contract of the sale of goods. The agreement between the parties, i.e., the buyer and the seller may be implied or may be expressed acknowledged by the conduct of the parties. Section 5 of the Sale of Goods Act, 1930 describes as to how the contract of the sale of goods can be framed. Therefore, the contract of the sale of goods can be made-

1. By an offer from the buyer to buy and seller to sell goods for a fixed consideration mentioned in the agreement. Such an offer of buying or selling must have an acceptance of the opposite party. The delivery of the goods can be executed in the following manner:
 - immediate delivery of the goods; or
 - immediate payment of the price or both; or
 - by delivery or payment in instalments; or
 - the delivery or payment or both to be postponed.

- 2. Subject to the provisions of any law for the time being in force, a contract of the sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied by the conduct of the parties.
- In nutshell, a contract of the sale may be made in any of the following modes:
 1. There may be an immediate delivery of the goods; or
 2. There may be an immediate payment of a price, but it may be agreed that the delivery is to be made at some future date; or

3. There may be an immediate delivery of the goods and an immediate payment of the price; or
4. It may be agreed that the delivery or the payment or both are to be made in installments; or
5. It may be agreed that the delivery or the payment or both are to be made at some future date.

PRICE & ITS FIXING

- Price is money consideration for the sale of goods and it constitutes the essence for a contract of sale. The price may be fixed:
- (i) at the time of contract by the parties themselves, or
- (ii) may be left to be determined by the course of dealings between the parties, or
- (iii) may be left to be fixed in some way stipulated in the contract, or
- (iv) may be left to be fixed by some third-party.

CONDITIONS & WARRANTIES

- **Condition**

- - If the stipulation forms the very basis of the contract or is essential to the main purpose of the contract, it is a condition.
- - The breach of the condition gives the suffering party a right to treat the contract as repudiated (cancelled). Thus, if the seller fails to fulfill a condition, the buyer may treat the contract as repudiated, refuse the goods and, if he has already paid for them, recover the price. He can also claim damages for the breach of contract.

- - Stipulation (condition) as to time of payment are not to be deemed conditions (and hence not to be of the essence of a contract of sale) unless such an intention appears from the contract.
- - Whether any other stipulation as to time (e.g., time of delivery) is of the essence of the contract or not depends on the terms of the contract.

1) Condition as to title -

- In every contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller, that :
- In case of a sale, he has a right to sell the goods, and
- In case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

The words 'right to sell' contemplate not only that the seller has the title to what he purports to sell, but also that the seller has the right to pass the property. If the seller's title turns out to be defective, the buyer may reject the goods.

ii) Condition as to Description --

- In a contract of sale by description, there is an implied condition that the goods shall correspond with the description. The term 'sale by description' includes the following situation ;
- Where the buyer has not seen the goods and buys them relying on the description given by the seller.
- Where the buyer has seen the goods but he relies not on what he has seen but what was stated to him and the deviation of the goods from the description is not apparent.
- Packing of goods may sometimes be a part of the description. Where the goods do not conform to be method of packing described (by the buyer or the seller) in the contract, the buyer can reject the goods

iii) Condition as to Quality or Fitness --

- Where the buyer, expressly or by implication, makes known the seller the particular purpose for which goods are required, so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply (whether or not as the manufacturer or producer), there is an implied condition that the goods shall be reasonably fit for such purpose. In other words, this condition of fitness shall apply, if:
 - The buyer makes known to the seller the particular purpose for which the goods are required,
 - The buyer relies on the seller's skill or judgment ,
 - The goods are of a description which he sellers ordinarily supplies in the course of his business, and
 - The goods supplied are not reasonably fit for the buyer's purpose.

v) Condition as to Merchantability

- Where the goods are bought by description from a seller, who deals in goods of that description (whether or not as the manufacturer or producer) there is an implied condition that the goods shall be of merchantable quality.
- Merchantable quality ordinarily means that the goods should be such as would be commercially saleable under the description by which they are known in the market at their full value.

v) Condition as to Wholesomeness

- In case of sale of eatable provisions and foodstuff, there is another implied condition that the goods shall be wholesome. Thus, the provisions or foodstuff must not only correspond to their description, but must also be merchantable and wholesome. By 'wholesomeness' it means that goods must be for human consumption.

vi) Condition Implied by Custom or Trade Usage:

- An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. In certain sale contracts, the purpose for which the goods are purchased may be implied from the conduct of the parties or from the nature or description of the goods. In such cases, the parties enter into the contract with reference to those known usage. For instance, if a person buys a perambulator or a medicine the purpose for which it is purchased is implied from the thing itself; the buyer need not disclose the purpose to the seller.

vii) Conditions in a Sale by Sample:

- A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied to that effect. Usually, a sale by sample is implied when a sample is shown and the parties intend that the goods should be of the kind and quality as the sample is.

viii) Conditions in a sale by Sample as well as by Description:

- A vast majority of cases where samples are shown, are sales by sample as well as by description. In a contract for sale by sample as well as by description, the goods supplied must correspond both with the sample as well as with the description

Warranties:

-
- - If the stipulation is collateral to the main purpose of the contract, i.e., is a subsidiary promise, it is a warranty.
- - The effect of a breach of a warranty is that the suffering party cannot repudiate (cancel) the contract but can only claim damages.
- - Thus, if the seller does not fulfill a warranty, the buyer must accept the goods and claim damages.

IMPLIED WARRANTIES

- Implied warranties are those which the law presumes to have been incorporated in the contract of sale in spite of the fact that the parties have not expressly included them in a contract of sale.

Warranty as to possession

There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer's possession is disturbed by anyone having superior title than that of the seller, the buyer may sue the seller for the breach of warranty.

Warranty as to freedom from encumbrances

There is an implied warranty that the goods shall be so **free from any charge or encumbrances in favor of any third party. If the goods are found subject to some charge in favor of third party, the buyer may sue the seller for damages. However, this warranty is not applicable where the buyer has been informed of such charge or has notice of the same.**

Difference between Condition and Warranty

Aspect	Condition	Warranty
Nature	Fundamental term of the contract	Collateral or secondary term
Legal Provision	Section 12(2) of the Sale of Goods Act	Section 12(3) of the Sale of Goods Act
Effect of Breach	Allows buyer to repudiate the contract	Allows buyer to claim damages only
Right to Reject Goods	Yes, buyer can reject goods and terminate contract	No, buyer cannot reject goods
Remedy Available	Repudiation + damages	Damages only
Importance in Contract	Goes to the root of contract	Does not affect the contract's core

- **When Does a Condition Become a Warranty?**
- Section 13 of the Sale of Goods Act explains when a breach of condition can be treated as a breach of warranty. This happens in the following cases:
 - **Buyer Waives Condition:** If the buyer expressly or impliedly waives the right to treat the term as a condition, it becomes a warranty.
 - **Buyer Elects to Claim Damages:** When aware of the breach, the buyer may choose to accept the goods and claim damages instead of repudiating the contract.
 - **Acceptance in Indivisible Contract:** If the contract is indivisible and the buyer accepts part or whole of the goods, the right to reject the goods is lost, and only damages can be claimed

Doctrine of Caveat Emptor

- The doctrine of caveat emptor has also been incorporated under Indian law through the Sale of Goods Act, 1930. Section 16 of the Act states that when a product is sold under a contract of sale, the law would not presume that the seller sold it under an implied warranty of fitness and quality.
- It is the consumer who has to examine the quality of the product and satisfy himself that the product is fit to meet his expectations and serve the purpose for which it is purchased.
- So long as the seller does not commit any fraud and does not provide any express warranty for the product's condition or fitness, the buyer will have no remedy against the seller for any defect in the product.

- The doctrine of *caveat emptor* is a Latin phrase meaning "let the buyer beware". It is a foundational principle in contract and commercial law—codified under Section 16 of the Sale of Goods Act, 1930—stating that a buyer is responsible for inspecting goods and judging their quality or suitability before purchase. The seller is generally not liable for defects unless fraud or express warranties are involved.
- **Core Meaning & Application**
- **Buyer Duty:** The purchaser must perform proper due diligence, test items, and verify that goods match their needs.
- **No Implied Warranty:** The law presumes the seller does not automatically guarantee quality or fitness for a specific purpose just by selling an item in an open market.
- **Visible Flaws:** The rule applies strictly to patent (open and visible) defects that a normal inspection would reveal.

Exceptions to Caveat Emptor:

- **Fitness of the Product for the Buyer's Purpose of Purchase-** Section 16 (1) If the buyer informs the seller about his purpose behind purchasing the goods and the seller does not sell the goods according to that knowingly, it relieves the buyer from the responsibility. In this case, it becomes the duty of the seller to supply the right goods to the buyer.
- For example, A informs B, who is a shoe seller, that he wishes to purchase shoes for running. If B still sells him shoes that are not for running, then B can be held responsible.

- **Sale of Goods Under the Trade Name**
- If the buyer purchases a branded product or a product sold under a trading name, then he is assured of the quality that is associated with that brand name. The seller in this case cannot be held responsible.
- In this case, the buyer is not relying on the skill or judgment of the seller but on the implied quality standard that the brand offers.

- **Goods Sold by Description :**

- If the buyer purchases the goods based on their description which matches the product, then the seller cannot be held liable. The seller will be held liable only if he provides an incorrect description of the goods.

- **Merchantable Quality of Goods- Section 16(2)**

- The seller must provide goods of merchantable quality to the buyer. This means that the goods must be fit for resale in the market and must pass the market standards. When the buyer purchases the goods from a seller based on a description and the seller deals in the goods of that description, then the goods must be of merchantable quality. If the goods are not of merchantable quality, then the seller can be held liable for the same.

- **Sale by Sample Inspection :**

- The Doctrine of Caveat Emptor does not apply if the buyer purchases the goods after careful inspection of a sample of the goods that he intends to buy and the seller supplies goods different from that sample. For example, A inspects a sample carpet manufactured by B. He gives an order of 100 carpets of the same quality as that of the sample. If B supplies carpets that do not match the sample carpet in quality, then he will be held liable. If the sale is made based on a description as well as a sample and the goods do not match both, then the buyer is not held responsible.

- **Trade Usage –**
- Section 16(3) The rule of Caveat Emptor does not apply if the seller deviates from informing the buyer about the quality or the fitness of goods/products. There is an implied condition or warranty on the condition of the goods.
- **Fraudulent Representation by the Seller**
- If the seller provides fraudulent information about the goods or conceals some important information about them, the buyer is not responsible.

The Consumer Protection Act, 2019

- The Consumer Protection Bill, 2019 was introduced in Lok Sabha by the Minister of Consumer Affairs, Food and Public Distribution, Mr. Ram Vilas Paswan on July 8, 2019. The Bill replaces the Consumer Protection Act, 1986.

Who is Consumer?

- Consumer — Section 2(7)A person is a consumer if they: (a) buy goods for personal (i.e., pay for them) and use those goods for personal purposes — not for resale or commercial use; or (b) Avail Services for consideration and use those services for personal purposes. The definition now explicitly includes people who buy goods or services online, through e-commerce platforms, teleshopping, or direct selling.

- **Defect—**

- Section 2(10) Any fault, imperfection, shortcoming, or inadequacy in the quality, quantity, potency, purity, or standard of goods that is required to be maintained by any law in force, or under any contract, or claimed by the trader in any manner.

- **Deficiency—**

- Section 2(11) Any fault, imperfection, shortcoming, or inadequacy in the quality, nature, and manner of performance of a service — compared to what is required by law, contract, or what was promised to the consumer.

- **Product Liability —**

- Section 2(34) The responsibility (liability) of a product manufacturer, product service provider, or product seller to pay compensation to a consumer for any harm or injury caused by a defective product or by a deficient service related to the product.

- **Unfair Trade Practice —**

- Section 2(47) A trade practice that uses any unfair method or deceptive practice for the purpose of promoting the sale, supply, or use of goods or services. This includes false representation about quality or price, misleading advertisements, and non-compliance with safety standards.

- **Six Consumer Rights**

- The Consumer Protection Act, 2019 formally recognises and legally protects six fundamental rights of every consumer. These rights form the foundation of the entire Act. Every provision of the Act is ultimately aimed at protecting one or more of these rights.

- **The Consumer Protection Act has recognised six rights of a consumer which are :**

- Right to Safety
- Right to Information
- Right to Choose
- Right to be heard
- Right to Redressal
- Right to Consumer Education.

- **Right to Safety**

- This right refers to as the right to be protected against the marketing of goods and services which are hazardous to life and property of the consumers.
- This right has a very wide scope of application, for instance, this right is available in the areas of electrical appliances, healthcare, automobile, pharmaceuticals, housing, travel etc. Nowadays, each and every field has an office for researchers who research and experiment and launch new products and appliances accordingly.
- Most of these products are not tested by the producers which prove to be harmful to the consumer. Therefore, after the implementation of this act, there is a mandate for each and every field to get all their products which are a danger to the life to be carefully tested and validated before launching it to the market.

- **Right to Information**



It refers to the right of a consumer to be informed of the quality, quantity, potency, purity, standard and price of the goods and services being sold by the shopkeeper.

- This right is given to the consumer in order to protect them from the various unfair trade practices conducted by the seller in order to earn more profits.
- Therefore, it is an obligation on the seller to provide the consumer with all the relevant information of the product he wishes to purchase.

- **Right to Choose**

- It is defined in the act as the right to be assured, wherever possible, to have access to a variety of goods and services at competitive prices.
- It is very common to find one product being sold at different possible prices by different sellers. This reflects the age of market competition which is found in almost all the countries.
- Therefore it is the right of all the consumers to purchase any product at any price which according to him is the best. A consumer cannot be forced to purchase a product of some particular brand or quality.

- **Right to be heard**

- It is referred to as the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums.
- This right was introduced for a consumer in order to ensure that all the complaints and issues of the consumers are heard duly under the appropriate authority.
- This is because of this right that almost all the big selling companies have a separate department known as the customer service to help the consumers in case of any dispute or any complaint regarding the quality or quantity of the product

- **Right to seek Redressal**

- If any consumer has been exploited by the seller or faced any unfair trade practices he can seek redressal i.e. compensation or damages under this right.
- This right ensures that all the issues of the consumers are dealt with and justice is done to him. A proper redressal mechanism has been set up by the government of India such as the consumer courts and forums at district and national level which is discussed later in this article.

- **Right to Consumer Education**

- It is the right of each and every person who is a citizen of India to have knowledge about all the laws and policies relating to the consumer.
- Therefore it is made sure the material regarding the consumer-related laws is easily available all over India but there is still a major part of the population who is not aware of his laws and rights.
- This is the reason many awareness programmes have been organized by the government of India such as 'jago grahak Jago' and the camps organized by various lawyers in the remote areas of the country.

- **Types of Product Defects:**

- A "defect" in a product is the basis for filing a consumer complaint or product liability claim. The Consumer Protection Act, 2019 and its rules recognize several specific types of defects. Understanding each type is important because it determines who is responsible and what remedy the consumer can claim.

- **1. Manufacturing Defect** This occurs during the manufacturing or assembly process. The product's overall design may be perfectly safe, but one or more specific units come out defective because of an error on the production line. Not all units of the product are defective — only those that were improperly assembled.
- **Example:** A car manufacturer produces 15,000 cars of a particular model. Due to a machine error on the assembly line, 300 units are fitted with faulty brake cylinders. These 300 cars have a manufacturing defect even though the overall car design is safe. The manufacturer is liable to compensate buyers of those 300 cars.

- **2. Design Defect** This is a defect inherent in the very design of the product, meaning that EVERY unit of that product is dangerous or defective — not just a few. The design itself is flawed, making the product inherently unsafe.
- Example : A company designs a baby carrier where shoulder straps are attached to the body of the carrier with clips that are too weak for the weight they need to bear. All units of the baby carrier have a design defect. Every carrier made from this design is potentially dangerous. The company is liable for harm caused to any consumer who uses any unit of this product.

- **3. Deviation from Manufacturing Specifications** The product does not meet the manufacturer's own stated or published specifications. The manufacturer claims certain measurements, compositions, or standards, but the actual product falls short of those claims.
- **Example:** A pharmaceutical company states on the packaging that each tablet contains 500 mg of paracetamol. Tests show the tablets contain only 300 mg. The product deviates from the manufacturer's own specifications. This is a defect — the consumer is not getting what was promised on the label.

- **4. Failure to Meet Express Warranty**
- The product does not perform as specifically promised by the manufacturer or seller in an express (written or spoken) guarantee or warranty.
- **Example** : A solar panel company advertises and guarantees a 22% energy conversion efficiency for its panels. Actual testing shows the panels only achieve 14% efficiency. The company has breached its express warranty. Consumers can claim compensation for the shortfall.

- **5. Failure to Provide Adequate Instructions or Warnings** The product lacks sufficient instructions for correct and safe use, OR fails to warn consumers about known risks. A product can be perfectly well-made but still be legally defective if it does not warn users about how to use it safely.
- **Example** : A highly corrosive industrial cleaning chemical is sold to consumers without any warning label about its toxic fumes or instructions on safe handling. A consumer mixes it with a household bleach and is hospitalised by the resulting toxic reaction. The manufacturer is liable for failure to provide adequate warnings.

- **6. Deficiency in Services Applies to service providers** (hospitals, airlines, banks, insurance companies, builders, etc.). A deficiency in service means the service falls short of the standard required by law, contract, or what was promised to the consumer.
- **Example** : A hospital delays emergency surgery for two hours because of an administrative paperwork dispute, causing permanent damage to the patient. The hospital's failure to provide timely emergency medical care is a deficiency in service. The patient (consumer) can file a complaint and claim compensation.

- **Product Liability**

- [Chapter VI, Sections 82-87] Product liability is one of the most powerful and entirely NEW features of the Consumer Protection Act, 2019.
- Before this Act, if a product harmed a consumer, the consumer had to go to a civil court and prove negligence under general tort law — a long, expensive, and difficult process.
- The 2019 Act creates a clear and consumer-friendly legal framework for product liability claims, making it much easier for consumers to get compensation.

- **Who can be held for Product Liability?**

- Product Manufacturer
- Product Service Provider
- Product Seller
- **Product Manufacturer** [Section 84]
- Any entity that manufactures, assembles, or produces the final product. This includes companies that design the product, those that assemble components made by others, and those whose brand name or trademark appears on the product.

- **Product Service Provider** [Section 85]A person who provides a service in relation to the product — for example, an authorized service centre that repairs or maintains a product. If the service centre creates or worsens a defect while servicing, it is liable.
- **Product Seller** [Section 86]A person who sells, distributes, supplies, leases, imports, or exports a product in the course of their business. This expressly includes e-commerce platforms that act as marketplaces.

- **When is a Product Manufacturer Liable?**
[Section 84]
- A manufacturer is liable if the product:
Contains a manufacturing defect — a flaw in how it was made. Has a design defect — the design itself is inherently dangerous.
- Deviates from manufacturing specifications — does not meet its own stated standards. Does not conform to an express warranty — does not perform as promised.
- Lacks adequate instructions for correct use — consumer was not told how to use it safely. Lacks adequate warnings about risk — consumer was not warned about known dangers.

- **When is a Product Seller Liable?**

[Section 86]

- A product seller is liable where: The seller exercised substantial control over the design, testing, manufacture, packaging, or labeling of the product.
- The seller altered or modified the product and the harm was caused by that alteration.
- The seller made an independent express warranty about the product. The manufacturer cannot be identified or is not subject to Indian court jurisdiction.

- Defences Available [Section 87] A manufacturer or seller is not liable under product liability if they can prove:
- The product was not in defective condition when it left their hands (the defect was caused after the product left the manufacturer/seller).
- The defect resulted from compliance with a mandatory government regulation (the government required a specification that caused the problem). The consumer modified or misused the product in a way that caused the harm.

- **Example** : Priya buys an electric iron from an e-commerce platform. The iron's heating element has a manufacturing defect. While using it normally, it explodes and burns Priya's hand. Priya can file a product liability claim against both the manufacturer (who made the defective iron) and the e-commerce platform (which sold it as a product seller under Section 86). Both can be held jointly liable. Priya does not need to prove negligence — the defect itself is sufficient for a claim.
- **Example** : Rajan buys a health supplement from a store. The store had removed the original packaging and repackaged the product under its own label with different instructions. Rajan has an adverse reaction. The store is liable under Section 86 — it modified/altered the product and must bear the consequences.

Redressal Mechanism

- The Consumer Protection Act proposes three-tier redressal mechanism:
- quasi-judicial machinery at the National, state and district level. The jurisdiction of each consumer redressal forum has been described under this act.

- **All Forum shall have the same powers as that of a civil court in the following matters:**
- In the summoning and enforcing of attendance of any defendant or witness
- In examining the witness on an oath
- In receiving the evidence on affidavit
- In any other matter which may be prescribed
- Demanding of the report of concerned analysis or test from the appropriate laboratory or from any other authorized relevant source.
- In discovering and producing any document or other material objects which are producible as evidence in the forum.

- **Three-Tier Consumer Dispute Redressal System**

- One of the most important features of the Consumer Protection Act, 2019 is its three-level system of Consumer Commissions (formerly called Consumer Forums).
- These are quasi-judicial bodies — they have the powers of a civil court but are designed to be faster, cheaper, and more accessible to ordinary consumers.

Three-Tier Consumer Dispute Redressal System

The Consumer Protection Act, 2019 establishes three levels of Consumer Commissions — quasi-judicial bodies with civil court powers, designed to be faster, cheaper, and more accessible than ordinary courts.

1

District (DCDRC)

One per district. Claims up to **Rs. 1 crore**.

2

State (SCDRC)

One per State/UT. Claims **Rs. 1–10 crore**. Hears District appeals.

3

National (NCDRC)

New Delhi. Claims above **Rs. 10 crore**. Hears State appeals. Supreme Court is final authority.

Consumer-Friendly Procedural Features

Filing & Access

- File in the district where the consumer **lives, works**, or where the incident occurred — no need to travel to the seller's city.
- **Online filing** via the **edaakhil portal** (edaakhil.nic.in) — from home, without visiting any office.
- Disputes can be resolved through **mediation** if both parties agree — faster, without a formal hearing.

Timelines & Helpline

- Complaint must be **admitted or rejected within 21 days** of receipt.
- Once admitted, resolved within **3 to 5 months**.
- Appeal structure: District → State → National → **Supreme Court**.
- National Consumer Helpline: **1800-11-4000** (toll-free) or **14404** for pre-complaint advice.

Example: Sunita buys a washing machine (Rs. 35,000) in Vadodara. She files at the Vadodara DCDRC — not the seller's Mumbai office — and can even file online. Well within the Rs. 1 crore jurisdiction.

Central Consumer Protection Authority (CCPA)

Created for the first time by the Consumer Protection Act, 2019, the CCPA is a **proactive regulatory body** — distinct from Consumer Commissions. It prevents violations before they harm consumers and takes class-based action for all consumers, not just individual

Investigate

Inquire into violations, unfair trade practices, and misleading ads — including **suo motu** action without any individual complaint.

Recall & Refund

Direct manufacturers to **recall dangerous goods** and order businesses to **refund** consumers charged for defective goods or deficient services.

Penalise Ads

Fine manufacturers, endorsers, and advertisers for misleading ads: up to **Rs. 10 lakh** (first offence), **Rs. 50 lakh** (repeat). Ban endorsers for up to **3 years**.

Advise & Alert

Issue advisories to businesses and e-commerce platforms, and public **safety notices** about dangerous products.

- ❑ **Key Distinction:** Consumer Commissions resolve individual disputes. The CCPA takes systemic action to protect ALL consumers — it can act before harm occurs and without any individual complaint.

Unfair Trade Practices & Misleading Advertisements

Section 2(47) — Unfair Trade Practices

Covers any **deceptive** method used to promote sales, including:

- False statements about quality, quantity, ingredients, or grade of goods/services
- Fake 'bargain price' or 'special discount' claims
- Prize contests or lucky draws with no genuine intention to honour prizes
- Hoarding goods to artificially create scarcity and inflate prices
- Manufacturing or selling spurious (fake) or substandard goods
- Non-compliance with mandatory safety standards

CCPA Guidelines on Endorsements — 2022

Endorsers — including celebrities and social media influencers — must personally verify claims in any advertisement they promote. Failure to do so makes the endorser liable to CCPA penalties, not just the brand.

Example

A food delivery app advertises 'guaranteed delivery in 30 minutes or free.' Only 5% of orders arrive on time and the free-order promise is almost never honoured. This is an unfair trade practice under Section 2(47) — a consumer can file with the CCPA or

E-Commerce Consumer Rights

The **Consumer Protection (E-Commerce) Rules, 2020** create specific legal obligations for all e-commerce companies selling to Indian consumers.

Mandatory Disclosure

Clearly display — before purchase — return policy, refund policy, warranty terms, delivery timelines, payment methods, and grievance procedure. Must disclose **country of origin**.

Grievance Officer & Timelines

Appoint a Grievance Officer with prominently displayed contact details. Acknowledge complaints within **48 hours**; resolve within **1 month**.

No Refusal, No Manipulation

Cannot refuse refunds for defective, damaged, or misrepresented goods. Cannot artificially inflate prices, engage in unjustified price discrimination, or give preferential treatment to affiliated sellers.

Explicit Consent — Rule 4(9)

Consumers must give **explicit, affirmative consent** for any optional charges. **Pre-ticked checkboxes** that automatically add charges are **prohibited**.

Dark Patterns — CCPA Guidelines 2023

Dark patterns are deceptive UI/UX design techniques that manipulate users into unintended actions. Under Indian law, they are classified as **unfair trade practices** under Section 2(47). The CCPA's Guidelines (notified 30 November 2023) prohibit **13 specific dark patterns** across all online platforms.

No.	Dark Pattern	Description
1	False Urgency	Fake scarcity or countdown timers to pressure purchases
2	Basket Sneaking	Auto-adding items or charges to cart without user consent
3	Confirm Shaming	Guilt-inducing opt-out language (e.g., "No, I don't want to save money")
4	Forced Action	Requiring irrelevant steps (sign-ups, downloads) to complete a purchase
5	Subscription Trap	Easy sign-up but hidden or difficult cancellation process
6	Interface Interference	Misleading button design that tricks users into unintended actions

7	Bait and Switch	Advertising one price or product, delivering another
8	Drip Pricing	Hiding additional charges until the final checkout step
9	Disguised Advertisements	Ads designed to look like editorial or organic content
10	Nagging	Repeated requests for permissions the user has already denied
11	Trick Wording	Double negatives or confusing language to mislead users
12	SaaS Billing	Charging users after a free trial ends with no prior reminder
13	Rogue Malwares	Fake buttons or links that install harmful software

Real Enforcement Actions by CCPA (2024–2025)



IndiGo Airlines — June 2024

Found using **Confirm Shaming** during web check-in. The opt-out button read: *'No, I will take the risk'* — implying not paying for a seat was risky. CCPA directed IndiGo to redesign the interface, clearly informing passengers they can proceed without a paid seat. IndiGo complied with a clear auto-assignment message.



BookMyShow — February 2025

Found automatically adding **Re. 1 per ticket** as a charitable donation via a pre-ticked checkbox — a classic case of **Basket Sneaking**. Following the CCPA notice, BookMyShow updated its interface to make the donation an explicit voluntary opt-in.



CCPA Advisory — June 5, 2025

All e-commerce platforms directed to: (1) conduct a **mandatory self-audit** within 3 months; (2) submit **self-declarations of compliance**; (3) make declarations publicly visible. By November 2025, **26 major platforms** — including Zomato, Blinkit, Ixigo, and Meesho — had submitted compliance declarations.

Sale of Goods Act, 1930 vs. Consumer Protection Act, 2019

Two landmark laws govern buyer-seller relationships in India — but with fundamentally different purposes, scope, and remedies.

Dimension	Sale of Goods Act, 1930	Consumer Protection Act, 2019
Primary Purpose	Governs contractual relationship between buyer and seller for moveable goods.	Protects consumers from defective goods, deficient services, unfair trade practices, and product liability.
Who Can Use?	Any buyer or seller, including businesses buying for commercial purposes.	Only 'consumers' — people buying for personal use, not for resale or business.
Forum & Speed	Civil Courts — very slow; cases can take years or decades.	Consumer Commissions — faster; 21-day admission, 3–5 month disposal.
Product Liability	No specific provision — general contract remedies only.	Detailed Chapter VI (Sections 82–87) with clear liability rules.
Dark Patterns & E-Commerce	Not addressed — written for a physical goods era.	Covered through E-Commerce Rules, 2020 and CCPA Dark Pattern Guidelines, 2023.
Regulatory Authority	None — purely contractual and judicial.	CCPA — proactive regulator with advisory, penalty, recall, and enforcement powers.