

# JAMMU AND KASHMIR CONSUMER PROTECTION ACT 1987

Act No. XVI of 1987

[3<sup>rd</sup>, October, 1987]

## 1. Short title, extent, commencement and application.

- (1) This Act may be called the Jammu and Kashmir Consumer Protection Act, 1987.
- (2) It extends to the whole of the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint and different dates may be appointed for different provisions of this Act.
- (4) Save as otherwise expressly provided by the Government by notification, in the Government Gazette, this Act shall apply to all goods and services.

## 2. Definitions.

In this Act, unless the context otherwise requires,.

- (a) "appropriate laboratory" means a laboratory or organisation recognised by the Government and includes any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect.
- (b) "complainant" means.
  - (i) a consumer ; or
  - (ii) any voluntary consumer association registered under the Companies Act 1956 ; or
  - (iii) the Government who makes a complaint ;
- (c) "complaint" means an allegation in writing made by a complainant that.
  - (i) as a result of any unfair trade practice adopted by any trader the complainant has suffered loss or damage ;
  - (ii) the goods mentioned in the complaint suffer from one or more defects ;
  - (iii) that services mentioned in the complaint suffer from deficiency in any respect ;
  - (iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods ;

with a view to obtaining any relief provided by or under this Act ;

(d) "consumer" means any person who.

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised, or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose ; or

(ii) hires any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person ;

(e) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies of disputes the allegations contained in the complaint ;

(f) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standards which is required to be maintained by or under any law for the time being in force as is claimed by the trader in any manner whatsoever in relation to any goods ;

(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under in any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service ;

(h) "Divisional Forum" means a Consumer Disputes Redressal Forum established under clause (a) of Section 7 ;

(i) "goods" means goods as defined in the Jammu and Kashmir Sale of Goods Act, Samvat 1996;

(j) "Government" means the Government of Jammu and Kashmir ;

(k) "manufacture" means a person who,.

(i) makes or manufactures any goods or parts thereof, or

(ii) does not make or manufactures any goods but assembles parts thereof made or manufactured by others and claims the end product to be goods manufactured by himself,

(iii) puts or causes to be put his own mark on any goods made or manufactures by any other manufacturer and claims such goods to be goods made or manufactured by himself.

Explanation. Where a manufacturer despatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so despatched to it are assembled at such branch office and are sold or distributed from such branch office ;

(l) "notification" means a notification published in the Government Gazette ;

(m) "person" includes,.

(i) a firm whether registered or not ;

(ii) a Hindu undivided family ;

(iii) a co-operative society ;

(iv) every other association of persons whether registered under the Jammu and Kashmir Societies Registration Act, Samvat 1998 or not ;

(n) "prescribed" means prescribed by rules made by the Government under this Act ;

(o) "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying a news or other information, under a contract of personal service;

(p) "State Commission" means a Consumer Disputes Redressal Commission established in the State under clause (b) of Section 7 ;

(q) "trader" in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and when such goods are sold or distributed in package form, includes the packer thereof ;

(r) "unfair trade practices" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any services, adopts one or more of the following practices and thereby causes loss or injury to the consumers of such goods or services whether by eliminating or restricting competition or otherwise namely :

(1) the practices of making any statement, whether orally or by visible representation which :

(i) falsely represents that the goods are of a particular standard, quality, grade, composition, style or model ;

(ii) falsely represents that the services are of a particular standard, quality or grade ;

(iii) falsely represents any rebuilt, second hand, renovated, reconditioned or old goods as new goods ;

(iv) represents that the goods or services, have sponsorship, approval,

performance, characteristics, accessories, uses or benefits which such goods or services do not have ;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have ;

(vi) makes a false misleading representation concerning the need for, or the usefulness of any goods or services ;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of a product or of any goods that is not based on an adequate or proper test there :

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test ; the burden of proof of such defence shall lie on the person raising such defence ;

(viii) makes to the public a representation in a form that purports to be :

(i) a warranty or guarantee of a product or of any goods or services ;

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeal or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out ;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been, or are ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in, the relevant market unless it is clearly specified to be the price at which the product has been sold services have been, provided by the person by whom or on whose behalf the representation is made ;

(x) gives false or misleading facts disparaging the goods, services or trade of another person ;

**Explanation.** For the purposes of clause (1), a statement that is :

(a) expressed on an article offered or displayed for sale, or on its wrapper or container ; or

(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale ; or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained.

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in, which the business is carried and size of business and the nature of the advertisement.

**Explanation.** For the purpose of clause (2), "bargain price" means.

(a) a price that is stated in advertisement to be bargain price, by reference to an ordinary price or otherwise ; or

(b) a price that a person who reads, hears, or sees the advertisement, would reasonably understand to be a bargain price having regard to the practices at which the product advertised or like product are ordinarily sold ;

(3) Permits.

(a) the offering of gifts, prizes or other terms with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole ;

(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting directly or indirectly, the sale, use or supply or any product or any business interest ;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, construction furnishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods.

(5) permits the boarding or destruction of goods, or refuses to sell the goods or to make them available for sale, or to provide any service, if such boarding or destruction or refusal raises or tends to raise to or is intended to raise the cost of those or other similar goods or services.

### **3. Act not in derogation of any other law.**

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

### **4. The State Consumer Protection Council.**

The Government may, by notification in the Government Gazette establish with effect from such date as it may specify in such notification a Council to be known as the State Consumer Protection Council (hereinafter referred to as the State Council).

(2) The State Council shall consist of the following members, namely :.

(a) the Minister-in-charge of the Department of Food and Civil Supplies in the Government, who shall be its Chairman, and

(b) such number of other official or non-official members representing such interests as may be prescribed.

### **5. Procedure for meetings of the State Council.**

(1) The State Council shall meet as and when necessary but not less than three meetings of the Council shall be held every year.

(2) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of the its business as may be prescribed.

### **6. Objects of the State Council.**

The objects of the State Council shall be to promote and protect the rights of the consumers such as,

- (a) the right to be protected against the marketing of goods which are hazardous to life and property ;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices ;
- (c) the right to be assured, wherever possible, access to variety of goods at competitive prices ;
- (d) the right to be heard and to be assured that consumers interest will receive due consideration at appropriate forums ;
- (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers ;
- (f) right to consumer education.

(b)

### **7. Establishment of Consumer Disputes Redressal Agencies.**

There shall be established for the purposes of this Act, the following agencies, namely :.

(a) a Consumer Disputes Redressal Forum to be known as the 'Divisional Forum' established by the Government in each division of the State ;

(b) a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the Government

## **8. Composition of the Divisional Forum.**

Each Divisional Forum shall consist of.

- (a) a person who is or has been or is qualified to be a District Judge to be nominated by the Government to be its President ;
- (b) a person of eminence in the field of education, trade or commerce ;
- (c) a lady social worker.

(2) Every member of the Divisional Forum shall hold office for a term of five years or up to the age of 62 years whichever is earlier, and shall not be eligible for re-appointment :

Provided that a member may resign his office in writing under his hand addressed to the Government on such resignation being accepted, his office shall become vacant and may be filled by the appointment of person possessing any of the qualification mentioned in sub-section (1) in relation to the category of the member who has resigned.

(3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of Divisional Forum shall be such as may be prescribed by the Government.

## **9. Jurisdiction of the Divisional Forum.**

(1) Subject to the other provisions of this Act, the Divisional Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation if any, claimed is less than rupees fifty thousand.

(2) A complaint shall be instituted in a Divisional Forum within the local limits of whose jurisdiction :

- (a) the opposite party or each of the opposite parties, where there are more than one at the time of the institution of the complaint, actually and voluntarily resides or carries on business, or personally works for gain, or
- (b) any of the opposite parties, where there are more than one, at the time the institution of the complaint, actually and voluntarily resides or carries on business, or personally works for gain, provided that in such case either the permission of the Divisional Forum is given of the opposite parties who do not reside or, carry on business, or personally work for gain, as the case may be, acquiesce in such institution, or
- (c) the cause of action, wholly or in part arises.

## **10. Manner in which complaint shall be made.**

A complaint in relation to any goods sold or delivered or any service provided may be filed with a Divisional Forum by.

- (a) the consumer to whom such goods are sold or delivered or such service provided ;
- (b) any recognised consumer association, whether the consumer to whom the goods sold or delivered or service provided he is a member of such association or not ; or
- (c) the Government :

Provided that in relation to District of Leh, Kargil, Poonch and Rajouri a complaint under this section may be filed with the concerned Deputy Commissioner, who shall forward such complaints to the Divisional Forum having jurisdiction to entertain such complaint.

**Explanation.** For the purpose of this section "recognised consumer association" means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force.

## **11. Procedure on receipt of complaint.**

- (1) The Divisional Forum shall on receipt of a complaint, if it relates to any goods,,
  - (a) refer a copy of the complaint to the opposite party mentioned in the ; complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the Divisional Forum ;
  - (b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the Divisional Forum, the Divisional Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g) ;
  - (c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods the Divisional Forum shall obtain a sample of the goods from the complainant, seal it and authenticate in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or suffer from any other defect and report its findings thereon to the Divisional Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the Divisional Forum ;
  - (d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the Divisional Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory, for carrying out the necessary analysis or test in relation to the goods in question ;
  - (e) the Divisional Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory, to enable it to carry out the analysis or

test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the Divisional Forum shall forward a copy of the report along with such remarks as the Divisional Forum may feel appropriate to the opposite party ;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the Divisional Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory ;

(g) the Divisional Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report, made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under Section 12.

(2) The Divisional Forum shall, if the complaint received by it under Section 10 relates to goods in receipt of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any service :

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the Divisional Forum ;

(b) Where the opposite party on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint or omits or fails to take any action to represent his case within the time given by the Divisional Forum, the Divisional Forum shall proceed to settle the consumer disputes :

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or

(ii) on the basis of evidence brought to its notice by complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.

(3) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any Court on the ground that the principles of natural justice have not been complied with.

(4) For the purpose of this section, the Divisional Forum shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, Samvat 1977 while trying a suit in respect of the following matters, namely .

(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath ;

(ii) the discovery and production of any documents or other material object producible as evidence ;

- (iii) the reception of evidence on affidavits ;
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source ;
- (v) issuing of any commission for the examination of any witness ; and
- (vi) any other matter which may be prescribed.

(5) Every proceeding before the Divisional Forum shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Ranbir Penal Code, and the Divisional Forum shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XVII of the Code of Criminal Procedure, Samvat 1989.

## **12. Finding of the Divisional Forum.**

(1) If, after proceeding conducted under Section 11, the Divisional Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following things, namely :

- (a) to remove the defect pointed by the appropriate laboratory from the goods in question ;
- (b) to replace the goods with new goods of similar description which shall be free from any defect ;
- (c) to return to the complainant the price, or as the case may be, the charges paid by the complainant ;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

(2) Every order made by the Divisional Forum under sub-section (1) shall be signed by all the members constituting it and if there is any difference of opinion the order of the majority of the members constituting it shall be order of the Divisional Forum.

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the Divisional Forum, sitting and other matters shall be such as may be prescribed by the Government.

## **13. Appeal.**

Any person aggrieved by an order made by the Divisional Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed :

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it satisfied that there was sufficient cause for not filing it within that period.

#### **14. Composition of the State Commission.**

(1) Each State Commission shall consist of :

(a) a person who is or has been a Judge of a High Court appointed by the Government, who shall be its President ;

(b) two other members, who shall be person of liability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industries, public affairs, or administration, one of whom shall be a woman :

Provided that no sitting Judge of a High Court shall be appointed under this sub-section except after consultation with the Chief Justice of the High Court.

(2) The salary or honorarium and other allowance payable to and the other terms and conditions of service (including tenure of office) of, the members of the State Commission shall be such as may be prescribed by the Government.

#### **15. Jurisdiction of the State Commission.**

Subject to the other provisions of this Act the State Commission shall have jurisdiction :.

(a) to entertain.

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees fifty thousands but does not exceed rupees ten lakhs, and

(ii) appeal against the orders of Divisional Forum within the State ; and

(b) to call for the records and pass appropriate order in any consumer dispute which is pending before or has been decided by any Divisional Forum within the State, where it appears to the State Commission that such Divisional Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

#### **16. Procedure applicable to State Commission.**

The procedure specified in Sections 10, 11 and 12 and under the rules made thereunder for the disposal of complaints by the Divisional Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

## **17. Appeals.**

Any person aggrieved by any order made by the State Commission in exercise of its power conferred by sub-clause (1) of clause (a) of Section 15 may prefer an appeal against such order to the High Court within a period of thirty days from the date of the order in such form and manner as may be prescribed :

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

## **18. Finality of orders.**

Every order of a Divisional Forum, or the State Commission shall if no appeal has been preferred against such order under the provisions of this Act, be final.

## **19. Enforcement of order by the Forum or the State Commission.**

Every order made by the Divisional Forum, or the State Commission may be enforced by the Divisional Forum, or the State Commission as the case may be in the same manner as if it were a decree or order made by a Court in a suit pending therein and it shall be lawful for the Divisional Forum or the State Commission to send in the event of its inability to execute it, such order to the Court within the local limits of whose jurisdiction.

(a) in the case of an order against a company, the registered office of the company is situated ; or

(b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated,

and thereupon, the Court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution.

## **20. Dismissal of frivolous or vexatious complaints.**

Where a complaint instituted is found to be frivolous or vexatious, the Divisional Forum or as the case may be, the State Commission may dismiss the complaint.

## **21. Penalties.**

Where a trader or a person against whom a complaint made fails or omits to comply with any order made by the Divisional Forum or the State Commission, as the case may be, such trade or person shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both

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Provided that the Divisional Forum, or the State Commission, as the case may be, may if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both for a term lesser than the minimum term and amount lesser than the minimum amount specified in this section.

## **22. Protection of action taken in good faith.**

No suit, prosecution or other legal proceedings shall lie against the member of the Divisional Forum or the State Commission or any Officer or person acting under the direction of the Divisional Forum or the State Commission for executing any order made by it or in respect of anything which is in good faith done or intended to be done by such member, officer or person under this Act, or under any rule or order made there under.

## **23. Power to remove difficulties.**

(1) If any difficulty arises in giving effect to the provisions of this Act the Government may, by order in the Government Gazette make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be as soon as may be after it is made, be laid before each House of the State Legislature.

## **24. Power to make rules.**

The Government may, by notification, make rules for carrying out the provisions contained in clause (b) of sub-section (2) of Section 4, sub-section (2) of Section 5, sub-section (3) of Section 8, clause (c) of sub-section (1) and clause (b) of sub-section (4) of Section 11, sub-section (3) of Section 12, Section 13, sub-section (2) of Section 14 of this Act.

## **25. Laying of rules.**

Every rule made by the Government under this Act shall be laid, as soon as may be after it is made, before each House of State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

