

**Government of India
Ministry of Consumer Affairs, Food and Public Distribution
Department of Consumer Affairs**

**LOK SABHA
UNSTARRED QUESTION NO. 2869
TO BE ANSWERED ON 13.03.2018**

SERVICE CHARGE

2869. SHRI SUMEDHANAND SARSWATI:
(OIH)

**Will the Minister of CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION
उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्री be pleased to state:**

- (a) whether the Government has issued any guidelines to the companies, hotels and restaurants located in States to display easily visible and comprehensible information that service charge is voluntary;
- (b) whether the Government has set up any agency to ensure its compliance in Rajasthan, if so, the details thereof; and
- (c) the number of complaints received so far by the Government in this regard?

ANSWER

**उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण राज्य मंत्री
(श्री सी. आर. चौधरी)**

**THE MINISTER OF STATE
CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION
(SHRI C. R. CHAUDHARY)**

(a) : In December, 2016, the Department of Consumer Affairs issued an advisory to State Governments to advise the hotels and restaurants to disseminate information through display at the appropriate place in hotels/restaurants that the service charges are discretionary/ voluntary and a consumer dissatisfied with the services can have it waived off. Further, the Department issued guidelines on service charge to all the State Governments/UTs vide circular No. J-24/9/2014-CPU dated 21.4.2017 which is at **Annexure**.

(b) : No, Madam.

(c) : 591 complaints from April 2017 till 20th February 2018 with regard to service charges have been received in National Consumer Helpline run by the Department.

STATEMENT REFERRED IN REPLY TO PART (a) OF LOK SABHA UNSTARRED QUESTION NO.2869 FOR 13.03.2018 REGARDING SERVICE CHARGE.

No.J-24/9/2014-CPU (Pt)
Government of India
Ministry of Consumer Affairs, Food & Public Distribution
(Department of Consumer Affairs)

Krishi Bhavan, New Delhi
The 21st. April, 2017

To,

The Secretary/Principal Secretary
Food, Civil Supplies and Consumer Protection
of All State Governments/UT Administrations

Subject: - Issuance of guidelines on fair trade practices related to charging of service charge from consumers by the hotels/restaurants

Sir/Madam,

I am directed to refer to this Ministry's letter of even number dated 14th December, 2016 , wherein an advisory was issued to the State Governments for sensitizing the companies, restaurants in the state regarding the provisions in the Consumer Protection Act, 1986 relating to unfair trade practices and the provision for making a complaint by the consumer against unfair trade practices to the appropriate consumer forum and also to advise the hotels and restaurants to disseminate information through display at the appropriate place in hotels/restaurants that the service charges are discretionary/voluntary and a consumer dissatisfied with the services can have it waived off.

2. With a view to bring clarity on the matter, the Ministry of Consumer Affairs, Food and Public Distribution, Government of India, hereby issues guidelines on 'fair trade practices related to charging of service charge from consumers by the hotels/restaurants', as enclosed.

3. The State Governments are requested to give wide publicity to these guidelines for educating the consumers of their rights to be heard and get their disputes redressed through the Consumer Fora, and also to circulate these guidelines among the hotels/restaurants in the State for bringing about clarity on fair trade practices on the subject and their liability thereto.

Yours faithfully

Sd/-
(G C Rout)
Deputy Secretary to the Govt of India
Telfax:-011-23389936

No. J- 24/9/2014-CPU(pt.)
Government of India
Ministry of Consumer Affairs, Food and Public Distribution
(Department of Consumer Affairs)

Krishi Bhavan, New Delhi
The 21st April, 2017

**GUIDELINES ON FAIR TRADE PRACTICES RELATED TO CHARGING OF SERVICE
CHARGE FROM CONSUMERS BY HOTELS/RESTAURANTS**

Whereas, the Department of Consumer Affairs, Government of India is mandated to ensure that consumers are protected as per the provisions of the Consumer Protection Act, 1986 (hereinafter referred as 'The Act');

Whereas, a customer visiting a hotel or restaurant for availing its hospitality, which includes buying the food & beverages and availing services connected therewith or incidental thereto for consideration, falls under the definition of consumer as per the Act;

Whereas, it has come to the notice of this Department that some hotels and restaurants are charging tips/gratuities from the customers without their express consent in the name of service charges;

Whereas, it has also come to the notice of this Department that some customers have been paying tips to waiters in addition to service charges under the mistaken impression that service charge is a part of taxes;

Whereas, it has also come to the notice of this Department that in some cases hotels/restaurants are restraining customers from entering the premises if they are not in prior agreement to pay the mandatory service charge;

Whereas, public interest has arisen due to a number of grievances reported against mandatory levy of service charges by the hotels and restaurants;

Now therefore, the Government considers it appropriate to clearly distinguish between the fair and unfair trade practices in respect of service charges, charged by the hotels/restaurants, and issues the following guidelines:

- (1) A component of service is inherent in provision of food and beverages ordered by a customer. Pricing of the product therefore is expected to cover both the goods and service components.
- (2) Placing of an order by a customer amounts to his/her agreement to pay the prices displayed on the menu card along with the applicable taxes. Charging for anything other than the afore-mentioned, without express consent of the customer, would amount to unfair trade practice as defined under the Act.
- (3) Tip or gratuity paid by a customer is towards hospitality received by him/her, beyond the basic minimum service already contracted between him/her and the hotel management. It is a separate transaction between the customer and the staff of the hotel or restaurant, which is entered into, at the customer's discretion.

(4) The point of time when a customer decides to give a tip/gratuity is not when he/she enters the hotel/restaurant and also not when he places his/her order. It is only after completing the meal that the customer is in a position to assess quality of service and decide whether or not to pay a tip/gratuity and if so, how much. Therefore, if a hotel/restaurant considers that entry of a customer to a hotel/restaurant amounts to his/her implied consent to pay a fixed amount of service charge, it is not correct. Further, any restriction of entry based on this amounts to a trade practice which imposes an unjustified cost on the customer by way of forcing him/her to pay service charge as condition precedent to placing order of food and beverages, and as such it falls under restrictive trade practice as defined under section 2(1)(nnn) of the Act.

(5) In view of the above, the bill presented to the customer may clearly display that service charge is voluntary and the service charge column of the bill may be left blank for the customer to fill up before making the payment.

(6) A customer is entitled to exercise his/her rights as a consumer, to be heard and redressed under provisions of the Act in case of unfair/restrictive trade practices, and can approach a Consumer Disputes Redressal Commission/Forum of appropriate jurisdiction.

Sd/-
(G.C. Rout)
Deputy Secretary to the Government of India
