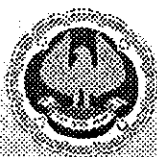

A Study on Consumer Protection Act, 1986



Corporate and Allied Laws Committee

The Institute of Chartered Accountants of India

(set up under an Act of Parliament)

ICAI Bhawan, PO Box No. 7100,

Indraprastha Marg, New Delhi-110002

Tel. 39893989, 30110471, Fax 30110586

E-mail corporatelaws@icai.org Website: www.icai.org

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Website: www.icai.org

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FOREWORD

The ongoing globalisation process is fastly emerging as a catalyst to assert the rights of a consumer society. The Consumer Protection Act, 1986 is a socio-economic legislation directed towards cost and time effective customer friendly justice. The object of the Act and its subsequent amendments is to protect the interest of the consumer in a competitive market. To provide speedy and simple redressal to the consumer disputes, a quasi-judicial machinery has been prescribed at the Districts, State and Central level. These quasi-judicial bodies have to observe the principles of natural justice and have been empowered to give relief including compensation to the consumers. Penalties for non-compliance of the orders given by this quasi-judicial bodies have also been provided in the Act.

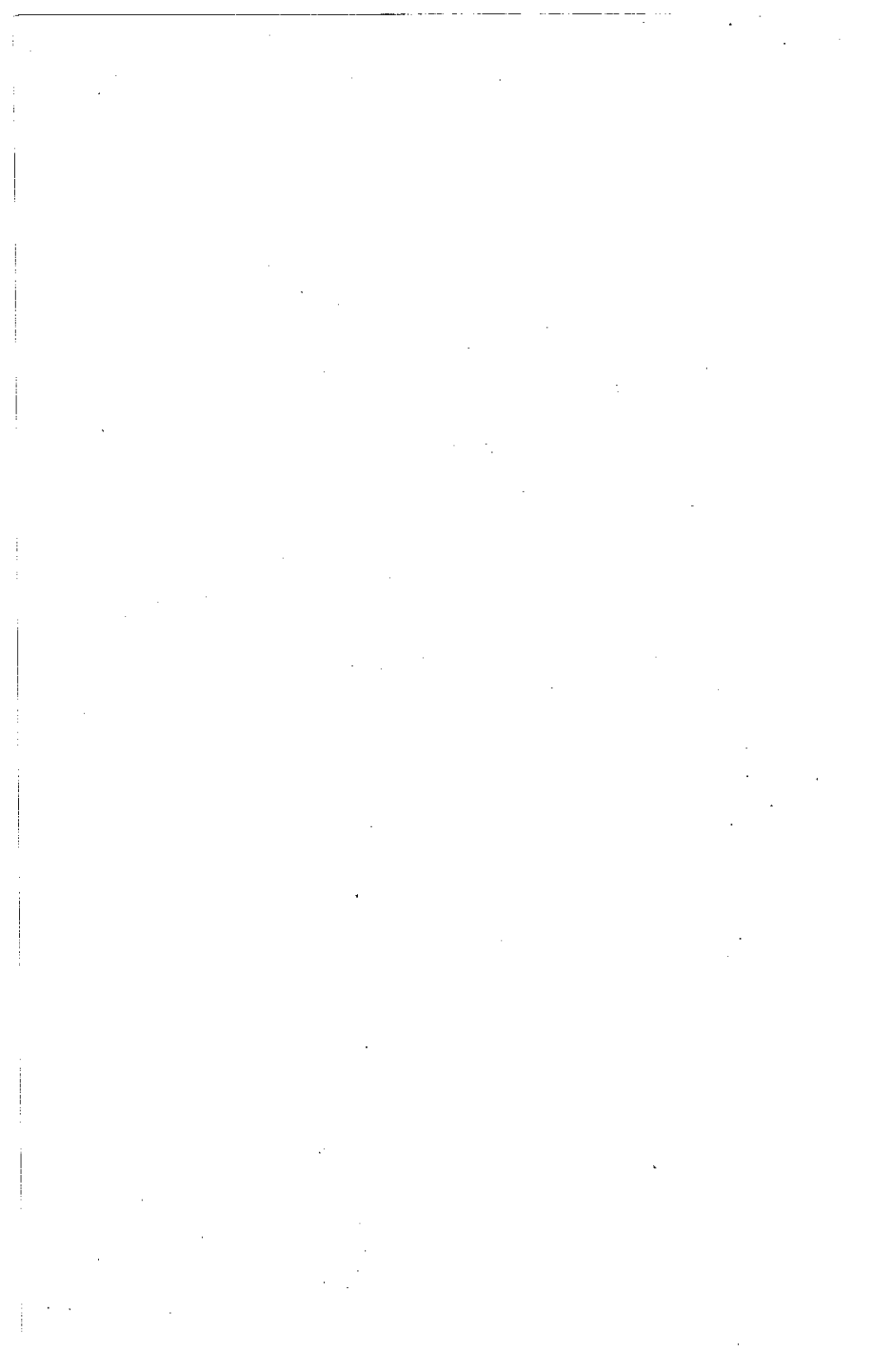
I congratulate Shri Sunil Talati, Chairman of the Corporate And Allied Laws Committee and the other members of the Committee in bringing out this in-depth commentary on the Consumer Protection Law. I compliment Ms. Pinky Mehta for preparing the first draft and Shri R.L. Bhatia, Advocate for his valuable inputs. I appreciate the painstaking efforts of Shri Rajkumar S. Adukia, member of the Committee to make the study more exhaustive and user friendly.

I am confident that this publication will be well received by the members.

New Delhi
Date: 2nd February, 2006

Kamlesh S. Vikamsey
President





PREFACE

The Corporate And Allied Laws Committee has undertaken various exercises to empower the profession to meet the challenges emerging in the service market. Chartered Accountants are acquiring excellence in socio-economic-welfare legislations and they are in a better position to provide consultancy services to the society with more professionalism and objectivity. Needless to mention that Consumer Protection Law is a major socio-economic legislation to address the grievances of the consumers and to redress the same effectively. India is one of the fastest growing economy of the world and the consumers requires protection against various anti-competitive as well as evil factors of the market. Appreciating the need of the members and as a measure of capacity building, the Committee is publishing this study on Consumer Protection Law.

I sincerely express my gratitude to Shri Kamlesh S. Vikamsey, President of the Institute and Shri T.N. Manoharan, Vice-President of the Institute for their guidance, support and encouragement in pursuit of various activities of the Committee during the year 2005-06 and to bring out this prestigious publication. I compliment Ms. Pinky Mehta for preparing the basic Draft of the Study and Shri R.L. Bhatia for his valuable inputs in the Study. I also compliment Shri Rajkumar S. Adukia for his valuable contributions to make the study more useful to the members.

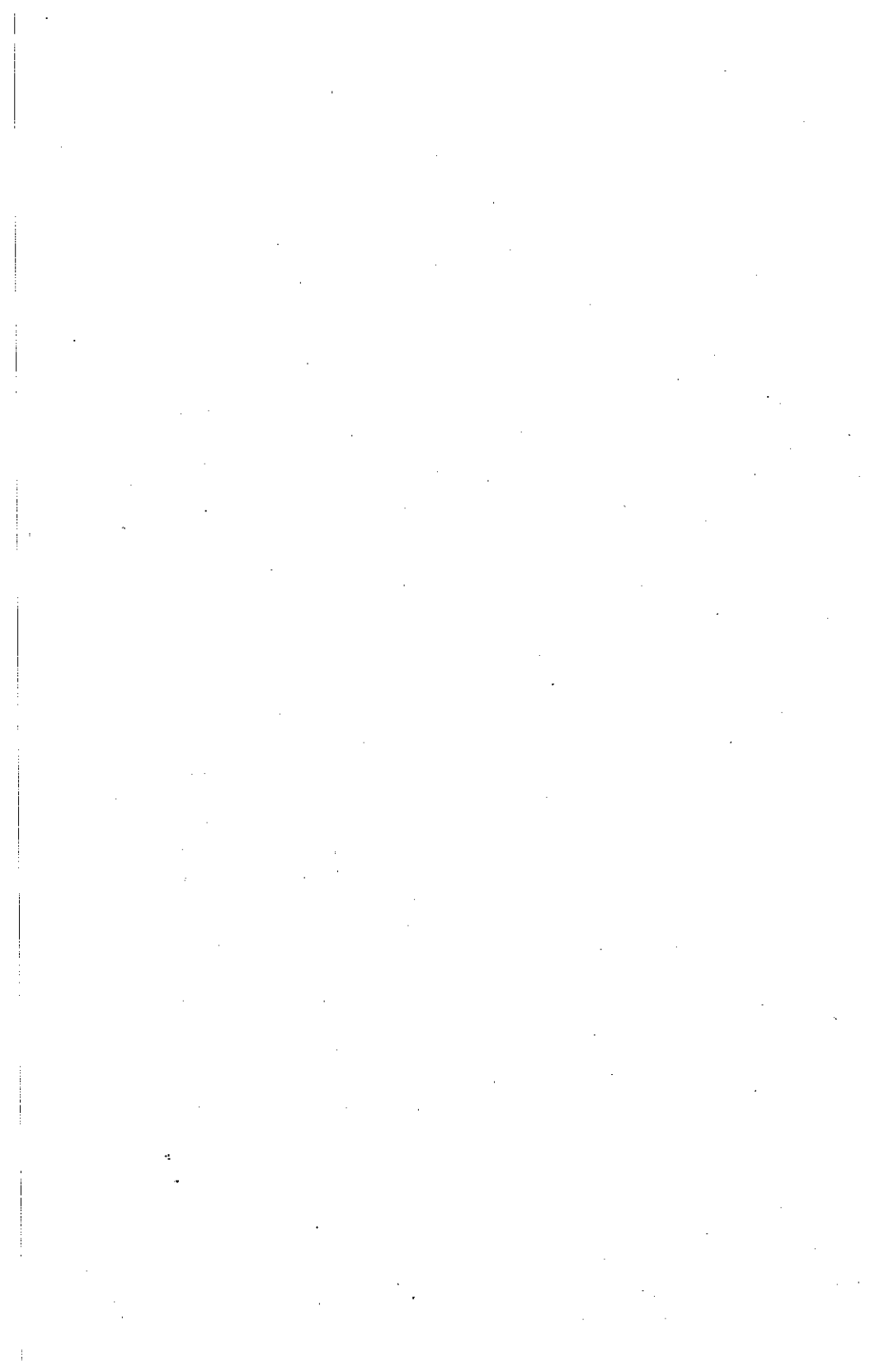
I also thank and compliment my learned colleagues Shri Harinderjit Singh, Vice-Chairman of the Committee, Shri Amarjit Chopra, Shri G. Ramaswamy, Shri Rajkumar S. Adukia, Shri S. Gopalakrishnan, Shri S. Santhanakrishnan, Shri Jitesh Khosla and Mrs. Anita Kapur in the Committee for their co-operation and suggestions to carry out various exercises of the Committee and the support rendered by the Co-opted Members of the Committee Shri K. B. Kapur, Ms. Parul Bharat Sheth, Shri Ashok Kantilal Shah, Shri M. Kandasami, Shri Sanjay L. Kapadia, Shri Rajesh Sharma and Shri Mahesh P. Sarda. I also compliment Dr. Ashok Haldia, Secretary of the Institute for his support and co-operation to carry out the various exercises of the committee.

I would also like to appreciate the dedication of Dr. Alok Ray, Secretary of the Committee & his team to bring out this publication.

New Delhi
30th January, 2006

SUNIL TALATI
Chairman
Corporate And Allied Laws Committee

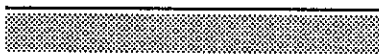


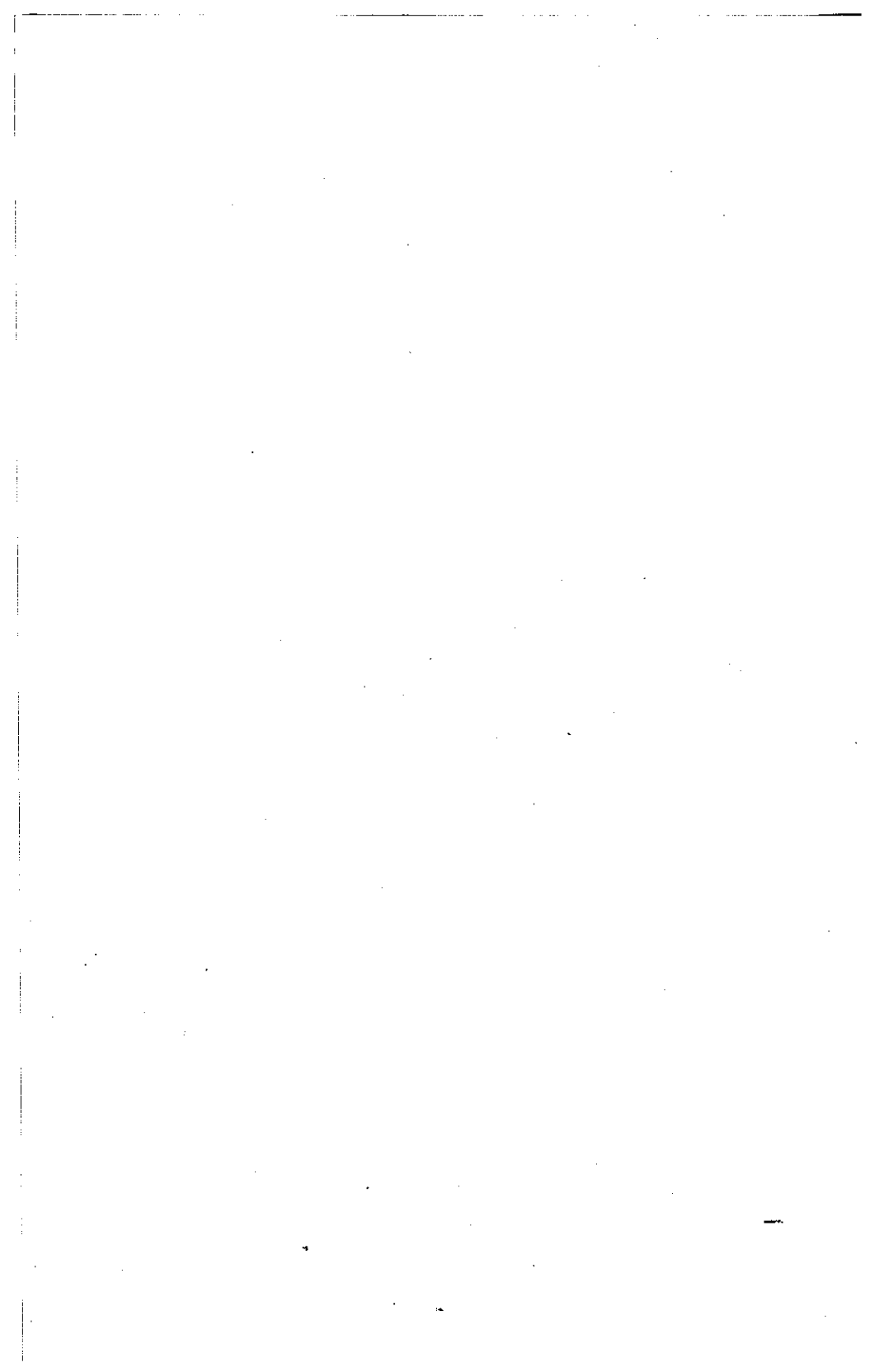


STUDY ON THE CONSUMER PROTECTION LAWS

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The Consumer Protection Laws

1. Introduction :

In olden days the wants of the people were limited and as such they were met by the 'Barter System' which was in force during those days. However, after the Industrial Revolution there was a major change in the life of an individual as his needs increased. The concept of market also evolved during this period and due to it many goods and articles flooded the market. Due to this, the traders also started to adopt various devices to sell the goods manufactured by them. As during this period, the production and the consumption of goods increased gradually, the encounters between the seller and the buyer also increased. In those times, there was no effective law to regulate the relationship between the seller and the buyer. The concept of "Caveat Emptor" i.e., "let the buyer beware" was the rule at that time. The traders enjoyed the monopolistic trade. The conditions and warranties fixed by the manufacturers and the traders were binding on the buyers/consumers. The consumers were abused and exploited by the traders, whose only object was to make profits. All these factors led to a consumer movement throughout the world. The developed countries like U.S.A. and U.K were the first to realize the need to protect the interest of the consumers and various laws were passed.

Consumer Movement in U.S.A:

The growth of the Consumerism in United States of America can be segregated into three eras as follows:

1. The industrialization of American life entertained many benefits. On the other hand it had its own negative impacts. The first problem faced was in achieving the right amount of competition in various markets and the other was the safety and the quality of the new branded goods that were sold in the national market .

There was optimum level of competition towards the end of the 19th century and the beginning of the 20th century. Due to this a greater need was felt to regulate the competition and at the same time to take care of the safety and the quality of the new goods. The politicians and the judges of various Courts

Introduction

emphasized this need. There was a formation of trusts. Initiative and the referendums for laws protecting female and child laborers, tariff reforms and the rights of the consumers were considered. Due to the impact of this, various laws were passed to protect the interest of the consumers viz.,

- (i) The Import Drugs Act, 1848
- (ii) Federal Law for the importation of Diseased Cattle, 1865
- (iii) The interstate Commerce Commission 1887
- (iv) Anti-Adulteration Movement 1906

2. The period between the 1920's and the 1930's marked the second era and it conceived as response to the broadening impact of the industrial revolution. Certain events like the automobile assembly, introduction of electricity have changed the character of consumption. The introduction of new products, the consumer choices were further complicated by the aggressive salesmanship, particularly in the form of advertising. The need for the consumer information resulted from the rise in the income group of the individuals, improvement in the technologies and the widening choice.

The State of America consumer was aptly described as operating in the world of conflicting claims, bright promises, fancy packages, soaring words and almost impenetrable ignorance. The authors offered a number of suggestions on how the consumers can reduce the cost. A new organization called the "Consumer Research Inc" was established with the financial support from the State and it started disseminating the product testing and information. The establishment of the Consumer Unions and the attempt to provide the consumer representation in the federal government marked a landmark development in Consumerism. Apart from these various legislations in the area of food and drug were passed during this period to protect the interest of consumers viz.,

- (i) The Federal Food, Drug & Cosmetics Act, 1938
- (ii) The Federal Trade Commission (Amendment) Act, 1938

3. The third era marked the increase of consumer prices owing to the inflation between 1946 and 1956. It offered difficult choice to the consumers among the new and the technologically complex products. This period was not aimed at the goods the people consumed but the method in which the products were promoted.

The message of the President John Kennedy to the Congress served as a starting point for the third era of consumer activism in the United States. In it the President enunciated a Consumer Bill of Rights including the rights to safety, information, choice among the variety of products and services at competitive prices and a fair hearing by the government in the formulation of consumer policy.

In 1964, President Lyndon Johnson appointed Esther Peterson, as an Assistant Secretary of Labour to be the first Special Presidential Assistant for the Consumer Affairs. This development reveals the extent to which the consumer interest has been institutionalized in the federal government. There were several legislations during the period 1966 to 1968 to protect the consumer interest which included the following:

- (i) The National Traffic & Motor Vehicles Safety Act
- (ii) The Child Protection Act
- (iii) The Wholesome Meat Act
- (iv) The Consumer Protection Act, 1968
- (v) Natural Gas Pipeline Safety Act
- (vi) Poultry Inspection Act
- (vii) Radiation Health & Safety Act

Thus, it can be seen that the Consumer movements in the United States have always been a part of much larger social reform movements. The connection between the consumerism and the desire for the social progress also exists at the individual level. The support for the consumerist goals is inconsistently associated with the liberal political beliefs and the high levels of the community involvement.

Consumer Protection In Great Britain :

The common law, relating to the Consumer Protection in England and the other European Countries was based on the concept of 'Product Liability' which was based on the case of Donoghue V Stevenson which gave rise to the law of negligence relating to consumers. In this case a manufacturer was made liable when the negligence was proved against him for the products sold by him. This principle was made applicable to the suppliers, distributors, retailers, packagers etc over a period of time. The following list of cases depict the initial trend of consumer protection in England:

1. Grant V Australian Knitting Mills Ltd.
2. Stennet V Hancock
3. Halmes V Ashford

These above cases explain that in the initial stages the emphasis was laid on reasonable care and product liability. However, the suppliers and the manufacturers were made liable for their negligence by the Law of Contracts. The law was based on the doctrines of 'Caveat Emptor' and 'Sanctity of Contracts'.

By the end of the 19th Century the following laws were enacted to emphasize the need to protect the consumers:

1. The Sale of Goods Act, 1893
2. The Restrictive Trade Practices Act, 1956
3. The Weights and Measures Act, 1963
4. The Monopolies and Restrictive Practices (Inquiry & Control) Act, 1948
5. The Monopolies and Mergers Act, 1965
6. The Fair Trading Act, 1973
7. The Competition Act, 1980
8. The Consumer Safety Act, 1978
9. The Food and Drugs Act, 1955
10. The Prices Act, 1974
11. The Unfair Contract Terms Act, 1977

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At present The Consumer Protection Act, 1987 is the primary legislation, which deals with the Consumer Protection in the United Kingdom. It is a comprehensive legislation consisting of 35 sections. It contains the provisions relating to the liability of persons for damages caused by defective goods and consumer safety. This Act consolidates with amendments, the Consumer Safety Act, 1978, The Consumer Safety (Amendment) Act, 1986. It also makes provisions with respect to the giving of misleading price indications, laying safety requirements, power to obtain information and other related matters.

Position In India:

The year 1986 is a 'Magna Carta' in the history of Consumerism.

The need to enact laws to protect the interest of consumers was also felt by the other Countries including India The Bill was passed on 5th December 1986, which received the assent of the President and The Consumer Protection Act was passed on 24th December 1986. The Act consists of 31 sections divided into 6 chapters.

The Consumer Protection Act of 1986 is "to provide for better protection of the interests of consumer. The expression "better protection" indicates that some sort of protection was being given to the consumers even prior to the introduction of the Act. If so, what sort of protection was it?

There were several pre-independence and post independence legislations to protect the interests of the consumers. The Laws and the respective enforcement agencies are:

1. Post Office Act, 1898 - Post Master General, Directorate of Post offices.
2. Indian Sale of Goods Act , 1930 - Consumer / Civil Courts.
3. The Agricultural Produce (Grading and Marketing Act, 1937 - Directorate of Agriculture, Government of India.
4. Insurance Act, 1938 - Consumer / Civil Courts.
5. The Drugs and Cosmetics Act, 1940 - Commissioner/Controller of Drugs, MRTP Commission / Consumer / Civil Courts.

Introduction

6. Electricity Supply Act, 1948 - Electricity Boards.
7. The Drugs Control Act, 1950 - Commissioner/Controller of Drugs.
- 8.. Prevention of Food Adulteration Act, 1954 - Corporation Health Officer / Consumer / Civil Courts.
9. The Drugs and Magical Remedies (Objectionable Advertisement) Act, 1954 - Controller of Drugs / Consumer / Civil Courts.
10. The Essential Commodities Act, 1955 - Commissioner, Department of Civil Supplies.
11. Life Insurance Act, 1956 - Consumer / Civil Courts.
12. Monopolies and Restrictive Trade Practices Act, 1969 - MRTP Commission / Ministry of Industry.(REPEALED)
13. Prize Chits and Money Circulation Schemes (Banning) Act, 1970 - MRTP Commission / Civil Courts.
14. Carriage by Air Act, 1972 - Ministry of Civil Aviation / Civil Courts.
15. Carriage of Goods by Sea Act, 1972 - Ministry of Civil Aviation / Civil Courts.
16. Water (Prevention and Control of Pollution) Act, 1976 - State Pollution Control Board / Central Government.
17. The Standards of Weights and Measures Act, 1976 - Controller of Weights and Measures, Department of Civil Supplies.
18. The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 - Police / Department of Civil supplies.
19. Air (Prevention and Control of Pollution) Act. 1981 - State Pollution Control Board / Central Government.
20. Chit funds Act, 1982 - Consumer / Civil Courts.

Introduction

21. The Standards of Weights and Measures (Enforcement) Act, 1985 - Controller of Weights and Measures, Department of Civil Supplies.
22. Environment Protection Act, 1986 - Ministry of Environment / Central and State Pollution Control Boards.
23. Indian Penal Code - Police.
24. Prize Competitions Act - MRTP Commission / Civil Courts, Director General of Post and Telegraph.
25. Telegraph Act - Director General of Post and Telegraph.
26. Bureau of Indian Standards Act, 1986 - Bureau of Indian Standards (BIS)
27. The Standards of Weights and Measures (Packaged Commodities Rules), 1977 - Controller of Weights and Measures, Department of Civil Supplies.
28. The Household Electrical Appliances (Quality Control) Order - Bureau of Indian Standards / Civil Courts.
29. The Competition Act, 2002 - Competition Commission Of India
30. Consumer Protection Rules, 1987.

All these enactments, though played a role in protecting consumer interests, did not yield the desired effect, as the enforcing agencies were the Governments or Government servants, whose lethargy is notorious. Wherever the actual consumers had a role, they had to do it through the junction of Civil Courts, which is expensive and time-consuming.

The Consumer Protection Act is an alternative and cheapest remedy already available to the aggrieved persons/consumers by way of civil suit. In the complaint/appeal/petition submitted under the Act, a consumer is not required to pay any court fees or even process fee.

The importance of the Consumer Protection Act, 1986, is that it gave direct role to consumers themselves to protect their own rights through the agencies provided under the Act. "The importance of

Introduction

the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy" the Supreme Court has said.

The provisions of the Consumer Protection Act are in addition to and not in derogation of the provisions of any other law for the time being in force. That means the Act has provided remedies in addition to the remedies provided by other enactment. The Act was further amended in 2002 to better protect the interest of the consumers and speedy disposal of disputes.

Proceedings are summary in nature and endeavor is made to grant relief to the parties in the quickest possible time keeping in mind the spirit of the Act which provides for disposal of the cases within possible time schedule prescribed under the Act.

Not only these few Acts but also the Constitution of India which is the law of land also contains a number of provisions which go a long way in protecting the rights of the consumers i.e., Article 21, which deals with the right of Personal Liberty and Article 47A which specifies the pollution free environment for all the citizens.

The main purpose and the intention of the enactment of the Act is to protect the interests of the consumers. The Act enables the consumers to get a simple, inexpensive, and speedy remedy to the complaints against the defective goods and deficiency in service. The Apex Court has categorically explained the main object of the Act in Lucknow Development Authority V M.K. Gupta . The Act confers six rights to the consumers namely:-

1. Right to Safety
2. Right to Information
3. Right to Choose
4. Right to be Heard
5. Right to Consumer Education
6. Right to seek Redressal

Definitions

2. Definitions

Appropriate Laboratory

When an alleged defect in goods cannot be determined without proper analysis of test of the goods the redressal agency should obtain a sample of the goods and send it to "the appropriate laboratory" for analysis or test to ascertain whether the goods suffer from any defect. What is an appropriate laboratory?

1. A laboratory or organization recognized by the Central Government or the State Government subject to guidelines prescribed by the Central Government, is an appropriate laboratory.
2. Any laboratory or organization established by or under any existing law which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods to determine whether such goods suffer from any defect is also appropriate laboratory.

Branch Office

A complaint can be instituted in a redressal agency "within the local limits of whose jurisdiction the opposite party has a branch office". Branch office means

- (1) any establishment described as a branch by the opposite party or
- (2) any establishment carrying on the same or substantially the same activity carried on by its head office.

"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

Definitions

- (ii) hires or avails of any services for a consideration which¹ 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 or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payments, when such services are availed of with the approval of the first-mentioned person

Note: For the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

All of us consume/use goods and services. So the Act defines 'consumer' with respect to both goods as well as services.

A person who buys or agrees to buy any goods for monetary or other considerations is a consumer. The consideration can be paid or promised, partly paid or partly promised and paid under any system of deferred payment. But consideration (payment) is a must. One who has secured any goods free of cost is not a consumer.

Not only the actual buyer of goods is a consumer, but also any user of such goods, provided the use is with the consent of the buyer. For instance a son using a scooter purchased by his father or a tenant using a fan purchased by the house owner, is a consumer.

Remember, there is an exception. A person who purchases any goods for commercial or resale purposes is not a consumer. Commercial purpose means a commercial activity for earning profit. But it does not include use of the goods by the consumer for earning his livelihood by way of self-employment.

For instance, a person buying a lorry to use it as a public carrier, it is a commercial purpose, but if the buyer employs himself as a driver and earns his livelihood, he is a consumer, no matter whether he employs a driver to help him.

Similarly a person who hires or avails of any service for a consideration (that is, paid service) and the one who derives benefit out of such service with the consent of the hirer, are also consumers.

Definitions

Here also consideration can be paid or promised, partly paid or partly promised or paid under any system of deferred payment. But payment consideration is a must. One who makes use of any free service is not a consumer. So is a person who hires a service rendered under a contract of personal service.

When bank advance loan or accept deposit or provide facility of locker they undoubtedly render service. A State or Nationalised Bank renders as much service as Private Bank. No distinction can be drawn in private and public transport or Insurance Companies. Even the supply of electricity or gas which throughout the country is being made, mainly by statutory authorities is included in it. The legislative intention is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom compliant is made is statutory body but whether the nature of the duty and function performed by it is service or even facility.

A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of transaction is covered in the expression service of any description. It further indicates that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in earlier part. So any service except when it is free of charge or under a constraint of personal service is included in it. Lucknow Development Authority v M.K.Gupta AIR 194 SC 787.

The government servants and the staff of the Accountant General Office of the Comptroller and Auditor General maintains the records of provident fund of government servants, issue slips of deposits of fund and on retirement final payments are made to the subscribers. The government servants and the staff of the Accountant General in discharging their duties does not render any service for consideration, nor hiring of any service is involved hence, maintenance of General Provident Fund Accounts does not fall within the meaning of 'service'; Hari Vallabh Vijay v. Administration Officer, 2001 (1) CPR 529.

Applicant who merely applies for allotment of shares is not a consumer; H.G.Bhatia v. ABC Computers Pvt. Ltd., 1994 (1) CPR 316.

Definitions

Undue delay in declaration of examination result is obviously deficiency in service; Secretary, Board of School Education, Haryana v Mukesh Chand, 1994 (1) CPR 269.

In short, you become a consumer only when you make payment in cash or kind for any goods or service. For example, only when you enter a bus and pay for the journey you become a consumer and not while waiting for a bus. So, if the bus is stopped and you are not permitted to travel, you cannot approach a consumer court seeking compensation for consequent loss, as you are not a consumer under the Act. But you can definitely make a complaint to the RTO or traffic police as a stage carriage is meant for the benefit of every passenger.

"consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint. Redressal agencies are created to provide speedy and simple redressal to consumer disputes.

"defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or 2[under any contract, express or] implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.

"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 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.

"goods" means goods as defined in the Sale of Goods Act, 1930.

"manufacturer" means

- (1) A person who actually makes or manufactures any goods.
- (2) A person who makes or manufacture the parts of any goods;
- (3) A person who does not make or manufacture any goods but assembles parts made or manufactured by others and claims the end-product to be the goods manufactured by himself

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- (4) A person who puts or causes to be put his own mark on any goods made or manufactured by others and claims such goods to be the goods made or manufactured by himself.

Note: Where a manufacturer dispatches 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 dispatched to it are assembled at such branch office and are sold or distributed from such branch office.

"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 Societies Registration Act, 1860 (22 of 1860) or not

"restrictive trade practice" means any trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include:

- (a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in price.
- (b) Any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, hiring or availing of other goods or services.

It is essentially a tie-up sale. It is a trade practice which requires a consumer to buy, hire or avail of any goods or services (often less-wanted) as a pre-condition for buying, hiring, or availing of any other goods or services (often much sought after). Example, LPG dealer insisting on the purchase of a gas stove from him, as precondition for giving gas connection.

Definitions

"service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

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

"unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:

- (1) the practice of making any statement, whether orally or in writing or by visible representation which,-
 - (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model
 - (ii) falsely represents that the services are of a particular standard, quality or grade
 - (iii) falsely represents any re-built, 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 or 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 life of a product or of any goods that is not based on an adequate or proper test thereof:

Definitions

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

(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.or
- (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat 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 the price at which the product has been sold or 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,

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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 of 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 on, the nature and size of business, and the nature of the advertisement.

Explanation: For the purposes of clause (2), "bargaining price" means-

- (a) a price that is stated in any advertisement to be a 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 prices at which the product advertised or like products are ordinarily sold;

(3) permits-

- (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating 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, games of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.
- (4) withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme.

Definitions

Explanation: For the purposes of sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspapers in which the scheme was originally advertised.

- (5) 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, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods.
- (6) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such-hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.
- (7) manufacture of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services.

3. *Redressal Agencies & Redressal Procedure*

There is a three-tier consumer disputes redressal agencies constituted under the Consumer Protection Act - District Consumer Disputes Redressal Forum, State Consumer Disputes Redressal Commission and the National Consumer Disputes Redressal Commission.

Hence a consumer intending to file a complaint must know which is the appropriate redressal agency he should approach. Filing a complaint before a wrong agency may entail dismissal of the complaint.

To find out the right agency, the consumer has to consider two things-

1. The monetary jurisdiction of the agency concerned.

If the valuation of the complaint (that is, the sum total of the

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value of the goods or service involved and the compensation claimed in the complaint) does not exceed Rs. 5 lakh, a district forum has the monetary jurisdiction to hear your complaint.

If the valuation exceeds Rs 5 lakh but does not exceed Rs 20 lakh, the complaint is to be filed before a State Commission and if it exceeds Rs 20 lakh, before the national commission.

2. The territorial jurisdiction of the agency.

In every district there is a district forum. Can a person file his complaint before any the district forums for the reasons that the cost of the goods/services and compensation asked for does not exceed Rs 5 lakh?

No. He has to file it before the forum in the district where the cause of action (in full or in part) has arisen or where the opposite party voluntarily resides or works for gain or does business or has a branch office.

Cause of action means the sum total of the facts and circumstances which the complainant has to prove in order to entitle him to the relief's claimed.

Similarly, a complaint having a valuation of Rs 5-20 lakhs has to be filed before the State Commission of the State where the cause of action has arisen wholly or in part or where the opposite party resides or works or does business or has a branch office.

In the like manner, if the valuation exceeds Rs 20 lakhs has to be filed before the National Commission provided the cause of action has arisen wholly or in part in India or the opposite party resides voluntarily or works for gain or does business or has a branch office in India.

Consumer Protection Councils

The "objects and reasons" of the Consumer Protection Act, 1986, is stated in the preamble of the Act itself. They are:

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1. To promote and protect the rights of consumers.
2. To provide speedy and simple redressal of consumer disputes

The first object is achieved by constituting Consumer Protection Councils at the national and State levels while the second by constituting quasi-judicial bodies called Consumer Dispute Redressal Agencies at the national, State and district levels. Consumer Protection Councils are advisory committees at the national and State levels in matters relating to consumer affairs. The resolutions passed by them are recommendatory in nature. The object of the councils is to promote and protect the rights of consumers. The national level council is called The Central Consumer Protection Council. It is established by the Central Government by notification in the official gazette. The union minister in charge of consumer affairs will be its chairman and the Minister of State (where he is not holding independent charge) or the Deputy Minister in the department of Civil Supplies the vice-chairman. Secretary of the department will be council secretary. The members of the central council are:

1. The minister of food and Civil Supplies or the Minister in charge of consumer affairs in all States and union territories.
2. Eight members of Parliament - five from Lok Sabha and three from Rajya Sabha.
3. The commissioner for scheduled castes and scheduled tribes.
4. Representatives of the central Government departments and autonomous organizations concerned with consumer interests not exceeding 20.
5. Representatives of consumer organizations or consumers not less than 35.
6. Representatives of women, not less than 10.
7. Representatives of farmers, trade and industries not exceeding 20.
8. persons capable of representing consumer interest not specified above, not exceeding 15

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The central council should meet as and when necessary, at least once in a year. Its time and place will be decided by the chairman. The procedures of the central council are prescribed by Central Consumer Protection Rules, 1987. The tenure of the council is three years. Any member can resign. The resultant vacancy should be filled up by nomination from the same category to which he belonged. But he can hold office only for the remaining period. The meetings of the council should be presided over by the chairman and in his absence by the vice chairman and in the absence of both by a member elected for the purpose. For the purpose of performing its functions under the Act, the Central Government can constitute working groups, whose findings will be placed before the council for its consideration. The State level council is called The State Consumer Protection Council. It is constituted by the State Government and the minister in charge of consumer affairs in the state will be its chairman. It consists of official and non official members representing such interests as may be prescribed by the State Government. The council should meet as and when necessary. But not less than two meeting should be held in a year. The rest of the matters are akin to that of the national council.

Consumer Disputes Redressal Forums or Agencies

While the Consumer Protection Councils at the national and State levels are meant "to promote and protect the rights of consumers", the following Consumer Disputes Redressal Agencies are constituted at the national, State and district levels are meant to provide speedy and simple redressal to consumer disputes:

- (a) a Consumer Disputes Redressal Forum to be known as the "**District Forum**" established by the State Government in each district of the State by notification:
- (b) a Consumer Disputes Redressal Commission to be known as the "**State Commission**" established by the State Government in the State by notification and
- (c) a **National Consumer Disputes Redressal Commission** established by the Central Government by notification

They are quasi-judicial bodies which are bound to observe the principles of natural justice and are empowered to give relief of a specific nature to the consumers.

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The district level redressal agency is called the District Consumer Disputes Redressal Forum, the State level agency the State Consumer Disputes Redressal Commission and the national agency is called the National Consumer Disputes Redressal Commission. The first two agencies are to be established by the respective State Government while the third by the Central Government. The jurisdiction of each agency varies depending on its rank.

A District Forum and a State Commission consists of a president and two members while the National Commission consists of a president and four members.

The president of the district forum should be a person who is, or who has been, or is qualified to be a District Judge. The president of the State Commission should be a person who is or has been a judge of a High Court, appointed by the State Government in consultation with the Chief Justice of the High Court. The president of the national commission should be a person who is or has been a judge of the Supreme Court, to be appointed by the Central Government in consultation with Chief Justice of India.

The members of all the three agencies should be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of the members should be a woman.

The members of the District forum and the State commission are appointed by the State Government on the recommendation of a selection committee consisting of the president of the State Commission (Chairman) and Secretaries of the departments of law and consumers affairs.

The four members of the national commission are appointed by the Central Government on the recommendations of a committee consisting of a judge of the Supreme Court and the secretaries to the departments of legal affairs and consumer affairs of the Union Government.

The members (including presidents) of the three redressal agencies are appointed for five years. But a member of the district forum should quit if he attains the age of 65 in the meantime. State

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commission member can continue up to the age of 67 and the national commission member up to 70.

At present, there are 569 District Forums, 34 State Commissions with apex body as a National Consumer Disputes Redressal Commission (NCDRC) having its office at Janpath Bhawan, 'A' Wing, 5th Floor, Janpath, New Delhi.

Procedure on admission of complaint

- (1) The District Forum shall, on admission of a complaint, if it relates to any goods-
 - (a) refer a copy of the admitted complaint within 21 days from the date of admission 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 District 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 District Forum, the District 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 District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis with a view to finding out whether such goods suffer from any defect alleged in the complaint or suffer from any other defect and to report its findings thereon to the District 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 District Forum
 - (d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees

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- 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 District 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 District Forum shall forward a copy of the report along with such remarks as the District 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 District 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 District 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 14.
- (2) The District Forum shall, if the complaint admitted by it relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,-
- (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 District 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 District Forum, the District Forum shall proceed to settle the consumer dispute,-

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- (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 allegation contained in the complaint, or
- (ii) ex-parte on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.
- (c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.
- (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) Every complaint shall be heard as expeditiously as possible and endeavor shall be made to decide the complaint within a period of three months from the date of receipt of notice by the opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:

Provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum.

Provided Further that the District Forum shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that in the event of a complaint being disposed of after the period so specified, the District Forum shall record in writing, the reasons for the same at the time of disposing of the said complaint.

- (5) Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

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- (6) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely,-
- (i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath
 - (ii) the discovery and production of any document 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.
- (7) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).
- (8) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of Rule 8 of Order I of Schedule I of the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.
- (9) In the event of the death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule of the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party as the case may be.

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Finding of the District Forum

- (1) If, after the proceeding conducted as above, the District 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 do one or more of the following things, namely:
 - (a) to remove the defect pointed out 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:

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit.

- (e) to remove the defects in goods or deficiencies in the services in question
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them
- (g) not to offer the hazardous goods for sale
- (h) to withdraw the hazardous goods from being offered for sale
- (i) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature.
- (j) to pay such sum as may be determined by it if it is of the opinion that the loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five percent of the value of such defective goods sold or service provided, as the case may be, to such consumers.

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Provided further, that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed.

- (k) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of opposite party responsible for issuing such misleading advertisement.
- (l) to provide for adequate costs to parties.

Appeal (from District Forum)

Any person aggrieved by an order made by the District 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 is satisfied that there was sufficient cause for not finding it within that period.

Note: The State Commission shall entertain no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, unless the appellant has deposited in the prescribed manner fifty percent or twenty five thousand rupees, whichever is less.

Jurisdiction of the State Commission

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

- (1) (a) to entertain-
 - (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees Twenty Lakhs but does not exceed rupees One Crore.
 - (ii) appeals against the orders of any District Forum within the State and
- (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State where it appears to the State Commission that such District Forum has exercised a

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jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise on its jurisdiction illegally or with material irregularity.

- (2) A complaint shall be instituted in a State Commission 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 has a branch office or personally works for gain or
 - (b) any 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 has a branch office, or personally works for gain. In such case either the permission of the State Commission is given, or the opposite parties who do not reside, or carry on business or have a branch office, 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.

Transfer of Cases: On the application of the complainant or on its own motion, the State Commission may at any stage of the proceeding transfer any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

Procedure applicable to State Commission: The provisions for the disposal of complaints by the District Forum is similarly applicable to the disposal of disputes by the State Commission.

Appeals (From the State Commission)

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

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Note: The National Commission shall entertain no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, unless the appellant has deposited in the prescribed manner fifty percent or thirty five thousand rupees, whichever is less.

Hearing of Appeals by the State & National Commission

An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavor shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission.

No adjournment shall be ordinarily granted by the State Commission or the National Commission as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such commission.

The State Commission or the National Commission as the case may be, shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act. In the event of an appeal being disposed of after the period so specified, the State Commission or the National Commission, as the case may be record in writing the reasons for the same at the time of disposing of such appeal.

Jurisdiction of the National Commission

Subject to the other provisions of this Act, the National Commission shall have jurisdiction-

- (a) to entertain-
 - (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees One Crore and
 - (ii) appeals against the orders of any State Commission and
- (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a

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jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

Power of and procedure applicable to the National Commission

The provisions for the disposal of complaints by the District Forum and State Commission are similarly applicable to the disposal of disputes by the National Commission.

The National Commission shall have the power to review any order made by it, when there is an error apparent on the face of the record.

Power to set aside ex parte orders: - Where an order is passed by the National Commission ex parte against the opposite party or a complainant, as the case may be, the aggrieved party may apply to the Commission to set aside the said order in the interest of justice.

Transfer of Cases: On application of the complainant or on its own motion, the National Commission may, at any stage of the proceeding, in the interest of justice, transfer any complaint pending before the District Forum of one State to a District Forum of another State or before One State Commission to another State Commission.

Circuit Benches: The National Commission shall ordinarily function at New Delhi and perform its functions at such other place as the Central Government may, in consultation with the National Commission, notify in the Official Gazette from time to time.

Appeal (From National Commission)

Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order. The Supreme 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.

Note: The Supreme Court shall entertain no such appeal by a person, who is required to pay any amount in terms of an order of the National Commission, unless the appellant has deposited in the

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prescribed manner fifty percent or fifty thousand rupees, whichever is less.

Finality of orders

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

Period of limitation

A complaint is to be filed in two years from the date on which the cause of action has arisen.

A complaint may be entertained after 2 years, if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period.

Enforcement of orders by the Forum, the State Commission or the National Commission:

1. Where an interim order made under this Act, is not complied with, the District Forum, the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order, to be attached.
2. No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.
3. Where an amount is due from any person under an order made by the District Forum, the State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, State Commission or the National Commission and such commission may issue a certificate for the said amount to the Collector of the District. He shall proceed to recover the same as land revenue.

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Penalties

1. Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant 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.
2. Notwithstanding anything in the Code of Criminal Procedure, 1973, the District Forum, State Commission or the National Commission as the case may be have the powers of a Judicial Magistrate of the First Class for the trial of offences under this Act. On the conferment of such powers the District Forum, State Commission or the National Commission as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the First Class for the purpose of the Code of Criminal Procedure.
3. All offences under this Act may be tried summarily by the District Forum, State Commission or the National Commission as the case may be.

Appeal

1. An appeal both on facts as well as on Law shall lie from:
 - (a) the order made by the District Forum to the State Commission
 - (b) the order made by the State Commission to the National Commission
 - (c) the order made by the National Commission to the Supreme Court
2. Every Appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or as the case may be the National Commission. The appeal may be accepted after the expiry of the said period if it is satisfied that the appellant had sufficient

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cause for not preferring the appeal within the period of thirty days.

Table Depicting The Monetary & Appellate Jurisdiction

S. No.	Particulars	Forum Commission	Appellate Jurisdiction
1	Where the Value of Goods/ Services involved is less than Rs 20 Lakhs	District Forum	State Commission
2	Where the Value of Goods/ Services involved is more than Rs 20 Lakhs but less than 1 Crore	State Commission	National Commission
3	Where the Value of Goods/ Services involved is more than 1 Crore	National Commission	Supreme Court

Note:

Territorial Jurisdiction:-

The jurisdiction of the complaint is determined by the facts of the case and where the cause of action arises. Further, when one files a complaint, the area in which the opposite party resides or carries on his work or business will also have to be taken into consideration.

In simple it means that if a person is filing a complaint against a service provider for a sum below 20 lakhs he would have to approach the District Forum in the jurisdiction where the cause of action arose. If the matter is above 20 lakhs but below 1 crore then it would be filed in the State Commission within which State the trader/ service provider/ manufacturer is located in the state in which the trader resides or works in. These two factors will have to be kept in mind while filing your complaint.

Eligibility to file a complaint:

Any one and every one cannot file a complaint before a consumer disputes redressal agency. Those entitled to file a complaint are

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enumerated in the definition of the word 'complainant'.

"complainant" means-

- (ii) a consumer or
- (iii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956), or under any other law for the time being in force or
- (iv) the Central Government or any State Government,
- (v) one or more consumers, where there are numerous consumers having the same interest
- (vi) in case of death of a consumer, his legal heir or representative.

What constitutes a complaint?

Section 2(1)(c) of the Act defines 'complaint' as complaint means any allegation in writing made by a complainant that -

- (1) an unfair trade practice or a restrictive trade practice has been adopted by [any trader or service provider]
- (2) the goods bought by him or agreed to be bought by him suffer from one or more defects;
- (3) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

One cannot approach the consumer disputes redressal agency to redress any and every grievance he has. For example, if his employer denies him wages he cannot file a complaint against the employer before a consumer court for a direction to disburse the wages.

A complaint before the consumer disputes redressal agencies should pertain only to the grievances specified in the definition of the word 'complaint'

"complaint" means any allegation in writing made by a complainant that-

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- (ii) an unfair trade practice or a restrictive trade practice has been adopted by any trader
- (iii) the goods bought by him or agreed to be bought by him suffer from one or more defect
- (iv) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect
- (v) 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
- (vi) goods which will be hazardous to life and safety when used, are being offered for sale to the public,
 - in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force.
 - If the trader could have known with due diligence that the goods so offered are unsafe to the public.
- (vii) Services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to the life and safety.

If a person is aggrieved by any of the above, he can approach the appropriate consumer disputes redressal agency.

What are the necessary ingredients in a complaint?

1. The name of the redressal agency before which the complaint is filed should be written on top. Example: Before the State Consumer Disputes Redressal Commission, Kerala.
2. The name and mailing address of the complainant/ complainants.
3. The name, designation and mailing address of the opposite

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party. If there are many opposite parties the name designation and mailing address of each of them should be written in serial order.

4. Statement of facts - the facts relating to the complaint should be described chronologically, but briefly.
5. The relief sought by the complainant should be enumerated one after another.
6. Documents like purchase bills that are necessary for proving the allegations should be attached.
7. Signature. The complainant or his authorized agent should sign the complaint.

The complainant or his agent can submit the complaint directly to the agency concerned or sent it by post. No fee is required for filing a complaint. The presence of an advocate is not necessary for filing a complaint or prosecuting it.

Number of copies of the complaint: As there are three members in a district forum and a State commission, three sets of the complaint (the complaint plus supporting documents) are required for the use of the court. Each of the opposite party should be given a copy. So the number of copies to be submitted before district forums and State commissions is three plus the number of opposite parties.

The national commission has five members. Hence the number of copies of a complaint before it should be five plus the number of opposite parties.

What all relief can be claimed?

They are limited:

- (a) Removal of any defect from the goods in question;
- (b) Replacement of defective goods with new goods of similar description and free from defects;
- (c) Refund of the price paid for the goods or charges paid for the service;

Redressal Agencies & Redressal Procedure

- (d) Award of compensation for any loss or injury suffered due to the negligence of the opposite party;
- (e) Removal of defects or deficiencies in the service;
- (f) Discontinuance of an unfair trade practice/restrictive trade practice or not to repeat it.
- (g) Withdrawal of hazardous goods from being offered for sale;
- (h) Award of the cost of litigation.

Conclusion

The Act has come as a panacea for consumers all over the country and has assumed the shape of practically the most important legislation enacted in the country during the last few years. It has become the vehicle for enabling people to secure speedy and inexpensive redressal of their grievances. With the enactment of this law, consumers now feel that they are in a position to declare "sellers be aware" whereas previously the consumers were at the receiving end and generally told "buyers be aware".

Thus Consumer Protection Act seeks to promote and protect the rights of consumers such as-

- (a) the right to be protected against 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 to protect the consumer against unfair trade practices.
- (c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;
- (d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
- (d) right to consumer education.

List of State Commissions in India

These objects are promoted and protected by the Consumer Protection Council established at the Central and State level.

To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is set up at the district, State and Central levels. These quasi-judicial bodies observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders are also given by the quasi-judicial bodies.

4. List of State Commissions in India

At present, there are 569 District Forums, 34 State Commissions with apex body as a National Consumer Disputes Redressal Commission (NCDRC) having its office at Janpath Bhawan, 'A' Wing, 5th Floor, Janpath, New Delhi.

The list of 34 State Commissions in alphabetical order along with their President's Name, Tel No. are as under:

Sl. No.	State Commissions & Addresses	Name of the President, Members and Registrar	Ph. No. (Office)	Ph. No. (Resi.)
1.	Andhra Pradesh State Commission, 'Eruvaka' Building, Khairatabad, HYDERABAD - 500004 STD Code: 040 Andhra Pradesh State Consumer Rules http://nedre.nic.in/Acts/1.8.html	Hon'ble Mr. Justice I. Venkata Narayana, President Mr. C.P. Suresh Member Mrs. Shreesha Merla, Member Mr. L. Ravi Babu, Registrar	23391273 23318456 23394399 23394399 23317040 23244673 Fax: 23394399	23376269 23412618 23607549 23244673
2.	Arunachal Pradesh State Commission, Near Pawan Hans office, (Old Secretariat Complex) Naharlagun, ITANAGAR STD CODE : 0360 Arunachal Pradesh State Consumer Rules	Hon'ble Mr. Justice J.N. Sarma, President Mrs. M. Riba, Member Mr. Larbin Nasi, Member Mr. G. Dirchi, Registrar	0361- 2350837 361- 2248620 2248620	2244179 2247201 2247919 2350306

List of State Commissions in India

3.	A & N Islands State Commission, Dte of Civil Supplies, Civil Supplies Complex, PORT BLAIR-744102 STD CODE: 03192 Andaman & Nicobar Islands Consumer Protection Rules	Hon'ble Mr. Justice S.N. Bhattacharjee, President Mr. D.P. Mukhopadhyay, Member Ms. G. Kaur, Member Mr. Amar Das, Registrar	246323 246323 246323 232321 Fax:232321	033- 24161888 231860 231142 232804
4.	Assam State Commission, Guwahati High Court, GUWAHATI-781001 STD CODE: 0361 Assam State Consumer Protection Rules	Hon'ble Mr. Justice P.C. Phukan, President Mrs. K Gogoir, Member Vacant, Member Registrar	2631057 2631057 2631057 Fax: 2631057	2220981 2550917
5.	Bihar State Commission Biskomaun Tower, Gandhi Maidan, 3rd Floor, PATNA - 800 001STD CODE: 0612 Email:scdrc@sancharnet.in Bihar State Consumer Protection Rules	Hon'ble Mr. Justice D.P.S.Chaudhary President Ms.(Dr.) Asma Ahmed, Member VacantMember Mr. R.L. Ravidas, Secretary	2217394 2207394 2207394 2207395 Fax: 2207395	2686856 2264959 2206292
6.	Chandigarh State Commission, Plot No.5-B, Madhya Margh, Sector-19-B, Chandigarh STD CODE: 0172 Chadigarh State Consumer Protection Rules Email:stcomm@glide.net.in	Hon'ble Mr. Justice K.K. Srivastava, President Maj. Gen. S.P. Kapoor, Member Mrs. D. Dhatt, Member Mr. R.S. Rawat, Registrar	2549198 Fax: 549198 2549198 2549198 2549198	2542788 2543354 2648875 2576504 2582436 2714637

List of State Commissions in India

7.	Chattisgarh State Commission, Gandhi Chowk, Kali Bari, RAIPUR - 492 001 STD Code : 0771	Hon'able Mr. Justice V.K. Aggarwal President	2236622	2520567
		Mrs. Veena Mishra, Member	2236215	2537525 2445603
		Mr. R.S. Awasthy Member	2236215 2236636	2424351
		Mr. C.B. Bajpai, Registrar	Fax: 2236215	2445603
8.	Dadra & Nagar Haveli & Daman & Diu State Commissions Department of Civil Supplies, Collectorate, DAMAN - 396220 STD CODE: 0260 Dadra & Nagar Haveli State Consumer Protection Rules	Hon'ble Mr. Justice R.J. Kocher, President	0260- 230689	5571766
		Mr. K. Krishnan, Member (Vacant) Member	02638- 56498 - 2230689	
		Mr. Vijay Kumar Sharma, Registrar	2230698 Fax 2230689	
9.	Delhi State Commission, 'A' Block, First Floor, Vikas Bhawan, I.P. Estate, NEW DELHI -2 STD CODE: 011 Delhi State Consumer Protection Rules	Hon'ble Mr. Justice J.D. Kapoor, President	23370258	23093695
		Ms. Rumnita Mittal, Member	23379146	22500262
		Mr. Mahesh Chandra Member	23379146	27868767
		Mr. R.S. Gupta, Registrar	23370799	951292 242439
10.	Goa State Commission, Junta House, 4th Floor, Vivekanand Road, PANAJI - 403 001 STD CODE: 0832 Goa State Consumer Protection Rules Email: gdcrc@goa.nic.in	Hon'ble Mr. Justice B.S. Srinivasa Rao, President,	24217922 Fax: 2425365	080- 23510634
		Mr. J.N. Prabhu Desai, Member	2222466	2417291
		Mrs. Sandra Vaze--e-Correia, Member	2222466	2531111
		Mrs. Maria Gonsalves, Registrar	2222466	2416304

List of State Commissions in India

11.	Gujrat State Commission, 4, Vijay Park, Near Milan Park, Opp: Municipal Market, AHMEDABAD - 380009 STD CODE: 079 Gujarat State Consumer Protection Rules	Hon'ble Mr. Justice M.S. Parikh, President Mrs. Lina P. Desai, Member Dr. M.K. Joshi, Member K.B.Bhavsar Registrar	26463699 26469253 Fax:26442875 26442875 26442875 26463699 26469253 Fax:26442875	26563689 26461750 26443600 26760540 27450215
12.	Haryana State ommission, Kothi No.548, Sector 8B CHDNADIGARH - 160018 STD CODE: 0172 Haryana State Consumer Protection Rules	Vacant President Mr. Banarsi Dass, Member Mrs. Shakuntala Yadav, Member Mr. Ashok Kumar Duhan, Secretary	2542944 Fax:2542872 2777730 2777730 2780937 2542955	2579372 01259- 275164 2639402
13.	H.P. State Commission, Block NO.33, 2nd Floor, H.P. Nagar Vikas Pradhikaran Commercial Building, Kusumpati, SHIMLA - 171 009 STD CODE: 0177 H.P State Consumer Protection Rules	Hon'ble Mr. Justice Surinder Sarup, President Mr. O.C. Thakur, Member Mrs. Prem Chauhan, Member Mr. Vinod Goel, Registrar	2620854 Fax: 2622491 2622491 2620855 2620797 2620026	2524315 2621016 2208746 2806424
14.	J&K State Commission, i) Mubarakpur Mandi, Old Secretariat, JAMMU ii) Near Municipality Office, Municipality Complex, SRINAGAR STD CODE: Jammu - 0191 Srinagar- 0194	Hon'ble Mr. Justice Mohd. Yasin Kawoosa, President Mrs. Jamila Bashir Member Vacant, Member	2477195 2545232 	2431074 2545259

List of State Commissions in India

15.	Jharkhand State Commission, Adre House, Near Administrative Training Institute, Mayorf Road, RANCHI STD CODE: 0651	Hon'ble Mr. Justice S.N. Mishra, President Mr. Sufal Hansda, Member Vacant, Member Mr. S.B. Prasad Registrar	2283978 2284345 2283978 2283978 2283978 (Fax)	0651- 2442819 2562510
16.	Karnataka State Commission, Basava Bhavan, Basaveswara Circle, BANGALORE - 560001 STD CODE: 080 Karnataka State Consumer Protection Rules E-mail:karscdrc.nic.in	Hon'ble Mr. Justice Chandrashekariah, President Mrs. Rama Ananth, Member Mr. J.N. Srinivasa Murthy, Member Mrs. Sridevi S. Angadi, Registrar	2260590 22262865 22262865 22262865 22262865 Fax: 22260590	23229683 26521358 25715494
17.	Kerala State Commission, Sisuvihar Lane, Vazhuthacaud, THIRUVANANTHA-PURAM STD CODE: 0471 Kerala State Consumer Protection Rules	Hon'able Mr. Justice T.N. Hassan Pillai, President Ms. A.Radha, Member Mr.V.Balachandran Secretary	2725158 Fax:2320578 2725157 2725157	2726040 2478035 2724949
18.	Lakshadweep State Commission, U.T. of Lakshadweep, KAVARATTI - 682555 lak-accal@hub.nic.in STD CODE: 04896 Lakshadweep State Consumer Protection Rules	Hon'able Mr. Justice T.N. Hassan Pillai, President Mr A.Hazara, Member Mr. Ponnikam Shaikoya, Member Mr. P.Migdad, Secretary	04896- 262087263852 Fax:263298 262087 262087 262087 Fax: 263852	0471- 2437521 04894- 242031 04891- 273271 04896- 262545

List of State Commissions in India

19.	M.P. State Commission Plot No.- 76, Arera Hills BHOPAL - 462 001 STD CODE: 0755 M.P State Consumer Protection Rules E-mail: scdrcbho@mp.nic.in	Hon'ble Mr. Justice N.K.Jain, President Mr. B.L. Khare, Member Mrs. Promila S.Kumar Member Mr. Sushil K. Palo, Registrar	2554270 Fax:2554270 2760324 2760324 2763673 2763673 :Fax	2466755 2426384 2428795 2661363 2661268
20.	Maharashtra State Commission, Old Administrative Staff College, Opp. V.T. Station, Hazarimal Somani Marg, MUMBAI - 400 001 STD CODE: 022 Maharashtra State Consumer Protection Rules	Hon'ble Mr. Justice M.S. Rane, President Mr. V.K. Date, Member Dr.(Ms.) R.N. Vardhay Member Mrs. S.A. Hembade, Registrar	22072097 22057409 Fax:22018539 22072097 22072097 22072097	23697273 23631486 26707209 23090632 25823232
21.	Manipur State Commission, Dept of Food & Civil Supplies, Sangaiprou, IMPHAL STD CODE : 0385	Vacant President Vacant, Member (Vacant), Member Mr. Binoy Kumar, Registrar, High Court	2220032 2220032 2220032 2220391	
22.	Meghalaya State Commission, Horse Shoe Building, Lower Luchumiere, SHILLONG - 793 001 STD CODE: 0364 Meghalaya State Consumer Protection Rules	Hon'ble Mr. Justice N.S. Singh, President Mr. R.K. Bawri, Member Mrs. A.S. Rangad, Member Mrs. M.D. Khongmen, Secretary	2222629 Fax:2222629 2222629 2225381 2222629 Fax:2222629	2537765 2224074 Fax:2224180 2500035 2222415

List of State Commissions in India

23.	Mizoram State Commission, Zodian Square, AIZWAL - 796 001 STD CODE: 0389 Mizoram State Consumer Protection Rules	Vacant, President	2327754	
		Mr. L. Colney, Member	2327754	2322422
		Mrs. Rozmi Thikuahtlang, Member	327754	2322638
		Mr. R. Thanga, Registrar	2327754 2341453	2341454 2325121
24.	Nagaland State Commission, Guwahati High Court, Kohima Bench, KOHIMA - 797 001 STD CODE : 0370 Nagaland State Consumer Protection Rules	Hon'ble Mr. Justice B. Lamare, President	2221686 2221661	2243098
		Mr. N.Z. Makritsu, Member	2221661	2228259
		Dr. (Mrs.) Alngla, Member	2240206	2221718
		Mr. M. Kikon, Dy. Registrar	2221505	2221885
25.	Orissa State Commission, Plot No.14-C, Type-C, Bidanasi, Sector VI, (in front of Rotary Eye Hospital), CUTTACK - 14 STD CODE: 0671 Orissa State Consumer Protection Rules	Vacant President	2365398 Fax:2363604	
		Vacant, Member	2603604	2613594
		Dr. Aarti Mohanty, Member	2603604	2615344
		Mr. P.K.Roy, Secretary	2363604	2335699
26.	Pondicherry State Commission, Plot No.3, D.P. Thotam, Behind Hotel Sarguru, Muthialpet, T.V. Nagar, PONDICHERRY - 3 STD CODE: 0413 Pondicherry State Consumer Protection Rules E-mail: scdrc@pondy.pon.nic.in	Hon'ble Mr. Justice V. Bakthavatsalu President (Vacant), Member	2213862	040- 26561333
		Mr. M.A. Emile, Member	2213862	2236491
		Mr. Deivanai, Registrar	22138642	2601735

List of State Commissions in India

27.	Punjab State Commission, SCO Nos. 3009-3010, Sector - 22-D, CHANDIGARH-160 022 STD CODE: 0172 Punjab State Consumer Protection Rules	Vacant, President Mr. C.P. Budhiraja, Member Ms. Jasbir Kapoor, Member Mr. Bhag Singh, Registrar	2702962 Fax:2707062 2702962 2702962 2702962	 2699830 3215577 2603802
28.	Rajasthan State Commission, Handloom Haveli, Ashok Marg, C-Scheme 1st Floor, JAIPUR- 302 001 STD CODE: 0141 Rajasthan State Consumer Protection Rules	Hon'ble Mr. Justice M.A.A. Khan, President Mr. Ratan Prakash, Member Mrs. Sushma Tanwar, Member Vacant, Registrar	2371837 Fax:2372237 2360805 2360316 2372237	2342022 2347400 2391428 2617798
29.	Sikkim State Commission, Balwakhani, GANGTOK - 737 101 STD CODE: 03592 Sikkim State Consumer Protection Rules	Hon'ble Mr. Justice N.Surjamani Singh President Mr. M.K. Pradhan, Member Mrs. (Dr.) H. Lepcha Member Mr. H.K. Sharma, Registrar	225027 225027 225027 225027	205068 231440 202996 223377
30.	Tamilnadu State Commission, Slum Clearance Board Building, II Floor, (Southern Wing), No.212, R.K. Mutt Road, Mylapore, CHENNAI - 600 004 STD CODE: 044 Tamilnadu State Consumer Protection Rules E-Mail scdrc@tn.nic.in	Hon'ble Mr. Justice A. Ramam, President Vacant, Member Mrs. R.Vana Roja, Member Mr. C. Subramanian, Registrar	24940687 24940687 24940687 24940687 24940687 Fax:24618900	24455000 26570783 26571530

List of State Commissions in India

31.	Tripura State Commission, Ramangar Road No.1, AGARTALA - 799 002 STD CODE: 0381 Tripura State Consumer Protection Rules	Hon'ble Mr. Justice P.K. Sarkar President	2225997 Fax:2326308	
		Mr. D.C. Roy, Member	2323514	2327426
		Mrs. Gauri Sarkar, Member	2323514	2305569 -
		Mr. B.K Roy, Secretary	2323514 Fax:2225975	
32.	Uttar Pradesh State Commission, 2A/1, Rana Partap Marg, Moti Mahal, LUCKNOW - 226 001 STD CODE: 0522 Uttar Pradesh State Consumer Protection Rules	Hon'ble Mr. Justice Palok Basu, President	2272983 2219484 Fax:2272970	2787433 2788010
		Mrs. Rachna, Member	2273419	
		Mr. Roop Singh, Member	2272983	2205015
		Mr. Raghunath Prasad, Member	2202292	2400024
		Mr. V.S. Chaubey, Member	2231457	2235336
		Vacant, Registrar	2284167	
33.	Uttaranchal State Commission, 15, Gandhi Road, DEHRADUN STD CODE: 0135	Hon'ble Mr. Justice K.D. Shahi, President	2714089 2714766 Fax:2714089	2673288
		Mr. Surender Kumar, Member	27144089	2714770
		Ms. Luxmi Singh, Member	2714766	2679557
		Vacant, Registrar	2714766 2714089	
34.	West Bengal State Commission, Bhabani Bhavan, (Ground Floor), 31, Belvedere Road, Alipore, CALCUTTA - 700 027 STD CODE: 033 West Bengal State Consumer Protection Rules	Hon'ble Mr. Justice M.K. Basu, President	24790378 Fax:24790378	24224131
		Mrs. Silpi Majumdar Member	24794916	23599217
		Mr. D. Karforma, Member	24794916	22595943
		Mr. D.J. Biswas, Registrar	24794916	

5. Model Specimen

Commission, Civil or Criminal Court of competent

MODEL SPECIMEN OF NOTICE, COMPLAINT, AFFIDAVIT AND REPLY

NOTICE BEFORE FILING THE COMPLAINT

Name and address

(of the trader, dealer, firm, company, etc.)

(Complete address)

IN RE: (Mention the goods/services complained of giving details)

Dear Sir,

This is to bring to your kind notice that I had purchased
from your..... for a consideration of Rs..... paid in cash
vide your cash memo/Receipt/Invoice No..... (or through cheque
No..... dated drawn on bank for
a sum of Rs.....

The said goods are suffering from the following defects:

- (i).....
- (ii)..... etc.

I have reported the above matter to you several times (give reference of earlier letters,
if any) but despite all my pleadings you have not made good the defect in the goods (or deficiency in
services) which is indeed regrettable and highly unbusiness like. On account of your aforesaid
dereliction of duty and failure and neglect to rectify the same I have
suffered losses/incurred expenses.....

(give details)

which you are liable to compensate to me. You are
hereby finally called upon to

(i) remove the said defects in the goods

and/ or

(ii) replace the goods with new goods

and/or

(Hi) return the price/charges paid

(iv) pay compensation for financial loss/injury/interest suffered due to your
negligence

(give details)

in the sum of Rs..... with interest @ %
per annum within days of the receipt of this notice failing
which I shall be constrained to initiate against you for redressal of my aforesaid grievances and
'recovery of the aforesaid amount such proceedings, both civil and criminal as are warranted by law,
besides filing a complaint under the statutory provisions of The Consumer Protection Act, 1986
exclusively at your own risk, cost,
responsibility and consequences which please note.

Place:

Sd/

Dated:

THE COMPLAINT

BEFORE THE HON'BLE DISTRICT CONSUMER DISPUTES
REDRESSAL FORUM AT..... OR BEFORE THE HON'BLE STATE CONSUMER
DISPUTES REDRESSAL COMMISSION AT..... OR BEFORE THE HON'BLE
NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION AT NEW DELHI
IN RE: COMPLAINT NO OF 20 IN THE MATTER OF:
(FULL NAME) (DESCRIPTION) (COMPLETE ADDRESS)

..... *Complainant*

VERSUS

(FULL NAME) (DESCRIPTION) (COMPLETE ADDRESS)

..... *Opposite Party/Parties*

COMPLAINT UNDER SECTION 12 | SECTION 17 | SECTION 21 OF
THE CONSUMER PROTECTION ACT, 1986.

RESPECTFULLY SHOWETH: (1) INTRODUCTION

(In this opening paragraph the complainant should give his introduction as well as that of the opposite party/parties. (2) TRANSACTION

(In this paragraph complainant should describe the transaction complained of, *i.e.*, particulars and details of goods/services availed; items of goods/kind and nature of service; date of purchase of goods/availing of service; amount paid as price/ consideration, full or in part towards the goods/service; Photocopies of the bill/cash memo/voucher or receipt should be attached and properly marked as Annexure - A,B,C and so forth or 1,2,3 and so forth.)

(3) DEFECT/DEFICIENCY

(In this paragraph complainant should explain the grievance, *i.e.*, whether the loss or damage has been caused by some unfair trade practice or restrictive trade practice adopted by any trader or there is some defect in the goods or there has been deficiency in service or the trader has charged excessive price for the goods. One should elucidate the nature of unfair trade practice adopted by the trader, *i.e.*, relating to the quality of goods/services; sponsorship; warranty or guarantee for such period promised. The nature and extent of defects in goods should be explained and so should the deficiency in service. In case of excessive price one should specify the details of actual price fixed by or under any law for the time being in force or as set out on goods and their packing *vis-a-vis* the price charged by the trader. Complaint can also be filed against offer for sale of goods hazardous to life and safety when used. You should narrate your grievance and rest assured it is being read/heard by compassionate and pragmatic judges. Photocopies of relevant documents must be attached.)

(4) RECTIFICATION

(In this paragraph complainant should highlight what attempts were made by him to set things right, *i.e.*, personal visits or negotiations; communication in writing if any; whether any legal notice was got served and/or whether he has approached any other agency for redressal like M.R.T.P. Commission, Civil or Criminal Court of competent

jurisdiction; the stage of its proceedings, its outcome, if any, alongwith copies (certified preferably) of such proceedings. The nature of response got from the trader when irregularities were brought to his notice, should also be disclosed here).

(5) OTHER PROVISIONS

(In this paragraph reference may be made to any other law or rules or regulations of particular procedure which is applicable to the case and/or which has been violated by the trader and consumer's rights under the same. There are incidental statutory obligations, which traders must fulfil and in case of their failure to do so the case in *prima facie* made out and Forum would take cognizance).

(6) EVIDENCE

(In this paragraph complainant should give details of documents and/or witnesses he will rely upon to substantiate his case. The documents attached as Annexures as stated above may be incorporated in a proper list and a list of witnesses (if any) may be filed similarly). The annexures should be attested as "True Copy".

(7) JURISDICTION

(In this paragraph complainant should liquidate the claim in the complaint i.e. upto 20 lacs; 20 lacs to 1 crore; or above and set out the pecuniary jurisdiction of the Forum/State Commission/National Commission, as the case may be. The territorial Jurisdiction should be highlighted to obviate any formal objection).

(8) LIMIT A TION

That the present complaint is being filed within the period prescribed under section 24A of the Act. (9) RELIEF CLAIMED

(In this paragraph complainant should describe the nature of relief he wants to claim, i.e., for removal of defects in goods or deficiency in service; replacement with new goods; return of the price or charges, etc., paid and/or compensation on account of financial loss or injury or detriment to his interest occasioned by negligence of the opposite party and elucidate how you have calculated the amount of compensation claimed).

(10) PRAYER CLAUSE

It is, therefore, most respectfully prayed that this Hon'ble Forum/Commission may kindly be pleased to.....

(Details of reliefs which complainant wants the Court to grant)

Place:

Dated:

Complainant

Through

(Advocate or Consumer Association, Etc.)

Verification:

I....., the complainant above named. Do hereby solemnly verify that the contents of my above complaint are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein.

Verified this..... " day of 20 at.....

Complainant

Note: Although it is not compulsory, complainant may file an affidavit in support of the complaint which adds to the truth and veracity of allegations and gives credibility to the cause. It need not be on a Stamp paper but one should get it attested from an Oath Commissioner appointed by a High Court. The format is just as simple.

AFFIDAVIT IN SUPPORT OF THE COMPLAINT
BEFORE THE HON'BLE IN RE: COMPLAINT NO OF 20.....
IN THE MATTER OF:
.....

VERSUS
S

Com
plainant

..... Opposite Party

AFFIDAVIT

Affidavit of Sh..... 5/ o. Sh.....
aged years, resident of

I, the above named deponent do hereby solemnly affirm and declare as under:

- (1) That I am complainant in the above case, thoroughly conversant with the facts and circumstances of the present case and am competent to swear this affidavit.
- (2) That the facts contained in my accompanying complaint, the contents of which have not been repeated herein for the sake of brevity may be read as an integral part of this affidavit and are true and correct to my knowledge.

Déponent

Verification:

I, the above named deponent do hereby solemnly verify that the contents of my above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein.

Verified this..... day of " 20..... at.....

Deponent

REPLY BY THE TRADER TO THE COMPLAINT
BEFORE THE HON'BLE THE CONSUMER
DISPUTES REDRESSAL FORUM/COMMISSION AT.....
IN RE: COMPLAINT NO..... OF 20.....
IN THE MATTER OF:

..... Complainant

Versus

..... Opposite Party

DATE OF HEARING

WRITTEN STATEMENT ON BEHALF OF RESPONDENTS TO THE COMPLAINT OF THE COMPLAINANT
RESPECTFULLY SHOWETH: Pr-liminary Objections:

1. That the present complaint is wholly misconceived, groundless and unsustainable in law and is liable to be dismissed as such. The transaction in question was without any consideration and free of charge.
2. That this Hon'ble Court has no jurisdiction to entertain and adjudicate upon the dispute involved in the complaint in as much as it is not a consumer dispute and does not fall within the ambit of the provisions of the Consumer

Model Specimen

- Protection Act, 1986, hereinafter called the said Act and is exclusively triable by a Civil Court and as such the complaint is liable to be dismissed summarily on this score alone.
3. That the dispute raised by the complainant in the present complaint is manifestly outside the purview of the said Act and in any event, the Act is in addition to and not in derogation of the provisions of the Act. The proceedings initiated by the complainant under the Act are *non est*, null and void and without jurisdiction.
 4. That the definitions of 'Complainant', 'Complaint' 'Consumer Dispute' and 'Service', as defined in section 2(1) of the said Act do not cover the claims arising under the present dispute and that from the aforesaid definitions, the complainant is not 'consumer' and the controversy involved in the complaint is not a 'consumer dispute'.
 5. That the present complaint is baseless and flagrant abuse of process of law to harass and blackmail the answering respondent.
 6. That the complainant has no *locus standi* to initiate the present proceedings.
 7. That the complaint is bad for non-joinder of necessary and proper party and is liable to be dismissed on this score alone.
 8. That the complainant has already filed a Civil Suit for in a court of competent jurisdiction which is pending disposal in the Court of and the present complaint has become infructuous.
 9. That the present complaint is hopelessly barred by limitation.
 10. That this Hon'ble Forum/Commission has no territorial or pecuniary jurisdiction in as much as the amount involved in the subject-matter exceeds/ is less than the limit prescribed by section 11(1) section 17(1)(a)(i)/section 21(a)(i) of the Act.
 11. That the present complaint is frivolous and vexatious and liable to be dismissed under section 26 of the Act.
 12. That the present complaint has not been verified in accordance with law.

On Merits:

In these paragraphs respondent must reply each and every allegation made and contention raised by the complainant, factual and legal as well. In case one has already made good the defect or deficiency, elucidate steps taken. One may have, *inter alia*, following goods defences as well:

1. That the transaction entered between the parties to the above dispute is a commercial one and the complainant cannot claim any relief from this authority in as much as
(give details)
2. That the complainant had purchased the goods as a *seller/retailer/distributor, etc.*, for consideration of resale and as such is barred from moving this Hon'ble Court for the alleged defect/deficiency, etc., in as much as
(give details)
3. That the complainant has already availed the warranty period during which the answering respondent has repaired/replaced the goods in question. The complainant is thus legally estopped from enforcing this complaint or to take benefit of his own wrong.

Model Specimen

Model Specimen

4. That the present complaint is an exaggeration beyond proportion despite the fact that the complainant is himself responsible for delay and laches in as much as he has on several occasions changed his option for class of goods/type of allotment scheme of flats/model of vehicle, etc.....

(give details)

5. That the answering respondent is well within his rights to charge extra price for the subject-matter of the above dispute in as much as time was not the essence of delivery thereof. The complainant is liable to pay the increased price w.e.f on account of escalation due to excise duty/budgetary provisions, etc., in as much as.....

(give details)

6. That the complainant has accepted the goods and/or service towards repair / replacement, etc., without protest and the present complaint is merely an after thought.

7. That without prejudice the answering respondent as a gesture of goodwill is prepared to *(give details of rectification, if any, which can be done in case of minor or tolerable problems to avoid harassment to consumer and litigation problems)*

The allegations of defect/default/negligence and/or deficiency in service are wholly misconceived, groundless, false, untenable in law besides being extraneous and irrelevant having regard to the facts and circumstances of the matter under reference.

Prayer clause with all the submissions made therein is absolutely wrong and is emphatically denied. Complainant is not entitled to any relief whatsoever and is not entitled to claim and recover any thing from the answering respondent in the light of what is stated above. The complaint itself is not maintainable and is beyond the jurisdiction of this Hon'ble Court and is liable to be dismissed summarily on this score alone and more fully set out in the preliminary objections. It is prayed that the complaint may kindly be dismissed with costs.

Sd/-

(Opposite party)

Place:.....

Dated:

through

(Advocate)

Verification:

I,, the above named respondent do hereby verify that the contents of paras to of the written statement on merits are true and correct to my knowledge. While paras to of preliminary objections and to of reply on merits are true to my information, belief and legal advice received by me and believed to be true while the last para is prayer to this Hon'ble Court.

Verified at this day of 20.....

Sd/

(Opposite party)

6. Banking Ombudsman - A Cure To Deficiency In Banking Services

A customer of any Scheduled Commercial Bank (including Foreign Bank) and Regional Rural Bank can approach Banking Ombudsman of the concerned area of Operation for redressal of his/her complaint. In exercise of the powers conferred by Section 35 A of the Banking Regulation Act, 1949 (10 of 1949) and in partial modification of its Notification Ref.RPCD.No. 1070/BOS-94/95 dated 14th June 1995 and being satisfied that it is necessary in public interest and in the interest of banking policy to enlarge the extent and scope of the authority and functions of Banking Ombudsman for redressal of grievances against deficiency in banking services, concerning loans and advances and other specified matters and also to empower him to act as an Arbitrator for specified disputes, the Reserve Bank of India, hereby directs that all commercial banks, regional rural banks and scheduled primary co-operative banks should comply with the Banking Ombudsman Schemes, released from time to time.

Jurisdiction, Powers And Duties Of Banking Ombudsman:

The Reserve Bank of India has given the following Powers and Duties to the Banking Ombudsman:

- a) To receive complaints relating to provision of banking services.
- b) To consider such complaints and facilitate their satisfaction or settlement by agreement, through conciliation and mediation between the bank and the aggrieved parties or by passing an Award in accordance with the Scheme.
- c) To resolve by way of arbitration such disputes between banks or between a bank and its constituents as may be agreed upon by the contesting parties in accordance with the provisions of the Scheme and the Arbitration and Conciliation Act, 1996.
- d) The Banking Ombudsman shall exercise general powers of superintendence and control over his Office and shall be responsible for the conduct of business thereat.
- e) The Banking Ombudsman shall have the power to incur expenditure on behalf of the Office. In order to exercise such power, the Banking Ombudsman will draw up an annual budget

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for his Office in consultation with Reserve Bank and shall exercise the powers of expenditure within the approved budget. The Reserve Bank will indicate the share of expenditure to be borne by the concerned banks.

- f) The Banking Ombudsman shall send to the Governor, Reserve Bank, by 31st May every year, a report containing a general review of the activities of his Office during the preceding financial year and shall furnish such other information as the Reserve Bank may direct.
- g) The Reserve Bank may, if it considers necessary in the public interest so to do, publish the report and the information received from the Banking Ombudsman in such consolidated form or otherwise as it deems fit.

Grounds of Complaints:

- 1. A complaint on any one of the following grounds alleging deficiency in banking service may be filed with the Banking Ombudsman having the jurisdiction:
 - a. Non-payment/inordinate delay in the payment or collection of cheques, drafts, bills etc.
 - b. Non-acceptance, without sufficient cause, of small denomination notes tendered for any purpose, and for charging of commission in respect thereof.
 - c. Non-issue of drafts to customers and others.
 - d. Non-adherence to prescribed working hours by branches.
 - e. Failure to honour guarantee/letter of credit commitments by banks.
 - f. Claims in respect of unauthorized or fraudulent withdrawals from deposit accounts, or fraudulent encashment of a cheque or a bank draft etc.
 - g. Complaints pertaining to the operations in any savings, current or any other account maintained with a bank.

Banking Ombudsman

- h. Complaints from exporters in India such as delays in receipt of export proceeds, handling of export bills, collection of bills etc.
 - i. Complaints from Non-Resident Indians having accounts in India.
 - j. Complaints pertaining to refusal to open deposit accounts without any valid reason for refusal and
 - k. Any other matter relating to the violation of the directives issued by the Reserve Bank in relation to banking service.
2. Complaints concerning loans and advances only in so far as they relate to the following may also be filed with the Banking Ombudsman having the jurisdiction.
- (a) Non-observance of Reserve Bank Directives on interest rates.
 - (b) Delays in sanction, disbursement or non-observance of prescribed time schedule for disposal of loan applications
 - © Non-acceptance of application for loans without furnishing valid reasons to the applicant and
 - (d) Non-observance of any other directions or instructions of the Reserve Bank, as may be specified by the Reserve Bank for this purpose, from time to time.
3. The Banking Ombudsman may also deal with any such other matter as may be specified by the Reserve Bank from time to time in this behalf.

As soon as the complaint with full particulars is received and admitted, Banking Ombudsman will attempt to resolve it by conciliation or persuasion. If the complaint is not resolved by amicable settlement, Banking Ombudsman will pass an Award and send it to the complainant for acceptance.

7. The Future of The Consumer Protection Movement:

Consumer Protection movement to be effective and meaningful needs the proactive support of the government, business, organizations of Civil Society, Educational Institutions - Schools,

The Future of The Consumer Protection Movement:

Colleges, Universities and Research Institutions. Over and above the support of pro bono public and of every individual is a sine qua non for the Consumer movement to be purposeful. The policies, schemes and programmes of the Government of India through the Department of Consumer Affairs are no doubt useful but their effectiveness finally depend on the involvement of the institutions and the people at large. A number of schemes have already been in operation such as, Grahak Jagaran, Consumer Clubs in Schools, Promoting involvement of Research Institutions, Universities, Colleges, etc. in Consumer Protection and Welfare etc. Similar schemes and programmes are needed at the State Government level also to provide further impetus to the Consumer movement in the Country. Organizations of the Civil Societies are having special responsibility in this regard and the same thought can be so said in the case of the educational institutions.

While expanding the scope of Consumer Law, National Commission opened new doors in Bhupesh Khurana and others Vs Vishwa Budha Parishad and others¹, that imparting education falls within the ambit of service as defined under CPA. It was held that fees are paid for services to be rendered by way of imparting education by educational institutions. This is a great move in the direction of Consumer Protection as many Five Star schools & colleges are mushrooming day by day. These claim of false affiliation with well known Universities in India as well as abroad and charge huge sums in the name of fees and other charges, which is unaffordable for the common man. Many of these institutions appoint unqualified staff and faculty to teach a particular stream and sometimes even such faculty is not available.

Examinations are not held in time or results are not declared for months or even years, or certificates are not issued to them. Most of such Institutions are being run by fly-by-night operators with only commercial motives. In the last decade imparting education has become just another business rather than service to the society. To be cheated and lose hard earned money is one thing but more important fact is that the future of many students is at stake.

The Future of The Consumer Protection Movement:

In many such cases, which have come before the National Commission, the apex consumer court has clearly held that providing education is a service and has compensated the aggrieved consumer. In a number of cases the non supply of Roll Number, unexplained delay in deciding the application for admission, misrepresentation in advertisement and prospectus about the recognition of the college, non refund of the initial payment as college fee etc. have been held as the deficiency in service on the part of the Educational Authorities.

The Role of Educational Institutions in Consumer Protection Movement may not legitimately be denied on any conceivable ground. Educational Institutions, therefore, are expected to play a positive role in promoting Consumer Protection Movement. There may be different ways to achieve the objective of Consumer education about their rights and interest. It is said that an aware Consumer is an asset to the society. Various methodologies, Educational Institutions are expected to follow such as, Seminars, Workshops, Lectures, Discussions, Colloquiums, Essay Competitions, Quizzes etc. in the area of Consumer Protection and Welfare to give boost to the Consumer Protection Movement in the Country.

8. FAQs

Q1) Is there a Fee for filing a Complaint ?

- A) Under the original un-amended Act of 1986, no requirement of payment of Court-fee or any other formal procedure of Court was contemplated. However, after the amendment of 2002, there is a nominal fee one may have to pay for filing a complaint.

For example in the District Forum located in Delhi the fee structure is as follows:

1. Up to 1 Lakh - Rs.100
2. 1 Lakh & above but less than 5 Lakhs - Rs.200
3. 5 Lakhs & above but less than 10 Lakhs - Rs.400
4. 10 Lakhs & above but less than 20 Lakhs - Rs. 500

The complainant will have to pay the specified fee in the form of a crossed demand draft drawn on a nationalized bank or

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through a crossed Indian Postal Order in Favour of the Registrar of the State Commission & payable where it is situated. The concerned District Forum shall deposit the amount so received.

Q2) Is there any court fee to be paid while filing an appeal?

A) No Court fee is required to be paid. However, the Act prescribes a mandatory pre-deposit of either 50% of the amount of the compensation or fine or the amounts mentioned below, whichever is less, before the admission of the appeal, namely -

1. Rs.25,000 in appeal to the State Commission from the District Forum
2. Rs.35,000 in appeal to the National Commission from the State Commission
3. Rs.50,000 in case of appeal to the Supreme Court of India from the National Commission.

Q3) What about the Jurisdiction of the Supreme Court in Appeals?

A) When there is an appeal of an order passed by the National Consumer Disputes Redressal Commission to the Supreme Court then -

1. Where there is an appeal against the order passed by the National Consumer Disputes Redressal Commission in original complaints the limitation period is, of course 30 days from the date the certified copy of the order was received.
2. However, when a Special Leave Petition is filed against the order of the National Consumer Disputes Redressal Commission which passed in cases of appeals or revision then, the limitation period is 90 days from the receipt of the certified copy of the order.

Q4) Is there any limit on the amount of compensation one can receive?

A) There is no limit on amount of compensation one can claim. However, it has to be proportionate & rational with the loss or

injury suffered. It should always be reasonable and clear as this will make it easier for the court to make a finding.

Q5) Do the person filing the complaint has to specify the compensation?

- A) One may do so if he wants. When one is asking for compensation, he should quantify the amount and state the break up i.e. how the amount is arrived at and under what heads. If the relief cannot be quantified he should give a notional valuation. However, he must not be greedy by asking for unusually high or large amounts.

Q6) How can the Consumer Courts enforce their Decisions?

- A) The District Forum, State Commission and the National Commission all have the powers of a Judicial Magistrate of the first class for the trial of offences under this Act and when conferred with the powers they shall also deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973.

Q7) Is there any application one can file if there is no compliance?

- A) Yes, in case of non compliance of an order from any of the consumer courts one can file an application for the amount due to him. Upon such application, the consumer courts may issue a certificate for the amount to the collector of the district and he can proceed to recover the amount due to you in the same manner as arrears of land revenue.

Q8) What are the penalties for Frivolous Complaints?

- A) If the Consumer Courts feel that a frivolous complaint has been filed, it may impose costs (up to Rs 10,000) on the complainant and if the same is not paid it can proceed to recover the amount in the same manner as arrears of land revenue.

Q9) What a person have to look while buying a product?

- A) A person always have to check that the product he is purchasing is an original one. This would help in case of some defect where

he can always avail of the warranty. One must check & inspect the goods itself and see that there is no apparent defect. Always the fine print should be read and a check should be given to all the details. This is absolutely the buyers responsibility and always purchase quality marked products such as those with the ISI, AGMARK, etc.

Q10) What are the issues to consider when filing a complaint?

- A) One has to check where the jurisdiction would lie and then ascertain the value of the claim. The complaint has to be filed depending upon the amount of money or compensation to be claimed from the opposite party for the deficient service he has provided or for the defective product.

Pecuniary Jurisdiction:-

1. In cases where the value of goods and services involved is less than Rs. 20 Lakhs in value, one should file the complaint in the District Forum constituted in the specified districts of a State.
2. In cases where the value of goods and services involved is more than Rs. 20 Lakhs in value but does not exceed Rs 1 crore it has to be filed with the State Commission constituted in the capital cities of the different states
3. In cases where the value of goods and services involved is more than 1 crore it has to be filed with the National Commission which has been constituted only in New Delhi.

Territorial Jurisdiction:-

The jurisdiction of the complaint is determined by the facts of the case and where the cause of action arises. Further, when one files a complaint, the area in which the opposite party resides or carries on his work or business will also have to be taken into consideration.

In simple it means that if a person is filing a complaint against a service provider for a sum below 20 lakhs he would have to approach the District Forum in the jurisdiction where the cause

of action arose. If the matter is above 20 lakhs but below 1 crore then it would be filed in the State Commission within which State the trader/ service provider/ manufacturer is located in the state in which the trader resides or works in. These two factors will have to be kept in mind while filing your complaint.

Q11) How many Consumer Courts are there?

- A) There are consumer forums at the District, State and National level. At present, there are 569 District Forums, 34 State Commissions & the highest body which is the National Consumer Disputes Redressal Commission having its office at New Delhi. The person who is, has been, or is eligible to be appointed as a District Judge heads the District Forums and the State Commissions are headed by a person who is or has been a Judge of High Court. The National Commission is headed by a sitting or retired Judge of the Supreme Court of India.

Q12) Are other Courts excluded from hearing consumer disputes?

- A) The jurisdiction of other courts to hear the consumer disputes is not excluded. This is because the Parliament of India felt it was necessary to have an efficient & convenient mechanism to address and resolve the various consumer complaints across the country. As a result, it created a three-tier remedial machinery for the inexpensive and quick disposal of consumer complaints. As these forums only deal with consumer complaints/issues and nothing else, all their time can be devoted to addressing consumers complaints.

Q13) Is the presence of the Complainant required personally to file a complaint?

- A) Not necessarily, one can present the petition in person or by an authorized representative. The complainant may also send the complaint/petition by Registered Post.

Q14) Can more than one Consumer file a single common complaint?

- A) Yes, consumers having the same problem can join together and file a single complaint. This can be done by enclosing a

petition with the complaint for joining together and filing a complaint. This petition should just state that since the facts and circumstances relating to the complaint are the same and also since the same relief is to be claimed for all the petitioners they may be allowed to join together and file a single complaint.

Q15) What is the procedure to inform the Opposite Party about the complaint ?

- A) A notice is required to be sent to the opposite party. This can be done by registered post which is to be delivered to the address where the opposite party resides, works or carries on his business.

Q16) Can one approach the Consumer Courts if the goods or services are bought for Commercial Purposes?

- A) No, the Consumer Courts are only meant for the ordinary consumers who have bought goods & services for their own use or needs. Those who buy the goods/services for commercial purposes or resale purposes are excluded from the Act. This forum is not meant for businesses, firms and Industries but for the common man/consumer looking for quick & effective justice.

Q17) What does the term 'service' mean ?

- A) A consumer avails numerous services in his/her day-to-day activity in return for a consideration, which has been paid or promised, or partly paid and partly promised, or under any system of deferred payment. The definition of "service" under the Act does not include the rendering of any service free of charge or under a contract of personal service. A few examples of services would include banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information. Also services by and large, include those provided by professionals such as Doctors, Engineers, Architects and Lawyers etc.

Q18) What does the term "Deficiency" mean ?

- A) Under the Act, "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance of a service. In order to file a complaint against deficiency in service, such service should necessarily have been rendered for consideration. Such consideration may however been paid or promised, or partly paid and partly promised, or the service may have been rendered under any system of deferred payment.

Q19) What does the term 'Goods' mean ?

- A) The term "goods" under the Consumer Protection Act means goods as defined in the Sale of Goods Act, 1930.

The sale of Goods Act defines goods as 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.

Q20) What does the term 'Defect' mean ?

- A) Defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract which express or implied or as is claimed by the trader in any manner whatsoever, in relation to any goods.

Q21). What are the statutory rights of the Consumers?

- A) The Consumer Protection Act, 1986, guarantees the following statutory rights to the consumers
1. The right to be protected against the marketing of goods and services which are hazardous to life and property: To simplify this it can be said that it is the duty of the manufacturers and the distributor not to supply any goods to the consumers which fails to comply with the general safety requirements in all circumstances. It is important to know that safety standards

are published from time to time by the relevant authorities in relation to many types of consumer goods.

2. The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices; by simplifying this right it can be said that consumers are given the right to information. This is intended to save the consumers from unfair trade practices like false and misleading descriptions about the nature and quality of goods, exaggerated statements about their power or potency, for example, that the hair oil is capable of promoting hair growth or preventing hair loss where there is no such power to an appreciable extent. It may be noted that a victim of unfair trade practices would be able to come before a Consumer Forum only if he is a consumer within the meaning of the Act. Other buyers would have to go to the Monopolies Commission under MRTP Act.
3. The right to be assured, wherever possible, access to a variety of goods and services at competitive prices: For the convenience of the consumers the Central Council has been charged with the responsibility of bringing about the organization of markets and market practices in such a way that all dealers are supplied with a variety of goods for the benefit of the consumers and that the goods with a variety are being offered at competitive prices. It is only then the consumers will have access to variety and will be able to enjoy the benefit of competitive prices.
4. The right to be heard and to be assured that consumer's interest will receive due consideration at appropriate forums: Right to be heard is not only the foremost right of consumers it is a principle of natural justice also. The Central Council is charged with the responsibility of assuring to consumers that they would be heard as of right by appropriate forums and consumers will receive due attention and consideration from such forums.
5. The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers: The consumers have been given the right to seek

redress against restrictive/unfair trade practices or unscrupulous exploitation. The right can be explained clearly by following example - where money was deposited in advance for the supply of a car within two months and the car was actually supplied some time after two months, in such situation retention of money beyond the period of two months is an unfair trade practice and the consumers can claim proper interest on the deposit for the period of delay.

6. The right to consumer education. This right is most important right because once the people are rendered conscious of their power, they may perhaps, feel energized to struggle against exploitation by manufacturers and traders. The Central Council has been charged with the responsibility to provide to the people proper education in terms of their remedies under the Act. It can be hoped that people's awareness is likely to prove a better tool for putting the trade on some level of discipline than tons of Government controls.

However, consumer's strongest and the most precious right, which he keeps to the last, is the 'refusal to buy' and withdraw the patronage from the seller who always craves for it because, without it, he has none to sell.

Q22). What are some other useful tips in case of defective products?

A)

1. A lot of times, some simple tips like getting back to the seller or trader would save a lot of time, money and tension. Most respectable manufacturers/ shop keepers have an exchange or money back policy which could be availed of. The following tips would be handy-
2. As soon as the fault is discovered it should be intimated to the trader/ service provider as soon as possible so that one could exchange the product or get the appropriate remedy immediately.
3. Do not delay in regard to return back to the seller or trader. A lot of products have a limited warranty period and if the complaint is within time then one may be able to get the remedy quickly.

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4. Always stop using the item. If it is continued to be used despite knowing the defect then it would be difficult to get any kind of compensation or relief from the opposite party or the consumer courts.
5. Always give the trader or organization the chance to sort out the problem, before resorting to Court action.

Q23). What are the required documents and facts?

- A) Always one should keep the copies of bills, written contracts, estimates, receipts, warranties, and other documents that are related to the complaint which will be required if a complaint is required to be filed in future.

Q24). When a complaint have to be filed?

- A) It is important to have exhausted all other remedies before filing a complaint. This will be viewed positively in a consumer court .Going to court is a big step and should not be taken lightly. What a person have to do before approaching the Court are as follows:
 1. Make sure that the complaint is made to the right person
 2. Find out where their Head office located .
 3. Then proceed to write to the customer service manager who is authorized deal with all complaints.
 4. If any one from the local branch has not followed up with your complaint the mention it in your letter or phone call.
 5. It is of course, better to write and mail the complaint and keep a record of it for future reference.
 6. If all this fails then look to consumer organizations for advice for dealing with the complaint.

Q25). Can a person approach the Court if his complaint is redressed in part?

- A) Yes, if the remedy provided by the trader is not what was claimed then in such case the person may approach the consumer courts.

For example, upon detecting some defect in a new washing machine which a person had just purchased and approach the seller & inform that he would like to have it replaced with a new one. The seller however, offers to have only the defective part repaired. If he is still not satisfied with this offer, he may approach the courts for the relief that was originally wanted. This is of course subject to the terms and conditions of the purchase or agreement between parties.

Q26). If someone performs a free service which is defective can the person still approach the courts for any relief against such person?

- A) No, a person cannot approach the court if the service provided to is absolutely free. If the person who performed the service has not received any money or 'pay' for the service performed then it does not fall within the definition of service under the Consumer Protection Act. Therefore, would not be able to make him liable under the Act or be able to take him to a consumer court.

However, in certain circumstances, like in the case of a government hospital or doctor, one could file a complaint even though the service provided is free. The doctor or hospital could still be liable in case of any deficiency of service because they would receive a remuneration from the government for providing this service. The fact that they get paid for their work, whatever the source of the pay, entitles you to file a complaint against them & make them liable. The detailed position is as under:

- (i) Where services are rendered free of charge, with no payment received directly or indirectly, the Act does not apply.
- (ii) But, where the fees charged are required to be paid by every body availing of the services, then the Consumer Protection Act, applies.
- (iii) Where charges are required to be paid by persons availing of services, but certain categories of persons (who cannot afford to pay) are not charged for services, then also, the Act applies.

Q27). Can a person argue and present his Complaint personally?

- A) Yes, he can do so. He need not have to be a lawyer to argue before consumer courts, or for that matter any civil Court. However if the matter is a complicated one it is always advisable to engage someone including a lawyer with necessary experience in such matters. By a series of judgments, the Courts have granted a party to the proceeding before the District Forum/State Commission the right to authorize a person of his choice to represent him and also to examine and cross-examine the witnesses, address the Court and take part in the proceedings as the case may be.

Q28). What are Consumer Coordination Councils?

- A) The Consumer Coordination Council was established in the month of March 1993 as a Society registered under the Societies Registration Act of 1860. Before taking the present shape, a group of consumer activists representing various Consumer Organizations gathered in April 1992 to work as one body, to raise one voice on issues related to consumer interests and various Government policies and programmes affecting the interest of the Consumers. It has been actively involved in various consumer-related projects and programmes funded by UNICEF, UNDP, Ford Foundation, Consumer Welfare Fund and other funding agencies as also grants from various Ministries of Govt. of India for specific projects. Earlier it had a long-term partnership with a German Foundation called Friedrich-Naumann-Stiftung (FNST), which helped in establishing the organization and provided full support for its programmes including infra-structural expenditure till 31st March 2002. From 1st April 2002 onward it is being managed entirely by such project-related funds. By now it has completed a decade of service to the consumers of the country in general and its Member Consumer Organizations in particular.

It presently has a membership reach of over 55 leading Consumer Organizations, spread over different parts of the country, which are, or have been members of the Central Consumer Protection Councils, set up under the Consumer Protection Act. It may also be added that many more Consumer Organizations including some new Members of Central

Consumer Protection Councils have applied for Membership of Consumer Coordination Council. These are under process. Its Governing Council of 12 Members consists of well-known consumer activists belonging to established Consumer Organizations of long standing. The vision with which they are established are Consumer Sovereignty. The mission for which they are established are to be an effective national coalition of consumer protection groups so as to provide thrust to common issues affecting consumers.

The aims and the objectives of these organizations are enumerated as follows:

1. Influencing policies, legislation and administrative framework towards promoting consumer interests.
2. Empowering consumer protection groups to work towards strengthening the civil society in the democratic system of the country.

One of the major concerns of these Councils has been Good Governance. It had accordingly launched a National Campaign on Citizens' Charter in July 1996 for implementing the principles of Transparency, Accountability, Standards of Service, Availability of Information and an Effective Grievance Redressal System in Public Service and has been continuing its pioneering work in this direction. In the process, CCC has been involved both in the drawing up of appropriate Citizens' Charters for various organizations, as also in the evaluation of their implementation in the Health, Telecom, Railways, Insurance & Banking Sectors.

BANKING OMBUDSMAN

Q.1. What does the Banking Ombudsman Scheme (the Scheme) offers the Consumers?

- A) The Banking Ombudsman Scheme, 2002 (which has been brought into force w.e.f 14th June 2002), offers the consumers recourse for resolution of:
1. The complaints, against the customers bank, in respect of such services of the bank which are stipulated under the Scheme and

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2. Resolution of claim of the bank against the customer, by the Banking Ombudsman (as an arbitrator), provided that the value of the claim in such dispute does not exceed Rs.10 lakhs.

Q.2. What is the role of the Reserve Bank in relation to the scheme?

- A) The Banking Ombudsman Scheme was formulated by the Reserve Bank of India to provide an expeditious redressal grievance mechanism to customers of banks covered under the Scheme. It provides for an institutional and legal framework for resolution of complaints relating to banking services and other matters as specified under the Scheme.

Q.3. What a complainant needs to do before filing complaint against a bank in respect of deficiency in banking service?

- A) For filing a complaint before the Banking Ombudsman, it is essential for a complainant to first attempt to find a satisfactory solution directly with his bank. For this purpose, the complainant should make a written representation to the bank named in the complaint and then he should wait for receipt of reply from the bank.

The complaint can be filed before the Banking Ombudsman in the following circumstances:

1. If the reply is not received from the bank within a period of 1 month, from the date of receipt of the representation made by the Complainant
2. If the bank has rejected the complaint, or
3. The complainant is not satisfied with the reply given to him by the bank.

The complaint should be made before expiry of 1 year after the cause of action has arisen as per aforesaid response of the bank.

The complainant should ensure that the complaint is not in respect of the same subject matter, which was settled through

the office of the Banking Ombudsman in any previous proceedings before a Banking Ombudsman.

The complainant should ensure that the complaint does not pertain to the same subject matter, for which any proceedings before any court, tribunal or arbitrator or any other forum is pending or a decree or award or a final order has already been passed by any such competent court, tribunal, arbitrator or forum. The complaint should not be frivolous or vexatious in nature.

Q.4. Is there any time limit for making an Award in arbitral proceedings?

- A). There is a time limit of six months, from the date of the first hearing, for passing of an Award. The Banking Ombudsman, if need be, on his own initiative or at the instance of the parties may extend such time limit, if it is necessary so to do in the interest of justice.

Q.5 What are the conditions for filing review application by a bank?

- A) The bank should first intimate to the Banking Ombudsman within one month (from the date of receipt of the copy of the Award) of its decision to file review petition. The bank may file review application before the review authority if the Award passed against it is:
1. Based on wrong appreciation of facts, law, banking practice, or general directions, if any, issued by the Reserve Bank.
 2. The implementation of the Award is likely to create a bad precedent for the bank or banking companies or banking system in general.

The Chairman of the bank and in his absence the Managing Director or Chief Executive Officer or any other officer of equal rank, of the bank, as the case may be, has approved filing of the review application by the bank.

Q.6. Is there any time limit for filing a review application?

- A) Yes. The review application has to be filed within one month (from the date of receipt of the copy of the Award) or within such further time as may be allowed by the Review Authority in the special circumstances of the case where bank justifies the reason for not being able to file application within the prescribed time.

Q.7. How does review authority deal with the review application?

- A) On receipt of review application, the review authority serves a copy thereof to the other party and calls upon for submission of a reply to a review application within a period of two weeks or such further time as the review authority may allow.

The review authority may also call for the comments of the Banking Ombudsman if he feels that such comment is necessary in the exigencies of the case.

Q.8. What directions the review authority can pass & to whom such directions are to be addressed?

- A) If on consideration of a review application the Review Authority is satisfied that the Award requires review by the Banking Ombudsman, he remands the matter to the Banking Ombudsman for reviewing the Award in the light of his observation.

If on consideration of review application the Review Authority is satisfied that there is no ground for the review of the Award, he issues appropriate direction to the bank for implementation of the Award, within six weeks (from the date of submission of the review application) or within such reasonable time as the review authority may consider necessary.

Q.9. Whether a complainant or a bank can file additional or new evidence before the review authority?

- A). No, The Scheme does not permit submission of additional or new material in evidence from any party, before review authority. It is a settled principle of Law that new facts cannot be raised in review.

Q.10. How an Award (which has become binding on a bank) is implemented?

- A). The Banking Ombudsman reports to the Reserve Bank about the non-compliance by any bank of an Award which has become binding on it. On receipt of such report from the Banking Ombudsman, the Review Authority passes necessary order.

Q.11. What happens if the complainant sends letter of acceptance of the Award in full and final settlement of his claim?

- A). On receipt of a letter of acceptance, from the complainant (of the Award in full and final settlement of his claim in the matter), the bank has two alternate options depending upon the fact as to whether or not the Award is acceptable to the bank.

If the bank is satisfied with the Award, within a period of one month (from the date of receipt of letter of acceptance from the complainant of the Award in full and final settlement of his claim in the matter), the bank is required to comply with the Award and intimate the compliance to the Banking Ombudsman.

If the Award is not acceptable to the bank, it has an option to file review application before the Review Authority under the Scheme.

Q.12. Whether any further recourse is available to the complainant, if he has rejected an Award passed by the Banking Ombudsman?

- A). If the complainant has rejected the Award passed by the Banking Ombudsman, no further recourse is available to him under the Scheme.

Q.13. What should be included in an Award passed by the Banking Ombudsman?

- A). An Award passed by the Banking Ombudsman should state the direction/s, if any, to the bank (for specific performance of its obligations) in addition to the amount to be paid by the

bank to the complainant (by way of compensation for the loss suffered by him) along with the summary of reasons.

Q.14. What happens if the complaint is not settled by agreement?

- A). If a complaint is not settled by an agreement within a period of one month (from the date of receipt of a complaint) or within such extended period, as the Banking Ombudsman may consider necessary, he proceeds further for passing an Award.

Before passing an Award the Banking Ombudsman provides reasonable opportunity to the complainant and the bank, to present their case. For passing an Award, the Banking Ombudsman is guided by:

1. The documentary evidence placed before him by the parties
2. The principles of banking law and practice
3. Directions, instructions and guidelines issued by the Reserve Bank of India and
4. Such other factors, which in his opinion are necessary in the interest of justice.

Q.15. Who pays for operation of the scheme?

- A). The complainant is not required to pay any amount in relation to filing of a complaint or resolution thereof as per the Scheme before a Banking Ombudsman. The costs incurred in relation to operation of the Scheme, is equally shared by the banks.

Q. 16 Who can approach the Banking Ombudsman for redressal of his grievance?

- A). A customer of any Scheduled Commercial Bank (including Foreign Bank) and Regional Rural Bank can approach the Banking Ombudsman of the concerned area for redressal of his grievance. In exercise of the powers granted U/s 35A of the Banking Regulation Act, 1949 and partial modification made by way of a notification RPCD No. 1070/BOS-94/95 dated 14-6-1995 it acts as the redressal agencies for the redressal of grievances.

Q. 17 What are the provisions regarding the powers and duties of Banking Ombudsman?

- A). The Reserve Bank of India has given the following Powers and Duties to the Banking Ombudsman:
- a) To receive complaints relating to provision of banking services.
 - b) To consider such complaints and facilitate their satisfaction or settlement by agreement, through conciliation and mediation between the bank and the aggrieved parties or by passing an Award in accordance with the Scheme.
 - c) To resolve by way of arbitration such disputes between banks or between a bank and its constituents as may be agreed upon by the contesting parties in accordance with the provisions of the Scheme and the Arbitration and Conciliation Act, 1996.
 - d) The Banking Ombudsman shall exercise general powers of superintendence and control over his Office and shall be responsible for the conduct of business there at.
 - e) The Banking Ombudsman shall have the power to incur expenditure on behalf of the Office. In order to exercise such power, the Banking Ombudsman will draw up an annual budget for his Office in consultation with Reserve Bank and shall exercise the powers of expenditure within the approved budget. The Reserve Bank will indicate the share of expenditure to be borne by the concerned banks.
 - f) The Banking Ombudsman shall send to the Governor, Reserve Bank, by 31st May every year, a report containing a general review of the activities of his Office during the preceding financial year and shall furnish such other information as the Reserve Bank may direct.
 - g) The Reserve Bank may, if it considers necessary in the public interest so to do, publish the report and the information received from the Banking Ombudsman in such consolidated form or otherwise as it deems fit.

Q. 18. What is the grounds for filing the complaint?

- A)1. A complaint on any one of the following grounds alleging deficiency in banking service may be filed with the Banking Ombudsman having the jurisdiction:
- a. Non-payment/inordinate delay in the payment or collection of cheques, drafts, bills etc.
 - b. Non-acceptance, without sufficient cause, of small denomination notes tendered for any purpose, and for charging of commission in respect thereof.
 - c. Non-issue of drafts to customers and others.
 - d. Non-adherence to prescribed working hours by branches
 - e. Failure to honor guarantee/letter of credit commitments by banks
 - f. Claims, in respect of unauthorized or fraudulent withdrawals, from deposit accounts, or fraudulent encashment of a cheques or a bank draft etc.
 - g. Complaints pertaining to the operations in any savings, current or any other account maintained with a bank.
 - h. Complaints from exporters in India such as delays in receipt of export proceeds, handling of export bills, collection of bills etc.
 - i. Complaints from Non-Resident Indians having accounts in India.
 - j. Complaints pertaining to refusal to open deposit accounts without any valid reason for refusal and
 - k. Any other matter relating to the violation of the directives issued by the Reserve Bank in relation to banking service.
2. Complaints concerning loans and advances only in so far as they relate to the following may also be filed with the Banking Ombudsman having the jurisdiction.

- (a) Non-observance of Reserve Bank Directives on interest rates.
 - (b) Delays in sanction, disbursement or non-observance of prescribed time schedule for disposal of loan applications
 - (c) Non-acceptance of application for loans without furnishing valid reasons to the applicant and
 - (d) Non-observance of any other directions or instructions of the Reserve Bank, as may be specified by the Reserve Bank for this purpose, from time to time.
3. The Banking Ombudsman may also deal with any such other matter as may be specified by the Reserve Bank from time to time in this behalf.

Q. 19 What is the procedure for filing the Complaint?

- A)..1 Any person, who has a grievance against a bank relating to the banking services, may himself or through his authorized representative make a complaint to the Banking Ombudsman within whose jurisdiction the branch or office of the bank complained against is located.
2. The complaint shall be in writing duly signed by the complainant or his authorized representative (other than an advocate) in a form specified in Annexure-A of the Scheme.
3. No complaint to the Banking Ombudsman shall lie un-less:
- (a) The complainant had before making a complaint to the Banking Ombudsman made a written representation to the bank named in the complaint and either the bank had rejected the complaint or the complainant had not received any reply within a period of one month after the bank concerned received his representation or the complainant is not satisfied with the reply given to him by the bank
 - (b) The complaint is made not later than one year after the cause of action has arisen as per clause (a) above
 - (c) The complaint is not in respect of the same subject matter, which was settled through the Office of the Banking

Ombudsman in any previous proceedings.

- (d) The complaint does not pertain to the same subject matter, for which and proceedings before any court, tribunal or arbitrator or any other forum is pending or a decree or Award or a final order has already been passed by any such competent court, tribunal, arbitrator or forum and
 - (e) The complaint is not frivolous or vexatious in nature.
4. Notwithstanding the provisions of sub-clause 3(d) of this clause, it would be open to the Banking Ombudsman to entertain a complaint falling under the Scheme provided the Banking Ombudsman is satisfied with the documentary evidence produced before him by the complainant as per the guidelines of the scheme.

As soon as the complaint with full particulars is received and admitted, Banking Ombudsman will attempt to resolve it by conciliation or persuasion. If the complaint is not resolved by amicable settlement, Banking Ombudsman will pass an Award and send it to the complainant for acceptance.

Q.20. Does the scheme provide the power to call for the information from the parties?

- A) (1) For the purpose of carrying out his duties under the Scheme, a Banking Ombudsman may require the bank named in the complaint or any other related bank to provide any information or furnish certified copies of any document relating to the subject matter of the complaint, which is or is alleged to be in its possession. However, in the event of the failure of a bank to comply the requisition without any sufficient cause made under sub-clause (1) the Banking Ombudsman may, if he deems fit, draw the inference that the information, if provided or copies if furnished, would be unfavourable to the bank.
2. The Banking Ombudsman shall maintain confidentiality of any information or document coming into his knowledge or possession in the course of discharging his duties and shall not disclose such information or document to any person

except with the consent of the person furnishing such information or document. Provided that nothing in this clause shall prevent the Banking Ombudsman from disclosing information or document furnished by a party in a complaint to the other party or parties, to the extent considered by him to be reasonably required to comply with the principles of natural justice and fair play in the proceedings.

Settlement of complaint by an Agreement:

- (1) As soon as it may be practicable to do, the Banking Ombudsman shall cause a notice of the receipt of any complaint along with a copy of the complaint to the branch or office of the bank named in the complaint and endeavour to promote a settlement of the complaint by agreement between the complainant and the bank named in the complaint through conciliation or mediation.
- (2) For the purpose of promoting a settlement of the complaint, the Banking Ombudsman may follow such procedures as he may consider appropriate and he shall not be bound by any legal rule of evidence.

Award by the Banking Ombudsman:

- (1) If a complaint is not settled by agreement within a period of one month from the date of receipt of the complaint or such further period as the Banking Ombudsman may consider necessary, he may pass an Award after affording the parties reasonable opportunity to present their case. He shall be guided by the evidence placed before him by the parties, the principles of banking law and practice, directions, instructions and guidelines issued by the Reserve Bank from time to time and such other factors, which in his opinion are necessary in the interest of justice.
- (2) The Award passed under sub-clause (1) above shall state the directions, if any, to the bank for specific performance of its obligations in addition to the amount to be paid by the bank to the complainant by way of compensation for the loss suffered by him along with the summary of the reasons for passing the Award.

However, the Banking Ombudsman shall not give any directions in the Award under sub-clause (1) above regarding payment of compensation in excess of that which is necessary to cover the loss suffered by the complainant as a direct consequence of the commission or omission of the bank, or for an amount exceeding rupees ten lakhs whichever is lower.

- (3) The Banking Ombudsman may while passing an Award under sub-clause (1) above, in respect of a complaint as stipulated under Clause 13(4) of the Scheme, may direct the complainant to furnish an indemnity, on the lines as per sub-clause (4).
- (4) The indemnity referred to in Sub-clause (3) shall be in favour of the bank whereby the complainant should undertake to refund to the bank such amount as the bank would pay to him in implementation of the Award, together with interest accrued thereon at the rate as applicable for deposit in savings account, in the event of the decision of the Court in a criminal proceeding or civil proceeding, or tribunal or arbitrator or any other forum as the case may be, against the complainant leading to the conclusion that there was no such omission or commission on the part of the bank or its employee which could be considered as an act with wrong intention and motive on the part of the bank or its employee to facilitate the commission of fraud or unauthorised withdrawal from the bank account of the complainant and in such cases it shall be open to the bank to invoke the indemnity against the complainant.
- (5) In the event of the complainant refusing to honour the indemnity given by him in favour of the bank it shall be open to the bank to approach a court of law for invoking its claim based on the indemnity against the complainant.
- (6) A copy of the Award shall be sent to the complainant and the bank named in the complaint.
- (7) An Award shall not be binding on a bank against which it is passed unless the complainant furnishes to it, within a period of 15 days from the date of receipt of copy of the Award, a letter of acceptance of the award in full and final settlement of his claim in the matter. If the complainant does not accept the Award passed by the Banking Ombudsman and fails to furnish

his letter of acceptance within such time without making any request for extension of time to comply with such requirements the Banking Ombudsman shall reject his complaint.

However, in the event of the complainant making a written request for extension of time, the Banking Ombudsman may subject to his being satisfied with the explanation as furnished by the complainant about his inability to consider the Award and furnish his letter of acceptance, grant extension of time up to further period of fifteen days for such compliance.

- (8) The bank shall within one month from the date of receipt by it, of the acceptance in writing of the Award by the complainant as per sub-clause (7) above comply with the Award and intimate the compliance to the Banking Ombudsman.
- (9) If in the opinion of the bank the Award passed against it is :
 - (i) Based on wrong appreciation of facts, law, banking practice, or general directions, if any, issued by the Reserve Bank; or
 - (ii) Implementation of the Award is likely to create a bad precedent for the bank or banking companies, or banking system in general; the bank may file a review application as per provisions of the clause 17 of the Scheme. The bank shall in relation to such Award intimate to the Banking Ombudsman within one month from the date of receipt of copy of the Award its decision to file the review petition.
- (10) The Banking Ombudsman shall report to the Reserve Bank the non-compliance by any bank of an Award which became binding on it and on receipt of such report the Review Authority shall pass necessary order. However, in the event of the bank failing to implement the Award within the prescribed time limit, the complainant may also, if he so desires, approach the Review Authority with a prayer to pass an appropriate direction to the bank for immediate compliance of the Award.

Q.21. When it can reject the complaint?

- A). The Banking Ombudsman can reject the complaint in the following circumstances:

FAQs

- (1) The Banking Ombudsman may reject the complaint at any stage if it appears to him that the complaint made is:
 - (a) Frivolous, vexatious, malafide or
 - (b) Without any sufficient cause or
 - (c) That it is not pursued by the complainant with reasonable diligence or
 - (d) Prima facie, there is no loss or damage or inconvenience caused to the complainant.
- (2) The Banking Ombudsman may reject a complaint at any stage, if after consideration of the complaint and evidence produced before him the Banking Ombudsman is of the opinion that the complicated nature of the complaint requires consideration of elaborate documentary and oral evidence and the proceedings before the Banking Ombudsman are not appropriate for adjudication of such complaint. The decision of the Banking Ombudsman in this regard shall be final and binding on the complainant and the bank.

Q.22. How many such Banking Ombudsman are established as of now?

- A). The following is the list, which discloses the number of such establishments, which are established for the redressal of grievances:

FAQs

Address of the Office of Banking Ombudsman	Area of Operation	Telephone/ Fax No.
C/o Reserve Bank of IndiaLa Gajjar Chambers, Ashram Road, Ahmedabad-380 009	Gujarat, Union Territories of Dadra and Nagar Haveli, Daman and Diu	Tel.No.079- 26582357/ 26586718 Fax No.079- 26583325
C/o Reserve Bank of India 10/3/8, Nrupathunga Road Bangalore-560 001	Karnataka	Tel.No.080- 22275020 Fax No.080- 22244047
C/o Reserve Bank of IndiaHoshangabad Road, Post Box No.32, Bhopal-462 011	Madhya Pradesh & Chattisgarh	Tel.No.0755- 2573772/ 2573776 Fax No.0755- 2573779
C/o Reserve Bank of India Pt. Jawaharlal Nehru Marg Bhubaneswar-751 001	Orissa	Tel.No.0674- 2418007 Fax No.0674- 2418006
C/o Reserve Bank of India 15, Netaji Subhas Road Kolkata-700 001	West Bengal and Sikkim	Tel.No.033- 22206222/22205580 Fax No.033- 22205899
C/o Reserve Bank of India New Office Building Sector- 17, Central Vista Chandigarh-160 017	Himachal Pradesh, Punjab and Union Territory of Chandigarh	Tel.No.0172- 22771849/ 22721011 Fax No.0172- 22721880
Kuralagam Building (3rd Floor) Esplanade N.S.C. Bose Road Chennai-600 108	Tamil Nadu, Union Territories of Pondicherry and Andaman and Nikcobar Islands	Tel No.044- 25341645/ 25341619 Fax No.044- 25341607

FAQs

C/o Reserve Bank of India Station Road, Pan Bazar Guwahati-781 001	Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Naga- land & Tripura	Tel.No.0361- 2510054/2540445 Fax No.0361- 2540445
C/o Reserve Bank of India Annexe Building, Ground Floor Saifabad, Hyderabad-500 004	Andhra Pradesh	Tel.No.040- 23210248/ 23216766 Fax No.040- 23210014
C/o Reserve Bank of India Ram Bagh Circle, Tonk Road, Post Box No.12, Jaipur-302 004	Rajasthan	Tel.No.0141- 2570357/ 2570392 Fax No.0141- 2562220
C/o Reserve Bank of India M.G. Road, Post Box No.82Kanpur-208 001	Uttar Pradesh excluding District of Ghaziabad & Uttaranchal	Tel.No.0512- 2306330/2306278 Fax No.0512- 2305938
C/o Reserve Bank of IndiaGarment House, Ground Floor Dr. Annie Besant Road, Worli, Mumbai-400 018	Maharashtra and Goa	Tel.No.022- 24924607/ 24960893 Fax No.022- 24960912
Jeevan Bharati BuildingTower No.1, 7th Floor 124 Connaught Circus New Delhi-110.011	Delhi, Haryana, Jammu and Kashmir and Ghaziabad district of Uttar Pradesh	Tel.No.011- 3725445/3710882 Fax No.011- 3725218
'Biscomaun Towers' 2nd Floor, West Gandhi Maidan Patna-800 001	Bihar & Jharkhand	Tel.No.0612- 2624987 Fax No.0612-
C/o Reserve Bank of India Bakery Junction Thiruvananthapuram-695 033	Kerala and Union Territory of Lakshadweep	Tel.No.0471- 2332723/2329676 Fax No.0471- 2321625

9. Case Laws

November 2005

Hindustan Law Book Co. V Ganesh Srivastav

Citation : AIR 2005 Cal. 278

Sub: Obligation under a contract entered into between a consumer and the erstwhile owner was not performed by the present owner- deficiency in service

Facts & Judgement : The complainant was a life member of a journal . The new owners suddenly stopped the supply of magazines to him, on the ground that the membership was only for 10 years and thereafter it was not under any obligation to continue the supply to him. It was held that it would amount to deficiency in service if the obligation under a contract entered into between a consumer and the erstwhile owner was not performed by the present owner, who had purchased that business with all encumbrances.

Secondary Education Board V Deshraj Singh

Citation : (2005)III CPJ 715 (Rajasthan-Scdrc)

Sub: Allotment of wrong roll number - deficiency in service

Facts & Judgement : The complainant was allotted a wrong roll number by the appellant as a result of which he could not appear in the examination on the scheduled day. The lapse on the part of the appellant amounted to deficiency in service for which compensation of Rs.15,000/- and refund of exam fee of Rs.500/- was ordered.

Joseph Mathew Thomas and Co. V Maruti Udyog Ltd

Citation: 2005 III CPJ 657 (Kerala - Scdrc)

Sub: Goods purchased for commercial purpose, if there is a warranty for its maintenance the purchaser becomes a consumer

Facts & Judgement : A vehicle was purchased by the complainant from an authorised dealer developed trouble which continued despite

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being repaired during the warranty period. The State Commission held that even where goods were purchased for commercial purpose, if there is a warranty for its maintenance the purchaser becomes a consumer in respect of the service rendered or to be rendered by the manufacturer of the supplier during the warranty period.

(September 2005)

Canara Bank Vs Kalastine

Citation : III (2005) CPJ 68 [Tamil Nadu - SCDRC]

Sub: Failure to return such a dishonoured cheque would not amount to a deficiency in service of the bank, which was only acting as a collecting agent.

Facts & Judgement : The deposit of a cheque made by the complainant, an account holder with the appellant bank, was returned dishonoured on the ground that "payment was stopped by the drawer". His request to the bank for return of the cheque was not heeded by the bank. He filed a complaint. The State Commission held that when disputes had arisen about the genuineness of the cheque and on the instructions of the police, which was making the investigation, the cheque had been retained by the bank, the failure to return such a cheque would not amount to a deficiency in service of the bank, which was only acting as a collecting agent.

Godrej Appliances Ltd. Vs S. Rajendran

Citation : III (2005) CPJ 198 [Tamil Nadu - SCDRC]

Sub: If the hiring of a service is meant for any business purpose, the Act will not apply.

Facts & Judgement : The fridge supplied was defective. The complainant approached the District Forum, which directed it to supply a new fridge and to pay compensation and costs. The State Commission held that the complainant, who was running a cool-drink shop, had purchased the fridge for the purpose of storing cool-drinks meant for sale and not for domestic or personal use. Since he had purchased the fridge for commercial purpose he would not fall

within the definition of "consumer" and hence was disentitled to approach the Consumer Forum. The provisions of Consumer Protection Act make it clear that if the hiring of a service is meant for any business purpose, the Act will not apply.

Prajakta Karkare Vs Vithal Madhavrao Kaslilar

Citation : III (2005) CPJ 148 [Chattisgarh - SCDRC]

Sub: Appellant in the capacity of the treasurer of the society could not be held personally liable for the refund of the amount so deposited

Facts & Judgement : The complainant deposited certain amount with a society. As the deposited amount was not returned, a complaint was filed by him before the District Forum, which held the president and treasurer, as liable to restitute the amount to the complainant. The State Commission held that though the treasurer and the president of the society had canvassed for the deposit of the amount with the society, it would not mean that they were the recipients of the deposit. There was no agreement between the complainant and the appellant-treasurer for the refund of the amount by the latter. The registered society, with which the deposit was made, was alone liable to refund the amount and it had also not been impleaded in the complaint. Therefore the appellant in the capacity of the treasurer of the society could not be held personally liable for the refund of the amount so deposited.

PSEB V Zora Singh

Citation : (2005) 6 SCC 776

Sub: Punjab State Elec. Board taken deposits for grant of electric connection which was not given even after 10 years - deficiency of service

Facts & Judgement : Punjab State Elec. Board had called for deposits from large number of agriculturists for grant of electric connection which was not given even after 10 years. Supreme Court held that the order of the National Commission directing the Board to release the connection by a specified date is in order. However the

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compensation of Rs.10,000/-to each applicant granted by the commission was modified to Rs.5000/- and the rate of interest was also reduced to 9% from 12%

(August 2005)

National Insurance Company Vs. Harject Rice Mills.

Citation : (2005) 6 SCC 45.

Sub: Fraudulent claim by mill not considered by High Court

Facts & Judgement : Mill claimed amount of Rs.8,96,500 from insurance company on account loss due to fire. State Commission and High Court ordered the payment. Supreme Court held that High Court failed to consider the allegation of insurance company that the claim was fraudulent on the basis of report of private investigator hired by the insurance company. Matter was remanded.

TRO Vs Himachal Gramin Sanchayatta Ltd.

Citation : 146 Taxman 6 SCDRC HP

Sub: Finance Company and its subsidiary duped investors - properties of the finance company sold in auction - proceedings kept in bank for distribution to investing public- commission dismissed TRO's claim for tax arrears of subsidiary as the first priority is consumers.

Facts & Judgement : Finance Company and its subsidiary duped investors by disappearing with their contributions. On their complaints, properties of the finance company were sold in auction and the proceedings were kept in bank for distribution to investing public. As only much after the filing of the complaint by the investors, TRO approached the State Commission for release of funds from the bank towards the tax arrears of the subsidiary, the commission dismissed the department's claim as the first priority is hapless consumers in country.

(July 2005)

FAO, Basic Education V. Madhuri Srivastav

Citation : (2005) CPJ UP SC DRC.

Sub: Teacher's complaint for non receipt of salary did not constitute a Consumer dispute.

Facts & Judgement : Teacher had complained to the Consumer Forum that her salary had not been credited to her account. The State Forum held that this is a matter to be raised before the Appropriate Forum which is State Administrative Tribunal and the Teacher's complaint did not constitute a Consumer dispute.

Villipuram Housing Unit V. P. Tamilarasan

Citation : (2005) CPJ 681 TN SC DRC.

Sub: After taking the token advances, builder abandoned the proposal for construction of housing colony- matter had not reached a final stage of contract - complainant cannot claim compensation on account of deficiency of service.

Facts & Judgement : After publishing advertisements in the news papers regarding construction of housing colony and collecting token advances the builder abandoned the proposal. As the matter had not reached a final stage of contract, the complainant cannot claim compensation on account of deficiency of service. He is entitled to get back the advance with 9 percent interest thereon.

(June 2005)

Laser Arts Vs Samarth Sahakari Bank Ltd.

Citation : II (2005) CPJ 246 (Maharashtra - SCDRC)

Sub: The bank had adjusted an amount received by its client in the course of business transaction, towards its existing loan liability - it could not be taken as deficiency in service

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Facts & Judgement : The bank had adjusted an amount received by its client in the course of business transaction, towards its existing loan liability, without its concurrence. The client had given guarantee for a third party which was in force and there was an existing loan liability to it and therefore it exercised its right of lien in appropriating the amount towards the aforesaid loan liability. The bank's action was justified under section 171 of the Indian Contract Act, 1872, and if the bank exercised its right, it could not be taken as deficiency in service under section 2(1)(g) of the Consumer Protection Act, 1986.

S.N. Panigrahi Vs Andhra Bank

Citation : II (2005) CPJ 316 [Delhi-SCDRC]

Sub: To deprive the consumer of his constitutional right of mentioning the amount in the cheque in Hindi amounts to gross deficiency in service

Facts & Judgement : The respondent bank declined to honour the cheques owing to the inability to compare the signature of the appellant written in Sanskrit language with that appearing in the account-opening form. On the insistence of the bank officials the appellant signed the cheques in Hindi which also were not accepted. It was held by the State Forum that to deprive the consumer of his constitutional right of mentioning the amount in the cheque in Hindi amounts to gross deficiency in service and violation of Official Languages Act. Therefore, the appeal was allowed with compensation and costs.

Bhari Cellular Ltd. Vs Blue Bells Model School

Citation: II (2005) CPJ 103 [Delhi-SCDRC]

Sub: Compensation to be paid on account of mental agony and harassment the complainant-respondent suffered for disconnection of his mobile phone

Facts & Judgement : The appellant was asked to pay compensation on account of mental agony and harassment the complainant-

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respondent suffered for disconnection of his mobile phone which cannot be denied on the ground that the consumer happened to be a chairman of a school it would not mean that he would be entitled to compensation for loss of business by way of disconnection of mobile telephone. The compensation allowed by District Forum was reduced in appeal.

(May 2005)

Sainik Automobiles Vs. Maheshchand Gupta

Citation : (2005) CPJ 88-UP SCD (RC).

Sub: No liability can be fastened on the dealer for delay in delivery of vehicles

Facts & Judgement : Consumer complained to the District Forum regarding the delay in delivery of vehicles. Forum directed the dealer to refund the booking amount along with interest. The state forum held that the responsibility of the dealer is limited to collect and pass on the booking amount to the manufacturer and no liability can be fastened on the dealer.

Mohan Ram Vs. Nagar Palika Churu

Citation: 2005 CPJ84 Raj. SCDRC.

Sub: Complainant was allotted a residential plot on payment of deposit but plot was not delivered by the respondent - the dispute is covered by the Act.

Facts & Judgement : Complainant was allotted a residential plot on payment of deposit but plot was not delivered by the respondent. District Forum dismissed the complaint treating it breach of contract between two parties which did not give rise to deficiency in service. However, the state forum held that respondent had undertaken to allot residential plots to needy persons under Urban Land Disposal Rules 1974 and the dispute is covered by the Act.

British Airways Vs Nitin Maheshwari

Citation: 1 (2005) CPJ 467 [Delhi-SCDRC]

Sub: Passenger lost baggage during his travel with the airlines, which refused to compensate him - providers of service are not expected to take a plea that the claim had become time-barred

Facts & Judgement : A passenger lost his baggage during his travel with the airlines, which refused to compensate him claiming that his complaint had become time-barred. It was held that the claims were not governed by the Limitation Act, 1963 or Code of Civil Procedure, 1908 and represented only damages provided to a consumer on account of deficiency in service or unfair trade practice. The providers of service are not expected to take a plea that the claim had become time-barred. The conduct of the Air Lines in taking time to make the offer, thereafter withdrawing the same and then compelling the passenger to approach the District Forum to make his rightful claim did entitle him to a compensation of Rs.5,000/- for mental agony and harassment besides US \$ 250 and Rs.500 towards cost of litigation.

Maharashtra Group Finance Co. Ltd. Vs Sunil Kumar Agarwal

Citation : 1 (2005) CPJ 35 [Dehradun-SCDRC]

Sub: An agent is not a consumer - payment could be made only to the account holders and not to the complainant, as he was not a consumer.

Facts & Judgement : An agent opened accounts with the appellant finance company in the names of other persons and deposited the entire account. However, the company did not refund the amount. It was held that though the amount was deposited by the agent, the deposits were themselves in the name of other persons, who were the actual account holders. Payment could be made only on the demand by the account holders, during their lifetime. The agent was not the beneficiary; he could be treated only as an agent of the account holders. An agent is not a consumer. The Forum held that the payment could be made only to the account holders and not to the complainant, as he was not a consumer. Complaint was dismissed.

Durg Rajnandgaon Gramin Bank Vs Oriental Insurance Company Ltd.

Citation : 1 (2005) CPJ 25 [Raipur-SCDRC]

Sub: Complainant paid premium to the bank for being paid to the insurance company - the mistake of the bank in remitting the amount to another company - the deficiency in service by the bank

Facts & Judgement : The complainant insured 4 pigs with one insurance company and paid premium to the bank for being paid to the insurance company. The bank remitted the premium to another Company. That Company contended that since it did not insure the impugned pigs, it was not liable to pay any compensation. Insurance Company No.1 contended that since it had never received any premium amount from the complainant for any insurance cover, it owed no liability to him. It was held that the mistake was solely of the bank in not remitting the amount of premium to company No.1, which had rightly repudiated the claim as it had not received the premium amount. The bank not only committed the deficiency in service but had also insisted that the complainant prefer the claim before company No.2, which was not the insurer.

(April 2005)

Prafulbhai Manibhai Patel Vs Union of India

Citation : 1 (2005) CPJ 607 (Guj- SCDRC)

Sub: Deposits due for repayment by the postal authorities on June 17, 2001 were paid only on October 21, 2001. The complainants would be entitled to interest at 12 per cent from June 17, 2001 to October 21, 2001.

Facts & Judgement : Deposits that were due for repayment by the postal authorities on June 17, 2001 were paid only on October 21, 2001. There was no direction or injunction against the postal department in making payment according to the pendency of the complaints. The complainants would be entitled to interest at the stipulated rate of 12 per cent from June 17, 2001 to October 21, 2001.

Case Laws

(February 2005)

HUDA V Soma Devi (2004)

Citation : 4 Comp L 46 SC

Sub: Failure to deliver land to the respondent after taking deposits - only deposit with interest liable to be returned.

Facts & Judgement : Haryana Urban Development Authority (HUDA) allotted a land to the respondent after taking deposits but could not deliver possession as plot was under litigation. Assessee took the matter to National Forum. HUDA thereupon delivered possession and returned the deposit with interest.

Supreme Court held that as per the direction of the National Forum only money with interest was to be restituted. Therefore assessee was directed to return possession of the plot of land.

Margadarsi Chit Fund Ltd V District Consumers Disputes Redressal Forum

Citation:(2005) 123 Comp Cas 194 (AP)

Sub: Chit fund companies amenable to jurisdiction of the consumer fora under the provision of the Act.

Facts & Judgement : A Chit fund company is in the business of providing a service and the subscribers to chits are "Consumers" within the meaning of section 2(1)(d) of the Consumer Protection Act, 1986. Therefore, Chit fund companies are amenable to jurisdiction of the consumer fora under the provision of the Act.

(January 2005)

R. Natarajan V. District Consumer Disputes Redressal Forum, Coimbatore

Citation: (2004) 122 Comp Cas 455 (Mad)

Sub: Jurisdiction of the authorities constituted under the Consumer Protection Act wider than and distinct from that of the authorities constituted under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act

Facts & Judgement : Simultaneous action was being taken against the properties of the petitioner, one under the Consumer Protection Act and the other under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act.

The petitioner obtained a sum of Rs.43,000/-, from a party as advance towards the sale of housing sites. As the petitioner failed to deliver the said housing sites, proceedings were initiated by the party before the District Consumer Disputes Redressal Forum. Meanwhile, the Government had initiated action against him under the Tamil Nadu protection of Interest of Depositors (in Financial Establishments) Act and attached his properties.

The Madras High Court held that as the jurisdiction of the authorities constituted under the Consumer Protection Act was wider than and distinct from that of the authorities constituted under the Tamil Nadu Act, section 6(2) of the latter Act, imposing a bar was not attracted.

HUDA V Dr. Babeswar Kanhar

Citation: (2005) 1 SCC 191

Sub: Forfeiting the deposit for delay in sending the letter because of holidays , not justified

Facts & Judgement : Appellant had applied for allotment of land to HUDA's and made a deposit of Rs.46,625/- as advance. He sent letter by RPAD on 28-11-2001 asking for the return of deposit as he was not interested in purchase of land. HUDA's office was closed on 01-12-2001 and 02-12-2001. 30-11-2001 was postal holiday and letter was received not 30-11-2001 but on 3-12-2001. HUDA's action in forfeiting the deposit for delay in sending the letter is held by district and state forums as not justified. Apex court upheld the order.

December 2004

Anumati V PNB

Citation: (2004) 8 SCC 498.

Sub: Bank cannot refuse payment to the other Jt. Holder for acting without his consent

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Facts & Judgement : In the case of a joint fixed deposit with a clause "either or survivor", the bank can pay the amount on maturity to either of the account holders. However one of the Jt. Holders cannot pledge the amount with a third party (which includes the bank) in its capacity as a creditor so that the amount becomes payable to the third party without the consent of the other Jt. holder. The bank cannot thereafter refuse payment to the other Jt. holder. The District Forum directed the bank to pay half the amount in Jt. FD to the other Jt. holder with interest thereon. The order was upheld by Supreme Court.

November 2004

Savita Garg V. National Heart Institute

Citation: (2004) 8 SCC 56

Sub: Hospital responsible for the acts of its permanent staff as well as (visiting) staff

Facts & Judgement : The distinction between the two sorts of contract "contracts of service" and "contracts for service" cannot absolve the hospital as it is responsible for the acts of its permanent staff as well as (visiting) staff whose services are temporarily requisitioned. Hospital as the controlling authority is responsible for both.

September 2003

R.K. Singh V. World Link Finance Ltd.

Citation: (2003) - 46 SCL 361 SCDRC-Raj.

Sub: Consumer Forum directed to decide afresh on the complaint regarding non refund of deposit inspite of it being a part of scheme of CLB

Facts & Judgement : Appellant was not refunded the deposit he had made with the respondent on its maturity. The respondent approached the Company Law Board (CLB) which directed him to repay the deposit in instalments. As appellant did not receive the

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instalment. He filed petition before District Forum which dismissed it in view of the scheme of CLB. The State Council directed the District Forum that in view of the complaint regarding deficiency of service, it should decide the matter afresh.

CCI Chambers CHS Ltd. V Development Credit Bank

Citation : (2003) - 7 SCC 233

Sub: Bank honored 150 forged cheques-Dist Forum asked the complainant to approach Civil Court on the ground that the lengthy process is involved in verifying the numbers-SC directed the forum to hear the appeal

Facts & Judgement : CCI Co-operative Housing Society is an account holder of Development Credit Bank Ltd. The Society filed Complaint before National Commission alleging deficiency of service by the bank whereby a huge amount of Rs.75.70 Lacs was debited to their a/c. by the bank honoring 150 forged cheques and apprehension that one bank officer was involved.

The Supreme Court deprecated the decision of the Dist. forum asking the complainant to approach Civil Court on the ground that the lengthy process is involved in verifying the numbers. It directed the forum to hear the appeal

GM Telecom BSNL v M. Krishnan

Citation: AIR 2003 KER 152

Sub: Consumer Protection Act is all embracing

Facts & Judgement : Respondent's phone was sought to be disconnected on ground of arrears relating to phone of the firm where he was partner. The Consumer Disputes Redressal Forum levied damages of Rs.5000/- on the appellant. Same was confirmed.

It was held that the Act is all embracing. It covers all goods and services within its ambit. Services provided under Telegraph Act

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1885 are not excluded. Remedy can be sought under the Act in addition to that available under Section 7B of 1885 Act and option is with the affected party.

Dr. Manmath S. Ravt v Mallikarjan Laxman Babare

Citation: AIR 2003 Bombay 262

Sub: Patient removed from operation theatre for not being able to pay - HC quashed the orders of District Forum as it had no jurisdiction to order administrative enquiry on a State Govt. doctor as it is for the State Govt.

Facts & Judgement : The patient was entitled to facility in ESI Hospital. He was examined by the petitioner doctor and was given injections, X-rayed and taken to operation theatre on 10-05-95. But the patient could not to pay a sum of Rs.20,000/- demanded by the doctor. Thereupon the patient was removed from the theater and was told that operation was not necessary. Another doctor at Wadia Hospital had certified that operation was needed. On these facts, the District Forum directed the doctor to reimburse the expenses incurred by the petitioner and further directed the hospital to hold dept inquiries.

The High Court quashed the orders as the District Forum had no jurisdiction, as it cannot order administrative enquiry on a State Govt. doctor as it is for the State Govt. Even though the doctor had alternate remedy of appeal to State Forum, the High Court admitted his writ petition as it was pending for 4 ½ years.

Rabinarayan Moharana v State of Orissa

Citation: Air 2003 Orissa 93

Sub: Removal of President of District Consumer Forum from the post by the Govt. for taking bribe is proper and consultation with the State Commission is not necessary.

Facts & Judgement : President of district consumer forum was found to have accepted Rs.5,000/- as bribe as per records of vigilance Dept.

Case Laws

and reasonable opportunity was given to him in the enquiry to defend himself. Removal from the post by the Govt. is proper and consultation with the State Commission is not necessary.

Archana M Kamath v Canara Bank

Citation : (2003) - 114 Comp Cas 15 SC

Sub: Bank Charges for issue of cheque book justified

Facts & Judgement : Bank had charged Rs.50/- for issuing 50 leaves of MISR cheques. The District and State Forums held the bank's action as unjustified which was reversed by the National Commission.

Supreme Court confirmed the orders of National Commission holding that bank have to make up the cost of introducing modern infrastructure.

UTI v. Smt. Urmila Nath

Citation: (2003) 42 SCL 20 SCDRC Orissa

Sub: Deficiency of service by UTI for sending repurchase cheque to the transferor of shares instead of transferring the shares in the transferee's name

Facts & Judgement : Respondent No.1 had purchased share certificate from Respondent No.2 and sent it to UTI for transfer in her name. Even after confirming the said sale from Respondent No.2 UTI still sent repurchase cheque to Respondent No.2. It was held that UTI had committed deficiency of service and should pay interest and compensation along with repurchase price.

Mrs. Bupender Kaur V. JCT Ltd.

Citation: (2002) 40 SCL 408 (UT, CDRC - CHD)

Sub: Non-receipt of matured amount of Fixed Deposit- Respondent liable to pay interest for 9 months.

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Facts & Judgement : A complaint had been filed with District Forum regarding non-receipt of matured amount of Fixed Deposit. The District Forum dismissed the complaint on the ground that the amount had been since sent.

On further appeal, the Consumer Disputes redressal Commission held that the respondent was clearly deficient in Service and liable to pay interest for 9 months.

Golden Forests (India) Ltd. V. Nasib Kaur Chakkal

Citation: (2002) - 40 SCL 413 (SCDRC-CHD)

Sub: Appellant's plea that it was already a party to the case under High Court for failure to repay the F.D on complaint filed by SEBI - State Commission held that since property mentioned in the complaint is different - it amounted to deficiency in Service under Consumer Protection Act.

Facts & Judgement : Appellant Company had made fixed deposit of Rs.3 Lakhs in 1999 with the respondent who had not refunded the maturity amount of Rs.3.50 lakhs on January 2000. The defence was that due to petition filed by SEBI, the Bombay High Court had appointed a Receiver for sale of properties and complainant should file claim before the Receiver.

The State Commission held that the property mentioned in the complaint is different from that involved in the case before High Court, and the High Court had not stayed the Consumer Protection Act, the appellant was liable to refund the Fixed Deposit amounts with interest.

Suresh Chandra V Parekh vs. Ramvilas Maheshwari

Citation: (2002) - 40 SCL 418 (SCDRC-Ahd.)

Sub: Prospective buyer is not a consumer under the Consumer Protection Act

Facts & Judgement : Complaint was filed for the bank's failure to

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forward share application money of Rs.35,000/- and compensation was claimed in the form of allotment of shares.

Since complainant was only a prospective buyer, he was not a consumer within Sec.2(1)(d) and complaint was not maintainable.

Union of India v. Haji Dal & Oil Mills

Citation: (2002) - 40 SCL 428 (SCDRC-Lucknow)

Sub: NSC were issued in the name of partnership firm - deficiency of service by post office

Facts & Judgement : NSC were issued in the name of partnership firm but as per rules payment on maturity could not be made in the name of firm.

It was held that there was deficiency of service by post office personnel who originally issued certificates in firm's name. Post office was directed to make the payment to the firm and to pay interest from the date of maturity at Savings Bank rate.

National Insurance Co. Ltd. V. Sky Gems

Citation: (2002) 39 SCL 529 SC

Sub: Following loss of exported goods appellant's claim for payment by insurance company in pound sterling rejected - respondent had paid the insurance premium in Indian rupees, the insurance amount was ordered to be paid in Indian rupees.

Facts & Judgement : Exported goods had been insured and the consignment sent through foreign post office to London were lost. Appellant claimed payment by insurance company in pound sterling as the insured value was in terms of that currency.

Since the respondent had paid the insurance premium in Indian rupees, the insurance amount was ordered to be paid in Indian rupees.

Case Laws

Narinder Kumar V. Sanjiv Kumar

Citation: (2002) - 39 SCL 835 NC DRC-N-Delhi

Sub: Chit Fund Act Sec. 64 bars Jurisdiction of Civil Court and not of Consumer Forum- adjustment against father's dues is not permitted.

Facts & Judgement : Respondent had paid all instalments in chit fund but petitioner refused to pay it in full on the ground that the same had been adjusted against the dues of petitioner's father and further claimed that Chit Fund Act Sec. 64 bars Jurisdiction of Consumer Forum.

It was held that the said bar is on Civil Court only and further held that adjustment against father's dues is not permitted.

Dr. J.J. Merchant V. Shrinath Chaturvedi

Citation: 2002 6 SCC 635

Sub: Commission competent to decide complicated issues of laws/facts.

Facts & Judgement : Respondent's son allegedly died of medical negligence and he filed complaint in National Council in 1993.

Supreme Court on appeal filed by the appellant doctors held that since the Commission is headed by retired Judge of Supreme Court / High Court it is competent to decide complicated issues of laws/facts and that for examination of expert doctor witnesses, affidavits can be taken and relegation of matter to civil court on ground of long delay would frustrate the purpose of the Act.

The appeal was dismissed but instructions were issued to the Commission to expedite the disposal.

Synco Industries vs State Bank of Bikaner and Jaipur

Citation: (2002) 2 SCCI

Sub: The bank reduced the sanctioned loan facilities- held to be not an appropriate case to be heard and disposed of in a summary manner- held to be an appropriate claim to be decided by a Civil Court.

Facts & Judgement : The bank reduced the sanctioned loan facilities and consequently the borrower filed complaint before National Commission seeking Rupees Fifteen Crores as damages and Rupees Sixty Lakhs as cost of travelling and other expenses. The National Commission did not consider it to be a fit case to be tried under the Consumer Protection Act. On appeal the Supreme Court held that given the nature of the claim and the prayer for damages, it is obvious that very detailed evidence would have to be led both to prove the claim and thereafter to prove the damages and expenses. It is, therefore in any event, not an appropriate case to be heard and disposed of in a summary manner. This was held to be an appropriate claim to be decided by a Civil Court.

Savani Roadlines v/s Sundaram Textiles Ltd.

Citation: 38 SCL 738 (SC)

Sub: Appellant transport Company directed to pay value of goods with interest for failure to deliver the goods - the second respondent ie. insurance company who settled the claim not a "consumer" under the Act - complaint by insurance company not maintainable.

Facts & Judgement : The First respondent entrusted certain goods of value of Rs. 9.30 lakhs to the appellant for transport from one place to another. Goods were not delivered. As the goods were insured, the first respondent lodged a claim with the second respondent - insurance company. The second respondent settled claim, obtained a letter of subrogation and a special power of attorney and filed a claim against the appellant before the State Forum. The First respondent was also a party to the complaint. The State Forum directed the appellant to pay value of goods with

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interest. Revision filed by the appellant before the National Commission was dismissed. It was held that the insurance company, compensatory consignor for loss of goods during transit and having letter of subrogation, was in effect an assignee and not beneficiary of service and, hence, not a 'consumer'. It was accordingly held that the appellant was right in contending that complaint by insurance company was not maintainable.

Kerala Agro Machinery Corpn. V. Bijoy Kumar Roy

Citation: (2002) - 3 Supreme Court Cases 165

Sub: After the expiry of warranty period the complaint was held to be time barred and not entertainable.

Facts & Judgement : Delay of more than 4 years in filing complaint before District forum regarding defects in goods purchased (Power Tiller) pointed out to Dealer and not removed by him. The warranty period was one year. The complaint was held to be time barred and not entertainable.

G.P. Forests Development (India) Ltd v/s Harinder Singh

Citation: 32 SCL 196 (Punjab State Consumer Disputes Redressal Commission)

Sub: Appellant defaulted in repaying money invested by respondent in its Monthly Investment Scheme- deficiency of service -respondent entitled to refund

Facts & Judgement : The Appellant defaulted in repaying money invested by respondent in its Monthly Investment Scheme. It was held that since appellant had failed to pay amount admittedly deposited with it on maturity of said scheme, there was deficiency of service on part of appellant and respondent was entitled to refund of said amount

Unit Trust of India v/s Joseph Kanju

Citation: 32 SCL 199 (Kerala State Consumer Disputes Redressal Commission)

Sub: The Children Gift Growth Fund Scheme of UTI suspended in terms of clause (33) of said scheme- insofar as benefit of bonus and dividend would accrue to child in respect of contribution already made and on maturity on attaining age of 21 years and child would be eligible to get amount- there was no deficiency of service.

Facts & Judgement : The Children Gift Growth Fund Scheme started by appellant as per section 21 of Unit Trust of India Act which respondent joined in name of his grand-children, was suspended in terms of clause (33) of said scheme. The contribution sent by respondent was not accepted. It was held that suspension was consistent with the provisions in the said scheme. It was also held that the appellant was not barred by principle of promissory estoppel in taking impugned step of suspension of said scheme. It was also held that insofar as benefit of bonus and dividend would accrue to child in respect of contribution already made and on maturity on attaining age of 21 years and child would be eligible to get amount, along with aforesaid bonus as well as dividend, it had to be held that there was no deficiency of service.

Santosh Kumari v/s Chairman, Ispat Alloys Limited

Citation: 29 SCL 148 (Delhi State Consumer Disputes Commission)

Sub: Deficiency in Issuing Debentures

Facts & Judgement : The appellant opted to convert her convertible debentures into non-convertible debentures and sent her Option Form by registered post on 4-2-1993. The respondent-company, however, issued equity shares on the ground that option letter was not received by 10-2-93, the stipulated due date. It was held that, in view of the admission by the respondent regarding receipt of the appellant's letter, onus was on the respondent to show that said letter had not reached in time and since no material evidence was produced by respondents in this regard, it had to be presumed that option

letter had reached in time, i.e. within 3-4 days in the ordinary course. It was therefore held that the respondent was deficient in not complying with the option exercised by appellant and hence liable to compensate for loss sustained by the appellant.

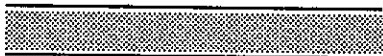
**Tamil Nadu State Consumer Disputes Redressal Commission,
Chennai - N. Alagammai v/s Indus Ind Bank Limited**

Citation: (2001) 29 SCL

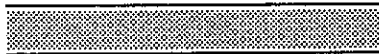
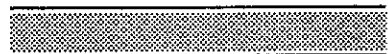
Sub: Depositor Respondent a consumer under the Act.

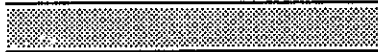
Facts & Judgement: The appellant finance-company failed to repay, on maturity, amount deposited by the respondent with interest. The appellant contended that respondent was not consumer within the meaning of section 2 (1) (d). It was held that in view of the decision of the apex court in case of Lucknow Development Authority v/s M.K.Gupta (1994) 1 SCC 243 and that of National Commission in the case of Neela Vasant Raje v/s Amogh Industries (1986 - 1995) Com 446 (NS), respondent was decidedly a consumer with the meaning of section 2 (1)(d)

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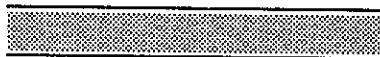
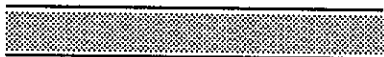


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