

Ahmednagar Jilha Maratha Vidya Prasarak Samaj's  
**NEW LAW COLLEGE**  
*Ahmednagar*

*LL.M II Semester III[2014 Pattern]*

*PAPER - 11*

***CONSUMER***

***LAW***

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*B.A., LL. M.(SET)*

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# CONSUMER LAW

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**Semester III**  
Business Law Cluster

(Paper -11)

Compulsory Paper

Credits : 4

## CONSUMER LAW

Objective: To obtain an insight into the provisions and working of the Consumer Protection law.

Topics for Study:

1. INTRODUCTION
  - a) Historical perspective of consumer protection in India
  - b) United Nations & consumer Protection
  - c) Laws dealing with consumer complaints
  - d) Caveat Emptor
2. CONSUMER PROTECTION ACT
  - a) Aims & Objects of the Act
  - b) Consumers
  - c) Consumer Dispute
  - d) Defect in Goods and Services
  - e) Unfair Trade Practices
3. DEFICIENCY IN SERVICES
  - a) Meaning & Instances
  - b) Negligence
  - c) Deficiency in service in various professions: Insurance services, Banking and Financial services, Housing etc.
4. PROCEDURAL PROVISIONS
  - a) National Commission
  - b) State Commission
5. CONSUMER PROTECTION ACT & CONFLICT WITH OTHER ENACTMENTS

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6. CONSUMER PROTECTION COUNCILS

7. CONSUMER DISPUTES REDRESSAL AGENCIES

## **Suggested Readings:**

1. Saraf, D.N., Law of Consumer Protection in India.
2. Avtar Singh, The Law of Consumer Protection: Principles and Practice.
3. J.N.Barowalia, Commentary on Consumer Protection Act 1986.
4. P.K.Majundar, The Law of Consumer Protection In India
5. D.P.Wadhwa & W.L.Rajah, The Law of Consumer Protection
6. R.N.P.Choudhary, Consumer Protection Law
7. V.Balakrishna Eradi, Consumer Protection Jurisprudence
8. Gupta S.N., Banks & Consumer Protection Law
9. Kaushal Anoop, Medical Negligence & Legal remedies
10. S.K.Verma & M.Afzal Wani, A Treatise on Consumer Protection Law
11. Landmark Judgement on Insurance & Consumer Protection t, NCDRC
12. Landmark Judgement on Consumer Protection, NCDRC.

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## Topic No. 1

### 1. INTRODUCTION

- a) Historical perspective of consumer protection in India
- b) United Nations & consumer Protection
- c) Laws dealing with consumer complaints
- d) Caveat Emptor

## **HISTORICAL EVOLUTION OF CONSUMER PROTECTION LAW IN INDIA**

### **Introduction:**

Consumer protection is not a new problem for India. Historically speaking however the problem of Consumer Protection is not a recent phenomenon this legal mechanisms have been devised to protect gullible consumers from unscrupulous traders. In the west, for instance, the seeds of consumer protection can be traced in the Talmudic legal jurisprudence. Arthur Silverstein wrote,<sup>1</sup> two specific biblical references warned against the misuse of weights and measures. The gravity of such misconduct was emphatically expressed in the Talmud. *“The punishment (i.e. divine) for (false) measures is more rigorous than that for (marrying) forbidden relatives.”* Moreover weights and measures were of particular concern to the sages because most transactions required their use, especially such necessities as grain, oil, and wine. Talmudic law specified the type of weights to be employed, procedures of weighing, general merchant rules to be applied, and methods of enforcement.<sup>2</sup>

Similarly, regarding the provisions on fraud and merchantability in the Talmudic law, Silverstein has further written-

The Doctrine of caveat emptor was almost totally rejected in Talmudic law; the seller was obliged to inform the buyer of all defects. It was especially forbidden to deceive people by creating a false impression, i.e. an intentional misrepresentation.

Consumer Protection has its deep roots in the rich soil of Indian civilization, which dates

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<sup>1</sup> “Commercial Law According to the Talmud.” In commercial law Journal, vol. 38, No. 1 (May) pp 239-49

<sup>2</sup> Arthur Jay Silverstain consumer protection in Talmudic law. “In commercial law Journal, Vol. 79, no. 7 (July), PP 279-82

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back to 3200 B.C. In ancient India, human values were cherished and ethical practices were considered of great importance. However, the rulers felt that the welfare of their subjects was the primary area of concern. They showed keen interest in regulating not only the social conditions but also the economic life of the people, establishing many trade restrictions to protect the interests of buyers. This chapter examines the historical perspective of consumer protection in India from the Vedic age<sup>3</sup> (ancient period) to the modern period. It also briefly analyzes the development of consumer law in India. Finally, an attempt is made to discuss the legal framework of the Indian Consumer Protection Act of 1986 which led to the evolution of a new legal culture in India.

## **Consumer Protection in Ancient India: A Historical Background:-**

In ancient India, all sections of society followed Dharma-shastras<sup>4</sup> (“Dharma”), which laid out social rules and norms, and served as the guiding principle governing human relations. The principles of Dharma were derived from Vedas.<sup>5</sup> Vedas were considered the words of God, and law was said to have divine origin which was transmitted to society through sages.<sup>6</sup> Thus, Vedas were the primary sources of law in India.<sup>7</sup>

Many writers and commentators of the ancient period documented the living conditions of the people through their innovative and divine writings, including Smriti (tradition) and sruti (revelation), and also prescribed codes to guide the kings and rulers about the method of ruling the State and its subjects. Consumer protection was also a major concern in their writings.

Among the Dharmas, the most authoritative texts are a) the Manu Smriti; b) the Yajnavalkya Smriti; c) the Narada Smriti; d) the Bruhaspati Smriti; and e) the Katyayana Smriti. Among these, Manu Smriti was the most influential.

## **Manu Smriti<sup>8</sup>**

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<sup>3</sup> Historical evolution of consumer protection and law in india :A. Rajendra Prasad

<sup>4</sup> Codes of morals. They also deal with the rules of conduct, law and customs.

<sup>5</sup> Shradhakar Supakar, Law of Procedure and Justice in India, 38 (1986). Veda means knowledge. There are four Vedas: the Rigveda, the Yajurveda, the Samaveda and the Atharvaveda

<sup>6</sup> Ibid. at 9

<sup>7</sup> Ibid. at 11

<sup>8</sup> Historical Evolution of Consumer Protection and Law in India: Dr. A. Rajendra Prasad – Journal of Texas Consumer Law – Pg. 132.

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Manu Smriti describes the social, political and economic conditions of ancient society. Manu, the ancient law giver, also wrote about ethical trade practices. He prescribed a code of conduct to traders and specified punishments to those who committed certain crimes against buyers. For example, he referred to the problem of adulteration and said “one commodity mixed with another must not be sold (as pure), nor a bad one (as good) not less (than the property quantity or weight) nor anything that is at hand or that is concealed”. The punishment “for adulterating unadulterated commodities and for breaking gems or for improperly boring (them)” was the least harsh. Severe punishment was prescribed for fraud in selling seed corn: “he who sells (for seed-corn that which is) not seed-corn, he who takes up seed (already sown) and he who destroys a boundary (mark) shall be punished by mutilation.” Interestingly, Manu also specified the rules of competency for parties to enter into a contract. He said “a contract made by a person intoxicated or insane or grievously disordered (by disease and so forth) or wholly dependent, by an infant or very aged man, or by an unauthorized (party) is invalid.”

During the ancient period, the king had the power to confiscate the entire property of a trader in two instances: (1) when the king had a monopoly over the exported goods; and (2) when the export of the goods was forbidden. There was also a mechanism to control prices and punish wrongdoers. The king fixed the rates for the purchase and sale of all marketable goods.<sup>9</sup> Manu said “man who behaves dishonestly to honest customers or cheats in his prices shall be fined in the first or in the middle most amercement.” There was a process to inspect all weights and measures every six months, and the results of these inspections were duly noted.

All these measures show how effective ancient society was in regulating the many wrongs of the market place. These measures also show how developed the system was in identifying the market strategies of traders. Thus, Manu Smriti effectively dealt with various consumer matters, many of which remain of great concern in modern legal systems.

### **Kautilya’s Arthashastra**

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<sup>9</sup> Rajendra Nath Sharma, Ancient India According to Manu 142 (1980)

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The Arthashastra and yajnavalkyasmriti also mention the malpractice of adulteration and accordingly recommend punishment for the offence. The Arthashastra for instance, recommended imposition of a fine of twelve panas on a trader who adulterated grains, fat, medicine, perfumes, salt and sugar and by mixing things of a similar nature.

Manu Smriti, Kautilya's Arthashastra is considered to be a treatise and a prominent source, describing various theories of statecraft and the rights and duties of subjects in ancient society<sup>10</sup>. Though its primary concern is with matters of practical administration,<sup>11</sup> consumer protection occupies a prominent place in Arthashastra. It describes the role of the State in regulating trade and its duty to prevent crimes against consumers.

Between 400 and 300 B.C., there was a director of trade whose primary responsibility was to monitor the market situations. Additionally, the director of trade was made responsible for fair trade practices. The director of trade was required to be "conversant with the differences in the prices of commodities of high value and of low value and the popularity or unpopularity of goods of various kinds whether produced on land or in water [and] whether they arrived along land-routes or water- routes, [and] also [should know about] suitable times for resorting to dispersal or concentration, purchase or sale."<sup>12</sup> The director of trade advised to "Avoid even a big profit that would be injurious to the subjects. He should not create a restriction as to time or the evil of a glut in the market in the case of commodities constantly in demand."

During this period, several measures were taken to maintain official standards of weights and measures. Kautilya observed, "The superintendent of standardization should cause factories to be established for the manufacture of standard weights and measures." He further said "[the superintendent] should cause a stamping [of the weights and measures] to be made every four months. The penalty for unstamped [weights] is twenty seven panas and a quarter. [Traders] shall pay a stamping fee amounting to one kakani every day to the superintendent of standardization."

According to **Kautilya**, 'the trade guilds were prohibited from taking recourse to

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<sup>10</sup> See R.P.Kangle, The Kautiliya Arthashastra-part II (2ed. 1972) [hereinafter Kangle Part II].

<sup>11</sup> R.P. Kangle, The Kautiliya Arthashastra. Part III A Study 116 (2000) [hereinafter Kangle Part III]

<sup>12</sup> Kangle Part II, supra note 19, at 127



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black marketing and unfair trade practice.” Severe punishments were prescribed for different types of cheating. For example, “for cheating with false cowrie-shells, dice, leather straps, ivory-cubes or by sleight of hand, [the punishment shall be] cutting-off of one hand or a fine.”<sup>13</sup> The rights of the traders were also well protected. Kautilya said, “On the subject of the return of an article purchased or payment of price thereof, there was fixed rule of time, after which an article could not be returned.”<sup>14</sup>

During **Chandragupta’s period**,<sup>14</sup> in which Kautilya lived, good trade practices were prevalent. For example, “Goods could not be sold at the place of their origin, field or factory. They were to be carried to the appointed markets (panya sala) where the dealer had to declare particulars as to the quantity, quality and the prices of his goods which were examined and registered in the books.”<sup>15</sup> Every trader was required to take a license to sell. A trader from outside had to obtain permission. The superintendent of commerce fixed the whole-sale prices of goods as they entered the Customs House. He allowed a margin of profit to fix retail prices. Speculation and cornering to influence prices were prohibited. Thus, the State bore a heavy responsibility for protecting the public against unfair prices and fraudulent transactions. There were severe punishments for smuggling and adulteration of goods. For example, public health was guarded by punishing adulteration of food products of all kinds, including grains, oils, alkali, salts, scents and medicines.

Also during Chandragupta’s period, easy access to justice for all, including consumers, was considered of great importance. The king was the central power to render justice. According to Kautilya, “The king should look to the complaints of the people [of the town and village] in the second part of the day. The mobile and circuit courts worked at night, when necessity arose. They also must have worked on holidays in urgent matters.” The king was required to pay full attention to the truth and he was primarily responsible for administering justice. Everyone could approach the king’s court for justice. However, standing was strictly followed. The king only entertained cases if the aggrieved presented a valid complaint. The king was directed not to “foster litigation by starting an action

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<sup>13</sup> N. Dutta, Origin and Development of Criminal Justice in India 26 (1990).

<sup>14</sup> Chandragupta Maurya ranks as one of the India’s greatest rulers. The period dates back to 323 B.C

<sup>15</sup> Radha Kumud Mookerji, Chandragupta Maurya and his Times 204 (4th ed. 1966).

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without a complainant, and moreover, [the king was told that] no complaint should be taken notice of when it proceeded from a person altogether unconnected with the person aggrieved.” In addition to this, different set of courts were prevalent in ancient India.

The court system during Kautilya’s time was well organized. There were two different benches comprising judges and magistrates to try civil and criminal cases. In civil matters, the judges themselves were empowered to take cognizance of the cases of disadvantaged persons who could not approach the court, for example, the cases concerning ascetics, women, and minors, old, sick and helpless people. Thus, rendering justice was regarded as one of the essential duties of the rulers, and care was taken to ensure that justice was accessible to all. Indeed, this emphasis on justice for all remains a cornerstone of India’s legal system.

### **Consumer Protection in Medieval and Modern Periods:**

In the medieval period, consumer protection continued to be of prime concern of the rulers. During Muslim rule, a large number of units of weights were used in India. During the Sultanate period, the prices used were determined by local conditions.<sup>16</sup> During the rule of Alauddin Khalji, strict controls were established in the market place. In those days, there was unending supply of grain to the city and grain-carriers sold at prices fixed by the Sultan. There was a mechanism for price- enforcement in the market. Similarly, shop-keepers were punished for under weighing their goods.

In the modern period, the British system replaced the age old traditional legal system of India. However, one of the outstanding achievements of British rule in India was “the formation of a unified nationwide modern legal system.”<sup>17</sup> During the British period, the Indian legal system was totally revolutionized and the English legal system was introduced to administer justice. However, it is important to note that the traditions and customs of the Indian legal system were not ignored. “The law itself underwent considerable adaptation. The British institutions and rules were combined with structural features [e.g. a system of separate personal laws] and rules [e.g. Dharma, and local custom]

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<sup>16</sup> S.R.Bakshi, *Advanced History of Medieval India* Vol. 1 287 (2003).

<sup>17</sup> Marc.Galanter, *Law and Society in Modern India* 15 (1997).

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which accorded with indigenous understanding. The borrowed elements underwent more than a century and a half of pruning in which British localisms and anomalies were discarded and rules [were] elaborated to deal with new kinds of persons, property and transactions.” To administer justice, “they were confronted [with] the problem of the value suitable to attach in practice to the [Indian traditions and customs].” Despite the challenges of combining the British and Indian legal systems, “the fabric of modern Indian Law is unmistakably Indian in its outlook and operation” and consumer protection is not an exception to this perception.

## **United Nations guidelines for consumer protection**

### **I. Objectives**

1. Taking into account the interests and needs of consumers in all Member States, particularly in developing ones, recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection, these guidelines for consumer protection have the following objectives:
  - (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
  - (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
  - (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
  - (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
  - (e) To facilitate the development of independent consumer groups;
  - (f) To further international cooperation in the field of consumer protection;

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- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices;
- (h) To promote sustainable consumption.

## **II. Scope of application**

These guidelines apply to business-to-consumer transactions, including the provision of goods and services by State-owned enterprises to consumers. For the purpose of these guidelines, consumer protection policies include the laws, regulations, rules, frameworks, procedures, decisions, mechanisms and programmes of Member States, as well as private sector standards and recommendations that protect consumer rights and interests and promote consumer welfare.

2. For the purpose of these guidelines, the term “consumer” generally refers to a natural person, regardless of nationality, acting primarily for personal, family or household purposes, while recognizing that Member States may adopt differing definitions to address specific domestic needs.

## **III. General principles**

3. Member States should develop, strengthen or maintain a strong consumer protection policy, taking into account the guidelines set out below and relevant international agreements. In so doing, each Member State must set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, and bearing in mind the costs and benefits of proposed measures.

4. The legitimate needs which the guidelines are intended to meet are the following:

- (a) Access by consumers to essential goods and services;
- (b) The protection of vulnerable and disadvantaged consumers;
- (c) The protection of consumers from hazards to their health and safety;
- (d) The promotion and protection of the economic interests of consumers;

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- (e) Access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- (f) Consumer education, including education on the environmental, social and economic consequences of consumer choice;
- (g) Availability of effective consumer dispute resolution and redress;
- (h) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them;
- (i) The promotion of sustainable consumption patterns;
- (j) A level of protection for consumers using electronic commerce that is not less than that afforded in other forms of commerce;
- (k) The protection of consumer privacy and the global free flow of information.

5. Unsustainable patterns of production and consumption, particularly in industrialized countries, are the major cause of the continued deterioration of the global environment. All Member States should strive to promote sustainable consumption patterns; developed countries should take the lead in achieving sustainable consumption patterns; developing countries should seek to achieve sustainable consumption patterns in their development process, having due regard for the principle of common but differentiated responsibilities. The special situation and needs of developing countries in this regard should be fully taken into account.

6. Policies for promoting sustainable consumption should take into account the goals of eradicating poverty, satisfying the basic human needs of all members of society and reducing inequality within and between countries.

7. Member States should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population and people living in poverty.

8. All enterprises should obey the relevant laws and regulations of the

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countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed. (Hereinafter, references to international standards in the guidelines should be viewed in the context of this paragraph.)

**Protection of privacy.** Businesses should protect consumers' privacy through a combination of appropriate control, security, transparency and consent mechanisms relating to the collection and use of their personal data;

**Consumer complaints and disputes.** Businesses should make available complaints-handling mechanisms that provide consumers with expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary cost or burden. Businesses should consider subscribing to domestic and international standards pertaining to internal complaints handling, alternative dispute resolution services and customer satisfaction codes.

## IV. Guidelines

The following guidelines should apply both to home-produced goods and services and to imports.

In applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations.

### A. National policies for consumer protection

Member States should establish consumer protection policies that encourage:

- (a) Good business practices;
- (b) Clear and timely information to enable consumers to contact businesses easily, and to enable regulatory and law enforcement authorities to identify and locate them. This may include information such as the identity of the business, its legal name and the name under which it trades, its principal geographic address, website and e-mail address or other means of contact, its telephone number and its government

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registration or licence numbers;

- (c) Clear and timely information regarding the goods or services offered by businesses and the terms and conditions of the relevant transaction;
- (d) Clear, concise and easy to understand contract terms that are not unfair;
- (e) A transparent process for the confirmation, cancellation, return and refund of transactions;
- (f) Secure payment mechanisms;
- (g) Fair, affordable and speedy dispute resolution and redress;
- (h) Consumer privacy and data security;
- (i) Consumer and business education.

Member States should work towards ensuring that consumer protection enforcement agencies have the necessary human and financial resources to promote effective compliance and to obtain or facilitate redress for consumers in appropriate cases.

### **B. Physical safety**

Member States should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.

Appropriate policies should ensure that goods produced by manufacturers are safe for either intended or normally foreseeable use. Those responsible for bringing goods to the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as “distributors”), should ensure that while in their care these goods are not rendered unsafe through improper handling or storage and that while in their care they do not become hazardous through improper handling or storage. Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers by internationally understandable symbols

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wherever possible.

Appropriate policies should ensure that if manufacturers or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate, the public without delay. Member States should also consider ways of ensuring that consumers are properly informed of such hazards.

Member States should, where appropriate, adopt policies under which, if a product is found to be seriously defective and/or to constitute a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it. If it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated.

### **c. Promotion and protection of the economic interests of consumers**

Member States should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the marketplace.

Member States should intensify their efforts to prevent practices which are damaging to the economic interests of consumers through ensuring that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory standards. Consumer organizations should be encouraged to monitor adverse practices, such as the adulteration of foods, false or misleading claims in marketing and service frauds.

Member States should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers, including means for the enforcement of such measures. In this connection, Member States should be guided by their commitment to the Set of



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Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in resolution 35/63 of 5 December 1980.

Member States should adopt or maintain policies that make clear the responsibility of the producer to ensure that goods meet reasonable demands of durability, utility and reliability, and are suited to the purpose for which they are intended, and that the seller should see that these requirements are met. Similar policies should apply to the provision of services.

Member States should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost. Member States should ensure that their consumer protection policies are not used to protect domestic businesses from competition or applied unfairly.

Member States should, where appropriate, see to it that manufacturers and/or retailers ensure adequate availability of reliable after-sales service and spare parts.

Consumers should be protected from such contractual abuses as one-sided standard contracts, exclusion of essential rights in contracts and unconscionable conditions of credit by sellers.

Promotional marketing and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements. This requires the provision of the information necessary to enable consumers to take informed and independent decisions, as well as measures to ensure that the information provided is accurate.

Member States should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products.

Consumer access to accurate information about the environmental impact of products and services should be encouraged through such means as product profiles, environmental reports by industry, information centres for consumers, voluntary and transparent eco- labelling programmes and product information hotlines.

Member States, in close collaboration with manufacturers, distributors

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and consumer organizations, should take measures regarding misleading environmental claims or information in advertising and other marketing activities. The development of appropriate advertising codes and standards for the regulation and verification of environmental claims should be encouraged.

Member States should, within their own national context, encourage the formulation and implementation by businesses, in cooperation with consumer organizations, of codes of marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by businesses, consumer organizations and other interested parties. These codes should receive adequate publicity.

Member States should regularly review legislation pertaining to weights and measures and assess the adequacy of the machinery for its enforcement.

### **D. Standards for the safety and quality of consumer goods and services**

Member States should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services and give them appropriate publicity. National standards and regulations for product safety and quality should be reviewed from time to time in order to ensure that they conform, where possible, to generally accepted international standards.

Where a standard lower than the generally accepted international standard is being applied because of local economic conditions, every effort should be made to raise that standard as soon as possible.

Member States should encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services.

### **E. Distribution facilities for essential consumer goods and services**

Member States should, where appropriate, consider:

- (a) Adopting or maintaining policies to ensure the efficient distribution of

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goods and services to consumers; where appropriate, specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas. Such policies could include assistance for the creation of adequate storage and retail facilities in rural centres, incentives for consumer self-help and better control of the conditions under which essential goods and services are provided in rural areas;

(b) Encouraging the establishment of consumer cooperatives and related trading activities, as well as providing information about them, especially in rural areas.

### **F. Dispute resolution and redress**

Member States should encourage the development of fair, effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution, including for cross-border cases. Member States should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, transparent, inexpensive and accessible. Such procedures should take particular account of the needs of vulnerable and disadvantaged consumers. Member States should provide consumers with access to remedies that do not impose a cost, delay or undue burden on the economic value at stake and at the same time do not impose excessive or undue burdens on society and businesses.

Member States should encourage all businesses to resolve consumer disputes in an expeditious, fair, transparent, inexpensive, accessible and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.

Information on available redress and other dispute-resolving procedures should be made available to consumers. Access to dispute resolution and redress mechanisms, including alternative dispute resolution, should be enhanced, particularly in cross-border disputes.

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Member States should ensure that collective resolution procedures are expeditious, transparent, fair, inexpensive and accessible to both consumers and businesses, including those pertaining to overindebtedness and bankruptcy cases.

Member States should cooperate with businesses and consumer groups in furthering consumer and business understanding of how to avoid disputes, of dispute resolution and redress mechanisms available to consumers and of where consumers can file complaints.

### **G. Education and information programmes**

Member States should develop or encourage the development of general consumer education and information programmes, including information on the environmental impacts of consumer choices and behaviour and the possible implications, including benefits and costs, of changes in consumption, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. In developing such programmes, special attention should be given to the needs of vulnerable and disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels. Consumer groups, business and other relevant organizations of civil society should be involved in these educational efforts.

Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects.

Consumer education and information programmes should cover such important aspects of consumer protection as the following:

- (a) Health, nutrition, prevention of food-borne diseases and food adulteration;
- (b) Product hazards;
- (c) Product labelling;

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- (d) Relevant legislation, how to access dispute resolution mechanisms and obtain redress and agencies and organizations for consumer protection;
- (e) Information on weights and measures, prices, quality, credit conditions and availability of basic necessities;
- (f) Environmental protection;
- (g) Electronic commerce;
- (h) Financial services;
- (i) Efficient use of materials, energy and water.

Member States should encourage consumer organizations and other interested groups, including the media, to undertake education and information programmes, including on the environmental impacts of consumption patterns and on the possible implications, including benefits and costs, of changes in consumption, particularly for the benefit of low-income consumer groups in rural and urban areas.

Businesses should, where appropriate, undertake or participate in factual and relevant consumer education and information programmes.

Bearing in mind the need to reach rural consumers and illiterate consumers, Member States should, as appropriate, develop or encourage the development of consumer information programmes in the mass media or through other delivery channels that reach such consumers.

Member States should organize or encourage training programmes for educators, mass media professionals and consumer advisers to enable them to participate in carrying out consumer information and education programmes.

### **H. Promotion of sustainable consumption**

Sustainable consumption includes meeting the needs of present and future generations for goods and services in ways that are economically, socially and environmentally sustainable.

Responsibility for sustainable consumption is shared by all members and organizations of society, with informed consumers, Member States, businesses, labour organizations and consumer and environmental organizations playing particularly

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important roles. Informed consumers have an essential role in promoting consumption that is environmentally, economically and socially sustainable, including through the effects of their choices on producers. Member States should promote the development and implementation of policies for sustainable consumption and the integration of those policies with other public policies. Policymaking by Member States should be conducted in consultation with business, consumer and environmental organizations and other concerned groups. Business has a responsibility for promoting sustainable consumption through the design, production and distribution of goods and services. Consumer and environmental organizations have a responsibility for promoting public participation and debate on sustainable consumption, for informing consumers and for working with Member States and businesses towards sustainable consumption.

Member States, in partnership with business and relevant organizations of civil society, should develop and implement strategies that promote sustainable consumption through a mix of policies that could include regulations; economic and social instruments; sectoral policies in such areas as land use, transport, energy and housing; information programmes to raise awareness of the impact of consumption patterns; removal of subsidies that promote unsustainable patterns of consumption and production; and promotion of sector-specific best practices in environmental management.

Member States should encourage the design, development and use of products and services that are safe and energy- and resource- efficient, considering their full life cycle impacts. Member States should encourage recycling programmes that encourage consumers to both recycle wastes and purchase recycled products.

Member States should promote the development and use of national and international environmental health and safety standards for products and services; such standards should not result in disguised barriers to trade.

Member States should encourage impartial environmental testing of products.

Member States should safely manage environmentally harmful uses of substances and encourage the development of environmentally sound alternatives for

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such uses. New potentially hazardous substances should be evaluated on a scientific basis for their long-term environmental impact prior to distribution.

Member States should promote awareness of the health-related benefits of sustainable consumption and production patterns, bearing in mind both direct effects on individual health and collective effects through environmental protection.

Member States, in partnership with the private sector and other relevant organizations, should encourage the transformation of unsustainable consumption patterns through the development and use of new environmentally sound products and services and new technologies, including information and communication technologies that can meet consumer needs, while reducing pollution and depletion of natural resources.

Member States are encouraged to create or strengthen effective regulatory mechanisms for the protection of consumers, including aspects of sustainable consumption.

Member States should consider a range of economic instruments, such as fiscal instruments and internalization of environmental costs, to promote sustainable consumption, taking into account social needs, the need for disincentives for unsustainable practices and incentives for more sustainable practices, while avoiding potential negative effects for market access, in particular for developing countries.

Member States, in cooperation with business and other relevant groups, should develop indicators, methodologies and databases for measuring progress towards sustainable consumption at all levels. That information should be publicly available.

Member States and international agencies should take the lead in introducing sustainable practices in their own operations, in particular through their procurement policies. Member State procurement, as appropriate, should encourage the development and use of environmentally sound products and services.

Member States and other relevant organizations should promote research on consumer behaviour related to environmental damage in order to identify ways to make consumption patterns more sustainable.

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## **I. Electronic commerce**

Member States should work towards enhancing consumer confidence in electronic commerce by the continued development of transparent and effective consumer protection policies, ensuring a level of protection that is not less than that afforded in other forms of commerce.

Member States should, where appropriate, review existing consumer protection policies to accommodate the special features of electronic commerce and ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace.

Member States may wish to consider the relevant international guidelines and standards on electronic commerce and the revisions thereof, and, where appropriate, adapt those guidelines and standards to their economic, social and environmental circumstances so that they can adhere to them, as well as collaborate with other Member States in their implementation across borders. In so doing, Member States may wish to study the Guidelines for Consumer Protection in the Context of Electronic Commerce of the Organization for Economic Cooperation and Development.

## **J. Financial services**

Member States should establish or encourage, as appropriate:

- (a) Financial consumer protection regulatory and enforcement policies;
- (b) Oversight bodies with the necessary authority and resources to carry out their mission;
- (c) Appropriate controls and insurance mechanisms to protect consumer assets, including deposits;
- (d) Improved financial education strategies that promote financial literacy;
- (e) Fair treatment and proper disclosure, ensuring that financial institutions are also responsible and accountable for the actions of their authorized agents. Financial services providers should have a written policy on conflict of interest to help detect potential conflicts of interest. When the possibility of a conflict of interest arises



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- between the provider and a third party, that should be disclosed to the consumer to ensure that potential consumer detriment generated by conflict of interest be avoided;
- (f) Responsible business conduct by financial services providers and authorized agents, including responsible lending and the sale of products that are suitable to the consumer's needs and means;
  - (g) Appropriate controls to protect consumer financial data, including from fraud and abuse;
  - (h) A regulatory framework that promotes cost efficiency and transparency for remittances, such that consumers are provided with clear information on the price and delivery of the funds to be transferred, exchange rates, all fees and any other costs associated with the money transfers offered, as well as remedies if transfers fail.

Member States should adopt measures to reinforce and integrate consumer policies concerning financial inclusion, financial education and the protection of consumers in accessing and using financial services.

Member States may wish to consider relevant international guidelines and standards on financial services and the revisions thereof, and, where appropriate, adapt those guidelines and standards to their economic, social and environmental circumstances so that they can adhere to them, as well as collaborate with other Member States in their implementation across borders. In so doing, Member States may wish to study the High-level Principles on Financial Consumer Protection of the Organization for Economic Cooperation and Development and the Group of 20, as well as the Principles for Innovative Financial Inclusion of the Group of 20 and the Good Practices for Financial Consumer Protection of the World Bank.

### **K. Measures relating to specific areas**

In advancing consumer interests, particularly in developing countries, Member States should, where appropriate, give priority to areas of essential concern for the health of the consumer, such as food, water, pharmaceuticals, energy and public utilities, and also address the specificities of tourism. Policies should be adopted or maintained for product quality control, adequate and secure distribution

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facilities, standardized international labelling and information, and education and research programmes in these areas. Member State guidelines in regard to specific areas should be developed in the context of the provisions of the present document.

### **Food.**

When formulating national policies and plans with regard to food, Member States should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the Food and Agriculture Organization of the United Nations and the World Health Organization Codex Alimentarius or, in their absence, other generally accepted international food standards. Member States should maintain, develop or improve food safety measures, including, inter alia, safety criteria, food standards and dietary requirements and effective monitoring, inspection and evaluation mechanisms.

Member States should promote sustainable agricultural policies and practices, conservation of biodiversity and protection of soil and water, taking into account traditional knowledge.

### **Water.**

Member States should, within the goals and targets set for the International Drinking Water Supply and Sanitation Decade, formulate, maintain or strengthen national policies to improve the supply, distribution and quality of water for drinking. Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation.

Member States should assign high priority to the formulation and implementation of policies and programmes concerning the multiple uses of water, taking into account the importance of water for sustainable development in general and its finite character as a resource.

### **Pharmaceuticals.**

Member States should develop or maintain adequate standards, provisions and appropriate regulatory systems for ensuring the quality and appropriate use of pharmaceuticals through integrated national drug policies which could address, inter

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alia, procurement, distribution, production, licensing arrangements, registration systems and the availability of reliable information on pharmaceuticals. In so doing, Member States should take special account of the work and recommendations of the World Health Organization on pharmaceuticals. For relevant products, the use of that organization's Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce and other international information systems on pharmaceuticals should be encouraged. Measures should also be taken, as appropriate, to promote the use of international non-proprietary names for drugs, drawing on the work done by the World Health Organization.

In addition to the priority areas indicated above, Member States should adopt appropriate measures in other areas, such as pesticides and chemicals in regard, where relevant, to their use, production and storage, taking into account such relevant health and environmental information as Member States may require producers to provide and include in the labelling of products.

### **Energy.**

Member States should promote universal access to clean energy and formulate, maintain or strengthen national policies to improve the supply, distribution and quality of affordable energy to consumers according to their economic circumstances. Consideration should be given to the choice of appropriate levels of service, quality and technology, regulatory oversight, the need for awareness-raising programmes and the importance of community participation.

### **Public utilities.**

Member States should promote universal access to public utilities and formulate, maintain or strengthen national policies to improve rules and statutes dealing with provision of service, consumer information, security deposits and advance payment for service, late payment fees, termination and restoration of service, establishment of payment plans and dispute resolution between consumers and utility service providers, taking into account the needs of vulnerable and disadvantaged consumers.

### **Tourism.**

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Member States should ensure that their consumer protection policies are adequate to address the marketing and provision of goods and services related to tourism, including, but not limited to, travel, traveller accommodation and timeshares. Member States should, in particular, address the cross-border challenges raised by such activity, including enforcement cooperation and information-sharing with other Member States, and should also cooperate with the relevant stakeholders in the tourism-travel sector.

## **VI. International cooperation**

Member States should, especially in a regional or subregional context:

- (a) Develop, review, maintain or strengthen, as appropriate, mechanisms for the exchange of information on national policies and measures in the field of consumer protection;
- (b) Cooperate or encourage cooperation in the implementation of consumer protection policies to achieve greater results within existing resources. Examples of such cooperation could be collaboration in the setting up or joint use of testing facilities, common testing procedures, exchange of consumer information and education programmes, joint training programmes and joint elaboration of regulations;
- (c) Cooperate to improve the conditions under which essential goods are offered to consumers, giving due regard to both price and quality. Such cooperation could include joint procurement of essential goods, exchange of information on different procurement possibilities and agreements on regional product specification.

Member States should develop or strengthen information links regarding products which have been banned, withdrawn or severely restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products.

Member States should work to ensure that the quality of products and the information relating to such products does not vary from country to country in a way that would have detrimental effects on consumers.

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Member States should improve their ability to cooperate in combating fraudulent and deceptive cross-border commercial practices, as that serves an important public interest, recognizing that cooperation on particular investigations or cases under these guidelines remains within the discretion of the consumer protection enforcement agency that is asked to cooperate.

1. The consumer protection enforcement agencies of Member States should coordinate investigations and enforcement activities to avoid interference with the investigations and enforcement activities of consumer protection enforcement agencies taking place in other jurisdictions.

2. The consumer protection enforcement agencies of Member States should make every effort to resolve disagreements that may arise regarding cooperation.

3. Member States and their consumer protection enforcement agencies should make use of existing international networks and enter into appropriate bilateral and multilateral arrangements and other initiatives to implement these guidelines.

4. Member States should enable their consumer protection policy agencies, in consultation with consumer protection enforcement agencies, to take a leading role in developing the framework for combating fraudulent and deceptive commercial practices, as set out in these guidelines.

5. Member States are invited to designate a consumer protection enforcement agency or a consumer protection policy agency to act as a contact point to facilitate cooperation under these guidelines. Those designations are intended to complement and not replace other means of cooperation. Such designations should be notified to the Secretary- General.

6. Member States should provide their consumer protection enforcement agencies with the authority to investigate, pursue, obtain and, where appropriate, share relevant information and evidence, particularly on matters relating to cross-border fraudulent and deceptive commercial practices affecting consumers. That authority should extend to cooperation with foreign consumer protection enforcement agencies and other appropriate foreign counterparts.

Member States should consider participating in multilateral and bilateral

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arrangements to improve international judicial and inter- agency cooperation in the recovery of foreign assets and the enforcement of decisions in cross-border cases.

Member States may wish to consider relevant international guidelines and standards on protecting consumers from fraudulent and deceptive cross-border commercial practices, in considering the legal authority to provide to their consumer protection enforcement agencies, and, where appropriate, adapt those guidelines and standards to their circumstances. In so doing, Member States may wish to study the Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders of the Organization for Economic Cooperation and Development.

To promote sustainable consumption, Member States, international bodies and business should work together to develop, transfer and disseminate environmentally sound technologies, including through appropriate financial support from developed countries, and to devise new and innovative mechanisms for financing their transfer among all countries, in particular to and among developing countries and countries with economies in transition.

Member States and international organizations, as appropriate, should promote and facilitate capacity-building in the area of sustainable consumption, particularly in developing countries and countries with economies in transition. In particular, Member States should also facilitate cooperation among consumer groups and other relevant organizations of civil society, with the aim of strengthening capacity in this area.

Member States and international bodies, as appropriate, should promote programmes relating to consumer education and information.

Member States should work to ensure that policies and measures for consumer protection are implemented with due regard to their not becoming barriers to international trade and that they are consistent with international trade obligations.

### **VII. International institutional machinery A.Institutional arrangements**

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An intergovernmental group of experts on consumer protection law and policy, operating within the framework of an existing commission of the Trade and Development Board of the United Nations Conference on Trade and Development, will provide the institutional machinery.

Member States should take appropriate steps at the national or regional levels to implement these guidelines.

### **B. Functions of the intergovernmental group of experts on consumer protection law and policy**

The intergovernmental group of experts on consumer protection law and policy shall have the following functions:

- (a) To provide an annual forum and modalities for multilateral consultations, discussion and exchange of views between Member States on matters related to the guidelines, in particular their implementation and the experience arising therefrom;
- (b) To undertake studies and research periodically on consumer protection issues related to the guidelines based on a consensus and the interests of Member States and disseminate them with a view to increasing the exchange of experience and giving greater effectiveness to the guidelines;
- (c) To conduct voluntary peer reviews of national consumer protection policies of Member States, as implemented by consumer protection authorities;
- (d) To collect and disseminate information on matters relating to the overall attainment of the goals of the guidelines and to the appropriate steps Member States have taken at the national or regional levels to promote effective implementation of their objectives and principles;
- (e) To provide capacity-building and technical assistance to developing countries and economies in transition in formulating and enforcing consumer protection laws and policies;
- (f) To consider relevant studies, documentation and reports from relevant organizations of the United Nations system and other international organizations and networks, to exchange information on work programmes and topics for consultations

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and to identify work- sharing projects and cooperation in the provision of technical assistance;

(g) To make appropriate reports and recommendations on the consumer protection policies of Member States, including the application and implementation of these guidelines;

(h) To operate between and report to the United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices;

(i) To conduct a periodic review of the guidelines, when mandated by the United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices;

(j) To establish such procedures and methods of work as may be necessary to carry out its mandate.

In the performance of its functions, neither the intergovernmental group nor its subsidiary organs shall pass judgement on the activities or conduct of individual Member States or of individual enterprises in connection with a specific business transaction. The intergovernmental group or its subsidiary organs should avoid becoming involved when enterprises to a specific business transaction are in dispute.

The intergovernmental group shall establish such procedures as may be necessary to deal with issues related to confidentiality.



## **Caveat Emptor**

*Caveat emptor* is a Latin term that means "let the buyer beware." Similar to the phrase "sold as is," this term means that the buyer assumes the risk that a product may fail to meet expectations or have defects. In other words, the principle of caveat emptor serves as a warning that buyers have no recourse with the seller if the product does not meet their expectations.

The term is actually part of a longer statement: *Caveat emptor, quia ignorare non debuit quod jus alienum emit* ("Let a purchaser beware, for he ought not to be ignorant of the nature of the property which he is buying from another party.") The assumption is that buyers will inspect and otherwise ensure that they are confident with the integrity of the product (or land, to which it often refers) before completing a transaction. This does not, however, give sellers the green light to actively engage in fraudulent transactions.

### **Caveat Emptor in Practice**

Under the principle of caveat emptor, for example, a consumer who purchases a coffee mug and later discovers that it has a leak is stuck with the defective product. Had they inspected the mug prior to the sale, they may have changed their mind.

A more common example is a used car transaction between two private parties (as opposed to a dealership, in which the sale is subject to an implied warranty). The buyer must take on the responsibility of thoroughly researching and inspecting the car—perhaps taking it to a mechanic for a closer look—before finalizing the sale. If something comes up after the sale, maybe a transmission failure, it is not the seller's responsibility. Garage sales offer another example of caveat emptor, in which all sales are final and nothing is guaranteed.

### **The Modern Rule: Caveat Venditor**

Caveat emptor was the rule for most purchases and land sales prior to the Industrial Revolution, although sellers assume much more responsibility for the integrity of their goods in the present day. People consumed far fewer goods and usually from local sources prior to the 18th Century, resulting in very few consumer protection laws (mostly limited to weights and measures). See "Product Liability: Background" for more historical information about the principle of caveat emptor.

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Today, most sales in the U.S. fall under the principle of *caveat venditor*, which means "let the seller beware," by which goods are covered by an implied warranty of merchantability. Unless otherwise advertised (for example, "sold as is") or negotiated with the buyer, nearly all consumer products are guaranteed to work if used for their intended purpose.

For example, a consumer who purchases a coffee grinder that lacks the power to grind coffee beans may return the product for a full refund under an implied warranty of merchantability. But if the same buyer purchased a used coffee grinder at a thrift shop marked "sold as is," returning the product later may prove difficult. While *caveat emptor* is no longer the rule for consumer transactions, it's important to know when the exception applies.

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# CONSUMER LAW

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## TOPIC NO 2

### CONSUMER PROTECTION ACT

#### OBJECTIVES AND SCOPE OF THE CONSUMER PROTECTION ACT, 1986

##### 2.0.0 INTRODUCTION

The Consumer Protection Act, 1986 was enacted to provide for better protection of the interest of the consumers and for the purpose to make provisions for the establishment of Consumer Councils and other authorities in the settlement of consumer disputes and for matters connected therewith. It seeks, *inter-alia*, to promote and to protect the rights of consumers such as protection against marketing of goods which are hazardous to life and property, the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices, the right to be assured, wherever possible, access to variety of goods at competitive prices, the right to be heard and to be assured that the interest of consumers will receive due consideration at appropriate forums, the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers and right to consumer education. The object is also to provide speedy and simple redressal to consumer disputes-quasi judicial machinery is sought to be set up at District, State and Central Levels. These quasi-judicial bodies are to observe principles of natural justice and have been empowered to give relief of specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of orders given by quasi-judicial bodies have also been provided.

##### 2.1.0 PREAMBLE OF CONSUMER PROTECTION ACT

It is not necessary that every act passed by legislature must have the preamble. However, when preamble is added to an Act, it is a part of Act itself. The preamble of consumer protection Act, 1986 reads as follows:

“An act to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer’s disputes and for matters connected therewith.”

From above, it would be seen that the consumer protection Act, 1986 seeks to provide for better protection of the interest of consumers and for that purpose to make provision for

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establishment of consumer councils and other authorities for the settlement of consumers' disputes.

### **2.2.0 SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION**

The title of present Act is "the consumer protection Act, 1986". It clearly reflects that purpose of the Act is to protect the interest of consumer.

Chapter I, II and IV of the Act came into force w.e.f. 15<sup>th</sup> April, 1987 and chapter III of the Act came into operation with effect from 1st July, 1987 in the whole India except the state of Jammu and Kashmir since separate legislation has been enacted for the state of Jammu and Kashmir known as the Jammu and Kashmir Consumer Protection Act, 1987.

Save as otherwise expressly provided by the Central Government by notification, the provisions of the Consumer Protection Act, 1986 as amended from time to time has made applicable to all the goods and services.

The Act seeks to protect the consumers in the following respects:-

- (1) It seeks, inter-alia, to promote and protect the rights of consumers such as The consumer protection
  - a) The right to be protected against marketing of goods and services which are hazardous to life and property;
  - b) 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 consumers against unfair trade practices;
  - c) The right to be assured, wherever possible, of access to a variety of goods and services 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 restrictive trade practices or unscrupulous exploitation of consumers; and
  - f) The right to consumer education.

Chapter-II of the Consumer Protection Act, 1986 provides for establishment of central consumer protection council and state consumer protection council while Chapter III of the

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Act which is in fact is regarded as the soul of the Act, provides for establishment of three tier consumer disputes redressal agencies namely (i) the district form, (ii) the state commission, (iii) the national consumer disputes redressal commission.

(2) Section 6 of the Act spells out these objects and charges the Central Council with the responsibilities of fulfilling these objects. The section says that the objects of the Central Council shall be to promote and protect the rights of the consumers which have been listed in Section 6. They are as follows:

a) **Protection Against Hazardous Goods :-** The Act says in the first place that the consumer has a right to be protected against the marketing of goods which are hazardous to life and property.

b) **Right to Consumer Information :-** The consumer has been given the right to informed by the producer about the quality, quantity, potency, purity, standard and prices of goods he buys.

c) **Right of Access to Variety of Goods and at Competitive Prices :-** The central council as constituted under the Act 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 consumer and that the goods with a variety are being offered at competitive prices.

d) **Right to Due Attention at Appropriate Forums :-** That Central Consumer Protection Council has been charged with the responsibility of assuring consumers that they would be heard as of right by the appropriate forums and the consumer will receive due attention and consideration from such Forums.

e) **Right Against Unscrupulous Exploitation, Restrictive and Unfair Trade Practices :-** The consumer has been given the right to seek redress against restrictive or unfair trade practices<sup>18</sup> or unscrupulous exploitation.

f) **Right to Consumer Education :-** This has been made one of the missions of the Consumer Protection Act, 1986 and the Central Consumer Protection Council has been charged with the responsibility to provide to the people proper education in terms of their remedies under the Act. Once the people are rendered conscious of their power, they may,

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<sup>18</sup> *National Consumer Protection Samiti v. Chief Electrical Supervisor*, 1991 CPR 191 Guj.

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perhaps, feel energized to struggle against exploitation by manufacturers and traders. Controlling hands and tools of the govt. are easily corruptible. They also suffer from slow motion. They often fail in their mission. But consciousness of the people as a whole, for every person is a consumer one way or the other, when aroused by proper consumer education, is likely to be above petty temptations and therefore more effective in its mission.

(3) To provide speedy and simple redressal to consumer disputes, a quasi judicial machinery is sought to be set up at district, state and central level.

### **WHO CAN MAKE A COMPLAINT?**

To initiate an action under the Consumer Protection Act, 1986, (hereinafter referred to as the Act) what is required is a complaint from the complainant. The term 'complaint' has been defined in section 2(1)(d) of the Act. According to clause (b) of section 2(1) of the Consumer Protection Act, a complaint can be made by any of the following:

- (i) a consumer or
- (ii) 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
- (iii) the Central Government or any State Government, who or which makes a complaint; or
- (iv) one or more consumers, where there are numerous consumers having the same interest;
- (v) In case of death of a consumer, his legal heir or representative.

### **CONSUMER**

According to Section 2(1)(d) of the Act consumer means any person who:

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

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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 payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose.

The aforementioned definition of the term 'consumer' is really comprehensive so as to cover not only consumer of goods but also consumer of services.<sup>19</sup>

The deviation is wide enough to include in 'consumer' not only the person who buys any goods for consideration but also any user of such goods with the approval of the buyer, likewise it covers any person who hires or avails of any services for consideration and also includes any beneficiary of such services, when availed with the approval of the hirer. In this way, any user of goods or any beneficiary of services, other than the actual buyer or hirer, is a consumer and thus he is competent to make a complaint before the Consumer Disputes Redress Forums. It includes anyone who consumes goods or services at the end of the claim of production.<sup>20</sup>

The definition of consumer may be discussed in following two parts:-

- (i) Consumer of goods
- (ii) Consumer of services

According to sub-clause (i) of section 2(1)(d) a consumer of goods means any person who-

- (a) buys any goods for consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and
- (b) includes any user of such goods other than the person who buys the, when such use is made with the approval of the buyer but
- (c) does not include a person who obtains such goods for resale or for any commercial purpose. Commercial purpose does not include use by a consumer of goods bought by and used by him exclusively for the purpose of earning his livelihood, by means of self-

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<sup>19</sup> In Black's law dictionary a consumer is explained one who consumes, individuals who purchase, use, maintain, and dispose of products and services.

<sup>20</sup> *Morgan Stanley Fund v. Kartick Dass & ors.* (1994)II CPJ 7 (S.C.)

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employment.

The above provision discloses that a person claiming himself to be a consumer should fulfill the following requirements :

- (i) there should be a sale transaction between the seller and the buyer,
- (ii) the sale must be of goods,
- (iii) the buying of goods must be for consideration, the consideration has been paid or promised or partly paid and partly promised, or under any system of deferred payment; and
- (iv) the user of the goods may also be a consumer when such use is made with the approbation of the buyer.

It may, however, be noted that a person who obtains the goods for resale or for any commercial purpose is not included within the meaning of the term consumer. This clearly reveals that the intention of the legislature is to restrict the benefits of the Consumer Protection Act to ordinary consumers buying goods or hiring services for consumption and not for resale or large scale commercial activity. Where the goods have been purchased or used by the consumer exclusively for the purpose of earning his livelihood, by means of self employment, such use of the goods will not be treated as 'commercial purpose.'

### **Consumer of Services**

The term 'consumer' also covers any person who hires or avails of any 'services for consideration and also includes any beneficiary of such sentences. According to sub-clause (ii) of section 2(1)(d) of the Act, a consumer of services includes any person, who

- (i) hires or avails of any services for consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment, and
- (ii) includes any beneficiary of such services other than the person who hires or avails of them, when such services are availed of with the approval of the hirer.

For the purpose of consumer of services, it is essential that the services must have been hired or availed of for the consideration. But it is not essential that the payment of consideration must be made immediately, it may be paid afterwards or even in installments.

The services which are rendered free of charge or under contract of personal service are out side the purview of the Act.



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## **VOLUNTARY CONSUMER ASSOCIATION**

According to sub-clause (ii) of clause (b) of section 2(1) of the Consumer Protection Act, any voluntary consumer association registered under the Companies Act, 1956(1 of 1956) or under any other law for the time being in force, is competent to make a complaint under the Act. the complaint can be made by recognized consumer association, whether the consumer to whom the goods sold or delivered or service provided is member of such association or not.

## **CENTRAL OR STATE GOVERNMENT**

Sub clause (iii) of clause (b) of section 2(1) of the Act provides that the Central Government and State Government can be a complainant under the Act. According to clause (d) of section 12, a complaint in relation to any goods sold or delivered or any service provided, may be filed with the consumer Redressal Forum by the Central Government or the State Government. In this way, the Central Government or any State Government can file the complaint as consumer of goods or services under section 12(d).

## **CLASS ACTION**

The Consumer Protection (Amendment) Act, 1993 has provided for 'class action' under Sub-Clause (iv) of clause (b) of section 2(1) read with clause (c) of section 12 of the Act. Prior to this amendment, there was no such provision of 'class action'. In this type of action, proceedings are brought by one or more members of a class on behalf of persons who are permitted to do so by the court.

On the basis of these provisions one or more consumers, where there are numerous consumers bearing the same interest to file 'class action' can proceed with the permission of the consumer forums.

## **LEGAL HEIR OR REPRESENTATIVE**

In case of death of a consumer his/her legal heir or representative can also file a complaint

## **SUBJECT MATTER OF COMPLAINT**

Clause (c) of section 2(1) of the Consumer Protection Act lays down as to against what a complaint can be made under the Act. According to this provision a complaint can be made in writing by a complaint in regard to one or more of the following:

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- (i) an unfair trade practice or a restrictive trade practices has been adopted by any trader or service provider;
- (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;
- (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
- (iv) a trader or service provider, as the case may be, has charged for the goods or the services mentioned in the complaint a price in excess of the price (a) fixed by or under any law for the time being in force; (b) displayed on the goods or any package containing such goods;
- (c) displayed on the price list exhibited by him or under any law for the time being in force;
- (d) agreed between the parties
- (v) goods which will be hazardous to life and safety when used, are being offered for sale to the public
  - (a) 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;
  - (b) If the trader could have known with due diligence that the goods so offered are unsafe to the public;
- (vi) 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 life and safety.

The complaint is required to be made in writing which should contain name, description and address of the complainant and the opposite party. The complaint must state the facts and be supported by documentary evidence if any. It must also state the relief sought by the complainant.

### **COMPLAINT AGAINST DEFECTIVE GOODS**

From above it is clear that, a complaint may be filed in respect of the goods which suffer from one or more defects. '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 express or implied or as is

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claimed by any trader. The term 'trader' includes any seller, distributor, manufacturer and packer of goods. The definition of 'defect' reveals that the standards, quality, quantity etc. of the goods must be corresponding with the claims made by the trader in relation to those goods any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard should be such which is required to be maintained by or under any law for the time being in force, or under any contract express or implied, or as is claimed by the trader.

### **COMPLAINT AGAINST DEFICIENT SERVICES**

The complaint can be made in respect of any services which suffer from deficiency in any respect. The term 'service' has been defined in clause(o) of section 2(1) of the Consumer Protection Act as follows:

'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, 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, but does not include the rendering of any service free of charge or under a contract of personal service.

It is worth mentioning here that some services like medicine, law, engineering, accountancy etc. have not been specifically enumerated. But it seems that these services are also covered in the scope of the aforesaid definition as these services are available to potential users.

The literal meaning of the word 'service' is work done to meet some general, an act of helpful activity, the supplying of utilities as water, electricity, gas, required by the public; supplying of repair service; supply of public communications or public transport. The use of the expression 'made available to potential users' in the above definition reveals that the service must be made available to potential users who are willing to pay for the service. Further, the expression, 'but does not include rendering of any service free of charge indicates that the service must be rendered for remuneration.

The definition of 'service' given under clauses of section 2(1) of the Act may be split into the following three parts:

- (i) service of any description which is made available to potential users and

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(ii) includes but not limited to the provisions of facilities in connection with 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, but

(iii) does not include the rendering of any service free of charge or under a contract of personal service.

It is clear that the main part is followed by the inclusive clause and ends by the exclusionary clause. In the main part, the expression service of any description indicates that the definition is very wide and tends to any service made available to potential users.

### **Deficiency**

The term 'deficiency' has been defined in section 2(1)(g) of the Act. Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be contained 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.

The aforementioned definition of deficiency is wide enough to include any short of imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in relation to any service. Hence the deficiency may be in quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or which has been undertaken to be performed by a person in pursuance of contract or otherwise in relation to any service. Therefore, the deficiency may take place on account of the violation of any standards of quality, nature and manner of performance laid down in any of the existing laws. The deficiency may also be caused due to non performance of the promise made in a contract regarding the quality, nature etc. of the services negligence while rendering the services may also come within the purview of the Act e.g., negligence in carrying out the repair of goods; negligence by the department of telephones while wrongfully disconnecting the telephone; negligence by a doctor while rendering services for consideration may amount to deficiency in service.

It may be noted that prior to the amendment made by the Consumer Protection (Amendment) Act, 1993 a complaint could only be made in respect of the services which

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were hired by the consumer and suffer from deficiency in any respect. But after the passing of amendment, now a complaint can be filed in respect of the services hired or availed of or agreed to be hired or availed of suffer from deficiency in any respect. Thus, the Consumer Protection Act, 1986 covers various types of services and provides remedy in case of deficiency of any service. Thus, the Consumer Protection Act, 1986 is a welfare legislation. Its object is to provide speedy, inexpensive and good remedies to the consumers of goods and services. It is a supplement Act not in derogation of the existing Laws.

### **CONSUMER DISPUTES ADJUDICATORY BODIES AND REDRESSAL AGENCIES**

There are different adjudicatory bodies and consumer disputes redressal agencies under the consumer protection Act, 1986.

**Advisory Bodies** :- The Consumer Protection Councils are the advisory bodies under the Consumer Protection Act and they have been charged with promotion and protection of the rights of the consumers. They play an important role in giving publicity to the matters of consumer concern, furthering consumer education and protecting consumers from unscrupulous exploitation. Consumer Protection Councils comprising of official and non-official members have been established at the district, state and centre levels. The councils meet periodically to deal with consumer problems and take corrective measures for protecting the rights of the consumers.

The following are the three types of Consumer Protection Councils:

- (a) The Central Consumer Protection Council,
- (b) The State Consumer Protection Council
- (c) The District Consumer Protection Council

**(a) The Central Consumer Protection Council**

Central Government has established a council known as Central Council by notification, headed by Minister, Incharge of consumer affairs in the Central Government as Chairman of the Central Council. The Central Council is to meet at least once every year.

**(b) The State Consumer Protection Councils**

The State Governments have established councils known as State Councils by notification, headed by Minister incharge of consumer affairs in

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the State Government as Chairman of the State Council. The State Council is to meet atleast twice every year.

### (c) **The District Consumer Protection Councils**

The State Governments have established for every district a council known as District Consumer Protection Council by notification, headed by Collector of the district as Chairman of the District Council. The District Council has to meet twice every year.

The objects of the Central Council, State Council and District Council are the same which are of the Act allowed by the Forum.<sup>21</sup>

### **ADJUDICATORY BODIES**

For the protection of consumer rights, a three tier quasi-judicial machinery has been set up at the national, state and district levels. It adjudicates disputes regarding defective goods, deficient services, unfair trade practices, over charging and hazardous goods. The *Consumer Protection Act* applies to all goods and services and covers public, private, joint and co- operative sectors. It however excludes goods obtained for commercial and resale purposes and services which are rendered free of charge or rendered under the contract of personal service.

The three-tier machinery consists of the District Forum, the State Commission and the National Commission.

Section 9 of the Consumer Protection Act, 1986 provides a three-tier quasi-judicial machinery at the district, State and National level to enforce the provisions of the Act. At the district level there is a 'District Forums to entertain consumer complaints where the value of goods or services and compensation does not exceed twenty lacs, and at the State level there is a 'State Commission' to deal with the complaints where the claim exceeds rupees 20 lacs but does not exceed rupees one crore. At the national level there is a 'National Commission' for complaints exceeding rupees one crore.

### **DISTRICT FORUM**

At the district level, each district of the State shall have a Consumer Disputes Redressal Forum to be known as 'District Forum'. Each District forum is to be established by the State Government by notification to be published in Official Gazette. In some cases, one

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<sup>21</sup> *Public Health Engineering Department v. Upbhokta Sanrakshan Samiti* (1992)1 CRP 569 (NCDRC)

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District Forum for district may be too inadequate to deal with the complaints of consumers of metropolitan cities or large districts. To overcome this difficulty, the 'Consumer Protection Amendment Act, 1993 has incorporated a proviso under clauses of section 9 of the Act, according to which the State Government may, if it deems fit, establish more than one District Forums in a district. It is, therefore, clear that the State Governments are now free to establish more than one District Forum in a district, if they deem it necessary keeping in view the requirements of that district.

### COMPOSITION OF THE DISTRICT FORUM

The District Forum is to consist of a President and two members (one of whom shall be a woman). The appointments have to be made by the State Government on the recommendation of a selection committee constituted under sub-section (1A) of Section 10 of the Act. It seems that the new procedure has been inserted under sub-section(1A) of Section 10 by the

Consumer Protection (Amendment) Act, 1993 with a view to make fair appointments on these vital positions which are of public importance.

According to sub-section (1) of Section 10 of the Consumer Protection Act – (a) the President of the Forum should be a person who is, or has been, or is qualified to be a District Judge; (b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely: (i) be not less than 35 years of age, (ii) possess a bachelor's degree from a recognized university, (iii) be persons of ability, integrity and standing, and have adequate knowledge or experience of, at least ten years in dealing with the problems relating to economics law, commerce, accountancy, industry, public affairs or administration. The inclusion of a woman as a member of the District Forum is of considerable importance keeping in view the nature and functioning of the Forum and the Act. Some disqualifications for appointment as a member have also been prescribed.

Sub-section (1A) of Section 10 of the Act provides that for selecting the President and the members of the District Forum, the selection committee shall consist of the following:

President of the State Commission	<input type="checkbox"/> Chairman	<input type="checkbox"/> Secretary	<input type="checkbox"/> Law
Department of the State	<input type="checkbox"/> Member	<input type="checkbox"/> Secretary in-charge of	
the Department	<input type="checkbox"/> Member	<input type="checkbox"/> dealing with consumer	

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affairs in the State

The appointments of the President and Members of the District Forum will be made by the State Government on the recommendation of the Selection Committee. It may be noted that there is a majority of officials the selection committee.

### **TENURE AND JURIDICTION**

Under the existing law all the appointments of members are valid for a period of five years or upto age of 65 years whichever is earlier. Provided that a member shall be eligible for re-appointment for another term of five years or upto the age of 65 years, whichever is earlier, subject to condition that he fulfils the qualifications and other conditions for reappointment mentioned in clause(b) of sub-section. Reappointment is also made on the basis of the recommendations of the selection committee.

Jurisdiction means the extent of the authority to administer justice not only with reference to the subject matter of suit but also to the territorial and pecuniary limits.

It is a fundamental rule that a judgment of Court without jurisdiction is a nullity.

### **PECUNIARY JURISDICTIONS**

Section-11(1) of the Act provides pecuniary jurisdiction of the District Forum. It states that the District Forum has the jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lacs. The pecuniary jurisdiction depends upon the amount of relief claimed and not upon the value of the subject-matter, nor upon relief granted.

Section 11(2) of the Act provides that a complaint shall be instituted in a district forum within the local limits of whose jurisdiction,

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or 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 provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside or carry on business or has a branch office or personally work for gain as the case may be, acquiesce in



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such institution:

(c) the cause action, wholly or in part, arises.

These provisions are more or less identical with the provisions of section 20 of the Code of Civil Procedure. One major point of departure is the deletion of explanation of Section 20 of the Code which provides that a Corporation shall be deemed to carry on business at its sole or principal office in India, or in respect of any cause of action arising where it has also a subordinate office, at such place. This explanation has given a privileged position to Corporations which ordinary traders do not enjoy. A suit against an ordinary trade can be brought not only at the principal office but at any place, where it has a branch office.

A provision to this effect has also been inserted by the Consumer Protection (Amendment) Act, 1993 by introducing clause (aa) in section 2(1) of the Act. It provides that a branch office means (i) any establishment described as a branch by the opposite party; (ii) any establishment carrying on either the same or substantially the same activities as that carried on by the head office of the establishment.

It is, thus, clear that all giant corporations which have branch offices in all nooks and corners of the country may be reached for redressal of grievances by filing of complaints in Consumer Disputes Redressal Agencies which is close to the place of stay of the consumer.

### **THE STATE COMMISSION : ITS COMPOSITION**

The next body in the hierarchy of Consumer Disputes Agencies is the State Commission. Each State is required to set up the State Commission.

Section 16(1) of the Consumer Protection Act provides that the State Commission consists of:

(a) a person who is or has been a judge of a high court, appointed by the state government who shall be its president; Provided that no appointment under this clause shall be made except after consultation with the chief justice of the High Court.

(b) not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall be not less than 35 years of age, possess a bachelor's degree and be persons of ability integrity and standing and have adequate knowledge or experience of atleast ten years in dealing with problems relating to Economics, Law, Commerce, Accountancy, Industry, Public Affairs or Administration.

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The appointment of the President and the members are made by the State Government. The appointment of the President shall be made only after consultation with the Chief Justice of the High Court of the State. In the case of appointment of the member, a selection committee shall be constituted by the State Government for recommending the name of members.

The section committee shall consists of the following

- (a) President of the State Commission  Chairman
- (b) Secretary, Law Department of the State  Member
- (c) Secretary in charge of the department  Member dealing with consumer affairs in the state.

It is hoped that the aforesaid procedure laid down for the appointment of members of the State Commission will help the State Government in making fair appointment of these important positions.

### **TENURE AND JURISDICTION**

A member of the State Commission shall hold office for a term of five years or upto the age of 67 years whichever is earlier. Provided that a member shall be eligible for re-appointment for another term of five years or upto age of 67 years whichever is earlier, subject to condition that he fulfils the other conditions for reappointment mentioned in clause (b) of sub-section(1) and such appointment is made on the basis of the recommendations of the selection committee.

Section 17 of the Act empowers the State Commission to exercise three types of jurisdiction, namely: (i) Original jurisdiction, (ii) Appellate Jurisdiction, and (iii) revisional jurisdiction.

### **ORIGINAL JURISDICTION: PECUNIARY**

**Pecuniary :-** Section 17(a)(i) of the Act provides that the State Commission can certain complaints where the value of the goods or services and compensation, if any, claimed exceeds twenty lacs of rupees but does not exceed one crore. The pecuniary jurisdiction depends upon the amount of relief claimed (including compensation) and not upon the

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value of the subject-matter, nor upon the relief granted.<sup>22</sup>

When the complaint before the Forum under the Act, claims two relief's in the alternative, the Forum has to consider for the purpose of jurisdiction the value of the relief which is higher.<sup>23</sup> Where a claim of compensation is pleaded in a consumer complaint, then the total value of the goods and/or services as well as that of compensation would determine the pecuniary limit of jurisdiction. It is the aggregate value of the goods and compensation or the aggregate value of the services as well as that of compensation that determines the pecuniary jurisdiction.

(i) **Territorial :-** According to section 17(2) a complaint shall be instituted in a state commission with in the 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 provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside or carry on business or has a branch office or personally work for gain as the case may be, acquiesce in such institution:

(c) the cause action, wholly or in part, arises.

### APPELLATE JURISDICTION

According to section 17(a)(ii) of the Act, the State Commission shall have jurisdiction to entertain appeals against the order of any District Forum within the State. Under section 15 of the Act, 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 orders. However, 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 filing it

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<sup>22</sup> *Akhil Bharatiya Grahak Panchayat v. Life Insurance Corporation of India*, (1991)1 CPR 112 (Maha. CDRC).

<sup>23</sup> *Chowgali Industries Ltd. v. G. Venkatesan* (1991)II CPR 300 (Tamil Nadu CDRC).

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within that period. However, no appeal by a person, who is required to pay any amount in terms of an order of the District forum, shall be entertained by the State Commission unless the appellant has deposited fifty percent of that amount or 25 thousands whichever is less.

### **REVISIONAL JURISDICTION**

The State Commission under Section 17(b) of the Act can exercise its revisional jurisdiction in any consumer dispute which is pending before or has been decided by any District Forum within the State where it appears that such district form:

- (i) has exercised a jurisdiction not vested in it by law, or
- (ii) has failed to exercise a jurisdiction so vested, or
- (iii) has acted in exercise of its jurisdiction illegally or with material irregularity.

The State Commission can exercise its power in revision only under the aforesaid situations. The commission has only to see whether the requirements of law have been duly complied with by the District Forum whose order is subject of revision and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order. Any error by the District Forum which does not have any relation to jurisdiction cannot be made a ground for revision.<sup>18</sup>

### **THE NATIONAL COMMISSION : ITS COMPOSITION**

The Consumer Protection Act, 1986 provides for the establishment of the National Commission by the Central Government by notification to be published in Official Gazette.<sup>19</sup> The National Commission is the apex body at the centre to settle the consumer disputes under the Act.

Section 20 of the Consumer Protection Act lays down that □

- (a) a person who is or has been Judge of the Supreme Court to be appointed by the Central Government who shall be its president;
- (b) not less than four, and not more than such number of members, as may be prescribed, and one of them shall be woman and who shall be persons of integrity and standing and have adequate knowledge or experience of, at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. The others qualification and disqualifications are the same which are those of members of district forum or state commission.

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The President of the National Commission shall be appointed by the Central Government only after consultation with the Chief Justice of India. The members of the National Commission shall be appointed by the Central Government on the recommendation of a Selection Committee consisting of the following, namely

- (i) a person who is a judge of the Supreme Court  Chairman to be nominated by the Chief Justice of India
- (ii) Secretary in the Department of Legal  Member Affairs in the Government of India
- (iii) Secretary of the Department dealing with  Member Consumer affairs in the Government of India

The procedure for the appointment of the members of the National Commission will help the Central Government in making appointment of suitable persons on these important positions. The procedure also ensures the independent functioning of the National Commission.

### TENURE

Sub-section (3) of Section 20 provides that every member of the National Commission shall hold office for a term of five years or upto the age of seventy years, whichever is earlier. Provided that a member shall be eligible for re-appointment for another term of five years or upto the age of 70 years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment.

### JURISDICTION OF THE NATIONAL COMMISSION

The National Commission has been vested with three types of jurisdiction namely

- (i) Original jurisdiction, (ii) Appellate jurisdiction and (iii) Revisional jurisdiction.

**Original Jurisdiction :-** According to Section 21(a)(i) of the Act, the National Commission shall have jurisdiction to entertain complaints where the value of the goods or services and compensation, if any claimed, exceeds one crore of rupees. The pecuniary jurisdiction depends upon the amount of the relief claimed and not upon the value of the subject-matter, nor upon the relief granted.<sup>24</sup> Its jurisdiction extends to the whole of India.

- (i) **Appellate Jurisdiction :-** Under Section 21(a)(ii) of the Act, the National

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<sup>24</sup> *Quality Foisl India Pvt. Ltd. v. Bank of Madura Ltd.* (1996)II CPJ 103 (NCDRC)

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Commission shall have jurisdiction to entertain appeals against the order of any State Commission. Section 19 of the act lays down that an appeal can lie to the National Commission only against the order made by the State Commission in exercise of its power under its original jurisdiction.

An appeal may be preferred to the National Commission within period of thirty days from the date of the order of the State Commission. However, 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. It has been held that the period of thirty days is to run not from the 'date of the order' but from the 'date of the knowledge of the order', that is to say from the date on which the order was communicated to the appellant.<sup>25</sup> However no appeal by a person, who is required to pay any amount in terms of an order of state commission shall be entertained by the national commission unless the appellant has deposited fifty percent of the amount or Rs. 35000/- which ever is less.

**Revisional Jurisdiction :-** The revisional jurisdiction has been vested in the National Commission under Section 21(b) of the Act. The revisional jurisdiction may be exercised where it appears to the National Commission that a State Commission □ (i) has exercised a jurisdiction<sup>26</sup> not vested in it by law, or (ii) has failed to exercise jurisdiction so vested, or (iii) has acted in the exercise of its jurisdiction illegally or with material irregularity. The National Commission in revision should not-interfere if there is no error of jurisdiction or any material irregularity or improper exercise of jurisdiction The National Commission has the power 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.

In *Telecom Distt. Manager v. Kalyanpur Cement*,<sup>27</sup> it was held by the National Commission that under section 21(b) of the Consumer Protection Act, its jurisdiction in revision is severely limited. In other words, the jurisdiction of the National Commission is limited to disputes where there has been wrongful, illegal and improper exercise of jurisdiction or failure to exercise jurisdiction.

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<sup>25</sup> *Marrakar (Motors). Ltd. v. Mary Poulsoe* (1991)II CPR 251 (Ker CDRC)

<sup>26</sup> *Union of India v. Hari Parkash Gupta* (1994)1 CPJ 186 (NCDRC)

<sup>27</sup> (1991) (II) CPJ 286 (NCDRC).

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## **ADMINISTRATIVE CONTROL**

Section 24B of the Act provides that the National Commission shall have administrative control over all the State Commissions in the following matters namely:

- (i) calling for periodical returns regarding the institution, disposal and pendency of cases;
- (ii) issuance of instructions regarding uniform procedure in the hearing of the matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of documents; generally overseeing the functioning of State Commissions or district fora to ensure that the objects and purposes of the Act are best served without in any way of interfering with their quasi judicial freedom.
- (iii) The state commission shall have administrative control over all the district fora within its jurisdiction in all matters referred to in sub-section (1).

## **2.9.0 SUPREME COURT**

Under Section 23 of the Act, it is provided that if any person aggrieved by the order of the National Commission may prefer and appeal against such order to the Supreme Court, within a period of thirty days, from the date of order in such form and manner as may be prescribed. The appeal can be preferred only against such order of National Commission which has been made by it in exercise of its power conferred under sub clause (i) of clause (a) of section 21 of the Act. This sub clause deals with the original jurisdiction of the National Commission to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds one crore of rupees. Thus, an appeal to the Supreme Court can lie only against the order made by the National Commission in exercise of its original jurisdiction. It means the provisions exist only for single appeal. The appeal from the orders of the State Commission shall lie to the National Commission under sub clause (ii) of clause (a) of section 21 of the Act and there cannot be second appeal to the Supreme Court. The reason to have the provisions for single appeal seems to be to save the consumer from unnecessary harassment by the opposite party. There has not been any specific ground provided for appeal to the Supreme Courts. Another proviso has been inserted that no appeal by a person, who is required to pay any amount in terms of an

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order of the national Commission, shall be entertained by the Supreme Court unless the appellant has deposited in the prescribed manner 50% of the amount or Rs. Fifty thousand, whichever is less.

### **2.10.0 GRIEVANCE REDRESSAL PROCEDURE OF CDRA<sub>s</sub>**

Sections 12, 13 and 14 contain detailed provisions concerning the procedure to be followed by the District Forum and the State Commission while entertaining a complaint and setting consumer disputes. Before the Amendment of the Act in 1993, section 22 only provided that in the disposal of any complaints or if any proceedings before it, the National Commission shall have the powers of a civil court and shall follow such procedure as may be prescribed by the Central Government. The Amendment Act of 1993 had made certain modifications in this section. Though the National Commission shall continue to have the powers of a civil court in the disposal of any complaints or any proceedings before it, it has now been vested with the power to issue an order to the opposite party to do anyone or more of things referred to in section 14(i) (a). It has further been laid down that the National Commission shall follow the procedure prescribed by the Central Government. There are, however, no material differences in the provisions of the 1986 Act laying down procedure for the District Forum and State Commission on the one hand and the procedure prescribed by the Central Government for the National Commission on the other hand. Now the Amendment Act of 2002 has made certain modifications in the section that the provisions of section 12, 13 and 14 and the rules made there under for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of dispute by the National Commission.

### **2.11.0 COMPLAINT PROCEDURE FOR DISTRICT FORUM AND STATE COMMISSION**

Section 12 of the 1986, which was considerably modified by the Consumer Protection (Amendment) Act, 1993, again modified by the Consumer Protection (Amendment) Act, 2002<sup>26</sup> lays down the procedure for filling a complaint before the District Forum in relation any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided by:



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- (a) The consumer to whom such goods are sold or delivered or agreed to be sold or such services provided or agreed to be provided;
- (b) Any recognized consumer association whether the consumer to the goods sold or delivered or agreed to be sold or delivered or services provided or agreed to be provided is a member of such association or not;
- (c) One or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum or State Commission, on behalf of or for the benefit of, all consumers so interested or;
- (d) The central or the state government as the case may be, either in its individual capacity, or as representative of the interest of the consumer in general.

Thus, four types of complaints have been given *locus standi* under the 1986 Act to file a complaint. The greatest step that the government has taken through the Amendment Act of 1993 is the introduction of this new provision, whereby one or more consumers shall be able to file complaints on behalf of even a large number of consumers having a similar cause of action and interest to be represented by others. This shall definitely deter unscrupulous traders from resorting to unfair and restrictive trade practices and shall in turn reduce the exploitation of a vast majority of consumers.

As regards the procedure, on receipt of any complaint, which may relate to unfair trade practice, restrictive trade practice, defect in goods, deficiency in services, excessive price charged, or sale of products hazardous to life and safety, the District Forum or State Commission, shall refer the same to the opposite party directing them to give their version of his case. If more than one opposite parties are involved, each one of them has the right to get the copy of the complaint. Ordinarily, the opposite party must file reply within a period of thirty days of the receipt of the complaint. However, the District Forum or the State Commission have the power to extend the period beyond thirty days in appropriate cases depending upon the circumstances of each and other case. If the opposite party admits the allegations leveled against them, the CDRA shall dispose off the complaint on the basis of the materials on the record. However, if they deny or dispute the allegations contained in the complaint, or omit or fail to take any action to represent their case within the stipulated time, the CDRA shall proceed to settle the consumer dispute in the manner

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specified in section 13(1)(c) to (g). The District forum will follow the procedure given in section 13(2) if the complaints admitted by it under section

12 relates to goods in respect of which the procedure specified in sub-section(1) can not be followed or if the complaint relates to any service, power to pass interim orders have been given to district forum or State Commission under Section 13(3-B).

### **2.12.0 COMPLAINT PROCEDURE FOR NATIONAL COMMISSION**

Under the Consumer Protection Rules, 1987 of the central government, a complaint filed in the National Commission must contain the following particulars:

(a) The name, description and the address of the complainant; (b) the name, description and the address of the of the opposite party or parties; (c) the facts relating to complaint and when and where it arose; (d) documents in support of the allegations contained in the complaint and (e) the relief which the complainant claims [Rule 14(a) to (e)].

It has been mentioned that in the disposal of any complaint before it, the National Commission should, as far as possible, follow the same procedure which has been laid down in sub clause (1) and (2) of section 13 of the Act for the District Forum under rule 14(3), it is provided that it shall be obligatory on the parties or their agents to appear before the National Commission on the dates fixed for hearing. Where the complainant or his agent fails to appear before the National Commission, the National Commission has been given power to either dismiss the complaint for default or decide it on merits. Similarly, if the opposite party makes any such default, the National Commission may decide the complaint *ex parte*.

The National Commission has the power to adjourn the hearing at any stage of the proceedings. However, a complaint has to be decided, as far as possible, within a period of three months from the date of receipt of the notice by the opposite party in case where a complaint does not require analysis or testing of commodities etc. and within five months if it requires testing. It is thus required that proceedings under the CDRAs, are time bound and these agencies are to dispose off the case within stipulated time.

In connection with the settlement of the complaints within the stipulated time, it is pertinent to mention here that prior to the Amendment of 1991, section 14(2) of the Act provided that every order made by a District Forum was to be signed by all the members

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constituting it. This particular section acted as a major hurdle in the functioning of the CDRAs. Ultimately, the government issued the Consumer Protection (Amendment) Ordinance, 1991.

It may be noted here that with the enactment of the Amendment Act of 1991, the decision-making procedure in consumer cases has been considerably facilitated. Of course, many cases have come before the CDRAs involving difference of opinion on decision between the President and the other members.<sup>28</sup> In all such cases, as the amended provision requires, it has been held:

“Where a case is heard by the President and one Member and there is difference of opinion between them on any point or points, the only procedure to be adopted is to refer the Point or Points on which they differ to the remaining member who had not heard the case and the decision of the case shall depend upon the majority of the members.” The Consumer Protection (Amendment) Act, 1993 has conferred additional powers on the CDRAs to order the withdraw or removal of all such goods which are likely to endanger life and safety.

Thus various consumer disputes redressal agencies have been established under the Consumer Protection Act, 1986. A simplified and time-bound procedure to file the complaint and to dispose off the same has also been laid down. However, it has been observed that the agencies are following technical procedure of civil courts. Thus, there is unnecessary delay in the disposal of complainants and speedy justice is denied to the consumers. There is urgent need to give thought to this problem so that objects of the Act may be achieved.

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<sup>28</sup> *General Manager, MTNL Ltd. & Anr. v. Nozari J. Jrani*, 1(1992) CPJ 82 (NC) and *Yamuna Vihar (Block No. 5) Residence Welfare Association v. Vice Chairman D.D.A. & others* 1992(1) CPR 110(NC)

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## TOPIC NO 3

### DEFICIENCY IN SERVICES

- a) Meaning & Instances
- b) Negligence
- c) Deficiency in service in various professions: Insurance services, Banking and Financial services, Housing etc.

It emerges from the discussion in previous chapters that in case of deficiency in services in any kinds of consumer transactions, a consumer may move before appropriate Consumer Forum for redressal of his/her grievances. But question is when a service is to be considered as deficiency in service and what are the different kinds of services falling in this category?<sup>29</sup> The term deficiency is defined in Section 2(1)(g) of the Consumer Protection Act, 1986 thus:

–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. The Apex Court in *Ravneet Singh Bagga v. K. L. M. Dutch Airlines*,<sup>30</sup> examined the issue of deficiency of service and held that the deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it. The deficiency in service has to be distinguished from the tortuous acts of the respondent. In the absence of deficiency in service the aggrieved person may have a remedy under the common law to file a suit for damages but cannot insist for grant of relief under the Act for the alleged acts of commission and omission attributable to the respondent which otherwise do not amount to deficiency in service. In case of bonafide disputes no wilful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in the service can be informed. If on facts, it is found that the

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<sup>29</sup> See Walters Suzanne, *Customer Service: How-to-do-it Manual for Librarians*, Neal-Schuman Publishers, New York (1994) pp. 115; William G. Haemmel, Barbara C. George and James J. Bliss, *Text, Cases and Materials on Consumer Law*, West Publishing Co., Minnesota (1975)

<sup>30</sup> (2000) 1 SCC 66

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person or authority rendering service had taken all precautions and considered all relevant facts and circumstances in the course of the transaction and that their action or the final decision was in good faith, it cannot be said that there had been any deficiency in service. If the action of the respondent is found to be in good faith, there is no deficiency of service entitling the aggrieved person to claim relief under the Act. The rendering of deficient service has to be considered and decided in each case according to the facts of that case for which no hard and fast rule can be laid down. Inefficiency, lack of due care, absence of bonafide, rashness, haste or omission and the like may be the factors to ascertain the deficiency in rendering the service.

In *Kotak Mahindra Prime Ltd. v. Pawan Kumar Soni*,<sup>31</sup> the purchaser under hire-purchase agreement defaulted in payment of instalments the court held that in such a situation, the possession of vehicle should not be taken by forcible and illegal means. The act of the financing company taking forcible possession with the help of the musclemen was improper. The company was directed to pay compensation and cost litigation to the purchaser. Thus, the hired or availed of services by the complainant or agreed to be hired or availed of by him suffer from -deficiency in services in any respect. The courts from time to time has identified a large number of categories of services as -deficiency in services after the commencement of the Consumer Protection Act, 1986 which can be termed as -dimensions of deficiency in services and can be grouped broadly into following categories:

### **I. Medical Services**

#### **(A) Deficiency in Services**

Medical negligence is a deficiency in service for which the doctors/clinics/hospitals/nursing homes may be held liable under the Consumer Protection Act.<sup>32</sup> But when 1 ml of -E-mal was administered to a child aged 4 and half years old and

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<sup>31</sup> AIR 2009 NOC 2548 NCC

<sup>32</sup> See Anoop K. Kushal, *Medical Negligence and Legal Remedies with Special Reference to Consumer Protection Law* (Universal Book Traders, Delhi, 1998); M. Khan, —Medical Negligence and Consumer Protection Law, *Civil and Military Law Journal* (2004) pp. 65-68;

J. N. Sharma, —Consumer Protection and Medical Negligence, *Journal of Gauhati Law Times* (2001), pp. 1-4; Rosy Kumar, —Medical Negligence-Hospital and the Doctors are equally Liable, 3(4) *Consumer Protection and Trade Practices Journal* (2008) pp.55; Sujan Singh,

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roughly weighing 16 kg for the treatment of malaria from which he was suffering for some time and according to medical opinion this is very much in the prescribed dosage and there was no medical or clinical report to show that administering the said injection could cause death, it was held in *Dr. Ganesh Prasad and Anrs. v. Lal Janmajay*,<sup>33</sup> that there was no medical negligence on the part of doctors.

Where death of a patient takes place because of denial of treatment due to delay in arranging more money demanded by the nursing home, doctors will be held liable for medical negligence. The National Commission has ruled thus in *Dr. S.*

*S. Prasad v. Sumitra Devi*.<sup>34</sup> The decision is based on the commission's own judgment in *Pravat Kumar Mukherjee v. Ruby General Hospital & Ors.*<sup>35</sup>

In *V. Kishan Rao v. Nikhil Super Speciality Hospital*,<sup>36</sup> the court, apart from scrutinizing the importance of an expert opinion in cases of medical negligence, also noted that the general directions laid down in the well known case of *Martin D'Souza*,<sup>37</sup> which is contrary to the landmark three-judge bench judgment in *Jacob Mathew*<sup>38</sup> case.

In the instant case, the appellant, an officer in the malaria department, admitted his wife in the respondent hospital as she was suffering from fever which was intermittent in nature and she was complaining of chill. In the complaint, the appellant further alleged that his wife was subjected to certain tests by the respondent but the tests did not show that she was suffering from malaria. It was also alleged that his wife was not responding to the medicine given by the respondent. Therefore, the complainant wife complained of respiratory trouble which the complainant brought to the notice of the respondent who gave artificial oxygen to the patient. According to the complainant, at that stage artificial oxygen was not necessary but without ascertaining the actual necessity of the patient, the same was

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—Medical Negligence – An Analysis of Jacob Mathew's Case 46(1) *Consumer Protection and Trade Practices Journal*, p. 88. (2008); T. P. S. Rathore, –Medical Negligence and the Consumer Protection Act, 1986, 11 *Legal News* (1997) pp. 6-10.

<sup>33</sup> 2006 (2) ALJ 333 (NC).

<sup>34</sup> 2006 (1) ALJ 895. Reliance was placed on its own judgment in *Pravat Kumar Mukherjee v. Ruby General Hospital*, (2005) 2 CPN 35 (NC), wherein it has held that doctors cannot insist and wait for money when death is knocking at the door of the patient and that withdrawal of treatment cannot be justified on any ground

<sup>35</sup> (2005) 2 CPJ 352

<sup>36</sup> (2010) 5 SCC 513

<sup>37</sup> *Martin F. D'souza v. Mohd. Ishfaq*, 2009 (3) SCC 1.

<sup>38</sup> *Jacob Mathew v. State of Punjab*, (2005) 6 SCC 1

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given. Further, he complained that his wife was not responding to the medicines and her condition was deteriorating day by day. The patient was finally shifted to another hospital where she was declared dead. From the particulars noted at the time of admission of the patient in the other hospital, it was clear that the patient was sent to the other hospital in a very precarious condition and was virtually, clinically dead.<sup>39</sup>

When the matter came before the District Forum, the crucial facts that came to the forefront were that wrong treatment for Typhoid was given to the complainant's wife as a result of which the condition of the complainant's wife became serious and in a very precarious condition she was shifted to the other hospital where the record showed that the patient suffered from malaria but was not treated for malaria. The District Forum made a note of the evidence provided by the managing director of the respondent hospital who categorically deposed that she had not treated the case for malaria fever. It also made a note of the death certificate issued by the other hospital that disclosed that the patient died due to cardio-respiratory arrest and malaria. Relying on these two pieces of evidence, the District Forum concluded that there was negligence on the part of the respondent hospital and allowed the complaint of the appellant and passed orders for compensation. Aggrieved by the order of the District Forum, the Respondent hospital preferred an appeal to the State Commission which allowed the appeal. In doing so, the State Commission relied upon the decision in *Tarun Thakore v. Dr. Noshir M. Shroff*,<sup>40</sup> where the National Commission observed that one of the duties of the doctor towards his patient was a duty of care in deciding what treatment was to be given and also a duty to take care in the admission of the treatment. A breach of any of those duties may lead to an action for negligence by the patient.

In this case reliance was placed on the decision of the Supreme Court in *Indian Medical Association v. V. P. Shantha*,<sup>41</sup> wherein similar judgment was delivered to the Supreme Court. Relying on the aforesaid two decisions that the State Commission observed that the appellant has failed to establish any negligence on the part of the Respondent hospital. Finally, while passing the order, the State Commission also casually made a

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<sup>39</sup> See V. K. Aggarwal, —Determination of Complex Issues under the Consumer Protection Act: A Question of Jurisdiction|| *Company Law Journal* (2004) pp. 9-14.

<sup>40</sup> 2003 (1) CLD 62 (NCDRC)

<sup>41</sup> (1995) 6 SCC 651

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reference that -there is no expert opinion to state that the line of treatment adopted by the appellant opposite party No.1 hospital is wrong or is negligent. The appeal before the National Commission was also dismissed on similar grounds. On appeal the Apex Court opined that before forming an opinion that expert opinion was necessary.

In *Anita Bhushan v. Sumita Sharma*,<sup>42</sup> two appeals have arisen out of the order dated 11.10.2004 passed by the District Consumer Forum, Ambala whereby complaint No.79 of 2000 filed by Sumita Sharma (Complainant) filed against the opposite party Dr. Anita Bhushan, for medical negligence and deficiency service has been accepted by granting relief that there was a breach of duty on the part of the Doctor respondent and the breach of duty from the part of respondent-Doctor was the real cause of damages complained of and as such damages was reasonably forcible and in this light, case of negligence is made out by the complainant against the respondent and accordingly the complaint is allowed. However, the complainant claimed damages to the tune of Rs.1,50,000/- and other expenses, which seems to be on the higher side. So, we allow the damages to the tune of Rs.50,000/- and Rs.9000/- spent by the complainant on the medicines etc and the opposite party is directed to comply with the directions within 30 days from the receipt of the order.

In the revision petition, the National Commission has observed thus:

Undisputedly, the complainant had given birth to a female child on 15.08.1999. It is also admitted that Copper-T was got inserted by the complainant from the opposite party and inspite of Copper- T, she conceived. It is also admitted that at the time of examination by the opposite party on 28.1.2000 the pregnancy was of four months and it was a male child. Thus the plea taken by the opposite party that the complainant herself wanted to get the child aborted is proved falsified in view of the admission of the parties. It is a matter of common knowledge that in the Indian Society a lady who is having only a female issue, would not allow to abort a male child. More so, it is admitted case of the opposite party that despite of installation of Copper-T, the complainant had conceived a child. Thus, the medical negligence and deficiency of service fully stands proved on record against the opposite party.

In National Commission by dismissing the revision petition held that the impugned

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<sup>42</sup> II (2011) CPJ 258 (NC).



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order of the Haryana State Consumer Disputes Redressal Commission did not suffer any jurisdictional error, material irregularity, or illegality.

In *Mehernosh Kersi Khambatta v. Venkartama Nursing Home and others*<sup>43</sup> the complainant's left leg suddenly snapped from the tibia while walking. He could not even stand and fell down. He was then admitted to respondent no.1 Nursing Home, Venkartame Nursing Home, and was assured best possible treatment by respondent no.2, A. Daya sagar. He was attended to by respondent no.3, C. Dharma Rao, who advised him to undergo a corrective surgery for proper reunion of the bone. The operation was performed by respondent no.3 after which the complainant was discharged and was advised to take the post-operative care and treatment. Thereafter, the complainant became medically fit and resumed his duties. However, allegedly, the problem returned after a year with severe pain and swelling at the same spot in the leg where the surgery had been performed. Fresh x-ray of the leg showed that the implant was broken and tibia was cracked. The complainant was admitted to another hospital and a second corrective surgery was performed. Following this, the complainant filed the present complaint against the aforementioned respondents. The question before the National Commission was whether there was any medical negligence as alleged by complainant. It was held that the genesis of the complaint lies in the recurrence of the problem one year after the surgery. The x-ray showed the broken tibia implant and crack fracture of tibia. Nevertheless, no evidence had been led by complainant to show that this has occurred due to any negligence on the part of the respondents. In fact, the complainant's medical condition of osteoporosis was not revealed in the complaint and was even specifically denied in his cross-examination. Medical literature brought on record showed a definite possibility of osteoporosis being of recurrent fractures of the tibia. There was no evidence on record to show that the problem was caused due to poor quality of the implant material or that the attending physician, respondent no.3, did not have the requisite professional qualification to perform the surgery. Devoid of any merit, the complaint was dismissed.

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<sup>43</sup> 1 (2013) CPJ271 (NC).

### **(B) Liability of the Government Hospitals/Private Hospitals and Nursing Homes**

The Courts in India from time to time have decided various issues relating to liability of the government hospitals/private hospitals and nursing homes. In *Dr. Laxman Balkrishan Joshi v. Dr. Trimbak Babu Godbole*,<sup>44</sup> the High Court had held that the death of the son of the claimant was due to the shock resulting from reduction of the patient's fracture attempted by the doctor without taking the elementary caution of giving anaesthetic. In this context, with reference to the duties of the doctors to the patient the Apex Court, in appeal, observed:

"The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding whether treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

In *Indian Medical Association v. V.P. Shantha*,<sup>45</sup> question which arose was whether the Consumer Protection Act, 1986, applied to medical practitioners, hospitals and nursing homes. It was held in this case that medical practitioners were not immune from a claim for damages on the ground of negligence. The Court held that "the approach of the Courts is to require that professional men should possess a certain minimum degree of competence and that they should exercise reasonable care in the discharge of their duties. In general, a professional man owes to his client a duty in tort as well as in contract to exercise reasonable care in giving advice or performing services."

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<sup>44</sup> AIR 1969 SC 128

<sup>45</sup> (1995) 6 SCC

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The Apex Court in *Achut Rao H. Khodwa v. State of Maharashtra*,<sup>46</sup> held that the facts speak for themselves and negligence is writ large. The facts as found by both the courts, in a nutshell, are that Chandrikabai was admitted to the government hospital where she delivered a child on 10th July, 1963. She had a sterilization operation on 13th July, 1963. This operation is not known to be serious in nature and in fact was performed under local anesthesia. Complications arose thereafter which resulted in a second operation being performed on her on 19th July, 1963. She did not survive for long and died on 24th July, 1963. In this case the Apex Court held that running a hospital is a welfare activity undertaken by the government but it is not an exclusive function or activity of the government so as to be classified as one which could be regarded as being in exercise of its sovereign power. The Court referred to its earlier decision in *Kasturi Lal's*<sup>47</sup> case wherein it was noticed that in pursuit of welfare ideal the government may enter into many commercial and other activities which have no relation to the traditional concept of governmental activity in exercise of sovereign power. Just as running of passenger buses for the benefit of general public is not a sovereign function, similarly the running of a hospital, where the members of the general public can come for treatment, cannot also be regarded as being an activity having a sovereign character. This being so, the State would be vicariously liable for the damages which may become payable on account of negligence of its doctors or other employees.

The concept of a right to health has been explained by the Apex Court in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*.<sup>48</sup> The Apex Court observed that the *Constitution* of India envisages the establishment of a welfare state at the federal level, as well as the state level. In a welfare state the primary duty of the Government is to secure the welfare to the people, and therefore providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government. The Government discharges this obligation by running hospitals and health centers which provide medical

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<sup>46</sup> AIR 1996 SC 2383; 1996 SCC (2) 634

<sup>47</sup> *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*, AIR 1965 SC 1039

<sup>48</sup> AIR 1996 SC 2426; (1996) 4 SCC 37. See also, *Martin F. D'Souza v. Mohd. Ishfaq*, AIR 2009 SC 2049; (2009) 3 SCC 1; *Confederation of Ex-Servicemen Associations and Ors. v. Union of India*, AIR 2006 SC 2945; 2006 (8) SCALE 399; *Chairman, Railway Board & Ors. v. Mrs. Chandrima Das & Ors.*, AIR 2000 SC 988; (2000) 2 SCC 465; *Common Cause, A Registered Society v. Union of India & Ors.*, AIR 1999 SC 2979; (1999) 6 SCC 667; *State of Punjab & Ors. v. Ram Lubhaya Bagga.*, AIR 1998 SC 1703; (1998) 4 SCC 117

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care. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. Government hospitals and their medical officers are duty bound to extend medical assistance for the preservation of human life. Failure on the part of a Government-run hospital to provide timely medical treatment to a person in need of such treatment can result in a violation of his or her right to life guaranteed under Article 21. In *Hakim Seikh* there was a violation of the right to life guaranteed under Article 21 when he was denied treatment at various Government hospitals which were approached when his condition was very serious and he was in need of immediate medical attention. Since state employees in these hospitals denied him the right guaranteed under Article 21, State authorities could not avoid their constitutional responsibilities.

In *Vincent Panikurlangara v. Union of India*<sup>49</sup>, the issue involved was the manufacturing, selling and distributing of approved medical drugs and the banning of injurious and harmful medicines. In the background of the case, the Supreme Court identified the maintenance and improvement of public health as one of the fundamental rights falling under Article 21 of the *Constitution*. Quoting a well-known adage, *sharirmadhyam khalu dharma shadhanam* (a healthy body is the very foundation of all human activities), the Court observed:

–...maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community, and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority-perhaps the one at the top.

Again, in *Dr. Ashok v. Union of India*,<sup>50</sup> indicating therein that various insecticides, colour additives, food additives are in widespread use in this country which have already been banned in several advanced countries as it has been found that those insecticides are carcinogenous. The Apex Court recognized the right to healthy life under Article 21 and directed the Union to take appropriate steps. In *Parmanand Katara v. Union of India*,<sup>51</sup> the

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<sup>49</sup> 1986 (2) SCALE 801; 1987 Supp (1) SCC 90

<sup>50</sup> AIR 1997 SC 2298; (1997) 5 SCC 10

<sup>51</sup> AIR 1989 SC 2039; JT 1989 (3) SC 496

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Apex Court held that Article 21 of the *Constitution* casts the obligation on the State to preserve life. The provision as explained by the Apex Court in scores of decisions has emphasized and reiterated with gradually increasing emphasis that position. A doctor at the Government hospital positioned to meet this State obligation is, therefore, duty-bound to extend medical assistance for preserving life. The Court further observed:

Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession.

Accordingly, no doctor contravenes any law if he attends to an injured victim without delay. The Apex Court gave directions to that effect. It also said that -every doctor wherever he be within the territory of India should forthwith be aware of this position and, therefore, we direct that this decision of ours shall be published in all journals reporting decisions of this Court and adequate publicity highlighting these aspects should be given by the national media as also through the *Doordarshan* and the *All India Radio*. Blood is an essential component of the body which provides sustenance to life. There can be no greater service to the humanity than to offer one's blood to save the life of other fellow human beings.

In *Common Cause v. Union of India*,<sup>52</sup> in a Public Interest Litigation petition under Article 32 of the *Constitution*, the petitioner highlighted the serious deficiencies and shortcomings in the matter of collection, storage and supply of blood through the various blood centers operating in the country. The Apex Court gave wide ranging directions to the Union Government, Governments of States and Union Territories to ensure that within a period of not more than a year, all blood banks operating in country should be duly licensed. If a blood bank is found ill equipped for being licensed and remains unlicensed after expiry of the period of one year; its operations should be rendered impossible and necessary steps should be taken to ensure that the Drugs Inspectors duly trained in blood banking operations are posted in adequate numbers so as to ensure periodical checking of operations of blood banks throughout country for the purpose of ensuring that all chances of any risk to life or health guaranteed through Article 21 are eliminated in these processes.

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<sup>52</sup> AIR 1996 SC 929: (1996) 1 SCC 753

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### ( C ) Res Ipsa Loquitur

In the common law, *res ipsa loquitur* (Latin for "the thing itself speaks") is a doctrine that states that the elements of duty of care and breach can sometimes be inferred from the very nature of an accident or other outcome, even without direct evidence of how any defendant behaved. Although modern formulations differ by jurisdiction, the common law originally stated that the accident must satisfy the necessary conditions of negligence.<sup>53</sup> In *Pushpa Bai Parshotam Udeshi v. M/s. Ranjit Ginning and Pressing Co. Pvt. Ltd.*,<sup>54</sup> the Apex Court explaining the doctrine of *res ipsa loquitur* observed that the normal rule is 'that it is for the plaintiff to prove negligence but in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it. The plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. It means the accident "speaks for itself" or "tells its own story".

Thus, when an unexplained accident occurs from a thing under the control of the defendant, and medical or other expert evidence shows that such accidents would not happen if proper care were taken, there is at least evidence of negligence for an injury. The two conditions for the applicability of the maxim are:

1. That the thing causing the damage is under the exclusive control of the defendant; and
2. That the accident must be such as would not in the ordinary course of things have happened without negligence.

Where the doctrine applies, a presumption of fault is raised against the defendant who, must overcome by contrary evidence, if he is to succeed in his defence. The burden on the defendant being to show how to act complained of could reasonably happen without negligence on his part. It may further be noted, however, that if facts are sufficiently known, the question ceases to be one where facts speak for themselves, and the solution is to be found by determining whether, on the facts as established, negligence is to be

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<sup>53</sup> See *Halsbury's Laws of England*, 3<sup>rd</sup> Ed., vol. 28 at p. 77

<sup>54</sup> 1977 AIR 1735; 1977 SCR (3) 372

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inferred or not.<sup>55</sup>

### (A) Award of Compensation

In case of award of compensation in deficiency in medical services three questions arise: (i) What should be the principle for determining the quantum of damages? (ii) Whether award of compensation on the basis of ages and salary of disease is justified? (iii) On what basis a claim can be enhanced? So far as the first question is concerned, the Court in *Joseph alias Pappachan v. Dr. George Moonjely*,<sup>56</sup> held that with regard to the quantum of damages awarded by the Trial Court, the same is not adequate to meet the ends of justice. An amount for rupees 30,000/- was awarded for medical expenses by the first plaintiff and supported by medical bills.

In *Parmanand Katra v. Union of India*,<sup>57</sup> the petitioner, a human right activist, filed a writ petition in public interest on the basis of a newspaper report concerning the death of a scooterist who was knocked down by a speeding car. The report further states that the injured person was taken to the nearest hospital but the doctors there refused to attend on him; that they told that he be taken to another hospital, located some 20 kilometres away, which was authorised to handle medico-legal cases; and that the victim succumbed to his injuries before he could be taken to the other hospital. The petitioner has prayed the directions be issued to the Union of India that every injured citizen brought for treatment should instantaneously be given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death, and in the event of breach of such direction, apart from any action that may be taken for negligence, appropriate compensation should be admissible. Disposing of the writ petition, the Apex Court held:

1. Article 21 of the Constitution casts the obligation on the State to preserve life.
2. There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the *status quo ante*

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<sup>55</sup> *State of Punjab v. Modern Cultivators*, AIR 1965 SC 17

<sup>56</sup> AIR 1994 Ker 289

<sup>57</sup> AIR 1989 SC 2039

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cannot be restored as resurrection is beyond the capacity of man.

3. The patient whether he be an innocent person or a criminal liable to punishment under the laws of the society, it is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment.
4. Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life.
5. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statute or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way.
6. The Court gave directions for giving adequate publicity to the decision in this case by the national media, the Doordarshan and the all India Radio, as well as through the High Courts and the Sessions Judges.

In *Poonam Verma v. Ashwin Patel*,<sup>58</sup> the deceased was 35 years of age and was getting a salary Rs.5700 per month. He died a young death, which has deprived his dependants, namely, the widow, two children and parents of the monetary benefit they were getting. The Supreme Court, while determining the compensation held that they were entitled under law to be compensated. The claim of the appellant was decreed as against respondent 1 for a sum of Rs. three lakhs payable to her within three months from the date of the present judgment, failing which would be recoverable in accordance with the law. The court further ruled that the appellant would be entitled to her costs, which were quantified at Rs.30,000.

The Supreme Court in *Ram Bihari Lal v. J.N. Srivastava*,<sup>59</sup> found that the defendant failed in his duty of care in undertaking the operation and in doing the operation without taking necessary precautions. His act of removing the gall bladder was highly hazardous which resulted in the death of the patient. So the defendant was liable to pay damages for his

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<sup>58</sup> (1996) 4 SCC 332

<sup>59</sup> AIR 1985 MP 150



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wrongful acts. However, the plaintiffs are only claiming symbolic damages. The award of Rs.3000 for loss of service at the rate of Rs.25 per month for 10 years, on the death of a young mother of seven minor children, the youngest aged four and a half months, is not adequate. The award of Rs.1000 for mental agony and physical suffering is also very low. However, there was no claim for enhancement.

Recently, in *Balram Prasad v. Kunal Saha*,<sup>60</sup> the issue before the Apex Court was whether the claim of the claimant for enhancement of compensation in his appeal is justified? The AMRI Hospital, Kolkata and the appellant-doctors argued that claimant seeking to amend the claim of compensation under certain heads in the original claim petition has forfeited his right of claim under Order 2, Rule 2 of Code of Civil Procedure and thus additional amount for compensation under different heads is not justified and wholly unsustainable in law without following the procedure contemplated under the provisions of the Consumer Protection Act and the Rules. The Apex Court answered in favour of the claimant and against the appellant-doctors and the Hospital. In this case the Apex Court also examined the issue whether the claimant is entitled to pecuniary damages under the heads of loss of employment, loss of his property and his travelling expenses from USA to India to conduct the proceedings in his claim petition? The claim of the claimant that he has also suffered huge losses during this period, both direct loss of income from his job in USA as well as indirect loss for pain and intense mental agony for tenure denial and termination of his employment at Ohio State University which was a direct result of the wrongful death of deceased in India. Further, the claimant argues that he has spent Rs.1,65,00,000/- towards litigation over the past 12 years while seeking compensation under this head. The Apex Court held that compensation of Rs.1,50,000/- under the head of legal expenses will be proper. Thus, a total amount of Rs. 11,50,000/- is granted to the claimant under the head of cost of litigation. Besides, the Apex court partly allowed and finding on contributory negligence by National Commission on part of claimant is set aside the direction of National Commission to deduct 10% of awarded amount of compensation on account of contributory negligence is also set aside by enhancing compensation from Rs.1,34,66,000/- to Rs.6,08,00,550/- with 6% interest per annum from date of complaint to date of payment to claimant.

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<sup>60</sup> 2014 (1) SCC 384; 2014 (1) BCR 397

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## II. Banking and Financial Services

The facilities in connection with banking and financial services come within the definition of –service under the Consumer Protection Act, 1986. It has, therefore been held that refusal to accept small currency is deficiency in service,<sup>61</sup> loss of a cheque,<sup>62</sup> or a demand draft,<sup>63</sup> has to be compensated. Similarly illegal deduction of interest contrary to the terms of the agreement is deficiency,<sup>64</sup> banks are liable to fulfil the terms of a gurarantee.<sup>65</sup> But the bank is not liable if a dishonoured cheque is lost in transit.<sup>66</sup> The bank cannot however release dues if rule required certificate of succession.<sup>67</sup> Thus, In *Vimal Chandra Grover v. Bank of India*,<sup>68</sup> the Supreme Court observed:

Banking is business transaction between bank and customers within the meaning of Section 2(i)(d)(ii) of the Act. The ‘banking’ means acceptance for the purpose of lending or investment of deposit of money from the public, repayable on demand otherwise. Banks provide or render service facility to its customers. Facilities/services rendered by banks include, *inter alia*, remittance, accepting deposits, providing for lockers, facility for discounting of cheques, collection of cheques, issue of bank drafts. Banking is thus a commercial function covered under the term ‘service’ under section 2(i)(o) of the Consumer Protection Act.

In *Standard Chartered Bank Ltd. v. B. N. Raman*,<sup>69</sup> the Supreme Court upheld the findings of the State Commission and the National Commission but remitted the case to the state commission to pass the decree in favour of the respondent in accordance with the law indicated by it in the judgment. It was noted that neither the State Commission nor the National Commission had examined the question regarding selection of the appropriate date at which the foreign currency amount had to be converted into the Indian currency, the

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<sup>61</sup> *Gandhi Bala Krishna Soni v. Manager, Canara Bank*, 1995 (12) CPR 10.

<sup>62</sup> See *Vidhya Jain (Dr.) v. Punjab National Bank*, 1955(1) CPR 10

<sup>63</sup> *Soya Udyog Ltd. v. State Bank of India*, 1(1955) CPI 88 (NC).

<sup>64</sup> *Narayanrao Mahadeo Manerakar v. Sangli Bank Ltd.*, 1955 (1) CPR 582

<sup>65</sup> *Tamil nadu State Corpn. Ltd. v. Tamil Nadu, Marcantile Bank Ltd.*, 1991 (1) CPR : see also *State of U.P. v. Corporation Bank*, 1997 (1) CPR 168

<sup>66</sup> *UCO Bank v. Manoj Shetty*, 1997 (4) CPR 593.

<sup>67</sup> *Dhen Kanal Gramya Bank v. Preadipta Kumar Nanda*, 1996 (1) CPR 479

<sup>68</sup> AIR 2000 SC 218

<sup>69</sup> (2006) 6 GLHEL – SC 37526

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appropriate rate of exchange on that particular date as well as the rate of interest which the appellant bank was required to pay. In the instant case the respondent, a NRI, had deposited US \$5,000 ON 17.8.1979 carrying 9 per cent interest and maturity on 17.11.1984. According to the respondent in 1984 he had given instruction to reinvest the entire amount in FCNR account on maturity for a period of six years at 13% p.a. He alleged that in September 1990 he had requested the bank to reinvest the amount in his FCNR account for a further period of three years. But in 1992 the appellant bank informed him that there was no outstanding amount in his name in the FCNR account. By another letter, the appellant informed that the deposit in question was permanently withdrawn on 22.11.1979. The State Commission rejected the plea of withdrawal of the deposit and passed an order in favour of the complainant-respondent. As far as the issue of limitation the commission concluded that as the deposit was reinvested from time to time the complaint was within limitation. In *Branch Manager, Indian Bank v. K. Swamanna*<sup>70</sup> it was held that the respondent cannot seek payment of the entire amount of subject matter cheque and can claim only compensation for deficiency in service on part of the petitioner bank in not returning the cheque to him. In *Allahabad Bank, Bhopal*

*v. Ranbir Singh Bhadoria*,<sup>71</sup> theft of jewellery from bank locker took place. The hirer last time operated locker he had mischievously removed four bolts of locker from inside, removed contents thereof and went away closing locker without key. It was held that if locker was closed without key, the bank should have detected that fact on inspection of locker immediately after it was used as also on physical verification of locker at the end of the day. The hirer of locker had filed complaint after lapse of 19 months when he operated locker and detected theft. There was thus deficiency in service on the part of the bank. It was held that the order of the forum directing bank to pay Rs. 2 lakh with interest to hirer was not improper.

In *Federal Bank Ltd. v. N. S. Sabastian*,<sup>72</sup> the Supreme Court was invited to determine whether losing of a cheque in transit by a bank would amount to a deficiency in service on the part of the bank, even in cases where a cheque is issued by an account holder without

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<sup>70</sup> MANU/CF/0169/2006. The court relied on *State Bank of Patiala v. Rajendra Lal*, IV (2003) CPJ 53 (NC)

<sup>71</sup> 2006 (2) ALJ 326

<sup>72</sup> (2009) III CPJ 3 (SC)

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maintaining adequate balance in his account. In the instant case, the complainant working as a clerk in a bank, had introduced one M.P. Anil Kumar for opening a saving bank account. Later, the complainant presented a cheque drawn in his favour by Anil Kumar for a sum of Rs. 9.85 lacs in the same branch of the bank for collection and crediting the same amount his account. The cheque, sent for collection to bank branch, through M/s. Professional Couriers, was lost in transit. The manager of the bank informed the complainant that the cheque was lost in transit, and advised him to get a duplicate in lieu of the lost instrument. The complainant, instead of taking steps for obtaining the same, filed a complaint before the state commission, claiming Rs. 9.85 lacs with interest @ 18% *per annum*. The state commission, though declaring the claim of Rs. 9.85 lacs, directed the bank to pay the interest @ 18 per cent *per annum* on the cheque amount. The order was further confirmed by the national commission. Through an appeal before the court, the *bona fides* of the complainant was questioned by the bank by alleging that on the date of issue of the cheque, the drawer had negligible amount of Rs. 112 in his account. The court, after perusing the facts of the case, allowed the appeal filed the bank and observed that since no amount was deposited by the drawer even after the issuance of cheque so as to honour the cheque, it was impossible for the complainant to get the amount credited in his account. Therefore, even if the cheque had not been lost in transit, the same would have been dishonoured due to insufficiency of funds. Further, on being informed that the drawer's account had a sum of less than Rs.200 at the relevant time, the complainant neither resorted to the Negotiable Instrument Act nor did he take any action for recovery of Rs.9.85 lacs, against Anil Kumar.

It has been debated over time whether banks have vicarious liability its officials/employees? In *Haryana Gramin Bank v. Madan Lal*,<sup>73</sup> the respondent files a complaint under section 12 of the Consumer Protection Act, 1986 against the petitioner bank submitting that he had deposited certain amount in fixed deposit, however, when he wanted to withdraw the same, the bank authorities declined to entertain his request. The respondent also alleged that some bank officials fabricated the records and withdrew the amount deposited in his account and for the acts of its officers/officials, the bank was liable. The bank contended that it cannot be held liable for the wrong actions of some

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<sup>73</sup> MANU/TN/3411/2011: W. P. No. 9356 of 2011 (Madras High Court)

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officers/officials. The Supreme Court, on appeal, held that the bank did not produce any evidence to prove that even though there were no entries in the passbooks, showing withdrawal of the amount deposited by the respondent in the saving bank accounts or by the respondent in the savings bank accounts or by way of FDRs, he had, in fact, withdrawn the amount, as reflected in the ledgers maintained by the bank. The bank was vicariously liable for the wrong actions of its officials/employees which resulted in monetary loss to the respondent and the consumer fora did not commit any error by entertaining and allowing the complaint filed by him.

Where the complicated issues were involved, like delivery of export bill without payment, non-collection of payment due to negligence, debiting the amount of the customer without authority amounting to an unfair trade practice and violation of court orders., withdrawal of bank guarantee facilities arbitrarily and reduction of credit facilities, and compensation was claimed for all these items. Thus, in *Doon Valley Rice Ltd. v. State Bank of India*,<sup>74</sup> it was held that voluminous evidence and complex questions of law were involved, and therefore, the dispute could not be adjudicated in a summary jurisdiction.

### III. Insurance Services

Like the banking and financial services, the insurance come within the definition of -service under the Consumer Protection Act, 1986. An insurance company is not liable for prospective loss but delay in settlement of claim has been held to be deficiency in service.<sup>75</sup> In respect of exclusion clauses in a policy, the company has to prove that policy conditions had been violated.<sup>76</sup> Where the complainant had as usual sent the premium for renewal of his policy against flood/riot, etc against which cover note was issued but the company instead of sending the policy bond refunded without any explanation, it was held that the act on the part of the insurer was held to be deficiency in service and claim was allowed in terms of the risk covered under the policy.<sup>77</sup> Where Life Insurance Corporation of India rejected death claim on the ground that the deceased had suppressed the fact about having

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<sup>74</sup> (2003) 2 CPJ 196 (NC).

<sup>75</sup> *Rajasthan Spinning and Weaving Mills Ltd. v. New India Assurance Co. Ltd.*, 1995 (1) CPR 72.

<sup>76</sup> *Kalidas B. Patel v. United India Insurance Co. Ltd.*, 1995 (1) CPR 9

<sup>77</sup> *Plastic International v. The Divisional Manager, New India Assurance Co. Ltd.*, 1996(J) CPR 95.

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been suffered from jaundice and undergone confinement in medical establishment before applying for insurance it was held that it is well settled that mere omission does not amount to suppression of facts. It must be a conscious operation of the giver of the answer which he knowingly did not disclose.<sup>78</sup> It has also been held diabetes is not such a serious ailment which is necessary for the insured to bring to the notice of the Life Insurance Corporation.<sup>79</sup>

In *Kundan Rice Mills Ltd. v. National Insurance Company Ltd.*<sup>80</sup> the question before the National Commission was whether the complainant was entitled to recover interest at the rate of 10% p.a. on the sum awarded if the insurance company failed to pay the said amount within six weeks from the date of the order. The said order was passed on 25.2.2005 and the insurance company paid the amount only in June, 2006. In its order the commission had also directed that in the event of failure of the insurance company to pay the amount within six weeks from the date of the order it shall pay interest at the rate of 10% p.a. from the date of receipt of surveyor's report (16.7.1998). Against the order passed by the commission both parties filed civil appeals which were dismissed by the apex court. In the current proceeding (execution proceeding) the respondent made the following submissions: (i) the question of payment of interest did not arise as the company made payment within one month of the apex court's order; and (ii) part of the order asking for payment of interest from the date of receipt of the surveyor's report was penal in nature. The commission rejected these contentions and laid down the following propositions: (i) mere filing of appeal before the apex court would not amount to stay of the order of the commission; and (ii) the court or commission has no power to modify the order which has attained finality. In the end, the execution petition was allowed and the insurance company was directed to comply with the order of the commission passed on 25.2.2005 by paying interest @ 10% p.a. within a period of eight weeks from the date of this order.

In *National Insurance Co. Ltd. v. Nipha Exports Pvt. Ltd.*,<sup>81</sup> the sole question to be determined was whether there was any delay in payment of Rs. 70,38,038 and if so whether the insurance company was liable to pay interest at the rate of 6 per cent as awarded by the

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<sup>78</sup> *Divisional Manager, Life Insurance Corporation of India v. Bilasini Champits*, 1 (1997) CPJ 30 (NC).

<sup>79</sup> *Life Insurance Corporation of India v. Rampati*, (1997) CPJ 137

<sup>80</sup> MANU/CF/0321/2006

<sup>81</sup> III (2006) CPJ 366 (NC).

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commission. The apex court relying upon *Polymat India Pvt. Ltd. v. National Insurance Co.Ltd.*,<sup>82</sup> held that there was no delay in making the payment which would warrant the award of interest on delayed payment. The court reasoned that the important dates to be decided in such circumstances was the date on which the quantum of compensation and to whom it should be paid was finally decided and not from the date on which the correspondence started between the parties. In *Central Coalfield Ltd. v. Bandana Mishra*,<sup>83</sup> the question that arose for consideration related to the liability of the insurance company to pay the assured sum under the group insurance scheme to the complainant after the death of her husband despite the delay in remitting the premium amount from the salary of the latter by the employers to the insurance company. The National Commission held that the employers and not the insurance company was liable to pay the assured sum with interest to the complainant-respondent no.1. The commission while pointing out the distinction between the salary saving schemes and the group insurance scheme observed that under the salary saving scheme each employee owns the policy individually, whereas in a group insurance the employer is the insured.

In *Unichem Laboratories Ltd. v. New India Assurance Co. Ltd.*,<sup>84</sup> the main question for consideration before the National Commission was whether in case of loss of insured goods or merchandise, the insurance company was bound to reimburse on the basis of the cost of production or on the basis of sale price or by taking into account cost of production plus profit. It was held that the insurance company was only required to reimburse on the basis of cost of production of the goods or merchandise and not on the basis of the sale price of goods of cost of production plus loss of profit.

In *National Insurance Company v. Sajjan Kumar Agarwall*,<sup>85</sup> the complainant- respondent, while travelling in his own maruti car with a valid insurance cover, met with an accident in which the vehicle got badly damaged. On submitting an insurance claim, the appellant-insurance company repudiated the claim on the ground that the driver who was driving the vehicle did not have an effective driving license at the time of accident. Thereupon a complaint was filed by the complainant-respondent before the district forum which held

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<sup>82</sup> 2006 (2) SCALE 678

<sup>83</sup> MANU/F/0167/2006.

<sup>84</sup> III (2006) CPJ 359 (NC).

<sup>85</sup> (2009) 1 CPJ 28 (SC).

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that the driver had a valid licence. The aforesaid decision of the district forum which held that the driver had a valid licence. The aforesaid decision of the district forum was upheld by the state consumer disputes redressal commission (SCDRC) and the national consumer disputes redressal commission (NCDRC). However, when the matter reached the Supreme Court, it was brought to its notice that a specific investigation carried out by an investigator of the insurance company revealed that the licence was issued not in the name of the driver who was accused of committing the accident, but in the name of someone else. In view of this, the court set aside the orders of all the consumer fora and remitted the matter to the district forum with a direction to verify necessary data by calling for records from the licensing authority.

The law of limitation casts a duty upon the courts not to entertain a suit appeal/application, if filed after the expiry of the limitation period provided under the relevant law. Thus, the Supreme Court in *Oriental Insurance Company Ltd. v. Prem Printing Press*,<sup>86</sup> clarified that when it was expressly provided in the insurance policy that the insurance company shall disclaim liability to the insured for any claim under the policy if the disclaimer failed to prefer the claim for required relief before the appropriate court within three months, the claim shall for all purposes be deemed to have been abandoned and thereafter shall not be recoverable. The relevant date of disclaimer refers to the date on which the claim was repudiated and was finally communicated and not the date on which initial repudiation was communicated. Therefore, any complaint filed before the consumer fora within three months from the date of final repudiation communicated can be entertained. The argument that the complaint filed was beyond the period of limitation provided under the insurance policy was held to be not acceptable by the court.

The Supreme Court through a large number of cases had the occasion to analyse the aspect of concealment of pertinent facts while making a claim under a mediclaim policy. The issue was considered in *New India Assurance Co. Ltd. v. Satpal Singh Muchal*,<sup>87</sup> where a pre-existing disease was concealed. In this case, the complainant-respondent, had taken a mediclaim policy in January, 1999, which was lastly renewed on 22.1.2002, for the period of one year, i.e. till 21.1.2013. The complainant, suffering from kidney trouble informed

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<sup>86</sup> (2009)1 CPJ 55 (SC).

<sup>87</sup> MANU/SC/0094/2009



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the same to the insurance company. The insurance company, on receipt of this information terminated the policy on 18.6.2003 w.e.f.17.2.2002 as per the terms of the policy (i.e. the insurance company may at any time cancel this policy by sending the insured 30 days notice and refund the insured a *pro-rata* premium for unexpired period of the insurance) on the ground that the complainant had concealed the pre-existing disease. Accordingly, the complainant was refunded a *pro-rata* rate of premium of Rs. 2,782. The request of the complainant for renewal of policy was also not considered for the said reason. When the matter was moved before the Supreme Court, it was brought to the knowledge of the court that the insured himself admitted the pre-existing disease by his letter dated 24.6.2009 addressed to the insured. In view of the said admission by the insured complainant and power of the insurer to cancel the policy as per clause 5.9, the court remitted the matter to the district forum for consideration afresh taking into account the consequences owing to concealment of fact and the applicability of the relevant terms of the insurance policy (with respect to termination by insurer) to the facts of this case. Surveyors are appointed under the statutory provisions and are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor would become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured. In the case of *New India Assurance Company Ltd. v. M. M. Krishan*<sup>88</sup> the National Commission, while highlighting the significance of the surveyor's report, observed that the same may not be relied upon if it was arbitrary and biased.

The respondent had taken an insurance policy from the petitioner insurance company for a sum of Rs.1,57, 000/- covering the risk of loss due to earthquake, fire etc. And also various types of clinical lab/medical equipment which were lying inside or installed at the clinic of the respondent. Subsequently, a fire occurred in the respondent's clinic destroying all the medical equipment lying at the clinic. The respondent lodged an insurance claim with the petitioner who appointed a surveyor. The surveyor totally ignored the documentary and other evidence given by the respondent to substantiate the value of various items destroyed in the fire and gave a report that the total loss was Rs. 19,000/- and recommended that out of this loss, Rs.10,000/- be deducted as excess as per policy'. Subsequently a complaint was filed in the district forum. The district forum had dismissed the respondent's complaint

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<sup>88</sup> 11 (2011) CPJ 301 (NC).

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by relying on the surveyor's report. However, the state commission had allowed the appeal and directed the petitioner to pay the respondent Rs.1,45,443/- as insurance claim and Rs.10,000/- on account of harassment and mental agony along with interest @ 9% per annum after the expiry of 2 months from the report of surveyor.

On appeal, the National Commission had noted that generally the surveyor's report was an important document and was to be relied upon unless it was arbitrary and biased. However, in the instant case, the surveyor's report was biased and the loss suffered by the respondent was not correctly assessed as surveyor had not assessed any value on the loss of cardiac monitor costing Rs.1,69,000/- on the ground that there was no evidence that the cardiac monitor was destroyed in the fire. On the other hand, the state commission had clearly ruled that the remnants of the partially burnt PCB found on the spot were obviously those of the cardiac monitor. Similarly, the surveyor had also wrongly stated that the electrical goods which were destroyed were not valued because they were not covered under the insurance coverage while a perusal of the policy taken by the respondent shows that there were covered under the insurance policy. The order of the state commission was found to be well- reasoned and convincing, hence, there was no reason for the National Commission to disagree with the findings therein.

When the insurance matter be referred to a civil court has been examined by the National Commission in *C. P. Moosa v. Chowgle Industries Ltd.*<sup>89</sup> In this case where goods insured under carriage were delivered by the carrier to the consignee without collecting from him the documents which were sent through a bank, the carrier only taking an undertaking from the consignee that he would return the documents, the insurer also repudiating the claim because the goods were delivered and not lost, it was held that the matter was too complicated for a consumer forum to sort out and, therefore, a civil suit would be better. Where the compensation amount is fixed by the insurer by due application of mind to all the facts and circumstances of the case, there is no deficiency in service even though the amount so fixed is less than the claim amount. The insurance policy carried arbitration clause in case of any dispute. The complainant was, therefore, advised to refer the matter to arbitration in terms of the clause.<sup>90</sup>

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<sup>89</sup> (2001) 3 CPJ (NC).

<sup>90</sup> *Shri Ganesh Spinners v. United India Ins Co. Ltd.*, (1998) 5 CTJ 390 (NC)

### IV. Railway Services

Deficiency of railway services comes within the definition of -service under the Consumer Protection Act, 1986. Thus, the CP Act provides remedies in cases of deficiencies in the railway service provided to consumers. Section 3 of the CP Act, directs that the provisions thereof shall be in addition to and not in derogation of the provisions of other laws for the time being in force. Obviously, in a case of deficiency in services provided by Railways, a complaint can be filed before District Consumer Forum or other authorities under the aforementioned Act of 1986. In this regard, Section 128 of the Railways Act, 1989, provides for an alternative remedy option to the claimant and says that the right of any person to claim compensation under Section 124 shall not affect the rights of any such person to recover compensation payable under the Workmen's Compensation Act, 1923, or any other law for time being in force; but no person shall be entitled to claim compensation more than once in respect of the same accident. It appears from the case law selected from the different consumer fora that a large number of consumer problems have been redressed by the said foras.

In *S. Pushpavanam v. G. M. Southern Railways*,<sup>91</sup> the Tamil Nadu State Commission examined the issue relating to railway reservation for the day on which the train did not ply. The Commission observed that this is a clear case of patent error and palpable negligence on the part of the railway staff who made the endorsement of confirmation. According to the opposite parties the confirmation for P.W.I. for her onward journey from Madras had really been made in Chennai Express Leaving Madras on 15.5.90 and a message to this effect has been given to the Trichy is still more serious. The Railway administration is vicariously responsible for this act of gross negligence. It has been often reported that a number of trains having defective railway boggies including leakages of rain water into the bogies etc. In this background in Orissa State Commission in *Mr. Shahjahan Shaikh v. South Eastern Railway*<sup>92</sup>, observed that when Railway authorities are casual in

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<sup>91</sup> 1991 (2) CPR 1: 1991 (2) CPJ 64

<sup>92</sup> 1991(2) CPR. 201.

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discharge of their obligation in not clearing platforms, compartments examining the bogies before leaving the terminal station that it is order as a result of which lights and fans do not work, even at times air conditioner fails and delayed arrival is a regular feature, putting blame on consumer, for not making entry in complaint book should not be seriously viewed. Theft and damage by miscreants could have been avoided in case persons engaged would have been serious in discharge of their duties. The deficiency is not a force major but is on account of negligence. Consumers should not be called up to bear the deficiencies in Railway Administration. Thus, where there is defect in bogie and leakage of rain water there is deficiency in service.

The issue relating to entry of unauthorized persons in First Class Compartment of Railways was examined by the *National Commission in General Manager, Southern Railway v. N. Prabakaran*.<sup>93</sup> The Commission observed that it is a matter of public knowledge that either because of serious inadequacy of suburban transport facilities in certain undisciplined section of society, many unauthorized persons enter into the Ist Class Compartments even without tickets or hold up trains. The railway staff is buying themselves unable to cope with the problems. The use of police to regulate the entry of passengers into compartment often takes an ugly turn. Thus, it cannot be said that entry of unauthorized person in first class compartment is due to the negligence of railways and so the complainant is not entitle to any compensation of this point. Similarly, late running of train due to derailment has been held no deficiency of railway service in *Saraswati N. Kambhevi v. Divisional Railway Manager, Hubli Division*.<sup>94</sup> It may be respectfully submitted that the Railway Authority enjoys monopoly for long time at least from the beginning of the Indian Independence; hence the justifications given in above stated two judgments are not based on sound footings. But in *Union of India v. M. H. Pathak*,<sup>95</sup> the National Commission fixed the liability upon railways comparatively in a modified reasoning. In this case the National Commission came down heavily on the railway administration for its failure to provide security to passengers having confirmed tickets. The complainant and his parents had valid reservation but they were forced by miscreants to vacant their seats. On their refusal they

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<sup>93</sup> 992(2) CPR1 109: 1992 (1) CPJ 323 (NCDRC).

<sup>94</sup> 1991(1) CPJ 539 (Knt. SCDRC).

<sup>95</sup> II (1996) CPJ 31 (NC).

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were beaten severely causing injuries including permanent disabilities. The District Forum and State Commission had held the railway liable. On the revision the National Commission rejected the argument of the railway authority that the maintenance of law and order within the railways was responsibility of ministry of home affairs that is the police department. It was held that the complainants have paid consideration for the service and were entitled to be carried safely in the train up to its distinction in the reserved compartment. Thus, the order of the District Forum was confirmed. Although, this judgment is based on the Railway Act, 1890 but in 1989 the said Act of 1890 has been replaced. But in the new Act it is clearly mentioned that one has to choose remedy under either CP Act, 1986 or the said Act of 1989. Therefore, the problem of security of bonafide passengers remains the same. This problem may be solved by suitable modification of both CP Act and Railways Act and a distinct link and bridge be made between them for proper dispensation of consumer justice. However, changing of timing of railway train without proper information has been considered as deficiency of railway service. In *Ashok Kumar Singh v. Union of India*,<sup>96</sup> the railway authority at Saharsa has no information about the change of the train timing till 12.30 hrs when the train was to leave at 21.15 hrs on that day. This is definitely a deficiency in service and no proper care was taken to advertise well in advance the change in the timings of the concerned train. Similarly where not providing seat to a passenger having confirmed reservation is deficiency of railway service. In *Padmanav Dash v. Divisional Railway Manager, South Eastern Railway*,<sup>97</sup> the reserved berth of complainant was allotted to another person and he was denied a reservation though he paid for it and his ticket was confirmed one month before. This amount to clear negligence. The public is not supposed to suffer for the erroneous act a negligence of railway staff. Because of the negligence of booking and reservation staff the railway must bear vicarious responsibility.

The issue relating to adoption of wrong criteria for specification of super fast train was examined by the *National Commission in Phiroze Amroliwalla v. Indian Railways*.<sup>98</sup> In this case the grievance of complainant who has brought this original petition on behalf of the

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<sup>96</sup> 1993(1) CPR 292 (Bhi. SCDRC).

<sup>97</sup> 1994(1) CPR 77 (Ori. SCDRC).

<sup>98</sup> 1993 (CP3) R 6 (NCDRC).

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three different well known organizations representing the travelling public making use of the facility of transport by rail is that the Railways have arbitrarily classified certain trains as Super Fast Trains' and are realizing extra charge from the passengers for travelling by such Super Fast Trains' without adopting any reasonable criteria for such classification and providing any facilities in return for the additional charge that is being levied. In the statement of objections filed on behalf of the Railway Administration it is stated that the criteria adopted by the Railways for classification of trains as Super Fast Trains' are:

- (i) -That the Super Fast Trains are comparatively faster on the route.
- (ii) That they are more convenient in respect of timing.
- (iii) That most of the berths/seats in these trains are reserved, bringing much needed relief to the long distance travelling public.

The National Commission held that these criteria do not lay down any proper, relevant or valid test for the purpose of classifying train as Super Fast Trains.' One should think it implicit in the very nomenclature that such classification must have a close nexus with the average speed at which the train is expected to operate. To state merely that Super Fast Trains' are -comparatively faster on the route is not laying down a criteria at all for the guidance of the officers responsible for carrying out the classification. One should have thought that the minimum average speed of the train required for including it in the category of

Super Fast Trains' would clearly be specified which furnishing guidelines as to how such classification is to be made. This essential requirement is not complied with. Secondly, it is mentioned -that they are more convenient in respect of timings. This is also as vague as any statement can be. A train which starts or terminates at a convenient time but going at a very leisurely pace and which halts at almost every other intermediate station cannot be justifiably classified as a Super Fast Trains'. The existence of -convenient timings does not appeal to us as a factor having any rational nexus for the purpose of such classification. The last test laid down as governing criteria is that -most of the berths/seats in these trains are reserved, bringing much needed relief to the long distance travelling public. In every long distance train there are several reserved compartments which are exclusively meant to be used only by passenger having reservation. The fact that most of the seats or

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berths in a train are of the reserved category will not justify the train being classified as -Super Fast by any reasonable construction of that expression. The resultant position is that we find that all the criteria laid down are of little relevance or assistance as guidelines to be followed by officials who are to classify trains as Super Fast Trains'. Thus, the Commission directed that Railway Board shall within one month from today address its mind to the matter with care and lay down fresh guidelines fixing criteria such as average speed, number of stops at intermediate stations and special amenities provided to passengers which have a close nexus and relevance to the description -Super Fast in the light of what we have indicated above for classification of trains as Super Fast Trains'.

In *Union of India v. Gunasekharan*,<sup>99</sup> the Tamil Nadu State Commission held when it is not possible for the Railway authority to attach a compartment due to mechanical defect it would not be liable for deficiency of service even though as a result reservation of consumer is nullified. However, in *Davinder Mohan Verma v. G. M. Northern Railways*,<sup>100</sup> the Delhi State Commission held that the Railway authority liable on the ground that customer is justified in placing confidence in Railway under such circumstances. In this case the car was insured for Rupees 70,000/- only. It also awarded for Rupees 5,000/- only for mental pain and suffering to the complainant.

### V. Advocates' Services or Services of Legal Profession

It is a controversial issue whether services rendered by legal professionals or Advocates' services falls within the ambit of -service|| under Consumer Protection Act, 1986? <sup>101</sup> The concept profession is well protected under Article 19(1) (g) of the Constitution of India. According to Article 19(1) (g) all citizen shall have the right to practice any profession or to carry on any occupation, trade or business. However, this right is subject to reasonable restriction under Article 19(2) of the Constitution. Thus in *Thomas Joseph v. State Bank of India*,<sup>523</sup> the Kerala High Court held that the introduction of licensing system does not convert the right into mere privilege. Thus, question arises

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<sup>99</sup> VIII 1994 (2) CPR 419 (TN).

<sup>100</sup> III 1994 (3) CPR 599 (Del.)

<sup>101</sup> See Upendra Baxi, —Accountability of Legal and Professionals under Consumer Protection Act,|| *Consumer Confrontation* (1992) pp.15-17; U. Surendra Kanstiya, "Law Practitioners and the Consumer Protection Act||, *Corporate Law Adviser* (1988), pp.24-26; D. Seshagiri Rao,

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whether the enrolment certificates provided by the Bar Council to the advocates are privileges from deficiency of services rendered by legal professional?

So far as the consumer related issues are concerned it has been pointed out over time that these issues are complex and not suitable to be decided by the civil court. To overcome of complexity of filing a case in the civil courts, Section 12 of the Consumer Protection Act provides that a consumer can file a complaint on a plain paper even without the help of an advocate. This was considered a revolutionary step in the direction of sparing the complaint from the clutches of lawyers.

In this connection *N. Ram Reddy v. Bar Council of State*,<sup>102</sup> the Andhra Pradesh High Court held that the right to practice as advocate is not a fundamental right it is merely a statutory right. Explaining this right in *Y. K. Singh v. State of Uttar Pradesh*,<sup>103</sup> the Allahabad High Court observed that Article 19(1) (a) and

(g) guarantees fundamental right to the advocates to practice their profession including their freedom of speech and expression though subject to any law imposing reasonable restriction thereon on the grounds mentioned in sub-article

(2) and (6) of article 19. The freedom of expression will apparently include their right to present the document prepared by them before any Court, Tribunal or Authority. This right guaranteed by the Constitution cannot be nullified by the Government order.

The term profession has been defined as –calling in which men pursue a learned profession and are united in the pursuit of it as a public service. Thus, professions are a select body of superior occupants where commercialisation cannot be tolerated and which are pursued not for pecuniary gains but out of a sense of duty to serve society. Service to individuals in a private relationship of trust between the practitioner and the client is inherent in the idea of professionalism. In this sense a profession differs from business that it is committed to public service and the earnings resulting from such a service is only an incidental one.

The legal profession undoubtedly is a profession as it has all the ingredients of a profession. In first place it has a collective organisation (the Bar); secondly it has a spirit of service (a duty to the community often transcending the duty towards a particular client); and thirdly this profession based on continuous learning and updating knowledge. Thus,

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<sup>102</sup> AIR 2002 AP 484; 2002 (3) Andh LT 717

<sup>103</sup> 2000 AIHC 3135 (All).



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this profession has a separate legal status as the law profession has been characterised as -noble profession for good reasons. A case is won or lost as a result of the ability or inability of the lawyer to cope and tackle with the situation successfully in bringing his ingenuity, ability, mental resourcefulness, knowledge of law in advocacy to bear upon it. It has been argued that for a long time the legal profession played an important role in shaping the Indian socio legal structure. The history of Indian freedom struggle is interwoven with that of the legal profession positive role in the evolution and establishment of the democratic institutions of the contemporary India. After India Independence especially during the testing times of Emergency (1975-77) has placed the profession in a very high public esteem. Thus, some people are advocating that services rendered by legal professionals (Advocates' services) are not falling within the ambit of -service under Consumer Protection Act, 1986.

Paradoxically, it is a hard fact that a noble profession like law which is expected to provide specialised services to its clients, is nowadays witnessing resentment amongst its consumers. For example, ever since the implementation of CP Act, unlike a large number of cases which came up against the medical profession, though only a limited number of cases involving issues relating to the legal profession have been filed before the consumer forum,<sup>104</sup> this does not indicate a healthy trend. Discussed below are few cases and the contradictory decisions pronounced in these cases as well as their probable implications. In *K. Rangaswamy v. Jaya Vital*,<sup>105</sup> the complainant in this case had engaged the services of an advocate at Bangalore for conducting a civil writ petition before the Karnataka High Court by paying consolidated fee of Rs. 2500. The complainant allegedly paid Rs.2000 to the advocate through two cheques. When the said writ petition came up for hearing it was passed over to the next day on account of the absence of the respondent counsel. The said case was not reached on the next date, too. In the meanwhile, the respondent demanded

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<sup>104</sup> See *K. Rangaswamy v. Jaya Vittal*, supra note 21, *Kankati Annapurnamma v. A.P. State Legal Aid & Advice Board*, (1991) (1) CPR 418 (NC); *S. P. Thirumala Rao v. Bar Council of India*, II (1991) CPJ 201 : *Niranjan Pandhi v. District Magistrate*, II (1992) CPJ 883; *S. Mahendran v. Shirayinkil C.P. Bhadrakumar*, 1992 (2) CPR 668; *R. Sathyanarayan v. Registrar, Supreme Court of India*, 1 (1993) CPJ 279; *R. Bakshappa v. Registrara General, High Court of Karnatak*, 1 (1993) CPJ 359; *State of Gujarat v. Akhil Bharatiya Grahak Panchayat*, II (1993) CPJ 816; *Kaniyalal Jethalal Pujara v. J. N. Seth, Advocate*, III (1993) CPJ 1270; *P. N. Rangaswamy v. Rupert J. Barnabas*, III (1993) CPJ 1258; *Akhil Bharatiya Grahak Panchayat v. State of Gujarat*, I (1994) CPJ 114 (NC); *Santilata Panda v. Krushna Chandra Dehuri*, III (1994) CPJ 397; and *Kumaran Apartments Owners Association v. Civil Rights Cell*, 1994(3) CPR 491.

<sup>105</sup> 1994 (3) CPR 491

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Rs.3000 more but the complainant expressed his inability to pay the said amount. The respondent failed to appear on behalf of the complainant on the day of the next hearing and the case of the complainant was accordingly dismissed. On being informed about the dismissal of the writ petition, the respondent advised the complainant to file an appeal before the Supreme Court and also promised to help the complainant by entrusting his appeal to some of his friends at New Delhi on the payment of a fee of Rs.10, 000. The complainant however spurned his offer and instead filed a complaint against the respondent for his professional misconduct. Thus the main issue involved in the case was whether the services rendered by an advocate to a litigant for a fee was a contract of personal service? The national Consumer Disputes Redressal Commission answered the question in the affirmative and held that the service offered by the respondent to the complainant was one under the contract of personal service' and therefore could not be considered as service' within the meaning of CP Act. According to the commission, the complainant was not a consumer within the meaning of section 2(d) of CP Act and the dispute between him and the respondent could not be termed as a -consumer dispute

However, in *Srimathi v. Union of India*,<sup>106</sup> the Madras High Court held that the consumer forums have got the necessary jurisdiction to deal with the claims against the advocates. The decision in this case has given rise to another controversy and the concern the applicability of CP Act to the legal profession in India. The Madras High Court in this case was dealing with a bunch of writ petitions which had been filed by the practising advocates against whom claims had been filed by certain persons in the respective cases before the consumer disputes redressal forums. The common question raised in these writ petitions was regarding the validity of section 3 of CP Act and a prayer was made in all the writ petitions for a declaration that section 3 of the Act was unconstitutional being opposed to the objects of the said Act. It may be mentioned here that section 3 of the Act lays down that the Act is -in addition to and not in derogation of the provisions of any other law for the time being in force. According to the petitioners, if section 3 was struck down as unconstitutional, it would not be possible for any person to drag the advocates before the consumer forums as the claim will be outside the scope of the said Act. It was further submitted that in a proceeding before the consumer forum, no court fee is payable and that

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<sup>106</sup> (1997) 5 CTJ 99

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it may be possible for any person to file a frivolous action against the advocate in that forum and even if that persons fails ultimately, he would lose nothing. However, on the other hand, if the advocate concerned wanted to file a claim for damages, it could not be filed without the payment of the court fee by him in the civil court. According to the petitioners, such provisions could cause -undue hardship and place the advocate in a hazardous situation thereby making his profession worthless

The Madras High Court, after referring to the statement of the objects and reasons of CP Act rejected the petitioners' contentions. The court held:

-We are unable to find anything in the Statement of Objects and Reasons, which runs counter to the provisions of section 3 of the Act. What all section 3 of the Act says that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law. In other words, the Act does not have the effect of overriding other enactments with reference to matters dealt with in the Act. The section only provides that it will be open to any person to claim the benefits of this Act and also avail himself of the provisions of other enactments if there is no inconsistency of conflict and if he is not barred otherwise, by any other principles of laws, like estoppels or election.

With regard to contention that once section 3 was declared unconstitutional; no person could institute any proceeding before the consumer forums. High Court held that even if the section was declared to be unconstitutional, other sections of the Act will continue to be intact and if the services of the advocate fall within the definition of service under section 2(o) of the Act, it will certainly be open to a client to proceed against the advocate before the Consumer Redressal Forum. The court further observed that the object of the petitioners to exclude the advocates from the purview of the consumer redressal forum, which could not be achieved by the grant of the prayer made in the writ petition namely, to declare section 3 of the Act as unconstitutional.

Another argument put forward by the petitioners was that they were governed by the provisions of the Indian Advocates Act and that they shall not be made to answer the claim under the CP Act. It may be appropriate to mention here that an exact similar plea was taken by the medical professionals before the Supreme

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Court in the case of *Indian Medical Association v. V. P. Shantha*.<sup>107</sup> However, while rejecting their plea, the apex court had categorically held:

The fact that medical practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/ or State Medical Councils constituted under the provisions of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Act.

In raising the contention that the advocates were governed by the Indian Advocates Act, 1963 the petitioners placed reliance on the decision in the case of *Nathamal Ashok Kumar v. Western Railway*<sup>108</sup>. The main issue involved in that case was whether a complaint filed before the consumer forum under section 12 read with section 17(1)(a) of the CP Act was barred by the provisions of section 15 of the Railway Claims Tribunal Act, 1987. Section 15 of the Act 1987 Act bars the jurisdiction of any court or other authority in relation to the matters referred to in sub-section 1 of section 13 of that Act. According to the Rajasthan State Commission, the claim made before the said forum fell within the scope of section 13 and consequently the bar under section 15 of the said Act would apply. Hence it was held that the proceedings before the forum were not maintainable, in as much as, they were barred by section 15 of the Railway Claims Tribunal Act.

The Madras High Court, however, rejected this contention, too in *Srimathi v.*

*Union of India*.<sup>109</sup> On this issue the court held :-The ruling cannot help the petitioners herein as it is a question of interpretation of the relevant provisions of the Act. It is seen that there is a specific section in the Railway Claims Tribunal Act barring the jurisdiction of the other courts and authorities. But, there is no such provision in the Advocates Act to bar the jurisdiction of other courts and authorities or Tribunals in relation to matters connected with the advocates or disputes arising between the clients and their advocates. Section 6 of the Advocates Act sets out the functions of State Bar Council. There is no provision in the Advocates Act to enable the Bar Council to deal with the dispute between the client and the advocate if the clients seek a remedy of damage or refund of money paid to the advocates or sums on monetary claim. The Bar Council can deal with only

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<sup>107</sup> 1995(3) CPJ 1(SC).

<sup>108</sup> 1 (1991) CPJ 618

<sup>109</sup> (1997) 5 CTJ 99

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disciplinary matters and consider whether the advocate is guilty of misconduct which will fall under Section 6(i) of the Advocates Act. Hence, there is no substance in the contention that the Advocates Act will prevail over the Consumer Protection Act and Consumer Redressal Forum will have no jurisdiction to deal with claim against the advocates.

The Madras Court High Court also rejected the argument that an advocate will have to pay court fee if he wanted to proceed against his client for damages or other remedies, whereas the client did not require to pay the court fee if he went before the consumer redressal forum. According to the High Court, that could not in any way invalidate the provision of CP Act. The petitioners finally argued that a client who engaged an advocate for professional services, was not a

consumer under section 2(1)(d) of CP Act. This contention was also rejected by the High Court. The court held that the language of the said section was very wide and that it used the expression 'avails of any service for a consideration'. Thus according to the court, that will not certainly exclude the services rendered by the advocate. The High Court referred to the definition of the term 'service' as given in section 2(1)(d) of CP Act. A reference was also made to a landmark decision of the Supreme Court in *Lucknow Development Authority v. M. K. Gupta*.<sup>110</sup> In this case, for instance, the Supreme Court while referring to the word 'service' had made the following observation: -The term has a variety of meanings. It may mean any benefit of any resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory, etc. The concept of service is very wide. Thus, the Madras High Court, rejected all arguments of the petitioners, dismissed all the writ petitions. According to the court, the consumer dispute redressal forums had the necessary jurisdiction to deal with the claims against the advocates. Referring to the definition of the term 'service' in the CP Act the court observed that, -the first part of the section makes it clear that services of description will fall within the scope of the section<sup>111</sup> and -this will undoubtedly include the service of lawyer to his client.<sup>112</sup>

According to the consumer protagonists, and rightly so, the recent ruling of Madras High

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<sup>110</sup> AIR 1994 SC 787: 1994 SCC (1) 243

<sup>111</sup> *Srimathi v. Union of India*, (1997) 5 CTJ 99

<sup>112</sup> *Ibid*

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Court has spelled out what was already an accepted proposition of services of advocates were covered under the Consumer Protection Act.<sup>113</sup> It is a matter of fact that there is hardly any need for repeating the arguments put forward the advocates for keeping them outside the jurisdiction of CP Act for their appeal to be no real substance in those arguments. Nevertheless one important point which deserves mention here is that there are now two inherently contradictory decisions involving exactly the same issue, that is, the applicability of CP Act to the legal profession. It may be recapitulated here that whereas the National Commission in *K. Rangaswamy v. Jaya Vittal*<sup>114</sup> had held that advocates were not governed by the provision of CP Act and that the dispute between an advocate and consumer did not constitute a ‘consumer dispute’, the Madras High Court in its decision in *Srimathi v. Union of India*<sup>115</sup> has held the opposite. Once again, this issue too is likely to be debated before the Supreme Court. Therefore, till the final word comes from the Apex Court, the matter shall remain in contention. Till then, one thing is clear, and that is with the aforesaid thought provoking decision by the Madras High Court holding that advocates were within the jurisdiction of CP Act no professional now seems to be outside its purview. While concluding the discussion, once again it may be argued that with the implementation of CP Act and as a result of some of the far reaching decisions pronounced by the consumer disputes redressal forums, there is a clear message for accountability on the part of every segment of society in general and that of the professionals in particular. Irrespective of the nature and style of their job and duties, they would now have to be accountable and answerable to the society in general and to the consumers who engage them in particular.

Similarly, in *Lall Srinivasa Murthy v. K. Vishnu*,<sup>116</sup> it was held that a legal practitioner was liable to be sued for negligence under section 2 (1) (o) of the CP Act. A complaint by a person who hires services of an advocate was maintainable. In *C. Venkatachalam v. Ajitkumar C. Shah*<sup>117</sup> the High Court (division bench) in its impugned judgment held that a

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<sup>113</sup> Rosy Kumar, —Advocates and the Consumer Protection Act||, 5(2) CTJ 29-30 (1997). Also see, Rajesh Gupta and Gunjan Gupta, \_Pervertive Professional and Perturb Consumer: Dr. Subramanian’s Case – A Critique||, 2(4), CPJ 33-34 (Aug. 1994).

<sup>114</sup> 1994 (3) CPR 491

<sup>115</sup> (1997) 5 CTJ 99

<sup>116</sup> 2005 (2) CPR 112 (NC).

<sup>117</sup> 2011 (9) SCALE 479: II (2011) CPJ 33 (SC).

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party before the district consumer forum/state commission cannot be compelled to engage services of an advocate. Against this judgement an appeal was filed, and the question was raised that whether non-advocate can represent their parties before consumer fora. The apex court held that section 32 of the Advocates Act, 1961 deals with the power of court to permit appearance of any person not enrolled as an advocate before consumer forum.

It has been argued that the consumers (clients) of the legal industry cannot be excluded from the Act for they pay the lawyers to win/represent the case. It would be misleading to term a lawyer-client relationship ‘personal service’. To claim a contract service one should prove that there exists a master-servant relationship between the lawyer and his client. Instead, a lawyer-client relationship is a contract for service. Apparently, a client moves to a lawyer to seek his service for professional reasons, ensuring justice being the most common. A client is never in a position to hire or fire his lawyer at his own discretion, if we were not to disregard the socio-economic realities of society. Essentially, in a contract for service, one party undertakes to render services to/for another in the performance of which he is not subject to detailed direction and control but exercises professional skill and uses his own knowledge and discretion. Such is the contract between a lawyer and his client. A lawyer is bound to conduct his profession with as much skill as is generally possessed by persons engaged in similar profession (for instance, doctors).<sup>546</sup> He is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his client, in respect to the direct consequences of his own neglect, want of skill.

Thus, in *Gloria Chemicals v. R. K. Cables*<sup>118</sup>, the Delhi High Court held that a lawyer must show reasonable degree of care expected of that profession. Law does not expect each legal practitioner to exercise highest skills. The lawyer has no doubt discretion in choosing means and ways which he proposes to conduct his profession in ensuring that his client gets justice in most expedient way imaginable. A lawyer with special skill engaged for reward to perform his job, is bound to exercise his skill in performance. In case the lawyer fails to exercise proper skill and diligence, he should not be entitled to his remuneration or commission. The client may indeed recover damages for want of skill and care and for disregard of the terms of the mandate. In its judgment dated 6 August 2007, the National

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<sup>118</sup> AIR 1988 Del 213

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Consumer Redressal Commission clearly set a precedent that all professional, including lawyers, cannot have a bold escape from the Act and are within the ambit of the Act. In *D. K. Gandhi v. M. Mathiasn*,<sup>119</sup> the Commission observed that lawyers charge fees and there is no contract of personal service between them and clients, hence there is no reason to hold that they are not covered by the provisions of the Act. It further maintained that there exists a bilateral contract between the client and the lawyer and on receipt of fees the lawyer is bound to appear and represent the matter in a court of law.

### **VI. Electricity Services**

Deficiency in electricity services is also the subject matter of Consumer Protection Act, 1986. While the electricity service undertaken or performed by a person the deficiency like any fault, imperfection, shortcoming, or inadequacy in the quality, nature, and manner of performance which is required to be maintained under any law or which have been undertaken to be performed must be shown and proved. When potential consumer performs his part of the contract but the other party do not accept the offer or may refuse to grant the services the question of deficiency in service might not arise unless the commission come to the conclusion that non extending the service itself is a deficiency.<sup>120</sup> The Supreme Court in *Hariyana State Electricity Board v. Mena Chand*,<sup>121</sup> has clearly extended the jurisdiction of the Consumer Forum over the matters relating to disputes involving theft of electricity and abstraction of energy. Consumer Forums thus do have the jurisdiction to try such cases and with a quasi judicial body and benevolent jurisdiction of Section 3 of Consumer Protection Act. The Court further held that the application of the complainant is allowed and electricity be restored within 7 days to the complainant subject to payment of 50% (fifty per cent) of the disputed amount.

Electricity service is vital to the development and development process. In today's world energy has a surging role to play in improving the quality of life of millions of people by improving the economy of the country. The nation's prosperity is judged by the quantum of energy produced and consumed by its population. Therefore, the planning process is to be devised in such a way that it gives enough impetus for the growth of economy. Besides, a

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<sup>119</sup> (2009) 2 Comp LJ 468 (NCDRC).

<sup>120</sup> *Gujrat Electricity Board v. Suleman Mithabhai*, 1993 (2) CPR 294; 1992 (3) CPJ 53 (Guj. SCDRC).

<sup>121</sup> 2006 CTJ 521 (SC) (CT).



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realistic conservation policy and law must evolve the modes of improving energy efficiency. Thus, in *G. M. cum Chief Engineer v. Rajeshwar Singh*,<sup>122</sup> the question arose before the Apex Court that whether the respondents were liable to pay the minimum guarantee charges under the agreement for supply of electricity unless it could be shown that the contract was terminated. The facts of the case are that the Bihar State Electricity Board entered into an agreement with the respondent for supply of 100 K. V. A. electric energy under the agreement which read thus:

-The maximum demand charge for the supply in any month would be based on maximum K.V.A. demands for the month or 75% of the contract of the demand whichever is higher subject to provision of Cl.13. For the first 12 months service the maximum demand charge for any month will however be based on actual monthly maximum demand for that month.

The question was also raised whether mere disconnection of electricity supply could amount to termination. The court followed its decision in *Bihar State Electricity Board v. Green Rubber Industries*,<sup>123</sup> in which it was held that the firm would be liable to pay the minimum guaranteed charges unless it could be shown that the contract itself was terminated. The mere disconnection of electricity supply could not amount to termination. If there was no application for restoration of energy within seven days of disconnection that could be deemed to be a notice for termination and the contract could be terminated either at the end of this period of notice or the tenure of the agreement whichever was longer. On the question of payment of minimum guaranteed charges for the period during which supply remain disconnected on the basis of the judgment cited, the court held that the minimum guaranteed charges would still be payable by the firm and the benefit to that extent would be available to the firm. The court held that the respondent would be entitling to exemption only from the date of its registration till it completed five years of production. It would be exempted even if the electric energy supply was disconnected, provided it was still liable to pay the minimum guarantee charges. The court set aside the judgement of the High Court and allowed the appeal only to the extent indicated above.

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<sup>122</sup> AIR 1990 SC 706.

<sup>123</sup> AIR 1990 SC 699.

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In *Municipal Corporation of Delhi v. Ajanta Iron and Steel Co. Pvt. Ltd.*,<sup>124</sup> the Apex Court found that there was a provision in the agreement between the Delhi Electric Supply undertaking and the consumer for service of notice as a pre-requisite for disconnection. Hence the Court upheld the decree for mandatory injunction directing restoration of supply of electricity discontinued during the pendency of the suit without issue of such notice.

In *Accounts Officer, Jharkhand State Electricity Board v. Anwar Ali*,<sup>125</sup> the Apex Court after hearing the counsel of the parties, observed that the question which arose for determination and which had not been decided by the National Commission was whether the consumer forum had jurisdiction to determine tortious acts (user of electricity) and liability arising therefrom. In view of the fact that the National Commission has not addressed the question as to whether consumer of electricity is covered under Section 2(1) (d) of the Consumer Protection Act, 1986. Thus, the Apex Court set aside the impugned order and remitted the matter to the National Commission to record a positive finding on the aspect. In compliance with this order the matter was disposed of by the National Commission in *Jharkhand State Electricity Board v. Anwar Ali*.<sup>126</sup> It is a split verdict. The majority order was prepared by M. B. Saha J., the President of the National Commission to which Rajyalakshmi Rao, member also subscribed. The minority view was authored by R. C. Jain J., member of the Commission. Both orders are quite exhaustive and have sufficient significance both to the providers and consumers of electricity services. Therefore, a summation of their verdict as formulated by the majority and minority opinion may be worth reproducing. The majority opinion summed up the effect of the Electricity Act, 2003 on the Consumer Protection Act, 1986 and laid down the following propositions:

1. Section 3 of the Consumer Protection Act and Section 175 of the Electricity Act, provide that they are in addition and not in derogation of rights under any other law for the time being in force. Therefore, the rights of the consumers under the Consumer Protection Act are not affected by the Electricity Act.
2. A bare reading of Sections 173, 174 and 175 makes it clear that the intent of the Legislature is not to bar the jurisdiction of the Consumer Fora constituted under the Consumer

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<sup>124</sup> AIR 1990 SC 882: (1990) 2 SCC 659.

<sup>125</sup> (2007) 11 SCC 753.

<sup>126</sup> (2008) CTJ 837 (NC).

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Protection Act. The provisions of the Electricity Act have overriding effect qua provisions of any other law except that of the Consumer Protection Act, 1986, the Atomic Energy Act, 1962 and the Railways Act, 1989.

3. Section 42(8) of the Electricity Act specifically provides that the remedies conferred on consumer under Sub-sections (50), (6) and (7) of Section 42 are without prejudice to the right which the consumer may have apart from the rights conferred upon him by those sub-sections.
4. Section 145 of the Electricity Act specifically bars the jurisdiction of the Civil Court to entertain any suit or proceedings in respect of any matter which an assessing officer referred to in Section 126 or an Appellate Authority referred to in Section 127 of the Electricity Act or the Adjudicating Officer appointed under the Electricity Act, is empowered to determine. Second part of Section 145 provides that no injunction shall be granted by any Court or Authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. For this purpose, if we refer to Sections 173 and 174 and apply the principle laid down there under, it would mean that in the Consumer Fora there is inconsistency and, therefore, 'other authority' would not include Consumer Fora.
5. Consumer of electrical energy provided by the Electricity Board or other Private Company, is a consumer as defined under Section 2(1)(o) of the Consumer Protection Act and a complaint alleging any deficiency on the part of the Board or other private company including any fault, imperfection, shortcoming or inadequacy in quality, nature and manner of performance which is required to be maintained by or under any law or in pursuance of any contract in relation to service, is maintainable under the Consumer Protection Act.

Against the Assessment Order passed under Section 126 of the Electricity Act, a consumer has option either to file Appeal under Section 127 of the Electricity Act or to approach the Consumer Fora by filing complaint. He has to select either of the remedy. However, before entertaining the complaint, the Consumer Fora would direct the Consumer to deposit an amount equal to one-third of the assessed amount with the licensee [similar to Section 127(2) of the Electricity Act].

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6. Consumer Fora have no jurisdiction to interfere with the initiation of criminal proceedings or the final order passed by any Special Court constituted under Sec. 153 or the civil liability determined under Section 154 of the Electricity Act.

It is relevant to note that electricity bills being sent without taking reading is deficiency in service.<sup>127</sup> Similarly, electricity supply at less than minimum voltage is deficiency.<sup>128</sup> Disconnection of electricity for non-payment of bill disputed by consumer was held deficiency in service.<sup>129</sup> Not giving electric connection as per undertaking is a deficiency in service.<sup>130</sup> Disregarding the grievance of a consumer is also a deficiency in service.<sup>131</sup> Fire due to spark in the supply line of the electricity is deficiency in service.<sup>132</sup>

It emerges from the above discussion that a large number of services are coming within the purview of the Consumer Protection Act, 1986. The CP Act makes provision for establishing of consumer councils and other authorities for this settlement of consumers' disputes not only the district level but also state level and the National Commission with original as well as Appellate Jurisdiction. Thus, it establishes a three tier system for the redressal of the grievances of the consumers at the door steps of the aggrieved consumers. The District Forum can entertain and decide the cases where the value of the goods and services and the compensation, if any, claimed is less than Rs. 20 lacs. Each District Forum will consist of President (qualified to be district judge) and two members one of whom will be lady social worker. The State Commission shall have jurisdiction to entertain where the value of the goods and services and compensation, if any claim exceeds Rs. Twenty lacs but does not exceed one crore. It will not only have original jurisdiction but appellate and divisional jurisdiction. A person aggrieved by an order of the District Forum may prefer an appeal against such order to the State Commission within 30 days from the date of the order. An aggrieved consumer can state way approach the State Commission instead of District Forum when the value of goods or services and compensation claimed exceed twenty lacs but does not exceeds Rs One Crore. The State Commission also consist of President (a judge of High Court) and two members and one of whom shall be lady

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<sup>127</sup> *G.M. Manjrekar v. Dy. Engineer*, 1991 (1) CPR 452 (Mah. SCDRC).

<sup>128</sup> *Andhra Pradesh Electricity Board v. Yelligari Chinna*, 1991 (1) CPR 539 (A.P. SCDRC).

<sup>129</sup> *M. S. Salvasekaran v. Executive Engineer*, 1991 (2) CPR 197 (Ori. SCDRC).

<sup>130</sup> *Assistant Engineer v. Jeenath Begum*, 1991 (2) CPR 490 (T.N.SCDRC).

<sup>131</sup> *Khageswar Sahoo v. Executive Engineer*, 1992 (2) CPR 201 (Ori. SCDRC).

<sup>132</sup> *Devinder Bir Singh v. S. D. O.*, 1992 (2) CPJ 698 (Har. SCDRC)

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member who is a prominent social worker. The National Commission shall also have original jurisdiction as well as appellate and revisional jurisdiction. Thus an aggrieved consumer can also approach the National Commission directly when the value of the goods or services and compensation, if any, claimed exceeds Rs. One Crore. The National Commission shall consist of a President (a judge of the Supreme Court) and four other members one of whom shall be woman. It is pertinent to mention here that the Consumer Protection Act, 1986 provides for only one appeal, that is, from the order of the District Forum to the State Commission, from the order of the State Commission to the National Commission and from the order of the National Commission to the Supreme Court.

### **Deficiency of Service**

Deficiency of Service is one of the biggest hindrances to consumers that the Consumer Protection Act intends to overcome. For this purpose, the Consumer Protection Act, 1986 defines the words “service” and “deficiency”. Hence, we must first understand the meaning and concept of service and deficiency.

What is a Service?

A service refers to an intangible benefit received by the consumer from the service provider for a considerable amount. Intangible is something that cannot be touched or seen but can be felt.

Illustration:

A pays B Rs. 500 for providing him career counselling.

Here, A is the consumer,

B is the service provider

Career counselling is the service and

Rs 500 is the consideration amount.

Section 2(1)(o) of the Consumer Protection Act, 1986 defines service and gives the ambit of service. Service, according to this definition, includes banking, financing, insurance, transport, processing and so on.

However, service excludes services rendered free of charge or under a contract of personal service. The concept of Contract of Service and Contract for Service will be

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discussed further in the article.

What is a Deficiency?

Section 2(1)(g) of the Consumer Protection Act, 1986 defines deficiency. According to this definition, any fault, shortcomings, inadequacy, and imperfection in the quality, nature or manner of performance of the service is a deficiency. This standard has to be maintained by or under any law for the time being in force.

Hence, if any service is not up to the mark or is flawed, that is, does not meet the mark of the laws applicable in the particular period, it is deficient.

Illustration:

If a hospital refuses to provide or suspends medical services to an injured person at his deathbed, the hospital's services will be deficient according to the aforementioned section.

This illustration has been seen in *Pravat Kumar Mukherjee v. Ruby General Hospital & Ors*<sup>133</sup>.

**Deficiency of Service:**

Deficiency of Service sprawls across various fields like medicine, construction, transport and so on. Deficiency in service often causes inconvenience, injury and in aggravated cases, death. Services are to be provided by immensely equipped individuals with utmost proficiency. If services are not provided with care, severe damage can be caused to the receiver. This damage includes physical, mental and economic loss.

Cases of deficiency of service are rampant in India due to inefficiency and negligence. The Consumer Protection Act is a way to penalise curb this lax behaviour and curb negligent activities in future. It is the much-required means of providing justice to those consumers who have been at a loss or inconvenience.

The field of medicine has seen the most complaints, ranging from *Ayesha Begum v. All India Institute of Medical Sciences*<sup>134</sup> to the famous *Indian Medical Association v. V.P. Shantha*<sup>135</sup>. The former dealt with a wrong diagnosis leading to economic loss and physical weakness, while the latter argued upon the distinction of the contract of service and contract for service. Other cases in this field include *Gulam Abdul Hussain v. Katta*

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<sup>133</sup> AIR 2007 Cal 77

<sup>134</sup> ILR 2003 KAR 4255

<sup>135</sup> 1996 AIR 550

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*Pullaiah Choudhary*<sup>136</sup> and *Consumer Unity and Trust Society Vs. State of Rajasthan*<sup>137</sup>.

The field of construction to has seen cases of deficiency of service, as noted in the case, *Lucknow Development Authority v. M.K. Gupta*<sup>138</sup>. The field of tailoring involves *A.C. Monday v. Cross Well Tailor And Anr.*<sup>139</sup>

These cases are the various instances where the Indian law rightly intervened and redressed the consumers. It poses as a strong deterrent to all those service providers who indulge in fraudulent or negligent means of operation.

Contract of Service of Contract for Service:

As clearly mentioned in the definition of service, a contract of service is excluded from service. But what does this term actually mean? The concepts are as follows:

A Contract of Service involves an employer and an employee, similar to a master-servant relationship. All the actions of the employee are monitored, controlled and regulated by the employer. The employee acts on the directions of the employer, hence he is told what task to do and precisely how to do it. Hence, the employee is not personally liable for the acts done by him. The employee can be hired and fired at any time, on the discretion of the employer. The acts of an employee arising out of a contract of service is not a service and hence cannot be deficient.

Illustration:

A master cannot claim compensation from his butler as the employment contract is that **of service**.

A Contract for Service, on the other hand, is more of a contractor and client relationship. Contractor acts on the basis of his own skill and expertise and is independent. He is not bound to the client as to how to perform a particular task that the agent wants to be done. His services can be deficient and he can be held responsible for it. He is hence the renderer of services, liable for providing compensation to the disadvantaged.

Illustration:

A tailor will be liable to compensate a customer if his stitching is imperfect as the contract entered into is that **for service**.

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<sup>136</sup> 1991 (1) CPR 499

<sup>137</sup> 1991 (1) CPR 241 (NC)

<sup>138</sup> 1994 AIR 787

<sup>139</sup> (1991)2 C.P.J. 586(N.C.)

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This illustration is derived from the aforesaid case *A.C. Monday v. Cross Well Tailor And Anr.* where the major contention from side respondent was ruled out. His argument of his tailoring service being a contract of service was held invalid, thus distinguishing the two terms.

These are the concepts Contract of Service and Contract for Service.

The consumers of the country today are in dire need of protection from services that are not up to the mark. The Consumer Protection Act, 1986, effectively tries to safeguard the interests of the consumers.



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## TOPIC NO 4

### PROCEDURAL PROVISIONS

#### **Introduction**

This chapter comprises four sections i.e. National Commission, State Commission, District Forum and Consumer Protection Councils. Dispute Redressal Agencies have been established under Consumer Protection Act-1986 and their composition, jurisdiction, procedure of redressal, power, sitting, and orders including penalties have been discussed separately. Apart from this, performances of Redressal Agencies have also been examined for the period from 2005 to 2010. This chapter ends with Consumer Protection Councils at the three levels and an impact survey.

#### **Consumer Dispute Redressal Agencies**

Consumer Forums have been established across country at the different levels with view to provide speedy, less expensive and simple (hassle-free) dispute redressal to the consumers. For achieving the objectives, section 9 of the Consumer Protection Act provides three tier dispute redressal agencies.

A 'National Consumer Dispute Redressal Commission' established by Central Government by the notification. This Court is known as "National Commission".

A 'State Consumer Dispute Redressal Commission' established by State Government with prior approval of the Central Government, by notification. And this Court is known as "State Commission".

A Consumer Dispute Redressal Forum established by the State Government in each district of the State by notification. And this Court is known is 'District Forum'.

Thus, the Act proposed to set up the hierarchy of three redressal agencies. (1) National Commission, (2) State Commission, (3) District Forum. All these agencies are quasi-judicial in terms of nature and power. The researcher discusses about all these Forums one by one from top to bottom

#### **National Commission**

The National Commission was established at the top of the hierarchy of three redressal Forums, it is considered as an apex court; because it oversees the functioning of State

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Commissions and District Forums also.

## **Composition of National Commission**

According to section 20(1) of Consumer Protection Act, the National Commission consists of following members-

- ❖ One person who is or has been the judge of Supreme Court.
- ❖ Four other members, neither more than four nor less than prescribed and one of them must be a woman, the members are appointed only when they fulfill the following conditions, namely-
  - a. None of them should be less than 35 year of age.
  - b. All of them should possess a bachelor degree from a recognized university.
  - c. All of them should be the person of ability, integrity and standing.
  - d. All of them should have adequate knowledge and experience of at least ten years in dealing with the problems relating economics, law, commerce, accountancy, industry, public affairs or administration.

Apart from that, among the members, not more than fifty percent of the members should be from judicial background. An experience person having judicial background is supposed to have at least ten years of experience as a presiding officer at the district level court or any tribunal.

According to section 20 (1A), jurisdiction and authority of National Commission can be exercised by the constituted Bench and a Bench can be constituted by the president with one or more members as president may deem fit.

## **Jurisdiction of National Commission**

Jurisdiction of National Commission has been categorized in five parts i.e. pecuniary, territorial, appellate, revisional and review of jurisdiction.

### **1) Pecuniary Jurisdiction**

Being an apex court, National Commission can entertain all the matters where the value of service or goods exceed Rs, 1 crore.

### **2) Territorial Jurisdiction**

As far as territorial jurisdiction is concerned, National Commission can entertain all complaints from all the States of Indian except Jammu and Kashmir, but complaint comes

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from outside India cannot be entertained by National Commission under this Act.

### 3) **Appellate Jurisdiction**

National Commission has jurisdiction to entertain appeals against the order of State Commissions and appeal can be filled within 30 days from the order of the State Commission. Appeals after 30 days may also be entertained if cause of delayed is justified.

### 4) **Revisional Jurisdiction**

This Commission can ask for the records in any consumer dispute which is in pending or has been in pending before any State Commission, if National Commission think that the State Commission-

- ❖ Has exercised jurisdiction for which it was not authorized.
- ❖ Has failed to exercise jurisdiction for which it was entitled.
- ❖ Has exercised jurisdiction illegally.

The very important point to be noted is this revisional jurisdiction can be exercised by National Commission only when some wrong doings have come out against the orders of State Commissions.

### 5) **Review of Jurisdiction**

National Commission can review its order if there is any error of judgment is surfaced in the dispute.

### **Procedure to be followed by National Commission**

According to section 22 of the Act, there is a procedure to be followed by the National Commission to deal with complaints. District Forum follows the procedure mention under section 12, 13 and 14 of the CPA and same procedure is to be followed by National Commission. Moreover, National Commission has power to make modification in the prescribed procedure if required. If an order has been passed by the National Commission ex parte against the opposite party or the complainant, as the case may be, the aggrieved party may insist the National Commission to turn down the said order in the interest of aggrieved party. Furthermore, National Commission can review any order passed by it if any error of judgment has been made. The procedure followed by National Commission has been mentioned in the first chapter under the heading “Grievances Redressal Procedure”.

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## **Powers of National Commission**

Section 13(4) of the Consumer Protection Act has given some powers of civil court to the Consumer Forums and apart from these powers; some additional powers have been given to them under the Rules 10 of the Consumer Protection Act, 1987. At the end, section 14 has empowered the Consumer Forum to issue an order.

- Power akin to those of Civil Court
- Power like a Criminal Court:
- Power to make summary judgment:
- Additional powers of the Consumer Forums
- Power to issue an order
- Executive Powers

The above mentioned powers are exercised by District Forum under its own territory likewise all these powers are also exercised by the National Commission under its own jurisdiction. In addition to all these powers, an exclusive power has been given only to National Commission.

## **Sitting of National Commission**

Nothing has been mentioned under the Act about the sitting requirement of National Commission, but under CPA amendment Rules, 1991, requires that before giving the judgment in any case, consensus of three members must be required and one of them must be the president of the Forum. If proceeding of any case gets dropped at any stage due to absence of any one of five members, remaining members will carry on the dropped case. However, Rules should be exercised while adjudicating case, otherwise non-compliance of Rules can invalidate the order.

Moreover, provision of setting up Benches has been introduced after amendment 2002 and Benches take the decision about the power, jurisdiction and authority of National Commission. The Benches may be constituted with one or more member or as the president may consider fit and thus, it can be concluded that two members should be there and one of them should be president. It is important to note that before the amendment 2002, if any case would get dropped due to absence of any member, the proceeding had to be started from the beginning, but after the amendment 2002, proceeding of case can be resumed from the dropped point.

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**Working through Benches**—if the members of benches have different opinions over any case or point, the differences would be bridged by the majority of members, if there is equal majority, the point (s) of differences will be referred to other member and then decision taken by majority of members will be final.

### **Orders of National Commission**

The orders of the National Commission are like the orders given by Civil Court and Commission's orders are treated as final if no appeal has been made against the orders. Every order made by the Commission must be signed by the president and two other members who conclude the case. If there is any difference between the opinions of two members regarding a particular judgment, matter should be referred to third member for final decision and decision taken by majority will be final.

### **Appeals against the Orders**

An appeal is a legal instrument through which any party (opposite or complainant), if not satisfied with judgment given by National Commission, can make appeal with the Supreme Court. There is a procedure for filling an appeal against the order of National Commission.

- An appeal can be made with the Supreme Court against the order of National Commission within 30 days from the date of order and this period can be extended for further 15 days.
- Supreme Court entertains the appeal only when the appellant has deposited in prescribed manner fifty percent of that amount or fifty thousand rupees or whichever is less.

### **Finality of orders**

If no appeal has been made against the order made by National Commission, the order is treated as final.

### **Penalties**

Each and every order made by National Commission is enforceable as enforced by Civil Court, if there is a non-compliance of the order, the concerned person will be charged with any one or all of the following penalties.

- Imprisonment for a term from one month to three years
- Monetary punishment from Rs. 2,000 to Rs. 10,000,
- Or With both

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## **Performance of National Commission**

The National Commission is the highest Consumer Court in the hierarchy of three Redressal Forums and this Commission was established in India over State Commissions and District Forums under the Act-1986. This Court functions like Supreme Court in India. Since 1987, this Forum has been functioning, but whether this Forum has been accomplishing its job or not has been analyzed.

## **State Commission**

According to section 16 of CPA, State Commission has been established at the State level and State Commission is next, after District Forum in the hierarchy of Consumer Dispute Redressal Forums under the Act. There are 35 State Commissions at present in India.

## **Composition of State Commission**

According to section 16(1) of Consumer Protection Act, the State Commission consists of following members-

- A. One person who is or has been the judge of High Court and this person will be the president of the State Commission.
- B. Two other members, neither more than two nor less than prescribed and one of them must be a woman, the members are appointed only when they fulfill the following conditions, namely-
  - e. None of them should be less than 35 year of age.
  - f. Both of them should possess a bachelor degree from a recognized university.
  - g. Both of them should be the person of ability, integrity and standing.
  - h. Both of them should have adequate knowledge and experience of at least ten years in dealing with the problems relating economics, law, commerce, accountancy, industry, public affairs or administration.

One more important clause has been inserted by the Amendment Act, 2002. If the president of the State Commission assesses the need to appoint a whole time member, he or she recommends to the State government and State government appoints a member on whole-time basis. Apart from that, among the members, not more than fifty percent of the members should be from judicial background and one more provision has been inserted, in the amendment, 2000, to appoint more than two members in the State Commission for speedy disposal of cases.

## **1) Disqualification for appointment**

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According to section 16(1), Following persons are disqualified for the appointment as a member of State Commission.

- a) A person who has been convicted and imprisoned for an offence involving moral turpitude.
- b) A person who has been declared insolvent and of unsound mind.
- c) A person who has been dismissed from the service of government or body corporate owned by the Government.

### **2) Appointment Authority**

According to section 16 (1A) of the Act, State Government appoints every member of the State Commission on the recommendation of the selection committee comprising, namely-

- a) President of the State Commission—known as Chairman.
- b) Secretary, Law department of the state—Member
- c) Secretary in- charge of the department of the state consumer affair—Member.

### **3) Terms of office**

According to section 16 (3) of Act, every member of this Commission is appointed for the term five years or upto the age of 67 years, whichever is earlier. With the amendment in the Act, 2002, members of Forum can be re-appointed on the recommendations of the selection committee. Prior to amendment, 2002, re-appointment was not possible.

### **4) Terms and Conditions of Service**

Salaries, or honorarium and allowances are decided by the State Government and different States have different rules regarding this matter.

### **Jurisdiction of State Commission**

The term jurisdiction can be defined as authority and legal power extent to which a State Commission can decide cases.

Thus, A State Commission can decide only those matters which fall under its jurisdiction. Jurisdiction of State Commission is further divided, namely-

#### **1) Pecuniary Jurisdiction**

State Commission can entertain all the matters where the value of services or goods exceeds Rs. 20 lakhs, but does not go beyond Rs 1crore. If the claim is above one crore, then it does not falls under its jurisdiction.

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### 2) **Territorial Jurisdiction**

As far as territorial jurisdiction is concerned, State Commission can entertain all complaints coming from concerned State or its geographical limit.

### 3) **Appellate Jurisdiction**

State Commission has power to entertain all those appeals which are made against the order of District Forum. If any party does not accept the order made by District Forum, then he or she can make appeal to the concerned State Commission within 30 days from the date when order was communicated to the appellant.

### 4) **Revisional Jurisdiction**

This Commission can ask for the records in any consumer dispute, which is in pending or has been in pending before any District Forum, if State Commission think that the District Forum-

- ❖ Has exercised jurisdiction for which it was not authorized.
- ❖ Has failed to exercise jurisdiction for which it was entitled.
- ❖ Has exercised jurisdiction illegally.

The very important point to be noted is this Revisional jurisdiction can be exercised by State Commission only when some wrong doings have come out against the orders of District Forum or State Commission may transfer a case from one District Forum to another District Forum.

### **Procedure to be followed by State Commission**

According to section 18 of the Act, there is a procedure to be followed by the State Commission to deal with complaints. District Forum follows the procedure mention under section 12, 13 and 14 of the CPA and same procedure is to be followed by State Commission. However, State Commission has power to make modification in the prescribed procedure if required. If an order has been passed by the State Commission ex parte against the opposite party or the complainant, as the case may be, the aggrieved party may insist the State Commission to turn down the said order in the interest of aggrieved party. Furthermore, State Commission can review any order passed by it if any error of judgment is surfaced. The procedure followed by District Forum is mentioned in the first chapter under the heading “*Grievances Redressal Procedure*”.



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## **Powers of State Commission**

Section 13(4) of the Consumer Protection Act has given some powers of civil court to the State Commission and apart from these powers; some additional powers have also been given to this Commission under the Rules 10 of the Consumer Protection Act, 1987. At the end, section 14 has empowered the State Commission to issue an order.

- Power akin to those of Civil Court
- Power like a Criminal Court:
- Power to make summary judgment:
- Additional powers of the Consumer Forums
- Power to issue an order
- Executive Powers

The above mentioned powers are exercised by District Forum under its own territory likewise all these powers are also exercised by the State Commission under its own jurisdiction.

## **Sitting of State Commission**

Nothing has been mentioned under the Act about the sitting requirement of State Commission, but under CPA amendment Rules, 1991, requires that before giving the judgment in any case, consensus of two members must be required and one of them must be the president of the Commission. If proceeding of any case gets dropped at any stage due to absence of any one of three members, remaining members will carry on the dropped case. However, Rules should be exercised while adjudicating case, otherwise non-compliance of Rules can invalidate the order.

Moreover, provision of setting up Benches has been introduced after amendment 2002 and Benches takes the decision about the power, jurisdiction and authority of State Commission. The Benches may be constituted with one or more member or as the president may consider fit and thus, it can be concluded that two members should be there and one of them should be president. It is important to note that before the amendment 2002, if any case would get dropped due to absence of any member, the proceeding had to be started from the beginning, but after the amendment 2002, proceeding of case can be resumed from the dropped point.

**Working through Benches**—if the members of benches have different opinions or points over any case, the differences would be bridged by the majority of members, if there is

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equal majority, the point (s) of differences will be referred to other member and then decision taken by majority of members will be final.

### **Orders of State Commission**

The orders of the State Commission are like the orders given by Civil Court and Commission's orders are treated as final if no appeal has been made against the orders. Every order made by the Commission must be signed by the president and one other member who concludes the case. If there is any difference between the opinions of two members regarding a particular judgment, matter should be referred to third member for final decision and decision taken by majority will be final.

### **Appeals against the Orders**

As it was explained earlier that an appeal is a legal instrument through which any party (opposite or complainant), if not satisfied with judgment given by State Commission, can make appeal with the National Commission. There is a procedure for filling an appeal against the order of State Commission.

- An appeal can be made with the National Commission against the order of State Commission within 30 days from the date of order and this period can be extended for further 15 days.
- National Commission entertains the appeal only when the appellant has deposited in prescribed manner fifty percent of that amount or thirty five thousand rupees or whichever is less.

### **Finality of orders**

If no appeal has been made against the order made by State Commission, the order is treated as final.

### **Penalties**

Each and every order made by State Commission is enforceable as enforced by Civil Court, if there is a non-compliance of the order, the concerned person will be charged with any one or all of the following penalties.

- Imprisonment for a term from one month to three years
- Monetary punishment from Rs. 2,000 to Rs. 10,000, or
- With both.

## TOPIC NO 5

### CONSUMER PROTECTION ACT & CONFLICT WITH OTHER ENACTMENTS

#### **Legal Framework of consumer protection in India**

##### **Background**

Since the dawn of human civilisation. It has been noticed that man and his behaviour were guided by the social, religious and thereafter the legal norms. The legal framework of consumer protection in ancient India is discussed in the earlier chapter where the code of conduct for businessmen is discussed right from the days of Mahabharat through Manusmriti, Kautilaya's Arthshastra etc. which facilitates us in informing that consumer exploitation and the legal machinery to curb their exploitation and protect the rights of consumer was prevalent even in the epic period.

It has been observed by us that wide ranging laws are framed to guard the consumer interest and these laws are amended from time to time to make them more stringent and purposeful in contemporary India but still the uproar and the agony of consumers draw a picture of helpless state of affairs while there is also a general public opinion that effective and efficient implementation and strict enforcement of the legal machinery is the urgent need of an hour. Even today almost all the consumers believe that they are not given a fair-deal. In this chapter an attempt has been made to highlight a gist of a few important laws prevalent in the country that are landmarks in protecting the consumer interest as a part of this academic study in the field of Consumer Protection. The discussion here deals with various dimensions of consumer protection like prevention of black marketing and hoarding, food adulteration, sale of goods, standards of weights and measures quality standards, prevention of restrictive and unfair trade practices, formation and functioning of special consumer courts under the scope of specially designed Consumer Protection Act 1986. The list of these laws refer to the Appendix at the end of this chapter. We hope that a study like this will help in understanding the legal protection available to the consumers. It may prove useful to the manufacturers and marketers in understanding the legal framework of Consumer Protection Law in India and in framing consumer oriented policies. This code would be of high value to the academicians, thinkers, consumer activists.

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## **The Essential commodities Act 1955**

### **5.1.1 Introduction**

It can be said that the Essential Commodities Act has its roots in 1939, when the Government of India wanted to control the production supply and distribution of certain commodities under the Defence of India Act, which ceased to have its existence on 30th September 1946 and in order to guard the interest of the general public in the matters pertaining to control of certain commodities, essential for human beings the essential supplies (temporary Powers) Ordinance, XVIII of 1946 was proclaimed in which some provisions of Defence of India Rules were incorporated. This ordinance was replaced later on by the Essential Supplies (Temporary Powers) Act of 1946. Gradually it was felt quite necessary that the Central Government should continue to control the production, supply and distribution of certain essential commodities of vital importance to the consumers in larger public interest and to provide social justice as well.

#### **Scope:**

**Applicability :** Essential commodities are of vital importance for every one which has normally a high demand and limited supply. There are more chances of black marketing, hoarding and other unfair trade practices by which artificial scarcity could be created and ultimately a very high price could be charged from the consumer and on the other hand the consumers who cannot afford to pay high price may have to live without such essential commodities and hence the objective of the Act is to provide essential commodities at reasonable price.

The Act is applied to the following commodities.

- 1) Cattle Fodder including oil cakes and other concentrates.
- 2) Food stuff including edible oil seeds and oils, sugar
- 3) Coal including coke and other derivatives
- 4) Component parts and accessories of automobiles.
- 5) Cotton and woolen textiles.
- 6) Drugs (as defined in Sec.3(b) of Drugs and cosmetics Act 1940)
- 7) Petroleum and petroleum products.
- 8) Paper including news print, paper Board and straw board.
- 9) Raw cotton whether ginned or unginned and cotton seeds.

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10) Raw jute

11) Any other commodities which the Central Government notifies from time to time.

### **The Administration of the Act.**

The Central Government possesses the powers to administer the provisions of the Act by Notifying the orders/directions in the official gazette. The Government has the powers to regulate the prices of these commodities. It can prohibit or institute permit system for their production supply and distribution and can inspect records. It has also authority of seizure of articles and criminal proceedings can be initiated on default of provisions of the Act. As a part of enforcement amendments were made through essential commodities (special provisions) Act, 1984. The following are some of the important features of this amendment Act.

1) An appeal can be made by any aggrieved person to the State Government instead of to any judicial authority.

2) The justification to make orders regarding possession, delivery, disposal or distribution of any essential commodity seized, vests with the collector or the State Government.

3) The punishment for contravention of the order has been made compulsory for a period of not less than three months and up to seven years imprisonment besides the payment of fine. Any offense punishable was previously cognizable offense but under the amendment this office has been made non-liaible. In short the provisions for releasing a person on bail have been made more stringent under the amendment.

5) To do away with the popular criticism of causing great unreasonable delay in settlement of cases, the State Government under this amendment may set up special courts by a notification for speedy settlement of offences under the act. The special courts shall consist of a single judge appointed by the High Court on the request of the State Government.

### **5.2 The Standards of Weights measures Act 1976.**

Since ancient times consumers are cheated by giving goods in short weight and by many techniques of use of hands, and use of unauthorised weights and measures. This act aims at introduction of standards in relation to various weights and measures which are in use in trade activities.

The preamble of the act reads as “an act to establish standards of Weight and Measures to regulate inter state trade or commerce in Weight and Measures and other

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goods which are sold or distributed by weight, measure or number and to provide for matters connected therewith or incidental thereto”.

The Directorate of weights and Measures in the Ministry of food and consumer Affairs is the nodal agency for all activities relating to the subject.

## 5.2.1 Background

India is a signatory to international metric convention of 1895. India enacted Standards of Weights and Measures Act 1956 on the basis of international system of units. Prior to that each state had their own laws for the enforcement of standards of weights and measures in their state. Metric system was introduced in 1956. The Central Government set up an expert committee to suggest suitable changes in the law to bring

- (a) standards on international equivalence and
- (b) to remove the short comings of the existing system.

The committee suggested changes in the 1956 law and its enforcement in various states and as an outcome Standards of Weights and Measures Act 1976 appeared on the legal scenario based on international system of units.

Responsibilities of the Directorate of Weights and Measures New Delhi includes.

- 1) Planning, coordinating and Directing the activities of the state.
- 2) Framing of rules and regulations formulation of weight and measures specifications and developing weighting measuring instruments and ensuring appropriate and uniform level of accuracy through measurement standards and testing equipment's and moreover assumes the task of establishment of maximum possible error in relation to packaged commodities.
- 3) it also carries surveys and collect statistical data and even represents without view point on Legal Metrology (LM) in the international organisation of legal Metrology and implementation of this international norms in the country as well.
- 4) The Directorate also undertakes the activities of training in the field of legal metrology, Surveys in the areas of consumer interest, it also provide guidance to manufactures and traders and helps the courts in relation to cases relating to weights and measures and provides evidences of breach of law.

Under the standards of Weights and Measures Act 1976 the following rules are framed and enforced.

- i) The standards of weights and measures (approval of model) Rules 1987;

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- ii) The Indian Institute of Legal Metrology Rules 1980;
- iii) The standards of weights and measures (inter state verification and stampings) Rules 1987;
- iv) The standards of weight and measures (numeration) Rules 1987;
- v) The standards of weight and measures (General) Rules 1987 and
- vi) The standards of weight and measures (National standards) Rules 1988
- vii) The standard of weights and measures (packaged commodities) Rules 1977.

The Standards of Weights and Measures (packaged commodities) Rules 1977 are in force since September 1977 which ensures and enforces that certain information must be printed on the package by the manufacturer or the packer as the case may be such as, name and address of the manufacturer or packer, net quantity, month and year of manufactured packing, maximum retail/price inclusive of all taxes. This information protects the interest of consumers of nondurable consumer goods. A standing committee is appointed under the packaged commodities Rules to examine various amendment proposals received from time to time and make appropriate recommendations. To finalise the amendments the concerned ministries, consumer organisations, standards institutions and other related organisations are consulted before finalising the amendments.

Legal standers of the states and union territories are calibrated in three regional reference standard (approved) laboratories situated at Ahmedabad, Bhubaneshwar and Bangalore while in the Ninth Plan, one laboratory will be established in Fairdabad (Haryana) for the North region and another at Guwahati for the North-East region. Punishment for offences under this act includes one to five years imprisonment.

### **Scope - Applicability of the Act in Consumer Protection.**

The act protects the consumer interest in several ways to the consuming public as it ensures the weights and measures to be strictly as per the standards prescribed by international bureau of weights and measures. The act prohibits the use of nonstandard weights and measures and even no weight or measures should be manufactured unless it confirms the standards prescribed by the act and for that the manufacturers of weight and measures have to obtain the permission of the Central Government under certain conditions and restrictions.

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## **5.3 The Prevention of Food Adulteration Act, 1954.**

This law aims at the objective of prevention of adulteration of food stuff. A Central committee of food standards was formed to recommend standards for food quality. The committee includes representatives of concerned ministries, experts and even consumers. The enforcement of the Act is by the food and drugs adulteration of the state under the ministry of health. The Chairman of this committee is the Director General of health services. Central food laboratories are also set up for testing the food samples. Any consumer organisation can initiate the complaint under this Act the food item can be called Adulteration when it is different from the ingredient stated which is an offence under this act. It can be also considered adulteration when it contains injurious substances and it is prepared packed and stored under unhygienic conditions or if the food stuff is of the quality which is harmful for human consumption.

The scope of the act includes the use of standard food. Colour packing and labeling mentioning contains in accordance with the actual contains of tea, milk, and milk products, fruit products, edible oil, edible flour etc. non durable food products. Under the provision inserted in 1976 Adulteration which causes “greivous hurt” is punishable with from 3 years to a life time imprisonment (depending upon the offence) and a fine of not less then Rs. 5,000.

## **5.4 Monopolies and Restrictive Trade Practices Act, 1969.**

### **5.4.1 Background**

The constitution of India Lays down a set of Directive principles of state policy, and impose a duty on the Government to apply those principles to the making of the laws which enjoin upon the state to direct its policy towards securing.

- 1) That the ownership and control of the material resources of the community are so distributed as best to subserve the common goods.
- 2) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment”.

Planning Commission appointed on 13-10-60 an expert committee unde\* the Chairmanship of Prof.P.C.Mahalnobis5 known as “The Committee on Distribution of Income and Levels



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of Living” to review the changes in levels of living during the 1<sup>st</sup> and the second five-year plans. Meanwhile Prof. R.K.Hazari made an in-depth study of the structure of the corporate private sector in India. It was found that there had been an increase in the concentration of economic power in the corporate PvtSector between 1951 and 1958. Mahalanobis Committee its report on February 25th 1964 on the basis of these two reports, Monopoly Inquiry Commission (MIC) was appointed under the Chairmanship of Mr.Justice K.C.Dasgupta a Supreme Court Judge. The MIC identified the prevalence of the concentration of economic power in private hands. It cited no.of instances of monopolistic and restrictive trade practices. On the basis of MIC recommendation and the draft bill, the Monopolies and Restrictive Trade Practices Act (MRTP Act) came in to force from June 1, 1970. The amendments of 1984 includes:unfair trade practices. The provisions of the Act mentions the establishment, constitution Jurisdiction, Powers and Procedures of the MRTP Commission.

The Provision of the Act focuses three areas:

- (i) Prevention of the concentration of economic power to the common detriment and control of monopolies.
- (ii) Prevention of Monopolistic trade practices.
- (iii) Prevention of restrictive trade practices.
- (iv) Prevention of unfair trade practices. Monopolistic trade practices are those which are likely to result into:
  - (i) Maintaining price at an unreasonable level by limiting or controlling the production, supply or distribution of goods or the supply of any services.
  - (ii) limiting technical development or capital investment or allowing the quality of any goods produced supplied or distributed or deterioration any service.

### **5.5 Restrictive Trade Practices :**

The protects consumers by also prohibiting those trade practices which prevents or distorts or restricts competition, which trends to bring about manipulation of prices or conditions of delivery of to affect the flow of supplies in the market relating to goods and services.

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## **5.6 Unfair Trade Practices :**

This part of the MRTP Act is aimed at preventing unethical practices and misleading and statements made relating to quality on labels, advertisements. Unfair trade practices are also enforceable under the MRTP Act and also the consumer protection Act. The commission can itself take initiative and can conduct an enquiry or on receipt of complaint from a consumer or a consumer organisation or trade association or on reference by the Government. The complainant need not pay court fees or retain a lawyer.

## **5.7 Bureau of Indian standards Act 1986.**

As the scope under Indian Standards Institution was formed much limited. The Government from 1st April 1987 Bureau of Indian Standard started functioning taking over the staff, assets and liabilities of Indian Standards Institution (ISI) and performing all the functions which were performed by ISI. The Bureau of Indian standards started functioning under the Bureau of Indian standards (BSI) Act 1986.

The main functions of BIS are :

- 1) Preparation and implementation of standards
- 2) Operation of certification for product and quality system
- 3) Organisation and management of testing laboratories
- 4) Maintaining close liaison with international standards bodies

### **5.7.1 The Functioning of the Bureau**

1. To establish, publish, promote and prescribe as Indian Standards for various articles.
2. Specify a standard mark to be called the Bureau of Indian standards certification mark.
3. Grant, renew, suspend or cancel a licence for the use of standard mark.
4. Levy fees for the grant or renewal of any licence.
5. Make inspection, take samples, test them to verify whether they conform with the Indian standard.
6. Seek recognition of the Bureau and the Indian standards outside India
7. Establish maintain and recognise laboratories for quality control.
8. To undertake research on standard
9. Provide services to the manufacturers and consumers.
10. Establish branches offices or agencies in India or outside.

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## **5.7.2 Role of BIS and consumer protection :**

The BIS has helped in presenting the consumers in number of ways.

1. The BIS certification mark - 1ST has provided an assurance to the consumers about standard products.
2. Certification mark issued may be also cancelled.
3. Complaints of consumers are entertained
4. Standards for new products are also evolved scientifically
5. Non maintenance of standards may be punishable and penalty may be charged for improper use of standard mark.
6. The Bureau provides guidance the manufacturing units and consumers as well.
7. Free replacement of standard marked product in case of their being found to be of substandard quality.
8. Protection of consumers from exploitation and deception.
9. Assurance of safety against hazards of life and property.

## **5.8 Conclusion**

“Law is an authority/control imposed by a system of rules.” India too like other countries have large number of laws protecting various interests of human beings in various capacities like Manufacturer, Buyer, Seller, Citizen and as a consumer/customer. If every one is a consumer and every one desires protection from unlawful acts. Then a question arises that why such a complex legal frame work is required ? The best regulation would be “Self Regulation” which means that one should abide by the norms/code of ethics by which not only self but others will also be protected. The next ideal situation is that where all the consumers are made aware of their rights and the contents and the quality standards of the goods and services offered to them.

The above two situations can prevent ethical, unreasonable, unjust and unlawful actions while in reality the ideal situations donot prevail hence there is a need for a powerful legal framework which is efficient, economical and affordable by even a common man. Many times the financial loss may be of a less amount as compared to the cost of hassles involved in the process of getting justice. Inspite of all these the fact cannot be denied that the consumer today is protected in several ways. There are laws and rules for every aspect of human behaviour. These laws are evaluated during the proceedings of

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several cases which provides new dimension to and understanding of the law and as a result of deliberations between the legal experts, the existing laws are amended from time to time to make them more meaningful. It is also true that the offenders are always ahead of law makers. In the past marketing activities gave a very little priority to the legal implications but today because of the general awareness among the consumers the business and government are forced to consider consumer interest. Laws like BIS Act weight and measures Act, Essential Commodities Act focus on the first “P” of marketing i.e. product. These laws take care of quality, contains, after effects etc. pricing is also considered by MRTP Act, promotional campaign, truth in advertising come within the jurisdiction of unfair trade practices while distribution and delivery of goods, after sales services, guarantee and warranty etc. are taken care of within the jurisdiction of Sale of Goods Act, Contract Act and above all for any kind of consumer suffering and exploitation the Consumer Protection Act 1986 provides a fairdeal to the consumers today a situation is created that before making any announcement or releasing any advertisement the manufacturers and the marketers look into its legal aspects.

In order to provide more effective, efficient and economical justice a detailed study of laws of different nations; the laws and their implementation in the country may be studied to provide an injustice free society.

Some important Consumer Protection Laws in India.

- 1) The Essential commodities Act 1969.
- 2) The prevention of food adulteration Act 1954
- 3) The Weight and Measures Act 1976 (Packaged commodities Rules 1977)
- 4) Bureau of Indian Standards Act, 1986.
- 5) The Drug and Cosmetics Act, 1940.
- 6) The Drugs and magic Remedies. (Objectionable Advertisement)ACT, 1954.
- 7) Indian sale of Goods Act 1930.
- 8) The Essential Commodities Act, 1955.
- 9) The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980.
- 10) Monopolies and Restrictive trade practices Act 1969.
- 11) Consumer protection Act 1986.
- 12) Air (Prevention and control of pollution) Act 1981
- 13) Water (Prevention and control of pollution) Act 1974.

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## TOPIC NO 6

### CONSUMER PROTECTION COUNCILS

#### Consumer Protection Councils

Consumer Protection councils established in India under CPA at three level, like Consumer Forums, with the objective to advice and assist consumers in seeking and enforcing their rights in the appropriate Consumer Forum. These Councils not only advice or assist the consumers but also promote and make the consumers enlightened about their basics rights given under the Consumer Protection Act.

For achieving the said objectives, these Councils function like a promoter, investigator and protector of the interests of consumers. Councils are authorized to investigate and publicize the matters having interests of consumers.

#### Central Council

It is obligatory for the Central Government to establish a Central Council and this Council is known as '*Central Consumer Protection Council*'.

#### 3.4.1-Composition of the Central Council

According to section 4(2) of the Act, members of Council are selected from various areas concerning consumer interest, such as, Ministry of Consumer Affairs, NGOs representing consumer interest, person involving in agricultural activities and members from Lok Sabha and Rajya Sabha etc.

Central Council consists following members, namely-

- ❖ The Minister in-charge of consumer affairs in the Central Government and this minister shall be the chairman of the Council.
- ❖ The Deputy minister in- charge of consumer affairs in the central government and this minister shall be the vice-chairman of Council.
- ❖ The Secretary in-charge of consumer affairs in the Central Government and shall be secretary of Council.
- ❖ The Minister in- charges of consumer affairs in States.
- ❖ Eight members of Parliament, five from Lok Sabha and three from Rajya Sabha and 142, others members from various areas concerning the consumer interest.

#### Term

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The term of council is three years.

### **Meetings of the Central Council**

According section 5 and rules 4 of the CPA, Central Council is required to hold at least one meeting every year and in addition this, additional meetings may also be organized by the Council as and when necessary. Time and place of the meeting is decided by the chairman of the Council. The resolution passed by the council is recommendatory not mandatory.

### **State Council**

According to section 7, State Government is authorized to set up State Council, before the amendment, establishment of Council was not mandatory but now it has become necessary on the part of the State Government to establish the Council.

### **Composition of the State Council**

State Council consists of following the members, viz.

- 1) The Minister in- charge of consumer affairs in the State and this Minister shall be the chairman of the Council.
- 2) And other official and non-official members representing the interest of the consumers.
- 3) Ten members are nominated by the Central Government.

### **Meetings**

Under the Act, State Government is required to hold at least two meeting every year and in addition to this, additional meetings may also be organized as and when necessary. Date and place of the meeting is decided by the chairman of the Council

### **District Council**

Before the amendment it was not obligatory for the State Government to establish District Council, but Amendment 2002 and inserted section 8A, made it obligatory for the State Government to establish District Consumer Protection Council in each and every District of the concerned State.

### **Composition of the District Council**

According to section 8A, District Consumer Protection Council comprises following the persons, namely-

- 1) The collector of the District and this person shall be the chairman of Council.
- 2) Some other members, official or non- official representing the interest of the

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consumers and these members are nominated by State Government.

## **Meetings**

District Council is required to hold two meeting every year and additional meetings may also be organized. Time and place is prescribed by the chairman.

## **Working Groups**

Working group is a group, constituted by the Central Government with the view to monitor the implementation of the recommendations made by the Central Council. And these Working Groups are composed of members of the Council under the chairmanship of Secretary of the Council. Number of members shall not exceed thirty.

## **Publicity Campaigns**

Success of every consumer movement in the country is rest upon the consumer awareness created by enlightening consumers about their rights and responsibilities. Consumer awareness varies from state to state and it depends upon level of literacy and standard maintained by the people. Due to lack of consumer awareness, Consumer movement in the country has not been successful so far. A multi-media publicity campaign has been launched by Ministry of Consumer Affairs by the name of “JAGO-GRAHAK- JAGO” to generate consumer awareness.

## **On Going Publicity Campaigns**

- ❖ Newspaper Advertisements
- ❖ Telecast of Video spots
- ❖ Telecast of Video and audio spots in North- Eastern States.
- ❖ Meghdood Postcards.
- ❖ Printed Literature.
- ❖ Participation in International Trade Fair
- ❖ Participation in PHD chamber of Commerce Exhibition.
- ❖ Participation in ‘Empower India 2009’ Exhibition.
- ❖ Nukkad Natak.
- ❖ Outdoor Publicity.
- ❖ Advertisement in in- flight Magazines ‘NAMASKAR’.
- ❖ Joint Publicity Campaign.

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## **Finding of the Impact Survey**

The government of India conducted a survey to analyze the impact of this campaign as a mid-term comment appraisal. This survey was conducted by an empanelled agency of the Planning Commission in 12 states Delhi, Madhya Pradesh, Haryana, West Bengal, Gujarat, Karnataka, Jharkand, Uttar Pradesh, Tamil Nadu, Rajasthan, Assam and Meghalaya in 59 Districts. The respondents were categorized in the following categories.

- i. House wives
- ii. Students
- iii. Employed
- iv. Self Employed
- v. Senior Citizens
- vi. Trade/Industry
- vii. Farmers

The respondents were further divided in two categories, respondents belong to urban area and respondents belong to rural area, about 47% respondents from urban area and 53% from rural area. The indicated that by and large, the campaign 'JAGO GARHAK JAGO' has helped to raise the awareness of the consumers about their rights, which have been given to them under the Act.

## **Conclusion**

Although structure of Dispute Redressal Agencies is very well framed and these Courts have been conferred sufficient power to provide redressal to aggrieved consumers, but orders of Consumer Courts are not implemented on time because somewhere Consumer Courts lack executing power. As far as performance is concerned, these Courts were examined for the period of six years from 2005 to 2010. Comparatively, speed of disposal of District Forums was higher than State Commissions. But the difference between the average speed of National Commission (39.43%) and average speed of District Forums (38.91%) was not very high. Hence, speed of disposal all the Forums i.e. National Commission, State Commissions and District Forums was low, but it was very low in case of State Commissions. Although, Consumer Protection Councils have been established according to the provisions of CPA, but their ultimate objectives remained unachieved.



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## TOPIC NO 7

### CONSUMER DISPUTES REDRESSAL AGENCIES

**(National Forum and State Forum already discussed in topic no.4)**

#### **District Forum**

A District forum is a place in a district where Complainant can lodge a complaint if he or she is cheated or misguided or deceived by any service provider or trader. District Forum is the lowest Consumer Court in the hierarchy of three redressal Forums and under section 10 of CPA, there is a provision to constitute at least a District Forum in each and every district of the country. At present, there are 629 District Forums across the country.

#### **Composition of District Forum**

According to section 10(1) of Consumer Protection Act, the District Forum consists of following members-

- A.** One person who is or has been the district judge and this person would be the president of the District Forum.
- B.** Two other members, neither more than two nor less than prescribed and one of them must be woman, the members are appointed only when they fulfill the following conditions, namely-
  - a.** None of them should be less than 35 year of age.
  - b.** Both of them should possess a bachelor degree from a recognized university.
  - c.** Both of them should be the person of ability, integrity and standing.
  - d.** Both of them should have adequate knowledge and experience of at least ten years in dealing with the problems relating economics, law, commerce, accountancy, industry and public affairs or administration.

One more important clause has been inserted by the Amendment Act, 2002. If the president of the State Commission assesses the need to appoint a whole time president, he or she recommends, but District Forum's president himself cannot make such a recommendation.

#### **1) Disqualification for appointment**

Following persons are disqualified for the appointment as a member of District Forum.

- a) A person who has been convicted and imprisoned for an offence involving moral turpitude.

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- b) A person who has been declared insolvent and of unsound mind.
- c) A person who has been dismissed from the service of government or body corporate owned by the Government.

### **2) Appointment Authority**

According to section 10 (1A) of the Act, State Government appoints every member of the District Forum on the recommendation of the committee comprising, namely-

- a) President of the State Commission—known as Chairman.
- b) Secretary, Law department of the state—Member
- c) Secretary in- charge of the department of the state consumer affair—Member.

### **3) Terms of office**

According to section 10 (2) of Act, every member of Consumer Forum is appointed for the term five years or upto the age of 65 years, whichever is earlier. With the amendment in the Act, 2002, members of Forum can be re-appointed on the recommendations of the selection committee. Prior to amendment, 2002, re-appointment was not possible.

### **4) Terms and Conditions of Service**

Salaries, or honorarium and allowances are decided by the State Government and different States have framed different rules regarding this matter.

### **Jurisdiction of District Forum**

The term jurisdiction can be defined as authority and legal power extent to which a District Forum can decides cases.

Thus, A District Forum can decide only those matters which fall under its jurisdiction.

Jurisdiction of District Forum is further divided, namely-

#### **1) Pecuniary Jurisdiction**

District Forum can entertain all the matters where the value of services or good is upto Rs. 20 lakhs. If above this claim, then it does not falls under its jurisdiction.

#### **2) Territorial Jurisdiction**

As far as territorial jurisdiction is concerned, District Forum can entertain all complaints coming from its geographical limit.

#### **3) Appellate Jurisdiction**

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Being a lowest agency in the ladder of Consumer Court, CPA does not give any power to the District Forums to hear the appeals.

### **Procedure Relating to Consumer's Complaint**

Under section 12 and 13 of the Consumer Protection Act, it has clearly been mentioned what procedure would be followed by a District Forum while dealing with a complaint. A complaint may either concern services or goods.

If any consumer feels cheated and deceived and falls prey to unfair trade practices, can lodge a complaint against the deceiving firm in the Consumer Forum within whose jurisdiction all the opposite parties reside or run the business. Whole procedure has been mentioned in the first chapter under the heading '*Grievances Redressal Procedure*'.

### **Sitting of the District Forum**

According to section 14 (2) of the Act, before giving the judgment in any case, consensus of two members must be required and one of them must be the president of the Forum. If proceeding of any case gets dropped at any stage due to absence of any one of three members, remaining two members will carry on the dropped case.

It is important to note that before the amendment 2002, if any case would get dropped due to absence of any member, the proceeding had to be started from the beginning, but after the amendment 2002, proceeding of case can be resumed from the dropped point.

### **Powers of District Consumer Forum**

Section 13(4) of the Consumer Protection Act has given some powers of civil court to the District Consumer Forums and apart from these powers; some additional powers have been given to them under the Rules 10 of the Consumer Protection Act, 1987. At the end, section 14 has empowered the Consumer Forum to issue an order.

#### **A. Power akin to those of Civil Court**

According to section 13 of CPA, Consumer Forum has been empowered like a Civil Court with respect to the following:-

- ❖ It can summon or enforce the defendant or witness for attendance or can examine the witness on oath.
- ❖ Discovering or producing any document or other material fact that can be taken as evidence.
- ❖ It may ask for report or test from appropriate laboratory or form any other

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relevant source.

- ❖ Setting up commission to examine the witness.
- ❖ Passing an interim order during the pendency of a case considering the fact and circumstance of a case.
- ❖ Any other prescribed matter.

### **B. Power like a Criminal Court:**

According to section 27, the Consumer Forums can also act like a first class Judicial Magistrate for the purpose of the code of criminal procedure. Clearly speaking, the Consumer Forums can use the power of a first class Judicial Magistrate if required.

### **C. Power to make summary judgment**

According to the amendment 2002, District Consumer Forums are authorized authorized to decide the cases on summary trial. The term 'Summary Trail' refers to the trail where the Consumer Forum does not consider any evidence and deal with case on the basis of affidavits given by the parties.

### **D. Additional powers of the Consumer Forums**

The District Forum has been conferred some additional powers:

- ❖ A Forum can ask for producing any book, account, documents or commodities from any person for examining or retaining them.
- ❖ It can ask for information required for the purpose to carry forward the proceeding from any person under the Act.
- ❖ It can enter into any premises for searching any book, document, papers or commodities for the purpose to carry forward the proceeding under the Act.

### **E. Power to issue an order**

According to Section 14 (1) of CPA, if the Forum is satisfied that complainant has suffered due to deficiency in service or defect in goods. Forum may issue an order to opposite parties to do one or more of the following things, namely-

- ❖ To take out the deficiency from service in question or take out defect in case of goods if any. To improve the service or replace the product of similar description in case of goods.
- ❖ For paying back prices or charges paid by the complainant.

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- ❖ To stop resorting unfair trade practices or restrictive trade practices.
- ❖ To compensate the consumer for the loss or injury occurred due to negligence of the opposite party.
- ❖ To discontinue offering hazardous goods from being offered for sale.
- ❖ Directing the opposite party to neutralize the effect of misleading advertisement on the cost of opposite party responsible for issuing such misleading advertisement.

### **F. Executive Powers**

According to the amendment 2002, the Consumer Forums have been given some executive powers what they were lacking before amendment.

- ❖ If opposite party does not comply with the interim order passed by the Forum, an order can be made to attach the property of the opposite party for not complying with order.
- ❖ If non-compliance of order continue for more than three months, than attached property may be sold to compensate the consumer suffered loss or injury and balance, if any, will be given to entitled party.
- ❖ If any person entitled for the remaining amount, he or she can make an application to the concerned Consumer Forum and Forum may issue a certificate to District Magistrate for the said amount and Collector shall proceed to recover the said amount in the manner applied for arrears of land revenue.

### **Orders of the District Forums**

The orders of the Consumer Court are like the order given by Civil Court and Forum's orders are treated as final if no appeal has been made against the orders of the Forum. Any party, if not satisfied with judgment, can appeal with the senior forum against the order of District Forum. However, prescribed norms and guidelines should be complied with before giving final judgment.

If there is any difference between the opinions of two members regarding a particular judgment, matter should be referred to third member for final decision and decision taken by majority will be final.

### **Appeals against orders**

An appeal is a legal instrument through which any party (opposite or complainant), if not

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satisfied with judgment given by lower Forum, can take his or her case to the higher court. But there is a provision for filing an appeal against the order of District Forum.

- A. An appeal can be made to the State Commission against the order of District Forum within 30 days from the date of order and this period can be extended for further 15 days.
- B. State Commission entertains the appeal only when the appellant has deposited in prescribed manner fifty percent of that amount or twenty five thousand rupees or whichever is less.

### **Finality of orders**

If no appeal has been made against the order made by the District Forum, such order is treated as final.

### **Penalties**

Each and every order made by District Court is enforceable as enforced by Civil Court, if there is a non-compliance of the order, the concerned person will be charged with any one or all of the following penalties.

- ❖ Imprisonment for a term from one month to three years
- ❖ Monetary punishment from Rs. 2,000 to Rs. 10,000, or
- ❖ With both.