



CP - 02

Vardhaman Mahaveer Open University, Kota



Consumer Practices and Procedures

Course: CP-02



Vardhaman Mahaveer Open University, Kota

Consumer Practices and Procedures

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CP-2

Introduction

This Course is conceived and produced for the students of Certificate Program in Consumer protection Laws who need to study different basic aspects of Consumer protection laws. It will provide understanding, skill and elementary knowledge of consumer protection laws. It will train learner for career as Consumer Rights activists, consumer volunteers or professionals. Course will also inculcate the understanding of consumer laws at district, state, national level and it will provide some International dimensions in consumer protection field.

This Block contains Ten Units. First Unit will introduce students about Complaint and the Definition of Complaint, Procedure to be followed for filing a complaint and the Jurisdiction of the District Forum for complaint purpose. This Second unit deals with the Consumer-who can file complaint and the Define of Consumer, it will explain you about various types of consumers and will also explain the definition of service and deficiency of service. Third Unit will explain students what a complaint must contain? What are unfair trade practices and Restrictive trade practices are? Unit Four will introduce students with the Fora for complaint under Consumer Protection Act, 1986. What are the various rights of consumer? Unit will also explain judicial trend regarding rights of the consumers. Unit Five help students in knowing the Constitutional perspective regarding to consumer protection and the provisions relating to Consumer Protection of various Acts. Students will also appreciate various regulatory by government to protect consumer interest. Unit Six will explain students about the various levels of redressal agencies and the Composition of these agencies along with Power and jurisdiction of these agencies. Unit seventh will introduce students with the Consumer Protection Council at various level and Composition of these Councils along with Power and jurisdiction of these Councils. Unit Eight will explain students about Provisions relating to penal and appeal and how the recovery of fine is made. It will also explain What a Composite order is? Unit Nine will explain students about Remedies available to consumer under various laws other then COPRA. It will also explain Role of various mechanisms like ombudsman, other regulatory authorities constituted by Indian Government Unit Ten will apprise students about the NGOs' and various functions of NGOs. It will also explain what major NGOs in India are? It will also apprise you about the status of Consumer Education.

UNIT-I

COMPLAINT PROCEDURE

STRUCTURE:

- 1.1 Introduction
- 1.2 Who Can File a Complaint?
- 1.3 Cause of Action
- 1.4 What a Complaint must contain?
- 1.5 Jurisdiction of the District Forum?
- 1.6 Interim Order
- 1.7 Terminal Questions
- 1.8 Answer to check your progress
- 1.9 Key words
- 1.10 Suggested readings

OBJECTIVES:

After going through this Unit you should be able to understand:

- Definition of Complaint
- Procedure to be followed for complaint
- Jurisdiction of the District Forum

1.1 INTRODUCTION:

An aggrieved consumer seeks redressal under the Act through the instrumentality of complaint. It does not mean that the consumer can complain against his each and every problem. The Act has provided certain grounds on which complaint can be made. Similarly, relief against these complaints can be granted within the set pattern.

What constitutes a complaint [Section 2(1) (c)] :

Complaint is a statement made in writing to the National Commission, the State Commission or the District Forum by a person competent to file it, containing the allegations in detail, and with a view to obtain relief provided under the Act.

1.2 WHO CAN FILE A COMPLAINT?

At the outset it is clear that a person who can be termed as a consumer under the Act can make a complaint. To be specific on this account, under sections 2(B) & 12 following are the persons who can file a complaint under the Act:

- (a) a consumer; or
- (b) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force, or
- (c) the Central Government or any State Government,
- (d) one or more consumers, where there are numerous consumers having the same interest.

Section 12 deals with the manner in which the complaint shall be made, according to the title of the section. But in fact this section discusses on who shall file a complaint before a redressal Forum instead of the manner in which the complaint shall be made. A complaint in writing on unfair/restrictive trade practice, defective goods/hazardous goods, deficiency of service, excess price, hazardous services may be filed by a consumer, recognized consumer association, one or more consumers (class action) or the Central Government or State Government by paying required fee. When once the complaint is filed in the consumer forum the ball sets rolling in the Consumer Forum from day one.

On receipt of complaint the District Forum may either allow the complaint or reject it. But a complaint shall not be rejected unless an opportunity is given to the complainant of being heard. The admissibility of the complaint shall be decided within twenty-one days from the date on which the complaint was received. If a complaint is admitted, it shall not be transferred to any other law for the time being in force. But State Commission, on the application of the complainant or of its own motion, transfers any complaint pending before the District Forum to another District Forum within the State in the interest of Justice. National commission can transfer any complaint pending before the District Forum of one state to a District Forum of another state or before one State commission to another State commission. But such transfers may cast shadow on competence of members. Maharashtra State commission in *Sunil Gopinath Raut vs Sriram P. Pingale*¹ held as follows:

¹ (2004) CPJ 513

"Mere presumption or possible apprehension should not be a basis for transferring a case from one forum to the other. It casts indirectly doubt on integrity or competence of presiding officer of Forum. Justice should not only be done but manifestly and undoubtedly seen to be done. It is essential to presiding officer of Forums, to ensure to instill confidence in minds of people and command respect."

As already discussed the object of the consumer protection Act is to provide simple and speedy justice. For speedy dispensation of justice the Act stipulates time bound actions on the Redressal Forums. The first and foremost obligation of the Forum is to decide the admissibility of complaint within twenty-one days from the date on which the complaint was received. Prior to this stipulation of time there were instances in which some complaints were admitted after a lapse of more than one year. The very object of providing speedy justice will be vitiated by such instance. In order to correct this situation the Act was amended in 2002 and made it mandatory on the Redressal Forum to decide the admissibility of complaint within twenty-one days. On admission of complaint only section 13 comes into operation. The District Forum organizes the complaint handling in two phases, first, in pre-admission stage of complaint and secondly in Post-admission stage. In addition to the above following are also considered as a consumer and hence they may file complain:

1. Beneficiary of the goods/services:

The definition of consumer itself includes beneficiary of goods and services.² Where a young child is taken to the hospital by his parents and the child is treated by the doctor, the parents of such a minor child can file a complaint under the Act.³

2. Legal representative of the deceased consumer:

The Act does not expressly indicate that the Legal Representatives of a consumer are also included in its scope. But by operation of law, the legal representatives get clothed with the rights, status and personality of the deceased. Thus the expression consumer would include legal representative of the deceased consumer and he can exercise his right for the purpose of enforcing the cause of action which has devolved on him.⁴

3. Legal heirs of the deceased consume:

² K.B. Jayalaxmi v. Government of Tamil Nadu 1994(1) CPR 114.

³ Spring Meadows Hospital v. Harjot Ahluwalia JT 1998(2) SC 620.

⁴ Cosmopolitan Hospital v. Smt. Vasantha P. Nair (1) 1992 CPJ NC 302.

A legal heir of the deceased consumer can well maintain a complaint under the Act.⁵

4. Husband of the consumer:

In the Indian conditions, women may be illiterate, educated women may be unaware of their legal rights, thus a husband can file and prosecute complaint under the Consumer Protection Act on behalf of his spouse.⁶

5. A relative of consumer:

When a consumer signs the original complaint, it can be initiated by his/her relative.⁷

6. Insurance company:

Where Insurance Company pays and settles the claim of the insured and the insured person transfers his rights in the insured goods to the company, it can file a complaint for the loss caused to the insured goods by negligence of goods/service providers. For example, when loss is caused to such goods because of negligence of Transport Company, the insurance company can file a claim against the transport company.⁸

Pre-admission Stage of complain

It must be understood that every paper or petition filed before the consumer Forum may not fall under the definition of complaint as defined in the Act. Section 1(1) (c) defines complaint as any allegation in writing made by a complainant that,

- (i) an unfair trade practice or a restrictive trade practice 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 the service provider, as the case may be, has charged for the goods or for 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 ;

⁵ Joseph Alias Animon v. Dr. Elizabeth Zachariah (1) 1997 CPJ 96.

⁶ Punjab National Bank, Bombay v. K.B. Shetty 1991 (2) CPR 633.

⁷ Motibai Dalvi Hospital v. M.I. Govilkar 1992 (1) CPR 408.

⁸ New India Assurance Company Ltd. v. Green Transport Co. II 1991 CPJ (1) Delhi.

c. displayed on the price list exhibited by him by or under any law for the time being in force ;

In view of the above-referred definition only those disputes relating to the four categories mentioned constitute a complain. But while enforcing the Consumer Protection Act, 1986 the Central Government publicized that the consumer forums will take any complaint by a consumer, even on a post card, into cognizance. As a result complaints started pouring in with all kinds of disputes even on issues other than those mentioned in the definition. Hence, a duty is cast on the Consumer Forums, on receipt of a complaint, to verify whether such complaint falls under the definition or not. Further, the forum is expected to go through the complaint thoroughly and raises preliminary objection, if any.

The following points need to be verified at the stage of admission:

1. The complaint must be signed by the party.
2. If the complaint is filed by an advocate. Vakalat shall be filed along with requisite stamps.
3. The Vakalata shall be attested.
4. Corrections, if any shall be attested by the party/advocate.
5. The postal addresses of the parties must be mentioned clearly.
6. All the documents concerned to the complaint shall be filed along with complaint.
7. The documents filed must be legible.
8. There must not be any ambiguity in the complaint or in the reliefs claimed.
9. In case of complaint by a consumer organization special power of attorney executed on a non-judicial paper or even on plain paper duly attested by a Gazatted officer or a Notary public as per the NCDRC Regulations.)
10. Copies in three sets in addition to the copies of the opposite parties shall be filed (NCDRC Regulations).

The Andhra Pradesh State commission has set out proforma check-slip for scrutinizing consumer complaints in the state, which is provided as under:

1. Whether the contents of the complaint prima facie disclose any consumer Dispute?
2. Whether this APSCDRS/District Consumer Forum has pecuniary/Territorial jurisdiction?
3. Whether the complaint is filed within the period of limitation?

4. Whether all the names, descriptive particulars of the parties and their postal addresses are furnished in the complaint?
5. Whether document referred is annexed to the complaint?
6. Whether the reliefs claimed in the complaint are correct and within the purview of C.P. Act?
7. Whether sufficient number of copies of complaint is filed (4+R)?
8. Whether verified affidavit of the complainant/s is filed?

The following are the points to be observed before the complaint is admitted:

1. Jurisdiction-Territorial and pecuniary
2. Limitation
3. Admissibility
4. Whether the complainant purchased goods or availed services for commercial purpose?
5. Whether parties shown as opposite parties are necessary parties?
6. Whether the required fee has been paid "

Unless the cause of action to file a complaint is identified, it will be difficult to decide on the above points. In view of this, it is necessary to know what cause of action is.

1.3 CAUSE OF ACTION:

Normally, the aggrieved consumer would approach the consumer forum only when he has a cause of action to raise such dispute. But cause of action is not defined in any legislation. The court has to necessarily adjudicate the matter basing on the cause of action only. As cause of action is a bundle of facts, the fact that has given rise to action against other party is called the cause of action. It can be better explained by an illustration. If a person is travelling in a train and his valuables are stolen in the compartment, such person has a cause of action against Railways for its negligence. On receipt of complaint about the theft, if police department does not take action he has a cause of action against police. If the valuables are insured and the insurance company wrongly repudiates the claim, again he has a different cause of action. Thus there will be different causes on the same incident and the cause of action is identified on the basis of relief claimed, on whom it is claimed, privity, the cause and effect etc. Unless there is a cause to sue the other party, Forum cannot exercise its jurisdiction on such complaint. Non-joinder of a party or mis-joinder of a party is decided only on the basis of cause of action. Basing on the

date of occurrence of that particular fact which gives a right to the complainant to sue the other party, the point of limitation is computed. Some causes of action arise only once whereas, some are recurring causes of action and some are continuous causes of action. Hence, it is very much necessary for the members to identify the real cause of action to decide the matter.

In the State of Madras vs. C.P. Agencies & Anr,⁹ the Supreme Court discussed the meaning of cause of action and defined as under:

"Every fact, which it would be necessary to prove if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence, which is necessary to prove each fact, but every fact, which is necessary to be proved.

"Everything which if not proved gives the defendant an immediate right of judgment, must be part of the cause of action."

In Narayan Givaji vs. Gurumath Gouda AIR 1939 Bombay, the Bombay High Court gave the meaning of cause of action as under:

"A Cause of action briefly means 'right and the infringement of that right' where a party has an undoubted right and that right is infringed. A cause of action at once accrues to him"

The points of jurisdiction and limitation arise from cause of action. In case of any ambiguity in cause of action or two causes of action erroneously become part of same complaint the points of jurisdiction or limitation cannot be decided by the Forum satisfactorily. The Orissa State commission in National Forum for consumer protection vs. Keonjhar¹⁰ held that where in respect of different services, different persons are involved, and they cannot be joined as opposite parties in one complaint.

Order 2 Rule 2 of CPC also mentions about the cause of action. It states that the plaintiff shall include the whole of his claim he is entitled. But can relinquish any portion of the claim to bring the suit within the jurisdiction of that court. If the plaintiff intentionally relinquishes any portion of his claim he shall not afterwards sue in respect of the relinquished portion of his claim. This procedure is based on the statutory principle that a defendant or defendants should not be twice vexed for the same cause of action.

⁹ AIR 1960 Supreme Court 1309

¹⁰ 1994 CCJ 564

As already discussed it is necessary to identify the cause of action to decide on the point of limitation. Several facts which are necessary constituents of a cause of action may not occur at one and the same time and in such an event complete cause of action can arise only when last of such facts occurs.

Section 24 A of Consumer protection Act prescribes period of limitation to file complaints before the Redressal Forums. Section 24A(1) reads that the District Forum, State commission or the National commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

1.4 WHAT A COMPLAINT MUST CONTAIN?

Under section 2(1)(c) a complaint must contain any of the following allegations:

(a) An unfair trade practice or a restrictive trade practice has been adopted by any trader;

Example: A sold a six months old car to B representing it to be a new one. Here B can make a complaint against A for following an unfair trade practice.

(b) The goods bought by him or agreed to be bought by him suffer from one or more defects;

Example: A bought a computer from B. It was not working properly since day one. A can make a complaint against B for supplying him a defective computer.

(c) The services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect.

Example: A hired services of an advocate to defend himself against his landlord. The advocate did not appear every time the case was scheduled. A can make a complaint against the advocate.

(d) A trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods.

Example: A bought a sack of cement from B who charged him Rs. 100 over and above the reserve price of the cement declared by the Government. Here A can make a complaint against B.

(e) Goods which will be hazardous to life and safety when used are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.

Example: A bought a tin of disinfectant powder. It had lid which was to be opened in a specific manner. Trader did not inform A about this. While opening the lid in ordinary way, some powder flew in the eyes of A which affected his vision. Here A can make a complaint against the trader.

1.5 JURISDICTION OF THE DISTRICT FORUM:

The second important issue to be taken in to consideration before admitting the complaint is the jurisdiction of the District Forum. The jurisdiction of the District Forum can be classified into two types.

1. Territorial jurisdiction
2. Pecuniary jurisdiction.

1. Territorial jurisdiction:

The District Forum has jurisdiction, as the name suggests, to the revenue district or to the revenue divisions allotted to it. The office of the District Forum has to verify whether the opposite parties mentioned in the complaint resides or carries on business within the local limits of the District Forum or the cause of action, wholly or in part arises in the territorial limits of the Forum or branch of such opposite party is situated in the local limits of the District forum. Then only it can act and decide on the complaint. Contract by agent on behalf of foreign principal, jurisdiction lies in India.¹¹

No part of cause of action arises at a place from where band draft is obtained-mere circulation of newspaper wherein advertisement published at particular area could not furnish cause of action on Forum of that area-place where communication of acceptance conveyed will have jurisdiction to try suit on breach of contract.¹²

Railway Ticket purchased at Dhanbad but Suit case was stolen between Dhanbad and Mugalsarai-just because the head quarters f Northern Railways are located in New Delhi it would not confer territorial jurisdiction on District Forum, Delhi.¹³

Deficiency in service arose only at Calcutta-Flight operator having its office at Calcutta-mere issuance of ticket from Chennai by travel agent would not bring it within territorial jurisdiction of Forum-District Forum Chennai has no jurisdiction.¹⁴

¹¹ II (2004) CPJ 28 (NC)

¹² II (2004) CPJ 36 (NC)

¹³ II (2003) CPJ 332, Delhi State commission

¹⁴ II (2004) CPJ 547 Tamilnadu State commission

In Commissioner of Transport vs. Y.R. Grover¹⁵ this case the petitioner is an individual desirous of instituting an action on behalf of some persons who are not known. The State commission allowed the petition under order I Rule 8 of CPC. The National commission held that the State commission has acted without jurisdiction in granting permission to the petitioner to institute the complaint in a representative capacity for the benefit of general public by invoking the provisions of Order 1 Rule 8 of CPC. The provisions of order 1 Rule 8 have not been made applicable to the consumer Forums under section 13(4) of the Act nor by the rules framed under the Act.

2. Pecuniary jurisdiction:

Pecuniary Jurisdiction means the monetary limit up to which the Forum can adjudicate matters. Section 11 of the consumer protection Act specifies that the District Forum can entertain complaints claiming relief not exceeding Rs. 20 lakh. This includes the goods or services and compensation claimed. Basing on the above, the court fee shall be paid by the complainant. Similarly the State commission can entertain complaints exceeding Rs. 20 lakhs and not exceeding rupees one crore value. All complaints above Rupees one crore fall within the jurisdiction of the National commission.

But Maharashtra State Commission held otherwise; the benefits claimed either by way of interest on compensation not to be added for the purpose of determination of the valuation of the subject matter of the complaint for the purpose of pecuniary jurisdiction.¹⁶

For the purpose of determination of valuation of the subject matter of the complaint, the criteria should be to determine the same on the basis of valuation as agreed between the parties.¹⁷

Agreed consideration of flat less than five lakh, below pecuniary limit of commission-returned for presentation to the appropriate Forum.¹⁸

In a common complaint with identical interest and cause of action the valuation to be done on the basis of individual claim of consumer and not on consolidated basis of all consumers.¹⁹

Limitation

¹⁵ I (1984) CPJ 199 (NC)

¹⁶ I (2005) CPJ 470

¹⁷ II (2003) CPJ 81 (NC), II (2003) CPJ 170(NC)

¹⁸ II (2004) CPJ 781 Maharashtra State commission.

¹⁹ Percy Doctor vs. Sona Developers, IV(2004) CPJ 285 (Maharashtra State Commission)

Another important point to be observed before admitting a complaint is whether the complaint is filed within the time prescribed.

No time limitation was prescribed in the principal Act for filling complaints. Subsequently Section 24A is inserted as per the amendments made to the Act in the year 1993. Section 24A of the consumer protection Act prescribes the period of time for filling a complaint before the consumer Forum the State commission or the National commission as two years from the date of cause of action. In other words, the complaints filed beyond two years from the date of cause of action cannot be entertained for adjudication.

However, the District Forum may entertain a complaint if the complainant satisfies that he had sufficient cause for not filing the complaint within the prescribed period. For this purpose, the complainant has to file a petition for condoning the delay and the consumer Forum shall record the reasons for condoning such delay.

Before condoning the delay, the Forum shall give notice on the condonation petition to the opposite party and after hearing both the parties, a decision shall be made on the point of limitation.

Gujarat State commission in its order reported in 1998 judicial Reports consumer, 298 held that preliminary issues in the point of jurisdiction, limitation etc. going to the root of matter if rests upon some undisputed question of facts as pure questions of law, which can be decided on the basis of the bare averments made in the complaint and reply thereto, the same should be decided at the earliest without losing further time so as to set at rest controversy at the earliest in the said regard.

In *G. jagadeesan vs. M.V. Sundra Murthy*,²⁰ the National commission held as follows;

"Two issues are framed by the State commission. One, on the question of maintainability and another on the question of limitation. The State commission decided to proceed on the maintainability first and observed that if it held in favour of the complainant, then the other issue will be decided. This does not appear to be right approach. We also find that the judgment has been rather too long."

The National commission further observed that as a matter of fact, the question of limitation should have gone into first and then the question of maintainability otherwise on the merit of the complaint later.

Maintainability

²⁰ IV (2003) CPJ 17 (NC)

The next point that shall be observed by the District Forum is whether the complaint filed is within the purview of the consumer protection Act, i.e. whether the complainant is a consumer as defined under Section 2(1) (d) of the consumer protection Act ?

The following are to be considered while admitting the complaint:

1. Whether the goods, services availed/hired are of commercial in nature?
2. Whether the goods are purchased for resale?
3. Whether the parties to the dispute are necessary parties?
4. Whether the complaint is bad for non-joinder of a particular party?
5. Whether the complainant is a consumer as defined in the Act?

If the Forum raises an objection on the above points, the complaint shall be returned to the complainant to comply with the objections within 15 days as per the Regulations framed by the National Commission.

If the complainant disputes on the objections taken or fails to clear the defects pointed out by the Forum, the matter must be placed before the bench for passing appropriate orders.

If a complaint is dismissed as withdrawn due to technical defect fresh complaint on same cause of action is not maintainable unless Forum permission is obtained to file fresh complaint.²¹

In view of section 3, the provisions of the Act need to be applied harmoniously with the other legislations that are in force. Additional remedies available under C.P. Act are in addition to those available under local Act. Additional jurisdiction thus conferred on Forums cannot be taken away by provisions of local Act.²²

Mahanagar Telephone Nigam Ltd vs. Sukhbir Singh Bhai,²³ the Delhi State commission held that remedy under consumer protection Act and Indian Telegraph Act was independent of each other - complaint not maintainable.

Complaints Relating to Matters Seized by company Law Board

When the company Law Board was seized of the matter a complaint alleging non-payment of money deposited on maturity consumer Fora have no jurisdiction, according to a decision given by the National commission. But A.P. High Court ruled that an order of CLB approving a scheme was no bar to admit or proceed

²¹ I (2005) CPJ 796 Punjab

²² III (2005) CPJ 368 Kerala State commission and III (2005) CPJ 252, Gujarat State commission

²³ IV (2004) CPJ 580

with a complaint before the consumer Forum. It further held that an order could be passed and enforced by the Forum when it was not complied with (Prudential Capital Marketing (P) Ltd case reported in 2001 CPJ 230 A.P. High Court). Subsequently the National commission in.....Held that a complainant could approach the consumer Forum even if a matter is seized of Company Law Board provided he is not a party before the Company Law Board or received a notice from CLB.

In Allianz Capital and Management Services Ltd. vs. B.P. Grover,²⁴ the National commission declined to entertain when the Company Law Board was seized of the matter. But later in Lloyds Finance Ltd vs. napeena Singh in R.P.N. 739 of 2001 dated 30.1.2003 the National commission held that if the complainant had not filed any application before the under section 45QA of the RBI Act or had not received any notice from the Company Law Board in the proceedings initiated by any other depositor or had not participated in the proceedings before the Company Law Board, he would be entitled to file a complaint before the consumer Forum under the C.P. Act.

Following the ruling in the above cited dispute, the National commission held "if a complaint by such a complainant is maintainable, he can also proceed with the execution proceedings" notwithstanding the fact that the Company Law Board formulated a scheme for repayment of deposits. Prakashs Wadwa vs. Classic Global Securities Ltd.²⁵

Payment of tax is not a consideration

Payment of tax to the Municipalities is not a consideration for any services rendered. A complaint is not maintainable for a direction to supply a certain quantity of water or approve building plan or to change the tariff for water, etc. But, when drainage water gets into the drinking water and the water supplied by the municipal authority is not pure and the complainant and members of his family fall sick due to intake of such water, complaint is maintainable as decided by Supreme court reported in 1986-99 consumer 4379 (SC)

Supplying water is a statutory duty and availing water supply on payment of tax is not hiring of service, hence the complaint is not a consumer dispute.²⁶ Payment of tax for sovereign function is not a consideration for service.²⁷

²⁴ 2001(1) CPJ 41 (NC)

²⁵ 2004 (8) CLD 612 (NC)

²⁶ II (2004) CPJ 183 Tamilnadu State commission.

²⁷ II (2004) CPJ 675 Bihar State commission.

In *Akhil Bharatiya Grahak Panchayat Vs. State of Gujarat*²⁸ the National commission upheld the order of the State commission stating as under :

"In entertaining and adjudicating upon a suit or other proceeding filed before it, the court is acting in the exercise of the sovereign judicial power of the state and it is not rendering a 'service' in pursuance of a contract between the litigant and the court for which consideration has been collected. The dispensation of justice is conducted by the court not as a quid pro quo for the court fee that has been remitted. All sums levied and collected as court fees go to the Consolidated Fund of the State and hence it cannot be said that the payment of court fee was by way of 'consideration' for the 'hiring' or availing of a service from the court."

Financial assistance for marriage of daughter refused. Complainant not a consumer in strict sense- State extending benefits to needy citizens-duty is to honour its commitment- excreta compensation granted.²⁹

If a complaint involves in complicated questions of law or fact which requires verification and examination of large number of documents and voluminous evidence, it shall not be entertained by consumer courts as held by National commission in *Special Machines* case reported in 1991 (2) CPR 144 the National commission held that merely because witnesses were to be examined, the consumer Forums couldn't refuse to entertain the complaints.

In *Kabul Singh vs. National Insurance Co. Ltd.*,³⁰ Haryana State Consumer Disputes Redressal commission held that two remedies cannot be availed simultaneously. In this case the complainant had filed a claim petition before Motor Accident Claims Tribunal at Sirsa and thereafter filed the complaint before the District Forum. The District Forum dismissed the complain. State commission also dismissed the appeal filed by the appellant-complainant.

Class action

Class action is an action by one or more consumer on behalf of various other consumers where the cause of action is common to all the consumers who have suffered loss or damage. In such a case one or two consumers after obtaining permission from the consumer Forum may file the dispute. For 'class action' the provisions of rule 8 of Order I of the first Schedule of the CPC apply.

²⁸ I (1994) CPJ 114 (NC)

²⁹ II (2004) CPJ 237 Tamilnadu State commission.

³⁰ II (2003) CPJ 28

Complainant traveling in A/c bus were caused inconvenience, as A/c was not functioning properly. The complainants joined as one unit and filed complaint that could be treated as class-action from which prior permission of Forum is not necessary as held in Rajasthan State Road Transport Corp. vs. Sunil Kumar.³¹

Class action is necessary to protect large number of consumers who may suffer damages at the hands of manufacturer, trader or service provider as poor consumer who do not have sufficient resources may not be able to bring individually separate proceedings against the delinquent.

In DKMB & Co. vs. Ashok Viswanath Jadhav & Ors,³² the Maharashtra State commission rejected the revision petition filed by O.P. before the District Forum. The brief facts of the case are complainants 1 to 145 have filed common complaint claiming relief that the O.Ps be ordered and directed to execute the registered sale deed and since there is failure on their part to execute the same, compensation of Rs.10,000 each may be awarded. O.P. took objection on the ground that the cumulative effect of the total claim would exceed the pecuniary jurisdiction of District Forum. The State commission held as follows

"In this respect we wish to refer to the provisions of section 2(1)(b) (iv) and 12 (c) and 13(b) which have been introduced by way of amendment in the consumer protection Act, 1986, in the year 1993 which allows the consumers with common and similar interest to file a complaint in a representative capacity and dispute filed by recourse to the said provisions has to be procured on consideration of individual claim of each of the consumer as distinct and not cumulatively. We are rejecting this revision with expectation that the District Forum will take up the complaint for final disposal in the light of provisions referred to herein above."

Consumer protection Act contemplates two different types of class action is such as can be instituted by one or more persons with the permission of the Forum with a view to give benefit of such action to specified number of other consumers who cannot be brought before the Forum at the initial stage of filing of the complaint. Another class action which has been contemplated by the Act is to see that large number of consumers who cannot be identified even after publishing notice might get the benefit of the order as required to be passed for removal of defects in the goods or removal of deficiency in service and for awarding specified amount as stated above so as to benefit the consumers through a fund to be established by the

³¹ III (2005) CPJ 568 Rajasthan State commission.

³² II (2002) CPJ 217

Government. The Gujarat State commission further held that even if no relief has been prayed for, beneficial order may be passed by the Forum so as to benefit a body of consumers as can be canvassed by the complainant or can be taken care of by the Forum as per the merits of the case which ultimately might stand established. State commission upheld the order of the District Forum directing O.P. to deposit Rs. 1,50,000 in consumer welfare fund in addition to Rs.5,000 compensation to the complainant (Hotel Nyay Mandir vs. Iswarlal Jina Bhai Desai,³³ Hotel Nyay Madir charged Rs. 18 per soft drink where as the MRP is Rs. 12 per bottle from Iswarlal Jina Bhai Desai. The complainant also prayed the District Forum, Bharuch to direct O.P. to refund the difference of amount charged from various consumers in the last three years to any consumer association doing service to consumers.

Court of law has no jurisdiction to direct matter to be governed by one statute when provisions of another statute applicabel. (Neeraja Munjal vs. Atul Grover Minor.³⁴

In Kishin v. Customer care center,³⁵ Tamil Nadu State commission held that on non-delivery of letters, money orders and other postal articles a complaint was not maintainable in view of section 6 of Indian post office Act.

In the case of Union of India & Ors vs. Sri Ramji Enterprises & Anr,³⁶ the National commission held that in view of the provisions of section 15 of the Railway Claims Tribunal Act, 1987, District Forum established under the CPA will have no jurisdiction over the matters covered under Railway Claims Tribunal Act. Section 3 of the C.P.A. is to be read in consonance with the provisions barring jurisdiction of a court or other tribunals absolutely. If a District Forum assumes jurisdiction in respect of matter falling exclusively within the jurisdiction of Tribunal established under Railway claims Tribunal Act, 1987 or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or similar other enactments that would certainly be in derogation of these provisions which is not permissible.

Remedy under C.P. Act barred by Section 15 Railways Act (IV 2004) CPJ 136 Chhattisgarh State commission) whether the complainant purchased goods or availed services for commercial purpose / in order to decide whether the

³³ I (2006) CPJ 521)

³⁴ II (2005) CPJ 1 (SC)

³⁵ IV (2004) CPJ 468

³⁶ F.A.N. 411 of 1996

complainant purchased the goods or availed services for a commercial purpose it is relevant to refer to explanation given under section 2(1)(d) which is as follows :

"Explanation : For this purpose of this clause, commercial purpose does not include use by a person of goods bought and used by him and services availed by him exclusively for the purpose of his earning livelihood, by means of self-employment. thus, the goods purchased or services availed do not come under commercial purpose if used by the consumer to earn his livelihood by self-employment. There is catena of decisions on this point.

Whether parties shown opposite parties are necessary parties?

In order to prevent harassment to persons who are not connected to the dispute the Forum must carefully examine whether the parties mentioned in the complaint are necessary parties. Sometimes the complainant may be in doubt as to from whom he is entitled for relief. The following provisions of CPC throw light and better understanding on the subject.

ORDER I

Rule 1 : Who may be joined as plaintiffs : All persons may be joined in one suit as plaintiffs where-

- (a) any right to relief in respect of, or arising out of, the same act of transaction is alleged to exist in such persons, whether jointly, severally or in the alternative ; and
- (b) if such persons brought separate suits, any common question of law or fact would arise.

Rule 3 : Who may be joined as defendants : All persons may be joined in one suit as defendants where-

- (a) any right to relief in respect, of or arising out of, the same Act or transaction or series of acts or transactions is alleged to exist, against such persons, whether jointly, severally or in the alternative ; and
- (b) if separate suits were brought against such persons, any common, question of law or fact would arise.

Rule 7 : When plaintiff in doubt from whom redress is to be sought : Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which or the defendants is liable, and to what extent, may be determined as between all parties.

Rule 9 : Misjoinder and non-joinder : No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Rule 10 : Suit in name of wrong plaintiff :

(1) where a suit has been instituted in the name of wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just .

(2) Court may strike out or add parties : The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended : Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

For taking the complaint of file requisite court fee shall be paid by the complainant as per rules.

Post-Admission stage of complaint

Once the complaint is admitted section 13 comes into operation, which reads as follows:

Procedure to be followed

Section 13 gives in detail the procedure to be followed on admission of complaint. Section 13 prescribed procedure for conduction the proceedings on admission of a

complaint. This procedure is of two kinds. In the first category if defects are alleged in the complaint and such defects cannot be determined without proper analysis, such goods shall be sent to appropriate laboratory. In the second category where there is no need to determine the defect by analysis or such defect cannot be determined even on analysis or the complaint is in relation to deficiency in service a different procedure is prescribed. The following are the procedures mentioned under section 13.

Section 13 : "Procedure on Admission of complaint : (1) The District Forum shall, on admission of a complaint, if it relates to any goods-

(a) refer a copy of admitted complaint, within 21 days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum :

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

(c) Where the complaint alleges a defect in the goods which can not be determined without proper analysis or test of the goods, the District forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or suffer from any other defect and to report its findings thereon to the District forum within a period of 45 days of the receipt of the reference or within such extended period as may be granted by the District Forum :

(d) Before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out necessary analysis or test in relation to the goods in question ;

(e) The District forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out its analysis or test

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

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

(g) The District forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under Sec 14.

Section 13(c) provides that the District forum shall refer the defective goods to the appropriate laboratory along with a direction to analyse or list such goods to find out the nature of defect. Such goods must be sealed and authenticated by the District forum in manner prescribed. It is necessary to know what the prescribed manner is.

Prescribed manner for sending goods for laboratory analysis

The sample should be sealed and labeled. The label must contain the following information namely:

1. Name and address of the appropriate laboratory to which the sample will be sent
2. Name and address of the District forum
3. C.C. Number
4. Description of goods
5. Seal of the District forum
6. Date of seal

Before any sample of goods is referred to any appropriate laboratory the District forum may require the complainant to deposit laboratory fees and remit the same to the credit of appropriate laboratory for carrying out the necessary analysis or test. On receipt of the laboratory report the District forum shall forward a copy of the report to the opposite party. If any of the parties disputes the correctness of findings of the laboratory the Forum shall require the party to submit its objections

in writing. After hearing both the parties the Forum shall issue an appropriate order.

Delhi State commission held that where the defect can be seen by naked eyes, there is no need to send it for laboratory test.³⁷

(2) The District forum shall if the complaint admitted by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed or if the complaint relates to any services-

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District forum;

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

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

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

(c) Where the complainant fails to appear on the date of hearing before the District forum, the District forum may either dismiss the complaint for default or decide it on merits.

If the complaint is dismissed for default, can the Forum restore the complaint on an application by the complainant?

In P.J.Lamech ve Chairman, Tamilnadu Housing Board, Madras,³⁸ the Tamilnadu State commission held as follows : "The complaint has benn dismissed for default which is a final order and this Forum is no longer seized of the matter which is finally disposed of. The State commission has therefore, no power to set aside the dismissal of the complaint for default".

In New India Insurance Co. vs Srinivasan,³⁹ the apex body held that there was no provision in the Act to restore the complaint by Forum but a second complaint can

³⁷ (1993) 1 CPR 654 B

³⁸ 1991 (1) CPR 53 (TN)

³⁹ I (2000) CPJ 19 (SC)

be filed. In view of the decision rendered by the Supreme Court the complainant does have an opportunity to file a second complaint if the earlier complaint on the same cause of action was dismissed for default. However, the second complaint is subject to limitation.

In *Indrasood vs. Ambros Motors Pvt Ltd*,⁴⁰ the Chandigarh State commission held that the Forum acting as quasi-judicial body has jurisdiction to dismiss complaint for default and restore it on good reason being shown.

Complainant could not put appearance before Forum on the date fixed, under wrong impression. Entire evidence had been led on record. But, Forum instead of deciding complaint on merit proceeded to dismiss the complaint for default. C.P. Act moves in favour of complainant as its rights of consumer. Complaint restored.⁴¹

Restoration

In *Mrs. Humers vs. Adhiyaksha Bharatiya Jeevan Bhima Nigam*,⁴² the Madhya pradesh State commission held that the District forum had no power to dismiss the complaint for non-appearance. After considering the material on record the District forum has to make an order.

In *Gulam Rasool vs Regional Manager J&K State Forest Corporation*,⁴³ J&K State commission expressed its view that once the case is dismissed on merits and the complainant does not produce any evidence, fresh complaint cannot be filed on the same facts. If fresh application is allowed it will open floodgate for filing such complaints and there will be no end to the filing of complaints. This will cause more harm to the consumers than any benefit.

In *Avtaar Singh Sahota vs. Pearl International Tours and Travels Pvt. Ltd. & Ors*,⁴⁴ Union Territory Consumer Disputes Redressal Commission, Chandigarh held as under;

"This complaint filed under consumer protection Act which has been enacted for the better protection of the consumers, the District forum has not justified in dismissing the complaint on this technical ground. The complainant has submitted that affidavit of his son could not be filed as he was not so advised by the counsel engaged in the case, hence the District forum should have directed the complainant

⁴⁰ IV (2005) CPJ 218

⁴¹ III (2005) CPJ 216 Chandigarh State commission

⁴² II (2000) CPJ 598

⁴³ III (2003) CPJ 576 J&K State

⁴⁴ IV (2003) CPJ 673

to get the affidavit of his son filed if that was so vital for the disposal of the complaint".

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

(3A) Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of 3 months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within 5 months if it required analysis or testing of commodities :

Provided that no adjournment shall ordinarily be granted by the District forum unless sufficient cause is shown and the reason for the grant of adjournment has been recorded in writing by the Forum:

Provided further that the District forum shall make such order as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act:

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

The hearing of complaint is also time bound and every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where laboratory analysis is not required. If analysis is required it needs 5 months for settlement. In order to achieve the object of speedy justice, even some restrictions are placed on the grant of adjournments. Ordinarily in any court of law, particularly in the call work, it is seen that the advocates plead mostly for adjournments. They even resort to filing of interlocutory applications for taking more adjournments. To discourage such attempts the Act was amended in 2002 and a proviso was inserted to the effect that no adjournments shall be ordinarily granted by the District forum unless sufficient cause is shown and the Forum has recorded the reasons for grant of adjournment in writing. But due attention is not paid to this provision by many of the Fora as understood from the comments of litigants and advocates.

From careful analysis of the time schedule given in consumer protection Act it can be understood that the Forum has very limited time to adjudicate the matter and finally to decide. The Forum has to decide the complaint within 90 days from the date of receipt of notice by opposite party where no analysis is required by appropriate laboratory. The First forty-five days are consumed for receiving version from opposite party leaving 45 days for the rest of the proceedings. After receiving version at least 10 days are given for complainant's affidavit and another 10 days for opposite party's affidavit. Thus another 20 days are consumed leaving 25 days for making a final order. For hearing both sides 10 more days are required and in the last 15 days ultimately the complaint should be decided. In other words the Forum at the most can give two adjournments after receiving opposite party's version and before it is finally posted for orders. The Forum can decide the matter within the time frame of 90 days only in this ideal situation. But it is not the case always. The parties resort to dilatory tactics and become hurdle for speedy disposal of the case. If a relevant party absents itself on the scheduled day of adjournment the dispute cannot be resolved within the stipulated time. Interlocutory applications cause further delay. If the consumer dispute is with regard to medical negligence absolutely there is no scope for time bound settlement. There is good number of reasons for not complying with the provisions of consumer protection Act. The old saying is that "justice delayed is justice denied". But the modern criticism on speedy disposal of cases is 'justice hurried is justice buried.' in view of these conflicting statements the members should not give an impression to the litigants as well as to advocates that they are hurrying up the matters and at the same time should not give scope for more adjournments.

(3B) where during the pendency of any proceeding before the District forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

1.6 INTERIM ORDER:

When the consumer protection Act was originally passed in 1986, there was no provision empowering the redressal Forums to pass an interim order. Apparently the reason for not providing for interim order may be due to the idea that when the matter is expected to be disposed of within 3 months there is no need for such provision. But in the course of application of consumer protection Act it is realized that there is need to empower the redressal Forums to pass interim orders. Accordingly by Act 62 of 2002 Sub-section (3B) was inserted to section 13.

According to the above sub-section 3(B) the point that comes up for discussion is whether the Redressal forum can on its own motion, grant interim order or it can pass such order only on the application of the complainant. It is desirable to consider granting interim order only on an application from the complainant. If such a prayer is made by the complainant in the original petition seeking interim relief, even then a separate application from the complainant is necessary.

Prior to the insertion of sub-section 3(B) to section 13 some State commission held that the interim relief should be in accordance with section 14 of consumer protection Act. If the Redressal Forums are expected to follow only section 14 even while passing interim relief it may not be possible to protect the interests of the consumers and also goes against the spirit of Sub-section 3(B). Sub-section 3(B) categorically suggests that the Forums may pass such interim order as is just and proper in the facts and circumstances of the case. Unless the Forums go beyond the scope of section 14 they may not really pass an appropriate order under the facts and circumstances of the case. Suppose, if a complainant seeks a direction to the opposite party not to disconnect the power supply till the matter is finally disposed of, necessarily the Forums have to pass interim order not mentioned in section 14. But the redressal Forums should carefully consider whether such interim order adversely affects the rights of opposite party. The following case may provide insight on this issue.

In *G.M. electronic 7 Anr vs. Jayesh Babulal Chouhan & Anr*,⁴⁵ Gujarat State commission held that no interim relief in terms of main relief can ever be granted unless complete prima-facie case has been shown and unless it has been shown that no hardship would be caused to the other party by passing such interim order. In this case, District forum directed O.P. 2 and 3 to file their reply on or before 24.6.2004, on the other hand interim injunction was granted in same terms as the main relief has been granted in favour of the complainant before filing their replies. An interim order may be passed under section 13(3B) and compliance of such order may be enforced by following the procedure laid down in section 25(1) & (2) *S.K.Bhargava vs. Mahadeva*.⁴⁶

In *Satish Kumar Chwla vs. Jashir Singh*,⁴⁷ the Punjab State commission discussed in detail the procedure to be followed under section 13 read with section 4(ii) of

⁴⁵ II (2005) CPJ 306

⁴⁶ 2004 (8) CLD 162 (Rajasthan)

⁴⁷ II (2003) CPJ 389

the Consumer Protection Act, 1986. In this case the Petitioner filed an application requesting the District forum to make the following interim orders for an effective cross-examination of the complainants witnesses in attendance. But no request was made by the applicant petitioner to summon the president of the District Bar Association, Muktsar and the president of the Bar Association of Punjab and Haryana High Court. The District forum instead of issuing a direction, as prayed, had summoned the president of District Bar Association, Muktsar and president of the Bar Association of Punjab and Haryana High Court. Thus the Punjab State commission dismissed the order of the District forum to that extent. The matter was sent back to the District forum for decision in accordance with law.

(4) For the purposes of this section, the District forum shall have the same powers as are vested in a civil court under the code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely-

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

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

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) Issuing of any commission for the examination of any witness; and

(vi) any other matter which may be prescribed

(5) Every proceeding before the District forum, shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the District forum shall be deemed to be a civil court for the purposes of section 195 and chapter XXVI of Cr.P.C., 1973 (2 of 1974).

(6) Where the complainant is a consumer referred to in sub-clause (4) of clause (b) of sub-section (1) of section 2, the provisions of Rule 8 of order I of the first schedule to the code of civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District forum thereon.

(7) In the event of death of a complainant who is a consumer or the opposite party against whom the complaint has been filed, the provisions of order XXII of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the

modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

Legal representative: Section 50 of the CPC describes as under:

(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court, which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree any of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

Order XXII of the Civil Procedure Code is furnished hereunder for ready reference to the reader:

Death, Marriage and Insolvency of parties

1. No abatement by party's death if right to sue survives: The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.
2. Procedure where one of several plaintiffs or defendants dies and right to sue survives : Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.
3. Procedure in case of death of one or several plaintiffs or of sole plaintiff:
 - i. where one or two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.
 - ii. Where within the time limited by law no application is made under sub rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may

have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

4. Procedure in case of death of one of several defendants or of sole defendant;

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The court whenever it thinks, fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such cases be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where-

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therein in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

(c) the court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.

4A. Procedure where there is no legal representatives

(1) If, in any suit, it shall appear to the court that any party who has died during the pendency of the suit has no legal representatives, the court may, on the

application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been party to the suit.

(2) Before making an order this rule, the court-

1. may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

2. shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.

5. Determination of question as to legal representative:

Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the court.

Provided that where such question arises before an Appellate court, that court may, before determining the question, direct any subordinate court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate court may take the same into consideration in determining the question.

6. No abatement by reason of death after hearing:

Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

7. Suit not abated by marriage of female party:

(1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone. (2)

Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

8. When the plaintiff's insolvency bars suit;

(1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

9. Effect of abatement or dismissal:

(1) Where a suit abates or is dismissed under this order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is prove that he was prevented by any sufficient cause from continuing the suit, the court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, 1877, Shall apply to applications under sub-rule (2)

10. Procedure in case of assignment before final order in suit:

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal there from shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

10A. Duty of pleader to communicate to court death of a party:

Whenever a pleader appearing for a party to the suit comes to know the death of that party, he shall inform the court about it, and the court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.

In *Ishwarchandra Gangrade & Ors vs. New India Assurance Co. Ltd.*⁴⁸, the Madhya Pradesh State Commission held that the costs of the claim couldn't be included in the aggregate value of the claim, which neither falls in the value of goods nor under the claim of compensation.

1.7 TERMINAL QUESTIONS

1. According to Section 2(b) and 12 who can file a Complaint?
 - a. Consumer
 - b. the Central Government or any State Government
 - c. Both (a) and (b)
 - d. None of the above
2. Within how many days from the date on which the complaint was received, the admissibility of the complaint shall be decided?
 - a. 15 days
 - b. 20 days
 - c. 30 days
 - d. 21 days
3. Who is not consumer and hence cannot file a complaint?
 - a. Legal representative of the deceased consumer
 - b. Husband of the consumer
 - c. Neighbour of the consumer
 - d. A relative of consumer
4. What points need to be observed before the complaint is admitted?
 - a. Jurisdiction-Territorial and pecuniary
 - b. Limitation
 - c. Admissibility
 - d. All of the above
5. The sample for the laboratory analysis needs not to contain_____.
 - a. Description of goods
 - b. Date of seal
 - c. C.C. Number
 - d. Exact time of seal
6. Section 13 of the Act deals with_____.
 - a. Jurisdiction of District Forum

⁴⁸ II (2000) CPJ 254

- b. Procedure to be followed on admission of Complaint
 - c. Definition of complainant
 - d. Pre-admission stage.
7. Supplying water by the municipality is _____.
- a. Moral duty
 - b. Statutory duty
 - c. Tertiary duty
 - d. None of the above
8. Pecuniary Jurisdiction means the monetary limit up to which the Forum can adjudicate matters.
- a. Territorial Jurisdiction
 - b. Pecuniary Jurisdiction
 - c. Both (a) and (b)
 - d. None of the above
9. Every proceeding before the District forum shall be deemed to be a judicial proceeding within the meaning of sections _____ and _____ of the Indian Penal Code.
- a. 193 and 228
 - b. 143 and 151
 - c. 225 and 231
 - d. 191 and 195

1.8 ANSWER TO CHECK YOUR PROGRESS:

- 1. c. Both (a) and (b)
- 2. d. 21 days
- 3. c. Neighbour of the consumer
- 4. d. All of the above
- 5. d. Exact time of seal
- 6. b. Procedure to be followed on admission of Complaint
- 7. b. Statutory duty
- 8. b. Pecuniary Jurisdiction
- 9. a. 193 and 228

1.19 KEY WORDS

- i. **Consumer Complaint**- is “an expression of dissatisfaction on a consumer’s behalf to a responsible party”. It can also be described in a positive sense as a report from a consumer providing documentation about a problem with a product or service.
- ii. **Dangerous Goods**- are solids, liquids, or gases that can harm people, other living organisms, property, or the environment. They are often subject to chemical regulations.
- iii. **Legal Representative**- In its broadest sense, one who stands in place of, and represents the interests of, another. A person who oversees the legal affairs of another. Examples include the executor or administrator of an estate and a court appointed guardian of a minor or incompetent person. This term is almost always held to be synonymous with the term personal representative. In accident cases, the member of the family entitled to benefits under a Wrongful Death statute.
- iv. **Heir**- An individual who receives an interest in, or ownership of, land, tenements, or hereditaments from an ancestor who has died intestate, through the laws of Descent and Distribution. At Common Law, an heir was the individual appointed by law to succeed to the estate of an ancestor who died without a will.
- v. **Cause of Action**- is the heart of the complaint, which is the Pleading that initiates a lawsuit. Without an adequately stated cause of action the plaintiff's case can be dismissed at the outset. It is not sufficient merely to state that certain events occurred that entitle the plaintiff to relief. All the elements of each cause of action must be detailed in the complaint. The claims must be supported by the facts, the law, and a conclusion that flows from the application of the law to those facts.

1.10 SUGGESTED READINGS

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UNIT-II

WHO CAN FILE COMPLAINT?

STRUCTURE

- 2.1 Introduction
- 2.2 Definition of Consumer
- 2.3 Consumer of goods
- 2.4 Consumer of services
- 2.5 Beneficiary of services is also a consumer
- 2.6 Are the following consumers
- 2.7 Terminal Questions
- 2.8 Answer to check your progress
- 2.9 Key words
- 2.10 Suggested readings

OBJECTIVES

After going through this Unit you should be able to:

- Define of Consumer
- Understand various types of consumers
- Understand the definition of service and deficiency of service

2.1 INTRODUCTION

Every individual is a consumer, regardless of occupation, age, gender, community or religious affiliation. Consumer rights and welfare are now an integral part of the life of an individual and we all have made use of them at some or the other point in our daily routine.

The moment a person comes into this world, he starts consuming. He needs clothes, milk, oil, soap, water, and many more things and these needs keep taking one form or the other all along his life. Thus we all are consumers in the literal sense of the term. When we approach the market as a consumer, we expect value for money, *i.e.*, right quality, right quantity, right prices, information about the

mode of use, etc. But there may be instances where a consumer is harassed or cheated.

The Government understood the need to protect consumers from unscrupulous suppliers, and several laws have been made for this purpose. We have the Indian Contract Act, the Sale of Goods Act, the Dangerous Drugs Act, the Agricultural Produce (Grading and Marketing) Act, the Indian Standards Institution (Certification Marks) Act, the Prevention of Food Adulteration Act, the Standards of Weights and Measures Act, etc. which to some extent protect consumer interests. However, these laws require the consumer to initiate action by way of a civil suit involving lengthy legal process which is very expensive and time consuming.

The Consumer Protection Act, 1986 was enacted to provide a simpler and quicker access to redressal of consumer grievances. The Act introduced the concept of 'consumer' and conferred express additional rights on him. It is interesting to note that the Act doesn't seek to protect every consumer within the literal meaning of the term. The protection is meant for the person who fits in the definition of 'consumer' given by the Act.

2.2 DEFINITION OF CONSUMER

The Consumer Protection Act provides means to protect consumers from getting cheated or harassed by suppliers. The question arises how a consumer will seek protection? The answer is the Act has provided machinery whereby consumers can file their complaints which will be entertained by the Consumer Forums with special powers so that action can be taken against erring suppliers and the possible compensation may be awarded to consumer for the hardships he has undergone. No court fee is required to be paid to these forums and there is no need to engage a lawyer to present the case.

Section 2(d) of the Consumer Protection Act says that 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 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;

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

2.3 CONSUMER OF GOODS

The provision reveals that a person claiming himself as a consumer of goods should satisfy that—

The Goods are Bought for Consideration - *There must be a sale transaction between a seller and a buyer; the sale must be of goods; the buying of goods must be for consideration.* The terms sale, goods, and consideration have not been defined in the Consumer Protection Act. The meaning of the terms ‘sale’, and ‘goods’ is to be construed according to the Sale of Goods Act, and the meaning of the term ‘consideration’ is to be construed according to the Indian Contract Act.

ANY PERSON WHO USE THE GOODS WITH THE APPROVAL OF THE BUYER IS A CONSUMER –

When a person buys goods, they may be used by his family members, relatives and friends. Any person who is making actual use of the goods may come across the defects in goods. Thus the law construes users of the goods as consumers although they may not be buyers at the same time. The words “....with the approval of the buyer” in the definition denotes that the user of the goods should be a rightful user.

Example : A purchased a scooter which was in B’s possession from the date of purchase. B was using it and taking it to the seller for repairs and service from time to time. Later on B had a complaint regarding the scooter. He sued the seller. The seller pleaded that since B did not buy the scooter, he was not a consumer under the Act. The Delhi State Commission held that B, the complainant was using it with the approval of A, the buyer, and therefore he was consumer under the Act.⁴⁹

⁴⁹ Dinesh Bhagat v. Bajaj Auto Ltd. (1992) III CPJ 272

ANY PERSON WHO OBTAINS THE GOODS FOR 'RESALE' OR 'COMMERCIAL PURPOSES' IS NOT A CONSUMER -

The term 'for resale' implies that the goods are brought for the purpose of selling them, and the expression 'for commercial purpose' is intended to cover cases other than those of resale of goods. When goods are bought to resell or commercially exploit them, such buyer or user is not a consumer under the Act.

Examples:

1. A jeep was purchased to run it as a taxi. The question was whether the buyer of the jeep was a consumer under the Act. The Rajasthan State Commission held that to use the jeep as a taxi with the object to earn profits was a commercial purpose, and therefore, the buyer/user was not a consumer within the meaning of the Act.⁵⁰

2. L Ltd. purchased a computer system from Z. The computer system was giving constant trouble and Z was not attending it properly. L Ltd. filed a complaint against Z with the National Commission. Z contended that L Ltd. was not a consumer under the Act because computer system was used for commercial purposes. L Ltd. argued that computer system was not directly used of commercial purposes rather it was used to facilitate the work of the company. The Commission rejected the argument on the grounds that the system made part of the assets of the company, and its expenses were met by it out of business income. Thus the said purchase was a purchase for commercial purposes and L Ltd. was held not to be a consumer under the Act. One thing is plain and clear from the decided cases that what is important to decide is - Whether a particular good is used for commercial purposes. If it is the buyer/user is not a consumer and if it is not - the buyer/user is a consumer.

PERSON BUYING GOODS FOR SELF EMPLOYMENT IS A CONSUMER-

When goods are bought for commercial purposes and such purchase satisfy the following criteria:

- the goods are used by the buyer himself;
- exclusively for the purpose of earning his livelihood;
- by means of self-employment,

then such use would not be termed as use for commercial purposes under the Act, and the user is recognised as a consumer.

⁵⁰ Smt. Pushpa Meena v. Shah Enterprises (Rajasthan) Ltd. (1991) 1 CPR 229

Examples :

1. A buys a truck for plying it as a public carrier by himself, A is a consumer.
2. A buys a truck and hires a driver to drive it, A is not a consumer.
3. A has one cloth shop. He starts another business of a photocopier and buys a photocopy machine therefor. He hasn't bought this machine exclusively for the purpose of earning livelihood. He is not a consumer under the Act.

Note: That this is an exception to the rule that a buyer of commercial goods is not a consumer under the Act.

2.3 CONSUMER OF SERVICES

"The word "service has been define in Section 2(1)(o). According to it "Service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, (housing construction), entertainment, amusement or the purveying of news or other information, but does not include the rendering of nay service free of charge or under a contract of personal service.

Thus, service which are rendered free of charge or under contract of personal service are expressly excluded from the definition of service in the Act. The expression "contract of personal service" was explained by the Supreme Court in *Indian Medical Association v. V.P. Shantha*⁵¹ as follows:-

"The expression contract of personal service is not limited to contract for employment of domestic servants only. It would include employment of medical officer for rendering medical service to the employer. Services rendered by such medical officer to his employer would not be service as defined in Section 1(1)(o).

A person is a consumer of services if he satisfies the following criteria:

SERVICES ARE HIRED OR AVAILED OF -

The term 'hired' has not been defined under the Act. Its Dictionary meaning is – "to procure the use of services at a price". Thus the term 'hire' has also been used in the sense of 'avail' or 'use'. Accordingly it may be understood that consumer means any person who avails or uses any service.

Example : A goes to a doctor to get himself treated for a fracture. Here A is hiring the services of the doctor. Thus he is a consumer.

⁵¹ AIR 1996 S.C. 550.

What constitutes hiring has been an issue to be dealt with in many consumer disputes. If it is established that a particular act constitutes hiring of service, the transaction falls within the net of the Consumer Protection Act, and *vice-versa*.

Examples :

1. A passenger getting railway reservation after payment is hiring service for consideration.
2. A landlord neglected and refused to provide the agreed amenities to his tenant. He filed a complaint against the landlord under the Consumer Protection Act. The National Commission dismissed the complaint saying that it was a case of lease of immovable property and not of hiring services of the landlord.⁵²

CONSIDERATION MUST BE PAID OR PAYABLE –

Consideration is regarded necessary for hiring or availing of services. However, its payment need not necessarily be immediate. It can be in installments. For the services provided without charging anything in return, the person availing the services is not a consumer under the Act.

Examples :

1. A hires an advocate to file a suit for recovery of money from his employer. He promises to pay fee to the advocate after settlement of the suit. A is a consumer under the Act.
2. A goes to a Doctor to get himself treated for a fracture. The Doctor being his friend charged him nothing for the treatment. A is not a consumer under the Act.
3. B issued an advertisement that a person could enter the contest by booking a Premier Padmini car. S purchased the car and thus entered the contest. He was declared as winner of the draw and was thus entitled to the two tickets from New Delhi to New York and back. S filed a complaint alleging that the ticket was not delivered to him. The National Commission held that S was not a consumer in this context. He paid for the car and got it. B was not liable so far as the contract of winning a lottery was concerned.⁵³

2.5 BENEFICIARY OF SERVICES IS ALSO A CONSUMER

When a person hires services, he may hire it for himself or for any other person. In such cases the beneficiary (or user) of these services is also a consumer.

⁵² Smt. Laxmiben Laxmichand Shah v. Smt. Sakerben Kanji Chandan [1992] 1 Comp. LJ 177 (NCDRC)

⁵³ Byford v. S.S. Srivastava (1993) II CPR 83 (NCDRC)

Example: A takes his son B to a doctor for his treatment. Here A is hirer of services of the doctor and B is beneficiary of these services. For the purpose of the Act, both A and B are consumers.

I. Misfeasance in public office

The Consumer protection Act has a wide reach and the Commission/forum has jurisdiction even in cases of services rendered by statutory or public authorities. Such authorities become liable to compensate for misfeasance in public office i.e. an act which is oppressive or capricious or arbitrary or negligent, provided loss or injury is suffered by a citizen. The word compensation is of wide import. It may constitute actual loss or expected loss and may extend to compensation for physical mental or national sufferings, insult or injury or loss. The Commission/Forum can award not only value of goods or services but also for injustice suffered by a consumer. Such compensation is for indicating the strength of law and acts as a check on oppressive, capricious or arbitrary exercise of power.⁵⁴ The Supreme Court has directed in a later case that principles laid down in this case should be followed in future cases.⁵⁵

II. Deficiency of Service:

As defined in Section 2(1) (g) of the Act deficiency of service 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. In *Vimal Chandra Grover v. Bank of India*⁵⁶ bank granted overdraft facility on pledge of shares. The client asked the bank to sell some of the pledged shares and the bank agreed to sell, but it could not sell them within reasonable time. Causing loss to the client, Bank was held liable. It was held that plea that bank was not obliged to sell shares on request of the customer was not available to bank.

Where farmers lost their vegetables stored in cold storage compensation was awarded towards cost of vegetables and also for loss of earnings and mental agony.⁵⁷

Board constituted for administration of pension Fund under Kerala cooperative Societies Employees Self Financing Scheme, 1994 was held to provide service as

⁵⁴ Ghaziabad Development Authority v. Balbir Singh, 2004 AIR SCW 2362.

⁵⁵ Haryana U.D.A. v. S.P. Gupta, AIR 2004 SC 4085

⁵⁶ AIR 2000 SC 2181

⁵⁷ M.D. Distt. Coop. Milk Union Ltd. v. Presiding officer State consumer Disputes Redressal Commission, AIR 2004 Jhar 101.

contemplated under Section 2 (1) (o) and retired employees of cooperative societies are consumer under Section 291) (d). Complaints in respect of delay in disbursement of pension can be entertained by Consumer Disputes Redressal Forum.⁵⁸

Where an unconditional bank guarantee is given by a bank to a foreign company and guarantee is invoked by the foreign company but the payment is delayed because of time taken by Reserve Bank of India in permitting remittance in that foreign country and also because of delay on the part of the bank of the complainant in replying queries by R.B.I., it was held that there was not deficiency of service as contemplated in Section 2 (1) (g) of the Act.⁵⁹

Where time was changed by the Airline without informing the client Airline was held liable. It was no defence that agent was informed. For short-coming of agent in not informing customer also principal will be vicariously liable.⁶⁰

Thus, where the quality, nature and manner of rendering service is not according to requirements of law or terms of an agreement the service provider will be liable for deficiency in service.

2.6 ARE THE FOLLOWING CONSUMERS?

1) Winner of a lottery

The question was considered in the case of *Byford v. S.S. Srivastava* [1993]. In this case Byford Motors inserted an advertisement in newspapers stating that a person booking a premier Padmini Car could enter into a contest in a lottery conducted by them. Under it a person who was successful in the draw would be entitled to two free tickets from New Delhi to New York and back. Shri S.S. Srivastava was one of the persons who were successful in the draw. He asked the dealers, M/s. Byford Motors, to give him the value of two tickets which was refused and he was asked to produce two passports to enable them to book the tickets. The complainant, however, produced one passport immediately but the second after the end of the financial year. M/s. Byford Motors refused to give the tickets on the ground that accounts of the financial year had been closed and that they could not carry forward the liability of that year to the next financial year under the provisions of the Income-Tax Act and Rules. The Court held that the complainant was not a consumer within the meaning of Sec.2 (1) (d) of the Act. He

⁵⁸ Kerala State Coop. Employees Pension Board v. C.D.R. Forum, Idukki, AIR 2004 Ker.57.

⁵⁹ Union Bank of India v. M/s Seppo Rally OY, AIR 2000 SC 62.

⁶⁰ Indian Airlines v. Renu Gupta, AIR 2007 (D.O.C.) 116 (Delhi).

had received the car for which he had paid and there was no complaint as to its condition.

Receiving air tickets to New York was an additional attraction attached to the sale, which depended upon a lottery draw. It is not an intrinsic part of the contract deal for which payment was made. Thus, as far as lottery was concerned, it could not be said that complainant was a consumer who had hired any service for consideration and hence he had no right to get redressal under the Act. The complainant's argument that this would fall under unfair trade practice as in Sec. 36 A(4) of the MRTP Act, 1969, was also not accepted.

2) A person registering for gas connection

The National Commission in *Mohindra Gas Enterprise v. Jagdish Poswal*(1993) held that registering for gas connection amounts to hiring of services. Reference was made to the Manual of the Indian Oil Corporation which states that an LPG customer gets continuing or recurring services like loan of the Corporation's equipment, delivery of refill cylinders, and technical service for appliance on leakage of equipment and so on. But can a person be upheld as a consumer at the stage of registration or only when he signs subscriptions voucher and makes deposit for LPG connection. To this, National Commission observed as follows:

Service as defined in sub-clause (0) of the sub-section (1) of Sec. 2 means "service of any description which is made available to potential users". The consumer who hires a service has been defined in clause (ii) of Section 2(1) of the Act, according to which it is not necessary that consideration should be paid at the time of hiring of service. If the transaction is supported by consideration which has been paid or promised or partly paid or partly promised or under any system of deferred payment, even then it will be a valid consideration for the hiring of the service. The present case is one in which payment of part consideration was deferred till the gas connection was released. Hence, a person becomes a consumer of LPG right at the time of registration for an LPG connection.

3) Warranty of free service

In *Vishwa Jyoti Printers v. Molins of India* (1992) a warranty of free service for one year was given at the time of sale of a printing machine. The seller of the machine contended that since he was rendering free service for the maintenance of the machinery for one year under the warranty, the buyer was not a 'consumer' under the Consumer Protection Act.

Held, the warranty was a part of the composite contract for supply of the printing machine and its maintenance for a period of one year. The consideration for service to be rendered under the warranty is obviously included in the sale price of the machine. There could not be an agreement, including warranty, without consideration. It was wrong to maintain that warranty obligations were being rendered free of charge.

4) Passengers traveling by trains

In *General Manager, Southern Railway v. Anand Prasad Sinha* (1989), it was held that passengers traveling by trains in payment of the stipulated fee charged for the ticket are 'consumers' and the facility of transportation by rail provided by the railway administration is a 'service' rendered for consideration as defined in the Act.

5) Subscribers of telephones

Subscribers of telephones would be 'consumers' under the Act and accordingly are entitled to seek relief from Forums wherever necessary.⁶¹

6) User of electricity

User of electricity is a consumer. The National Commission in *Y.N. Gupta v. DESU* (1992) considered a complaint regarding the inflated electricity bills served by DESU on the complainant. In this case, DESU did not raise the bills in keeping with the cycle normally adopted. It also did not replace the defective meter. However, it issued a bill for Rs. 1.06 lakhs for a period of 1 1/4 years. The power connection was also disconnected but restored after a complaint with the General Manager.

The National Commission ruled that the bills were casually prepared as much as the bills reflected consumption in the five digits instead of four digits. Moreover, DESU had no power to raise bills upon a defective meter beyond six months under the Electricity Act, 1910. The National Commission concluded that there was deficiency in service on the part of DESU and awarded a compensation of Rs. 30,000 and costs of Rs. 5,000.

2.7 TERMINAL QUESTIONS

1. To protect interests of consumers, which Acts have been made?

a. Indian Contract Act

b. Sale of goods Act

⁶¹ Dist. Manager, Telephones, Patna v. Lalit Kumar Bajla (1989)

- c. The Standards of weights and Measures Act d. All of the above
2. In which year the Consumer Protection Act was enacted?
 a. 1975 b. 1982 c. 1986 d. 1996
3. Who entertains the complaints filed by consumers under the Consumer Protection Act?
 a. Civil Court b. Supreme Court
 c. Consumer forums d. High Court
4. Which Section of The Consumer Protection Act Provides for the meaning of the "Consumer" ?
 a. Section 1 b. Section 3(c)
 c. Section 5(a) d. Section 2(d)
5. Who are the consumers according to Consumer Protection Act?
 a. Subscribers of Telephone b. User of Electricity
 c. Only (a) d. (b) and (c)
6. Under the Consumer Protection Act the word 'service' has been defined in section _____
 a. Section 2(1)(e) b. Section 2(1)(f)
 c. Section 2(1)(g) d. Section 2(1)(o)
7. The term 'hire' has also been used in the sense of _____
 a. avail b. use
 c. get d. avail or use
8. The words "...with the approval of the buyer" in the definition denotes that the user of the goods should be a.
 a. rightful user b. tenant
 c. hired user d. complainant
9. Who among the following is a consumer?
 a. Person who obtains the goods for 'resale'
 b. Person who obtains the goods for self employment
 c. Person who obtains the Goods for Commercial Purposes
 d. Winner of a lottery

2.8 ANSWER TO CHECK YOUR PROGRESS

1. (d) All of the above

2. (c) 1986
 3. (c) Consumer forums
 4. (c) Section 2(d)
 5. (d) (b) and (c)
 6. (d) Section 2(1)(o)
 7. (d) avail or use
 8. (a) rightful user
 9. (b) Person who obtains the goods for self employment
-

2.9 KEY WORDS

- i. **Consideration**- Something of value given by both parties to a contract that induces them to enter into the agreement to exchange mutual performances. Consideration is an essential element for the formation of a contract.
- ii. **Commercial Purpose**- The use of a public record for the purpose of:
 1. sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale, or
 2. obtaining of names and addresses from such public records for the purpose of solicitation, or
 3. Monetary gain from the direct or indirect use of the public record.
 4. Commercial purpose does not include use of public records as evidence or research in a judicial or quasi-judicial action, or the publication of all or a portion of a public record in a newspaper for its news value.
- iii. **Beneficiary of Services**- When a person hires services, he may hire it for himself or for any other person. In such cases the beneficiary (or user) of these services is also a consumer
- iv. **Warranty**- "A written guarantee promising to repair or replace an article if necessary within a specified period." A warranty is a type of guarantee; in the case of a product guarantee/product warranty, it's basically the same thing - the company undertakes to repair or replace your goods if they go wrong.
- v. **Hire**- To engage the services of (a person) for a fee; employ: hired a new clerk or to engage the temporary use of for a fee; rent: hire a car for the day. To grant the services of or the temporary use of for a fee.
- vi. **Self-Employment**- A situation in which an individual works for himself or herself instead of working for an employer that pays a salary or a wage. A self-

employed individual earns their income through conducting profitable operations from a trade or business that they operate directly.

2.10 SUGGESTED READINGS

- “Consumer Protection Laws – An Appraisal” Naresh Kumar
- “Consumer Awareness Guidelines”, Issued by Government of Tamil Nadu
- “Consumers Awareness about Rights and Grievance Redressal”, by Dr. Durga Surekha, 2010,
- “Consumer Protection and Consumerism in India”, Ms Kiran Chaudhry; Ms Tanu Chandhiok, Mrs Parveen Dewan
- “Consumer Protection Legislations in South Asian Countries: The Emerging Trend”, Basant Kumar

Unit-III

SUBJECT MATTER OF COMPLAINT

STRUCTURE:

- 3.1 Introduction
- 3.2 Subject Matter of Complaint
- 3.3 Unfair Trade Practices
- 3.4 Restrictive Trade Practices
- 3.5 Specific Services Mentioned in the Act
- 3.6 Terminal Questions
- 3.7 Answer to Check Your Progress
- 3.8 Key Words
- 3.9 Suggested Readings

OBJECTIVES:

After going through this Unit you should be able to understand:

- What a complaint must contain
- Unfair trade practices and Restrictive trade practices
- Specific services mentioned in the Act

3.1 INTRODUCTION

An aggrieved consumer seeks redressal under the Act through the instrumentality of complaint. It does not mean that the consumer can complain against his each and every problem. The Act has provided certain grounds on which complaint can be made. Similarly, relief against these complaints can be granted within the set pattern.

According to Section 2(1)(c) A Complaint is a statement made in writing to the National Commission, the State Commission or the District Forum by a person competent to file it, containing the allegations in detail, and with a view to obtain relief provided under the Act.

According to Section 2(b) & 12] a person who can be termed as a consumer under the Act can make a complaint. To be specific on this account, following are the persons who can file a complaint under the Act:

- (a) a consumer; or
- (b) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force, or
- (c) the Central Government or any State Government,
- (d) one or more consumers, where there are numerous consumers having the same interest.

3.2 SUBJECT MATTER OF COMPLAINT

Under Section 2(1)(c) a complaint must contain any of the following allegations :

(a) An unfair trade practice or a restrictive trade practice has been adopted by any trader;

Example: A sold a six months old car to B representing it to be a new one. Here B can make a complaint against A for following an unfair trade practice.

(b) The goods bought by him or agreed to be bought by him suffer from one or more defects;

Example: A bought a computer from B. It was not working properly since day one. A can make a complaint against B for supplying him a defective computer.

(c) The services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect.

Example: A hired services of an advocate to defend himself against his landlord. The advocate did not appear every time the case was scheduled. A can make a complaint against the advocate.

(d) A trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods.

Example: A bought a sack of cement from B who charged him Rs. 100 over and above the reserve price of the cement declared by the Government. Here A can make a complaint against B.

(e) Goods which will be hazardous to life and safety when used are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.

Example: A bought a tin of disinfectant powder. It had lid which was to be opened in a specific manner. Trader did not inform. While opening the lid in ordinary way, some powder flew in the eyes of A which affected his vision. Here A can make a complaint against the trader.

The complaint need only set out the grievances in the simplest form and furnish the name and address of the opposite party against whom the complaint is made. It may even be in the form of a letter to the concerned Redressal Forum and no formalities of any type would be insisted upon. Appearance may be by the complainant himself in person or by agent duly authorized by him. It is not obligatory to engage any advocate. Thus, it is a far more convenient law for consumers. The Act also covers complaints relating to unfair trade practices. Thus, a consumer can directly protect against food adulteration, short weighing and overcharging, directly to the District Forum. The consumer can pick up a food sample from a shop, get it analyzed by a chemist and file a complaint on that basis. It also provides for complaints against charging in excess office price of a product fixed by a law or rule and/or displayed on the packaged commodities.

3.3 UNFAIR TRADE PRACTICES

Original clause 9 (r) of Sub-section (1) of Section 2

The expression "unfair trade practices" has been defined by clause 9r) of Sub-section (1) of Section 2. In the original Act as enacted in 1986 clause 9r) simply provided that the expression "unfair trade practices" shall have the same meaning as in Section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 but shall not include unfair trade practices adopted by the owner of an undertaking to which part A of Chapter III of that Act applies or by any person on behalf of or for the benefit of such owner.

Clause (r) after 1993

Clause (r) in the present shape was substituted by the consumer protection (Amendment) Act, 1993 and further amendment by consumer protection (Amendment) Act, 2002. Unfair Trade practices given in this clause may be classified as follows:-

1. **False representation** -Sub-Clause (1) of clause (r) deals with false representation. According to this practice of making any statement whether in writing or by visible representation, will amount to false representation if it-

- (i) Falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
- (ii) falsely represents that the services are of a particular standard, quality or grade ;
- (iii) falsely represents any re-built second-hand, renovated, reconditioned or old goods as new goods ;
- (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have ;
- (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have ;
- (vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services ;
- (vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;
provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence ;
- (viii) makes to the public a representation in a form that purports to be-
 - (i) a warranty or guarantee of a product or of any goods or services ; or
 - (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out ;
- (ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly services have been provided by the person by whom or on whose behalf there presentation is made ;

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

The explanation attached to this clause provides that a statement which is -

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

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

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

2. **Bargain price** - Sub- Clause (2) deals with offer of bargain price and prohibits the trade practice which permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

The explanation attached to clause (2) explains the expression "bargain price". According to the explanation "bargain price" means -

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

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

3. **Gifts, prizes etc.** - Sub-Clause (30) deals with the unfair practices relating to gifts, prizes etc. According to this any practice of offering gifts, prizes etc. shall be unfair trade practice if it permits -

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

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

4. **Withholding of information as to final result of a scheme** - Sub - clause (3A) has been inserted by the consumer protection (Amendment) Act 2002. According to it withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme shall amount to unfair trade practice.

The explanation attached to this sub-clause provides that for the purposes of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspapers in which the scheme was originally advertised.

5. **Non-compliance with prescribed standards** - Sub-clause (4) declares a trade practice as unfair trade practice which permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods.

6. **Hoarding destruction and refusal to sell** - Sub-clause (5) deals with hoarding, destruction and refusal to sell. According to this a practice will be unfair trade practices if it permits the hoarding or destruction of goods, or refusal to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

7. **Manufacture of spurious goods** - Sub-clause (6), which has been inserted by the consumer protection (Amendment) Act, 2002, declares manufacture of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services as unfair trade practices.

3.4 RESTRICTIVE TRADE PRACTICES

The expression "restrictive trade practices" has been defined in Section 2 (1) (nnn). According to this "restrictive trade practice" means a trade practice which tends to

bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or service in such a manner as to impose on the consumers unjustified costs or restrictions and shall include-

(a) Delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price.

(b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services.

3.5 SPECIFIC SERVICES MENTIONED IN THE ACT

Banking Services

Banking services are expressly included in Section 2(1) (o). Therefore customers of a bank are consumers and in case of any deficiency of service on the part of the bank the customer is entitled to file a complaint.⁶² Any person hiring banking services for consideration comes within the definition of "consumer" under section 2(1)(d) of the consumer protection Act, 1986.⁶³

In *State Bank of India v. Shri Bairi Lingam*⁶⁴ the bank agreed to pay loan to weavers but later on refused. It was held that this act of bank was deficiency in service and complainants were entitled to file complaint.

In *Sovintorg (India) Ltd. v. State Bank of India*⁶⁵ a cheque of Rs.1 lakh was deposited by the appellant in the respondent bank. The proceeds of the cheque were collected by the bank but were not deposited in the complainant's account for about seven years. The bank contended that it was linked with the adjustment of margin money for the bank guarantee.

The State Commission directed the respondent to pay rupees one lakh with 12 percent interest with quarterly rest from the date of receipt of the amount till the date of payment. The National Commission also affirmed the order of the State Commission but the Supreme Court modified the order and allowed the payment of rupees one lakh with interest @ 15 percent with quarterly rest from the date of receipt of the amount till the date of payment. The court observed that in the circumstances of the case the payment of interest at the rate of 12 percent was inadequate.

⁶² P.Nagbhushan Rao v. Union Bank of India, 1991 (1) CPR 197 (A.P.).

⁶³ *Biratunga S.C.S. Ltd. (Mini Bank) v. Sangram Keshari Pati*, AIR 2006 Orissa 97.

⁶⁴ 1991 91) CPR 148 (N.C.).

⁶⁵ 1999 (3) CPR 56 (S.C.).

In Punjab National Bank, Faridabad v. Ashok Pipe Udyog⁶⁶ it was held that customer of a public sector bank is entitled to know and the bank is duty bound to disclose the prescribed service charges in respect of letters of credit to prevent discrimination from customer to customer.

In Pradeep Kumara Jain v. City Bank⁶⁷ the bank guaranteed the price of the car and renewal of insurance policy. The bank failed to get policy renewed and the accident happened. Award of compensation was passed against the owner of the car. The Supreme Court held that the bank cannot be liable for the loss merely because it failed to make the payment. The mere payment of premium could not automatically result in renewal of policy. An application has to be made and it has to be indicated whether any claim was received in the previous year or not and he has to furnish appropriate material as regards the valuation of the vehicle and type of the risk to be covered.

In Anumati v. Punjab National Bank⁶⁸ husband and wife had fixed deposit in Punjab National Bank in joint name with 'either or survivor' clause. The fixed deposit was pledged by the husband alone as security for loan taken by M/s Verma Trading Co. The bank adjusted the amount of fixed deposit towards that loan. The wife filed complaint in the District Forum which held that wife was entitled to half of the amount of deposit. On appeal by the bank the State Commission held that since the deposit was payable to either or survivor the bank could get it discharged by making payment to either of the two. The National Commission approved the decision of the State Commission.

Thereupon the appellant filed appeal before the Supreme Court. The court held that the fixed deposit jointly held by husband and wife could not be pledged by the husband alone. The bank could also not set off the fixed deposit against any claim in respect of one account holder without consent of the other. Either or survivor clause simply means that on maturity of the Fixed deposit the amount may be paid to either of the two. The court set aside the decision of the State and National Commission and upheld the order of the District forum with costs.

Not to open account after due enquiry or to charge service charges more than prescribed are deficiencies in service on the part of the bank. However, to charge

⁶⁶ (1992) 1 CPJ 135 (Haryana).

⁶⁷ AIR 1999 S.C. 3119

⁶⁸ AIR 2005 S.C. 29.

commission for issuing demand draft less than the rate prescribed cannot be called deficiency in service.⁶⁹

In *P. Nagbhusan v. Union Bank of India*⁷⁰ complainant had a Fixed Deposit Account with the Union Bank of India. He applied for premature payment of the amount. The bank delayed the payment. Delay in payment was held to be deficiency in service. Similarly, where inspite of sufficient amount in the account cheque was dishonoured bank was held responsible.⁷¹ Where complainant's locker was found open and jewellery missing the bank had to pay compensation.⁷² Where bank takes more than prescribed rate of service charge, it is deficiency in service.⁷³

Financing Service

Now-a-days financing institutions have gained importance because everybody wants all modern amenities immediately which are not possible for everybody to do with current income. He can do it only by taking loan and paying back by and by. Financing institutions have made it possible. Today all modern amenities are available on loan from some or the other financing institution. This service has also been included specifically in Section 2(1) (o) of the Act.

Insurance Service

Liability of insurer to insured is under the contract of insurance. No relief can be given unless his claim is covered by the terms of the policy. The court has to give meaning to terms as defined in the policy.⁷⁴ Thus where claim is made under an insurance policy against burglary and/or house breaking and burglary is defined in the policy as theft with forced or violence or threat it is not open to the court to interpret burglary in terms of criminal law.⁷⁵ In *M. Kanagavalli v. Div. Manager, L.I.C.*⁷⁶ policy lapsed for non-payment of premium of expiry of grace period, i.e. 23.4.1991. The insured took a pay order for policy on 27.4.1991 and died on 27.4.1991. Opposite party received the pay order on 30.4.1991. The claim by heirs of the insured was rejected by the State Commission and the National Commission approved the decision of the State Commission. Where premium had been paid but

⁶⁹ *Bharat Trading Co. v. Punjab and Sind Bank*, (1991) 1 comp.L.J. 306(N.C.).

⁷⁰ 1991 91) CPR 197 (St. C.).

⁷¹ *Ram Kumar v. Punjab National Bank* (1997) III CPJ 428 (Delhi).

⁷² *K.B.Shetty v. Punjab National Bank*, 1991 (1) CPR 125 (Mah.).

⁷³ *Punjab National Bank v. Ashok Pipe Udyog*, (1992) 1 C.P.J. 135.

⁷⁴ *United India Insurance Co. Ltd. v. M/s Harchand Rai Chandan Lal* 2000 AIR SCW 5481.

⁷⁵ *National Insurance Co. Ltd. v. Public Type College* 2001 (2) CPS 26 (N.C.) overruled.

⁷⁶ 2004 (1) CPR 1 (N.C.)

insurance company did not accept the proposal; and returned the amount the insurance company was held not liable as there was no subsisting contract.⁷⁷ But where in case of money back policy the deceased had written wrong date of birth in the proposal the refusal of payment was held not justified.⁷⁸ In *L.I.C. of India v. S. Venkatamma*⁷⁹ policy holder died on 14.6.1990. The life Insurance corporation was informed. The corporation in its reply did not deny nor did it sent rejection of claim. This was held to be deficiency in service and commission awarded Rs. 10,000/- though original claim was not acceptable because disease was not mentioned in the proposal.

Where there is unreasonable delay in settlement of claim it amount to deficiency in service of the insurance company.⁸⁰

Rejection of claim by insurance company on the ground that the driver was not having a valid licence at the time of the accident could not be termed as deficiency in service.⁸¹ Where a person was holding licence to drive light motor vehicle but the licence did not have specific authorization to drive a transport vehicle as required by Section 3 of the Motor Vehicles Act, 1988 the driver cannot be said to have a valid licence and the insurance company can repudiate the claim. It will not be treated as deficiency in service.⁸²

In *Life Insurance Corporation of India v. Sanjeev Mahendralal Shah*⁸³ the complainant was the husband of the deceased. The L.I.C. repudiated the claim on the ground that the deceased fraudulently suppressed the material facts while filling up proposal form. The State Commission found that neither the deceased nor her husband nor doctors and experts had any reason to suspect that the lump, which was found on the neck of the insured, had malignancy. The National Commission dismissed the appeal and observed that it is not that insured is required to disclose casual ailments not requiring any treatment or consultation with a medical doctor. The sickness or ailment which is required to be disclosed should be serious disorder in health.⁸⁴

⁷⁷ *Yattam Sessa Kumari v. L.I.C.*, (1991) 1 CPJ 12 (A.P.St.C.).

⁷⁸ *Narangji Devi Sharma v. Divisional Manager, LIC* (1992) 1 CPJ 405 (St.C.).

⁷⁹ (1992) 1 CPJ 439 (St.C.).

⁸⁰ *Narendra Kumar Laxmanbhai Savsani v. National Insurance Co.* 1993 (2) CPR 138 (Guj.St.C.).

⁸¹ *New India Assurance Co.Ltd. v. Smt.Pushpa Yashwant Ghatge* 1996 (1) CPR 38 (N.C.).

⁸² *Oriental Insurance Co. v. Ashok* 1995 (2) CPR 97 (N.C.).

⁸³ 1996 (1) CPR 129 (N.C.)

⁸⁴ *L.I.C. of India v. K. Purushothama* AIR 2007 (D.O.C.) 100 (N.C.C.)

In *L. I. C. of India v. Anuradha*⁸⁵ husband of Mrs. Anuradha had taken a life insurance policy on 8.2.1986. Premium was paid for two years. On 17.7.1988 he was at Bombay wherefrom he disappeared and was never traced. On 11.7.1988 L.I.C. sent a communication in the name of Sham prakash (Anuradha's husband) informing that the policy lapsed for non-payment of premium. On 29.6.1996 the respondent approached L.I.C. to release the benefit under the policy assuming that Sham Prakash had died. L.I.C. turned down the claim on the basis of Rule 14, which provided:

"Where a person is reported missing it is to be advised to the claimant that the life insured will be presumed to be dead after seven years or production of decree from the court of law and in the mean time policy is to be kept in force by making payment of premium regularly.

The respondent, then, approached State Commission constituted under the Jammu and Kashmir Consumer protection Act, 1987 which upheld the claim on the ground that Rule 14 was of no relevance in view of statutory presumption. The High Court also upheld her claim on the ground that L.I.C. failed to prove that Sham Lal was alive when claim was made.

The L.I.C. went in appeal to the Supreme Court which set aside the judgement of the High Court. The Court held that it could not agree with the view taken by the High Court that on the expiry of seven years by the time the issue came to be raised not only the death could be presumed but it could also be presumed that the presumed death synchronized with the date when he was reported to have disappeared or the date and time should be correlated to the time coinciding with the commencement of calculated seven years backward from the date of initiation of legal proceeding. To maintain successfully the claim of benefit it was necessary to keep alive the policy by payment of premium until the claim was made. The L.I.C. was justified in turning down the claim on the ground that policy had lapsed. All that could be paid to the claimants was the paid up value of the policy.

Transport Service

In the definition of service transport service has been specifically included. Modes of transport may be roadways, water and airways.

Section 9 of carriers Act 1865- Provides that in a suit against any carriers for loss, damage of non-delivery of goods, entrusted to him for carriage it shall not be

⁸⁵ AIR 2004 S.C. 2070.

necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to any negligence or criminal act of the carrier or its servants or agents.

Where goods are in custody of the carrier and they are damaged or lost due to negligence of the carrier the carrier cannot escape liability.⁸⁶

Notice prescribed by carriers Act 1865 will be necessary before consumer forum entertains complaint against a carrier. The fact that remedies under consumer protection Act are in addition to and not in derogation of any other law does not mean that rights under carriers Act can be exercised in disregard of the manner prescribed under Section 9 of the carriers Act.⁸⁷

Liability of common carriers may be curtailed by contract.⁸⁸ In addition to this some specific Acts, like Railways Act 1989, carriage by Air Act, 1934, also govern their liability.

In *Synco Textiles Pvt. Ltd. v. Economic Transport organisation*⁸⁹ transporter had to deliver goods to bank or its authorised agent. It could not deliver them according to conditions of the contract. Therefore a complaint was filed before Rajasthan State Commission alleging deficiency in service on the part of the Economic Transport Organisation. The State Commission did not go into the merits of the case on the ground that it was a case of breach of contract. The National Commission set aside the order of the State Commission and remanded the case to State Commission with the observation that every transaction of hiring of service may amount to a contract in the eyes of law and any deficiency in rendering service may be technically a breach of contract. Merely for that reason the complainant cannot be denied the protection of the Act.

In *Sumatidevi M. Dhanwatay v. Union of India*⁹⁰ damage was caused to the person and property of the appellant. While she was travelling in a first class coach of a train an unruly mob entered the compartment, assaulted passengers including the appellant and took away her jewellery. No steps were taken by the administration to avoid the incident. She was held entitled to damages. She was awarded compensation.

Supply of Electricity and Other Energy

⁸⁶ *Lucky Forwarding Agency v. Binder Devi* AIR 2003 M.P. 261,266.

⁸⁷ *Arvind Mills Ltd. v. M/s Associated Roadways*, AIR 2004 SCW 5915; AIR 2004 S.C. 5147.

⁸⁸ *Ishwar Iyyer & Sons v. Madras Bangalore Transport* (1964) I.L.R. 1 mad. 1997; *Indian Airlines Corporation v. Keshav Lal*, AIR 1962 Cal. 290.

⁸⁹ (1991) 1 C.P.J. 40 (N.C.).

⁹⁰ AIR 2004 S.C. 23 68.

With regard to supply of electricity common complaints are regarding wrong billing, electrocution due to breaking of wire, to stop supply without sufficient reason, improper disconnection and any other negligent damage to someone.

In *West Bengal Electricity Board v. Smt. Champa*⁹¹ wire snapped due to storm and fell in the water of a pond. The deceased tried to save some one and himself became victim of electric current. It was held that the deceased was not a consumer because he had neither purchased goods from the opposite party nor had any contractual agreement for hiring services of the opposite party.

Consumer includes all those who avail services by paying consideration or promising to pay it.⁹² Making of illegal demands by issuing bills with penalty⁹³ or taking unreasonable amount of security money⁹⁴ have been held to be deficiency in service. Similarly not to pay interest on deposits of domestic consumer⁹⁵ or recovery at enhanced rate⁹⁶ or delay in reconnection even after completion of all formalities⁹⁷ were held to be deficiencies in services.

In *Punjab State Electricity Board v. Zora Singh*⁹⁸ despite deposit of Security amount by complainant energy connection was not given by the Board. It was held that the Board was guilty of deficiency of service. The Court directed the Board to give connection and pay 9 percent interest on the deposited amount and also Rs. 5000/- as compensation.

Board or Lodging or Both

Persons, who stay and take food in any hotel or restaurant, are consumers for purposes of this Act because they use their services for consideration. For any deficiency in the services of such hotel or restaurant they can file complaint in appropriate consumer forum.

Entertainment

Persons using entertainment or amusement services for consideration are also consumers for purposes of this Act and are entitled to claim for deficiency in service against owners of such places.

Housing Construction

⁹¹ 2000 (1) CPR 51 (St.C.).

⁹² *Consumer Protection Council v. Chairman, T.N. State Electricity Board* 1992 (2) CPR 454.

⁹³ *Punjab State Electricity Board v. Jetha Sing*, 1999 (3) CPR 510.

⁹⁴ *Krishna Cement Works v. Andhra Pradesh State Electricity Board*, AIR 1979 A.P. 291.

⁹⁵ *Akhil Bhartiya Grahak Panchayat v. Ahmedabad Electricity Board* 1991(1) CPR 143 (N.C.).

⁹⁶ *Govind Bhai Karamshibhai v. Gujaraat Electricity Board*, (1992) 1 CPJ 258.

⁹⁷ *S.Narayan Swamy v. T.N. State Electricity Board* 1992 (2) CPR 73, *P. Jagdishan v. T.N. State Electricity Board*, 1997 (2) CPR 23.

⁹⁸ AIR 2006 S.C. 182.

House construction is for the benefit of the person for whom it is constructed. He can construct himself or engage a contractor. Where he gets constructed through other she avails their services for consideration and their services fare services under section 2(1) (o) of the Act and he is consumer.

In the original Section 2 (1) (o) of the Act words "housing construction" were not there. They were added by the consumer protection (Amendment), Act, 1993 but it was held in Lucknow Development Authority v. M.K. Gupta⁹⁹ that even before inclusion of "housing construction" in Section 2 (1) (o) by amendment in 1993 the house construction or building activity carried on by a private person or statutory body was a service within the meaning of section 2 (1) (o).

In this case respondent was allotted M.I.G. house He paid the whole price in July, 1988 and in August registration was completed but he was not given possession because its construction could not be completed. State Commission ordered that he should be given possession immediately and he should be paid interest @ 12 percent from January 10, 1989. The commission also awarded compensation of Rs. 10,000/- for inconvenience suffered by him. The Supreme Court affirmed the order of the Commission and ordered that compensation of Rs. 10,000/- he paid by the concerned officer.

In Brij Pal Sharma v. Ghaziabad Development Authority¹⁰⁰ appellant was allotted a plot in the housing scheme. He made full payment but due to stay order no development or construction awarded as damages and compensation interest @ 18 percent P.A. for non-allotment of plot. The Supreme Court upheld it as proper.

In Haryana Urban Development Authority v. Rajnish Chandra Sharda¹⁰¹ the respondent was not allotted plot for 12 years from 1982 to 1994 he had to live in a rented house at a rent of Rs. 1600/-per month. He claimed the amount of rent from the Development Authority The National Commission did not allow the rent but awarded 18 percent interest on the amount deposited by the respondent. The Supreme Court refused to interfere with the award of the National commission.

In Lata Construction v. Ramniklal Shah¹⁰² under a contract appellant was under obligation to provide flat to respondents. Under a subsequent a stipulated amount to respondents by the appellant. Since the appellant did not pay the stipulated amount of Rs. 9,51,000/- the respondents could claim flat by invoking the earlier

⁹⁹ AIR 1994 SC. 787,794.

¹⁰⁰ AIR 2005 S.C. 4282.

¹⁰¹ AIR 2000 SC 3573.

¹⁰² AIR 2000 SC 380.

contract before the commission. It amounts to deficiency of service under section 2 (1) (g) of the consumer protection Act.

In H.P. Housing Board v. Varinder Kumar Garg¹⁰³ the respondent was allotted a house. On payment of full amount he got possession of the house and found major defects in its construction. The house was not inhabitable unless major repairs were made. In spite of report of the architect of the Board no action was taken to remove the defects, nor for payment of Rs. 50,000/- as damages and Rs. 1000 as costs. It also directed for enquiry against erring officers.

State Commission took note of the fact that no action had been taken against concerned officers and directed for refund of Rs. 1,75,866 along with interest @18% P.A. it enhanced compensation to 60,000 and costs to Rs.5000/-

Against this decision in revision filed before National Commission, the National Commission set aside the award of compensation of Rs. 60,000 and maintained the direction for refund of the amount deposited by the respondent with interest @ 18 percent.

In appeal to the Supreme Court, the Supreme Court held that if he desires to keep the flat he will be entitled to do so and he will also be entitled to Rs.60,000 as compensation for repairing the flat. In case he does not desire to keep the flat appellant will refund Rs. 1,75,000 with interest @ 18% P.A. from the date of the deposit and in either case respondent will be paid Rs 5000/- as cost of litigation.

However, the court clarified that its order shall not be taken as precedent and in future cases Forum/Commission shall follow principles laid down in Ghaziabad Development Authority v. Balvir Singh¹⁰⁴

Newspapers and Other Sources of Information

Mistakes in contents of a newspaper or book are held to be not deficiency in service in Devanand Gehlot v. Rajasthan.¹⁰⁵ The news was that though Mr. Gehlot was a member of the bar he was no longer practicing and was running a travel company and photocopier service. The appellant alleged that as a result of this false news he suffered in practice and claimed compensation of Rs. 2 lakhs.

The National Commission held that defect in newspaper to constitute a defective 'goods' must pertain to the quality of its paper or printing. It cannot relate to the contents of the paper. Its news and views and manner of display are the exclusive

¹⁰³ AIR 2004 S.C. 4168.

¹⁰⁴ AIR 2004 S.C. 441.

¹⁰⁵ 1991 91) CPR 526.

preserve of the editor. On the other hand news and views constitute a service which the newspaper renders to readers. The news and views contained in the newspaper cannot be described as goods. Consequently, the alleged false news item about the appellant does not make the newspaper defective.

The commission further held that the contents of newspaper and truthfulness of news and views raise a most fundamental question concerning the freedom of press: who is to determine the content and whether particular news is true or false?

These questions have been raised in as much as it is the editor's responsibility to ensure that the newspapers carry no objectionable material including defamatory statements. Obviously it is for the editor to decide in his wisdom which news he would like to project and how. If he indulges in false reporting defamatory or libelous it would not lead to a deficiency in service. The freedom of news and views is very essence of freedom of press in a democratic society. In fact freedom to report what the editor considers appropriate makes for the quality of service not deficiency therein. It is consequence of newspaper man's professional hazards that he may in the process of reporting or commenting fall foul of other laws like law of defamation or press objectionable matter Act on trivial matters he was directed to pay Rs. 100 by way of costs to the respondent.

In *Sahitya Pravartak Society v. K.N. Narayanana Pillai*¹⁰⁶ the petitioner was a publishing company. The complaint was filed by the respondent consumer protection council through its president of behalf of T.S. Benugopal who had purchased encyclopedia. Mr. Venugopal found certain mistakes in it and alleged that it was defective as defined in section 2(1) (f) and the opposite party was guilty of unfair practice. The National Commission held that the dispute did not fall within the scope of the Act. Though the books published were goods there was no defect in printing or binding of books. the commission observed that there is no law by or under which mistakes in the encyclopedia will amount to defect, nor was there any express or implied contract in that behalf Referring to leaflet issued by the publisher the commission observed that it nowhere mentioned that the information was authentic. It only mentioned that it was a project of 2000 learned scholars in various subjects. The opposite party published it on the basis of information received from various scholars. We fail to understand how publisher can be held liable if any mistake occurs in the subject matter, the commission said.

¹⁰⁶ 1996 91) CPR 161.

Medical Services

There has been controversy about the liability of medical staff or hospital in cases of failures in treatment, as such failure depends on factors still beyond the control of the human beings and to impose liability on the doctor might prove to be injurious to the patient and the society, because the doctor may be overcautious and may not try to the best of his capabilities. On the other hand, the doctors cannot be allowed to be negligent in treatment and patient should be entitled to recover for loss suffered due to negligence of the medical staff. Law must, therefore, decide where the line is to be drawn to fix liability.

In *Cassidy v. Ministry of Health*¹⁰⁷ it was established that hospital authorities are liable for negligence of medical staff. Lord Denning held that "the hospital authority is liable for the negligence of professional men employed by the authority under contracts for service as well as contracts of service." The liability depends upon the negligence of the hospital staff. Recently, quoting with approval Lord Denning's statement the Supreme Court of India has also held that a hospital shall be liable for negligence of doctors, whether they are on contract of service or contract for service. Doctors, who are on the staff of the hospital, are on contract of service and whose services are availed from time to time, are called doctors on contract for services. For purposes of hospital's liability no distinction can be made between the two categories of doctors.¹⁰⁸ Where the harm is not caused such cases the problem arises how to prove the negligence on the part of the medical staff.

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 purposes. Such a person when consulted by a patient owes him certain duties namely a duty of care in deciding what treatment is to be given and administration of the treatment.¹⁰⁹ In *A.S.Mittal v. State of U.P.*¹¹⁰ the Supreme Court said:

"The approach of the Court is to require that the 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."

¹⁰⁷ (1951) 2KB 343.

¹⁰⁸ *Savita Garg v. Director, National Hear Institute*, 2004 AIR SCW 5820; AIR 2004 S.C. 5088, at 5094-95.

¹⁰⁹ *Laxman Bal Krishnan Joshi v. Dr. Triambak Babu Godbole* (1969) 1 SCR 206; AIR 1969 SC 128 Para 11.

¹¹⁰ AIR 1989 SC 1570.

In *Achutrao Haribhau Khodwa v. State of Maharashtra*¹¹¹ the Supreme Court held that the skill of a medical practitioner differs from doctor to doctor. The very nature of profession is such that there may be more than one treatments which may be advisable for treatment of a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to course of action to be taken by a doctor treating a patient but as long as a doctor acts in a manner, which is acceptable to the profession, and the court finds that he has attended on the patient with due care, skill and diligence and if the patient still does not survive or suffers a permanent ailment it would be difficult to hold the doctor guilty of negligence.

Mc Nair J. also held in *Bolam v. Friern Hospital Management Committee*¹¹² that a doctor is not guilty of negligence if he has acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art.

Where no negligence is proved on the part of the doctor and hospital staff compensation may be denied. In *Vinitha Ashok v. Lakshmi Hospital*.¹¹³ The appellant gave birth to a child on 6.6.1989 and on 3.2.1990 again she was pregnant. She went to the hospital for termination of pregnancy. In the process it was found that it was a case of cervical pregnancy and her uterus had to be removed. The appellant filed a case before the National Commission for compensation of Rs. 25 Lakhs. The commission came to the conclusion that the respondents acted with due care, circumspection and professional skill and competence and there was no negligence on their part. On appeal to the Supreme Court against the order of the National Commission under section 21 of the Act the Supreme Court affirmed the decision of the Commission and dismissed the appeal.

But where an injection, which was meant to be given intra-muscular, was given intra-venous and as a result of which her condition deteriorated and she ultimately died, it was held that there was negligence on the part of the hospital staff. Her legal heirs were awarded compensation of Rs.99000/-¹¹⁴

Free medical service

¹¹¹ AIR 1996 SC 2377.

¹¹² (1957) 2 All E.R. 118 also see *Sidaway v. Board of Governors of Bethlem Royal Hospital*, (1985) 1 All ER 643 and *Rogers v. Whitaker*, (1992)109 ALR 625; (1993) 67 Aus. L.J.R. 47.

¹¹³ AIR 2001 SC 3914.

¹¹⁴ *bholi Devi v. State of J&K*, AIR 2002 J&K 65. *Fakir Mohan Bhuyan v. G.C.Pothal* 1999 (1) CPR 140 (St.C.Orissa) where it was held that services rendered by government hospital are not services for consideration.

Section 2(1)(o), which defines "service", expressly excludes the rendering of and service free of charge or under a contract of personal service. Thus medical practitioner rendering service to patient by way of consultation, diagnosis, and treatment both medical and surgical fall within the ambit of "service" in Section 2 (1) (o) except where the doctor renders services free of charge to every patient or under a contract of personal service. The term "contract of personal service" was explained by the Supreme Court in *Indian Medical Association v. V.P. Shantha*.¹¹⁵ It was held that the expression contract of personal service is not limited to contract of employment of domestic servants only. It would include employment of medical officer for rendering medical services to the employer. Services rendered by such medical officer to his employer would not be service as defined in section 2(1)(o). No doubt, the relationship between medical practitioner and his patient is of mutual confidence and there for services rendered by him may be treated as personal services, but where there is no relationship of employer and employee the services cannot be treated as services under contract of personal service. In fact they are under a contract for services. His services are, therefore, not exempted under Section 2 (1) (o).

But doctors and hospital rendering services free of charge to all patients are not covered by Section 2(1)(o). Mere receipt of salary by medical practitioner from hospital administration or its being charged on consolidated fund does not make it service under Section 2 (1)(o). Where, however, doctor/hospital treat some patients free of charge, such as poor, but charge from others both types of services rendered by the doctor hospital will be treated as service under Section 2(1)(o). The object of the Act is protection of interest of consumers as a class. Any other interpretation would mean that the Act is intended to protect only those, who are able to pay. Certainly it could not be the intention of the legislature.

In *Rajbai (Smt.) v. M.P. Shasan Sachiv, Lok Swasthya Avam Pariwar Kalyan Vibhag*¹¹⁶ complainant had already 5 children. She underwent family planning operation in 1988 in family planning camp. Her allegation was that her operation was unsuccessful and after the operation 3 more children were born to her. She claimed rupees ten lakhs as compensation, It was held that in family planning camps operations are performed free of cost. To the contrary some incentive is also given. Therefore, she cannot be consumer under Section 2(1)(d) of the Act.

¹¹⁵ AIR 1996 SC 550.

¹¹⁶ 1999 (1) CPR 619.

Where medical practitioners treat the patients and payment is made by insurance company under Medicare policy or by an employer under conditions of service the service is not free of charge.

Medical service rendered by railway hospital to railway employees and their dependents is not free service it is part of conditions of service of railway employees.¹¹⁷

Denial of medical service and Human Rights

The Supreme Court in its historical Judgement in Parmanand Katara v. Union of India¹¹⁸ held that under Article 21 of the constitution it is the legal duty of the central and State Governments and private doctors that every injured person brought for medical treatment should, instantaneously, be given medical help to preserve life and thereafter Procedural Criminal Law be allowed to operate in order to prevent negligent death. In this case a scooter driver was injured in an accident. He was brought to a nearby hospital. There he was refused treatment on the ground that it was a medico legal case and he should go to specified hospital which was 20 Km. away. He died. The Court said that without caring for requirements of criminal procedure government or private doctors should protect his life.

In Paschim Banga Khet Mazdoor Samiti v. State of West Bengal¹¹⁹ a member of the Samiti was seriously injured as he fell down from the train. he was taken to government hospitals in Calcutta but there being no vacancies he was taken to a private hospital and even after spending Rs.1700/- he died. Referring to its decision in parmanand katara's case the Supreme Court directed the State to pay compensation of Rs.25,000/-.

It must be remembered that these decisions are not under consumer protection Act. For such cases remedy can certainly be given under the constitution and probably under law of torts but not under the consumer protection Act, as it stands today, because they cannot be said to be consumer as defined in Section 2(1)(d).

Maintability of case in both Consumer Fora and Motor Accidents Tribunal

Where accident happened due to negligence of driver of a motor vehicle and the person injured was admitted in a hospital where due to negligence in treatment he developed fat embolism syndrome. For treatment of fat embolism respiratory

¹¹⁷ Laxman Thamappa Kotgiri v. G.M. Central Railway (2005) 2 SLT 387. Cited in Monthly Digest 9S.C.) of Jan. part of AIR 2006. Indian Medical Association v. V.P.Shantha, (1995) 6 SCC 651.

¹¹⁸ AIR 1989 SC 79.

¹¹⁹ 919960 4 S.C. 37 Leela Bai v. Sebastian, AIR 2002 Ker. 262.

support is necessary but that was not available as ventilator was not functioning. Hospital was held liable for death of the injured.¹²⁰

It was held that two causes of action were separate and required to be decided by different tribunals/fora. For negligence of hospital in treatment complaint was filed in consumer forum but for accident arising out of negligence of other vehicle complaint could be filed before Motor Accents Tribunal.

Postal Services

Everybody has right to avail postal services for prescribed consideration and such person is a consumer under the Act. As such he can file a complaint in case of any deficiency in postal service. In *Koku Rajendra Prasad v. Union of India*¹²¹ for admission to post-graduate classes the complainant had sent a postal order for Rupees 50/- to Jawahar Lal Nehru University. Due to negligence of postal department it did not reach the University and was mis-delivered back to the sender. The complainant alleged that because of the negligence of the department his one academic year has been spoiled and claimed Rs.50,000/- as compensation. He was awarded Rs. 2000/- compensation and Rs. 2000/- as cost of appeal.

Similarly, where telegram was sent but did not reach the addressee¹²² and where registered letter was sent but the addressee refused to take the delivery and this was not noted by the postman,¹²³ it was held that there was deficiency in service.

In *sub-post Master, post office, Rewari, Vinod Kumar*¹²⁴ complainant had sent Rs.400/-by money order which was delivered to some other person, not the addressee. The District Forum ordered for payment of Rs.400/-with 12 percent interest thereon. The Haryana State commission in appeal upheld the order to the District Forum and dismissed the appeal.

In *Surinder Sing v. Post Master General, panaji*¹²⁵ money order was not delivered in time the post office was held liable. Similarly, where father sent telegraphic message to his son but was not delivered in time the post office was held liable.¹²⁶

Telephone Services

Telephone Department also provides services for consideration and person availing telephone service is a consumer under Section 2(1)(d) of the Act. He can claim

¹²⁰ *Smt.Gitu Sapra v. Dr.B.L.Kapoor Memorial Hospital*, 2006 (4),ALJ 213.

¹²¹ 1991 (1) CPR 299 (A.P.St.C.).

¹²² *T.K. v. Supdt.Telegram and Traffic* 1991 (2) CPR 175.

¹²³ *Ram Gopal v, Director, Postal Services*, (1997) II CPJ 187.

¹²⁴ 1996 (1) CPR.444 (Haryana St.C.).

¹²⁵ 1991 (1) CPR 430 (goa St.C.).

¹²⁶ *Telegraph Master (o) Belgaum v. E.F.D'silve*, 1991 (2) CPR 105 (Karnataka St.C.).

redress for any deficiency in service. Usual complaints against Telephone Department are not to give connection in order of priority,¹²⁷ not to allow rebate¹²⁸ or excess billing.¹²⁹

Disconnection-Under certain circumstances disconnection of telephone may be justified. For instance where the telephone bill remains unpaid or telephone is misused. Thus, where telephone was transferred from ground floor to first floor without taking permission from the department disconnection was held to be justified.

In *Kishan Lal v. Union of India*¹³⁰ complainant's telephone was disconnected because bill of the telephone in the name of his son was not paid. The State Commission held that in such cases Indian Telegraphic Rule 443 will be applicable and therefore disconnection of his telephone was not unjustified. However, later cases do not support this view. In *Dr. B.V. Manek v. Mahanagar Telephone Nigam, Ltd.*¹³¹ It was held that subscriber in Rule 443 means a person or firm who has subscribed and would not include relation or servant who has independent connection. Department cannot disconnect telephone of a relation of subscriber for default committed by such subscriber. In this case the default was in respect of the telephone in the name of V.N. Manek, Plaintiff's father. Payment was not made inspite of notice. Thereupon, M.T.N.L. issued a notice that if V.N. Manek failed to clear his dues telephone of his son will also be disconnected. Department contended that the plaintiff's phone was under use by V.N. Manek and his family and Rule 443 permits them to disconnect/. The Court ordered the defendants to reconnect plaintiff's phone within a week.

In a similar situation in *Y. Pridhvi Kumar av. General Manager, Telecom District Hyderabad*¹³² it was held that disconnection of telephone of son would be arbitrary, unreasonable and violative of Article 14 of the constitution.

In *Rameshwar Dayal Jain v. D.M. Telephone, Rohtak*¹³³ in spite of registered notice served by the department bill was not paid. It was held that disconnection was not unjustified. Disconnection of telephone is a serious step and must not be

¹²⁷ *Union of India v. Thakorebhai* 1991 (2) CPR 221 (GujSt.C.).

¹²⁸ *Telecom Div. Engineer v. Bhagwati prasad* (1991) 2 CPR 658 (M.P.St.C.).

¹²⁹ *S.D.O. Telephone v. Premraj* (1992) 11 CPJ 688.

¹³⁰ 1992 (1) CPR 17 9St.C.).

¹³¹ AIR 1996 Bom.53. Also see *Om Prakash Sharma v. T.D.M., O.C.J. No. 447 of 1993* decided on 5/4/93 and *panchanan Misra v. Union of India, O.C.J. No. 1886 of 1993* decided on 14/4/93.

¹³² AIR 1993 A.P. 131. Also see *Smt. Kishan Kumar v. Delhi Mahanagar Telephone Nigam Ltd., 1989 Rajasthan, L.R. 393 (D.B.)*

¹³³ 1993 (3) CPR 437 (St.C.).

resorted to lightly. It is an essential service today and disconnection may put the customer in great hardship and inconvenience and irreparable loss may be caused. Therefore, in *Santosh Singh v. Divisional Engineer, Telephones, Shillong*¹³⁴ it was held that before disconnection it is necessary to serve notice upon the subscriber. This view has been accepted in several cases¹³⁵ but in *G.M. Telephones, Faridabad v. D.K. Singh*¹³⁶ the national Commission differed from the view that it is mandatory to serve the notice before disconnection. According to the Commission Rule 443 of Indian Telegraph Rules 1951 specifically entitles the department to disconnect without notice once the bill has been served and there has been default in payment of such bill. In *The Accounts officer, telecom district Engineer Bankura v. Krishna Trading Co.*¹³⁷ the complainant had two telephone connections. Bill in respect of one of them was not paid and for non-payment both telephones were disconnected. It was contended by the complainant that each connection is governed by separate agreement and due to non-payment of the bill of one connection the other phone could not be disconnected. Referring to Rule 443 of Indian Telegraph Rules, this contention was dismissed by the National commission.

However, there is a departmental Circular of February 7, 1992 requiring registered notice in addition to telephone reminder, before disconnection telephone. In *Larsen and Toubro Ltd. v. Pophale Nursing Home*¹³⁸ the complainant fixed electronic telephone system in his room but it was not functioning properly as calls were not coming. It was held that if purchased telephone set does not function properly it will not be treated as deficiency in service.

Where registration of telephone is cancelled the money deposited must be returned. Not to refund the deposit will be treated as deficiency in service.¹³⁹ Unreasonable delay in transfer of telephone,¹⁴⁰ disconnection of telephone without notice¹⁴¹ or delay in giving STD connection¹⁴² has been held to be deficiency in service. Similarly, where complainant's telephone was without STD connection but in the bill S.T.D. calls were added it was held to be deficiency in service and complainant

¹³⁴ AIR 1990 Gau.47.

¹³⁵ V.P.Mehta v. Mahanagar telephone Ltd. AIR 1990 Del. 169; Devinder Mittal v. G.M. Telecom. Faridabad (1994) 11 CPJ 356 (Har.St.C.).

¹³⁶ 1995 (2) CPR 510 (N.C.).

¹³⁷ (1999) II CPJ 29 (N.C.).

¹³⁸ 1992 (2) CPR 132 (N.C.).

¹³⁹ Dr. Sudha Parikh v. Union of India, 1992 (2) CPR 523 (St.C.).

¹⁴⁰ D.E.C.F., Calcutta Telephone v. Hari Prakash Gupta, 1992 (2) CPR 574; Commercial officer

¹⁴¹ D.E.C.F. Calcutta Telephone v. Hari Prakash Gupta, 1992 (2) CPR 574.

¹⁴² Vijaya Sethi v. Divisional Manager Telephone, 1997 1 CPR 103 (N.C.).

was not bound to pay for STD Calls.¹⁴³ Where mobile phone service was disconnected because balance outstanding was not paid it was held that there was not deficiency of service.¹⁴⁴

Telephone Directory- Rule 452 of the Indian Telegraph Rules provides for supply of directory to subscribers free of charge. There is no mention of period after which new directory should be published but the National commission in *Telecom District Manage, Hissar v. Dev Raj*¹⁴⁵ realising difficulty to consumers when directory is not published for a long time, directed that as far as possible it must be published after every two years. If during that period large number of changes are made Department should publish an addenda.

Education

Education is the most valuable service provided by the State or private institutions. Education to children from 6 to 14 years has now been provided in Article 21A as fundamental right, whereas to children up to 6 years it is still a directive principle under Article 45. Article 41 also directs the State to secure right to education within the limits of its economic capacity. Equal opportunity in matters of admission subject to certain specific restrictions is also guaranteed by Article 14 and 29 (2).

The question naturally arises whether education is a service under the consumer protection Act and whether a student can complain before a consumer disputes redressal forum. The law is not very clear on this point

In *Monisha Samal (Smt.) v. Sambalpur University*¹⁴⁶ it has been held that conduct of examination and publication of result are services under the Act and the students appearing in examination are consumers. Maharashtra State Commission also held that a student is essentially a consumer of services in an educational institution. Therefore when there is no service there is no right with the college to appropriate fees.¹⁴⁷

In *Tilak Raj v. Haryana School Education Board*¹⁴⁸ also the State commission held that though education has not been included expressly in the definition of service in Section 2(1)(o) there does not seem to be any logical reason for excluding education from the ambit of the definition of service. A similaar view has been

¹⁴³ P.K. Goel v. G.M. Telephone Jaipur (1992)1 CPJ 69 (Raj.St.C.).

¹⁴⁴ P.N. Shetty v. Bharti Celluar Ltd, AIR 2007 (D.O.C.) 115 (Kar.).

¹⁴⁵ 1994 91) CPR 705 (N.C.).

¹⁴⁶ (1991) 11 CPJ 373, 376 in appeal (1992) 1 CPJ 231, 232 National commission also accepted.

¹⁴⁷ Able Pacheco Gracias v. Principal Bhartiya Vidya Pith College of Engineering, (1992) 1 CPJ 105 (Mah.St.C.).

¹⁴⁸ (1992) 1 CPJ 76 (Har.St.C.).

expressed in *Maharshi Dayanand University Rohtak v. Shakuntala Chowdhary*¹⁴⁹ and *Kurukshetra University v. Vinaya prakash Verma*.¹⁵⁰

In *S. Venkatapathy v. The Principal, Adhiyaman College of Engineering*¹⁵¹ the Tamil Nadu State Commission has also held that the education is one of the most valuable services in the human society. It is rendered for consideration in the form of fee and the complainants are, therefore, consumer within Section 2(1) (d) of the Act. The Delhi State commission has also held that imparting of education for consideration is covered by the expression "service" in Section 2(1)(o) of the Act.¹⁵²

However, Calcutta High Court in *Nirmal Taneja v. Calcutta District Forum*¹⁵³ has expressed a different view and held that education was not covered by the expression "service" in Section 2(1) (o).

In *Kumari Seema Bhatia v. Registrar Rajasthan University*¹⁵⁴ Rajasthan State commission also held that examination, evaluation of answer books and declaration of result and re-evaluation of answer books do not constitute service within Section 2(1)(o). The decision was approved in appeal by the National commission. However, in *Bhupesh Khurana v. Vishwa Budha Parishad*¹⁵⁵ the National commission has held that imparting of education by educational institutions for consideration falls within the ambit of service as defined in the Act.

3.6 TERMINAL QUESTIONS

1. Which mode of transport of included in Transport service?

- a. Roadways
- b. Waterways
- c. Airways
- d. All of the above

2. Specific Services mention in Section 2(1)(o) are_____.

- a. Banking service
- b. Financing service

¹⁴⁹ 1993 (1) CPR 274 (Har St.C.).

¹⁵⁰ (1993) II CPJ 647 (651).

¹⁵¹ 1993 (1) CPR 595 (St.C.).

¹⁵² *Apeejay School v. M.K.Sangal*, 1993 (2) CPR 62 (Del.St.C.).

¹⁵³ (1992) II CPJ 591 (Cal.H.Ct.).

¹⁵⁴ (1992) II CPJ 899 (Raj.St.C.). Also see *Society of Civic Right v. Union of India*, 1991 (1) CPR 104 (N.C.).

¹⁵⁵ (2001) I CPJ 74 (N.C.).

- c. Insurance service
 - d. All of the above
3. Pradeep Kumara Jain v. City Bank case is related to _____.
- a. Financing service
 - b. Transport service
 - c. Banking service
 - d. Insurance service
4. Which famous case deals with medical service?
- a. Cassidy v. Ministry of Health
 - b. Sahitya Pravartak Society v. K.N. Narayana Pillai
 - c. Devanand Gehlot v. Rajasthan
 - d. Lata construction v. Ramniklal Shah
5. Education to children from _____ to _____ years has now been provided in Article 21A as fundamental right.
- a. 5 to 11
 - b. 6 to 14
 - c. 7 to 12
 - d. 6 to 12
6. Which of the following does not constitute service?
- a. Evaluation of Answer Books
 - b. Declaration of result by University
 - c. Re-evaluation of Answer Books
 - d. All of the above
7. _____ of the Indian Telegraph Rules provides for supply of directory to subscribers free of charge.
- a. Rule 452
 - b. Rule 451
 - c. Rule 450
 - d. None of the above

3.7 ANSWER TO CHECK YOUR PROGRESS

1. d. All of the above

2. d. All of the above
3. c. Banking service
4. a. Cassidy v. Ministry of Health
5. b. 6 to 14
6. d. All of the above
7. a. Rule 452

3.8 KEY WORDS

- i. **Banking Service**- The various ways in which a bank can help a customer, such as operating accounts, making transfers, paying standing orders and selling foreign currency.
- ii. **Medical Service**- is the diagnosis, treatment, and prevention of disease, illness, injury, and other physical and mental impairments in humans. Health care is delivered by practitioners in medicine, optometry, dentistry, nursing, pharmacy, allied health, and other care providers. It refers to the work done in providing primary care, secondary care, and tertiary care, as well as in public health.
- iii. **Education**- Education is a systematic process through which a child or an adult acquires knowledge, experience, skill and sound attitude. It is the process of becoming an educated person.
- iv. **Arbitrary**- Determined by chance, whim, or impulse, and not by necessity, reason, or principle. It is based on or subject to individual judgment or preference.
- v. **Tribunal**- A *tribunal* is like a court, which is appointed to adjudicate in a particular matter.

3.9 SUGGESTED READINGS

- Gurjeet Singh ,1994, "The Concept of Contract of Personal Service under The C.P.Act, 1986." In: Con. Pro. & Trade Practices Journal, Vol.2,No. 3 (March)
- Pushpa Girimaji (1993): "Most Consumers Ignorant of Rights."
- O. P. Tiwari, Consumer Protection Act (1) 1996.
- "Applicability of Consumer Protection Act to Banking Sector" Consumer Protection Journal,
- Gurjeet Singh (1996): The Law of Consumer Protection in India: Justice With Reach, New Delhi: Deep & Deep Publication.

UNIT-IV

FORAS FOR COMPLAINT UNDER CONSUMER PROTECTION ACT, 1986

STRUCTURE:

- 4.1 Introduction
- 4.2 Fora under Consumer Protection Act
- 4.3 Rights of the Consumers
- 4.4 Judicial trends
- 4.5 Terminal Questions
- 4.6 Answer to check your progress
- 4.7 Key words
- 4.8 Suggested readings

OBJECTIVES:

After going through this Unit you should be able to understand:

- Fora for complaint under Consumer Protection Act, 1986
- Various rights of consumer
- Judicial trend regarding rights of the consumers

4.1 INTRODUCTION

The greatness of the Consumer Protection Act, 1986 lies in its flexible legal framework, wider jurisdiction and inexpensive justice. One can find in the Consumer Protection Act, 1986 a mixture of principles of torts and contracts. Simply speaking, it is “a shorthand term to indicate all the many different aspects of general law.” Basically, the Consumer Protection Act, 1986 liberalizes the strict traditional rule of standing and empowers consumers to proceed under the CPA. Consumer groups, the central or any state government are all empowered to lodge complaints under the CPA. This liberalization shows the care that has been taken to represent and fight for the cause of weak, indifferent and illiterate consumers. The novelty of the CPA is the inclusion of both goods and services within its ambit. The consumer can bring suit for defective products as well as for deficiency of

services. In the event of any deficiency, all services, whether provided by the government or private companies, can be questioned under the CPA.

The CPA also liberalized rigid procedural requirements and introduced simple and easy methods of access to justice. To proceed under the CPA, the consumer need only pay a nominal fee and need not send any notices to the opposite party. A simple letter addressed to the consumer forum draws enough attention to initiate legal action. Another major procedural flexibility is the option the consumer has to engage a lawyer. If the consumer prefers, he can represent himself. The simple measures of action drive consumers to avail themselves of the benefits of the CPA.

The CPA initiated a legal revolution by ushering in the era of consumers and developing a new legal culture among the masses to take recourse under the CPA regardless of their grievance. The Consumer Disputes Redressal agencies, the National Commission, the State Commission, and the District Fora are working together in a way that is revolutionizing the present Indian legal system and challenging the traditional system of delivering justice. With easy access to the courts guaranteed by the CPA, consumers now wage legal battles against unscrupulous traders or service providers without any hesitation. The Indian government is also taking an active interest in protecting consumer rights and promoting effective consumer movements. In 2003, the Planning Commission of India identified "Consumer Awareness, Redressal, and Enforcement of the Consumer Protection Act of 1986" as a priority, and as a result, a national action plan was prepared.

The consumer fora created by the CPA have proven to be effective, disposing of thousands of cases with few legal formalities, and leading the way toward well-founded consumer jurisprudence in India. The traditional Indian legal system, in addition to a huge backlog of cases, is experiencing a litigation explosion in the area of consumer protection. The huge backlog of consumer cases before consumer fora is forcing the Indian legal systems to think of "alternatives" for speedy disposal of consumer cases. India, home to the majority of the world's consumers, is committed to working for the welfare of consumers through new legal innovations.

4.2 FORA UNDER CONSUMER PROTECTION ACT

The Consumer Councils are created to advise and assist the consumers in seeking and enforcing their rights. We have Consumer Protection Councils both at Centre level and State level that is one Central Council and many State Councils. These councils work towards the promotion and protection of consumers. They make investigations and give publicity to the matters concerning consumer interests, take steps towards furthering consumer education and protecting consumer from exploitation, advice the Government in the matter of policy formulation keeping consumer interest as pivotal concern, etc. Although, their suggestions are recommendatory in nature, but they have significant impact in policy making.

While deciding about the composition of these councils, the State keeps in mind that it should have proper representation from all the possible areas affecting consumer interests. Again the rules as to when should these councils meet, what should they aim at, how they conduct their business are framed by the Government with a view to balance the efficacy and practicability of its business.

The Central Consumer Protection Council

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

(2) The Central Council shall consist of the following members, namely,-

(a) the Minister in charge of 1[consumer affairs] in the Central Government, who shall be its Chairman, and

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

Procedure for meetings of the Central Council

(1) The Central Council shall meet as and when necessary, but 1[at least one meeting] of the council shall be held every year.

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

Objects of the Central Council

The objects of the Central Council shall be to promote and protect the rights of the consumers such as-

- (a) the right to be protected against the marketing of goods 2[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 1[or services, as the case may be], so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, 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 1[or restrictive trade practices] or unscrupulous exploitation of consumers; and
- (f) the right to consumer education.

The State Consumer Protection Councils

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

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

- (a) the Minister in-charge of consumer affairs in the State Government who shall be its Chairman;
- (b) such number of other official or non-official members representing such interests as may be prescribed by the State Government.

(3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

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

Objects of the State Council

The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of section 6.

The judicial machinery set up under the Consumer Protection Act, 1986 consists of consumer courts (forums) at the district, state and national levels. These are known as District forum, State Consumer Disputes Redressal Commission (State Commission) and National Consumer Disputes Redressal Commission (National Commission) separately.

1. District Forum

This is established by the state governments in each of its districts.

Composition: The district forums consist of a Chairman and two other members one of whom shall be a woman. The district forums are headed by the person of the rank of a District Judge.

Jurisdiction: A written complaint can be filed before the District Consumer forum where the value of goods or services and the compensation claimed does not exceed Rs. 20 lakh.

Appeal: If a consumer is not satisfied by the decision of the District forum, he can challenge the same before the State Commission, within 30 days of the order.

2. State Commission

This is established by the state governments in their respective states.

(a) **Composition:** The State Commission consists of a President and not less than two and not more than such number of members as may be prescribed, one of whom shall be a woman. The Commission is headed by a person of the level of High Court judge.

(b) **Jurisdiction:** A written complaint can be filed before the State Commission where the value of goods or services and the compensation claimed exceeds Rs. 20 lakh but does not exceed Rs. One crore.

(c) **Appeal:** In case the aggrieved party is not satisfied with the order of the State Commission he can appeal to the National Commission within 30 days of passing of the order.

3. National Commission

The National commission was constituted in 1988 by the central government. It is the apex body in the three tier judicial machinery set up by the government for redressal of consumer grievances.

(a) **Composition:** It consists of a President and not less than four and not more than such members as may be prescribed, one of whom shall be a woman. The National Commission is headed by a sitting or retired judge of the Supreme Court.

(b) **Jurisdiction:** All complaints pertaining to those goods or services and compensation whose value is more than Rs. one crore can be filed directly before the National Commission.

(c) **Appeal:** An appeal can be filed against the order of the National Commission to the Supreme Court within 30 days from the date of order passed.

It may be noted that in order to attain the objects of the Consumers Protection Act, the National Commission has also been conferred with the powers of administrative control over all the State Commissions by calling for periodical returns regarding the institution, disposal and pending of cases and issuing instructions for adoption of uniform procedures, etc.

4.3 RIGHTS OF THE CONSUMERS

There is one basic thought that 'consumers need to be protected'. Another thought is - how he can be protected? Definitely, there has to be some agency to work towards this protection. The Act has provided for constitution of Consumer Councils for this purpose. Now, when we say that these councils are there to protect the consumers, a question arises - consumers are protected against what? Thus the Act has detailed some rights of consumers which need to be protected by the councils. These are:

(a) Right to be assured of competitive price of goods and service

Under section 6 (c) every consumer has a right to be assured wherever possible, access to variety of goods and service at competitive price. Very often it happens that because of monopoly over certain goods or services high prices are fixed arbitrarily and consumers are compelled to pay. The same thing happens when traders organize themselves and do not allow the sufficient quantity of goods to come in the market to maintain high prices. It is the duty of the Consumer Protection Council to protect the consumer from such practices and make available goods in the sufficient quantity.

(b) Right to Safety

Right to Safety means right to be protected against the marketing of goods and services, which are hazardous to life and property. The purchased goods and services availed of should not only meet their immediate needs, but also fulfill long term interests. Before purchasing, consumers should insist on the quality of the products as well as on the guarantee of the products and services. They should preferably purchase quality marked products such as ISI, AGMARK, etc.

(c) Right to be informed

Right to be informed means right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices. Consumer should insist on getting all the information about

the product or service before making a choice or a decision. This will enable him to act wisely and responsibly and also enable him to desist from falling prey to high pressure selling techniques.

The key aspects of this right are:

- The right to be given the facts needed to make an informed choice, to be protected against misleading advertising or labeling.
- The responsibility to search out and use available information.
- To read and follow labels and research before purchase

Consumer should insist on getting all the information about the product or service before making a choice or a decision. This will enable him to act wisely and responsibly and also to desist from falling prey to high-pressure selling techniques. Without information on quality, quantity, potency, purity, standard and price of goods and services, consumers would not be able make the right decisions and protect themselves from abusive practices. Various interpretations of Article 19 (2) of fundamental rights clearly state that there should be a definite policy or uniform guidelines on the part of the state to help consumers make “informed choice”.

The new Right to Information (RTI) Act is expected to have far reaching implications for the right to information of the consumer. After many deliberations over the years, the RTI Right to Information is a key enabler of good governance, and a tool to ensure transparency and accountability in the government. It also helps ensure participation of public in governance, eliminate corruption and empower the people. It gives the citizen the right to seek information and makes it binding on the officials to store and make the information easily available to the consumers.

(d) Right to Choose

This right means right to be assured, wherever possible of access to variety of goods and services at competitive price. In case of monopolies, it means right to be assured of satisfactory quality and service at a fair price. It also includes right to basic goods and services. This is because unrestricted right of the minority to choose can mean a denial for the majority of its fair share. This right can be better exercised in a competitive market where a variety of goods are available at competitive prices.

The key elements of this right are:

- The right to choose products and services at competitive prices with an assurance of satisfactory quality.
- The responsibility to make informed and responsible choices.

In spite of a fair amount of legislation and other safeguards, the right to choice of the Indian consumer is far from realized. At the micro level, the individual is duped each and every day by dishonest traders, forced to buy items s/he does not require as part of tied- selling, and cheated by wrong weights and poor quality. Consumers in many parts of the country are deprived of supply of electricity, good roads, proper transport and other public services and utilities.

(e) Right to be Heard

Right to be Heard means that consumer's interests will receive due consideration at appropriate forums. It also includes right to be represented in various forums formed to consider the consumer's welfare. The consumers should form nonpolitical and non-commercial consumer organizations which can be given representation in various committees formed by the Government and other bodies in matters relating to consumers.

The main aspects of the right are:

- The right to express consumer interests in the making of decisions.
- The responsibility to make opinions known.
- To join an association such as the Consumer Council to make their voice heard and to encourage others to participate. Effective consumer representation ensures that the needs of all people are taken into consideration in policy formulation that directly affects their lives. By magnifying the voice of the individual, representation contributes to good governance and the achievement of social justice. It affords better and more durable decisions. Consumer associations have used these guidelines to promote legislation enabling them to seek representation in the courts, in the law-making process, and in the implementation of regulatory regimes. Some of the consumer organizations are actively participating at policy making platforms through websites, consultations and meetings. However, despite the existence of a number of administrative as well as organizational tools, the implementation of consumer's right to representation faces several drawbacks.

The consumer movement in the country has not developed to the size and reach, which is required to serve the vast country and its huge population. Furthermore, a majority of consumer organizations are mostly confined to cities and urban areas. They are not being able to penetrate deep into society where the majority of poor, low-income and disadvantaged consumers live.

(f) Right to Seek Redressal

This right means right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers. It also includes right to fair settlement of the genuine grievances of the consumer. Consumers must make complaint for their genuine grievances. Many a times their complaint may be of small value but its impact on the society as a whole may be very large. They can also take the help of consumer organizations in seeking redressal of their grievances.

The key aspects are:

- The right to be compensated for misrepresentation, shoddy goods or unsatisfactory services.
- The responsibility to fight for the quality that should be provided.
- To complaint effectively and refusing to accept shoddy workmanship.

The right to seek redress is set out in the Preamble to the Constitution of India, wherein it has been declared that people has the right to strive for justice, social, economic and political and equality of opportunity. The Act has come as a panacea for consumers all over the country and has assumed the shape of practically the most important legislation enacted in the country during the last few years. It has become the vehicle for enabling people to secure speedy and in-expensive redressal of their grievances. The first and the foremost problem is that most state governments do not evince requisite enthusiasm and attention in promptly implementing the provisions of the Act by establishing properly functioning District Forums and State Commission. Secondly, the consumer forums are becoming like civil courts with presidents (judicial members) asking for a more formal approach. Sometimes, these forums have asked complainants to engage lawyers, even when it is not really required. Such systemic problems are resulting in inordinate delays. In the past, members were appointed on the basis of their connections rather than merit. Now the system has improved substantially due to an amendment in the law requiring a selection committee to appoint them. However, there is a lackadaisical approach in selecting people for such positions.

One major reason is the general apathy and absence of proper knowledge and fear of exploitation by lawyers. An average Indian consumer is noted for her patience and tolerance. Perhaps because of these two traditional traits, she considers the receipt of defective goods and services as an act of fate or unfavorable planetary position in her horoscope. It is rather paradoxical that the customer is advertised as the "king" by the seller and service provider; but, in actual practice, treated as a slave or servant.

(g) Right to Consumer Education

Right to consumer education means the right to acquire the knowledge and skill to be an informed consumer throughout life. Ignorance of consumers, particularly of rural consumers, is mainly responsible for their exploitation. They should know their rights and must exercise them. Only then real consumer protection can be achieved with success.

Consumer awareness and education is meant to ensure that the consumers have easy access to the knowledge and skills to be an informed consumer. Thus, the right to consumer education envisages the right to knowledge and skills needed for taking actions to influence factors, which affect consumers' decisions. There is no legal framework establishing the right to consumer education nor are there guarantees in the Constitution. The Union and state governments, however, have accepted the introduction of consumer education in school curriculum and progress has been made in some states.

Furthermore, the Government of India, through the Consumer Welfare Fund (CWF), supports consumer educational programmes undertaken by consumer groups or state governments. The Consumer Club scheme was launched in the year 2002, with funding from CWF, has the objective to educate children about the rights of the consumers, protection of their rights, and to strengthen the consumer movement in the country. The media has also been playing an important role in this context. Consumer education faces the universal problem of matching limited resources against an infinite need. Moreover, in a large country like India, with multiplicity of languages, the problem is of larger dimensions.

(h) Right to a Healthy Environment

This is the right to consume goods and services in a sustainable manner, that is in a manner which meets the needs of present and future generations for goods and services in ways that are economically, socially and environmentally sustainable.

To live and work in an environment, which is non-threatening to the well-being of present and future generations. The right contains the following elements:

- The right to live and work in an environment that is neither threatening nor dangerous and which permits a life of dignity and well-being.
- The responsibility to minimize environmental damage through careful choice and use of consumer goods and services.
- To reduce waste, reuse products and to recycle whenever possible.

The United Nations' Guidelines contain governments, which in partnership with business and relevant organisations of civil society, should develop and implement strategies to 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 environmental- management best practices.

As far as the issue of a healthy environment is concerned, Article 21 of the Indian Constitution requires the State, inter alia, to protect life, which is construed as including the right to a healthy and safe environment. A healthy and safe environment is inalienably linked with sustainability and promotion of sustainable consumption. Moreover, the Directive Principles of State Policy direct the state to endeavor to protect and improve the environment, forests and wild life. Consumer protection in India thus has dual dimensions. It first has to ensure availability and access to basic needs of life to one section of the society; on the other hand, those with the purchasing power need to be protected against violation of their other rights. The consumer policy should strive to cover and address the interests of both the have-nots and haves.

(i) Right against restrictive trade practices

Every consumer has a right to be protected against restrictive trade practices. For example consumer has to be protected against false advertisements which may mislead customers. Similarly, manufacturers must be required to mention price, date of manufacturing an expiry dates, so that consumer can get correct information and traders are not allowed to charge price in an arbitrary manner or sell goods which have crossed expiry date. If goods bear ISI mark but in fact they are not of that standard it is the responsibility of the Consumer Council to prohibit

their sale in the market. Thus, the concern of consumer protection is to ensure fair trade practices; quality of goods and efficient services with information to the consumer with regard to quality, quantity, potency, composition and price for their choice of purchase. Such a consumer protection policy creates an environment whereby the clients, customers, and consumers receive satisfaction from the delivery of goods and services needed by them.

(j) Right to Basic Needs

All consumers have the right to basic goods and services such as adequate food, drinking water, shelter, clothing, health care, electricity and education. These rights lay a foundation to lead a life with dignity and, therefore, give a meaning to citizen's rights.

The key aspects are as follows:

- The right to basic goods and services, which guarantee survival.
- The responsibility to use these goods and services appropriately.
- To take action to ensure that basic needs are available.

The following eight needs constitute the inalienable right to basic needs: food; clothing; healthcare; drinking water and sanitation; shelter; education; energy; and transportation. Basic needs are important for everyone's survival and access to a decent standard of life. This is more important for a country like India, which has a history of the systematic denial of access to basic needs and services to the majority of its people. The United Nations' Guidelines do not explicitly mention the right to basic needs, but expect governments to take appropriate measures so that essential goods and services could be easily accessible to the consumers.

Everyone has the right to have access to adequate clothing, housing, education, primary health etc. In addition, everyone requires pure air and water, safe and responsible waste disposal, the preservation of natural resources, and effective conservation measures. However, much remains to be done in terms of reaching out to the poorest of poor and the remote areas of the country to avail the consumers of basic needs.

4.4 JUDICIAL TRENDS

In commercial Manager, Indian Air Lines v. S.M. Mukherjee¹⁵⁶ complainant had lost his tickets but he had a photocopy of the same. Even so he was compelled to purchase again. The State Commission held that it was an unfair trade practice.

In Latif Mohammed v. Lohia Machine¹⁵⁷ a scooter was booked but within the prescribed time limit it was not made available, the complainant asked to cancel the booking and to return the deposited amount, but it was not returned. The State commission held that it was an unfair trade practice. Similarly, where complainant booked a motor cycle and deposited Rs.1500/- as advance but before delivery full price was demanded which the purchaser did not pay, Here also State commission held that to demand full price before delivery of Motor cycle was unfair trade practice¹⁵⁸ and ordered that the advance of Rs.1500/- should be returned with 15 percent interest.

Where manufacturer of car advertises to deliver car at a certain price but in fact he has no intention to deliver at that price, it was held unfair trade practice.¹⁵⁹

Where a scheme of house construction was launched without required permission,¹⁶⁰ it was held to be unfair trade practice. In Dr. Mohan Rao v. Sipani Automobiles¹⁶¹ in advertisement it was shown that engine of the car was manufactured with collaboration of a Japanese company but in fact it was not so. It was held to be unfair trade practice.

Where in advertisement of a medicine it was shown that male child will be borne by taking it, it was held to be unfair trade practice.¹⁶² Illegal recovery by Electricity Board was held to be unfair trade practice.¹⁶³

As provided in Section 14 (1) (f) in a case of unfair trade practice remedy is to discontinue the unfair trade practice and not to repeat it. There is no provision for seizure of goods¹⁶⁴ or compensator.¹⁶⁵

In Gyanendra Kumar Mohante v. Kinetic Honda Motor Co. Ltd.¹⁶⁶ company represented that under ordinary Indian conditions scooter manufactured by it will give an average of 48 Kms. per liter. In fact in city it gave an average of 25-30

¹⁵⁶ 1992 (2) CPR 66 (State commission Punjab).

¹⁵⁷ 1992 (2) CPR 572 (State commission).

¹⁵⁸ Mahesh v. Wheel Magnets, 1992 (2) CPR 578.

¹⁵⁹ Mukesh Praveen Chand Shah v. Managing Director, Sipani Automobiles Ltd. 1993 (1) CPR 515 (State commission Gujrat).

¹⁶⁰ Dinesh hai v. Ganesh Housing corporation 1993 (2) CPR 432 (State commission).

¹⁶¹ (1992)II CPJ 613.

¹⁶² consumer Education and Research Society v. M/s Basu Pharmaceuticals (1992) 11 CPJ 508 (N.C.).

¹⁶³ S.K.Dhingra v. M.P. Electricity Board, (1998) ICPJ 214 (St.C.).

¹⁶⁴ consumer Education and Research society v. M/s Basu Pharmaceuticals (1992) II CPJ 508.

¹⁶⁵ New Era Education Society v. H.L.Kalsi, 1997 (3) CPR 501.

¹⁶⁶ (1992)II CPJ 345 (N.C.C.)

kms. per liter and outside 35-38 kms. per liter company was ordered to repair it so as to give average of 40 kms. in the city. A similar problem was involved in Kinetic Engineering Ltd. v. Rahul Ray¹⁶⁷ where representation was made that its motor cycle will give average of 93 kms. in ideal conditions and 82 kms. on road but in fact it gave average of 40 Kms. Manufacturer was held guilty of unfair practices.

4.5 TERMINAL QUESTIONS

1. Which Article of Indian Constitution state that there should be a definite policy or uniform guidelines on the part of the state to help consumers make “informed choice”?
 - a. Article 18
 - b. Article 19(2)
 - c. Article 21
 - d. Article 19(3)
2. The full form of RTI Act is _____.
 - a. Right to Instruction Act
 - b. Right of Taxation on Increment Act
 - c. Right to Information Act
 - d. None of the above
3. Which is not the right of consumer?
 - a. Right to Safety
 - b. Right to be Heard
 - c. Right to Redressal
 - d. None of the above
4. The full form of CWE is _____.
 - a. Consumer Welfare Forum
 - b. Consumer World Forum
 - c. Costumer Welfare Fund
 - d. Consumer Welfare Fund
5. The Consumer Club scheme was launched in the year _____.
 - a. 2000
 - b. 2001
 - c. 2002
 - d. 2003
6. Which is not key aspect of ‘Right to Basic Needs’?

¹⁶⁷ AIR 2007 (D.O.C.) 1056 (N.C.C.)

- a. The right to basic goods and services, which guarantee survival.
 - b. The responsibility to use these goods and services appropriately.
 - c. To reduce waste, reuse products and to recycle whenever possible.
 - d. To take action to ensure that basic needs are available.
7. Which Section states that the remedy in a case of unfair trade practice is to discontinue and not to repeat it?
- a. Section 13
 - b. Section 14 (1) (f)
 - c. Section 12 (2)(d)
 - d. Section 15
8. Illegal recovery by Electricity Board is_____
- a. Unfair Trade Practice
 - b. Restrictive Trade Practice
 - c. Fraud
 - d. Coercion
9. The expression "restrictive trade practices" has been defined in Section
- a. 2(1) (a)
 - b. 2(1) (nnn).
 - c. 3
 - d. 5

4.6 ANSWER TO CHECK YOUR PROGRESS

- 1. b. Article 19(2)
- 2. c. Right to Information Act
- 3. d. None of the above
- 4. d. Consumer Welfare Fund
- 5. c. 2002
- 6. c. To reduce waste, reuse products and to recycle whenever possible
- 7. b. Section 14 (1) (f)
- 8. a. Unfair Trade Practice
- 9. b. 2(1) (nnn).

4.7 KEY WORDS

- i. **Restrictive trade practice-** means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of

supplies in the market relating to goods or service in such a manner as to impose on the consumers unjustified costs or restrictions and shall include-

(a) delay beyond the period agreed to be a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;

(b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be services as-condition precedent to buying, hiring or availing of other goods or services.

ii. **Competitive Price**- A price lower than that offered by the competitors, or a price made more attractive because of added incentives, such as longer payment term.

iii. **Redressal**- To compensate someone monetarily for some damages that they experienced. "The courts decided that I was entitled to some compensation for my injury, so they ordered redress from the defendant."

iv. **Consumer education** is the preparation of an individual through skills, concepts and understanding that are required for everyday living to achieve maximum satisfaction and utilization of his resources. It is defined as education given to the consumer about various consumer goods and services, covering price, what the consumer can expect, standard trade practice, etc.

4.8 SUGGESTED READINGS

- P. K. Majumdar: Law of Consumer Protection in India, 5th edition 2003.
- Hilton Mathew, (2005), The Duties if Citizen, the Rights of Consumers, Consumer Policy Review, Jan/Feb, Vol. 15, p6-12
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UNIT- V

FORAS FOR COMPLAINT UNDER ALLIED LAWS

STRUCTURE:

- 5.1 The Constitutional Perspective
- 5.2 Allied Laws
- 5.3 Regulatory
- 5.4 Terminal Questions
- 5.5 Answer to check your progress
- 5.6 Key words
- 5.7 Suggested readings

OBJECTIVES:

After studying this Unit, you will be able to understand:

- Constitutional perspective regarding to consumer protection
- the provisions relating to Consumer Protection of various Acts
- Various regulatory by government to protect consumer interest

5.1 THE CONSTITUTIONAL PERSPECTIVE

The Constitution of India in Articles 38, 39, 42, 43, 46 and 47 provides that the state shall strive to secure a social order for the promotion of welfare of the people; it shall direct its policies in such a way that operation of economic system does not result in the concentration of wealth and means of production to the common detriment, it shall make provision for securing just and humane conditions of work and for maternity relief; it should endeavor to build an economic organization or to make suitable legislation to ensure a decent standard of life to all the workers who constitute the bulk of the consumers; it should promote educational and economic interests of schedule castes, scheduled tribes and other weaker sections and it shall also raise the level of nutrition and standard of living and to improve public health.

Article 38 in the Indian Constitution provides that (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all

the institutions of the national life. (2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 39 of the Indian Constitution provides certain principles of policy to be followed by the State—The State shall, in particular, direct its policy towards securing—

- a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- d) that there is equal pay for equal work for both men and women;
- e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 46 of the Indian Constitution provides that the State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 46 of the Indian Constitution provides that state shall endeavor to protect the economic interest of the weaker section of its population and also protect them from social injustice and all forms of exploitation which means all kinds of harassments and frauds in the market place. This also includes people should be entitled to unadulterated stuff injurious to public health and safety. This principle amply reflects the inclusion of the philosophy of the concept of consumerism in article 47 of the Indian Constitution. Article 47 of the Indian Constitution provides the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

In the Constitution of India, establishment of standards of weights and measures falls under entry no.50 in list 1- Union List of the seventh schedule and matter relating to weights and measures except establishment of Standards are in the Concurrent list, under entry 33-A.

5.2 ALLIED LAWS

Even before the attainment of independence a few legislative attempts were made but after attainment of freedom the democratic legislature made special efforts to protect the interest of the consumers. In addition to Consumer Protection Act, 1986 and its subsequent amendment the following enactments may also be noted:

- 1) The Indian Penal Code, 1860
- 2) The Dangerous Drugs Act, 1930
- 3) The Sale of Goods Act, 1930
- 4) The Drugs and Cosmetics Act, 1940
- 5) The Drugs (Control) Act, 1950
- 6) The Industries (Development And Regulation) Act, 1951
- 7) The Indian Standards Institutions (Certification Marks) Act, 1952
- 8) The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- 9) The Prevention of Food Adulteration Act, 1954
- 10) The Code of Criminal Procedure, 1973
- 11) Company Law
- 12) Monopolies and Restrictive Trade Practices Act, 1969
- 13) Competition Act, 2002
- 14) The Petroleum and Natural Gas Regulatory Board Act, 2006

THE INDIAN PENAL CODE, 1860

It is the foremost penal law of the country which contains the substantive law of crime. It caters to the needs of the consumer in some manner. However, sections 264 to 267 of the Indian penal code relate to fraudulent use of false instrument for weighing, fraudulent use of false weight and measures, anyone in possession of false weight or measure respectively. The penal code further provides sections 269 to 271 on spreading of infections and in sections 272 to 276 on adulteration of food or drink, adulteration of drugs, sale of adulterated drugs and sale of drugs as a different drug or preparation are punishable with imprisonment or with both.

THE DANGEROUS DRUGS ACT, 1930

In the area of drugs control the Dangerous drugs Act, 1930 is an important central legislation which empowers the central government to control certain operations relating to dangerous drugs. It further empowers to increase and render uniform penalties for offences relating to operations of dangerous act.

THE SALE OF GOODS ACT, 1930

Some spirit of concept of consumerism is also evident in the Sale of Goods Act, 1930. Before this enactment the situation was uncertain with regard to "sale of goods or movables, the law on the subject was not only uniform throughout British India but was also outside the limits of the original jurisdiction of the high court, extremely uncertain in its application."

The Sale of Goods Act contains the spirit of the concept of consumer protection in several provisions in several provisions which include contract of sale, conditions and warranties in the sale, transfer of property between seller and buyer, duties of seller and buyers, right of unpaid sellers against the goods and suits for the breach of the contract.

THE DRUGS AND COSMETICS ACT, 1940

In order to defend the cause of consumer in the area of drugs and cosmetic industries in India, Drugs and cosmetic act of 1940 was enacted so as to regulate the import, distribution and sale of drugs. In pursuance to the recommendations the pharmaceutical enquiry committee appointed by the Government of India, the drugs and cosmetics act, 1940 empowers the central government to control the manufacture of drugs, to appoint inspectors for inspecting manufacturing premises and taking samples of drugs, to appoint government analysts to whom samples drawn by such inspectors could be sent for analysis and to issue the state government for carrying into any of the provisions of the Act.

THE DRUGS (CONTROL) ACT, 1950

In 1950 the Drugs (Control) Act was passed which also provides for the control of the sale, supply and distribution of drugs. This Act briefly provides for fixing of maximum prices and maximum quantities which may be held or sold, general limitation on quantity which may be possessed at any one time, duty to declare possession of excess stocks, marking of prices and exhibiting list of prices and stocks.

THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

Industries (Development and Regulation) Act, 1951 is another example on the part of the union government to make some attempts in implementing the objectives of consumerism. The act provides for the development and regulations of certain industries. The Act specifically deals with the central government's power to control supply, distributing price etc of certain articles.

THE INDIAN STANDARDS INSTITUTIONS (CERTIFICATION MARKS) ACT, 1952

The Act provides for the standardization and marking of goods which is a prerequisite to the establishment of a healthy trade and to compare favorably with the established makes of foreign products. The Act has been amended in 1961 and 1976 to make more effective in order to achieve its objectives.

THE DRUGS AND MAGIC REMEDIES (OBJECTIONABLE ADVERTISEMENTS) ACT, 1954

The Act in brief provides for prohibition of advertisement of certain drugs for treatment of certain diseases and disorders. It further imposes curb on misleading advertisements relating to drugs, magic remedies for treatment and regulation of certain advertisements of Indian imports and exports. There is also provision for punishment for those guilty of contravention of the law.

THE PREVENTION OF FOOD ADULTERATION ACT, 1954

The Act, keeping in view the menace of adulteration to the society and to make the machinery provided under it more effective to curb the increasing tendencies in adulteration, was amended in 1964. The amendment provides that for the proper enforcement of the provision of the Act that the central government also should have power to appoint food inspectors.

THE CODE OF CRIMINAL PROCEDURE, 1973

Nevertheless, the criminal laws of the country do protect the consumer in some degree or so. In this regard section 153 of the code empowers a station- house officer of a police station without warrant to enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept and whenever there is reason to believe that in such place weights, measures or instruments for weighing or false.

COMPANY LAW

The Companies Act, 1956 does not expressly provide for the protection of consumer interests. However, shareholders can be considered as consumers by the following interpretation: Firstly, shareholders buy shares and earn dividend. This payment of dividend is a service offered by the company in exchange of the price offered by the shareholders for the shares. Under the Consumer Protection Act, any person who hires or avails any service for a consideration is a consumer. Secondly, shareholders under the Companies Act, have limited liability, unlike the owners, who have an unlimited liability. Therefore, shareholders cannot be considered as owners, and thus can be considered as consumers.

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969

The one of the most important steps taken by central government to protect the interest of consuming public is the enactment of the monopolies and restrictive Trade practices Act of 1969. The object of this Act is to provide that the operation of economic system does not result in the concentration of economic power to common detriment. It also provides for controlling the monopolies and prohibition of monopolistic and restrictive trade practices.

Redressal mechanisms are an essential component of the competition legislation of any country and so is the case in India where the MRTPA has in-built grievance redressal provisions. With subsequent developments in the Indian economy, there were nine amendments to the MRTP Act before it was finally repealed by the Competition Act. Of these, the amendments of 1984 and 1991 are significant. Prior to 1984, the MRTP Act contained no provisions for the protection of consumers against false or misleading advertisements and other similar Unfair Trade Practices (UTPs). It was felt necessary to protect them from such practices resorted to within trade and industry to mislead or dupe them. The Sachar Committee therefore recommended that a separate chapter be added to the MRTP Act defining the various UTPs so that consumers, manufacturers, suppliers, traders and others in the market could conveniently identify practices that are prohibited. The provision as to UTPs in the MRTP Act was introduced in 1984. With the restructuring of the MRTP Act through the 1991 amendments, the thrust shifted to curbing MTPs (Monopolistic Trade Practices), RTPs (Restrictive Trade Practices) and UTPs with a view to preserve competition in the economy and safeguard the interests of consumers by providing them protection against false or misleading advertisements and/or deceptive trade practices. Thus, the Consumer Protection Act, 1986 and the

Monopolies and Restrictive Trade Practices Act, 1969 had been playing complementary roles in promoting consumer welfare in India.

However over the years, because of its inefficiency (factors like inadequate budgetary allocation and lack of autonomy) the MRTPC was not very effective in providing redress as number of cases kept piling up. Moreover the MRTPC solved the cases that were less damaging for the consumers and the economy, whilst the relatively more damaging cases remained unattended.

COMPETITION ACT, 2002

One of the most important milestones in the area of consumer protection/consumer movement in the country has been the enactment of the Consumer Protection Act, 1986. This Act has been necessitated because the well-organized sectors of manufacturers, traders and service providers with the knowledge of market and manipulative skills often attempt to exploit the consumers, in spite of the existence of various provisions of different laws for protecting their interests. Moreover, the increase in population has resulted in enormous pendency and delay in disposal of cases in the civil courts. . Hence, the Consumer Protection Act, 1986 was enacted to better protect the interests of consumers. It is one of the most progressive and comprehensive pieces of legislation and is umbrella legislation covering all goods and services.

Effective competition regime provides necessary conditions for maximizing the interests of the consumers. Protection of consumer interests runs through the Competition Act. The Preamble of the Act and subsequent provisions like Sec 18, 19 etc. expressly provide for protection of consumer interests. Sec. 2(f) defines 'consumer' which, as earlier mentioned, is much wider than the definition given under the Consumer Protection Act, 1986. Further, under the chapter on Duties, Powers and Functions of Commission, it is provided that the Commission shall, while determining the "relevant geographic market" and "relevant product market", have due regard to consumer preferences.

The National Competition Policy, 2011 also stated that the fundamental role of competition policy is to guarantee consumer welfare by encouraging optimal allocation of resources and granting economic agents appropriate incentives to pursue productive efficiency, quality and innovation.

The inefficiency and inadequacy of the MRTPA led to the formulation of the Competition Act, and the establishment of the Competition Commission of India to

enforce its provisions. The Competition Commission of India is expected to serve consumers better as far as redress is concerned. Among other things the Competition Act allows individual consumers or their associations to present their grievances for redressal, before this forum. However cost considerations and other factors may deter individual consumers or local consumer groups to approach the CCI. The need for regional benches of the Commission is again felt in this context.

The Salient Features of the Act are as under:

- I. The Act provides for establishing three-tier consumer dispute redressal machinery at the national, state and district levels.
- II. It applies to all goods and services.
- III. It covers all sectors, whether private, public or any person.
- IV. The Act provides for relief of a specific nature and also for compensation to the consumer as appropriate.
- V. The Act also provides for setting up of Consumer Protection Councils at the Central, State and District levels, which are advisory bodies to promote and protect the rights of the consumers.
- VI. The provisions of the Act are in addition to and not in derogation of the provisions of any other law for the time being in force.

THE PETROLEUM AND NATURAL GAS REGULATORY BOARD ACT, 2006

In spite of the Competition Act, one of the objectives behind the recently drafted Petroleum and Natural Gas Regulatory Board Act, 2006, (“PNGRB Act”) is “to promote competitive markets” and “protect the interest of consumers by fostering fair trade and competition amongst the entities.” Interestingly, the PNGRB Act borrows the concept of “restrictive trade practices” from the MRTP Act, a concept that the Competition Act sought to repeal. After four years of drafting the Competition Act, the framers appear to have either forgotten about the earlier act or developed cold feet about the need for modern competition legislation.

5.3 REGULATORY

THE ELECTRICITY REGULATOR

The Electricity Act is another example of the confusion caused by overlapping jurisdictions of regulatory authorities in India. Though the Electricity Act was passed by the Parliament on May 26, 2003, a good four and a half months after the

Competition Act was passed on January 13, 2003, one of its objectives is the promotion of competition. Indeed, the framers of the legislation ignored the competition legislation and conferred power upon the electricity regulator, the CERC, to deal with anti-competitive agreements, abuse of a dominant position, and mergers impeding competition in electricity markets. The CERC has also been entrusted with the task of advising the government on competition within the electricity sector.

THE TELECOM REGULATOR

It was established, *inter alia*, in order to ensure orderly development of the telecom sector. Accordingly, one of its critical functions is to “facilitate competition and promote efficiency.” Nevertheless, the appellate authority established to adjudicate telecom disputes has no jurisdiction over competition matters, or at least those arising under the old MRTP Act.

THE SECURITIES MARKET REGULATOR

The securities market regulator, the SEBI, is one the oldest regulators and was set up on the point of market reforms in India. The SEBI has been entrusted with the dual task of protecting investors’ interests and developing the securities market. It also has authority to regulate “fraudulent and unfair trade practices.” While the enactment does not venture to define fraudulent and unfair trade practices, the regulator nevertheless oversees mergers.

5.4 TERMINAL QUESTIONS

1. Which is the foremost penal law of the country which contains the substantive law of crime?
 - a. Dangerous Drugs Act
 - b. The Indian Penal Code
 - c. The code of Criminal Procedure
 - d. The Drugs Control Act.
2. In 1950, which Act was passed which provides for the control of the sale, supply and distribution of Drugs?
 - a. The Drugs Control Act
 - b. The Drugs and Cosmetics Act
 - c. The Dangerous Drugs Act

- d. None of the above
- 3. Which Article of the Indian Constitution provides that the State shall make provision for securing just and humane conditions of work and for maternity relief?
 - a. Section 45
 - b. Section 47
 - c. Section 48-A
 - d. Section 46
- 4. Under which Act the central government has power to appoint food inspectors?
 - a. The Indian Standards Institutions (Certification Marks) Act, 1952
 - b. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
 - c. The Prevention of Food Adulteration Act, 1954
 - d. The Code of Criminal Procedure, 1973
- 5. The Competition Act was enacted in _____.
 - a. 2003
 - b. 2005
 - c. 1999
 - d. 2002
- 6. Which Act has the object to provide the operation of economic system does not result in the concentration of economic power to common detriment?
 - a. The Code of Criminal Procedure, 1973
 - b. Monopolies and Restrictive Trade Practices Act, 1969
 - c. Competition Act, 2002
 - d. The Petroleum and Natural Gas Regulatory Board Act, 2006
- 7. The electricity Act was passed by the Parliament on _____.
 - a. May, 26 2003
 - b. Jan, 13 2003
 - c. July, 14 2004
 - d. None of the above
- 8. The _____ has been entrusted with the dual task of protecting investors' interests and developing the securities market.
 - a. UTP
 - b. SEBI
 - c. MRTTP

- d. RTI
 - 9. What is full form of the MRTP Act?
 - a. Monopolies and Restrictive Trade Practices Act, 1969
 - b. Money and Revenue Trade Practice Act, 1969
 - c. Monopoly Regulatory and Trade Practices Act, 1969
 - d. Marketing and Recovering Trade Practices Act, 1969
-

5.5 ANSWER TO CHECK YOUR PROGRESS

- 1. b. The Indian Penal Code
 - 2. a. The Drugs Control Act
 - 3. d. Section 46
 - 4. c. The Prevention of Food Adulteration Act, 1954
 - 5. d. 2002
 - 6. b. Monopolies and Restrictive Trade Practices Act, 1969
 - 7. b. Jan, 13 2003
 - 8. b. SEBI
 - 9. a. Monopolies and Restrictive Trade Practices Act, 1969
-

5.6 KEY WORDS

- i. Legal Representative- In its broadest sense, one who stands in place of, and represents the interests of, another. A person who oversees the legal affairs of another. Examples include the executor or administrator of an estate and a court appointed guardian of a minor or incompetent person. This term is almost always held to be synonymous with the term personal representative. In accident cases, the member of the family entitled to benefits under a Wrongful Death statute.
 - ii. Fraudulent- a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.
 - iii. Evidence- The documentary or oral statements and the material objects admissible as testimony in a court of law. It is helpful in forming a conclusion or judgment.
 - iv. Dangerous Goods- are solids, liquids, or gases that can harm people, other living organisms, property, or the environment. They are often subject to chemical regulations.
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5.7 SUGGESTED READING

- M.P. Jain, "Constitutional Law of India"
- T. Bhattacharya, "Indian Penal Code"
- Bangia, "Law of Contract"
- Mishra, "Labour Laws"
- Paranjape, "Company Law"
- Kushal, Anoop K. (1998): "Medical Negligence and Legal Remedies with special Reference to Consumer Protection Law", Delhi Universal Book Traders.

UNIT-VI

JURISDICTION, POWERS AND FUNCTIONS OF DIFFERENT FORA'S UNDER CONSUMER PROTECTION ACT, 1986

STRUCTURE:

- 6.1 Introduction
- 6.2 District Forum
- 6.3 State Commission
- 6.4 National Commission
- 6.5 Terminal Questions
- 6.6 Answer to check your progress
- 6.7 Key words
- 6.8 Suggested readings

OBJECTIVES:

After going through this unit you should be able to understand-

- Various levels of redressal agencies
- Composition of these agencies
- Power and jurisdiction of these agencies

6.1 INTRODUCTION

The Consumer protection Act envisages the establishing of the following redressal agencies:

1. Consumer Disputes Redressal Forum to be known as "District Forum."
2. Consumer Disputes Redressal Commission, to be known as "The State Commission, and
3. National Consumer Disputes Redressal Commission, viz., "The National Commission."

After the Consumer Protection (Amendment) Act, 2002, the pecuniary jurisdiction of the above said for is as under:

Forum	Amount in dispute
District Forum	Up to Rs. 20 lakhs
State Commission	Above Rs. 20 lakhs and below rupees one crore
National Commission	Above rupees one crore

6.2 DISTRICT FORUM

Composition of the District Forum (Sec.10)

Every District Forum shall consist of the following:-

- (1) President- a person who is, or has been, or is qualified to be a District Judge who shall be its President;
- (2) Two other members- one of the two members shall be a woman.

The two members shall have the following Qualification:-

- 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 and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

Disqualifications of members (Proviso to section 10(1)(b))

Persons shall be disqualified for appointment as a member in the following situations:-

- (i) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or
- (ii) is an undercharged insolvent; or
- (iii) is of unsound mind and stands so declared by a competent court; or
- (iv) has been or is dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(v) has, such other disqualifications as may be prescribed by the State Government.

Method of appointment (Section 10(1-A))

Every appointment as mentioned above shall be made by the State Government on the recommendation of a Selection Committee consisting of the following:-

- (i) The President of the State Commission-Chairman;
- (ii) Secretary, Law Department of the State-Member; and
- (iii) Secretary, in charge of the Department dealing with consumer affairs in the State- Member.

Where the Chairman of the Selection Committee is absent or is otherwise unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High court for nominating a sitting judge of that High Court to act as Chairman.

Term of office & Salary (Section 10(2))

Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years, whichever is earlier.

He shall be eligible for re-appointment for another term of five years or up to the age of 65 years, whichever is earlier.

A member may resign his office in writing addressed to the State Government, and on such resignation being accepted, his office shall become vacant. The vacancy may be filled by an appointment in the manner mentioned above.

The salary or honorarium or other allowances payable to him and the other terms of appointment shall be such as may be prescribed by the State Government.

Jurisdiction of the District Forum (Sec.11)

(A) Pecuniary Jurisdiction (Sec. 11(1))

The District Forum shall have jurisdiction to entertain complaints where the value of the Goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs. Prior to the Amendment Act, 2002 the District Forum's jurisdiction was up to Rs. Five lakhs only. The increase in the jurisdiction is beneficial for the complainants.

(B) Territorial Jurisdiction (Section 11(2))

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/ In such a case, it is necessary that there should be either the permission of the District Forum, or the acquiescence in the institution of the suit, of such of the opposite parties who do not reside or carry on business or have a branch office, or personally work for gain, as the case may be; or
- c) the cause of action, wholly or in part, arises.

Mere dealing with claim by some at Regional Office would not furnish part of cause of action. - Where fire had broken in godown in Ambala Cantt. Policy was obtained from Ambala. Claim was lodged with branch office, Ambala. Compensation was accepted at Ambala held, that mere dealing with claim at some stage by Regional office at Chandigarh would not furnish part of cause of action and State Commission union Territory, Chandigarh, had no territorial jurisdiction. As such, order allowing complaint was set aside.¹⁶⁸

Manner of making complaint (Sec.12)

Section 12 has been substituted by the consumer protection (Amendment) Act, 2002. There are some important changes in the substituted provision. The provisions are as under:-

(1) Who can file a complaint (Section 12(1))

A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by any of the following:-

- (a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such services provided or agreed to be provided;
- (b) any recognized consumer association. Such services an association can make a complaint even though the consumer concerned is not its member;
- (c) The complaint may also be filed by one or more consumers, where there are numerous consumers having the same interest, on behalf of, or for the benefit of, all the consumers so interested, with the permission of the District Forum;

¹⁶⁸ National Insurance Co. Ltd. v. Sonic Surgical, (2003) III C.P.J. 144(N.C.)

(d) The complaint may also be filed by the Central or the State Government. For the purpose of the aforesaid provision, "recognized consumer association" means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force.

(2) Complaint to be accompanied by court fee (Section 12(2))

Every complaint as mentioned above shall be accompanied with such amount of fee and payable in such manner as may be prescribed. There was no provision of court fee earlier. The same has been introduced by the Amendment Act, 2002.

(3) Admissibility of the complaint (section 12(3))

This is also a new provision introduced by the Amendment Act, 2002. The provision with regard to the admissibility of the complaint is as under:

(i) On receipt of the complaint, the District Forum may allow the complaint to be proceeded with or rejected. Before rejecting the complaint, the complainant has to be provided with an opportunity to explain his case.

(ii) The admissibility of the complaint shall ordinarily be decided within 21 days from the date on which the complaint was received.

(iii) After the complaint is admitted, it shall be proceeded with in accordance with the provisions of this Act. The complaint shall be heard by the District Forum which has admitted the same, and shall not be transferred to any other forum or court, etc.

Complaint against Nursing Home must be dismissed in to if medical negligence and made out.-So long as the allegation of medical negligence and carelessness on the part of Nursing Home, whereby using outdated and material of expiry period in the surgery had Already been disbelieved by the District Forum and for valid reasons as mentioned in the impugned order, the appeal filed by the complaint was dismissed.¹⁶⁹

Deficiency in service made out on the part of University for non-delivery of opted question paper to student.-In this case complainant was a student of M.A. Final (Sanskrit) examination, but was delivered a question paper on subject other than he had opted for in his application. Held, that the University would be deficient in service in conduct of examination when the complaint was delivered a question paper on subject other than he had opted therefore.¹⁷⁰

¹⁶⁹ Bhargava Nursing Home v. Charan Kamal Kaur, 2004 (1) C.P.R. 193 (chandigarh)

¹⁷⁰ Rajasthan University v. Ramesh Kumar Sharma, 2004 (1) C.P.R. 270 (Raj.).

Procedure on admission of complaint (Sec.13)

Section 13 has also been substituted by the C.P.A. (Amendment) Act. This provision deals with procedure on admission of complaint. The earlier provision dealt with the procedure on 'receipt of complaint.'

The procedure prescribed is as under:-

- (1) The District Forum shall refer a copy of the admitted complaint within 21 days from the date of admission to the opposite party, directing him to give his version of the case within 30 days or such extended period not exceeding 15 days as may be granted by the District Forum.
- (2) After giving due opportunity to the opposite party to represent his case, the District Forum shall proceed to settle the case.
- (3) If the opposite party omits or fails to represent his case within the given time, the District Forum can pass ex party order.
- (4) Every complaint shall be heard as expeditiously as possible. An endeavour shall be made to decide the complaint within 3 months from the date of receipt of notice by the opposite party where the goods do not require any testing, and within 5 months, where any testing or analysis of the goods is needed.
- (5) No adjournments shall be ordinarily allowed unless sufficient cause is shown and reasons for adjournment have been recorded in writing by the Forum.
- (6) The new sub-section (3-B) to section 13 enables the District Forum to pass interim order, as may be deemed just and proper in the facts and circumstances of the case.
- (7) Substitution of the representative on the death of a party-The sub-section (7) to section 13 states that in the event of death of a complainant who is a consumer or of the opposite party provides for substitution of the parties by their legal representatives according to the provisions of the C.P.C.

A criminal proceeding launched by the complainant on same cause of action is held to be no bar to maintainability of complaint under the Act, 1986.¹⁷¹

Finding of the District Forum (Sec.14)

Section 14 has also been amended by the C.P. (Amendment) Act, 2002. The present provision is as under:-

If, after conducting the proceedings under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified

¹⁷¹ Dr. B.K. Misra v. S.C.D.R.C., A.I.R. 2009 (NOC) 109 (All).

in the complaint, or that any of the allegations contained in the complaint about the services are proved, it shall order the opposite party to do one or more of the following things, stated in Sec. 14(1), namely:-

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party; Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;
- (e) to remove the defects in the goods or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- (hb) when the injury has been suffered by a large number of consumers, who are not identifiable conveniently, the opposite party may be required to pay such sum as may be determined by the Forum;
- (hc) to issue corrective advertisement to neutralize the effect of any misleading advertisement;
- (i) to provide for adequate costs to parties.

The consumer for a can direct the payment of compensation. However, the precondition in such a case is sufferance of loss or injury by the complainant. In *M/s Godfrey Phillips India Ltd. v. Ajay Kumar*,¹⁷² the respondent filed a complaint in respect of an advertisement given by appellant, issued in the newspapers/magazines, carrying photo of film hero Akshay Kumar holding a cigarette as also slogan and statutory warning. Since the complainant was not

¹⁷² A.I.R. 2008 S.C. 1828

alleged to have been affected by the advertisement, awarding of compensation by the consumer for a was held by the Apex court a unsustainable.

In I.C.I.C.I. Lombard General Insurance Co. Ltd. v. State consumer Dispute Redressal Commission,¹⁷³ the D.C.D.R.F. had passed an interim order against the petitioner to pay certain amount for repair of the vehicle, which met with an accident. Upholding the order, the Allahabad High Court held that the question whether the vehicle in question was being driven in breach of insurance policy and that the driver was intoxicated, were questions requiring adjudication on the basis of oral and documentary evidence that might be adduced by the parties before the courts below before the question of grant of insurance money was decided. As long as the Adjudicating Authority did not record a categorical finding on the said counts, 'interim relief could not be denied,' the court held.

The Order should be a speaking order

It is necessary that the Forum should take into account the evidence and the Documents produced by the parties and the Order of the Forum should be a speaking order, i.e., it should give reasons for the order.

In K.S.Sidhu v. Senior Executive Engineer,¹⁷⁴ the complaint filed before the District Forum was dismissed by a non-speaking order. The order did not discuss the evidence and the documents submitted before it. It was held that such an order was unjust and arbitrary and was liable to be set aside on the ground.

Conduct of Proceedings and Quorum, etc.

The Consumer Protection Act makes the following provisions regarding the conduct of the proceedings of the District Forum-

1. Every proceeding referred to in Sec. 14(1) shall be conducted by the president of the District Forum and at least one member there of sitting together. However, where the member, for any reason, is unable to conduct the proceeding till it is completed, the president and the other member shall conduct such proceeding de novo.¹⁷⁵
2. Every order made by the District Forum mentioned above shall be signed by its president and the member or members who conducted the proceedings; provided that where the proceeding is conducted by the president and one member and they differ on any point or points, they shall state the point or points on which

¹⁷³ A.I.R. 2009 All. 29

¹⁷⁴ I (2001) C.P.J. 144 (Punjab S.C.D.C.)

¹⁷⁵ Sec. 14(2). Subs. by Act 34 of 1991 (W.e.f. 15-6-1991).

they differ and refer the same to the other member for hearing of such point or points. The opinion of the majority shall be the order of the District Forum.¹⁷⁶

3. The procedure relating to the conduct of the meetings of the District Forum, its sitting and other matters shall be such as may be prescribed by the State Government.¹⁷⁷

The Quorum

From the provisions contained in Sec. 14(2) and 14(2A), it is evident that-

(1) The proceedings are to be conducted by the president of the District Forum and at least one member there of sitting together; and

(2) The order of the District Forum is to be signed by its president and the member or members who conducted the proceedings:

Provided that where the proceeding is conducted by the president and one member and they differ on any point or points, they shall refer the same on those points to the other member for hearing such point or points and the opinion of the majority shall be the order of the District Forum.

When there is no coram (quorum) required by Sec. 14(2) for the proceedings of the Forum, it may be adjourned by the Reader of the court or a member or president sitting singly. There is nothing wrong in a single member adjourning the case for want of quorum.¹⁷⁸

President Sitting Singly

It has been held by the National Commission that the orders passed by the president of the State commission sitting singly without the junction of any other member is contrary to section 14(2) of the consumer protection Act, 1986. Such an order is invalid.¹⁷⁹ Absence of the president of District Forum or State commission

It has been noted above that according to section 14 that every proceeding shall be conducted by the president and at least one member, and also that every order shall be signed by the president and the member or members, who conducted the proceedings. There have been various decisions to further explain the implication of the above stated provisions. The West Bengal State commission has held that no

¹⁷⁶ Sec. 14(2-A)

¹⁷⁷ Sec. 14(3)

¹⁷⁸ Sawhney Export House v. Air France, I (1996) C.P.J. 301 (Delhi)

¹⁷⁹ Raj Kumar Mangla v. R.S.Singh, II (1995) C.P.J. 50 (N.C.); H.U.D.A. v. Sri Kishan, III (1997) C.P.J. 572 (Haryana S.C.D.R.C.)

proceedings of a Consumer Forum can be conducted in the absence of the president.¹⁸⁰

Sometimes, the question has arisen as to what ought to be the position when the president is absent for some reason, like non-appointment illness, or inability to be present on account of having gone abroad, etc.

In *Gulzari Lal Agarwal v. The Accounts Officer*,¹⁸¹ the Supreme Court has held that harmonious construction should be given to various provisions. According to Sec. 14(2) and 14(2A), C.P.A. the president with at least one member sitting together shall conduct the proceedings. That is so when the president is functional. When he is non-functional, sub-rules (9) and (10) of Rule 6 of the West Bengal Consumer Protection Rules, 1987 (in the instant case) shall govern the proceedings. According to sub-rule (9), where any vacancy occurs in the office of the president of the State Commission, the senior most (in order of appointment) Member holding office for the time being, shall discharge the function of the president until a person is appointed to fill such vacancy. The sub-rule is made to make the State commission functional even in the absence of the president.

The Supreme Court quashed the order of the National commission holding the order passed by only two members of the State commission as void in view of the absence of the president of the State commission.

Absence of President of National commission

The Consumer Protection Rules have been amended by the Consumer Protection (Amendment) /rules, 1997 w.e.f. 27th January, 1997 to provide for the functioning of the National Commission even if its president is unable to discharge the functions owing to absence, illness or otherwise. In such a situation:

(i) The senior most member of the National commission with judicial background, if authorized so to do by the president in writing, shall discharge the functions of the president until the day on which the president resumes the charge of his functions, (Rule 12, sub-rule (6))

(ii) The proceeding of the National Commission shall be conducted by the senior most member, as stated above, and at least two members there of sitting together. Rule 15 A(1)

¹⁸⁰ *Hindustan Lever Ltd. v. State Consumer Redressal Forum*, II (1996) C.P.J. 103 (West Bengal S.C.D.R.C., Calcutta).

¹⁸¹ III (1996) C.P.J. 12 (S.C.) decided on 25-9-1996; Followed in *Mohd. Abdullah v. Abid Quadir*, I (1997) C.P.J. 181 (U.P. S.C.D.R.C.).

(iii) Every order shall be signed by the president/Senior most member, as stated above, and at least two members who conducted the proceedings, and if there is any difference of opinion among themselves, the opinion of the majority shall be the order of the National commission. Rule 15A(2).

In view of section 16(1-B) of the C.P. Act, 1986, it is not necessary that the president shall be a member of bench of the state commission. Further, as per section 29-A, an order cannot be invalidated on account of any defect in the constitution of the commission. Also, that an order would not be invalid even if the president has not participated in the proceeding of the State commission.¹⁸²

Appeals from District Forum to State Commission (Section 15)

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 30 days from the date of the order, in such form and manner as may be prescribed. The State commission may entertain an appeal after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing it within that period.

In case a complaint is dismissed for default, the District/State Forum is not empowered to restore the complaint. The remedy of the petitioner is to file appeal under section 15.¹⁸³

Deposit of certain amount as a pre-condition for appeal

The C.P. (Amendment) Act, 2002 requires that 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 in the prescribed manner 50% of that amount or Rs.25,000-, whichever is less.

Limitation period runs from the date of Communication of the order.

It may be noted that the period of limitation of 30 days begins from the date; the order of the District Forum is communicated.

Condemnation of Delay

The delay in filing an appeal may be condoned if the appellant is able to show that there was sufficient cause for such delay. In *Vice Chairman, D.D.A. v. O.P. Gaube*,¹⁸⁴ there was a delay of 38 days by the Delhi Development Authority in making the appeal. The grounds of delay were the examining of the case from all its

¹⁸² *National Insurance Co. Ltd. v. State of Jharkhand*, A.I.R. 2008 Jhar. 84.

¹⁸³ *Mr. Raju Thomas v. National Insurance Co. Ltd.*, A.I.R. 2009 Ker. 5.

¹⁸⁴ III (1995) C.P.J. 18 (N.C.); *Exec. Engineer, electricity Board v. Santosh Kumar*, I (1996) C.P.J. 332 (M.P. S.C.d.r.C.).

aspects at different levels. It was held that delay caused by inters office consultations is not sufficient cause and hence the delay was not condoned.¹⁸⁵

In Delhi Development Authority v. I.S. Narula,¹⁸⁶ certified copy of the order of the District Forum was received by the appellant on 13-7-94. The appeal was filed on 27-9-94. The alleged reason for the delay was public holidays on 14th and 15th August, 1994, strike in Tis Hazari Court, and procedural delay in obtaining sanction of D.D.A. by the counsel for filing the appeal. The Supreme court observed that the power of condonation should be exercised liberally.¹⁸⁷ There was held to be sufficient cause, and, hence, the delay was condoned.

Ex parte order

If the opposite party fails to appear and contest, the District forum may proceed and pass an ex parte order. If sufficient cause is shown for not appearing in the case, an ex parte order may be set aside.

The District Forum, which has the right to pass an ex parte order, has also the power to set aside the same. In Janak Mehta v. Allahabad Band,¹⁸⁸ the question before the J.&K. State Commission was whether a District Forum can set aside an ex parte order passed by it.

It was held that one of the methods adopted to prolong the proceedings is first to allow the case to proceed ex parte, and then waste further time in getting the ex parte order set aside, in enquiries and in recording evidence. The Civil procedure Code is applicable to Consumer Protection Act to a limited extent. Therefore, the Forum has no power to set aside an ex parte order.

It appears that the above decision needs reconsideration. The correct position is that an ex parte order may be set aside if the OP is not trying to unnecessarily waste the time of the Forum, but has genuine reasons for not appearing in the case.

Dismissal of complaint in default

If the complainant fails to appear on the date of hearing, the District Forum may dismiss the complaint in default. Such a dismissal of the complaint may be set aside and the complaint may be restored. In Kamlesh Bansal v. Balaji Land Traders,¹⁸⁹ the complainant filed a complaint and he failed to appear on the date fixed by the District Forum for ex parte evidence. Within 23 days of dismissal of

¹⁸⁵ V.K. Verma v. Vikram Kumar, A.I.R. 2008 (NOC) 2527 (NCC).

¹⁸⁶ III (1995) C.P.j. 333.

¹⁸⁷ Collector of Land Acquisition v. katiji, A.I.R. 1988 S.C. 897 was followed.

¹⁸⁸ I (1996) c.P.J. 149 (J. & K. S.c.D.r.c.).

¹⁸⁹ III (1995) c.P.J. 510 Delhi S.c.D.r.c.

complaint, the complainant applied for restoration of the complaint. The said application was rejected on the ground that the District Forum could not restore the complaint. It has been held by the Delhi State Commission that the commission, while exercising appellate jurisdiction, can set aside the order of the District Forum dismissing the said application for restoring the complaint.

Writ petition Against District Forum' order

There is no reason to say that a writ petition under Article 226 of the constitution of India is not at all maintainable against an order of a consumer Disputes Redressal Forum established under Section 9 of the consumer protection Act, 1986. The Calcutta High Court in Garh-Moyna Samabay Krishi Unnayay Samiti Ltd. v. State of W.B.¹⁹⁰ explained:

“The forum established under Section 9 of the consumer protection Act, 1986 is the lowest agency or body in the hierarchical quasi-judicial machinery set up by the Act for speedy and simple redressal of consumer disputes; it is a Quasi-judicial body. Therefore against an order of a District Forum a writ petition under Art.226 can be filed before the High Court. But that is only in a very exceptional case.... It should be entertained only when the person approaching the writ court, for no fault of his own, is deprived of the remedies of appeal and revision provided by the provisions of Sections 15 and 17 of the consumer protection Act, 1986.

The court said that if it was held that generally against an order of a District Forum, an aggrieved person was entitled to approach the writ court, then such a proposition was bound to defeat the special purposes for which the consumer protection Act, 1986 had been enacted. It was thus said that unless it was shown that the special revisional power conferred on the State commission to correct an error of jurisdiction of the Dist. Forum was unavailable to one, one should not be permitted to approach the writ court under Article 226, even when it was alleged that the Dist. Forum had made the complained order without jurisdiction.

6.3 STATE COMMISSION

Composition of the state commission (Sec.16)

Each State commission shall consist of the following:-

- (a) a person who is or has been a judge of a High court. He shall be appointed by the State Government, and shall be its president:

¹⁹⁰ A.I.R. 2008 Cal. 275.

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, one of them shall be a woman. They shall have the following qualifications:-

- (i) be not less than 35 years of age;
- (ii) possess a bachelor's degree from a recognized university; and
- (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law commerce, accountancy, industry, public affairs or administration: Provided that at least 50% of the members should have judicial background.

Disqualifications of members

A person shall be disqualified for an appointment as a member, if he:-

- (a) has been convicted and sentenced to imprisonment for an offence involving moral turpitude; or
- (b) is an undercharged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from service of the Government, or a body corporate owned or controlled by the Government; or
- (e) has such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as member; or
- (f) has such other disqualifications as may be prescribed by the State Government.

Appointment of Members

Every appointment as stated above shall be made by the State Government on the recommendations of the Selection Committee consisting of the following:-

- (i) The president of the State commission-Chairman;
- (ii) Secretary, Law Department of the State-Member; and
- (iii) Secretary, in charge of the Department dealing with consumer Affairs of the State-Member.

Establishment of Benches

The jurisdiction, powers and authority of the State commission may be exercised by Benches thereof. A Bench may be constituted by the president with

one or more members as the president may deem fit. The provision of more Benches has been introduced by the C.P. (Amendment) Act, 2002.

Salary and Terms of Service

(i) The salary of honorarium and other allowances payable to the members and their other terms of service shall be such as may be prescribed by the State Government.

(ii) Every member of the State Commission shall hold office for a term of 5 years or up to the age of 67 years, whichever is earlier.

(iii) A member may resign his office in writing by addressing it to the State Government. His vacancy may be filled by appointment as per the above mentioned procedure.

In Justice Debendra Mohan Patnaik v. State of Orissa,¹⁹¹ the question related to the reduction of salary of the president of the State commission, to the extent of pension he received as retired judge of the High Court. Holding the reduction as illegal and a constitutional infraction in view of Article 221(2) of the constitution of India, the Orissa High Court observed:

“Pension is not a bounty but it is a part of one’s own earning, which is retained and is given after superannuation as per the rules. Thus an indefeasible right is created. That right cannot be taken away or abridged in any manner in course of a subsequent employment unless statute under which the employment is made specifically provides for such abridgement.”

Jurisdiction of the State commission (Sec.17)

(1) pecuniary jurisdiction- The state commission shall entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds Rs.20 lakhs but does not exceed rupees one crore. Prior to the Amendment Act, 2002 the Jurisdiction was from above Rs. 5 lakhs and up to Rs. 20,000/- By the increase in amount of jurisdiction there will be lesser number of direct complaints which will go to the National Commission, who will have more time for hearing appeals.

(2) To entertain appeals against the orders of any District Forum within the State; and

(3) To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the

¹⁹¹ A.I.R. 2008 Ori. 28.

State. Such power can be exercised where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in exercise of its jurisdiction illegally or with material irregularity.

Transfer of cases (Section 17-A)

On an application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires. The above said provision has been introduced by the C.P.9Amendment) Act, 2002.

Circuit Benches (Section 17-B)

The State Commission shall ordinarily function in the State capital but may perform its functions at such other place as the State Government may, in consultation with the State Commission, notify in the Official Gazette, from time to time.

This provision also has been introduced by the amendment Act, 2002 and the provision of Circuit Benches could be of great convenience to the litigants who are far away from the State capital.

Appeals from the State Commission to the national commission (Section 19)

It has been noted above that one of the jurisdictions of the State Commission is to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds Rs. 20 lakhs but does not exceed Rs. one crore. Any person aggrieved by an order made by the state Commission in the exercise of its above said jurisdiction, may prefer an appeal against such order to the National Commission. Such appeal shall be made within a period of 30 days from the date of the order. It shall be in such form and manner as may be prescribed. National Commission may, however, entertain an appeal after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing it within that period.

Deposit of required amount as pre-condition for appeal [Second proviso to section 19]

According to the new provision introduced by the Amendment Act, 2002, no appeal by a person, who is required to pay any amount in terms of the order of the State Commission, shall be entertained by the National Commission unless the

appellant has deposited in the prescribed manner 50% of the amount or Rs. 35,000/-, whichever is less.

Hearing of appeal (Section 19-A)

Prior to the Amendment Act, there was no provision regarding the time limit, etc. for hearing the appeal. Section 19-A is a new provision introduced by the amendment Act. According to that provision:-

(a) An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of 90 days from the date of admission.

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

(c) The State Commission or the National Commission, as the case may be, shall make such orders as to costs occasioned by the adjournment as may be provided by the regulations made under this Act.

(d) In the event of appeal being disposed of after the period so specified , the State Commission or the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

6.4 NATIONAL COMMISSION

Composition of the National Commission (Sec. 20)

The National Commission shall consist of the following:

(1) Its president-who is or has been a judge of the Supreme Court. He shall be appointed by the central Government. His appointment shall not be made except after consultation with the Chief Justice of India.

(2) Not less than four, and not more than such number of members, as may be prescribed, one of them shall be a woman.

These members shall have the following qualifications:-

(i) be not less than 35 years of age;

(ii) possesses a bachelor's degree from a recognized university; and

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than 50% of the members shall be from amongst the persons having judicial background.

Disqualification of members

A person shall be disqualified from appointment, if he:-

- (a) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government of a body corporate owned or controlled by the Government; or
- (e) has, in the opinion of the central Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualifications as may be prescribed by the Central Government:

Provided that every appointment under this clause shall be made by the Central Government on the recommendation of a Selection Committee consisting of the following, namely:-

- (a) a person who is a judge of the Supreme Court, to be nominated by the Chief Justice of India (Chairman),
- (b) the Secretary in the Department of Legal Affairs in the Government of India (Member),
- (c) Secretary of the Department dealing with consumer affairs in the Government of India (Member)

Establishment of Benches [Section 20(1-A)]

The Amendment Act, 2002 permits the establishment of the Benches of the National Commission. According to this provision:-

- (1) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.
- (2) A Bench may be constituted by the president with one or more members as the president may deem fit.

Jurisdiction of National Commission (Sec.21)

Jurisdiction of the National Commission shall be as under:

- (1) It can entertain complaints where the value of the goods or services and compensation, if any, claimed exceed Rs. one crore;
- (2) it can entertain appeals against the orders of any State Commission; and
- (3) it can call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission, where it appears to the National Commission that such State Commission has exercised jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

It may be noted that now after the Amendment Act, 2002, the pecuniary jurisdiction is only in respect of complaints where the amount in dispute exceeds Rs. one crore. Earlier it was above Rs. 20 lakhs.

It may, however, be noted that the consumer forum can compensate parties only with regard to deficiency in service. In respect of other claims the parties will have to approach other fora. For example, non-disbursement of sanctioned loan would be deficiency in service. In respect but the claim for loss sustained cannot be adjudged by consumer forum.¹⁹² An order passed by consumer forum without first considering the question of jurisdiction is liable to be set aside.¹⁹³

Power and procedure applicable to National Commission (Section 22)

- (1) The provisions of sections 12, 13 and 14 the rules framed 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 disputes by the National commission.
- (2) The National Commission shall have the power to review any order made by it, when there is an error apparent on the face of the record.

Power to set aside ex parte orders (Section 22-A)

When an order is passed by the national Commission ex parte against the opposite party or a complainant, as the case may be, the aggrieved party may apply to the commission to set aside the said order in the interest of justice.

In case a complaint is dismissed for default, it is held that it is only the National commission who is empowered to set aside ex parte order.¹⁹⁴

Transfer of cases (Section 22-B)

¹⁹² M/s Raj C.C.P. Pvt. Ltd. v. P. & S. Bnk, A.I.R. 2008 (NOC) 2525 (NC).

¹⁹³ K. Sagar M.D. v. A. Bal Reddy, A.I.R. 2008 S.C. 2568; M/s Dwakadish Chits Pvt. Ltd. v. Sanju Ram Aggarwal, (1986-96) NC 7 SC on CC 2469.

¹⁹⁴ Raju Thomas v. national Ins. Co. Ltd., A.I.R. 2009 Ker, 5.

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

Circuit Benches (Section 22-C)

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

Appeals from National commission to the Supreme Court (Section 23)

An appeal against the orders of the National Commission can lie to the Supreme Court. Such an appeal can only be in respect of the powers exercised by the National Commission under Section 21 (a)(i), i.e., when the National Commission is exercising original jurisdiction in respect of complaints where the value of the goods or services and compensation, if any, claimed exceed rupees 20 lakhs. An appeal to the Supreme Court can be made within a period of 30 days from the date of the order of the National Commission. However, the Supreme Court may entertain an appeal after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal within the above said time limit.

Appellant to deposit part of decreed amount before making appeal

A new proviso to Section 23 has been introduced by the C.P.A. (Amendment) Act. It states that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless the person has deposited in the prescribed manner 50% of that amount or Rs. 50,000/- whichever is less.

Finality of orders (Section 24)

Where no appeal has been filed against the order of the District Forum, State Commission or the National Commission, the same shall be final.

Limitation period for filing a complaint 9Sec.24A)

Section 24A is a new provision, inserted by the Consumer protection (Amendment) Act, 1993, w.e.f. 18-6-1993. It prescribes a period of limitation within which a complaint can be filed. The provision is as under:

(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) A complaint may, however, be entertained after the period specified above in sub-section (1) if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period;

Provided that no such complaint shall be entertained unless the District Forum, the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.

In *S. Kumar v. Managing Director, Air India*,¹⁹⁵ the complainant travelled from London to Delhi no 31-7-85. He made a complaint after 4 years and 4 months, on 15-11-89.

It was held that the Limitation Act was applicable in the case and the complaint was barred by limitation.

it may be noted that Section 24A, Consumer protection Act, providing for limitation period of two years for filing a complaint was inserted by an amendment in the Consumer protection Act w.e.f. 18-6-93. The provision is not retrospective.¹⁹⁶

Limitation is case of a continuing wrong

If the wrong is a continuing wrong, for example, the result of a candidate is stated "Result later" and it is not declared for 10 years, the candidate can still make a complaint in a consumer forum.¹⁹⁷

Administrative control (Section 24-B)

Section 24B has been inserted by the consumer protection (Amendment) Act, 1993. It envisages administrative control of National Commission over the State Commission, and that of the State Commission over the District Fora. Enforcement of orders of the District Forum, the State commission or the National Commission (Section 25)

Attachment and sale of property

¹⁹⁵ II (1991) C.P.J. 72; Also see Maj. Gen. (Rtd.) V.K. Verma v. Vikram Kumar, A.I.R. 2008 (NOC) 2527 (NCC); M/s Stereocraft v. M/s Monotype India Ltd. I (1991) C.P.J. 111. K.S. Hegde v. Cjeif Manager, P.N.B., II (1996) C.P.J. 352 (Karnataka S.C.D.R.C.)

¹⁹⁶ Amar Nath Aggarwal v. Norhtern Railway, II (1996) C.P.J. 14 (Delhi S.C.D.R.C.).

¹⁹⁷ Tilak Raj v. Haryana School Education Board, Bhiwani, 1992 C.P.C. 61.

(1) Where an interim order made under this Act is not complied with, the concerned District Forum, State Commission or the National Commission may order the property of the person, not complying with the order, to be attached.

(2) No attachment made as above shall remain in force for more than 3 months at the end of which, if non-compliance continues, the property attached may be sold and out of the proceeds thereof, the relevant consumer court may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where an amount is due under the order of the consumer court, it may issue certificate to the collector of the District to recover the same in the same manner as the arrears of land revenue.

Dismissal of Frivolous or Vexatious Complaints (Section 26)

Where a complaint instituted before the District Forum, the State commission, or as the case may be, the National Commission, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complaint shall pay to the opposite party such cost, not exceeding Rs. 10,000/- as may be specified in the order.

Prior to the amendment of the Act in 1993, only dismissal of the frivolous or vexatious complaint could be there. But to discourage such complaints, which unnecessarily increased the work-load of the fora, the Amendment Act has provided for the penalty up to Rs. 10,000/- on the person making frivolous or vexatious complaint.

Penalties for non-compliance of order (Section 27)

Any trader or a person against whom the consumer court has made an order, fails or omits to comply with the order can be punished as follow:-

- (a) Imprisonment- Minimum one month and maximum 3 years; or
- (b) Fine-Minimum Rs. 2,000/- and maximum Rs. 10,000/- or both the above said punishment may be awarded.

It has been held that the consumer Forum, after the Amendment of 2002, can exercise powers of the Judicial Magistrate and the police is obliged to execute warrants issued by the District/State/National Commission in the same manner as they execute warrants issued by competent Courts of Judicial Magistrate.¹⁹⁸The

¹⁹⁸ State of Karnataka v. Paramjit Sing, A.I.R. 2006 S.C. 1408; V. Anil Kumar v. State of T. N. A.I.R. 2008 Mad.

Supreme Court in State of Karnataka v. Viswabharathi H.B. Co-opt. society,¹⁹⁹ held:

“...Courts and tribunals must be held to possess power to execute their own order.... a statutory tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order has also the power to implement its order.”

Appeal against order passed under Section 27 (Section 27-A)

Earlier there was no provision of appeal against an order awarding punishment under Section 27. Section 27-A inserted by the C.P. (Amendment) Act, 2002 provides for an appeal against such orders, as under:

Order of	Appeal to
The District Forum	The State Commission
The State Commission	The National Commission
The National Commission	The Supreme Court

Time limit for making appeal is 30 days from the date of an order. The relevant appellant authority may entertain an appeal after the expiry of the period of 30 days, if it is satisfied that the appellant had sufficient cause for not preferring an appeal within the period of 30 days.

6.5 TERMINAL QUESTIONS

1. After Consumer Protection (Amendment) Act, 2002, the pecuniary jurisdiction of District Forum is-
 - a. Up to Rs. 10 lakhs
 - b. Up to Rs. 5 lakhs
 - c. Up to Rs. 20 lakhs
 - d. Above 10 lakhs and below 20 lakh
2. Term of office for every member of the District Forum shall be _____ whichever is earlier.
 - a. Five years or up to the age of 65 years
 - b. Five years or up to the age of 60 years
 - c. Three years or up to the age of 65 years
 - d. Three years or up to the age of 60 years

¹⁹⁹ A.I.R. 2003 S.C. 1043.

3. An appeal against an order of the State Commission is made to_____.
 - a. The Supreme Court
 - b. The High Court
 - c. National Commission
 - d. The District Forum
4. According to Section 27, the imprisonment for non-compliance of order of Consumer Court is of
 - a. Minimum six months and Maximum 3 years
 - b. Minimum one year and Maximum 3 years
 - c. Minimum one month and Maximum 3 years
 - d. Minimum one month and Maximum 2 years
5. The National Commission shall ordinarily function at _____
 - a. Mumbai
 - b. New Delhi
 - c. Kolkata
 - d. Bangalore
6. The composition of National Commission is under_____.
 - a. Section 17
 - b. Section 18
 - c. Section 19
 - d. Section 20
7. Any person aggrieved by an order of District Forum may appeal to State Commission within a period of _____.
 - a. 28 days
 - b. 30 days
 - c. 15 days
 - d. 40 days
8. If the opposite party fails to appear and contest, the District forum may proceed and pass _____.
 - a. Interim Order
 - b. Ex-parte Order
 - c. Simple Order

- d. General Order
- 9. Which Section deals with Composition of the District Forum?
 - a. Section 11
 - b. Section 12
 - c. Section 10
 - d. Section 9

6.6 ANSWER TO CHECK YOUR PROGRESS

- 1. c. Up to Rs. 20 lakhs
- 2. a. Five years or up to the age of 65 years
- 3. c. National Commission
- 4. c. Minimum one month and Maximum 3 years
- 5. b. New Delhi
- 6. d. Section 20
- 7. b. 30 days
- 8. b. Ex-parte Order
- 9. c. Section 10

6.7 KEY WORDS

- i. Unsound Mind- A person of unsound mind is an adult who from infirmity of mind is incapable of managing himself or his affairs. The term, therefore, includes insane persons, idiots, and imbeciles.
- ii. Competent Court- A court is competent if it has been given jurisdiction, by statute or constitution, to hear particular types of lawsuits
- iii. Territorial jurisdiction- refers to a court's power over events and persons within the bounds of a particular geographic territory. If a court does not have territorial jurisdiction over the events or persons within it, then the court cannot bind the defendant to an obligation or adjudicate any rights involving them.
- iv. Evidence- The documentary or oral statements and the material objects admissible as testimony in a court of law. It is helpful in forming a conclusion or judgment.
- v. Limitation Period- It is an enactment in a legal system that sets the maximum time after an event that legal proceedings based on that event may be initiated.

6.8 SUGGESTED READINGS

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UNIT-VII

ADMINISTRATIVE BODIES FOR PROTECTION OF CONSUMERS RIGHTS

STRUCTURE:

- 7.1 Introduction
 - 7.2 Central Consumer Protection Council
 - 7.3 Objects of the Council
 - 7.4 State Consumer Protection Council
 - 7.5 District Consumer Protection Council
 - 7.6 Terminal Questions
 - 7.7 Answer to check your progress
 - 7.8 Key words
 - 7.9 Suggested readings
-

OBJECTIVES:

After going through this unit you should be able to understand-

- Various level of Consumer Protection Council
 - Composition of these Councils
 - Power and jurisdiction of these Councils
-

7.1 INTRODUCTION

Originally in this Act provision was made for Consumer Protection Councils at two levels - one at the Central level called Central Consumer Council and the other at State level called State Consumer Council., There was no Consumer Council At the district level. By the Consumer Protection (Amendment) Act, 2002 provision has been made for constitution of a council at district level.

7.2 CENTRAL CONSUMER PROTECTION COUNCIL

Section 4 of the Consumer Protection Act provides that the Central Government shall by notification establish a Consumer Protection Council known as Central Consumer Protection Council from the date specified in the Notification. Thus, constitution of the Central Consumer Protection Council is given in section 4 and Rule 3 of Consumer Protection Rules. As provided in Rule 3 the Central Consumer Council, which may be called Central Council, consists of the following members not exceeding thirty- five:-

- (1) the Minister in charge of the consumer affairs in the Central Government, who shall be its Chairman, and;
- (2) The Minister of state, where he is not holding independent charge or deputy Minister in charge of Consumer Affairs in the Central Government shall be Vice-Chairman of the Council.
- (3) the Minister in charge of Consumer Affairs of two of the States from each of the five regions as mentioned in Schedule I to be Changed by rotation on expiration of the term of the Council on each occasion;
- (4) an Administrator (whether designated as Administrator or Lieutenant Governor) of Union Territory to represent a Union Territory as mentioned in Schedule II to be changed by rotation on expiry of the term of the Council on each occasion;
- (5) two members of Parliament- one from Lok Sabha and one from Rajya Sabha;
- (6) not exceeding five representatives of the Central Government Departments and autonomous organisations concerned with the consumer interests;
- (7) the Registrar, National Consumer Disputes Redressal Commission, New Delhi;
- (8) not exceeding six representatives of consumer organisations from amongst the Indian members of the International Organisation namely, Consumer International to be nominated by the central Government;
- (9) one representative from each of the regions specified in I schedule with Proven expertise and experience. Their total number should not exceed five. They should be drawn from consumer organisations, consumer activists, women, farmers, trade and industry.
- (10) not exceeding three Secretaries in charge of Consumer Affairs in States to be nominated by the Central Government;

(11) the Secretary in charge of the Consumer Affairs in the Central Government Shall be member -Secretary of the Central Consumer Council.

Following are the five regions specified in the Schedule I of the rules:-

1. **Eastern Region-** this consists of State of Bihar, Chhatisgarh, Jharkand, Orissa and West Bengal.
2. **Western Region-** This consists of States of Goa, Gujarat, Maharashtra, Madhya Pradesh and Rajasthan.
3. **Northern Region-** This consists of States of Haryana, Himachal Pr adesh, Jammu & Kashmir, Punjav, Uttar Pradesh and Uttaranchal.
4. **South Region-** This consists of States of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu.
5. **North-Eastern Region-**This Consists of State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura and Sikkim.

Term of the Central Consumer Council

The term of the Central Consumer Council shall be Three Years.

Resignation by Members

Any member may by writing under his hand to the Chairman of the Central Council, resign from the membership of the Council.

The vacancies so caused of otherwise shall be filled from the same category by the Central Government and such person shall hold office so long as the member, whose place he fills, would have been entitled to hold office, if vacancy had not occurred.

Procedure of the Central Consumer Council

Section 5 of the Act provides that the Central Council shall meet as and when necessary but at least one meeting of the Council Shall be held every year.

Sub-Section (2) of Section 5 of the Act provides that the Central Council shall meet at such time and place as the chairman may think fit and shall observe such procedure as may be prescribed.

Rule 4 of Consumer Protection Rules prescribes the following procedure to be followed by the Council:-

The meeting of the Central Council shall be presided over by the Chairman. In the absence of the Chairman, the Vice- Chairman, Shall preside over the meeting of the Central Council. In the absence of the Chairman and the Vice-Chairman, the Central Council shall elect a member to preside over that meeting of the Council.

Each meeting of the Central Council shall be called by giving, not less than ten days from the date of issue, notice in writing to every member.

Every notice of a meeting of a meeting of the Central Council shall specify the place and the day and hour of the meeting and shall contain statement of business to be transacted thereat.

No proceedings of the Central Council shall be invalid merely by reasons of existence of any vacancy in or any defect in the constitution of the Council.

For the purpose of performing its functions under the act, the Central Council may constitute from amongst its members, such working groups as it may deem necessary and every working group so constituted shall perform such functions as assigned to it by the Central Council. The findings of such working groups shall be placed before the Central Council for its Consideration.

The non-official members shall be entitled to first class or second Air-Conditioned by all trains (including Rajdhani Express) to and from Railways fare or actual mode of travel, whichever is less. Outstation non-official members shall be entitled to daily allowance of one hundred rupees per day for attending meetings of the Central Council or any working Group. Local non- official members shall be paid actual conveyance, hire charges subject to a ceiling of Rs. 75.00 per day irrespective of the classification of the city .Members of Parliament shall be entitled to travelling and daily allowance at such rates as are admissible to such members. The resolution passed by the Central Council shall be recommendatory in nature.

Working Group

For the purpose of monitoring the implementation of the recommendations of Central Council and to suggest the working of the Council a Standing Working Group may be constituted by the Central Government from amongst its members. The Member-Secretary of the Council shall be its chairman. The Standing Working Group shall consist of not more than thirty members and shall meet as and when considered necessary by the Central Government.

7.3 OBJECTS OF THE COUNCIL

Section 6 of the Consumer Protection Act provides that the objects of the Central Consumer Protection Council shall be to promote and protect the rights of the Consumers such as-

- (a) the right to be protected against the marketing of goods and services which are hazardous to life and property;
- (b) the right to be informed about the quantity, potency, purity standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
- (d) the right to be heard and to be assured that consumer's 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.
- (g) The use of the words "such as" indicates that the enumeration of these rights is only illustrative not exhaustive.

(a) Right against marketing of goods and services hazardous to life and property

Since the decision in *Donoghue v. Stevenson* it has been established that a manufacturer will be liable if consumer suffers damage because of the use of his product. Though *Donoghue v. Stevenson* was relating to food articles the principle was applied to several other articles such as lifts, motor cars, tombstone, hair dye and industrial chemicals. The principle has also been extended from manufacturers to include repairers, fitters erectors, assemblers etc.

In *Andrews v. Hopkinson* the defendant sold an old car to a Finance Company. The car was 18 years old with defective steering system. The defendant, who was dealer in second hand cars, had taken no steps to see whether the car was roadworthy or not though it remained in his possession for a week. The accident happened and the defendant was held liable.

(b) Right to be informed

Under Section 6(b) every consumer has a right to be informed about the quality, potency, purity standard and price of goods or services as the case may be so as to protect the consumers against unfair trade practices.

In Consumer Protection Council v. National Dairy Development board, the complainant wanted to know whether the dairy Development Board was using the imported palmolein oil. The Board refused to disclose on the ground that the disclosure was not in public interest. It was held that the consumer had a right to know.

In India Photographic Co. v. H.D. Shourie also an importer of film was required to print the price of the films. But the importer pleaded that he was unable to print the price because the nature of the trade did not allow him to open packages: He was directed to make a condition of attaching price tags to each item before selling it to his retailers.

(c) Right to be assured of competitive prices of goods and services

Under Section 6 (c) every consumer has a right to be assured, wherever possible, access to variety of goods and services at competitive prices. Very often it happens that because of monopoly over certain goods or services high prices are fixed arbitrarily and the consumer is compelled to pay. The same thing happens when traders organise themselves and do not allow the sufficient quantity of goods to come in the market to maintain high prices. It is the duty of the consumer Protection Council to protect the consumers from such practices and make available goods in sufficient quantity.

(d) Right to be heard in appropriate forums

In case of violation of rights consumer must have a right to be heard and should be assured that his interest will be duly considered by appropriate forum so that he may get necessary remedies. To achieve this object the procedure of the forums should be cheap and easily accessible to common consumers and there should not be unnecessary delay in deciding the cases.

(e) Right against unfair and restrictive trade practices

Every consumer has a right to be protected against unfair and restrictive trade practices. For example he has to be protected against false advertisements which may mislead customers. Similarly, manufacturers must be required to mention price, date of manufacturing and expiry dates so that customer gets correct information and traders are not allowed to charge price in an arbitrary manner or sell goods which have crossed expiry date. Where goods bear ISI mark but in fact they are not of that standard it is the responsibility of the consumer Council to prohibit their sale in the market.

(f) Right to consumer education

The purpose of consumer education is to make the consumers aware of their rights and remedies which are available in case of their violation in consumer forums. After duly considering steps necessary to promote and protect these rights the Central Consumer Council will pass resolutions and send its recommendations to the Central Government. The Central Government will take necessary action including amendment of the Act and rules wherever necessary.

7.4 STATE CONSUMER PROTECTION COUNCIL

Section 7 of the consumer Protection Act Provides that the State Government shall by notification establish a Consumer Protection Council for every State with effect from the date specified in the notification. It may be referred to as State Council.

Composition of State Council

The State Council shall consist of the following members:-

- (a) the Minister in -charge of consumer affairs in the State Government who shall be its Chairman;
- (b) such number of other official or non-official members representing such interests as may be prescribed by the State Government;
- (c) such number of other official or non-official members, not exceeding ten, as may nominated by the Central Government.

Thus State Council has three types of members. The Minister in-charge of Consumer Affairs of the State is ex-officio Chairman of the State Council. The second category consists of official and non official members who will represent interests as determined by rules made by the State Government. The rules may determine the interests to be represented and also the number of members to represent each type of interest. This category is left to the discretion of the State. Therefore it may differ from State to State. The third Category consists of members nominated by the Central Government. In this category uniformity is possible. This third category has been added by Consumer Protection (Amendment) Act, 2002.

Procedure for Meetings

The State Council shall meet as and when necessary but at least two meetings must be held every year. The procedure of the council for transaction of its business shall be such as may be prescribed by rules made by the State Government.

Place of Meeting

The State Council shall meet at such place as the State Government may think fit.

Object of the State Council

Section 8 of the Act provides that the objects of be to promote and protect within the State the rights of the consumers laid down in clauses of section 6. Thus objects of the State Council are identical with those of the Central Consumer Council. Both are different forums to promote and protect the same rights, which have already been considered in connection with the Central Consumer Council.

7.5 DISTRICT CONSUMER PROTECTION COUNCIL

The Consumer Protection (Amendment) Act, 2002 has made provision for a Consumer Protection Council at the district level known as the District Consumer Protection Council. The amending Act has inserted two new sections, 8A and 8B. Section 8A provides that the State Government Shall establish for every district by notification a Council to be known as District Consumer Protection Council with effect from such date as it may specify in such notification. It also provides for its composition, meetings and procedure, Section 8-B provides for objects of the District Council.

Composition of the District Consumer Protection Council

The District Consumer Protection Council Shall Consist of the following members:-

- (a) The Collector of the district (by whatever name called), who shall be its Chairman; and
- (b) such number of other official and non-official members representing such interests as may be prescribed by the State Government.

Thus besides its Chairman (District Collector) other members, official or non-official, shall be specified by the rules made by the State Government. Naturally composition in this respect may differ from State to State.

Procedure for meeting

Section 8A (3) Provides that the district Consumer Protection Council Shall meet as and when necessary but not less than two meetings shall be held in every year.

The Council shall meet at such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to transaction of business as may be prescribed by the State Government. Thus, detailed procedure is to be prescribed by rules made by the State Government.

Objects of the District Consumer Protection Council

Section 8-B, which was inserted by the Consumer Protection (Amendment) Act 2002, provides that objects of every District Council shall be to promote and protect within the district rights of the consumer laid down in clauses (a) to (f) of Section 6. Thus, object of the District Council also is to promote and protect the same rights as by the Central or State Councils.

7.6 TERMINAL QUESTIONS

1. The term of Central Consumer Council shall be _____.
 - a. Four Years
 - b. Five Years
 - c. Three Years
 - c. Two Years
2. The meeting of the Central Council Shall be Presided over by the _____.
 - a. Chairman
 - b. Vice-chairman
 - c. President
 - d. Vice-president
3. The object of the Central Consumer Protection Council is provided in _____ of the Consumer Protection Act.
 - a. Section 5
 - b. Section 6
 - c. Section 7
 - d. Section 8
4. The object of the central Consumer Protection Council includes _____.
 - a. Right to be informed
 - b. Right to be heard
 - c. Right against unfair trade practice
 - d. All of the above
5. Which of the following state the Western Region does not consist Under Schedule-I?
 - a. Goa
 - b. Gujarat
 - c. Rajasthan

- d. Bihar
- 6. At least how many meeting of the Central Consumer Council shall be held every year under section 5?
 - a. Two
 - b. Three
 - c. One
 - d. Four
- 7. Which Section deals with State Consumer Protection Council?
 - a. Section 5
 - b. Section 6
 - c. Section 7
 - d. Section 8
- 8. The _____ is ex-officio Chairman of the State Council.
 - a. Governor
 - b. Chief Minister
 - c. Minister in-charge of Consumer Affairs of the State
 - d. Home Minister
- 9. Who shall be Chairman of District Consumer Protection Council?
 - a. The Collector of the District
 - b. District Judge
 - c. Member of Parliament of the District
 - d. None of the above

7.7 ANSWER TO CHECK YOUR PROGRESS

- 1. c. Three Years
- 2. a. Chairman
- 3. b. Section 6
- 4. d. All of the above
- 5. d. Bihar
- 6. c. One
- 7. c. Section 7
- 8. c. Minister in-charge of Consumer Affairs of the State
- 9. a. The Collector of the District

7.8 KEY WORDS

- i. Notification- is a formal notifying or informing or an act or instance of notifying, making known, or giving notice. It can be written, printed or announcement.
- ii. Consumer affairs- is an established system or entity formulated for the protection and safeguard of the consumer or purchaser of goods and/or services.
- iii. Unfair Trade Practice- Using various deceptive, fraudulent or unethical methods to obtain business. Unfair trade practices include misrepresentation, false advertising, tied selling and other acts that are declared unlawful by statute. It can also be referred to as deceptive trade practices.
- iv. Appeal- means the transfer of a case from a lower to a higher court for a new hearing.

7.9 SUGGESTED READINGS

- Consumer Protection from Unfair Trading Regulations
- Advani Rani (1990): "Consumer Protection Act and its implications," Ahmedabad: CERC.
- Aggarwal Sukhdev, **Commentary on the Consumer Protection Act**, 1986 Delhi: Bright Law house, 2003.
- Anderson, Janathan et al. (1988): "Thesis and Assignment Writing", New Delhi: Wiley Eastern Limited.
- Bajaj, Ramkrishan (ed.) (1991): "Consumer Viewpoint", Bombay CFBP.

Unit-VIII

PROVISIONS RELATING TO APPEAL UNDER CONSUMER PROTECTION ACT, 1986

STRUCTURE:

- 8.1 Introduction
 - 8.2 Appeal against order passed under Section 27
 - 8.3 Recovery of fine imposed
 - 8.4 Composite order
 - 8.5 Terminal Questions
 - 8.6 Answer to check your progress
 - 8.7 Key words
 - 8.8 Suggested readings
-

OBJECTIVES:

After studying this Unit, you will be able to understand:

- Provisions relating to penal and appeal
 - How the recovery of fine is made
 - Composite order
-

8.1 INTRODUCTION

If an order is passed by the Consumer Forum against a person and that person deliberately fails or omits to comply with the order, it is necessary to impose penalty for such disobedience of the order. By Section 27 Consumer Forums are empowered to take coercive steps against Judgement-Debtor for compliance of the order. But there is lot of controversy and difference of opinion amongst legal professionals on the validity of Section 27. Some are of the opinion of that Section 27 is not legally sustainable, whereas others hold the view that Section 27 is necessary for quick enforcement of orders. In *Haryana State Electricity Board & Ors. v. Pirthi Singh*²⁰⁰ the Haryana State Commission observed that Section 27 was

²⁰⁰ 1993 III CPR 351

king pin of consumer jurisdiction without which perhaps the consumer jurisdiction would only be a paper tiger lacking teeth altogether. It is further observed that this section is one of the rare provisions in the civil jurisdiction where the penal sanction of imprisonment and fine is provided for non-compliance with the orders of Consumer Forums. The main contention of those who argue against section 27 is that Consumer Forum has no power to conduct trials under Criminal Procedure Code. To overcome to this difficulty the Act was amended in 2002 to empower the Consumer Forum with the power of I Class Judicial Magistrate to order imprisonment of a person not complying with the order of the Forum. In the opinion of a few other critics the Judgement-Debtor or the person against whom the Consumer Forum gives order may not get all available opportunities to defend himself, as the trials are summary in nature.

Another criticism was that the principal Act did not contain a provision to punish the complainant for not complying with the order of the Forum, and hence discriminatory. But this lacuna was removed by 1993 amendments. Even a complainant who fails or omits to comply with the order of the Forum is punishable as per the 1993 amendment. At this juncture it is necessary to look into the provisions of section 27 before and after 2002 amendment.

Section 27 after 2002 amendments: (1) Where a trader or a person against whom a complaint is made [or the complainant] fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person [or complainant] shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973.

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.

Thus, section 27 has been subjected to through change and the Consumer Forums are conferred with the First Class Judicial Magistrate powers by 2002 amendments. Further proviso to section 27 is repealed. Thus after 2002 amendments there is no discretion to the Consumer Forums to impose a lesser sentence of imprisonment or fine than specified under section 27. It is mandatory for imposition of the minimum sentence of imprisonment or fine under this section. For this purpose the Redressal Forums are given power of a judicial magistrate of the First Class for the trial of offences under this Act. For the purpose of Criminal Procedure Code, 1973 the forum shall be deemed to be a Judicial Magistrate of the First Class. Sub-section 3 of section 27 states that the District Forum, State Commission or the National Commission may try offences under this Act summarily, as the case may be. Penalty petitions under section 27 are also to be tried summarily.

According to the provision of Section 27 a minimum penalty of one month imprisonment or a fine not less than Rs. 2000 should be imposed. Similarly, a maximum imprisonment of 3 years or a maximum fine of Rs. 10,000 is prescribed. Consumer Forums are expected to exercise the authority judiciously to meet the ends of justice. The legislative intent in creating section 27 is to make the parties comply with the order in the specified time and failure to do so render him liable to be punished with either imprisonment or fine or both.

There are no guidance provided in the Act as to when a decree-holder can invoke section 25 and when shall be proceed under section 27. It is not very clear whether Decree Holder should invoke section 27 only after exhausting the remedy provided under section 25. Delhi State Commission in Omprakash Batia v. Deepu Chits Pvt. Ltd. & Ors held that 'an application under section 27 is maintainable by the decree holder against a judgement-debtor, in inspite of the fact that a remedy by way of execution is available to him under section 25 of the Act.

In *Nirmala Syam Sunder Jaipuria v. Canbank Mutual Fund*²⁰¹ Maharashtra State Commission held a different view according to which the exceptional remedy available under section 27 of the Consumer Protection Act should not be permitted to be resorted as a handle of vengeance. It is only when normal attempts of recovery of the awarded compensation fail, then the same should be resorted to.

The judgement-debtor creates legal hurdles in the way of decree-holder at the time of execution and thus deprives him from the fruits of the decree for a long time. In

²⁰¹ 2001 CYJ 1092

many cases, the judgement-debtors are in a position to pay the decretal amount but still they delay the executions by filing frivolous objections. It is axiomatic that in India the real trouble of a litigant starts after he obtains a decree. The legislature while enacting the Consumer Protection Act was mindful of delays that are caused by judgement-debtors at the time of execution. So parliament in its wisdom enacted section 27 so that a decree-holder in case he fails to pay the decretal amount. The decree-holder can avail any of them at his will.

Whether remedy under section 25 and section 27 can be sought in a single petition is considered by A.P. State Commission in²⁰² and held that separate petitions are to be files because the remedy under section 25 is civil in nature whereas section 27 involves criminal procedure.

While making a final order in a particular case, whether the Redressal Forum is empowered to invoke section 27 in anticipation of disobedience by the judgement-debtor. The National Commission in *Union of India v. Chairman, Madras Provincial Consumer Association*²⁰³ held that the question of punishment or sentence under section 27 could arise only when there had been a disobedience of an order already passed by the Forum. It was not open to the Redressal Forum constituted under the Act to anticipate that such disobedience would take place and pass in advance an order of punishment and imposition of a sentence of imprisonment on the opposite party even while disposing of the main complaint.

Rajasthan State Commission categorically stated in its order in *Rajasthan State Electricity Board & Ors. v. Parag Ice Factory*²⁰⁴, that if an action is to be taken under section 27, natural justice requires that the person sought to be proceeded against should be issued a notice and his explanation should be heard before any conclusion is reached that an order of punishment and imposition of any sentence is called for.

In *Union of India v. Thirubengadam*, the National Commission found error in the order of the District Forum in which the Southern Railway was directed to pay compensation to the complainant and in case the compensation was not paid within the period fixed in the order, the opposite parties would undergo simple imprisonment for one year under section 27 of the Act. The National Commission further observed that such Composite order should not be passed. If an order

²⁰² I(1999) CPJ 208

²⁰³ (1992) II CPR 710

²⁰⁴ (1994)II CPJ 64

passed under section 14 of the Act is not complied with by the opposite party, he should be heard before passing an order under section 27 of the Act. The party concerned is entitled to give reasonable explanation about the default.

Prior to 2002 amendments there was no provision for appeal against the order passed under section 27. In 2002 amendments section 27A was inserted enabling the aggrieved party to prefer an appeal against the order passed under section 27 by the District Forum to State Commission or against the order of the State Commission to National Commission or against the order of the National Commission to the Supreme Court. Sub-section (2) of section 27 prohibits making an appeal against the order passed under section 27 to any other court except to the Consumer Disputes Redressal Commissions. In any case final appeal lies with the Supreme Court. The appeal should be preferred within thirty day and the appellate court has discretion to condone any delay in filing appeal on a sufficient cause. Section 27A is usefully extracted hereunder;

8.2 APPEALS AGAINST ORDER PASSED UNDER SECTION 27

(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from –

- (a) the order made by the District Forum to the State Commission;
- (b) the order made by the State Commission to the National Commission; and
- (c) the order made by the National Commission to the supreme Court.

(2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission:

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Member while dispensing the petitions under section 27 should get themselves acquainted with the Criminal Procedure Code and Indian Penal Code. It is very

important to observe the following basic procedures particularly in exercising the authority in Penalty Petitions.

1. Show-cause notice should be issued to the person who is alleged to have disobeyed the order of the Consumer Forum.
2. Section 25 is a civil remedy whereas section 27 is a criminal proceeding. Hence, both remedies cannot be sought by a single application.
3. A person who is not a party in the main petition cannot be subjected to penalty under section 27.
4. Forum may adopt any procedure for trial under section 27 provided it is fair and just for the opposite party.
5. Accused cannot be convicted in his absence.
6. Basic order cannot be amended, modified or varied in the proceedings under section 27.
7. If the order is complied with during the pendency of petition under section 27 there is no ground to sustain the order if imprisonment. But only fine should be imposed.
8. If the petitioner filed penalty petition against only one opposite party where, in fact, the relief was granted in the original petition against three opposite parties the Forum can impose punishment only on one O.P. against whom the penalty petition is filed.

Under section 27 the Consume Forum is empowered to order imprisonment of a person or impose fine or both. This is default of payment of fine by the offender. Section 30 Cr.P.C. empowers the magistrate to award imprisonment in default of payment of fine subject to certain restrictions. But section 27 does not provide for imposing sentence in default of payment of fine.

8.3 RECOVERY OF FINE IMPOSED

Where an offender has been sentenced to pay a fine by a court, it may take action for the recovery of the fine in the manner specified in section 421 Cr.P.C., i.e., by attachment and sale of movable property, or issue a warrant to the District Collector authorizing him to realize the amount as arrears of land revenue from his movable or immovable property or both.

As accused cannot be convicted in absentia, it is the duty of the Redressal Forum to secure the presence of the O.P. before an action could be taken against him. If his presence could not be secured by summons it is necessary for the Forum to issue

bailable warrant. If bailable warrant fails to bring the opposite party before the Forum, non-bailable warrant may be issued against him.

8.4 COMPOSITE ORDER

A direction to the Railway to provide drinking water in polythene sachets to passengers taking meals and in case of default the General Manager of the Railway, by name would undergo imprisonment for one year was found to be illegal by the appellate Forum- District Forum does not have such a jurisdiction to pass such an order. The question of punishment arises only when there has been a disobedience of an order already passed and it is not open to the Forum to anticipate disobedience and to pass order.

The provision of Section 27 was quasi-criminal and therefore, before any penalty can imposed, the delinquent must be given full opportunity to defend his case.²⁰⁵ When the person is not impleaded by name proceedings under section 27 against such person for non-compliance are not justified.

In *Ravikant v. Mrs. Veena Bhatnagar*²⁰⁶ the National Commission held that the Directors were not personally liable to pay the decretal amount and therefore no complaint could be filed under section 27 of the Act against the appellants personally. But, where the director did not comply with the order passed by the Redressal Commission they were sent to jail for a period of three months. Non-compliance of an interlocutory order issued under section 13 (3B) is punishable under section 27 of the Act also.²⁰⁷

Before imposing sentence, the District Forum here the person against whom a sentence is proposed to be imposed. If it had passed an order imposing without hearing the Forum had denied a valuable right to the person to bring forth any marginally mitigating circumstance, and it resulted in grave miscarriage of justice. The matter was remitted back to the District Forum.²⁰⁸

In *B.M. Viswanathan v. National Radio Electronics Co. & Anr.*²⁰⁹ The Kerala State Commission held that the finding of the District Forum that the judgement-debtor could not comply with the order of the order of the Forum because the decree holder did not co-operate cannot be sustained. It was not proved whether

²⁰⁵ *Jt. Secretary, Gujarat Secondary Education Board v. Dakshna Ishwarlal Dhorajjiya, II* (1993) CPJ 1058

²⁰⁶ I (1996) CPJ 260

²⁰⁷ *S.K. Bhargava v. Mahadeva*, 2004 (8) CLD 14 (NC)

²⁰⁸ *Rajmani v. Pichhimuttu*, 2003 (2) CLD 410 (NC)

²⁰⁹ I (2000) CPJ 555

judgement-debtor made any attempt to comply with the order. Forum coming to a conclusion that there was no willful violation of order is not proper.

Section 25 and 27

In *Dr. Usha Jain v. U.P. Awas Parishad & Anr.*,²¹⁰ the Uttar Pradesh State Commission held that sufficient opportunity was not given to the judgement-debtor and instead of sentence order passed against the opposite party a show-cause notice should have been given by the District Forum. The State Commission quashed the order of sentence passed by the District Forum.

In *M/s Rajani Chit Fund (P) Ltd. V. V. Shakaraiah*,²¹¹ the A.P. State Commission held as under “it is represented to us by the learned counsel for the petitioner herein that a copy of the order of the District Forum in PP No. 14/99 dated 05-10-1999 was not furnished to the petitioner even before he was taken to prison. It is also represented that an application for a copy of that order had been made on 05-10-1999 itself but it had not been handed over immediately. If true, this is a most unfortunate circumstance and District Forum shall see that it shall not happen again. When a person’s liberty has been curtailed, this is a constitutional imperative.

Process of warrant is a most stringent and static action, which gravely affects/jeopardizes right of liberty and freedom of a citizen which is a precious right guaranteed under the constitution as one of the fundamental right, and therefore, it is necessary to exercise caution and be circumspect and not to resort to an action inviting penal consequences.²¹²

In *Durga Prasad Sharma v. Naved Khan*,²¹³ the respondent Naved Khan was ordered to restore the services of the mobile phone of the complainant. Though the defect in service was removed by the respondent, complainant was not satisfied with the services so rendered and therefore made an application under section 27. When the matter has gone for appeal to the Rajasthan State Commission, it was held that the interim order is enforceable under section 25(1) of the Act and not under section 27. Section 25 contemplates the enforcement of orders by attachment of condemner’s property during the pendency of the complaint. Therefore, section 27 is not applicable for enforcement of the interim order.

²¹⁰ I (2000) CPJ 598

²¹¹ I (2000) CPJ 98

²¹² I (2005) CPJ 308

²¹³ I (2006) CPJ 230

8.5 TERMINAL QUESTIONS

1. Which Section of Consumer Forums empowers to take coercive steps against Judgment-Debtor for compliance of the order?
 - a. Section 23
 - b. Section 24
 - c. Section 25
 - d. Section 27
2. According to the provision of Section 27, what is minimum penalty?
 - a. One month imprisonment or a fine not less than Rs. 2000
 - b. Two month imprisonment or a fine not less than Rs. 2000
 - c. One month imprisonment or a fine not less than Rs. 1000
 - d. Two month imprisonment or a fine not less than Rs. 1000
3. Prior to _____ amendments there was no provision for appeal against the order passed under section 27.
 - a. 2000
 - b. 2001
 - c. 2002
 - d. 2003
5. Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from –
 - a. the order made by the District Forum to the State Commission;
 - b. the order made by the State Commission to the National Commission; and
 - c. the order made by the National Commission to the supreme Court.
 - d. All of the above
6. Section _____ was inserted enabling the aggrieved party to prefer an appeal against the order passed under section 2
 - a. Section 23
 - b. Section 24
 - c. Section 27-A
 - d. Section 27
7. Who are given power of a first class judicial magistrate for the trial of offences under Section 27?
 - a. Consumers
 - b. Petitioner

- c. Redressal forum
- d. None of these
- 8. Section 30 of _____ empowers the magistrate to award imprisonment in default of payment of fine subject to certain restrictions.
 - a. Code of Civil Procedure
 - b. Code of Criminal Procedure
 - c. Indian Penal Code
 - d. Consumer Protection Act
- 9. According to the provision of Section 27, what is minimum penalty?
 - e. One year imprisonment or a fine not less than Rs. 20000
 - f. Two years imprisonment or a fine not less than Rs. 20000
 - g. One year imprisonment or a fine not less than Rs. 10000
 - h. Three years imprisonment or a fine not less than Rs. 10000

8.6 ANSWER TO CHECK YOUR PROGRESS

- 1. d. Section 27
- 2. a. One month imprisonment or a fine not less than Rs. 2000
- 3. c. 2002
- 4. d. All of the above
- 5. Section 27-A
- 6. c. Redressal forum
- 7. b. Code of Criminal Procedure
- 8. Three years imprisonment or a fine not less than Rs. 10000

8.7 KEY WORDS

Medical Service- is the diagnosis, treatment, and prevention of disease, illness, injury, and other physical and mental impairments in humans. Health care is delivered by practitioners in medicine, optometry, dentistry, nursing, pharmacy, allied health, and other care providers. It refers to the work done in providing primary care, secondary care, and tertiary care, as well as in public health.

Territorial jurisdiction- refers to a court's power over events and persons within the bounds of a particular geographic territory. If a court does not have territorial jurisdiction over the events or persons within it, then the court cannot bind the defendant to an obligation or adjudicate any rights involving them.

Unsound Mind- A person of unsound mind is an adult who from infirmity of mind is incapable of managing himself or his affairs. The term, therefore, includes insane persons, idiots, and imbeciles.

Redressal- To compensate someone monetarily for some damages that they experienced. "The courts decided that I was entitled to some compensation for my injury, so they ordered redress from the defendant."

8.8 SUGGESTED READING

- Leelakrishana, P. (ed.) (1985): "Consumer Protection and Legal Control", Lucknow: Eastern Book Co.
- Mahajan, B.M. (1980): "Consumer Behaviour in India: An Econometric Study", New Delhi: Naurang Rai & Company.
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Unit – IX

REMEDIES OTHER THEN UNDER CONSUMER PROTECTION ACT, 1986

STRUCTURE:

- 9.1 Introduction
- 9.2 Mechanisms under Allied Laws
- 9.3 Regulatory
- 9.4 Other Initiatives
- 9.5 Terminal Questions
- 9.6 Answer to Check your Progress
- 9.7 Key Words
- 9.8 Suggested Readings

OBJECTIVES:

After going through this unit you should be able to understand

- Remedies available to consumer under various laws other then COPRA
- Role of various mechanisms like ombudsman, other regulatory authorities constituted by Indian Government.

9.1 INTRODUCTION

Other than Consumer Protection Act, 1986 redress mechanisms are also to be found in the Arbitration and Conciliation Act 1996, and through codes of business ethics. Some sector regulators like telecom and electricity also have redress mechanisms. Thus there is generic complaint redress by TRAI, telephone *adalats*, grievance redressal mechanisms of state electricity commissions etc.

State electricity regulators in Himachal Pradesh, Haryana, Karnataka and other states have set up consumer grievance redressal mechanisms including electricity ombudsman in some cases. The Ministry of Consumer Affairs has also set up a national consumer helpline for information and complaints purposes. Some big companies including banks, airlines, and hotels have their own customer feedback and customer solutions mechanisms. With increased competition the need for customer feedback on part of companies would no doubt increase. The suggestion

for setting a 'consumer ombudsman' has often been voiced by consumer activists. A 'consumer ombudsman' or a state level competition and regulatory agency, could be helpful in dealing with local-level monopolies and collusive practices which a consumer often encounters. A consumer ombudsman will also take the pressure off consumer courts and formalize and strengthen the prevalent practice of out-of-court settlements mediated through consumer groups. The banking and insurance sectors, as mentioned above, already have such a system.

9.2 MECHANISMS UNDER ALLIED LAWS

Monopolies and Restrictive Trade Practices Act

Redressal mechanisms are an essential component of the competition legislation of any country and so is the case in India where the MRTPA has in-built grievance redressal provisions. With subsequent developments in the Indian economy, there were nine amendments to the MRTP Act before it was finally repealed by the Competition Act. Of these, the amendments of 1984 and 1991 are significant. Prior to 1984, the MRTP Act contained no provisions for the protection of consumers against false or misleading advertisements and other similar Unfair Trade Practices (UTPs). It was felt necessary to protect them from such practices resorted to within trade and industry to mislead or dupe them. The Sachar Committee therefore recommended that a separate chapter be added to the MRTP Act defining the various UTPs so that consumers, manufacturers, suppliers, traders and others in the market could conveniently identify practices that are prohibited. The provision as to UTPs in the MRTP Act was introduced in 1984. With the restructuring of the MRTP Act through the 1991 amendments, the thrust shifted to curbing MTPs (Monopolistic Trade Practices), RTPs (Restrictive Trade Practices) and UTPs with a view to preserve competition in the economy and safeguard the interests of consumers by providing them protection against false or misleading advertisements and/or deceptive trade practices. Thus, the Consumer Protection Act, 1986 and the Monopolies and Restrictive Trade Practices Act, 1969 had been playing complementary roles in promoting consumer welfare in India.

However over the years, because of its inefficiency (factors like inadequate budgetary allocation and lack of autonomy) the MRTPC was not very effective in providing redress as number of cases kept piling up. Moreover the MRTPC solved

the cases that were less damaging for the consumers and the economy, whilst the relatively more damaging cases remained unattended.²¹⁴

Competition Act, 2002

Effective competition regime provides necessary conditions for maximizing the interests of the consumers. Protection of consumer interests runs through the Competition Act. The Preamble of the Act and subsequent provisions like Sec 18, 19 etc. expressly provide for protection of consumer interests. Sec. 2(f) defines 'consumer' which, as earlier mentioned, is much wider than the definition given under the Consumer Protection Act, 1986. Further, under the chapter on Duties, Powers and Functions of Commission, it is provided that the Commission shall, while determining the "relevant geographic market" and "relevant product market", have due regard to consumer preferences.

The National Competition Policy, 2011 also stated that the fundamental role of competition policy is to guarantee consumer welfare by encouraging optimal allocation of resources and granting economic agents appropriate incentives to pursue productive efficiency, quality and innovation.

The inefficiency and inadequacy of the MRTPA led to the formulation of the Competition Act, and the establishment of the Competition Commission of India to enforce its provisions. The Competition Commission of India is expected to serve consumers better as far as redress is concerned. Among other things the Competition Act allows individual consumers or their associations to present their grievances for redressal, before this forum. However cost considerations and other factors may deter individual consumers or local consumer groups to approach the CCI. The need for regional benches of the Commission is again felt in this context.

9.3 REGULATORY

The Petroleum Regulator

In spite of the Competition Act, one of the objectives behind the recently drafted Petroleum and Natural Gas Regulatory Board Act, 2006, ("PNGRB Act") is "to promote competitive markets" and "protect the interest of consumers by fostering fair trade and competition amongst the entities." Interestingly, the PNGRB Act borrows the concept of "restrictive trade practices" from the MRTP Act—a concept that the Competition Act sought to repeal. After four years of drafting the

²¹⁴ Vijay Vir Singh, The Competition Regime as a Determinant of Consumer Welfare, available at http://www.cutsccier.org/pdf/Comp_Regime_Determinant_of_Consumer_Welfare.pdf, accessed on 15/10/12

Competition Act, the framers appear to have either forgotten about the earlier act or developed cold feet about the need for modern competition legislation.

The Electricity Regulator

The Electricity Act is another example of the confusion caused by overlapping jurisdictions of regulatory authorities in India. Though the Electricity Act was passed by the Parliament on May 26, 2003, a good four and a half months after the Competition Act was passed on January 13, 2003, one of its objectives is the promotion of competition. Indeed, the framers of the legislation ignored the competition legislation and conferred power upon the electricity regulator, the CERC, to deal with anti-competitive agreements, abuse of a dominant position, and mergers impeding competition in electricity markets. The CERC has also been entrusted with the task of advising the government on competition within the electricity sector.

The Telecom Regulator

It was established, *inter alia*, in order to ensure orderly development of the telecom sector. Accordingly, one of its critical functions is to “facilitate competition and promote efficiency.” Nevertheless, the appellate authority established to adjudicate telecom disputes has no jurisdiction over competition matters, or at least those arising under the old MRTP Act.

Banking Ombudsman (BO):

The word “Ombudsman” (‘ahm’‘bedz’ ‘man’) in general means a public official who is appointed to investigate the citizen’s complaints against the administration. He is to intervene for the ordinary citizen in his dealings with the complex machinery of the establishment. In India, any person whose grievance against a bank is not resolved to his satisfaction by that bank within a period of one month can approach the BO if his complaint pertains to any of the matters specified in the Scheme. The Scheme envisages expeditious and satisfactory disposal of customer complaints in a time bound manner. The BOs on receipt of any complaint endeavors to promote, if necessary, a settlement of the complaint by agreement between the complainant and the bank named in the complaint through conciliation or mediation.

The Ombudsman scheme is a boon and a very important channel for redressal of grievances by the general public against banks and banking services. It is framed in such a manner that it does not oust the jurisdiction of other courts, and hence,

aggrieved people do not hesitate in using the banking ombudsman as a primary forum for resolution of disputes regarding banks. The hallmark of the banking ombudsman probably is that it is in position to do justice in an individual case, in the sense it is not bound by the precedents and in certain circumstances, can ignore technicalities and legal rules of evidence while resolving disputes between aggrieved customer and the bank. Apart from above BO's offices have also started outreach activities for creating awareness among customers like interface with banks, organizing awareness camps, participation in exhibitions, responding to reader's queries in newspapers, broadcasting advertisements through AIR and Doordarshan and many others.

So far the achievements of BOS have been remarkable however there is a lot to achieve. As number of complaint received are though significant and are handled but total consumer awareness needs to grow in order to the get total satisfaction of consumer and also BOS needs to handle complaints efficiently and promptly in order to not deny a consumer justice as its delayed is denied. Bank Ombudsman is limited to twenty seven grounds on which a customer can file a complaint against a bank and there is a dire need to expand the scope of ombudsman in the changing IT environment.

A lot can be achieved by thought better corporate governance in banking sector and education of the customer. It is the money of customer which banking sector should be acting as a trustee. If customer is aware of his/her rights then it can be better protected by being vigilant for its interests of safeguarding its money and better services. Strict actions taken on banks who default can help in protecting consumer interest in better way. Education that can improve awareness of banking sector customer which should be like a movement will help safeguarding the interest of the biggest stakeholder i.e. customer of the bank.

Insurance Ombudsman

The scheme of Insurance Ombudsman has been provided under the Redressal of Public Grievances Rules, 1998 (RPG Rules), formulated by the Government of India under the Insurance Act, 1938. These Rules which apply to all insurance companies (general insurance as well as life insurance business) provide for the mechanism for resolution of complaints relating to the settlement of claims on the

part of insurance companies in a 'cost-effective, efficient and impartial manner' (Rule 2). Insurance companies belonging to both public and private sectors are covered by these Rules.

In pursuance of these Rules, the Government of India appointed the Insurance Ombudsman and this institution started functioning in 1999. An Ombudsman is appointed from amongst persons having relevant experience or exposure to industry, civil, administrative, or judicial services. On October 15, 2008, there were 12 Insurance Ombudsman centers, covering all parts of the country, with specific territorial jurisdiction, and located at Ahmadabad, Bhopal, Bhubaneswar, Chandigarh, Chennai, Delhi, Guwahati, Hyderabad, Kochi, Kolkata, Lucknow, and Mumbai.

The Ombudsman may receive and consider complaints of individuals relating to:

- (i) Any partial or total repudiation of claim by an insurer.
- (ii) Any dispute in regard to premium paid or payable in terms of the policy.
- (iii) Any dispute in regard to the legal construction of the policies in so far as such disputes relate to the claims.
- (iv) Delay in settlement of claims.
- (v) Non-issue of an insurance document to customers after receipt of premium.
- (vi) The Ombudsman shall act as counselor and mediator in matters which are within his terms of reference and, if requested to do so in writing by mutual agreement by the insured person and insurance company.
- (vii) The Ombudsman's decision whether the complaint is fit and proper for being considered by it or not shall be final.

When can a complaint be made to the Ombudsman?

- (i) If the insurer has rejected a written representation of the complainant.
- (ii) The complainant had not received any reply within one month after the insurer received his representation.
- (iii) The complainant is not satisfied with the reply given to him by the insurer.
- (iv) The complaint is made not later than 1 year after the insurer had rejected the representation or sent his final reply on the representation of the Complainant.
- (v) The complaint is not on the same subject matter, for which any proceedings "before any court, or Consumer Forum, or arbitrator" is pending or were so earlier.

Where both the parties to the complaint agree to mediation, the Ombudsman is required to give such a recommendation within one month of the receipt of the complaint. However, where no mediation takes place, the Ombudsman has to pass the 'award' within 3 months of the receipt of the complaint. Thus, the maximum time to be taken in finally disposing of a complaint is 3 months. The cases decided by the Ombudsman were examined from the angle of the time taken in their disposal.

Financial Sector Legislative Reforms Commission

The government of India has set up the Financial Sector Legislative Reforms Commission (FSLRC) to examine, amongst other things, the architecture of the regulatory system governing the financial sector in India. Focusing on consumer protection is the ultimate objective of financial sector regulation. The agency would have front ends in every district of the country, where consumers of all financial products would be able to submit complaints. Technology would be used to connect up these front ends to a centralized adjudication process. Consumers will deal only with Financial Redressal Agency (FRA) when they have grievances in any financial activity, and not with multiple regulators.

Some of the rights and safeguards FSLRC proposed for consumers are protection against unfair terms of contract, against misleading and deceptive conduct, the right to receive support to enter suitable contracts, the right to receive reasonable quality of service, and the right to data privacy and security.²¹⁵

Reserve Bank of India

The central bank, the Reserve Bank of India, is the regulator of the banking system and consequently oversees the consumer protection regime for credit products in India. The RBI issues guidelines from time to time covering various aspects of consumer protection. While the RBI was set up in 1934, it has become far more active in protecting the interests of end-consumers primarily in the past two decades, reflecting, in some senses, the creation of the SEBI in 1992 and the IRDA in 1999 to protect the interests of investors and purchasers of insurance products.

The matrix of consumer protection for aggrieved consumers of credit today is as follows:

- (a) Information dissemination to customers mandated by the Banking Codes and Standards Bureau of India (BCSBI) / Fair Practices Code adopted by banks.

²¹⁵ 3Rajat Chaudhuri, Competition Regime and Consumer Welfare available at www.cutsccier.org/icrr/doc/ICRRReport_Chapter6.doc

- (b) In-house grievance redressal mechanisms set up by banks
- (c) Office of the Ombudsman, created by RBI in almost every state of the country that could enquire into complaints not properly resolved by the concerned bank. Banking Ombudsman Scheme is fully funded and managed by India's central bank. Bank customers can lodge a complaint with any of the 15 offices of the Banking Ombudsman situated across the country, on 27 different grounds of "deficiency in banking services".

Security and Exchange Board of India

Aspects of consumer protection relating to securities in India are regulated by the Securities Exchange Board of India. Set up by an Act of Parliament in 1992, the SEBI was set up "to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market..."

The matrix of consumer protection for aggrieved consumers of securities in order of access is as follows:

- (a) SCORES: SEBI Complaints Redress System – an online portal for investors to register their complaints against listed companies and intermediaries.
- (b) SEBI Tribunal: SEBI Tribunal has exclusive jurisdiction in matters falling under the scope of the SEBI Act to the exclusion of courts of law and by extension, consumer courts
- (c) Securities Appellate Tribunal (SAT): Forum for first appeal from decisions of the SEBI Tribunal
- (d) Supreme Court: Second appeal lies directly to the Supreme Court but only on "questions of law"

Pension Fund Regulatory and Development Authority

The pension sub-sector of the financial products and services sector falls under the regulatory ambit of the Pension Fund Regulatory and Development Authority (PFRDA), established "to promote old age income security by establishing, developing and regulating pension funds, to protect the interests of subscribers to schemes of pension funds and for matters connected therewith or incidental thereto".

However, from the point of view of consumer protection, uncertainty still pervades this subsector as even though the PFRDA was first established through an executive Government of India order dated 10th October, 2003, the PFRDA Bill

providing statutory legitimacy to the same has yet to be passed by Parliament. Till date, no consumer grievance redressal mechanism in the pension sphere analogous to those existing in the insurance, credit and securities' spheres has been set up by the PFRDA, on account of its lack of statutory legitimacy.

Lok adalats

The Legal Services Authorities Act, 1987 has been further amended and Chapter VI-A (Section 22A to 22E) titled as 'Pre-Litigation Conciliation And Settlement' has been added in 2002, which provides for establishment of Permanent Lok Adalats in respect of one or more public utility services as under:

- (i) Transport service for the carriage of passengers or goods by air, road or water; or
- (ii) Postal, telegraph or telephone service; or
- (iii) Supply of power, light or water to the public by any establishment; or
- (iv) System of public conservancy or sanitation; or
- (v) Service in hospital or dispensary; or
- (vi) Insurance service

The Central Government or the State Government, may, in the public interest declare any service to be a public utility service. Every Award of the Permanent Lok Adalat made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them. Every Award of the Permanent Lok Adalat shall be deemed to be a decree of a civil court. The Award made by the Permanent Lok Adalat shall be by a majority of the persons constituting the Permanent Lok Adalat.

Every Award made by the Permanent Lok Adalat shall be final and not be called in question in any original suit, application or execution proceeding. The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

9.4 OTHER INITIATIVES

The State Consumer Helplines and National Consumer Helplines

National Consumer Helpline was launched in 2005 in collaboration with the University of Delhi .Consumers from all over the country can access the toll-free number 1800-11-4000 and seek telephonic counseling, advice and guidance to sort out their consumer related problems. An independent evaluation conducted noted

that there are very few calls originating from North East, West and non-Hindi speaking States. Since the service is available only in English and Hindi, State level Helplines were initiated which provides service in regional language, Hindi and English. These functions in 23 States at present These Helplines will be networked and linked to a nodal Centre at IIPA where the central hub will be functioning. A uniform software platform has been provided to the States for this purpose.

Consumer Online Resource & Empowerment (CORE) Project:

This is an Online Disputes Redressal forum (ODR) and is an initiative taken by the Ministry towards web based consumer awareness & protection programme aimed at identification of consumer problems and their redressal using Information Technology tools. The project is being executed through Consumer Coordination Council.

A Consumer Online Research and Empowerment (CORE) Center has been set up in collaboration with Consumer Coordination Council (CCC). The CORE Centre is intended to provide online dispute redressal of Consumer Grievances.

Adequate publicity is being given to the facility of online filing of grievances through the website www.core.co.in. The helpline no. of CORE 18001804566 is also being promoted through the 'Jago Grahak Jago' publicity campaign so that consumers have adequate knowledge about the online grievance resolution facility made available by the Government.

Consumer Advice Centers (CAC)

The consumer centers set up on pilot basis in the four States play a decisive role in as an extended arm of State Helplines and provide consumers with up to date, reliable information and independent consultation. The consumer advice centers in the Districts are the first point of contact for comprehensive consumer information and independent advice. And CAC assist members by ensuring high quality advice by establishing uniform advice standards. They provide an overview of the market and help consumers deal with complex market conditions. They also identify health and environmental aspects that could influence purchasing decisions.

National Physical Laboratory (CSIR-NPL)

The role of National Physical laboratory (CSIR-NPL) as the National Metrology Institute in the fields of metrology, calibration, measurement systems and quality control. The fields of metrology, calibration, measurement systems and quality

control are used by world economies to help develop technical regulations that address optimization of production, health, consumer protection, environment, security and quality. Sound development and effective implementation of these procedures and regulations enable sustainable development, build welfare and facilitate trade.

CSIR-NPL is the custodian and develops by research National Standards of weights and measures¹. It provides an open, transparent and comprehensive scheme to give users reliable quantitative information on the comparability of National and International Metrology Services and to provide the technical basis for quality control and for the subsequent wider agreements negotiated for international trade, commerce and regulatory affairs. From October, 1999, CSIR-NPL is the signatory of Mutual Recognition Arrangement (CIPM MRA) under the International Bureau of Weights and Measures (BIPM), an intergovernmental organization under the authority of the General Conference on Weights and Measures (CGPM). The aim of this agreement is to bring together the officials concerned with measurements in trade, representatives from intergovernmental organizations and international bodies whose missions benefit from the global uniformity and international acceptance of measurements, and representatives from industry.

There is possibility for conflict between jurisdictions of the CCI and other sectoral regulators. For example, under the Electricity Act, 2003, the power is with the Central Electricity Regulatory Commission to issue directions to a licensee or generating company if it enters into any agreement or abuse of their dominant position or enter into a combination, this is likely to cause an adverse effect on competition in electricity industry.

Now this poses a question as to who would exercise jurisdiction and opens up the doors for forum shopping. This is definitely a challenge, and one which requires answers at a policy level. The present situation, therefore, demands harmonization. The Raghavan Committee recommended that the coordination and cooperation between the CCI and sectoral regulators should be maximized. An option is to make the Commission responsible for both sector specific regulation as well as overarching competition enforcement. This approach is advantageous, as it reduces the multiplicity of regulators and accumulates sectoral expertise. Indeed, Australia has used this approach to create an economy-wide economic regulator that integrates technical and competition regulation.

From the above discussion, it can be concluded that consumer protection has become an important aspect of various legislations, and same is the case with competition law. The legislators are realizing the vulnerability of consumers, and are trying to incorporate the relevant provisions in the legislations of the sectors which are more likely to affect the consumers.

9.5 TERMINAL QUESTIONS

1. The CPA provides for a _____ Redressal Mechanism.
 - a. 2-tier
 - b. 3-tier
 - c. 4-tier
 - d. 5-tier
2. The Banking Companies Act was enacted in _____.
 - a. 1945
 - b. 1949
 - c. 1951
 - d. 1948
3. A public official who is appointed to investigate the citizen's complaints against the administration-
 - a. Ombudsman
 - b. Registrar
 - c. comptroller
 - d. none of the above
4. Arbitration and Conciliation Act was passed in
 - a. 1986
 - b. 1992
 - c. 1996
 - d. 1999
5. Electricity Act was passed by the Parliament on-
 - a. May 26, 2003
 - b. June 24, 2001
 - c. July 23, 2002
 - d. May 24, 2004

6. Insurance Ombudsman is not located-
- Chandigarh
 - Chennai
 - Delhi
 - Jaipur
7. 'Lok Adalat' is constituted under-
- The Legal Services Authorities Act
 - The Companies Act
 - Arbitration and Conciliation Act
 - Monopolies and Restrictive Trade Practices Act
8. In India consumer protection relating to securities is regulated by-
- Financial Sector Legislative Reforms Commission
 - Insurance Ombudsman
 - The Securities Exchange Board of India
 - The Electricity Regulator

9.6 ANSWER TO CHECK YOUR PROGRESS

- b. 3-tier
 - b. 1949
 - a. Ombudsman
 - c. 1996
 - a. May 26, 2003
 - d. Jaipur
 - a. The Legal Services Authorities Act
 - c. The Securities Exchange Board of India
-

9.7 KEY WORDS

- Consumer-is a person who buys goods or hires services to be used or consumed by himself/herself or by someone on behalf of the buyer.
- Consumer Protection- refers to laws designed to aid retail consumers of goods and services that have been improperly manufactured, delivered, performed, handled, or described. Such laws afford the retail consumer with additional protection and remedies not generally provided to merchants and others who engage in business transactions.

iii. Consumer dispute- means dispute where the person against whom a complaint has been made, denies or disputes the allegation contained in the complaint.

iv. Caveat emptor- A Latin phrase for "let the buyer beware." The term is primarily used in real property transactions. Essentially it proclaims that the buyer must perform their due diligence when purchasing an item or service.

v. Essential commodities- Goods considered essential to maintain a minimum acceptable standard of living. Some essential goods in an advanced affluent society would be considered luxuries in poorer countries

Mens Rea - As an element of criminal responsibility, a guilty mind; a guilty or wrongful purpose; a criminal intent. Guilty knowledge and willfulness. A fundamental principle of Criminal Law is that a crime consists of both a mental and a physical element. Mens rea, a person's awareness of the fact that his or her conduct is criminal, is the mental element, and actus reus, the act itself, is the physical element

9.8 SUGGESTED READINGS

- "Role of Media in Consumer Protection" Rishikant Agnihotri, Beenu Singh and Arti Singh, VSRD International Journal of Business & Management Research Vol. 1 (10), 2011.
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Unit-X

ROLE OF NGOs AS COMPLAINANT AND CONSUMER HELP LINE

STRUCTURE:

- 10.1 Introduction
- 10.2 Functions of the NGOs
- 10.3 Major NGOs in India for Consumer Protection
- 10.4 Role of NGOs in Consumer Education
- 10.5 Terminal Questions
- 10.6 Answer to check your progress
- 10.7 Key words
- 10.8 Suggested readings

OBJECTIVES:

After studying this Unit, you will be able to understand:

- Various function of NGOs
- Major NGOs in India
- Consumer Education

10.1 INTRODUCTION

According to the World Bank, “a Non-governmental Organization (NGO) is a private organization that pursues activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development”. In other words, NGOs are legally constituted organizations, operate independently from the government and are generally considered to be “non-state, non-profit oriented groups who pursue purposes of public interest”. The primary objective of NGOs is to provide social justice, development and human rights. NGOs are generally funded totally or partly by governments and they maintain their non-governmental status by excluding government representatives from membership in the organization. NGOs are not legal entities under national or international law.

NGOs are formed to function in various fields so as to influence socio-cultural and economic life of people in India. There are organizations in the areas like environment, health care, anti-corruption, eradication of child labour, education, protection of human rights of women and children, consumer protection etc. Similarly in order to protect the consumer rights and interests, there are NGOs working in India. These organizations primarily deal with various projects through media, consumer research and monitoring.

Consumer movement is a socio-economic movement which seeks to protect the rights of consumers in relation to the goods purchased and services availed. Government has been according high priority to better protect consumer interests. The Department of Consumer Affairs, has initiated a number of steps to promote a responsible and responsive consumer movement in the country. Such measures include the use of multi-media campaign for promoting consumer awareness and encouraging consumer's involvement through efforts of Government and Non-Governmental Organizations and others.

The main objectives of the consumer protection programme are:-

- (i) To create suitable administrative and legal mechanisms which would be within the easy reach of consumers and to interact with both Government and non-Governmental Organizations to promote and protect the welfare of the consumers.
- (ii) To involve and motivate various sections of society including consumer organizations, women and youth to participate in the programme.
- (iii) To generate awareness among consumers about their rights and responsibilities, motivate them to assert their rights so not to compromise on the quality and standards of goods and services and to seek redressal of their disputes in consumer fora, if required.
- (iv) To educate the consumers as to be aware of their rights & social responsibilities.

10.2 FUNCTIONS OF THE NGOs

Functions performed by consumer non-government organizations are as follows:

(1) Accelerating Consumer Awareness/Educating Consumers:

The first priority of a consumer NGO is to accelerate consumer awareness towards their rights. To accomplish this task following efforts are made:

- (i) To publish brochures, journals and monographs.
- (ii) To arrange conferences, seminars and workshops.

- (iii) To educate consumers to help themselves.
- (iv) To provide special education to women about consumerism.
- (v) To encourage to follow desirable consumption standards.

(2) Collecting Data on Different Products and testing them:

These NGOs collect samples of different products from time to time and test them. After that the results of the tests are declared to public. In this way, these NGOs provide prior information to consumers about the authenticity of product and protect them. Apart from this, these NGOs also work in conducting investigation/ research on consumer's problems.

(3) Filing Suit on Behalf of Consumers:

Whenever a consumer fails to raise his voice of protest regarding his complaints, these consumers' NGOs come to his rescue and file a case in the court. By rendering this service to the consumers, the consumers get a feeling that they are not alone in their struggle. They also run voluntary complaint centres for the guidance of consumers.

(4) Organizing Protests against Adulteration etc.:

The consumers' NGOs play a significant role in eliminating the evils of adulteration, hoarding, black-marketing, and under-weight selling. Whenever there is an unnecessary rise in the prices of certain things, the consumers' NGO raise a voice of protest against it.

Consumer NGOs prepare films and cassettes related to adulteration in food products, ill effects of medicines and Acts related to consumer protection. Many a times exhibitions are arranged to bring awareness among the consumers against spurious and adulterated products. Nowadays NGOs are playing a major role in encouraging consumers to raise their voice against faulty and inferior products.

(5) Helping Educational Institutions:

These NGOs tell the educational institutions the way to prepare courses of study keeping in view the interests of the consumers. They stress the fact that a special chapter on consumers' interest should always be added to the courses on general study.

(6) Promoting Network of Consumer Associations:

Consumer NGOs are trying to grow their numbers. They want to cover all the regions of the country so that consumers of all the regions are benefited by their

services. Their effort is to form a federation at the apex level and then through the medium of the federation reach state and district level.

(7) Extending Support to Government:

Consumer NGOs by informing the government agencies about adulteration, artificial scarcity, inferior quality products and other such evils help the government. This in turn helps the government to conduct proceedings in time.

10.3 MAJOR NGOs IN INDIA FOR CONSUMER PROTECTION

The Consumer Guidance Society of India (CGSI)

The Consumer Guidance Society of India (CGSI) is a consumer rights organisation based in Mumbai, India. It was the earliest consumer's organization in India, founded by nine women in 1966, and became the first to conduct formal product testing in 1977. CGSI publishes a magazine, "Keemat". Various activities included testing the purity of food products, weights and measures used by shopkeepers and consumer protection in other forms. Consumers have often been made to endure sub-standard products, very high prices, hazardous drugs, never ending shortage of goods and many more injustices. To fight against these odds 9 ladies in Delhi came together to form Consumer Guidance Society of India (CGSI).

Consumer Online Foundation

Consumer Online Foundation major focus is to engage in Policies concerning Consumer Protection and Rights of Citizens. Founders of the Consumer Online Foundation have worked for more than 30 years on Consumer Education and Advocacy. Their major achievements were in making India visible globally as a country with strong consumer protection policies and building bridges between the Government and the Consumer NGOs. It was the signatory of the national coalition of consumer NGOs in India and was members of several working groups and expert committees of Government of India.

Consumer Education and Research Centre

This is an Ahmadabad based NGO that has worked on protecting the rights and interests of consumers through redressal, advocacy, research and media exposure for over 28 years. Anyone can register his problems on this website by becoming a member by paying a fee. It has a formidable success record and also helps consumers to file appropriate litigation. Its website posts interesting success stories

that encourage consumers to sign up as members. It also publishes a useful magazine called 'Insight' and also has a product-testing laboratory.

Consumer Voice

Delhi based Consumer Voice is a consumer advocacy group that also publishes a magazine by the same name as well as an e-newsletter. It informs and educates consumers about their rights and advises on grievance redressal. It has a strong comparative product section and is among the few NGOs that openly offers 'best buy' suggestions for a range of products which have been tested and verified. It allows consumers to register their complaints online and also provides a complaint status. It has a discussion forum that is, however, not very active.

Consumer Coordination Council (CCC)

It was established in 1993 under the Societies Registration Act 1860, Consumer Coordination Council (CCC) has been a stalwart proponent of good governance. In 1996, CCC launched a national campaign on citizens' charter to implement transparency, accountability, standards of service and a public grievance redressal system at the government level. CCC has made notable achievements in influencing the making of laws, governmental policy decisions, and providing administrative infrastructure for protecting consumer interest. It also serves as an umbrella organization for all other consumer NGOs in India.

Citizen Consumer and Civic Action Group

Established in 1985, Citizen Consumer and Civic Action Group (CAG) has grown out to be one of the country's leading consumer advocacy groups. Instrumental in running campaigns for greater access to information, improved functioning of public utilities, greater transparency and accountability in governmental and private sector functioning, and protection of our open spaces and natural environment, CAG plays a vital role in the growth of consumerism in our country. CAG specializes in attending issues that affect the common man's life such as lack of hygiene, pollution of our natural resources, inaccessible healthcare facilities, corruption and lack of accountability for the government revenue from tax sources. CAG has been a member of Consumers International since 1990.

Association for Consumers Action on Safety and Health

Association for Consumers Action on Safety and Health (ACASH) is a consumer organization that focuses on health-related consumer issues. It has programs aimed at the general public promoting consumer rights and overall dispersion of

information regarding consumer safety. Founded by a group of doctors, lawyers and other eminent personalities, ACASH today helps consumers in India through education & awareness, training, developing IEC (Information, Education and Communication) material, networking, advocacy and lobbying and follow-up action. A member of Consumers International since 1990, ACASH is also a member of Globalink, International Network of Women Against Tobacco (INWAT), International Baby Food Action Network (IBFAN), International Lactation Consultant Association (ILCA), World Alliance for Breastfeeding Action (WABA), Health Action International (HAI), Breastfeeding Promotion Network of India (BPNI), All India Drug Action Network (AIDAN), Bureau of Indian Standards (BIS) and Voluntary Health Association of India (VHAI).

Federation of Consumer Organisations in Tamil Nadu (FEDCOT)

The Federation of Consumer Organisations of Tamil Nadu and Pondicherry, well known by its acronym, FEDCOT, is a nation-wide non-governmental organisation that is voluntary non-profitable, non-political, civic-minded, secular and registered under Societies Act to work for the promotion and development of consumers' interest and their welfare. Freedom fighter R.R.Thalavai was responsible for the founding of the organisation in 1990. It is an umbrella body of more than 350 registered consumer associations in Tamil Nadu and Pondicherry. It is one of the largest consumer organisations in the country and in Asia working at grass-roots level. It embraces people from different walks of life. It is significant that sixty percentage of the member councils are in rural areas. FEDCOT is a consumer movement of the people, by the people and for the people. It is concerned with human values.

Citizen Consumer and Civic Action Group

Citizen Consumer and Civic Action Group (CAG) is a non-profit, non-political and professional organisation that works towards protecting citizen's rights in consumer and environmental issues and promoting good governance processes including transparency, accountability and participatory decision-making. CAG came into existence on 7 October 1985 as a non-profit, non-political, non-religious, voluntary and professional citizens group based in Chennai, India. The Group was originally christened Consumer Action Group. Specifically, issues affecting the

common citizen such as extreme pollution, lack of access to information, poor quality health care and civic amenities have emerged as priorities in the work undertaken by CAG.

Consumer Unity of Trust Society

Consumer Unity & Trust Society (CUTS) began its journey in 1983 in Rajasthan, from a rural development communication initiative, a wall newspaper Gram Gadar (Village Revolution). This monthly is published regularly and has been instrumental in providing a forum for the oppressed classes to get justice.

In 1983, CUTS was a small voluntary group of concerned citizens operating out of a garage on a zero budget at Jaipur. Today, its annual budget exceeds Rs 13 crores. The organisation consists of five programme centres and one resource centre in India (at Jaipur with headquarters, Chittorgarh, Calcutta and New Delhi), two resource centres in Africa (at Lusaka, Zambia and Nairobi, Kenya) and one resource centre in London, UK. CUTS is the only Indian NGO with such overseas operations. The current staff strength is over 130 persons, of which one third are females at managerial levels too.

CUTS is registered since 1984, under the Rajasthan Societies Registration Act, 1958, the FCRA and under Sec: 80G of the Income Tax Act. It is governed by a 12-member Executive Committee, which is elected every three years from a general body of 350 life members and 150 institutional members.

Mumbai Grahak Panchayat

Mumbai Grahak Panchayat (MGP) is a registered voluntary consumer organization established in 1975. It has more than 20,000 members in and around Mumbai (Bombay) to whom it supplies about 75 essential commodities at their door-step, every month. MGP's joint purchase and distribution system has been acclaimed by Consumers International which supports links and represents consumer organizations all over the world. To enable consumers to exercise their choice, especially before festivals, MGP also has Consumer Plazas at different locations in the city, for 10 days every year. Items like readymade clothes, bed sheets, bags, sarees, utensils, crockery are sold at reasonable rates.

MGP's Consumer Protection Wing has filed a number of public interest petitions to protect consumers' interests. MGP's Consumer Education Wing organizes consumer awareness camps, workshops, seminars for students and teachers. MGP's Study and Research Wing undertakes consumer research and provides the

base for launching various consumer interest campaigns. An in-house newsletter Grahak is sent to all members, free of cost. A number of priced publications are also available. MGP has a number of Complaint Guidance Centres all over Mumbai which give free guidance to consumers having complaints. MGP also has a new Environment Wing which looks after matters of environmental interest. In 1990, MGP was honored with the National Award (2nd) by the Government of India for its outstanding contribution to Consumer Protection.

Bureau of Indian Standards

The Bureau of Indian Standards (BIS), the National Standards Body of India is involved in the development of technical standards (popularly known as Indian Standards), product quality and management system certifications and consumer affairs. It resolves to be the leader in all matters concerning Standardization, Certification and Quality.

In order to attain this, the Bureau strives:

- To provide efficient timely service.
- To satisfy the customers' needs for quality of goods and services.
- To work and act in such a way that each task, performed as individuals or as corporate entity, leads to excellence and enhances the credibility and image of the Organization.
- BIS would achieve these objectives by working in close cooperation with all concerned organizations and by adopting appropriate management systems, motivating and ensuring active participation of all the employees.

10.4 ROLE OF NGOs IN CONSUMER EDUCATION

Traditionally consumer education has been treated as being about avoiding the rip-offs, money management and understanding credit. But many educators take the broader view that it should be 'education for living' with the major emphasis on the economic, environmental, political and social decisions that learners will make today, tomorrow and in the future.

Consumer Education is a way to balance the power between producers and consumers. Consumer Education aims to encourage individuals to analyse and make value-based decisions at a personal level in terms of needs and wants. It can also help individuals to make decisions which may be concerned with the wider community. It is the transferability of skills conferred by consumer education which sets it apart from consumer information-enabling people to use consumer

information, so they ultimately make informed decisions. Consumer education is basically an education which brings about behavioural changes in a person who goes to market to buy anything. Consumer education is the process of gaining the knowledge and skills needed in managing consumer resources and taking actions to influence the factors which affect consumer decisions. Consumer education addresses four issues i.e. consumer decision making economics, personal finance, rights and responsibilities.

Consumer behaviour and decision making have become prominent areas of research. Consumer behaviour in everyday living is modified by complex micro and macro environment. The consumer buying and consumer decision making are so complicated as a result of external influence that has to be handled within an internal frame of reference which comes from consumer socialization. The change in consumer education should be beneficial for the buyer. Now a day, the market is glutted with a variety of goods and services which leave the consumer muddleheaded with how to decide and for what and how much? The consumer is constantly exploited by the market men like the producers, traders and the shopkeepers. The unfair and unethical malpractices adopted in the market may be black marketing, food adulteration, under-weighting, misleading advertisements, rising prices, false claims, lucky draws, zero percent finance schemes and a lot more which add to the already existing problems of the consumers. The consumer is totally perplexed what to do and what not to do. Ultimately deciding to buy which he doesn't need at all; though there is advancement in education yet most of the consumers are unaware of their rights like right to safety, right to be heard, to seek redress, to be adequately informed and consumer education. Most of the consumers still don't utilize the consumer knowledge they have. So, keeping in mind the gravity and need of consumer education the present study was planned.

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

The role of Non-government Organizations has long been recognized as being of importance in the development of low income settlement and providing support for income generation. Non-government Organizations have multiple and varied approaches to reducing urban poverty. In some circumstances Non-government Organizations work directly with educating women's and make aware about their rights. Non-government Organizations provide important services throughout the world. Their scope covers a wide spectrum of services such as health and welfare, research, education, social organizations and professional associations. A number of initiatives have already been launched by the Non-government Organizations. Many of them have been successful however; most of these initiatives are small in nature and local in context. Non-government Organizations are defined as professional non profit, non membership intermediary organizations that are independent of the state and which undertake a range of activities in order to further development objectives. Non-government Organizations are more efficient, innovative and dynamic than state. There is a need to adopt and replicate these efforts on a nationwide scale by creating awareness among women's. Consumer Education is now part of educational programs for children, youth and adults in most countries in Latin America. In the formal system, NGOs work mainly in schools, and sometimes at the university level, in such diverse fields as law, home economics, medicine and tourism. Consumer education has made important inroads in the region, but it is important to recognize that these achievements fall short of current needs and demands. In this way we find that the consumers' NGOs play a significant role in providing protection to the consumers.

10.2 TERMINAL QUESTIONS

1. NGOs are legal entities under
 - (a) National law
 - (b) International law
 - (c) None of the above
 - (d) (a) and (b)
2. The areas of NGOs
 - (a) Environment
 - (b) Health care
 - (c) Consumer protection
 - (d) All the above

3. The full form of CGSI
 - (a) Consumer Guidance Society of India
 - (b) Consumer Guidance service of India
 - (c) Customer Guidance service of India
 - (d) Consumer Guidance support of India
4. Consumer Education and Research Centre is _____based NGO.
 - (a) Delhi
 - (b) Ahmadabad
 - (c) Mumbai
 - (d) Jaipur
5. Consumer Coordination Council (CCC) was established in-
 - (a) 1993
 - (b) 2003
 - (c) 2001
 - (d) 1994
6. Which issue "consumer education" does not address.
 - (a) Personal finance
 - (b) Rights
 - (c) Responsibilities
 - (d) None of the above
7. Which of the following does not constitute service?
 - (a) Evaluation of Answer Books
 - (b) Declaration of result by University
 - (c) Re-evaluation of Answer Books
 - (d) All of the above

10.3 ANSWER TO CHECK YOUR PROGRESS

1. (c) None of the above
2. (d) all the above
3. (a) Consumer Guidance Society of India
4. (b) Ahmadabad
5. (a) 1993
6. (d) None of the above
7. (d) all the above

10.4 KEY WORDS

- i. Appeal- means the transfer of a case from a lower to a higher court for a new hearing.
- ii. Competent Court- A court is competent if it has been given jurisdiction, by statute or constitution, to hear particular types of lawsuits.
- iii. Consumer-is a person who buys goods or hires services to be used or consumed by himself/herself or by someone on behalf of the buyer.
- iv. Limitation Period- It is an enactment in a legal system that sets the maximum time after an event that legal proceedings based on that event may be initiated.

10.5 SUGGESTED READING

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