

CONSUMER PROTECTION – LAW AND PRACTISE

Section II

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LEARNING OBJECTIVES

Every individual is a consumer, regardless of occupation, age, gender, community, cast, creed, religion or race. Consumer rights and welfare are 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. Consumer is the real deciding factor for all economic activities. It is now universally accepted that the extent of consumer protection is a true indicator of the level of progress in a nation. Taking into account the interests and needs of consumers in all countries, particularly those in developing countries, recognizing that consumers often face imbalances in economic terms, educational level and bargaining power, and bearing in mind that consumer should have the right of access to non-hazardous products, as well as importance of promoting just, equitable and sustainable economic and social development, the Secretary General, United Nations submitted draft guidelines for consumer protection to the Economic and Social Council in 1983. Thereupon on an extensive discussions and negotiations among various countries on the scope and content of such impending legislation certain guidelines were arrived at.

In line with the international development on consumer protection, the Parliament enacted Consumer Protection Act, 1986 provides a forum for speedy and simple redressal of consumer disputes. The rights under the consumer protection flow from the rights enshrined in Articles 14 to 19 of the Constitution of India.

According to the preamble, the Consumer Protection Act, 1986 to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers disputes and for matters connected therewith.

INTRODUCTION

A consumer is a user of goods and services, therefore, every producer is also a consumer. However, conflicting interests have categorised them, inevitably, into two different groups. The industrial revolution brought in the concept of standardisation and mass production and over the years, the type of goods and the nature of services available grew manifold. The doctrine of 'Caveat Emptor' or 'let the buyer beware' which came into existence in the middle ages had been replaced by the principle of 'Consumer Sovereignty' or 'Consumer is the King'. But, with tremendous increase in the world population, the growing markets were unable to meet the rising demand which created a gap between the general 'demand' and 'supply' levels in the markets. This to some extent watered down the concept of 'Consumer Sovereignty', what with consumers being forced to accept whatever was offered to them. On the other hand, the expanding markets necessitated the introduction of various intermediaries between the producer and the ultimate consumer. 'Advertising', though ostensibly directed at informing potential consumers about the availability and uses of a product began to be resorted to as a medium for exaggerating the uses of ones products or disparaging others products so as to have an edge over competitors. Unfair and deceptive practices such as selling of defective or sub-standard goods, charging exorbitant prices, misrepresenting the efficacy or usefulness of goods, negligence as to safety standards, etc. became rampant. It, therefore, became necessary to evolve statutory measures, even in developed countries, to make producers/traders more accountable to consumers. It also became inevitable for consumers to unite on a common platform to deal with issues of common concern and having their grievances redressed satisfactorily.

Genesis of Consumer Protection Laws

The need to ensure the basic rights to health, safety, etc. of consumers has long been recognised the worldover and various general legislations were enacted in India and abroad in this direction. In India, the general enactments other than the law of torts which ultimately aimed at protection of consumers interests are the Indian Contract Act, 1872, the Sale of Goods Act, 1930, the Dangerous Drugs Act, 1930, the Agricultural Produce (Grading and Marketing) Act, 1937, the Drugs and Cosmetics Act, 1940, the Indian Standards Institution (Certification Marks) Act, 1952, the Prevention of Food Adulteration Act, 1954, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the Essential Commodities Act, 1955, the Standards of Weights and Measures Act, 1976 (Now Legal Metrology Act, 2009), the Trade and Merchandise Marks Act, 1958, (Now Trade Marks Act, 1999), the Patents Act, 1970, the Hire Purchases Act, 1972 and the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

These legislations contained regulatory provisions and contravention of these provisions attracted civil liability. This meant that an ordinary consumer had no other remedy but to initiate action by way of a civil suit which involved lengthy legal process proving to be too expensive and time consuming for lay consumers. In fact, at times, the time and cost involved in the legal process was disproportionate to the compensation claimed and granted to an individual consumer. Though the MRTP Commission proved to be far more accessible and less time-consuming than the Civil Courts, its single central location at New Delhi did not make the redressal agency accessible to all consumers, especially those located in the remote towns and villages of the country. Therefore, it became necessary to evolve laws directed at protecting the consumers and at the same time, providing for remedies which are simpler, more accessible, quicker and less expensive.

This paved the way for enactment of the Consumer Protection Act in 1986 providing for simple, quick and easy remedy to consumers under a three-tier quasi-judicial redressal agency at the District, State and

National levels. To make the Act more effective and meaningful, necessary changes have been brought by Consumer Protection (Amendment) Act, 2002, which came into force w.e.f. March 15, 2003.

The Basic Rights of Consumers

The basic rights of consumers that are sought to be promoted and protected are:



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

This is based on the basic rights of consumers as defined by the International Organisation of Consumers (IOCU) viz., the Rights to Safety, to Information, of Choice, to be Heard, to Redressal, to Consumer Education, to Healthy Environment and to Basic Needs.

Scope of the Act

The Act extends to the whole of India except the State of Jammu and Kashmir and applies to all goods and services unless otherwise notified by the Central Government. The Act received the Presidents assent on 24.12.1986. However, all provisions of the Act except those relating to establishment, composition, jurisdiction, etc. of the Consumer Disputes Agencies (which came into force on 1.7.1987) came into force on 15.4.1987.

DEFINITIONS

Section 2(1) of the Act defines various terms used in the Act. Some of the definitions are given hereunder:

Complainant means

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

who or which makes a complaint [Section 2(1)(b)]

An association of persons, to have *locus standi* as consumer, it is necessary that all the individual persons forming the association must be consumers under Section 2(1)(d) of the Act having purchased the same goods/hired the same service from the same party i.e. they should have a common cause of action. Thus, unlike MRTP Act, 1969, the Redressal Machinery under Consumer Protection Act, 1986 has no power to initiate cases *suo-moto*.

Complaint means any allegation in writing made, with a view to obtaining any relief, 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—
 - fixed by or under any law for the time being in force;
 - displayed on the goods or any package containing such goods;
 - displayed on the price list exhibited by him by or under any law for the time being in force
 - agreed between the parties.
- (v) goods which will be hazardous to life and safety when used are being offered for sale to the public,—
 - in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
 - if the trader could have known with due diligence that the goods so offered are unsafe to the public.
- (vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety. [Section 2(1)(c)].

Consumer means any person who

- (a) 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
- (b) 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 but does not include a person who avails of such services for any commercial purpose. [Section 2(1)(d)].



It has been clarified that the term 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.

Therefore, to be a 'consumer' under the Act:

- (i) the goods or services must have been purchased or hired or availed of for consideration which has been paid in full or in part or under any system of deferred payment, i.e. in respect of hire purchase transactions;
- (ii) goods purchased should not be meant for re-sale or for a commercial purpose. Goods purchased by a dealer in the ordinary course of his business and those which are in the course of his business to supply would be deemed to be for 're-sale; and
- (iii) in addition to the purchaser(s) of goods, or hirer(s) or users of services, any beneficiary of such services, using the goods/services with the approval of the purchaser or hirer or user would also be deemed a 'consumer under the Act.

A purchase of goods can be said to be for a 'commercial purpose only if the goods have been purchased for being used in some profit making activity on a large-scale, and there is close and direct nexus between the purchase of goods and the profit-making activity. *In Laxmi Engineering Works v. P.S.G. Industrial Institute*, Supreme Court held that the explanation to Section 2(1)(d) is clarificatory in nature. It observed that whether the purpose for which a person has bought goods is a 'commercial purpose' is always a question of facts and to be decided in the facts and circumstances of each case. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self employment such purchaser of goods would yet be a consumer. The Supreme Court further observed that if a person purchased a machine to operate it himself for earning his livelihood, he would be a consumer. If such person took the assistance of one or two persons to assist him in operating the machine, he would still be a consumer. But if a person purchases a machine and appoint or engage another person exclusively to operate the machine, then such person would not be a consumer.

In Bhupendra Jang Bahadur Guna v. Regional Manager and Others (II 1995 CPJ 139), the National Commission held that a tractor purchased primarily to till the land of the purchaser and let out on hire during the idle time to till the lands of others would not amount to commercial use.

The question as to whether the widow of the deceased policy holder was a 'consumer' under the Act was decided in the affirmative by the State Commission in Andhra Pradesh in the case of *A Narasamma v. LIC of India*. The State Commission held that as the term 'consumer' includes any beneficiary of service other than the person who hires the services for consideration, the widow being the beneficiary of services is a 'consumer' under the Act entitled to be compensated for the loss suffered by her due to negligence of the LIC.

In Laxmiben Laxmichand Shah v. Sakerben Kanji Chandan and others 2001 CTJ 401 (Supreme Court) (CP), the Supreme Court held that the tenant entering into lease agreement with the landlord cannot be considered as consumer under Section 2(1)(d) of the Act. Where there was no provision in the lease agreement in respect of cleaning, repairing and maintaining the building, the rent paid by tenant is not the consideration for availing these services and therefore, no question of deficiency in service.

Goods, in terms of Section 2(1)(i) has been defined to mean goods as defined in the Sale of Goods Act, 1930. As per Section 2(7) of the Sale of Goods Act, 1930 Goods means every kind of movable property

other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. Therefore, most consumer products come under the purview of this definition.

In Morgan Stanley Mutual Fund v. Kartik Das (1994) 3 CLJ 27, the Supreme Court held that an application for allotment of shares cannot constitute goods. It is after allotment, rights may arise as per the articles of association of the company. At the stage of application there is no purchase of goods for consideration and again the purchaser cannot be called the hirer of services for consideration.

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

Passengers travelling by trains on payment of the stipulated fare 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. Subscribers of telephones would also be 'consumer' under the Act.

Contract of Service and Contract for Service



The Supreme Court in the case of Indian Merchants Association v. V P Santha, (CA No. 688 of 1993 decided on 13th November 1995) observed that a contract for service implies a contract whereby one party undertakes to render services e.g. professional or technical services to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion. A contract of service on the other hand implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance. The Parliamentary draftsman was well aware of this well-accepted distinction between 'contract of service' and 'contract for services' and had deliberately chosen the expression 'contract of service' instead of the expression 'contract for service' in the exclusionary part of the definition of 'service', this being the reason being that an employer could not be regarded as a consumer in respect of the services rendered by his employee in pursuance of contract of employment. By affixing the adjective 'personal' to the word 'service' the nature of the contracts which were excluded were not altered. The adjective only emphasised that what was sought to be excluded was personal service only. The expression contract of personal service in the exclusionary part of Section 2(1)(o) must, therefore, be construed as excluding the services rendered by an employee to his employer under the contract of personal service free from the ambit of the expression service.

Service Rendered under Medicare Insurance Scheme: Service rendered by a medical practitioner or hospital/nursing home can not be regarded as service rendered free of charge, if the person availing the service has taken an insurance policy for medical care whereunder the charges for consultation, diagnosis and medical treatment are borne by the insurance company and such service would fall within the ambit of 'service' as defined in Section 2(1)(o). Similarly, where as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, service rendered to such an employee and his family members would not be free of charge and would constitute 'service' under Section 2(1)(o) of the Act.

In State of Haryana v. Santra [2000(3) SCALE 417], the Supreme Court held that in a country where the population has been increasing rapidly and the Government has taken up the family planning as an important programme, the medical officer as also the State Government must be held responsible in damages if the family planning operation is a failure on account of the medical officers negligence because this has created additional burden on the parents of the child.

In the case of Alex J. Rebello v. Vice Chancellor, Banglore University and others, 2003 CTJ 575 (CP) (NCDRC) the National Commission has held that the University in conducting examination, evaluating answer sheets and publishing the result was not performing any service for consideration and a candidate who appeared for the examination cannot be regarded as a consumer.

Consumer Dispute means a dispute where the person against whom a complaint has been made, denies or disputes the allegation contained in the complaint [Section 2(1)(e)].

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 services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—

- (a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in 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.[Section 2(1)(nn)].

Defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods [Section 2(1)(f)].

It is clear from the above definition that non-fulfilment of any of the standards or requirements laid down under any law for the time being in force or as claimed by the trader in relation to any goods fall under the ambit of defect. Therefore, contravention of any of the provisions of enactments such as the Drugs & Cosmetics Act, 1950, , the Prevention of Food Adulteration Act, 1955, the Indian Standards Institution (Certification Marks) Act, 1952 etc. or any rules framed under any such enactment or contravention of the conditions or implied warranties under the Sale of Goods Act, 1930 in relation to any goods have also been treated as a defect under the Act. Fault, imperfection or shortcoming in quality, quantity, potency, purity or standard as claimed by the trader in any manner whatsoever in relation to goods is to be determined with reference to the warranties or guarantees expressly given by a trader.

Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service [Section 2(1)(g)].

Failure to maintain the quality of performance required by the law or failure to provide services as per warranties given, by the provider of the service would amount to 'deficiency'.

In Divisional Manager, LIC of India v. Bhavanam Srinivas Reddy, the National Commission observed that default or negligence in regard to settlement of an insurance claim (on allegation of suppression of material facts, in this particular case) would constitute a deficiency in service on the part of the insurance company

and it will be perfectly open for the aggrieved consumer to approach the Redressal Forums to seek appropriate relief.

In Jaipur Metals and Electrical Ltd. v. Laxmi Industries, the National Commission held that a reading of Section 2(1)(g) of the Act shows that deficiency must pertain to the 'performance' in terms of quality, nature and manner to be maintained or had been undertaken to be performed in pursuance of a contract.

In Punjab National Bank v. K.B. Shetty (First Appeal No. 7 of 1991 decided on 6th August, 1991), ornaments kept in the banks locker were found lost though the certificate recorded by the custodian of the bank on the day the customer operated the locker stated that all lockers operated during the day have been checked and found properly locked. The National Commission unholding the decision of the State Commission, held the bank guilty of negligence and therefore, liable to make good the loss.

However, failure to provide nursing and financing facilities to a small scale industry which consequently became sick cannot be said to constitute 'deficiency in service' as in matters of grant or withholding of further advances and insisting on margin money, banks may exercise their discretion and act in accordance with their best judgement after taking into account various relevant factors. Therefore, the proper forum to agitate such grievances is a civil court (*Special Machines v. Punjab National Bank*, Original Petition No. 32/1989 decided on 22.12.1989; *M.L. Joseph v. SBI*: O.P. No. 2/1989 decided on 31.8.1989). It has also been held by National Commission in the case of *Mrs. Anumati v. Punjab National Bank* (2003 CTJ 921 (CP) (NCDRC) that the financial institutions have every right to protect their interests by taking conscious decisions. There shall be no deficiency in service where the bank takes conscious decision to adjust the fixed deposit of the joint holders against the loan taken by a third party when the FDR has been mortgaged as guarantee for loan.

Failure of a Housing Board to give possession of the flat after receiving the price and after registering it in favour of the allottee was held to be 'deficiency in service' in the case of *Lucknow Development Authority v. Roop Kishore Tandon* F.N. No. 54/1990 decided on 10.10.1990.

Cancellation of train services by the railways due to disturbance involving violence so as to safeguard the passengers as well as its own property was held by the National Commission as not constituting 'deficiency in service' on the part of the Railway. [*Dainik Rail Yatri Sangh (Regd.) v. The General Manager, Northern Railway - I* (1992) CPJ 218 (NC)]. Failure of the Railways to provide cushioned seats in the first class compartments as per specifications laid down by the Railway Board and to check unauthorised persons from entering and occupying first class compartments was held to be 'deficiency' [N. *Prabhakaran v. General Manager, Southern Railway, Madras - I* (1992) CPJ 323 (NC)].

In Union Bank of India v. Seppo Rally OY (1999) 35 CLA 203, the Supreme Court held that delay in payment of an unconditionally guaranteed amount by a bank in India to a non-resident in Finland in foreign currency can not be attributed to any deficiency in the service of the bank when the banks stand is that the delay is caused by the failure of a bank in Finland, to which the remittance was to have been made under the non-residents instructions to reply to the Indian Banks valid query in this connection and the RBI took time to grant the necessary permission to make the remittance.

CONSUMER PROTECTION COUNCILS

The interests of consumers are sought to be promoted and protected under the Act inter alia by establishment of Consumer Protection Councils at the Central, State and District Levels. Chapter II of the Consumer Protection Act, 1986 comprising Sections 4 to 8 deals with Consumer Protection Councils.

Central Consumer Protection Council

Section 4 empowers the Central Government to establish a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council), consisting of the Minister in charge of Consumer Affairs in the Central Government, as its Chairman, and such number of other official or non-official members representing such interests as may be prescribed. However, the Consumer Protection Rules, 1987 restrict the number of members of the Central Council to 150 members.

Section 5 of the Act requires the Central Council to meet as and when necessary, but atleast once in every year. The procedure in regard to transaction of its business at the meeting is given in Rule 4 of the Rules.

State Consumer Protection Council

Section 7 provides for the establishment of State Consumer Protection Councils by any State Government (by notification) to be known as Consumer Protection Council for (name of the State). The State Council shall consist of a Minister incharge of Consumer Affairs in the State Government as its Chairman and such number of other official or non-official members representing such interests as may be prescribed by the State Government and such number of other official or non official members, not exceeding ten, as may be nominated by the Central Government. The State Council shall meet as and when necessary but not less than two meetings shall be held every year. The procedure to be observed in regard to the transaction of its business at such meetings shall be prescribed by the State Government.

District Consumer Protection Council

In order to promote and protect the rights of the consumers within the district, section 8A provides for establishment in every district of a council to be known as the District Consumer Protection Council .It shall consist of the Collector of the district (by whatever name called), who shall be its Chairman and such number of other official and non-official members representing such interests as may be prescribed by the State Government. The District Council shall meet as and when necessary but not less than two meetings shall be held every year. The District 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 the transaction of its business as may be prescribed by the State Government.

REDRESSAL MACHINERY UNDER THE ACT

The Act provides for a three-tier quasi-judicial redressal machinery at the District, State and National level for redressal of consumer disputes and grievances. The District Forum has jurisdiction to entertain complaints where the value of goods/services complained against and the compensation, if any claimed, does not exceed Rs.20 lakhs, the State Commission for claims exceeding Rs. 20 lakhs but not exceeding Rs. 1 crore; and the National Commission for claims exceeding Rs.1 crore.

District Forum

Section 9 of the Act provides for the establishment of a District Forum by the State Government in each district of the State. However, the State Government may establish more than one District Forum in a district if it deems fit to do so. Section 10(1) provides that each District Forum shall consist of:

- (a) a person who is, or who has been, or is qualified to be, a District Judge, who shall be its President;
- (b) two other members one of whom shall be a woman, who shall have the following qualifications,

namely:

- (i) be not less than thirty-five years of age,
- (ii) possess a bachelor's degree from a recognised university,
- (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 a person shall be disqualified for appointment as a member if he—

- (a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the State Government 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 or a body corporate owned or controlled by the Government; or
- (e) has, in the opinion of the State 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 disqualification as may be prescribed by the State Government.

Every member of the District Forum shall hold office for a term of 5 years or upto the age of 65 years, whichever is earlier, and shall be eligible for reappointment for another term of five years or upto the age of sixty-five years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in Section 10(1)(b) and such re-appointment is also made on the basis of the recommendation of the Selection Committee. A member may resign his office in writing under his hand addressed to the State Government.

Jurisdiction of District Forum

Section 11 provides for the jurisdiction of the District Forum under two criteria pecuniary and territorial.

Pecuniary limits

Section 11(1) empowers the District Forum to entertain complaints where the value of goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs.

Territorial limits

Section 11(2) requires a complaint to be instituted in the District Forum within the local limits of whose jurisdiction the opposite party or the defendant actually and voluntarily resides or carries on business or has a branch office or personally works for gain, at the time of institution of the complaint; or any one of the opposite parties (where there are more than one) actually and voluntarily resides or carries on business or has a branch office or personally works for gain, at the time of institution of the complaint, provided that the other opposite party/parties acquiesce in such institution or the permission of the Forum is obtained in respect of such opposite parties; or the cause of action arises, wholly or in part.

In the case of Dynavox Electronic Pvt. Ltd. v. B.J.S. Rampuria Jain College, Bikaner (Appeal No. 4/89 before the Rajasthan CDRC), it was held that where in a contract, the machinery was supplied and installed at a particular place, a part of cause of action would be deemed to have arisen at that place, therefore, the complaint could be instituted in the District Forum within whose jurisdiction that place falls.

State Commission

Section 16 of the Act empowers the State Government to establish the State Consumer Disputes Redressal Commission consisting of:

- (a) a person who is or has been a judge of a High Court appointed by the State Government (in consultation with the Chief Justice of the High Court) who shall be its President.
- (b) not less than two and not more than such number of members, as may be prescribed, one of whom shall be a woman, who shall have the following qualifications, namely:
 - (i) be not less than thirty-five years of age,
 - (ii) possess a bachelor's degree from a recognised 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:

It is required that not more than fifty per cent of the members be from amongst persons having a judicial background. "Persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level.

A person shall be disqualified for appointment as a member if he—

- (a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the State Government 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 or a body corporate owned or controlled by the Government; or
- (e) has in the opinion of the State 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 disqualification as may be prescribed by the State Government.

Every appointment shall be made by the State Government on the recommendation of a Selection Committee consisting of the President of the State Commission, Secretary Law Department of the State and Secretary in charge of Consumer Affairs in the State. The proviso to this clause states that where the President of the State Commission is, by reason of absence or 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. Section 16(2) empowers the State Government to decide on the salary or honorarium and other allowances payable to the members of the State Commission and the other terms and conditions of service.

Every member of the State Commission shall hold office for a term of five years or upto the age of sixty-seven years, whichever is earlier and shall be eligible for reappointment for another term of five years or upto the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in Section 16(1)(b) and such re-appointment is made on the basis of the recommendation of the Selection Committee.

Jurisdiction of State Commission

Section 17 of the Act provides for the jurisdiction of the Commission as follows:

- (a) the State Commission can entertain complaints where the value of the goods or services and the compensation, if any claimed exceed rupees twenty lakhs but does not exceed rupees one crore;
- (b) the State Commission also has the jurisdiction to entertain appeals against the orders of any District Forum within the State. However, under second proviso to Section 15 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 fifty percent of the amount or rupees twenty-five thousand, whichever is less;
- (c) the State Commission also has the power to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, if it appears to it that such District Forum has exercised any power not vested in it by law or has failed to exercise a power rightfully vested in it by law or has acted illegally or with material irregularity.

A complaint shall be instituted in a State Commission within the limits of whose jurisdiction, -

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



The State Commission's jurisdiction may be original, appellate or revisional. In respect of (c) above, the State Commission may reverse the orders passed by the District Forum on any question of fact or law or correct any error of fact or of law made by the Forum.

The National Commission in *Indian Airlines v. Consumer Education and Research Society* (1992) CPR 4 (NC) held that in respect of the original jurisdiction of the State Commission, Section 17 only prescribes pecuniary limits. No territorial limits have been fixed for the exercise of original jurisdiction under the Act though the provision contained in Section 11(2) of the Act apply *mutatis mutandis* in the matter of entertaining original complaints by the State Commission. The territorial jurisdiction of the State Commission therefore extends to the territorial limit of the State. In the exercise of its appellate jurisdiction, the State Commission may entertain appeals only against the orders of any District Forum within the State. Similar condition also applies in respect of the State Commissions power to revise orders of the District Forums - only orders of the District Forum within the State may be subject to revision by the State Commission.

Transfer of Cases

Section 17A empowers the State Commission on the application of the complainant or of its own motion to

transfer, at any stage of the proceeding any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

National Commission

Section 9 empowers the Central Government to establish the National Consumer Disputes Redressal Commission, by notification in the Official Gazette. Section 20(1) provides that the National Commission shall consist of—

- (a) a person who is or has been a judge of the Supreme Court, to be appointed by the Central Government (in consultation with the Chief Justice of India), who shall be its President;
- (b) not less than four and not more than such number of members as may be prescribed one of whom shall be a woman, who shall have the following qualifications, namely:-
 - (i) be not less than thirty-five 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 not more than fifty percent of the members shall be from amongst the persons having judicial background. "Persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

A person shall be disqualified for appointment if he—

- (a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the Central Government 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 or 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 disqualification as may be prescribed by the Central Government

Every appointment by the Central Government is required to be made on the recommendation of a Selection Committee consisting of a Judge of the Supreme Court to be nominated by the Chief Justice of India, the Secretary in the Department of Legal Affairs and the Secretary in charge of Consumer Affairs in the Government of India. Section 20(2) empowers the Central Government to fix the salary/ honorarium and other allowances payable to the members as well as the other terms and conditions of their service. Every member of the National Commission shall hold office for a term of five years or upto seventy years of age, whichever is earlier and shall be eligible for reappointment for another term of five years or upto the age of seventy years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in Section 20(1)(b) and such re-appointment is made on the basis of the recommendation of the Selection Committee.

Jurisdiction of National Commission

Section 21 provides that the National Commission shall have jurisdiction:

- (a) to entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds rupees one crore;
- (b) to entertain appeals against the orders of any State Commission. However, under second proviso to Section 19 no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty percent of the amount or rupees thirty-five thousands, whichever is less; and
- (c) to call for the records and pass appropriate orders in any consumer dispute which is pending before, or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a 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.

Complaints before the District Forum and State Commission

Section 12 provides that 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 the District Forum by—

- (a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;
- (b) any recognised consumer association, whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided, is a member of such association or not; or
- (c) one or more consumers, where there are numerous consumers having the same interest with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or
- (d) the Central or the State Government as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

Every complaint filed under this section is required to be accompanied with such amount of fee and payable in such manner as may be prescribed. On receipt of a complaint, the District Forum may, by order, allow the complaint to be proceeded with or rejected. However, a complaint shall not be rejected unless an opportunity of being heard has been given to the complainant. It is also to be noted that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received. Where a complaint is allowed to be proceeded, the District Forum may proceed with the complaint in the manner provided under this Act. Where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

The explanation defines the term 'recognised consumer association' as to mean any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force.

Thus, in case the affected consumer is unable to file the complaint due to ignorance, illiteracy or poverty, any recognised consumer association may file the complaint. The rule of 'privity of contract' or locus standi which permits only the aggrieved party to take action has very rightly been set aside in the spirit of public interest

litigation. Section 13 states the procedure to be followed by the District Forum or the State Commission on receipt of a complaint. On receipt of a complaint, a copy of the complaint is to be referred to the opposite party (or each of the opposite parties, where there are more than one) within twenty-one days from the date of its admission, directing him to give his version of the case within a period of 30 days. This period may be extended by another period of 15 days. If the opposite party admits the allegations contained in the complaint, the complaint will be decided on the basis of materials on the record. Where the opposite party denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the stipulated time, the dispute will be settled in the following manner:

(i) *In case of dispute relating to any goods*

Where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, a sample of the goods shall be obtained from the complainant, sealed and authenticated in the prescribed manner, for referring to the appropriate laboratory for the purpose of any analysis or test whichever may be necessary, so as to find out whether such goods suffer from any such defect. The 'appropriate laboratory' would be required to report its finding to the referring authority, i.e. the District Forum or the State Commission within a period of forty-five days from the receipt of the reference or within such extended period as may be granted by these agencies [Section 13(1)(c)].

The term 'Appropriate laboratory' has been defined to mean a laboratory or organisation recognised by the Central Government or a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect.

Section 13 empowers the District Forum/State Commission to require the complainant to deposit such amount as may be specified, towards payment of fees to the 'appropriate laboratory for the purpose of carrying out the necessary analysis or tests. The amount so deposited shall be remitted to the appropriate laboratory to enable it to carry out the analysis and send the report. On receipt of the report, a copy thereof is to be sent by District Forum/State Commission to the opposite party along with its own remarks. In case any of the parties i.e. opposite party or the complainant, disputes the correctness of the methods of analysis/test adopted by the appropriate laboratory, the concerned party will be required to submit his objections in writing in regard to the report.

After giving both the parties a reasonable opportunity of being heard and to present their objections, if any, the District Forum/State Commission shall pass appropriate orders under Section 14 of the Act.

(ii) *In case of dispute relating to goods not requiring testing or analysis or relating to services*

Section 13(2)(b) provides that where the opposite party denies or disputes the allegations contained in the complaint within the time given by the District/State Commission, the Agency concerned shall dispose of the complaint on the basis of evidence tendered by the parties. In case of failure by the opposite party to represent his case within the prescribed time, the complaint shall be disposed of on the basis of evidence tendered by the complainant.

Limitation Period for Filing of Complaint

Section 24A provides that 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. However, where the complainant satisfies the Forum/Commission as the case may be, that he had sufficient cause for not filing the complaint within two years, such complaint may be entertained by it after recording the reasons for condoning the delay.

Administrative Control

Section 24B authorises the National Commission to exercise administrative control over the State Commissions in the matter of calling for periodical returns regarding the institution, pendency and disposal of cases, issuance of instructions regarding adopting of uniform procedure in hearing of matters, serving copies of documents, translation of judgements etc. and generally overseeing the functioning of the State Commission/District forum to ensure that the objects and purposes of the Act are served in the best possible manner.

Similarly, the State Commission has been authorised to exercise administrative control over all the District forum within its jurisdiction in all the above matters.

Powers of the Redressal Agencies

The District Forum, State Commission and the National Commission have been vested with the powers of a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters:

- (i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;
- (ii) the discovery and production of any document or other material object producible as evidence;
- (iii) the reception of evidence on affidavits;
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- (v) issuing of any commission for the examination of any witness; and
- (vi) any other matter which may be prescribed.

Under the Consumer Protection Rules, 1987, the District Forum, the State Commission and the National Commission have the power to require any person:

- (i) to produce before and allow to be examined by an officer of any of these agencies, such books of accounts, documents or commodities as may be required and to keep such book, documents etc. under his custody for the purposes of the Act;
- (ii) to furnish such information which may be required for the purposes of the Act to any officer so specified.

These redressal agencies have also been empowered to pass written orders authorising any officer to exercise the power of entry and search of any premises where the books, papers, commodities or documents are kept if there is any ground to believe that these may be destroyed, mutilated, altered, falsified or secreted. Such authorised officer may also seize books, papers, documents or commodities if they are required for the purposes of the Act, provided the seizure is communicated to the District Forum/State Commission/National Commission within 72 hours. On examination of such documents or commodities, the agency concerned may order the retention thereof or may return it to the party concerned.

The District forum, the State Commission and the National Commission have the power to issue remedial orders to the opposite party directing him to do any one or more of the things referred to in Section 14(1)(a)

to (i) as discussed hereinbelow. The redressal agencies have also been empowered to dismiss frivolous and vexatious complaints under Section 26 of the Act and to order the complainant to make payment of costs, not exceeding Rs. 10,000 to the opposite party.

COMPLAINTS TO BE REGISTERED	
District Consumer Forum	for a claim of Compensation up to Rs.20 lakhs
State Commission	for a claim of Compensation above Rs.20 lakhs and up to Rs.1 crore
National Commission	for a claim of Compensation above Rs.1 crore

Nature and Scope of Remedies under the Act

In terms of Section 14(1) of the Act, where the goods complained against suffer from any of the defects specified in the complaint or any of the allegations contained in the complaint about the services are proved, the District Forum/State Commission/National Commission may pass one or more of the following orders:



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

It is to be noted that the minimum amount of sum so payable shall not be less than five percent of the value of such defective goods sold or service provided, as the case may be, to such consumers. Further, the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed.
- (hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;
- (i) to provide for adequate costs to parties.

The remedies that can be granted by the redressal agencies are therefore, wide enough to cover removal of defects/deficiency in goods/services, replacing defective goods with new goods, refunding price/charges paid by the complainant, payment of compensation for loss or damage suffered, providing costs to parties and issuing prohibitory orders directing the discontinuance of unfair trade practice, sale of hazardous goods etc. However, the redressal agencies have not been granted power to order injunctions.

Section 14(1)(d) provides that the redressal agency may order payment of compensation only in the event of negligence of the opposite party which resulted in loss or damage and not otherwise, i.e. even though the complainant has suffered loss or damage, he may not be entitled for compensation if he cannot prove negligence.

Appeal

Section 15 entitles a person aggrieved by an order of the District Forum to prefer an appeal to the State Commission. Similarly any person aggrieved by any original order of the State Commission may prefer an appeal to the National Commission under Section 19. Likewise, any person aggrieved by any original order of the National Commission may prefer an appeal to the Supreme Court, under Section 23.

All such appeals are to be made within thirty days from the date of the order. However, the concerned Appellate authority may entertain an appeal after the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within the prescribed period. The period of 30 days would be computed from the date of receipt of the order by the appellant.

It may be noted that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum/State Commission, shall be entertained by the State Commission/National Commission respectively unless the appellant has deposited in the prescribed manner fifty percent of that amount or twenty five thousand rupees/thirty-five thousand respectively, whichever is less. It may be observed that appeals are allowable only against the original orders passed by the concerned redressal agency. Appellate orders passed by the State Commission or National Commission (i.e. on appeal against the orders of the District Forum or State Commission) cannot be further appealed against though on questions of law revision petitions may be filed. So also, the revisional orders passed by the State Commission or the National Commission are not appealable.



APPEL PROVISIONS

Aggrieved by the orders issued by the District Consumer Redressal Forum, appeal petition may be filed before State Consumer Dispute Redressal Commission within 30 days from the date of receipt of orders.

Aggrieved by the orders issued by the State Consumer Dispute Redressal Commission, appeal petition may be filed before National Consumer Dispute Redressal Commission within 30 days from the date of receipt of orders.

Aggrieved by the orders issued by the National Consumer Dispute Redressal Commission, appeal petition may be filed before Supreme Court of India within 30 days from the date of receipt of orders

Penalties

Section 27 of the Act deals with penalties and provides that failure or omission by a trader or other person against whom a complaint is made or the complainant to comply with any order of the District Forum, State

Commission or the National Commission 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 of not less than Rs. 2,000 but which may extend to Rs. 10,000, or with both.

However, on being satisfied that the circumstances of any case so require, the District Forum or the State Commission or the National Commission may impose a lesser fine or a shorter term of imprisonment. Section 27(3) prescribes that all offences under the Act to be tried summarily.

GIST OF IMPORTANT CONSUMER CASES

Gist of some of the important rulings rendered by Supreme Court, National Commission and State Commissions, are given hereunder:

Failure to provide basic safeguards in the swimming pool – deficiency in service

In the case of *Sashikant Krishnaji Dole v. Shitshan Prasarak Mandali [F.A. No. 134 of 1993 decided on 27.9.1995 (NCDRC)]* the school owned a swimming pool and offered swimming facilities to the public on payment of a fee. The school conducted winter and summer training camps to train boys in swimming and for this purpose engaged a trainer/coach. The complainants had enrolled their son for learning swimming under the guidance of the coach. It was alleged that due to the negligence of the coach the boy was drowned and met with his death. The school denied that it had engaged the services of a coach and also denied any responsibility on its part. The coach claimed that he was a person with considerable experience in coaching young boys in swimming and that as in other cases he taught the deceased boy also the way in which he should swim and take all precautions while swimming. When the deceased was found to have been drowned the coach immediately took him out of the water and removed the water from his stomach and gave him artificial respiration and thereafter took him to a doctor, where he died.

The State Commission held the school and the coach deficient in rendering service to the deceased, that the coach was not fully trained, did not exercise even the basic commonsense needed to counter an accident in swimming. He was so casual in his behaviour that he did not attempt to take prompt action to save the life of the deceased and so far as the school was concerned it did not even provide basic facilities nor did it provide any safeguards to prevent accidents.

Dismissing the appeal the National Commission observed that the State Commission had given cogent reasons for holding the school and the coach responsible for death of the deceased. A detailed examination of the depositions of eye witnesses showed that the Commission had correctly appreciated the evidence and come to the conclusion that the coach was negligent and the school did not provide the necessary life saving mechanism to save the lives of trainee students in cases of accidents.

So far as the compensation was concerned the State Commission had taken all relevant factors into account and fixed the amount at Rs. 1.50 lakhs which was reasonable.

Removal of ladder of an aircraft while disembarking by the passenger— deficiency in service

In *Station Manager, Indian Airlines v. Dr. Jiteswar Ahir [First Appeal No. 270 of 1994 decided on 28.2.1996 (NCDRC)]* when the complainant-passenger occupied his seat in the aircraft, an announcement was made that his luggage was lying on the ground unidentified and that he should disembark to identify his luggage. According to the complainant he moved towards the rear door, and finding that the step ladder was attached to the aircraft door, he stepped out on to the staircase but before he could actually put his entire body weight

on the staircase the ladder was suddenly removed as a result of which he fell down on the ground and sustained bodily injuries which was reported to be about 10 percent. As against the complainant's claim of Rs. 10 lakhs the airlines was willing to pay Rs. 40,000 as compensation which according to them was the maximum statutory liability of the Corporation under the Carriage by Air Act, 1972.

The State Commission, after examining witnesses and the medical boards report held that there was dangerous deficiency in service and having regard to the expert opinion and other medical reports, it ordered payment of compensation of Rs. 4 lakhs and Rs. 1 lakh for mental agony and distress plus costs.

In appeal by the Corporation, the National Commission, upholding the State Commissions order, held that in terms of regulations relied upon by the appellant Corporation, if it was proved that the accident caused to the complainant had resulted in a permanent disablement, incapacitating him from engaging in or being occupied with his usual duties or his business or occupation, the liability could not exceed Rs. 5 lakhs. This case related to the incapacity and permanent disability to the extent of 10 per cent and, therefore, the compensation could not exceed Rs. 5 lakhs. The State Commissions assessment of compensation of Rs. 4 lakhs was justified, considering the age of the complainant (37 years) at the time of accident and his having lost earning capacity. The State Commission was also right in awarding compensation of rupees one lakh for the complainants mental suffering and agony as well as feeling of inferiority in social relations.

Deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving deficiency in service is upon the person who alleged it. When the complainant has not established any willful fault, imperfection, shortcoming or inadequacy in the service of the respondent, there can be no deficiency in service.

In Ravneet Singh Bagga v. KLM Royal Dutch Fintimes [1999(7) SCALE 43], the complainant booked a ticket from Delhi to New York by a KLM plane. The airport authorities in New Delhi did not find any fault in his visa and other documents. However at Amsterdam, the airport authorities instituted proceedings of verification because of which the appellant missed his flight to New York. After reaching New York, the airlines tendered apology to the appellant for the inconvenience and paid as a goodwill gesture a sum of Rs. 2,500. The appellant made a complaint to the National Commission under the Consumer Protection Act which was rejected.

The Supreme Court held that the respondent could not be held to be guilty of deficiency in service. The staff of the airline acted fairly and in a bona fide manner, keeping in mind security and safety of passengers and the Aircraft. The photograph on visa documents was a photo copy and not the original which was unusual. In the circumstances, the staff took some time to ascertain the truth and helped the appellant to reach New York the same day.

A doctor qualified to practice homoeopathic system of medicines treating a patient with allopathic medicines and patient dies - guilty of negligence

In Poonam Verma v. Ashwin Patel [1996(4) SCALE 364] the respondent was a qualified medical practitioner in homoeopathic system of medicine. The appellant, was the widow of a person who, it was alleged, had died because of the negligence of the respondent in administering allopathic medicines in which he was not qualified to practise. It was alleged that the deceased was treated to begin with, for viral fever on allopathic medicines and since his condition had not improved antibiotics were used without conducting proper tests. When his condition further deteriorated he was removed to a nursing home and after four days he was removed to a hospital in an unconscious state. Within a few hours thereafter he died.

Her complaint to the National Consumer Disputes Redressal Commission for damages for the negligence

and carelessness of respondent in treating her husband was dismissed. Allowing the appeal the Supreme Court held that the respondent who had practised in allopathy without being qualified in that system was guilty of negligence per se. A person is liable at law for the consequences of his negligence.

Jurisdiction of the Commission: The Supreme Court observed that it is beyond doubt now that disputes regarding applicability of the Act to persons engaged in medical profession either as private practitioners or as Government doctors working in hospitals or Government dispensaries come within the purview of the Consumer Protection Act, 1986. It is also settled that a patient who is a consumer has to be awarded compensation for loss or injury suffered by him due to negligence of the doctor by applying the same tests as are applied in an action for damages for negligence.

In *Gopi Ram Goyal and others v. National Heart Institute and others*, 2001 CTJ 405 (CP) (NCDRC), the National Commission held that where the record and evidence shows that the conduct of the opposite parties i.e. doctors was more than reasonable and the level of care was as could be expected from professional in exercising reasonable degree of skill and knowledge. The complainant however failed to prove any case of negligence on the part of doctors, therefore the doctor cannot be held liable for death of patient.

Fall from a running train while passing through vestibule passage – deficiency in service

In *Union of India v. Nathmal Hansaria* [First Appeal No. 692 of 1993 decided on 24.1.1997 (NCDRC)] the daughter of the respondent, travelling by a train, fell down from the running train while she was passing through the inter-connecting passage between two compartments and died as a result of crush injuries on her head. In the respondents petition for compensation, the Railways contended that the Consumer Redressal agencies had no jurisdiction to consider a complaint of this nature in view of Section 15 of the Railway Claims Tribunal Act read with Section 13 of that Act.

The State Commission held that a railway passenger travelling in a train on payment of consideration was a consumer within the meaning of the Consumer Protection Act, 1986. Section 82A of the Railways Act referred to in Section 13 of the Railway Claims Tribunal Act, 1987 and the rules made thereunder provided compensation for railway accidents and not for accidental death of this nature.

Dismissing the appeal the National Commission held that the death of the passenger could not be described as resulting from railway accident but an accidental death caused by the absence of safety devices in the vestibule passage way.

Although the railway administration had claimed that the coach was a new coach and that all coaches had been thoroughly checked at the starting point of the train and that no defect was reported, the railways had not contended that this particular coach was checked at the time of commencement of the journey. The general statement of practice and procedure was not conclusive proof that this particular coach was checked and no evidence had been produced in support of their contention. Thus, the State Commission was right in holding that the deceased passenger was a consumer. On the basis of similar facts, the MRTP Commission has recently awarded a compensation of Rs. 18 lakhs with 9% interest to the parents of deceased. The above compensation appears to be the highest award in commission's history.

Repudiation of Insurance claim because the driver did not have a valid license

In the case of *Jitendra Kumar v. Oriental Insurance Company Ltd.* and another the Supreme Court has held that where the fire has occurred due to mechanical failure and not due to any act or omission of the driver, the insurance company cannot repudiate the claim because of lack of valid driving license.

Premium paid to the agent of the LIC but the agent did not deposit the premium, death of the insured - No deficiency of service on the part of the LIC

In Harshad J. Shah v. Life Insurance Corporation of India [1997(3) SCALE 423 (SC)] the insured (since deceased) took out four life policies with double accident benefits, premium payable half-yearly. When the third premium fell due, the general agent of the Corporation met the person and took a bearer cheque towards the premium payable by him in respect of the policies. Although the cheque was encashed immediately thereafter, it was not deposited with the Corporation for another three months. In the meantime, the insured met with a fatal accident and died. The Corporation rejected the widows claim for payment of the sum assured on the ground that the policies had lapsed for non-payment of premium within the grace period.

In the widows complaint to the State Commission under the Consumer Protection Act the Corporation pleaded that the amount of premium allegedly collected by the general agent could not be said to have been received by the Corporation, that the agent was not authorised to collect the premium amount. The State Commission held that in order to collect more business, agents of the Corporation collected premiums from policyholders either in cash or by cheque and then deposited the money so collected with the Corporation and that this practice had been going on directly within the knowledge of the Corporations administration, notwithstanding the departmental instructions that the agent was not authorised to collect the premiums. When the practice of the agent collecting the premiums from policyholders was in existence and the money was collected by the agent in his capacity and authority, the reasonable inference was that the Corporation was negligent in its service towards the policyholder.

The National Commission, in appeal, was of the view that the insurance agent in receiving a bearer cheque from the insured towards payment of insurance premium was not acting as agent of the Corporation nor could it be said that the Corporation had received the premium on the date the bearer cheque was received by the agent, even though he deposited the sum with the Corporation a day after the death of the insured.

Dismissing the appeal the Supreme Court held that the agent had no express authority to receive the premium on behalf of the Corporation. In his letter of appointment there was a condition expressly prohibiting him from collecting the premium. Nor could it be said that he had an implied authority to collect the premium, as regulation 8(4) expressly prohibited the agents from collecting premiums. Therefore, no case had been set up by the complainant before the State Commission that the Corporation by its conduct had induced the policyholders, including the insured, to believe that the agents were authorised to receive premiums on behalf of the Corporation. Nor was there any material on record that lent support to this contention. In the facts of this case there was no room to invoke the doctrine of apparent authority underlying Section 237 of the Indian Contract Act.

In National Insurance Co. Ltd. v. Seema Malhotra [2001(2) SCALE 140] (Supreme Court) a cheque was issued under a contract of insurance of motor car by the insured for payment of premium to the policy. However, cheque was dishonoured for want of funds in the account. Meanwhile, the car met an accident and badly damaged, killing the insured owner. The claim for insured amount was repudiated by the company.

The Supreme Court held that applying the principles envisaged under Section 51, 52 and 54 of Indian Contract Act, relating to reciprocal promises, insurer need not to perform his part of promise when the other party fails to perform his part and thus not liable to pay the insured amount.

Educational Institutions

In Sreedharan Nair N. v. Registrar, University of Kerala [2001 CTJ 561 (CP) (NCDRC)], the University refused to provide LL.B. degree certificate on completion of course on the ground that the qualifying examination on the basis of which student was admitted in LL.B. course in Kerala law college has not been

recognised by it. The National Commission held that this is a clear case of deficiency on part of University. A compensation of Rs. 50,000 was awarded to complainant.

In *Isabella Thoburn College v. Ms. Fatima Effendi [2001 CTJ 386 (CP) (SCDRC)]*, the State Commission held that non-refund of admission fee is not a deficiency of service on the part of the university because admission fee is consideration for admission and respondent herself voluntarily withdrawing admission from one university to join another institute cannot claim refund of admission fee.

Medical Negligence

In *Kusum Sharma & Others Versus Batra Hospital & Medical Research Centre & Others 2010 CTJ 242 Supreme Court (CP)* Supreme Court held that While deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:-

I. Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

IV. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.

VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

VIII. It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.

X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

The aforementioned principles must be kept in view while deciding the cases of medical negligence. We should not be understood to have held that doctors can never be prosecuted for medical negligence. As long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. It is imperative that the doctors must be able to perform their professional duties with free mind.

LESSON ROUND UP

- The Consumer Protection Act, 1986 is the most important legislation enacted to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer's disputes and for matters connected therewith.
- Consumer means any person who 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 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 but does not include a person who avails of such services for any commercial purpose.
- Defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.
- Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.
- 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.
- A contract for service implies a contract whereby one party undertakes to render services e.g. professional or technical services to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion.
- A contract of service on the other hand implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance.
- The Act has set up three-tier quasi-judicial consumer disputes redressal machinery at the National, State and District levels, for expeditious and inexpensive settlement of consumer disputes. It also postulates establishment of Consumer Protection Councils at the Central and State levels for the purpose of spreading consumer awareness.
- District Forum has jurisdiction to entertain complaints where the value of goods/services complained against and the compensation, if any claimed, is less than Rs. 20 lakhs, the State Commission for claims exceeding Rs. 20 lakhs but not exceeding Rs. 1 crore; and the National Commission for claims exceeding Rs. 1 crore.
- 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.
- The District Forum, State Commission and the National Commission have been vested with the powers of a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the certain matters.

