CHAPTER FIVE

PERFORMANCE APPRAISAL OF THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION AND SUGGESTIONS FOR STRENGTHENING ITS ROLE IN THE DEVELOPMENT OF THE CONSUMER PROTECTION LAW AND POLICY
CHAPTER FIVE

PERFORMANCE APPRAISAL OF THE NATIONAL CONSUMER DISPUTES
REDRESSAL COMMISSION AND SUGGESTIONS FOR STRENGTHENING
ITS ROLE IN DEVELOPMENT OF THE CONSUMER PROTECTION
LAW AND POLICY

5.1 Introductory

Ever since the Consumer Disputes Redressal Agencies envisaged and established under the Consumer Protection Act, 1986 started functioning effectively, much water has flown below the bridges. The consumer law experts, consumer activists, protagonists associated with consumer organisations and media people have all been keeping a close watch on the actual functioning of these agencies. The Principal Act of 1986 had envisaged the establishment of a strong and an effective Consumer Disputes Redressal Mechanism. However, hopes were belied very soon, that in turn, led first to the minor amendment of the law in the year 1991 and then to a major amendment in the year 1993. The law was once again amended quite extensively in the year 2002. The story does not end here. The Consumer Protection Act, 1986 is again on the anvil of being amended, as mentioned earlier also, by the Consumer Protection (Amendment) Bill, 2011 which has already been presented in the Lok Sabha on 16 December 2011. When this 2001 Amendment Bill will become an Act, only the time will tell. We have to wait and we have to watch.

The purpose of this chapter is to do performance appraisal of the National Consumer Disputes Redressal Commission on the basis of the analysis of some of the prominent cases that the National Commission has decided ever since its establishment. Many of these might have been ruled over by the Hon’ble Supreme Court of India. However, this is a separate and
a full-fledged topic for debate and discussion. In the last chapter, the researcher had made an attempt to demonstrate and to critically evaluate the decision-making by the National Consumer Disputes Redressal Commission. In the present chapter, the researcher has attempted to draw some implications out of the working of the National Commission on the basis of the cases decided by the latter.

It may be appropriate to mention here that the National Consumer Disputes Redressal Commission has decided a large number of cases and it is next to impossible to discuss all of these cases within the body of the present thesis due to the space constraints. The researcher has, therefore, broadly chosen those cases where she was absolutely convinced that the National Commission as an apex decision making body had really made some contribution to the furtherance of the consumer protection movement. Although the opinions can and may substantially differ on this issue, the researcher has nevertheless made a modest and a humble attempt to choose only a few landmark cases, in consultation with her supervisor that to them seemed to be really important.

5.2 Working of the National Consumer Disputes Redressal Commission

The present study primarily being the one based on the secondary sources, the researcher has consulted a large number of writings (both books as well as journals, periodicals and the newspapers) on the establishment, functioning and decision-making of this apex body. The journals like the Consumer Protection Judgments, Consumer Protection Reporter and the Consumer Protection and Trade Practices Journal were the three core case law reporters-cum-research journals that were the researcher’s companions all the time, that is, from the commencement of the research work till the end. To the present researcher, perhaps the best way seemed to analyse the functioning of the National Commission was on the basis of the decided case law. Thus the researcher has made this modest attempt. On the basis of examining and analysing a few prominent cases where the National Consumer Disputes Commission was perhaps at its best, so far as the decision making was concerned, the researcher was in a position to draw the possible implications. Some of the issues that need highlighting are discussed as under.

Unlike in the last chapter (that is, chapter 4), the researcher has not discussed the facts and law points involved in each of the cases unless it was necessary, she has instead drawn implications from the decided case law, that is, as to how on the basis of the decision making, the National Consumer Disputes Redressal Commission has actually been able to put a dent
in the existing scenario of consumer protection in the country. Thus, without mentioning the
facts and the law points involved in the cases, the researcher has evaluated the performance
of the National Consumer Disputes Redressal Commission. There are a few areas where this
apex body has made its presence felt. These are discussed as under.

5.2.1 Advising and Counselling the Consumer Disputes Redressal Agencies

An apex institution like the National Consumer Disputes Redressal Commission, that has
been envisaged and established under the *Consumer Protection Act*, 1986, is certainly
expected to work strictly in accordance with the provisions of the Act. This is applicable
equally well to all the State Consumer Disputes Redressal Commissions as well as to all the
District Consumer Disputes Redressal Fora. Notwithstanding the aforesaid legitimate and
 logical expectations, there have been number of critical writings whose focus was the
functioning, and rather defective functioning and inconsistent decision-making on the part of
the Consumer Disputes Redressal Agencies, more particularly, the District Consumer
Disputes Redressal Fora and the State Consumer Disputes Redressal Commissions. The
National Commission, being the apex Consumer Protection Decision Making Body in the
hierarchy of the Three Tier Consumer Disputes Redressal Mechanism, had to intervene to
convey this message loud and clear to the Consumer Fora working below it that they have to
work and function in a particular manner as is expected out of them under the Consumer
Protection Act, 1986.

For instance, Hon’ble Mr. Justice Ashok Bhan, former judge of the Hon’ble Supreme Court
of India and the then President of the National Consumer Disputes Redressal Commission,
while delivering the order of the National Commission Bench in the matter of *Sahara India
Commercial Corporation Ltd. v. P. Gajendra Charry*¹ had done well to counsel the
Consumer Disputes Redressal Agencies to remain within the boundaries of the *Consumer
Protection Act*, 1986 and while dealing with the consumer disputes, these agencies must not
in any case overlap. The context was that in the case which came up before the National
Consumer Dispute Redressal Commission, the complainant had booked a house with the
petitioner company and had paid a sum of Rs. 46,350/- as an advance amount. Later, on
account of financial difficulties, he cancelled the booking and requested for the refund of the
amount so deposited by him. The petitioner company refused to do so contending that as per
clause 8 of the agreement entered into by the contracting parties, in the event of any default

¹ 2010 CTJ 768 (NC).
by the allottee in paying the instalments, the company was entitled to forfeit 10 per cent of the total agreed amount of the house and it did so in pursuance thereto. The complainant filed a consumer complaint. Both the District Consumer Disputes Redressal Forum and the State Consumer Disputes Redressal Commission directed the petitioner company to refund the amount to the complainant along with interest. The Andhra Pradesh State Commission, however, went a bit further and held that clause 8 of the agreement was not merely arbitrary but was also an “unfair trade practice” and hence was unwanted.\(^2\) In the order, Hon’ble Justice Ashok Bhan observed that “Consumer Fora are not the courts of plenary jurisdiction having the power either to strike down the provisions of the Act or have the power of judicial review. Consumer Fora have limited jurisdiction and they should operate in the defined area only.”\(^3\) The message was loud and clear for all the subordinate Fora that they should remain within their limits only.

Yet another Bench of the National Consumer Disputes Redressal Commission comprising Hon’ble Mr. Justice B.N.P. Singh and Mr. S.K. Naik noticed in *M.P. Housing Board v. Jagdish Prasad Mahesh*\(^4\) that the Madhya Pradesh State Consumer Disputes Redressal Commission had overstepped its jurisdiction in reviewing its earlier order. The National Commission, while referring back the matter to the State Consumer Commission, observed and rightly so, that “it is now very well settled that neither the District Forum nor the State Commission enjoys the power of review.”

While the National Consumer Commission had done well to tell the Consumer Disputes Redressal Fora below to remain within bounds and not to cross the ‘lakshmanrekha’ earmarked in the statute itself, it had perhaps lost sight of the fact that the Presidents heading the Consumer Fora or the Consumer Disputes Redressal Commissions were, once upon a time, omnipotent and could pass any order. They seem to have hardly realized that they had atleast now under the new regime not to overstep. That it is so can be seen from the fact that as early as in 1994, even the Hon’ble Supreme Court had to unambiguously tell the Consumer Disputes Redressal Agencies that they did not possess the unbridled powers. All these issues are, as a matter of fact, the subject of a full-fledged study on the performance appraisal of the Consumer Disputes Redressal Agencies establishing under the *Consumer Protection and Trade Practices Journal*, Vol. 18, 2010, p. 97.


\(^3\) id.

\(^4\) 2010 CTJ 749.
Protection Act, 1986. I am, however, concentrating only on the role and decision-making by the National Consumer Disputes Redressal Commission.

In another case, On 4th January 1994, a District Consumer Disputes Redressal Forum in Calcutta passed an interim order of injunction restraining the public issue of shares from being floated by Messrs Morgan Stanley Mutual Fund forgetting that the Consumer Disputes Redressal Agencies had then no power to provide an injunctive relief. The result of this overstepping was the straight intervention of the Hon’ble Supreme Court of India which had to tell the District Forum to remain within limits as there was “no power under the Consumer Protection Act to grant an interim relief or even an ad-interim relief. Only a final relief could be granted.” Law has to be read as it is written and not how the Judges would like to read. Cockburn C.J. had laid down this proposition very candidly as early as in (1878) 3 QBD 346 by observing that “the question for the court is not what the legislature meant, but what the language means, i.e. what the Act has said that it means.”

5.2.2 Launching of a Campaign Against the Old and Obsolete Legislations and Offering Pleas for their Repeal

Whereas our country is well known for having enacted some of the finest and the most modern pieces of legislation ever passed in any part of the world, our country, in the same breadth, is also known for having on its statute book, some of the oldest, obsolete and completely anarchic pieces of legislation. Most of these have nearly lost their relevance in society. However, despite the occasional outbursts and governmental promises to abolish and to repeal these legislations, these obsolete laws continue to adorn the pages of the statute book. Quite surprisingly some of these obsolete pieces of legislation have neither been repealed, nor have been made redundant. And it goes on like this only.

On the front of consumer protection law and policy in particular, the case of the Indian Post Office Act, 1898 deserves prominent mention. For instance, day in and day out, orders are being passed by the Consumer Disputes Redressal Agencies at the district, the state and the national level in relation to the complaints of late delivery, non-delivery or damaged delivery of the postal articles. Each one has been trying to pass illuminating judgments, sometimes running into several pages. Despite thereof, no one knows precisely as to what really the law on the subject is. Conflicting versions are handed down. In some cases, the postal authorities

\[\text{id.}\]
are totally exonerated on the ground that in handling the postal services they are only performing the statutory functions and not rendering service within the meaning of the *Consumer Protection Act*, 1986. In several other decisions, where the tilt towards the suffering consumer is noticed, the law is stretched to award a pittance of compensation to please the consumers irrespective of the fact how badly they suffer when their urgent documents are not delivered or delivered belatedly.\(^6\)

Although there has been a spate of complaints against the postal authorities, the major obstacle in the path of the consumers for redressal of their grievances against them is Section 6 of the *Post Office Act*, 1898 and the postal authorities without fail put it in their defence in all cases coming before the Consumer Disputes Redressal Agencies. Ironically, at a time when accountability and reliability in the postal service sector is the need of the hour, the Postal Authorities, by pulling out Section 6 of the archaic *Indian Post Office Act* of 1898 out of their hat, have virtually managed to shield themselves from any action against them even for obvious lapses unless the aggrieved consumer can prove that the negligence occurred due to a fraud or due to the wilful act or default on the part of any of the officers of the Postal Department, which is a highly difficult task indeed.

Be that as it may, we here are concerned with the totally apathetic and lackadaisical attitude of the authorities who seem to be least bothered on such sorry state of affairs. It must be pointed out that as early as on 24 January 1994, the then President of the National Consumer Disputes Redressal Commission Hon’ble Mr. Justice V. Balakrishna Eradi, while speaking at the National Convention of the Presidents and Members of the State Commissions, Secretaries of the Union States Food and Civil Supplied Departments, had in his inaugural address, observed as under:

> The *Indian Post Office Act*, 1898 and the *Indian Railways Act*, 1890 are the two very ancient statutes enacted during the British colonial period, but they are still on our statute books as existing laws in force. It is expressly laid down in Section 6 of the *Post Office Act* and in a similar provision contained in the *Railways Act* that the post authority and the railway administration shall not be made liable to pay any compensation in the event of delay in delivery or loss of letters or other articles sent through post or of any goods consigned by rail. These provisions were enacted

at that time to protect the interest of the imperialist British Government and they are totally out of tune with the altered state of things presently existing in the modern India. The existence of this statutory bar against the award of compensation is resulting in gross injustice to consumers. It is highly necessary that urgent steps should be taken for the repeal of these two anachronistic and obnoxious provisions.\footnote{ibid.}

More than a decade and a half have gone by but nothing tangible has happened nor can one expect anything from those sitting in the air-conditioned cabins of Krishi Bhawan, New Delhi, the hub of the administrative decision-making, that is, the Ministry of Consumer Affairs and Public Distribution, Government of India. It appears that only the consumer organisations, the consumer activists, consumer law experts and above all, media people have to do something by launching a campaign to put an end to this indifference of the administrators. India of the twentieth century, instead of being governed by the century old anarchic pieces of legislation, certainly deserves to be governed by the utmost latest, citizen friendly, beneficent and benevolent pieces of social welfare legislation which could bring home the point that there has indeed been an attempt to democratise justice and that in a democratic set up, it is the consumer interest that matters the most.

Another example, an equally apt and relevant one, can be cited here. For instance, on 10 May 2001, Hon’ble Mr. Justice D.P. Wadhwa, the then President of the National Consumer Disputes Redressal Commission, had written a judgment while dealing with an appeal form an order of the Maharashtra State Consumer Disputes Redressal Commission. The appeal was filed by the Indian Airlines which was directed by the State Consumer Disputes Redressal Commission to pay the cost of the two airline tickets which the passengers had lost soon after their purchase and much before their scheduled journey they had taken steps to intimate the Indian Airlines about their loss. In the appeal against the aforesaid order, it was urged before the National Consumer Commission, presided over by Justice D.P. Wadhwa, that in the exercise of powers conferred upon the Indian Airlines by Section 35 of the \textit{Air Corporation Act}, 1953 it had framed Regulations under which it was clearly provided that “refund will be made only against documents surrendered and no claim will be entertained against the lost documents.” With this being the position, the National Consumer Disputes Redressal Commission held that there was thus “a statutory bar on the refund of the lost tickets. Refund is permissible only if original tickets are produced. In the face of statutory
bar, we do not think that the District Forum and the State Commission were right in directing refund of the lost air tickets.  

The National Commission in the above situation had no alternative but to go by what was written in the legislative provisions, its powers being circumscribed by it. Even earlier also, the National Commission has held accordingly and has not been able to provide any relief to the air travellers who lost their tickets and were even very much ready to execute indemnity bonds in favour of the Airlines, the Jet Airway and the Sahara Airlines from their liability in the case of lost tickets. Be that as it may, the President of the National Commission seemed to be very much concerned to notice such a predicament of the passengers who were being governed by such outdated laws. In the above judgment, Hon’ble Justice D.P. Wadhwa made the following observations that are as under:

Before concluding, however, we may observe that the Indian Airlines Cancellation and Refund Regulations allowing refund only if the original tickets are produced would appear to be rather archaic in today’s situation when there is explosion in communication and spread of vast computer network in the country. It was submitted that Airlines tickets are not transferrable. Airlines cannot, however, get unjust enrichment at the cost of the passenger who lost his ticket and which has not been misused for a long period. Indian Airlines in the present case has fixed validity of air tickets for six months. But for the statutory regulations, we would certainly have struck down the condition that refund is not permissible on a lost ticket for all time. It will certainly appear to be unfair trade practice and condition of no refund in case of loss arbitrary. We are told in the year 1992, a person had no choice except to travel by Indian Airlines. For the present, we are not saying anything on small print which appears on the face of the ticket that no refund is permissible for lost ticket. There are methods even to save any loss they may occasion to Indian Airlines for misuse of the tickets, if any. It is not for us to suggest to the Indian Airlines what method it should adopt for the purpose.”

(emphasis added)  

Not only that he cannot ameliorate the lot of consumers in such a situation, the President of the National Consumer Disputes Redressal Commission could realize that such observation


9 ibid., pp. 96-97.
made even at the level of the Apex Consumer Disputes Redressal Commission were not given any attention by the authorities though they must treat them with utmost respect and also take urgent action to rectify the situation. These archaic and outmoded laws in existence in our country ought to have been repealed long before but the administrators do not wake up from their slumber, how best one tries to wake them up. Similar unwanted provisions also exist in regard to the liability of the Railways and the Post Offices for the loss of parcels and letters. It was as early as on 24 January 1994 that Justice V. Balakrishna Eradi, the first and the former President of the same National Consumer Disputes Redressal Commission had lamented about such type of provisions in the following words: “The Indian Post Office Act, 1898 and the Indian Railways Act, 1890 are the two very ancient statutes enacted during the British colonial period, but they are still on our statute books as existing laws in force . . . . It is highly necessary that urgent steps should be taken for the repeal of these two anachronistic and obnoxious provisions.”

Hon’ble Justice Balakrishana Eradi failed to stir the authorities though he repeatedly drew their attention to such type of obnoxious and unwanted provisions during his long stint at the National Consumer Disputes Redressal Commission. The consumers would be extremely benefitted if the National Consumer Disputes Redressal Commission succeeds in this direction.

5.2.3 Resolution of the Jurisdictional Issues in Case of Prevalence of the Parallel Proceedings (Before a Civil Court and Before a Consumer Disputes Redressal Agency)

A Division Bench of the Delhi High Court was in the recent past concerned with an important issue of jurisdiction of the Consumer Disputes Redressal Agencies in the writ petition No. 264 of 2009 in Hindustan Motors Ltd. v. Amardeep Singh Wirk. In this case, the issue involved in the appeal before it was whether the proceedings before the Consumer Disputes Redressal Forum should remain stayed and await the outcome of the proceedings involving similar issues pending before a Civil Court.

In this case, one Amardeep Singh had purchased a Mitsubishi Pajero vehicle manufactured by Messrs Hindustan Motors Pvt. Ltd. The aforesaid vehicle met with an accident while being

---

10 ibid., p. 97.
11 id.
driven by Amardeep Singh’s brother who sustained fatal injuries. Contending that the said vehicle had a manufacturing defect, a consumer complaint was filed claiming compensation from the manufacturers of the vehicle, namely, Messrs Hindustan Motors.

Mrs. Jatinder Wirk, the deceased’s widow also filed a suit before the Hon’ble Delhi High Court claiming, *inter alia*, damages for negligence from the manufacturers of the vehicle. The State Consumer Disputes Redressal Commission, before whom it was pleaded that the parallel proceedings must not be allowed to continue on the same cause of action, by order passed on 06 November 2007, declined to stay the proceedings before it. This was challenged by a writ petition filed before the Hon’ble Delhi High Court. It was contended before the Hon’ble High Court that the issues in both the proceedings were common and the continuation of both the proceedings would have a deleterious effect and could result in conflicting orders.12

By an order passed by a learned Single Judge of the Hon’ble Delhi High Court in the above writ petition, it was held that section 3 of the *Consumer Protection Act*, 1986 could not simply imply that the rights created under the said Act could be curtailed on the ground of pendency of other proceedings. It was also held relying on various landmark judgments of the Hon’ble Supreme Court that existence of the parallel or other adjudicatory Forums could not take away or in any way exclude the jurisdiction created under the *Consumer Protection Act*, 1986.

The Hon’ble High Court’s Division Bench’s ruling has been handed down after relying upon several judgments of the Hon’ble Supreme Court of India and if one reads the same carefully, barring the one namely that of Satya Pal Mohindra, none other is concerning the parallel proceedings instituted in the Civil Court and the Consumer Disputes Redressal Forum. In this case too, the Hon’ble Supreme Court noticed that the consumer complaint was filed earlier than the Civil Court suit and also that the reliefs claimed in the two proceedings were different, and hence, it directed the Consumer Disputes Redressal Forum to continue with the complaint and to decide it on merit. The other decisions quoted, cited and relied upon by and large relate to the wider scope of the jurisdiction and powers of the Consumer Disputes Redressal Agencies set up under the *Consumer Protection Act*, 1986.

Thus the major thrust of the verdict of the Hon’ble Delhi High Court in this case was the purport and the scheme of the Consumer Protection Act, 1986 which has been emphasised unequivocally by the apex court in Secretary, Thrumurugan Cooperative Agricultural Society v. M. Lalitha and Others\textsuperscript{13} and in the case of Lucknow Development Authority v. M.K. Gupta\textsuperscript{14}. Keeping this objective and wider scope of the 1986 Act in view, the Hon’ble Division Bench of the Delhi High Court, in the view of the some of the consumer protection law experts, ought to have directed the appellants to choose one out of the two forums, viz., the State Consumer Disputes Redressal Commission or the Hon’ble High Court. On the contrary, it had allowed both the proceedings to continue irrespective of the fact that conflicting results might ensue in the two simultaneous proceedings on the identical issues and same cause of action.

According to the consumer protection law experts, it was all the more incumbent in the case before the Hon’ble Delhi High Court to confine itself to the facts of the case before it and hold in that case alone that because the two cases had been filed by the different plaintiffs/complainants and the grievances were different, hence both the cases could continue. This was what the Hon’ble Supreme Court of India, too, did in a few cases. However, the Hon’ble Delhi High Court had gone ahead to pass the sweeping order of general application that simultaneous proceedings could be filed on the same cause of action before the two different adjudicatory bodies. That this decision could lead to a lot of confusion as well as chaos and end in results which might not only be conflicting, but also absurd sometimes. One court may dismiss the suit, the other may allow a substantial relief. Nothing will be left except confusion and chaos all around.

It may be pertinent to state here that as early as in the year 1904, Farewell L.J. had dealt with the above aspect in the famous case of Japson v. James\textsuperscript{15} and had observed that “the existence of concurrent jurisdiction renders it very necessary the observant of a comity between those jurisdiction the disregard of which would lead to most unfortunate friction. It is a matter of great importance that there should be no conflict or clash of jurisdiction between two equally competent authorities”, the judgment had stated.

\textsuperscript{13} 2004 CTJ 1 (SC).
\textsuperscript{14} 1993 CTJ 929 (SC).
\textsuperscript{15} (1904) 77 LJ Ch. 824.
It may further be noted that the judgment of the Hon’ble Delhi High Court not relating or confining to the particular case before it but by laying the law applicable generally, will be binding to the National Consumer Disputes Redressal Commission and the Seven Member Bench of the Supreme Court had stated authoritatively on 18 March 1997 in *L. Chandra Kumar v. Union of India*\(^\text{16}\) as under:

We, therefore, hold that the power of judicial review over legislative action vested in the Hon’ble High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and an essential feature of the Constitution constituting part of its basic structures. Ordinarily, therefore, the power of Hon’ble High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded. We also hold that the power vested in the Hon’ble High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution.\(^\text{17}\)

The resultant effect of all this would be that multiple suits and complaints may be filed and the Consumer Disputes Redressal Agencies which even earlier were objecting to the forum-hopping, will not be able to raise any finger at any time. The parallel proceedings may become the order of the day and the unscrupulous complainants may also take undue advantage of the situation where their benefit lies. This would be a totally undesirable situation and must have to be put an end to. The Hon’ble Supreme Court of India has repeatedly observed that the Consumer Disputes Redressal Fora are substituted Courts and that the aggrieved consumer can choose between a civil suit and consumer complaint but in no case can an aggrieved consumer file the same case in two courts simultaneously. However, the Hon’ble Delhi High Court said otherwise.

The above judgment seems to have gone unnoticed. To the present researcher, hardly has anyone in the apex National Consumer Disputes Redressal Commission and more particularly in the Union Consumer Affairs Ministry really bothered to realize that this judgment has to be reversed as it would bring in the unpleasant consequences. If not so done, the stalemate will continue and the effect ultimately will be frustrating the very purpose of setting up the Consumer Disputes Redressal Fora.

\(^{16}\) (1997) SC 1125.

\(^{17}\) *ibid.*, p. 1132.
5.2.4 Laying Down of the Guidelines and Norms for Determining and Awarding of the Compensation to the Aggrieved Consumers by the Consumer Disputes Redressal Agencies

It is a matter of common knowledge and understanding that the National Consumer Disputes Commission is the apex body established under the Consumer Protection Act, 1986. Its orders are followed by all the State Consumer Disputes Redressal Commissions and the District Consumer Disputes Redressal Fora, numbering more than six hundred or so. The law laid down by the National Consumer Disputes Redressal Commission has not only the guiding, but also has the binding effect on the Consumer Disputes Redressal Fora below. Obviously, therefore, the National Consumer Disputes Redressal Commission has to be consistent in its approach so as not to create confusion in any way. This is precisely what the National Commission has by and large been doing, notwithstanding a few digressions here and there.\(^\text{18}\)

Section 14(1)(d) of the Consumer Protection Act, 1986 makes a provision for the award of compensation to the consumer for any loss or injury suffered by him due to the negligence of the opposite party. While interpreting section 14(1)(d) of the Consumer Protection Act in the case of Consumer Unity and Trust Society, Calcutta v. The Chairman and Managing Director, Bank of Broda\(^\text{19}\), the National Consumer Disputes Redressal Commission had observed:

> Under this clause, compensation can be awarded to a consumer only in respect of any loss or injury found to have been suffered by him, due to the negligence of the opposite party. It is of the essence of this provision that the loss or injury for which compensation is to be adjudged and awarded should be found to have been caused by the negligence of the opposite party. The complainant has, therefore, to establish that there was negligence on the part of the opposite party and that as a consequence thereof, loss or injury was suffered by him. It is only in such event that the award of compensation would be warranted under the provisions of this sub-clause.\(^\text{20}\)

---


\(^{19}\) (I) CPR 241 (NC).

\(^{20}\) ibid., p. 244.
Again in the case of *Commercial Officer v. Bihar State Warehousing Corporation*\(^{21}\), the National Consumer Disputes Redressal Commissions had made the following observations:

> The award of compensation by the Forums established under the Act has to be made only on well recognized legal principles covering the quantification of damages or consideration of material produced before the adjudicating forum showing the extent to which monetary loss has been caused thereby to the complainant.\(^{22}\)

The above principles in relation to the award of compensation are obviously required to be followed by every court and tribunal and no exception should ideally be made by anyone in this behalf. It was in this context that when the National Consumer Disputes Redressal Commission noticed that the Bihar State Consumer Disputes Redressal Commission was not following the aforesaid principles in the right earnest manner, it immediately corrected that approach.

In the case of *General Manager, South Eastern Railway v. Anand Prasad Sinha*,\(^{23}\) the facts were that the complainant Anand Prasad Sinha, a retired Judge of the Patna High Court and his wife were travelling in the first class compartment of the railways. Apparently, the fans were not working in the said railways compartment. Moreover, the iron shutters in the windows were not in working condition and even shutters with glass panes could not be used since the glass was missing. It was also alleged that the rexine of the upper berth was in a bad condition and there were two exposed rusty nails which caused some injuries to the complainant’s wife. Though a complaint was made to the conductor on duty, no action was taken to set right the defect. As a result of these deficiencies, the complainant along with his wife faced acute discomfort and inconvenience.

The Bihar State Consumer Disputes Redressal Commission, after taking into account the status of the complainant awarded Rs. 10,000/- each as compensation to the complainant and to his wife. After issuing the said direction, the State Consumer Disputes Commission went on to observe as under:

---

\(^{21}\) As cited in S.S. Kumar, 2004, pp. 11-13, at p. 11.

\(^{22}\) *id.*

\(^{23}\) 1991 (1) CPR 145.
In view of the status of the complainant and condition in which they were forced to travel, the aforesaid amount of compensation is not sufficient, but on the assurance given by the Railway Administration, the steps are being taken to improve the condition, we hope the present amount of compensation will meet the ends of justice.24

In an appeal before the National Consumer Disputes Redressal Commission against the above order, the National Commission held that the quantum of compensation awarded, based as it was on the status of the complainant, was found to be manifestly excessive and was not based on the well settled principles governing the fixation of compensation. In so holding, the National Commission had observed:

No reference is to be found in the State Commission’s order to any of the well settled principles governing the fixation of compensation in case like the present one and one is left in complete darkness as to what factors weighed with the State Commission in fixing the compensation at the figure of Rs. 10,000/- each to the complainant as well as to his wife. It is an established principle of law that the compensation awarded must have a rational relation to the nature and extent of the injury, inconvenience or physical and mental suffering caused to the complainant by the action or omission of the opposite party. No attempt was made by the State Commission to approach the question of quantification of compensation from this corrective perspective. The status of the complainant was of little relevance in this context since every passenger who had paid for the first class travel and who has been subjected to inconvenience and suffering of a like nature on account of defects in the compartment is entitled to similar treatment in the matter of award of compensation irrespective of any question of status.25

In yet another case of M.T.N.L. v. Raja S. Bhosale26, the complainant Raja S. Bhosale, a former Judge of a High Court and a practising lawyer, received a telephone bill for an amount of Rs. 34,395.10 which, in his opinion, was excessive. In his complaint before the Maharashtra State Commission, he claimed Rs. One Lakh as compensation alleging deficiency in service of the telephone authorities in sending him the bill of such a magnitude when his earlier bills never exceeded Rs. 2,500/- per billing cycle. The State Consumer

24 ibid., p. 147.
25 id.
Disputes Redressal Commission awarded Rs. 25,000/- as “exemplary compensation” along with Rs. 1,000/- as costs to the complainant. MTNL filed an appeal before the National Commission which in its order observed as under:

The State Commission appears to have been influenced by the status of the complainant and therefore awarded exemplary compensation amounting to Rs. 25,000/-. The status of a person is not of much relevance while awarding compensation / exemplary compensation. The nature of the grievance and resultant loss have alone to be considered. However, considering the fact that the bill were used to be sent by the Department in the name of a wrong person and the complainant apprehending excessive bills in future, got the STD facility disconnected from his telephone, we are of the opinion that he is entitled to some compensation. Accordingly, we award Rs. 500/- as compensation.27

The amount of compensation was thus scaled down from Rs. 25,000/- to a mere Rs. 500/-. By the above rulings of the National Consumer Disputes Commission, a guideline was given to the Consumer Disputes Redressal Agencies at the state and at the district level that they should award compensation to an aggrieved consumer by following the well entrenched norms for determining the amount of compensation and that that no compensation be awarded on remote or on unconnected grounds and that the status of the complainants should not influence the Consumer Disputes Redressal Agencies while dealing with their cases.28

5.2.5 Emphasising on the Need for Quick and Speedy Disposal of the Consumer Complaints

It is indeed a matter of rejoice to know that the disposal of cases at the National Consumer Disputes Redressal Commission has, of late, speeded up and the figures stand to amply prove it. Adjournments have certainly become exceptional, which might have been a rule once upon a time. In their zeal to achieve an early disposal of consumer cases, the various Hon’ble Presidents of the National Consumer Disputes Redressal Commission have been inclined to express their reservations to grant the adjournments just for the sake of granting them, even when the advocates appearing before the Commission are on a strike. For example, in the year 2001, the then President of the National Consumer Disputes Redressal Commission had observed that the lawyers’ strike was “a virus which should not be allowed to infect the Fora

27 id.
28 id.
constituted under the *Consumer Protection Act*. It should never be ground for adjournment in a Forum under this Act that the lawyers are on a strike.” The Apex Consumer Disputes Redressal Commission had further observed therein as under:

[W]e have to guard ourselves against the pernicious practice of strike by lawyers spreading to the Fora under the Act. Non-appearance of a lawyer in a Court or Tribunal or any Authority after being engaged and having charged his fee could itself be deficiency in service on his part. There is already a public criticism that Fora under the Act are fast becoming civil courts where adjournments are granted as a matter of course. This should not be permitted otherwise the purpose of the Act will be lost. State Commissions should ensure that no adjournment is granted on the ground of strike by lawyers. If the lawyers do not appear before District Forum or State Commission, it can decide the matter on the basis of the record, if it so chooses. A request for adjournment on the ground of strike by lawyers is not justifiable ground for adjourning the matter.29

As these observations come from the National Consumer Disputes Redressal Commission, these were expected to be followed by the State Consumer Disputes Redressal Commissions and the District Consumer Disputes Redressal Fora. This was done to an extent. Some State Commissions as well as some of the District Fora did follow the observations in toto. However, some kept moving and are at present, too, moving at a snail’s place.

Notwithstanding the resultant outcome of the entire thing, however, one observation that one can make is that the National Consumer Disputes Redressal Commission has indeed been quite serious as well as sensitive with regard to the disposal of cases filed before it. This is one area where the National Commission’s contribution has indeed been highly commendable and unmatchable, too. It is, therefore, worth emulation also.

5.3 Critical Evaluation of the Working of the National Consumer Disputes Redressal Commission

In the above paragraphs, I have highlighted some of the instances where the National Consumer Disputes Redressal Commission, an apex agency in the hierarchy of the Three Tier Consumer Disputes Redressal Mechanism, by way of its decision making, has made significant contribution in the arena of consumer protection law and policy. Notwithstanding

the highly commendable contribution made by the National Commission, some of the critics as ever, are still up in the arms, to criticise the Apex Commission. Irrespective of the fact whether these criticisms are justified or not, I have endeavoured to discuss some of these in the following paragraphs.

5.3.1 *Entertainment of Revision Petitions by the National Consumer Disputes Redressal Commission*

If one attempts to analyse the factual position, one would perhaps like to go along with me to believe that the apex National Consumer Disputes Redressal Commission has, for the past ten years, been handling most of the work which does not legally fall within its jurisdiction. Its work has not spontaneously increased but has been made to increase. This is surprising, though absolutely true. If one looks up at the cause list of the National Consumer Disputes Redressal Commission on any day or have a glance over any law journal which reports its orders. Eighty per cent or even more of the cases coming up before it are the revision petitioners filed before it by the unsuccessful appellants who lost their appeals in any State Consumer Disputes Redressal Commission. Barring a few revision petitioners, these are invariably admitted, notices are issued, replies are sought and then arguments are heard on the evidence tendered before the District Consumer Disputes Redressal Forum and orders are passed under section 21(b) of the *Consumer Protection Act*, 1986 reversing, modifying and annulling the orders of the appellate State Consumer Disptues Redressal Commissions. Sometimes not interfering with them and on other occasions remitting them back for retrial. Does this type of work lie within the ambit of the National Commission as per law? Does the *Consumer Protection Act* provide for a second appeal? If not (which is a crystal clear fact), then why second appeals are being entertained and decided in the garb of revision petitions?30

Thus the consumer law experts have strongly been criticising this approach of the National Consumer Disputes Redressal Commission. Nobody has so far challenged it though. The present researcher is of the confirmed view that the National Commission should give attention to this point.

5.3.2 *Inconsistent Approach of the National Consumer Disputes Redressal Commission With Regard to the Awarding of Compensation to the Aggrieved Consumers*

---

In the above paragraphs, the present researcher, with the help of the decided case law, has explained as to how the National Consumer Disputes Redressal Commission has tried to lay down the norms and guidelines to be followed by the Consumer Disputes Redressal Agencies working below it, while awarding compensation to the aggrieved consumers. The underlying point has been that the status of an individual should not always be the determining factor for the award of compensation in consumer protection case and that the compensation should be awarded in accordance with the well settled principles only. The National Commission has been expecting that the Consumer Disputes Redressal Commissions at the state level and the Consumer Disputes Redressal Fora at the district level should strictly follow the guidelines laid down by the apex commission. There is, however, the other side of the story, too, which indeed is disturbing, and that is that there has been deviation from these settled principles and that too by none other than the National Commission itself. One wonders as to how and why these aforesaid guidelines have been given an occasional good bye by the apex Consumer Disputes Redressal Agency. For instance, in the case of *U.S. Awasthy v. Gulf Air and Anr.*\(^{31}\), the case of the complainant was dismissed by the State Commission and the complainant came before the National Commission in appeal against the Gulf Air, an international carrier. His complaint was that he was a business class passenger and in the flight of Gulf Air between the sector Bahrain-Istanbul, he was given a seat which was fixed and was not reclining on account of which he suffered great inconvenience and discomfort for about six and half hours. He claimed Rs. 5 lakhs as damages for the discomfort and agony caused to him. In its reply, the Airlines stated that there were sixteen first class, twelve business class and ninety five economy class seats and that all the seats were occupied and in view thereof, it was not possible to make available an alternative seat to the complainant. It was further stated that otherwise the seat given to the complainant was wide, well cushioned and was comfortable to sit and all business class facilities were otherwise provided to him. Taking into account these factors and the fact that the seat given to the complainant was not a reclining one being next to the emergency exit which has to be like that for the security reasons, the State Commission dismissed the complaint.\(^{32}\)

In case of the above nature and keeping in view its own earlier ruling, all what was justifiably expected of the National Consumer Disputes Redressal Commission in appeal was, that the complainant at best should have been reimbursed the difference of air fare between the

---

31 As cited in S.S. Kumar, *ibid.*

business class and the economy class and a couple of thousands of rupees of compensation could have been awarded and that would have been reasonable in the circumstances and under the Indian conditions. The National Consumer Commission, however, in this case, after referring to nearly a dozen judgments, mostly of the foreign courts, in a detailed order dated 30 September 2003 running into more than 20 pages awarded a sum of Rs. One Lakh as damages to the complainant and also directed the air carrier, that is, Gulf Air to pay to the complainant the amount of difference between the business class and the economy class fare. In addition to this, the Airlines was also directed to pay the interest at the rate of 9 per cent on both the amounts from the date of filing of complaint till payment. Cost of Rs. 10,000/- was also awarded.33

Now, if one compares the facts of the above case with those of another complaint of similar nature which had been dealt with by the Maharashtra State Consumer Disputes Redressal Commission, one can observe the difference. In Kurana Travels v. Doctor Dilip Govind Rao Mhaiskar34, the complainant had booked four tickets in a luxury bus for journey from Nanded to Nagpur on 30 June 2002. However, when he boarded the bus along with his family members which included his minor daughter, he noticed that the window pane by the side of his seat was broken. Consequently he and his family members had to suffer cold wind and also rain which led to his young daughter falling sick. He filed a complaint before the District Consumer Disputes Redressal Forum against the travel agent who had arranged the bus journey and had projected a comfortable and luxurious journey. The complainant accordingly claimed a compensation of Rs. 10,000/- for all the mental agony and the discomfort suffered by him and by his daughter due to the deficiency in service of the travel agent. From all standards, the amount claimed should have been fairly reasonable but perhaps keeping the law enunciated by the apex Commission in its earlier decisions, the District Fourm awarded a sum of Rs. 1,000/- as compensation to be paid to the complainant by the travel agent. An appeal was filed before the Maharashtra State Consumer Disputes Redressal Commission which, despite noticing the fact that the travel agent had admitted that the window glass was broken, upheld the decision of the District Consumer Disputes Redressal Forum and found no

33 id.
34 2003 CTJ 1022.
justification in awarding more than Rs. 1,000/- as compensation for all the torture meted out to the complainant and his family.\textsuperscript{35}

It may be appropriate to mention here that whenever and wherever any decision making is involved at any place at any time, consistency in approach always helps following the law. However, when the consistency is found missing at the highest echelons, then the confusion develops and it gets more confound in the course of time. It may be pertinent to mention here that in September 2001, the very same National Consumer Disputes Redressal Commission in the Standard Chartered Bank’s Case had observed that the relief to a consumer by a Consumer Disputes Redressal Agency established under the Consumer Protection Act, 1986 could be given for the actual loss and not for the remote loss or for abnormal loss. Doesn’t the Awasathy’s case deviate from the aforesaid principle? One has to really work out for a logical and a consistent answer.\textsuperscript{36}

5.4 Suggestions for Improving the Working of the National Consumer Disputes Redressal Commission

On the basis of the above discussion, one can only say that the National Consumer Disputes Redressal Commission being the highest body in the hierarchy of the Three-Tier Consumer Disputes Redressal Mechanism, is expected to act as a role model for the agencies working below it. It goes without saying that the State Consumer Disputes Redressal Commissions and the District Consumer Disputes Redressal Fora would always look towards the apex agency for guidance and for supervision. If the National Consumer Disputes Redressal Commission errors anywhere or does pronounce an illogical decision or its decision gets inconsistent, this affects not only the National Commission, but also the State Commissions and the District Fora working under it. Hence, here are a few suggestions for improving the image of the National Consumer Disputes Redressal Commission.

In the first place, for instance, there is a greater need to pass the reasoned and not the sketchy orders by the National Consumer Disputes Redressal Commission. This is quite understandable that the decision by the National Commission mostly becomes the basis for the pronouncement of decision by the Hon’ble Supreme Court of India. These decisions, in turn, become the law of the land. Hence the National Commission should be extra-ordinarily

\textsuperscript{35} S.S. Kuamar, 2010, p. 171.

\textsuperscript{36} id.
cautious while pronouncing a decision or while laying down some law on the subject. The apex body should be conscious that each and every decision pronounced by it is the law of the land, so far as the subject of consumer protection is concerned, unless and until it is challenged before the Hon’ble Supreme Court of India in appeal filed by either of the parties to the dispute. The Hon’ble Supreme Court also sometimes remands a few cases to it back.

At one stage, the remand of the three cases in a row by the Hon’ble Supreme Court of India to the National Consumer Disputes Redressal Commission had brought into focus and limelight the hasty and illogical behaviour on the part of the National Consumer Disputes Redressal Commission. And when the remand of all such cases is for no other reason than for the non-application of mind by the Apex Commission, it becomes all the more alarming and worrisome as well as embarrassing, too. Notwithstanding the amount of case law that one is able to study and analyse on the subject, one can hardly be sure as to whether these three were the only cases disposed of by the Apex Consumer Disputes Redressal Agency in a manner that incensed the affected parties to have invoked the jurisdiction of the Apex Court, that is, the Hon’ble Supreme Court of India. It is quite possible that there would be many more holding sketchy or cryptic orders issues to them by the National Consumer Disputes Redressal Commission, they do not have the means or resources to approach the Supreme Court for its interference. This is a matter of common knowledge as to how expensive, cumbersome and tedious the entire process is.\(^{37}\)

5.5 Conclusion

The focus of the above chapter was the performance appraisal of the National Consumer Disputes Redressal Commission. Besides this, the scope of the chapter included a discussion on the suggestions to be offered for improving the role and performance of the National Consumer Commission in the arena of consumer protection. One may write endlessly on the topic. However, due to the space constraints and due to the fact that the scope of the study is limited, the researcher has touched only those aspects which really need attention. To my mind, the single point agenda for the agency like the National Commission is the decision making, and above all, a logical, consistent, thoughtful and progressive decision making. When the Consumer Protection Act, 1986 was enacted, high hopes were pinned up on these bodies. There is no denying the fact that according to some critics, the expectations of the

people seemed to have been belied. However, the things were and even today are not that bad. The National Consumer Disputes Redressal Commission has certainly pronounced some path breaking judgments. Some of these were also challenged before the Hon’ble Supreme Court of India. A few of these were reversed also, though the majority of the judgments pronounced by this apex body were upheld. My indepth study of the case law has enabled me to comment that today at whatever level the consumer protection movement has reached, the major credit for this goes to the decision making by the National Consumer Disputes Redressal Commission. Due credit also needs to be given to the State Consumer Disputes Redressal Commissions as well as to the District Consumer Disputes Redressal Fora. Though, by and large, all the State Commissions have been performing their role in the arena of decision making, nevertheless, some of the State Commissions have been functioning quite pro-actively and have been pronouncing significant judgments. The role of a State Commission also assumes significance because many a time a decision pronounced or the issue determined or decided by a State Commission, comes up for consideration of the National Commission in appeal or in revision. And then the whole episode begins. There is no denying the fact that when an agency functions anywhere, some criticism from here and there is quite obvious. That criticism should not, however, unnerve the institution involved in the decision making. The party against whom the decision has been made, be it an individual, a group of individuals, a consumer organisation and even the government, would never ever be happy with such a decision. Knowing fully well that the aforesaid decision shall not stand vindicated even before the Hon’ble Supreme Court of India, certain stake-holders do go in for appeal or in revision to try their luck. Therefore, criticism from such quarters does not hold good and is without any justification, whatsoever.

To sum up the entire discussion, the present researcher is of the view that what is expected of the National Consumer Disputes Redressal Commission is a sound, logical, reasonable and progressive decision-making because it is primarily the decision-making by the National Commission that becomes the basis for the decision making by the Hon’ble Supreme Court, provided the decision pronounced by the former gets contested in appeal or in revision before the latter. And if it is not contested, then it becomes the law of the land as far as the subject of consumer protection is concerned. The second issue concerns the leadership. The National Commission should lead in such a way that the State Consumer Disputes Redressal Commissions and the District Consumer Disputes Redressal Fora look toward it with awe and inspiration. That is what is expected of an apex institution in the hierarchy.