CHAPTER – IV

THE CONSUMER PROTECTION ACT, 1986: AN ANALYSIS


A. Application of the Act

The Consumer Protection Act, 1986 applies to all goods and services. The Central Government has the power to issue notification exempting any goods or services from the application of the Act. Thus the Consumer Protection Act, 1986 applies to all goods and services including private, public or co-operative sector. It means that a consumer can take an action under the Consumer Protection Act, 1986 against defective goods supplied or deficient services rendered even by public sector or government undertakings such as Railways, Telephones, Electricity Boards, Postal Authorities etc. 1

In India Airlines Corporation v. Consumer Education & Research Society Ahmedabad, 2 the National Commission prior to the 1993 amendment observed that Parliament never intended that a complaint against a corporation having its branches all over India should have a choice to file his complaint anywhere in the country irrespective of where the cause of action arose merely on account of the fact that the corporation may have a branch office functioning at the place where the complaint is instituted.

The Consumer Protection Act, 1986 is one of the importance legislation which provides simple, speedy and inexpensive services or justice to the consumer. It will not be wrong to say that this is a social-economic legislation for the protection and preservation of consumer rights. Initially, the consumer who was at once the king of the market has become the victim of it. Generally no

2 (1991) 3 Comp. Cases 166.
adequate information as to the characteristics and performance of many consumer goods is available because of the reason of non-availability of its source. To provide the protection to empower the consumers under this legislation the consumer is protected against any type of deficiency in the goods. In order to understand the various terms recognized under the Consumer Protection Act, 1986, we should go through these terms.

A.1 Complainant under Section 2(1) (b)

In order to initiate proceedings under the Consumer Protection Act, 1986 a complaint is required to be filed by a complainant. A complaint can be filed by any one of the consumer; any voluntary consumer association registered under the companies Act, 1956 or under any other enactment; or the Central Government or any State Government, who or which makes a complaint; one or more consumers, where there are numerous consumers having the same interest; in case of death of a consumer, his legal heir or representative.\(^3\)

It is not necessary that the complaint be made only by the aggrieved consumer himself. It can be by any recognized voluntary consumer association irrespective of the fact that the aggrieved consumer is not a member of such association. Sub-clause (v) to Section 2(1)(b), which was inserted by the Amendment Act, 2002 has made the law more specific in this regard. Though even prior to this amendment, the beneficiary of services was included in the definition of ‘consumer’. The Gujarat State Commission, in \textit{Kirti Ramniklal Parekh v. Bank of Baroda}\(^4\) held that the son of the deceased would be a ‘complainant’ within the Act, being one of the beneficiaries, though not the sole beneficiary.

There must be specific identifiable consumers to file complaint. Consumers alone can receive the relief which may be granted under the Act. A complaint filed on behalf of unspecified number of users of telephone services has been held to be not in consonance with the provisions of the Act. It was so held in \textit{Society of Civil...}

\(^3\) Inserted by \textit{Consumer Protection (Amendment) Act, 2002.}

\(^4\) II (1995) CPJ 350 (Guj. CDRC).
Rights v. Union of India.\(^5\) Rule 14(1) of the Consumer Protection Rules, 1987 allows a complainant or his agent to file the complaint. Further, Rule 14(3) allows parties or their agents to appear before the National Commission. Thus, an authorized agent may represent the complainant.

Prior to its 1993 Amendment, there was no provision for class action in the Consumer Protection Act, 1986. In this kind of action proceedings are brought by one or more members of a class on behalf of persons who are permitted to do so by the court if it finds that question of law or of fact or cause of action are common to the members of the class. In such a situation the court permits one or two members of the class to bring action on behalf of the entire class. It was necessary to provide for this class action to protect large number of consumers who may suffer damages at the hands of a producer etc. but being poor and not having sufficient resources may not be able to bring separate claims against the delinquent. In such a situation if individual action is insisted upon, the result would be only to deprive a large number of such consumers from the benefits of the Consumer Protection Act, 1986. Accordingly provisions have been made in the Consumer Protection Act to enable one or more consumers having the same interest to file complaint on behalf of all such similarly aggrieved consumers with permission of the Consumer Forum on behalf of all such consumers.\(^6\)

**A.2 Complaint under Section 2 (1) (c)**

Complaint under Section 2(1)(c) of the Consumer Protection Act, 1986 means any allegation in writing made by a complainant regarding an unfair trade practice or restrictive trade practice has been adopted by any trader or service provider;\(^7\) the goods bought by him or agreed to be bought by him suffer from one or more defects; the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect; a trader or service provider, has charged for the goods or for the service mentioned in the complaint

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\(^5\) 1991(I) C.P.R. 104 (NCDRC).


\(^7\) The words ‘or service provider’ inserted by Consumer Protection (Amendment) Act, 2002.
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 recognized law; agreed between the parties;\textsuperscript{8} goods which will be hazardous to life and safety when used or 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; if the trader could have known with due diligence that the goods so offered are unsafe to the public;\textsuperscript{9} 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.\textsuperscript{10}.

The complaint must be in writing specifying the name, description and address of the complainant and the opposite party. It must state the facts, when and where they arose and it must be supported by documents if any. It must also specify the relief which the complainant is seeking. In \textit{Trupti K. Patel v. M/s. Rocklines Construction(SC)}\textsuperscript{11}, the court held that dismissal of original complaints on the ground that neither the complainants were consumers nor the respondents were 'service providers' under the Act. Point squarely covered by judgment in \textit{Faqir Chand Gulati} case. Impugned order set aside. Complaints held maintainable. In \textit{Sundaram Automobiles v. C.N. Anantharam},\textsuperscript{12} foreclosing of pending issues between the parties at admission stage arose. Issue of liability to make payment to the complainant not having been decided, revision being admitted by the National Commission only on the point of E.M.I. and rate of interest. Foreclosing other issues, held, was unwarranted. Order of National Commission set aside.

\textsuperscript{8} \textit{The Consumer Protection (Amendment) Act, 2002} has widened the scope of this provision by making it applicable to services also.

\textsuperscript{9} Substituted for the words ‘goods which will be hazardous to life and safety when used or being offered for sale to the public in contravention of the provisions in any law for the time being in force requiring traders to display information in regard to contents, manner and effect of use of such goods’ by the \textit{Consumer Protection (Amendment) Act, 2002}.

\textsuperscript{10} \textit{Supra} note 3.

\textsuperscript{11} 2011(7) R.C.R.(Civil) 603.

\textsuperscript{12} 2010(13) SCC 721.
Commission set aside. Matter remanded to be decided with connected issues expeditiously. In *Bihar School Examination Board v. Suresh Prasad Sinha*, education Board conducted examination but did not declare the result of one candidate and candidate had to re-appear in the exam. Complaint filed before the Consumer Forum. Complaint is not maintainable. Board is a statutory authority not carrying on any commercial or service oriented activity. Board is not a service provider and candidate is not a consumer. Two students appearing in Board exam were allotted same Roll number (496) by the Education Board. Centre Superintendent allotted different Roll No. (496A) to complainant's son. Result of complainant's son not declared and he had to re-appear in the exam in the following year. Complaint filed before the consumer Forum. Consumer Forum awarded compensation of Rs. 12000 with @12% interest. Board filed appeal before Supreme Court. The Supreme Court set aside the order of Forum and held as under :-

a) Board is a statutory authority and is not carrying on any commercial, professional or service oriented activity.

b) When Board conducts an examination in discharge of its statutory function it does not offer its service to any candidate.

c) Board is not a service provider and a student who takes an examination is not a consumer.

In a case *State Bank of India v. M/s B.S. Agricultural Industries (I)*, the Complainant sold engines and pump sets to certain firm on credit basis and gave the Bills and documents to Bank for collection. Bank failed to collect the amount of Bills and did not return the Bills to complainant. Complaint against Bank filed before the Consumer Forum claiming compensation for deficiency in service. Complaint, however, filed after a gap of 3 years from the cause of action. Limitation prescribed under Section 24A is 2 years. Complaint barred by limitation. Despite that consumer forum granted compensation without

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13 2009(4) R.C.R.(Civil) 9(SC).
considering the point of limitation. Order of consumer forum set aside. If complaint is time barred yet consumer forum decides it on merits, the forum would be committing an illegality. Aggrieved party would be entitled to have such order set aside.\textsuperscript{15}

\textbf{A.2.1 Complaint against Unfair and Restrictive Trade Practice}

Prior to the Consumer Protection (Amendment) Act, 1993, to make a complaint under the Consumer Protection Act, 1986 it was necessary that the complainant must have suffered loss or damage as a result of any unfair trade practice. There was, however, no such limitation under the M.R.T.P. Act. It was felt that there should also not be any such limitation under the Consumer Protection Act. The complainant should be able to file complaint even if he has any apprehension of loss or injury from any unfair or restrictive trade practice. With the amendment of 1993, this anomaly has been removed and now a complaint can be made in respect of any unfair or restrictive trade practice whether the complainant has suffered loss or damage or not as a result of such trade practice. A complaint may be filed in respect of the goods which suffer from one or more defects. The 1993 amendment enables the consumer to file a complaint not only after he has bought the goods but even if there is an agreement to buy goods. Further prior to the 1993 amendment a complaint could be made only in respect of those services which were hired by the consumer and suffer from deficiency in any respect. But now a complaint can be made in respect of the services hired or availed of, or agreed to be hired or availed of, suffer from deficiency in any respect.\textsuperscript{16}

The scope of Section 2(1)(c)(iv) has been widened by the Amendment Act, 2002 by inserting provisions (c) and (d). Prior to this amendment, the provision was limited to charging a price in excess of the price fixed by or under any recognized law; or displayed on the goods or on any package containing such goods. Further, the provisions of charging excess price now apply not only to

\textsuperscript{15} 2009(2) R.C.R.(Civil) 628(SC).
\textsuperscript{16} Available at: bombayhighcourt.nic.in-1993.50.pdf, (visited on 10.03.2015).
goods but also to services after the Amendment Act, 2002. Where there is no fixing of price of an article by law, nor a display of the price on the package containing the goods or on the goods itself, the Act does not contemplate any complaint being instituted in respect of the price charged for the article on the ground that the price charged for the article is excessive. The Consumer Forums etc. under the Consumer Protection Act, 1986 cannot undertake an investigation of the reasonableness of the price fixation made by a manufacturer, producer or dealer. In *Milk Chilling Centre, Mehaboobnagar v. Mehaboobnagar Council*, no price was displayed on the milk pouch. Complaint was that price charged with respect to milk is excessive. It was held that the complaint was not maintainable for the simple reason that neither price with respect to milk is fixed by law nor displayed on the pouch. It was further held that it is not the duty of Consumer Forum to see the reasonableness of price fixed by manufacturer, dealer or producer. 17

**A.2.2 Complaint against Hazardous Goods and Services**

Sub-clause (v) has also been amended and its scope widened after the Amendment Act, 2002. Now it covers cases where the trader could have known with due diligence that the goods so offered are unsafe to the public. Prior to the amendment, this Section provided "goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law, requiring traders to display information in regard to the contents, manner and effect of use of such goods. Prior to this, there was no provision in the Act to protect consumers from hazardous services. 18

**A.3 Consumer under Section 2(1) (d)**

In Oxford Dictionary, a consumer is defined as "a purchaser of goods or services". In Black's Law Dictionary, it is explained to mean "one who consumes". Individuals who purchase, use maintain and dispose of products and services. A member of that broad class of people who are affected by pricing

17 1991(I) CPR 177 (NCDRC).
18 Sub-clause (vi) has been inserted by the Amendment Act, 2002.
policy, financing practices, quality of goods and services, credit reporting, debt collection and other trade practices for which state and federal consumer protection laws are enacted. Act makes it clear that it includes not only the person who buys any goods for consideration but also any user of such goods when such use is made with the approval of the buyer. According to section 2(d) 'Consumer means and included the following person who:

i. Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such 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.

ii. Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised or partly paid and partly promised or under any system of deferred payment, which such services are availed of with the approval of the first mentioned person.19

In Morgan Standley Mutual Fund v. Katrick Das,20 the Supreme Court held that the term 'consumer' means one who consumes. According to the definition of consumer is one who purchases goods for private use or consumption and includes anyone who consumes goods and services at the end of the chain or production. It covers every man who pays money as the price or cost of goods and services. The court added that the consumer deserved to get what he pays for in real quantity and true quality. He remains the centre of gravity of all business and industrial

19 Section 2(d) of The Consumer Protection Act, 1986 (Universal Bare Act-2015).
activity in every society. He therefore, needs protection from the manufacturer, producer, supplier, wholesaler and retailer. In *Regional Provident Fund Commissioner v. Shiv Kumar Joshi*, the Supreme Court held that the definition of 'consumer' is wide and covers in its ambit not only the goods but also services, bought or hired, for consideration. Such consideration is paid or promised or partly paid or partly promised under any system of deferred payment and includes any beneficiary or such person other than the person who hires the service for consideration. In *Dinesh Bhagat v. Bajaj Auto Ltd.*, a scooter purchased by a person has been in possession of another person, the complainant from the date of purchase and he has been using and taking it to the respondents for repairs and service. The Delhi State Commission held that the complainant was using it with the approval of the owner and therefore he was a consumer under the Act.

The expression 'commercial purpose' is not defined in the Act. In common parlance 'commercial purpose' is that purpose the object of which is to make profit. According to Standard Dictionary the word 'commercial' means connected with or engaged in commerce; mercantile, having profit as the main aim. According to Chambers Twentieth Century Dictionary, pertaining to commerce, mercantile.'Where the goods are purchased from a retailer the Sales of Goods Act would permit only a retailer to be sued and not the manufacturer. In Consumer Protection Act a manufacturer should be liable only with the retailer for the satisfactory quality of goods. It is pertinent to mention here that the Act says that consumer does not include a person who obtains goods for resale or for any commercial purpose. 'Resale' implies that where the goods are purchase not for consumption but for further sale by a dealer or supplier in the ordinary course of business.

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22 III (1992) CPI 272 (Delhi CDRC).
A purchaser of shares or debentures for resale purposes has been held to be not a consumer because the transaction is for a commercial purpose.\textsuperscript{24} An estate agent who was acting as a middleman for buying or selling real estate for profits was held to be not a consumer.\textsuperscript{25} A small farmer purchasing land drip irrigation system for irrigating his grape groves has been held to be a purchaser for a commercial purpose and therefore not a consumer with the meaning of the Act.\textsuperscript{26} Installation of air pollution control system has been held to be commercial requirement and outside the purview of the consumer courts.\textsuperscript{27} In \textit{Jay Kay Puri Engineers and others v. Mohan Breweries and Distilleries Ltd.},\textsuperscript{28} the National Commission has held that even where the goods were purchased for commercial purpose, if there is a warranty for its maintenance, the purchaser becomes a consumer in respect of the service rendered or to be rendered by the manufacturer or supplier during the warranty period. The Act provides that commercial purchases do 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. Where the complaint was for the failure to supply accessories of a computer and it was contended by the opposite party that there was not consumer dispute as the purchase was for commercial purpose, the test laid down by the Supreme Court in \textit{Laxmi Engineering Works v. P.S.G Industrial Institute}\textsuperscript{29} was followed in which Supreme Court said that the goods bought must be used by the buyer himself, by employing himself for earning his livelihood, and it was held that the purchase of computer in this case was for earning livelihood.\textsuperscript{30}

\textsuperscript{24} Ram Narayan Parameshwaraiyer v. Larsen and Tourbo Ltd., 1993 (1) CPR 106 (NC).
\textsuperscript{25} Skipper Towers P. Ltd. v. A.P. Gupta, II(1995) CPJ 106 (NC).
\textsuperscript{26} Jain Irrigation System Ltd v. Malgonda Anna Patil, 1993 CCJ 545 NC.
\textsuperscript{27} Eagle Ultra Marine Industries v. Paramount Pollution Control P. Ltd., I (1994) CPJ 78 (NC).
\textsuperscript{28} 1993 (1) CPR 102 (NCDRC).
\textsuperscript{29} (1995) 3 SCC 583.
The definition of the term consumer as given in section 2(1) (d) of the Act covers not only consumers of goods but also consumer of services. It includes not only the person who buys the goods for consideration but also the person who uses such good with the approval of the buyer. Similarly it includes a person who hires or avails of any service for consideration and also includes any beneficiary of such service, when the services are availed of with the approval of the hirer. It is crystal clear that this special legislation covers the transactions for supply of goods and to rendering of services. To understand the ambit of Consumer Protection Act, 1986 it is important to know the concept and meaning of the words i.e. goods and services. The definition can be displayed under two heads- Consumer of goods and Consumer of service. In a case M/s Narne Construction P. Ltd. v. Union of India (SC), the Hon'ble Apex Court held that a Company was selling plots to its members. Activities of the appellant-company inviting offer of plots for sale to its customers/members with an assurance of development of infrastructure/amenities, lay-out approvals etc. was a 'service' within the meaning of clause (2) of Section 2(1) of the Act and would, therefore, be amenable to the jurisdiction of the fora establishment under the statute.\footnote{2012(3) R.C.R.(Civil) 127.}

The word 'consumer' is a comprehensive expression. It extends from a person who buys any commodity to consume either as eatable or otherwise from a shop, business house, corporation, store, fair price shop to use of private or public services. When a person applies for allotment of building site or for a flat constructed by development authority and enters into an agreement with the developer or a contractor, the nature of the transaction is covered by the expression 'service' of any description. The housing construction or building activity carried on by a private or statutory body was, therefore, held to be 'service' within the meaning of clause (o) of Section 2(1) of the Act as it stood prior to the inclusion of the expression 'housing construction' in the definition of
The Supreme Court in its landmark decision in *Lucknow Development Authority v. M.K. Gupta*,\(^{33}\) held that consumer is a comprehensive expression. It extends from a person who buys any commodity either as eatable or otherwise from a shop, business house, corporation, store, fair-price shop to use it for private use or consumption and not for commercial purpose. Moreover, the Act thus, aims to protect the commercial sense as a purchaser of goods and in the larger sense of user of services. This Court while dealing with the meaning of the expressions 'consumer' and 'service' under the Consumer Protection Act observed that the provisions of the Act must be liberally interpreted in favour of the consumers as the enactment in question was a beneficial piece of legislation. This Court while examining the true purport of the word 'service' appearing in the legislation observed:

"It is in three parts. The main part is followed by inclusive clause and ends by exclusionary clause. The main clause itself is very wide. It applies to any service made available to potential users. The words 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionary means 'one or some or all'. In Black's Law Dictionary it is explained thus, word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject-matter of the statute". The use of the word 'any' in the context it has been used in Clause (o) indicates that it has been used in wider sense extending from one to all. The other word 'potential' is again very wide. In Oxford Dictionary it is defined as 'capable of coming into being, possibility'. In Black's Law Dictionary it is defined as "existing in possibility but not in act. Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive

\(^{32}\) It added by Ordinance No. 24 of 1993.

\(^{33}\) (1994) 1 SCC 243-253.
future installments or payments on a contract or engagement already made.\textsuperscript{34n}

In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to any or all actual or potential users. But the legislature did not stop there. It expanded the meaning of the word further in modern sense by extending it to even such facilities as are available to a consumer in connection with banking, financing etc. Each of these are wide-ranging activities in day to day life. They are discharged both by statutory and private bodies. In absence of any indication, express or implied there is no reason to hold that authorities created by the statute are beyond purview of the Act. When banks advance loan or accept deposit or provide facility of locker they undoubtedly render service. A State Bank or nationalized bank renders as much service as private bank. No distinction can be drawn in private and public transport or insurance companies. Even the supply of electricity or gas which throughout the country is being made, mainly, by statutory authorities is included in it. The legislative intention is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility.\textsuperscript{35}

In the context of the housing construction and building activities carried on by a private or statutory body and whether such activity tantamounts to service within the meaning of clause (o) of Section 2(1) of the Act, the Court observed that as pointed out earlier the entire purpose of widening the definition is to include in it not only day to day buying and selling activity undertaken by a common man but even such activities which are otherwise not commercial in nature yet they partake of a character in which some benefit is conferred on the consumer. Construction of a house or flat is for the benefit of person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The

\textsuperscript{34} Ibid.

\textsuperscript{35} Ibid.
latter being for consideration is service as defined in the Act. Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such disputes or claims are not in respect of Immovable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in Sub-clause (ii) of Clause (r) of Section 2 as unfair trade practice. If a builder of a house uses substandard material in construction of a building or makes false or misleading representation about the condition of the house then it is denial of the facility or benefit of which a consumer is entitled to claim value under the Act. When the contractor or builder undertakes to erect a house or flat then it is inherent in it that he shall perform his obligation as agreed to. A flat with a leaking roof, or cracking wall or substandard floor is denial of service. Similarly when a statutory authority undertakes to develop land and frame housing scheme, it, while performing statutory duty renders service to the society in general and individual in particular. This Court further held that when a person applies for allotment of building site or for a flat constructed by development authority and enters into an agreement with the developer or a contractor, the nature of the transaction is covered by the expression 'service' of any description. The housing construction or building activity carried on by a private or statutory body was, therefore, held to be 'service' within the meaning of clause (o) of Section 2(1) of the Act as it stood prior to the inclusion of the expression 'housing construction' in the definition of 'service' by Ordinance No. 24 of 1993.  

In the light of the above pronouncement of this Court the High Court was perfectly justified in holding that the activities of the appellant-company in the

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The present case involving offer of plots for sale to its customers/members with an assurance of development of infrastructure/amenities, lay-out approvals etc. was a 'service' within the meaning of clause (o) of Section 2(1) of the Act and would, therefore, be amenable to the jurisdiction of the fora established under the statute. Having regard to the nature of the transaction between the appellant-company and its customers which involved much more than a simple transfer of a piece of immovable property it is clear that the same constituted 'service' within the meaning of the Act. It was not a case where the appellant-company was selling the given property with all advantages and/or disadvantages on "as is where is" basis, as was the position in *U.T. Chandigarh Administration and Anr. v. Amarjeet Singh and Ors.* 37 It is a case where a clear cut assurance was made to the purchasers as to the nature and the extent of development that would be carried out by the appellant-company as a part of the package under which sale of fully developed plots with assured facilities was to be made in favour of the purchasers for valuable consideration. To the extent the transfer of the site with developments in the manner and to the extent indicated earlier was a part of the transaction, the appellant-company had indeed undertaken to provide a service. Any deficiency or defect in such service would make it accountable before the competent consumer forum at the instance of consumers like the respondents. This Court in *Bangalore Development Authority v. Syndicate Bank* 38, dealt with the nature of the relief that can be claimed by consumers in the event of refusal or delay in the transfer of the title of the property in favour of the allottees/purchasers and observed that where full payment is made and possession is delivered, but title deed is not executed without any justifiable cause, the allottee may be awarded compensation, for harassment and mental agony, in addition to appropriate direction for execution and delivery of title deed.

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37 2009(2) R.C.R.(Civil) 401.
A.4 **Manufacturer under Section 2 (1) (j)**

“Manufacturer” has been defined as a person who makes or manufactures any goods or part thereof; or does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer.\(^{39}\)

A person is deemed to have manufactured goods if he puts or causes to be put his own mark on the goods made or manufactured by any other manufacturer and claim such goods to be goods made or manufactured by himself. Such a person by putting his name or mark holds himself out to the public as the manufacturer of the goods. It seems reasonable that such a person should be treated as though he is the actual manufacturer where for legitimate marketing reasons, he chooses to induce the ultimate buyer to rely on his reputation rather than that of the real manufacturer whose identity is usually unknown to the buyer. The above sub-section has been amended by the Amendment Act, 2002. Prior to the amendment, an Explanation appended to the definition of manufacturer provided that where a manufacturer dispatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so dispatched to it are assembled at such branch office and are sold or distributed from such branch office. The basic idea of this explanation was to clarify that liability of a manufacturer will continue even if he gets the goods or part thereof assembled, sold or distributed at any branch office maintained by him.\(^{40}\)

A.5 **Trader under Section 2(1) (q)**

Under the Consumer Protection Act, the definition of trader has been confined to goods only. According to Section 2 (1) (q) “trader” in relation to any goods means a person who sells or distributes any goods for sale and includes the

\(^{39}\) Section 2(1)(j) of *The Consumer Protection Act, 1986.*

\(^{40}\) However, this Explanation has been omitted by *the Amendment Act of 2002* as the amended definition of ‘manufacturer’ itself includes the same.
manufacturer thereof, and where such goods are sold or distributed in package form includes the packer thereof. Usually the main grievance of the complainant could be against the trader only on the ground that the goods supplied by him suffer from one or more defects. Plainly enough the privity of contract and the relief claimed is against the trader, be that the seller or distributer of goods. It is not the requirement of the law that whenever a trader is proceeded against, the original manufacturer is to be a necessary party. It was so held in the case of *M/s Chaudhry Automobiles v. Anil Kumar.*

A.6 **Person under Section 2 (1) (m)**

The term ‘person’ consists of a firm whether registered or not; a Hindu undivided family; a cooperative society; and every other association of persons whether registered under Societies Registration Act, 1860 or not. The definition of the term 'person' is an inclusive one and not exhaustive. Thus, any person not falling in the categories mentioned above may still be a person within the meaning of the term person as defined in the Consumer Protection Act. The definition of person extends to companies, firms, co-operative societies, joint families and any other association of persons.

A.7 **Restrictive Trade Practice under Section 2 (1) (nnn)**

“Restrictive trade practice” is defined under section 2(1)(nnn) of Consumer Protection Act, 1986. It means a trade practice which tends to bring about manipulation of price or 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. It includes 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; or any trade practice which requires a consumer to buy, hire or avail of any goods or, services as condition precedent to

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41 1991 (I) CPR 470 (Haryana CDRC).
42 ‘Person’ as defined in Section 3 (42) of the General Clauses Act, 1897.
43 The Amendment Act, 2002 has substituted sub-clause (nn) for the earlier sub-clause (nnn).
buying, hiring or availing of other goods or services. 44 Restrictive trade practice means any ‘trade Practice’ which requires a consumer to buy, hire or avail of any goods or as the case may the case may be, services as a condition precedent for buying, hiring or availing of any other goods or services. 45

New definition also covers the restrictive trade practices of ‘tie-up sales’ or ‘tying arrangements’. A tie up sale or tying arrangement is an agreement or arrangement whereby a purchaser is forced to take one or more other articles or services in addition to goods which he desires to purchase. It consists in the conditioning of sale or purchase of a product or services upon the purchase or sale of one or more other products or services eg. A buyer agrees to purchase a product X upon condition that he will also purchase product Y from seller rather than from some other supplier. Thus the sale of product Y (tied product) is tied to sale of product X (tying product). The effect of such an arrangement is that a purchaser is compelled to buy goods or services which he does not want along with the goods or services which he wants to buy. Further, he is forced to forego his free choice between competing products resulting in economic harm to competition in the tied market. But when there is no such condition or compulsion and the buyer is free to take either product, there is no tying problem even though the seller may offer the two items as a unit at a single price. Tie up sales do not serve any purpose beyond the suppression of competition. Generally such trade practices are against the interest of consumers. A consumer aggrieved by the restrictive trade practice of the tie up sale may make to the Consumer Disputes Redressal Agency (CDRA) under the Consumer Protection Act.

A.8 Unfair Trade Practice under Section 2 (1) (r)

The Amendment Act, 2002 has amended the definition in Section 2(1)(r) by inserting Section 3A which means withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the

44 The new definition substituted by the Amendment Act, 2002 has enlarged the definition of restrictive trade practice.

45 The definition of restrictive trade practice had been inserted by the Amendment Act of 1993 vide sub-clause (nn).
information about final results of the scheme. Further the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time, published, prominently in the same newspapers in which the scheme was originally advertised. Originally, in India the MRTP Act has not contained protection of consumers against false or misleading advertisement or other similar unfair trade practices. The definition of unfair trade practice has been incorporated by the Amendment Act of 1993.\textsuperscript{46} It proceeded on the assumption that the competitive market would provide a fair deal to the consumers. However, subsequently it was felt that there is greater need that the consumers be protected not only against restrictive trade practices but also unfair trade practices which are resorted to by the traders etc. to mislead the customers. The effect is to shift the emphasis on detection and eradication of frauds against the customers. Consequently, on the recommendation of the Sachhar Committee (1975), Monopolies and Restrictive Trade Practices Act was amended in 1984 incorporating Section 36 A to E relating to unfair trade practices.\textsuperscript{47}

The definition of unfair trade practice is general and inclusive. The emphasis is on unfair or deceptive practice. The term ‘unfair trade practice’ means a trade practice which for the purpose of promoting the sale; use or supply of any goods; or the provision of any services; or adopts any unfair method or unfair or deceptive practice including anyone of the nine practices enumerated in clauses (1) to (6) of Section 2 (1) (r). It does not cover all types of unfair trade practices. These are merely statutory illustrations of unfair trade practices and are not exhaustive. A trade practice which falls within the scope of the term ‘unfair method’ or ‘unfair practice’ or ‘deceptive practice’ will also be an unfair trade practice. However, these terms have not been defined and it has been left to the Monopolies and Restrictive Trade Practices Act Commission and

\textsuperscript{46} The definition incorporated under \textit{Consumer Protection Act} is the reproduction of the definition of unfair Trade Practice as given in Section 36 A of \textit{the Monopolies and Restrictive Trade Practices Act, 1969.}

\textsuperscript{47} Now \textit{MRTP Act} is repealed.
consumer Disputes Redressal Agencies to interpret these terms. The Apex Court in *Lakhanpal National Ltd. v. Monopolies and Restrictive Trade Practices Commission*,\(^{48}\) while examining the scope of the term ‘unfair trade practice’ observed that when a problem arises as to whether a particular act can be condemned as unfair trade practice or not, the key of the solution would be to examine whether it contains a false statement and is misleading and further what is the effect of such a representation made by the manufacturer on the common man? Does it lead a reasonable person in the position of a buyer to a wrong conclusion? If it does, it amounts to unfair trade practice. Further, “the issue can’t be resolved by merely examining whether the representation is correct or incorrect in the liberal sense. A representation containing a statement apparently correct in the technical sense may have the effect of misleading the buyer by using tricky language. Similarly a statement which may be inaccurate in the technical literal sense can convey the truth. It is, therefore, necessary to examine whether the representation complained of contains an element of misleading the buyer”.\(^{49}\)

The practice of making any statement, whether orally or in writing or by visible representation which falsely represents that the services are of a particular standard, quality or grade, falsely represents any-rebuilt, second hand, renovated, reconditioned or old goods as new goods, represents that the goods or services have sponsorship, approval, performance, characteristics, accessories uses or benefits which they do not have. e.g a false representation that an electric machine has approval of the state electricity board or that a particular good has I.S.I. mark which it does not have or a false representation that the fire extinguishers comply with the requirements as laid down by Fire Commission etc. are instances of unfair trade practices, Represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have, makes a false or misleading representation concerning the need


\(^{49}\) *Ibid.*
for or the usefulness of any goods or services, gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any foods that is not based on an adequate or proper test thereof, and this clause deals with the situation where a representation is made to the public in such a manner that the representation appears to be a guarantee or warranty in respect of a product or of any goods or services or; a promise to either replace or to maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result. It will amount to an unfair trade practice if such purported warranty or guarantee or promise is materially misleading or there is no reasonable prospect that such warranty, guarantee or promise will be carried out.\footnote{Ibid.}

### A.8.1 False or Misleading Advertisement

False means which is not true. The expression falsely indicates that the representation is contrary to facts. The term misleading means capable of leading into error. There is an obligation on the seller that if he advertises or otherwise represents, he must speak the truth as well as well as avoid half-truth. Sometimes a statement may be literally true and yet it may be false and misleading. An advertisement may be misleading because things which should be said are omitted or because advertisements are composed or purposefully printed in such a manner or way as to mislead. A representation containing a statement apparently correct in the technical sense may have the effect of misleading the consumer by using tricky language. It is therefore necessary to determine whether the representation complained of carries the possibility of misleading the buyer. The meaning of advertisements or other representation to the public and their tendency to deceive or mislead are questions of fact to be determined by the Consumer Disputes Redressal Forums or the Monopolies and Restrictive Trade Practices Commission. The truth of the advertisement or representation must be proved if the same is challenged. Further, it is not material whether the facts have been falsely
represented by the advertiser in good or bad faith. The important criteria, therefore, is to ascertain as to what impression is likely to be created by the representation or statement upon the consumers. In *D.G. (I & R) v. Burroughs Welcome (India) Ltd.*, the company issued an advertisement claiming its medicine ‘Ridake Paracetamol Tablets’ as the safest ways to clear headaches and it did not have the side effects like that of aspirin. The advertisement was supported by an article of British Medical Journal which dealt with the side effects of Asprin but suppressed the view of the said journal to the effect that Paracetamol adversely affects the liver. It was held to be a false representation as to the quality of goods and was, therefore, an unfair trade practice.

This provision is intended to cover any statement which falsely suggests that the services are of a particular standard, quality or grade eg. Private Schools provide service, hold out certain promises to parents and charge for it. If they don’t provide the promised services then it is a false representation and thus an unfair trade practice. Any arbitrary increase in the fees, imposition of charges for some non-existent facilities like library, sports and medical care will be cases of unfair trade practices. In *Director General (Investigation & Registration) v. Prakash Clinic*, the respondent providing Ayurvedic treatment published several advertisements in different newspaper and periodicals claiming successful treatment of various diseases. The claims made by the respondent were found to be exaggerated and misleading, hence amounted to unfair trade practice. When a motor car is represented as latest model whereas in fact it was an outdated mode, it will fall within the ambit of sub-clause (iii). Sub-clause (iv) is applicable when the statement represents that the goods or services have sponsorship or approval which they do not have. Sub-Clause (v) applies to the statement which represents that the seller or the supplier has a sponsorship or approval which he does not have.

The sub-clause requires that every warranty or guarantee of the

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51 U.T.P.E. 55 of 1986 decision dated 2.7.86 (MRTPC).
performance, length of life of the product etc. should be based on adequate or proper test. When such a warranty or guarantee is not supported by the proper test, it will be an unfair trade practice under this sub-clause. Where a defense is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defense shall lie on the person raising the defense (proviso). An advertisement which guarantees loss of weight within a specified period without being supported by adequate or proper test will be an unfair trade practice within the ambit of this sub-clause. This clause lays down that it will amount to an unfair trade practice where a statement materially misleads the public regarding the price at which a particular product or like products or goods or services have been or are ordinarily sold and for this purpose a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made. This sub-clause lays down that it will amount to an unfair trade practice if the statement is made giving ‘false or misleading facts disparaging the goods, services or trade of another person’. Disparagement generally involves casting aspersions on the quality or characteristics of goods or services of another whereas false advertising usually comprises assertion of superior attributes for the advertiser’s own goods or services. However, both disparagement and false advertising have the same effect, i.e. advertiser’s goods or services are falsely presented to the potential customers in a more favourable light than those of another.53

A.9 Goods under Section 2(1)(i)

In general the term goods is used to mean any movable property as distinct from immovable property. Goods do not include money and actionable claims. Money consideration is the price which is payable for the sale of goods.

Consequently money itself cannot be a subject matter of sale. But if notes or coins which have ceased to be legal tender are sold as consumer would prefer to make a complaint against final manufacturer rather than the manufacturer of the component either because he may have difficulty in identifying the component manufacturer or because while it may be clear that the final product was defective, it may be difficult to establish that the defect was caused by a fault in particular component rather than faulty installation of that component or some other factor. It is important to mention here that one of the special legislation i.e. Transfer of Property Act, 1882 under section 3 i.e. interpretation clause defines immovable property as immovable property doesn't include standing timber, growing crops and grass. It simply means that so far as the standing timber, growing crops and grass is concerned they are movable property. It includes grass, crops and standing timber which are agreed to be cut before sale or under the contract of sale.

According to Section 2 (1) (i) of the Consumer Protection Act, ‘Goods’ means goods as defined in 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 served before sale or under the contract of sale.” Movable property under section 3(36) of General Clauses Act, 1897 means property of every description except immovable property.\textsuperscript{54} Immovable property as contained in section 3(26) of the General Clauses Act, 1897 includes land, benefits to arise out of land, and things attached to the earth, or permanently, fastened to anything attached to the earth. Section 3 of the Transfer of Property Act, 1882 also defines immovable property i.e. 'attached to the earth' which means rooted in the earth, imbedded in the earth and attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached. Money means the recognized currency, in circulation and for obvious reasons it is not subject matter of sale of goods. Money constitutes consideration for the sale of goods, rather than itself

\textsuperscript{54} Section 3(36) of The General Clauses Act, 1897.
being goods. Old and rare coins, however, are goods, and they can be sold or purchased as such. Section 2(7) of the Sales of Goods Act defines.  

Consumer of goods under Section 2(1)(d)(i) means any person who buys any good for 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 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 re-sale or for any commercial purpose. Commercial purpose does not include use by a consumer of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood by means of self-employment. Thus a person, to fall under the definition of the term consumer of goods, must satisfy that there must be a sale transaction between the seller and the buyer; the sale must be of goods; the buying of goods must be for consideration; the consideration has been paid or promised or partly paid and partly promised or under any system of deferred payment. In other words, it is not necessary to pay the consideration immediately. It may be paid afterwards or in installments. The user of goods may also be a consumer where such use is made with the approval or the buyer. But, the term consumer does not include a person who obtains any goods for re-sale or for any commercial purpose. Where the goods have been bought by a consumer and used by him exclusively for the purpose of earning his livelihood by means of self-employment, such use of goods will not be treated as commercial purpose.  

The definition of consumer as given in the Consumer Protection Act makes it clear that it includes not only the person who buys goods for consideration but also any user of such goods when such use is made with the approval of the buyer. This is necessary because the goods purchased by a buyer are most likely to be

55 Section 2(7) of The Sales and Goods Act, 1930.

56 This was clarified by insertion of the Explanation to this sub-section by the 1993 Amendment Act.
used by his buyer are most likely to be used by his family members, relatives and friends. But now a complaint may be made by the user of goods, where the use of goods is with the approval of the buyer, even though he is not a party to the contract for purchase of these goods. Under the general principles of the law of contract, such user of goods are not entitled to sue the earlier of such goods on the grounds of privity of contract. The rule of ‘privity of contract’ provides that only parties to the contract can sue and not a stranger.\textsuperscript{57}

Under the Consumer Protection Act, if a person buys any goods for consideration and obtains such goods for re-sale or any commercial purpose, then he is not a consumer within the meaning of the Consumer Protection Act. However, commercial purpose does not include use of goods exclusively for the purpose of earning his livelihood by means of self-employment. Commercial purpose is that purpose the object of which is to make profit. Accordingly, it is clear that the legislature intended to exclude from the scope of the definition of consumer not only persons who obtain goods for resale but also those who purpose goods with a view to using such goods for carrying on an activity on a large scale for the purpose of earning profit.

Test for commercial purpose is that if there is a close nexus between purchase of the goods and activity for earning and is excluded from the purview of the term consumer. In \textit{Synco Textiles Pvt. Ltd. v. Greaves Cotton and Co. Ltd.}\textsuperscript{58} the appellant company was engaged in the business of producing edible oil from oil seeds, the machinery in the factory was used for conversion of raw materials into finished goods. The complaint was that the electricity generating sets purchased from the respondent company were found to be defective and therefore the complainant was entitled to compensation under the Consumer Protection Act. The National Commission observed that the purchase of the generating sets was clearly for the purpose of generating electricity for running the machinery in the factory for commercial production of edible oil. Therefore the appellant was not a

\textsuperscript{57} \textit{Jamuna Das v. Ram Avtar}, 1911 II Ind Cas 91.
\textsuperscript{58} 1991(1) CPR 229 Raj (CDRC).
consumer within the ambit of the Consumer Protection Act. In *Smt. Pushpa Meena v. Shah Enterprises (Rajasthan) Ltd.*\(^{59}\) it was admitted that the jeep was purchased with an object to run it as a taxi. The using of jeep as a taxi to earn profile was held to be an admitted commercial activity and the complainant was not a consumer with the meaning of Consumer Protection Act.

But if it is used for earning livelihood by means of self employment, the complainant will be a consumer. In *Oswal Fine Arts v. HMT Madras*\(^{60}\), the complainant purchased an offset printing machine for use in printing press for expanding his business (commercial purpose) Since the goods had been purchased for commercial purpose, the complainant was not a consumer and could not recover damages for defect in goods. But, where he is running the press himself for earning his livelihood, the complainant will be consumer. In *Dr. Simrata, Simrata Nursing Home v. M/s G.N. Sales*,\(^{61}\) the complainant purchased as Ultra Sound Scanner from the opposite party for Nursing Home. According to the complaint the Ultra Sound Scanner was defective and could not be repaired by the opposite party. Since the Scanner was for a Commercial activity with the object to made profits, the complainant was not a consumer under the Consumer Protection Act.

Sometimes the distinction between commercial and non-commercial purposes is so obscure that it becomes very difficult to reach to a definite conclusion e.g. a fridge, fan, water cooler etc. purchased and installed in a residence will not be considered for commercial purpose and will be entitled to the protection of the consumer protection Act. However, if they are installed in a factory, a shop, lawyer’s office or doctor’s clinic, it will become an acquisition for commercial purpose and therefore outside the purview of the Consumer Protection Act. All the above discussed cases reveal that the term “Commercial Purpose” has been interpreted against consumers’ interests. Though, there has been a positive

\(^{59}\) 1991(1) CPR 413 (NCDRC).
\(^{60}\) 1991(1) CPR 180 (NCDRC).
\(^{61}\) 1993(2) CPR 164 (Pb. CDRC).
change and the recent judgements in this regard are pro-consumers. In *C.P. Moosa v. Chawgla Industries Ltd.*,\(^{62}\) the National Commission held that even when the goods were purchased for commercial purpose, if there is a warranty for maintenance, the purchaser becomes a consumer with regard to the services rendered or to be rendered by the manufacturer or supplier during the warranty period. In *East India Construction Co. v. Modern Consultancy Services & Ors.*,\(^{63}\) the National Commission held that even though the machine/ equipment is used for commercial/ industrial purposes if any manufacturing defect occurs during the warranty period then the issue is covered under the Act and for that purpose purchaser of the equipment is entitled to file a complaint under the Act. This point has been elaborated in many judgments, one of them being *Meera & Co. Ltd. v. Chinar Synten Ltd.*, this Commission has held that even if the generating set purchased by the complainant for a commercial purpose, it suffered the alleged defects during its warranty period of one year and, therefore, the complainant was well within its right to move the Consumer Forums under the Act, it being a consumer of the opposite party’s service.\(^{64}\)

The Amendment Act 1993 inserted an explanation under clause (d) or Section 2 (1) which provides that commercial purpose does not include use of goods bought and used exclusively for the purpose of earning livelihood by means of self-employment. This explanation seems to have been inserted with a view to safeguard the interest of small consumers who buy goods for self-employment to earn their livelihood. Prior to this amendment a person buying any goods for commercial purpose was excluded from the definition of consumer and was not covered within the ambit of the Consumer Protection Act. This caused great difficulty to consumers who were purchasing goods for eking out their livelihood like a taxi driver buying a car to run it as a taxi or a rickshaw puller buying a rickshaw for livelihood or a farmer purchasing seed for sowing crops. It was not


\(^{63}\) II(2006) CPJ 289 (NCDRC).

\(^{64}\) (2004) CTJ 1086 (NCDRC).
desirable to exclude such sort of persons from the category of consumers as they
depend upon the goods for earning their livelihood. At the same time, the
intention behind the Act was to exclude big business and industrial houses
carrying out business with profit motive from the purview of the Act. \(^65\)

Section 3 of the Transfer of Property Act, 1882 defines actionable claims.
Actionable claims means a claim to any debt, other than a debt secured by
mortgage of immovable property or by hypothecation or pledge of movable
property, or to any beneficial interest in movable property net in the possession,
either actual or constructive, or the claimant, which the civil court recognize as
affording grounds for relief, whether such debt or beneficial interest be existent,
accruing, conditional or contingent. \(^66\)

A.10 **Service under Section 2(1) (o)**

The second category of consumer is that of hirer or user of Services. The
literal meaning of the word 'service' is work done to meet general need, an act of
helpful activity the supply of utilities as water, electricity, gas required by the
public, supplying of repair services, supplying public communications or public
transport. The definition says that the term 'consumer' includes a person who
hires or avails of any service for a consideration. But it is not necessary to pay the
consideration immediately, it may be paid afterwards or in installments. 'Service'
would include all kinds of professional services, be in the routine services of a
barber or the technical services of a highly qualified person. Under Section 2(1)
(d) (ii) of Consumer Protection Act a consumer of service means any person who
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

\(^65\) The insertion of the explanation has removed the difficulty and enables the consumers to
the file complaints before the CDRF (Consumer Disputes Redressal Forum) where the
goods brought by them and used exclusively for the purpose of earning their livelihood by
means of self-employment suffer from any defect.

\(^66\) Section 3 of *The Transfer of Property Act, 1882*. 

163
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 purposes. Commercial purpose does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment. The aforementioned sub-clause has been amended by the Amendment Act of 2002. Prior to it, a consumer of service even for commercial purpose was not barred from claiming protection under the Consumer Protection Act. However, a consumer of goods for commercial purpose was specifically excluded from the preview of the Act under Section 2(1) (d) (i).

The Consumer Protection (Amendment) Act, 2002 has excluded from the definition of ‘consumer’ any person who avails of services for commercial purpose. Thus, commercial undertakings, which are already excluded from approaching the redressal agencies for defective goods, are also debarred from seeking relief in case of defective services. In order to be a consumer for the purpose of services, it is necessary that the services must have hired or availed of for consideration but it is not necessary to pay the consideration immediately, it may be paid afterwards or in installments. A student hiring the services of the University or payment of fees for appearing at the examination or passenger getting railway reservation after payment is hiring service for consideration and consequently is a consumer of service. In A.S. Films v. Bhatia Sehgal Const, Corporation, it was held that an advertising agency which is a commercial concern engaged in arranging advertisement through radio and television for the consideration of 15% Commission is hiring service for consideration and therefore it is rendering service. The services rendered free of charge or under a contract of personal service is outside the purview of the Act. In Byford v. S.S.

67 Maruti Udyog v M.S. Hameed, 1992 (I) CPR 215 (Ker. CDRC).
68 1992(I) CPR 272.
the appellant issued an advertisement that a person could enter the contest by booking a Premier Padmini Car and the draw would be held and the winner would be entitled to two free air tickets from Delhi to New York and Back. The complainant was declared winner but was not given the tickets. The National Commission held that the complainant was not a consumer as defined under Section 2(1) (d) of the Consumer Protection Act. He had paid for a Car which he had duly received and there was no complaint regarding any defect in it. Receiving air ticket was not an intrinsic part of the contract for purchase of car for which the deal was made. Consequently he could not get relief under the consumer Protection Act.

When Court fee is paid the question is whether the litigants are hiring services of the civil courts for consideration as contemplated under the Consumer Protection Act. In *State of Gujrat v. Akhil Bharatiya Grahak Panchayat,* the complainant alleged that though the state is collecting full court fee under the Court Fees Act yet the state is not providing adequate number of Courts and judges with the result that litigants are not getting justice in time. The complainant alleged that Court fee is nothing but the amount paid for hiring of services i.e. consideration for the service and dispensation of justice by a judge is service to the civil litigants. The State Commission observed that in providing justice the state is acting in exercise of its sovereign function and it is not contractual. Court fee is imposed under the taxing power of the state. The complainant cannot have any contract or negotiation. If he wants to avail the privileges offered by the state he has to pay the court fee prescribed and if it is more he can challenge the same but it cannot be said to amount to deficiency in service.

The consumer of services includes not only the hirer of services for consideration but also any beneficiary of such services provided that he is availing

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69 1993(2) CPR 83 (NCDRC).
70 Ibid.
71 1993(1) CPR 327 (Guj. CDRC).
72 Ibid.
the services with the approval of the hirer. This is necessary to protect the interest of the user of services because under the general principles of law of contract such user can’t sue the provider of services on the ground of privity of contract. In *Mahanagar Telephone Nigam v. Vinod Karkare*, a person who is using the telephone of a subscriber with his approval is a consumer of telephone services and is entitled to claim compensation under the consumer Protection Act for the period for which his complaints reclaimed unattended by the Telephone Department.\(^73\)

The term ‘service’ has been defined in Section 2(1) (o) of the Consumer Protection Act. It says service of any description which is made available to potential\(^74\) (users and includes but not limited to the provision of) facilities in connection with financing, insurance,\(^75\) transport,\(^76\) processing, supply of electrical or other energy, board of lodging, housing, construction or both, entertainment, amusement or purveying of news or other information,\(^77\) but does not include the rendering of any service free of charge or under a contract of personal services. The service must be available to potential users who are willing to pay for the service. The service must be rendered for remuneration. Thus if a company is running a bus which is meant to be used by the staff of that company only or it is running a conation exclusively for its staff, it will not constitute rendering service for the simple reason that the facilities are not meant to be hired by potential users. The aforesaid view as reiterated in *S.P. Goyal case*.\(^78\) In the judgement the Supreme Court interpreted the term 'service' and includes all the services within the meaning of the Act excluding serviced free of charge or under a contract of personal service. Maintenance of General Provident Fund does not fall within the meaning of 'service'. Services provided by opposite party on humanitarian grounds

\(^{73}\) II(1991) *CPJ* 655.
\(^{74}\) *Indian Medical Association v. V.P. Shantha*, (1995)16 SCC 651.
\(^{75}\) *LIC v. Shiv Bhavanam*, II(1991) *CPJ* 189 (Delhi).
\(^{77}\) *Union of India v. Bennett Coleman and Co.*, (1988) 63 Comp. Cases 504 (Bom).
\(^{78}\) (1996) 1 *SCC* 573.
not for consideration, does not amounts to service. The Supreme Court in *Lucknow Development Authority v. M.K. Gupta*, interpreted the word ‘service’ and held that it is a very and extends to any or all actual or potential users.  

Any service rendered free of charge is outside the scope of the consumer Protection Act. In other words, for the purpose of the Consumer Protection Act, service must be rendered for payment. Free services rendered by municipalities in the form of facilities like sanitation, roads street, lights, parks etc. are outside the ambit of the Act. In fact these services are managed by the municipalities or other government agencies out of the taxes paid by the citizens. It has been held that these takes do not constitute consideration for the services ostensibly rendered gratuitously by the state to its citizens. Where there is nothing on record to establish that the services rendered by the opposite party were hired for consideration, the complainant cannot maintain claim for any deficiency in service against the opposite party. It was so held in the case of *S. Radhakrishnan v. M/s Santosh Travels.*  

The expression ‘under a contract of personal service’ has not been defined in the Consumer Protection Act. Section 14 (b) of the Specific Relief Act, 1963 provides that a contract cannot be specifically enforced if it is not so dependent on the personal qualifications or volition of the parties or otherwise from its nature is such that the court cannot enforce specific performance of its material terms. Contract of personal service is a contract to render the service in a private capacity to an individual excluding all others. It refers inter-alia to the relationship of a master and servant where the servant has entered into an agreement with the former for employment. In a significant ruling in *Vasantha P. Nair v. Smt. V.P. Nair,* the National Commission upheld the decision of the Kerala State Commission which said that a patient is a 'consumer' and the medical assistance was a 'service' and therefore, in the event of any deficiency in the

80 1992 (2) CPR 431 (NCDRC).  
performance of medical service, the consumer courts can have the jurisdiction. In a very famous important landmark case *Indian Medical Association v. V.P. Shantha and others*, questions arise before Supreme Court whether and in what circumstances, a medical practitioner can be regarded as rendering 'service' under the Act. Supreme Court held that service rendered by a medical practitioner or hospital/nursing home cannot be regarded as service rendered free of charge, if the person availing of the service has taken an insurance policy for medical care where under the charges for consultation, diagnosis and medical treatment as borne by the insurance company, such service would fall within the ambit of 'service' under the Act. Thus it was observed that in the absence of a relationship of master and servant between the patient and medical Practitioner, the service rendered by a medical practitioner to the patient cannot be regarded as service rendered under a 'Contract of personal service.'

Contract of personal service' has to be distinguished from a contract for personal service'. Service rendered at a non-government hospital where no charge is made and all patients given free service outside the purview of expression 'service'. Free medical service would constitute 'service' under the Act. The controversy has been set at rest and the Hon'ble Supreme Court in above case held that patients aggrieved by any deficiency in treatment from both private clinics and government hospitals are entitled to seek damages under the Consumer Protection Act. The judgement of the Madras High Court was thus set aside by the Supreme Court. It was held that services rendered to patient by a medical practitioner (except where doctor renders service free of charge to every patient or under a contract of personal service) by way of consultation, diagnosis, and treatment both medicinal and surgical would fall within the ambit of 'service' under the Act. Medical Practitioners belong to the medical profession and are subject to the disciplinary control of Medical Council of India and State Medical Councils would not exclude the service rendered by them from the ambit of

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83 Ibid.
Consumer Protection Act. The service rendered by a doctor was under a contract for personal service (rather than a contract of personal service) and was not covered by the exclusionary clause of the definition of service contained in the Consumer Protection Act. A service rendered free of charge to everybody, would not be service as defined in the Act. The hospitals and doctors cannot claim it to be free service if the expenses have been born by an insurance company under medical care or by one's employer under the service condition.\textsuperscript{84}

\textbf{A.10.1 Medical Service under the Consumer Protection Act, 1986}

One of the most essential services having an effect on the life of an individual is medical service. Medical practitioners can also be proceeded against in the Consumer Forum for deficiency in service. No human being is infallible, and in the present state of science even the most eminent specialist may be at fault in detecting the true nature of a diseased condition. A practitioner can only be liable in this respect if his diagnosis is so palpably wrong as to prove negligence, that is to say, if his mistake is of such a nature as to imply absence of reasonable skill and care on his part, regard being had to ordinary level of stall in the practitioner. The present arrangements, in the public sector, for curing the sick and injured, suffer from a multitude of weaknesses viz inadequate number of hospitals and dispensaries, the rude, callous and indifferent behavior of the doctors, their carelessness, poor hygienic and sanitary conditions and above all an environment compelling the patient to switch over to private clinics and nursing homes if only he/she is to survive. Attempts, though made, to solve these problems are far from satisfactory. In \textit{Hanuman Prasad Darban v. Dr. C.S. Sharma, S.M.S. Hospital, Jaipur},\textsuperscript{85} the Commission held that if a person gets the service rendered by the doctors in the hospital run by the state Govt., such services are free services and no consideration whatsoever is paid by that person. Service as defined in Section 2 (1) (o) does not include any service free of charge or under any contract of personal service. It is true that the doctors are paid salary from the public

\textsuperscript{84} \textit{Ibid.}

\textsuperscript{85} Complaint No. 3/1989 (CDRC, Raj).
exchequer and the Govt. employs them on payment of salary and the Govt. while running the hospitals gives free medical service to its citizens and for availing of their services it pays the salary to the doctor, but any citizen who is entitled to free medical services from the hospitals run by the Government cannot be said to have hired the services for consideration. So it could not be said that he is a 'Consumer' within the meaning of section 2 (1) (d). \(^{86}\)

The National Commission in *Consumer Unity and Trust Society v. State of Rajasthan*, while considering whether an ordinary patient admitted to a general ward being provided free treatment is a consumer within the meaning of the consumer protection Act as compared to a patient in a paying ward in a government hospital and observed that we do not think it involves any unfair discrimination between paying and non-paying patients. In the first instance, such a distinction is based on reasonable classification. Again paying wards provide better medical services than general non-paying wards. As such the hospitals would be justified in making a levy from the patients who wish to avail of superior facilities. Further, hospitals may levy a charge from patients having certain level of income on the principle that they can afford to pay and with this money, hospitals can provide better services to the free and non-paying patients. This however cannot deny to the paying patients of any legal rights they have under other laws by virtue of their having purchased or bought these services. \(^{87}\)

But the Supreme Court in the historic decision in *Indian Medical Association v. V.P. Shantha* has done away with the distinction between the paying and non-paying patient and held that such free services would also be a service as defined in the Act and the recipient would be a consumer under the Act. The Court observed that serviced rendered at a government hospital, health-centre, or dispensary where services are rendered on payment of charges and also rendered free of charge to other person availing such services would fall within the scope of the Act irrespective of the fact that the service is rendered free of charge to

\(^{86}\) *Ibid.*

\(^{87}\) *Ibid.*
persons who do not pay for service. Free service would also be service and the recipient a consumer under the Act. Regarding the service rendered at non-government hospital the Court observed that service rendered at a non-government hospital or nursing home where charges are required to be paid by person who in a position to pay and persons who are cannot afford to pay are rendered free of charge would fall within the ambit of the expression "Service" as defined in the Act irrespective of charge to person who are not in a position to pay for such services. Free service would also be a service and the recipient a consumer under the Act.\textsuperscript{88}

As a result of this judgment, medical profession has been brought under the Section 2(1) (o) of CPA, 1986 and also, it has included all medical / dental practitioners doing independent medical / dental practice unless rendering only free service; private hospitals charging all patients; All hospitals having free as well as paying patients and all the paying and free category patients receiving treatment in such hospitals; Medical / dental practitioners and hospitals paid by an insurance firm for the treatment of a client or an employment for that of an employee and it exempts only those hospitals and the medical / dental practitioners of such hospitals which offer free service to all patients.\textsuperscript{89}

In the case of \textit{Dr. N.T. Subramanyam and another v. Dr. B. Krishna Rao and another},\textsuperscript{90} it was held doctor can be held guilty of medical negligence only when he falls shorts of the standard of reasonable care. Doctor cannot be found negligent merely because in a matter of opinion he made an error of judgement. Similarly in another case of \textit{Poonam Verma v. Ashwin Patel and others},\textsuperscript{91} it was held that where a person is guilty of negligence per se, no further proof is needed. In \textit{Aphramin Jayanand Rathod v. Dr. Shailesh Shah}\textsuperscript{92} the Commission held this to be case of gross negligence or deficiency in service for diagnosis of acute

\textsuperscript{88} III (1995) CPJ 1 (SC).
\textsuperscript{89} Ibid
\textsuperscript{90} 1996(2) CPR 247 (NCDRC).
\textsuperscript{91} III (1996) CPJ 1 (SC).
\textsuperscript{92} I (1996) CPJ 243.
appendicitis. In yet another case no early attention was given to the patient as a result patient died with septicemia with acute renal failure.\textsuperscript{93} Similarly in Pravat Kumar Mukherjee v. Ruby General Hospital and others,\textsuperscript{94} case life was lost due to the business like approach of the hospital. The complainants, parents of the deceased boy Sumanta Mukherjee, aged 20, a Student of II years, Electronic Engineering, was knocked down from behind by a bus. Some people from the crowd took the injured boy who was conscious at that time to the hospital. At the hospital, he showed the medical certificate, and promised that the charges for the treatment would be paid. Hospital started the treatment in its emergency room. The doctors insisted for immediate payment of Rs. 15,000/ and threatened to discontinue the treatment if the payment was not immediately made. Crown present in the hospital offered to pay Rs. 2000/ and to hand over the motor cycle to the hospital. Despite all these, the doctors remained adamant about the immediate deposit of Rs. 15,000/ and discontinued the treatment after around 45 minutes. Few people from the crowd then took him to another hospital where he was declared brought dead. The Commission was of the opinion that since the treatment had started, it meant the complainant had hired the services. Commission held that it constituted deficiency in service. In the case of Sham Lai v. Saroj Rani,\textsuperscript{95} due to the negligence of the doctor, an intramuscular injection was administered intravenously to the complainant's husband which caused compulsion of heart and stopped blood circulation to his heart causing his death within a few minutes, all these shows clear cut deficiency on the part of doctor. In yet another case Dr. K. Vidhyallatha v. Smt. R. Bhagawathy,\textsuperscript{96} the complainant approached the doctor on account of pain in her abdomen. The doctor diagnosed the disease as abdominal hysterectomy and prescribed the medicine. At the time of operation one bottle of A+ blood group was transfused. On her condition becoming serious she was shifted to another hospital. The doctor at the hospital found that the

\textsuperscript{93} Fakruddin Abbas Bharmal v. Dr. B. Das Gupta, III (1998) CPJ 677.
\textsuperscript{94} 2005(3) CPR 95 (NC).
\textsuperscript{95} I (2003) CPJ 47 (NC).
\textsuperscript{96} 2005(1) CPR 150 (NC).
complainant was administered mismatched blood as a result of which she suffered acute renal failure. Commission held that administering wrong group of blood to a patient is patent deficiency in medical services. *Dr. P.S. Hardia v. Kedarnath Sethia*, 97 was also a similar case in which eye surgeon performed radical keradiathermy operation although in the case of glaucoma it was contraindicated. The State Commission held the negligence of the eye surgeon provide and awarded compensation against him. National Commission dismissed the appeal. *Dr. V. Pahwa v. Surinder Mohan Ghosh*, was a case of retina detachment, in which operation for cataract was contraindicated. The eye Surgeon performed cataract operation, but without implanting intraocular lens resulting in deterioration in the condition of the eye. The doctor had himself admitted in his cross examination that "a B-Scan was a pre-requisite for knowing the exact status of eye before carrying out the cataract surgery. The National Commission held there was negligence on the part of the eye surgeon. 98

In *Darshan Kaur v. Dr. J.S. Doshi*, 99 deficiency in respect of the performance as Radiologist came into consideration. After considering all facts deficiency on the part of radiologist proved. In another case *P.G.I. Chandigarh v. Jaspal Singh*, 100 when patient's kidney was damaged and the blood level reached 100 gms percentage, hemoglobin came down to 5 mg after the mismatched blood transfusion was given by the doctor in the hospital, from all these facts, it has been held that though septicemia has been written as the ultimate cause of death, the health took a nose dive only after wrong blood was given to her and it is a clear cut case of deficiency in service.

**A.10.2 Transport Service under the Consumer Protection Act, 1986**

Innocent men, women and children are losing their lives because of hopeless condition of roads with no street lights for days, weeks and months

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devoid of suitable edges/ demarcations/signals and presence of real obstructions on the road like big stone pieces, dead animals, story cattle moving in the heart of the cities. The question is why are the various public sector organization the Central public works Department, the public works Department, the state electricity Boards, the Municipal Authorities as parties to the above sufferings, not alive to the seriousness of the situation, the value of human life and human happiness? If service sector management has any meaning, the managers of these service organizations, should be made answerable for this grave loss. It is a tragedy that nobody feels the pinch. These services are so basic and ought to be performed in so normal a course that they do not require any extra budgetary allocations. For a while, one tends to be reminded of the British regime in India when the marketing of services by the public sector was done better in every field. The hard earned freedom should lead to an improvement in the quality of life, and not the deterioration, as one observes. The public service organizations should make themselves more useful to the society than ever before. The carriage of passengers or goods by railway, airlines, buses, taxis, trucks is a service within the meaning of the Act and therefore, any deficiency in this service is actionable under the Act. Railway Administration is providing transport facilities to the public for consideration paid by them by way of fare, levied for the ticket. It is one of the largest public utility undertakings in the country intended to render service to the public. Consumer forums have no jurisdiction to entertain complaints on account of deficiency in service arising from loss, destruction, damage, deterioration or non-delivery of the goods. This jurisdiction is exclusively vested in the Railway Claim Tribunal Act, 1987 in a case recovery of excess fare amounts to deficiency in service.\footnote{D.S.Shipehandler v. The Manager, Central Railway, 1991 (1) CPR 121.}

Refusal by the attendant of railways to provide AC-II Berth even after the confirmation of reservation was held to be a deficient service.\footnote{Anil Gupta v. General Manager, Northern Railway, II (1991) CPJ 308 (HPCDRC).} Journey by railway train is becoming uncomfortable. Those with reservation tickets hardly get
a seat or berth, and the ticket collector seldom comes to help the situation. The maintenance of the compartments is poor, they are dirty, devoid of water in the taps, mirrors not fitted and faulty window shutters. In the case of General Manager, South Eastern Railway v. Shri Sinha, the facts were that the complainant was travelling in the first class compartment of the Railway Train where the fans were not working and though a complaint was made to the conductor, no action was taken to set right the said fan during the journey. Moreover, the shutters in the window were not in the working condition and even the shutters with glass panes could not be used since the glass was missing. The rexine of the berths was badly torn and nails were exposed which had caused some injuries to the wife of the complainant. The state Commission has held that the Railway Administration was liable to pay compensation to the complainant and his wife for the mental and physical suffering caused to them. The National Commission held that expression 'service' contained in section 2 (1) (0) of the Consumer Protection Act 1986 specifically includes within its scope the provision of facility in connection with transport. The Railway Administration is providing transport facility to the public for consideration paid by them by way of the fare levied for the ticket. The Commission further held that the passengers travelling by train on payment of stipulated fare charged for the ticket are 'consumers' and the facility of transportation by rail provided by the Railway Administration is 'service' rendered for consideration as defined under the Act. As to the amount of compensation directed to be paid by the state Commission, the National Commission observed that it is an established principles of law that compensation awarded must have a rational to the nature and extent of the injuries, inconvenience or physical and mental suffering caused to the complaint by the action or Commission of the opposite party. The Commission considered it reasonable and fair to fix the compensation payable each to the complainant and to his wife at Rs. 1500/- only. In Southern Eastern Railway v. Bharathi Arora,

103 First appeal No. 3 of 1998 (NCDRC).
is another case which relates to suitcase stolen from reserved compartment. District Court held that railway was guilty of deficiency in service.

Similarly in Ashok Kumar Singh v. Union of India Through G.N., N.E. Railways,\textsuperscript{105} complainant alleged deficiency in service for change in departure time of train for which he had purchased tickets. Complainant had to take another train. Such conduct on the part of the railways was held to be deficiency in service. In the case of South Eastern Railways v. Yeshwant Tiwan,\textsuperscript{106} complainant complaint against railway for non-availability of water in the toilet in the reserved compartment in which the complainant's family traveled. Complainant alleged that in spite of complaints nothing was done to rectify the broken pipes. District Forum held that there was deficiency on the part of Railway. In the case of Deputy Chief Commercial Manager, Eastern Railways v. Dr. K.K. Sharma,\textsuperscript{107} Dr. K.K. Sharma and other complainants have sent telegram for réservation to Hawrah Railway Station through the Shimla Railway Authorities and three telegram were sent from the Shimla Railway office, and that the Railway authorities have not produced any proof to establish that réservation was done strictly on priority basis, it was held that the deficiency in service on the part of the railway authorities is proved. In the Case of Union of India v. K.K. Shukla,\textsuperscript{108} the complainant had reserved tickets for berths for travel from Lucknow to Haridwar. But the berths were occupied by unauthorized persons. On due adjudication of facts it was held that not providing berths to the complainants who were holding reserved tickets is a clear case of deficiency in service on the part of the railways.

A.10.3 Telephone Service under the Consumer Protection Act, 1986

Telephone is an important and vital means of communication in the fast changing and developing world. An efficient telephone system promotes development and accelerates progress of the people in general and country in

\textsuperscript{105} 1993 (1) CPR 292 (PAT).
\textsuperscript{106} 2003 (2) CPR 12 (NC).
\textsuperscript{107} III (2000) CPJ 1 (NC).
\textsuperscript{108} 2002 (I) CPR 77.
particular. Telephone services in India are far from satisfactory in all aspects. It has been facing constant criticism in and outside Parliament, by consumer protection organizations and more so from the consuming public of telephone services in the country. Telephone is a public utility and should be efficient in its operation. Telephone facility provided by the Telecom Department is a 'service' as envisaged in the Consumer Protection Act. Thus, Consumer Disputes Redressal Forum have jurisdiction to entertain the complaint filed by a consumer of the telecom department. The facility of telephone is 'Service" under the Act. However, in a recent case General Manager, Telecom. v. M. Krishnan and another, \(^{109}\) the Supreme Court held that, in their opinion, there is a special remedy provision in Section 7-B of the Indian Telegraph Act regarding disputes in respect of telephone bills, then the remedy under the Consumer Protection Act is by implication barred. Rule 413 of the Telegraph Rules provide that all services relating to telephone are subject to Telegraph Rules. A telephone connection can be disconnected by the Telegraph Authority for default of payment under Rule 443 of the Rules. It is well settled that the special law overrides the general law. Hence in the opinion of the Supreme Court the High Court was not correct in approach and the Consumer Forum is having no jurisdiction over the telephone services rendered to the consumers. In case of Union of India through General Manager, Telecom, v. Nilesh Agarwal, \(^{110}\) a person who avails of the telephone connection is required to pay telephone installation charges as well as rental charges for its use. Telecommunication department is rendering service for consideration as defined in Consumer Protection Act and subscribes to telephone as 'consumer' within the meaning of the Act.

Disconnection of telephone, excess billing, inefficient functioning of different services, frequent breakdowns and other perceptible ill render the service inefficient. But consumers of telecommunication service are unable to receive assistance from consumer for a in view of the rigid stand taken by the National

\(^{109}\) Civil Appeal No. 7687 of 2004.

\(^{110}\) Revision petition No. 1 of 1989 (NCDRC).
Communication that in the matter of excess billing the Forum should not grant relief on the basis of average consumption of the consumer to show that the dealing of the department have been dishonest or unfair. There are still some areas in which consumers get relief. In the case of Telephone District Manager, Department of Telecom, v. Uppalapati Lakshmi Narayana,\textsuperscript{111} furnishing a correct directory constitute an essential part of rendering efficient service by Telecom Department. Because rend paid by the subscriber includes supply of one directory without charging separately. The non-rectification of mistakes in Directory amounts to deficiency in service.

In the case of Accounts Officer, Telephone Revenue v. T. J. Eliamma,\textsuperscript{112} it was observed that the two telephones in the same premises in the name of two closely related persons one in arrears, telephone of other cannot be disconnected. Disconnection of another telephone amounts to deficiency in service. Commission observed that telephone regarding which there are arrears that can be disconnected not the téléphone in the name of another person whatever be relationship. Similarly in Mahanagar Telephone Nigam Ltd. v. J.K. Agarwal,\textsuperscript{113} which relates to delay in installation, and defect which cannot be removed despite the fact that eight complaints made to various authorities, proved deficiency in service. In the case of General Manager, Telecommunications v. G. Padmaja Ram\textsuperscript{114} the complainant paid the charges for shifting the telephone to her new premises and also furnished Bank guarantee for that purposes. Thus, depriving the complainant of telephone connection for eight months amounts to deficiency in service. In Director General Manager Department of Telecommunication v. S. M. Verma,\textsuperscript{115} the complainant applied for telephone connection. Advice note was issued and all other formalities were completed and telephone was required to be installed, but

\textsuperscript{111} I (2000) CPJ 233.
\textsuperscript{112} 1996 (1) CPR (186).
\textsuperscript{113} II (2001) CPJ 80.
\textsuperscript{114} II (2001) CPJ 530.
\textsuperscript{115} III (2001) CPJ 51.
still telephone was not installed after 7 months of the issue of advice note which proves deficiency on the part of the opposite party.

**A.10.4 Electricity Service under the Consumer Protection Act, 1986**

Energy is vital for the development and development process. In today's world energy has a surging role to play in improving the quality of life of millions of people by improving the economy of the country. The national prosperity is judged by the quantum of energy provided and consumed by its population. In express term supply of electrical energy includes in the definition of 'service'. A person who receives the service by way of supply of electrical energy and which he has hired for consideration is a 'consumer' and has *locus standi* to invoke the jurisdiction of the Consumer Forums under the Act. In case of *S.P. Singha v. New Delhi Municipal Corporation*,\(^{116}\) complainant complained that due to sudden increase in the voltage of the electric supply due to some defect in the junction box from which electricity was being supplied his Video Cassette Recorder was damaged and this amount to deficiency in service.

The voltage fluctuations are too wide and too frequent. This blows off the domestic electrical appliances and the industrial installation so often, and the poor consumers (users) are hard hit in matters of repairs, replacement and maintenance. The state Electricity Boards never advise the users on the range frequency of fluctuations, and on the ways to cope with them. How can one expect the consumer to manage at his own level? In *Karnataka Power Transmission Corpn. v. Ashok Iron Works (P), Ltd.*,\(^{117}\) the Supreme Court observed that as indicated in the definition of “service” contained in Section 2(1) (o) of the Consumer Protection Act, 1986, the provision of facilities in connection with supply of electrical energy is a service. Thus, supply of electricity by the Electricity Board, concerned to a consumer would be covered under Section 2(1) (o) being ‘service’ and if the supply of electrical energy to a consumer is not provided in time as is agreed upon, then under Section (2) (g) of the Consumer Protection Act.

\(^{116}\) I (1992) CPJ 202 (NC).

\(^{117}\) (2009) 3 SCC 240.
Protection Act, 1986, there may be a case for deficiency in service. Normally, it is the duty of the Electricity Board to maintain and keep all its instrumentation including poles, their fixtures, in such a condition that the passersby, may be human beings or the cattle, on coming into contact with them are not hit by any electricity wire or exposition of the electricity. In *Rajasthan State Electricity Board, Jaipur v. Shiv Charan Lal Vaish*,\(^\text{118}\) it was held that the touch of electricity wire even monetary is enough to take a life. If the cattle are allowed to pass through that area, the natural activities of the cattle are to be presumed and assumed. The Electricity Board should ensure such a safeguard by bar or otherwise if the instruments so necessitate and nobody can come in contact with it and if they do not do so, it would come in the category of the negligence.

Live broken electricity wires carrying high tension energy are generally not found in a public place, street or road, therefore, if such a thing happens, a prima facie inference can be drawn that there has been some carelessness on the part of the defendant in transmitting electric energy or in properly maintaining the transmission lines. This inference is further supported by Rule 91 of the Indian Electricity Rules, 1956. This rule provides that every overhead line which is not covered with insulating material and which is created over any part or street or other public place or any factory or mine or any consumer's premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks. If the precaution under this rule is taken, the line in case it breaks would become dead and harmless. It was so held in *Manohar Lal Sobha Ram v. Madhya Pradesh Electricity Board*.\(^\text{119}\)

The principles of liability for 'dangerous things' is laid down in *Rylands v. Fletcher*.\(^\text{120}\) According to the established law, a duty is imposed on those who control and interfere with 'dangerous things' to take care of those things. Things like fire, explosive, gas and electricity are 'dangerous things' and liability for

\(^{118}\) AIR 1986 Raj, 176.

\(^{119}\) 1975 ACJ 494 (M.P).

\(^{120}\) 1868 LR 3 HL 330.
damages caused by 'dangerous things' is absolute. It is not necessary to prove any negligence or lack of care on the part of anybody provided that the 'dangerous things' escapes from a place in the occupation of the defendant or over which he has control to a place outside his occupation or control and its presence on the land constituted a non-natural user of the land. Thus, the liability being that of an insurer, the defendant can only excuse himself by bringing himself within one of the exceptions. The defendant can, however, excuse himself by showing that the escape was due to the plaintiff’s default or that it the sole cause of the damages is the act of the plaintiff himself, his action cannot succeed.

A person who installs electricity on his premises owes a duty to take care to install and maintain the installation in a safe condition and if he fails to do so then whether by himself, his servants or agents or his dependent contractor, he is liable for the resultant damages. In Sellers v. Best\textsuperscript{121}, an electric contractor who had installed at the plaintiff’s house an electric boiler together with a new circuit, but had failed negligently to provide a fully efficient earth system for it, was held liable to the plaintiff for the death of his wife who was electrocuted in consequence. As the wires carrying electric current must be kept properly insulated, neglect of this duty, which causes damages is actionable. When two person were using public baths but, owing to the neglect of the local authority to earth the metal tubes employed in connection with the electric light system, died as a result of receiving electric shocks, the local authority was held liable in re Fulhan Brough Council and National Electric Construction company and in Smt. Bimla Poddar v. Union of India\textsuperscript{122} for storing of a dangerous objects. In Orissa State Electricity Board v. Madhu Sudan Behera,\textsuperscript{123} complainant paying electricity charges but deprived from getting power supply for one year on the ground that the transformer burnt which was restored after one year. This amounts to deficiency in service on the part of opposite party. In the case of Manju Singh

\textsuperscript{121} (1954) 2 ALL ER 389.
\textsuperscript{122} AIR 1985 HP 71.
\textsuperscript{123} II (2002) CPJ 234 (Ori).
*Chauhan v. M.P. Electricity Board and another*, it was observed that corporate bodies like the State Electricity Board render service under section 2(1) (i) of the Act and that the sale of electricity is for consideration and supply of electricity on a continuing basis over a period of time against payment, therefore, is hiring of service under section 2(1) (d) (ii) of the Act.

Deficiency in electricity supply gives a cause of action to the consumer to file complaint before the Consumer Redressal Forum and entitled to compensation in respect of deficiency in supply of electrical or other energy. In the case of *Haryana State Electricity Board v. Naresh Kumar*, it was observed that drastic action in disconnecting electricity by the Electricity Board without notice to the consumer, is unjustified and is a 'deficiency of service'. Similarly in another case of *Haryana State Electricity Board v. Tanuj Rashi Poultry Farm*, electrical meter of the complainant was burnt which was not replaced after making many complaints amount to deficiency in service. In the case of *P. Jagadeesan v. Tamil Nadu Electricity Board*, electrical connection of the complainant was disconnected only for meeting the temporary needs, for enabling the Chief Minister's convey to pass along the road. But Electricity Board enable to reconnect the electric supply of the complainant, amounts to deficiency in service.

**A.10.5 Banking Service under the Consumer Protection Act, 1986**

The banking industry is the life of a nation's economy. The banking activities have now a day increased manifold. The institution of banking has to perform various functions judiciously and coherently in the larger public interest. All banking operations come within the purview of service and money lending is one of the important services rendered by the banking institutions. Any deficiency in these services is covered within the scope of the Act. It is the duty of the government to ensure that the constituents of these banks are provided

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uninterrupted services and avoid inconvenience, hardship and loss by reason of any stoppage of work by the employees of any of the banks. In a modern economy, the dependence of the commerce upon banking has become so great that the cessation of their operation even for a short period would not only provide serious adverse repercussions entailing very great hardship and loss to their customers, but would also completely paralyse the economic life of the country. In *Standard Chartered Bank Ltd. v. B.N. Raman (Dr.)*\(^{129}\) the Apex Court held that banking is a commercial function. “Banking’ means acceptance, for the purposes of lending or investment of deposit of money from the public, repayable on demand or otherwise. The intention of the 1986 Act is to protect consumers of such services rendered by the Banks. Banks provide or render service/facility to its customers or even non-customers. Such customers are consumers within the meaning of Section 2(1) (d) (ii) of the Act. The relationship between the banker and customer is complex one. Their relationship may be governed both by contract and other specific Statutes dealing with the rights and obligations of the consumer. Banking service provides deficiency service in instant cases.

In *Standard Chartered Grindlays Bank Ltd. v. H. B. Impex (P) Ltd.*,\(^{130}\) defective and invalid bank draft for Rs. 1,40,000 was issued by the bank as a result of which the execution of the two export transactions were delayed and the cancellation of a subsequent export transaction because of the initial delay was held to be a remote effect of the bank's negligence. In another case of *Vipin Bhardwaj v. Citi Bank*,\(^{131}\) complainant taken loan from the bank and 36 post dated chèques issued for repayment of the loan, out of which one cheque was misplaced by the bank, it has been held that the officials of the bank are clearly shown to have handled the loan amount of the complainant in a very negligent and casual man, and misplacing the cheque, the bank was guilty of deficiency in service. There is a clear deficiency of service on the part of the bank who having accepted


\(^{130}\) I (2004) CPJ 13 (NC).

\(^{131}\) I (1994) CPJ 522 (Delhi).
the mount of premium from its customer and its debtor in respect of the vehicle hypothecated in favour of the bank three days prior to the date of expiry of the insurance cover, did not care to remit the amount to the Insurance Company to keep the vehicle duly insured.\textsuperscript{132}

In the case of \textit{Mike's (P) Limited v. State Bank of Bikaner and Jaipur},\textsuperscript{133} the manager of the bank demanded Rs. 50,000 as bribe for sanctioning credit limit of Rs. 60 lakhs from the complainant and a trap was laid and the manager was caught red handed in taking bribe. Thereafter the bank started harassing the complainant and cheque issued were dishonoured and complainant could not fulfill orders received from foreign buyers and had to sell his land and shift to renai building and even to retrench employees, it has been held that there was great deficiency in service on the part off the bank. In \textit{Zilla Sahkari Bank Ltd. v. Uttar Pradesh Police Avas Nigam Ltd.},\textsuperscript{134} the National Commission held that inviting call deposits at a particular rate of interest by bank and thereafter Converting @ 9.5% rate of interest without having any authority in terms of Instructions of Reserve bank of India and NABARD would amount to deficiency in service. Similarly in another case of \textit{Cooperative Agricultural Rural Development Bank v. K. Sardamma},\textsuperscript{135} failure to include the name of an agriculturist borrower in the list of persons whose loans were to be written off under a government scheme was held to be a deficiency in service. In \textit{Dharam Pal Kansal v. Bank of India},\textsuperscript{136} loan covered under Export Credit Guarantee Corporation bank debiting certain amount without informing complainant was held to be deficiency in service. In \textit{H. R. Dareesh v. P. N. B.},\textsuperscript{137} fake foreign currency was issued by a nationalized bank and same was detected by authorities.

\textsuperscript{132} \textit{United India Insurance Co. Ltd. v. Satrughan Sharma}, I (1999) CPJ 1 (NC).
\textsuperscript{133} II (1995) CPJ 97 (NC).
\textsuperscript{134} 2005(1) CPR 124 (NC).
\textsuperscript{135} III (1995) CPJ 154 (Ker).
\textsuperscript{136} I (1999) CPJ 327.
\textsuperscript{137} 1994(3) CPR 325.
abroad keeping in view the totality of the circumstances bank was held liable for
deficient services.

**A.10.6 Housing Service under the Consumer Protection Act, 1986**

Right to housing goes under the category of socially and economically
accepted rights and it is a part of the Universal Declaration of Human Rights. Right to housing is a basic right as every individual needs shelter over head. Housing construction has specifically been brought within the meaning of services in Consumer Protection Act by the Amendment Act of 1993. State Housing Boards providing constructed houses to the public provide 'service' to the consumer. In the case of *U.P. Avas & Vikas Parshad v. Garima Shukla* 138 the National Commission has held that the Housing and Development Board which is engaged in serving the public in the matter of providing housing by acquisition of land, development of sites, construction of houses thereon and allotment of plots, houses to the public is clearly engaged in rendering 'service' for a consideration to the public and therefore, those who are allotted plots, houses from the board are clearly 'consumers' falling within the definition in section 2 (d)(ii) of the Consumer protection Act, 1980. The National Commission further held that even though the consumer Protection Act, 1986 had been processed by the Minister of food & Civil Supplies of the govt. of India, the Parliament has enacted it and there is no provision in this Act limiting it to subject under the control of the Civil Supplies Ministry.

In a landmark case of *Lucknow Development Authority v. M. L. Gupta*, 139 question came before the Supreme Court whether the concept of service extended to deficiency in the building of a house or fiat and whether a complaint could be filed under the act. Both of these questions were answered in the affirmative manner. A consumer cannot be allowed to suffer on account of negligence on the part of the Housing Board. Housing Board uses a poor quality of material for construction or does not provide roads, schools, parks or delay in handling over

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138 Appeal No. 5/1989 (NCDRC).
139 1994(1) SCC 243.
the possession of the houses allotted all will cover under deficiency of services. Similarly in *Ashish Kumar Biswas v. D.D.A.*, the housing colony board to provide basic infrastructure facilities, fails to provide amounts to deficiency in service.

The National Commission observed in the case of *Leelawati v. Dr. Sukimal Jain*, that it was the responsibility of the Consumer Forum to be alive and sensitive to the needs of the promised services and to ensure that relief is provided if deficiency is noticed. A unique example of deficiency in service was held in *Manju Goel v. Ghaziabad Development Authority*, when a fiat number delivered against full payment was found to be in the occupation of someone else. In the case of *Delhi Development Authority v. Ram Chander*, the complainant was allotted a L.I.G. fiat by D.D.A. It was found that immediately after the allotment of the fiat, the iron bars in roof of his fiat become visible and cracks developed in the walls due to the use of sub-standard material in the building. It amounts to deficiency in service and Commission observed that the consumer cannot be allowed to suffer on account of negligence of the appellante officers.

A.10.7 Insurance Service under the Consumer Protection Act, 1986

Man is exposed to various kinds of risks from cradle to grave. His instinct to survive has compelled him to devise suitable methods to combat risks. Insurance law has been under development since independence to meet the growing needs of the people. Insurance covers risk and it has to be minimized as far as practicable. Insurance business is run in this country by monopolies the Life Insurance Corporation and General Insurance Corporation with its subsidiaries. This public sector organisation have received a good deal of maturity for their rough and ready methods in disposing of the claims of consumers. Provision of facilities in connection with 'insurance' has been specifically within the scope of

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140 1997 (2) CPR 294.
141 (2003) 3 CPJ 90 (NC).
142 I(1994) CPJ 41 (NC).
143 1993(1) CPR 545 (Delhi CDRC).
term 'service'. It covers insurance of all sorts marine, fire, life, property, etc.

According to the philosophy of the Consumer Protection Act 1986, and its avowed object of providing cheap and speedy redressal to consumers affected by the failure on the part of persons providing services for a consideration, whenever there is a delay in making the payment of claim\textsuperscript{144} and non-settlement of claim\textsuperscript{145} or négligence in regard to the settlement of an insurance claim, will constitute a deficiency on the part of Insurance Company and it will be perfectly open to the concerned aggrieved consumer to approach the redressal for a under the Consumer Protection Act.\textsuperscript{146} Services rendered by the insurer suffer from deficiency. Whenever, there is default or negligence with regard to settlement of an insurance claim that will constitute a deficiency\textsuperscript{1} in the service on the part of insurance company. It will perfectly open to aggrieved consumer to approach appropriate redressal forum. In another case of \textit{Birendra Mohan Pd. Sinha v. New India Assurance CO.},\textsuperscript{147} delay in settlement of claim by Insurance Company cause problem to complainant to rehabilitate his business, amounts to deficiency in service.

In \textit{National Insurance Co. Ltd. v. Shah Cloth House},\textsuperscript{148} the complainant’s shop was looted by rioters. He filed a claim before insurance company but the Insurance Company repudiated the claim on the ground that it did not produce the surveyor's report. Whereas the records showed that there were riots and the shop of the complainant was looted. The deficiency in the service of the insurance company become proved. In the case of \textit{Plastic International v. Divisional Manager, New India},\textsuperscript{149} a person insured his property to cover the risk of flood, riot etc., and the insurer accepted the premium amount and issued a cover note saying that the policy was under preparation and would be forwarded in due

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\textsuperscript{144} Bharat Kumar C. Patel v. United India Insurance Co., 1992 (1) CPR 224 (Guj. CDRC).
\textsuperscript{145} N. Laxman Bhai Savsani v. National Insurance Co., 1993(2) CPR 138 (Guj CDRC).
\textsuperscript{146} Umedia Lai Agarwal v. United Assurance Co. Ltd., 1 (1991) CPJ 3 (86) NC.
\textsuperscript{147} 1993 (1) CPR 297.
\textsuperscript{148} I (2003) CPJ 267 (NC).
\textsuperscript{149} I (1995) CPJ 526( Maha).
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course, but unilaterally, without consulting the parts, refunded the premium amount, it was held that the act of the insurer amount to a deficiency in service. If Insurance Company reduced amount payable under insurance policy arbitrarily, unfairly and not settled the claim with reasonable expedition has been guilty of deficiency in service. In Jintu Urban Cooperative Bank Ltd. v. The New India Assurance Co. Ltd., the law has been well settled by the decisions of the National Commission, New Delhi and various State Commissions in India that the delay in settlement of insurance claim is a deficiency in service of the insurance company and in this case the claim of the claimant is within the limitation from the date of knowledge of the fraud and consumer for a can decide the consumer dispute involving the deficiency in service of the insurance company. In the case of L.I.C. v. Mrs. Jeeva, two policies of the complainant had been settled but the third policy for Rs. 50,000/- was repudiated on the ground that the complainant had suppressed material facts about his health and policy had not been issued. District and State Commission observed that if two policies of the assured had been settled, third policy was not repudiated on the ground that the complainant had suppressed material facts and if insurance policy had not been issued, it could not be said that there was no concluded contract of insurance. In this case Insurance Company liable for deficiency in service.

In the case of Shantilal P. Malvania v. United India Insurance Co. Ltd., the insurance company refused to reimburse the expenses of by-pass surgery, undergone by the policy-holder. It was held that the insurance company was deficient in service by wrongly denying the legitimate claim of the insured by excluding the coverage of heart ailment from the policy and directed the Insurance Company to renew the policy without any exclusion as per guidelines issued by General Insurance Corporation. In the case of Ramesh Flowers Ltd. v. M/S Uniplas India Ltd. v. The National Insurance Co. Ltd., 1992(1) CPR 575 (NC).

150 M/S Uniplas India Ltd. v. The National Insurance Co. Ltd., 1992(1) CPR 575 (NC).
151 1993 (3) CPR 553.
National Insurance Co. Ltd.\textsuperscript{154} the godown of the complainant covered under an insurance policy. Due to fire some material was destroyed. The surveyor assessed the loss at Rs. 21,94,348/- which was accepted by the insurer but did not inform the complainant. The Insurance Company raised the plea of non-payment of additional premium and deducted Rs. 11,69,633/- from the assessed loss. It was held by the National Commission that the Insurance Company was not entitled to deduct that amount. It amount to deficiency in service. In *Avon Rice Trading Company v. United India Insurance Co. Ltd.*,\textsuperscript{155} insurance claim of the complainant against loss of paddy and husk was partially allowed by the Insurance Company and that too after two years of the claim. The State Commission held the complainant to be a consumer and held the delay in settling the claim to be deficiency in service and held that repudiation of claim for husk was not justified.

In *Vijay v. L.I.C.*,\textsuperscript{156} L.I.C. had repudiated a claim on the ground that the insured had made misleading statements at the time of revival of policy which had been issued more than two years before its revival. The Kerala State Commission held that under section 45 of the Insurance Act, 1938 the burden of establishing that misleading statements had been made intentionally by the assured was on the L.I.C. which it had failed to discharge. The repudiation of the claim was therefore, held to be erroneous and constituted deficiency in service.

From the apparent study it can be concluded that the basic purpose of seeking the protection under Consumer Protection act is to get relief and to empower the consumer against defective services. The relief can only be sought when all the requirements are complied with. The foremost requirement is that all the persons approaching consumer court under the Act should be consumer and a person can be treated as consumer only in a situation when he purchases some goods or having some type of services from the market. It is really a typical task

\textsuperscript{154} I(2001) CPJ 18 (NC).
\textsuperscript{155} III (2002) CPJ 340 (NC).
\textsuperscript{156} 1994(1) CPR 317 (Ker).
to specifically to make a ascertainment that what will be the specified goods which comes under the domain of consumer or what are the services which are within the parameter of this legislation. It is observed that the ambit of goods and services covers a variety of situations for this purpose i.e. whenever there is any type of defect or negligence the consumer can easily approach to consumer courts under goods like scooter, printing machinery air conditioner, television, pressure cooker, VCR, edible oils, seeds, etc. and whenever there is any deficiency in services like banking service, medical services, transport services, education services, insurance services and housing services, etc.

A.10.8 Miscellaneous services

Sometimes the services are disrupted by sudden illegal strikes or agitations on the part of the employees of any organization rendering service to the public for consideration, causing great inconvenience and hardships to the consumers of such services. Whether a complaint made by such consumers is maintainable under the Consumer Protection Act, came up for consideration before the National Commission in *Common Cause v. Union of India & Others*[^157^]. The National Commission found that the disruption of flights was caused solely on account of an illegal strike launched by the Indian Flight Engineers Association. The Commission observed that the persons employed on salary in an organization which is rendering service for consideration are equally amenable to the provisions of the Consumer Protection Act along with the management of the said organization even though there may not be any direct privity of contract as between the persons hiring or availing of the service and the concerned employees. The Commission, thus, held that in the event of deficiency in service and consequent loss being suffered by passenger travelling by an airline, action under the Consumer Protection Act can be instituted not only against the corporate personality of Air India but also against the erring staff member or responsible for the deficiency in service.

[^157^]: 1996(2) CPR 39 (NCDRC).
Similarly, there are the malpractices prevalent in private educational institutions so as to invoke the provision of the Consumer Protection Act aimed at redressing grievances of consumer. Recognition is a material fact, and has its significance, which may affect the decision of the parents seeking admission for their children in institutions. Unrecognized institutions are involved in making false and misleading statements regarding Government recognition. Institutions prefer to keep unrecognized character so as to escape from government control. But to the public they falsely represent themselves as recognized. Whether educational institutions operating in private sector are recognized or not, they collect fees, social gathering fees, library fees, development fees etc. Fees thus charged are not utilised for the stated purpose in the tariff on the one hand and on the other hand the refundable caution money is often not refunded on one pretext or other. If fee charged is in excess of the fees approved by the education department, parents have no remedy but to pay fee or allow the career of their wards to ruin. The education institutions more often than not compel parents to purchase stationary, clothes, books, shoes etc. either from the institution itself or approved shop. In both the situations, the institutions gain profit by charging higher rates or collecting Commission from approved shop. Thus, the denial of basic facilities, forced purchase by parents, false representation as to quality and services being rendered are unfair trade practices and deficient service which are squarely covered by comprehensive phraseology of the Consumer protection Act, 1986. Similarly, in L-R, Jiikwak v. State of Rajasthan,158 the court was dealing with the duty of municipality to remove the dirt, filth etc. and clean the city and said that it is not the duty of the court to see whether the funds are available or not and it is the duty of the administrator, Municipal Council to see that the primary duties of the municipality are fulfilled. Municipality cannot say that because of the paucity of the funds or because of the paucity of staff they are not in a position to perform the primary duties. If the legislature or the state government feels that the law enacted by them cannot be implemented then the legislature has

158 1987(4) Reports Raj. 53.
liberty to scrap it, but the law which remains on the statutory book will have to be implemented, particularly when it relates to primary duty.

Marketing of services, both at the policy formulation stage and implementation stage, is neither being undertaken as per the traditional roles/functions assigned to the service sector organizations nor these organizations, are, in any way, broadening their role and functions in order to be more useful to the society, consequently, there is a marked decline in the quality of life. The consumer looks thoroughly ill-equipped to perform the duties, shoulder the growing responsibilities effectively, and to live a decent life. The public enterprises constitute an important sector of Indian economy and it has been accepted as major tool of development. Public enterprises are not preferred for ideological reasons alone. The dominant objective of such enterprises is social rather than commercial. Public enterprises are owned by the people and those who run them are accountable to the people. The public enterprises are generally autonomous bodies and take their decision independently. The decision taken by these enterprises are far-reaching and may affect a number of people, e.g. if the Road Transport Corporation or Telephone Department enhances the fares or charges, that will affect the number of consumers. Those enterprises are accountable to people as public money is invested in these enterprises. Further, these enterprises have to function on sound and prudent business principles. Thus, the Road Transport Service is established in order to provide efficient, economical and coordinated service to the people. The difficulty faced in this regard is that there is no adequate control mechanism to supervise the functioning of public enterprises. The accountability of public sector to the parliament is ineffective, diffuse and haphazard. Hence, the Courts have to play a dominant role in his area and see that the public enterprises are not behaving in irresponsible manner. Traditionally the role of the court is not to allow the public enterprises to overstep the limits of their authority. The judicial control is exercised through the Doctrine of ultra-vires. A statutory corporation has to act within the terms of the statute. If the corporation exceeds its authority, the court
may declare its action as ultra-vires. The courts have been expanding the scope and extent of their control over public undertakings beyond the confines of the doctrine of ultra-vires. The trend-setting pronouncement of the Supreme Court in *R.D.Shetty v. International Airports Authority*¹⁵⁹ laid down that the statutory bodies no longer enjoy absolute discretion to enter into contract. It has to choose the party in non-discriminatory manner. It has to act fairly and afford equal opportunity to all contenders by examining their claims fairly.

There are number of cases being filed before the Courts against public enterprises. The disputes arise between the enterprises and the employees or between enterprises and the public. The role of the Court has been significant in protecting the consumers against the action or inaction of public enterprises. The Courts, however, refused to interfere with the internal management of public enterprises. There is a clear cut demarcation drawn by the Courts between the areas where the Court can interfere and areas where it cannot. The public enterprises like a government company or a statutory corporation have been treated as state for the purpose of Article 12 of the constitution and thereby the fundamental rights become enforceable against these bodies. The public enterprises have to be careful in discharge of their functions. Any action which is arbitrary or discriminatory can be challenged before the Court of law. It is well known that like government, the public enterprises also are engaged in various developmental activities. In discharging various functions the public enterprise have to act fairly and cannot ignore the procedure laid down for the said purpose. In *Kasturi Lal v. State of Jammu & Kashmir*,¹⁶⁰ the court has laid down limitation on the power of the government or statutory authority where it is dealing with the public whether by way of giving job, entering into contracts or issuing quotas or licenses or granting other forms of charges. It cannot act arbitrarily at its sweet will and like a private individual deal with any person it pleases but its action must be in conformity with standard or norm which is nor arbitrary irrational or

¹⁵⁹ AIR 1979 SC 1628.
irrelevant. This principle flows directly from Article 14 which strikes at arbitrariness in state action and ensures fineness and equality of treatment. 

In Fertilizer Corporation Kamgar Union v. Corporation of India. The Supreme Court expounded the principle that a public authority does not have an open-end discretion to dispose of its property. The Fertilizer Corporation sold some old machinery the operation of which had become uneconomical. The Kamgar Union challenged the sale under Article 14 as being arbitrary and unfair. However the Supreme Court concluded after going into the facts, that the sale was not unjust or unfair. The implication is that had the Court found the sale of the machinery to be arbitrary or unreasonable it would have set it aside. In fertilizer Corporation case the Supreme Court laid down the parameters of judicial control of public enterprises. The public Sector occupies commanding heights of National economy. Accordingly this sector cannot assert a right to be free from judicial review. The Court will not subject to inspection the internal management business activity or institutional operation of public bodies. The Courts are not equipped for such oversights. The true scope of judicial review in this area in the words of Justice Iyer is that the broad parameters of fairness of administration, bonafide in action, and the fundamental rules of reasonable management of public business, if breached will become justifiable.

One important development that has taken place in this area is the growth of concept of public interest litigation. It provides a means to redress public wrongs by enlarging the scope of locus standing. The traditional rule relating to locus standing is no more relevant today. The scientific and technological development have led to certain situations like leaving industrial effluent in fiver or lake, disturbing ecological balance which do not affect the individual directly. The interests affected may be so diffused and fragmented that injury to such person will be very small. As Justice Bhagwati pointed out that individual rights and duties are giving place to mats-individual, collective, special

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161 AIR 1981 SC 344.
rights and duties of classes or group of persons. In case of S.P. Gupta v. Union of India\(^{162}\), it was held that a public spirited or social action group can move the Court and seek redress of public wrong. Public interest litigation vindicates vital public interests and ensures 'Interest Representation participation in the Government'. Whenever there is a public wrong or public injury caused by act or omission of the state or a public authority which is contrary to the constitution or the law, any member of the public action bonfire and having sufficient interest can maintain an action for redressed of such wrong or public injury. This proposition can be illustrated by case of P.N. Thampy there v. Union of India\(^{163}\), the Supreme Court entertained petition under Article 32 at the behest of railway commuter against the Indian Railways for improving the railway services. The main burden of the petition was that the Railways were not taking adequate safety measures. In a counter affidavit, the Railways narrated the various steps taken to avoid accidents and improve safety. The Court did not thing prudent to issue any directions to the government in a case where availability of resources has material bearing policy regarding priorities is involved the expertise is very much in issue.

The Railways are a public utility service run on monopoly basic and common man's mode of transport. It can't be run as a commercial venture with a view to making profits. It should not be used to support the revenue of the state. The Railway services should be prompt, efficient and dignified. This is a case illustrating petitioner's failure not on account of standing but on account of justifiability. There are a number of cases coming up before the court in the form of public interest litigation where the Department, Board or Company has been negligent and the Court has interfered and provided relief. These are the instances where the injury may be to a specific individual or number of individuals. The Court has not only entertained the petition but awarded adequate compensation to the petitioners. In the famous case of M.C. Mehta v. Union of India\(^{164}\) there was

\(^{162}\) AIR 1982 SC 149.

\(^{163}\) Ibid.

\(^{164}\) AIR 1987 SC 1086.
leakage of oleum gas during pendency of petition by public spirited body like legal Aid and advice Board for closure of certain units of company. It was held that if there was infringement of fundamental rights of large number of persons the Supreme Court was competent to award remedial relief for compensation. The power of the Court was held to be not only injunctive rights, but was remedial in scope providing relief against breach of fundamental right already committed. The power of the Court to grant such relief may include the power to award compensation in appropriate cases. In Mehta's case the Court further clarified that the compensation cannot be awarded in each and every case of violation of fundamental right. The infringement of fundamental right must be gross and patent. It must be in controvertible and ex-facie glaring and such infringement should be on a large-scale affecting the fundamental rights of large number of persons or unduly harsh or oppressive on account of their poverty or disability. Ordinarily, the petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation through the ordinary process of civil court. It is only in the exceptional cases of the nature indicated above that the compensation may be awarded in a petition under Article-32.

The Courts have shown great reluctance to interfere with the area of fixation of rates chargeable by the public enterprises from the consumers of their services. It has been treated as executive domain. The concerned statutes cast an obligation on the board to operate the enterprises efficiently and economically. Then the question would be—whether the Board is entitled to enhance the tariff unless the corresponding statutory obligations are fulfilled. In S. Narayan Iyer v. Union of India, the Supreme Court refused to scrutinize the reasonableness of the telephone rates and charges fixed by the government from time to time. The Court reasoning is that when any subscriber to telephone enters into contract with the Telephone Department, he has the option to enter into contract or not; telephone tariff is subordinate legislation and legislative process. Under the provisions of Indian Telegraph Act, the Central Government is empowered to

make rules inter-alia for rates and Courts under Article 226 have no jurisdiction to go into reasonableness of rates.

In *Rohtas Industries Ltd. v. Chairman, Bihar Electricity Board*,166 and *Modi Industries Ltd. v. UPSE Board*,167 it was argued before the Supreme Court that supply of electricity being a monopoly service conducted by an agency of the State, it must be carried out reason-ably and not arbitrarily. Such reasonableness should be reflected in price fixation. If the prices are arbitrary, they are bound to be challenged before the court. The Court found that there was no arbitrariness in fixation of tariff. The Court held that what factor should or should not be taken into account for the fixation of rates is in the domain of the executive. It is not appropriate for the Court to make a minute scrutiny of such matter. In *Union of India v. Cyanamid India Ltd*,168 it was held that the general view seems to be that the courts have no jurisdiction under Article 226 to go into the reasonableness of rates. These rates are decided as policy matters in fiscal planning. There is a legislative prescription of rates. Rates are matters of legislative judgment and not for judicial determination.

Where a customer is hiring a sleeping accommodation, the hotelier is liable for the safety of the goods which are brought to the hotel. Such accommodation must be as safe as reasonable care and skill on the part of anyone can make it. The words 'hires or avails of any services' occurring in section 2(l)(d) (ii) shows that the term 'hire' has also been used therein in the sense of 'avail' or use, the term 'hire has not been defined in the Act. According to Concise Oxford Dictionary, 'hire' means 'employ person for wage or fee'. In Collins English Dictionary 'hire' has been defined as 'to acquire the temporary use of a thing or the services of a person in exchange for 'payment' or to 'provide something or the services of oneself or other for an agreed payment usually for a agreed period.' According to Chambers Twentieth Century

166 AIR 1984 S.C. 657.
167 AIR 1986 All. 342.
dictionary, 'hire' means 'to procure the use or, at a price to grant temporary use of for consideration.' Hiring in its ordinary, plain and governmental sense inter-alia, involves letting of things or services for rent or wages. It is a payment for labour or for the use of goods. The taxes paid by Citizens cannot, by any stretch of imagination be called hiring' of services rendered by the Government. In the case of Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar, it was held that tax is the compulsory exaction of money by public authority for public purposes enforceable by law and is now payment for service rendered.

The consumer of services includes not only the hirer of services for consideration but also nay beneficiary of such services provided that he is availing the services with the approval of the hirer. This is necessary to protect the interest of the user of services, because under the general principles of law of contract such user cannot sue the provider of service on the ground of 'privity of contract'. But now such a user or beneficiary may seek relief against the deficient services under Consumer Protection Act. An employee member of an Employee’s Provident Fund Scheme has been held to be a consumer of the services of the Provident Fund Commissioner. The latter would be liable to any employee-member for any delay or deficiency in services. Approval of building map plans is not a service of commercial nature. Where a machine is purchased for a commercial purpose, the purchaser as such may not be a consumer but in respect of after sales services he would be a consumer. In another case of Bhaskaran Suresh Kumar v. Regional Passport Officer, an applicant for a passport has been held to be not a consumer within the meaning of

170 1954 SCR 1005.
175 1993(2) CPR 619 (Ker).
the Act. The duties of the passport office do not fall in the category of services for a consideration rather they are in the nature of sovereign services. In Union Bank of India and another v. Seppo Rally and another, the question for consideration before the National Commission was whether a beneficiary under a bank guarantee can be termed 'as a consumer'. Commission held that the complainant is a beneficiary as the back guarantee has been procured for his benefit and protection and therefore is a consumer within the meaning of Consumer Protection Act.

A.11 Defect under Section 2(1)(f)

The complaint under Consumer Protection Act can be made in relation to those goods which suffer from one or more defects. In general word 'defect' means lack of something essential to completeness. According to Law Lexicon defect means a lack of absence of something essential to completeness. The term 'defect' has been defined in clause (f) of section 2(1) of the Act. '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. Where the quality, quantity, potency, purity or standard of any goods are not in accordance with law or promise made by the trader, the goods will be deemed as defective. There are many legislations which are providing standards quality, quantity etc. of several goods. When the goods do not fulfill the requirements of these legislations, they will be defective for the purpose of Consumer Protection Act. The standard, quality, quantity etc. of goods must correspond with the Claims made by the trader in relation to these goods. Such Claims may be made by advertisements, by printing on the packets of the goods or otherwise. Where the standards, quality

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176 1996(2) CPR 221 (NCDRC).
and quantity etc. of goods are not in accordance with such claims the goods will be considered to be defective.\footnote{179}

In other sense goods are defective if they do not fulfill any applicable legal requirement or not in accordance with the claims made by trader in reference to them. The legal requirements are in the care of the whole manner of legislation affecting trading of marketing of goods e.g. the Prevention of Food Adulteration Act, 1954 provides the standards of cream that ought to be maintained in milk or ice-cream made of milk, a failure on the part of the trader to maintain that standard would be quality related defect in the goods. Similarly, if the Standards of Weights and Measures Act, 1976 provide that a particular marketable item should not be in packing less than 50 grams it would be quantity related defect. The trader has to maintain his promised standards of quality, quantity, etc. If engine being marketed by him is of particular horsepower, he must assure the declared power in the machine supplied by him. If he fails to do so, it would be defect in the goods. Goods are of satisfactory quality if they meet the standard. The expression 'mercantile quality' means in reference to consumer that the goods shall be reasonably fit for the general purpose for which they are bought and sold in the market. If they are not so usable they are said to be defective.

The burden is on the consumer to show that his misfortune was the result of the defect in the goods supplied to him. In \textit{J.D. Sharma v. Maruti Udyog Ltd.},\footnote{180} appellant purchased a van manufactured by the respondent. The identification plate, which every such vehicle has, indicate the name of the manufacturer along with the correct chassis number and engine number imprinted thereon. The van bought by the appellant was having wrong engine number embossed thereon. The Haryana State Commission held that goods suffered from defect within the meaning of the Act.

Housing construction is wide enough to cover buildings of any type which provide shelter or a roof. It will include both residential and non-residential

\footnote{180} 1991 (1) CPR 436 (Haryana CDRC).
structures and the activity of construction will be within the purview of the Act. Defects may be in quality, quantity, standard and purity. Defects in machines may be due to inherent defect, manufacturing defect and technical defect. These defects not only cause financial loss but complainant has suffered a lot of inconvenience and harassment. It is well settled law that no order of replacement of machinery or refund of price can be made until defect has to be provided by testimony of an expert in the field. In case of *Wheel World v. Tejinder Singh Grewal*, a montanna diesel car which had inherent manufacturing defects had to be taken to the dealers for repairs several times. The engine block was removed and sent to the manufacturer for repair and replacement. It was clearly a case of defect in goods. The order of the Commission for refund of the original price of the car with interest @ 18% was approved by the National Commission. In another complaint Commission came to the conclusion that in respect of vehicle the defect complained of need not be a manufacturer defect but any defect as per definition of 'defect'. The defective chassis in any motor vehicle is evidently a major structure defect. If a major structural defect existed on the date of sale, the customer would evidently be entitled to replacement of a vehicle. In the case of *Abhaya Kumar Panda v. Bajaj Auto Ltd.*, machine was so materially defective that it did not come to its form inspite of repairs. Commission ordered its replacement.

In the case of *R.P. Processing Unit v. Chowgole Industries Ltd.*, defective Xerox machine supplied to complainant which could caused not only the financial loss to the complainant but it also caused him to suffer harassment, mental agony and torture. The standard of health is the parameter of a nation's social and economic prosperity. Good health is vital to every consumer irrespective of particular strata of the society. In *Vikram Samant Desia v. M/S*
Kothari Products Ltd., complainant has pathetically described the suffering the different diseases suffered by him due to consumption of 'Pan Parag'. He proved his allegations about the manufacture and sale of defective and hazardous goods which cause loss or injury to his health. In another case in which dead fly found in the new pack of tooth paste amounts to defects in goods. There are two aspects regarding quality, quantity, potency, purity or standard as mentioned in the definition. Firstly, the same may either be required to be maintained by any law or rules for the time being in force. Secondly, where there is not such statutory mandate, then in the alternative, these requirements are to be tested on the anvil of what is claimed by the trader in any manner whatsoever in relation to any good. Defective goods are oftenly seen in the market and use of these goods cause injury to the party. In the case of T.T. Pvt. Ltd. v. A.B. Grahak Panchayat, pressure cooker burst while in normal use, due to this buyer wife was injured losing her right hand, this shows clear cut defect in pressure cooker. Sometimes spurious or substandard seeds and pesticides sold after expire dates amount to defect in goods. In another case of M.V. Arunachalam v. Vellore Anjappa Modaliar, defect in quality of seeds come into small in size, watery and rubber like due to defective seeds of tomato show defect in quality of seeds.

A.12 Deficiency in Service under Section 2(1)(g)

The literal meaning of the word 'deficiency' is incomplete, defective, wanting in specified quality or insufficient in quality etc. According to Section 2 (1) (g) of the Consumer Protection Act 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 recognized law or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. Thus, the deficiency in service may occur due to the violation of any standards as to the quality, nature and manner of performance

184 1995 (2) CPR 383.
186 II (1996) CPJ 239( NC).
laid down in any of the existing laws. The deficiency may also be caused owing to the non-performance of promise made as to the quality, nature etc. of the service under the contract or otherwise.

The Act aims to protect the economic interest of a consumer as a purchaser of goods and user of services. The common characteristics of goods and services are that they are supplied at a price to cover the costs and generate profits or income for the seller of goods or provider of services. Goods are normally capable of being replaced and repaired and efficiency in service required to be compensated. The Supreme Court in Ravneet Singh Bagga v. K.L.M. Royal Dutch Airlines,¹⁸⁸ explained the nature of the test for ascertaining deficiencies in service. Deficiency in service cannot be alleged without attributed fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it. Deficiency in service is distinguished from the tortuous act. Deficient service has to be considered and decided in each case according to the facts of the case, there is no hard and fast rule. In this case the distinction between a deficiency in service and negligence is brought out. In the absence of deficiency in service the aggrieved person may have a remedy under the common law to file a suit for damages but cannot insist for grant of relief under the Act for the alleged acts of commission and omission attributable to the respondent which otherwise do not amount to deficiency in service. If on facts it is found that the person or authority rendering service had taken all precautions and considered all relevant facts and circumstances in the course of the transaction and that their action or the final decision was in good faith, it cannot be said that there had been any deficiency in service. If the action of the respondent is found to be in good faith, there is no deficiency of service entitling the aggrieved person to claim relief under the Act. Inefficiency, lack of due care, absence of bona fide, rashness, haste or omission and the like may be

the factors to ascertain the deficiency in rendering the service. In *Arulmighu Dhandayudhapaniswamy Thirukoil v. Director General of Post Offices*\(^{189}\), post Office accepted deposit of Rs. 1.40 crores from respondent under five year fixed deposit scheme which scheme had already been discontinued. Post office refunded the amount after about 4 months. Respondent is not entitled to interest under the Rules. It is not a deficiency in service. Held, Rule 17 of provided that in such cases only the amount should be refunded without any interest. Further held that in view of Rule 17 of the Rules, failure to pay interest cannot be construed as a case of deficiency in service in terms of Section 2(1)(g) of the Consumer Protection Act, 1986.

In *The Accountant General, M.P. v. S.K. Dubey*\(^{190}\), the respondent is a former Judge of the Madhya Pradesh High Court and rendered service of more than 10 years and retired on August 13, 1998. He was appointed as the President, State Consumer Redressal Commission, Madhya Pradesh on 21.9.1998 and continued to hold that office of President upto 12.8.2003. As per terms and conditions of appointment as President the respondent he is to be paid salary as payable to a Judge of High Court minus pension payable. Thereafter, on 5/4/2002 Government of Madhya Pradesh issued another order for counting the period of service as President, State Commission for the purposes of payability and determination of the pension. Government of Madhya Pradesh also recommended and forwarded the pension case of the respondent to the appellant. Appellant raised objection that pension and gratuity were not payable to the respondent as proposed and recommended as there was no statutory provision for grant of pension to the President of the State Commission. Whether in the absence of any express rule in the State Rules, was it open to the State Government of Madhya Pradesh to have provided by way of an Executive order dated April 5, 2002 that the service rendered by the respondent as President of the State Commission would be counted as pensionable service? In this regard Hon'ble R. M. Lodha J.

\(^{189}\) 2011(3) R.C.R.(Civil) 776.

\(^{190}\) 2012(4) SCC 578 (SC).
held that there is no bar for the State Government in issuing executive order or administrative instructions regarding pensionable service of the President, State Commission; order dated 5.4.2002 is not inconsistent with the statutory provisions contained in Section 16(2) and the State Rules; the respondent was entitled to pension from the State Government insofar as service rendered by him as the President, State Commission was concerned to the extent provided in the order dated April 5, 2002 and obviously such service shall not be clubbed with the service of the respondent as a High Court Judge and shall not be charged to Consolidated Fund of India. Further per Hon'ble H.L. Gokhle J. such a grant cannot be made at the instance of the State Government when the rules do not prescribe the same and sanction order does not prescribe any period for eligibility or any rate at which the pension is to be paid. Clubbing of period of service as a High Court Judge with the subsequent period of his service as the President of the State Commission is impermissible.

A.12.1 Deficiency in Medical Service

A medical practitioner can only be liable if his diagnosis is so palpably wrong as to prove negligence that is to say if his mistake is of such a nature as to imply absence of reasonable skill and care on his part, regard being had to the ordinary level of skill in a practitioner. It was so held in case of Phillips India Ltd. v. Kunju Punnu 191. In Navneethan v. Dr. Rathanswamy 192 it was held that a mistaken diagnose is not necessarily negligent diagnose'. In Bolam v. Frierin Hospital Management Committee 193 it was held that a doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular area. In other words a man is not negligent if he is acting in accordance with such a practice merely because there is a body of opinion who would take a contrary view. In the case of

191 AIR 1973 Bom. 306.
192 1992(1) CPR 41 (Med. CERC).
193 (1992)1 WLR 582 1 d.
Smt. Kamalawati v. state of H.P.\textsuperscript{194} the court took a serious view of the callous and indifferent manner in which hospital services were provided to unsuspecting customers and awarded an compensation of Rs. 50,000/- to the dependents of the victims who died as a result of Nitrous oxide having been administered to them instead of oxygen at the time of performance of surgical operation account of the negligence on the part of the staff of government hospital.

In the case of Dr. T.T. Thomas v. Elisa,\textsuperscript{195} the question was regarding the liability of a doctor not performing an emergency operation for want of patient’s consent and consequent death of the patient. In that case, on complaint of severe abdominal pain by the patient, the general practitioner, after diagnosis, found it to be a case of appendicitis and the patient was admitted to the hospital. The operation was not performed on that very day and on the subsequent day the patient died owing to bursting of the appendix. The plaintiff’s case was that had the operation been performed immediately, on the very day of admission, the patient’s life would, most probably have been saved. The Kerala High Court held that the burden of proof that consent of patient was sought and it was refused was upon the one who takes such a plea particularly when the patient himself has died and held the doctor negligent for failure to perform an emergency operation.

In the case of B.S. Hegde v. Dr. Sudhansu Bhattacharya\textsuperscript{196} the State Commission of Maharashtra held the doctor guilty of gross negligence for failure to render necessary post-operative care which was undertaken by him for consideration (fee). The State Commission further observed that the complainant badly needed post-operative care as pus was formed in his chest region for want of post-operative care, which could have caused death. The doctor examined the patient reluctantly on one of the post-operative follow-ups, and on another occasion did not grant interview to the patient. Hence it was held that the doctor had charged disproportionately and there was imperfection, short-coming and

\textsuperscript{194} AIR 1989 HP 5.
\textsuperscript{195} AIR 1987 Ker. 52.
\textsuperscript{196} II (1992) CPJ 449.
inadequacy in the nature and performance of post-operative care and awarded a sum of Rs. 2 lacs by way of compensation to the patient.

The view in Bolam’s case was finally accepted in India after two decades in the landmark case of Dr. Suresh Gupta\(^\text{197}\). However, that case got referred to a larger bench of the Supreme Court and finally in Jacob Matthew\(^\text{198}\) and Shiv Ram case\(^\text{199}\), the Bolam Test was approved. Recently, the Supreme Court has given far reaching guidelines in *Martin F. D’Souza v. Mohd Ishfaq*\(^\text{200}\), while following Jacob Matthew held that the law, like medicine, is an exact science. One cannot predict with certainty an outcome of many cases. It depends on the particular facts and circumstances of the case, and also the personal notions of the Judge concerned who was hearing the case. However, the broad and general legal principles relating to medical negligence need to be understood. Judges are not experts in medical science, rather they are laymen. This itself often makes it somewhat difficult for them to decide cases relating to medical negligence. Moreover, Judges have usually to rely on testimonies of other doctors which may not necessarily in all cases be objective, since like in all professions and services, doctors too sometimes have a tendency to support their own colleagues who are charged with medical negligence. The testimony may also be difficult to understand, particularly in complicated medical matters, for a layman in medical matters like a Judge; and a balance has to be struck in such cases. While doctors who cause death or agony due to medical negligence should certainly be penalized, it must also be remembered that like all professionals doctors too can make errors of judgment but if they are punished for this no doctor can practice his vocation with equanimity. Indiscriminate proceedings and decisions against doctors are counterproductive and serve society no good. They inhibit the free exercise of judgment by a professional in a particular situation. The Supreme

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\(^{197}\) (2004) 6 SCC 422.

\(^{198}\) (2005) 6 SCC 430.

\(^{199}\) AIR 2005 S.C 3280.

\(^{200}\) Civil appeal no 3541/2002, decided on 17.2.2009.
Court has further directed that whenever a complaint is received against a doctor or hospital by the Consumer Fora or by the Criminal Court then before issuing notice to the doctor or hospital against whom the complaint was made the Consumer Forum or Criminal Court should first refer the matter to a competent doctor or committee of doctors, specialized in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence should notice be then issued to the concerned doctor/hospital. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent.

In *Ins. Malhotra v. Dr. A.Kriplani*\(^{201}\), the patient was brought for treatment when her health was in very bad condition and renal failure had already taken place. Appellant, sister of patient was informed well in advance regarding deteriorating condition of patient. Records indicating no difference or divergence of opinion about method or mode of treatment adopted between the two sets of doctors. Appellant not questioning post-mortem report indicating death due to peritonitis with renal failure. Statements made by respondent doctors neither rebutted nor appellant leading evidence of any expert doctor. Further, it was not the case of appellant that doctors were not qualified and specialized. Held, on facts, all the doctors who treated patient were skilled and duly qualified specialists in their respective fields and tried their best to save the patient’s life and performed their professional duties as a team. Hence, no case made out of negligence or deficiency in service.

A.12.2 Deficiency in service rendered by Advocate

In *Srimathi and Others v. Union of India and Others*,\(^{202}\) it was contended by the petitioners, who were the practicing advocates that the objects of the Consumer Protection Act do not contain any provision which will bring in the services rendered by an advocate to his client within the scope of the Act. It was argued that the definition of ‘consumer’ contained in clause (d) of section 2 (1) of

\(^{201}\) (2009) 4 SCC 705.

\(^{202}\) AIR 1996 S.C 427.
the Act will not include a client, who has availed of the services of an advocate. The Madras High Court turned down these contentions and opined that the language in clause (d) of section 2 (1) of the Act is very wide. It used the expression ‘avails’ of any service for a consideration. That will not certainly excluded the services rendered by advocate. Further, the matter is made clear by the definition of ‘service’ in clause (o) of section 2(1) of the Act which provides, *inter-alia*, that service of any description will fall within the scope of the section. The Court, thus, held that the definition will undoubtedly include the service of a lawyer to his client, and referring to the word ‘service’ quoted from the judgment of the Supreme Court in *Lucknow Development Authority v. M.K. Gupta*\(^{203}\). The terms has variety of meanings. It may mean any benefit or any act resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory, etc. The concept of service thus is very wide.

**A.12.3 Deficiency in Transport Service**

Carriage of passengers or goods by railways, airlines, buses, truck etc. is service within the meaning of the Consumer Protection Act,1986 and therefore, any deficiency in this service is actionable under the Consumer Protection Act. In the *Station Manager Indian Airlines v. B.B.Dass*\(^{204}\), the National Commission has held that where the departure of the flight from Bhubaneswar was delayed, it was the duty of the Indian Airlines officers to use the telephones to find out departure time of the flight from Delhi. It therefore, held that there had been deficiency in the rendering of service towards the passengers by the Airlines and its staff. There was further deficiency in service when Airlines staff did not make proper arrangement for the food and stay of stranded passengers on account of delay in flight. In *Indian Airlines v. S.N. Sinha*\(^{205}\), the National Commission has held that the provision of food is one of the amenities provided to the passengers in return for payment of the fare for the journey and it forms an essential part of the service.

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\(^{203}\) AIR 1994 SC 787.

\(^{204}\) I(1992) CPJ 183 (NC).

\(^{205}\) I (1992) CPJ 62 (NC).
rendered by the Airline for the consideration received by it in the form of the price charged for the ticket. Any defect in the food supplied must therefore be regarded as a deficiency in the service rendered by Airlines. We are in complete agreement with the view expressed by the State Commission that the carrier who had actually supplied the food can only be regarded as agent of the Airline and in the event of there being any defect in the food supplied by the caterers, the principal namely. The Indian Airlines will have to bear the responsibility for the same. It also upheld the award of compensation of Rs. 2000/- by the state Commission for the inconvenience and mental shock suffered by the complainant on the feeling of the piece of metallic wire pressing against his gum while consuming rice and curry served during the flight. In Smt. Krishna & Others v. The General Manager, Northern Railways, 206 due to lack of proper care at the manned crossing the passenger travelling in the train died as one rickshaw laden with the iron door negligently came below the closed level crossing pole near the railway track and the projected iron door hit/struck the train so violently that the deceased fell down from the running train and received fatal injuries. It was held that every passenger travelling inside the train is a ‘consumer’ as defined by Section 2(1)(g) of the Consumer Protection Act 1986 by virtue of hiring service against consideration and therefore any loss or injury suffered by the passenger either at platform, inside or outside the train entitles him and his legal heirs as to a reasonable amount as compensation. It was held that so far as jurisdiction of this Commission is concerned it is not barred even in respect of any mishap or accident that occurs inside or outside the train and at the platform. As per Section 3 of the Consumer Protection Act 1986, the remedy is additional and independent remedy and not in derogation of any other law for the time being in force. This remedy involves compensation, which has too wide a connotation than what is referred and mentioned in Sections 13, 15, 124 and 124-A of the Railways Act.

In Inter Globe Aviation Ltd. v. N. Satchidananda, 207 delay in flight to take

206 Complaint Case No.154/1998, Delhi CDRC, Date of Decision: 30.03.2007.
207 2011(7) SCC 463 (SC).
off due to bad weather causing inconvenience and discomfort to passengers who were on the board. This does not amount to deficiency in service. Consumer Fora and Permanent Lok Adalats cannot award compensation merely because there was inconvenience or hardship. It was further held that whenever there is such delay beyond a reasonable period (say three hours), the passengers on board should be permitted to get back to the airport lounge. If for any unforeseen reason, the passengers are required to be on board for a period beyond three hours or more, without the flight taking off, appropriate provision for food and water should be made, apart from providing access to the toilets. In Ghaziabad Development Authority v. Balbir Singh 208 the Supreme Court has defined the word “compensation” under the Consumer Protection Act 1986 to such an extent that it includes mental agony, harassment, physical discomfort, emotional suffering, loss of life, injury damage on any count whatsoever arising from the deficiency in service or negligence of the opposite party i.e. service provider. It was held that as proper safety measures were not taken by Railways, it was guilty for deficiency in service as negligence is writ large that resulted in the death of a passenger who was inside the running train. Railways are not only required to provide efficient service and every kind of facility in the train but also it is required to maintain the safety at platform and inside the train for protecting the life and property of the passengers. 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 undertake to be performed by a person in pursuance of a contract or otherwise in relation to any service amounts to an offence of deficiency in service.

A.12.4 Deficiency in Telephone Service and Electricity Service

In General Manager, Calcutta Telephones v. Dr. Timir Baran Bhattacharjee,209 the respondent was a practising medical doctor who applied for shifting his telephone from one residence to another. This shifting took three

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years. It was held that the delay caused mental suffering, financial loss and hardship to complainant. The National Commission upheld the order of the State Commission awarding compensation of Rs. 10,000 to the complainant. Similarly, in case of Smt. M. Sabat v. D.M. Telecom,\textsuperscript{210} disconnection of the telephone without notice on the ground of non-payment of dues was held to be in violation of the principles of natural justice. In District Telecom Engineer v. Laxmi,\textsuperscript{211} the Apex Court held that District, State and National Forums coming to the conclusion that change in telephone number, only of the respondent complainant and without informing her was a deficiency in service. In Karnataka Power Transmission Corp. Ltd. v. Mani Thomas,\textsuperscript{212} the hanging electric lines came into contact with each other resulting in short circuit followed by fire due to which the entire plantation of the complainant was burnt causing huge loss. The National Commission held that the damage was caused to the complainant due to negligence of KPTCL for not having considered the grievance made by the complainant on earlier occasion. It was further held that the cause of fire was obviously due to the wires which were being left loose at a height of 8 ft. above his land. Thus, there was deficiency in service by the appellants. In Punjab S.E.B. Ltd. v. Zora Singh,\textsuperscript{213} despite deposit of the security amount and completion of all other formalities, Board was not supplying electricity connections to agriculturists. In such circumstances, the Supreme Court held that National Commission rightly found that the Board had unjustly enriched itself with the deposit amounts without rendering any service in return. Hence, the National Commission rightly directed the Board to release connections to all the applicants by the specified date and to pay interest on the deposits, compensation and costs. In H.D. Sourie v. Municipal Corporation of Delhi,\textsuperscript{214} the Delhi High Court had held that the maximum period for which a bill can be raised in respect of a

\textsuperscript{210} 1992(I) CPR 241 (Orissa CDRC).
\textsuperscript{212} II (2006) CPJ 245 (NCDRC).
\textsuperscript{213} (2005) 6 SCC 776.
\textsuperscript{214} AIR 1987 Delhi 218.
defective meter under Section 26 (6) Electricity Act, 1910 is six months and no more. It is the duty and obligation of the licensee to maintain and check the meter. *Gujarat Electricity Board v. Kantilal Rajabhai Patel*\(^{215}\) is one of the judgments of the High Court of Gujarat which clearly depicts the concern of the judiciary in mitigating the hardships caused to petty consumer of the services provided by the Electricity Department of the State Government. In this case, the plaintiff, an agriculturist, had failed a suit against the state Electricity Board for the recovery of Rs. 25,000/- as damages on the allegation that the electric supply was wrongly disconnected and that he was wrongly deprived of electric supply for a period of about three months.

In *P. Jagdeesan v. Tamil Nadu Electricity Board*, \(^{216}\) the electric supply line to the petitioner’s premises had been in existence for well over ten years prior to the date of disconnection without any objection from any quarter. The electric supply was disconnected by the Electricity Board on the ground that it was drawn across the road through which a procession of the Chief Minister was to pass and it constituted and obstruction to the free movement of the Chief Minister’s convoy. But no steps were taken by the Electricity Board to reconnect the line even after the date of the procession was over. The National Commission held that the disconnection had been made only for meeting the temporary need for enabling the Chief Minister’s convoy to pass along the road without any obstruction by the said line and in such a situation, it is obligatory on the part of the Electricity Board to reconnect the said line and to restore the supply of electricity to the complainant immediately after the temporary need was served. Thus, the failure on the part of the Electricity Board to reconnect the electric supply clearly constitutes deficiency in service. It has been held that disconnection without Notice is not tenable. This notice is contemplated to enable the defaulter to pay the amounts due and avoid disconnection or to satisfy the authorities concerned that there was no real default on his part. This notice is contemplated in

\(^{215}\) AIR 1988 Guj. 261

\(^{216}\) I (1998) CPJ 26 (NCDRC).
order to satisfy the requirements of principles of natural justice and fair play. In *Isha Marbles v. Bihar State Electricity Board*, the Supreme Court held that Section 24 of the Electricity Act comes into play when the consumer neglects to pay any charge for energy, due from him to a license, or the consumer neglects to pay sums, other than a charge for energy, due from him to the licensee. In these circumstances, the licensee (the Electricity Board) may after giving the consumer a written notice of not less than seven clear days’ cut off the supply.

**A.12.5 Deficiency in Banking Service**

In *Ganga Nagar Central Cooperative Bank Limited v. Pushpa Rani & Another*, the depositors moved a petition before the District Forum, Sri Ganganagar praying for the release of the amounts deposited by them and for compensation and interest. The District Forum in its order dated 20.1.2003 held that the money had been deposited with the Mini Bank and it alone was liable for the deficiency in services and as such the depositors were entitled to relief. The Supreme Court set aside the order of the National Commission and that of the State Commission and restored that of the District Forum. In *Citibank N.A. v. Geekay Agropack (P) Ltd.*, respondent, which was seller of goods to a company in USA, furnished necessary documents like bill of lading, invoice, etc. to its banker which in turn transmitting the documents to appellant Bank for collection of sale proceeds from purchaser in USA. Appellant Bank failed to realize sale proceeds and also to return the documents with due diligence. Held, there was deficiency of service and both the Banks were jointly and severally liable for it. Accordingly, Rs. 5 lakhs awarded as compensation for deficiency in service plus Rs. 50,000 as costs, as against total amount of Rs. 14, 37,000 claimed as value of goods, interest thereon and other expenses. In *Vijaya Bank v. Gurnam Singh*, fraudulent withdrawal from bank account was held to be liability of bank. In absence of overdraft facility to complainant, a cheque for amount in excess of

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balance amount in account of complainant, held, could not be honoured. This by itself was a glaring example of negligence/deficiency in service by bank. Direction of District Forum to appellant Bank to credit the amounts of Rs. 2500 and Rs. 3,50,000 less Rs. 5000 in the account of complainant along with interest @ 10% p.a with effect from 17.8.1999 till the date of the correct entry, affirmed. In Sovintorg (India) Pvt. Ltd. v. S.B.I.,\(^{221}\) the appellant deposited a cheque for Rs. one lakh for collection with the respondent Bank. Though the proceeds of the cheque were collected by the Bank, they were not deposited in the account of the complainant for over seven years. It was held that the respondent bank acted illegally in not crediting the cheque to the account of the appellant and denying him the benefit of this amount for over seven years. Consequently there was a grave deficiency in service on the part of the respondent Bank towards the appellant which caused serious set-back to the business of the appellant. Such failure is deficiency in service for which compensation is payable by the bank. In Dr. K.T. Shivaiah v. Canara Bank\(^ {222} \) it was held that there was deficiency in service on the part of the bank in not crediting the commuted value of the pension to the account of the appellant.

In K.S. Shetty v. P.N.B.\(^ {223} \) the complainant alleged that the loss of jewellery from the locker was caused due to negligence of the Bank employees. The state Commission opined that even if the locker was left open, how is it that it went unnoticed by the Bank employees for fifteen days? It was held that loss had occurred due to negligence for which it was liable to pay compensation. In the case of Punjab National Bank, Bombay v. K.B. Shetty,\(^ {224} \) on appeal by the Bank, the National Commission fully concurs with the findings of the State Commission in which the State Commission has taken adverse notice of the fact that the appellant bank did not probe departmentally when the locker had been found open on the 9\(^ {th} \) June, 1988 and treated the matter as closed so far as the Bank is

\(^{221}\) (1992) I Comp. L J 102 (NCDRC).
\(^{222}\) I (1992) CPJ 253 (NCDRC).
\(^{223}\) (1991) CDR 125( Mar. CDRC).
\(^{224}\) II (1991) CPJ 639 (NCDRC).
concerned. It is a matter of common knowledge, the master key of the locker is with the Bank, the locker can be opened only with the master key and the key with the locker holder. The mechanism is however, such that the locker must get closed if the locker holder takes out his key. For this, the State Commission has held that the bank is squarely responsible and therefore liable to make good the loss suffered by the respondent claimant. In *Bank of India v. HCL Ltd. & Anr.*, where the Bank had issued a Bank guarantee in favour of a complainant but paid the amount thereof after about 4 years from the date of invoking the same by the complainant, the National Commission held that the complaint was filed under the Act on the ground that the 'service' (i.e. issue of guarantee) which the Bank had undertaken to render was 'deficient'. As the bank has been deficient in rendering service which it had undertaken to perform, the State Commission was justified in awarding interest as compensation under section 14 (1) (d) of the Act.

**A.12.6 Deficiency in Housing Service**

Housing construction has specifically been brought within the meaning of services in the Consumer Protection Act, 1986 by the amendment Act of 1993. In *Sneh Chadda v. D.D.A.* where the Housing Board used a poor quality of material for construction or did not provide roads, school parks etc. as promised under the scheme of sale of its houses, it will amount to deficiency in service under the Consumer Protection Act, 1986. In the case of *Kanhaiya Lal Mathur v. Secretary, Rajasthan Housing Board, Jaipur*, the State Commission held that failure to hand over the possession of the allotted flat after completing it soon after the full price was deposited is deficiency in service as defined in Section 2(1) (g) of the Consumer protection Act. Further, the Commission ordered that in case the flat had already been allotted to some other person, a similar flat according to the choice of the complainant may be allotted to the complainant at the costs prevailing at the time of the issuance of allotment letter to the

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225 1993(3) CPR 30 (NCDRC).
226 1991 (1) CPR 532 NCDRC.
complainant for the earlier flat. The order of the State Commission was confirmed by the National Commission. The Supreme Court in *Lucknow Development Authority v. M.K. Gupta*,\(^{228}\) held that if a builder uses sub-standard material in construction or makes false or misleading representations about the conditions of the house, it is denial of the facility and the consumer is entitled to claim value under the Act.

In the case of *Bangalore Development Authority v. Syndicate Bank*,\(^ {229}\) it was held that where there is a delay in delivery of possession, the buyer is entitled to interest. The following Principles, as laid down by the Hon’ble Supreme Court in *Balbir Singh* case\(^ {230}\) which are as where no time is stipulated for performance of the contract (that is for delivery), or where time is not the essence of the contract and the buyer does not issue a notice making time the essence by fixing a reasonable time for performance, if the buyer, instead of rescinding the contract on the ground of non-performance, accepts the belated performance in terms of the contract, there is no question of any breach or payment of damages under the general law governing contracts. However, it creates any statutory obligations on the part of the development authority in the contractual field, the matter will be governed by the provisions of that statute. Where an alternative site is offered or delivered at the agreed price in view of its inability to deliver the earlier allotted plot/flat/house, or where the delay in delivering possession of the allotted plot/flat/house is for justifiable reasons, ordinarily the allottee will not be entitled to any interest or compensation. This is because the buyer has the benefit of appreciation in value. Where an alternative plot/flat/house is allotted and delivered, not at the original agreed price, but by charging current market rate which is much higher, the allottee will be entitled to interest at a reasonable rate on the amount paid towards the earlier allotment, from the date of deposit to date of delivery of the alternative plot/flat/house. In addition, he may be entitled to

\(^{228}\) 1994(1) CPR 569 (SC).
\(^{229}\) (2007) 6 SCC 711.
compensation also, determined with reference to the facts of the case, if there are no justifiable reasons for non-delivery of the first allotted plot/flat/house. Where the plot/flat/house has been allotted at a tentative or provisional price, subject to final determination of price on completion of the project (that is acquisition proceedings and development activities), the development authority will be entitled to revise or increase the price. But where the allotment is at a fixed price, and a higher price or extra payments are illegally or unjustifiably demanded and collected, the allottee will be entitled to refund of such excess with such interest, as may be determined with reference to the facts of the case.

In *Faquir Chand Gulati v. Uppal Agencies (P) Ltd.*

231, there existed a building construction agreement between landowner and builder. The Supreme Court held that failure of builder to obtain completion certificate and assessment forms from the municipal corporation concerned as per the municipal/building laws and to deliver the same to landowner was amounted to deficiency in service. Merely because the builder has applied for the completion certificate of assessment forms, it would not discharge him of his obligation to obtain and deliver those documents to landowner. If these documents are not being issued by the municipal corporation because the builder has made deviations/violations in construction, it is the duty of the builder to rectify those deviations or bring the deviations within permissible limits and obtain the said documents.

**A.12.7 Deficiency in Insurance Service**

Deficiency in insurance services arises when there is a default or negligence on the part of the service provider to settle a claim. An unreasonable delay in making the payment on a claim also amounts to deficiency of services. In fact, the National Insurance Commission has defines a ‘reasonable time frame’ within which insurance providers must settle or repudiate a claim. Any delay beyond this reasonable time frame will attract the odium of insurance deficiency. Compensation awarded to a plaintiff in case of insurance deficiency not only

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covers the actual value of the cover, but also additional damages for the mental agony caused by the delay. The case in *Oriental Insurance Co. Ltd. v. Target Plywood Industries Ltd.*,232 was that Fire insurance claimants were suffering huge loss on account of litigation lingering for 12 years. The parties were disputing over appropriate deductions from gross loss on account of alleged discrepancies in accounts and false evidence. It was held that the National Commission had not properly appreciated discrepancies in the report of surveyor, as the report did not state any reason or basis for deducting 50% from the gross loss towards discrepancies and alleged fraudulent documents. Insurer deducting 50% from the gross loss and making a full and final payment of Rs. 22,23,404 to claimant was held to be incorrect. Claimants were willing to accept deduction of 35% from the total claim. Therefore by deducting 35% from the gross loss of stock of Rs. 57,29,120.76, Insurance Company’s liability for loss was assessed at Rs. 37,23,928.49. However, since greater amount had been withdrawn as per directions of National Commission, same directed to be recovered. In *New India Assurance Co. Ltd. v. Priya Blue Industries Pvt. Ltd.*,233 Complainant purchased ship for breaking. Insured the same with appellant insurance company. Condition was stipulated to cover constructive or total loss only. In way to ship breaking yard vessel was stranded due to rough weather. Thereby damaged and could not be beached to the specified place. Resulted in total loss. Insurance company pleaded there is no total loss. As insured recovered 13 crores by selling vessel. Held, there was actual loss as ship was bought for sole purpose of breaking. As it could not be bought to destined point because of sea peril. The National commission’s order to insurance company to pay sum of Rs. 13.69 crores @ 9% interest to complaint upheld.

A.12.8 Deficiency in Service by Airlines and Courier Service

In *Inter Globe Aviation Ltd. v. N. Satchidanand*,234 it was held that even

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233 (2011) 4 SCC 231 (SC).
234 (2011) 7 SCC 463.
if no compensation is payable for the delay on account of bad weather or other conditions beyond the control of the air carrier, the airline will be made liable to pay compensation if it fails to offer the minimum facilitation in the form of refreshment/water/beverages, as also toilet facilities to the passengers who have boarded the plane. In the event of delay in departure, as such failure would amount to deficiency in service.

Where the carrier delivers consignment in contravention of instructions of consigner, it amounts to deficiency in service. In *Patel Roadways Ltd. v. Biral Yamaha Ltd.*, the respondent booked 237 consignments containing 267 generator sets at Ghaziabad in the State of Uttar Pradesh, with the appellant for transportation. The freight charges were duly paid by the consignor to the carrier and the necessary lorry receipt was issued by the latter in favour of the former. The goods booked by the respondent were destroyed in a fire which took place in the godown of the appellant shortly after booking of the consignments. The appellant however pleaded that the consignments were lost in a fire which was an accident beyond their control, and therefore, there was no deficiency in service and the complaint was not maintainable. The Apex Court held that the liability of a common carrier under the Carriers Act is that of an insurer. This position is made further clear by the provision in Section 9, in which it is specifically laid down that in a case of claim of damage for loss to or deterioration of goods entrusted to a carrier it is not necessary for the plaintiff to establish negligence. The absolute liability of the carrier is subject to the exception where the loss or damage arises from an act of God. An act of God, as has been observed by a Division Bench of the Madras High Court in *P.K. Kalasami Nadar case*, will be an extraordinary occurrence due to natural causes, which is not the result of any human intervention and which could not be avoided by any amount of foresight and care, eg. a fire caused by lightning; but an accidental fire thought it might not have resulted from any act of or omission of the common carrier, cannot be said to be an act of God.

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235 AIR 2000 SC 1461.
In the case of *Sudhir Deshpande v. Elbee Service Ltd.*, the National Commission held that the limited liability clause in the Bill in an action based on breach of contract cannot restrict the liability of the Courier for the consequences flowing out its negligence and deficiency in the performance of the service undertaken by him. It was held that there was deficiency on the part of the opposite party and that the complainant is entitled to reasonable compensation for inconvenience and mental strain. In *Air France v. Ragistan Exports, Jaipur*, the Commission held that the consignment was admittedly delayed and, therefore, it is but natural that the complainant was put to mental stress. The consignee had not received goods within a reasonable time and, therefore, must have nagged the complainant. The mercantile transactions require prompt delivery of the goods as per the order. The complainant might have suffered future loss of business, which cannot be quantified because the loss of goodwill was not specified by the complainant in terms of money. The National Commission held that the belated delivery of the consignment was regarded as deficiency in the service. In *On Dot Couriers and Cargo Limited v. M/s. Pharma Care*, it was observed by the State Commission that the burden of proof squarely lies on the Courier company to prove that the consignment was delivered to the consignee.

### A.12.9 Deficiency in University Service

In *Buddhist Mission Dental College and Hospital v. Bhupesh Khurana*, it was held that in absence of affiliation by Magadh University and recognition by the Dental Council of India, as contended in the advertisement inviting applications for admission, the appellant institute could not have started admissions to the four years’ degree course of BDS. The respondents were admitted to the BDS course for receiving education for consideration by the appellant College which was neither affiliated nor recognized for imparting education. This clearly falls within the purview of deficiency as defined in the

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236 1993 (3) CPR 32 (NCDRC).
237 NCDRC, First Appeal NO. 87 OF 2007, pronounced on 25.05.2011.
238 Appeal No. FA-8/443; Delhi CDRC, decided on 19.08.2011.
Consumer Protection Act, 1986. The Apex Court observed that the appellant institute has played with the career of the students and virtually ruined their career and the respondent students have lost two valuable academic years. Thus, order of Commission directing refund of admission expenses to students with interest @ 12% p.a. was affirmed. In *Manisha Sarwal v. Sambalpur University*, a student hired the service of the university on payment of fees for appearing at the examination and the University allotted the same Roll No. to three different students on the same subject. It was held that it was a serious negligence on the part of the university and thus, a deficiency in service.

Now the question is whether a statutory Board conducting academic examinations is a service provider and the examinee a consumer under the Act? This question came up for consideration in *Bihar School Examination Board v. Suresh Prasad Sinha*. The Apex Court held that any dispute relating to fault in holding of examination and non-declaration of result of an examinee does not fall within the purview of the Act. The fact that in the course of conducting of examination, or evaluation of answer scripts, or furnishing of mark sheets or certificates, there may be some negligence, omission or deficiency does not convert the Board into a service provider for a consideration, nor convert the examinee into a consumer who can make a complaint under the Act. The Board is not a “service provider” and a student who takes an examination is not a “consumer” and consequently, complaint under the Act will not be maintainable against the Board. The aforesaid principles were also followed in *Maharshi Dayanand University v. Surjeet Kaur*.

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240 1992( 1) CPR 215 (NCDRC).