Important studies have already been undertaken and investigated by different researchers. The implications of the research carried out on issues concerning Consumer Protection Act, have been reviewed, in order to assess their success and to bring about amendments.

Corrections & rectifications for failure in its method or technique of implementation and identify new areas to strengthen and effectively reorganize the executive structure for its effective implementation.

This is a review of the literature that is exploratory and scientific. The review conducted involves in systematically identifying, locating and analyzing the information that is relevant to the research problem.

The sources includes journals, research articles, published researches, books, thesis, judicial cases and their outcomes, as well as the e-sources.

2.1 : Review of Literature

Goyal et al, (2013)*

Has detailed the duty of business towards consumers, of providing quality goods & services at a fair price, right quantity, right time and right place as “primary”.

It cites the ancient Indian Law that not only regulated trade but social and economical life of people, through human values & codes of trade practices. It encompasses the ancient Indian literature, Manu Smriti, Narda Smriti, Brihaspati Smriti & Artha Shastra.

Hilton, (2009)*

Has detailed the history of the consumer society, it cites events in the eighteenth century how the consumer protested against the abuses of the market by boycotting products and offering alternative moral economics promoting fair and honest trade. It highlights the need for the consumer to be participative in order to enjoy a more prosperous way of life. It keys out the goal for a consumer, being “satisfaction of the individual choice”.

Panda et al, (2009)*

Plays out the ills of a globalised society, where the senior citizen an important consumer segment are the most vulnerable with complexities of psycho-socio-economic, including legal paradigms of global markets. They are victims of frauds, deception, cheating, and unfair trade practices because of declining health, social isolation and lack of knowledge. He phrases there senior citizens as “Hapless Consumers” at risk in place of “Consumer the king”.

Britt, (2008)*

This article deals with social psychology of consumer behavior. It initiates its study with anthropological, sociological, psychological and economic material that helps to understand consumer behavior. It forms the background demonstrating how behavioral science can be utilized to correlate the behavior of the business firms with consumer attitude and thereby “Decision Making” by consumer.


37. Panda et al. Journal::“The IUP Law review” volume 3 no.1 Jan 2013; ISSN 2231-3095, ICAFI University Press

**Harding et al, (2008)**

Examines the role of different economic actors in employing arguments relating to their basic legal rights to protect their interest. These commercial actors invoke their basic rights argument as a means of trumping opposing interest and claims.

It emphasizes the need for a public law discloser on basic right protection in the commercial law context of economic policy, business activities and corporate behavior.

**Ministry of Consumer Affairs, Auckland, (2005)**

This survey finds that the consumers and traders share a relative state of balance and comfort with adverse encounters are common and considered economically minor and readily passed over mainly due to its resolution by directly approaching the trader.

It highlights that consumer awareness with respect to consumer protection is very low. It finds that adverse consumer to read events are expressions of context or circumstances particularly to narrow aspect of individual transactions. It reflects on the high proportion of consumers who perceive, rightly or wrongly that they have had an adverse encounter with highly structured and formalized sectors like banks or utilities. It recommends better trade-consumer dialogue in the area of “Quoting and estimating” and the related “Work by a Tradesman”.

**Kaptan, (2004)**

This is a monograph on rural Consumers that highlights the changing pattern of the rural economy and its impact. The rural consumer was not an

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important segment. Mainly due to it low purchasing power, limited size and its narrow approach towards market. Emergence of a liberalized economy was complemented with varied marketing policies to attract rural consumers. The demography of the rural consumer has been altered with the growth of the service sector, commercialized services. Its search is the “Status of Rural Consumers” in this new economy.

Kishtwaria et al, (2004)*42

This study highlights that the main source of information regarding consumer organizations and legislation for the male was the print media and for females it was friends and neighbours. The survey notes that “Weights and Measures Act” were best known male respondents knew about the consumer forum that worked at the national level. Females were least aware of consumer legislation and consumer organization that was attributed to the high degree of illiteracy. The survey highlighted that only 48% of males and 20% females were aware of consumer forums and courts.

Kamdar, (2003)*43

It highlights the pitiable state of the consumer Dispute Redressal Commission in terms of infrastructure and manpower drawn from government departments. Justice (retd.) M.S. Rane; sum it up subtly as “We have no disciplinary control over them, pinning the problem down to the expanded mandate given to consumer courts.

The article highlights the functioning of the commission that receive complaints by the hour in comparison to the district courts to deal with complaints up to Rs. 20 Lakhs from the previous limit of Rs. 5 lakhs.

43. Kamdar S, TNN, August2003 “Consumer courts have a grievance too“.
It lists the efforts of the commission on the novel solutions of utilizing the services of retired judges and remunerating them by penalizing the guilty. It has limits the opposite party to file its reply within 30 to 45 days and levying a fine for failure, adjournments permitted was only one, with an average of 25 sittings to conclusively arrive at a verdict.

**Giram, (2003)**

Consumer protection is an integral activity of every person, since each of them is a consumer. It is an inevitable activity of every person till death. Its effective performance is primary; be its process procedure and legal aspects, so that he will not be cheated or exploited. He states that manufactures dealers or sellers are least bothered after sale which is the inception of consumer dissatisfaction. He observes that during purchase persons are deceived due to adoption of misleading or unscrupulous trading activities by the business men.

He attempts through his writing to create awareness of consumerism and its essential requirement to protect the interest of consumers against exploitation of injustice done to him. This writing covers the essential legal aspects of consumer protection act, redressal machinery under CPA. An elaborate attempt is made to analyze the problems of consumer dissatisfaction by quoting cases and its results.

**Pati**

The author cites problems encountered by consumers as far as the execution of the forums decisions are concerned. This is rectified through the consumer Protection (Amendment) Bill. Which has given greater power to the foras? He emphasizes the amendments required in regard to the selection of the forums members.

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Ammendment proposed by the Author:

To make the forums autonomous and quickly resolve consumer disputes. The first change envisaged is in the appointment of District Judge, and in the composition of District Forum

1) **District:**

A President, who is a District Judge, who should have a term of 5 years. The appointment of the District Judge/President shall be made by the High Court of that state. The salary should be reasonable and adequate.

2) **State:**

The state commission President and its members will be selected by the chief Justice of the High Court of that state and his term shall be for a period of 5 years and salary reasonable and adequate.

3) **National:**

It consists of four members and its President will be appointed by the Chief Justice. He has to be a Supreme Court Judge. The salary shall be reasonable, and shall continue to hold office of the President, till the completion of his term.

The order issued will be enforceable like any court of the country. The important amendment envisaged is [S.(25) Enforcement of orders by the Forum, the State Commission or the National Commission Every order made by the District Forum, the State Commission, or the National Commission may be enforced by the District Forum, the State Commission or the National Commission, as the case may be, in the same manner as if it were a decree or order made by a Court in a suit pending therein.
The positive of the economic reforms that were ushered in the 1990 and the several agreements signed under the World Trade Organisation (WTO). This has ushered in a transition from a predominantly a ‘Seller market’ to a ‘Buyer Market’, where choice exercised by the consumer will be influenced by the level of consumer awareness achieved. “Consumerism” means ensuring the right standards for prices goods and services. This objective can be achieved with the cooperation of all. The consumers are represented by the voluntary non-government consumer organizations, the government, the regulatory authorities, and the machinery set up to implement the act.

The author emphasizes that the future will be an era of choice for consumers due to awareness and unrestricted flow of information. His study has revealed that there is a direct relationship between literacy and consumer awareness.

It's commendable that the state of Maharashtra legislated the consumer protection rules 2000 with its main objective being a systematic organizational structure in setting up the forum, their composition, appointment, allowances, perks, tenure and most important the procedure for hearing appeals which is first of its kind.

Srinivasan, 1999

As per the author “Consumerism” dominates the Indian Market at present. Services that are not charged will not be admissible under the act, for such services the government will have its own regulatory authority to monitor such services and the procedure to be followed for services offered.

The author has brought out possible flaws in the implementation of the Citizen Charter and the fixing of accountability. This to a certain limit is taken

46. Maharashtra consumer protection rules 2000 (www.maharashtra.gov.in)
47. Srinivasan K, 1999, “A new era in consumerism” - Secretary, Department of Consumer Affairs, Government of India, New Delhi. THE HINDU.
care of by the regulatory bodies e.g. Telecom Regulatory Authority of India (TRAI) where the consumers importance and interest is its top priority. He list problem areas like telecom, power, transport and water supply where grievances seem to mount having no proper resolution.

The author suggest remedial measures like

i) The governments more aggressive role in increasing consumer awareness.

ii) Consumer education.

iii) Improving the Infrastructure.

iv) More financial allocation. The author suggests that the funds for consumer welfare fund be increased to help the financial weaker sections. The annual ritual of celebrating world Consumer Day on 15\textsuperscript{th} March has not been successful.

India with its diversity requires not one but several Ralph Nadars to boost awareness on consumer rights. The survey concluded significantly a high level of ignorance on consumer rights both in urban and rural areas. In this context he quotes the objectives of the united nations: They are:

The UN for Consumer Protection are meant to achieve the following objectives:

i) To achieve and maintain adequate protection.

ii) To facilitate production and distribution in response to needs and desires of consumers.

iii) To encourage ethical conduct for those engaged in production and distribution.

iv) To curb abusive business practices.

v) To facilitate development of independent consumer groups.

vi) To infuse international co-operation in the field of consumer protection.
vii) To encourage market conditions for greater consumer choice at lower prices.

It is interesting to note that in spite of U.N. recognition, encouragement from the developed countries and the pro-active role played by the Government, the consumer in India still does not get his due. It is time that he wakes up and realizes his rights.

Even the great Hanuman required someone older and wiser to remind him of his potential strength. It will be useful if voluntary consumer organizations take up this role and make way for the realization of the objectives of the U.N. guidelines and the Consumer Protection Act.

**Prabhat, (1998)**

This book deals with the consumption behavior of urban consumers in India. The study covers three different planks:

1) Analysis of the rising consumption patterns, the income-consumption relationships and the projection of consumption there from;
2) Identification of existing heterogeneity in the level and pattern of consumption between the urban sectors of 15 major states of India.
3) Analysis of the extent to which occupation, age, female education, religion and caste tend to affect the consumption patterns.

The emerging proposition is based not only on the secondary data analysis but also the verification thereof through a micro level primary investigation. Consequently, the projections and recommendations are based on the testification of facts at two different levels-macro and micro.

In the wake of liberalized economic policy the urban consumers, as potential buyers of variety of goods, are likely to hold the key of an expanded market. In view of this, studying urban consumers looks important, although, no serious attempt is seen to have been made in this field for the last two decades or so. This book, therefore, fulfills an important gap in this regard.

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Foxall, (1983)*49

The book addresses major theme but employs original criticism & an innovator theoretical perspective to reinterpret consumer behavior & redirect consumer research & marketing management. This book determines consumer’s choice by influencing their psychological processes.

The author argues that it is not attitudes or mental processes that reflect their choices but the consumer’s actual behavior. So the consumer’s choices themselves become the focus of the research & the managerial action.

Chadha R, (1995)*50;

The book highlights through its survey that are well documented through its tables & exhibits about the urban Indian woman who is the primary decision maker for consumer products. The Indian woman has evolved over the years due to access to education & being gainfully employed. There has been an evolution & the direction she is likely to take in the future in her lifestyle & consumption behavior.

The best part of this book is that the core of the analysis is based on the in-depth information & hard data generated through the special studies conducted by the marketing & research department of a MNC ‘Hindustan Lever’ & has a clear marketing orientation resulting from three decades of studies on Indian consumers in country’s leading industrial house, manufacturing & marketing consumer products.

The extensive research material is available for planning & designing of marketing strategies for consumer products. Another highlight of the book is the target group ‘Housewives’ by demographics & examines their changing attitudes & roles for buying decisions in the changing scenario.


Consumer Guidance Society Of India Forum, 2000*51

Consumer who complain allow themselves to be brainwashed into believing that they are trouble-makers. Manufactures and retailers fob off dissatisfied consumers with a bland: "We have had no complaints."

Consumer must not hesitate to complain about adulteration, sub-standard drugs and cosmetics, shoddy product quality, unsatisfactory after-sales service, etc. Indian consumers are fortunate to be covered by the Consumer Protection Act 1986.

Special Consumer Courts and a Directorate to implement the Act. There is also the Package Commodities Act which insists that weights, price, date of manufacture and ingredients are marked on all packages.

This Act, as well as "Agmark" and the "ISI" mark, can be of substantial assistance in the fight for consumer's rights. Vigilant consumerism can put teeth into their function.

Authur Best's, when Consumer Complain, (1988)*52

This book draws out the scope of complaints that consumer's encounter, the nature of these consumer complaints and the institutions that have been set up to handle these complaints. The process of consumer complaints has been described in three stages that is

a) Perceiving the problem

b) Recording the complaint

c) Resolving the complaint

The book illustrates the many hurdles and difficulties in the machinery for resolving complaints through citation of case studies.

Gurbax Singh’s, Law of Consumer Protection, (1989)*53

This book traces the problem of consumer protection through its history, highlighting the contribution of the machinery that have been set up under the act and controversies created by orders for services that were provided free.

He has examined the functioning of this structure mechanism instituted to deal with redressal of consumer complaints and problems that are associated with the country.

The focus has been on the progress made by judgements delivered setting precedents. His emphasis on consumer educating and boycotts as non-legal measures is appreciable

Gurjeet Singh*54

This article gives a peep into the issues faced by consumers in India. Controversial judicial decisions that have highlighted issues where services are provided free of charge or under personal contract and for commercial purpose have been examined highlighting problems with the redressal mechanisms and forums. His study emphasis on the need for non legal measures.

Rajendra Kumar Nayak,*55

The author is critical of the Indian Consumer and holds them responsible for their exploitation due to their attitude of indifference. His view about the consumer legislation in India is one of perfection and he blames the consumer for his lack of interest in utilizing the instruments available to redress their grievance.

His article discusses and examines the role of the government on warranty quality, and identifying the cheating methods used and the use of legislations to protect the consumer. He proposes in his study the establishment of an ombudsman for consumers and the establishment of a separate ministry of consumer affairs.

ASSOCHAM Monographs (1990)*56

The study emphasis the need to bring about consumer awareness in terms of their rights aggressively and as a primary project to eliminate rouge businessmen and their unfair trade practices. The review has established a very low level of consumer awareness in India.

Bhutani, (1991)*57

His study on consumer awareness with special reference to services in textile starkly shows only 2% respondents aware of the District forum for consumer redressal.

Dhyani & Sakalani58, (1994)

The study conducted by them in Northern India with reference to knowledge of buyers towards their rights with its association to literacy, income but omitting the age groups per se.

Singh & Balachandran59, (1994)

Their findings about awareness of the Consumer Protection Act have shown very positively that the increase in income and literacy levels of the

consumers shows a high level of awareness but with a comment of the educated consumers that the procedure of redressing the grievance was time consuming and not worth the trouble.

**Consumer awareness:**

The government has been bringing about awareness through advertisements skits, short films etc… that help to communicate to the consumers. There is a need for being vigilant. This has resulted in business houses being conscious of their duty to produce quality goods and service.

**CONSUMER GRIEVANCE REDRESSAL**

Consumers need an inexpensive and quick grievance redressal mechanism to ensure that manufacturers and service providers are accountable for the price and quality that the consumers are entitled to.”

The functioning of the redressal mechanism has been noteworthy. As is evident from its performance to date. (Annexure-I, II, III & IV).

The government has also been providing financial assistance through its department to the states to provide infrastructure that will be required to make the implementation of the Act more effective.

**CONSUMER PROTECTION (AMENDMENT) BILL, 2011**

The act has been amended three times in the year 1991 in the year 1993 and in the year 2002 and year 2010. The changes that were made:

a) To have a minimum strength at the district forums in 1991.

b) To strengthen the act by adding new areas that were not covered in 1993.

c) To resolve the complaints of consumers in the shortest possible time in 2002.

d) To levy penalty on range businessmen for cheating consumers in 2011.

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60. Dr. Durga Surakha, “Consumer Awareness about Rights & Grievance Redressal”, 2010, pg 8-19 [www.ncrdc.in]
In 2011 the government laid down the additional objectives for consumer protection.
   a) To include services in addition to goods under the act.
   b) To resolve the consumer disputes within a fixed period.
   c) To have a well laid out procedure to select the members of the forum.
   d) To give enforcement authority to the consumer courts.
   e) To levy fines on rouge businessmen and award consumers cheated by them.

2.2: Case Studies and Precedents

Review of Judgments under CPA that have set Precedents

The case studies reviewed have been classified into seven different categories for a better understanding effectiveness of the Consumer Protection Act

The Judgments*61 have been classified as:

1) Services
2) Medical and Paramedical Services
3) Banking and Financial Institutions
4) Real Estate
5) Insurance Sector
6) Education
7) General Products & Services

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61. Judgements & Case studies: Times of India “Consumer is King” Jehangir B Gai and others.
2.2.1: Services:

Public Sector Undertakings covered as service providers (railways/Public bus transport airlines etc....Earlier these service providers under the garb of railway/ bus/ airlines Accident Tribunal awarded the victims meager compensation with limited liability.

As in the case of Railways maximum liability:

- Rs. 4 Lakh for death, loss of both hands or legs deafness, disfiguring of face.
- Rs. 32,000 to Rs. 3,60,000 for other injuries.

For Airlines & For Public Bus Transport (Varying from state to state)

2.2.1 a) CASE 1

“The National Consumer Disputes Redressal Commission in 1995 upheld that the commuters are consumers provided they possess a valid ticket or season pass at the time of the unfortunate happenings provided it is an accidental death caused due to negligence and deficiency of service.”

On 11th January, 2014, Ms. Monika More a 16 year old college student lost her arms under a train after falling into a gap between the train and platform at Ghatkopar station, Mumbai. The public relation officer the next day called her accident as a case of trespassing.

The railways/bus carriages and airways are service providers. They are in a consumer relationship with commuters and therefore in the above case of Monika More have all the ingredients of being admitted in a consumer forum. To prove that she is a consumer she needs to produce the following:

1) Valid daily ticket or
2) Season ticket
And state with conviction that the gap between the platform and train was the cause of her accident.

The railways can be held guilty for deficiency of service and will receive a suitable compensation definitely much more than what is stated in the accident tribunal act, for the permanent disability that she suffered, provide she lodge her complaint with the appropriate forum within the period as specified under CPA.

**The process to be followed by the complainant would be as follows:**

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<td>i</td>
<td>The complaint needs to be typed on a legal paper as per requirement with the annexure of the ticket or pass as the case may be and submit the same at any of the six district consumer disputes redressal forums in the Mumbai Metropolitan region.</td>
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<tr>
<td>ii</td>
<td>The forum admits the complaint within 21 days and issues notice to the service provider.</td>
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<td>iii</td>
<td>The service provider is given 30 days to respond to the notice, and a further grace period of 15 days can be given. If no reply is received the forum can hear matter ex-parte and pass order.</td>
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<tr>
<td>iv</td>
<td>If order is unsatisfactory, appeal will have to be filed at the state commission and if not satisfied by their order.</td>
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<tr>
<td>v</td>
<td>File appeal with the National Commission.</td>
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In the year 2011 the National Commission ruled in favour of a woman whose husband was run over by a goods train in 2003 while he was crossing the railway tracks at a spot where there was no railway bridge.

The National Commission upheld that even though the person in question did not hold a valid ticket, the accident occurred at an unmanned railway crossing and termed it as a deficiency of service and reiterated its jurisdiction.
2.2.1 c) CASE 2:

In 1990 Kabita Hansaria aged 21 years died while passing through interconnecting compartments on a long distance train. Her claimants proved before the commission that the vestibule connecting the compartments did not have safety grills which was a case of deficiency of service causing accidental death thereby covered by the provisions of the Act. This was upheld by the National Commission in 1995.

This is a Landmark case as the National Commission made a clear distinction between a train accident and an accidental death and that the railway passenger is a consumer.

A similar case for the airways a very recent one can be cited where the passenger died in the escalator crash when she was boarding the airplane.

2.2.1 d) CASE 3:

“Lack of passenger facility’s at railway stations or the airport as basic as toilets has been termed as deficiency of services.”

In 2007 a female commuter had begun menstruating and looked for a toilet at Dadar station . She found one locked and requested the railway staff on duty to use the facility.

She was rudely told to approach the station master . She was also physically abused by the cleaners. The chief booking officer arrived at the scene exactly 35 minutes later and seeing the complainant in dire straits ordered to open the facility.

She sent a written complaint to the divisional manager stating that she was mentally, psychologically and physically affected because of the attitude of the railway staff on duty at that time. She said that she lost her confidence, self- esteem and self respect.
The railways in their reply termed the above as a gynecological problem. It further claimed that the complainant could have used the toilet facility at the Terminus end or a municipal toilet just outside the railway station.

It further stated that the foot bridge toilet was closed for security reasons and that it had reprimanded its staff for their uncooperative and rude behavior.

The Consumer forum held the railways responsible for deficiency of service.

2.2.1 e) CASE 4:

“When a customer has cancelled a ticket much prior to the scheduled flight date and claims a refund, a refusal to make the refund is strongly deprecated.”

Mr. Vishwanathan v/s Air France and Ticketing agents Benzyl Tours & Travels and Rashmika Travel Consultants

The complainant had booked the tickets on 11th October, 2007 for journey commencing on 29th January, 2008. On 18th November, 2007 his grandson was hospitalized and on the advice of his doctors was left with no alternative but to cancel his trip.

He requested for cancellation of his tickets on 19th December, 2007 along with a medical report. He was assured that after due cancellation charges the balance would be refunded, but he never received it. He filed a complaint for the same with the Additional Mumbai Suburban District Redressal forum in May, 2008.

The airline and the travel agent pleaded that the flight tickets were non-refundable since no mention of it appeared on the ticket.

The forum concluded that when nothing is mentioned in the ticket about non-refund of fare in case of cancellation of ticket, the act on the part of the air authority to refuse refund is objectionable, specifically when the cancellation was much prior to the scheduled flight.
The Additional Mumbai Suburban District Consumer Disputes Redressal forum in May 2008 ruled in favour of Mr. Vishwanathan for full refund citing that “When nothing is mentioned in the ticket about non-refund of fare in case of cancellation of ticket, the act on the part of the air authority not to grant refund is definitely objectionable, especially when the bookings of the tickets was cancelled much prior to schedule flight”.

2.2.2: Medical and Paramedical Services

Earlier this service being ‘NOBLE SERVICE’ for reasons best known, never caught the attention of the consumer forums for any act of medical negligence. The patient was not treated as a client and thereby a consumer

2.2.2 a) CASE 1:

“Consent obtained by doctor before any surgery is not a mere paper formality. It has meaning and purpose. The doctor is required to provide information related to the operation theater documents and a case sheet copy explaining the pros and cons of the procedure to be performed”.

Kusuma Secunderabad v/s Dr. Padmini Valluri of Yashoda Group of Hospitals

The National Commission has elaborately dealt with the concept of consent in the case of patient Kusuma Secunderabad v/s Dr. Padmini Valluri of Yashoda Group of Hospitals and concurred that “Every adult of sound mind has a right to determine what shall be done with her/his body and a surgeon who performs an operation without the patient’s consent commits an assault for which she/he is liable in damages.

This holds good except in medical emergencies where a patient is unconscious and it is necessary to operate without delay".
2.2.2 b) CASE 2:

The Maharashtra State Consumer has ruled in favour of a couple for the failure of the Gynecologist for failing to inform the mother to be about certain test that could help diagnose late motherhood potential impact on baby health causing “Down Syndromes”.

2.2.2 c) CASE 3:

Shabana Khan v/s Cooper Hospital (2003)

The complainant availed medical facilities for free i.e. no consideration. Payment made was Rs. 10 only for registration fees which cannot be construed as professional fees.

The District forum remarked that “it (the decision) is highly regrettable and painful but inevitable. “Stating that a person availing freeservice is not entitled to redressal from the forum, as the provisions contained in the CPA, a person becomes a consumer if services are availed for payment of consideration for availing services or purchase of goods, such person would not become a consumer within the meaning of section 2(1) (d). of the Act.”

2.2.2 d) CASE 4:

B.L.Gupta v/s Navjyoti Eye Centre.

B.L.Gupta a diabetic for 30 years and suffered from diabetic retinopathy. His complaint alleged that multiple surgeries had been performed to extract money and negligence resulted in him losing his vision which led to depression.

The National Commission did not accept the complainant’s allegation citing that “Medicine not being an exact science is dependent on several factors that contribute to the success or failure of a treatment. Unless a
doctor deviates from the standard accepted medical procedure or of she/he does not exercise ordinary skill and prudence expected of a professional, he cannot be held liable for the treatment's outcome”.

2.2.3 : Banking & Financial Institutions

2.2.3 a) CASE 1:

KETKI MEHTA V/S Bank of Baroda’s

“Deficiency of Service on part of bank, insisting on its consumer to provide security for clearing foreign cheques despite it being en-cashed and lying in the customer’s account.”

The case pertains to the loss suffered by the complainant of over Rs.1.5 lakhs after she was asked to deposit security by a bank for getting her cheque of $10,000 cleared a decade ago.

The state Commission ruled that the complainant was not only to be compensated for the money that she lost but also for mental agony suffered. The commission pointed out a deficiency of service on the part of the Bank as the proceeds were lying in their Vile Parle Branch and the same was not communicated.

The forum ruled that it was illegal and unnecessary to retain the security by the opponent when the proceeds for the said cheque of $10,000 was already lying in one of their branches.

Mehta was compensated Rs.1,70,000/- as loss suffered due to holding back the security by the bank along with interest on the said amount @ 9% p.a. from the date of complaint that is 10th August,2005 till realization besides Rs.10,000 each for mental agony and cost of proceedings.
2.2.3 b) CASE 2:

**Ishwar Piraji Kalpatri v/s Syndicate Bank (2001):**

“Cheque’s forwarded from treasury office at Jalna not credited to his Syndicate Bank account, the proceeds were wrongly put into the Suspense account.”

This incident took place in December, 1999 when the complainant was in need of his own funds required to undergo a heart operation a clear case of deficiency of service.

The bank only expressed regret for inconvenience caused by its letter dated 10th July, 2000. The complainant asked to initiate action against the employee of the bank for defrauding his accounts. No response from the bank even after persual.

Complainant files a consumer complaint claiming Rs. 5 lakhs as compensation and Rs. 14 lakh for fraudulent act on the part of the bank.

The Commission concurred that it was agonizing for the complainant and his family at that point of time, and were more over required to agitate for a long period of time, no action taken record even to this date before the commission.

The commission noted that there was lack of due diligence which is a serious anomaly on the part of the bank. The complainant was partly allowed 4% p.a..

2.2.3 c) CASE 3:

**Ramker Jaiswal v/s Canara Bank:**

At the Thane District Consumer Disputes Redressal forum.

It is the duty of the bank while clearing bearer cheques for withdrawals of Rs. 50,000 and above as per Reserve Bank of India instructions to verify the
identity of the person presenting the cheque by checking his PAN card or
Bank records which includes account holders signature.

“Due diligence is to be adopted by the bank while clearing cheques
failure to do so is a deficiency of service.”

The complainant was awarded Rs. 7.2 lakhs which included Rs. 1,00,000
that was fraudulently withdrawn by encashing a forged bearer cheque and
interest @10% p.a. from July 2007 the date of withdrawal.

2.2.3 d) CASE 4:

Snehal Waikul v/s Mahindra & Mahindra Finance Services

The complainant applied for a car loan with Mahindra & Mahindra Finance
Services. Rupees 2.84 lakhs was sanctioned as loan amount to purchase the
car Maruti Zen, to be paid in 36 equated monthly installments of Rs.10,170/-
each for which post dated cheques were obtained from the complainant.

Snehals husband who was a tailor by profession used the car to carriage
the cloth material and stitched clothes. After paying 17 installments amounting
to Rs.1,72,809/- the complainant defaulted in repayment.

The company forcibly seized the car through its recovery agents without
giving notice. At the time of seizure Rs.1.2 lakh worth cloth was also seized as
per the panchanama recorded by the recovery agency.

The complainant contacted the finance company and was told to pay
Rs.40,670/- when the complainant went to pay the said amount it was
enhanced to Rs.88,486 calculated to include other charges.

When the complainant went to pay the amount demanded, the company
ordered him to pay in one single installment entire outstanding amount of
Rs.2,13,798/- which the complainant was not in a position to pay. The
company failed to return the cloth seized with the car that resulted in the
complainant husband losing his source of livelihood.
The complainant filed her complaint with the Mumbai District Forum. The company stated before the commission that the car had been voluntarily surrendered which was found to be incorrect as per the statement of recovery agency. The company also alleged that the car had been sold by the complainant which was found to be incorrect as per RTO records.

The Forum directed the company to refund the entire amount of Rs.1,72,809 which was paid by the complainant along with interest @9% p.a. along with legal cost of Rs.5,000/-

The company appealed against this order at the State Commission after a delay of 126 days citing that the company had shifted its premises which was not accepted by the commission and the district forums order was upheld.

The company then appealed at the National Commission, The commission in its order dated 18th September 2010, indicted Mahindra & Mahindra Finance for not having appeared before the district forum and for filing its appeal that was barred in time.

"Strictures were passed against the said company for using its financial muscle to muzzle the hapless complainant from legitimately follow up their grievance “

The District order was upheld besides the company was ordered to pay an additional amount of Rs. 25,000/- to cover legal cost.

2.2.4 : Real Estate

The State Consumer Commission of Maharashtra has ruled that “Occupation and Completion Certificates from the concerned authority and handing them over with other relevant documents to the society is the responsibility of the builder. The clients / consumers are entitled to legal and proper possession of the flats with carpet area as promised by agreement”.

2.2.4 a) CASE 1:

91 members of Tilak Nagar Royal Co-Operative Housing Society v/s Vinaya Builders

The State Consumer Commission of Maharashtra has ruled that “Occupation and Completion Certificates from the concerned authority and handing them over with other relevant documents to the society is the responsibility of the builder.

The clients / consumers are entitled to legal and proper possession of the flats with carpet area as promised by agreement”. The builders in the above case were required to reimburse for excess water charges and excess property tax that the resident consumers had to paid holding the builder responsible for the same.

2.2.4 b) CASE 2:

“A person who invests in real estate is not a consumer”. “Consumer Protection is for Consumers not commerce”.

In several cases it has been noticed that investors with objective of commerce when short changed/duped instead of approaching the civil courts apparently make out their cases to be heard at consumer forums since proceedings under the Consumer Protection Act are by comparison simpler, less costly and faster camouflaging their transaction to be a consumer dispute.

“A complaint under the Consumer Protection Act is maintainable provided the buyer fits within the definition of consumer under the CPA. A consumer is one who buys goods or avails of service for his own use.”
2.2.4 c) CASE 3:  

**Dr. Gupta v/s Omaxane Azomsim Developers**

Dr. Gupta on behalf of his daughter Saavi Gupta had purchased four properties from Omaxane Azomsim Developers. The purchaser made payments in installments but they were not paid by due dates. The builder intimated the purchaser of the prize being revised for one such property from Rs. 4.04 crores to Rs. 4.35 crores. The purchase at that point of time had already made payment of Rs. 2.17 crore more than half its cost.

The purchaser protested but the builder did not relent and cancelled the booking. The purchaser filed a complaint before the National Commission Claiming for re-allotment at original rate or compensation of Rs. 5 crore along with 24% interest.

The Commission observed that the purchaser had booked four properties all in the same name. In an affidavit filed by the purchaser the 1st property was purchased to improve his daughter Saavi’s future and marriage prospects; the second property was purchased for himself, his wife and his parents and the third property was purchased for his minor son. The fourth did not find mention in the affidavit.

The Commission had to decide whether the dispute could be maintained under the CPA and whether the complainant could be termed as “Consumer’ or not.

To answer the above the Commission was required to ascertain the objectives in purchase of the four properties. i.e.

i) to **Earn Profits**.

ii) For **self employment**

iii) for **own use**.

The commission after reviewing several of its judgment and those of the Supreme court. In Bihar school Examination Board v/s Suresh Prasad Sinha [IV(2010) CPJ 34(SC)] the apex court had held that a consumer is a person
who avails any service for consideration, but would exclude those who
avail of services for commercial purpose.

The commission dismissed the complaint of Dr. Gupta since he could not
be considered as a consumer since the properties had been booked with
intent of being an investment. The complainant in the above dispute Lost
since he had booked more than one property and could not establish the
reason for investing in the fourth property.

2.2.4 d) CASE 4:

In Monstera Estate Pvt. Ltd. v/s Ardee Infrastructure Pvt. Ltd.
{IV(2010) CPJ 299 (NC)}

The National Commission had held that purpose of space by a a company
for its showroom would be constituted as a service for “commercial Purpose”,
and thereby not falling under the purview of the CPA.

2.2.4 e) CASE 5:

Shaji Jhavir v/s Builders Riverwood Park in Kalyan.

On the Bench : Umesh Jhawalikar and member N.D. Kadam (District
Consumer Redressal Forums Thane).

The complainant in the above case was fined Rs. 5,000 for concealing
vital facts. The respondent in the above case proved before the forum that the
complainant had concealed vital facts before the forum.

The complainant was required to pay the balance of the amount for the flat
allotted to him before February, 2008. The respondent had made every effort
till 2012 to recover the balance from the complainant.

The failure of the complainant compelled the respondent to cancel the
allotment. When these facts were brought before the forum the forum
dismissed the complaint and fined the complainant for concealing the facts.
2.2.4 f) CASE 6:

**Menu Aggarwal v/s JMD Ltd. Gurgaon Haryana**

Order delivered by the National Commission on 7th February 2014 by Justice K.S. Chaudhari along with Dr. B.C.Gupta

“Service provider is not concerned with consumer’s personal problems, however genuine or unexpected they may be.”

The complainant had booked a flat in a building constructed by the respondents in Haryana. As per the agreement dated 1st April, 2006 the flat was to be sold for Rs.28,59,375/- payable in installments.

The complainant had paid three installments of Rs.12,67,723/- by cheque and Rs.5,70,000/- by cash. The complainant’s mother fell ill and died as a result of which the complainant defaulted on her payments despite several reminders.

The agreement provided that delay in payment attracted interest @ 18% p.a. The complainant requested the builder to accept the balance with interest but the builder refused.

The complainant was then filed by Menu with the District Forum after the builder refunded the amount paid by pay order cheque and a letter cancelling the allotment of the flat. The builder in the time lapse sold the allotment to another customer.

The State Commission directed the builder to accept the balance with interest @ 18% p.a. along with cost of Rs.11,000/-. The builder being aggrieved by the order appealed to the National Commission. The commission noted various clauses of the agreement. One of them pertained to timely installments and failure to abide would entail forfeiture of earnest money and cancellation of agreement.

Since the builder had sent reminders to the complainant to pay the delayed installments the complainant failed to comply within the allocated time. The Commission observed that the clause of accepting delayed
payments vested with the builder and in no way conferred any rights on the purchaser to force the builder to accept the delayed payment.

The complainant cited the illness of her mother and her untimely demise as the cause of delay, but the commission did not accept it and stated Personal issues in no way can be influence contractual agreement and passed an order in favour of the builder, as far as the cash payments refund was concerned the Commission refused to oblige as there was no evidence to show cash payments had been made.

2.2.5 Insurance Sector

2.2.5 a) CASE 1:

Manjeet Singh v/s Postal Life Insurance

Ajit Bhavihoke for the bench, with Suresh Chauhan, 16th December, 2013.

A person may be unaware that he suffers from a disease till it causes him/herself to be physically afflicted by it. If a person is unaware about a disease that he has and does not record it at the time of the purchase of an insurance policy, it does not amount to hiding of the fact until and unless it is proved otherwise.

In the above the deceased had subscribed for a life insurance for a sum of Rs.2,00,000. Unfortunately he expired within a year of subscribing for the same. The insurance claim was dismissed as he had died of AIDS.

The District forum asked the insurer to pay claim as it ruled the insurer was entitled to ask a person to undergo medical examination before issuing the policy.
The Insurer appealed before the Haryana State Commission it observed that being an army man and under category “AYE/Shape-1 was exempt from undergoing medical examination.

The State Commission upheld the Forums Order and dismissed the appeal.

The Insurer appealed to the National Commission. It ruled that there was no evidence to show whether or not the doctor who knew about the illness had communicated the same to the deceased.

2.2.5 b) CASE 2:

Kiran Patel v/s Life Insurance Corporation of India.

Mumbai Suburban District Consumer Redressal Forum

“When evidence brought on record is sufficient to conclude that the deceased died due to a fall, which is sufficient to conclude due to accidental death, the complainant fulfills the parameter for getting double accident benefit “

It relied on a National Commission order, that had observed that even the murder of a person and his death due to murder is an accidental death.

The complainant was awarded Rs. 5.30 Lakhs as Insurance amount and an additional Rs. 3.71 Lakh as Interest.

2.2.5 c) CASE 3:

Manicklal Rathi v/s National Insurance Company Ltd.

The bench comprising President R. Mohandas and member T. Kalaiyarari

“If there is any ambiguity in the terms of an insurance policy, the benefit should go to the consumer.”
The Consumer Protection Council, Tamil Nadu had filed a complaint on behalf of Manicklal Rathi at the District Consumer Disputes Redressal forum, Chennai (North).

The insurance company was found guilty of negligence and deficiency in service and directed to reimburse medical cost incurred in full along with interest @ 9% besides Rs. 5,000 for deficiency of services and another Rs. 2,000 as litigation cost.

2.2.5 d) CASE 4:

**Darshak Mahesh Shah v/s L.I.C. of India**

“Unilateral change in policy terms without consent of the insured is illegal and constitutes a deficiency in service.”

The complainant had taken LIC Bal Vidya Policy (without Profit) for educational expenses of his son. The policy with a sum insured for Rs.1 lakh was taken on 15\(^{th}\) July,2002 to continue for 18 years that is upto 15\(^{th}\) July,2024. The Policy assured 1% of the sum insured to be paid every month from 15\(^{th}\) July 2006 to 15\(^{th}\) June,2010; 2% of the sum insured to be paid every month from 15\(^{th}\) July 2010 to 15\(^{th}\) June,2018 and finally 4% of the sum insured to be paid every month from 15\(^{th}\) July 2018 to 15\(^{th}\) July,2024.

LIC unilaterally paid just 1%per month of insured value after 15\(^{th}\) July,2010. The complainant informed LIC about it ,they refused to entertain his grievance. He then approached the Ombudsman who informed him without assigning any reason that the grievance could not be processed as LIC’s response was found to be satisfactory.

The complainant approached with the Consumer Welfare Association since there were a large number of aggrieved consumers with the above policy for similar reasons which filed a complaint on their behalf with the South Mumbai District Consumer Forum.
After considering the SC judgment in United Insurance company Ltd. v/s MKJ Corporation where it was held that the fundamental principle of Insurance law requires utmost good faith to be observed by the Insured and the Insurance firm forbidding either party from concealment or non-disclosure. After completion of the contract, no material alteration can be made in its terms except by mutual consent.

The forum in its order said the terms could not be varied after commencement of the policy. The Forum termed this alteration illegal and that it constituted deficiency. LIC was directed to make payment as per terms of the policy issued to Mr. Shah besides levying interest @ 9% from the due date of each installment till actual settlement.

2.2.6 : Education

2.2.6 a) Case 1:

Shirish Desai v/s D.Y.Patil College of Architecture, Nerul

A student who wants to cancel his admission before the commencement of the academic period has to be refunded his fees.

The Additional Mumbai Suburban District Consumer Disputes Redressal Forum on July 28, 2010 ruled in favour of Shirish Desai where the educational institution was required to refund the fees and a compensation of Rs. 36,000.

The complainant had secured admission for his daughter at D. Y. Patil College of Architecture, since he also secured admission at JJ College of Architecture before the commencement of the course he sought to withdraw admission from D. Y. Patil and wanted a refund of his fees.

The college said it would be done if another student took admission in his daughters place. It sent him cheques of Rs. 7,000/- each in December 2008 and September 2009 these could not be encashed as they had incorrect names even after several reminders.
The forum in its order said that since the complainant had withdrawn his admission without availing any service from the college, he was entitled to a refund along with interest and a compensation of Rs.36,000/-

2.2.7 : General Consumer Products / Services

2.2.7 a) Case 1:

Savitri Anandram v/s Hindustan Lever Ltd. (now Hindustan Unilever) & its state stockiest (Meera Agencies in Chennai) & Contractual Manufacturer of the product Carrif Maron & Co. P Ltd. Kolkata.

In the year 2000 the complainant who had purchased a Jam bottle of Hindustan Liver Ltd., Glass Pieces were found in the bottle of Jam. The District Consumer Disputes Redressal forum (north) Chennai after 13 years and getting confirmation of the presence of glass particles in the jam after sample analysis by the department of public health and preventive medicines, noted the serious lapse in quality control and imposed an exemplary fine of Rs. 40,000 on the manufacturer.

2.2.7 b) Case 2:

S.K.Taing v/s Hotel Sealord at Carnac Bunder (Mumbai).

Maharashtra State Consumer Commission presided by bench of Usha Thakare and Narendra Kawade.

S. K. Taing was left permanently disabled in early February 6th, 1998 when the entire hotel was plunged into darkness due to power failure in the area. Mistaking the lift door that was open to be his room door on the second floor he entered and plunged 2 floors down in the lift shaft that was left open and unattended.
The hotel was pronounced “guilty of deficiency in service” for not having back-up plan in the event of power failure.

The complainant was to be compensated Rs. 3 lakhs by State Commission order passed in December 2013 @ 6% interest since 1998 by 23rd January 2014. (16 years).

2.2.7 c) Case 3:

Dharmendra choukse v/s Julia Tailors.

District Consumer forum in Indore.

Tailor directed to pay Rs. 3,050 by the forum for stitching two loose trousers for the complainants brother in-law causing him embarrassment and mental agony at his wedding. Since the tailor failed to redress the complainant after several reminders.

2.2.7 d) Case 4:

Mr. Vipin Handa (legal heirs) v/s Otis Elevator company Ltd.

“The Consumer Protection Act is a law to correct the system of society. The judgment will go a long way to ensure that maintenance personnel and buildings where lifts are installed carry out their duties. The order sends a strong signal to those who do not take their jobs seriously” Shirish Deshpande

The legal heirs of Vipin Handa filed a complaint with the NCDRC. He was killed in the lift mishap that took place at the RAW headquarters it was proved that Otis elevators had failed to provide a voltage stabilizer while installing the lift which was responsible for the crash and RAW guilty for not insisting on a stabilizer, failing to ensure that the lift maintenance contract was being followed through and turning a blind eye to complaints received against the manufacturer.
The National Commission issued an order for compensation of Rs.5.9 crores to the family of the victim after nearly eleven years of the fatal accident to the family of the RAW officer killed in the accident.

2.2.7 e) Case 5:

Agriculturist of Mohegaon Deshmukh Taluka Ahmednagar (Filed Individually ) v/s Government of Maharashtra

“Water Supply a Service, Tax payers Consumers ”

The complaints filed by the agriculturist pertained to the lack of water supply for which they were paying taxes, had resulted in lower crop yields incurring losses.

The District forum dismissed the complaint saying the government cannot be termed a service provider and that the agriculturist were not consumers as the taxes that were paid was credited to the consolidated fund of the state and there was no element of profit earnings.

The complainant not satisfied by the order appealed to the State Commission which reversed the order, holding that “water tax” payment was in the nature of a fee, which would entitle them to file a consumer complaint for deficiency of service, since the tax was charged on the basis of consumption recorded by a meter.

The government appealed to the National Commission which upheld the state commissions order. Its argument being that water supply was a sovereign function of the state of beneficial nature and without any commercial element or profit motive.

The commission noted that the trend of the SC decision was that the jurisdiction of the consumer forum should not be curtailed unless there is an express prohibition under some enactment.

Since any service provided by the state is for a consideration, the citizens availing such services would be a consumer.
“Justice R.C. Jain pronouncing the order for the bench along with Anupam Dasguta, concluded that the complaint would be maintainable stating that the government cannot take shelter behind the shield of sovereign or regal function to escape from the purview of the Act.”

2.2.7 f) Case 6:

**Lourdes Society registered under the Societys Registration Act and the Trust Act v/s H.R.Johnson.**

A Commercial organizations purchase is commercial therefore the organization is not a consumer - Judgement delivered on 23rd September, 2013.

The complainant had purchased glazed tiles for fitment in the Hostel. The National Commission dismissed the appeal of the complainant. The basis being that running a hostel and charging inmates would be a commercial activity beyond the ambit of the consumer protection act and thus not maintainable. In fact it ordered the Society to pay Rs.20,000/- to Legal Aid.

2.2.7 g) Case 7:

**Altaf Pirani V/S St.Lawrence Eduction Society and P.I.O. of the Charity Commissioner Public Trust Registration Office.**

“RTI Grievance is NOT a Consumer matter”

The Additional Suburban District Consumer disputes Redressal Forum stated, “In view of the recent judgments of the National Commission, remedy is available to the complainant under the RTI, to approach the Appelate authority under section 19 of the RTI Act.
2.2.7 h) Case 8:

Rajiv Mehta v/s Anil Textorium –Before the Gujarat State Commission

“Knowing the difference in JOINT v/s Representative plaints”

The company in question had a sales promotion scheme whereby a member enrolling under the scheme was assured of refund of membership fee when he enrolled more members.

The commission its wisdom felt that there would be several members interest in this dispute and treated it as a representative complaint filed for and on behalf of similarly situated persons. A Public press note was issued.

This was challenged at the National Commission where it was stated that as a general rule the person interested must be joined as parties to the dispute. The exception to this being in representative complaints where one or more file a case for the benefit of all similarly placed persons.

This if permitted by the courts to avoid multiplicity of litigation, applicable in respect of general declaration of rights and not for individual claims for money or compensation.

The National commission clarified that it is necessary to seek permission of the forum when all consumers are parties to the complaint it is not a representative complaint. If the complaint is filed for and on behalf of unidentified consumers it is a representative complaint requiring permission.

As per this judgment “When one or more consumers file a representative complaint, the relief sought is on behalf of all and therefore binding those who are not a party to the proceedings”.