Chapter-V

Impact of Landmark Judgments- Some Reflections.
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INTRODUCTION

In preparation of this research work I have gone through thousands of cases decided by various State Commissions, National Commission, and Supreme Court but here in this chapter it is proposed to refer only those cases which have provided a new application of the existing range of responsibilities. With this avowed object in mind relevant cases decided by the National Commission and Supreme Court will be discussed and analyzed in some length so that the question—what is the impact of these decisions on Consumer Fora in the State will be better viewed and answered. However considering the fact that these courts have decided innumerable cases so for the sake of brevity only those reported cases falling under headings—Defective Goods and Deficient Services will be undertaken.

(A). **Defective Goods**\(^1\):—A complaint can be made where the goods in question suffer from one or more defects. A defect in goods means any fault, imperfection or short-coming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any applicable law or as is claimed by any trader in any manner whatsoever in relation to the goods. Thus, standard etc. may be either a legal prescription or trader’s claim or consumer expectation. Now let us go through a bulk of cases under the above heading.

(1) **Automobiles**:—On a survey of reported cases it has been found that under the category of goods most of the complaints are in connection with defective automobiles. In Surender Agro Centre of

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1. Clauses (f) and (i) of Section 2 (1) Consumer Protection Act.
Rewari & Another V/s Sher Singh and others (2) the complainants were in need of a tractor agreed to purchase it from the dealer. On seeing the very small size of the tractor the complainants refused to take delivery. On the assurance given by the dealer that he will take it back if the complainants do not find it suitable even after use. After the use of one day it was returned. The buyer was allowed to reject it as the tractor was found to be too small and therefore of no use for cultivation. Supreme Court in Tata Engineering and Locomotive Co. Ltd. & Another V/s Gajanan Y. Mandrekar (3) upheld the order of State Commission that the seller has undertaken under the warranty to deliver the vehicle in good condition but when despite repairs the vehicle continued to give same trouble the complainant was rightly entitled to the compensation. However, in the circumstances of the case the apex court directed that one third of the compensation be deducted towards the user of the vehicle by the purchaser during the period (eight long months after delivery) concerned. For the rest of the amount the order of the SC was upheld.

In similar other complaints (4) about motor cars containing multiple defects price was ordered to be refunded and/or a demand for replacement was held to be not unreasonable but where due to improper handling the vehicle (its clutch plate) got damaged a number of times the same cannot be attributed to the manufacturing process. In Amarnath Singh V/s Mahindra & Mahindra & another (5) complainant purchased a new mahindra which after examined in the garage it was

4. M/S Escorts Ltd and Another V/S N.K. Dasapha 1986-96 CONSUMER 2607 (NS); Same view was held in E. Aboo and Another V/S Tata Engineering and Locomotive Company Ltd. and Others 1986-96 CONSUMER 3084(NS).
5. 1986-96 CONSUMER 2373 (NS)
found that the engine was of a tractoo and its bearings, crank shaft and other parts were of sub-standard size. NC held there is no difference between a tractoo engine and a jeep engine except of a few adjustments. Further, it is the normal practice in the automobile industry of fitting under sized parts and it does not constitute a manufacturing defect. It is to be submitted that the view expressed by NC in this case is not good in law because this decision is likely to give legal base to those manufacturers who willingly and intentionally adopts such practices in order to cheat the buyer.

(2) **Electronics**

Many complaints entertained by consumer Disputes Redressal Agencies are also about the quality of the goods supplied. Consumer expects his purchases to be suitable for his purpose or that they would give him reasonable use. But where goods are unreasonably dangerous they are likely to be regarded as defective by the objective test of analyzing the expectations of reasonably prudent user and the extent to which those expectations have not been met. In T.T. Private Ltd. V/s Akhil Bhartiya Grahak Panchayat & Another by the doctrine of **Res Ipso Loquitor** manufacturing company was held liable for the accident caused due to defective goods. In this case the complainant has purchased a new cooker of 5 liters capacity of 10 years guarantee. The cooker while cooking burst and exploded. Her wife received severe injuries. NC held injuries suffered due to the negligence of the company (Appellant here in) in supplying defective goods is established on record. The inference is irresistible that the accident was caused due to defective goods and compensation of one lac

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6. Various cases have been reported which are decided by the various Consumer Forums under the instant heading but for brevity we will here deal only few noteworthy cases.

7. 1986-96 Consumer 2367(NS); however in Smt. Gurmeet Kaur V/S The Regional Office, T.T Ltd. and Another 1986-96 CONSUMER 2001(NS) there was no proof that the material used in the cooker was defective or sub-standard at the material time so there was no defect.
rupees was held to be on the conservative side.

(3) **Machines:** The supply of a different article than promised is a defective supply. In M/s Kody Elocot V/s Dr. C.P. Gupta the complainant purchased a ultra sound scanner machine with a warranty of one year. The machine stopped functioning after eight months of installation.

The NC observed that the unit did not perform satisfactorily after 8 months of its installation and thereafter started giving trouble and the defects could not be rectified. Therefore the machine was defective. Similarly, Chocklingam Proprietor, Malandu Printers V/s M.Amba Shankar & Others the appellant company purchased photo type machine. When defect after sometime occurred in the machine it was reported to the Regional Sales Manager who sent an engineer. The grievance of the appellant was that the respondents were bound to provide after sales service for all time to come and for failure to do so the respondent was guilty of negligence.

On hearing both parties and after going through the record NC came to the conclusion that the respondent had not refused to attend to the machines. They only demanded charges for servicing and charges for the visiting engineer. The appellant was not prepared to pay those amounts after the warranty period of one year has long expired and when there was no subsisting contract of service between the parties.

In M/s Jay Kay Puri Engineers & Another V/s M/s Mohan Breweries & Distilleries Ltd. the respondent Public Limited

8. 1986-96 CONSUMER 2827 (NS).
9. 1986-96 CONSUMER 2284 (NS).
10. 1986-96 CONSUMER 1954 (NS); In R.K. Kapoor V/S R. N Mittal 1986-96 CONSUMER 2297 (NS) price charged for air conditioner was ordered to be paid back for defect in it due to which it did not work.
Company entrusted the work of centrally air conditioning the guest house established for its directors and officers to the appellants. However, when the cooling system of the air conditioning plant was put to use it did not function properly. It was repaired but even it did not work properly. NC from the material on record held that inference is irresistible that the goods, i.e., air conditioning equipment and machinery supplied were defective and there has been gross deficiency in service.

(4) Miscellaneous :- In Sahitya Pravarthaka Cooperative Society Ltd. V/s K. N. Narayan Pillai(11) the complainant purchased encyclopedia from cooperative society limited (appellant herein) which contained certain mistakes relating to subject-matter. NC held there is no law by or under which it can be said that the alleged mistakes in an encyclopedia will amount to a defect. But speaking respectfully and honestly the Hon'ble Commission has committed an error in not imposing any liability on the publisher. No doubt publisher has published the encyclopedia on the basis of information said to have been received from various scholars in each subject but he was supposed to get the material scrutinized from knowledgeable person/persons in each subject before publishing the same.

Where complainant purchased certain items of furniture and on delivery found some defects in the furniture NC held that the defects in the furniture supplied are of a minor nature but the relief granted be refunded of the entire cost of furniture(12).

Many complaints though entertained by CDRA's has been consequently dismissed on the ground complainant purchased goods not for earning livelihood but for commercial purpose. A fair

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11. 1986-96 CONSUMER 2059 (NS).
distinction between consumer and non-consumer sales though seems necessary but is difficult to make a clear-cut distinction and is always a question of fact to be decided in the facts and circumstances of each case. In Laxmi Engineering Works V/s P. G. G. Industrial Institute on the facts and circumstances of the case the Supreme Court on having regard to the nature and character of the machine and the material on record held it is not goods which the complainant purchased for use by him self exclusively for the purpose of earning his livelihood by means of self-employment.

However, in Punjab Water Supply & Sewage Board V/s Udaipur Cement works, Supreme Court didn't appreciate with the observation of the NC to the effect that-

"Where the transaction is one of the sale and purchase simpliciter no question of deficiency in service can arise so as to entitle the complainant to invoke the jurisdiction of the consumer forum where there was no case at all of any defect in the goods supplied".

It is to be observed that the rejection of said observation of NC by Supreme Court is based on merits. Changing conditions of trade in the 20th Century have altered the setting in which most sales take place was being deprived of the protection which it was the intention of the law that he should have. Sellers of consumer goods exploited their superior economic power to contract out of the liability for implied terms and by means of contractual exemption clauses transferred the risk of defect in their wares from their own shoulders to the luckless purchaser who might in consequence suffer heavy and irrecoverable loss. Hence the control of exemption clauses by legislation is a part of

13. 1986-96 CONSUMER 1554 (NS); To the same effect is the case titled Rjeev Metal Works and Others V/S Mineral and Metal Trading Corporation of India Ltd. (1996) 9 SCC 422.
a wider programme of consumer protection. A sale is presumed to be consumer sale until the contrary is proved and the burden is on the consumer to show that his misfortune was the result of the defect in the goods supplied to him. But where the goods itself has not been supplied, non-delivery is not a defect. Non-delivery is a typical breach of contract for which an action lies in damages. The only other remedy is an order for delivery of goods that is specific performance and this the consumer for may not be able to provide.

In Colgate Palmolive (India) Ltd. V/s Hindustan Lever Ltd.\(^{(15)}\)

the principle grievance of the complainant before the commission was that the claim of the Colgate Palmolive Ltd. that its toothpaste is germ-fighter having the ability to stop bad breath and its ability to fight tooth decay are highly misleading quo the consumers and the trade however there was no evidence of a single consumer being mislead. The apex court held that in the event of a complaint being lodged by a trader in respect of unfair trade practice, it is for the trader to convince by way of evidence sufficient that there is involved an element of public interest, in the complaint in order to obtain the order of injunction and the commission in its turn has thus to consider as to whether or not, the public is being deceived or likely to be deceived and in the event the commission comes to a finding that there is likelihood of such a deception then and in that event only, the question of grant of an order of injunction arises.

(B) **Deficient services:**— A complaint can be filed under the Act in respect of unsatisfactory services. If the forum is convinced that any of the obligations contained in the complaint about the services are proved, it can provide any of the applicable types of remedy specified

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\(^{(15)}\) 1999 (3) CPR 70.
in section 14. The consumer has to prove that the services suffered from a deficiency. The term service is defined as follows (16):

"Service means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information but does not include the rendering of any service free of charge or under a contract or personal service"

The term "Deficiency" is also defined as follows (17):

"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 timing being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

Supreme Court Analysis of Definition of word "service" (18).

In its decision in Lucknow Development Authority V/s M. K. Gupta (19) the Supreme Court examined the scope of the term "service" in the context of a consumer protection legislation. Justice Sahai proceeded as follows:-

"It (definition of consumer) 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 word 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionary means 'one or some or all'.

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17. Id. Section 2 (1) (g).
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 content 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 e.g., the future product of grain or trees already planted, or the successive future installments or payments on a contract or engagement already made". 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 extended 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 a 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 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 a complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility.

In the foregoing pages an attempt is made to examine the question of amenability of public authorities to the jurisdiction created by the Act. In the chronological form service rendered by these public authorities to the society will be scrutinized in the following pages in some detail.

(1) Banking: Banking is the business dealing with money and created transactions. In India, the modern banking is now 200 years old. The number of branches of commercial banks have gone up since 1994 and the activities of the banks have spread to the country side. All this has happened due to the extensive powers of control and regulation vested in the Central Monetary Authority - the Reserve Bank of India (RBI). It was nationalized in 1949. Commercial banking was mostly confined to private sector till 1969. On 19th July 1969, 14 leading commercial banks were also nationalized. It was followed by nationalization of six more privately owned commercial banks in 1980. The business of banking consists of borrowing and lending, safe storage and money transfer etc.

Growth of trade and commerce have in the recent years increased the business of banking. Banking constitutes the largest nationalized service sector in the country and banks are supposed to render a vital

20. It can be traced back beyond 2500 B.C but modern banking originated in medieval times. It started taking its name from banca - which means the money, lending
22. The purpose of nationalization was to bring these banks to the main stream of commercial banking.
service to the society. More than a dozen of Acts relating to banks and financial institutions have been passed with a view to develop, guide and assist and control the growth of industry and trade and functioning of the economy of the country.

While defining term 'service' under section 2(1)(o) of the C.P. Act the banking or financing services are specially included in the definition after defining 'service' in general term. When banks advance loan or accept interest on payments or deposits, safe storage and money transfer etc. they undoubtedly render service whether they are public or private banks. The services that a bank renders to the customer is for consideration in as much as the credit balances in his accounts are lend to other parties and the bank earns interest more than it gives to the customer.

The bank cannot act arbitrarily either in considering the case of the customer or refusing to consider his case. Though the CDRF may not in exercise of its summary jurisdiction attempt to adjudicate complaint involving complex question of facts or law, it will entertain the complaints where the banks has failed to honour its guarantee or

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delayed giving credit of the instruments deposited with it or refused to pay demand drafts on technical grounds or dishonoured cheques though funds were there, withheld fixed deposits after maturity, paid forged cheques, failed to carry out the instructions of the customer or safe guard the contents of lockers let out to the customer or without reasonable cause prevented the customer from operating his account or cheques deposited for credit where lost, it refused to return the security given by the customer which became excess in relation to his liability or made wrong entries or omitted to make entries in the customers account in other words, the bank can not act in a high handed manner it must deal with its customers with due respect and care and should avoid any harassment to customer. For improper or wrongful acts of the bank, it has to pay damages or compensation to customer and the recent trend is that the bank has been authorized to recover such compensation or damages paid to the customer from the salary of the employee responsible for such acts.

Normally the CDRF will not ask the bank to give credit facilities to its customers but where the bank has undertaken to grant loans and relying thereon the customer has altered his position and incurred certain liabilities, the forum may direct the bank to honour its promises.

Some of the decisions given by National Commission and Supreme Court in which the liability of the bank has came into question can be scrutinized under the following headings -

a). **Denial of Credit Facility**: In a series of reputed cases it has been repeatedly said that non-grant of financial accommodation or non-grant of loan by a bank does not amount to deficiency in service. See for example, The Branch Manager, *State Bank of India and*

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others V/s Sunderlah Kela\(^{(25)}\) and Govind Electrodes Pvt. Ltd. V/s General Manager, United Commercial Bank & Another\(^{(26)}\). In the former case, the complainant prayed that the bank be ordered to restore the limit of the complainant which was stopped and that it may be ordered to sanction immediately the proposal of cash credit limit forwarded by the branch manager. NC held that it is for the bank to decide whether a particular party is eligible for the grant of credit within the frame work of the credit policy laid down by the Govt. of India and the Reserve Bank of India (RBI).

In the later case, the complainant complained that for running his industry for manufacture of electrodes he had applied to the bank for working capital facility which was sanctioned to him but when he applied to the bank for enhancement of the limit for cash credit the bank refused. The non-cooperation of the bank as it was alleged adversely affected the production of the factory. The NC came to the conclusion that banks have the discretion to decide in good faith in the interests of safeguarding public funds whether a party should be given or continued credit facilities or not keeping in view its performance and above all whether or not the party concerned is justifiably eligible for additional credit facilities. Similarly, in Branch Manager, Bank of Maharashtra V/s Manohar Sita Ram Nandanwar\(^{(27)}\) the complainant (Respondent before NC) got the cash credit loan facility which was secured by FDR. The bank informed the complainant that the cash credit loan facility would cease in some future date which was mentioned and the amount of the FDR would be appropriated towards the amount outstanding in the cash credit loan facility in case the said account was

25. 1986-96 CONSUMER 2702 (NS).
26. 1986-96 CONSUMER 3152 (NS).
27. 1986-96 CONSUMER 444 (NS)
not regularized on or before the date given. The NC held that it was open to the bank not to renew the cash credit facility after a period of one year and to adjust the amount in the FDR towards amount recoverable under the cash credit facility. The action of the bank was strictly in accordance with the terms of the arrangement of cash credit loan facility account and no deficiency in service on the part of the bank has been established in relation to the complainant.

Yet in another case against bank for non-release of loan facility the NC concluded that bank was justified in declining to sanction the loan advance to the complainant in as much as he failed to provide the guarantee money as well as collateral security as had been demanded of him by the bank and without these conditions being fulfilled by the complainant for loan, the bank which had to act in conformity with the rules and regulations framed by the RBI could not have made the advance to the complainant.

As in above cases in a few other cases the court has reiterated the same view that providing loan facility is in the discretion of the bank. The policy laid down by the Govt. of India and the guidelines of the RBI in the matter of bank credit are mere guidelines and the responsibility for taking decision vests with the bank or institution which has to give the credit eventually. The bank has to be the sole judge of the credit-worthiness of a party whether the unit proposed to be assisted by credit is economically viable or not is considered by the bank. Similarly the refusal of the bank to enhance the existing

sanctioned limits of credit or even to continue to grant to extent of the limits already sanctioned cannot constitute a breach of bank's obligations and hence it is not a deficiency in service(30).

b). **Dishonouring Cheque**: The most common relation between a banker and the customer is that of debtor and creditor. The customer is the creditor of the bank to the extent of the amount belonging to the customer deposited with the bank. A bank, therefore, has a duty to honour the customer's cheque and make the payment, if there are sufficient funds belonging to the customer, to meet such payment(31). If there are sufficient funds to meet the cheque and the same is dishonoured by a bank, it can be held liable for the wrongful honour of the cheque and required to pay compensation for the damage caused thereby. **In State Bank of India V/s N.Raveendran Nair**(32) the Respondent - Complainant was engaged in business in textiles. He was purchasing textiles direct from the manufacturers and distributes them to retailers. With the above object he had obtained the draft payable at State Bank of India, Surat Branch. The said bank refused to honour the demand draft just on the ground that though the draft bore the signatures of two officials of the issuing branch, the specimen signature number of one of these officials was missing. On the question whether the State Bank of India, Surat Branch was negligent in rendering service while dishonouring that draft, the NC replied in affirmative. The State Bank

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30. However in Mike's (P) Ltd. V/s State Bank of Bikaner and Jaipur 1986 - 96 CONSUMER 3187(NS) the action of the bank in freezing the credit facilities without giving notice to the complainant was held mala-fide and accordingly he was entitled to the compensation of Rs. 10 lakhs.

31. Section 31 of Negotiable Instruments Act, 1881.

32. 1986-96 CONSUMER 3069 (NS)
of India, Surat had earlier honoured the demand draft issued by the State Bank of India Travancore, which also did not bear the specimen signature on three occasions prior to the presentation of the disputed draft. So the commission held that the bank can not be permitted to be whimsical while honouring one draft and dishonouring another draft of the same nature.

In another case of the similar nature, bank refused to make payment under two cheques. The apex commission held that the bank in the instant case has not been negligent in rendering service because the banker who was under an obligation to honour the cheques of its customers was equally bound not to encash them as he has received instructions later on to stop payment.

Since under rules when the drawer of the cheque countermands the payment, that is, issues instructions to the bank not to make the payment of a particular cheque issued by him, the authority of the bank to pay that cheque stands revoked. Any payment made by the bank after a due notice countermanding the payment was given cannot be considered good against the drawer. This type of problem arose in Osmanabad Distt. Central Co-operative Bank Ltd. & Another V/s Ramachandra Dasharath Mane & Others. In this case partnership company had opened an account with the bank and alleged deficiency in the service of the bank on the ground that the withdrawals were allowed by the bank on the authority of one of the partners whereas according to the instructions given to them two partners should have authorized any withdrawal. NC was of the view that since copy of deed of dissolution of partnership firm was not received in time so the bank

35. 1986-96 CONSUMER 1852 (NS).
was justified in giving authority of withdrawal to only one partner in accordance with the special instructions as indicated in the account opening form that either of the partners shall operate the bank account with his signature.

c). **Received Amount not Credited** :- A bank must always have cash balances on hand in order to pay its depositors upon demand or when the amounts credited to them becomes due. Only in this way can confidence in the banking system be maintained. But when bank fails to credit the amount received under cheque or otherwise in one's account, its promises or obligations constitutes claims against it\(^{36}\). In Sovintorg (India) Pvt. Ltd. V/s State Bank of India, New Delhi\(^{37}\), the bank failed to credit the amount deposited by the complainant for over a period of seven years. Holding the bank liable for not crediting the amount to the account and denying the complainant the benefit of this amount for over seven years the Supreme Court held that there was a grave deficiency in service.

Similarly in Laxmi Vilas Bank Ltd. & Another V/s P. R. Krishanan & Another\(^{38}\) by reason of failure on the part of the bank to pay the amount due under the fixed deposit on the date when it matured for payment the complainant was entitled to receive interest at 18 % on the full amount. In another case of similar nature namely, Dr. K. T. Shivaiah V/s Canara Bank,\(^{39}\) the complainant was sanctioned a pension. Out of this amount a sum was commuted. The bank did not credit the commuted value of the pension but nonetheless started effecting recovery of the pension per month. In the result he did not receive the commutation amount. While agreeing with the state

\(^{36}\) Supra Note 33

\(^{37}\) 1999 (3) CPR 56(SC).

\(^{38}\) 1986-96 CONSUMER 3234 (NS).

\(^{39}\) 1986-96 CONSUMER 2026 (NS).
commission that there was deficiency in service on the part of the bank in not crediting the commuted value of pension to the account of the complainant consider it just and fair that he should be allowed interest at 18% per annum on the commuted value of pension.

d). **Banker’s Right of General Lien:** Bankers have a right of general lien under the General Law of Banker’s Lien. Such a right entitles the bank to retain things deposited with the bank as security for a general balance of account\(^{(40)}\). This right is available in the absence of a contract to the contrary. Therefore, if cheques or other securities have been deposited with a bank he can exercise lien over them. Bank can exercise lien even over those items for which the loans has been sanctioned say for e.g. building or capital assets. In *M/s Agnal Traders Ltd. V/s R.K. Aneja & Another*\(^{(41)}\) the complainant purchased a car by availing of loan from the bank. As the complainant defaulted in the payment of installments the bank ultimately seized the car. The complainant filed a complaint questioning the accounts and adjustment of the loan, harassment of the complainant by the bank and the illegal act of seizing the vehicle. NC after assessing various receipts came to the conclusion that no excess payment was made by the complainant and the complainant is not a consumer as he has not alleged any deficiency in the service.

In the same way, in *Canara Bank V/s G.Annaji Rao*\(^{(42)}\) the NC held that bank has a general lien by virtue of which it is entitled to retain ornaments deposited by constituents as security in respect of any advance owing to the bank.

e). ** Strikes or Lock-Outs:** In a modern economy, the dependence of

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\(^{(40)}\) Supra Note 31, Section 171.

\(^{(41)}\) 1986-96 CONSUMER 1931 (NS).

\(^{(42)}\) 1986-96 CONSUMER 1851 (NS).
their operations even for a short period would not only produce serious adverse repercussions entailing very great hardship and lost to their customers, but would also completely paralyze the economic life of the country. Since strikes in public utility services have unfortunately become a very common and frequent phenomenon in over Country there is urgent and imperative need to evolve a workable scheme which would enable uninterrupted service being rendered to the constituents of every bank throughout the year during normal business hours on all working days notwithstanding strike by the employees of the banks.

Barring a few banking companies which are in the private sector the rest of the banking industry in the country is operated by nationalized banks. It is clearly the duty of the Govt. to ensure that constituents of these banks are provided uninterrupted service and they are not put to inconvenience, hardship and loss by reasons of any stoppage of work by the employees of any of the nationalized banks. In this connection the short question arose for consideration in Consumer Unity & Trust Society V/s The Chairman & Managing Director, Bank of Baroda, Calcutta & Another. The question was whether a banking company which renders service within meaning of clause (g) of section (2) of Consumer Protection Act is liable to compensate its customers for loss of service due to illegal strike by its employees.

It was held through R. M. Sahaj J., that the provisions of Section 14 (1)(d) are attracted if the person from whom damages are claimed is found to have acted negligently and such negligence must result in some loss to the person claiming damages. Mere loss or injury without negligence is not contemplated by the section. The bank

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43. Dr. V.K Agarwal Consumer Protection 2nd Ed. BLH Publishers and Distributors Pvt. Ltd. New Delhi.
44. 1986-96 CONSUMER 1546 (NS).
has not been found to be negligent in discharging of its duties. Therefore, even if any loss or damage was caused to any depositor but it was not caused due to negligence of bank then no claim of damages under the act was maintainable.

f) **Other Grounds** :- The relation between the banker and the customer being complex in nature some times a confusion arises as to whether a particular duty was required to be performed by the bank or the customer. Such type of situation arose for consideration in *Pradeep Kumar Jain V/s Citi Bank & Another* (45). In this case the complainant borrowed money after making certain initial payments for the purchase of a car from the bank. He also obtained in respect of the car a policy of insurance from the Oriental Insurance Company and the policy was endorsed to indicate that the subject of higher purchase would be payable by the bank. The complainant issued two cheques with the impression that the policy would be automatically renewed in the name of the complainant with hire purchase endorsement in favour of the bank.

Car met with an accident resulting in damage of car and death of five occupants. Supreme Court (on appeal) held merely because owner of vehicle passed cheque for insurance premium on to bank along with monthly installment of loan obtained to purchase a vehicle, liability arising out of accident to third party can not be vested with the bank on ground due to failure of bank to pay premium amount. Owner would be liable to compensate third party victims because it is the obligation of the owner to take insurance policy.

In another case (46), due to fault on the part of the customer she was not entitled to encash the certificate after seven years as that certificate was in the name of Indian Credit Investment Ltd. and not in

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45. 1999(3)CPR 60 (SC).
46. 1986-96 CONSUMER 2590 (NS).
her own name. The NC held that since the documents on record were made in the name of the company which alone was entitled to act in accordance with the resolution of the Board of Directors of the company so the bank was justified in refusing the encashment at the instance of the complainant (Respondent).

It is to be submitted that in respect of banking service CDRF especially NC has made the distinction between discretionary functions of banks such as granting of loans raising of credit limits and matters relating to repayment etc. and deficiency of service in respect of honouring of demand drafts and making payments without exercising due care and diligence. In the former type it has refused to intervene and in the later type it has granted relief.

(2) **Building and Housing Service** :- Housing service was not included even by way of an example in the original definition of the term service. The definition was amended in 1993 under central Act so as to specifically include "housing construction". The question of law that arose for consideration before the Supreme Court in several appeals tagged together and reported as L**ucknow Development Authority V/s M. K. Gupta**\(^{47}\) was whether the statutory authorities such as Lucknow, Delhi & Bangalore Development Authorities constituted under the State Acts to carry on planned city development are amenable to the consumer protection act 1986 in respect of any act or omission relating to housing activity such as delay in delivery of possession of houses to allottees, non-completion within the stipulated time or defective or faulty construction etc. In the instant case, the LDA had undertaken a housing project and invited applications for that purpose. The complainant applied in the prescribed form for allotment of a flat for

\(^{47}\) 1993–94 company law Digest Vol. 23.
which he made entire payment. However, possession of the flat was not given to him for which State Commission directed the authority to hand over possession of the flat without delay. The authority instead of complying with the order approached the NC and raised the question of jurisdiction. Petition however, was dismissed and the complainants cross appeal was allowed and the authority was directed to pay him Rs. 10,000 as compensation for harassment, mental torture and agony. That order of the NC became the subject of appeal to the Supreme Court. Several questions of law arose for consideration of the apex court which were answered in affirmative. The court held -

i) There is no reason to hold that the authorities carried by the statute are beyond the purview of the C.P. Act.

ii) If such authority undertakes to construct building or allot houses or building sites to citizens of the state either as amenity or as benefit then it amounts to 'rendering of service' and will be covered under the expression 'service made available to potential users'. Since housing activity is a service it was therefore covered in the clause it stood before amendment. The amendment only clarified the position and did not add something new.

iii) The commission or the forums constituted under the Act are empowered to award not only the value of the goods or services but also to compensate a consumer for any injustices meted out to him.

The court further held that if the direction to pay damages or compensation is issued against the state then the department concerned should pay the amount to the complainant from the public fund immediately and thereafter recover the same from those officers found responsible for such unpardonable behavior by dividing it proportionately where there are more than one functionaries.
Consequently, the decision of this SC in this case was upheld. R. M. SAHAI J analysed the definition of service in the following terms:

"... The entire purpose of widening the definition is to include in it not only day-to-day buying and selling activity under taken 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 the person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The 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 the 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 the 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 a 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 faculty or benefit of which a consumer is entitled to claim value under the Act. When the contractor or builder under takes 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 under
takes to develop land and frame a housing scheme, it, while performing statutory duty, renders service to the society in general and individual in particular. The entire approach of the ld. counsel for the development authority in emphasizing that power exercised under a statute could not be stretched to mean service proceeded on misconception. It is incorrect under standing of the statutory functions under a social legislation. A development authority while developing the land or framing a scheme for housing discharges statutory duty the purpose and objective of which is service to the citizens. As pointed out earlier, the entire purpose of widening the definitions is to include in it not only day-to-day buying of goods by a common man but even such activities which are otherwise not commercial but professional or service oriented in nature. The provisions in the Acts, namely Lucknow Development Act, Delhi Development Act or Bangalore Development Act clearly provide for preparing plan, development of land and framing of scheme etc. Therefore if such authority undertakes to construct building or allot houses or building sites to citizens of the state either as amenity or as benefit then it amounts to rendering of service and will be covered in the expression 'Service made available to potential users'. A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of transaction is covered in the expression 'service of any description'. It further indicates that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in the earlier part. So any service except when it is free of charge or under a contract of personal service is included in it. Since housing activity is a service it was covered in the clause as it
stood before 1993 \(^{(48)}\).

Thus in view of the Supreme Court’s observation "Housing" would be a service within the meaning of the Act. This was the right interpretation borne out by the fact that the definition was amended and it now specifically includes "Housing Construction". Now large proportion of consumer disputes before CDRA are in connection with building and housing service. For a comprehensive study they are enumerated as follows.

a). **Deficiency in Service** :- A construction contract is a contract of services within the meaning of the Act and therefore user of service is a consumer. The failure to provide the building according to the contractual requirements is a consumer wrong amenable to the remedies under the Act. In *Rajnish Chander Sharda V/s Haryana Urban Development Authority*\(^{(49)}\) the complainant was allotted plot but when he asked for possession of the said plot it was discovered that a factory existed on the plot. Then he was allotted another plot and when he asked for the actual possession again it was discovered that the plot belonged to another man. NC found HUDA guilty of gross deficiency in service towards the complainant beginning from 1979 to 1993 and held that it is amazing that HUDA made allotment of plots whose actual physical possession could not be given either because there was a factory or because the land was already in the possession of another party and the area was totally undeveloped. Consequently the complainant was entitled to multiple relief’s. If ‘the attitude of the builder is far from satisfactory in the transaction it is patently gross deficiency in service’\(^{(50)}\). In *M.D. Bhoopathy & Others V/s Mrs.*

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\(^{(48)}\) 1986-96 CONSUMER 3139 (NS).

\(^{(49)}\) Capt. C.P. Gupta V/S Joint Secretary, Department of Local Govt. of Punjab and Another 1986-96 CONSUMER 2357 (NS).
**Sarada & Another** (51) the builders agreed to construct apartment building and pent houses but they could not honour the agreement and failed to put up the pent house. In the facts and circumstances of the case it was held that failure to build pent house amounted negligence and deficiency of service.

The NC has held that since the amendment of 1993 and the addition of clause (e) to section 14(1) a direction can be issued under the ct that the deficiency in service be rectified (52). In **Yammuna Vihar Residents Welfare Association V/s Vice Chairman D.D.A. & Others** (53) the gist of the grievance put forward was that several of amenities which were originally promised to be provided in the colony relating to drainage facilities and maintenance of proper hygienic condition environmental purity have not been kept up by the Delhi Development Authority and later by the municipal corporation of Delhi. D. D. A. was directed to discharge there obligation by making available to the MCD necessary funds in respect of the deficiencies for the rectification of which responsibility was on the D. D. A. prior to the date of transfer of the colony to the MCA.

However, no action will lie for doing of a thing which is beyond one's obligation in **Arihant Corporation V/s Umed Park Ghatlodie Co-operative Housing Society Ltd.** (54) the facts as gathered from the record are that the organizer offered a scheme to the members of the public wherein a representation was made that houses would be construed in accordance with the terms and conditions of Ahmedabad

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51. 1986-96 CONSUMER 2952 (NS).
52. Garden Estate Resident Welfare Association V/S M/S Gulmohar Estate Ltd. (1997) 1 CPR 45 it was held non-execution of sale deed to the residents of colony of flats in terms of agreement is a deficiency in service and the opposite parties were directed to draft the sale deed.
53. 1986-96 CONSUMER 1731 (NS).
54. 1986-96 CONSUMER 2278 (NS).
Urban Development Authority (AUDA) and all essential amenities such as water supply, soak-wells for discharge or drainage and electricity would be provided as per the regulation of AUDA. However, only two soak-wells were provided. NC held two soak-wells to 164 tenements were sufficient for their needs. Further, since the management was handed over to the cooperative society, it was their responsibility to clean the soak-wells. It was not the perpetual duty of the organizers to maintain the soak-wells.

Where the complainant never paid the amount due as shown in the allotment letter nor the future installments, the action of the building company to cancel the allotment cannot be said arbitrarily and mala-fide. But where the complainant has suffered mental agony as huge amount borrowed by him from different agencies was lying blocked with the board and he was not getting any benefit from the deposits, it is common knowledge that the prices of real estate are rising and the complainant cannot get a house at the amount deposited by him, he would be entitled to claim deficiency in service. There are various complaints about deficient services claiming provider of services has thrust upon the consumer a plot/flat of less area than the one for which the consumer had paid the price. In Mohammad Ibrahim Mulla v/ Hamid Abubkar Memon and Another, the case as set up in the complaint was that the complainant had purchased a flat from the builder. As per terms and conditions of the agreement, the built-up area including the Balcony should have been 715 sq. ft. However, after taking possession of the flat, the complainant found area of the flat less than

56. S.P. Dhavarkar v/The Housing Commissioner, Karnataka Housing Board, 1986-96 CONSUMER 2867 (NS).
57. 1986-96 CONSUMER 2878 (NS).
agreed one by 48 sq. ft. Before NC the builder produced building rules and bye-laws of the Municipal Corporation which show that the area covered by stair case of any sort shall be considered as built up area. The commission held though the building rules and bye-laws are not much relevant for the purpose of disposal of this petition but it shows that the stair case was considered as built area while the plan was sanctioned by the corporation. Accordingly builder was not held liable for any deficiency in rendering of service.

In another case of similar nature namely, Tulip Park Co-operative Housing Society Ltd. V/s M/s Sai Overseas Import & Export(58) the complainant a co-operative housing society, had complained shortfall in services rendered by the builder and developer, which had agreed to construct and sell 64 flats to the complainant in a building. The complainant alleged that while under the agreement the builder had agreed to construct the flats having total saleable area measuring 34,361 sq.ft. but the saleable area actually measured comes to 29,788.34 sq.ft. For 4,572.66 complainant claimed refund of money. After considering the fact that the building was constructed as per the sanctioned plan and each flat has the area as given in the agreement and the complainant had agreed not to raise any dispute regarding saleable area, particularly when permitted area of construction was to the extent of 34361 sq.ft. the Supreme Court held there was no deficiency in service in housing construction provided by the builder.

58. 1993 (3) CPR 50.
In Srichand K. Bajaj V/s S. M. N. Consumer Protection Council & Another (59) also like the above case no deficiency was proved. In this case the original plan envisaged car parking area intended for the use of the flat owners. However, towards the end of the construction, the builder converted seven car parking spaces into a ground floor apartment. According to the complainants all these were deviations from the approved plan and were unauthorized. The NC held that the complainant has not taken any step to get produced the approved plan from the builder to show that there was any violation about providing the parking spaces. Since only four allottees of the flats opted for garages and thus seven garages were not constructed and the space meant for those seven garages has been utilized as stated earlier by the builder amounts no deficiency.

However, a construction contract cannot be construed unfairly and arbitrarily so as to deny the basic facilities which are otherwise to be there. In Lt. Col. Yogesh (Retd.) V/s Hyderabad Urban development Authorities (60) the complainant was allotted a plot by HUDA for which he made full payment within time prescribed by the HUDA. He later inspected the plot and found that it was full of rocks and boulders. So he requested the HUDA to get the plot cleared and leveled before handing over to him or in the alternative he may be allotted another developed plot in lieu. HUDA invited the attention of the complainant to clause 15 of the conditions of the sale that the said prospectus of a developed residential site with basic amenities like

59. 1986-96 CONSUMER 2565 (NS); Another case titled S.Satyamoorthi and Another V/S The Member Secretary, M.M.D.A. Madras and Others 1986-96 CONSUMER (2560) (NS) was decided on similar way. Here NC held the layout plans were sanctioned and revised in exercise of the powers of statutory duty and there was no deficiency in service at all in exercise of statutory duty by the M.M.D.A in sanctioning the building plans.

60. 1986-96 CONSUMER 2740(NS).
roads, drainage, water supply and street lighting etc. As is where is in the context in which it has been used in the brochure prefers to the length and breadth of the sizes of the plots which may vary according to the site situation or the frontage of the plots may be more in one case and less in the other case or one plot may be having an opening on the main road or the other on a main street. It is also deficiency in service where there is failure to deliver possession of allotted plot due to unauthorized encroachment on land and order to allot alternative plot suffers no illegality. Where Housing Board made refund of earnest amount to unsuccessful applicants within reasonable period of draw of lots there is in no way deficiency in service. Similarly, where the possession of the house was handed over to a person other than the one who had paid for the same, remedy by way of interest on the deposit amount was allowed. Where the complainant purchased the plot in an open auction in 1983 and the plot was provided to him two years later in 1985 and that too with encroaches on it and the vacant possession was granted to him in 1991, he was allowed compensation amount of one lac rupees with interest at 18% on the amount deposited.

b). Liability Where There is Delay: A housing organization providing plots and in some cases construction is required to provide the same within the stipulated time or where no time is given within a reasonable time ordinarily possession should be given within a month after full payment and in some cases it is remarked that there can be normal fluctuations of three months in the tentatively stipulated period in the completion of the houses. However, more often it depends on the facts and

61. HUDA V/S Smt. Usha Leekha 1999 (2) CPR 32 (NC).
64. R. Sivasubramaniyam V/S T.N. Housing Board (1995) 1 CPJ 396.
circumstances of each case. In *Delhi Development Authority V/s Anoop Kumar*\(^{(65)}\) the complainant had deposited money as registration money for a flat in the year 1979. He applied for change of locality in 1984. As no action has taken place despite reminders he wrote a letter in 1987 requesting the D. D. A. to ignore his request for change of locality and allot him a flat but it was not allotted to him. The NC held long delay of five years in rejecting request of an allottee for change of locality and then non-inclusion of his name in subsequent draws amounts to deficiency in service.

'Where the possession of the flat is not delivered within the stipulated period the delay so caused is denial of justice\(^{(66)}\). In *M/s Pushpa Builders Ltd. & Another V/s L. R. Kapoor & Others*\(^{(67)}\) the builder had undertaken to construct and provide flats to the complainants and notwithstanding the gaps of more than five years after 50% of the cost price had been deposited even the construction of the flats has not so far been commenced by the builder the NC held that the state commission could have with full justification, avoided compensation in addition to the amount of interest in favour of the complainant but it refrained from doing so and has only erred in favour of the builder by directing him only to refund the amount received by him by way of price of the flat with interest at 18% p.a. from the date of payment of the amount. Non-cooperative attitude adopted by the builder despite continuous and repeated contacts and communications to deliver possession amounts to deficiency in service\(^{(68)}\). As against this

65. 1999(2) CPR 24 (NC)
67. 1986-96 CONSUMER 1549 (NS).
'delay due to administrative exigencies and not on account of any mala fide action of any individual authority / builder does not amount to deficiency in service. A statutory authority is expected to perform its duties as expeditiously as possible and to take the action quickly'. However default, unjustifiable delay and harassment in the light of the facts and circumstances of the case is in no way excusable. In *Bihar State Housing Board & Others V/s Prio Ranjan Roy* (70) complainant was allotted house under LIG housing scheme but possession of the allotted house was not given to him and instead, it was allotted to else one. Under another order other house was allotted to him but it was in a most dilapidated condition which was not acceptable to the complainant. NC awarded compensation of Rs. 7 lacs along with refund of the amount deposited for allotment of the house to complainant. Supreme Court while accepting the agreement that the builder was negligent remanded the matter to NC for going into the aspect of compensation afresh.

The court held where damages are awarded there must be an assessment thereof and the order awarding damages must contain an indication of the basis upon which the amount awarded is arrived at in somewhat similar case *Bhagyashri A. Lohit V/s Harivijay Builders* (71) a builder under took to provide land and constructed bungalow. However, he let it out not to the complainant but to a tenant. He was directed to refund the whole of the money received from the client with interest at 12% from the date of payment till the date of refund and rupees 2,00,000 by way of loss caused to the client. In a large number of cases relating to housing construction NC

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69. Haryana Urban Development Authority V/S Smt. Nalini Aggarwal 1997 (2) CPR 315 (SC)
70. (1997) 6 SCC 487 .
71. 1993 CLJ 138 Maha .
on being convinced that there has been gross deficiency of service on the part of the builder, directed the builder to pay compensation to complainants for mental agony and disappointment suffered by them in indefinitely waiting and not getting the flat. Similarly, in Rajasthan Housing Board V/s R. C. Bhandari and Harbans Singh V/s Lucknow Development Authority there was delay in constructing and delivering possession. Interest at the rate of 6% and 15% was allowed respectively for the period covered by the delay.

As already said - what amounts to delay can be said in the particular facts and circumstances of the case. However, a reasonable delay is always permissible. In Sarthak Behuria & Another V/s The Orissa State Housing Board & Another the grievance of the complainant was that there was unreasonable delay in construction of houses. NC found that the delay period of one year and three months cannot be said to be unreasonable delay in completion of such a big project. 'Where the delay in the completion of the flat has not been conclusively established the builder cannot be held liable'. Similarly 'where delay in handing over the possession of the flat was due to non-availability of water and electricity the responsibility for the delay caused by the Electricity and Water Supply Authorities cannot justifiably be placed on the housing board as these authorities are...

73. 1997 (1) CPR 61.
74. (1994) 1 CPR 98.
75. 1986-95 CONSUMER 510 (NS) Further in this case complainant failed to prove that there were any major defects in the house which required rectification or the cost of rectification.
76. 1986-95 CONSUMER 651 (NS).
independent of the board \(^{(77)}\).

Where house allottees suffered because of delay which was due to helplessness they were entitled to compensation but where delay is due to the circumstances beyond the control of the builder no compensation is allowable\(^{(78)}\). The Supreme Court did not allow compensation or interest where delay in handing over possession of the plots to the allottees was caused due to interim orders of the court obtained by the landowners. It was averred in the petition in **Ghaziabad Development Authority V/s Sanchar Vihar Sahkari Avas Samiti Ltd.**\(^{(79)}\) that the GDA has violated the terms and conditions in as much it failed to put them in possession of the plots within the stipulated period. It was further complained that the authority has charged interest and penal interest for delayed payment of installments. The Supreme Court held the view of NC that the interest can not be charged from those who have applied for the plots under Self Financing Scheme is an erroneous interpretation of the brochure. The entire brochure is required to be read as a whole as it relates to various schemes of housing to the eligible persons. A person who agrees on the basis of a brochure and goes ahead with acceptance and payments becomes bound by its terms by acquiescence and estoppel and cannot afterwards say that in a self-financing scheme no interest should be chargeable on balance installments. Coming to the other point court was of the opinion that the NC has made no mistake in refusing interest or damages for delayed possession because delay was due to land acquisition proceedings and because of the interim orders obtained by the landowners.

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77. 1986-96 CONSUMER 2764 (NS).
79. AIR 1995 Supreme Court 2021.
c). Imperfections or Use of Sub-Standard Material:— Where the Housing Board uses a poor quality of material for construction or the construction work carried out by the builder is full of defects, imperfections and shortcoming in the quality of construction and is woefully deficient and in adequate in the quality, nature and manner of performance that was promised by the builder will amount to deficiency in service under the Act. In *Pushpa Builders Flat Buyers Association V/s Pushpa Builders Ltd. & Others*\(^{(80)}\), the complainant proceeded against builders on the allegation that none of the flats offered are complete or in a habitual condition. Accepting the report of the expert the commission hold that the builder has been miserably failed in providing services to the complainant. Accordingly the builder was directed to refund the amounts paid by the ten members of the association along with interest at the rate of 18% p.a.

Similarly, in *Welfare Association Brij Vihar, Ghaziabad V/s Vice-Chairman, Ghaziabad Development Authority*\(^{(81)}\) the complainants for allotment of houses/ flats under the scheme paid full amount in four half year installments in a period of two years. In accordance with the terms of the scheme, the houses were to be completed within two years of the deposit but possession of the said houses/ flats was given after one years delay and infra-structural works necessary for the habitation and enjoyment of the houses/ flats were not provided.

The commission held that no doubt there has been more than one years delay on the part of the builder in completing and allotting the houses/ flats however, such delay in construction are usual in this

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80. 1986-96 CONSUMER 2402 (NS). In V.L Bhanu Kumar V/S Dega Sundara Rama Reddy and Others 1986-96 CONSUMER 1880 (NS) also NC held incomplete work in the construction of the flat amounts deficiency in service as well as imperfection in the service rendered.

81. 1986-96 CONSUMER 3106 (NS).
country and in any case it cannot be said that one years delay in completion of construction is abnormal and that such delay can be deemed to be deficiency in service on the part of the GDA. However GDA was held liable for making allotment of the flats before the infra-structural works were completed and that there were numerous defects in the houses constructed of which the allottees were forced to take possession on the threat of cancellation.

Once it is found by the Consumer Fora that there is deficiency in service on the part of housing board then its duty is to adequately compensate the consumer\(^{(82)}\). A failure to provide infra-structural facilities no doubt amounts to deficiency in housing service because without them the house cannot be beneficially enjoyed but at the same time if he fails to prove that there is any defect in the flat allotted to him and those defects required remedial measures, the complainant cannot be entitled to deficiency in service\(^{(83)}\). In *Anuradha Builders & Others V/s Ranjit Prasad & Another*\(^{(84)}\) the complainants had occupied two flats but in which lifts were not installed by the Co-operative Housing Society. NC held on account of non-installation of the lift the flats are rendered unfit for occupation by persons of advanced age as is the case with the complainant but since the two flats had been in occupation of complainants for a long period it would not be proper or just to direct the Co-operative Housing Society to pay interest on the amount of purchase price of the flats paid which has been directed to be refunded by state commission.

In *The General Consumer Protection & Welfare Association*

\(^{82}\) Birja Shankeracharya V/S Orissa State Housing Board 1997 (1) CPR 124.

\(^{83}\) 1986-96 CONSUMERS 3113 (NS).

\(^{84}\) 1986-96 CONSUMERS 3214 (NS).
& Others V/s Ghaziabad Development Authority & Another\(^{85}\) the complaints of the complainants were:

i) An increase in the cost of each house which has been described as arbitrary, exorbitant and illegal.

ii) Inordinate delay in the construction and handing over of the possession of the houses in a habitable condition.

iii) Construction of sub-standard houses and use of sub-standard materials.

After going through the evidence which disclosed considerable delay in the completion and allotment of houses, the delivery of possession made conditional on the payment of additional prices which amounts to unfair trade practice and the evidence regarding use of sub-standard materials in the houses under construction also remained unrebutted the NC held that GDA has been deficient in rendering service in respect of housing construction and with the result appropriate reliefs were granted.

Holding GDA liable in another case\(^{86}\) also NC held houses as constructed suffered from series of defects. Sub-standard materials and fixtures and fittings leading to percolation/seepage of water from upper floors to lower floors. It is self-evident that these deficiencies were of very serious nature.

d). Escalation of Construction Prices: Pricing of services is one of the factors over which consumer forums cannot play much role. The prices of land, building materials, labour changes, cost of transportation, the quality and availability of land, supervision and management charges are all factors of variable nature and they play their

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85. 1986-96 CONSUMERS 24 59 (NS).
86. Sanjay Nagar Residents Welfare Association V/S The Vice-chairman Gaziabad Authority 1986-96 CONSUMER 2500(NS).
role in the working out of the price. Pricing is not a factor which falls within the purview of Consumer Redressal Forum\(^{\text{87}}\). In Manohar Lal Sharma V/s Delhi Development Authority & Another\(^{\text{88}}\) the grievance put forward by the complainant relates to the question of pricing of a flat allotted to a person by DDA. NC held the question of pricing can not be gone into by the consumer forums. Since the prices of the flats are not fixed by any law and that even if any excess charge has been collected by way of price that will not constitute a ground for contending that there is a 'deficiency' in service on the part of the builder.

Those rendering house-building services have been allowed to increase charges equal to the amount of costs escalations provided there has been no delay on their own part in which case escalation during the period of delay may not be allowed. In Smt. K. Saksena & Another V/s Ghaziabad Development Authority & Another\(^{\text{89}}\) the main dispute between the parties is about the price of plot. The complainant has deposited full price in lump sum for a particular plot. Infact, GDA was not in a position to deliver the possession of that plot to her as big water tank of Irrigation Department was situated on the plot. GDA allotted another plot and was asked to pay over and above the amount already deposited by her. In the light of the facts and circumstances of the case GDA was found clearly deficient in rendering service and was directed to allot one plot to the complainant at the agreed rate and pay

\(^{\text{87}}\) Supra Note 18 P.159 ; Seen also The Gujarat Housing Board V/S Akhil Bhartiya Grahak Pnachyat and Others 1986-96 CONSUMER 2980 (NS)

\(^{\text{88}}\) 1986-96 CONSUMERS1016 (NS) . In the Chairman and Managing Director Tamil Nadu Housing Board and Another V/S R. Venkataraman 1986-96 CONSUMER 2609 (NS) and Ramlal V/S chairman , Ghaziabad Development Authority and Another 1986-96 CONSUMER 3157(NS) the same view has been reiterated .

\(^{\text{89}}\) 1986-96 CONSUMER 2848 (NS)
rupees 20,000 to her as compensation and she was given an option that if she could not accept the above proposal she will be entitled to the refund of the amount deposited by her with interest at the rate of 18% p.a. and she was entitled to compensation of Rs. one lakh.

Earlier in The Gujrat Housing Board V/s Akhin Bhartiya Grahak Panchat & Others\(^{(90)}\) NC while entitling complainants to compensation for delay in the construction and for the lesser area given to them held so far as the question of pricing is concerned it was held that it is the consistent view of this commission that fora constituted under the Consumer Protection Act have no jurisdiction to go into the question of pricing of houses and plots.

In DRS-87 Applicant's Association V/s City Industrial Development Copn. of Maharashtra Ltd.\(^{(91)}\) the grievance of the complainant was two fold. The first grievance was that there was delay in the construction of the houses and the second one is regarding escalation in the prices of the houses and some other charges said to have been levied by the C. I. D. Co. It was found by the NC that the delay occurred was caused due to the circumstances beyond its control and not due to its negligence. Regarding second grievance it was held that the quantum of consideration is not relevant in relation to services as had been defined under clause (g) of section 2(1) of the Act. The dispute about pricing of a flat or a plot does not fall within the purview of the CP Act and further the question of price is only relevant when the goods are purchased from a trader and the price charged is in excess of what has been fixed by any law or declared on the package.

90. 1986-96 CONSUMER 2980 (NS).
91. 1986-96 CONSUMER 3088 (NS).
However, in a number of cases while relying on the judgment of the Supreme Court in the case of **Lucknow Development Authority V/s M.K. Gupta** in which it was ruled that once a plot or house is sold by any statutory authority and its possession is not delivered within the reasonable time it amounts to deficiency in service and also unfair trade practice NC held where price of the flat raised about five times of the original price and where it was agreed upon earlier that no escalation charges were payable but inspite of its escalation charges were claimed from complainant is a deficiency in service.

From the above cases decided by the apex commission and the apex court, it is observed that a person who applies for allotment of a building site or for a flat constructed by the development authority enters into an agreement with a builder or contractor is a potential user and nature of transaction is covered in the expression 'service of any description' under section 2(1)(o) of the Consumer Protection Act. A Govt. or semi-Govt. body or local authority is as much amenable to the CPA as any other private body rendering similar services. The argument that the applicability of the CPA is confined to movable goods only a complaint filed for any defect in relation to immovable property such as house or building or allotment of site could not be entertained by the CDRA is rejected by the Supreme Court in the following words:-

*When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such claims or disputes are not in respect of immovable property as argued but deficiency in rendering of service of particular house uses sub-standard*

92. Ajay Khana V/S Omega Commercial Pvt. Ltd. and Another 1986-96 CONSUMER 2504 (NS); Jatinderdev Singh Masafir V/S Ludhiana Improvement Trust 1997 (1) CPR 137.

93. Supra Note 47.
material 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 under the CPA.

(3). **Courier Service** :- Courier service has been started by private operators. Though this service is expensive but at the same time it is efficient and there is a general acceptance that couriers would deliver parcels within 24 hours or at the most within two days. The essence of this service is safety and timely delivery of the package to the right person. This is borne out by the fact that the charges for this kind of service are several times more than ordinary mode of carriage. But there is flood of cases before CDRA'S complaining loss of consignment or delay in delivering articles by couriers. Couriers in turn have objection that their liability should not be exceeded beyond the terms and conditions as contained in the courier consignment note. To our surprise couriers have usually limited their liability to a maximum of Rs. 100. Is this amount when awarded as compensation sufficient to redress consumer grievance when there is a clear case of gross negligence, callous indifference and sheer dereliction of duty on the part of the courier in transporting or sending a consignment is question which is to be answered by a variety of cases.

In M/s Skypak Couriers Pvt. Ltd. V/s Consumer Education & Research Society & Others there was loss of consignment containing passport visas, air ticket, degree certificate etc. which were absolutely necessary for travel to one Mr. Khan. NC while holding courier liable for deficiency in the rendering of service held that it was obligatory on the part of the consignor to have disclosed the contents of

94. D.N Saraf ‘ASIL’ 1993 P.64
95. 1986-96 CONSUMER 1788 (NS)
the packet and when it was not done the contention that they were lost by the courier cannot be supported. Relying on the above decision various cases have been decided on the same qua. In *M/s Air Pak Couriers (India) Pvt. Ltd. V/s S. Suresh*, complaint sent a consignment of papers described as "Important" which includes performance report and agreement letter from Jaipur to be transported and delivered to the complainant at Madras. The consignment did not reach the complainant. NC held complainant did not disclose in the consignment note the value of the documents sent by him through the courier, nor did he insure or indicate what was the nature of the documents so the compensation of Rs. 1,00,000 awarded by State Commission was reduced to Rs. 100 as specified in the couriers rules. Where a packet containing some official record was delivered by the manager of the corporation to the courier company for delivery at the former's head office packet contained certain original records pertaining to the disciplinary proceedings and was not delivered. Complainant alleged the impossibility of rebuilding the records. The NC agreed with the findings of the state commission that the loss of the packet by the courier company amounts negligence and that there was deficiency of service on the part of the company. However, the commission was of the view that it was the responsibility of the complainant corporation to have arranged to keep a copy of the same with that office before parting with them and reduced the compensation of Rs. 1000 awarded by SC to Rs. 100 only. Another decision against a courier has made it clear that unless the value of the consignment is made known before entrustment to the courier, he cannot be saddled with

96. 1986-96 CONSUMR 3080 (NS).
the liability for the actual value of the consignment\(^{(98)}\).

Above decisions are consistent with the view expressed by Supreme Court in *Bharati Knitting Co. V/s D. H.L. Worldwide Express Courier Divn. of Air Freight Ltd.*\(^{(99)}\) wherein the complainant had consigned certain goods. The documents in relation thereto were sent in a cover. The cover did not reach the destination. Consequently, though duplicate copies were subsequently sent the season was over (summer season for which the manufacturer sent goods to the buyer) and consequently consignee paid less than the agreed price. The complainant demanded compensation for the difference of the loss incurred. Supreme Court (on appeal) held that on facts the NC was right in limiting the liability to the extent undertaken by the contract entered into by the parties and in awarding the amount for deficiency in service to that extent. The above decision has been followed in *AirPak International Pvt. Ltd. V/s K. P. Nanu & Another*\(^{(100)}\). Here the complainant booked the consignment of the ashes with the courier for carriage. The consignment never reached the consignee. According to the complainant the mortal remains of his wife are priceless but as the loss of the ashes caused mental agony and pain to the complainant he claimed a compensation of Rs. 50,000 for the loss. Applying the above decision the apex court restricted the award of compensation for the deficiency in service to Rs. 100 only in consonance with the terms and conditions of the consignment.

It is to be submitted here that the essence of this mode of carriage is safety and timely delivery of the package to the right person. This is borne out of the fact that the charges for this kind of service are several

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99. 1986-96 CONSUMER 2428 (NS).
100. (1997) 1 CPR 15.
times more than the ordinary mode of carriage. In these circumstances it is expected that a good sense will prevail over our high esteemed judges to consider the quantum of compensation in the light of loss incurred in due spirit to the CP Act.

(4). **Educational Service**: Role of educational service in our society is dynamic and not limited to the field of study only - that is its one aspect. In its institutional framework, it is entrusted with the task of giving admission to different courses, conducting or holding examinations, issuing certificates or marks sheets which is purely administrative in nature and is performed by both teaching and non-teaching staff. This service requires payment of prescribed fee more or less by the students or candidates (unless specified as free) and is provided by private, Govt. or autonomous bodies. Days have gone when education was treated as mission. Like doctors teachers too are busy in private practice. They are opening academic/coaching centers for different courses where they are charging heavy tuition fee. No doubt still this profession is regarded as noble but where an employee of the educational department (board or university etc.) comments any mistake which ruins or adversely affects the carrier of a student - Does this amount negligence or deficiency of a service? Education Act (103) provides that no suit, prosecution or other legal proceeding shall lie against the Govt., any authority or any officer in respect of any thing which is in good faith done or intended to be done under any provisions of this Act or the rules framed there under. It is true only to the extent an institution or officer is within its/his authority under the Act. There is no guidance or remedy for deficient or negligent service under the said Act.

So in order to understand, analyze, diagnose and answer the question whether 'Educational Service' is service within the meaning of CPA it
becomes necessary to have a passing review of various cases on the point decided under the CP Act.

The question whether a candidate for examination is a consumer came up for consideration in *Kumari Seema Bhatia V/s Registrar, Rajasthan University*\(^{101}\) where the NC upheld the view expressed by the State Commission in conducting the revaluation of the answer papers of a candidate who had appeared for an examination held by the university, the university was not rendering any service as defined in the Act for consideration nor there was any arrangement of hiring of service for consideration as contemplated by the Act. The question again came up for consideration before the NC in *Joint Secretary, Gujarat Secondary Education Board V/s Bharat Narcottam Thakkar*\(^{102}\) where the above view was reiterated that in conducting the secondary school board examinations, evaluating answer papers, announcing the results thereof and thereafter conducting a re-checking of the marks of any candidate on application made by the concerned candidate, the board is not performing any service for hire and there is no arrangement of hiring of service involved in such a situation as is contemplated by section 2(1)(o) of the Act. The same view was reiterated in *Registrar, University of Board V/s Mumbai Grahak Panchayat, Bombay*\(^{103}\).

In some other cases similar view has been expressed. In *Staff Selection Commission V/s Smt. P. Lalita*\(^{104}\) the candidate did not

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102. Ibid. This view was followed in *Maharashtra Board of Secondary Education V/S Chairman Grahak Jagratisangh (1994) II CPJ 1; Secretary, Board of Intermediate Education V/S M.Suresh and Another – II (1995) CPJ 167; P.M. Noushad and Another V/S University of Kerala and Others –II (1995) CPJ 334 (by Maharashtra, Andhrapardesh, Kerala and Delhi State Commissions respectively) and in other cases.
103. 1986-96 CONSUMER 1917 (NS).
104. 1986-95 CONSUMER 404 (NS).
received hall ticket necessary to enable her to appear the selection test and with the result she made complaint before the forum. Both the lower courts accepted the plea of the complainant that is direction to the staff selection commission to hold a fresh examination. NC held the issuance of a direction to SSC to hold a fresh examination for testing the suitability of the complainant for her being selected to the particular category of post was outside the scope of clauses (a) to (d) of section 14(1) of the CPA.

However, in Akhil Bhartiya Grahak Panchayat & Another V/s Secretary, Sharada Bhavan Education Society & Others (105) a compensation of rupees 40,000 was allowed for unfair trade practice adopted by a private college. In this case two students were admitted to the college who passed the final examination and completed their practical training but could not obtain registration after having qualified in the D. Pharmacy course due to the fact that this pharmacy college had admitted two students in excess of (30) the authorized maximum number of admissions in violation of the provisions of the pharmacy Act and the rules made thereunder. The NC therefore, held that the facts establish clearly that there was unfair trade practice as well as deficiency in service on the part of the college authorities towards the students who were deliberately admitted to the course. Except this case there may be hardly any case where NC may have put the liability on educational authority. The view expressed in Registrar, University of Bombay (106) has been reiterated in other cases. In Datapro Information Technology V/s Rajinder Singh Saluja (107) the complainant - student appeared for written paper, however, the date of

105. 1986-95 CONSUMER 579 (NS).
106. Supra Note 87 P 136-127.
107. 1986-95 CONSUMER 658 (NS).
viva examination was not communicated to him by the institute NC held that there has been no deficiency on the part of the institute as it had displayed duly the circular of the education board on the notice board indicating the dates of the written and oral examination. There was no legal obligation on him to communicate the dates of viva examination to each student.

The decision given in Shri. Ramdrobaba Engineering College V/s Sushant Yuvraj Rode & Another\(^{108}\) meets the same fate. Here the student obtained provisional admission to the 1st year of engineering for which he paid admission fee and security deposit. Thereafter the student secured admission in another college. In consequence, he requested the Engineering College to refund the fee and the security deposit paid by him. While the college was prepared to refund the caution money it was not agreeable to refund the admission fee on the ground that under the orders of the Govt. of Maharashtra where a student leaves the institution and applies for refund of the fees after 30 days from the date of admission no fee is to be refunded. NC held that complainant student withdrew from the college to join another institute voluntarily and as such there was no deficiency in service on the part of the institute.

An interesting case on the point is also Manisha Samal V/s Sambalpur University and others\(^{109}\) where identical roll numbers were assigned to the complainant and two other students by the Sambalpur University for examinations. The final result was withheld by the university due to the non-clearance of the back paper but she apprehended that the marks awarded to her had been exchanged with those two other students who were given the same roll numbers erroneously. However, the university submitted a letter addressed to it

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108. 1986-95 CONSUMER 1364 (NS).
109. 1994 Suppl. CONSUMER 1477 (NS).
by the principal Govt. college that the two other students with the same roll numbers did not appear in the examination. In view of this NC held that her apprehension that the marks she secured in examination papers had been awarded to other two students who had been assigned the identical roll number, in the examination is not true.

Recently in couple of cases NC by minority view held that a candidate who appears for the examination can be regarded as person who had hired or availed of the services of the university or board for consideration. In Chairman, Board of Examinations, Madras V/s Mohideen Kader the complainant was a student of the diploma course in electrical engineering. He went to the examination hall and the Hall Supervisor told that the code number of that examination paper was (1) while the complainants hall ticket gave the number as (2) and that he was not eligible to write the examination. On subsequent verification, however, it was found that the code number for that paper was only (2) and it had been correctly entered in the hall ticket. It was the complainants case that the Invigilator had committed the mistake for which the board was vicariously liable for the negligence. Both District Forum and State Commission allowed the complaint. NC by majority view held:

**Whether a University or an institution affiliated to it imparting education is within the arena of consumer jurisdiction** is a question which this commission will consider and decide when it directly arises before it. What this commission had decided in cases is that a University or Board in conducting public examinations, evaluating answer papers, announcing the results thereof and there after

110. 1886-96 CONSUMER 1911 (NS). The view expressed by Supreme Court in Bangalore Water Supply V/S A.Rajappa and Others A.I.R 1978 SC 548 is noteworthy to be mentioned here - “Education can be and is in its institutional form an Industry as defined in Section 2 (i) of the Industrial Disputes Act.”
conducting rechecking of the marks of any candidate on the application made by the concerned candidate is not performing any service for hire and there is no arrangement of hiring of any service involved in such a situation as contemplated by section 2(1) (o) of the Act. A candidate who appears for the examination cannot be regarded as person who had hired or availed of the services of the university or board for consideration.

However, the minority view given by Dr. (Mrs. R Thamerajakshi, Member is that

"The words 'any services for a consideration' in the definition of 'consumer' points to the generally non-restrictive nature of the definition in relation to service. The words 'avails of' in section 2(1) (d)(ii) as alternative to 'hires' in the same section as also the words "has been undertaken to be performed in pursuance of a contract or otherwise in relation to any service' in Section 2 (1) (g) have the effect of bringing under the purview of the consumer forum, services rendered by bodies like universities which are established for rendering specified services and which services are availed of for a consideration, even in the absence of any arrangement or contract to hire such services a positive approach is needed in interpreting the provisions of the Act to capture to maximum extent the spirit underlying the enactment to render natural justice to consumers and also to make those rendering these services accountable".

The same view was reiterated by the same member of NC in Sh. Ravinder Singh V/s Maharashi Daya Nand University, Rohtak [111] wherein it was concluded that the answer to the basic question whether education is a service under the purview of the Act is in the affirmative and the answer to specific questions such as whether

111. 1986-96 CONSUMER 1948 (NS)
holding of examinations, declaration of results etc. is a service is also in the affirmative, these specific issues being operational aspects of the basic matter. Very recently, the NC in Miss. Sonal Matapukar & Others V/s Sri S. Nigalingappa Institute of Dental Service & Another\(^{(112)}\) held that concealment of true nature of the extent of sanctioned student strength in the prospectus issued in practicing fraud on students seeking admissions and thus a clear case of deficiency in service within the scope and ambit of CPA.

In the light of the above noteworthy minority view expressed in Mohideen Kadre's case\(^{(113)}\) and subsequently in Sh. Ravinder Singh's case\(^{(114)}\) there seems no logic or reason in excluding education from the category of service as envisaged by the CPA.

The scope of definition of 'service' in the Act has been discussed in extenso by the Supreme Court in Lucknow Development Authority V/S M. K. Gupta\(^{(115)}\) and more recently in Indian Medical Association V/S V.P. Shantha & Others\(^{(116)}\). After pointing out that the definition of 'service' in the CPA is in three parts, the Supreme Court has observed in the former case:

"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' dictionarily means" one or some or all". In Black's law dictionary it is

\(^{112}\) 1997 (2) CPR 24 (NC) Opposite Parties admitted 44 Students including complainants to BDS course in excess of mentioned strength and consequently they were not allowed to appear in examination though all formalities were fulfilled by them.

\(^{113}\) Supra Note 110.

\(^{114}\) Supra Note 107.

\(^{115}\) 1986-95 CONSUMER 278 (NS).

\(^{116}\) 1986-95 Suppl. CONSUMER 1569 (NS).
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 it has been used in clause (o) indicates that it has been used in wider sense extending from one to all."

Referring to the inclusive part of the definition, the Supreme Court in the above said case observed:

"The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in earlier part. So any service except when it is free of charge or under a contract of personal service is included in it."

The Supreme Court also made observations in the same case on the larger issue whether the public authorities under different enactment's are amenable to jurisdiction under the Act. Referring to the arguments placed before them in that case the local authorities or Govt. and that therefore, they could not be subjected to the provisions of Act, the court observed:

"In fact the Act requires the provider of service to be more objective and care taking. It is still more in public services."

They further observed:

"Any attempt therefore, to exclude services offered by statutory or official bodies to the common man would be against the provisions of the Act and the spirit behind it."

Thus though service of education has not been specifically included in the definition of service as provided under the CP Act but it is within this definition as is clear from the words "Service means service of any description which is made available to potential users". So the need of the hour is that in future there should be positive judicial and quasi-judicial approach in interpreting the provisions of the Act to
capture to a maximum extent the spirit underlying the enactment to render natural justice to consumers and also to make those rendering these services accountable.

(5). **Electrical Service**: Supply of electricity is a consumer service\(^{(117)}\). There are two important enactments dealing with electricity service - The Electricity Act, 1910 and The Electricity (Supply) Act, 1948. Though under both the above mentioned Acts there is a provision of arbitration for settlement of disputes if any arising between the Board and Licensee but after passing of CP Act exceedingly a large number of cases have been brought before the CDRA'S. An important and noteworthy point which deserves to be highlighted is that unlike other commercial matters a person who uses electricity for commercial purpose has been also treated as a consumer. See *Haryana State Electricity Board V/s Jai Forging and Stamping's (P) Ltd. Yammuna Nagar\(^{(118)}\)* complainant claimed that due to illegal disconnection of electricity of the industrial premises he suffered loss apart from humiliation and loss of reputation of a reputable concern. NC upheld the order of state commission whereby he was entitled to Rs. 40,000 as loss plus Rs. 5000 in lump sum as compensation. Similarly where the allegations of the complainant stood substantiated on the basis of the evidence oral and documentary he was entitled to an appropriate compensation\(^{(119)}\).

Since it is the first and main duty of the Power Deptt. to supply electricity to its licensees any disregard to such obligation is a statutory violation. But it is true only where a licensee having fulfilled all the necessary conditions to get the power supply has been negligently

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117. As provided by Section 2 (1) (o) of Consumer Protection Act, 1986.
118. 1986-96 CONSUMER 2264 (NS).
119. Haryana State Electricity Board V/S Taney Roshi Poultry Form 1986-96 CONSUMER 2237 (NS).
denied or delayed this facility. Refusal to sanction supply unless all conditions are fulfilled is not a deficient service under existing rules. This impression also comes from the following cases on the point. In Additional Chief Engineer & Others V/s Ramalingam\(^{(120)}\) there was delay in providing additional power supply to the complainant for ice factory. NC held that by making application along with earnest money deposit he had only became an intending consumer. In Maharashtra State Electricity Board, Wardtha V.K. L. Ramani\(^{(121)}\) NC while agreeing with the District Forum that there was delay and harassment on the part of the board in giving electric supply held that failure to grant electric connection to an applicant who had not filed a proper application for connection does not constitute deficiency in service\(^{(122)}\).

Where there is disconnection of power supply whether to a factory/mill or residence without notice it is wrongful and consequently actionable. In Haryana State Electricity Board V/s Naresh Kumar\(^{(123)}\), board was held guilty of deficiency in service which it had undertaken to render to the consumer under The Indian Electricity Act & The Electricity Supply Act as also the statutory instructions of its own sales manual by disconnecting the electricity supply without any prior notice. 'Also disconnection of electric service within less than 7 days of the issue of the bill is deficiency in service\(^{(124)}\). 'It is also deficiency in service if there is delay in getting defective transformers / meters

\(^{120}\) 1986-95 CONSUMER 695 (NS) Seen also Additional Chief Engineer and Others V/S Ramalingam 1986-95 CONSUMER 695 (NS).

\(^{121}\) 1986-95 CONSUMER 1395 (NS).

\(^{122}\) Seen also Resi Engineering Works V/S Commissioner Coimbotare Corporation 1986-96 CONSUMER 2675 (NS).

\(^{123}\) 1986-96 CONSUMER 1981 (NS).

\(^{124}\) Rajasthan State Electricity Boar and Another V/S Ramlkhia Vyar 1986-96 CONSUMER 2423 (NS).
repaired or replaced. It is the duty of the Electricity Board to take prompt steps to have meters in question checked and if found defective to have them replaced by new meters having ISI Certification\(^{(125)}\).

Where the Electricity Board detects that any consumer had committed any malpractice with reference to his use of electric energy including unauthorized alterations, unauthorized extension and use of devices to commit theft of electric energy, the board may without prejudice to other rights of the consumer disconnect his electricity provided that the exercise of the power of disconnection shall be in accordance with the statutory powers. In *Haryana State Electricity Board V/s Laxman Singh*\(^{(126)}\) the complainant had obtained prematurely a power connection by paying bribes / illegal gratification to a junior engineer. Subsequently the SDO visited the site at demanded Rs. 5000 and on the refusal to pay such charge the electric connection was disconnected. After going through the record and hearing of the parties the NC came to the conclusion that complainant had managed to obtain power connection by dubious means and the subsequent connection was therefore, fully justified and it cannot be deemed to be deficiency in service on the part of the electricity board. In *CESC V/s Smt. Sunita Pal*\(^{(127)}\), the officers of the CESC found on surprise visit on the consumer premises that he was drawing electricity directly from the service cut-outs and in consequence disconnected the electricity in the said premises. State Commission on appeal directed the CESC to restore the electricity but the NC held the exercise of the powers of

\(^{(125)}\) Consumer Protection Council, Ahodab V/S Thc Ahodab Electricity Company Ltd. and Another 1986-95 CONSUMER 759 (NS); Consumer Assistance and Welfare Centre V/S A.P. State Electricity Board 1986-96 CONSUMER 3133 (NS).

\(^{(126)}\) 1986-96 CONSUMER 3258 (NS).

\(^{(127)}\) 1997 (2) CPR 92 (NC).
disconnection is in accordance with the statutory power and cannot be construed as any deficiency in service. However, a consumer/complainant cannot be held responsible for the unauthorized use of electricity by others. In *V. K. Ramchandani V/s Municipal Corp. of Delhi (DESU)* (128) the complainant had obtained the electric connection for his farm house for tube well and the poultry farm and agriculture. The power supply was disrupted in his locality as a result of the overhead wires having snapped. The wires were subsequently repaired and the electric supply was restored in the area. However, the complainant's electric supply was not restored. DESU failed to prove that the electric connection had been misused by the complainant... NC held there was no justification whatsoever for not restoring the connection subsequently. Complainant's electric supply remained disconnected for three years for which he was entitled to damages.

Earlier we have seen consumer forums have been hesitant in issuing mandatory orders for supply of power where a person has not acquired status of a consumer (129) - but where the same or additional load has been sanctioned but not made available it amounts to deficiency in service. In *The Executive Engineer, Q and M, Tamil Nadu Electricity Board & Others V/s K. R. Mani* (130) electricity board failed to produce the necessary records to establish that they were taking steps without any default and that delay in given the additional load was unavoidable. However, where after submitting an application complainant did not press the board or its officers to give the electric connection immediately the supplier of electricity was not held liable for

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128. 1986-96 CONSUMER 2669 (NS).
129. 1986-96 CONSUMER 2807 (NS).
130. Id. P.2807
any deficiency \(^{131}\). Similarly, where there is delay on the part of complainant Electricity Board can not be held liable for deficient service. In *M/s Genetic Industrial Gases (p) Ltd. V/s The U.P. State Electricity Board & Others\(^{132}\) it was found that delay in supply of power to the unit of the complainant was occasioned due to the fact that the sub-station at the industrial estate, was under construction was completed the transformer was not available and when the sub-station was energized it was found that the complainant had not installed the L. T., switching system.

Various cases have been reported where disconnection has been based on imposition of arbitrary bills. In *Y. N. Gupta V/s D.E. S.U.\(^{133}\)* bills for electrical consumption were not prepared and served at the appointed time in accordance with the billing cycle and thereafter the consumer feel harassed with heavy arrears of bill. NC held that harassing the complainant with heavy arrears of bill amount deficiency in service. Not only the complainant has been harassed by presenting him with inflated bills requiring him to pay the same at extremely short notice but torturing him and his family members by arbitrarily and malafidely disconnecting his power supply and that too before the date specified for payment of the bill by DESU itself.

Briefly to say after perusal of cases supply of electricity has been held to be a consumer service even if the energy is being put to a commercial use.

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132. Id. P.2688 (NS); Seen also Alarcity Foundations (Pvt). Ltd. V/S The Chairman, Tamil Nadu Electricity Board 1986-96 CONSUMER 3259 (NS); In Haryana State electricity Board V/S Pirthi Singh 1986-95 CONSUMER 456 (NS) in which no deficiency was proved as it was not showed that the board has violated any rule, direction or instruction issued by it.

133. 1986-95 CONSUMER 551 (NS).
(6). **Financial Service**: Financing Service is a service as mentioned u/s 2(1)(0) of the Act. Earlier under the heading of 'Banking Service' it is said that banks are necessarily allowed considerable discretion in deciding granting of loans, raising of credit limits and matters relating to repayment etc. The same is true of Financing Institutions. In the case of **Branch Manager Tamil Nadu Industrial Investment Copn. Ltd. V/s S.R.Subramanian** the complainant approached the corporation for the grant of a loan for starting an oil mill industry. He deposited margin money but the corporation failed to advance him the balance of the amount. The NC held that it has been repeatedly pointed out by this commission that:

"Even after a bank or other financing institution has sanctioned the limits up to which a loan will be advanced by it to a borrower, it is still vested with the discretion to apply its mind from time to time and decide in its best judgment as to whether it will be reasonable, safe and prudent to make further advances to the particular borrower in the light of any failure on his part. So long as such discretion is exercised in good faith and for safeguarding the interest of public funds after due application of mind to all relevant factors, a decision taken by the bank or other financial institutions to discontinue making further advance to a particular borrower will not constitute deficiency in service." 

Applying the aforesaid principles to the facts of the present case, the NC was of the opinion that in view of the failure on the part of the complainant to show proper progress in the construction work of the

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134. The same view has been reiterated by NC in Pondichary Aerators V/S M.D. Pondichary Industrial Development and Investment 1991(1) CPR 613.
135. 1986-96 CONSUMER 2965 (NS).
136. The view has been taken from Special Machine Tools V/S Punjab National Bank and Others 19986-95 CONSUMER 766 (NS).
factory and to comply with the conditions stipulated by the bank to open a special current account in order to enable it to make further advance to him, the bank cannot be said to have guilty of any deficiency in service in taking a decision to stop making any more advances to the complainant.

Similarly in M/s Robinson India V/s Rajasthan Financial Corpn. & Another\(^{137}\) the complainant applied to the RFC for a loan for the manufacture of medicines and was sanctioned Rs 7lacs. The grievance of the complainant was that the RFC disbursed to him only Rs 6.08 lacs and the balance amount was not disbursed. The complainant had also obtained sanction for a cash credit limit of Rs 3lacs from Punjab National Bank. The complainant alleged that the RFC & PNB acted in collusion with each other with a view to cause him undue loss. On the merits of the case, NC found that both the RFC & PNB have acted as per the terms and conditions of the sanction of the loan and extension of cash credit facility. Further, it was the complainant who had defaulted in the repayment of principal with interest to the RFC and had also violated norms of financial discipline by operating his cash credit account with the PNB in an unsatisfactory manner.

Where financial corporation could not give additional loan because the complainant failed to give additional security as it had misutilized the loan granted earlier there is no deficiency in service \(^{138}\). But where the default is on the part of the company or firm to carry out its obligations to repay the principal and interest on the amount deposited it amounts to deficiency in service \(^{139}\).

137. 1986-96 CONSUMER 2776 (NS).
139. Neela Vasant Raja V/S Amogh Industries and Another 1986-95 CONSUMER 446 (NS).
In Another case (140) the question for the consideration of the commission was whether non-payment of subsidy is deficiency in service. It was held subsidy offered to be paid is not service as defined in the CP Act. In the same way rescheduling of loans and relief in interest thereon is also not a service. It is in the nature of an accommodation and concession to a party.

Another issue that needs here mention is whether a prospective investor is consumer and can he claim any deficiency in service against a company. In order to answer this question let us move a step back ward and see the decision of the MRTP commission as given in CERC V/s T. T. K. Pharma (141). In this case it was held that shares before allotment are not goods as defined in the Sale of Goods Act, 1920. No doubt the MRTP, 1969 has been amended in 1991 in order to include in the definition of 'goods' shares before allotment but still the ruling of the above case prevails the most. In Morgan Stanley Mutual Fund Kartik Das (142), the MSMF was registered with Securities Exchange Board of India (SEBI) and was managed by the board of trustees. The Board have appointed Morgan Stanley Asset Management India Pvt. Ltd. (MSAM) as asset management company of (MSMF). The first scheme of the (MSMF) was approved by the board of trustees in the name of Morgan Stanley Growth Fund (MSDF). The (MSMF) and (MSAM) commenced marketing the scheme through circular advertisement to raise a capital of Rs. 300 crores by selling 30 crore shares of Rs. 10-each. A suit was brought by the complainant alleging that the scheme was not approved by (SEBI) and the basis of allotment of shares by the (MSMF) was unfair as the (MSMF) was unfair.

140. M/S Sowheny Export House (P) Ltd V/S Noida.
142. (1994) CPJ 7 NC.
intending to collect money by misleading the public. To the issue whether prospective investor could be said to be a consumer within the meaning of the CP Act, the court replied in the negative. It held that only after allotment shares became goods and the question of violation of rights of investor would arise only after allotment.

However, keeping in view the comprehensive definition of service as provided under this Act and the fact that the financial service is within the inclusive clause of section 2(1)(o) it is to be submitted respectfully that the above case is based on wrongful judgment. Morgan Stanley is an internationally reputed financial service company. It employees more than 7,400 people to provide a wide spectrum of financial and advising services to many fortune five hundred corporations, institutions, Govt. and individual investors. Its main activities include investment, banking, financing services, merchant banking, under taking asset management securities, sales and trading investment research, brokerage and correspondent services, commodities and foreign exchange trading, advising services and global custody. Thus Morgan Stanley Mutual Fund is rendering financial services to the investors and therefore the complainant is a consumer.

It is to be briefly stated that the financial service like banking service is within the ambit of CP Act and is bound by the same rules and principles as are applicable to the banks.

(7). **Insurance Service**: The quick pace of industrialization of the modern age has rendered man and his property most vulnerable to

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different types of risk and uncertainties of life. Thus, while uncertainties of death, unemployment, sickness are constantly starting at the face of a man, his property is exposed to the risks arising from fire, water, accident, windstorm, Sea perils, earthquakes, floods, dishonesty, negligence etc resulting from acts of God. In the absence of any remedy or cooperative efforts of society, friends, relatives and others, these losses were borne by the victims concerned. But with the growth of the industrialized society and consequently a rapid increase in the number of situations in which the human life and property get exposed to risks an effective solution of reducing the burden of these losses has been devised, by shifting these risks to agencies or persons willing or qualified to share them. (144) Presently in India Life Insurance Corporation, General Insurance Corporation of India and its subsidiaries are operating for pursuing the goals set for these agencies (at the time of nationalization) under various Acts (145).

These Acts set out body of rules and principles for determining the disputes arising out of insurance contracts between individuals or groups and the insuring body. This Act- CP Act also includes insurance within the definition of Section 2 (1) (o). How far CDRA’S have commended them selves to impart consumer justice in matters relating to insurance service can be better viewed by going through a long list of cases decided by them. For convenience let us focus them under the following sub-headings:

a). **Life Insurance:** It is one of the most important and popular type of insurance. One of the deepest desires of a rational man is to ensure that his dependants are provided for in the event of his untimely death. Life

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145. Oriental Fire and Insurance Company Ltd. New India Assurance Company Ltd, United India Fire and General Insurance Company Ltd.
assurance provides for ordinary life assurance, industrial life assurance and annuities.

b). **Marine Insurance** :- It is one of the oldest forms of insurance due to man's long association with the maritime trade and the perils of the sea. It includes Hull Insurance which insures the actual vessel and its equipment's; Cargo Insurance for insuring the merchandise; Freight Insurance; which is self-explanatory.

c). **Fire Insurance** :- Includes the risk of destruction by fire and also loss of profits (consequential loss) policies.

d). **Miscellaneous Insurance** :- This general category includes fidelity insurance, unemployment insurance, employee's state insurance, plate glass insurance, motor car insurance, employees liability, public liability cash in transit, crop insurance, cattle insurance, beauty insurance, dog insurance etc. But the cases which has been dealt by consumer forums are mainly concerned with vehicle insurance, consignment, burglary etc. Let us go into the details of above mentioned points with support of cases.

a). **Life Insurance** :- Life policies are generally taken for the protection of the life. These contracts are based upon mutual trust and confidence between the insurer and the insured and are subject to good faith because the law can not support fraud. In simple terms, utmost good faith in insurance means that each party to a proposed contract is legally obliged to reveal to the other all information which would influence the others decision to enter the contract whether such information is requested or not. In other words utmost good faith requires each party to tell the other truth, the whole truth and nothing but the truth about the proposed contract. Accordingly, all the material facts should be disclosed by the insured and the insurer so that the person under taking to shoulder the burden of risk may ascertain the nature and extent of it
before fixing a price. So any non-disclosure of a material fact enables the under-writer to avoid the contract irrespective of whether the non-disclosure was intentional or inadvertent. In *Draupadi Devi’s Chaudhari V/s United India Insurance Company* (146) Ltd. the complainant had taken a mediclaim insurance policy from the insurance company covering risks of expenses incurred for hospitalization and domiciliary hospitalization. After some months complainant’s husband felt chest discomfort for the first time and was advised to undergo bypass surgery. The insurer repudiated the mediclaim on the ground that he had been suffering from chest discomfort since ten years and this fact had not been disclosed in the proposal form. The repudiation of the insurance claim by the insurer was primarily based on the 'history' of the patient as recorded in the Hospital Discharge Card wherein it had been stated that Mr. . . . had "chest discomfort since ten years . . .". NC found that the repudiation of the claim by the insurer in this case appears bonafide being based on the history in the discharge card of the hospital and that therefore, there was no deficiency in service on its part attracting the mischief of the CP Act.

On merits also in *Divisional Manager, LIC of India & Others V/s Smt. Sunita Sharma* (147) it has been fully established that the insured had concealed material facts while taking the insurance policy.

In this case the complainant’s deceased husband had taken out a policy on his own life. After his death the insurance company got the matter investigated which revealed that the deceased insured has

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146. 1986-96 CONSUMER 391 (NS).
147. 1986-96 CONSUMER 359 (NS).
suppressed material facts relating to the state of his health that he was suffering from mitral stenosis for about 17 years from breathlessness for 7 years and that about 9 months prior to the submissions of the proposal for the issue of the policy he had undergone operation for appendicitis. This concealment of material facts while taking the insurance policy entitled the LIC to repudiate its liability under the policy.

Fraudulent misrepresentation of facts entitled LIC to repudiate the liability in Smt. Kantaben V/s Life Insurance Corporation of India Ltd. & Another\(^{(148)}\) also. The complainant was the widow of deceased who had during his life time taken a policy of insurance for Rs. 1 lakh. She being the nominee in the policy lodged a claim with the LIC. LIC repudiated all liabilities under the policy on account of the deceased having withheld correct information regarding his health at the time of effecting the assurance. The NC found that though allegation was made by the complainant that the services rendered by the insurer suffered from deficiency but there was no evidence to support that allegation. The policy taken by the deceased was vitiated by reason of suppression of material facts by the insured and the LIC was justified to repudiate its liability under the policy.

On similar grounds LIC repudiated the claim of the complainant in Life Insurance Corporation of India V/s Smt. Lily Rani Roy\(^{(149)}\). The question whether submitting proposal and payment towards premium can be construed as a concluded contract. In couple of cases before NC the question came for consideration. In LIC of India & Another V/s Smt. K. Aruna Kumari\(^{(150)}\) the facts in brief are these –

\(^{148}\). 1986-96 CONSUMER 3004 (NS).

\(^{149}\). 1997 (1) CPR 40. NC held that LIC was right in repudiating the claim on the facts in respect of the information received from the hospital …

\(^{150}\). 1986-96 CONSUMER 2801 (NS).
The Respondent - complainant had submitted to the branch of LIC a proposal for insurance on own life. Unfortunately soon the husband died in an accident and the wife of the assured claimed the amount due under the policy of insurance in pursuance of the proposal and the premium accepted by LIC. LIC repudiated the contract on the ground that the assured was required to submit the age of certificate. Since it was not submitted so there was no acceptance of proposal. NC agreed with the point of refusal submitted by the LIC and held that merely submitting the proposal and payment of an amount which was kept in deposit with out appropriation towards the premium it can not be said to be a valid contract of insurance.

The NC referred the decision held by the Supreme Court in LIC's case

"The Contract of Insurance will be concluded only when the party to whom the offer had been made accepts it unconditionally and communicates his acceptance to the person the offeror. Though in certain human relationships reliance to a proposal might convey acceptance but in the case of insurance proposal silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance. Mere delay i. giving an answer cannot be construed as an acceptance, as prima-facie, acceptance must be communicated to the offeror. Similarly, the mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance.

However, earlier in Life Insurance Corpn. of India V/s Mrs. V.Jeeva NC upholding the decision of the State Commission held

151. AIR 1984 SC 1014.
152. 1986-96 CONSUMER 2533 (NS).
that it was mistake on the part of LIC in not choosing to issue the policy immediately and that there is no illegality or irregularity when the two forums came to the conclusion that there was a concluded contract (as the premium was deposited) of insurance and deficiency in service.

It is to be submitted that keeping in view the constitutional mandate of the socio-economic justice the Jeeva's case has been rightly decided and the view expressed by NC in Smt. K.Aruna Kumari's Case is based on erroneous judgment. A layman usually poor illiterate can hardly be expected to know that after accepting proposal and premium any formality remains to be fulfilled. It is upon the insurer who knows the technicality of the matter to get all formalities done and in case the same remains wanting it is in appropriate, unreasonable and unjust on the part of the insurer to avoid liability and say that the money deposited by the assured was kept in suspense account. In view of the social responsibility to provide reasonable security to policy holders Insurance Corporations should provide better service but not by rejecting claims on frivolous and technical ground.

b). Marine Insurance : - Marine insurance is the oldest form of insurance. It covers loss or damage to vessels or to cargo or passengers, during transportation on the high seas. The risks insured against are those commonly known as perils of the sea. It does not include the ordinary action of the wind and water. Like other insurance contracts a full disclosure of all the material facts is more essential. However, it is only the fraudulent suppression, or knowledge of the suppressed facts which would entitle the Insurance Corporation to avoid the policy. In a number of cases relating to marine insurance the NC has over, emphasized the same view. In M/s National Insurance Company Ltd. V/s Premjibhai Ranchodhai Hodal Mangrol
Matsyugandhi Mongrol\(^{(153)}\) the fishing boats belonging to the complainant were insured. There was some disturbance in the sea. Efforts to tow the fishing board continued but owing to heavy swell at rough sea, mooring houses were frequently parted and all the fishing boats drifted along with heavy swell at midsea. The towing of the fishing boats was required to be abandoned and all the vessels sunk in the sea. The insurance company raised the contention that the complainants had not placed adequate persons on the vessel to man it which amounted to breach of manning warranty.

Up holding the decision of the state commission, NC held that the crew members tried to save the boats and re-tide the ropes but ultimately the efforts were required to be given up. The damage was caused only because of the rough sea weather and not because of any inadequacy of manning of the boats.

Similarly in another case\(^{(154)}\), the insurance company does not disprove the fact that the engine shaft of the vessel had broken so the NC held that it was not justified on the part of the insurance company to repudiate the claim of the complainant and that too after twenty months of the filing of the claim. If payments are delayed or withheld without satisfactory reasons, policy holders will quite rightly lose confidence in the insurance company. Paying the claim is certainly one of the most important functions of marine insurance companies, it is essential that just claim be paid promptly and in full payment\(^{(155)}\).

M/s Uniplas India Ltd. V/s The National Insurance Company Ltd.\(^{(156)}\) the complainant lodged a claim for the loss occasioned due to

\(153.\) 1997 (2) CPR 251 NC.
\(155.\) 1986-96 CONSUMER P.265
\(156.\) 1986-96 CONSUMER 1654 (NS).
non-arrival of good in respect of six Bills of Lading ... The NC held that the insurance company has reduced the amount payable under the insurance policy arbitrarily, unfairly and has not settled the claim with reasonable expedition and thus has been guilty of deficiency in service.

Since marine insurance contracts are based on the principle of insurable interest under rules of marine insurance every person has an insurable interest who is interested in a marine adventure where he stands in any legal or equitable relation to the adventure. Thus a person can take an insurance policy on his ship, an owner of goods can take policy on the cargo and the person entitled to receive freight can take policy on the freight. In a case the insurance company has not paid the claim on the ground that the complainant had no insurable interest in the vessel as the true owner of this vessel was the person in whose name the vessel was registered. But the NC held that the complainant had paid the premium by getting the vessel insured because the vessel was in his possession. He could not have done this if he had no insurable interest in the said property. From the totality of the facts the commission came to the conclusion that there was deficiency of service on the part of insurance company.

c). Fire Insurance:- The contract of fire insurance is in fact an offshoot from the contract of marine insurance. The contract of fire insurance, like other contracts of insurance, differs from an ordinary contract in that it requires, throughout its existence, the utmost good faith (Uberrima fides) to be observed on the part of both the insured and in the insurers. A failure to comply with this requirement renders the contract voidable, for the insured as being the person interested in the subject matter, has some acquaintance with its nature and surroundings, and must, therefore, be taken, as against the insurers, to know what the matters are which are to be communicated to them. But the contract
which the insurer make with insured must be clearly expressed. If the terms are ambiguous, the consumer cannot rely upon a construction which would effect, make the contract misleading or unfair.

In *M.K. G. Corporation V/s United India Insurance Company Ltd. & Others*\(^{(158)}\) the NC held that the repudiation of the liability of the insurance company under the insurance policy was not bonafide and that it has placed a far-fetched and unreasonable interpretation on the insurance clause pertaining to insurance of stocks in process. Similarly the insured cannot be allowed to take unfair advantage of a typing mistake in the insurance policy regarding the amount insured\(^{(159)}\).

In *United India Insurance V/s Ajmer Singh Cotton & General Mills & Others etc.*\(^{(160)}\) insurance company made the payments which were accepted by the insured with declaration of receipt of the "sum in full and final discharge of claims upon them". After the payments were made the complainants (Insured) filed complaint before the state commission claiming interest at the rate of 18% p.a. against the insurance company. State Commission dismissed the claim but NC directed the company to pay the interest. The Supreme Court held that mere execution of the discharge voucher and acceptance of the insurance claim would not estop the insured from making further claim from the insurance company but it is possible under fraud, undue influence, misrepresentation, or the like. The same view was reiterated by NC in *The New India Assurance Co. Ltd. V/s M/s Geetaanjali*.

\(^{157}\) Haji Dand Haji Haran Aboo V/S United India Insurance Company Ltd. 1986-96 CONSUMER 3100 (NS).

\(^{158}\) 1986-96 CONSUMER 3204 (NS).

\(^{159}\) United India Insurance Company Ltd. V/S M/S Mohan Lal and Sons 1986-96 CONSUMER 1685 (NS).

\(^{160}\) 1993 (3) CPR 53 (SC).
Silk House & Another\(^{161}\). The complainant had taken loan from the bank and insured the shop where he was carrying on cloth business. A fire broke out in the shop causing huge loss to the complainant. The complainant alleged that he had asked the bank that he was not agreeable to the payment offered by the insurance company but which the bankers had accepted. So he objected on the ground that he was coerced to agree the same in full satisfaction. NC held acceptance of the settled claim by co-insured will bind the other. In this case since there is no allegation that the complainants were coerced in any way to accept the sum so in no way (NC held) can be Insurance Company held liable for deficiency in service or imperfection in the rendering of service.

Though it is a fundamental principle of fire insurance that the insured in case of the loss covered by the contract, shall so far as the sum specified in the contract permits, be fully indemnified but shall never be more indemnified or on other words be never allowed to obtain benefit fraudulently or malafidely. In the light of the reports of the surveyors and investigator it was held by the NC in Shiv Trading Company V/s New India Assurance Co. Ltd. & Others\(^{162}\) that the fire was not accidental but it was arranged just to get benefit under the policy. On the same lines that is for similar reason NC in M/s Advance Rubber Industries V/s M/s United India Insurance Company Ltd.\(^{163}\) found Insurance Company right in repudiating the claim. In this case the complainant had withheld material information from the Insurance Company that the family member of the land lord had poured kerosene oil over the rubber material which was mentioned in the F.I.R.

\(^{161}\) 1986-96 CONSUMER 2088 (NS).
\(^{162}\) 1986-96 CONSUMER 2293 (NS).
\(^{163}\) 1986-96 CONSUMER 2114 (NS).
immediately after the incident but was not disclosed to the insurance company.

However, in a large quantity of cases decided by the apex commission it is noticed that there have been inordinate delays in the finalization of the claims of the insured. **M/s Tanawala Synthetic Textile Ltd. V/s Oriental Insurance Co. Ltd.** is relevant case on the point. In the instant case the insurance company sent a letter of repudiation to the complainant after a long delay of over three years. NC held long delay for not accepting the loss as assessed by the surveyors is itself a deficiency in service as per section 2(1)(o)(g) of the Act. On the facts and circumstances of the case in **M/s R. K. Industries V/s The New India Assurance Co. Ltd.** the settlement of the claim was delayed deliberately for about 17 months.

In **M/s Shai Sabbari Syndicates V/s M/s Oriental Fire & General insurance Ltd.** the NC observed that the conduct of the insurance company in initially offering to settle the two claims and subsequently agreeing to have a re-survey done and finally agreeing to settle the claims at reduced payment exhibits deficiency in service in settling the claims and even when release of the amount was asked the same was not paid. This amounted to gross deficiency in service.

d). **Miscellaneous Type of Insurance:-** Apart from the main forms

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165. 1986-96 CONSUMER 2103 (NS).

166. 1986-96 CONSUMER 2760 (NS).

167. 1986-96 CONSUMER 2795 (NS).
of insurance a number of insurance policy meant to cover a variety of other risks are also issued by the general insurance companies. Some of the important miscellaneous forms of policies among others are motor car insurance, goods in transit insurance, burglary insurance etc. A survey of cases decided by NC under this heading is designed to under take here:-

(i). **Accidental Cases**: The motor car insurance or automobile insurance is a contractual protection against losses connected with the use of automobile. Since usually on occurrence of any accident or loss of or damage to the vehicle, the insured must inform the insurer and the insured must take reasonable steps to prevent or mitigate as the case may be, any loss of or damage to the vehicle some times insurance companies repudiates the claims on the one or other ground of own damages that is the damages caused by the insured. In *National Insurance Co. Ltd. V/s Rais Abbas Naqvi* \(^{168}\). The Respondent Complainant had taken an insurance policy in respect of truck which was financed from a bank. The said vehicle met with an accident. The Insurance Company repudiated the claim alleging that the vehicle was passed for carriage of 12 tons and weight carried by the vehicle at the time of accident was 15 tons.

NC held that the policy of insurance lays down limitation as to the use. The licensed carrying capacity of the said vehicle for the goods was 12 tons but the investigation report showed it carried 15 tons. Since the truck was overloaded so the repudiation was based on material and cannot be termed as arbitrary. Similarly carrying unauthorized

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\(^{168}\) 1986-96 CONSUMER 2234 (NS).
passengers amounts violation of the terms and conditions of the policy\(^{(169)}\).

As above stated it is the duty of the insured to intimate the insurer immediately if any change takes place regarding the insured property. In The New India Assurance Co. Ltd. V/s Mrs. S.Pushpa Devi Jamed & Another\(^{(170)}\) The Complainant -Insured purchased lorry was taken by the financier and while proceeding on the way the vehicle met with an accident. The complainants shifted the goods to another vehicle and left the insured vehicle unattended for ten days. Someone as it was alleged set the vehicle on fire causing heavy damage to it. NC held that the fact regarding the change of possession of the lorry hire-purchaser to the financier was not intimated to the company before filing the claim so the repudiation by the company on this ground was genuine and reasonable.

To raise a claim before insurance company it is necessary under section 64 - VB of the Insurance Act that there should be valid insurance contract on date of accident. In a case\(^{(171)}\), it was observed that cheque for installment premium was encashed one day after the alleged incident so there was no valid insurance contract and the repudiation of the claim by the insurance company did not constitute any deficiency of service. In Hotel Southern Pvt. Ltd. V/s National Insurance Co. Ltd. & Others\(^{(172)}\) also encashment of the cheque was dishonoured as there was no funds with the bank. Meanwhile accident

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170. 1986-96 CONSUMER 2620 (NS).
171. Bam Dev V/S United India Insurance Company Ltd. 1997 (1) CPR 95.
172. 1986-96 CONSUMER 2803 (NS). In this case judgment of the Supreme Court in United India Insurance Company Ltd. V/S Ayub Mohd. And Others 1991 A.C.J 650 was referred. In this case it was held in the absence of consideration for the policy Insurance Contract was void ab initio.
took place but the claim was repudiated by the NC as there was want of premium on the day of accident. An interesting case from the discussion point of view here is M/s Complete Insulation's Pvt. Ltd. V/s New India Assurance Company Ltd. \(^{(173)}\). In the instant case a maruti car was purchased in the name of Mrs. Archana Wadhwa for which the Insurance Company had issued a comprehensive insurance policy. The premium for the insurance was paid by the complainant company in whose favour the car was transferred. The complainant intimated the transfer of registration and asked for transfer of the insurance policy by two letters to which the insurance company did not reply. The car met with an accident and there was a total loss of car. The NC while setting aside the order of the state commission directed the insurance company to pay insured value of the vehicle. On appeal to Supreme Court provisions of section 103-A of the Motor Vehicle Act, 1939 (Old Act) and section 157 of the New Act were examined and it was found that since there was no such agreement as insurer had not transferred the policy of insurance in relation thereto the transferee the insurer was not liable to make good the damage to the vehicle. But we are in complete agreement with the NC in holding the insurance company liable for providing deficient services. As it is clear from the facts and circumstances of the case that the complainant intimated the insurer vide two letters about the transfer of registration and asked for transfer of the insurance policy but the insurance company did not reply to the said two letters. Anyway it is due to the delay or irresponsibility showed by the insurance company which is the root cause of complainants suffering\(^{(174)}\). In a large number of reported cases validity of the driving licenses were the main issue.

173. 1986-96 CONSUMER 2839 (NS).
174. 1997 (2) CPR 151.
In New India Assurance Co. Ltd. v/s Smt. Pushpa Yashwant Ghatge\textsuperscript{(175)} and Gurbhand Singh v/s The Oriental Insurance Co. Ltd. & Others\textsuperscript{(176)} NC held that the Insurance Co.'s were right in repudiating the claims after considering survey reports from qualified surveyors in which the validity of the licenses were denied. To some extent on the similar facts complainants' grievance was not allowed to be redressed in Sachin Balachandra Shah v/s The Oriental Insurance Co.\textsuperscript{(177)} on the ground that driving licence of the driver was misused as in fact that person was not driving car at the time of accident and that person himself had written a letter to insurer that he was not driving car. NC held it is clear from the reports submitted on behalf of the insurance company that it has reasonable doubt to the genuineness of the claim and therefore, non-settling of the claim under the policy could not be due to deficiency in service or negligence.

However, insurance company in The New India Assurance Company v/s Sh.Hement S.Handra\textsuperscript{(178)} has been held liable for providing deficient service. In this case the complainant has insured his tempo vehicle with the insurance company. The said vehicle was involved in an accident. The insurance company rejected the claim on the ground that the driver of the tempo was holding motor car licence. But in view of sections 2(23), 2(21) & 10(2) of The Motor Vehicle Act, 1988 the apex commission held that the vehicle in the present case falls under the light motor vehicle so the repudiation of the claim by the insurance company has not been done on valid grounds and hence this amounts to deficiency in service.

\textsuperscript{175} 1986-96 CONSUMER 1901 (NS).
\textsuperscript{176} 1997 (2) CPR 156.
\textsuperscript{177} 1999 (2) CPR 11 (NC).
\textsuperscript{178} 1986-96 CONSUMER 2211 (NS).
ii). **Burglary etc. Cases** :- Like other forms of insurance a desirous person also takes insurance policies to cover loss of consignment and collision and burglary. There is a steep rise in such type of insurance's and it is observed mainly due to the increase in filing complaints before the CDRA. In a couple of cases (179) relating to loss of consignment NC while declining negligence on the part of insurance company convinced the complainants to approach the ordinary civil court. In such cases it was found that due to the break up of war, purposes of the contracts were frustrated and consequently giving rise to the special and extra-ordinary nature of the facts and circumstances.

While denying delay and deficiency on the part of insurance company NC reached to the conclusion that the failure or the refusal on the part of the buyer to accept goods clearly conveyed the existence of prima-facie dispute between the complainant and the buyer and the insurance company was not to be called upon to fulfill their contractual obligation before the conditions in the relevant provisions of the policy were complied with to their satisfaction (180).

There are a large number of cases (181) which have been dismissed by the NC on the ground that the claim put forward by the complainants were not tenable. From the argument point of view it is unnecessary to set out in detail the contentions raised there in. In **M/s Modern Insulators Ltd. V/s The Oriental Insurance Co. Ltd.** (182) the insured factory had taken out and insurance policy known as 'All risks insurance policy'. The policy covered risks against loss during storage —

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179. 1986-96 CONSUMER 26 (NS) ; Supp. (3) SCC 406.
180. Rangudyog V/S Export Credit Guarantee Corporation of India Ltd. 1986-96 CONSUMER 2230(NS).
182. 2000 (1) CPR 93 (SC).
cum-erection including trial and testing. After completion of the erection of 25M3 Kiln, was loaded with insulators for trial and testing and when it was opened it was found that complete structure of kiln furniture with insulators had collapsed and various items of kiln furniture were damaged. Insurance company refused to settle the claim stating that damaged property was not covered by the insurance policy.

It relied on the exclusion clause was not included in the policy nor communicated to the insured, Insurance company can not claim the benefit of the exclusion clause so as to avoid its liability under the insurance policy. Due to heavy rains the compound wall was damaged and collapsed in M/s New India Assurance Co. Ltd. V/s M/s Matchless Investment Finance and Leasing Ltd.\(^{(183)}\) also but on account of under-insurance it was found that it was bonafide for the insurer to deduct from the sums assessed by the surveyor.

In M/s New Jaipur Dyeing & Tents Works V/s The Oriental Insurance Company Ltd.\(^{(184)}\) there was a burglary in the firm of complainants. The grievance of the complainants was that the Insurance company did not settled the claim within the reasonable time for which he claimed compensation. NC hold the view that since there was reasonable ground to doubt the genuineness of the claim, as such the non-payment of the insurance amount under the policies cannot be deemed to be a deficiency in service arising from negligence.

For the further examination of the subject matter some more important cases are to be worth mentioning.

In The Chairman Life Insurance Corporation of India & Another V/s Akhil Bhartiya Grahak Panchayat & Another\(^{(185)}\) the

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183. 1986-96 CONSUMER 2302 (NS).
184. 1986-95 CONSUMER 887 (NS).
185. 1986-95 CONSUMER 858 (NS).
complainant held 6 policies in servicing which the State Commission found deficiency in service rendered by the LIC to the insured as under :-

i) Unilateral increase in the premium payable on three policies by 50 paisa each which constituted a breach of contract of insurance.

ii) Refusal on the part of LIC to give additional loans to the insured on the basis of the surrender value of the policies.

iii) Failure of the Insurer LIC to furnish to the Insured the guaranteed surrender value of the policies and special surrender value of the bonus accrued on the policies from time to time.

iv) Alleged rude behaviour of an employee of LIC and failure of LIC to take action on the complaint made by the Insured.

NC held there has been no deficiency in the service on the part of LIC on the two major charges of deficiency in service - unilateral increase in the premium (on the policies by 50 paisa) due to rounding off and refusal to give additional loans on the basis of the special surrender value of the policies. Consequently a token compensation was awarded to the Respondent - Complainant in this case and that with reference to its deficiency in service established against the insurance in respect of items iii & iv above.

In a special leave petition Under Article 136 of The Constitution in State of Orissa V/s Divisional Manager, LIC and Another the question before the Supreme Court was whether the State of Orissa (Appellant) is liable to pay compensation to the Govt. servant (Respondent) under the Act and whether the claim is maintainable.

186. 1986-96 CONSUMER 2141 (NS). In this case recent judgment of the Supreme Court in Indian Medical Association V/S V.P Shantha and Others (1995) 2 CCC; CONSUMER 673 (NS) was applied in which concept of personal service was considered.
The court held that under section 2(1)(o) the excluded services are 'Service free of charge or under a contract of personal service'. Since the complainant in this case was Govt. servant and therefore he was bound by the service conditions and the state was rendering services free of charge to the complainant. Under these circumstances it was held that the Govt. servant has been excluded from the purview of the Act to claim any damages against the state under the Act. However, it was made open to complainant to claim in any other forum.

After perusing the above cases under the heading Insurance Service carefully one thing is observed and that is that the CDRA's while deciding cases under different sub-headings as above mentioned have not faced much difficulty as in cases of life insurance. In these cases LIC has repudiated claims primarily on the ground that insured had hidden the grounds of health. It is to be submitted here that LIC must employ competent doctors equipped with modern techniques so as to ascertain the state of health of a consumer. The standard proposal forms add to the miseries of the policy holder. He is neither aware of his own health history nor is able to reply the questions asked in the proposal form.

(8). **Medical Service** :- Unlike other services specifically mentioned in the definition section 2(1)(o) of the Act 'Medical Service' has always disputed applicability of the Act although there has been a remedy in Law of Torts for the negligence done by the doctors. However, very few suits have been filed under The Law of Torts because it takes a long time to decide such cases. There is criminal liability also for the negligence committed by any person and a doctor can be prosecuted under sections 304-A, 336, 337 and 338 of IPC. If the complainant is able to prove the negligence on the part of the doctor,
he can be punished with imprisonment or fine or both according to the gravity of negligence and punishment prescribed under The IPC, 1860\(^\text{187}\).

There are number of cases in the newspapers every day that after performing an operation the doctor forgot knife, towel, scissors or some other instrument in the body of the patient\(^\text{188}\). There are various cases\(^\text{189}\) where the courts have held the doctor negligent in the performance of his duty under the CP Act. Actually the controversy concerning the inclusion or exclusion of services rendered by medical practitioners and hospitals in general appears to have started from the decision of the Rajasthan State Commission in Consumer Unity & Trust Society, Jaipur V/s State of Rajasthan\(^\text{190}\) which needs to be referred here.

In this case a voluntary consumer organization made a complaint on behalf of a lady who underwent an abdominal tube tomy operation at the Govt. hospital on part of the family planning programmes. It was alleged in the complaint that after operation he suffered series complications on account of negligence on the part of the civil surgeon who had performed the operation and it was due to the lack of proper post-operation care and attention for which compensation was claimed. It was held by the concerned state commission that neither the lady nor his husband can be said consumer under section 2(1)(o) of the CP Act


\(^{189}\) Paschim Banga Khat Mazdoor Samity and Others V/S State of West Bengal and Another 1986-96 CONSUMER 2040 (NS). In this case it was held denial of immediate Medical Aid to complainant the Govt. Hospital was held liable for committing breach of the petitioners right guaranteed under Article 21 of the constitution.

\(^{190}\) (1991) 1 CPR 30.
as they had not hired services for consideration. On appeal NC requested an advocate of the Supreme Court, to assist the commission. The advocate proceeding before the NC laid emphasis on the following points:

i) That tax could be regarded as payment of consideration the return for which tax-payer gets only the participation in the common benefits.

ii) That it is guaranteed under the constitution that state should provide a good standard of life and health facilities.

iii) That the words 'hires or avails' should be taken to mean any person who prevails or uses any services.

iv) That the expression 'service free of charge' no doubt appears to mean service without reward or remuneration (gratuitous service) but the word 'charge' has various other meanings for instance - duty, liability and burden etc.

v) That the CP Act 1986 is a beneficial piece of legislation (a measure of social welfare) which needs to be liberally construed for the protection of interests of larger number of people.

But the NC did not accept the above raised contentions specially that tax constitutes 'consideration' for any facility provided by the state and upheld the decision of the Rajasthan state commission and observed:

"The conclusion is evitable that persons who avail themselves of the facility of medical treatment in Govt. hospitals are not consumers and that the said faculty offered in Govt. hospitals cannot be regarded as service 'hired' for consideration. Hence no complaint under the Act can be preferred either by any person or by a consumer association on his behalf..."
The decision of the NC in the above mentioned case was followed in a number of cases prominent among them are Ram Kali V/s Delhi Administration\(^{(191)}\), Soubhaya Prasad V/s State of Karnataka\(^{(192)}\), Laxman T.Kotgiri V/s Union of India \(^{(193)}\), Avtar Singh V/s State of Punjab \(^{(194)}\), Dr.S.Venkataraman V/s M. Chandrasckaram \(^{(195)}\), S.S.Kohlon V/s Bawa Hospital \(^{(196)}\) etc.

However, in Sukunte Beherl V/s Sashi Bushan Rath\(^{(197)}\), in which a lady wanted to terminate her pregnancy in a Govt. hospital but was not permitted to do this despite the fact that another doctor advised for medical termination of the pregnancy. The opposite party on denying the allegations the District Forum dismissed the complaint as not maintainable. On appeal to Supreme Court it was held that obstruction to such medical termination of pregnancy would not be a negligence. Further the court said that the finding of the District Forum that the complaint under the Act is maintainable because she has not paid for such service is not correct where the state Govt. has paid the doctor to render the service to the people who attend the hospital. Thus the persons who were attending the hospital for treatment and service/advise were the beneficiaries of the service rendered by the doctor. Therefore, the complaint was a consumer within the meaning of section 2 (1).

Similarly, in Cosmopolitan Hospitals V/s Vasanth P. Nair, \(^{(198)}\) the NC expressed complete agreement with the observations of the

196. Id. P.286.
Andhra Pradesh State Commission and especially the Kerela State Commission that "where a medical officers service may loosely be called personal, it will be incorrect, in fractious and crude to describe it as personal service".

Thus the NC, by its decisions in the above case, had endeavored to set at rest for the time being, the controversy concerning the governance of private medical practitioners, hospitals and nursing homes by upholding the finding of The State Commission that the activity of providing medical assistance for payment carried on by hospitals and members of the medical profession falls within the scope of the expression 'service' as defined in Section 2 (1) (o) of the Act and that in the event of any deficiency in the performance of such service, the aggrieved party can invoke the remedies provided under the Act by filing a complaint before consumer forum having jurisdiction ...

The decision of the NC in above-mentioned case has been approved by other state commissions. For instance in Sachin Agarwal V/s Dr. Ashok Arora and Ramanand B. Raikar V/s Salgamkar Medical Research Centre.

Though both of the above named cases have been decided in favour of the consumer but there are a large number of cases which were rejected even at their preliminary stage for want of satisfactorily proof against doctors. A part from strong opposition on the part of doctors and medical authorities against applicability of CP Act to medical service the decision of Madras High Court in C.S. K. Subramanian V/s Kumaraswamy has given a deathblow to the consumerism in this field.

In this case several writ petitions were filed by doctors and medical authorities claiming immunity of medical service from the provisions of the CP Act.

The Madras High Court held as:

i) The services rendered to a patient by a medical practitioner or an hospital by way of diagnosis and treatment both medicinal and surgical would not come within the meaning of 'service' as defined in Section 2(1)(o) of the Act.

ii) A patient who undergoes treatment under medical practitioner or an hospital by way of diagnosis and treatment both medicinal and surgical cannot be considered to be 'consumer' within the meaning of Section 2(1)(d) of the Act.

iii) The medical practitioner or hospital undertaking and providing paramedical services of any categories or kind cannot claim similar immunity from the provisions of the Act and they would fall to the extent of such services rendered by them within the definition of 'service' and a person availing of such service would be a 'consumer' within the meaning of the Act.

However, judgment of the above mentioned case of Madras High Court which had granted exemption to the medical profession from the application of the CP Act has been answered by a landmark judgment in *Indian Medical Association V/s V.P. Shantha & Others* (202).

In the instant case the Supreme Court was called upon to decide the matter between Indian Medical Council Act and Consumer Protection Act. There were several appeals before this apex court from different state commissions, national commission and from various high courts on the same issue of medical service i.e. whether and if so in what circumstances a medical practitioner can be regarded as

rendering service. Connected with this question is the question whether the service rendered at a hospital/nursing home can be regarded as 'service' u/s 2(1)(o) of the Act. The court in its judgment comprising a bench of three judges namely, Kuldip Singh, S. C. Agarwal & B. L. Hansaria JJs speaking through his lordship Justice Agrawal, S.C. Agarwal held that doctors are accountable for any act of medical negligence under the CP Act, 1986 and made the following conclusions:

i) Service rendered to a patient by a medical practitioner except where doctor render 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' as defined in section 2 (1)(o) of the Act.

ii) The fact that medical/practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils constituted under the provisions of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Act.

iii) 'A contract of personal service' has to be distinguished from 'a contract for personal services'. 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'. Such service is service rendered under a 'contract for personal service' and is not covered by exclusionary clause of the definition of 'service' contained in Section 2(1)(o) of the Act.
iv) The expression 'contract of personal service' in Section 2(1)(o) of the Act cannot be confined to contracts for employment of domestic servants only and the said expression would include the employment of medical officer for the purpose of rendering medical service to the employer. The service rendered by a medical officer to his employer under the contract of employment would be outside the purview of 'service' as defined in Section 2(1)(o) of the Act.

v) Service rendered free of charge by a medical practitioner attached to a hospital/nursing home or a medical officer employed in a hospital/nursing home where such services are rendered free of charge to everybody, would not be 'service' as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.

vi) Service rendered at a non-government hospital/nursing home where no charge whatsoever is made from any person availing the service and all patients reach and poor are given free service - is outside the purview of the expression 'service' as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.

vii) Service rendered at a non-government hospital/nursing home where charges are required to be paid by the persons availing such services fall within the purview of the expression 'service' as defined in Section 2(1)(o) of the Act.

viii) Service rendered at a non-government hospital/nursing home where charges are required to be paid by persons who are in a position to pay and persons who cannot offer to pay are
rendered service free of charge would fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charge to persons who are not in a position to pay for such services. Free service, would also be 'service' and the recipient a 'consumer' under the Act.

ix) Service rendered at a government hospital / health centre / dispensary where no charge whatsoever is made from any person availing the services and all patients rich and poor are given free service - is outside the purview of the expression 'service' as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital / nursing home would not alter the position.

x) Service rendered at government hospital / health centre / dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing such service would fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be 'service' and the recipient a 'consumer' under the Act.

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

On the whole, the above judgment by bringing negligent doctors under the umbrella of CP Act, 1986 has heightened the scope of consumerism. Following the I.M.A V/s V. P. Shanta's (1995) judgment in Poonam Verma V/s Ashwine Patel a compensation of Rs. 30,000 was decreed against doctor.

In this case, the doctor (Respondent no.1) was registered as medical practitioner with the Gujarat Homeopathic Medical Council as he had studied Homeopathy for 4 years in the Medical College at Anand and had, thereafter, obtained a diploma in Homeopathic Medicine and Surgery but had treated patients under Allopathic System prescribing Allopathic Medicines. The question for the consideration of the court was whether the doctor could prescribe and administer Allopathic Medicines if he had not studied Allopathy and had not pursued the prescribed course in Allopathy nor had he obtained degree or diploma in Allopathy from any recognized Medical College and whether this will amount to actionable negligence? The court held since the law under which doctor was registered as a medical practitioner, required him to practice HOMOPATHY ONLY he was under a statutory duty not to enter the field of any other system of medicine. He having practiced in Allopathy, without being qualified in that system, was guilty of negligence per se and therefore, the appeal against him was

203. AIR 1996 Supreme Court 2111.
allowed in consonance with the maxim *sic utere tuo ut alium non loedas* (A person is held liable at law for the consequences of his negligence).

The Supreme Court of India again in a recent case of *Parmanand Katara V/s Union of India*\(^{(204)}\) has emphasized that human life is more valuable and must be preserved at all costs and that every member of the medical profession nay every human being, is under an obligation to provide such aid to another as may be necessary to help him secure from fatal accidents, that it is the obligation of those who are in charge of the health of the community to preserve life and reminded every doctor of his total obligation and assured him of the position that he does not contravene the law of the land by proceeding to treat the injured victim on his appearance before him and that the formalities under the Criminal Procedure Code or any other local laws should not stand in the way of the medical practitioner attending an injured person.

Again in *Jyotsana Arvind Kumar Shah & Others V/s Bombay Hospital Trust*,\(^{(205)}\) the Bombay Hospital Trust has been directed to pay Rs.7 lacs as compensation to the wife and children of a patient who died in the hospital for alleged carelessness and negligence.

In this case one Mr. Arvind Kumar Shah was admitted to the hospital for an operation on his left hip. He was operated upon by Dr. K. T. Dholakia & died the following morning. The complainant had complained of pain and continuous bleeding from the wound till he died next day. The hospital authorities failed to appear before the commission, it proceeded ex-party and directed the Bombay Hospital Trust to pay Rs. 7 lacs with interest of 12% p.a. from the date of the

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204. A.I.R 1989 SC 2039.
205. 1999 (1) CPR 86 (SC).
complaint till realization.

Similarly, in M/s Spring Meadows Hospital (Noida) and Another V/s Harjol Ahluwalia the doctor made the diagnosis that the patient was suffering from typhoid and prescribed the medicine for treatment of fever. After some days nurse of the hospital asked the father of the minor patient to get the injection where upon the nurse injected the same to the minor patient. The patient immediately on being injected collapsed while still in the lap of his mother. The doctors diagnosed that the child had suffered a cardiac arrest. He was admitted to AIIMS for some days to stabilize the condition of the child but all in vain. The Supreme Court (on appeal) held that commission was right in awarding compensation in favour of the child taking into account the cost of equipment's and the recurring expenses that would be necessary for the said minor child who is merely having a vegetative life. The compensation awarded in favour of the parents of the minor child is for their acute mental agony and the life long care and attention which the parents would have to bestow on the minor child.

Now, though it is well established that guilty doctors would be liable under CP Act but it is only if negligence in treating the patient has been proved. In the following cases no negligence or deficiency was established and accordingly no relief was granted. Here first case of such type is The Calcutta Medical Research Institute V/s Bimalesh Catterjee & Others. In this case state commission awarded compensation of Rs. 2 lacs in favour of the complainant for negligence and deficiency in transplanting blood of wrong group. However the NC held that SC had relied on a certificate issued by a doctor who is neither hematologist nor a pathologist. He does not

206. 1998 (1) CPR 1 (SC).
207. 1999 (1) CPR 3 (NC).
mention the blood group of either the donee or the donor. No evidence has been brought on record to link the blood transfusion with any of the resultant complications in the case nor has any evidence been led which would go to show the hospital or any of its doctors had been negligent.

In another case, complainant was suffering from bronchial problem and breathing trouble. She took treatment from appellants herein, but her condition deteriorated however, her condition improved when she consulted other doctors. State Commission accepted complainants claim and awarded compensation of Rs. 2 lacs against each of two appellants herein. But the NC held that complainant had failed to tender evidence and SC had disposed the case on basis of certificates given by persons who were not medical men. Neither in discharge certificate given by hospital nor in prescription of the doctor there was any suggestion that treatment given to complainants by appellant was wrong. So doctor should not be held guilty of giving wrong treatment without some medical evidence to that effect.

Similarly in Tara Chand Jain V/s Sri Ganga Ram Hospital & Another, the complainant was having urinary trouble. The opposite party No. 2 with his team examined the complainant and advised him prostate operation. However, the tendency of continuous and regular flow of urine which had started immediately after the operation continued and could not be cured. Complainant alleged that springer muscle of complainant was cut during operation and that is way there was leaking of urine. NC held that no cogent, convincing and reliable evidence is produced in support of allegations made in complaint. So in the absence of medical evidence produced charge of negligence or

208. Subhashis Dhir and Another V/S Smt. Sanjakta Sengupta and Others 1999 (3) CPR 38 (NC).
209. 1999 (3) CPR 38 (NC).
deficiency on part of doctor could not be held proud.

It is to be observed that in the light of the above discussion it can be safely said that extension of the jurisdiction of the consumer forum created under the Act to the medical practice is welcome step to bring in greater accountability in this important public utility service. However, the condition *quid pro quo* \(^{(210)}\) i.e., a consideration should have been paid in order to put liability on one's shoulder for negligent service under this Act has brought lot of confusion. Though there is very little difference between the obligations undertaken by a medical practitioner in private practice and those imposed on his colleagues and counterparts working in the hospitals run and administered either by the Govt. or local authorities or philanthropic bodies but the source of consideration being entirely different in both services had made the medical authorities (Govt.) to claim non-applicability of the Act. Since there is now measure shift towards private medical health care facilities a National Sample Survey recently found that 70% of the out-patient Central Govt. health services put the average rate of growth of private hospital at a high 70% in the 80's while that of Govt. facilities grew by just 2%. Rama Paru, a public policy Govt. expert in the Delhi based Voluntary Health Association of India (VHAI) found that in Hyderabad as many as 80% of Govt. surgeons were now consultants to private nursing homes making them liable under COPRA as well. But it does not mean to circumscribe the limits of private medical practitioners and let the Govt. doctors to go ahead even to the extent of committing negligence.

Keeping in view the aims and objectives of the CP Act there is a greater need to bring the whole medical profession under this Act so

\(^{(210)}\) Dr. Sr. Louie and Another v/s Kemolil Pathumma and Another 1986-95 CONSUMER 54 (NS).
that the human life is to be respected and protected with concern and care. Running a Govt. health service is not a sovereign service so as to claim immunity from liability for sovereign acts, Medical men have to bring to their profession, like all other professionals, an amount of care and skill which is reasonable in the circumstances of the situation. A doctor can be held guilty of medical negligence only when he falls short of the standard of reasonable medical care. A doctor cannot be held to be negligent merely because in the matter of opinion he made an error of judgment or he has demanded high charges even though the consideration paid to him is improper but there is no reason why these Govt. doctors will not be made accountable and why should those working in these hospitals get away with murders when it is through sheer negligence.

(9). **Postal Service** :- Under the Indian Post Office Act, 1898 postal Deptt. being indispensable agency for communication and financial service is meant to provide postal service to the public specially weaker sections of the country. But like medical and educational service postal service not specifically mentioned definition of 'service' as provided under CP Act has claimed and contented statutory immunity and applicability of this Act U/S 6 of Post Office Act. Moreover, the ruling of NC in *The Presidency Post Master*

211. Regarding the question of charging high fee in B.S. Hedge V/S Dr. Sudhansu Bhattacharya 1986-95 CONSUMER 545 (NS) it was held that it is not for the Consumer Forum to adjudicate on the question whether the consideration charged was reasonable.

212. The Govt. shall not incur any liability by reasons of the loss, miss delivery or delay or damage to and postal article in course of transmission by post, except in so far as such liability may in express term be undertaken by the central Govt. as hereinafter provided, and no Officer of the Post Office shall incur any liability by reason of any such loss. Loss, misdelivery, delay or damage unless he has caused the same fraudulently or by his willful Act or default.
V/s Dr. U. Shanker Rao\textsuperscript{(213)} has given death blow to the avowed and celebrated purpose of CP Act. In this case two revision petitions were disposed of by the common order as the points involved were similar.

In the first revision petition the complainant - director of National Medical Hospital decided to celebrate the 15\textsuperscript{th} Anniversary of his hospital on 11\textsuperscript{th} March 1990. It is alleged that about 600 invitation letters were issued and put in to post at the post office on 5\textsuperscript{th} and 6\textsuperscript{th} March, 1990 which were addressed to Industrialists and Bankers etc. Most of the invitations are set to have reached invitees on 13\textsuperscript{th} and 14\textsuperscript{th} March 1990 and the function in 11\textsuperscript{th} March, 1990 proved to be a poor show as only 200 persons attended it. According to the complainant there was gross deficiency in service and negligence on the part of the postal department.

In the second revision petition it was alleged that due to the carelessness, negligence and misconduct of the postal authorities, registered letter containing the original lorry receipt of consignment sent by the complainant had fallen into the hands of some unscrupulous persons who used it.

District Forum in each case allowed the complaint and accordingly the damages claimed in each case was allowed. State Commission upheld the order passed by the lower court. NC held the claim petitions are not maintainable in view of Section 6 Indian Post Office Act as the services rendered by the post office are merely statutory and there is no contractual liability\textsuperscript{(214)} so far as the speed post service by post department is concerned. The NC held in The Post

\textsuperscript{213} 1986-95 CONSUMER 395 (NS); Seen also Post Master General Tamil Nadu V/S Calvin Jacob 1986-95 1235 (NS).

\textsuperscript{214} The partner, Monickbag Automobiles V/S Sub-Postmaster LSG and Another (1997) 1 CPR 6060 wherein it was held the services rendered by the post office are merely statutory and there is no contractual liability.
Master, Station Kalhijuda & Others V/s G. Hanumantha Reddy

the bar U/S 6 will not apply and it is open to the party aggrieved by the non-delivery or delay in delivery of an article sent by speed post to put forward a claim for compensation as against the postal department.

It is to be submitted that postal service is no doubt sovereign function of Govt. but the provisions of Section 6 of Indian Post Office Act 1898 constituted no defense when an action for compensation for deficiency of service or negligence is instituted under the CP Act. CP has been passed specifically to provide cheap, speedy, inexpensive and expeditious remedy against deficiency in service whether that is committed by the Govt. or any private body provided only that the services are hired by the consumer. Any attempt to exclude statutory or official bodies to the common man would be against the provisions of the CP Act and Postal Service is no exception to this rule.

(10). **Telephone Service** :- The telephone service is a Govt. monopoly. Like medical profession Telecommunication Deptt. has always contented the applicability of the Consumer Protection Act. The fact that disputes relating to telephones are to be settled U/S 7 B of the Indian Telegraph Act, 1885 does not oust the jurisdiction of CDRA’S because CP Act is in addition to the remedy provided under other existing law. The subscriber of the telephone hires the services from the Central Govt. for a consideration paid in the nature of installation charges, rental charges and call charges whereas Section 7 B applies only if there is any dispute concerning telephone line, appliance or apparatus between the Telegraph Authority and the

215. 1986-95 CONSUMER 1293 (NS).

216. Seen also Telecom District Manager Patna V/S M/S Kaliyanpur Cement Ltd. (1986-96 CONSUMER 158 (NS).
In Divisional Manager Telephones, Lucknow V/S Madhu Enterprises, Lucknow\(^{(218)}\) the NC held:

"The non-mention of telephone facility in the inclusive portion of the definition is of no consequence in view of the very wide language used in the main part of the definition which takes in every form of service. Admittedly, the telephone service is not provided free of charge and hence the lost portion of the definition which excludes service rendered free of charge does not get attracted nor is this a case of contract of personal service.

In spite of the above decision Telegraph Authority having developed phobia of this Act is striving against the jurisdiction of CDRA's. How far the grievance of telephone consumers have been redressed under the CP Act is to be enunciated by cases.

a). **Disconnection of Telephone Service Without Notice:**

Disconnection of telephone on the ground of non-payment of dues without intimation/notice to the subscriber amounts to deficiency in service. Disconnection of telephone without notice is violative of the principles of natural justice\(^{(219)}\). But what amount to notice is a question not free from controversy. As per the Rule 443 of the Indian Telegraph Rules Telecommunication Deptt. is specifically entitled disconnect the telephone without any notice. Once the bill has been served and there has been a default in payment of such bill. Following the rule NC in a number of cases\(^{(220)}\) held (while rejecting the contention of the complainant that the telephone was disconnected without any advance

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217. Telecom District Manager, Mehasana and Another V/S Shri Ptel Shankerlal Kavalram 1998-96 CONSUMER 2196(NS).


219. Supra Note 43.

notice to the complainant) there is no deficiency in service on the part of the department in disconnecting the telephone of the complainant on the ground of non-payment of the bill issued to the subscriber.

It is to be submitted here that even after due service of bills a separate notice of disconnection should be issued to the telephone subscriber calling upon him to pay the bill and it is only in the event of his non-comply with said demand within a period say for example one month from issue of such notice the disconnection should be taken into process.

However, where the action of the Telegraph Authority is arbitrary and not in accordance with the rules of Indian Telegraph specially Rule 443 it amounts to deficiency in service. In case Mahanagar Telephone Nigam Ltd. & Another V/s M. R. Chedda & Another the complainant having telephone facility requested for disconnection of the STD facility. He was informed that the STD facility had been withdrawn and telephone number has been also changed. He received telephone bills under the old number which were highly abnormal and exorbitant. He did not pay the same and consequently telephone was disconnected. NC fully agreed with the State Commission that the STD calls cannot be attributed to the complainants. Another case of grave deficiency is District Engineer, Telecommunications Deptt. & Another V/s Roshan Lal Aggarwal. Here Complainant was enjoying two telephones one at mill and another at residence. There was outstanding bill in

221. 1986-95 CONSUMER 384 (NS). Seen also Commercial Officer, Office of the Telecom, District Manager, Patna V/S Bihar State warehousing corporation 1986-95 CONSUMER 159(NS) where complainant was entitled to Rs. 1000/- for a short period disconnection.

222. In District Manager, Telephones Patna V/S L.K Bagila (1992) I CPJ 189 (NC) also it was held that if the telephone which does not have STD facility shows STD calls amounts to deficiency in service on the part of Telephone Department.

223. 1986-96 CONSUMER 1993 (NS).
respect of telephone charges for the telephone installed at mill. As the outstanding bill was not paid the telecommunication department disconnected both the telephones. NC upheld the decision of State Commission that as there was no outstanding bill against the telephone installed at residence so the telecommunication department disconnected the phone arbitrarily.

b). Excessive Billing :- Not only our day-to-day experience but our painstaking analysis of the cases reveal that most of the complaints before Telegraph Authority and CDRA'S are regarding excessive billing of the telephones. As far back as in 1986 Govt. of India Ministry of Communications, Deptt. of Telephones had become aware of the difficulty experienced by the telephone subscribers about the issue of excessive telephone bills and issued instructions detailing the manner in which the complaints filed by the subscribers about excessive bills have to be dealt. It provides for(224) -

i) Meter readings being taken every fortnight;

ii) Identifying all subscribers whose current fortnightly readings show a sudden spurt;

iii) In case of such sudden spurts being noticed, placing the telephone line on observation and deputing responsible staff to the subscribers premises to check up that there has been no special occasion which might have given rise to such spurts...

It is a common belief that some vile wretch workmen who may be a line man, technical person or some other person are vigorously providing unauthorized telephone connections to some miscreants (who themselves may or may not be among telephone subscribers) in return of reward or remuneration and thereby enabling them to misuse the telephones which are functioning in the name of others. With the

result telephone owner applies for disconnection of the facility or faces the consequences by paying the excessive bill. Under these circumstances when an aggrieved subscriber approaches Court of Law/Redressal Agencies he is required to prove the allegations of deficiency made in the complaint, and in case he fails to prove, the complaint goes dismissed.\(^{(225)}\)

In an unique case interesting situation arose for consideration. The case is **Kasam Noor Mohd. Unad V/s Union of India\(^{(226)}\)** through Telecom District Manager, Telecom District, Jamnagar. The complainant who is collecting oil tins and supplying to the oil mills had got a telephone with STD facility. According to him, the normal bills for the said phone ranged from Rs. 200 to 400 but the bills dated 1.9.1990, 1.11.1990 and 1.1.1991 were respectively for Rs. 23, 324/-, Rs. 15,668/-, Rs. 21,901/-, the correctness of which he challenged. The telephone was put under secret observation. As requested by the complainant his phone was taken for safe custody and then was disconnected. In the absence of any evidence to establish that any collusion has taken place between the employees of the Telecom Deptt. and third parties in the alleged misuse of the said telephone, The State Commission concluded that the complainant must have used the telephone for overseas calls and was then trying to avoid the liability to pay the telephone bills. Before NC complainant only reiterated the points made before the SC. The Apex Commission (NC) held that the order of the SC is based on a fear appreciation of the evidence before them.

However, the minority view expressed by the member B. S. Yadav, J.is more convenient and expeditious. The learned member of

226. 1986-96 CONSUMER 2337 (NS).
the commission held considering the fact that the complainant is mainly a hawker, it would look very doubtful that he would use the telephone in making ISD calls. Further as soon as the spurt was noticed in the meter reading the department make no investigations. Considering all the circumstances of the case the learned member came to the conclusion that the telephone of the complainant has been misused.

Another noteworthy case is The District Manager, Telephones and Others V/s Niti Saran (227) wherein the NC uphold the decision of the SC that "to resolve the dispute of excessive billing Redressal Forums have been taking recourse to ascertaining the average number of calls made from the particular telephones over a period of time to see whether the bills complained against show any abnormal or marked deviation from the pattern of calling derived from the average number of calls in a particular period." However after concluding the order in the instant case, The NC expressed the disquiet over the manner in which the CDRA'S have been disposing of the complaints from consumers regarding inflated bills issued by the Telecom Authority. In this connection the commission in the last para of the order wished to reiterate the observations made in Telecom District Manager, Patna V/s Kalyanpur Cement Ltd. (228) and held:

"The consumer Redressal Forums will not be legally justified in taking over the function of estimating by application of the rule of thumb the precise number of calls made unless there is adequate evidence of calls which may be either direct or circumstantial to show that the metering equipment was defective or there has been misuse of the particular telephone by some unauthorized person in collusion with

228. Order date 08-11-1990 R.P. No. 44; Seen also General Manager Mahanagar Telephone Nigam Ltd. V/S Mauli Chand Sharma 1986-96 CONSUMER 2710 (NS).
the employees of the department particularly in cases where a subscriber has the STD facility."

The above decision was followed consistently in Divisional Manager Telephones, Lucknow V/s Madhu Enterprises, Lucknow (229), Telecom District Manager, Patna V/S M.S.Mukerjee (230) Deptt. of Telecom & Others V/s Satya Narain Lal (231), Union of India, through Accounts officer, Rajkot Telephones, Rajkot V/s Dhanjibhai K. Patil (232), U. S. Dalal V/s Telecom District Manager Telephone Exchange, Rohtak Haryana (233), Union of India (through Chief General Manager).

Telecommunication, Jaipur & Others (234) wherein it was held by the National Commission (NC) that unless and Until there is evidence to show that the metering equipment is defective or there has been tampering with the telephone connection by third parties it would not be legally correct for the consumer forums to determine the bills on the basis of average of the calls made during the earlier periods nor is the consumers forum justified in disregarding the fact that the bills will be heavy if the consumer avails of the STD facility …

To the same effect is Accounts Officer, Telephone District, Panaji V/s Sheela H.N.Gaunekar (235) where no defect in meter was proved and consequently no average billing was allowed to be made the basis for correct verification of calls. Since malfunctioning of the telephone or misuse of the telephone line is a dispute within the

229. 1986-95 CONSUMER 904 (NS).
230. 1986-95 CONSUMER 1179 (NS).
231. 1986-95 CONSUMER 725 (NS).
232. 1986-95 CONSUMER 1239 (NS).
233. 1986-96 CONSUMER 2447 (NS).
234. 1986-96 CONSUMER 2160 (NS).
meaning of Section 7B of the Telegraph Act so the correctness of the bill or inflated bill can be challenged before the Arbitrator whose award by purview of this Section shall be final\(^{(236)}\). In the case of The Telecom District Engineer, Pondichery & Another v/s R. Shangmugam\(^{(237)}\), NC held it is not open to the subscribes to first approach 'The Central Govt.' for appointment of an arbitrator and then either during pendency of arbitration or after the award to file a complaint before the CDRA'S. The Commission referred the recent pronouncement of the Supreme Court in M.L. Jaggi v/s Maha Nagar Telephones Nigam Ltd. & Others decided on 2.1.1996 where the court while dealing with the scope of Section 7B observed that the resolution of the dispute by arbitration U/S 7B is a statutory remedy provided under the Act and that in dispute as regards the amount claimed in the demand raised, the only remedy provided is by way of arbitration. By operation of Sub-Section (2) thereof, the award of the arbitrator shall be conclusive between the parties to the dispute and shall not be questioned in any court. Later on in para 7 of the judgment the Supreme Court made the legal position clear by stating "it is seen that U/S 7 - B the award is conclusive when the citizen complains compliant that he was not correctly put to bill of the calls he had made and disputed the demand for payment the statutory remedy open to him

\(^{236}\) 7-B- Arbitration of Dispute-(1)Except as otherwise expressly provided in this Act if any dispute concerning any telegraph line, appliance or apparatus arises between the telephone authority and the person for whose benefit the line appliance or apparatus is, or has been provided. The dispute shall be determined by Arbitration and shall, for the purposes of such determination be referred to an Arbitrator appointed by the Central Govt. either specially for the determination of that dispute or generally for the determination of dispute under this Section.

\(^{(2)}\) The award of the Arbitrator appointed under sub-section (1) shall be conclusive between the parties to the disputes and shall not be questioned in any Court.

\(^{237}\) 1997 (2) CPR 115 (NC).
is one provided U/S 7 B of the Act. By necessary implication, when the arbitrator decides the dispute U/S 7 - B, he is enjoined to give reasons in support of his decision since it is final and cannot be questioned in a court of law. The only obvious remedy available to the aggrieved person against the award is judicial review under Article 226 of the Constitution.

However, where the subscriber merely complains about the exorbitant bill meaning thereby that he complains only about faulty reading of meter, it only involves question as to whether the meter has been correctly and honestly read and the readings had been correctly and honestly noted down. Such dispute does not fall within the purview of Section 7 – B(238).

c). Delays :- Delay in providing telephone service after a subscriber has made full payment in shifting it or in reconnecting it after a bill has been duly paid is a deficiency in service. In *Vijay Sethi V/s District Manager, Telephones and Another* (239) the complainant had locked his STD facility by use of wrong code. He requested the Telecom Authority for unlocking the same on payment of relevant charges. He claimed inaction of the telecom deptt. resulted in to business loss. NC upheld the decision of the SC that there was inordinate delay in reopening the locked STD dynamic code and this was deficiency in the telecommunication service. Similarly in *Union of India V/s Amam Dahiya* (240) an award of Rs. 6000 was allowed by way of compensation as there was delay on the part of telephone authority to provide telephone connection in accordance with allotted priority. However, where complainant could not cite a single instance

238. The Divisional Engineer and Another V/S Harikrishen Bhattad 1986-96 CONSUMER 2098(NS).

239. 1997 (1) CPR 103.

in which some one below him in the waiting list had been provided a telephone connection can not be entitled to compensation for the harassment (241).

As said in the beginning the same conclusion can be drawn here that the existence of the alternative remedy of arbitration under Indian Telegraph Act cannot stand in the way of speedy and effective remedy which can be granted under CP Act. Keeping in view the object of the CP Act that is to promote welfare of the society in as much as to remove the helplessness of a consumer which he faces against powerful business and public bodies - all Govt. bodies are liable under the Act for any deficiency in services to those who purchase their services for consideration and officers - in-charge would be held personally liable if they cause any harassment to the users of the services in pursuing the matters with the department. Like postal services as discussed earlier telecommunication department is claiming immunity though it is amenable to the CP Act in respect of any act or omission in respect of their service which amounts to deficiency in service. In order to improve the quality of life for the society there should be more accountability from our officials manning the public utilities and a bit more consideration for the consumers in the state.

(11) **Transport Service :-** Transport Service is the service as envisaged by the CP Act. It includes Air Service ,Railway & Road. The service of each category though meant for carriage of passengers or goods is regulated by different Acts. So it is better to scrutinize the matter of our concern separately under three sub-headings.

241. B.S. Bindra V/S Secretary Union of India and Another (1986-96) CONSUMER 3218 (NS); Seen also Divisional Engineer (C.F) Calcutta, Telephones V/S Dr. Malati Sinha 1997 (2) CPR 266 (NC).
a). **Air Service** :- This service is provided by both public and private sector. Presently apart from Airlines and Air India Service there are private and foreign operators who have undertaken to provide this service. There is a steeped rise of complaints before consumer forums by passengers and National Commission too has been called in a number of cases to decide and determine the liability of Air Authority on account of delay or deficiency. In a case\(^{(242)}\) NC held that flights may get delayed due to various causes such as poor visibility in the airfield, bad weather, bird hits, sudden strike by any crucial section of Airport Authority all of which may be factors beyond the control of Airlines. In such a case the delay cannot be attributed to negligence of the Air Authority. There may however, be other reasons where the delay in operating the flight might have been caused by reason of the negligence on the part of Air Authority. In **Air India V/s N. Uddavan**\(^{(243)}\) the complainant entrusted to the Air Authority a cargo of leather garments for transport and delivery to Poland. As the consignee in Poland did not take delivery the complainant instructed the Air Authority to arrange for forwarding the cargo to Sweden for delivery to the another named consignee. Air India pointed out to the complainant that the said course could be adopted only if the complainant obtained an order from the Reserve Bank of India (RBI) specifically authorizing Air India to accept the payment in Indian currency without which it will constitute clear violation of the Foreign Exchange Regulations and Rules. During long interval of time the goods had suffered heavy demurrage charges plus penalties imposed by the customs authorities in Poland which became levy-able under Polish Law if the goods were not cleared with in 15 days after arrival. NC

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243. 1986-96 CONSUMER 2474 (NS).
held that the fact the consignee failed to take delivery even after expiry of a reasonable period would not operate to keep alive the responsibility of the carrier for the goods who carried goods safely to the port of destination without any damage or delay in the carriage on its part. The same view was reiterated in *Air France Cargo V/s M/s Pillaiyar Exports 7 Others* where in it was held that responsibility under taken by the carrier came to an end on the expiry of reasonable period from the date on which intimation of arrival was given to consignee.

In view of the above two decisions let us apprise the situation where buyer / consignee refuses to get goods or consignment. A consigner is supported to have shipped the goods with reasonable and probable regard to the agreement or order. But where contract frustrated for one or the other reason or mainly as consigner fails to accept goods a duty is casted on the carrier to arrange for transportation of goods back to the sender place or any other place in accordance with the advise of the consigner. No doubt carriers duty ends under law when after goods have been reached safely to its destination and sufficient notice have been given to the consignee but in the above two cases carrier is duty bound to seek instructions from the consigner and there after to be more prompt in discharging its duties in order to prevent enormous financial loss to consigner. Any disregard to such duty even in the absence of contract should be held deficiency in service.

Want of care and lack of skill to handle one's job may amount deficiency in service. Where complainant boarded air craft of Indian Air lines and thereafter some time he was informed by official of Airport Authority that is luggage was lying unidentified on the ground and that he should disembark from the aircraft to identify his luggage. As he
stepped out on the stair, the ladder was suddenly removed and he fell
down on the stony ground and sustained serious injuries. It was held
that the negligence leading to the fall of the complainant on the ground
was entirely with the staff of the Airport and therefore they are
responsible for such negligence which caused 10% incapacity and
permanent disability to the complainant. Similarly where there was
loss of a suit case which was booked from Delhi to Seoul Via Hong
Kong and which contained samples of textile pieces for display at an
International Textile Fair it was held that staff (of the British Airways)
was negligent in not putting the baggage in the same flight by which the
complainant was traveling. In a couple of cases it becomes clear
that where there is loss of cargo or any part of it even though it is
custom bounded the liability before customs examination is that of
shipper and of the carriers after examination. In M/s Shobha Global
V/s M/s Air India & Others 8 out of 12 cartons were found
missing which could not be exported. It was held consignment was
entrusted by customs house agent to The Air India Authority so it was
that which was guilty of deficiency in service resulting in loss to the
complainant.

A great loss and hardship may also be faced by a passenger on
account of rescheduling of flights. Where a travel agent makes wrong
entry in the ticket regarding the departure of flight etc. it is held the
travel agent is liable for this mistake. In Indian Airlines Corporation

245. The Station Manager, Indian Airlines and Others V/S Dr. Jiteshwar Ahir 1986-96
CONSUMER 1975 (NS). In this case a compensation of Rs. 5,00,000 was allowed.

246. Exporters Apparels Group Ltd. and Others V/S British Airways 1986-96 CONSUMER 1971
(NS).

247. 1986-96 CONSUMER 2551 (NS); Seen Another Case titled International Airport Authority of
India V/S Inter Freigh Service Pvt. Ltd. and Others 1986-96 CONSUMER 2857 (NS).
V/s Patel Rambhai Shanker Lal and Another  

It has been held:

"The Authority conferred on the ticketing agent by Indian Airlines was only to sell and issue tickets in accordance with the flight operation schedules and timings notified by the Airlines. In making the wrong entry regarding the departure timing of the flight in question, the travel agent has manifestly acted contrary to the instructions of his principal namely, The Indian Airlines Corporation. The said wrongful act of the travel agent was beyond the scope of its limited authority and for any consequential loss to a third party arising therefrom, the liability will only be that of the travel agent and not of the principal. The complainant who had hired the services of the travel agent has a legitimate claim against the said agent for the deficiency in service consisting of wrong noting in the ticket."

The above view has been followed in Air India V/s Yogendra Hiralal Parekh and subsequently in The Chief Commercial Officer, Indian Airlines & Another V/s Lal Chand & Another. There are numerous cases before consumer forums especially NC regarding the misconduct of the staff employed by Air Corporations. Latest case of misconduct is Indian Airlines Corporation Ab. Majid & Another. Here complainant purchased the waited list ticket from The Indian Airlines. After a short period his wait listed ticket was confirmed and after all necessary formalities at the airport he loaded the aircraft. After 10 minutes the duty officer along with two other members of the staff asked the complainant to get up from seat and on his refusal the officers forcefully took him out of the aircraft by dragging him down as a result of which his shirt was torn and he was

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248. 1986-95 CONSUMER 437 (NS).
249. 1986-96 CONSUMER 2215 (NS).
250. 1986-86 CONSUMER 2245 (NS).
251. 1986-95 CONSUMER 692 (NS).
publicly subjected to insulting and humiliating treatment. NC held the version given by The Indian Airlines Corporation for confirming his wait listed ticket and directed the complainant to disembark from the aircraft for the purpose of providing seat to another passenger who allegedly had a confirmed ticket for the same flight has not been convincingly established as true. However, the complainant has satisfactorily proved his case that his shirt got torn as a result of the force applied to its arm by the staff of the Indian Airlines while he was being taken out from the aircraft and consequently decision of the SC was upheld. In another case against excesses committed by staff of Royal Dutch Airlines in verification proceedings of visa which caused delay and consequently the complainant missed two flights it was held by Supreme Court that checking and screening for the validity of the travel documents is done as a measure of safety and security of the passengers as well as the legal obligation of the Airlines. Further since complainant failed to prove the alleged business loss due to his missing flight so there was no deficiency in service\(^{252}\). However, where in case \textbf{Indian Airlines V/s S. N. Sinha}\(^{253}\) complainant alleged that a piece of metallic wire got mixed up in the food served by the Indian Airlines and it pierced his gum while he was consuming the food the principal - Indian Airlines was held liable. Another important case on the point is \textbf{Common Cause V/s Union of India & Others}\(^{254}\) where the complaint petition was filed by the well known consumer organization "common cause" seeking redressal of the grievance of air passengers who were put to great amount of inconvenience and hardship on account of

\(^{252}\) Ravneer Singh Bugga V/S M/S KLM Royal Dutch Airlines and Another 1997 (3) CPR 26(NC); 1999 (3) CPR 102 (SC).

\(^{253}\) (1992) 4 CPJ 62 (NC).

\(^{254}\) 1986-96 CONSUMER 3047 (NS).
disruption of a large number of flights of Air India caused by reason of a sudden strike. Coming to the claim for compensation made against Air India the decision in Consumer Unity and Trust Society Calcutta V/s Chairman & Managing Director Bank of Baroda 1986-95 CONSUMER 233 (NS) was refereed ... in the light of which it was held that no negligence has been made out against Air India.

b). Railway Service:- The Railways provide the principal mode of transport in country. In spite of hikes in passenger fare and freight, it still continues to be the cheapest mode of transport. With electrification of several roots, across the country it has reduced pollution and shortened the time of journey. It is a state owned enterprise and the responsibility of its administration and management rests with The Railway Board. The Railway Act, 1980 was the basic law which contained provisions regarding safety, fixation of rates, procedure for inquiries into accidents and payment of compensation for death or injuries sustained by passenger and for loss or damage to goods. It has now been replaced by The Railway Act, 1987 and Parliament has also enacted the Railway Claims Tribunals Act, 1987 for facilitating disposal of claims for payment of compensation. Though it seems that these tribunals have exclusive jurisdiction over railway claims but there is neither any provision in this Act (which has been passed after CP Act, 1986) excluding applicability of the CP Act, over railway disputes nor this service comes within the exclusionary part of the definition of 'Service' as provided under CP Act, instead of it is within inclusive portion of definition. A correct interpretation of this blurred position created by both Acts is given by NC in General Manager,

South Eastern Railway V/s Anand Prasad Sinha (256)

The expression service contained in section 2(1) (o) of the CP Act specifically includes within its scope the provision of facilities in connection with transport. The Railway Administration as providing Transport facilities to the Public for consideration paid by them by way of the fare levied for the ticket. It is in fact one of the largest public utility undertaking in the country intending the render service to the public by providing transportation by Rail through its large network. Therefore, passengers traveling by trains on payment of the stipulated fare charged for the ticket are ‘consumers’ and the facility of transportation by rail provided by the Railway Administration is a ‘service’ rendered for consideration as defined under the CP Act.

Following the above decision NC in consumer protection council V/S Indian Railways (257) held the expression ‘consumers’ under the CP Act, 1986 includes passengers who avail themselves of the facility of transportation offered by the railways ...

Since the first and foremost duty of the railway authority is to provide accommodation in trains routed to different places the same must be in accordance with the confirmed reservation. If wait listed passengers are given priority at the cost of those having confirmed booking it will amount deficiency in service. In G. M. Southern Railways V/S J.F. Albert Fernando (258) complainant’s reserved 42 tickets which erroneously were allotted to others. For this gross negligence railway authority was held liable. However, where complainant alleged to have obtained confirmation telephonically which was denied by the railway

256. (1991) 1 CPJ 10 (NC).
257. (1992) 1 CPJ 120 (NC).
official NC held\textsuperscript{259}:

*The Railway Authority is under obligation to provide accommodation in railway trains against confirmed booking only and where a passenger is wait listed. Considering the conditions prevailing in the country it would be hazardous to make railway liable on the ground that the passenger claims to have obtained confirmation of reservation on telephone which such telephonic conversation is denied by a responsible official of the railway organization.*

Another duty of the carrier here Railway Service is to carry goods/ passengers safely to its destination where complainant’s were having reserved seats but some persons un-authorizedly entered the reserved compartment and forcefully occupied seats. When complainant’s resisted they were attacked by these unauthorized persons and as a result complainant suffered fracture leading to permanent disability. NC held if any person enters into any reserved compartment un-authorizedly, then besides being liable for criminal prosecution he can be removed from the railway compartment by any railway servant or by any of the person whom such railway servant may call to his aid. In the instant case since administration neglected in checking the entry of unauthorized person in the reserved railway compartment and then failed to remove them forcibly for which they are duly empowered by the statute. Hence there was gross deficiency\textsuperscript{260}. However, penalizing complainant’s for traveling in a train in which they were not entitled to travel can not be held deficiency\textsuperscript{261}. So far as the question of

\begin{itemize}
\item \textsuperscript{259} Union of India Through General Manager Northern Railway and Another V/S G.C.Sharma and Others 1986-95 CONSUMER 633 (NS).
\item \textsuperscript{260} Union of India through General Manager , Western Railway , Bombay and Another V/S Manoj H.Pathack 1986-96 CONSUMER 2162 (NS).
\item \textsuperscript{261} General Manager , Eastern Railway and Another V/S P.Chattopadhyah 1986-96 CONSUMER 2081 (NS).
\end{itemize}
delay of departure and arrival of trains is concerned NC is reluctant in conferring any liability on Railway Authority (262).

c). Road Service: - The carrying of passengers or goods by buses, Taxies, Trucks etc. is a consumer within the meaning of CP Act and therefore any deficiency in the service is actionable under the Act. Every transaction of hiring of service may amount to a contract in the eye of law and any deficiency in rendering the service may be technically a breach of contract but merely for that reason the consumer can not be denied the benefit of the protection conferred by the CP Act (263). In Express Goods Service V/S Standard Textile Mills (264), the firm entrusted 8 consignments of goods of textile and knitted fabrics for carriage from Amritsar to Delhi and for onward delivery to the consignees. On the garb of fire the carrier misappropriated the goods. The carrier took the preliminary objection that the complainant is not a consumer within the meaning of CP Act and that the goods in question were booked with the carrier for commercial purpose. Rejecting this contention NC held:

"A combined reading of the definition of consumer as contained in Section 2 (1) (d) (ii) read with 'service' as defined in Section 2(1) (o) persuades us to hold that it comprehends consumers of services of commercial and trade oriented nature such as banking, financing, insurance, transport etc. The services include within its scope the provision of facilities in connection with transport. The only service

262. Seen Dr. Yatri Sang (Regd.) V/S Northern Railway 1992 (1) CPR 270 (NC) and Union of India V/S Ashok K. Singh (1995) 7 CPJ 3 (NC).

263. 1986-96 CONSUMER 3228 (NS). Seen also East India Transport Agency V/S Jagdish Bhai M. Chandhan 1986-96 CONSUMER 1942 (NS), M/S Birla Yamaha Ltd. V/S M/S Patel Road Ways Ltd. 1986-96 CONSUMER 2164 (NS), wherein carrier failed to deliver consignments in accordance with the contract and accordingly they were held liable for deficient service performed by them as common carrier.

categories that have been excluded by the legislator from the definition are those rendered either free of charge or under a contract of personal services. No other exclusion can be inferred, if the legislature has not intended it either specifically or implication.”

In the instant case since the transporter failed to carry the 8 consignments safely and to deliver the same to the consignees there has been deficiency in rendering of the service by it. The question whether the consumer Forum has jurisdiction to adjudicate upon a claim for compensation arising out of a motor vehicle accident the Supreme Court in Thiruvalluvar Transport Corporation V/S Consumer Protection Council answered in negative through the judgment of A.M. Ahmadi C.J it was held:

The Motor Vehicles Act, 1988 can be said to be a special Act in relation to claims for compensation in respect of death or injury arising out of the use of a motor vehicle. The CP Act, 1986 being a law dealing with the question of extending protection to consumer in general, could, therefore, be said to be a general law in relation to the specific provisions concerning accidents arising out of the use of motor vehicles found in chapter xii of the 1988 Act. Ordinarily the general law must yield to the special law...

Similarly CDRA’s have no jurisdiction to entertain complaints against State Road Transport Corporation regarding the fare fixing which is to be fixed exclusively by this authority while taking into consideration only Govt. orders etc. However, if a passenger or consigner of goods is charged excessive prices than what has been fixed by SRTC he can

265. 1995 Company cases Vol. 83 P. 82.
266. The General Manager, A.P State Road Transport Corporation and Others V/S The Secretary East Godawari District Consumer Aid, Advise and Welfare Society and Another 1986-96 Consumer 3160 (NS) it was held that the question as to the reasonableness of the price charged for the performance of service cannot be agitated before a Consumer Forum.
compliant before CDRA’s. In Maharashtra State Road Transport Corporation V/S B.G. Sarang the complainant was traveling from Vengurala to Kundal and was charged Rs. 5.50 whereas on the return journey from Kundal to Vengurala he was charged Rs. 4.50 for the same distance. The NC held that the distance traveled for the purpose of charging fare shall be calculated from the stage point. In respect of vehicles going beyond Kundal the fare has to be calculated on the basis of distance between the boarding stage to the approved succeeding stage point as in respect of such route the stage point Kundal is only a sub-stage and is not an approved stage point. Therefore, the fare is calculated for 5 stages on the basis of distance. However, in respect of route Vengurala to Kundal the stage point Kundal is approved point and on the basis of the distance the fare is calculated for 4 stages. The fare being legitimately charged by the competent authority cannot be said to be a deficiency in service.

Cases will multiply if we will bring more cases on record which are available here but briefly to state that though the transport service is within the inclusive part of the definition under Section 2 (1) (o) but The Railway Act and the Railway claims Tribunals Act vests exclusive jurisdiction in the Railway Administration to entertain complaints on account of deficiency in service arising from loss, damage, deterioration or non-delivery of goods etc.

(C). Law deduced from the above discussed cases:-

- ‘Intentional’ is doing for a purpose with an ultimate aim. The legislature by using the words ‘deficiency’ and ‘negligence’ clearly intended that the remedy for intentional malicious acts are outside the jurisdiction of Consumer Forums under the Act.

267. 9186-96 CONSUMER 2818 (NS).
Merely submitting the proposal and payment of an amount which was kept in deposit without appropriation towards the premium, it cannot be construed as a concluded contract of service.

Even after a bank or other financing institution has sanctioned the limits up to which a loan will be advanced by it to a borrower, it is still vested with a discretion to apply its mind from time to time and decide in its best judgment as to whether it will be reasonable, safe and prudent to make further advances to the particular borrower in the light of any failure on his part. So long as such discretion is exercised in good faith and for safeguarding the interest of public funds after due application of mind to all relevant factors, a decision taking by the bank or other financial institution to discontinue making further advance to a particular borrower will not constitute deficiency in service.

Fora constituted under the CP Act 1986 have no jurisdiction to go into the question of pricing of houses and plots sold or allotted on hire purchase system. Further, the question as to the reasonableness of the price charged for the performance of service cannot be agitated before a consumer forum.

Where once the claim is paid and received in full and final settlement, there is no deficiency in service and no relief can be granted under the provisions of the Act.

From 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 services rendered or to be rendered by the manufacturer or supplier during the warranty period.
Where the cause of action has arisen due to the delay in delivery of goods and the relief claimed is also by way of interest on the price of the goods it constitutes a breach of contract in sale of goods.

In the case of hospitals which provides treatment to patients for payment there is no element of personal service.

Once it is found that there is hiring of service for consideration and that loss has been caused to the complainant on account of neglect and deficiency in rendering the service the aggrieved consumer is entitled to seek his remedy under the CP Act, 1986. The mere fact that the default or deficiency on the part of carrier may also amount to a breach of contract under the general law will not in any way affect the jurisdiction of the forums set up under the special law namely, CP Act, 1986.

The provisions of the Act are in addition to but not in derogation of any other law in force. A complainant has option to seek redress either under the Act or under the provisions of any other law including through arbitration as provided in the contract of insurance.

A consumer can complain about a defect in the rendering of service event after the expiry of period of 6 months, provided the claim has been made within the time provided under the general law i.e. Law of Limitation.

Purchase of seeds for the purpose of Agriculture is not a purchase of an article for commercial purpose.

Insurance companies must compensate the insured within a reasonable period – it should be possible where there are not disputes to settle the claim within a period of 3 months.
When amount towards payment of premium of insurance policy be
cheque could be realized only after the date of incident, no valid
contract of insurance could be said existing and repudiation of
claim did not constitute deficiency in service.

Observation :- Above we have dealt with a galaxy of cases. The most
important is the Lucknow Development Authority v/S M.K. Gupta in
which the Supreme Court emphasized the need for construing the
provisions of the CP Act in favour of the consumer. The approach made
by the Supreme Court in the decision has been approved by Consumer
Fora in the State in a number of cases e.g Mohd Shafi and Mohd Abass
v/S Regional Manager and Others SC while quoting the above decision
observed that the Supreme Court has wisely stated that the CP Act does
entitle the complainant to claim compensation and also empowers the
commission to grant the same. Similarly the decision passed by the NC in
Indian Assurance Company Ltd. v/S Acharya Kumar Garg NC held once
the claim is paid and received in full and final settlement there is no
deficiency in service and relief be claimed, has been followed in a
number of cases both by the SC and High Court under CP Act (Misger
Gh. Mohi-ud-din and Others v/S National Insurance Company ). If we
will enlist cases will multiply which will show that the Consumer Fora in
the State has actually/in substance followed decisions of Apex Court and
Apex Commission and decisions of these Courts have favourable/desired
impact on Consumer Fora in the State. Case titled Indian Medical
Association v/S V.P. Shantha Supreme Court has resolved the conflict and
controversy by recognizing the medical service neither a contract of
employment nor of personal service but rendering of professional service
on payment. Herein the State in Sunita Kaur v/S Dr. Arun Prasad and
Others and Mrs. Shashi Sharma v/S Bee Enn General Hospital on the
lines of Shantha’s case compensation was awarded.