Chapter-3

Consumer Protection Act, 1986: An Appraisal

The industrial revolution and the development in the international trade and commerce had led to the vast expansion of business and trade as a result of which a variety of consumers goods have appeared in the market to cater to the needs of the consumers like insurance, transport, electricity, housing, entertainment, finance and Banking. A well organized sector of manufactures and traders with better knowledge of markets has come into existence, thereby affecting the relationship between the traders and the consumers making the principle of consumer sovereignty almost inapplicable. The advertisements of goods and services in television, newspapers and magazines influence the demand for the same by the consumers though there may be manufacturing defects or imperfections or short comings in the quality, quantity and the purity of the goods or there may be deficiency in the services rendered. In spite of various provisions providing protection to the consumer and providing for stringent action against adulterated and sub-standard articles in the different enactments like Code of Civil Procedure, 1908, The Indian Contract Act, 1872, The Sale of Goods Act, 1930, The Indian Penal Code, 1860, The Standard of Weights and Measures Act, 1976 and Motor Vehicle Act, 1988, very little could be achieved in the field of consumer protection. Though the Monopolies and Restrictive Trade Practices Act, 1969 and the Prevention of Food Adulteration Act, 1954 have provided relief to the consumers yet it became necessary to protect the consumers from the exploitation and to save them from adulterated and sub-standard goods and services and to safeguard the interests of the consumers. In order to provide for better protection of the interests of the consumer the consumer protection bill was introduced in the parliament in the 37th year of Republic India. The consumer protection bill having been passed by both the houses of parliament received the assent of the President on 24th December, 1986. It came on the statute book as The Consumer Protection Act, 1986 (68 of 1986) and is amended in 1991, 1993, and 2002.
Consumer Protection under the Consumer Protection Act, 1986 (68 of 1986):-

The Consumer Protection Act, 1986 is a milestone in the history of socio-economic legislation in the country. An act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers disputes and for matters connected therewith. It was enacted after an in-depth study of consumer protection laws of a number of countries and in consultation with representatives of consumers, trade and industry and extensive discussions within the government.

The main objective of the act is to provide for the better protection of consumers. Unlike existing laws which are punitive in nature, the provisions of this act are compensatory in nature. The act is intended to provide simple, speedy and inexpensive redressal to the consumers grievances, and reliefs of a specific nature and award of compensation wherever appropriate to the consumer. The act has been amended in 1993 and 2002 both to extend its coverage and scope and to enhance the powers of the redressal machinery.

The organization set-up, provided under the Consumer Protection Act, 1986 (Amendment 2002) has two wings – (i) Advisory Bodies (ii) Adjudicatory Bodies.

(i) Advisory Bodies: The Consumer Protection Councils are the advisory bodies under the Consumer Protection Act and they have been charged with promotional and protection of the rights of the consumers. They play an important role in giving publicity to the matters of consumer concern, furthering consumer education and protecting consumers from unscrupulous exploitation. Consumer Protection Councils comprising of official and non-official members have been established at the district, state and centre levels. The councils meet periodically to deal with consumer problems and take corrective measure for protecting the rights of the consumers.

A) Central Consumer Protection Council: Central government has established a council known as Central Council by notification, headed by Minister, incharge of consumer affairs in the Central government as Chairman of the Central Council. The Central Council is to meet at least once in a year (Sec. 4).
B) **State Consumer Protection Councils:** The state governments have established councils known as state councils by notification, headed by Minister incharge of consumer affairs in the state government as chairman of the State Council. The state councils is to meet atleast twice in a year (Sec. 7).

C) **District Consumer Protection Councils:** The state government have established for every district a council known as District Consumer Protection Councils by notification, headed by the collector of the district as Chairman of the District Council. The District Council has to meet twice in a year (Sec. 8-A).

The objects of the above said councils are to promote and protect the rights of consumers such as: the right to be protected against the marketing of goods and services which are hazardous to life and property; the right to be informed about the quality, quantity, potency, purity, standard and price of goods or service so as to protect the consumer against unfair trade practice; the right to be assessed, whichever is possible, access to a variety of goods and services at competitive prices; the right to be head and to be assured that consumer’s interests will receive due consideration at appropriate forums; the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; the right to consumer education.

The preamble of the Consumer Protection Act aims to provide better protection of the interests of the consumers and for that provisions are made for the establishment of Consumer Protection Councils in the second chapter of the act. The object of the Consumer Protection Councils are to protect the rights of the consumers.

(ii) **Adjudicatory Bodies:** For the protection of consumer a three-tier machinery consist of district forums, the state commission and the national commission.
### Constitution of Various Forums under the Consumer Protection Act, 1986

<table>
<thead>
<tr>
<th>Forum</th>
<th>President</th>
<th>Members</th>
<th>Term of Officer</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>District Forum</strong></td>
<td>One</td>
<td>Two</td>
<td>5 years or up to the age of 65 years which ever is earlier [Sec. 10(2)]. The salary shall be as determined by the concerned state government [Sec. 10(3)].</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(a) The President is a person who is or has been qualified to be a district judge; (b) A person of eminence in the field of education, trade or commerce; etc. (c) A lady member [Sec. 10(1)]</td>
</tr>
<tr>
<td><strong>State Commission</strong></td>
<td>One</td>
<td>More than two members</td>
<td>5 years or up to the age of 67 years whichever is earlier Sec. 16(3). The salary as fixed by concerned state government Sec. 16(2).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>President</td>
<td></td>
<td></td>
<td>(a) The President shall be one who is or has been qualified to be a judge or a sitting / retired judge of High Court; (b) Two members of eminence who fulfill the qualification prescribed under para 10; (c) Out of both one should be a lady member [Sec. 16(1)]</td>
</tr>
<tr>
<td><strong>National Commission</strong></td>
<td>One</td>
<td>Four</td>
<td>Five years or up to the age of 70 years whichever is earlier [Sec. 20(3)]. The salary as fixed by the Central Government [Sec. 20(2)].</td>
<td></td>
</tr>
<tr>
<td></td>
<td>President</td>
<td></td>
<td></td>
<td>(a) The President shall be one who is or has been qualified to be a judge of Supreme Court or a sitting / retired judge of Supreme Court; (b) Four members of eminence who fulfill the qualifications prescribed under para 10; (c) Out of (b), one should be a lady member [Sec. 20(1)].</td>
</tr>
</tbody>
</table>
**Jurisdiction:- Where to file a complaint?**

A complaint can be filed as per following jurisdiction:

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>District forum (Sec. 11)</th>
<th>State Commission (Sec. 17)</th>
<th>National Commission (Sec. 21)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pecuniary</td>
<td>Upto to Rs. 20 lacs</td>
<td>More than Rs. 20 lacs but least than Rs. 1 crore</td>
<td>More than Rs. one crore</td>
</tr>
<tr>
<td>Appellate</td>
<td>No appellate jurisdiction</td>
<td>(a) Appeal against the orders of district forums (b) In case where the district forum exceeded the jurisdiction or failed to exercise jurisdiction</td>
<td>(a) Appeal against the orders of the state commission (b) In case where the state commission exceed the jurisdiction or failed to exercised jurisdiction</td>
</tr>
<tr>
<td>Residential</td>
<td>(a) Where the opposite party (ies) actually and voluntarily reside (s) or carries on business or has a branch office or personally work(s) for his/their gain. (b) In the case of more than one opposite parties, the parties actually or voluntarily reside or carry on business or has a branch office or personally works for their gain, provided that in such cases either the permission of the district forum, state commission, national commission or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain acquiensce in such institution. (c) Where the cause of action arose wholly or in part.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Structure of Fee at Different Levels

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Total value of goods or services and the compensation claimed</th>
<th>Amount of fee payable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>District Forum</strong></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Upto one lakh rupees – for complainants who are under the below poverty line holding Antyodaya Anna Yojana</td>
<td>Nil</td>
</tr>
<tr>
<td>2.</td>
<td>Upto one lakh rupees – for complainants other than Antyodaya Anna Yojana card holders.</td>
<td>Rs. 100/-</td>
</tr>
<tr>
<td>3.</td>
<td>Above one lakh and upto rupees five lacs</td>
<td>Rs. 200/-</td>
</tr>
<tr>
<td>4.</td>
<td>Above five lacs and upto rupees ten lacs</td>
<td>Rs. 400/-</td>
</tr>
<tr>
<td>5.</td>
<td>Above ten lacs and upto rupees twenty lacs</td>
<td>Rs. 500/-</td>
</tr>
<tr>
<td></td>
<td><strong>State Commission</strong></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Above twenty lacs an upto rupees fifty lacs</td>
<td>Rs. 2000/-</td>
</tr>
<tr>
<td>7.</td>
<td>Above fifty lacs and upto rupees one crore</td>
<td>Rs. 4000/-</td>
</tr>
<tr>
<td></td>
<td><strong>National Commission</strong></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Above rupees one crore</td>
<td>Rs. 5000/-</td>
</tr>
</tbody>
</table>

Limitation Period under Consumer Protection Act, 1986

Description of Matter

<p>| 1. | For filling and consumer complaint before district forum / state commission or national commission | Within two years from the date on which the cause of action has arisen (Sec. 24-A) |
| 2. | For referring a copy of the admitted complaint to the opposite party | Within twenty one days from the date of its admission [Sec. 13(a)] |
| 3. | For deciding the admissibility of complaint ordinarily | Within twenty one days from the date on which the complaint was received [Sec. 12(3)] |
| 4. | For filing a reply to the complaint filed before consumer forum relating to goods | Within thirty days or such extended period not exceeding fifteen days, as may be given by the consumer |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>For filing a reply to the complaint filed before consumer forum relating to services.</td>
<td>Within thirty days or such extended period not exceeding fifteen days as may be given by the consumer forums. However, grant of extension is within the role discretion of the consumer forums [Sec. 13(1)(a)]</td>
</tr>
<tr>
<td>6.</td>
<td>For preferring an appeal against the order passed by district forum before state commission</td>
<td>Thirty days from the date of such order (Sec. 15)</td>
</tr>
<tr>
<td>7.</td>
<td>For preferring an appeal against the order passed by state commission before National Commission</td>
<td>Thirty days from the date of such order (Sec. 19)</td>
</tr>
<tr>
<td>8.</td>
<td>For referring the sample to the appropriate laboratory (in the case of defective goods which cannot be determined without analysis) for obtaining the findings of the test.</td>
<td>Within a period of 45 days of the receipt of reference or within such extended period granted [Sec. 13(a)(c)]</td>
</tr>
<tr>
<td>9.</td>
<td>For deciding complaint expeditiously as possible the complaint that: (i) does not require analysis or testing of commodities. (ii) requires analysis or testing of commodities.</td>
<td>Within a period of three months from the date of receipt of notice by opposite party [Sec. 13(3)(A)] Within a period of five months from the date of receipt of notice by opposite party [Sec. 13(3)(A)]</td>
</tr>
<tr>
<td>10.</td>
<td>Final disposal of the appeal</td>
<td>Within a period of ninety days from the date of its admission (Sec. 27)</td>
</tr>
</tbody>
</table>
11. An appeal against the order containing the award of penalties under Sec. 27

Within a period of thirty days from the date of an order passed by concerned forums (District Forums, State Commission & National Commission) (Sec. 27-A)

Procedure to be followed on receipt of complaint relating to services section 13 of Consumer Protection Act 1986 (Amendment) 2002

Receipt of complaint

Refer to opposite party for his version within a period of 30 days or such extended period not exceeding 15 days

Opposite party

Either denied or disputed the allegations made in the complaint

Omits or fails to take any actions to represent his case

Ex-parte proceeding

Within the given time by consumer forum

Settlement of dispute on the basis of evidence brought to its notice by the both parties (relief)

Application of the Act (Section 1): The Consumer Protection Act, 1986 extends to the whole of India except the state of Jammu and Kashmir as stipulated in section (2) of the Consumer Protection Act, 1986. By virtue of this clause, the Jammu and Kashmir
Government had enacted a separate act called J&K Consumer Protection Act in the year 1987 with almost identical provisions.\textsuperscript{70} The applications of the Consumer Protection Act, 1986 to a consumer dispute that arose in Jammu came up for decision before State Consumer Commission, Chandigarh in the case of Hindustan Petroleum Corporation vs. Jammu & Kashmir Bank.\textsuperscript{71} In the light of the enactment of separate Consumer Protection Act for the State of Jammu and Kashmir in 1987, while disposing of the case, the said State Commission ruled that “since there is a separate Jammu and Kashmir Consumer Protection Act, 1987, and the entire transaction and dispute took place at Srinagar and Jammu, this commission at Chandigarh has no jurisdiction.” This judgement is likely to affect the interest of consumers who are residing outside the State of Jammu and Kashmir.

- **Non Application of the Act (Section 1):** The application of the Consumer Protection Act, 1986 in a case involving prayer for award of compensation in case Gulab Hotchand Bhachandaney vs. Egypt Airlines & others (Consumer Protection Reports 1993 (3) Page 385 National Commission). After hearing the National Commission, ruled that the Indian Consumer Protection Act, 1986 is not applicable to case involving cause of action arising outside India, in this case, at ‘Barcelona’.

  The act applies to “all goods and services” except those which are expressly excluded by the central government by notification section 1(4).

- **Who can be a complainant – Section 2(1)(b):** The complainant under the Consumer Protection Act, 1986 may be,
  
  (i) a consumer; or
  
  (ii) any voluntary consumer organization registered under the Companies Act, 1956 or under any other law for the time being in force; or
  
  (iii) the central government or any state government; or
  
  (iv) one or more consumers, where there are numerous consumers having the same interest;\textsuperscript{72}

\textsuperscript{71} Consumer Protection Reports 1997(2) Pae 228, Chandigarh.
\textsuperscript{72} Inserted by Act 50 of 1993, Section 2 w.e.f. 18.6.1993.
(v) in case of death of a consumer, his legal heir or representative,\textsuperscript{73} who or which makes a complaint.

- **Section 2(1)(c):**
  
  Complainant\textsuperscript{74} means any allegation in writing made by a complainant that:
  
  (i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;\textsuperscript{75}
  
  (ii) [The goods brought by him or agreed to be bought by him] suffer from one or more defects;\textsuperscript{76}
  
  (iii) [the service hired or availed of or agreed to be hired or availed of by him]\textsuperscript{77} suffer from deficiency in any respect;
  
  (iv) A trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price\textsuperscript{78} –
    
    (a) fixed by or under any law for the time being in force;
    
    (b) displayed on the goods or any package containing such goods;
    
    (c) displayed on the price list exhibited by him by or under any law for the time being in force;
    
    (d) agreed between the parties.
  
  (v) Goods which will be hazardous to life and safety when used are being offered for sale to the public\textsuperscript{79} –
    
    (a) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
    
    (b) if the trader could have known with due diligence that the goods so offered are unsafe to the public.

\textsuperscript{73} Inserted by Act 62 of 2002, Section 2 w.e.f. 15.3.2003.
\textsuperscript{74} Inserted by Act 50 of 1993, Section 2 for sub-clause (i) w.e.f. 18.6.1993.
\textsuperscript{75} Inserted by Act 62 of 2002, Section 2(c) for any trader w.e.f. 15.3.2003.
\textsuperscript{76} Inserted by Act 50 of 1993, Section 2(c) for the goods mentioned in the complaint w.e.f. 18.6.1993.
\textsuperscript{77} Subs by Act 50 of 1993, Section 2(c) for “the services mentioned in the complainant” w.e.f. 18.6.93.
\textsuperscript{78} Subs. by Act 62 of 2002, Section 2(c) for Sub clause (iv) w.e.f. 15.3.2003.
\textsuperscript{79} Subs. by Act 62 of 2002, Section 2(c) for Sub clause (v) w.e.f. 15.3.2003.
(vi) Services which are hazardous or likely to be hazardous to life an safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety.\(^{80}\)

**Who is Consumer – Section 2(1)(d):**

All of us are consumers of goods and services. For the purpose of the Consumer Protection Act, the word “Consumer” has been defined separately for “goods” and “services”.

Consumer means any person who –

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale as for any commercial purpose; or

(ii) (hires or avails of)\(^{81}\) any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who, {hires or avails of} the services for consideration paid or promised, or partly paid or partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person\(^{82}\) [but does not include a person who avails of such services for any commercial purpose].

**Explanation:** For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self employment.

---

\(^{80}\) Subs. clause (vi) along with sub-clauses (iv) & (v) Subs. for clause (iv) & (v) by Act 62 of 2002 Section 2 15.3.2002

\(^{81}\) Subs. by Act 50 of 1993, Section 2 for “hires” w.e.f. 18.6.1993.

\(^{82}\) Inst. by Act 62 of 2002, Section 2 w.e.f. 15.3.2003.
**District Forum:** District forum means a consumer disputes redressal forum established under clause (a) of section 9 of Consumer Protection Act 1986 (Amendment 2002).

**What shall Constitute Complaint? Section 2(1)(c):**

The complaint shall always be made in writing by specifically making any one or more of the following allegations stating that:

(i) an unfair trade practice or a restrictive trade practice has been adopted by any trades or service provider;

(ii) the goods bought or agreed to bought suffered defects;

(iii) the services hired or availed of or agreed to be hired or availed or suffered from deficiency in any respect;

(iv) a trader or service provider has charged for the goods or for the services mentioned in the complaint more than the price or in excess of the price;
   (a) fixed
   (b) displayed on the goods or any package containing the goods;
   (c) displayed on the priced list exhibited;
   (d) agreed between the parties;

(v) sale of goods hazardous to life an safety to public;
   (a) in contravention of standards relating to safety of such goods;
   (b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

(vi) services hazardous to life and safety of the public when used, offered by service provider without adopting due diligence and care;

The complaint on the above mentioned grounds has to be made with a view to obtaining required relief provided under Consumer Protection Act, 1986 (Amendment 2002).

**How to File a Complaint?**

Procedure for filing complaints and seeking redressal are simple and speedy.

- The complainant or his authorized agent can present the complaint in person.
  every complaint filed under sub-section 12(1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed, on receipt of a complaint made under sub-section 12(1), the district forum may, by order, allow
the complaint to be proceeded with or rejected, a complaint should contain the following informations:

(a) the name, description and the address of the complaint;
(b) the name, description and address of the opposite party or parties; as the case may be, as far as they can be ascertained;
(c) the facts relating to complaint, when and where it arouse;
(d) documents, if any, in support of the allegations contained in the complaint;
(e) the relief which the complaint is seeking. The complaint should be signed by the complainant or his authorized agent. The complaint should be filed with in two years from the date on which the cause of action has arisen (Section 24-A).

Procedure on Admission of Complaint (Section 13): (1) The District Forum shall on admission of a complaint, if it relates to any goods - (a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the district forum.(b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the district forum, the district forum shall proceed to settle the consumer disputes in the manner specified in clauses (c) to (g); (c) Where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the district forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its finding thereon to the district forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the district forum; (d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the district forum may require the complainant to deposit to the credit of the forum such as far as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in
(e) the district forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the district forum shall forwarded a copy of the report along with such remark as the district forum may feel appropriate to the opposite party; (f) if any of the parties disputes the correctness of the finding of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the district forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory; (g) the district forum shall thereafter give a reasonable opportunity to the complainant as well as opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 14. (2) The district forum shall, if the (complainants admitted) by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services, (a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days of such extended period not exceeding fifteen days as may be granted by the district forum, (b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) devices or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the district forum, the district forum shall proceed to settle the consumer dispute – (i) on the basis of evidence brought to its notice by the complaint and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint; or (ii) ex-parte on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within time given by the forum; (c) where the complainant fails to appear on the date of hearing before the district forum, the district forum may either dismiss the complaint for default or decide it on merit. (3) No proceeding complying with the procedure laid down in sub-section (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with. (3A) – Every complaint shall be heard as expeditiously as possible and endeavour shall be made
to decide the complaint with in a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and with in five months, if it requires analysis of testing of commodities; Provided that no adjournment shall be ordinarily granted by the district forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the forum; Provided further that the district forum shall make such orders as to the costs occasioned by the adjournment may be provided in the regulations made under this act; Provided also that in the event of a complaint being disposed of after the period so specified, the district forum shall record in writing, the reasons for the same at the time of disposing of the said complaint; (3B) Where during the pendency of any proceeding before the district forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts an circumstances of the case.(4) For the purpose of this section, the district forum shall have the same powers are vested in a civil court under Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters: (i) the summoning and enforcing the attendance of any defendant or witness an examining the witness on oath; (ii) the discovery and production of any document or other material object producible as evidence, (iii) the reception of evidence on affidavits, (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source; (v) issuing of any commission for the examination of any witness, and (vi) any other matter which may be prescribed.(5) Every proceeding before the district forum shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code (45 of 1860), and the district forum shall be deemed to be a civil court for the purpose of section 195, and chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).(6) Where the complaint is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of order I of the first schedule to the Code of Civil Procedure 1908 (5 of 1908) shall apply subject to the modification that every reference there in to a suit or decree shall be construed as a reference to a complaint or the order of the district forum thereon. (7) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of order XXII of the first scheduled to the Code of Civil Procedure, 1908 (5 of 1908) shall apply
subject to the modification that every reference there in to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

**Finding / Relief (Section 14):** Depending upon the facts and evidence of the complaint and the nature of relief sought by the consumer, the redressal forums may give orders for one or more of the following relief like, replacement of the goods; removal of defects from the goods; refund of the price paid; award of compensation for the loss or injury suffered; removal of defects or deficiencies in the services; discontinuance of unfair practices or restrictive trade practice or direction not to repeat them; withdrawal of the hazardous goods from being offered for sale; not to offer the hazardous goods for sale; award for adequate costs to parties; to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature.

**Appeal (Section 15):**

Any person aggrieved by an order made by the district forum may prefer an appeal against such order to the state commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed; provided that the state commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within the period; provided further that no appeal by a person, who is required to pay any amount in terms of an order of the district forums, shall be entertained by the state commission unless the appellant has deposited in the prescribed manner fifty per cent of that amount or twenty five thousand rupees, whichever is less.

Appeal against the order of state commission can be filed before the national commission within thirty days; and appeal against the order of the national commission can be filed before Supreme Court within a period of thirty days.

**Consumer Disputes Redressal Agencies: Establishment of Consumer Disputes Redressal Agencies (Section 9):**

There shall be established for the purpose of this act, the following agencies, namely: (a) a consumer disputes redressal forum to be known as the ‘District Forum’ established by the state government, in each district of the state by notification:

Provided that the state government may, if it deems fit, establish more than one district forum in a district; (b) a consumer disputes redressal commission to be known as
the ‘State Commission’ established by the state government in the state by notification; and (c) a national consumer disputes redressal commission established by the central government by notification to be known as “National Commission”.

**Composition of District Forum (Section 10):** Each district forum shall consist of: (a) a person who is, or has been, or is qualified to be a district judge, who shall be its President; (b) two other members, one of whom shall be a woman, who shall have the following qualification, namely: (i) be not less than thirty five years of age, (ii) possess a bachelor’s degree from a recognized university; (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration; Provided that a person shall be disqualified for appointment as a member, if he – (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the state government involves moral turpitude; or (b) is an undischarged insolvent; or (c) is of unsound mind and stands so declared by a competent cant; or (d) has been removed or dismissed from the service of the government or a body corporate owned and controlled by the government; or (e) has, in the opinion of the state government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or (f) has such other disqualifications as may be prescribed by the state government; I.A. – Every appointment under sub-section (1) shall be made by the state government on the recommendation of a selection committee consisting of the following, namely: (i) President of the State Commission – Chairman (ii) Secretary, Law Department of the State- Member (iii) Secretary, Incharge of the Department- Member, dealing with consumer affairs in the state. Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as chairman of the selection committee, the state government may refer the matter to the Chief Justice of the High Court for nominating a sitting judge of that High Court to act as chairman. (2) Every member of the district forum shall hold office for a term of five year or up to the age of sixty-five years, whichever is earlier: Provided that a member shall be eligible for re-appointment for another term of five years or up to the age sixty-five years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub-
section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee: Provided further that a member may resign his office in writing under his hand addressed to the state government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointment under the provisions of sub-section (1A) in place of the person who has resigned; Provided also that a person appointed as the President or as a member before the commencement of the Consumer Protection (Amendment) Act, 2002 shall continue to hold such office as President or member, as the case may till the completion of his term.

(3) The salary or honorarium and other allowances payable to and the other terms and conditions of service of the members of the district forum shall be such as may be prescribed by the state government.

Composition of the State Commission (Section 16): (1) Each State Commission shall consist of: (a) a person who is or has been a judge of a High Court appointed by state government, who shall be its President: Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court; (b) not less than two and not more than such number of members, as may be prescribed and one of whom shall be a woman, who shall have the following qualifications, namely: (i) be not less than thirty-five years of age; (ii) possess a bachelor’s degree from a recognized university; and (iii) be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. Provided that not more than fifty percent of the members shall be from amongst person having a judicial background.

Composition of the National Commission (Section 20): The national commission shall consist of: (a) a person who is or has been a judge of the Supreme Court, to be appointed by the central government, who shall be its President; Provided that no appointment under this clause shall be made except after consultation with the Chief Justice and India; (b) not less than four, and not more than such number of members as may be prescribed and one of whom shall be a woman, who shall have the following qualification, namely:
(i) be not less than thirty-five years of age; (ii) possess a bachelor’s decree from a recognized university; and (iii) be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. Every member of the national commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier.

The National Commission was constituted in the year 1988. Mr. V. Balakrishna Eradi was the first President of N.C.D.R.C. It is headed by a sitting or retired judge of Supreme Court of India. The national commission is presently headed by Hon’ble Justice Ashok Bhan, Former Judge of Supreme Court of India as President and has a members – Hon’ble Justice K.S. Gupta, Hon’ble Mr. Anupam Das Gupta, Hon’ble Mr. S.K. Naik, Hon’ble Justice R.C. Jain, Hon’ble Justice R.K. Batra, Hon’ble Justice B.N.P. Singh, Hon’ble Mrs. Vineeta Rai, Hon’ble Mr. Vinay Kumar and Hon’ble Mr. Suresh Chandra.

**Circuit Benches (Section (22-C):**

The national commission shall ordinarily function at New Delhi and perform its functions at such other place as the central government may, in consultation with the national commission notify in the official gazette, from time to time.

The central government has notified that the national commission shall perform its functions at the following places other than New Delhi:

1. Ahmedabad
2. Allahabad
3. Bangalore
4. Bhopal
5. Chennai
6. Hyderabad
7. Jodhpur
8. Kolkata
9. Lucknow
10. Nagpur
11. Pune

Consumer Movement in Haryana:

Voluntary consumer organizations play an important role in consumer awareness. Voluntary initiative by the consumers through the establishment of consumer organizations forms the central stand in the consumer welfare movement. In Haryana the history of development of consumer organizations is not so old. In this regard, first attempt was made by a group of 20 persons in 1987 in Mahendergarh and after three months, they converted themselves in to a consumer organization named ‘Upbhokta Jagrity Manch’. This consumer organization continued its activities through exhibitions, workshops, seminars etc. This organization also organized ‘Consumer Mela’. In recent years amendments to existing laws have been made to give necessary teeth to the voluntary consumer organizations. The amendments have been necessitated by the fact that the weaker sections of the society have not been able to make an effective use of the legal processes for vindication of their private rights. The protection of public interest is the avowed objective of legislation in conferring locus-standi on consumer association.

In 1987, ‘Gramin Upbhokta Sangthan’ was formed in Sisai Bola District Hisar. Firstly it is an unregistered consumer organization and its area of working is rural and semi-urban consumers but now it is registered one. The main source of income of this consumer organization is membership fee and voluntary contribution by villagers in case of need. This organization operates its activities through distribution of pamphlets. In 1989, ‘Haryana Upbhokta Sangh’ 398 Defence Colony, Hisar’ was formed and it is a registered organization. It has 21 branches. Out of these, five are rural branches. The main income source of this organization is membership fee. Poverty is the main cause of consumer exploitation in the eyes of this organization and main areas of exploitation are food adulteration and short weights and measures. This organization files cases of consumers free of cost. It has organized several seminars and exhibitions for consumer awareness. In 1992, the consumer movement gained momentum when several consumer organizations were formed. In this year, ‘Consumer Protection Association Rewari’, zila Upbhogta Welfare Association, Bhiwnia and Kashat Nivaran Samiti, Amin Kurukshetra were formed. Consumer Protection Associateion 3811-12, Dharuhera Gate, Rewrai is a registered consumer organization. It has only one branch in urban area. The main source of income of this consumer organization is membership fee. It does not accept any
assistance from business sector and government. It operates its activities by celebrating ‘Consumer Day’ and surveys. Zila Upbhokta Welfare Association, Bhiwani is a registered consumers organization. Its areas of operations is whole Bhiwani district. It has its branch office at Charkhi Dadri and two rural branches – one in Palri and one in Kaliyana. This organization has been doing excellent work in consumer protection. In 1992, it organized a seminar in which detailed information on C.P.A. was given to the public through speeches and pamphlets. In 1985, it organized another seminar / workshop in which some leading consumer activities like Mrs. Pushpa Girimaji delivered lecturers. This organization also organized “Rural Campaign” from March 4 to March 18, 1995 in more than 250 villages of the district giving information about consumer rights. This organization also files complaints in district forum on behalf of consumers. So far, it has filed more than 100 complaints and has achieved success in getting the decisions in favour of the consumers in more than 10 cases. It has also filed several complaints in state commission and national commission. Time to time, this organization send letters to different government departments informing them about the problems of consumers. This organization has done a lot of work for the LPG Consumers. It is rural oriented organization and has no branch. Its main income source is membership fee. From time to time, it organizes functions in the form of seminar, consumer celebration day etc.

In 1996, Haryana Upbhokta Chetna Manch 984/5, Patel Nagar, Gurgaon was formed and it is a registered organization. Its area of operation is whole Haryana. It has four branches at district level and these are in Gurgoan, Faridabad, Jind and Jhajjar. The main income source in membership fee and it also accepts donation from members in case of need. This organization has been doing excellent work in consumer education. In 1996, Haryana Upbhokta Manch, Balsamand Road, Hissar was formed and it is a registered organization. It has no branch. It main source of income is donation from the public in case of need. This organization has been organizing several programmes for consumer awareness. In 1997, Aware Citizen and Consumer Endeavour Panchkula was formed and it is unregistered organization. Its area of operation is the whole territory of India, particularly the state of Haryana and the union territory of Chandigarh. It has no branch and main income of the organization is membership fee. Its main object is to work for the promotion and protection of the interests of the consumers and promotion of
consumer education and awareness. To achieve these objects, it has organized several programmes in the form of ‘Rural Campaign’, talk, poster / pamphlet distribution programme. In 1997, PH & HP, J&K Consumer Education and Research Centre, Chandigarh was formed. It is a registered organization. Its area of operation is the territorial jurisdiction of the states of Haryana, Punjab, Himachal Pradesh and Jammu & Kashmir.

The 33 voluntary consumer organization entered / registered under the food and supply department in the state of Haryana.

**List of Voluntary Consumer Organizations in the State of Haryana**

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Organization</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>President, Consumer Welfare Association of Haryana</td>
<td>3391, Gupta Ganj Market Palwal, District Faridabad</td>
</tr>
<tr>
<td>2.</td>
<td>President, Consumer Forum</td>
<td>81/2, Gobind Nagar, Ambala Cantt.</td>
</tr>
<tr>
<td>3.</td>
<td>President, Ambala Urban Estate Consumer Protection Council</td>
<td>490, Sector 7 Urban Estate Ambala City</td>
</tr>
<tr>
<td>4.</td>
<td>President, Consumer Welfare Association</td>
<td>400-KutabPur Rewari</td>
</tr>
<tr>
<td>5.</td>
<td>President</td>
<td>Shri Bhagwta Bhakti Ashram, RamPura, Rewari</td>
</tr>
<tr>
<td>6.</td>
<td>President, Consumer Protection Association</td>
<td>3811-12, Dharuhera Gate Rewari</td>
</tr>
<tr>
<td>7.</td>
<td>President, Consumer Forum</td>
<td>C/o Dhariwla Nursing Home, Dharamshala Road, Fatehabad</td>
</tr>
<tr>
<td>8.</td>
<td>President, Consumer Association</td>
<td>Consumer Association Anand Bhawna, Shivaji Park, Yamuna Nagar</td>
</tr>
<tr>
<td>9.</td>
<td>President, Panchkula Consumer Forum (Regd.)</td>
<td>Panchkula Consumer Forum, H. No. 201, Sector 12, Panchkula</td>
</tr>
<tr>
<td>No.</td>
<td>Name, Organization</td>
<td>Address</td>
</tr>
<tr>
<td>------</td>
<td>----------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>11.</td>
<td>President, Kashat Niwaran Samiti</td>
<td>Kashat Niwaran Samiti Amin, Kurukshetra</td>
</tr>
<tr>
<td>12.</td>
<td>President, Haryana Upbhokta Sangh</td>
<td>Haryana Upbhokta Sangh 398, Defence Colony, Hissar</td>
</tr>
<tr>
<td>13.</td>
<td>President, Gramin Upbhokta Sangthan</td>
<td>PO Sisai Bola, District Hissar</td>
</tr>
<tr>
<td>14.</td>
<td>President, Haryana Upbhokta Manch</td>
<td>Balsamand Road, Hissar</td>
</tr>
<tr>
<td>15.</td>
<td>President, Consumer Protection Society</td>
<td>587/18, Indira Bazar, Jind</td>
</tr>
<tr>
<td>16.</td>
<td>President, Haryana Upbhokta Chetna Manch</td>
<td>984/5, Patel Nagar, Gurgaon</td>
</tr>
<tr>
<td>17.</td>
<td>President, Welfare Association</td>
<td>Eros Garden Colony, Charmwood Village, Surujkund Road, Faridabad</td>
</tr>
<tr>
<td>18.</td>
<td>President, Akhand Bhartiya Upbhokta Parisad</td>
<td>2053-P, Sector 9, Ambala City, Ph. 0171-2531069</td>
</tr>
<tr>
<td>19.</td>
<td>President, Adarsh Sarswati Shiksha Samiti</td>
<td>Kakroi Road, Sonepat</td>
</tr>
<tr>
<td>20.</td>
<td>President, Haryana Lok Kalyana Shiksha Samiti</td>
<td>Blue Jay Road, Smalkha, District Panipat</td>
</tr>
<tr>
<td>21.</td>
<td>President, All India Common Weal Organization</td>
<td>665/20, Prem Nagar, Rohtak</td>
</tr>
<tr>
<td>22.</td>
<td>President, Bhartiya Gram Sudhar Sabha</td>
<td>228/29, Ram Gopal Colony, Rohtak</td>
</tr>
<tr>
<td>23.</td>
<td>President, Amar Jyoti Foundation</td>
<td>2nd Floor, ATO Office, Julana District Jind PP-274106</td>
</tr>
<tr>
<td>24.</td>
<td>President, Modern Education Society</td>
<td>Mandori Road, Mandora District Sonepat</td>
</tr>
<tr>
<td>25.</td>
<td>President, Nav Chetna Gram Udyog Mandal</td>
<td>2/46, Arya Nagar, Sonepat</td>
</tr>
<tr>
<td>26.</td>
<td>President, Hans Khadi Gram Udyog Samiti</td>
<td>House No. 280, Sector 8, Urban Estate, Karnal. Ph. 0184-282280</td>
</tr>
<tr>
<td>27.</td>
<td>President, National Educational and Welfare Society</td>
<td>House No. 7715, Street No. 2, Azad Nagar, Rewari</td>
</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Address</td>
</tr>
<tr>
<td>------</td>
<td>----------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>28.</td>
<td>President, Multi Vision Foundation</td>
<td>V.P.O. – Tandaheri, Bahadurgarh Block, Distt. Jhajjar</td>
</tr>
<tr>
<td>29.</td>
<td>President, New Gram Vikas Samiti</td>
<td>Nahadia Building, Bag Kothi No. 3, Bhiwani</td>
</tr>
<tr>
<td>30.</td>
<td>Shri Shyam Sewa Smiti</td>
<td>147, Gali No. 1, Shiv Nagar, Bhattu Road, Fatehabad</td>
</tr>
<tr>
<td>31.</td>
<td>Haryana Voluntary Action Network</td>
<td>Youth Adventurous Club, Village-Bapoli, Panipat</td>
</tr>
</tbody>
</table>

Source: Food & Supplies Department, Haryana.

Above said table shows that out of 21 districts only in 16 district there is voluntary consumer organizations registered. Rewari has 4 organizations followed by Ambala, Hissar, Sonepat and Panipat have 3 consumer organization each. Faridabad, Fatehabad, Bhiwnia and Rohtak have 3 organizations while Yamunanagar, Panchkula, Kurukshetra, Gurgaon, Karnal and Jhajjar have only one consumer organization.

In India 24th December of every year observed as “National Consumer Rights Day”. In all over the world, on 15 March, every year observed “Consumer Rights Day” and in Haryana also this day of 15th March observed as ‘Consumer Day’ Haryana government started many programmes regarding awareness of consumer about their rights. The total 135 consumer club has been established in government school in seven district namely Mahendergarh, Hissar, Sirsa, Jind, Gurgaon, Rohtak and Sonepat and a programme of establishing consumer club in 115 government school of six district is in the pipe line. And a scheme of consumer welfare fund has been started by state government from an amount of Rs. 50 (Fifty) lacs.

**Enforcement of Consumer Protection Act in Haryana:**

In order to protect the interest of the consumers, the government of Haryana is implementing the provisions of the Consumer Protection Act, 1986. In exercise of the
powers conferred by sub-section (2) of the section 30 of the Consumer Protection Act, 1986, The Haryana Consumer Protection Rules, 1988 have been notified in the state vide notification dated 25.04.1988 and these rules have been amended on 30.03.1989, 10.02.1993, 06.05.1996. Now a day, at the state level, Consumer Dispute Redressal Commission, Haryana has been functioning at Panchkula, the appellate authority of the district forums, which was set-up in Haryana 1989 under the chairmanship of Justice S.S. Sandhawalia Former Chief Justice of P&H High Court. By exercising the powers under section 7 of Consumer Protection Act State Consumer Protection Council was constituted on 05.09.1988.

At the district level, two district forums in Ambala and Hissar were established in 1989. These two district forums started functioning on 01.07.1989 as full time district forum. After that in 1991, 13 more district forums were established in Bhiwani, Faridabad, Gurgaon, Jind, Karnal, Kurukshetra, Kaithal, Narnaul, Rohtak, Rewari, Sonipat, Sirsa and Yamunanagar as part time district forums. These 13 district forums started functioning on 01.11.1991 out of these 13 district forums Bhiwani, Jind, Kurukshetra, Kaithal, Rewari, Sonipat, Sirsa, Yamunanagar were converted in to full time district forums on 18.11.1997. Faridabad district forum was converted in to full time district forum on 01.11.1991 out of these 13 district forums Bhiwani, Jind, Kurukshetra, Kaithal, Rewari, Sonipat, Sirsa, Yamunanagar were converted in to full time district forums on 18.11.1997. Faridabad district forum was converted in to full time district forum on 18.11.1997. Gurgoan district forum was converted as full time on 7.2.1994. Rohtak district forum was converted into full time district forum on 18.1.1995. The district forum at Panipat was established in 1992 and it started functioning on 14.8.1992 and it was converted in to full time on 18.11.1997. The 17th district forum was established Panchkula on 29.7.1997 as part time district forum and on 18.11.1997 it was converted into full time district forum. Previously the work of Panchkula district was being looked after by the district forum, Ambala. In the year 1998 the 18th consumer forum established at Fatehabad and in the 1999 district forum at Jhajjar was established as 19th district forum. On 1.9.2010 two district forums were also established Mewat at Nuh and Palwal. The related cases were transferred when in 1991, several forms were established. Cases from the Hissar district forum were transferred to Bhiwani, Kaithal, Faridabad, Narnaul, Rewari, Jind, Sirsa, Rohtak district forums and cases from Ambala district forum were transferred to Karnal, Kurukshetra, Sonepat and Yamunanagar district.
forums. Originally, there were only five whole time independent district forums and these were Ambala, Karnal, Rohtak, Faridabad and Gurgaon district forums. Rest of the district forums were part time district forums district and session judge / additional district and session judge of the concerned district was assigned / empowered to exercise the functions of the President of district forums in addition to his judicial work. But at present all the 21 district forums are whole time district forums. In order to protect the interest of consumers in the state of Haryana, government has made the Haryana Consumer Protection Rules under Consumer Protection Act. District Consumer Disputes Redressal Forum, Jind was established in the year 1991 in the Mini Secretariat, Jind. Now a days Mr. Hari Singh Khokhar, Advocate is the President of the Consumer Forum. District Consumer Dispute Redressal Forum, Sonepat was established in the year 1993 at Malik Colony, Near Judicial Complex, Sonepat. At the time of study Sh. Joginder Singh Nandal was the President and Sh. K.K. Malik and Smt. Bhim Kaur Chhillar were members of the forums. District Consumer Dispute Redressal Forum, Jhajjar was established in the year 1999 situated at Court Complex Jhajjar. The forum was headed by Sh. A.N. Manocha with Smt. Krishna Yadav and Sh. J.P. Hooda the members of the redressal forum.

Consumer Grievances:

The Consumer Protection Act, 1986 confers jurisdiction on the redressal agencies to deal with the consumer grievances. The consumer grievances are of several types:

- Deficiency in service
- Defect in goods
- Unfair trade practices

The complaint under the Consumer Protection Act can be made in respect of only those services, which suffer from any deficiency. The term ‘deficiency’ has been defined in section 2(1)(g) of the Consumer Protection Act. ‘Deficiency’ means any fault, imperfection, shortcoming, or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. The term ‘service’ means service of any description which is made available to potential users and includes facilities in connection with
banking, finance, insurance, transport, processing, supply of electrical or other energy, boarding or lodging of both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. Numerous cases involving deficiency in service have been decided by redressal agencies. The Supreme Court and the Consumer Disputes Redressal Agencies have in several judgements elucidated the types of deficiency services. The main purpose and objective behind this chapter is to codify the rulings laid down by Supreme Court as well as High Courts and reported since the enactment of this act till date on various aspects pertaining to operation to the provisions of Consumer Protection Act, 1986 and functioning of consumer courts. The Supreme Court had occasions to express as well as lay down rulings on several aspects i.e.

- Constitutional validity of the act,
- Objective of the Consumer Protection Act,
- Status of deficiency in service caused while discharging statutory duties as sovereign functions by government officials and departments,
- Jurisdiction of consumer dispute redressal forums and commissions and coverage of Consumer Protection Act,
- Power, status and procedure to be followed by consumer courts,
- Ambit and coverage of commercial purpose.

**Constitutional Validity of Consumer Protection Act, 1986 –** The act is constitutionally valid. *State of Karnataka vs. Vishwabarathi House Cooperative Society.*

The orders passed by consumer forums need not be sent to Civil Court for execution as the consumer forums are competent to execute its own orders.

The power of parliament to enact the Consumer Protection Act, 1986 is held constitutional valid. The creation of Consumer Dispute Forums (C.D.F.), National Commission (N.C.), State Commission (S.C.) and District Forums (D.F.) are valid in the absence of suitable amendment under Art 368 of the Constitution and such forums doubt strike at the independence of the judiciary as the Consumer Protection Act, 1986

---

83 A.I.R. 2003 S.C. 1043
supplement the jurisdiction of Civil Courts or other statutory authorities. The orders passed by the consumer forums are deemed to be decree or order made by Civil Court, hence need not be sent to Civil Courts for execution thereof as much orders can be executed by consumer forum itself.

**Objective of the Act:**

**Lucknow Development Authority vs. M.K. Gupta.** The Supreme Court, in this case has observed and rule as under:

(a) The Consumer Protection Act, 1986 is a social benefit oriented legislation. Hence, courts while construing the provisions of the act have to adopt a constructive approach in favour of consumer in accordance with the stated objective of the enactment;

(b) The Consumer Redressal Forums Jurisdiction to entertain complaint about service in relation to immovable property is not ousted;

(c) The words “any” or “potential” under the definition of service in section 2(a) are very wide and extend to any or all actual or potential users.

(d) A government or semi-government body or a local authority is as much amenable to this act as any other private body rendering similar service;

(e) The test to be adopted is not the type of person or authority; but it is the nature of duty and function performed by it regardless of status of person and authority;

(f) Housing construction or building activity is covered by the definition of service as it stood even before inclusion of expression housing construction by 1993 amendment;

(g) Relief that can be granted by Consumer Dispute Redressal Forum (C.D.R.F.) is not limited to the award of value of goods or service;

(h) The Consumer Dispute Redressal Forums has got power to award compensation for harassment, mental agony or oppression suffered by consumer and they should direct recovery of the same from persons responsible for that; and

---

84 A.I.R. 1994 S.C. 787
(i) Damages caused due to misconduct by public officer has to be recovered from erring officials by dividing it proportionately where there are more than one functionaries.

**Discharge of Statutory Duties as Sovereign Function:**

*S.P. Goel vs. Collector of Stamps.*

Subject: Deficiency in service caused while discharging statutory duties becomes sovereign function of the state, hence not covered under the Consumer Protection Act, 1986:

The Supreme Court, in this case, has observed and ruled as under:

(a) The person who presents a document for registration under the Registration Act, 1980 and pays the stamp duty under the Stamp Act on it or the Registration Fee under Registration Act, does not become a consumer under Consumer Protection Act, 1986;

(b) The officers appointed under the Registration Act, 1908 as well as Stamp Act to implement the provisions of the said acts do not render any service within the meaning of C.P.A., 1986;

(c) They only perform their statutory duties which is a part of sovereign power of the state;

(d) A government officer may be liable in tort if, in the discharge of his official administration duties, he acts maliciously or with oblique motive or malafide;

(e) The collector under the Stamp Act enjoys immunity from legal action if he functions without malicious intention;

(f) The Registration Officer under the Indian Registration Act also enjoys immunity for things in good faith or referred to in his official capacity in bonafide manner.

**Jurisdiction and Consumer:**

(a) Objection against jurisdiction cannot be raised at appellate stage.

*Vikas Motors Ltd. vs. Dr. P.K. Jain, Supreme Court Cases 1999(6) page 548.*

---

85 AIR 1989 SC 839
When the full payment (of car) is paid before the cut off date, the consumer cannot be burdened to pay the excess charge levied after making full payment.

(b) Consumers forum cannot refer a dispute (pending before it) to an arbitrator.

**Skypak Couriers Ltd. vs. Tata Chemical Ltd.**\(^6\)

Jurisdiction: Consumer forum can not refer a dispute (pending before it) to an arbitrator even if there is an arbitration clause in the agreement as the remedy under Consumer Protection Act, 1986 is in addition to provisions is any other laws.

(c) Pecuniary Jurisdiction:

**South Field Paints & Chemicals (P) Ltd. vs. New India Assurance Co. Ltd.**\(^7\)

The enhancement of pecuniary jurisdiction of consumer forums / commissions by the 2002 amendment, will come in to force prospectively in the opinion of National Commission. The Supreme Court directed the National Commission to record its detailed reasons for taking such a view.

(d) Mere complication of either facts or law cannot be the ground for the denial of jurisdiction:

**CCI Chambers Cooperative Housing Society Ltd. vs. Development Credit Bank Ltd.**\(^8\)

Jurisdiction: The mere complication of either facts or law cannot be the ground for the denial of jurisdiction by consumer forums: The National Commission and other forums forming the opinion that the complaint is not triable by the commission (forums) even without issuing notice (to bank) is not proper.

(e) A dispute between a member and a cooperative society cannot be ousted by Consumer Forums Secretary, Thirumurugan Cooperative Agriculture Credit Society vs. M. Lalitha (dead) through L.R. AIR 2004 SC 448.

---

\(^7\) SCC 2005 (10) page 628  
\(^8\) AIR 2004 SC 184
Jurisdiction: A dispute between a member and cooperative society is not ousted as the remedy before consumer forum is in addition to and not in derogation to remedy under other acts.

(f) **Other Jurisdiction related cases:**

**Punjab Water Supply & Sewage Board vs. Udaipur Cement Works.**

With reference to transaction of sale and purchase simpliciter, the observations made by the national commission that no question of deficiency can arise so as to entitle complainant to invoke jurisdiction of Consumer Dispute Redressal Forums when there was no case at all of any defects in goods supplied is not appreciable. It was further observed that the national commission should have appreciated the pleading of the parties in the light of the provisions of the act.

**State of Gujarat vs. Rajesh Kumar Chimanlal Barot.**

Consumer Dispute Redressal Forums do not have jurisdiction to decide a dispute (Fixation of rate) that does not legitimately fall within the purview of adjudication by such that party involved is Gram Panchayat and subject involved is subsidized electricity rate and amount involved is very meager amount. If a court does not have jurisdiction, it is the obligation of the appellate court to hold so and to set aside the order under appeal.

**Appointment of Members of State and National Commission:**

Proper procedure to be followed for the appointment of president of state/National commission:

**Ashish Handa vs. Hon'ble The Chief Justice of High Court of Punjab and Haryana.**

With regard to the appointment of president of State/National Commission, the appropriate course to adopt is to initiate the proposal by the Chief Justice of High Court and supreme Court themselves and mention the name approved by him for such an appointment instead of the chief justice only approving the name suggested by state Government as well as central Government as the Chief Justice is the most suitable

---

AIR 1996 SC 537
person to know about the suitability of the person to be appointed as the president of state/National Commission.


Sub: Appointment of President of State Commission:

In anticipation of vacancy to the office of the President of State Commission due to completion of the term by the incumbent, the Executive (Chief Minister) recommended the name of the retired Chief Justice of Guwahati High Court requested for communication of the views of the Chief Justice of Punjab & Haryana High Court. The Chief Justice informed the Chief Minister that “even for the initiation of the proposal for the appointment of President of State Commission, the Executive (Government) is expected to approach the Chief Justice of High Court when the appointment is to be made for taking the steps to initiate the proposal and the procedure followed should be the same as for appointment of High Court Judge”. In view of the above, the Chief Justice recommended the name of another person (Former Chief Justice Punjab & Haryana High Court).The Executive drew the attention of Chief Justice to the newly inserted Sec.16 (1A) and requested the Chief Justice to nominate a sitting Judge of High Court to act as Chairman of Selection Committee to be constitute under Sec.16 (1A) of Consumer Protection Act, 1986. The High Court was of the opinion that the procedure contemplated under sub-section (1-A) can apply only in respect of appointment of members falling within the contemplation of Sec.16 (1) (b) (i.e. selection of member of state commission other than the president). The Court had also opined that there was no conflict between provision of Sec. 16(1) (a) [prescribing qualification for a person to be appointed as President of State Commission] appointment of member of state commission of the supreme court upheld the said rulings of the High Court (i.e. the two sub-section 16 (1) and Sec.16 (1-A) have to be harmoniously construed.

POWER OF CONSUMER COURTS:

Marine Container Service vs. Gogo Garment.⁹³

The contract Act applies to all litigants before consumer courts. Hence the agent/consumer has a right to invoke the protection available under Sec. 230 of the Indian

---

contract Act, 1872 before the consumer Dispute Redressal Forums (CDRFs) as well, hence, is therefore improper to hold that the Indian contract Act does not apply to complaints filed under consumer protection Act, 1986.

**Arvind Mills Ltd. vs. Associated Roadways.**

Sub: A complaint under consumer protection Act, 1986 against common carrier (governed under carriers Act, 1865) cannot be entertained in the absence of notice under sec. 10 of the carriers Act:

On a complaint filed for recovery of Rs.21.05 lacks against Associated Roadways under consumer protection Act 1986 for the loss suffered due to delivery of goods entrusted to it without obtaining the original lorry receipts from the consignee the National commission ruled that in the absence of a notice under Sec.10 of carriers Act, 1865 the complaint cannot be entertained against common carriers. On appeal the Supreme Court ruled the fact that the remedies under consumer protection Act, 1986 are in addition to and not in derogation of any other law does not mean that the rights under carriers Act (Carriers Act, 1865).

**Haryana Seeds Development Corporation Ltd. vs. Sadhu.**

Sub: Variation in the condition of crop could not be attributed to the quality of seeds alone but it may be due to other factors viz. high salt concentration, brackish water moisture content at the time of sowing long dry spell etc, as well:

The seeds of wheat purchased from credit and service co-operative society and Haryana seeds Development corporation and sown in the field did not germinate up to the Government Development Accordingly the District forum held the said corporation liable and awarded compensation which was also upheld by state commission. The corporation however on appeal before supreme court pleaded that the District, state and National commission failed to take note of the report of the expert committee constituted by the corporation which inter alia recorded that “hence the variation in the including high salt concentration brackish water moisture content at the germination of seed and crop stand”. The Supreme Court accepting the contention held that the claim for compensation on ground that seeds were substandard is not tenable.

---

PROCEDURE TO BE FOLLOWED CONSUMER COURTS:

M.R.F. Ltd vs. Jagdish Lal.96

The consumer Dispute Redressal Forums cannot be faulted for not observing the procedure prescribed under Sec.13 (1) © of consumer protection Act.1986 for testing analysis of samples due to the fact that the complainant had given the tyre and tube which had burst to the dealer who in turn had sent it to the manufacturer. In other words the was not capable of being followed because the complainant was not in possession courts in the matter of not following the procedure under Sec.13 (1) © of the Act.


Sub: Power and procedure of National Commission. The complaint filed under Sec. 22 (Power of National Commission) requires the National Commission to decide the matter in accordance with the evidence documents and respective case of parties including submission made before it and not by referring the matter to an arbitrator by giving an award:

The respondent, Mr. Atul Grover, filed a complaint before National Commission for recovery of compensation from the appellants Neeraj Munjal and other for the deficiency in the service rendered. The National commission instead of deciding the matter by itself as required under law, referred the matter to a retired Judge of High Court for arbitration who gave an award in terms of which the National Commission decided the complaint. The appellants aggrieved by the decision preferred an appeal before supreme courts. The Supreme Court in this regard held that the complaint filed under Sec.22 of consumer protection Act 1986 requires the National commission to decide the matter in accordance with the evidence documents and the respective case of the parties including submission made before it and not by referring the matter to an arbitrator by giving an award.

STATUS OF CONSUMER COURTS: THE CONSUMER COURTS ARE JUDICIAL AUTHORITIES:

*Fair Air Engineers Pvt. Ltd. vs. N.K. Modi.*

The Consumer Dispute Redressal Forums are judicial authorities and the proceedings before them are judicial for the purpose of Sec. 34 of Arbitration Act 1940. The Sec. 34 does not confer an judicial authority under the Act. Therefore the said forums are at liberty to proceed with matters in accordance with the provisions of consumer protection Act. 1986 rather than relegating the parties to arbitration proceeding pursuant to contract between parties. The reason being that the Act intends to relieve the consumer of the cumbersome arbitration proceeding or civil action.

COMMERCIAL PURPOSE:

Machine purchased by charitable hospital is for commercial purpose, if only 10 per cent of the patients are provided free medical service.


A charitable Trust Hospital which purchased CT scan machine goods for the purpose of providing CT scan facility to the patients and in the process charges 90 percent. Of the patients and provides free service only to 10 percent of the patients will be treated as the machine purchased for “consumer purpose” and such trust will not come under the purview of definition ‘consumer’ under consumer protection Act. Raw material imported with an object to manufacture finished goods for resale is for commercial purpose.

*Rajeev Metal Works vs. Mineral & Metal Trading Corporation of India Ltd.*

The manufacturer who procures goods (tin sheets for resale) for commercial purpose i.e. for manufacture and resale as finished goods during the course of their commercial business is not a consumer.

---

Service rendered by Statutory authority is not covered by sec. 2 (1)(d) (Consumer). 
Laxmi Engineering Works vs. P.S.G. Industrial Institute.99

What constitutes commercial purpose is a question of fact to be decided on the basis of facts and circumstances of each case. The explanation added by way of amendment brought in the year 1993 under consumer protection Act is clarification in nature and applies to all pending proceedings i.e. a person who buys goods and uses them himself the expression of consumer. The purchase of PSG 450 CNC Universal Turning Central machine worth over Rs.20 lacs in the year 1990 cannot be treated as a machine purchased for the purpose of earning one’s livelihood by means of self – employment.

BANKING SERVICE:

Bank promised to renew the insurance policy but failed to renew the same: bank is liable but not to the extent of meeting the entire damages awarded as the primary obligation to obtain policy lies with the owner of the vehicles and not with the bank:

Pradeep Kumar Jain vs. City Bank.100

The bank that promises to renew insurance policy of vehicle cannot be made liable to incur the total liability to pay the compensation awarded for causing accident resulting in loss of life and damages against the owner of the vehicle even when such bank failed to keep up its promise for the simple reason that the obligation has been cast upon the owner of the vehicle to the hence there is no deficiency in banking service.

Consumer courts are empowered to award appropriate interest rate on delayed payment made by the bank:

Sovintorg (India) Ltd. vs. State Bank of India.101

The consumer Dispute Redressal Forums have power to great interest on delayed payment (of cheque worth over Rs. One lakh deposited for collection after seven years) under sec.34 of code of civil procedure, 1908 appropriately under the circumstances of each case on the ground of justice equity and good conscience.

Unit Trust of India vs. Ravinder Kumar Shukla.¹⁰²

Sub: In the absence of any contract or request either express or implied from the payee (the unit trust of India holder) that the amount be sent by post the post office would continue to act as the agent of the drawer (unit trust of India) and in such case the loss (due to non-receipt of money sent by unit trust of India to unit holders) is that of drawer i.e. unit Trust of India:

The unit trust of India a statutory body various schemes and it issues cheques towards maturity amount of unit purchased and / or towards repurchase value by drawing account payee, non-transferable and not negotiable cheques and sends the same to the payee [unit trust of India holder(s)] by registered post. The Unit Trust of India received large number of complaints from unit holders alleging non-receipt of the cheques. It is learnt that the said cheques generally are intercepted by strangers new accounts opened in banks / post offices in the names of payees of cheques and later money are withdrawn by leaving minimum balance. As a result of this the unit holders did not receive money hence they filed complaints in various forums. The District Forums have held that the Unit Trust of India is bound to pay the amounts to unit holders as the post office acts as agent of unit trust of India. Most of the files have been dismissed by National Commission hence an appeal has been Supreme Court by unit Trust of India. The question before Supreme Court was whether the loss is to be born by the unit holder paree and/ or Unit Trust of India. After referring to a couple of cases- commissioner of income-tax Bombay v. Ogale Glass Works Ltd., A.I.R. 1954 S.C.429 and Hanuman Prasad vs. Hiralal, A.I.R. 1971 S.C.206), the Supreme Court held that in the absence of any contract or request either express or implied from payee unit holder stating that the amount of units would be sent by post the post office would continue to be the agent of unit trust of India which would have to incur losses caused to unit holders due to non-receipt of money sent by post by post by Unit Trust of India to the unit holders.

¹⁰² A.I.R. 2005 S.C. 3228
Remyting Bank is different and distinct from that of college Bank:

**Indian Bank vs. Satyam Fibres India Pvt. Ltd.**

The Supreme Court in this case has observed and ruled as under:

(a) In the absence of any specific direction to the bank to write to foreign bank to deliver documents to buyer only on co-acceptance by it the bank cannot be said to have acted negligently.

(b) As per the rules of collection of the international Chamber of Commerce, remitting bank cannot be treated as collecting bank. Identity of remitting bank is different from that of collecting bank.

(c) The National Commission cannot ignore the alleged plea of forged document;

(d) The constitutional statutory, administrative and judicial authorities possess the power to recall their judgment or orders if they are obtained by fraud.

(e) Realisation of expert proceeds by bank in local currency of foreign country against US Dollars as stipulated in the document due to restriction in foreign country shall not amount to deficiency in banking service:

**Corporation Bank vs. Navin J. Shah.**

Where an exporter (of Tea) entrusted documents and bills relating to exports with local bank to negotiate the document through a foreign bank named in the agreement and the local bank realized the export proceeds in local currency of foreign country (Sudan) but not in dollar as stated in the document due to restrictions in foreign country, no deficiency in service could be imputed on local bank for not realizing export proceeds in dollar and for the delay in collecting the export proceeds.

**Bank Guarantee:** The delay caused in making payment by bank under unconditional Bank guarantee may not amount to deficiency in service rendered if there is valid reason for the same:

Though the amount guaranteed under unconditional bank guarantee had to be paid the moment it is invoked if the delay caused in making payment by bank is due to (a) the foreign banker not replying to valid query released by bank and (b) more time taken by Reserve Bank of India to grant permission to remit the amount under bank guarantee in

---

foreign currency; such delay will not amount to deficiency in service on the part of Indian Banks. With regard to the question involving remitting of foreign exchange the court advised the bank to discuss the matter with officials of Reserve Bank of India rather than entering into lengthy correspondences. The territorial jurisdiction provided under Sec.11 (2) of the consumer protection Act, 1986 (upon District Forum) should also be read into Sec. 17 (pertaining to state commission) with necessary modifications.

**Over draft facility to customer. Failure to sell shares pledged by bank timely resulting in loss: Liability of Bank:**

*Vimal Chandra Grover vs. Bank of India.*\(^{105}\)

When the customer requested the bank to arrange sale of part of his shares to clear the over draft account, the failure to sell the same timely resulting in loss in the market value of share falling shall amount to deficiency in service on the part of bank and the bank is liable to compensate the loss in market value (difference between the price offered to be sold and the price of share of share fallen on specified date) due to its negligence under Consumer Protection Act, 1986. The plea that the complainant is not a consumer is not tenable as when banks is granting Demand Draft facilities to its clients, it is providing service to the customers hence they are consumers with in the definition under consumer protection Act,1986.

**The filing of exorbitant claim (Rs.15.60 crores) against bank for freezing the sanctioned facilities is an example of abuse of process of law:**

*Synco Industries v. state Bank of Bikaner & Jaipur.*\(^{106}\)

The complaint filed with the allegation of freezing the sanctioned working (capital) facilities without prior intimation as well as good reasons and seeking direction issued to the bank (i) to prepare a funding package and waiver of interest,(ii) pay damages to the extent of Rs. 15 crores and additional sum of Rs. 60 lacs to cover the cost of traveling man days lost and other expenses incurred by the borrower company obviously require leading and disposed off in a summery fashion by National Commission (and other consumer forums): The filing of such claim before National

---


Commission appears to have been to save court fee, hence an example for an abuse of process of consumer forum.

**Time Period provided for filling reply cannot be extended beyond the period (30 + 15 days) provided under Consumer Protection Act, 1986:**

**Topline Shoes Ltd., vs. Corporation Bank.**

The time period provided for filling reply under Sec.13(2)(a) of consumer protection Act, 1986 as 30 days with provision for extension of 15 days, appears to be directory in nature which the consumer Forums are ordinarily supposed to apply. Therefore the bank appearing before the forum 30 days after receiving notice (on a complaint alleging failure to advance loan despite furnishing security) and obtaining a time of one month to file its reply is certainly barred by the provisions of Sec. 13 (2) (a) of the consumer protection Act, 1986 keeping in view the objective of the Act.

**INSURANCE:**

**Insurance claim can be preferred even after executing valid discharge voucher of course for valid reason:**

**United India Insurance vs Ajmer Singh Cotton & Gen. Mills.**

It is possible to make insurance claim even after executing discharge voucher in full satisfaction on the claim, provided it could be proved that the said discharge voucher was obtained by fraud, coercion etc. and consumer courts/Tribunals can grant appropriate relief. The mere execution of the discharge voucher by an insured in respect of claim raised under the insurance policy would not always deprive the insured consumer from preferring claim with respect to the deficiency in service on consequential benefit arising out of the amount paid in default of the service rendered. However delay in settlement of claim under the policy cannot be the ground to grant interest, particularly when the insurer complained of the delay at the time of acceptance of the insurance amount under the policy.

---


Insurance: Employees salary saving scheme: The liability of employer and life Insurance corporation when the premium is deducted but not remitted to life Insurance Corporation:

Delhi Electric supply Undertaking vs. Basanti Devi.¹⁰⁹

Insurance cover was extended to employees by life Insurance Corporation through salary saving scheme based on an agreement reached between the employer (DESU) and Life Insurance Corporation. As per the agreement the Life Insurance Corporation premium (monthly) was to be deducted from the salaries of employees by the employer and remitted the employee but failed to remit the same to the Life Insurance Corporation timely i.e. before the death of the employee. The Life Corporation refused to honour the claim on the ground that the premium was not paid regularly, hence the policy lapsed. The state national Commission gave valid discharge to Life Insurance Corporation, but held the employer liable for providing the required relief i.e. to pay amount equivalent to value of Insurance Policy. The Supreme Court on appeal made by the employer ruled that the life Insurance Corporation shall pay the insurance amount (Rs. 50, 000/-) along with interest @15 per cent per annum to the window of the deceased. However the employer equally had to pay a damage cost of Rs. 25,000/- for the default committed by the employer in not remitting the premium to Life Insurance Corporation.

Insurance: Assignee of the policy cannot be said to be beneficiary of any service under the policy, hence not a consumer:

New India Assurance Company Limited vs. B.N. Sainani.¹¹⁰

Assignee of marine insurance policy cannot be said to be the beneficiary of any service under the policy, hence not a consumer particularly when a policy is assigned to the assignee by the insured much after goods had reached the point of destination and after lapse of policy. A complaint by an assignee under consumer protection Act, 1986 against the insurer for deficiency therefore is not maintainable.

Insurance: The Insurance Company not being a beneficiary of service hired by consignor from Railways is not a consumer:

**Oberoi Forwarding Agency vs. New India Assurance Company Limited.**

The goods sent by truck to Assam by consignment were lost. The goods were insured hence the consignor got the claim settled with New India Assurance Company which in return obtained a letter of subrogation (the right to recover compensation for loss) and filed a case against the appellant under Consumer Protection Act 1986 for recovery of loss of consignment on the strength of said letter of subrogation and power of attorney obtained in its favour. This complaint was resisted by the appellant on the ground that the Insurance company is not a consumer under Consumer Protection Act, 1986. The Supreme Court upholding the contention ruled that the insurance company not being a beneficiary of transportation service hired by consignor from Railway Administration is not a consumer under consumer protection Act, 1986.

**Insurance Policy: Duty to disclose all material facts with both the parties:**

**Modern Insulators Ltd. vs. Oriental Insurance Company Limited.**

The insured has a duty to disclose all material facts and similarly it is the duty of insurance company and its agents to disclose all material facts in their knowledge since the obligation of good faith applies to both the parties. Since the terms and conditions of the standard policy where in the exclusion clause was included were neither a part of the contract of insurance nor disclosed to the insured the insurer cannot claim the benefit of the said exclusion clause. Father it is settled position of law that in appeal the parties cannot urge new facts.

**Insurance: Jurisdiction: Forums competent to decide on loss or damage caused to goods entrusted to transport carrier: Negligence (by plaintiff) need not be proved since the liability is that of Insurer:**

**Patel Roadways Ltd. vs. Birla Yamaha Ltd.**

The consumer Disputes Redressal Agencies (District Forum state Commission and National Commission). Created under consumer protection Act 1986 are vested with

---

the power to adjudicate all type of consumer disputes, hence the said forums are competent to entertain complaint containing allegation of loss or damage to goods entrusted to a carrier for transportation. Further in a case with a claim of damage or loss to or deterioration of goods entrusted to a carrier it is not necessary for the plaintiff is equally applicable in the proceedings before consumer Forums.

Insurance: Repudiation of claim with mala fide intention by company after long delay should compensate the party:

**Jit Ram Shiv Kumar vs. National Insurance Co. Ltd.**

The Insurance Company which repudiated the claim of the party with mala fide intention that too after a long delay, is bound to satisfy the entire claim i.e. to pay-

(i) full insured value of the consignment (Rs.8.21lacs);

(ii) interest 18 percent after the lapse of six months from the date of lodging the claim; and

(iii) interest @ 18 percent on the said amount after 30 days of the date of the order till the payment is made, as passed by National Commission which was later confirmed by supreme court.

**Insurance Claim Though the sum assured is payable in pound sterling as per the annum after lapse of six months from the date of lodging the claim should not be consignee at London: Insurance amount promised in foreign currency can be paid in Indian rupees:**

**National Insurance Co Ltd. vs. Sky Gems.**

The consignment (two parcels of precious stones – Emerald) exported by an Indian owner to London did not reach the consignee and were believed to have been either stolen or lost. The exporter had taken two insurance policies from insurance company as per terms of which the sum assured was payable in pound sterling at London. It is also a fact that there has been or evidence to show that the goods were transferred to consignee at London meaning thereby the title to the goods had not passed to consignee at London. The supreme Court ruled that the owner is not entitled to insurance amount in

---


pound sterling instead entitled to get the same in Indian rupees owing to the following fact,-

(i) the insurance premium is paid in Indian currency;

(ii) the owner continued to have title over the goods as it never passed to the consignee:

(iii) Insurable interest over goods remained with the owner of the goods.

Electricity:

Punjab State Electricity Board Limited vs. Zora Singh.\textsuperscript{116}

Sub.: The State Electricity Board, being a State under Act 12 of the Constitution, has to discharge the statutory functions (i.e. grant of electrical connection to the agriculturist) within a reasonable time, if not, it is liable to pay compensation and interest on amounts deposited by appellant, agriculturists) in case of unreasonable delay (of 13 years) in supply of electrical energy to the farmers: However, the burden on Compensation and interest awarded may be reduced if the said services area rendered within the specified period as directed by the National Commission.

Large number of agriculturist farmers, with a view to obtain supply of electrical energy, filed applications in 1981 with the Punjab State Electricity Board which asked them to deposit the security amount in the year 1999. Despite the deposit of such security amount and compliance with other formalities, the electrical energy was not supplied to the farmers, hence complaints were filed before various District Consumer Forums alleging deficiency in service on the part of Board. As per the Boards own circular the Board was under an obligation:

(a) to draw a blue print so as to enable it to make supply of electrical energy to the customer in order of seniority of application: and

(b) to notify the persons concerned stating the reasons as to why such supply could not be made during the relevant period.

The said farmers had also spent a huge amount on construction of Kotha and making other arrangements for obtaining supply of electrical energy. On the complaints filed by the said farmer alleging deficiency in service on the part of Board the District Forums found the “Board” guilty of deficiency in service and directed of Board to give

\textsuperscript{116} (2006) 6 S.C.C. 776
the connection to the complainant farmers within specified period therein and also
awarded compensation of Rs.10,000/- to each farmer complainant in addition to award of
interest @ 12 percent on the security amount deposited with the Board. The order was
also upheld by the National Commission. Against the said order of National Commission,
the Punjab Electricity Board preferred an appeal before the Supreme Court with the
submission that all connections have been given to the claimant farmers within the period
of 31st March 2004 mentioned in the order. The Supreme Court keeping in view the said
fact ruled that the interest of justice (in this Case) should be subserved if the said
direction issued by National Commission is compensation from Rs.10,000/- to Rs.5,000/-
to each claimant.

HOUSING:

Discrepancy between total permitted area for construction and saleable area may
not constitute deficiency in service:

Tulip Park Co-operative Housing Society vs. Sai overseas Import & Export.\textsuperscript{117}

When the building was constructed as per sanctioned plan and each flat has the
area as given in the agreement and for that the complainant had agreed not to raise
dispute regarding saleable area any discrepancy between total permitted area for
construction and saleable area shall not constitute to deficiency in service.

Housing when the cause of action remained as a ‘continuing cause of action’ the
claim cannot be rejected as time barred:

Lata construction vs. Dr. R.R. Shah.\textsuperscript{118}

The promise made by House builder to provide a flat to the purchaser after
receiving full payment (consideration) could not be fulfilled hence entered into a fresh
(second) agreement with the purchaser with a promise to repay the full payment received
in three installments on or before a specified date (ie.30\textsuperscript{th} April 1991). On failure to
honour the said commitment under the said both agreements a dispute was raised before
consumer Forum which was objected as time barred claim as it was filed in July 1993 ie.
two years after the date fixed for payment of entire argument had not been given up and
the builder was constantly under an obligation to provide a flat it could be said that the


S.L.T. 77
“cause of action” was a continuing “cause of action” and the claim was not barred by
time provided under the Act.

**Haryana Urban Development Authority vs. Surinder Kumar Goel.**

Sub: The award of interest @12 percent on the amount deposited by the applicants is
found adequate in case where possession had delivered to the applicant. The tax deducted
from the interest is directed to be refunded with 12 percent interest:

The respondent Mr. Surinder Kumar Goel was allotted a plot bearing No. 2724 in
Sector 23/23A (11), Gurgaon on 11\(^{th}\) August 1986. Despite paying all the payment the
possession was not delivered to the respondent hence a complaint was filed before
District Forum which awarded interest @ 18 percent annum. The National Commission
disposed of the revision petition in terms of its judgment in Haryana Urban Development
Authority (HUDA) v. Darsh Kumar. On further appeal the Supreme Court observed that
the National Commission cannot dispose off the matter by awarding interest @ 18
percent in all matters irrespective of facts of the cases. The Supreme Court further
observed that as the possession had already been offered on 17\(^{th}\) March 1997 and interest
@ 12 percent had already been paid there is no need to claim further amount from
respondent Haryana Urban Development Authority (HUDA) except registration charges.
The tax deducted at source if any deducted had to be paid by the appellant Haryana
Urban Development Authority (HUDA) to the respondent (S.K. Goel) within two weeks
the amount of Tax Deducted at Source (TDS) deducted with interest @ 12 percent from
the date Tax Deducted at source was deducted till payment.

**Haryana Urban Development Authority vs. Rekha Sharma.**

The complainant – respondent was allotted a plot on 23\(^{rd}\) January 1986. He paid
all dues but was not offered possession. The Directed forum directed to deliver an
alternate plot at the same price and to pay interest @ 10 percent as per Haryana Urban
Development Authority (HUDA) policy after two years from the date of deposit till the
date of delivery of physical possession of alternate plot. The National Commission
increased the rate of interest to 18 percent. Relying on the judgment of supreme court in
the case of Gaziabad Development Authority v. Balbir Singh, 2 that “interest at the rate

---

119 J.T. 2005 (11) S.C. 476
of 18 percent cannot be granted in all cases irrespective of the facts of the case” the supreme court set aside the order of National Commission. However, keeping in view the fact that the payment of interest awarded was paid only on 28th July 2004, inspite of the clarification given by Supreme Court in Balbir Singh’s case the Haryana Urban Development Authority (HUDA) was directed to pay interest to pay interest @ 15 percent. The Haryana Urban Development Authority (HUDA) was also directed to,

(i) pay cost of Rs. 500/- and further direction to recover the said amount personally from the officers who were responsible for not paying even after clarification given by supreme court:
(ii) to execute the sale deed: and
(iii) to give permission to construct without claiming any amount what so ever except the registration charges.

Haryana Urban Development Authority vs. Rajkumar Rathi. ¹²¹

Sub: The failure to deliver possession of allotted plot despite paying full payment may enable the allottee to get the alternate plot offered after 12 years, but at the original cost and not at the enhanced cost as demanded by the Development Authority:

The respondent Shri Rajkumar was allotted a plot bearing No.50 at Sector 21, Gurgaon on 19th May 1986. All payments were made, but the possession was not given as the plot was under litigation and development work could not take place. The respondent on 20th May 1997 (after a gap of 12 years) was offered an alternate plot No. 20 in Sector 5, Gurgaon but at an enhanced price. The respondent, though agreed to take the alternate plot but filed a complaint challenging the enhancement of price. On a complaint filed the District Forum directed payment of interest @10 percent after two years from the date of deposit till possession was given and it directed that the alternate plot must be delivered at the original price. It further directed that if there had been enhancement in the price of original plot then such enhancement could be collected but no interest could be charged on the enhanced amount. The National Commission dismissed the revision petition on the ground of delay of 63 days. On an appeal the Supreme Court refused to approve the dismissal of revision by National Commission and instead upheld the order of District Forum. The Haryana Urban Development Authority (HUDA), based on an interim order

¹²¹ (2005) 9 S.C.C.499
of the Supreme Court paid interest @ 12 percent on the deposited amount by the allottee. © The Haryana Urban Development Authority (HUDA) deducted tax Deducted at Source (TDS). Whereas they were not entitled to the allottee. In the view of the above the Haryana Urban Development Authority (HUDA) was directed to pay the amount of TDS deducted along with interest @ 12 percent from the date of deduction till payment to the allottee.

**Haryana Urban Development Authority vs. Soma Devi.**

Sub: The respondent Smt. Soma Devi was allotted a plot at Sector 15. Jagadhri on 23rd August, 1991 and paid substantial amount but the possession was not delivered as the plot was under litigation. On a complaint filed claiming refund of amounts paid the District Forum directed the refund of the said amount with interest on amounts deposited @ 18 percent per annum from each date of deposit till its actual payment with a further direction to pay Rs. 5000/- as compensation on account of harassment and mental agony and awarded Rs. 2000/- as cost of litigation. The state Commission modified the order of the District Forum by reducing the interest from 18 percent to 12 percent. The revision filed before the National Commission was dismissed. On a further appeal the Supreme Court observed as under:

(a) Based on the correspondence shown before Supreme Court demanding possession of plot and the offer made by some officers of Haryana Urban Development Authority (HUDA) to handover possession on certain terms. (of course, without disclosing the order directing refund of moneys paid.) The Supreme Court directed Haryana Urban Development Authority (HUDA) to handover possession to the allottee.

(b) The Haryana Urban Development Authority (HUDA), in obedience of the said order gave possession to the allottee and also sum of Rs. 5,00,736/- to the allottee in July 2004, thereby complying with orders directing refund of amount deposited with interest thereon. Due to this reason, Haryana Urban Development Authority (HUDA) contended that the allottee is not entitled to possession of any plot.

---

122 (2005) 9 S.C.C. 559
The allottee having claimed a refund and having received the amounts can now have no right to possession. The possession to obtained under the order of Supreme Court was without disclosing proper facts before Supreme Court.

In view of the above it was ruled that the allottee cannot be allowed to retain possession accordingly directed him to return the possession to Haryana Urban Development Authority (HUDA).

Ghaziabad Development Authority vs. Devendra Sharma.\(^{123}\)

Sub: When the Development Authority has not been able to deliver possession of plot, to the allottee the proper relief in such a case is not to issue direction for delivery of possession, but to issue a direction to refund the amount deposited to the allottee with interest @ 18 percent from the date of deposit till refund:

The respondent, Shri Devendra Sharma was allotted a plot by the Development Authority, Ghaziabad. But the Development Authority has not been able to deliver possession to the allottee. It appears that on a complaint made, the consumer Forums have issued direction to the Development Authority for the delivery of possession. On an appeal, the Supreme Court based on its earlier decision in the case of Ghaziabad Development Authority v. Balbir Singh, held that in cases like this the direction for delivery of possession has to be set aside and the only direction that could be given was to refund the amount deposited by the allottees together with interest @ 18 percent from the date of deposit till the amount is refunded. Accordingly, the said direction issued for delivery of possession in favour of respondent was set aside.

Ghaziabad Development Authority vs. Vidya Wati.\(^{124}\)

Sub: In the facts and circumstances of this case wherein the passion was not delivered for several years, due to operation of stay order of High Court resulting in stoppage of developmental activities and construction work I would be just and equitable to direct the Development Authority to pay interest @ 12 percent per annum:

The Ghaziabad Development Authority floated a scheme called “Indira Puram Priyadarshani Enclave Plot Scheme in the year 1992. The respondent Smt. Vidya Wati,

\(^{123}\) (2005) 11 S.C.C. 529

\(^{124}\) (2005) 9 S.C.C. 565
persuasant to the said scheme applied for an allotment of 200 square metres of land in Scheme No.634, code No. 703. Against the estimated cost of plot of Rs.2.64 lacs mentioned in the brochure, the respondent paid Rs.24.620/- towards registration charges and therefore Rs.2,57,090/- in five instalments, by February 1993. Despite payment of the instalments the possession could not be delivered till 10th April 1996 on which date the amount paid already was refunded to her based on her own request. On a complaint filled the District Forum and State Commission awarded interest @ 18 percent per annum. This order was upheld by National Commission which decision is under appeal before Supreme Court. It was brought to the knowledge of the Supreme Court that the possession could not delivered because of the stay order granted by Allahabad High Court which was in operation till December, 1993. In this context the Supreme Court observed and ruled as under: “If the delay in the delivery of the possession is for the reason of the interim order passed by High Court and the developmental activities and construction work could not be carried out during the period the order of stay was in operation, it could not be said that there were laches or negligence on the part of the Appellant Development Authority. In view of the payment of interest @ 12 percent which has already been paid observed the Supreme Court.”

**Manju Lal vs. Ghaziabad Development Authority.**

Sub: The amount paid already (i.e. interest @ 18 percent per annum claiming refund of the interest already paid to the beneficiary), cannot be refunded as ruled in Balbir Singh’s case:

The Development Authority allotted plot to one (Smt.) Manju Lal. However there was delay in the delivery of possession. On a complaint filed and appeals made thereon, the National commission awarded interest @ 18 percent on the amount deposited already to the beneficiary which was duty complied with by the Development Authority. The only grievance of (Smt,) Manju Lal was that the amount which she has paid already should not be allowed to be refunded. On a further appeal claiming refund of the interest already paid, Supreme Court based on its earlier decision in Ghaziabad Development Authority vs. Balbir Singh, 1 held that the amount already paid to the beneficiary, should not be refunded.

---

125 (2005) 9 S.C.C. 567
**Haryana Urban Development Authority (HUDA) vs. Kapoor Yadav.**126

Sub: Bodies like Development Authority should point out to the private parties concerned their right as per the Judgement of Supreme Court which deprecated the act of Development Authority to force private to accept for lower rate of interest:

There was delay in delivery of possession by Development Authority despite making necessary deposit by the transferee. The Development Authority Placing reliance on an affidavit failed by the transferee in execution proceedings taken by him argued that the transferee has agreed to receive interest @ 10 percent. But the transferee contended before the Supreme Court that he was pressurized to make such a statement and with draw the execution proceedings as otherwise possession would not be given to him, On this score, the Supreme Court held that the bodies like Development Authority should point out to private parties concerned their rights as per the Judgement of the Supreme Court. The Supreme Court further deprecated the act of making private parties to accept lower rate of interest. Accordingly the Supreme Court ordered payment of interest @ 12 percent per annum after two years from the date of deposit and directed to be paid within four weeks falling which the Development Authority was directed to pay interest @ 18 percent per annum from the date of each deposit made till payment.

**Ghaziabad Development Authority vs. Ram Chandra Srivastava.**127

Sub: Possession having been given at old rates although belatedly about seven long years after the allotment as per the Supreme Court interest could not should not be awarded on the money but the allottee should have been compensated for the mental agony and harassment and the loss suffered in paying rent: The respondent Shri Ram Chandra Srivastava was allotted a flat in the MIC self financing scheme, Govindpuram in 1988 and paid all dues but he was not offered possession with the result he started staying in rental accommodation by paying Rs. 2000/- per month. On a complaint filed alleging deficiency in service on the part of the Development authority, the District Forum directed that possession of the flat must be given with in 2 months in addition to awarding interest on the amount which remained deposited @ 15 percent per annum with the Development authority. On a revision filed before the National Commission by the

---

126 (2005) 10 S.C.C. 561
127 (2005) 9 S.C.C. 436
Development authority the interest rate was raised to 18 percent per annum. In this case although the allotment of flat was made in 1988 the passion was given only in 1995. The District Forum has not awarded compensation for mental agony and harassment. In this context the Supreme Court observed as under:

(i) where possession is given at the old rate the party has got benefit of escalation in price of land.

(ii) In view of the above there could not and should not also be award of interest on the money.

(iii) Keeping in view the gap between the year of allotment (1988) and handing over of possession (1995) on the one hand and arrangement made for stay in rental accommodation by paying Rs. 2000/- per month, it is evident that he suffered losses, underwent mental agony and harassment for which he should have been compensated.

**AIRLINES:**

Sub.: The remedy for cases involving deficiency in service free cases lies before Civil Courts:

**Ravneet Singh Bagga vs. KLM Royal Dutch Airlines.**

On the facts and circumstances of the case, if it is found that the person or authority rendering service (authorized) ha taken all precautions and considered all relevant facts in the course of the transaction and their action or final decision was in good faith, it cannot be said that there had been any deficiency in service. In the absence of any deficiency in service, either proved or established, the remedy may be available in common law to file a civil suit for damages before Civil Courts. The person cannot insist for grant of relief under the Consumer Protection Act for alleged acts of commission and omission which otherwise do not amount to deficiency in service.

RAILWAYS:
Sumatidevi M. Dhanwatay vs. Union of India.\(^{129}\)

Sub: The Railway administration cannot escape the liability against damage caused to passengers and their properties by unruly mob entering the railway compartment as recurring phenomenon every year on particular day (Ambedkar Day):

The passenger while traveling from Nagpur to Mumbai by 1\(^{st}\) class Air conditioned birth by Howrah-Bombay Mail was assaulted and deprived of her valuable (gold, Silver, pearls and diamond) forcibly worth Rs.1.18 lacs by unauthorized passengers who entered the Railway compartment on the eve of Ambedkar day and the railway authorities failed being reported to railway authorities at particular station (Igatpuri). The state Commission based on rival contentions awarded a total compensation of Rs. 1.42 lacs in favour of affected and injured passenger which on appeal was set aside by the National Commission. The Supreme Court observed that on the facts and circumstances of the case and in the light of the incident that had taken place, the railway administration escaped its liability hence restored the quanum of compensation awarded by State Commission and also an amount of Rs.5,000/- in addition was awarded towards cost in favour of affected passenger.

HEALTH / MEDICAL PROFESSION SERVICE:

The difference between medical profession and occupation laid down by supreme Court: \textbf{Indian Medical Association vs. V.P. Shantha.}\(^{130}\)

The difference between profession and occupation has been laid down by Supreme Court as under:

(a) Medical Practitioners are liable to pay damage for negligence;

(b) The service rendered by Medical Practitioners are covered under the definition of service;

(c) The complainant bringing complaint against Medical Practitioners involving complicated issues may approach Civil Court;

(d) The service rendered by the doctors are not excluded under the Exclusionary Part i.e. contract of personal service;


(e) Whether government or non-government doctors / hospitals rendering free of charge service to all patients are not covered under Sec.2(1) (o);

(f) Doctors/hospitals rendering free of charge services (without levying charges) to some patient and service on payment to large number of patients fall within the ambit of service under Sec.2 (1) (o);

(g) Service to patients under medical care policy or where payment is borne by employer is not a service rendered free of charges instead constitutes services under Sec.2 (1) (o);

(h) Contract of personal service – not limited to contracts for employment of domestic servants only, rather it would include employment of medical officer for rendering medical service to the employer. Service rendered by each Medical officer to his employer would not be service as defined under Sec. 2 (1) (o);

(i) Medical practitioner rendering service to patients by way of consultation, diagnosis and treatment both medical and surgical fall within the ambit of service as defined –except where the doctors render service free of charge to every patient or under a contract of personal service.

**Jacob Mahew vs. State of Punjab.**

Sub: A doctor accused of negligence or rashness may not be arrested in a routine manner (simply because a charge has been leveled against him) under the arrest is necessary for furthering the investigation or for collecting evidence as a simple lack of care; an error of judgment or an accident is not proof of negligence on the part of medical profession:

The complainant’s father (since deceased) was admitted in a private ward of CMC Hospital, Ludhiana. As the patient experienced difficulty in breathing the relatives of the patient contacted the duty nurse who in turn called some doctors to attend the patient No doctor turned up for about 20 to 25 minutes. Dr. Jacob Mathew (appellant) came to the room an oxygen cylinder was brought and connected to the mouth of patient but the breathing problem increased further. The oxygen cylinder was found to be empty hence another gas cylinder was brought from adjoining room. As there was no arrangement to make the gas cylinder functional and in between 5 to 7 minutes were lost. Finally the patient was declared dead.

---

131 2005 (3) C.P.R. 70 S.C.
Later an F.I.R. was filled against the Doctor(s) and hospital alleging that “…..the death of the patient had occurred due to the carelessness of doctors and nurses and non-availability of oxygen cylinder and the empty cylinder fixed on the mouth of the deceased and his breathing had totally stopped hence he died.

Based on the said FIR an offence under Sec.304 –A/ 34 Indian Penal Code was registered against the concerned doctor and nurses. In this context the Supreme Court observed as under:

(i) A simply lack of care an error of judgment or an accident is not proof of negligence on the part of medical professional.

(ii) So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would the accused Doctor followed.

(iii) When the charge of negligence arises out of failure to use some particular equipment the charge would fail if the equipment was not generally available at that particular time (that is the time of the incident) at which it is suggested it should have been used.

(iv) To prosecute a medical professional for negligence under criminal law, it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do.

(v) The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.