CONSUMER PROTECTION LAW
VIS-À-VIS LIFE INSURANCE

Introduction

The moment a person comes into this world, he starts consuming. He needs clothes, milk, oil, soap, water, and many more things like security of life and these needs keep taking one form or the other all along his life. For the purpose of security of future one also buys an insurance policy suitable to him. When one buys a life insurance policy he becomes a consumer. Thus we all are consumers in the literal sense of the term. When we approach the market as a consumer, we expect value for money, i.e., right quality, right quantity, right prices, information about the mode of use, etc. There may be instances where a consumer is harassed or cheated for which the Consumer Protection Act, 1986 comes to the fore.

LAWS FOR THE CONSUMER PROTECTION

The Government understood the need to protect consumers from unscrupulous suppliers, and several laws have been enacted for this purpose.¹ There are the Indian Contract Act, the Sale of Goods Act, the Dangerous Drugs Act, the Agricultural Produce (Grading and Marketing) Act, the Indian Standards Institution (Certification Marks) Act, the

Prevention of Food Adulteration Act, the Standards of Weights and Measures Act, etc. which, to some extent, protect consumer interests. However, these laws require the consumer to initiate action by way of a civil suit involving lengthy legal process which is very expensive and time consuming.

THE CONSUMER PROTECTION ACT

The Consumer Protection Act, 1986 was enacted to provide a simpler and quicker access to redressal of consumer grievances. The Act for the first time introduced the concept of ‘consumer’ and conferred express additional rights on him. It is interesting to note that the Act does not seek to protect every consumer within the literal meaning of the term. The protection is meant for the person who fits in the definition of ‘consumer’ given by the Act.\(^2\)

Now we understand that the Consumer Protection Act provides means to protect consumers from getting cheated or harassed by suppliers. The question arises how a consumer will seek protection. The answer is the Act has provided a machinery whereby consumers can file their complaints which will be entertained by the Consumer Forums with special powers so that action can be taken against erring suppliers and the possible compensation may be awarded to consumer for the hardships he

has undergone. There is no need to engage a lawyer to present the case. The remedy is cheaper and quick.

This chapter deals with definition of a consumer under the Act, what are the matters which can be complained against, when and by whom a complaint can be made and what reliefs are available to consumers.

**Definition of Consumer**

As per section 2 (d) of the Consumer Protection Act, Consumer may be defined in two ways\(^3\): (1) Consumer of Goods and (2) Consumer of Service. Consumer of goods is a person who buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose and consumer of service is a person who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid.


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or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;

Where a person buys an insurance policy, he is consumer and the insurance company is the service provider. As per explanation to section 2(d) of the Consumer Protection Act, consumer in respect of service is “A person who is a consumer of services if he satisfies the following conditions:

(a) Services are hired or availed of - The term ‘hired’ has not been defined under the Act. Its dictionary meaning is - to procure the use of services at a price. Thus the term ‘hire’ has also been used in the sense of ‘avail’ or ‘use’. Accordingly it may be understood that consumer means any person who avails or uses any service.

1. A landlord neglected and refused to provide the agreed amenities to his tenant. He filed a complaint against the landlord under the Consumer Protection Act. The National Commission dismissed the complaint saying that it was a case of lease of immovable property and not of hiring services of the landlord.\(^4\)

2. A presented before the Sub-Registrar a document claiming it to be a will for registration who sent it to the Collector of Stamps for action. The matter remains pending for about six years. In

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the meantime A filed a complaint under the Consumer Protection Act alleging harassment by the Sub-Registrar and Collector and prayed for compensation. The National Commission held the view that A was not a “consumer” under the CPA because there was no hiring of services by the complainant for consideration and because a Government official doing his duty as functionary of the State under law could not be said to be rendering a service to the complainant.5

(b) Consideration must be paid or payable - Consideration is regarded necessary for hiring or availing of services. However, its payment need not necessarily be immediate. It can be in instalments. For the services provided without charging anything in return, the person availing the services is not a consumer under the Act.

The Direct and Indirect taxes paid to the State by a citizen is not a payment for the services rendered.

Example: T was paying property tax for his house to the local corporation. This corporation was responsible for proper water supply to the premises under its work area. T raised a consumer dispute over the inadequacy of water supply by the corporation. The National Commission held that it was not a consumer dispute as water supply was made by the corporation out of its statutory

duty and not by virtue of payment of taxes by T.  

(c) Beneficiary of services is also a consumer - When a person hires services, he may hire it for himself or for any other person. In such cases the beneficiary (or user) of these services is also a consumer. Example: A person buys an insurance policy on his life. He dies. His legal heir/nominee is also a consumer. However this is an exception to the rule of privity to the contract because there was no contract between the legal heir and the insurance company. It is important to note that in case of goods, buyer of goods for commercial purpose ceases to be a consumer under the Act. On the other hand, a consumer of service for commercial purpose remains a consumer under the Act.

Case Law: S applied to Electricity Board for electricity connection for a flour mill. There was a delay in releasing the connection. S made a complaint for deficiency in service. He was held a consumer under the Act.  

Complaint

An aggrieved consumer seeks redressal under the Act through the instrumentality of complaint. It does not mean that the consumer can complain against his each and every problem. The Act has provided

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7. Shamsher Khan v. Rajasthan State Electricity Board (1993) II CPR 6 (Raj.).

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certain grounds on which complaint can be made. Similarly, relief against these complaints can be granted within the set pattern.

What constitutes a complaint [Section 2(1)(c)] 8 - Complaint is a statement made in writing to the National Commission, the State Commission or the District Forum by a person competent to file it, containing the allegations in detail, and with a view to obtain relief provided under the Act.

Who can file a complaint [Sections 2(b) and 12] 9 - At the outset it is clear that a person who can be termed as a consumer under the Act can make a complaint. To be specific on this account, following are the persons who can file a complaint under the Act:

(a) a consumer; or

(b) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force, or

(c) the Central Government or any State Government,

(d) one or more consumers, where there are numerous consumers having the same interest. In addition to the above following are also considered as a consumer and hence they may file complaint:

9. Ibid., 8.
Beneficiary of the goods/services: The definition of consumer itself includes beneficiary of goods and services.\textsuperscript{10}

Where a young child is taken to the hospital by his parents and the child is treated by the doctor, the parents of such a minor child can file a complaint under the Act.\textsuperscript{11}

Legal representative of the deceased is a consumer: The Act does not expressly indicate that the legal representative of a consumer are also included in its scope. But by operation of law, the legal representatives get clothed with the rights, status and personality of the deceased. Thus the expression consumer would include legal representative of the deceased consumer and he can exercise his right for the purpose of enforcing the cause of action which has devolved on him.\textsuperscript{12}

Legal heirs of the deceased consumer: A legal heir of the deceased consumer can well maintain a complaint under the Act.\textsuperscript{13}

Husband of the consumer: In the Indian conditions, women may be illiterate, educated women may be unaware of their legal rights, thus a husband can file and prosecute complaint under the Consumer Protection Act on behalf of his spouse.\textsuperscript{14}

\begin{footnotesize}
\begin{enumerate}
\item K.B. Jayalaxmi v. Government of Tamil Nadu 1994 (1) CPR 114.
\item Spring Meadows Hospital v. Harjot Ahluwalia JT 1998 (2) SC 620.
\item Cosmopolitan Hospital v. Smt. Vasantha P. Nair (1) 1992 CPJ NC 302.
\item Joseph Alias Animon v. Dr. Elizabeth Zachariah (1) 1997 CPJ 96.
\item Punjab National Bank, Bombay v. K.B. Shetty 1991 (2) CPR 633.
\end{enumerate}
\end{footnotesize}
A relative of consumer: When a consumer signs the original complaint, it can be initiated by his/her relative.\textsuperscript{15}

Insurance company: Where insurance company pays and settles the claim of the insured and the insured person transfers his rights in the insured goods to the company, it can file a complaint for the loss caused to the insured goods by negligence of goods/service providers. For example, when loss is caused to such goods because of negligence of transport company, the insurance company can file a claim against the transport company.\textsuperscript{16}

What a complaint must contain [Section 2(1)(c)] - A complaint must contain any of the following allegations:

(a) An unfair trade practice or a restrictive trade practice has been adopted by any trader;

(b) The goods bought by him or agreed to be bought by him suffer from one or more defects;

(c) The services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect.

Example: A hired services of an advocate to defend himself against his landlord. The advocate did not appear every time the case was scheduled. A can make a complaint against the advocate.

\textsuperscript{15} Motibai Dalvi Hospital v. M.I. Govilkar 1992 (1) CPR 408.

\textsuperscript{16} New India Assurance Company Ltd. v. Green Transport Co. II 1991 CPJ (1) Delhi.
(d) A trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods.

(e) Goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.

Time frame within which a complaint can be filed - Section 24A of the Act provides that a consumer dispute can be filed within two years from the date on which the cause of action arises.

Since this provision was inserted in the Act in 1993, before that the Consumer Forums were following the Limitation Act, 1963, which says that a suit can be filed within three years after the cause of action arises. The point of time when cause of action arises is an important factor in determining the time period available to file a complaint. There are no set rules to decide such time. It depends on the facts and circumstances of each case.

Relief available against complaint [Sections 14 and 22] - A complainant can seek any one or more of the following relief under the Act:

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;

(e) to remove the defects or deficiencies in the services in question;

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;

(g) not to offer the hazardous goods for sale;

(h) to withdraw the hazardous goods from being offered for sale;

(i) to provide from adequate costs to complainant.

When a complaint cannot be filed - A complaint on behalf of the public which consists of unidentifiable consumers cannot be filed under the Act.18

Example: A complaint was filed on the basis of a newspaper report that passengers travelling by flight No. IC-401 from Calcutta to Delhi on May 13, 1989 were made to stay at the airport and the flight was delayed by 90

minutes causing great inconvenience to the passengers. It was held that such a general complaint cannot be entertained. No passenger who boarded that plane came forward or authorised the complainant to make the complaint.\footnote{19} A complaint by an individual on behalf of general public is not permitted.\footnote{20} An unregistered association cannot file a complaint under the Act.

A complaint after expiry of limitation period is not permitted. A complaint cannot be filed after the lapse of two years from the date on which the cause of action arise unless the Forum is satisfied about the genuineness of the reason for not filing complaint within the prescribed time.

Dismissal of frivolous and vexatious complaints - Since the Act provides for an inexpensive procedure (Court fees is not charged in consumer complaints under the Act) for filing complaints, there is a possibility that the Act is misused by people for filing vexations claims. To discourage frivolous and vexatious claims, the Act has provided that such complaints will be dismissed and the complainant can be charged with the costs not exceeding Rs. 10,000.

Example : A filed a complaint against B to recover compensation of Rs. 55,99,000 with the motive of indulging in speculative litigation

\footnote{19} Consumer Education and Research Society, Ahmedabad v. Indian Airlines Corporation, New Delhi (1992) 1 CPJ 38 NC.
\footnote{20} Commissioner of Transport v. Y.R. Grover 1994 (1) CPJ 199 NC.
taking undue advantage of the fact that no court fee was payable under the Consumer Protection Act. The National Commission held that the complainant has totally failed to make a case against B, and dismissed the complaint as frivolous and vexatious imposing Rs. 10,000 as costs to A.\textsuperscript{21}

Unfair Trade Practice - The Act says that, “unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice.

(1) Permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

(2) Permits the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole; or the conduct of any contest, lottery, game of chance or

\textsuperscript{21} Brij Mohan Kher vs. Dr. N.H. Banka I 1995 CPJ 99 NC.
skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(3) Permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(4) Permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

**What is a Restrictive Trade Practice - Section 2(1)(nnn) of the Act** provides that, “restrictive trade practice” means “any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, hiring or availing of other goods or services”. 22

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Service and Deficiency [Section 2(1)(o) and (g)]

When a service is found deficient by a consumer, he can make a complaint under the Act. Thus the prime requirement is that the matter must fall within the definition of service, and it must entail a deficiency as per the norms given by the Act.

**Definition of Service** - Section 2(1)(o) of the Consumer Protection Act provides that “service” means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or loading or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

**Eleven Sectors of the Service**

The definition provides a list of eleven sectors to which service may pertain in order to come under the purview of the Act. The list is inclusive not exhaustive. Service may be of any description and pertain to any sector if it satisfies the following criteria:

1. service is made available to the potential users, i.e., service not only to the actual users but also to those who are capable of using it.

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2. it should not be free of charge, e.g., the medical service rendered free of charge in Government hospital is not a service under the Act;

3. it should not be under a contract of personal service.

**Difference between ‘Contract of Service’ and ‘Contract for Service’**

The Supreme Court has observed\(^\text{24}\) that a contract for service implies a contract whereby one party undertakes to render service e.g. professional or technical services to or for another in the control but exercises professional or technical skill and uses his own knowledge and discretion. A contract of service on the other hand implies relationship of performed and as to its mode and manner of performance. The parliamentary draftsman was well aware of this well accepted distinction between ‘contract of service’ and ‘contract for sale’ and had deliberately chosen the expression ‘contract of service’ instead of the expression ‘contract for service’ in the exclusionary part of the definition of ‘service’, this being the reason being that an employer could not be regarded as a consumer in respect of the services rendered by his employee in pursuance of contract of employment. By affixing the adjective ‘personal’ to the word ‘service’ the nature of the contracts which were excluded were not altered.

The adjective only emphasised that what was sought to be excluded was personal service only. The expression contract of personal service in exclusionary part of Section 2(1)(o) must, therefore, be construed as excluding the services rendered by an employee to his employer under the contract of personal service free from the ambit of the expression service.

For example, where a servant enters into an agreement with a master for employment, or where a landlord agrees to supply water to his tenant, these are the contracts of personal service. The idea is that under a personal service relationship a person can discontinue the service at any time according to his will; he need not approach Consumer Forum to complaint about deficiency in service.

It does not make a difference whether the service provider is a Government body or a Private body. Thus even if a statutory corporation provides a deficient service, it can be made liable under the Act. The list of services mentioned above is not exhaustive. Other services not mentioned in the list may also fall within the four corners of service. The same being covered under ‘any service’ as mentioned in the very first line of the definition of service. The analysis of definition of ‘Deficiency in Service’ is as follows:

(a) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance
Examples:

1. A boarded a train. The compartment in which he and his wife travelled was in a bad shape—fans not working, shutters of windows were not working, rexin of the upper berth was badly torn and there were rusty nails which caused some injuries to the wife of A. A made a complaint against the railway department. It was held that the complaint constituted ‘deficiency in service’ and the compensation of Rs.1,500 was awarded to A.25

2. Dr. A treated P under Allopathic system, though he himself was a Homoeopathic practitioner. Later on P alleged A for wrong treatment. The Commission held it as deficiency in service.26

(c) The deficiency must be in relation to a service - The words ‘....in relation to any service’ in the definition signifies that the deficiency is always in terms of service. Thus if the grievance pertains to a matter which does not fall in the definition of service, the concept of deficiency would not apply.

Example: A deposited Rs. 100 with B as application fee and executed bond for the purpose of drilling tubewell. B did not drill the tubewell because it was not feasible. A alleged deficiency in service. It was held that depositing Rs. 100 as application fee and executing a bond

does not amount to hiring of services, thus the deficiency of service cannot be complained of in the matter.\(^{27}\)

**Deficiency in Service Due to Circumstances Beyond Control**

In normal course, if the service is found deficient as per the above criteria, it is held deficient and the compensation is awarded. However there may be abnormal circumstances beyond the control of the person performing service. If such circumstances prevent a person from rendering service of the desired quality, nature and the manner, such person should not be penalised for the same.

Whether deficiency on the part of LIC- complainant, wife of deceased who was having several life insurance policies, made proposal for insurance for Rs.1,00,000.under plan 14-18 - before the said proposal was accepted, proposer died- counter offer made by LIC- proposal submitted by deceased never matured into a concluded contract- held merely because there has been delay in the acceptance of proposal of the deceased in the present case, it cannot be held that there has been deficiency in the rendering service by LIC- no concluded contract of insurance came into existence- revision petition accepted.\(^{28}\)

Life insurance policy- fifth half yearly premium due on 28-6-89 was not paid even during the grace period of 30 days-policy lapsed-policy holder murdered-doubt in the date of death of deceased-according

\(^{27}\) Mangilal v. Chairman District Rural Development Agency [1991] 1 CPJ 474 (Raj.).  
to post –mortem report the deceased died before the 19-8-1989 held the life assured had expired before the 10-8-89 and the policy had lapsed on the 28-06-89 and as such no claim was maintainable under the policy of insurance-no deficiency in service in refusing to pay double accident benefit under the policy.  

Charging Excessive Price

A complaint may be made against a trader who has charged a price in excess of the price :

(a) fixed by or under any law for the time being in force, or

(b) displayed on the goods, or

(c) displayed on any package containing the goods.

**Consumer Protection Councils**

The Consumer Councils are created to advise and assist the consumers in seeking and enforcing their rights. We have Consumer Protection Councils both at Centre level and State level, that is one Central Council and many State Councils.

These councils work towards the promotion and protection of consumers. They make investigations and give publicity to the matters concerning consumer interests, take steps towards furthering consumer education and protecting consumer from exploitation, advice the

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Government in the matter of policy formulation keeping consumer interest as pivotal concern, etc. Although their suggestions are recommendatory in nature, but they have significant impact in policy making.

While deciding about the composition of these councils, the State keeps in mind that it should have proper representation from all the possible areas affecting consumer interests. Again the rules as to when should these councils meet, what should they aim at, how they conduct their business are framed by the Government with a view to balance the efficacy and practicability of its business.

Objects of the Councils [Sections 6 and 8]31

There is one basic thought that ‘consumer needs to be protected’. Another thought is - how he can be protected? Definitely, there has to be some agency to work towards this protection. The Act has provided for constitution of Consumer Councils for this purpose. Now, when we say that these councils are there to protect the consumers, a question arises - consumers are protected against what? Thus the Act has detailed some rights of consumers which need to be protected by the councils. These are

Central Council

Composition [Section 2 and rule 3] Members of the councils are selected from various areas of consumer interest, who are, when possible,

leading members of state-wide organisations representing segments of the consumer public so as to establish a broadly based and representative consumer council.

State Consumer Protection Councils (State Councils) [Section 7]

Composition - The power to establish State Councils is with the States. The Act provides that the Minister in-charge of consumer affairs in the State Government shall be the Chairman of the State Council. About the number and qualifications of the rest of the members, State is the deciding authority.

Working Groups [Rule 3]

For the purpose of monitoring the implementation of the recommendations of the Central Council and to suggest the working of the Council, the Central. Government may constitute from amongst the members of the Council, a Standing Working Group, under the chairmanship of the Member Secretary of the Council. The Standing Working Group shall consist of not exceeding 30 members and shall meet as and when considered necessary by the Central Government.

Constitution of the Forums

The composition of the District Forum and the State Commission has been detailed out by the Consumer Protection Act, 1986. As for the National Commission, the Consumer Protection Rules, 1987, elaborates

upon its composition.

District Forum [Section 10] 33

COMPOSITION - District Forum consist of one president and two other members (one of whom is to be a woman). The president of the Forum is a person who is, or has been qualified to be a District Judge, and other members are persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

State Commission [Section 16] - After the District Forum, State Commission is next in the hierarchy of Consumer Redressal Forums under the Act.

DISTRICT FORUM

Pecuniary Jurisdiction - District Forum entertains the cases where the value of claim is upto Rs. 5 Lakh. Where a claim exceed this limit, the matter is beyond the jurisdiction of the Forum. This limit of Rs. 5 lakh is as to the value of claim filed by the party. Value of goods or services in question or value of relief granted is not relevant for this purpose. The complainant has a right to reduce value of his claim in order to bring his claim within the jurisdiction of a junior forum.

Territorial Jurisdiction - Every District Forum has definite geographical limits within which it can exercise its jurisdiction. A case is supposed to fall within such territory when at the time of the institution of the complaint-

(a) The party against whom the claim is made actually and voluntarily resides or carries on business or has a branch office or personally works for gain in that area, or

(b) Where there are more than one opposite party, each such party actually and voluntarily resides or carries on business or has a branch office or personally works for gain in that area, or

(c) Where there are more than one opposite party, and any such party actually and voluntarily resides or carries on business or has a branch office or personally works for gain in that area, provided the other parties not so residing or working agrees, or the District Forum gives permission in this regard,

(d) The cause of action, wholly or in part, arises in that area.

Appellate Jurisdiction - District Forum is the lowest rung of the ladder of the consumer courts. Thus this is not an appellate court, i.e., no appeal lies in this court.

STATE COMMISSION

Pecuniary Jurisdiction - State Commission entertains the cases

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where the value of claim exceeds Rs. 5 lakh. But where value of a claim exceeds Rs. 20 lakh, the matter is beyond the jurisdiction of the Commission.

Example: A of Delhi bought a house from housing board for Rs. 4 lakh. Due to defect in the house, its wall fell down on the daughter of A and she dies. A sue the Housing Board claiming Rs. 15 lakh as compensation. This matter will lie with the State Commission of Delhi.

Note: That although the value of house is less than 5 lakh, the decisive factor regarding jurisdiction is the value of claim.

Territorial Jurisdiction - The Consumer Protection Act does not specifically provide for the territorial jurisdiction of the State Commission. Thus it is governed by the general principle of the law which are contained in section 20 of the Civil Procedure Code.

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Broadly these principles are on the similar lines on which the territorial jurisdiction of District Forum is based.

Appellate Jurisdiction [Section 17(a)(ii)] - State Commission has power to adjudicate upon the appeals made against the order of the

District Forums. Any person aggrieved by an order made by the District Forum may prefer an appeal against such order within 30 days from the date of order. However, the State Commission may entertain an appeal after the expiry of 30 days if it is satisfied that there was sufficient cause for delay.

Revisional Jurisdiction [Section 17(b)] - State Commission may call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where State Commission is of the view that the District Forum-

- has exercised jurisdiction which it was not entitled to, or
- has failed to exercise such jurisdiction which it was entitled to, or
- has exercised its jurisdiction illegally or with material irregularity.

Such revisional jurisdiction may be exercised by the Commission on its own or on the application of a party.

NATIONAL COMMISSION

Pecuniary Jurisdiction - Since National Commission is the highest level of Consumer Forums, it entertains all the matters where the value of claim exceeds Rs. One crore.\(^{36}\)

Territorial Jurisdiction - The territorial jurisdiction of the National Commission is whole of India except the State of Jammu and Kashmir.

However, the Consumer Protection Act is applicable only if the cause of action arise in India. If the cause of action arises out of India, National Commission has no jurisdiction over the matter as it cannot be tried in India under the Act.

Example: The complainant alleged that they were not properly treated by the Egyptian Airlines authorities at Barcelona. It was held that the cause of action arose at Barcelona, so the complaint under the Act is not maintainable in India.\footnote{Gulab Hotchand Bhagchandaney v. Egyptian Airlines III 1994 CPJ 172 (NC).}

Appellate Jurisdiction - The National Commission has jurisdiction to entertain appeals against the order of any State Commission. The appeal may be made within 30 days from the date of the order of the State Commission. However the National Commission may entertain an appeal filed after the expiry of 30 days if it is satisfied that there was sufficient cause for not filing the appeal within the given time.

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Revisional Jurisdiction [Section 21(b)]\textsuperscript{39} - National Commission can call for the records and pass the appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission it is of the view that the State Commission—

- has exercised jurisdiction which it was not entitled to, or
- has failed to exercise such jurisdiction which it was entitled to, or
- has exercised its jurisdiction illegally or with material irregularity.

Note that the revisional jurisdiction is available to the National Commission only in the cases where there has been wrongful, illegal, and

\textsuperscript{38} Gulu Hotchand Bhagchandaney v. Egyptian Airlines III 1994 CPJ 172 (NC).
improper exercise of jurisdiction or failure to exercise jurisdiction on the part of State Commission.

Example: K made an appeal to the National Commission against the order of the State Commission whereby the State Commission had made an order against him although he was not a made a party to the dispute by the complainant. The National Commission observed that the order of the State Commission was vitiated by illegal exercise of jurisdiction resulting immaterial irregularity and accordingly, the same was liable to be set aside.\textsuperscript{40}

Procedures

The Consumer Forums are the bodies who function like courts in order to settle the consumer disputes. Their composition is so made as to best represent the interests of the consumers, and they have specified jurisdictions. The next question is - what procedure these Forums adopt in order to deal with the consumer disputes.

Section 13 of the Act has detailed the procedure in context of District Forum only. For State Commission, section 18 says that it will follow the same procedure as followed by District Forum with such modifications as necessary, and for the National Commission, section 22 gives power to the Central Government to make rules in this regard. These rules in turn have included:

\textsuperscript{40} Kinetic Engineering Ltd. v. Samasi Saumund [1993] II CPR 409 (NC).
- The defect is obvious and is visible to naked eyes, like in a complaint about contamination of water, the sample of water given was so dirty that the Forum did not consider it necessary to send it for test.41

- When the complainant is not in possession of the subject matter of the complaint, e.g., in a matter the complainant had given to the dealer the tyre and tube which had burst, the dealer sent the same to the manufacturer. Thus the complainant was not in possession of the same.

- When subject matter of the complaint gets destroyed, like in case a pressure cooker burst, its remains can’t be send to the laboratory for testing.

- In case of complaint regarding deficiency in service there is no question of testing or analysis.

Thus the procedure to be followed by the Forums can be discussed under the two heads—
1. where laboratory test is required to determine the defect in goods.
2. where no laboratory test is required to determine the defect in goods or the complaint relates to services.

41. “Commentary on Consumer Protection Act”, National Consumer Disputes Redressal Commission, 2.35.
POWERS OF THE CONSUMER FORUMS[^42]
[Sections 13(4), 14(1) and Rule 10]

For the purpose of adjudicating a consumer dispute, section 13(4) has vested the Consumer Forums with certain powers of a civil court. Apart from these powers, the Central Government has provided some additional powers to them under Rule 10 of the Consumer Protection Rules, 1987. Finally section 14 of the Act has provided them with the power to issue orders.

Powers akin to those of civil court [Section 13(4)] - The Forums are vested with the Civil Court powers with respect to the following:

(a) summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) receiving of evidence on affidavits;

(d) requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(e) issuing of any commission for the examination of any witness; and

(f) any other matter which may be prescribed.

Additional powers of the consumer forums [Rule 10] - The National Commission, the State Commission and the District Forum have

[^42]: "Commentary on Consumer Protection Act", National Consumer Disputes Redressal Commission, 2.36.
following additional powers:

(a) Requiring production of any books, accounts, documents, or commodities from any person, examining and retaining them.

(b) Obtaining information required for the purpose of the proceedings from any person.

(c) enter and search any premises and seize from such premises books, papers, documents, commodities required for the purpose of proceedings under the Act.

Power to issue order [Section 14(1)] 43 - If, after the proceedings, the Forum is satisfied that the complainant suffer from any defect in goods or deficiency in service, it may issue an order to the opposite party directing him to do one or more of the following things, namely:—

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

District Forum - Signing requirement - Section 14(2A) provides that every order made by the District Forum shall be signed by its President and the member or members who conducted the proceeding.

43. Ibid., 2.36.
If there is difference of opinion between any two members, matter should be referred to the third member for a decision. And the decision of the majority would be final. Thus any order passed by a single member of the District Forum is not warranted.

State Commission - Signing requirement\(^{44}\) - Every order made by the State Commission shall be signed by its President and the member or members who conducted the proceeding. If there is difference of opinion between any two members, matter should be referred to the third member for a decision. And the decision of the majority would be final.

National Commission - Signing requirement - Every order made by the National Commission must be signed by the president (or the senior most member acting as president), and at least two members who conducted the proceeding, and in case of any difference of opinion, the opinion of the majority shall be the order of the Commission.

Appeals against orders - ‘Appeal’ is a legal instrumentality whereby a person not satisfied with the findings of a court has an option to go to a higher court to present his case and seek justice. In the context of Consumer Forums –

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;

\(^{44}\) “Commentary on Consumer Protection Act”, National Consumer Disputes Redressal Commission, 2.37.
(e) to remove the defects or deficiencies in the services in question;
(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
(g) not to offer the hazardous goods for sale;
(h) to withdraw the hazardous goods from being offered for sale;
(i) to provide for adequate costs to complainant.

Sitting of the Forums

The law has provided certain norms as to the number of judges who will handle a dispute. The rationale must have been to make the decisive body as broad as possible.

Sitting of the District Forum - For conducting any proceedings to resolve a consumer dispute, at least two members of the Forum must be there one of whom should be the president.

Where the member, for any reason, is unable to conduct the proceeding till it is completed, the President and the other member shall conduct such proceeding de novo i.e. from the beginning.

Sitting of the State Commission - Every proceeding is required to be conducted by the president of the State Commission and at least one member thereof sitting together. However, if for any reason the member is unable to conduct the proceeding till it is completed, the president and the other member shall conduct such proceeding afresh.
Sitting of the National Commission - The disputes must be disposed of by at least three members of the National Commission, one of whom must be the president (or the senior most member authorised to work as president).

Where the member(s) for any reason are unable to conduct the proceeding till it is completed, the president (or the senior most member acting as president) shall conduct the proceeding afresh. Note that the rules regarding sitting are mandatory. Any failure to comply with the same may invalidate the order.

Orders of the Forums

The orders of the Consumers Forums are like orders of the Civil Court and are enforceable like a decree of the court. The order of a junior Forum is appealable with the senior Forum, and when no appeal is instituted, the order is final. However, the law has prescribed certain norms as to the signing of orders without complying which the orders cannot be made.45

1. An appeal can be made with the State Commission against the order of the District Forum within 30 days of the order which is extendable for further 15 days. [Section 15]

2. An appeal can be made with the National Commission against the order of the State Commission within 30 days of the order or

within such time as the National Commission allows. [Section 19]

3. An appeal can be made with the Supreme Court against the order of the National Commission within 30 days of the order or within such time as the Supreme Court allows. [Section 23]

Finality of orders - Where no appeal has been preferred against the order made by the District Forum, or State Commission, or the National Commission, such order shall be final. [Section 24]

Penalties for non-compliance - Every order made by the District Forum or State Commission, or the National Commission may be enforced in the same manner as if it were a decree of the court. [Sec. 25]

All the persons - the trader, or complainant, or the opposite party, are supposed to comply with the orders. When any such person fails or omits to comply with the order, the District Forum, or State Commission, or the National Commission, as the case may be, may punish him with-
- imprisonment for a term ranging between one month and three years, or
- with fine ranging between Rs. 2,000 and Rs. 10,000, or
- with both.

**DELIBERATE MISSTATEMENTS AND WITHHOLDING OF CORRECT FACTS REGARDING THE HEALTH OF THE INSURED**

The petitioner insurer repudiated the life insurance policy in the name of the respondent’s late husband (insured) on the ground of

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deliberate misstatements and withholding of correct facts regarding the health of the insured. The lower Fora rejected the various contentions of the insurer and allowed the complaint. Before the National Commission, the insurer relied upon the Commission’s decision in L.I.C. of India and Another v Parveen Dhingra [II (2003) CPJ 70 (NC)] and contended that revival of the policy constituted a new contract between the parties and the limitation period of two years under section 45 of the Life Insurance Act, 1938 had to be counted from the date of revival. Therefore, the misstatements and concealment of facts could be made a ground for repudiation even though same were not made a ground at the time of initial policy. The Commission referred to the Supreme Court decision in Mithoolal Nayak v Life Insurance Corporation of India [AIR 1962 SC 814] where the Court had rejected a similar contention that the revival of the policy constituted a new contract between the parties and held that section 45 was clear that the period of two years was to be reckoned from the date on which the policy was originally effected. The Commission observed that the decision of Supreme Court had to be preferred and followed.

Facts of the Case: The issue\textsuperscript{47} to be decided in this case is whether dyspepsia – imperfect or painful digestion - is a disease, which had to be

\textsuperscript{47} Life Insurance Corporation of India (LIC) Vs. Smt. Chandra Kanta Lohande, National Consumer Disputes Redressal Commission, revision petition no. 3138 of 2003 and revision petition no. 3139 of 2003, dated the 26\textsuperscript{th} March, 2008.
mentioned in the proposal form of the LIC. Simple answer to the question is ‘NO’ as dyspepsia is not a disease in itself. Further, in this matter, the main ground of repudiation is that the assured did not disclose the aforesaid disease he was suffering from. In support, it was stated that assured had taken medical leave. Western Coal Fields is a government owned public sector undertaking. In government departments and undertakings employees have the habit of exhausting all types of leaves like casual leave, medical leave and earned leave. The first casualty is casual leave, which is exhausted first, then medical leave, which cannot be accumulated beyond a particular limit nor can be en-cashed. Hence, they are liberally taken. But that should not be used as a ground for arriving at a conclusion that assured was suffering from some serious ailment, which required notice.

Mr. Kantikumar S/o Govindrao Lokhande had obtained life insurance policy for an assured sum of Rs.50,000/- with a quarterly premium of Rs.1,404/- with the date of commencement as 28.3.1992. The widow of the insured submitted a claim, which was repudiated by the LIC. Denying the liability, LIC stated that assured did not pay premium instalments after September 1993 and policy was in a lapsed condition for three years without acquiring paid up value. According to LIC the assured got the policy revived by paying 12 instalments from December 1993 to
September 1996 and submitted wrong information regarding state of his health duly signed on 31.12.1996. The assured was a chronic patient of ‘Dyspepsia’ since May 1995 and was under regular treatment as an outpatient. LIC submitted the certificate issued by the employer in-charge of Western Coal Fields, according to which, the assured availed medical leave for 7 days in the year 1993, 12 days in the year 1994, 9 days in the year 1995, 8 days in the year 1996 and 13 days in the year 1997 for his treatment as an outdoor patient. On the basis of these submissions of LIC, the complaint was dismissed by the District Forum.48

Dissatisfied by the order of the District Forum, the complainant filed an appeal before the State Commission. The State Commission held that the amount deposited by the assured i.e. Rs.19,498/- deserved to be returned by the LIC to the poor helpless widow. Accordingly, the LIC was ordered to return the amount to the complainant with 9% interest p.a. from the date of the order. Operative part of the order of the State Commission reads as follows:

“We are of the view that the amount deposited by the life assured of Rs.19,498/- deserves to be returned by the LIC to the poor helpless widow. In view of this the LIC is ordered to return the amount of Rs.14,498/- to the appellant within a period of two months from the date

of receipt of the certified copy of the order failing which the amount shall carry interest @ 9% p.a. from the date of this order.”

The Learned Chairman of the State Commission upon an application made by the Respondent corrected the figure of Rs. 14,498/- to Rs. 19,498/-. Vide an application u/s 152 CPC it was pointed out by the LIC to the State Commission that it had erroneously ordered refund of Rs. 19,498/- to the Respondent when the amount actually paid as total premium for revival of the policy was Rs. 9,458/- and not Rs. 19,498/- and the mistake be corrected by taking the figure of Rs. 9,498/- instead of Rs. 19,498/-. State Commission did not consider this application as it would amount to recall or review of its decision.

This revision petition is filed basically to set aside and quash the order dated 20.1.2003 modified on 4.4.2003 or to allow the correction of the revival premium amount directed to be refunded as Rs. 9,458/- and not Rs. 19,498/-. When the revision petition was admitted this Commission observed as follows:

“We have gone through the order passed by the State Commission. It appears that the State Commission has dismissed the appeal solely on the ground that there was suppression on the part of the deceased with regard to the ailment and the treatment taken by the deceased. As per the

order, the deceased was having ailment of dyspepsia and for that a certificate is produced on record. On that basis the State Commission dismissed the appeal and held that the District Forum was justified in holding that the Insurance Company has rightly repudiated the claim.

“We have gone through the papers at the time of hearing of this matter. We have also heard the learned counsel for the LIC as well as the Respondent in person. Prima facie, it appears the order passed by the State Commission cannot be justified because ‘dyspepsia’ is not a serious ailment. It is a symptom with regard to indigestion. Hence, order passed by the State Commission requires reconsideration.”

The Respondent who is the wife of the deceased appeared in person and stated that she is a poor woman and has no means to engage an advocate and therefore, revision petition was not filed. Hence, in exercise of our power under Section 21 (b) of the Consumer Protection Act, 1986, we issue notice to the LIC as to why the impugned order should not be set aside. Mr. S.P. Mittal, learned Counsel appearing on behalf of the LIC waives notice.”

Secondly, dyspepsia cannot be considered as disease as the meaning of dyspepsia as defined in the Taber’s Cyclopedic Medical

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Dictionary, is: “Imperfect or painful digestion. Not a disease in itself but symptomatic of other diseases or disorders. Characterized by vague abdominal discomfort, a sense of fullness after eating, eructation, heartburn, nausea and vomiting, and loss of appetite. These symptoms may occur irregularly and in different patterns from time to time. The symptoms are increased in times of stress.”

In today’s world, people face problems like acidity, indigestion, back pain and headache, which are sometimes chronic in nature. These symptoms may occur from time to time with different levels of intensity. They cannot be considered as diseases, which require to be enumerated while answering the questionnaire of the LIC in its proposal form.

Accordingly, we feel the repudiation of the policy by the LIC is unjust and improper. Therefore, while dismissing the revision petition filed by the LIC, we set aside the impugned order, for which we had given due notice to the Ld. Counsel for LIC Mr. Mittal who was fair enough to waive the notice and argue the case on merits.

“We, therefore, allow the complaint and direct the LIC to pay the sum assured i.e. Rs. 50,000/- with 9% from 1.5.1999 (two months after the repudiation of the claim) till date of payment. LIC shall also pay Rs.10,000/- as costs. The LIC has deposited Rs. 20,000/- in response to
our order dt.30.10.2007. This amount shall be released to the respondent and shall be deducted from the amount payable by the LIC.”

**RELEVANCY OF THE DATE OF DEATH:**

**Persons Missing and Lost**

In Civil Appeal No. 2655 of 1999 Sham Prakash Sharma, the late husband of Mrs. Anuradha, the respondent, had taken a life insurance policy from the appellant - Life Insurance Corporation of India. The policy commenced with effect from 08.02.1986. The premium was payable every six months. For two years, the premium was paid.

**DISAPPEARANCE OF THE INSURED**

On 17.07.1988 Sham Prakash Sharma was at Bombay wherefrom he just disappeared, never to be traced our thereafter. The respondent, Anuradha, lodged an FIR with the police. On 11th July, 1988, the LIC communicated to Sham Prakash Sharma at his residence that the insurance policy had lapsed for non-payment of premium.

On 29.06.1996, the respondent approached the LIC for release of benefits under the policy proceeding on an assumption that Sham Prakash was dead as having not been heard of for a period of more than seven years. The LIC turned down the claim of the respondent relying on Rule 14 of the Insurance Manual which reads as under:

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“Where a person is reported missing, it is to be advised to the claimant that Life insured will be presumed to be dead after seven years or production of the decree from the court of law and in the meantime policy is to be kept in force by making payment of premium regularly.”

**LIC’s CONTENTION: Policy Not Alive - Non Payment Of Premia.**

The respondent approached the State Commission constituted under the Jammu and Kashmir Consumer Protection Act, 1987 complaining of deficiency in service on the part of LIC. The LIC defended itself mainly by submitting that as the policy was not kept alive, and therefore the claim was not maintainable.

The State Commission upheld the respondent's claim forming an opinion that Rule 14 relied on by the appellant was of no relevance in view of the statutory presumption arising under Section 108 of the Evidence Act. LIC’s appeal to High Court was also dismissed.

The facts of the case resemble with the case just cited above i.e. L.I.C. Of India vs. Anuradha 26 March, 2004. In the appeal arising out of SLP (C) No.9334 of 2000\(^53\), two insurance covers of Rs. 50,000/- each were taken on the life of one Dev Raj Sharma (whose heirs the respondents in that appeal are) who was employed under the Punjab government as Junior Engineer. On a day in the month of November 1988 he did not return to his home from the office. The FIR of his

\(^{53}\) Dev Raj Sharma V. LIC, SLP (C) NO.9334 OF 2000 S.C.
disappearance was lodged with the police. The premiums were regularly paid upto the time of disappearance of Dev Raj Sharma where after the premiums were not paid. On 20.9.1997 the respondent filed a civil suit against the LIC claiming release of benefits under the policy on the ground that the insured should be presumed to have died on the date of his disappearance, and therefore, the claim had become payable on the date of disappearance itself though the presumption as to death became available to be raised after the expiry of period of seven years from the date of disappearance, and therefore, the question of policies having lapsed for non-payment of premium after the date of disappearance would not arise as the assured was dead.

SC upheld the decision of the High Court. Where the presumption of death after seven years’ absence applies, the person will be presumed to have died by the end of that period; where the presumption does not apply, or is displaced by evidence, the issue will be decided on the facts of the particular case.

“The presumption is only that the subject died at some time during the period; his death on any particular day will not be presumed, and must be proved by evidence if in issue”.54

Neither Section 108 of Evidence Act nor logic, reason or sense permit a presumption or assumption being drawn or made that the person

not heard of for seven years was dead on the date of his disappearance or soon after the date and time on which he was last seen. The only inference permissible to be drawn and based on the presumption is that the man was dead at the time when the question arose subject to a period of seven years absence and being unheard of having elapsed before that time. The presumption stands un-rebutted for failure of the contesting party to prove that such man was alive either on the date on which the dispute arose or at any time before that so as to break the period of seven years counted backwards from the date on which the question arose for determination.  

At what point of time the person was dead is not a matter of presumption but of evidence, factual or circumstantial, and the onus of proving that the death had taken place at any given point of time or date since the disappearance or within the period of seven years lies on the person who stakes the claim, the establishment of which will depend on proof of the date or time of death.

A presumption of fact or law which has gained recognition in statute or by successive judicial pronouncements spread over the years cannot, be stretched beyond the limits permitted by the statute or beyond the contemplation spelled out from the logic, reason and sense prevailing

55. Dev Raj Sharma V. LIC, SLP (C) NO.9334 OF 2000 S.C.
with the Judges, having written opinions valued as precedents, so as to draw such other inferences as are not contemplated.

If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years, the presumption raised under Section 107 ceases to operate. Section 107 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108, subject to its applicability being attracted, has the effect of shifting the burden of proof back on the one who asserts the fact of that person being alive. The presumption raised under Section 108 is a limited presumption confined only to presuming the factum of death of the person who’s life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to the date or time of death. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by reference to Section 108 would arise only on lapse of seven years and would not by applying any logic or reasoning be permitted to be raised on expiry of 6 years and 364 days or at any time short of it.

An occasion for raising the presumption would arise only when the question is raised in a Court, Tribunal or before an authority who is called upon to deciders to whether a person is alive or dead. So long as the
dispute is not raised before any forum and in any legal proceedings the occasion for raising the presumption does not arise.

**JUDGEMENT BY THE SUPREME COURT**

The appeals are allowed and both the judgments of the High Court under appeal are set aside but subject to the clarification that, in view of the statement made on behalf of the appellant-LIC, the monetary benefits available to the respondents in the two appeals under the judgments of the High Court shall not be denied by the appellant-LIC.

In a legal battle fought by a mother for the last seven years to recover an amount due on insurance policy of her son after his accidental death, the Life Insurance Corporation paid an amount of Rs. 37 lakh following an order passed by South Goa district consumer disputes redressal forum under execution petitions.

In this case of landmark recovery of decreetal amount, the forum recently directed the LIC to pay a sum of Rs 37,18,081 to the complainant mother, one Malkumi Puno Ladekar, a resident of Navelim, Salcete. She was a nominee of her deceased son, who had drawn two life insurance policies, wherein each basic sum assured was Rs 5 lakh with double accident benefit.

Her son died due to drowning on May 12, 2002, at Galgibaga. Thereafter, the mother filed a complaint before the forum in 2003 in

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56. Dev Raj Sharma V. LIC, SLP (C) NO.9334 OF 2000 S.C.
57. Dev Raj Sharma V. LIC, SLP (C) NO.9334 OF 2000 S.C.
respect of the claim of these policies as LIC failed to pay her the insurance amount. The complainant stated she had put forward her claim before the LIC for payments as per the terms of both the policies. However, LIC, Vasco branch, from where the policies were drawn failed to respond.

Subsequently, the complainant lodged a claim before the senior divisional manager, (LIC) Panaji, who through a letter informed the complainant that her claim is withheld due to personal and family history of the deceased. The complainant pointed out in support of her claim, that magisterial enquiries were duly conducted declaring that the cause of the death was purely accidental.

The complainant further alleged that the LIC was avoiding to make the payments and hence served a legal notice in 2003 on LIC and demanded that they clear the dues under the said two policies within a time stipulated under the said notice. Instead of complying with the requirement of the said notice, the LIC intimated the complainant that the said policies are referred to the LIC zonal manager, Mumbai, for review. The company failed even to reply to the various representations made by the complainant from time to time without any valid reason whatsoever only with a view to harass the complainant and delay the payment under one pretext or the other, the complainant alleged.
The complainant therefore asked the consumer court to order the LIC to pay her Rs. 5 lakh being the normal assured amount due under one of the policies, immediately. She also prayed that the LIC be ordered to pay accidental death benefit of Rs 5 lakh to her as due under the second policy along with other benefits available under the policy like bonus etc. She also said that they be ordered to pay damages at the rate of Rs 100 per day from the date of demand made by the complainant from March 19, 2003, till the date of payment, besides the costs to be paid to the complainant.

Upon receiving notices from the forum, the LIC denied the claim and disputed the cause of death of the deceased as reflected in the order of the SDO, Quepem and the validity of the final police report. LIC further alleged that the case looked to be of a suicidal death. However, the forum, after verifying various facts of the case, opined that the complainant had succeeded in proving her case with convincing documentary evidence as regards her entitlement for the amount to be received by her under the two policies. The forum also held that there was no justification on the part of the insurance company to repudiate the claim of the complainant and that the acts of omission and commission on the part of LIC clearly amount to the deficiency in service as defined under the Consumer Protection Act, 1986. The forum also agreed with the contention of the complainant that under the relevant policy, double
the amount of the policy becomes due and payable by the LIC as the same is of double benefit in case of accidental death.

**SUPPRESSION OF MATERIAL FACTS BY THE INSURED**

The complainants were Medical Practitioners by profession and they were husband and wife. On approach of the Agent, Sri Pankaj Dutta of Life Insurance Corporation of India the complainant No.1, Dr. Anupam Nath Gupta got a LIC’s Health Plus Policy with profit being Policy No.454726887 under Proposal No.18594 dated 14.02.2008 from 14.02.08 against Plan No.901, Term 28 years for four persons namely Complainant No.1, the Complainant No.2, the husband of the complainant No.1 and two children premium payable Rs.15,000/- yearly to be expired on 14.02.2036.

In the year 2009 the Complainant No.2, Dr. Parash Nath felt heart problem and accordingly the complainant decided to go to Mumbai on 03-12-2010 for check-up and treatment, if any, in Asian health Institute, Mumbai. Doctors on satisfaction of the reports of different tests and examinations arrived at the conclusion for holding major operation of the complainant No.2. Under the procedure and better treatment and welfare to the patient concerned past history of any ailment was enquired. It was disclosed that the complainant No.2 had been suffering from diabetes in

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the year 2002 and the said history was noted in the treatment sheet. The complainant No.2 submitted Claim Form along with all medical papers for satisfaction of the claim of Rs. 5,61,920/- out of assured sum of Rs. 8,00,000/-. The said claim was registered as 0310216.

It was alleged by the LIC that the complainants did not come before this Forum with clean hand suppressing the material facts for illegal gain.

From the discharge summery issued by the Asian heart Institute also it was revealed that the complainant No.2 had a history of diabetes mellitus since 2002. But it has not been disclosed in the form dated 13.02.08. The complainants concealed the past history of suffering from illness like diabetes mellitus since 2002, it amounts to pre-existing disease. The complainant is not entitled to get any amount under the alleged policy as claimed for. There is no negligence or deficiency of service on the part of the OPs and as such the case is liable to be dismissed with cost.

The complainant No.2 in course of reply against the questionnaire put by the OPs/Insurance Company that there is no column in the Proposal Form to give information any past disease. So, he did not furnish any past history.

The Learned Advocate on behalf of the OPs/Insurance Company advanced argument that the complainants are by profession doctors. It is
within their knowledge that disease diabetes mellitus is not curable but it is a controllable one. Insurance Policy is granted on the basis of Uberrimae fidei on good faith. It is the proposer to fill up the forms as well as make answers against the questionnaires and knowing fully the terms and conditions of the policy it was concealed and no disclosure of any illness as suffered by him was made.

In the discharge summery issued by Asian Heart Institute, Mumbai dated 14.01.10 it was disclosed that he was diagnosed as Ischemic heart disease, Multi Vessel Coronary Artery disease, Diabetes Mellitus. From the past history it was clear that the complainant No.2 suffered from diabetes mellitus since 2002. The OP No.4/TPA Services by letter dated 09.03.10 repudiated the claim on the plea of pre-existing illness i.e. H01 and MO2.

Even then the complainant No.2 did not answer the questionnaire as placed at the time of filling the Proposal Form and it has been answered in the negative form ‘No’. The complainant No.2 being doctor by profession it is not expected from him to make answer in the negative form and avoiding on the plea of filling up the form by the Agent concerned and it was not within his knowledge and put his signature in a blank format.

It is a settled principle of law that the Principles of Insurance Law based upon the theory of utmost good faith i.e. Uberrimae fidei. In
paragraph 16 of the said decision their Lordships categorically discussed that it may be stated that it is the fundamental proof of Insurance Law that utmost good faith must be observed by the contracting parties and good faith forbids either party from non-disclosure of the facts which the parties knew since obligation of good faith applies to both equally and in this respect that decision of Hon’ble Supreme Court in M/s Modern Insulators Vs Oriental Insurance Company Ltd. reported in I (2000) CPJ 1 = air 2000 Supreme Court 1014 have been referred.\(^5^9\)

In written manner it was disclosed that the complainant No.2 had been suffering from diabetes in the year 2002. It may be mentioned here several types of tests were made before admission in the hospital for major operation. Despite knowledge of own statement of suffering from diabetes in the year 2002 all those medical papers with regard to various tests have not been placed before this Forum for appreciation. What needs the complainant No. 2 to disclose suffering from diabetes in the year 2002? So at the time of fill up the Proposal Form it may be mentioned about suffering from diabetes in the year 2002 and there from there is no such suffering like diabetes after 2002.

In the decision reported in I 2006 CPJ 494 wherein Hon’ble State Commission, Delhi took a view that diseases like Hypertension, diabetes etc. are so common and are always controllable and unless and until

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patient was undergone long treatment including hospitalization and remains in hospital for test undergoes operation etc. in the proximity of taking the policy cannot be accused of concealment of material fact. It was held by the Hon’ble State Commission, Delhi that the disease like Hypertension, diabetes etc. are always controllable. But according to the complainants as well as urged by the Learned Advocate on behalf of the complainant that disease like diabetes is curable. So, on this point relying the said decision conclusion may be drawn that disease like diabetes is a controllable but not curable.

In III 2011 CPJ 418 Hon’ble National Commission held that Insurance Company on the ground of suppression of material facts and therefore what is required to be examined is the credibility and authenticity of the Medical Certificate indicating that the Insured was heart and diabetes patient at the time of his taking the Insurance Policy and that the Policy could thus repudiated on the ground of suppression of material facts.

It is not the case of the complainant that the discharge summery as furnished by the OP is not the correct one. Rather complainant’s own case is that in the year 2002 he suffered from diabetes mellitus and the same was cured and the diabetes is a curable disease.

The Learned Advocate on behalf of the OPs/Insurance Company referred several decisions namely AIR 1962 Supreme Court 814; IV 2009
It has been held that the Policy Holder was clearly guilty of a fraudulent suppression of material facts when he made his statement which he must have known were deliberately false and hence the policy issued to him relying on those statement was vitiated.

Here from the documents i.e. Policy in question it reveals that the said Proposal Form was submitted on 13.02.2008 under the signatures of Anupam Nath Gupta. Health Plus Plan (Plan No.901) containing health details and medical information was submitted by Parash Nath on 13.02.08 wherein it has been declared contents of the form and the documents have been fully explained to him by the Agent Pankaj Dutta and he has understood the significance of the proposed contract. The Discharge Summery issued by Asian Heart Institute goes to show that the complainant No.2, Dr. Parash Nath got admission on 03.01.10 and the said discharge certificate reflects about the past history of diabetes mellitus since 2002.

On careful consideration of the materials coupled with the case of the complainant is that complainant No.2 suffered from diabetes mellitus in the year 2002. It is within the knowledge of the complainant No.2 that he suffered from diabetes in the year 2002. In that occasion he should
have disclosed it in the Proposal Form against the questionnaire as put to the insured.

But the complainant made as negative answers. The complainant No.2 is not the general public or illiterate one having no knowledge of effect of suffering of diabetes. If any one suffered from diabetes once he should have checked or controlled form sufferings of diabetes so that it may not recur. It is the knowledge of each and every person about the disease diabetes which is controllable by regular medicine coupled with physical exercises. But the said disease is not curable. But the patient concerned, the complainant No.2 being a doctor by profession is not within his knowledge that diabetes is curable is not at all believable and convincing.

The disease diabetes may recur at any time if the patients concerned be not alert by regular check-up as well as exercises. Even the diabetes leads to heart attack, stroke or kidney failure. But the said disease is not at all curable but it is controllable. So, in the instant case when the complainant No.2 once suffered from diabetes mellitus in the year 2002 obviously he is under long procedure of treatment of diabetes. But in the instant case save and except copy of LIC’s Health Plus Plan, Claim Form, Discharge Summery and letter of repudiation no other medical sheets and/or treatment sheets have been placed before this
Forum to contradict the defence case of repudiation of claim on the plea of pre-existing disease since 2002.

If there was a rout of diabetes in the year 2002 the complainants before taking such Insurance Policy under the style LIC’s Health Plus Plan he should have disclosed it in the Proposal Form coupled with the questionnaires and if it be disclosed then burden shifts to the LIC that after knowledge of such disease policy was granted in their favour.

In the instant case no such disclosure was made by the complainant No.2 being a doctor concerned by profession it clearly comes within the purview of suppression of material fact. It has already been reflected above that the policy was obtained based upon theory of Uberrimae fidei i.e. on good faith. More so, the admission on the part of the complainant No.2 as reflected in his case under the complaint coupled with testimony together with discharge certificate this Forum is of the view that there is suppression of material fact. So, the repudiation on such plea of pre-existing disease cannot be held as arbitrary or illegal or unjustified.

Rather on careful consideration of the pleadings coupled with documents together with testimony and also relying the decisions as held by our Hon’ble Supreme Court as well as Hon’ble National Commission together with Hon’ble State Commission this Forum is of the view that
the diabetes mellitus is not curable rather it is controllable and suppression there of amounts to guilty of suppression of material fact.

Under this facts and circumstances, this Forum was of the view that the claim of the complainant is not sustainable in law and repudiation as made by the OPs/Insurance Company is justified. Thereby they cannot be held as negligent or suffering from deficiency of service. In the result the case fails. Hence, it is ordered that the Consumer Case No.15/S/2011 is dismissed on contest against the OPs/Insurance Company and Third Party Administrator.

**BACK-DATING OF A POLICY: It Should Be Treated Effective As From The Back Date Or The Date Of Issue?**

Dharamvir Anand⁶⁰, the respondent, took a policy of life Insurance on the life of his minor daughter, Kumari Rajan Anand. The proposal was submitted on 25.3.90 and on the request of the insured the policy was dated 10.05.89. The policy contained a Clause, Clause 4B which read as follows :

"Notwithstanding anything mentioned to the contrary, it is hereby declared and agreed that in the event of death of Life assured occurring as a result of intentional self injury, suicide or attempted suicide, insanity, accident other than an accident in a public place or murder at any time on

⁶⁰ Life Insurance Corporation of India v. Dharamvir Anand, 1999(1) CPC 10 S.C.
or after the date on which the risk under the policy has commenced but before the expiry of three years from the date of this policy, the Corporation's liability shall be Limited to the sum equal to the total amount of premiums (exclusive extra of premiums, if any), paid under the policy without Interest. Provided that in case the Life Assured shall commit suicide before the expiry of one year reckoned from the date of this policy, the provisions of the Clause under the heading "Suicide" printed on the back of the policy.”

The insurer called upon the insured to indicate whether the policy is to be back dated and if so, the date from which it should be dated back. The Insured indicated that the policy should be dated back to 10.5.89 and the premium for the period 10.5.89 till 25.3.1990 was accordingly paid. The policy was issued to the Insured on 25.3.90.

The minor girl whose life had been insured under the policy committed suicide on 15.11.1992. The respondent thereafter lodged a claim for payment of the entire sum for which life of the deceased had been insured. The Corporation gave a reply to the respondent that his claim for the full sum assured could not be entertained as the assured had committed suicide within three years of the date of the issue of policy and Clause 4B of the policy would be attracted.

61 Life Insurance Corporation of India v. Dharamvir Anand, 1999(1) CPC 10 S.C.
The respondent then filed a complaint under Section 12 of the Consumer Disputers Act upheld the contention of LIC. In appeal the State Commission upheld the view of the corporation and contended that the policy would be treated as effective from 30.03.1990 i.e. the date of the issue and decided that Clause 4-B will apply. The father of the girl filed an appeal to the National Commission. Dharamvir Anand, the father of the girl filed an appeal before the Supreme Court. The Supreme Court ordered that the entire sum for which the life of the minor girl had been insured should be paid to the respondent together with the Bonus and interest which accrued due.

The Apex Court ruled that undoubtedly the risk under the policy had commenced from 10.5.89 and not from the date of issue of the policy i.e. 31st of March, 1990. The Corporation was ordered to pay a total sum of Rs. 3 Lacs to the respondent-claimant in full satisfaction of the claim within eight weeks. 62

NO REVIVAL OF POLICY AFTER DEATH OF THE INSURED – SC

One Karan Singh Chandel63 had taken a Life Insurance Policy and was insured for a sum of Rs.1,50,000/- . The annual premium payable was Rs.12,821/-. The policy was taken on 28.3.1994. The annual premium which was to be paid on or before 28.3.1995 was not paid. In terms of the

63. Life Insurance Corporation of India v. Jaya Chandel, 2008(1) CPC 419 S.C.
policy, the same became inoperative after one month.

The insured died on 1.7.1995. A cheque drawn on Jogindra Cooperative Bank Ltd. for an amount of Rs.12,821/- purportedly on account of premium along with late fee of Rs.189/- was issued by one Prakash Chand Thakur on 27.6.1995. The same was received on 12.7.1995. According to the claimant i.e. widow of the deceased, the cheque was issued before the death of the insured and therefore, the appellant could not have repudiated the claim. 64

The stand of LIC was that the policy had lapsed due to non-payment of premium in time. This plea was not accepted by the District Forum on the ground that the cheque was claimed to have been issued on 12.7.1995, but is presumed to have been received earlier than that date. The State Commission held that in any event the amount was received within the grace period and therefore, the claim could not have been repudiated. Accordingly the appeal filed by LIC was dismissed. The National Forum dismissed the Revision holding that Section 64-VB of the Insurance Act, 1938 was applicable where the premium is tendered by postal money order or cheque sent by post and the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be. Therefore, it was held that there was revival. It did

64. Life Insurance Corporation of India v. Jaya Chandel, 2008(1) CPC 419 S.C.
not accept the stand of the appellant that the revival was not a matter of right.

In support of the appeal, learned counsel for the appellant submitted that the District Forum, the State Commission and the National Commission failed to notice certain relevant factors. It was not explained as to why the cheque was issued by Prakash Chand Thakur and not by the insured. This is sufficient to show that subsequently a cheque was issued to regularize the policy. Further the cheque was received on 12.7.1995 much after the death and this itself is sufficient to show that the cheque was not issued prior to the death of the insured. The extract of the receipt register has been filed which shows that the cheque was received on 12.7.1995. 65

In reply learned counsel for the claimant submitted that it is not Condition 2 of the policy which is applicable, but Condition no.3 which is applicable. It is stated that no adverse inference can be drawn because the insured had not signed the cheque and merely because the cheque was received after the death of the deceased that does not entitle the appellant to refuse a genuine claim.

Revival of discontinued Policies: If the Policy has lapsed it may be revived during the life time of the Life Assured, but within a period of 5 years from the date of the first unpaid premium and before the date of death. 65

65 Life Insurance Corporation of India v. Jaya Chandel, 2008(1) CPC 419 S.C.
maturity, on submission of proof of continued insurability to the satisfaction of the Corporation and the payment of all the arrears of premium together with interest at such rate as may be fixed by the Corporation from time to time compounding half yearly. The Corporation reserves the right to accept or decline the revival of discontinued policy.66

A bare reading of the condition shows that a policy can be revived during the life time of the assured. In the instant case the cheque was admittedly received after the death of the assured. Further the revival takes effect only after the same is approved by the Corporation and is specifically communicated to the life insured. In the present case this is not the situation. Looked at from any angle the orders passed by the District Forum, the State Forum and National Commission cannot be maintained and are set aside. Appeal was allowed without posts. There shall be no order as to costs.

EFFECT OF BACK DATING OF A POLICY

Mani Ram,67 the respondent, herein son of one Budhu Ram, resident of village Khatehar, Pargana and Tehsil Sadar, District Bilaspur (HP) filed a complaint under Section 12 of the Consumer Protection Act, 1986 before the District Consumer Forum, Bilaspur. In the complaint, it was inter alia alleged by the complainant that his son Ashok Kumar had been insured with the appellant-Insurance Company on August 21, 1995

66. Life Insurance Corporation of India v. Jaya Chandel, 2008(1) CPC 419 S.C.
67. Life Insurance Corporation of India v. Mani Ram, 2005(2) CPC 422 S.C.
and premium amount of Rs. 5,215/- was paid on the same day. According to the complainant, the next instalment of premium was due on August 21, 1996. Ashok Kumar insured, however, died in an accident on August 2, 1996 at Barmana as the boundary wall of the D.A.V. School fell on him and he was crushed under the debris. The complainant, in view of the subsisting policy, requested the appellant-Insurance Company to pay the insurance claim amount of Rs. 2,50,000/- to the complainant, but under the lame and false excuses, the Insurance Company did not pay the amount. Finally, by a communication dated August 11, 1997, the Insurance Company refused to pay any amount.\(^{68}\)

The appellant-Insurance Company resisted the claim of the complainant by filing a written reply. A preliminary objection was raised against the maintainability of the complaint on the ground that the policy had lapsed due to non-payment of premium within the prescribed period and hence, the complainant had no right to claim anything. The complaint was, therefore, liable to be dismissed. It was stated that deceased Ashok Kumar was insured with the Insurance Company. It was also admitted that the premium amount was paid to the Insurance Company on August 21, 1995 but the policy holder got the policy effected from a back date, i.e. from April 28, 1995.\(^{69}\)

\(^{68}\). Life Insurance Corporation of India v. Mani Ram, 2005(2) CPC 422 S.C.

\(^{69}\). Life Insurance Corporation of India v. Mani Ram, 2005(2) CPC 422 S.C.
According to the Insurance Company, therefore, the next premium was due and payable after one year, i.e., on April 28, 1996. Giving benefit of grace period of one month, the premium amount was required to be paid latest by May 28, 1996. No premium, however, was paid on April 28, 1996 nor till May 28, 1996 and the policy lapsed. Since the deceased Ashok Kumar met with an accident on August 2, 1996, there was no subsisting policy in favour of the insured inasmuch as it lapsed on May 28, 1996, the Insurance Company could not be held liable and the complainant was not entitled to any amount.

The District Forum decided the case in favour of the insured. Being aggrieved by the order passed by the District Forum, Insurance Company filed appeal before the State Commission which was decided in favour of the insured.\(^70\)

The LIC approached the National Commission against the orders passed by the State Commission. The National also decided the case in favour of the insured. The orders passed by all the three Commissions were set aside by the SC.

The learned counsel for the appellant-Insurance Company, however, stated that the assured died in 1996 and the District Forum upheld the claim of the complainant in December, 2000. He fairly stated that the amount was not 'very high' and has also been paid and the

\(^70\) Life Insurance Corporation of India v. Mani Ram, 2005(2) CPC 422 S.C.
Insurance Company was not so serious about the amount, but since the question of law had been wrongly decided, the Insurance Company had to approach this Court so that the law is settled. Therefore, though we hold the orders not to be in accordance with law and we set aside them, but we direct that no recovery be effected from the respondent-complainant pursuant to this order. The appeal is allowed to the extent indicated above. In the facts and circumstances of the case, however, there shall be no order as to costs.  

The short question that arises for consideration in this appeal is whether in the case of a lapsed life insurance policy, the Life Insurance Corporation of India while paying the reduced sum payable by treating it as a paid-up policy, is liable to pay interest in regard to premiums paid from the respective dates of payment of premiums to date of settlement.

A policy of insurance dated 11.03.1994 for an assured sum of Rs.5 lakhs with risk commencing from 04.12.1993 was issued in regard to the life of K. Thankachan under the ‘money back policy’ scheme for a period of 20 years. The premium payable was Rs. 8,306/- every quarter. The conditions of the policy made it clear that the policy will be in force only if the premiums were paid regularly, every quarter, and that if the premium was not paid before the expiry of the grace period provided, the

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71. Life Insurance Corporation of India v. Mani Ram, 2005(2) CPC 422 S.C.
72. Life Insurance Corporation of India v. S. Sindhu, 2006(2) CPC 161 S.C.
policy will lapse. K. Thankachan paid the premiums till 4.6.1994 and did not pay the premiums thereafter.

In August, 1996, he opted for revival of the policy by paying the arrears of premium from 4.9.1994 to 4.6.1996 with interest. Accordingly, the policy was revived and he paid the premium till 4.12.1996. Thereafter, the policy again lapsed from 4.3.1997 as premium was not paid. K. Thankachan died on 5.12.1997 and his widow/nominee (the respondent herein) made a claim for payment of the amount under the policy, by letter dated 1.1.1968.\textsuperscript{73}

Condition No.4 of the policy contains the exceptions to lapsing of the policy. The portion of the said condition relevant for our purpose, is extracted below:

“Non-forfeiture Regulations: If, after at least three full years premiums have been paid in respect of this Policy, any subsequent premium be not duly paid this policy shall not be wholly void, but shall subsist as a paid-up policy for a reduced sum payable on the Date of Maturity or at the Life Assured's prior death provided the paid up sum assured is not less than Rs.250. The amount of paid up assurance for integral number of years' premiums paid will be calculated as per Table given below. The policy so reduced shall thereafter be free from all liability for payment of within mentioned premium but shall not be

\textsuperscript{73}. Life Insurance Corporation of India v. S. Sindhu, 2006(2) CPC 161 S.C.
entitled to participate in future profits. The existing bonus additions if any, will remain attached to the reduced paid up policy. (Emphasis supplied). 74

The 'paid up value' of the policy was arrived at Rs.1,13,750/- as per Condition (4) of the policy and was paid by the LIC to the respondent on 26.3.1998, on her executing a full and final settlement discharge. As the policy of insurance with profit plan was eligible for bonus only if premiums are paid at least for a period of 5 years and as the insured had paid premium only for a period of three and quarter years, the policy was found to be ineligible for bonus.

The respondent approached the Consumer Disputes Redressal Forum, Kollam, on 30.4.1998, praying for a direction to the LIC to pay her the entire sum assured under the policy namely, Rs.5 lacs with accrued bonus and interest at 12% per annum, as also Rs. 25,000/- as compensation for deficiency of service and Rs. 5,000/- as costs.

The Appellant (LIC) resisted the said claim pointing out that it had released the paid-up value of Rs. 1,13,750/- in terms of the policy, in full and final settlement and it had no liability either to pay the assured sum or bonus or any interest. The District Forum by order dated 28.8.1998 rejected the contention of the respondent that she is entitled to the assured sum of Rs. 5 lacs or bonus. It held that the respondent was only eligible

74. Life Insurance Corporation of India v. S. Sindhu, 2006(2) CPC 161 S.C.
for payment of Rs. 1,13,750/- as paid-up value in terms of Condition No.4 of the policy. The District Forum, however, directed the LIC to pay interest at 15% per annum (on the sum of Rs. 1,13,750/-) from the respective dates of receipt of the amounts of premium to date of settlement. For grant of such interest, the District Forum relied on the decision of this Court in Harshad J. Shah v. L.I.C. of India [1997 (5) SCC 64].

An appeal was filed by the LIC before the Kerala State Consumer Disputes Redressal Commission contending that it was not liable to pay interest from the date of receipt of the premiums, and the decision in Harshad J. Shah (supra) did not require payment of such interest. The Commission allowed the appeal in part, on 31.3.1999. It held that the direction to pay interest from the dates of payment of premium was in accordance with the decision in Harshad J. Shah (supra) and did not call for interference. The rate of interest was, however, reduced from 15% to 12% per annum. The revision filed by LIC against the order of the State Commission was rejected by the National Commission on 2.11.1999, on the ground that order of the State Commission did not suffer from any illegality or jurisdictional error. The said order is challenged in this appeal.

75 Life Insurance Corporation of India v. S. Sindhu, 2006(2) CPC 161 S.C.
At the outset, what should be noticed, is that the amount that is paid by LIC in regard to a lapsed policy, is not "refund of the premiums paid on various dates", but a reduced lump sum (calculated as per condition no. 4 of the policy) instead of the assured sum. When what is paid by LIC is not refund of premiums, the question of treating the amount paid by LIC as refund of premiums paid and then directing payment of interest thereon from the respective dates of payment of premium does not arise. That would amount to treating the premiums paid in respect of a policy which lapsed by default, as fixed deposits repayable with a hefty rate of interest. Surely, the intention is not to reward defaulting policy holders. Moreover, the courts and Tribunals cannot rewrite contracts and direct payment contrary to the terms of the contract, that too to the defaulting party. Be that as it may.76

It is examined whether award of interest can be sustained in any manner. It is now well-settled that interest prior to the date of suit/claim (as contrasted to pendente-lite interest and future interest) can be awarded in the following circumstances:

(a) Where the contract provides for payment of interest; or
(b) Where a statute applicable to the transaction/ liability, provides for payment of interest; or

76. Life Insurance Corporation of India v. S. Sindhu, 2006(2) CPC 161 S.C.
(c) Where interest is payable as per the provisions of the Interest Act, 1978.

In this case, the contract, that is the insurance policy, provides that if the premium is not paid (after regularly paying premiums for a period of three full years), the policy shall subsist only as a paid up policy for a reduced sum (calculated as per Table given in Condition No. (4) of the policy) payable on the date of maturity or at the prior death of the life assured. It does not provide for payment of interest on the premiums paid. In fact, the operative portion of the policy specifically provides that no interest will be paid. The relevant portion extracted below:

“The Life Insurance Corporation of India do by this policy agree, in consideration of and subject to the due receipt of the subsequent premiums as set out in the Schedule, to pay the sum assured (together with such further sum or sums as may be allocated by way of Bonus in the case of 'with profits' policies) but without interest, to the person or persons to whom the same is payable in terms of the said Schedule This policy of assurance shall be subject to the condition and privileges printed on the back hereof”.

Payment of interest on the premium amounts, from the respective dates of remittance of premiums, is alien to the concept of life insurance. In this case, the assured died on 5.12.1997 prior to the date of maturity.

77 Life Insurance Corporation of India v. S. Sindhu, 2006(2) CPC 161 S.C.
Therefore the reduced sum as a paid up policy became due and payable without any interest on 5.12.1997. The claim was settled by payment of Rs.1,13,750/- on 26.3.1998, within three months from the date of intimation of death. Therefore, under the contract, no interest is payable by LIC.

Where a statute provides for payment of interest, such interest will have to be paid in accordance with the provisions of such statute. Admittedly there is no enactment, or rules made under any enactment, either relating to contracts in general or insurance in particular, which provides for payment of interest in regard to amount payable under such a policy.

Let us now consider the provisions of Interest Act, 1978 ('Act' for short) which deals with payment of interest upto the date of suit/claim. The Act was enacted to consolidate and amend the law relating to the allowance of interest in certain cases. The objects and reasons states that the Act was enacted to prescribe the general law of interest in a comprehensive and precise manner, which becomes applicable in the absence of any contractual or statutory provision specifically dealing with interest. Sub-section (1) of Section 3 of the Act provides that in any proceedings for the recovery of any debt or damages, or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow
interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, 78

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in that regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings.

Sub-section (3) of Section 3 makes it clear that nothing in Section 3 shall apply in relation to any debt or damages upon which interest is payable as of right, by virtue of any agreement, or any debt or damages upon which payment of interest is barred, by virtue of an express agreement. Clause (a) of section 2 of the Act defines 'court' as including a tribunal and an arbitrator; clause (c) of Section 2 defines 'debt' as any liability for an ascertained sum of money and includes a debt payable in kind but does not include a judgment debt; and clause (b) defines 'current rate of interest'. Sub-section (1) of Section 4 of the Act provides that notwithstanding anything contained in section 3, interest shall be payable

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78. Life Insurance Corporation of India v. S. Sindhu, 2006(2) CPC 161 S.C.
in all cases in which it is payable by virtue of any enactment or other rule of law or usage having the force of law. Sub-section (2) of section 4 provides that notwithstanding what is stated in section 3 or section 4(1) of the Act, in the cases of money deposited as security for performance of an obligation, interest is payable from the date of deposit; and in the case of money payable by virtue of a fiduciary relationship, money/property obtained/ retained by fraud and money due as dower/maintenance, interest is payable from the date of cause of action. A claim for interest on the amounts of premium paid, from the respective dates of payment of premium to date of settlement of claim, does not find support from any of the provisions of the Act.\textsuperscript{79}

Even assuming that interest can be awarded on grounds of equity, it can be awarded only on the reduced sum to be quantified and paid from the date when it becomes due under the policy (that is on the date of death of the assured) and not from any earlier date. We do not propose to examine the question as to whether interest can be awarded at all, on equitable grounds, in view of the enactment of Interest Act, 1978 making a significant departure from the old Interest Act (of 1839). The present Act does not contain the following provision contained in the proviso to section (1) of the old Act: “interest shall be payable in all cases in which it is now payable by law.” How far the decisions of this Court in Satinder

\textsuperscript{79}. Life Insurance Corporation of India v. S. Sindhu, 2006(2) CPC 161 S.C.
Singh v. Umrao Singh etc. [AIR 1961 SC 908] and Hirachand Kothari (D) by LRs. v. State of Rajasthan and Anr. [1985 Supp SCC 17] and the decision of the Privy Council in Bengal Nagpur Railway Co. Ltd., vs. Rultanji Ramji [AIR 1938 PC.67], holding that interest can be awarded on equitable grounds, all rendered with reference to the said proviso to section (1) of old Interest Act (Act of 1839), will be useful to interpret the provisions of the new Act (Act of 1978) may require detailed examination in an appropriate case.

In this case, we have already noticed that the reduced sum calculated as per the Table in Condition No. (4) of the Policy, became due only on the death of the assured. No interest is payable either under the contract of insurance, or under any statute, or under the Interest Act, 1978 from the respective dates of payment of premium to date of settlement of claim. Therefore the District Forum, the State Commission and the National Commission committed a serious error in awarding such interest.

This takes us to the question whether the decision in Harshad J. Shah (supra) lays down any principle of law that LIC should pay such interest on the premium amounts, from the dates of payment of premium, as assumed by the Consumer Forum, State Commission and National Commission. We have carefully examined the said decision and find that no such principle is enunciated therein. In that case, one J. took out four
insurance policies on 6.3.1986 through a general agent of LIC. The insured paid the first and second premiums. The third half-yearly premium which fell due on 6.3.1987 was not paid within the prescribed period. On 4.6.1987, the general agent of LIC obtained from J a bearer cheque dated 4.6.1987 for Rs. 2,730/-, (being the half-yearly premium in regard to the four policies), encashed the cheque through his son, and deposited the premium with LIC on 10.8.1987. In the meanwhile, the insured died on 9.8.1987. The widow of the deceased, as the nominee under the policy, made a claim with LIC for payment of the sum assured under the four policies. It was repudiated by the LIC on the ground that the policies had lapsed on account of non-payment of half-yearly premium which fell due on 6.3.1987, within the grace period. The widow of the insured submitted a complaint to the State Commission claiming the sum assured under the said 4 policies, namely, Rs. 4,32,000/-. The State Commission held that LIC was negligent in its service to the policyholder and directed LIC to settle the claim. On the other hand, the National Commission held that the Insurance Agent was not acting as agent of LIC in receiving the bearer cheque from the insured and therefore, LIC was not liable. That order was challenged by the claimant before this Court. The question that arose for consideration of this Court in that case was whether the payment of premium in respect of a life insurance policy by the insured to the general agent of the LIC can be
regarded as payment to the insurer so as to constitute a discharge of
liability of the insured. This Court answered the said question in the
negative. No other question was raised or considered by this Court.
Consequent to its decision, the appeal was disposed of by this Court with
the following directions:

“For the reasons aforementioned, we are unable to uphold the
claim of the appellants. No ground is made out for interfering with the
decision of the National Commission that Respondent 3 in receiving the
bearer cheque for Rs.2730 from the insured was not acting as an agent of
the LIC. But keeping in view the facts and circumstances of the case we
direct the LIC to refund the entire amount of premium paid to the LIC on
the four insurance policies to Appellant 2 along with interest @ 15% per
annum. The interest will be payable from the date of receipt of the
amounts of premium.”

What requires to be noticed in that case, is that the default having
occurred after payment of premium for only one year, there was no
question of application of any 'non-forfeiture provision', nor was it
permissible to treat the policy as subsisting as a paid-up policy for a
reduced sum. Therefore nothing was payable by LIC under the policy.
Consequently there was no direction to pay any amount under or in
pursuance of the policy, nor any direction for payment of interest. The

80. Life Insurance Corporation of India v. S. Sindhu, 2006(2) CPC 161 S.C.
claim based on the policy was completely rejected. This court however
found that a sum of Rs. 2730/- had been remitted after the death of the
insured, which was not legally due or payable to LIC. Therefore, it
directed refund of the said sum of Rs. 2730/- wrongly paid as 'premium'
with interest from the date of its payment. Therefore what was awarded
was not interest on any sum payable by LIC under the policy or in
pursuance of the policy, but interest on the sum of Rs. 2730/- which was
found to have been remitted to LIC, de hors the policy, on 10.8.1987, to
retain which, LIC had no legal right. 81

The sum of Rs. 2730/- though paid as 'premium' on 10.8.1997 and
referred to by this Court as 'premium' for convenience, was not really due
to LIC as 'premium' as the policy had lapsed and the insured had died
before that date. There was no claim for refund of Rs. 2730/- and the
question relating to refund or Rs. 2730/- was not the subject matter of the
claim. Therefore, it is clear that the direction to refund Rs. 2730/- with
interest from the date of its payment was not by way of elucidation of any
principle of law nor based on interpretation of any contractual term. 82
This Court while rejecting the claim in toto, apparently, in exercise of
power under Article 142, to do complete justice between the parties,
directed refund of Rs. 2730/- with interest from the date of its payment,
on the special facts of that case.

81. Life Insurance Corporation of India v. S. Sindhu, 2006(2) CPC 161 S.C.
82. Life Insurance Corporation of India v. S. Sindhu, 2006(2) CPC 161 S.C.
As contrasted from Harshad J. Shah’s case (supra), in this case the amount paid (Rs.1,13,750/-) is a contractual liability of LIC under condition No.4 of the policy to pay a reduced sum by treating the policy as a paid up policy, on default. The award of interest in Harshad J. Shah's case (supra), being followed by the forum and commissions, is a classic case of a direction issued by this Court in exercise of Article 142 on the special facts, being wrongly interpreted as a general principle of law laid down by this court.\(^{83}\)

Therefore, the appeal was allowed and hold that the LIC is not liable to pay any interest on the sum of Rs. 1,13,750/-.  

However, it was find that the following order was passed on 7.8.2000 while granting leave:

“Learned Solicitor General has placed on record copy of the communication received by the instructing counsel dated 26th July, 2000, according to which amount payable to the respondent, as per directions of the Consumer Disputes Redressal Commission, have already been paid. It is submitted that irrespective of the result of the appeal, the amount which stands paid, shall not be sought for any adjustment, in the peculiar facts and circumstances of the case and no relief would be sought in that behalf against the respondent. It is submitted that the question of law involved in the case is of great importance and likely to arise in other cases.”

\(^{83}\) Life Insurance Corporation of India v. S. Sindhu, 2006(2) CPC 161 S.C.
In view of it, this decision does not render the respondent liable to refund any amount already received in pursuance of the order of the consumer forum, even though we have held that the respondent is not entitled to any interest on Rs.1,13,750/-. We may clarify the contents of this para is purely based on a concession made on 7.8.2000.

The appellant, the widow of one Vijay Kumar Gupta, who had obtained a Policy for an assured sum of Rs. 1 lakh from the respondent, Life Insurance Corporation of India (hereinafter 'the Corporation'). The Policy was obtained on 1.4.1989 and two yearly premiums had been paid by 1.4.1991. As the third annual premium could not be paid within the grace period of a month thereafter, the Policy lapsed on 1.5.1991. It however so happened that the Policy holder was assassinated on 30.5.1991 at Chandigarh. A claim for the sum assured, along-with an additional sum equal to the sum assured, was lodged, as the Policy covered “DAB” (Double Accident Benefit) also. The Corporation paid a sum of Rs. 1,13,925/- on 19.7.1991 which according to it was by way of ex-gratia payment, and taking a compassionate view the basic sum assured (Rs. 1 lakh), together with bonus which had accrued (the total of which came to Rs. 1,13,925/-) was paid. The grievance of the appellant is that under the terms of the Policy, an additional sum equal to the sum assured was payable because of the death of the Policy holder was in an

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84. Shashi Gupta v. Life Insurance Corporation of India and Another, 1995(2) CPC 14 S.C.
accident. The respondent's stand, however, is that under the Policy no further amount is payable to the appellant.85

Under normal circumstances, a Policy lapses unless three instalments are paid. The Corporation, however, relaxed this condition vide its circular dated 16.10.1987, according to which if the death of the assured were to occur after two premiums have been paid within three months of the due date of the next unpaid premium, "the full Sum Assured together with the declared bonuses" would be paid. Shri Rao, appearing for the respondent Corporation, contends that the expression "full Sum Assured" would really mean the sum assured, which is Rs. 1 lakh in the present case. According to the learned Counsel, the word “full” has been used because despite two premiums having been paid, by force of the aforesaid circular, the full amount assured was required to be paid, which otherwise would not have been so. Shri Mohan, however, draws our attention to the further provision in the aforesaid circular according to which for Policies issued under Multi-purpose Plan and Jeevan Mitra Plan, the concession visualised in the circular will be given with regard to the basic sum assured only. This indicates, according to the learned Counsel, that for other Policies concession is not confined to the basic sum assured.

85. Shashi Gupta v. Life Insurance Corporation of India and Another, 1995(2) CPC 14 S.C.
As both the aforesaid interpretations are reasonably possible, we would accept the one which favours the Policy holder, as the same advances the purpose for which a Policy is taken and would be in consonance with the object to be achieved for getting lives assured. Had this been the only material before us, we would have ordered the respondent to pay a further sum of Rs. 1 lakh, but then Shri Rao brings to our notice a subsequent circular of the Corporation dated 04.01.1991 which clarifies what was held out in the circular of 16.10.1987. Para 5 of the second circular states that no DAB is payable under any plan for the claims admitted under the provisions of the circular even in those cases where the claim is considered to the extent of the full sum assured. This para further states that the payments under lapsed Policies are purely on ex gratia basis.86

From the impugned orders before us, it, however, appears that the subsequent circular was not brought to the notice of either the State Consumer Disputes Redressal Commission or the National Commission. Shri Rao submits it was on record, which is denied by Shri Mohan. Be that as it may, in the facts and circumstances of the case which includes the death of Vijay Kumar at the height of his youth at the hands of terrorists and his having been survived of his widow and three children, we are of the view that the interest of justice demands some further

86. *Shashi Gupta v. Life Insurance Corporation of India and Another, 1995(2) CPC 14 S.C.*
payment to be made to the appellant, which we quantify as Rs. 50,000/-. We, therefore, order that a further sum of Rs. 50,000/- be paid to the appellant by the respondent on ex gratia basis. This would be done within a month. The appeal is allowed accordingly. No order as to costs.\textsuperscript{87}

**Life Insurance Corporation of India vs Sudesh [National Consumer Disputes Redressal Commission, 27 Feb 2012]\textsuperscript{88}

Consumer Protection - Insurance - Consumer Protection Act, 1986 - Claim - Repudiation - Entitlement of - Respondents husband (deceased) obtained a policy for life of Rs.5 lakhs from appellant LIC of India - Deceased died 13 months later after taking the policy and the claim under the policy was repudiated by appellant on the ground that the deceased had withheld material information at the time of seeking the insurance cover - Respondent filed complaint, which was allowed by State Commission - Hence, instant appeal - Whether the State Commission was justified in allowing the complaint - Held, appellant relied entirely on the record of treatment for repudiation of the claim under a policy taken more than one year - Appellant could not point to any other evidence produced before the State Commission, which could show that the deceased suffered from any or all of those ailments at the time when the proposal for insurance was made - Question of disentitlement under the insurance policy, on the ground of concealment/suppression of information, would

\textsuperscript{87} Shashi Gupta v. Life Insurance Corporation of India and Another, 1995(2) CPC 14 S.C.

have arisen in case only if there was evidence to show that the insured
had undergone hospitalization/treatment for any disease in near proximity
of the time when insurance policy was obtained and had chosen not to
disclose it - Further, voluntary disclosure of information relating to
occasional drinking, as made in the proposal form by the deceased, was
not investigated further before appellant chose to issue the insurance
policy in favour of the deceased - Impugned order of State Commission
was upheld – the appeal was dismissed.

State Bank of Hyderabad vs (1) Nirmala W/o late Vinod Kumar; (2)
SBI Life Insurance Company Limited [NATIONAL CONSUMER
DISPUTES REDRESSAL COMMISSION, 29 Feb 2012]^{89}

Consumer Protection - Banking and Finance -
Claim - Repudiation - Deceased sought housing loan of Rs.10 lakh from
petitioner to construct a house - Loan was agreed but simultaneously
deceased was made to apply for insurance from respondent no. 2
Insurance Company to provide insurance cover to the housing loan -
Complainant/deceased's wife asked petitioner to have the insurance claim
settled - Respondent no. 2 rejected the insurance claim on the ground that
the deceased died before the acceptance of the proposal and therefore,
there was no privity of contract between complainant and respondent no.
2 - Thereafter, a notice was issued by petitioner asking the Complainant
to pay back the entire loan - District Forum, held that there was a

website visited on 21-02-2013.
presumption of acceptance of the proposal for insurance with the receipt of premium, hence directed respondent no. 2 to pay the insurance amount proportionate to premium of Rs.27,660/- - On appeal State Commission held that petitioner alone and not respondent no. 2 was responsible to comply with the direction of District Forum - Hence, instant revision petition - Whether the State Commission was justified in passing the impugned order - Held, proposal form for insurance and deduction of premium were made on same day on which application for housing loan was accepted\(^9\) - Hence, despite façade of voluntary acceptance of insurance, insurance coverage under policy was a requirement of petitioner as an additional security for housing loan - Thus, policy was thrust upon borrower as a mandatory security for recovery of loan - Further, respondent no. 2 insurer should not be made liable to pay for lapses on part of petitioner's employees - Borrower insured should not be held responsible for lapses, which later resulted in contract of insurance remaining incomplete till his death - Impugned order of State Commission was confirmed - Revision dismissed.

**GRIENENCE REDRESSAL MECHANISM IN INDIAN LIFE INSURANCE INDUSTRY**

The insurance industry across the world primarily relies on the “trust” between the insurer and the insured. Unlike any other industry,

literally nothing gets delivered either in the terms of tangible goods (FMCG industry) and/or experience (tourism industry). The sales transaction gets closed with a delivery of policy certificate and “assurance” to the policyholder from the insurance company that in case of crisis, we are there to support you against this certificate.\textsuperscript{91}

As a human tendency, the policyholder starts ranking “trust” based on their experience during the sales process and accordingly develops an opinion about the insurance organization regarding their capability or ability to fulfill the promises. To protect the policyholder’s right to avail the benefits and ensure that the policyholder is not taking an undue advantage of the same, the regulators play a key role in defining the guideline of the grievance management system.

Over the past decade, grievance management guidelines have evolved substantially to ensure that grievances are not only recorded but also appropriately handled for logical settlement within the defined TAT and agreed SLA’s. Policyholder grievance normally falls under the following major categories listed below:

- Transparency (e.g. sharing of information like premium details, process for risk assessment along with impact of the assessed risk and minimal fine print)

• Feedback on sales (e.g. miss-selling related to product benefits and services offered)
• Feedback on services (e.g. services not provided as per defined TAT/SLA or quality of the service)
• Policy Administration which is nothing but accuracy of the data captured and quality of the information shared.
• Benefits payout (e.g. payment of claims—'moment of truth')

These categories are common for both life and non-life insurance, however the frequency and impact could depend on the type of benefit being availed/offered e.g. A health insurance policy can have multiple episodes of benefits payout whereas in case of life insurance policy benefit is only paid out once.\(^92\)

Thanks to the growth and revolution of general insurance organizations (both private and public) which provide risk coverage for physicals assets, awareness levels related to available benefits and how the same can be availed have risen among policyholders. However, since Health insurance is still fairly new, the policyholders still continue to be apprehensive about the delivery of promise.

Thus in this tough arena, it is important for any Health insurance organization to offer customer services that are true reflection of the

funds invested by the customers. The key to success is “PRICE” i.e. Proactive Services, Relationship and not just transaction services, Innovation, Care (reflected in attitude) and everlasting Experience.

Price is feasible if Health insurance organizations ensure that the data is captured only once at the point of policy generation and is made accessible to both the policyholder and other stakeholders, through various channels involved in grievances management. Equally important is the timely availability of information. This is further aided by the ability to develop a predictability model, to ensure design and development of proactive services for enhancing customer experience. This is feasible only when technology is embraced at all stages with a provision to support process innovation in an unstructured environment, guided by the policyholder requirement.

It is pivotal for insurance companies to be transparent at the time of selling. The policy documents should be as simplified as possible with minimal fine print. The premium and the risk assessment details should also be clearly communicated at the point of purchase. These steps will help in re-instilling customer’s trust on the insurer and make the claim process hassle free.

Proactive outreach by insurance companies to the customer for feedback on sales and services will also go a long way in ensuring customer satisfaction. Since the sales team is the face of the insurer, it is
important to determine if they are clearly communicating the policy terms and conditions to the policyholder. At the same time, doing a quality audit at regular intervals will help the insurer determine the gaps that need to be addressed. In today's market wherein insurance is visualized and sold like a commodity, it is really important to differentiate through “customer experience” which is being adopted by many insurance companies as a strategic objective.

Policy administration systems are developed to ensure data is captured only at the time of generation and the same data flows into various transactional processes which are automated and integrated to ensure minimal manual intervention. These systems and processes are being reviewed at a regular interval to ensure adoption of latest technology trends to develop differentiated customer service models specifically at the “moment of truth” i.e. enhanced claim experience like minimal documentation requirement at the time of pre-auth as details are readily available with the insurer, instant approval of pre-authorization and instant discharge for a real “cashless” experience accompanied with timely and appropriate adjudication of claims for logical settlement within defined TAT.

Most of the insurance organizations in today’s world provide many access points to the policyholder like via phone, email, web site along with escalation matrix, correspondence either via fax or letter or walk-in
to any of their location, customer service contact centre with a toll free number or SMS. Key objective for multiple access point is to provide options to the policyholder to reach out at any point of time.

IRDA is taking many heartening steps to conserve the rights of the consumers; and to upgrade and automate the existing system to make it more user-friendly. One such initiative is the establishment of the “Consumer Affairs Department” to give a special focus to administer the compliance by insurers of the IRDA Regulations so as to protect the policyholders' interests. It also assists to empower consumers by imparting them the knowledge of procedures and mechanisms that are available for grievance redressal through various campaigns.

Another important aspect in grievance management is to keep the policyholder informed about the status of various transactions and allow a policyholder to control the data flow along with an option to appropriately escalate to the right authorities in case resolution is not provided as per expectation. IRDA has developed an IGMS\(^\text{93}\) (Integrated Grievance Management system) which can be accessed by any insured to post their grievances. IGMS is integrated with every insurer complaint management system keeping in mind the customer centricity wherein transparency is maintained with every policyholder and at the same time they are being kept well informed about the status of their grievances.

Establishment of grievance redressal cell by IRDA is yet another initiative towards the protection of consumer right. This cell plays a facilitative role by taking up complaints with the respective insurers. There is a separate dealing with the complaints against Life and Non-life insurers. Every insurance organization has a grievance redressal cell which works very closely with IRDA to ensure appropriate and timely disposal of all grievances.

A recent introduction by IRDA for the facilitation of the policyholders is IRDA Grievance Call Centre (IGCC)\textsuperscript{94} which acts as an additional and easy accessible channel for policyholders to lodge their grievances and also seek their status over phone/e-mail. IGCC is well integrated with IGMS. The call centre carries out filling of grievance registration forms on the basis of the call and also provides a channel for tracking of grievances. Further, the IGCC also educates policyholders about the Insurance Ombudsman who provides a channel for fair disposal of complaints falling within the laid down authority.

Latest revolution in this area is availability of a “self service module” wherein the policy holders are provided with an option to endorse their policies and some of these changes are made effective immediately to ensure a required roll-out. In a nutshell, as insurance industry is growing, on one hand all stakeholders (including

policyholders) are raising the bar of expected service standards; and on the other hand, multiple partners are working on different innovative technological solutions to deliver the required services without much impacting the base delivery model.\textsuperscript{95} Gone are the days wherein policyholder was willing to wait for “day” to get a resolution, it's an age of “instant” resolution and it is mandatory for all insurance organizations to “run” and be part of the game.

**IRDA GUIDELINES FOR GRIEVANCE REDRESSAL BY INSURANCE COMPANIES**

Further to Regulation 5 of IRDA Regulations for Protection of Policyholders Interests, 2002 which provides for insurers to have in place speedy and effective grievance redressal systems, and in terms of the Authority’s powers and functions as enunciated in Section 14 of IRDA Act, 1999, the IRDA hereby issues the following guidelines pertaining to minimum time-frames and uniform definitions and classifications with respect to grievance redressal by insurance companies. These guidelines are applicable for disposal of “grievances/complaints” as defined herein. All insurers should follow the guidelines of the Authority strictly.

1. **Definition of “Grievance/Complaint”:**

   There shall be a uniform definition of “Grievance or Complaint”. Grievances shall be clearly distinguished from Inquiries and Requests,

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which do not fall within the scope of these guidelines. The following
definition of grievance shall be adopted:

**Grievance/Complaint:** A “Grievance/Complaint” is defined as any communication that expresses dissatisfaction about an action or lack of action, about the standard of service/deficiency of service of an insurance company and/or any intermediary or asks for remedial action.\(^9^6\)

On the other hand, an Inquiry and Request would mean the following:

**Inquiry:** An “Inquiry” is defined as any communication from a customer for the primary purpose of requesting information about a company and/or its services.

**Request:** A “Request” is defined as any communication from a customer soliciting a service such as a change or modification in the policy.

2. **Grievance Redressal Policy:**

   Every insurer shall have a Board approved Grievance Redressal Policy which shall be filed with IRDA.

3. **Grievance Officer (s):**

   Every insurer shall have a designated Grievance Officer of a senior management level. Senior Management would mean either the CEO or the Compliance Officer of the company. Every office other than the

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\(^9^6\). *Consumer Affairs Annual Booklet - 2010-11*, IRDA, Mumbai, 163.
Head/Corporate/Principal officer of an insurer shall also have an officer nominated as the Grievance Officer for that office.

4. **Grievance Redressal System/Procedure.**

   Every insurer shall have a system and a procedure for receiving, registering and disposing of grievances in each of its offices. This and all other relevant details along with details of Turnaround Times (TATs) shall be clearly laid down in the policy. While insurers may lay down their own TATs, they shall ensure that the following minimum time-frames are adopted:

   (a). An insurer shall send a written acknowledgement to a complainant within 3 working days of the receipt of the grievance.

   (b). The acknowledgement shall contain the name and designation of the officer who will deal with the grievance.

   (c). It shall also contain the details of the insurer’s grievance redressal procedure and the time taken for resolution of disputes.

   (d). Where the insurer resolves the complaint within 3 days, it may communicate the resolution along with the acknowledgement.

   (e). Where the grievance is not resolved within 3 working days, an insurer shall resolve the grievance within 2 weeks of its receipt and send a final letter of resolution.

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(g). Where, within 2 weeks, the company sends the complainant a written response which offers redress or rejects the complaint and gives reasons for doing so,

(i). the insurer shall inform the complainant about how he/she may pursue the complaint, if dissatisfied.

(ii). the insurer shall inform that it will regard the complaint as closed if it does not receive a reply within 8 weeks from the date of receipt of response by the insured/policyholder.

Any failure on the part of insurers to follow the above-mentioned procedures and time-frames would attract penalties by the Insurance Regulatory and Development Authority. It may be noted that it is necessary for each and every office of the insurer to adopt a system of grievance registration and disposal.

5. **Turnaround Times:**  

There are two types of turnaround times involved.

(i). The service level turnaround times, which are mapped to each classification of complaint (which is itself based on the service aspect involved).

(ii). The turnaround time involved for the grievance redressal.

As to (i), the TATs are as mapped to the classification and prescribed by the Authority to insurers. These TATs reflect the time-

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98. *Consumer Affairs Annual Booklet* - 2010-11, IRDA, Mumbai, 164.
frames as already laid down in the IRDA Regulations for Protection of Policyholders Interests and more, as, wherever considered necessary (for certain service aspects not getting specifically reflected in the Regulations), specific TATs are indicated in the classification and mapping provided by the Authority.

As regards (ii) above, the minimum TATs required to be followed shall be as prescribed in guideline 4 (a) to (g) as prescribed above.

6. **Closure of Grievance:**

A complaint shall be considered as disposed of and closed when

(a). the company has acceded to the request of the complainant fully.

(b). where the complainant has indicated in writing, acceptance of the response of the insurer.

(c). where the complainant has not responded to the insurer within 8 weeks of the company’s written response.

(d) where the Grievance Redressal Officer has certified that the company has discharged its contractual, statutory and regulatory obligations and therefore closes the complaint.

7. **Categorisation of complaints:**

a). Categorisation of complaints as prescribed by the Authority from time to time shall be adopted by insurers and incorporated in their

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b). The present classification prescribed by the Authority is placed at Annexure A. All insurers shall provide for these classification categories in their respective systems.

8. **Minimum software requirements:**

   It is necessary for insurers to have automated systems that will enable online registration, tracking of status of grievances by complainants and periodical reports as prescribed by IRDA. The system should also be one which can integrate seamlessly with the Authority’s system in the manner prescribed by the Authority. The Authority shall define these requirements from time to time and insurers shall ensure that they provide for such software/system modifications as may be required. The objective is to create the required industry level database and systems that would enable speedy and effective redressal of complaints.

9. **Calls relating to grievances:**

   Insurers shall also have in place a system to receive and deal with all kinds of calls including voice/e-mail, relating to grievances, from prospects and policyholders. The system should enable and facilitate the required interfacing with IRDA’s system of handling calls/e-mails.

10. **Publicizing Grievance Redressal Procedure:**

    Every insurer shall publicize its grievance redressal procedure and
ensure that it is specifically made available on its website.

11. **Policyholder Protection Committee**:\(^{101}\)

    Every insurer that ensure that the Policyholder Protection Committee, as stipulated in the guidelines for Corporate Governance issued by the Authority, is in place and is receiving and analyzing the required reports from the management and is carrying out all other requisite monitoring activities.

**Conclusion**

    Thus, the chapter contains the definitions of consumer, beneficiary, complaint, unfair trade practice, restrictive trade practice, deficiency in service, ‘contract of service’ and ‘contract for service’. The study of law cases reveal that a deficiency in services is the main cause of litigations in the area of life insurance business. For proper development of life insurance business holistic consumer service should be at the apex of the insurance efforts.

    Grievence Redressal Mechanism in Indian Life Insurance Industry and IRDA Guidelines for Grievance Redressal by Insurance Companies have also been discussed. Every insurer shall have a Board approved Grievance Redressal Policy which shall be filed with IRDA. Every insurer shall have a designated Grievance Officer of a senior management level. Every insurer shall have a system and a procedure for receiving,

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\(^{101}\) *Consumer Affairs Annual Booklet - 2010-11*, IRDA, Mumbai, 174.
registering and disposing of grievances in each of its offices. Any failure on the part of insurers to follow the above-mentioned procedures and time-frames would attract penalties by the Insurance Regulatory and Development Authority.