

Dr. Shabina Arfat
Department of Law
University of Kashmir

Email: arfatshab9@gmail.com

PROGRAMME/ COURSE: BA.LL.B 1st & LL.B 1st SEMESTER

PAPER—IV— LAW OF TORTS, CONSUMER PROTECTION AND MOTOR VEHICLES ACT

Unit-IV --- Consumer Protection

INTRODUCTION

We are all consumers in one form or another. According to Oxford Dictionary 'A consumer is a purchaser of goods or services. The expression 'consumer' in the common sense, means 'all of us may be called consumers, when we purchase some movable or immovable property or hire services for various purposes.' But in the present socio economic scenario, we find that the consumer is a victim of many unfair and unethical tactics adopted in the market place. The untrained consumer is no match for the businessman marketing goods and services on an organised basis and by trained professionals. He is very often cheated in the quality, quantity and price of goods and services. The consumer who was once the '*King of the market*' has become the victim of it. He is not supplied adequate information so as to the characteristics and performance of many consumer goods and suffer

due to unfairness of many one sided standard forms of contracts. The modern economic, industrial and social development have made the notion of 'freedom of contract' largely a matter of fiction and an empty slogan so far as many consumers are concerned.

The *caveat emptor*- 'let the buyer beware' doctrine of the law concerning the sale of goods, assumed that the consumer was responsible for protecting himself and would do so by applying his intelligence and experience in negotiating the terms of any purchase. That principle may have been appropriate for transactions conducted in village markets. In early times, the consumer may have been able to protect himself since the products were less sophisticated and could be inspected before purchase. But now the conditions have changed. Many modern goods are technological mysteries. The consumer knows little or nothing about these highly sophisticated goods. In real life, products are complex and of great variety and consumers and retailers have imperfect knowledge. The principle of *caveat emptor*, thus, has ceased to be appropriate as a general rule. The consumers need protection by law when goods fail to live up to their promises or indeed cause injury.

With globalisation and development in the international trade and commerce, there has been substantial increase of business and trade, which resulted in a variety of consumer goods and services to cater to the needs of the consumers. In recent years, there has been a greater public concern over consumer protection issues all over the world. Taking into account the interest and needs of consumers in all countries, particularly those in developing countries, the consumer protection measures should essentially be concerned with- (i) the protection from hazards to health and safety; (ii) the promotion and protection of economic interests; (iii) access to adequate information; (iv) control on misleading advertisements and deceptive representation; (v) consumer education; (vi) effective consumer redress. The consumer deserves to get what he pays for in real quantity and true quality. This lecture deals with the basic concept of consumer, services and goods. The object of

this lecture is to focus on the progressive and social welfare legislations designed to protect the interests of the consumers.

BASIC CONCEPTS:

“Consumer” under section 2 (7) of The Consumer Protection Act, 2019:

Section 2 (7) "consumer" means any person who—

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration 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; or
- (ii) hires or avails of any service 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 service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Explanation.—For the purposes of this clause,—

- (a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;
- (b) the expressions "buys any goods" and "hires or avails any services"

includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

“Defect”

Section 2(10) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly.

Service

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

In *R.C. Dixit v. Principal, St. Paul School*, [(2002) III CPJ 5] the complainant's daughter was admitted in school on payment of various fees and security deposits. Since there was no proper arrangement in the school for teaching economics, the complainant withdrew daughter and put her in another school. The complainant sought full refund of the fees. The State Commission held that since the withdrawal from the school was voluntary, admission fees and monthly tuition fees were not refundable, whereas the annual maintenance, support fees and library fees were refundable after proportionate deduction on account of deficiency in services.

'Deficiency'

Section 2(11) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes—

- (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
- (ii) deliberate withholding of relevant information by such person to the consumer;

"GOODS"

Section 2 (21) "goods" means every kind of movable property and includes "food" as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006. (The law is significant in ensuring quality food to the consumer. It protects consumer interest by prohibiting misleading advertisement and penalising adulteration. In other words, the Act seeks to enhance quality of food related information to consumers and also by setting standards which, when effectively enforced by Commissioners in the States would result in increased consumer welfare.)

Food is defined, as, under section 3 (j) (of Food Safety and Standards Act): "Food" means "any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal

products, cosmetics, narcotic or psychotropic substances.

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality.”

AUTHORITIES FOR CONSUMER PROTECTION

Introduction

The consumer movement in India arose out of dissatisfaction of the consumers as many unfair practices were being indulged in by the sellers. There was no legal system available to consumers to protect them from exploitation in the marketplace. For a long time, when a consumer was not happy with a particular brand product or shop, he or she generally avoided buying that brand product, or would stop purchasing from that shop. It was presumed that it was the responsibility of consumers to be careful while buying a commodity or service. It took many years for organizations in India, and around the world, to create awareness amongst people. Because of all these efforts, the movement succeeded in bringing pressure on business firms as well as government to correct business conduct which may be unfair and against the interests of consumers at large. A major step was taken on 24th of December 1986 by the Indian government to safeguard the interest of the consumer by enacting a comprehensive legislation- the Consumer Protection Act, 1986 (now CPA,2019). The Consumer Protection Act, is a social benefit oriented legislation and the provisions of the Act have to be construed as broadly as possible in favour of the consumer to achieve the purpose of the enactment but without doing violence to its language.

It may be mentioned at the outset that anyone interested in the task of consumer protection movement has to be well versed in various laws and not merely with the Consumer Protection Act, 1986. He should have knowledge of laws relating to Contract, Tort, Railways, Telegraphs,

Telephones, Post, Air Travel, Insurance, Electricity, Water, Housing, Medicine, Banking, Finance, Engineering, Motor Vehicles, Hotel Industry, Entertainment, Cooperative Societies, Tourism Agencies, Sales Tax, Central Excise, Limitation, Transport etc. There is no limit to subjects, which may come before a Consumer Forum / Commission for decision. In addition, one should also be well versed with the laws relating to unfair trade practice and restrictive trade practices, it intends to protect the consumers against different forms of exploitation.

According to the Preamble, the purpose of the Act is:

To provide for the better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers disputes and for matters connected therewith.

The object and purpose of enacting the Act is to render simple, inexpensive and speedy remedy to the consumers with complaints against defective goods and deficient services and for that a quasi-judicial machinery has been sought to be set up at the District, State and Central levels. These quasi-judicial bodies are required to observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance with the orders given by the quasi-judicial bodies have also been provided.

Authorities for Consumer Protection

Prior to the Consumer Protection Act, for any consumer complaint one had to go to an ordinary Civil Court. He had to engage a lawyer, pay the necessary Court fee and he was harassed for years before any outcome, positive or negative, was there in that litigation. Under the Consumer Protection Act, no Court fee has to be paid and the decision on the complaint is more quicker, as the court can evolve a summary procedure in disposing of the complaint. Under the Act of 1986, the Consumer Disputes Redressal agencies, provided for the establishment

of:

1. Consumer Disputes Redressal Forum to be known as *District Forum*;
2. Consumer Disputes Redressal Commission to be known as *State Commission* and;
3. National Consumer Disputes Redressal Commission known as *National Commission*.

CENTRAL CONSUMER PROTECTION AUTHORITY

Since the CPA, 1986 is replaced by Consumer Protection Act, 2019, it provides for the establishment of **CENTRAL CONSUMER PROTECTION AUTHORITY** under (CHAPTER III). Section 10 says:

(1) The Central Government shall, by notification, establish with effect from such date as it may specify in that notification, a Central Consumer Protection Authority to be known as the Central Authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.

(2) The Central Authority shall consist of a Chief Commissioner and such number of other Commissioners as may be prescribed, to be appointed by the Central Government to exercise the powers and discharge the functions under this Act.

(3) The headquarters of the Central Authority shall be at such place in the National Capital Region of Delhi, and it shall have regional and other offices in any other place in India as the Central Government may decide.

Qualifications, method of recruitment, etc., of Chief Commissioner and Commissioners:

Section 11. The Central Government may, by notification, make rules to provide for the qualifications for appointment, method of recruitment, procedure for appointment, term of office, salaries and

allowances, resignation, removal and other terms and conditions of the service of the Chief Commissioner and Commissioners of the Central Authority.

Vacancy, etc., not to invalidate proceedings of Central Authority

Section 12. No act or proceeding of the Central Authority shall be invalid merely by reason of— (a) any vacancy in, or any defect in the constitution of, the Central Authority; or (b) any defect in the appointment of a person acting as the Chief Commissioner or as a Commissioner; or (c) any irregularity in the procedure of the Central Authority not affecting the merits of the case.

Appointment of officers, experts, professionals and other employees of Central Authority

Section 13. (1) The Central Government shall provide the Central Authority such number of officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Central Authority appointed under this Act shall be such as may be prescribed.

(3) The Central Authority may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and ability, who have special knowledge and experience in the areas of consumer rights and welfare, consumer policy, law, medicine, food safety, health, engineering, product safety, commerce, economics, public affairs or administration, as it deems necessary to assist it in the discharge of its functions under this Act.

Powers and functions of Central Authority [sections 18,19,20,21]

1. protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;
2. prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;
3. ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act or the rules or

regulations made there under;

4. ensure that no person takes part in the publication of any advertisement which is false or misleading.

5. inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either suo motu or on a complaint received or on the directions from the Central Government;

6. file complaints before the District Commission, the State Commission or the National Commission, as the case may be, under this Act;

7. intervene in any proceedings before the District Commission or the State Commission or the National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;

8. review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation;

9. recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights

10. undertake and promote research in the field of consumer rights;

11. spread and promote awareness on consumer rights;

12. issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;

13. advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;

14. issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;

15. advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;

16. Where the Central Authority is satisfied after investigation that any advertisement is false or misleading and is prejudicial to the interest of

any consumer or is in contravention of consumer rights, it may, by order, issue directions to the concerned trader or manufacturer or endorser or advertiser or publisher, as the case may be, to discontinue such advertisement or to modify the same in such manner and within such time as may be specified in that order.

17. seize document, record, article or any other form of evidence; make a note or an inventory of such record or article; or require any person to produce any record, register or other document or article.

CONSUMER DISPUTES REDRESSAL COMMISSION

Establishment of District Consumer Disputes Redressal Commission.

Section 28: (1) The State Government shall, by notification, establish a District Consumer Disputes Redressal Commission, to be known as the **District Commission**, in each district of the State: Provided that the State Government may, if it deems fit, establish more than one District Commission in a district. (2) Each District Commission shall consist of— (a) a President; and (b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.

Officers and other employees of District Commission.

Section 33. (1) The State Government shall provide the District Commission with such officers and other employees as may be required to assist the District Commission in the discharge of its functions.

(2) The officers and other employees of the District Commission shall discharge their functions under the general superintendence of the President of the District Commission.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District Commission shall be such as may be prescribed.

Jurisdiction of District Commission

Section 34. (1) Subject to the other provisions of this Act, the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration **does not exceed one crore rupees:**

Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit.

(2) A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or

(c) the cause of action, wholly or in part, arises; or

(d) the complainant resides or personally works for gain.

Manner in which complaint shall be made:

[Who can file Complaint]

Section 35. (1) A complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Commission by—

(a) the consumer,— (i) to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided; or (ii) who alleges unfair trade practice in respect of such goods or service;

(b) any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or who alleges unfair trade practice in respect of such goods or service, is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government, the Central Authority or the State Government, as the case may be: Provided that the complaint under this sub-section may be filed electronically in such manner as may be prescribed.

Explanation.—For the purposes of this sub-section, "recognised consumer association" means any voluntary consumer association registered under any law for the time being in force.

(2) Every complaint filed under sub-section (1) shall be accompanied with such fee and payable in such manner, including electronic form, as may be prescribed.

Proceedings before District Commission

36. (1) Every proceeding before the District Commission shall be conducted by the President of that Commission and at least one member thereof, sitting together: Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

(2) On receipt of a complaint made under section 35, the District Commission may, by order, admit the complaint for being proceeded with or reject the same: Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant: Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was filed.

(3) Where the District Commission does not decide the issue of admissibility of the complaint within the period so specified, it shall be deemed to have been admitted.

Reference to mediation.

37. (1) At the first hearing of the complaint after its admission, or at any later stage, if it appears to the District Commission that there exists elements of a settlement which may be acceptable to the parties, except in such cases as may be prescribed, it may direct the parties to give in writing, within five days, consent to have their dispute settled by mediation in accordance with the provisions of Chapter V.

(2) Where the parties agree for settlement by mediation and give their consent in writing, the District Commission shall, within five days of receipt of such consent, refer the matter for mediation, and in such case, the provisions of Chapter V, relating to mediation, shall apply.

Procedure on admission of complaint

Where the complaint relates to any goods, the District Commission shall,— (a) refer a copy of the admitted complaint, within ***twenty-one days*** from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not ***exceeding fifteen days*** as may be granted by it;

(b) if the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, proceed to settle the consumer dispute in the manner specified in clauses (c) to (g); (c) if the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, obtain a sample of the goods from the complainant, seal it and authenticate it in the manner as may be prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory to make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by it;

(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

(e) remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate

laboratory, it shall forward a copy of the report along with such remarks as it may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, require the opposite party or the complainant to submit in writing his objections with regard to the report made by the appropriate laboratory;

(g) give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 39.

Section 38(3) The District Commission shall, if the complaint admitted by it under sub-section (2) of section 36 relates to goods in respect of which the procedure specified in sub-section (2) cannot be followed, or if the complaint relates to any services,— (a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Commission; (b) if the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, it shall proceed to settle the consumer dispute.

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, if the opposite party denies or disputes the allegations contained in the complaint, or

(ii) ex parte on the basis of evidence brought to its notice by the complainant, where the opposite party omits or fails to take any action to represent his case within the time given by the Commission; (c) decide

the complaint on merits if the complainant fails to appear on the date of hearing.

38(7) Every complaint shall be disposed of as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:

Provided that no adjournment shall ordinarily be granted by the District Commission unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Commission:

Provided further that the District Commission shall make such orders as to the costs occasioned by the adjournment as may be specified by regulations:

Provided also that in the event of a complaint being disposed of after the period so specified, the District Commission shall record in writing, the reasons for the same at the time of disposing of the said complaint.

38(8) Where during the pendency of any proceeding before the District Commission, if it appears necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

Review by District Commission in certain cases

Section 40: The District Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.

Appeal against order of District Commission.

Section 41: Any person aggrieved by an order made by the District Commission may prefer an appeal against such order **to the State**

Commission on the grounds of facts or law **within a period of forty-five** days from the date of the order, in such form and manner, as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed: Provided also that no appeal shall lie from any order passed by the District Commission pursuant to a settlement by mediation under section 80.

Establishment of State Consumer Disputes Redressal Commission

Section 42. (1) The State Government shall, by notification, establish a State Consumer Disputes Redressal Commission, to be known as the State Commission, in the State.

(2) The State Commission shall ordinarily function at the State capital and perform its functions at such other places as the State Government may in consultation with the State Commission notify in the Official Gazette: Provided that the State Government may, by notification, establish regional benches of the State Commission, at such places, as it deems fit.

(3) Each State Commission shall consist of— (a) a President; and (b) not less than four or not more than such number of members as may be prescribed in consultation with the Central Government.

Section 43. The Central Government may, by notification, make rules to provide for the qualification for appointment, method of recruitment,

procedure of appointment, term of office, resignation and removal of the President and members of the State Commission.

Officers and employees of State Commission

Section 46. (1) The State Government shall determine the nature and categories of the officers and other employees required to assist the State Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit. (2) The officers and other employees of the State Commission shall discharge their functions under the general superintendence of the President. (3) The salaries and allowances payable to and the other terms and conditions of service of, the officers and other employees of the State Commission shall be such as may be prescribed.

Jurisdiction of State Commission

Section 47. (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction— (a) to entertain—

- (i) complaints where the value of the goods or services paid as consideration, **exceeds rupees one crore**, but does not exceed rupees ten crore:

Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;

- (ii) complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees;

(iii) appeals against the orders of any District Commission within the State; and (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the State, where it appears to the State Commission that such District Commission has exercised a jurisdiction

not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof, and a Bench may be constituted by the President with one or more members as the President may deem fit: Provided that the senior-most member shall preside over the Bench.

(3) Where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it: Provided that the President or the other members, as the case may be, shall give opinion on the point or points so referred within a period of one month from the date of such reference.

(4) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided in such case, the permission of the State Commission is given; or

(c) the cause of action, wholly or in part, arises; or

(d) the complainant resides or personally works for gain

Review by State Commission in certain cases.

Section 50: The State Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.

Appeal to National Commission

Section 51. (1) Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of section 47 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed: Provided that the National Commission shall not entertain the appeal after the expiry of the said period of thirty days unless it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.

(2) Save as otherwise expressly provided under this Act or by any other law for the time being in force, an appeal shall lie to the National Commission from any order passed in appeal by any State Commission, if the National Commission is satisfied that the case involves a substantial question of law.

(3) In an appeal involving a question of law, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the National Commission is satisfied that a substantial question of law is involved in any case, it shall formulate that question and hear the appeal on that question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the National Commission to hear, for reasons to be recorded in writing, the appeal on any other substantial question of law, if it is satisfied that the case involves such question of law.

(5) An appeal may lie to the National Commission under this section from an order passed ex parte by the State Commission.

Hearing of appeal by State Commission and National Commission

Section 52. An appeal filed before the State Commission or the National Commission, as the case may be, shall be heard as expeditiously as possible and every endeavour shall be made to dispose of the appeal *within a period of ninety days* from the date of its admission:

Provided that no adjournment shall ordinarily be granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission:

Provided further that the State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment, as may be specified by regulations:

Provided also that in the event of an appeal being disposed of after the period so specified, the State Commission or the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

Establishment of National Consumer Disputes Redressal Commission

Section 53. (1) The Central Government shall, by notification, establish a National Consumer Disputes Redressal Commission, to be known as the National Commission.

(2) The National Commission shall ordinarily function at the National Capital Region and perform its functions at such other places as the Central Government may in consultation with the National Commission notify in the Official Gazette:

Provided that the Central Government may, by notification, establish regional Benches of the National Commission, at such places, as it deems fit.

Composition of National Commission.

54. The National Commission shall consist of— (a) a President; and (b) not less than four and not more than such number of members as may be prescribed.

Qualifications, etc., of President and members of National Commission

Section 55. (1) The Central Government may, by notification, make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the President and members of the National Commission: Provided that the President and members of the National Commission shall hold office for such term as specified in the rules made by the Central Government but not exceeding five years from the date on which he enters upon his office and shall be eligible for re-appointment: Provided further that no President or members shall hold office as such after he has attained such age as specified in the rules made by the

Central Government which shall not exceed,— (a) in the case of the President, the age of seventy years; (b) in the case of any other member, the age of sixty-seven years.

Jurisdiction of National Commission.

Section 58. (1) Subject to the other provisions of this Act, the National Commission shall have jurisdiction— (a) to entertain—

(i) complaints where the value of the goods or services paid as consideration exceeds rupees ten crore:

Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;

(ii) complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;

(iii) appeals against the orders of any State Commission;

(iv) appeals against the orders of the Central Authority; and (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

Section 58. (2) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof and a Bench may be constituted by the President with one or more members as he may deem fit: Provided that the senior-most member of the Bench shall preside over the Bench.

Section 58. (3) Where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority,

if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it: Provided that the President or the other member, as the case may be, shall give opinion on the point or points so referred within a period of two months from the date of such reference.

Review by National Commission in certain cases

Section 60. The National Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.

Power to set aside ex parte orders

61. Where an order is passed by the National Commission ex parte, the aggrieved party may make an application to the Commission for setting aside such order.

Transfer of cases

Section 62. On the application of the complainant or of its own motion, the National Commission may, at any stage of the proceeding, in the interest of justice, transfer any complaint pending before the District Commission of one State to a District Commission of another State or before one State Commission to another State Commission.

Appeal against order of National Commission

Section 67. Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) or (ii) of

clause (a) of sub-section (1) of section 58, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period: Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited fifty per cent. of that amount in the manner as may be prescribed.

Limitation period.

Section 69. (1) The District Commission, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Commission, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the District Commission or the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.

Remedies

The District Commission / State Commission / National Commission may pass one or more of the following orders to grant relief to the aggrieved consumer:

- to remove the defects pointed out by the appropriate laboratory from goods in question

- to replace the goods with new goods of similar description which shall be free from any defect
- to return to the complainant the price, or, as the case may be, the charges paid by the complainant
- 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 negligence of the opposite party;
- to remove the defects or deficiencies in the services in question
- to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them
- not to offer the hazardous goods for sale
- to withdraw the hazardous goods from being offered for sale
- to provide for adequate costs to parties.

By the Consumer Protection the consumer redressal agencies has been specifically empowered to order that the defects or deficiencies in the services in question be removed, or to discontinue or not to repeat any unfair or restrictive trade practice, not to offer for sale, or to withdraw the hazardous goods from the market, or to provide adequate costs to the parties.

In *Dist. Engineer Telecom., Sriganaganagar v. Dr. Tej Narain Sharma, III* (1995) C.P.C. 225, the dues of the telephone bill had been deposited by the complaint after the due date, 22 days after this deposit the telephone was disconnected without even remaining the complaint on phone. The phone remained disconnected for 15 days. The disconnection was held to be due to the negligence and same amounted to deficiency in services. The compensation was awarded for mental distress, agony and loss of reputation.

In *Union of India v. Nathmal Hansaria, I* (1997) C.P.J. 20 (N.C.), the daughter of the complainant, fell down and died while passing through inter-connecting passage in the Tinsukhia Mail going from Delhi to Guwahati. The passage was not protected by any grills, etc. The State

Commission awarded compensation of Rs. 2 lacs for death of girl and Rs. 25,000/- for mental agony, etc. to the parents of the deceased on account of deficiency in service by the opposite party, Railways. The decision was upheld by the National Commission.

In a significant ruling in *Vasanth P.Nair v. Smt.V.P.Nair*, I(1991) C.P.J. 685, the National Commission upheld the decision of the Kerala State Commission which said that a patient is a consumer and the medical assistance was a service and therefore, in the event of any deficiency in the performance of medical service, the consumer courts can have the jurisdiction. It was further observed that the medical officers service was not a personal service so as to constitute an exception to the application of the Consumer protection Act.

Supreme Court in its landmark decision in *Indian Medical Association v. V.P. Shantha and others*, III (1995) C.P.J. I (S.C.), has held that patients aggrieved by any deficiency in treatment, from both private clinics and Govt. hospitals, are entitled to seek damages under the Consumer Protection Act.