

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, SERVICE, GOODS

CONSUMER

The expression consumer is defined in S. 2(1)(d) of the Act. The primary purpose of the definition is to restrict the availability of consumer

remedies only. The method adopted is to confine the Act to non-business buyers from business sellers.

According to Section 2(d), '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 services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payments, when such services are availed of with the approval of the first-mentioned person;

[Explanation: For the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]

The definition of the term 'consumer' given in clause (d) of section 2(1) of the Act is comprehensive one so as to cover not only consumer of goods but also consumer of services. The definition is wide enough to include in consumer not only the person who buys any goods for consideration but also any user of such goods with the approval of the buyer. Similarly, it covers any person who hires or avails of any services for consideration and also includes any beneficiary of such services, when availed with the approval of the hirer. Thus, any user of goods or any beneficiary of services. other than the actual buyer or hirer, is a consumer for the purpose of this Act and he is competent to make a complaint before the Consumer Redressal Forum under this Act. The Act aims to

protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of service. The important characteristic of goods and services under the Act is that such goods are supplied at a price to cover the costs which consequently result in profit or income to the seller of goods or provider of services. It includes anyone who consumes goods or services at the end of the chain of production.

The Supreme Court in its decision in *Lucknow Development Authority v. M. K. Gupta* [(1994) 1 SCC 243] noted that the word 'consumer' is comprehensive expression. It extends from a person who buys any commodity either as eatable or otherwise from a shop, business house, corporation, store, fair-price shop to use it for private use or consumption and not for a commercial purpose. The term 'consumer' also includes any person who uses the goods with the permission of the buyer though he is not himself buyer.

CONSUMER OF GOODS

Under sub-clause (i) of section 2(1)(d), a consumer for the purpose of goods means any person, who-

- a. 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
- b. includes any user of such goods other than the person who buys them, when such use is made with the approval of the buyer, but
- c. does not include any person who obtains such goods for resale or for any commercial purpose. 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.

The above provision reveals that a person claiming himself as a consumer should satisfy that- (i) there must be a sale transaction between the seller and the buyer; (ii) the sale must be of goods; the buying of goods must be for consideration; (iv) the consideration has been paid or promised or partly paid and partly promised, or under any

system of deferred payment; and (v) the user of the goods may also be a consumer when such use is made with the approval of the buyer.

However, the term consumer does not include a person who obtains any goods for resale or for any commercial purpose. It is obvious that the parliament intended to restrict the benefits of the Act to ordinary consumers purchasing goods wither for own consumption or even for use in some small venture which they may have embarked upon in order to make a living as distinct from large scale manufacturing or processing activity carried on for profit.

Consumer of Services

The second category of consumer laid down under the act is that of hirer or user of services. Under sub-clause (ii) of Section 2(1)(d) of the Act, a consumer for the purpose of services means any person, who-

- a. 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
- b. includes any beneficiary of such services other than the person who hires or avails of them when such services are availed of with the approval of the hirer; but.
- c. does not include a person who avails of such services for nay commercial purpose. Commercial purpose does not include a person of services availed by him exclusively for the purpose of earning his livelihood, by means of self-employment.

In order to be a consumer for the purpose of services, it is necessary that the services must have been hired or availed of for consideration. But it is not necessary to pay the consideration immediately, it may be paid afterwards or in instalments. A student hiring the services of the university on payment of fees for appearing at the examination; or passenger getting railway reservation after payment is hiring service for consideration, is a consumer of services.

Service

The term services according to sec. 2(1)(o) 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.

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 organisations 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. The Consumer Protection Act, 1986 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. Be it as it may. In India various Acts

intended to protect the consumers against different forms of exploitation were enacted.

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, 1986 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, the Consumer Disputes Redressal agencies, which have been set up are:

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*.

District Forum

Composition of the District Forum (Section 10)

Each District Forum shall consist of the following :

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely :-

(i) be not less than thirty-five years of age, (ii) possess a bachelor's degree from a recognized university, (iii) be persons of ability, integrity and standing, and have adequate problems relating to economics, law, commerce, accountancy, industry public affairs or administration:

Provided that a person shall be disqualified for appointment as a member, if he-

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude;

or (b) is an undischarged insolvent; or (c) is of unsound mind and stands so declared by a competent court; or (d) has been removed or dismissed

from the service of the Government or a body corporate owned or controlled by the Government; or (e) has, in the opinion of the state

Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or (f) has

such other disqualifications as may be prescribed by the State Government.

Method of appointment

Every appointment under sub-section (I) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely :-

(i) the President of the State Commission - Chairman. (ii) Secretary, Law Department of the State - Member. (iii) Secretary, incharge of the Department - Member dealing with consumer affairs in the State

Provided that where the President of the state Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

Terms of Office and Salary

Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years, whichever is earlier.

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment and such re-appointment is also made on the basis of the recommendation of the Selection Committee.

Provided also that a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.

Jurisdiction of the District Forum (Section 11)

Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees 20 lakhs.

A complaint shall be instituted in a District Forum 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, actually

and voluntarily 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 either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or

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

In *Kurukshetra University v. Vinay Prakash Verma*, (1993) CPJ 647, it was held that objection & regarding territorial jurisdiction should be taken at the earliest opportunity or the same deemed to have been waived.

Further in *Consumer Education and Research Society v. Canara Bank*, (1991) CPR 405, it has been held a petition of complaint can be filed against corporation carrying on business within the territory of District Forum or Commission even though its sole or principal office is situated outside state limits.

Manner in which complaint shall be made (Section 12)

(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 Forum by-

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided 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 Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

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

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this sub-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 received.

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:

Procedure on receipt of complaint (Section 13)

(1) The District Forum shall, on admission of a complaint, if it relates to any goods,-

(a) refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of *thirty days* or such extended period not exceeding *fifteen days* as may be granted by the District Forum;

(b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute.

For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:-

(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath,
(ii) the discovery and production of any document or other material object producible as evidence,
(iii) the reception of evidence on affidavits, (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source. (v) issuing of any commission for the examination of any witness, and (vi) any other matter which may be prescribed.

Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the district Forum shall be deemed to be a civil court for the purposes of section" 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

It has been held in *Sagli Ram v. General Manager, United India Insurance Co. Ltd.*, II (1994) CPJ 444 that a consumer knocking at the door of the redressal agencies under the Act for relief in a consumer dispute must do so with clean hands; 1994 (I) CPR 434.

Finding of the District Forum (Section 14)

If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall 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;

(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;

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit:

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

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

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

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

(ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(hb) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or services provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;)

(i) to provide for adequate costs to parties.

Appeal (Section 15)

Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State commission may entertain an appeal after the expiry of the said period of thirty days If it is satisfied that there was sufficient cause for not filing it within that period.

In *General Manager. Telecom v. Jyantilal Hemchand Gandhi*, 1993 (III) CPR 155. it was held that the appellate fora constituted under the Act should not dismiss the appeal merely on the ground of default of appearance of the appellant but the merits of the case should be considered on the basis of the material available before them and thereafter pass appropriate order in the appeal;

Composition of the State Commission (Section 16)

Each State Commission shall consist of:

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;

(b) not less than two, and not more than such number of members, as may be prescribed, and one of who shall be a woman, who shall have the following qualifications, namely:-

(i) be not less than thirty-five years of age; (ii) possess a bachelor's degree from a recognized university; and (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent of the members shall be from amongst persons having a judicial background.

Every appointment under Sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely:-

(i) President of the State Commission -Chairman. (ii) Secretary of the Law Department of the State -Member. (iii) Secretary, incharge of Department dealing with consumer affairs in the State -Member. Provided that where the President of the State Commission is, by reason

of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government.

Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions.

Jurisdiction of the State Commission (Section 17)

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 and compensation, if any, claimed exceeds rupees exceeds rupees 20 lakhs but does not exceed one crore ; and (ii) appeals against the orders of any District Forum 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 Forum within the State, where it appears to the State Commission that such District Forum 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.

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, actually and voluntarily 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 either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises.)

In Kashyap Constructions (Pvt.) Ltd.v. Delhi Development Authority, 2001 (1) CPR. 128. It was held that the State Consumer Disputes Redressal Commission has no jurisdiction to entertain complaints regarding the transactions of shops/kiosks having been purchased in auction from the Delhi Development Authority;

Appeals (Section 19)

Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 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 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.

Composition of the National Commission (Section 20)

The National Commission shall consist of-

(a) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President; -

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of India;

(b) not less than four, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely :-

(i) be not less than thirty-five years of age; (ii) possess a bachelor's degree from a recognized university; and (iii) be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent of the members shall be from amongst the persons having a judicial background.

Provided further that a person shall be disqualified for appointment, if he –

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or (b) is an undischarged insolvent; or (c) is of unsound mind and stands so declared by a competent court; or (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or (e) has, in the opinion of the Central Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or (f) has such other disqualifications as may be prescribed by the Central Government:

Provided that every appointment under this clause shall be made by the Central Government on the recommendation of a Selection Committee consisting of the following, namely ;-

(a) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India -Chairman. (b) the Secretary in the Department of Legal Affairs in the Government of India -Member (c) Secretary of the Department dealing with consumer affairs in the Government of India -Member.

Salary and Term of Office

The salary or honorarium and other allowances payable to and the other terms and conditions of service of the members of the National Commission shall be such as may be prescribed by the Central Government.

Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and shall not be eligible for re- appointment.

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of seventy years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment.

Jurisdiction of the National Commission (Section 21)

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 and compensation, if any claimed exceeds one crore; and (ii) appeals against the orders of any State Commission; 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.

Appeal (Section 23)

Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order of 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.

Limitation Period (Section 24A)

The District Forum, 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.

A complaint may be entertained after the period if the complainant satisfies the District Forum, 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 National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.

Dismissal of Frivolous or Vexatious Complaints (Section 26)

Where a complaint instituted before the District Forum, the State Commission or, as the case may be, the National Commission is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order.

REMEDIES

In this lecture you will be able to know the remedies available to consumer under the Consumer Protection Act, 1986.

The main objective of the Act is to provide simple, speedy and inexpensive redressal to the consumer's grievances. To provide this, a three-tier quasi-judicial machinery at the national, state and district level has been envisaged under the Act; National Consumer Disputes Redressal Commission (National Commission).; State Consumer Disputes Redressal Commission (State Commission); District Consumer Disputes Redressal Forum (District Forum).

The District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees 20 lakhs. A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction:-

- The opposite party or each 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; or
- 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. In such a case, it is necessary that there should be either the permission of the District Forum, or the acquiescence in the institution of the suit, of such of the opposite parties who do not reside or carry on business or have a branch office, or personally work for gain, as the case may be, or
- The cause of action, wholly or in part, arises.

In *J.K. Synthetics Ltd. V. Smt. Amita Bhargava*, II (1993) C.P.J. 242 (N.C.), the registered office of the O.P. was at Kanpur. Payment was made through a bank in Delhi. Complaint filed in Calcutta was held to be outside the territorial jurisdiction of the District Forum. The order passed by the Calcutta District Forum was set aside.

Complaint can be filed by consumer, any voluntary organisation representing consumers registered under Companies Act/Societies Act, Central Government, State Government or Union Territory, and a group of consumers having common dispute.

Remedies:

The District Forum / 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 (Amendment) Act, 1993, the District Forum 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.

The term 'service', according to sec. 2(1)(o) 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 electric 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 service free of charge or under a contract of personal service. Deficiency, according to sec. 2(1)(g), means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained to be performed by a person in pursuance of a contract or otherwise in relation to any service.

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 *Vasantha 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.

Procedure on Admission of Complaint by District Forum:

District forum shall refer a copy of the admitted complaint within 21 days from the date of admission to the opposite party (i.e. admissibility of the complaint shall be decided within 21 days from the date on which the complaint was received), directing him to give his version of the case within 30 days or such extended period not exceeding 15 days as may be granted by the district forum.

After giving due opportunity to the opposite party to represent his case, the district forum shall proceed to settle the case. If the opposite party omits or fails to represent his case within the given time, the district forum can pass ex-parte order.

An endeavour shall be made to decide the complaint within 3 months from the date of receipt of notice by the opposite party where the goods does not require any testing; and within 5 months, where any testing or analysis of the goods is needed. No adjournments shall be ordinarily allowed unless sufficient cause is shown and reasons for adjournments have been recorded in writing by the forum.

District forum can pass interim order as may be deemed just and proper in the facts and circumstances of the case.

There is also a provision (sub sec 7 to sec 13) for substitution of the representative on the death of a party in the event of death of a complainant who is consumer or of the opposite party. In *Balbir Singh Makal v. Sir Ganga Ram Hospital, I (2001) C.P.J. 45 (N.C.)*, there was a complaint against a surgeon for medical blunder which resulted in the death of the complainants son. While the complaint was pending the surgeon died. It was held by the national Commission that on the death of the surgeon the cause of action had come to an end. Hence, the legal heirs of the surgeon could not be made liable for the surgeon's negligence.

Under the law of torts, the rule is 'actio personalis moritur cum persona', which means that the personal action against the defendant dies with the death of the defendant. That the rule has been recognized in respect of the consumer cases.

Appeal to State Commission shall be made within a period of 30 days and shall be disposed of within a period of 90 days.

The district forum, 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. However it may be extended after prescribed period, if the complainant satisfies the forum, or commission, as the case may be, that he has sufficient cause for not filing appeal within such period. Reasons for condoning delay must be recorded.

The delay in filing an appeal may be condoned if the appellant is able to show that there was sufficient cause for such delay. In *Vice Chairman, D.D.A. v. O.P. Gauba, III* (1995) C.P.J. 18 (N.C.), there was delay of 38 days by the Delhi Development Authority in making the appeal. The grounds for delay were the examining of the case from all its aspects at different levels. It was held that delay caused by inter office consultations is not sufficient cause and hence the delay was not condoned.

In *Delhi Development Authority v. I.S. Narula, II* (1995) C.P.J. 333, certified copy of the order of the District Forum was received by the appellant on 13-7-94. The appeal was filed on 27-9-94. The alleged reason for the delay was public holidays on 14th and 15th August, 1994, strike in Tis Hazari Court, and procedural delay in obtaining sanction of D.D.A. by the Counsel for filing the appeal. The Supreme Court observed that the power of condonation should be exercised liberally. There was held to be sufficient cause, and, hence, the delay was condoned.

If the opposite party fails to appear and contest, the District Forum may proceed and pass an ex parte order. If sufficient cause is shown for not

appearing in the case, an ex parte order may be set aside. The District Forum, which has the right to pass an ex parte order has also the power to set aside the same. In *Maya Mitra v. K.P. Equipments*, I (1996) C.P.J. 330 (West Bengal S.C.D.R.C.), it has been held that the District Forum, which has the right to decide the case ex parte if the opposite party or his agent fails to appear on the date of the hearing, has also the right to set aside the order if sufficient cause is shown provided that such a prayer is made early, without any undue delay.

If the complainant fails to appear on the date of hearing, the District Forum may dismiss the complaint in default. Such a dismissal of the complaint may be set aside and the complaint may be restored. In *Kamlesh Bansal v. Balaji Land Traders*, III (1995) C.P.J. 510 Delhi S.C.D.R.C, the complainant filed a complaint and failed to appear on the date fixed by the District Forum for ex parte evidence. Within 23 days of dismissal of complaint, the complainant applied for the restoration of the complaint. The said application was rejected on the ground that the District Forum could not restore the complaint. It has been held by the Delhi State Commission that the Commission, while excising appellate jurisdiction, can set aside the order of the District Forum dismissing the said application for restoring the complaint.

It is necessary that the Forum should take into account the evidence and the documents produced by the parties and the order of the forum should be speaking order, i.e., it should give reasons for the order. In *K.S. Sidhu v. Senior Executive Engineer*, I (2001) C.P.J. 144 (Punjab S.C.D.R.C), the complaint filed before the District Forum was dismissed by a non-speaking Order. The order did not discuss the evidence and the documents submitted before it. It was held that such an order was unjust and arbitrary and was liable to be set aside on that ground.

Similarly complaints can be made to State Commission and National Commission if the pecuniary value of the goods or services and

compensation, if any, claimed exceeds Rs. 20 lakhs and below one crore. National Commission can entertain complaints where the value of the goods or services and compensation, if any, claimed exceed one crore, and it can entertain appeals against the orders of any State Commission.

Every order made by the District Forum, the State Commission or the National Commission may be enforced by the District Forum, the State Commission or the Nation Commission as the case may be, in the same manner as a decree or order made by a civil court. If the said authorities are not able to execute their orders themselves, they may forward the same for execution to the Court, in the following manner:

- i. If the execution is sought against a company, it may be sent to a court within the local limits of whose jurisdiction the registered office of the company is situated, and
- ii. If the execution is sought against any person, it may be sent to the Court within the local limits of whose jurisdiction the place where the person concerned voluntarily resides or carries on business or personally works for him, is situated.

The court to which the order is to sent, shall then execute the order as if it were a decree or order sent to it for execution.

The procedures under the Act and under the Commissions are relatively simpler and more informal than under normal litigation. In fact any consumer can appear before the commission and need not even hire a lawyer to argue one's case. Despite the simple procedures there have not been too many consumer cases in India unlike the United States where the courts are filled with consumer grievances. One of the reasons for this fact has been the lack of adequate consumer awareness of their rights in India and the seemingly intimidating structure of courts and the legal profession. However to its credit, it must be said the Consumer Protection Act remains one of those rare laws which allows for a speedy and simple protection of the rights of ordinary people, and judicious use

of the same would foster a greater consumer movement in India in this age where the market is flooded with more products but not necessarily more information.