

COMSUMER DISPUTE REDRESSAL MECHANISM IN INDIA

EMERGENCE AND OVERVIEW:



- *Seven Deadly Sins* (the Rules of Violence) :
 - (i) Wealth without work
 - (ii) Pleasure without conscience,
 - (iii) Science without humanity,
 - (iv) Knowledge without character,
 - (v) Policy without principle,
 - (vi) Commerce without morality,
 - (vii) Worship without sacrifice,

Shri Mahatma Gandhiji

HISTORICAL EVOLUTION OF CONSUMER PROTECTION AND LAW IN INDIA

❖ Consumer Protection in Ancient India: A Historical Perspective

- Deep roots in the Indian civilization, dates back to 3200 B.C.
- For rulers- Subjects were prime area of concern.
Regulated their socio-economic life
- 'Dharma' Code derived from 'Vedas' were guiding principles.
- Authoritative text- Manu Smriti was most influential.

Manu Smriti

- Describes the social, political and economic conditions of ancient society.
- Ethical trade practices.
- Code of conduct for traders
- Punishments for crimes against buyers. For example:- Adulteration
- Thus, Manu Smriti effectively dealt with various consumer matters, many of which remain of great concern in modern legal systems.

MANU-QUOTES

- *“Man who behaves dishonestly to honest customers or cheats in his prices shall be fined in the first or in the middle most amercement.”*
- *“One commodity mixed with another must not be sold (as pure), nor a bad one (as good) not less (than the property quantity or weight) nor anything that is at hand or that is concealed.”¹*
- *“He who sells (for seed-corn that which is) not seed-corn, he who takes up seed (already sown) and he who destroys a boundary (mark) shall be punished by mutilation.”¹*
- *“A contract made by a person intoxicated or insane or grievously disordered (by disease and so forth) or wholly dependent, by an infant or very aged man, or by an unauthorized (party) is invalid.”¹*

1. www.jtexconsumerlaw.com/V11N3/JCCL_India.pdf

Kautilya's Arthashastra (Chankya)

- Treatise and a prominent source for statecraft & rights and duties of subjects.
- Consumer Protection occupies a prominent place where role of the State in regulating trade & to prevent crimes against consumers.
- **“A strong foundation is the key to any successful business”.**
- **“Your vision, your commitment, your purpose - all form the basis for an organization. They are the all-important pillars, the most essential part of any building”.**
- ❖ **“The superintendent of standardization should cause factories to be established for the manufacture of standard weights and measures.”²**
- ❖ **“The superintendent should cause a stamping of the weights & measures to be made every four months”.²**
- ❖ **“The trade guilds were prohibited from taking recourse to black marketing and unfair trade practice.”²**

Medieval Period:- Consumer Protection-
Prime concern of the rulers.

Muslim rules:- Large number of units of weights
were used.

Sultanate period:- Prices used were determined by
local conditions.

Alauddin Khalji:- Strict controls over market.
Price enforcement in the market.
Punishment for under weighing goods.

INTERNATIONAL LAW AND CONSUMER PROTECTION: THE HISTORY OF CONSUMER PROTECTION

❖ History of Consumer Protection

- Early form of movement in defense of consumers was born in the United States where bases for the birth and development of monopoly and oligopolistic capitalism started.³
- Until the 18th century, Consumers had to verify themselves the quality of the goods & only in presence of gross negligence, the seller could have been hold liable. ³
- Struggle against capitalism and food fraud started the first phase of consumerism but it wasn't until the third phase, in the 1950s, the involvement of the European countries.³
- First consumer's organizations were born in Denmark in 1947 and in Great Britain in 1955 where the Government created the Consumer Council.³
- The real normative breakthrough came with the Single European Act- it modified the Treaty of Rome by strengthening the role of the Economic and Social Committee.³
- In 1962, former US President John F Kennedy declared four basic consumer rights –
 - **the right to safety;**
 - **the right to be informed;**
 - **the right to choose and**
 - **the right to be heard.**
- The guidelines were formulated to:
 - Assist countries to achieve and maintain adequate protection for consumers
 - Encourage ethical conduct in the market
 - Encourage the development of market conditions which provide consumers with greater choice at lower prices

3. www.nyulawglobal.org/globalex/International_Law_Consumer_Protection.html

❖ Organizations for the consumer's protection

- The Federal Trade Commission (FTC) was created on September 26, 1914, President Woodrow Wilson signed the Federal Trade Commission Act into law.
 - Opened its doors on March 16, 1915.
 - Mission is to protect consumers and promote competition.
 - Works with foreign competition and consumer protection authority, and cooperates with foreign authorities on enforcement and policy matters through formal and informal agreements.⁴
- The Regulation on Consumer Protection Cooperation (CPC) is applicable in the European Economic Area.
 - The consumers' authorities of Norway, Iceland and Liechtenstein are authorities of the CPC Network.⁴
- The International Consumer Protection and Enforcement Network is a worldwide organization involving more than 40 countries, most of which are members of the Organization for Economic Cooperation and Development (OECD).
 - The aim of the Network is to share information about cross-border commercial activities & to encourage international cooperation among law enforcement agencies.
 - The Organization for Economic Co-operation and Development addresses a wide range of issues relevant to consumers.⁴

4. www.nyulawglobal.org/globalex/International_Law_Consumer_Protection.html

- UN General Assembly adopted few UN Guidelines for Consumer Protection in April 1985, and updated in 1999. The eight rights listed below are the work of consumer groups and many government consumer affairs agencies around the world.
 - **Right to satisfaction of Basic Needs**
 - **Right to Safety**
 - **Right to be Informed**
 - **Right to Choose**
 - **Right to be Heard**
 - **Right to Redress**
 - **Right to Consumer Education**
 - **Right to Healthy & Sustainable Environment**

THE UNITED STATES OF AMERICA

LEGISLATION ON CONSUMER PROTECTION

- Rapid industrialization after the end of Civil War in 1865 led to mergers and amalgamations & formation of trusts and cartels, which advanced a great deal by 1880s.⁵
- First antitrust legislation in 1890 which came to be known as the **Sherman Act**.⁵
- Two major legislations were passed in 1914 namely **the Federal Trade Commission Act, 1914 and the Clayton Act**.⁵
- The Federal Trade Commission Act set up– new machinery the Federal Trade Commission which shared with the department of justice the responsibility for enforcement of all anti-trust.
 - The Act prohibited unfair methods of competition.
 - It was amended in the year 1938 by **Wheeler-lea Act** which further extended the scope of the Act to cover unfair or deceptive acts or practices in commerce.⁵
- Clayton Act declared four types of restrictive practices or device price discrimination, exclusive dealing and tie-in contracts, interoperate share holdings and interlocking of directorates, illegal attempts at circumvention of the Clayton Act resulted in passing of the **Robinson Patman Act, 1936** which tightened up the law on price discrimination.⁵

- **Other legislations on consumer protection are:**
 - The Consumer Credit Protection Act, 1968 which requires certain disclosures in consumer credit sales and loans;
 - the Consumer Leasing Act, 1970 which deals with consumer leases;
 - the Fair Credit Billing Act, 1974 which contains provisions relating to credit billing practices,
 - The Magnuson-Moss Warranty Act, 1975, which establishes certain minimum requirements for written warranties offered by suppliers of consumer products.
 - The Fair Packaging Act, 1972 and the Consumer Product Safety Act, 1972 provide protection to the consumer in several ways.

- The Economy Analysis of Law Act which favoured consumer protection by requiring the enterprise costs of defective products to be transferred on the insurer and ultimately distributed among the consumers themselves.

- The Product Liability Law, a set of rules and principles on the direct responsibility of the company to the consumer, for the manufacture and sale of products that give rise to harmful events.

- Thus The United States has even today, the most comprehensive and well established anti-trust and consumer protection law in the world.

CONSUMER PROTECTION IN THE UNITED KINGDOM

- The anti-monopoly legislations came immediately after the World War-II. Number of statutes were passed for this purpose between 1948 and 1973 .⁶
- These statutes were:
 - The Monopolies and Restrictive Practices Enquiry and Controls Act, 1948 amended by the Monopolies and Restrictive Practices Act, 1953,
 - The Restrictive Trade Practices Act, 1968;
 - The Resale Price Act, 1964;
 - The Monopolies and Mergers Act, 1965 and
 - The Fair Trading Act, 1973.
 - ❖ Extended the scope of the existing laws on monopolies and mergers and restrictive trade practices
 - ❖ Covers even professions, businesses, nationalized industries and public undertaking.
 - ❖ Envisages a twin machinery for its enforcement
 - ❖ Seeks to protect the consumers from Consumer Trade Practices, and Unfair Practices.⁶
- All these legislations except the Fair Trading Act, 1973 have been repealed by the consolidating enactments:
 - The Restrictive Trade Practices Act, 1976,
 - The Resale Price Act, 1976 and
 - The Restrictive Practices Court Act 1976.
 - The Restrictive Trade Practices Act, 1976 has been supplemented by the Restrictive Trade Practices Act, 1977.⁶

6. shodhganga.inflibnet.ac.in/bitstream/10603/7831/10/10_chapter%202.pdf

- The Competition Act, 1980 has been enacted:
 - to make provisions for the control of anti-competitive practices in supply and acquisition of goods, and the supply and securing of services;
 - to provide for the investigation of prices and charges by the Director General of Fair Trading, and
 - to make some amendments with respect to the Fair Trading Act, 1973¹⁷ and the Restrictive Trade Practices Act, 1976.
- Apart from the aforesaid enactments, the United Kingdom has a number of other legislations to protect the interest of the consumers. These include
 - The Consumer Protection Act, 1961 which empowers the executive to promulgate regulations.
 - The Unfair Contracts Terms Act, 1977 which has various provisions to protect the consumers from unfair terms in the standard form of contracts;
 - The Price Commission Act, 1977 which requires that the firms with large turnover should notify price increases and periodical report on profits, and the smaller firms to keep appropriate financial records.
 - The Consumer Protection Act which creates both civil as well as criminal liability. It consists of five parts and four schedules which deal mainly with three subject i.e. product liability, unsafe goods and misleading price indications.

CONSUMER PROTECTION THROUGH LEGISLATIVE MEASURES PRIOR TO INDEPENDENCE

- Prominent feature of this time is “the formation of a unified nationwide modern legal system.”
- English Common Law applied through Privy Council and the High Courts Judge.
- Laws passed during the British regime concerning consumer interests are:
 - (a) The Indian Contract Act of 1872,
 - (b) The Sale of Goods Act of 1930,
 - (c) The Indian Penal Code of 1860,
 - (d) The Drugs and Cosmetics Act of 1940,
 - (e) The Usurious Loans Act of 1918, and
 - (f) The Agriculture Procedure (Grading and Marketing Act) of 1937.
- For 50 years- Sale of Goods Act of 1930 [SGA] was the exclusive source of consumer protection in India.

CONSUMER PROTECTION THROUGH LEGISLATIVE MEASURE IN POST INDEPENDENCE PERIOD

- Anglo-Saxon system introduced during British Regime continued to operate.
- Preamble, Fundamental Rights & Directive Principles of State Policy” in the constitution of India from 1950 guaranteed the rights of citizens & guided the State mechanism/policies.
- **Major Enactments:**
 - (i) The Drugs (Control) Act, 1950;
 - (ii) The Prevention of Food Adulteration Act, 1954.
 - (iii) The Essential Commodities Act, 1955.
 - (iv) The Monopolies and Restrictive Trade Practices Act, 1969.
 - (v) The Bureau of Indian Standard Act, 1986.
 - (vi) The Consumer Protection Act, 1986.

THE CONSUMER PROTECTION ACT OF 1986 WITH EXPANSION OF INTERNATIONAL TRADE & COMMERCE, EXPANSION OF BUSINESS/TRADE & VARIETY OF COMMON GOODS/SERVICES ENTERING MARKET

○ OBJECTIVES:-

- To promote & protect the rights of Consumer such as-
- **Right to-**
 - a) be protected against the marketing of goods and services which are hazardous to life and property.
 - b) be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices;
 - c) be assured, wherever possible, access to a variety of goods and services at competitive prices ;
 - d) be heard and to be assured that consumer's interest will receive due consideration at appropriate forums;
 - e) seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
 - f) to consumer education.
- To provide speedy & simple redressal to consumer, a quasi-judicial machinery is sought to be set up at the district, State & Central levels.

THREE TIER CONSUMER GRIEVANCES MACHINERY UNDER THE CONSUMER PROTECTION ACT!

- The Act envisages a three- tier quasi-judicial machinery at the National, State and District levels.
 - National Consumer Disputes Redressal Commission - National Commission. (Exceeding 1 Crore)
 - State Consumer Disputes Redressal Commissions - State Commission. (> Rs. 20 Lakhs < Rs. 1 Crore)
 - District Consumer Disputes Redressal Forums - District Forum. (< Rs. 20 Lakhs.)

BASIS	DISTRICT	STATE COMMISSION	NATIONAL COMMISSION
Composition	It consists of a president and two other members.	It consists of a president and two other members.	It consists of a president and four other members.
Who can be a President	A working or retired judge of District Court.	A working or retired judge of High Court.	A working or retired judge of Supreme Court.
Appointment of President	The president is appointed by the state government on the recommendation of the selection committee.	The president is appointed by the state government after consultation with the chief justice of the High Court.	The president is appointed by the central government after consultation with the chief justice of India,
Jurisdiction	In 1986, it had jurisdiction to entertain complaints where the value of goods or services does not exceed Rs 5, 00,000 but now the limit is raised to 20 lakhs. (w.e.f. 15-3-2003)	In 1986, it had jurisdiction to entertain complaints when the value of goods or services exceeds Rs 5,00,000 and does not exceed Rs 20,00,000 but now it is raised to more than Rs 20,00,000 and up to Rs1 crore. (w.e.f. 15-3-2003)	In 1986, it had jurisdiction to entertain complaints where the value of goods or services exceeds Rs 20 lakhs but now the limit is raised and it entertains the complaints of goods or services where the value exceeds Rs 1 crore. (w.e.f. 15-3-2003)

BASIS	DISTRICT	STATE COMMISSION	NATIONAL COMMISSION
Appeal against orders	Any person who is aggrieved by the order of District Forum can appeal against such order to State Commission within 30 days and by depositing Rs 25000 or 50% of the penalty amount whichever is less.	Any person who is aggrieved by the order of State Commission can appeal against such order to National Commission within 30 days and by depositing Rs 35000 or 50% of penalty amount whichever is less.	Any person who is aggrieved by the order of the National Commission can appeal against such order to Supreme Court within 30 days and by depositing 50% of penalty amount but only cases where value of goods or services exceeds Rs 1 crore can file appeal in Supreme Court.

DISTRICT FORUMS & STATE COMMISSION

- ❖ Is a quasi-judicial in nature. No strict-laws will apply.

❖ POWERS:

❖ A. **Power akin to those of Civil Court [Section 13(4)]**

- Examining, enforcing as well as summoning the witness on oath;
- Discovering and producing any material evidence;
- Receiving evidence on affidavit;
- Requesting for report or test analysis from the concerned authorities and laboratories;
- Issuing commission for examining the witness;

○ B. **Power like a Criminal Court:[Section 27(2)]**

- Can act like a first class Judicial Magistrate for the purpose of the code of criminal procedure. . (w.e.f. 15-3-2003).

○ C. **Power to make summary judgment [(Section 27(3)]**

According to the amendment 2002, District Consumer Forums & the State Commission are authorized to decide the cases on summary trial.

Chapter XXI (Section 261 to 265) of Criminal procedure Code, 1973 describes “Summary trials”.

Sec 262 of Crpc. Procedure for summary trials.—

- (1) In trials under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.
- (2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

○ D. Executive Powers (Section 25)

- According to the amendment 2002, the Consumer Forums or Commissions have been given some executive powers what they were lacking before amendment.
- If opposite party does not comply with the interim order passed by the Forum or Commissions, an order can be made to attach the property of the opposite party for not complying with order.
- If non-compliance of order continue for more than three months, than attached property may be sold to compensate the consumer suffered loss or injury and balance, if any, will be given to entitled party.

SECTION 13:- PROCEDURE ON ADMISSION OF COMPLAINT

Section 13 of Consumer Protection Act, 1986:

(2) The District Forum shall, if the complaints admitted by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,—

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days 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 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 Forum, the District Forum shall proceed to settle the consumer dispute,—
 - (ii) ⁷[**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 Forum.

7. Subs. by s. 9, *ibid.*, for “on the basis of evidence” (w.e.f. 15-3-2003).

POWER TO REVIEW EX-PARTE ORDERS

- Prior to the amendment of the Act in 2002, the power of review was not vested in any forum. The sole remedy against the orders of the District Forums and the State Commissions was to file an appeal or revision before the State Commission or the National Commission, respectively.
- However, the 2002 amendment to the Act brought about with it changes in the functioning and powers of the National Commission.
- **Section 22 :-Power and procedure applicable to the National Commission.—**
 - (1) The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.
 - (2) Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.
- **Section 22A:- Power to set aside ex parte orders.—**
 - Where an order is passed by the National Commission ex parte against the opposite party or a complainant, as the case may be, the aggrieved party may apply to the Commission to set aside the said order in the interest of justice.

- In *Jyotsana Arvind Kumar Shah and Ors. v. Bombay Hospital Trust*, (1999) 4 SCC 325, the Honourable Supreme Court held that the State Commission did not have the power to review or recall its ex-parte orders. The Court held that “if the law does not permit the Respondent to move an application for setting aside the ex-parte order, which appears to be the position, the order of the State Commission setting aside the ex-parte order cannot be sustained. As stated earlier, there is no dispute that there is no provision in the Act enabling the State Commission to set aside an ex-parte order”.
- Expressing a differing view, in *New India Assurance Company Ltd. v. R.Srinivasan* (2000) 3 SCC 242., the Honourable Supreme Court without referring to *Jyotsana’s Case*, held that the State Commission could indeed review or recall its ex-parte orders.

RAJEEV HITENDRA PATHAK AND ORS. VS.
ACHYUT KASHINATH KAREKAR AND ANR.
(2011) 9 SCC 541

The main question which arises for consideration before the full bench of the Honourable Supreme Court is whether the District Consumer Forums and the State Commissions have the power to set aside their own ex parte orders or in other words have the power to recall or review their own orders?

HELD:

- Under Consumer Protection Act, 1986, Sections 22 and 22A is regarding Recall/review. District Fora and State Commissions is not given any power to set aside ex parte orders. Power of review not expressly given by statute cannot be exercised. However, by virtue of Sections 22 and 22A after 2002 amendment, National Commission entitled to review its ex parte orders.
- Thus the decision in **Jyotsana's [(1999) 4 SCC 325] case laid down the correct law and the view taken in the later decision of this Court in New India Assurance Company Ltd. [(2000) 3 SCC 242]** is untenable and cannot be sustained.

FINDING OF THE DISTRICT FORUM (SECTION 14)

- According to Section 14 (1) of CPA, if the Forum is satisfied that complainant has suffered due to deficiency in service or defect in goods. It may issue an order to opposite parties. 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
 - b) To replace the goods
 - c) To return to the complainant the price, or, as the case may be, the charges paid by the complainant;
 - d) To compensate the consumer for the loss or injury occurred due to 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 it
 - g) Not to offer 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 service 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

(i) to provide for adequate costs to parties.

- **BHANWAR KANWAR V/S R.K.GUPTA & ANOTHER**

- **(2013) 4 SCC 252 (Punitive Damges)**

- The Apex Court has taken the view that wherein unauthorized medical treatment is administered, same is unfair trade practice and administering allopathic medicine by person who is qualified in Ayurvedic medicine cannot be approved of.
- Thus held by the Apex Court:
 - The child & mother suffered physical & mental injury due to misrepresentation made by respondent.
 - Further held that it was not proper for National Commission to divert 50% compensation of Rs 5 lakhs awarded by it, to consumer Legal Aid Account.
 - **Punitive/exemplary damages**, Deceptive practice by making false statement. Thus the Apex Court enhanced the compensation amount from Rs.5 lacs to Rs. 15 lacs.

- **General Motors (India) Private Ltd V/S Ashok Ramnik Lal Tolat & Another**

- **(2015) 1 SCC 429 (Punitive Damages)**

- According to the observation made by the Supreme Court:
 - Mere proof of "unfair trade practice" is not enough for claim or award or relief unless causing of loss is also established.
 - Neither there is any averment in the complaint about the suffering of punitive damages.
 - Normally, punitive damages are awarded against a conscious wrongdoer unrelated to the actual loss suffered.
 - Such a claim has to be specially pleaded.
 - Moreover, no litigant can be punished by way of punitive damages for merely approaching the Supreme Court, unless its case is found to be frivolous.
- Thus held by the Apex Court:
 - Claim for punitive damages made by consumer for first time before Supreme Court, not permissible being beyond claim of consumer complainant in complaint filed by him.
 - Order of National Commission directing appellant to pay punitive damages of Rs. 25 lakhs set aside.

SUPREME COURT OF THE UNITED STATES

- **BMW of North America, Inc v/s Gore**

- **517 U.S. 559 (1996) (Punitive Damages)**

- Plaintiff bought a new BMW, & later discovered that the vehicle had been repainted before he bought.
- Defendant revealed that their policy was to sell damaged cars as new if the damage could be fixed for less than 3% of the cost of the car.
- Alabama jury awarded \$4000 in compensatory damages (lost value of the car) & \$4 million in punitive damages, which was later reduced to \$2 million by the Alabama Supreme Court.
- **Opinion of the Alabama Supreme Court:**
- Punitive damages may not be “grossly excessive”-if they are, then they violate substantive due process.
- For punitive damages to stand, the damages must be reasonably necessary to vindicate the State’s legitimate interest in punishment & deterrence.
- Three factors in making determination:
 - 1) The degree of reprehensibility of the defendant’s conduct.
 - 2) The ratio to the compensatory damages awarded;&
 - 3) Comparison of the punitive damages award & civil or criminal penalties that could be imposed comparable misconduct.
- The Supreme Court noted, however that these 3 factors can be over-ridden if it is “necessary to deter future conduct”

LIMITATION PERIOD

- Section 24A of The Consumer Protection Act, 1986: Limitation period.
 - 1) 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.
 - 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 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.

BAR OF LIMITATION CANNOT BE STRICTLY CONSTRUED TO THE DISADVANTAGE OF CONSUMER

- **NATIONAL INSURANCE CO. LTD. V/S HINDUSTAN SAFETY GLASS WORKS LTD.**

- The Supreme Court held that the provision of limitation in the Consumer Protection Act cannot be strictly construed to disadvantage a consumer.
- As per Section 24A of the Consumer Protection Act.1986 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. But a complaint may be entertained after the period specified above, 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.
- Thus Apex Court held that “it is necessary for the courts to take a pragmatic view of the rights of the consumer principally since it is the consumer who is placed at a disadvantage vis-à-vis the supplier of services or goods”.

PENALTIES(SECTION 27)

- Each and every order made by District Court is enforceable as enforced by Civil Court, if there is a non-compliance of the order, the concerned person will be charged with any one or all of the following penalties:
 - ❖ Imprisonment for a term which shall not less than one month but which may extend to three years
 - ❖ Fine which shall not be less than from Rs. 2,000 but which may extend to Rs. 10,000, or
 - ❖ With both.

NO CHALLENGE OF CONSUMER FORUM ORDERS IN HIGH COURT: SUPREME COURT

Cicily Kallarackal V/S Vehicle Factory

(2012) 8 SCC 524

- Hon'ble Supreme Court ruled that a high court cannot entertain a writ petition against the orders of the consumer fora, for which the law prescribes a statutory channel of appeal.
- The Court observed that a proper channel for appeals is prescribed under the Consumer Protection Act. When the legislature provides a statutory mechanism for appeals to a higher court or tribunal, it would not be proper to permit the parties to bypass such statutory remedy provided by law and instead approach the HC in its writ jurisdiction under Article 226 of the Constitution of India.
- Accordingly, it directed the high courts to exercise caution while entertain writ petitions. It further directed that this order should be circulated to all the high courts and brought to the notice of all the HC judges.
- **Impact:** This ruling will save consumers the harassment of needlessly being dragged by the opponent to the HC to frustrate and tire them out.

CONSUMER PROTECTION- AN OVERVIEW

- The Consumer Protection Bill, 2018 was introduced in Lok Sabha by the Minister of Consumer Affairs, Food and Public Distribution, on January 5, 2018. The Bill replaces the Consumer Protection Act, 1986. A Consumer Protection Bill to replace the Act was introduced in 2015, but has been withdrawn post the introduction of the 2018 Bill..
- **Main features of bill:**
- Central Consumer Protection Authority (CCPA)
- Filing of consumer complaint electronically
- Measures to Prevent Unfair Trade Practices in E-commerce
- Unfair Contracts
- Product Liability Action
- Reference to Mediation
- Enhancing of Pecuniary Jurisdiction

OBJECTS AND REASONS OF THE BILL

- The Consumer Protection Act, 1986 was enacted to provide for better protection of the interests of consumers
- Although, the working of the consumer dispute redressal agencies has served the purpose to a considerable extent under the said Act, the disposal of cases has not been fast due to various constraints.
- Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1986.
 - The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers.
 - Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices.
 - Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-commerce pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment
- Therefore, there is a need to amend the Act to address the myriad and constantly emerging vulnerabilities of the consumers.⁸

8. <https://taxguru.in/...law/clausewise-details-of-consumer-protection-bill-2018-introduce...>

- **The BILL:-**
- Provides for the establishment of an executive agency to be known as the Central Consumer Protection Authority (CCPA):
 - to promote, protect and enforce the rights of consumers;
 - make interventions when necessary to prevent consumer detriment arising from unfair trade practices and
 - to initiate class action including enforcing recall, refund and return of products, etc.
- Envisages provisions for product liability action on account of harm caused to consumers due to a defective product or by deficiency in services.
- Further, provision of “Mediation” as an Alternate Dispute Resolution Mechanism has also been provided.
- Provides for several provisions aimed at simplifying the consumer dispute adjudication process of the Consumer Disputes Redressal Agencies

THANK YOU

