

Enhancing Consumer's Access to Speedy And Quality Justice:

ROLE OF DISTRICT CONSUMER FORUM



“Man who behaves dishonestly to honest customers or cheats in his prices shall be fined in the first or in the middle most amercement.”

- Manu smriti

“NEED FOR CONSUMER PROTECTION ACT

IN AN ERA OF FREE COMPETITION

WHERE CONSUMER IS THE KING

THEREFORE, KING NEED PROTECTION”





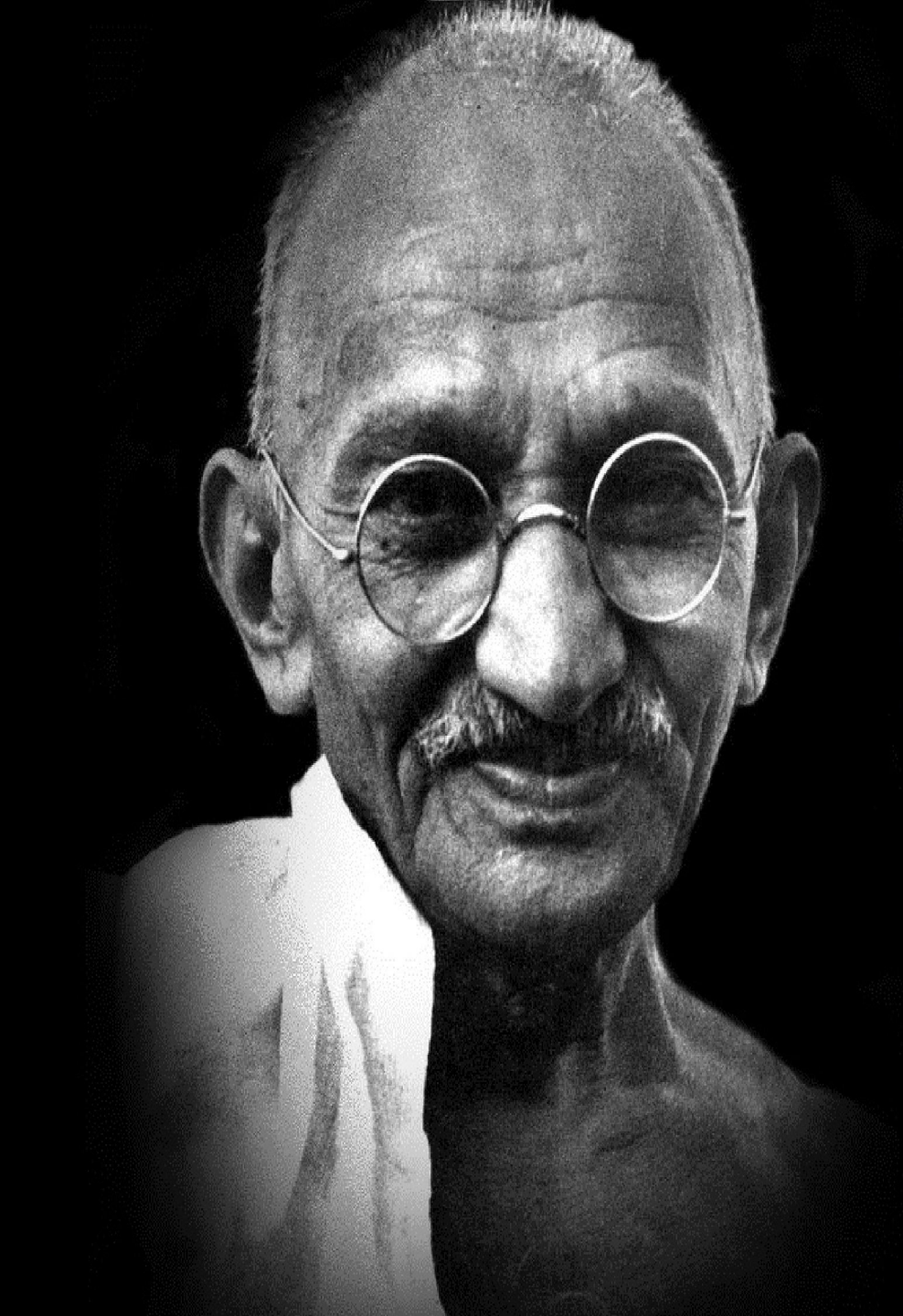
CONSUMER PROTECTION

With respect to the everyday rights and wrongs of the great majority of an urban community, the machinery whereby rights are secured practically defeats rights by making it impracticable to assert them when they are infringed.

- Roscoe Pound (1913)

Justice is a consumer product and must therefore meet the test of confidence, reliability and dependability like any other product if it is to survive market scrutiny. It exists for the citizenry 'at whose service only the system of justice must work'. Judicial responsibility, accountability and independence are in every sense inseparable. They are, and must be, embodied in the institution of the judiciary."

- Dr. Cyrus Das



"Seven Deadly Sins

- "Wealth without work**
- "Pleasure without conscience**
- "Science without humanity**
- "Knowledge without character**
- "Politics without principle**
- "Commerce without morality**
- "Worship without sacrifice."**

—Mahatma Gandhi

INTRODUCTION

- ❑ In the era of science & technology- vast competition prevailing in market.
- ❑ In last few years' market is found to be influenced by:
 - the false, misleading advertisements or representations,
 - bargaining, offering gifts, prizes, contests and hoardings attracting public for product or services.
- ❑ Previously “consumer was asked to beware” i.e “Caveat Emptor” but now it is replaced by Caveat Venditor i.e. “let seller be beware” as due to:
 - Policies introduced,
 - Government laws,
 - consumer protection,
 - NGO and
 - Increased competition in the market.



HISTORICAL PERSPECTIVE OF THE CONSUMER MOVEMENT



The consumer movement had primarily started in the West.

History of the consumer movement can be traced from the judgment of the leading case ***Carlill v. Carbolic Smoke Ball Company* 1893 (1) Q.B. 256.**

Manufacturers' liability for minimum quality standard for product was established

In 1856 for the first time, a select committee recommended that a cheap and easy remedy should be afforded to consumers who received adulterated or falsely described food.

This suggestion was taken up in the Merchandise Marks Act, 1887.

In a leading English case ***Donoghue v. Stevenson* (1932) A.C. 562:**

Over a strong dissent the majority held that the manufacturer would be liable.



➤ The word “consumer” is a comprehensive expression.



- It extends from a person who buys any commodity to consume either as eatable or otherwise from a shop, business house, corporation, store, and fair price shop to use of private or public services.
- A Consumer is a person who purchases a product or avails a service for a consideration, either for his personal use or to earn his livelihood by means of self employment. The consideration may be:
- Paid
 - Promised
 - Partly paid and partly promised.
- It also includes a beneficiary of such goods/services when such use is made with the approval of such person.



What are Goods?

- “Goods” means every kind of movable property other than actionable claims and money, and includes stock and shares, growing crops, grass and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of the sale.

What is a Defect?

- “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 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.



Deficiency - Service

- **‘Deficiency’ means**
 - a fault, imperfection, shortcoming or inadequacy in quality, nature, or manner of performance than is required.
- **‘Service’ includes**
 - service in connection with banking, financing, insurance, transport, processing, supply of electrical and other energy, boarding or lodging, housing construction, entertainment, amusement or purveying of news and other information
 - but does not include any service free of charge or under a personal contract.

Definition Of Unfair Trade Practice.

- A trade practice which, for the purpose of promoting the sale, use or supply of any good or for the provision of any services, adopts any unfair method or unfair or deceptive practice.

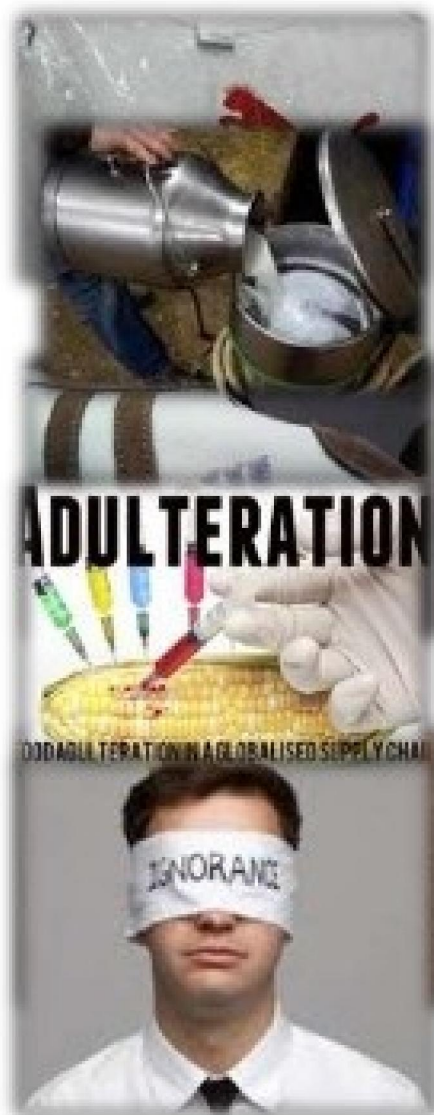


Some of these practices include:

- False Representation
- Price of product or service is misleading.
- False and Misleading Advertisement of selling at Bargain price.
- Offering gifts, prizes, etc. to lure customers with no intention of providing them.
- Selling goods which do not fall within the safety standards set up by competent authority.
- Hoarding or destroying goods with the intention of raising the cost of these or similar goods manufactured in greater number so as to manipulate higher prices.
- Manufacturing or offering spurious goods or adopting deceptive practices in the provision of services.

PROBLEMS FACED BY CONSUMERS

- ★ Illiteracy and Ignorance,
- ★ Unorganised Consumers,
- ★ Spurious Goods,
- ★ Deceptive Advertising,
- ★ Adulteration,
- ★ Irregular Supply,
- ★ Other Problems.



Consumer Protection Act, 1986



- The Consumer Protection Act which is social welfare legislation is a milestone in the history of socio-economic legislation in the country.
- It is an Act to provide for better protection of the interests of consumers.
- It has come as a panacea for consumers all over the country and is considered as one of the most important legislations enacted for the benefit of the consumers.
- It provides inexpensive and prompt remedy.
- It was enacted with the object and intention of speedy disposal of consumer disputes at a reasonable cost, which is otherwise not possible in ordinary judicial/court system.
- Amended in 1991, 1993 & 2002.

RIGHTS OF A CONSUMER



- ★ Right to Safety.
- ★ Right to Choose.
- ★ Right to be Informed.
- ★ Right to be Heard.
- ★ Right to Seek Redressal.
- ★ Right to Consumer Education.



Hall
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THREE TIER CONSUMER GRIEVANCES MACHINERY UNDER THE CONSUMER PROTECTION ACT

❑ Establishment of Consumer Disputes Redressal Agencies:

- 1) National Consumer Disputes Redressal Commission - National Commission. (Exceeding 1 Crore)
- 2) State Consumer Disputes Redressal Commissions - State Commission. (Exceeds Rs. 20 Lakhs but does not exceed Rs. 1 Crore)
- 3) District Consumer Disputes Redressal Forums - District Forum. (Not exceeding Rs. 20 Lakhs.)
 - District Consumer Disputes Redressal Forum is the lowest Forum in the first instance for redressal of Consumer Disputes.



FORUMS

FORUMS	ESTABLISHED BY	COMPOSITION	JURISDICTION	APPEAL
District Forum	State Government	<ul style="list-style-type: none"> - Chairman & 2 members - One shall be woman 	Less than Rs.20 lakhs	To state commission within 30 days of order
		Head: District Judge		
State Commission	State Government	<ul style="list-style-type: none"> - President & - Minimum 2 members - One shall be woman 	In range of Rs. 20 lakhs to Rs. 1 crore	To national commission within 30 days of order
		Head: High Court Judge		
National Commission	Central Government In 1988	<ul style="list-style-type: none"> - President & - Minimum 4 members - One shall be woman 	More than Rs. 1crore	To supreme court within 30 days of order.
		Head: Sitting or Retired Judge of the 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)]
- B. Power like a Criminal Court:[Section 27(2)]
- C. Power to make summary judgment [(Section 27(3))]
- D. Executive Powers (Section 25)



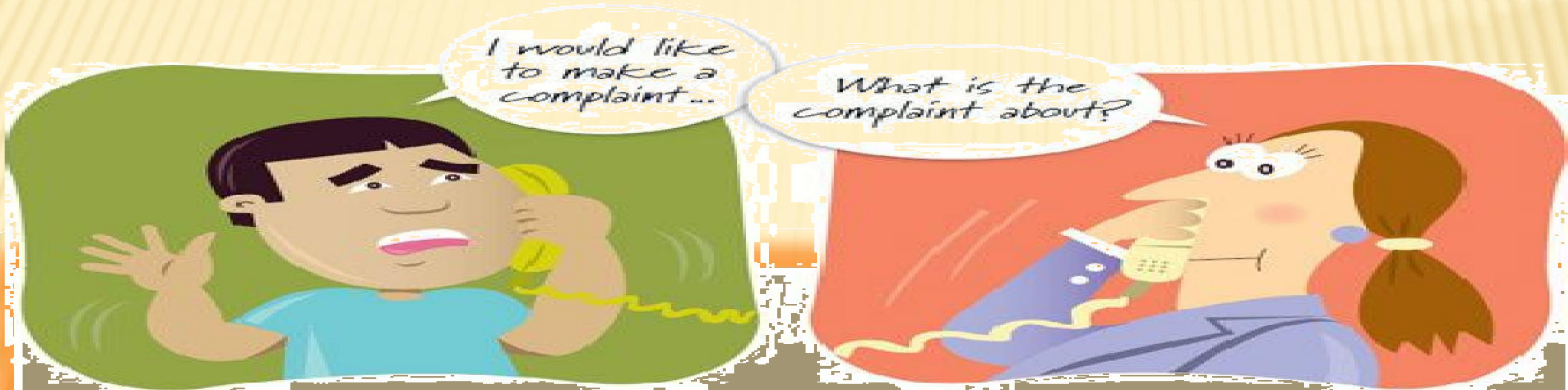
COMPLAINT

- ★ Any allegation in writing made by a complainant.

- ★ Complaint is filed for:-
 - Defect in goods,
 - Deficiency in service,
 - Charging of excess price,
 - Hazardous goods or
 - Unfair trade practices.




WHO CAN FILE A CONSUMER COMPLAINT ?



A complaint can be filed in a District Forum by:

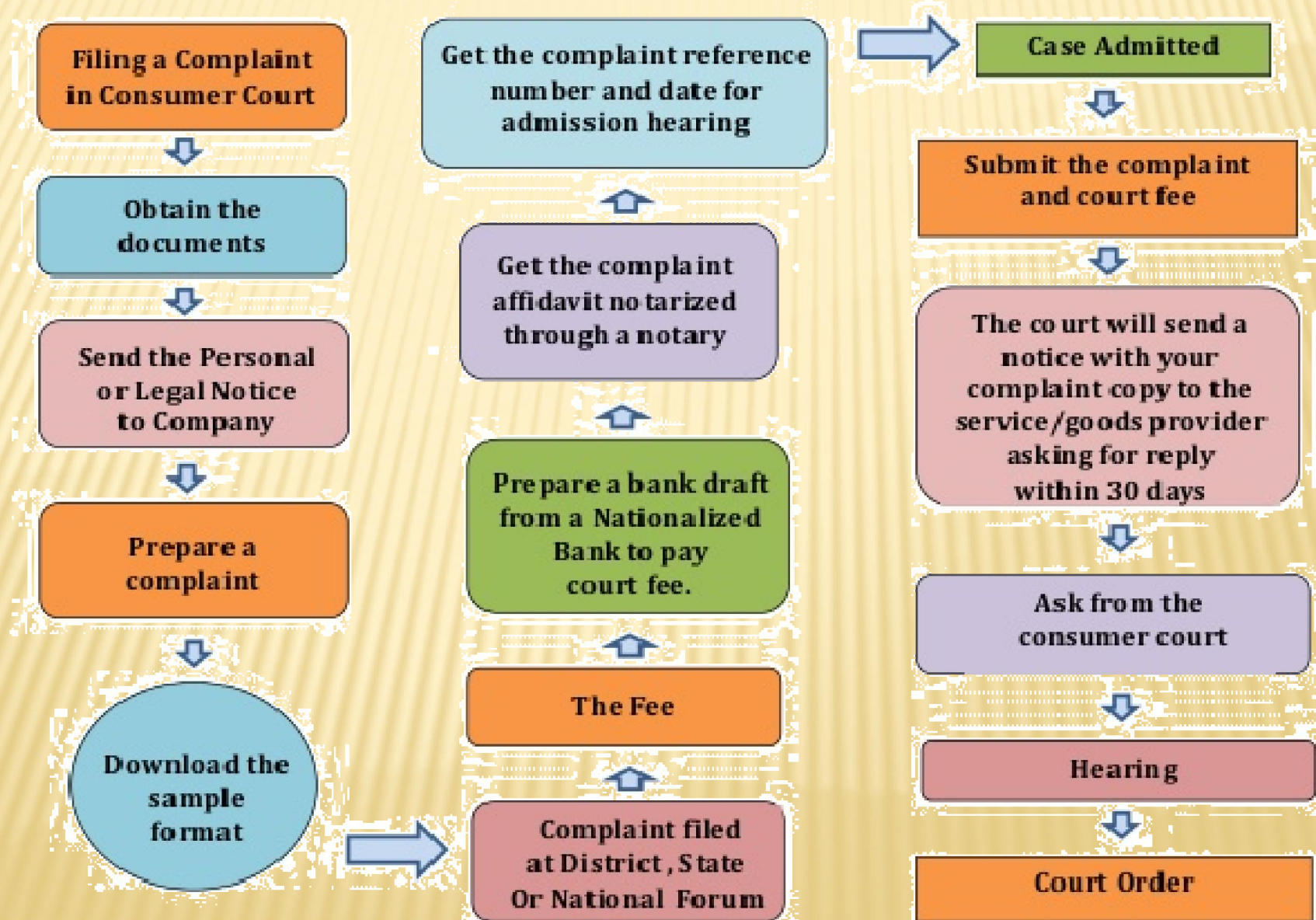
- 1) Consumer
- 2) Any recognized consumer association
- 3) One or more consumers where there are numerous consumers having the same interest.
- 4) The central or state government.
- 5) In case of death of a consumer, his legal heir or representative.



LIMITATION PERIOD FOR FILING A COMPLAINT

- ▣ District Forum or State Commission or the National Commission within 2 years from the date on which the cause of action has arisen. The Forum/Commission concerned can overlook the delay for recorded reasons [Section 24A].
- ▣ Appeals are require to be filed within 30 days from the date of receipt of the court's order.
- ▣ It may be noted that these time frames are not absolute limitations. If the Consumer Forum is satisfied that there was sufficient cause for not filing the complaint within the prescribed period, it can entertain a complaint beyond limitation time. However the Forum must record the reasons for condensation of delay.

PROCEDURE OF FILING A COMPLAINT



REMEDIES AVAILABLE TO AGGRIEVED CONSUMER

- To Remove the defects;
- Replacement of the goods;
- Refund of the price paid;
- Removal of defects or deficiencies in the services;
- Award of compensation for the loss or injury suffered;
- Discontinue and not to repeat unfair trade practice or restrictive trade practice;
- To withdraw hazardous goods from being offered for sale;
- To cease manufacture of hazardous goods and desist from offering services which are hazardous in nature;
- If the loss or injury has been suffered by a large number of consumers who are not identifiable conveniently, to pay such sum (not less than 5% of the value of such defective goods or services provided) which shall be determined by the forum;
- To issue corrective advertisement to neutralize the effect of misleading advertisement;
- To provide adequate costs to parties.



CASES UNDER CONSUMER PROTECTION ACT 1986



COMPANY IS INCLUDED IN WORD “PERSON”

✕ *Karnataka Power Transmission Corporation v Ashok Iron Works Private Limited*
(2009) 3 SCC 240

✕ The Supreme court, in this case, held that:

- + While defining ‘person’ in Section 2(1)(m), the Legislature never intended to exclude a juristic person like company. As a matter of fact, the four categories by way of enumeration mentioned therein is indicative, categories (i), (ii) & (iv) being unincorporate and category (iii) corporate, of its intention to include body corporate as well as body un-incorporate.
- + The expression ‘but does not include a person who avails of such services for any commercial purpose’ inserted in Section 2(1)(d)(ii) by the Act 62 of 2002 is not applicable in the facts and circumstances of the present case since the controversy relates to the period prior to amendment.
- + Thus company incorporated under Companies Act is a person within the meaning of Section 2(d) reads with Section 2(1)(m) of the CPA.

✕ It also reiterated its own position in *Southern Petrochemical Industries* (2007) 5 SCC 447 that the word “supply” is not the same as “sale” and in the context of electricity, it would be a provision of service as under section 2 (1)(d)(ii) of the Act.

NON-ADVOCATES CAN APPEAR IN CONSUMER CASES:

- ✗ C. Venkatachalam v/s Ajitkumar C. Shah and others

- ✗ (2011) 9 SCC 707

- ✗ Persons who may file complaints & represent person before consumer Fora:
Held:
 - + Authorized agents who are non-lawyers can represent, appear and argue cases filed under the Consumer Protection Act before consumer district forums.
- ✗ Further held that the Act of 1986 is a special piece of legislation for the better protection of the interests of consumers.
- ✗ Before concluding, the apex court considered American, English and Australian laws that permitted similar non-legal representation in certain areas before quasi-judicial bodies or subordinate courts.

NO CHALLENGE OF CONSUMER FORUM ORDERS IN HIGH 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 High Court 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.

PUNITIVE DAMAGES

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

✖ (2013) 4 SCC 252

- ✖ 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.

PUNITIVE DAMAGES

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

✖ (2015) 1 SCC 429

- ✖ 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 damaged of Rs. 25 lakhs set aside.

PROCEDURE OF SUMMARY TRIAL TO BE FOLLOWED

- ✖ *Kamlesh Aggarwal v/s Narain Singh Dabbas & Anr*
 - ✖ (2015) 11 SCC 661

- ✖ Background:

- ✖ Appellant filed a complaint before District Forum for not allotting & registering a plot in her name, in a resolution passed by it, cancelled appellant's membership in default of payment by her.
- ✖ District Forum vide its order directed Navchetna Sahkari Awas Samiti Ltd to allot & register the said plot in favour of appellant within 3 months.
- ✖ For non-compliance of order by respondents, District Forum ordered for three months imprisonment along with penalty of Rs 3000.
- ✖ State Commission while setting aside conviction finds that
 - + District forum has not adopted summary trial as provided under crpc.

- ✖ Held: Remand: when warranted:

- ✖ State Commission should have remanded matter to District Forum considering that appellant had been litigating for last 17 years & further no remedy was available to her even under section 24 of CPA.
- ✖ Apex Court remanded case to District Forum.

- ✖ Second Appeal: Held:

- ✖ No second appeal is provided in terms of Section 27(A) (2) of CPA Act.

- ✖ Alternate remedy: Held:

- ✖ Alternate right to execute order of District Forum by invoking Order 21 rule 32 CPC which is permissible in terms of Section 13 (4), (6) & (7) of CPA , apart from initiating proceedings under section 27 CPA.

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

✕ NATIONAL INSURANCE CO. LTD. V/S HINDUSTAN SAFETY GLASS WORKS LTD.
(2017) 5 SCC 776

- ✕ 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”.

FOR ENTITLEMENT TO COMPENSATION IT IS ESSENTIAL TO PROVE LOSS OR DAMAGE

✖ Chief Administrator, H.U.D.A. & Anr. v. Shakuntla Devi

✖ (2017) 2 SCC 301

- ✖ Award of fair, just and reasonable compensation: Principles summarised:
 - + It is pre-condition that there must be proof of loss or injury suffered by consumer due to negligence of opposite party.
 - + Once this proof is adduced, Consumer Forum needs to decide on quantum of compensation.
 - + Computation of compensation has to be fair, reasonable & commensurate to loss of injury.
 - + Duty of Consumer Forum to take into account all relevant factors for commutation of compensation.

- ✖ Object of the Consumer Protection Act, 1986
 - + The avowed object of the Consumer Protection Act, 1986 is to provide for better protection of the interest of consumers. The statement of the objects and reasons, inter alia, provides for a speedy and simple redressal to consumer disputes. The quasi judicial bodies at the District, State and Central levels were empowered to give relief to the consumers and award, wherever appropriate, compensation to consumers...(para 11)

SC ASKS CENTRE TO FRAME RULES AND REGULATIONS FOR EFFECTIVE IMPLEMENTATION OF CONSUMER PROTECTION ACT

✖ State Of U.P. Through Principal Secretary & Ors v. All U.P. Consumer Protection Bar Association

✖ (2017) 1 SCC 444

✖ Inadequacy of members/presiding officer, resources and infrastructure:Held:

- + With the proliferation of goods and services in a rapidly growing economy, CPA Act, 1986 was envisaged to be the corner-stone of a vibrant consumer movement.
- + Importance of adopting unified standards and objective processes of selection applicable to all the States considering wide variation in standards and a great deal of subjectivity, and bureaucratic and political interference in appointments of Presiding officers of consumer fora.
- + Directions issued to State and Central Government.

CONSUMER FORUMS HAVE THE JURISDICTION TO DISMISS THE COMPLAINT IN LIMINE

✖ *M/S Anjaneya Jewellery vs. New India Assurance Co.Ltd.*

✖ *CIVIL APPEAL NO.6878 OF 2018*

- ✖ In this case, the question for consideration was
 - + whether the National Consumer Disputes Redressal Commission was justified in dismissing a complaint in limine.
- ✖ The Supreme Court held that:
 - + Consumer forums have the jurisdiction to dismiss the complaint in limine and decline its admission without notice to the opposite party.
 - + Further observed that such jurisdiction to dismiss the complaint in limine has to be exercised by the Commission having regard to facts of each case, i.e., in appropriate case.
- ✖ It was brought to the notice of the bench that
 - + Section 13 of the Act has undergone amendment w.e.f. 15.03.2003.
 - + Earlier Section 13 had the words "procedure on receipt of complaint".
 - + However, after 15.03.2003, in place of these words, the words "on admission of a complaint" were substituted,
- ✖ However, in the facts of the case, the bench said that the instant complaint does not appear to be of the nature, which deserved the dismissal in limine.
- ✖ Thus remanded the case back to the Consumer commission.



CONSUMERS

BE AWARE OF YOUR RIGHTS

- If not satisfied with the Goods / Services of a packaged commodity, approach consumer care cell, the details of which are given on the package.
- It is your right to know the gross weight of packaged commodity and demand a printed receipt free of cost from the retailer dealing in packaged commodities.

**Be alert
and enforce
your Rights
as a
Consumer**



Ministry of Consumer Affairs,
Food and Public Distribution
Department of Consumer Affairs
Government of India, Krishi Bhawan,
New Delhi-110001
Website: www.fcamin.nic.in

FOR GUIDANCE CALL
National Consumer Helpline No. - 1800-11-4000
(TOLL FREE - BSNL / INTEL 011 - 27662955 - 58
(Normal call Charges)

SOURCES

- ✖ http://www.ncdrc.nic.in/1_1.html#_Hlk149662025
- ✖ https://consumerhelpline.gov.in/Consumer_Handbook.pdf
- ✖ [Dr. Harpreet Kaur. Consumer Activism and Globalisation of Consumerism : An Overview. \(2017\) PL June 68](#)



