



CONSUMER PROTECTION MECHANISM

**CONSUMER PROTECTION ACT
1986**

A black and white portrait of Mahatma Gandhi, showing his face from the chest up. He is wearing his characteristic round glasses and has a mustache. The background is dark, and the lighting highlights his features.

"Seven Deadly Sins

"Wealth without work

"Pleasure without conscience

"Science without humanity

"Knowledge without character

"Politics without principle

"Commerce without morality

"Worship without sacrifice."

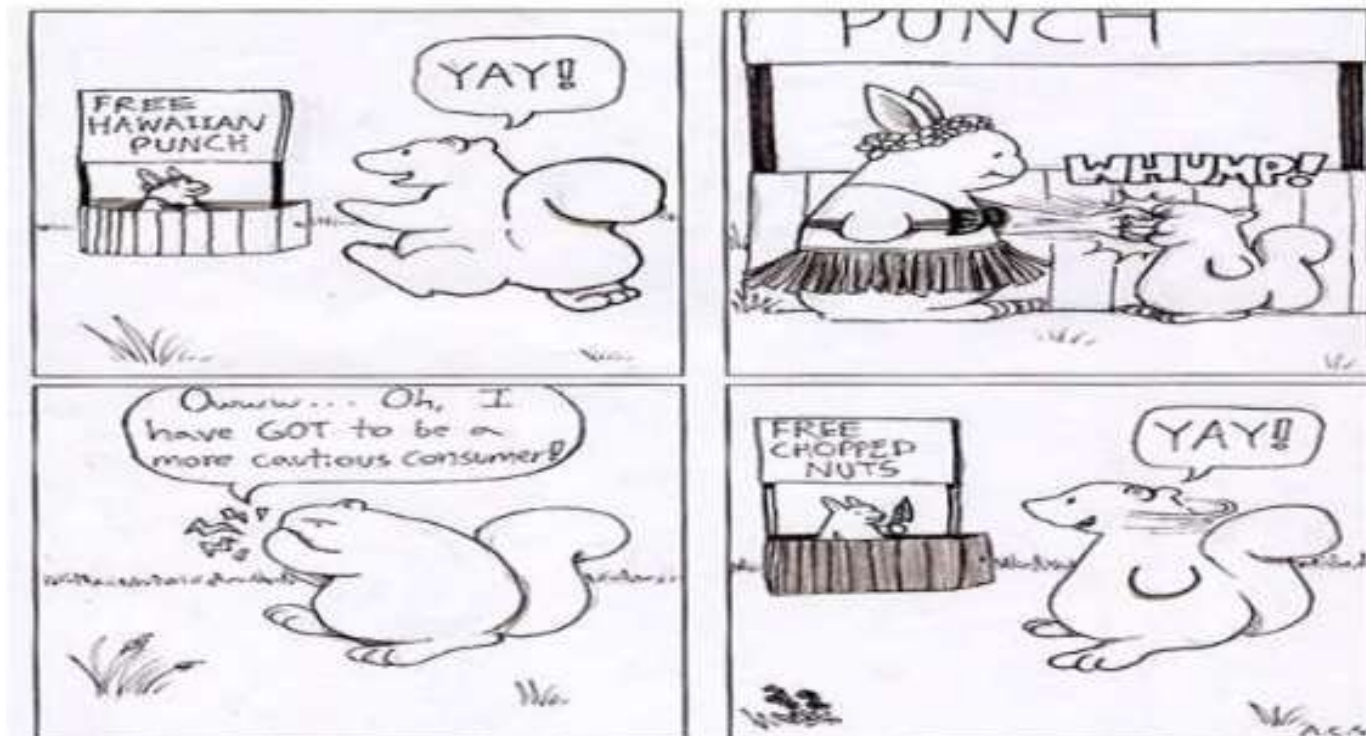
-Mahatma Gandhi

Why protect the consumers?

Reason for Enacting the Act

- Doctrine of Caveat Emptor

This implies that the responsibility of identifying goods and finding defects with them lies with buyer.



Why protect the consumers?

Reasons for Enacting the Act

- Collective Bargaining

Sellers Lobby; Forming cartels; Artificially keeping prices high!!!!

- Multiple Laws

India Contract Act; Sale of Goods Act; Essential Commodities Act

- Hurdles in the Litigation

Going to regular court; Expensive & Time Consuming

- Remedy

Punishment in the form of Punitive & Deterrent measure

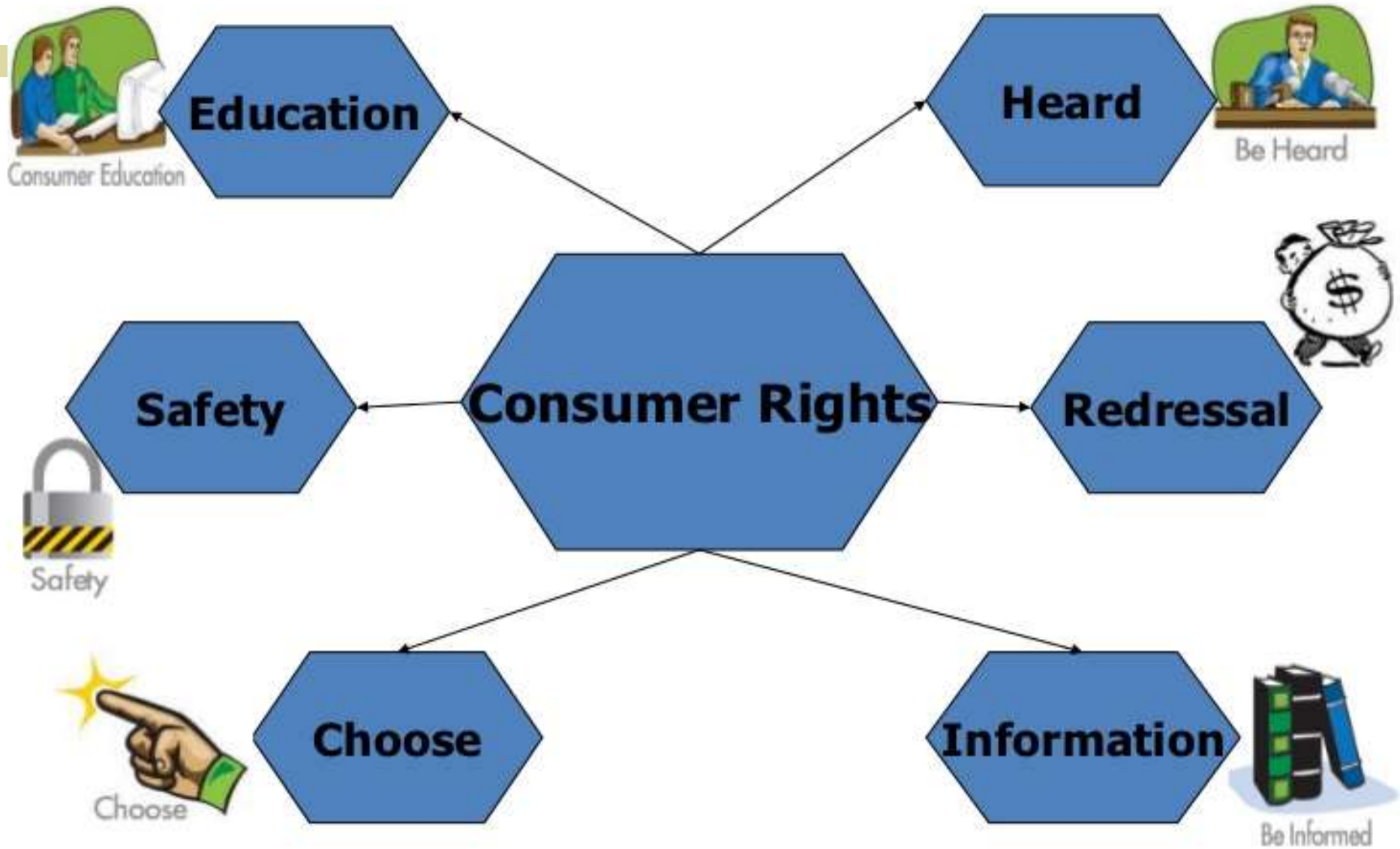
HISTORY

- Lok Sabha on 9th December, 1986 and
 - Rajya Sabha on 10th December, 1986 and
 - Assented by the President of India on 24th December, 1986 and was
 - Published in the Gazette of India on 26th December, 1986.
 - This Act was enacted in the 37th year of the republic of India and was amended from time to time in the following years i.e.
 1. Amendments in 1993
 2. Amendments in 2002
 3. Amendments
-

HISTORICAL PERSPECTIVES:

1. INDIAN CONTRACT ACT, 1872
 2. SALE OF GOODS ACT, 1930
 3. STANDARD OF WEIGHTS AND MEASURES ACT, 1976
 4. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969
 5. FOOD ADULTERATION ACT, 1954
-

Objectives of CPA, 1986



Consumer's perspective:

■ 1

- **Unorganised Consumers**-In developing countries like India, consumers are not organised. There are very few consumer organisations which are working to protect the interest of consumers. Consumer protection provides power and rights to these organisations as these organisations can file a case behalf of customer.





- **Consumer Ignorance**-It spreads awareness so that consumer can know about the various redressal agencies where they can approach to protect their interests.
- **Wide Spread Exploitation of Consumer's**-There is lot of exploitation of consumers as businessmen use various unfair trade practices to cheat and exploit consumers. Consumer protection provides safe guard to consumers from such exploitation.



Businessman's perspective:

■ 2

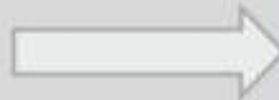
- **Businessman Uses Society's Resources-** Businessmen use the resources of society. They earned profit by supplying goods and services to the members of society. They must use these resources for the benefits of consumers.
- **Social Responsibilities-**A businessman has social obligations towards customer. It is responsibility of businessmen to provide quality goods at reasonable price. Consumer protection guides businessman to provide social responsibilities. 
- **Government Intervention-**If businessman want to avoid intervention of govt. then they should not involve in unfair trade practices. Businessman should voluntarily involve in the activities which protect the interest of consumer
- **Consumer is the Purpose of Business-**The basic purpose of the business is to create more and more customers and retain them and businessmen can create more customers only by satisfying the customers and protecting the interest of consumers. 

WHO IS CONSUMER?

"A consumer is the most important visitor on our premises. He is not dependent on us, we are on him. He is not an interruption to our work, he is the purpose of it. We are not doing a favour to a consumer by giving him an opportunity. He is doing us a favour by giving us opportunity to serve him"

-Mahatma Gandhi

Consumer is King



Who is consumer [section 2(7)]

- A person who:
 - Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose;
 - Hires or avails of any service for a consideration which has been paid or promised, or under any system of deferred payment and includes any beneficiary of such service other than the person hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are not availed of with approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.
 - The expression “commercial purpose” does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.
 - The expression “buys any goods” and “hires or avails any services” includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

Rights of Consumer



CONSUMER REPNONSIBILITY

- **Consumer must exercise his right-**The consumer must select the product according to his preferences, he must file a complaint if he is not satisfied with the quality of product.
- **Cautious Consumer-**The consumer should not blindly believe on the words of seller. He must insist on getting full information on quality,quantity,utility,price etc
- **Consumer must be quality-conscious-**According to this, consumer himself stops compromising the quality of product. While purchasing the goods or services consumer must look for quality marks such as ISI mark,Agmark,ISO,Wool Mark etc.



- **Insist on cash memo-** To file a complaint the consumer needs the evidence of purchase, and cash memo is the evidence or proof that consumer has paid for the good or service.
- **Filing complaints for the redressal of genuine grievances-** The consumer must file a complaint even for a small loss. This awareness among consumers will make the sellers more conscious to supply quality product.



Consumers need protection against:

1. UNFAIR TRADE PRACTICE
 2. RESTRECTIVE TRADE PRACTICE
 3. DEFECTS
 4. DEFICIENCIES
 5. DATA SHARING / CONFIDENTIALITY BREACH
 6. NON DELIVERY/ E-COMMERCE ISSUES.
-

Unfair Trade Practice:

- For which a trader, for promoting sale, use or supply of any goods or provisions of services, adopts any unfair method or deceptive practice.
- Which includes:
 - a) Of making any statement, orally, written, or by visible representation of electronic record.
 - b) Falsely represent standard, quality, quantity, grades of any goods or services.
 - c) Permits the publication of any advertisement in any newspaper or otherwise for sale or supply at a bargain price of goods/ services that are intended to be for sale or supply of the bargain price.

Restrictive Trade Practices

- Trade practice which tends to bring about manipulation of price or;
- its conditions of delivery or;
- to affect flow of supplies in the market relating to goods or;
- services in such a manner as to impose on the consumers unjustified cost or restrictions.

Defects and Deficiency

- Defect means any fault, imperfection, or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by the trader under any law.
- It is for the complainant to establish that the goods mentioned in the complaint suffer from one or more defects.

- Deficiency means any fault, imperfection, shortcoming, or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under the law.
- It is for the complainant to establish that services mentioned in the complaint suffer from deficiency in any respect.
- Examples: **Lack of facilities by Housing Board is deficiency. Non-allotment of shares is not deficiency in service. Failure of insurance company to settle claim without sufficient cause is deficiency. Failure of Railways to provide**

COMPLAINT

- ★ Any allegation in writing made by a complainant.

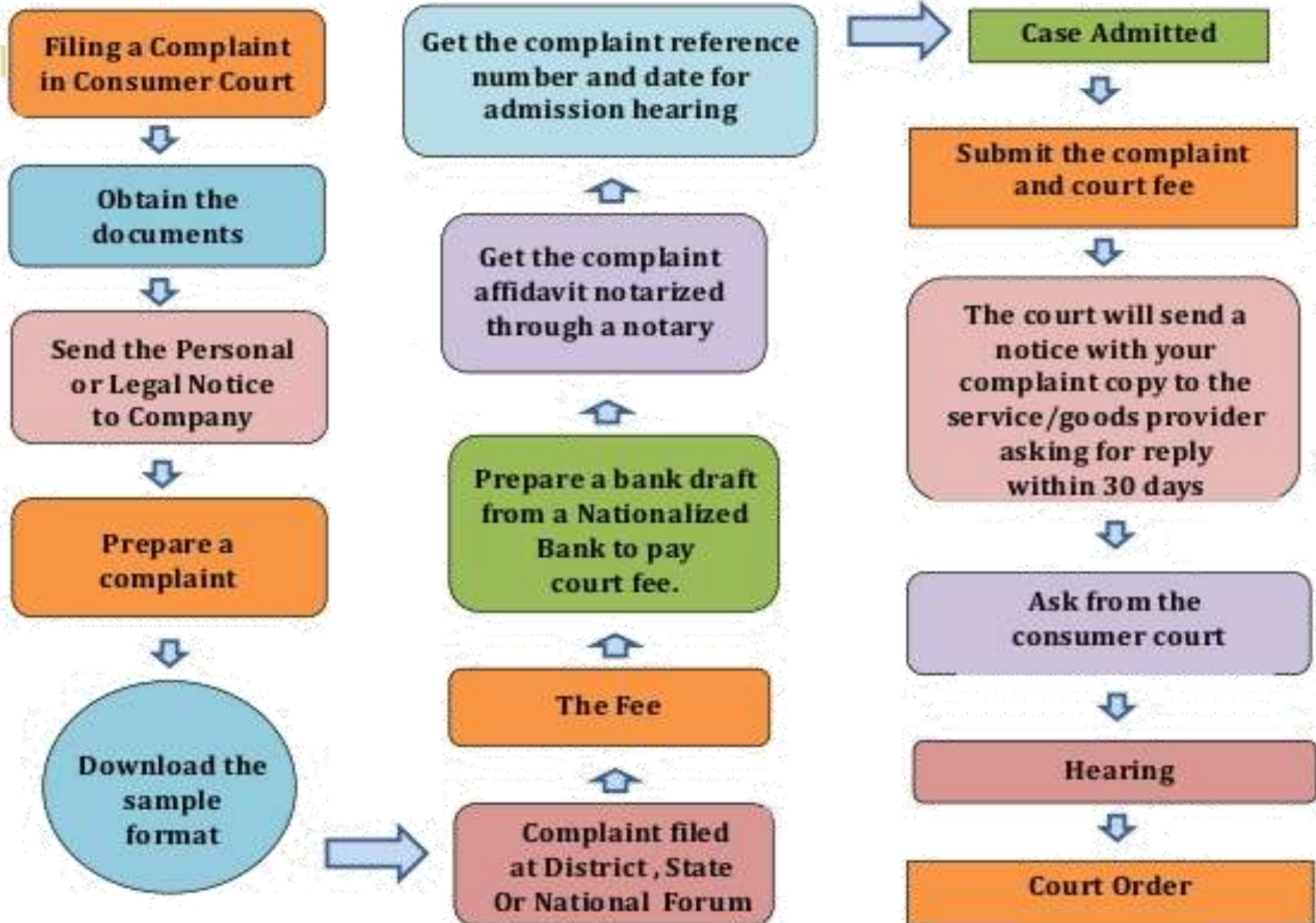
- ★ Complaint is filed for:-
 - Defect in goods,
 - Deficiency in service,
 - Charging of excess price,
 - Hazardous goods or
 - Unfair trade practices.



LIMITATION PERIOD FOR FILING A COMPLAINT

- District Commission or State Commission or National Commission within 2 years from the date on which the cause of action has arisen.
- Commission concerned can overlook the delay for recorded reasons.
- Appeals are require to be filed within 45 days from the date of receipt of the court's order. (State- National 30 days)
- Appeals in criminal matters (30 days).
- It may be noted that these time frames are not absolute limitations. Supreme Court held that the provisions in the Act cant be strictly construed to disadvantage a consumer. *National Insurance co. ltd vs Hindustan Safety Glass Works.*

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.



- DISTRICT COMMISSION [BELOW 1 CRORE]
- STATE COMMISSION [BELOW 10 CRORES]
- NATIONAL COMMISSION [ABOVE 10 CRORES]



CONSUMER PROTECTION ACT, 2019



The Consumer Protection Bill, 2019 was introduced in Lok Sabha by Minister of Consumer Affair, Food and Distribution, Ram Vilas Paswan on July 8, 2019.

Consumer Protection Bill 2019

The Consumer Protection Bill 2019 that seeks to protect and enforce consumer rights was passed through a voice vote by the Lok Sabha on Tuesday, July 30, 2019. The Consumer Protection Bill seeks to establish the Central Consumer Protection Authority (CCPA). The Central Consumer Protection Authority (CCPA) will take immediate action on complaints filed by consumers. The authority will take action after a complaint is filed by even a single consumer and it can also file a class suit. The bill was introduced on July 8.

Some salient features of Consumer Protection Bill 2019

Key Provisions

- The Consumer Protection Bill aims to protect consumers' interests through a redressal mechanism that would ensure timely and effective settlement of disputes.
- It seeks to enlarge the scope of the existing law and make it more effective and purposeful.
- It seeks to establish a Central Consumer Protection Authority (CCPA) to protect consumer rights and look into the issues related to false or misleading ads.
- It has provisions for post-litigation stage mediation as an alternative dispute resolution mechanism. It also provides for product liability action.



Objects and reasons of the new Act 2019

- 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

CONSUMER PROTECTION ACT 1986

PROVISIONS

CONSUMER PROTECTION ACT 2019

No separate regulator

Regulator

Central Consumer Protection Authority (CCPA) to be formed

Complaint could be filed in a consumer court where the seller's (defendant) office is located

Consumer court

Complaint can be filed in a consumer court where the complainant resides or works

No provision. Consumer could approach a civil court but not consumer court

Product liability

Consumer can seek compensation for harm caused by a product or service

District: up to ₹20 lakh
State: ₹20 lakh to ₹1 cr
National: above ₹1 cr

Pecuniary jurisdiction

District: up to ₹1 cr
State: ₹1 cr to ₹10 cr
National: Above ₹10 cr

No provision

E-commerce

All rules of direct selling extended to e-commerce

No legal provision

Mediation cells

Court can refer settlement through mediation

Provision	Consumer Protection Act,1986	Consumer Protection Bill, 2019
Regulator	No Central Regulator	Central Consumer Protection Authority to be set up.
Filing of Complaint	A complaint needs to be filed in the consumer court under whom jurisdiction of the seller falls under	A complaint can be filed from anywhere or from where the consumer resides.
Mediation	No Provision	Courts can work towards settlement through mediation cells.
Jurisdiction	The jurisdiction at District level was complaints worth of Rs. 20 Lakh	District level authorities can take-up complaints with goods and services worth up to Rs.1 crore.
Product Liability	No Provision	Consumers have the right to seek compensation for any harm caused.
E-Commerce	No Provision	E-Commerce transactions will come under the provisions involving direct sales.
Video Conferencing	No Provision	Consumers can seek hearing through Video Conference.

CCPA is mandated to carry out the following functions:

1. Inquiring in to violations of consumer rights, investigating and launching prosecution at the appropriate forum;
2. Passing orders to recall goods or withdraw services that are hazardous, reimbursement of the price paid, and discontinuation of the unfair trade practices;
3. Issuance of directions to the concerned trader/ manufacturer/ endorser/ advertiser/ publisher to either discontinue a false or misleading advertisement or modify it;
4. Imposition of penalties;
5. Issuance of safety notices to consumer against unsafe goods and services and guidelines to prevent unfair trade practices;
6. Spread and promote awareness and research on consumer rights ;
7. Recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights.

A comparative chart of the substantive changes in the provisions of CPA 1986 & CPA 2019

- | | |
|---|--|
| 1. No separate regulator | 1. CCPA to be formed. |
| 2. Complaint could not be filed in a consumer court basis the site of the defendant/ seller's office. | 2. Complaint can be filed in a consumer court where the complainant either resides or works. |
| 3. No specific provision of product liability existed earlier. | 3. Consumer can now seek compensation for harm caused by a defective product or deficient service. |
| 4. No legal provisions for mediation existed earlier. | 4. Courts can now refer settlement through mediation. |

PRODUCT LIABILITY:

- There was no separate legislation governing ‘product liability’ in India, though it was addressed under CPA 1986, if parties were included within the ambit of ‘consumer’. Insertion of product liability as a separate chapter in CPA 2019 and a new ground for filing a complaint has been one of the most significant additions to the act.
- Section 2(35) of CPA 2019 allows a person to make a claim of product liability against such manufacturer, seller or service provider for such defective products. Product liability means the responsibility of a product manufacturer or seller of any product or service, related to the product to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating to the product.
- CPA 2019 has gone a step forward and defined a product manufacturer, seller and service provider to provide clarity on who can be made liable for an action under Chapter 6 of CPA 2019.

PRODUCT MANUFACTURER & SERVICE PROVIDER:

PRODUCT MANUFACTURER:

- Product manufacturer will be liable if product contains a manufacturing defect, or defective in design,
- or there is deviation from manufacturing specifications; or does not conform to the express warranty; or fails to contain adequate instructions of correct usage.

SERVICE PROVIDER:

- Product service provider may be liable if the service was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required by or under any law for the time being in force;
- There was an act of omission or commission or negligence or conscious withholding any information which caused harm;
- The service provider did not issue adequate instructions or warnings to prevent any harm;
- The service didn't conform to express warranty.


PRODUCT SELLER:

- Product seller who is not a product manufacturer may be held liable if he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling;
 - he has altered or modified the product and such alteration is substantial;
 - or he has made express warranty of a product independent of any express warranty made by the manufacturer;
 - the product has been sold by him and the identity of product manufacturer is not known;
 - or he fails to exercise reasonable care in assembling or inspecting or maintaining such product.
-


E-COMMERCE:



E-COMMERCE CAN BE CATEGORIZED UNDER:

1. Online marketing.
 2. Online advertising
 3. Online sales
 4. Product delivery
 5. Product service
 6. Online billing
 7. Online payments.
- 

FEATURES OF E-COMMERCE:

1. Ubiquity
 2. Global Reach & Security
 3. Universal Standards
 4. Information Density
 5. Richness
 6. interactivity
- 

UNITED NATIONS COMMISSIONS ON INTERNATIONAL TRADE LAW (UNCITRAL)

- Indian Government followed model law of UNCITRAL and enacted Information Technology Act 2000.
- It facilitates E-commerce and E-governance in the country.

Basic principles of Model Law:

- Analyze purposes and functions of paper-based requirements.
- Consider criteria necessary to replicate those functions and give electronic data the same level of recognition as information on paper.
- Equal treatment of paper-based and electronic transactions.
- Equal treatment of different techniques.

REDIFF.COM INDIA LTD VS URMIL MUNJAL:

- Here a consumer was dissatisfied with the goods delivered by the online shopping website. While the consumer wanted to return the product and claim refund, he did not find a Return Policy, which provided details of the address to which the products were to be returned. The court held the online portal liable on the grounds of ‘deficiency in service’ for not providing sufficient information.

ANITA KUSHWAHA VS PUSHAP SUDA [(2016) 8 SCC 509]

- In this case the Supreme Court held that the ‘Access to Justice’ is a fundamental right and laid down four main facets of the essence to justice:
 1. The state must provide an effective adjudicatory mechanism
 2. The mechanism so provided must be reasonably accessible in terms of distance
 3. The process of adjudication must be speedy and
 4. The litigant’s access to the adjudicatory process must be affordable.

Box 2

Consumer challenges in e-commerce in developing countries

Based on responses to the UNCTAD questionnaire on consumer protection in e-commerce, circulated to consumer protection agencies around the world, some of the most common e-commerce challenges faced by consumers in developing countries are in the following areas:

- Weak Internet infrastructure, including speed and reliability
- Unstable communications network
- Relatively low online connectivity and insufficient electricity supply
- Language barriers
- Deceptive information and marketing practices with respect to both goods and services and prices
- Misleading advertising
- Lack of clear and sufficient information on both the identity and location of traders, as well as goods and services, prices and guarantees
- E-commerce offers made by anonymous traders
- Drip pricing practices, where the final amount due is not known until the whole process is complete
- Uncertainty on merchantability of goods
- Monetary refunds for non-satisfactory products
- Non-fulfilment of return or refund policies announced on trader websites
- Long and tedious refund process
- Expenses for returning goods to be covered by consumers
- Data security and online scams, identity theft and frauds
- Irreversibility of electronic payments
- Security of online and mobile payments and chargeback options
- Unclear information on chargebacks and withdrawals
- Denial by e-commerce websites of responsibility for online payments that are blocked by banks or payment gateways
- Fraudulent and fly-by-night operators who take money from consumers without providing products or services
- Protection of personal data and privacy

FOSTERING CONSUMER CONFIDENCE IN E-COMMERCE:

- Based on UNCTAD responses:
 1. Establish a good internet infrastructure for e-commerce
 2. Set up a robust legal and institutional framework governing e-commerce and redress processes.
 3. Adapt existing regulatory systems to the particular requirements of commerce.
 4. Ensure effective enforcement of relevant laws.
 5. Provide e-commerce consumers with a level of protection not less than that afforded in other forms of commerce.
 6. Require full disclosure of all necessary information related to businesses, goods and services and transaction.
 7. Ensure the reliability and security of online payments regardless of the payment method, and protect consumer privacy and data.
 8. Prevent misuse of consumer data
 9. Guarantee authenticity of online reviews and ratings.
 10. Ensure delivery of goods and after-sale services.

PRE-PURCHASE

Information requirements

Unfair commercial practices

PURCHASE

Unfair contract terms

Online payment security

Data protection and privacy

POST-PURCHASE

Dispute resolution

redress

Cross border e-commerce

Protection of children and e-commerce

COMPENSATION



Repair



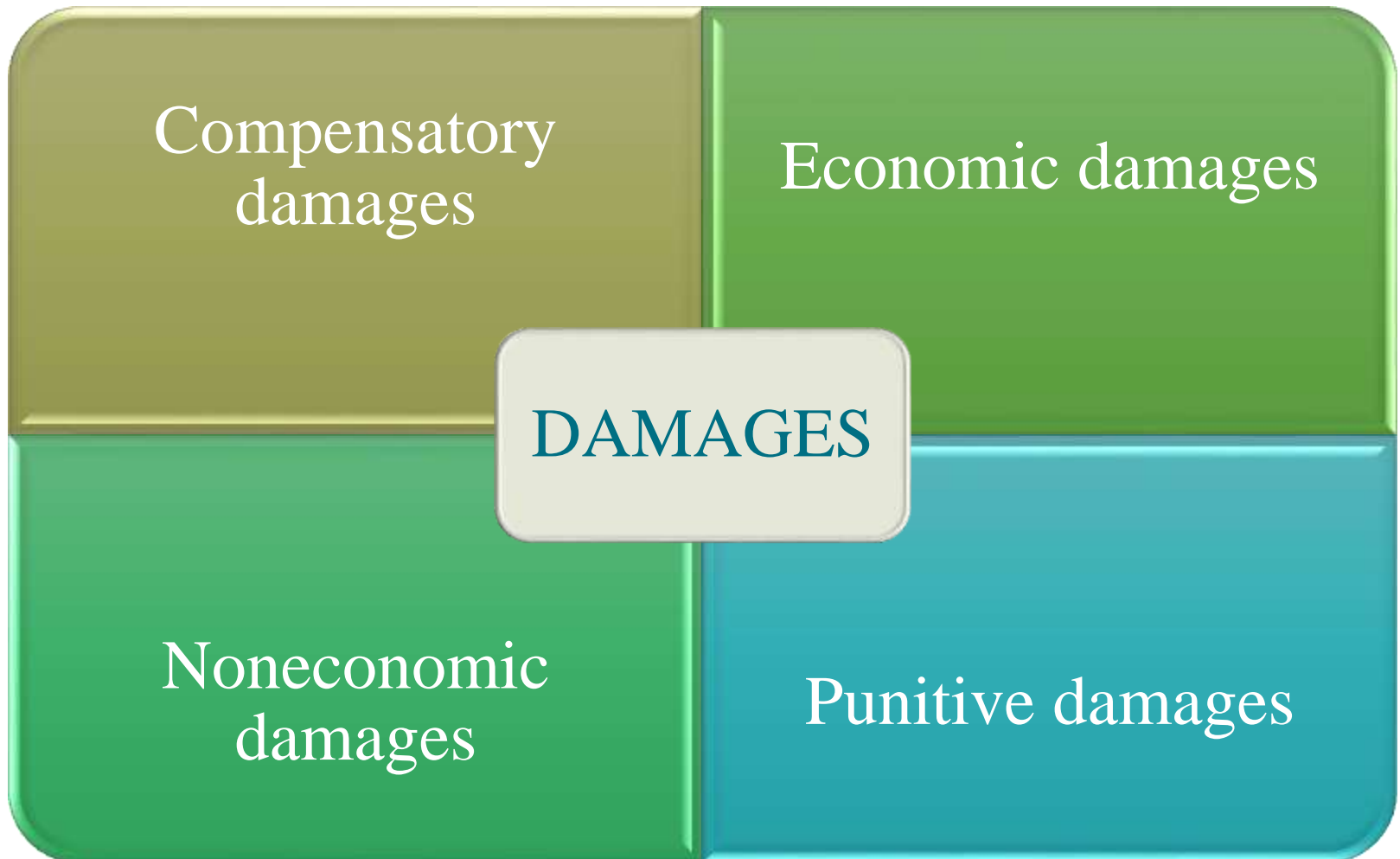
Replacement



Refund

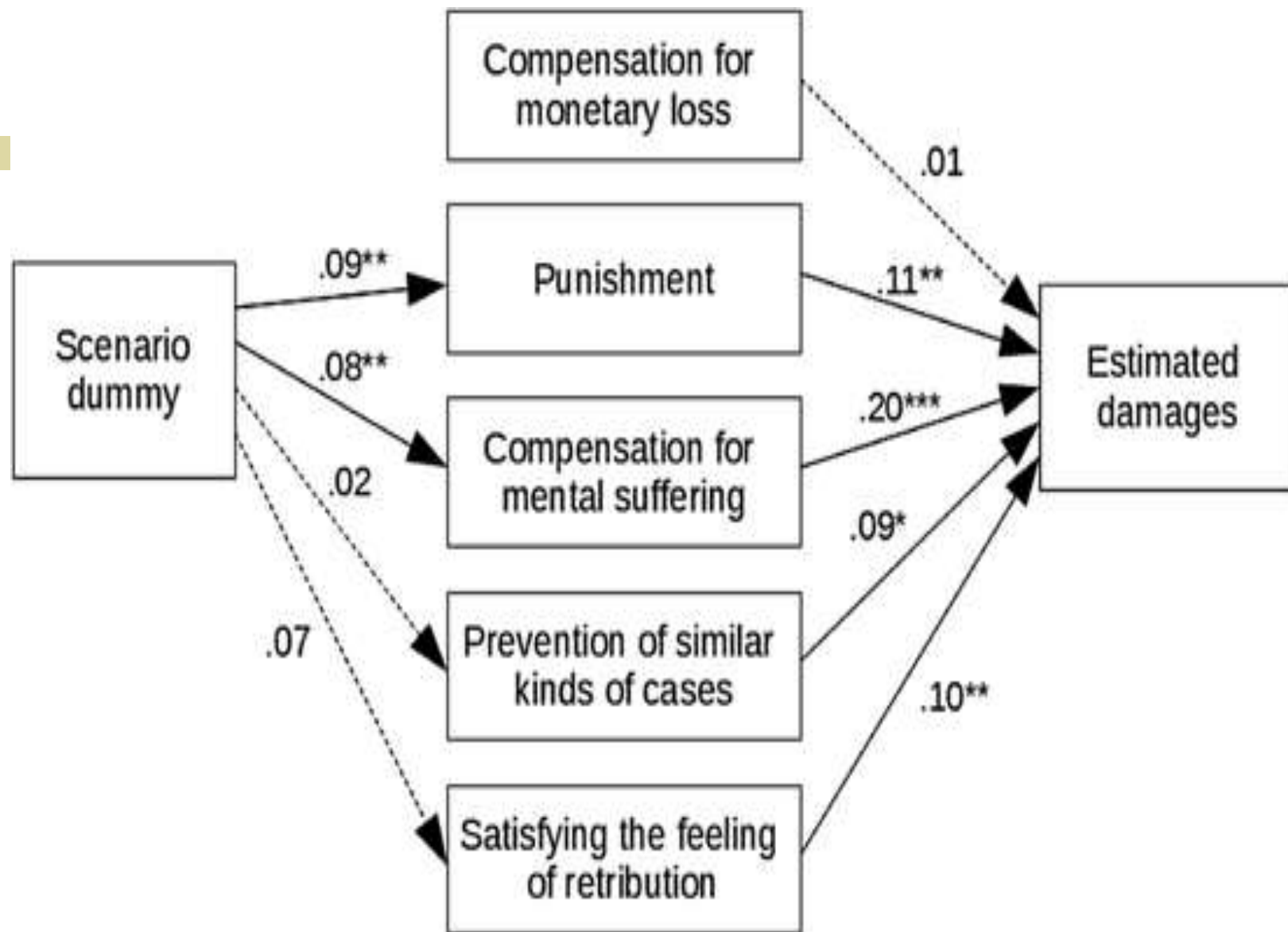


QUALITATIVE AND QUANTITATIVE TRANSLATION IN JURY DAMAGE AWARDS:



GIST-BASED MODEL:

- The gist-based model makes a contribution in emphasizing, as other accounts of jury damage award decision making generally do not, the central importance of the meaning numbers.
- the story model also privileges meaning in its narrative account, but in a subtly different way. The story model emphasizes the narrative itself, the way facts hang together in a coherent account.
- The gist-based approach stresses the narrative too, but goes further to posit that jurors derive categorical and ordinal judgements from the meaning or gist of the narrative.
- Exact numbers have little significance, even to the highly numerate, until the numbers can be interpreted relative to specific content and contexts.
- One advantage of the gist based model of jury damage awards is that in future work we should be able to use research on the significance of cues and framing to predict when verbatimism versus gist approaches will dominate juror decision making about damages.
- The gist-based account is a more positive take on jurors' approach to damage decision. The gist that we say drives jurors as they consider damages is not presumed to be naive and immature reasoning.



While computing the damages awarded to the consumer, it is vital that foras and commissions are fair.

- *LUCKNOW DEVELOPEMENT AUTHORITY VS M.K.GUPTA; [AIR 1994 SC 787]*
- Supreme Court accentuated on the need for consumer fora to award compensation proportionate to the injustice suffered by consumers. It observed that the word “compensation” was of very wide connotation, and in legal sense, “compensation” constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss.
- the Apex Court emphasised that when the forum/ commission was vested with the jurisdiction to award value of goods or services and compensation, it has to be construed widely, enabling it to determine compensation for any loss or damages suffered by a consumer. Any other construction would defeat very purpose of Consumer Protection Act. The forum/ commission , mentioned in the Act, is therefore entitled to award not only value of goods or services, but also compensate consumers for injustice suffered by them.

HUDA & ANR VS SHAKUNTLA DEVI [(2017) 2 SCC 301]

- In this case, the respondent alleged that inspite of paying the full price of the house as per the terms and conditions of the allotment letter, she was not given the plot by the appellant.
- Supreme Court held that the sine qua non for entitlement of compensation is proof of loss by the consumer due to the negligence of the opposite party.
- That there cannot be any dispute that the computation of compensation has to be reasonable and commensurate to the loss or injury. There is a duty cast on the commissions to take into account all relevant factors for arriving at the compensation.

V. KRISHNAKUMAR VS STATE OF TAMIL NADU [AIR 2015 SCW 4283]

- Two pediatrics doctors were held negligent in this case and government of Tamil Nadu and Director General of Health Services were also held liable for compensation by doctrine of apportionment of liability and vicarious liability.
- The case highlighted and applied various doctrines like :
 - vicarious liability,
 - importance of proper and relevant record keeping,
 - timely referral and standard precautions and method of calculation of amount of compensation and factors relevant for computation.

BALRAM PRASAD VS KUNAL SAHA [(2014) 1 SCC 384]

- The Supreme Court enhanced the compensation amount Rs 1.73 crore, which was awarded by the National Consumer Dispute Redressal Commission (NCDRS) in 2011 to the tune of Rs 5.96 crore and asked the Kolkata based Advanced Medicare and Research Institute (AMRI) and the doctors to pay the amount and also asked to pay interest at the rate of 6% from the date of filing old complaint in 1999 till the payment to Kunal Saha which led to the death of his wife.
- The compensation was granted under the head of *non-pecuniary damages*, wherein it held that in India the courts recognized that the contribution made by wife to the house is invaluable and cant be computed in terms of money.

BANGLORE DEVELOPMENT AUTHORITY VS SYNDICATE BANK [(2007) 6 SCC 711]

- The Supreme Court laid down some general principle that would govern the allotment of apartments by a local authority:
 1. Where no time period is mentioned for delivery of possession of flats for the performance of contract, or where time is not the essence of contract, if the buyer, instead of rescinding the contract on grounds on non-performance accepts the belated delayed delivery of possession, is no breach of contract.
 2. Where the authority offers to deliver another property instead of the one allotted/ promised, or where delay is for justifiable reasons, the allottee will not ordinarily be entitled to compensation or interest.
 3. Whether allottee has been subjected to avoidable harassment and mental agony.

INDIAN MACHINERY COMPANY VS ANSAL HOUSING AND CONSTRUCTION LTD [(2016) 2 SCC 450]

- The Supreme Court held that the second complaint in the consumer forums made on the same facts and cause of action is not maintainable when the first complaint is dismissed for default or non-prosecuted.
- also held that in absence of any rule similar to Order 9 Rule 9(1) of CPC, second complaint is maintainable.

In the case of R.D. HATTANGADI VS M/S PEST CONTROL PVT LTD [AIR 1995 SC 755]:

- It was held: In Halsbury's Law of England, 4th Edn., Vol. 12 regarding non-pecuniary loss at pg 446 it has been said "non-pecuniary loss- the pattern- damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of the previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket.
- "In its very nature whenever a Tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all aforesaid elements have to be viewed with the objective standards."

RESHMA KUMARI VS MADAN MOHAN [(2009)13 SCC 422]:

- Supreme Court held that “grant of compensation in a case involving accident is within the realm of law of torts. It is based on the principle of *restitutio in integrum* (restitution to original). The said principle provides that a person entitled for damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had sustained the wrong”.

DIVISIONAL CONTROLLER, KSRTC VS MAHADEV SHETTY & ANR. [(2003) 7 SCC 197]

- Supreme Court held that “measures of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of “just” compensation which is the pivotal consideration. Though by use of the expression “which appears to it to be just”, a wide discretion is vested in the tribunal. The determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness, and not-arbitrariness. If it is not so, it cannot be just”.

NIZAM INSTITUTE OF MEDICAL SCIENCE VS PRASANTH S DHANANKA [(2009) 6 SCC 1]

- Supreme Court said “we must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The adequate compensation that we speak of, must be to some extent, be a rule of thumb measure, and a balance has to be struck, it would be difficult to satisfy all parties concerned.

INDIAN CONSUMER PROTECTION

CASE 1

- ▶ **Redressal filed against: Indian Airlines**
- ▶ **Issue: not allowing passenger to board the flight despite the fact that the passenger had flight tickets booked**
- ▶ **Compensation: Rs. 10,000**

CASE 2

- ▶ **Redressal filed against: ROYAL STAGS PVT. LTD.**
- ▶ **Issue: presence of protein impurity in beer**
- ▶ **Compensation: Rs. 5,000**

CASE 3

- ▶ **Redressal filed against: Shoe crafts**
- ▶ **Issue: Sale of faulty camera from the grey market with mismatch in serial number on guarantee card**
- ▶ **Compensation: Rs.3033**

INTERNATIONAL CONSUMER PROTECTION

CASE 1

- ▶ **Redressal filed against: Slim America, Inc**
- ▶ **Issue: false advertising claims about a health product (dieting, slimming)**
- ▶ **Compensation: \$8.3 million (Rs.32.3 crores)**

CASE 2

- ▶ **Redressal filed against: Christiana Hospital**
- ▶ **Issue: wrong medication leading to death of patient**
- ▶ **Compensation: \$1.6 million (Rs.6.2 crores)**

CASE 3

- ▶ **Redressal filed against: Trans Union**
- ▶ **Issue: misrepresentation of identity and inappropriate credit record upload**
- ▶ **Compensation: \$ 800,000 (Rs.3.1 crores)**

CASE 1 HEALTH PRODUCT Weight loss by drinking herbal tea for 12 weeks



MCDONALDS BIG MAC

ADVERTISEMENTS

ACTUAL BIG MAC

- ROTATED TO MOST ATTRACTIVE ANGLE



CASE 2 FOOD ITEM A big Mac burger of McDonalds

CASE 3 SHAMPOO Copied a famous brand



Digest this, 5% of food items you buy are fake



BEWARE: Any of these could be counterfeit foodstuff.

MT PHOTO

FAKE MUMBAI

Spot the fake

Look closely at the labels for spelling errors

Most manufacturers place the company name on the face, as well as side panel of the item

Avoid purchasing food items from temporary road side set ups

ANJALI Doshi
Mumbai, September 28

ONE IN every 10 bottles of soft drinks sold in the city is spurious. When Nadia Chauhan stepped into a corner store recently she was alarmed to see shelves lined with 'Frooti'.

Chauhan, director, marketing, Paris Agro, the company that manufactures the mango drink, says, "The logo was identical, but the label had the wrong manufacturing address."

Frooti is not the only victim of the counterfeit racket. There are 10 versions of Pepsi pass-offs called Tipsey, Dipsay, Sipsel, Toss Up, Dream Cola, IUP, Lahaar. What's worse? The spurious edibles racket, growing at roughly 10 per cent every year, includes bottled water, salted snacks, biscuits, edible oils and confectionery. Fakes of everything you see in the grocery store are freely available. Five

per cent of all food items sold in the city are fakes.

Fly-by-night manufacturers set up shop in small hutments in the suburbs where they make soft drink in a bucket. Ingredients: plenty of sugar, artificial flavours, dangerous colours and soda. Spurious edible oils are made using dangerous additives by adding argemone oil to mustard oil that could be fatal. "Since the business model of faking is based on usage of spurious material," such food articles are dangerous," says Milind Sarwate, chief financial officer, Marico Limited.

The technology is so sophisticated that replicating logos is easy. And fake product manufacturers reap lakhs every year because there are hardly any input costs, no safety standards involved, or duties to be paid. The distribution network for such stuff is prolific

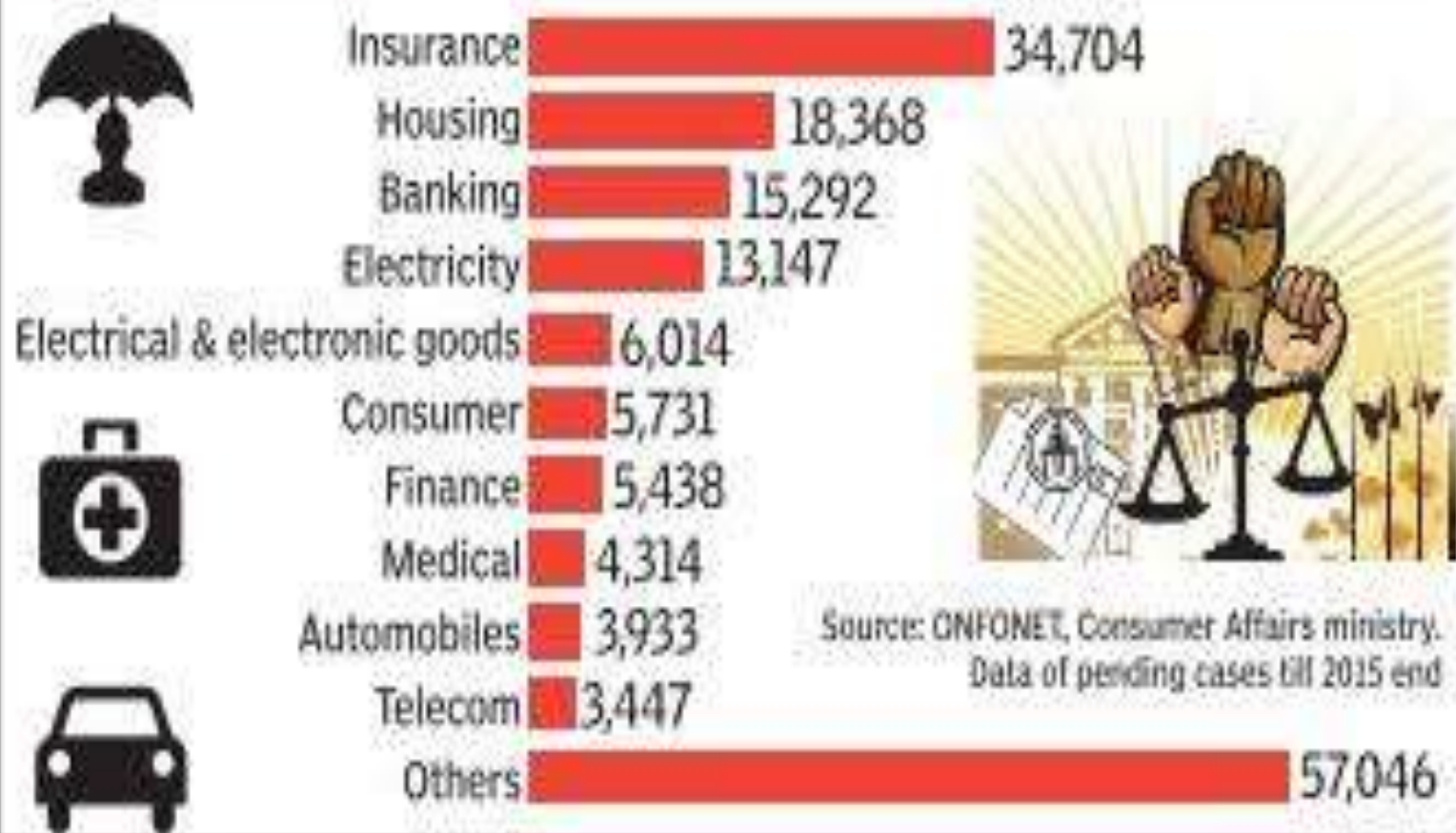
with racketeers and grocery stores working hand-in-glove to con consumers. The racket is so widely spread that several companies like Procter & Gamble, Hindustan Lever and Marico, that earmarks around Rs 25 lakh every year to combat spurious competitors, have been forced to set up special units to protect their brands and educate consumers.

The Maharashtra Food and Drug Administration (FDA), however, has not taken the dangers of the spurious edibles market seriously. "We concentrate more on adulterated edible items than pass-offs," says an FDA official.

It's no surprise then that the racket is booming. "It is evolving because of regulatory inaction. Consumers are finding it more difficult to distinguish between the genuine and the fake," says Sarwate. Tomorrow: Fake autoparts

CASES IN FORUMS

Sector-wise breakup of cases in consumer forums



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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 - BSM / BTHL. 011 - 27662955 - 58

(Normal call charges)

SOURCES:

- E-consumer protection in India by Prof. Dr. Ashok Patil & Dr. Pratima Narayan.
 - United Nations Conference on Trade and Development.
 - CPA law in India by Nishith Desai.
 - Consumer Protection in E-commerce by OECD Recommendation.
 - Qualitative to quantitative translation in Jury Damage Awards by Valerie P Hans f Valerie F Reyna.
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