

The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy statement of the dispute. [Sec. 67(3)].

The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in Writing and need not be accompanied by a statement of the reasons therefor. [Sec. 67(4)].

Administrative assistance: In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person. (Section 68).

Communication between Conciliator and parties (Section 69)

The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

Disclosure of information (Section 70)

When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that to present any explanation which he considers appropriate. However, when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party.

Cooperation of the Parties with Conciliator (Section 71)

The parties shall in good faith co-operate with the conciliator, and in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

Suggestion by parties for settlement of dispute (Section 72)

Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

Confidentiality (Section 75)

The confidentiality principle applies to all persons who have access to matters relating to the conciliation proceedings. The conciliator and the parties are under obligation to keep all matters relating to conciliation proceedings confidential, whether it has resulted in a settlement agreement or not. The law provides that notwithstanding anything contained in any other law, the principle of confidentiality shall be maintained by the parties as well as the conciliator except where its disclosure is necessary for parties for the implementation and enforcement of the settlement agreement.

Settlement Agreement (Section 73)

When it appears to the conciliator that there exists elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observation of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations. [Sec. 73(1)].

If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement [Sec. 73(2)].

When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively. [Sec. 73(3)].

The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties. [Sec. 73(4)].

Status and effect of settlement agreement (Section 74)

A settlement agreement will have the same status and effect as if it is an arbitral award on agreed terms. A settlement reached after the conclusion of the conciliation proceedings will also be enforceable like a decree of court.

TERMINATION OF CONCILIATION PROCEEDINGS**Termination of proceedings (Section 76)**

The conciliation proceedings shall be terminated -

- (a) by the signing of the settlement agreement by the parties, on the date of the agreement; or
- (b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
- (c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
- (d) by a written declaration of a party to the other party and the conciliator; if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

Since conciliation is a consensual proceedings, it is entirely dependent on the continued goodwill of the parties and could be terminated by the parties at any time before the signing of the settlement agreement.

However, parties cannot initiate any arbitral or judicial proceedings, pending conciliation proceedings, unless it is necessary to protect the rights of the parties. (Section 77)

Costs (Section 78)

Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties. 'Costs' means reasonable costs relating to -

- (a) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;

- (b) any expert advice requested by the conciliator with the consent of the parties;
- (c) any assistance provided pursuant to clause (b) of sub-section (2) of Section 64 and Section 68;
- (d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

Deposits (Section 79)

According to Section 79, before initiating the proceedings the conciliator may ask the parties to deposit a particular amount as he think fit as cost of proceeding. He may, during the proceedings also ask the parties to deposit supplement amount. This section empowers the conciliator to suspend proceedings, if the amount is not deposited by the parties within 30 days.

Similarly, conciliator is under obligation to render accounts at the termination of proceedings and return unspent amount to the parties. **Role of Conciliator in Other Proceedings (Section 80)**

Unless otherwise agreed by the parties: -

- (a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;
- (b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

However, the parties by agreement can do so.

Admissibility or evidence in other proceedings (Section 81)

The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings:-

- (a) view expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- (b) admissions made by the other party in the course of the conciliation proceedings;
- (c) proposals made by the conciliator;
- (d) the fact that other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

REVIEW QUESTIONS

1. What are the objectives of the Arbitration and Conciliation Act, 1996 ?
2. Define arbitration agreement.
3. Explain the essentials of an arbitration agreement.
4. What is an arbitration agreement and discuss its effect.
5. What matters can and cannot be referred to arbitration ?
6. Discuss the capacity of various persons to submit disputes to arbitration.
7. Describe the procedure for the appointment of arbitrators.

Need for Consumer Legislation : Most of the manufacturers and traders have been adopting unfair trade practices for the purpose of promoting sale, use or supply of any goods, or for the provision of any services. Unfair practices like false and misleading descriptions about the nature and quality of the goods, exaggerated statements about their power and potency, false weights and measurements etc., have been causing loss or injury to consumers of such goods and services. A number of Acts were enacted by the Government to protect the interests of consumers. For instance, Prevention of Food Adulteration Act, Essential Commodities Act, Sales of Goods Act, Standards of Weights and Measures Act, Monopolies and Restrictive Trade Practices Act, Indian Standard Institution (certification of marks) Act etc. were passed by the Government for the purpose of protecting the interests of the consumers. But these Acts failed to provide the needed protection to the interests of consumers. To provide for better protection of the interests of the consumers, and to save the consumers from the evils of unfair trade practices, the Government of India enacted the Consumer Protection Act in 1986. Most of the defects in the Act were removed by amendments to the Act in 1991, 1993 and 2001.

Objectives of the Act : The Consumer Protection Act, 1986 seeks to provide for better protection of the interests of consumers. This Act seeks, *inter alia*, to *promote and protect the basic rights of customers* such as :

Right of Protection to Life and Property : The right to be protected against marketing of goods which are hazardous to life and property.

Right to be informed : The right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumers against unfair trade practices.

Right to choose : The right to be assured, wherever possible, access to a variety of goods at competitive prices.

Right to be Heard : The right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums.

Right to Redress : The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers, and

Right to Education : The right to consumer education.

This is based on the basic rights of consumers as defined by the International Organisation of Consumers (IOCU) viz. Right to safety, to information, of choice, to be heard, to redressal, to consumer education, to healthy environment and to basic needs.

These objects are being promoted and protected by the *consumer protection councils* established at the central and state level. The Act seeks to provide *speedy and simple redressal* to consumer disputes. For this purpose a *quasi-judicial machinery* is being set up at the district, state and central level. These quasi-judicial bodies will observe the principles of natural justice. These have been empowered to give reliefs of a specific nature and to award compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided. The remedies under this Act are additional and supplemental remedies.

Section 3 of the Consumers Protection Act states that the *provision of this Act shall be in addition and not in derogation of the provisions of any other law or Act for the time being in force.*

Advantages of seeking relief under the Consumer Protection Act, 1986.

Following are the most important advantages of seeking relief before a Consumer Forum instead of approaching of Civil Court. While evaluating the comparative benefits we may also consider the remedy available to consumers under the MRTP Act, 1969 against restrictive trade practices and unfair trade practices:

Firstly administration of justice under the Consumer Protection Act is totally free. Consumer Courts do not levy court fee in respect of legal proceedings.

Secondly consumer courts are expected to delivery speedy justice. Despite criticism on this aspect some of which is justified, one agrees that consumer courts certainly score over the civil courts.

You can be your own lawyer before consumer courts. Though appearance of lawyer is not prohibited consumer courts do not encourage appearance of lawyers and extensive long winded arguments.

Procedural simplicity and amiable atmosphere prevailing in consumer courts is more encouraging to an ordinary litigant as compared to lengthy and procedure oriented civil court proceedings.

While the provisions of Restrictive Trade Practices and Unfair trade practices cannot be invoked against Central Govt., State Govt., and public sector organisations, the provisions C.P. Act, 1986 can be invoked against Govt. run organisations such as railways, post office, air line, telephone boards, electricity boards, insurance companies, banks. Further Consumer Forum is vested with quasi criminal powers/penal provisions u.s. 27 of the Act.

DEFINITIONS

Consumer : 'Consumer' means any person who: (i) "*buys any goods for a consideration which has been paid or promised, or partly paid and partly promised, or under a system of deferred payment*"; or (ii) *hires any services for a consideration which has been paid or promised, or partly paid and partly promised, or under a system of deferred payment, i.e. in respect of hire-purchase transactions.* [Sec 2(d)].

Thus consumer is a person who (i) buys any goods for a consideration, or (ii) hires or avails any services for a consideration. In addition to buyer(s) of goods or hirer(s) or user(s) of services, *any beneficiary of such services, using the goods/services with the approval of the purchaser or hirer or user would also be deemed a 'Consumer' under the Act.* The widow of the deceased Policy holder was held as a consumer under the Act by the State Commission of A.P. in the case of *A Vs. LIC of India*. The consideration may be either paid or promised, or partly paid and partly promised or under any system of deferred payment. The Act thus covers transactions for the supply of goods and rendering of services.

Buyer of goods for consideration : The buyer of goods for a consideration is a consumer. The Act, unlike the Sale of Goods Act, does not insist on money consideration only. Transactions of transfer of services, or barter, or exchange will come within the purview of the Act. The user of such goods, with the approval of the buyer of goods, is also a consumer as per the Act. But according to section 2 (d) of the Act, *the term consumer does not include a person who obtains such goods for resale or for any commercial purpose.* Thus a purchaser of goods for reselling them, or a purchaser of taxi for plying the same on hire,¹ a purchaser of a V.C.R. for running a video library, or purchaser of machinery for his commercial establishment is not a consumer.

- (d) **Post accident changes** : Post accident changes may be considered as evidence that original designs were deficient. Though this is a contentious factor as to whether such an evidence is admissible a jury may be influenced by the same.
- (e) **Report of Govt. and the other agencies** : Generally factual findings of an official investigation forms admissible evidence.
- (f) **Past record** : Complainant may show that past record of the product proves his claim. Manufacturer has the obligation of proving that other accidents were not similar.

Who is liable : Who is liable to pay compensation is indeed an important question. The liability extends from manufacturer to retailer or in other words to everyone in the chain of distribution. Even an occasional seller may be held liable for his own negligence to the extent he should have known or discovered that the product was dangerous to users. In most states in USA strict liability applies only to manufacturers.

Therefore, contravention of any of the provisions of enactments such as the Drugs & Cosmetics Act, 1950, Standards of Weights & Measures Act, 1976, the Prevention of Food Adulteration Act, 1955, the Indian Standards Institution (Certification Marks) Act, 1952 etc. or any rules framed under any such enactment or contravention of the conditions or implied warranties under the Sale of Goods Act, 1930 in relation to any goods would also be termed as a 'defect' under the Act. Fault, imperfection or shortcoming in quality, quantity, potency, purity or standard as claimed by the trader in any manner whatsoever in relation to goods is to be determined with reference to the warrants or guarantees expressly given by a trader.

Deficiency : Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service [Section 2(1)(g)].

The definition of 'deficiency' also has two parts to it like the definition of 'defect' pertaining to services for which standards are prescribed by the law and services for which express warranties or guarantees are given by the persons concerned, say, traders, etc.

Goods : Goods means goods as defined in the Sale of Goods Act, 1930 [Section 2(1)(i)]. As per Section 2(7) of the Sale of Goods Act, 1930 'Goods' means every kind of movable property other than actionable claims and money; and includes stock & 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 or sale. Therefore, most consumer products would come under the purview of this definition.

Manufacturer : (i) Manufacturer means a person makes or manufactures any goods or (ii) parts thereof, or ii. does not make or manufacture any goods but assembles parts their of made of manufactured by himself, or iii. puts or cause to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself. [Sec. 2(j)].

Service : "Service" means Service of any description which is made available to potential users and includes the provisions of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, house construction, entertainment, amusement or other information [Sec. 2(O)].

The expression "Service" includes in its scope provision of facility in connection with telephone provided by Telecommunication Department and houses and plots by Housing & Development Board.

Free services and personal services under a control have been excluded from the protective spell of the Act. Thus services must be of commercial nature in the sense that they must be on payment. The payment may be in cash or kind. It may be made either at once or partly at once or partly later i.e., on credit. For services rendered without consideration, the complaint cannot be maintained in forum. For example a medical service rendered by Government hospitals will not come within the scope of Consumer Protection Act.

In *Consumer Unity and Trust Society Vs. State of Rajasthan (1989)*, the National Commission, while hearing an appeal from the State of Rajasthan, held that complaints against government hospitals cannot be entertained under the Act on the ground that a person receiving treatment in such hospital is not a 'consumer' as the patient does not 'hire' the services of the hospital; moreover, the treatment provided is free of charge, and therefore, it does not amount to "service".

In the case of *Cosmopolitan Hospitals Vs. Smt. Vasantha P. Nair, (1991)* and *Cosmopolitan Hospitals Vs. Smt. V.P. Santha (1992)*, the National Commission considered at length whether service rendered by doctors in private hospitals for consideration would come under the purview of 'service', whether the medical profession was outside the scope of the Consumer Protection Act, and whether legal representatives of a deceased patient could file a complaint against the hospital alleging negligence. The facts of both cases were similar - the widows of the deceased patients alleged the hospital authorities with negligence - in the diagnosis and treatment in the first case and in the performance of an operation in the second case.

The contentions of the hospital authorities denying the allegation of negligence were that - (i) the complainants were not 'consumers' under the Act, and therefore, were not entitled to initiate the proceedings; and (ii) the treatment rendered in the hospital did not constitute 'service' under the Act. Their contention was that the Act ensured protection to consumers against unscrupulous traders selling defective goods or indulging in unfair trade practice and against deficiency in service relating to commercial transactions only - and that services rendered to a patient by a medical practitioner, which is a professional service, is of a personal nature and contracts of personal service being outside the purview of the Act, the services rendered in hospitals whether by government or private agencies were not 'services' under the Act.

The National Commission upholding the decision of the State Commission held that (i) the complainants who were legal representatives of the deceased were clothed by operation of law with the rights which the deceased had to initiate action against the hospital on the ground of alleged deficiency in service and that those rights had not become extinguished by his death but remained enforceable by his legal representatives. Unless such a broad and pragmatic view is taken, the intention of the legislature in enacting the Consumer Protection Act would be defeated. Therefore, the complainants were "consumers" and had full *locus standi* to maintain the complaint petitions before the Forums.

(ii) the activity carried on by the hospital constituted 'service' under the Act and did not fall within the exempted category of service rendered under a "contract of personal service". The definition of "service" as given in Section 2(1)(0) of the Act mentions "service of any description" made available to potential users and only exempts "service rendered free of charge" or "under

a contract of personal service" from its ambit. Restricting the scope of the definition to only "service relating to commercial transactions" would not be warranted, given the intention of the legislature. Thus, there is no substance in the contention that service rendered by hospitals and members of the medical profession for consideration will not constitute "service" as defined in the Act because it does not relate to a "commercial transaction".

Quoting its own observations in the case of *A.C. Modagi Vs. Cross Well Tailor* (1991) the National Commission reiterated that there was a *distinction between contract for service and contract of service*. 'Personal service' stemmed from a master and servant relationship where the master can order what is to be done and how it shall be done and under which, an employee could be turned out of service by the master at will, and therefore, no occasion would arise for the master to complain about the deficiency in the rendering of service by the employee. Where the hirer of the service is not in a position to exercise any sort of control or supervision over the work of the person rendering the service, there would not be any 'personal service'. In the case of hospitals which provide treatment to patients for payment, there could be no reason to hold that there was any element of personal service in such arrangement. The provisions of the Consumer Protection Act relating to adjudication of consumer disputes and award of reliefs under Section 14 fully apply to disputes concerning deficiency in the service rendered by hospitals and members of the medical profession also.

The following have been held to be services for the purpose of application of the provisions of the Consumer Protection Act :

Banking Services, Insurance Services, Railway Services, Airlines Services, Telephone Services, Transport Services, Electricity Board Services, Private Hospitals Services, Services of Intermediate Board, Tourist Services, Services provided by Universities, Postal Department Services, Registration Department Services.

The following services are held to be not covered by the Consumer Protection Act :

Services provided by Government hospitals, Service Commission Services, Service of Courts etc.

Complaint : "Complaint" means any allegation in writing made by a complainant that : as a result of any unfair trade practice or restrictive trade practice, adopted by a trader, the complainant has suffered loss or damage; the goods mentioned in the complaint suffer from one or more defects; the services mentioned in the complaint suffer from deficiency in any respect; a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force. The complaint is to be made with a view to obtaining any relief provided by or under this Act.

Who can make a Complaint : A complaint in relation to any goods sold or delivered, or any service provided may be filed with quasi-judicial organs constituted under the Consumer Protection Act by any of the following :

- (i) the consumer to whom such goods are sold or delivered or such service provided;
- (ii) any recognised consumer's association registered under law, or
- (iii) the Central or any State Government, and
- (iv) one or more consumers on behalf of many consumers having same interest.

Note : 'Recognised Consumer Association' means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force.

To Whom the Complaint is to be made : According to the Consumer Protection (Amendment) Act, 1993, a complaint can be made to the following quasi-judicial agencies in the following manner:

- (a) Where the value of goods or services and compensation, if any, claimed *does not exceed Rs. 20 lakhs*, complaint is to be filed with the *District Forum*;
- (b) Where the value of goods or services and compensation, if any, claimed *exceeds Rs. 20 lakhs, but does not exceed Rs. 50 lakhs*, complaint is to be filed with the *State Commission*.
- (c) Where the value of goods or services and compensation, if any, claimed *exceeds Rs. 50 lakhs*, the complaint to be filed with the *National Commission*.

Where to file a Complaint : A complaint should be filed in a District Forum (subject to pecuniary jurisdiction) within the limits of whose jurisdiction all the opposite parties reside or carry on business, or

Any one of the opposite parties resides or carry on business (with the permission of District Forum or acquiescence of the opposite party not residing there) or where the cause of action wholly or in part arises.

How to file a Complaint : Procedure for filing a complaint are simply and speedy.

- (a) No fees have been prescribed.
- (b) Complainant or his authorised agent can present the complaint in person.
- (c) The complaint can be sent by post to the appropriate Forum/Commission.

How to draft a Complaint : A complaint should contain the following information:

- (a) Name and description and address of the complainant.
- (b) Name, description and address of the opposite party or parties.
- (c) The facts relating to complaint and when and where it arose.
- (d) Documents, if any, in support of the allegation contained in the complaint.
- (e) The relief which the complainant is seeking.

The complaint should be signed by the complainant or his authorised agent.

Unfair Trade Practices

The Consumer Protection Act has adopted the definition of 'Unfair Trade Practices' as given in the MRTP Act.

Section 36-A of the Monopolies and Restrictive Trade Practices Act, 1969, amended in 1993 explains what 'unfair trade practice' means. Unfair trade practice methods are listed in section 36-A. Where the methods listed in section 36-A are adopted for the purpose of promoting the sale, use or supply of any goods, or for the provision of any services and thereby some loss or injury is caused to the consumers of such goods or services, it is an unfair trade practice. The practices mentioned in section 36-A are grouped into the following five categories:

1. **Misleading Advertisement and False Representation :** These include :

- (a) *falsely representing* that the goods are of a particular standard, quality, quantity, grade, composition, style or model.
- (b) *falsely representing* that the services are of a particular standard, quality or grade.

- (c) *falsely representing* that the re-built, second-hand, renovated, reconditioned or old goods as new goods.
- (d) *representing* that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have.
- (e) *representing* that the seller or the supplier has a sponsorship or approval or affiliation which he does not have.
- (f) *making a false or misleading representation* concerning the need, for, or the usefulness of any goods or services.
- (g) *giving to the public any warranty or guarantee of the performance* or length of life of a product which is not based on adequate test.
- (h) *making a materially misleading representation to the public concerning the price* at which a product or like products of goods have been or are ordinarily sold.
- (i) *giving false or misleading facts disparaging the goods, services* or trade of another person.

The mode of representation or statement to the public may be by any method: It will be enough if the statement comes to the knowledge of the buyer of those goods etc. The representation may appear on the article or on its wrapper or container or on anything on which the article is mounted.

2. **Sale offer of bargain price** : This includes advertising for supply, at a bargain price, goods or services that are not intended to be offered for supply at the price for a reasonable period or reasonable quantities.

3. **Schemes offering Gifts or Prizes** : This category includes : (a) offering gifts or prizes or other items with the intention of not providing them and conducting promotional contests; (b) the conduct of any contest, lottery or game of chances, etc.

4. **Non-compliance of prescribed Standards** : This category includes cases where goods are sold for use by consumers knowing or having reason to believe that they do not comply with the standards prescribed by some competent authority. The prescribed standard may relate to performance, composition, contents, design, construction, finishing or packing as are necessary to prevent or reduce the risk of injury to the person using the goods.

5. **Hoarding, destruction or refusal** : The fifth and last category of unfair trade practices includes cases of hoarding, destruction of goods or refusal to sell goods or services so as to raise the cost of those or similar goods.

Ingredients of Unfair Trade Practices

- (a) The trade practices must consist of any of the practices listed as above.
- (b) The purpose of such trade practice must be to promote the sale, use or supply of any goods or provision of any services.
- (c) The trade practices must have caused loss or injury to the consumer whether by eliminating or restricting competition.

Restrictive Trade Practice

Sec. 2(nn) of the Consumer Protection Act defines "Restrictive Trade Practice" as any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be,

services as a condition precedent for buying, hiring or availing of other goods or services. While the "Restrictive Trade Practice" covered under C.P. Act relates to tie up sales of slow moving goods with fast moving goods, Sec. 2(o) of MRTP Act has a wider ambit which covers all practices which prevent distort or restrict competition and obstructs free flow of goods and services or obstruct free flow of capital and resources in to production.

RESTRICTIVE TRADE PRACTICES (RTP) (under MRTP Act 1969)

Restrictive Trade Practices are those trade practices which have the effect of preventing, distorting or restricting competition in any manner and in particular acts intended to result in:

1. Obstruction of capital and resources in to stream of production.
2. Manipulation of price or to abstract production, distribution/supply of goods or provision of services.
3. Agreement falling within the scope of Sec. 33 (of the MRTP Act) which are deemed as Registrable Agreements relating to Restrictive Trade Practices.

CONSUMER DISPUTES REDRESSAL AGENCIES

For the purpose of speedy and simple settlement of 'consumer's disputes' section 9 of the Act, 1986 provides for the establishment of the following three Consumer Disputes Redressal Agencies.

A "*Consumer Disputes Redressal Forum*" to be known as the *District Forum* established by the State Government in each district of the State by notification.

A "*Consumer Disputes Redressal Commission*" to be known as *State Commission* established by the State Government, with the prior approval of the Central Government, in the State by notification, and

A "*National Consumer Disputes Redressal Commission*" to be known as *National Commission* established by the Central Government by notification.

Thus, the Act envisages a hierarchy of three Redressal Forums : (1) District Forums, (2) State Commissions and (3) National Commission. These are quasi-judicial bodies.

District Forum

District Forum means a *Consumer Disputes Redressal Forum*, established under section 9 (2) of the Consumer Protection Act, 1986. This is established by the State Government in each district of the State by means of a notification. If reasonable and necessary, the State Government can establish more than one district forum in a district. As per the amended Act, 1993, permission of the Central Government is not necessary for establishing a district forum.

Composition of the District Forum : According to section 10 of the Act, each district forum shall consist of : (i) a person who is, or has been or is qualified to be a District Judge shall be nominated by the State Government and shall be the *president* of the Forum, (ii) a *person of eminence* in the field of education, trade or commerce, law etc. and (iii) a *lady social worker*.

Appointments to the State Commission shall be made by the State Government on the recommendation of a *Selection Committee* consisting of the President of the State Committee, the Secretary - Law Department of the State and the Secretary in charge of Consumer Affairs in the State.

purposes of the Act are served in the best possible manner.

The State Commission shall have administrative control over all the District fora within its jurisdiction in all the above-referred matters.

Findings of the Forum : If the Forum is convinced that the goods are really defective, or that the complaint about the service is proved, the Forum shall have to order the opposite party to do one or more of the following things :

- ↪ *to remove the defect pointed out by the laboratory from the goods in question.*
- ↪ *to replace the goods with new goods of a similar description, which should be free from any defect.*
- ↪ *to return to the complainant the price of the goods, or the charges of services paid by the complainant.*
- ↪ *to pay such amount as may be awarded compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.*
- ↪ *to remove the defects or deficiencies in the services in question.*
- ↪ *to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them.*
- ↪ *not to offer the hazardous goods for sale.*
- ↪ *to withdraw the hazardous goods from being offered for sale.*
- ↪ *to provide for adequate costs to parties.*

The order for the District Forum shall be signed by its president and the member or members who conducted the proceedings. In case of difference of opinion, the order of the majority of the members shall be the order of the Forum.

Enforcement of orders : The orders of District Forum are enforceable in the manner of an order or decree made by a civil court, in a civil suit. If the forum is not able to execute its order, it may forward the same to the court for execution. The court to which the order is sent, shall then execute the orders as if it were a decree or order sent to it for execution.

Appeal : Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission *within a period of 30 days from the date of the order.* The period of 30 days would be computed from the date of receipt of the order by the appellant. The appeal to the State Commission is to be made in such form and manner as may be prescribed. Where no appeal has been preferred, the orders of a District Forum shall be final. In *Kohinor Carpets. Vs. Rajendra Arora, Haryana*, it was held that a penalty become final in the absence of any appeal against it.

Penalties : Every trader or a person against whom complaint is made is bound to comply with the order of the District Forum. If a trader fails to comply with the order, he shall be punishable.

- ↪ *with imprisonment for a minimum duration of one month and maximum of 3 years, or*
- ↪ *with minimum fine of Rs. 2000 and maximum of Rs. 10,000 or*
- ↪ *both, with imprisonment and fine as mentioned above.*

Powers of the District Forum : For the purposes of settling the disputes under section 13, the District Forums have been vested with the same powers as are vested in a civil court under

the Code of Civil Procedure, 1908. Such powers are enjoyed by the Forum in respect of the following matters.

1. the *summoning and enforcing the attendance* of any defendant or witness and examining the witness on oath.
2. the *discovery and production of any document* or other material object producible as evidence.
3. the *reception of evidence* on affidavits.
4. the *requisitioning* of the report of the concerned analysis or test from the appropriate laboratory or other relevant source.
5. *issuing of any commission* for the examination of any witness.
6. *dismiss a complaint* which appears to have been filed frivolously or with a view to cause vexation, *order the complainant to make payment of cost, not exceeding Rs. 10,000 to the (under the Sec. 26 of the Act) opposite party.*
7. The authorised officer may *seize such books, papers, documents or commodities* as are required for the purpose of this Act.
8. The Officer has a *right to exercise power of entry and search of any premises of the opposite party.*

Isaac Mathew Vs. Maruti Udyog Ltd. : A car which was damaged and was subsequently repaired and supplied as new car was ordered to be replaced and some compensation for inconvenience was also allowed.

Kailash Kumari Vs. Narandra Electronics : A defective television was ordered to be replaced along with compensation.

Vinod Seth Vs. Rathan Road Lines : The carrier was held liable for loss of goods and for mental agony.

Bnany. Vs. Shenoy, Karnataka S.R.T.C. Karnataka : The passenger who could not be conveyed to his destination owing to road obstruction was allowed to recover from the bus operators his ticket money to and from.

State Commission

State Commission is a "Consumer Disputes Redressal Commission" established by the State Government with the prior approval of the Central Government, in the State notification under Section 9(b) of the Consumer Protection Act.

Composition of the State Commission : According to section 16(1) of the Act, each State Commission shall consist of the following :

- a person who is or has been a judge of High Court shall be appointed, on the recommendation of a Selection Committee, by the State Government and shall be its *president.*
- *two other members*, who shall be persons of ability, integrity and standing. They shall have adequate knowledge or experience of or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of such members shall be a woman.

The provision to this clause states that every appointment made under this clause shall be made by the State Government on the recommendation of a Selection Committee consisting of the President of the State Commission, Secretary-Law Department of the State and Secretary in charge of Consumer Affairs in the State.

Under Section 16(2), the State Government has the power to decide on the salary or honorarium and other allowances payable to the members of the State Commission and the other terms and conditions of service.

Every member of the State Commission shall hold office for a term of *5 years or upto the age of 67 years*, whichever is earlier and shall not be eligible for reappointment.

Pecuniary and Territorial Jurisdiction : According to Section 17 of the Act, subject to the other provision of this Act, the State Commission shall have jurisdiction in the following matters.

1. *To entertain complaints* where the value of the goods or services and compensation, if any, claimed *exceeds Rs. 20 lakhs, but does not exceed Rs. 50 lakhs.*
2. *To entertain appeal against the orders of any District Forum* within the State, and
3. *To call for the records and pass appropriate orders* in any consumer dispute which is pending before and has been decided by any District Forum within the state.

Therefore, the *State Commission's jurisdiction may be original, appellate or revisional.* In respect of (3) above, the State Commission may reverse the orders passed by the District Forum on any question of fact or law or correct or error of fact of law made by the Forum.

In respect of the original jurisdiction of the State Commission, Section 17 only prescribes pecuniary limits. No territorial limits have been fixed for the exercise of original jurisdiction under the Act though the provision contained in Section 11(2) of the Act apply *mutatis mutandis* in the matter of entertaining original complaints by the State Commission as was held by the National Commission in *Indian Airlines Vs. Consumer Education and Research Society (1992)*. The territorial jurisdiction of the State Commission, therefore, extends to the territorial limit of the State.

In the exercise of its appellate jurisdiction, the State Commission may entertain appeals only against the orders of any District Forum within the State. Similar condition also applies in respect of the State Commission's power to revise orders of the District Forums-only orders of the District Forum within the State may be subject to revision by the State Commission.

Procedure applicable to State Commission : The procedure prescribed for the working of District Forums by sections 12, and 14 and the rules framed under these sections, with suitable modifications, is also applicable to State Commissions.

Findings of the State Commission : According to section 13 of the Act, if the State Commission is convinced that the goods are really defective or that the complaint about the service is proved the State Commission shall issue an order to the opposite party to take one or more of the following things :

1. *To remove the defect pointed out by the appropriate laboratory* from the goods in question.
2. *To replace the goods with new goods* of similar description which shall be free from any defect.
3. *To return to the complainant the price of the goods or the service charges* paid by the complainant.