

**“A CRITICAL APPRAISAL OF CONSUMER
GRIEVANCES AND THEIR REDRESSAL
MECHANISM FOR SERVICE INDUSTRY: A CASE
STUDY OF TELECOM INDUSTRY WITH SPECIAL
REFERENCE TO KOTA CITY”**

A Thesis

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**To the
UNIVERSITY OF KOTA**

**By
Pushpendera Singh Chauhan**



**Under the supervision of
Prof. (Dr.) Gopal Singh
Department of Commerce and Management
University of Kota
KOTA, (RAJ)**

2018

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I feel great pleasure in certifying that the thesis entitled “**A CRITICAL APPRAISAL OF CONSUMER GRIEVANCES AND THEIR REDRESSAL MECHANISM FOR SERVICE INDUSTRY: A CASE STUDY OF TELECOM INDUSTRY WITH SPECIAL REFERENCE TO KOTA CITY**” by **Pushpendera Singh Chauhan** under my guidance. He has completed the following requirements as per Ph.D. regulations of the University.

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Pushpendera Singh Chauhan
(Research Scholar)

Place: Kota

Date:

.....

Prof.(Dr.) Gopal Singh
(Research Supervisor)

Place: Kota

Date:

Abstract

With rapid industrialization since independence, India joined the race in manufacturing consumer goods and providing essential services on a large scale. Earlier public sector had monopolized many public utility services and production of consumer goods of various types, which left the hapless consumers with inadequate remedies. The three traditional necessities of all human beings all over the globe – i.e. food, clothing and housing are all sought to be protected by various consumer protection legislations. Now is the era of disinvestments of public sector. All the major public sector undertakings are now going in private hands. It is yet to be seen what will be the fate of the consumers in the big fight with great giants.

In the United State, Ralph Nader – who is also known as the father of modern consumerism has rightly taken the view that the term ‘consumer’ should be equated with the word ‘citizen’ and that consumer protection legislations should be regarded as an aspect of the protection of basic civil rights. Even I personally feel that the Consumer Protection Act, 1986 which has been passed to promote and protect the rights of consumers should receive very liberal and generous interpretation so that no category of goods, services or persons are excluded from the benefits of this legislation. Further modern advertisements, which are the greatest social and economic force in today’s business world, instead of giving the consumer the right to informed choice, often dis-inform and misinform the consumer. Moreover, there are other problems which the consumers face: artificial scarcities, defective weights and measures, excessive charging of prices, food and drug adulteration, environment pollution, lack of consumer education and awareness, non-responsive public utilities and poor functioning of laws. The hapless consumer has little hope in the face of all these problems.

The Consumer Protection Act, 1986 is a comprehensive piece of legislation and it seeks to promote and protect the rights of the consumers. Over the period of last sixteen years, the Act has come in a big way to help the cause of the consumers. It is beneficent and benevolent piece of socio-economic legislation. Through its enactment an attempt has been made to provide a cheap and speedy remedy to the aggrieved consumer by way of an alternative to the time consuming and expensive

process of civil litigation. The most important and remarkable feature of the Act is the setting up of an alternative dispute settlement machinery. The three-tier quasi-judicial redressal agency set up is to provide simple, speedy and effective redressal to the grievances of the consumer. The apex body of consumer protection in this regard is the National Consumer Redressal Commission. The National Commission has original, appellate and revisional jurisdiction and its authority extends to the whole of India. The burden of consumer protection lies on the shoulders of the National Commission to give meaningful and useful judgments. It is for the National Commission to set up precedents which the various District Fora and the State Commissions can follow throughout the country and protect the interests of the consumers.

The Amendment Act 2002 and 2005 has brought about many changes in the Consumer Protection Act, 1986. Recently, one of which is that now the National Commission can set up Circuit Benches at different places in the country.

Consumer education is another unique feature of the Consumer Protection Act, 1986. In this context, the Councils should strive not only to make the consumers aware of their rights but also to inculcate a sense of responsibility in them to see that they do not accept all goods/services which are doled out to them. The consumer movement can assume the dimensions of a vibrant, dynamic mass movement for consumer justice if it extends to consumer mobilization, out of court settlements, class litigation, special consumer lok adalats, compulsory consumer education at school and college levels and consumer-oriented law reforms.

Another need of the hour is to declare the right to healthy environment and sanitation as a consumer right. This would generate a sense of responsibility and accountability in the departments of Government which deal with public utilities. One more area in which consumers require a lot of protection is small investor's protection.

A lot of work is done and lot more is required to be done. The Act has worked and served the country efficiently as is evident from the number of cases already decided and a happy number of cases pending in the consumer forum. Now the only thing

that the consumers of this country require is the transformation from the 'helpless' to 'informed & assertive masses'.

Candidate's Declaration

I, hereby, certify that the work, which is being presented in the thesis, entitled “**A CRITICAL APPRAISAL OF CONSUMER GRIEVANCES AND THEIR REDRESSAL MECHANISM FOR SERVICE INDUSTRY: A CASE STUDY OF TELECOM INDUSTRY WITH SPECIAL REFERENCE TO KOTA CITY**” in partial fulfillment of the requirement for the award of the Degree of Doctor of Philosophy, carried under the supervision of Professor (Dr.) Gopal Singh and submitted to the University Department of Commerce & Management, University of Kota, Kota represents my ideas in my own words and where others ideas or words have been included. I have adequately cited and referenced the original sources. The work presented in this thesis has not been submitted elsewhere for the award of any other degree or diploma from any Institutions. I also declare that I have adhered to all principles of academic honesty and integrity and have not misrepresented or fabricated or falsified any idea/data/fact/source in my submission. I understand that any violation of the above will cause for disciplinary action by the University and can also evoke penal action from the sources which have thus not been properly cited or from whom proper permission has not been taken when needed.

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Date: _____

This is to certify that the above statement made by **Pushpendera Singh Chauhan**, Enrolment No. **05/14080** Ph.D. Reg. No. **RS/257/13** is correct to the best of my knowledge.

Date: _____

Prof. (Dr.) Gopal Singh
Supervisor

University Department of Commerce & Management, University of Kota, Kota

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Date:

Pushpendera Singh Chauhan

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Abbreviations

Sr. No.	Abbreviation	Full Form
1	AIR	All India Reports
2	CERC	Consumer Research and Education Centre
3	CERD	Committee on the Elimination of Racial Discrimination
4	CGIS	Consumer Guidance Society of India
5	CHAN	Consumer Health Action Network
6	CLA-N	Consumer Law Association National Commission
7	CP Act	Consumer Protection Act
8	CPA	Consumer Protection Act
9	CPJ	Consumer Protection Journal
10	CPR	Consumer Protection Report
11	Cr LJ	Criminal Law Journal
12	DLT	Delhi Law Times
13	IOCU	International Organization of Consumer Union
14	IPC	Indian Penal Code
15	NC	National Commission
16	SC	State Commission
17	SCC	Supreme Court Cases
18	SCR	Supreme Court Report

CHAPTER-1: Introduction

1.1 Introduction

India is a vast and complex country with a population of more than one billion people, which accounts for nearly one fifth of total population of the world. When it gained independence in 1947 after two hundred years of colonial rule, the people of India gave to themselves a written Constitution, which pledged to secure to all its citizens.

“Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity¹.”

The Constitution of India conferred the Fundamental Rights to every person in Part-III. These fundamental rights are enforceable and justifiable legal rights. On the other hand, part IV of the Constitution laid down the Directive principles of State Policy, which are fundamental in the governance of the country. The Fundamental rights can be regarded as the legal ends to be achieved by the state while the Directive principles of State Policy can be said to be moral ends to be achieved by the Government.

The challenge before the Republic was indeed massive and unprecedented-establishing a social order through democratic methods informed by justice, liberty and equality. The instrument for the great transformation is to have rule of law and constitutional governance. The inherited legal and judicial system based on Common Law for a number of reasons-structural, historical and cultural-could not provide access to justice to the vast majority of Indians who were poor and illiterate. For a long time, courts and tribunals continued to service the grievances of the middle and upper classes of urban society leaving the rural masses to content with whatever informal systems of disputes resolution available in the mousse areas. The State made some efforts by a limited scheme of legal aid to reach justice to the poor. The Supreme Court attempted to liberalize the rule of locus standi and to entertain

¹ Preamble to the Constitution of India

letter petitions from public-spirited citizens on behalf of under-privileged sections of people.

Judicial reform had been in the national agenda for quite some time. Increase in number of courts, introduction of modern methods of management, resort to alternate dispute resolution methods like mediation, conciliation and arbitration and revival of indigenous Nyaya Panchayats were some of the proposals made from time to time. All these were attempted with varying degrees of success. The Lok Adalats (peoples' courts) became a popular instrument for negotiated settlement by parties themselves of a variety of litigations pending in such bodies like motor accident claims tribunals, family courts, labour courts and even criminal courts. Because the country had a State-controlled planned economic system, nobody seriously canvassed for consumer redressal forums. The ordinary tort and contract laws were thought sufficient to take care of consumer grievances. It was a seller's market and caveat emptor was the dominant principle of commercial relations. Shortages, shoddy goods and services, corruption and inefficiency became the order of the day. The aggrieved people were either to resort to "direct methods" or seek relief in Ombudsman-like institutions (vigilance cell, Lok Ayukta, etc.) which could not give remedies and relief which only judicial bodies could order. The result was alienation and frustration and an overload of the court system with conventional patterns of costly, time consuming litigations.

The unprecedented industrial disaster of December 1984 in the Union Carbide Factory in Bhopal killing over 2500 people in their sleep and injuring seriously ten times that number did shock the system out of its slumber. The inefficiency of the existing tort litigation was admitted even by the Government of India which took the matter on behalf of the victims to American courts for more expeditious disposal. The privileged status of the all-pervasive. State-sponsored public sector in a planned economic system and an ill-conceived legal doctrine that the government is not liable for the torts committed by its employees, kept down the number and extent of consumer grievances in the adjudicatory system. Literally it transferred disputes that ought to have been settled in the private domain into the public law regime. Tort law remained under-developed in India partly because of structural

constraints and partly as a result of the continued prevalence of unhelpful legal doctrines developed in a by-gone era. It is a proposition worth consideration that misadministration and corruption grew in the system because of the non-availability of easy access to judicial processes for getting remedies for injuries suffered.

It is one thing to give right to consumers under various laws, and another to provide mechanisms for agitating those rights for appropriate remedies. The Indian legal system made promises to consumers but failed to fulfill them through necessary administrative arrangements. With two-thirds of the people being poor and illiterate, the problem got aggravated at functional level. The legal system expects people to know their rights and assumes that they are capable of asserting those rights when threatened through appropriate channels. As two-third of Indian consumers lack these two basic requirements for access to justice, the system offered little relief to them and they were left either to suffer in silence or to use direct action methods risking the consequences for violating rule of law.

1.2 Consumer

Every human being who consumes anything for survival is a consumer. The Longman Dictionary of English Language defines consumer as ‘one who purchases goods or services’². However according to the Oxford English Dictionary, “a consumer is one who purchases goods or pays for services”³. Therefore, any person who purchases goods or services for his personal needs is a consumer. This is a rather broad definition.

Section 20(6) of the Consumer Protection Act, 1987 of the United Kingdom defines the term “Consumer” as under:

- a. In relation to any good means any person who might wish to be supplied with the goods for his own private use or consumption;

² The Longman Dictionary of English Language (1991), p343

³ The Oxford English Dictionary (1989) Vol.3, p.802

- b. In relation to any services or facilities means any person who might wish to be provided with any services or facilities otherwise than for the purposes of any business of his; and
- c. In relation to any accommodation means any person who might wish to occupy the accommodation otherwise than for the purposes of any business of consumer.

Oughton have made the following observation in the context of the British law of Consumer protection.

“In general, a consumer transaction involves three elements. First by the consumer must be an individual who does not act in a business capacity. Secondly, the supplier must act in a business capacity. Thirdly, the goods or services supplied must be intended for private and not business use”⁴.

‘In the Indian law of consumer protection the definition of the term ‘consumer’ given in the Consumer Protection Act, 1986 in Section 2(1) (d) is fairly wide. It not only includes within its ambit any person who buys any goods or hires any services for consideration, but also includes any user of such goods or beneficiary of such services with the approval of the original buyer or hirer’⁵.

The National Commission in **M.P State Industrial Development Corporation vs. Bureau of Indian Standards & another**⁶, where repudiation of claim on plea that since investments in bonds by the respondent being made for commercial purpose, respondent was not a consumer under the purview of consumer protection act.

1.3 Need for Consumer Protection Act

‘Economic history of man proved that the principle of Caveat Emptor (Let the buyer beware) is unreasonable and “Consumer is a KING” is a myth. In a market economy –1) more organized and dominant presence of the seller, ii) A large variety of

⁴ David W. Oughton (1991):” *Consumer Law Text, Cases and Materials* “, p.1

⁵ Barowalia, J.N.- *Commentary on the Consumer Protection Act, 1986* (2000) 2nd edition

⁶ 2007(2) CPR 17 (NC)

products and services over flooding the market baffle the consumer, who is unorganized, weak and less aware-often the victim, and hence there is a cause of alarm. A well-organized sector of manufacturers and traders with better knowledge of markets has come into existence thereby affecting the relationship between the traders and the consumers making the principle of consumer sovereignty almost inapplicable in the second half of the twentieth century. The advertisements of the goods and services in imperfections or shortcomings in the quality, quantity and the purity of the goods or there may be deficiency in the services rendered. For the welfare of the public, the glut of adulterous and sub-standard articles in the market had to be checked. The people's participation is the only answer to protect the consumers from the nefarious designs of the unscrupulous traders'⁷. Television, newspapers and magazines influence the demand for the same by the consumers although there may be manufacturing defects

Consumer protection is not a new problem for India. This was, inter alia one of the prominent socio-economic problems inherited by the nation with independence in 1947. Since then, the enactment of various consumer-oriented laws by the national and state governments from time to time to tackle this malady bear ample testimony to its existence, growth and ramification.

In spite of all this, a little could be achieved in the field of the consumer protection through the implementation of the various provisions dealing with consumer protection in the Code of Civil Procedure, 1908, the Indian Contract Act, 1872, the Sale of Goods Act, 1930, the Indian Penal Code, 1860, the Standards of Weights and Measures Act, 1976 and the Motor Vehicle Act, 1988.

The existing laws on consumer protection were not very much suited to the present day needs of the consumer. They either had cumbersome procedures that caused inordinate delay or they were costly and inaccessible to the common man. The remedy available through Civil Courts was also not apt. Moreover, the existing laws were somewhat trader oriented and hence not very much helpful. (E.g. Sale of

⁷ Ibid Barowalia, J.N.- Commentary on the Consumer Protection Act, 1986 (Second Edition, 2000)

Goods Act cannot be invoked for barter transactions). Under Contract Act, a stranger (a person not a party) to the contract cannot sue.

1.3.1 Features of the Act

- The term “Consumer” has been clearly defined under the Act.
- The consumers have been given a legal right to approach the Consumer Courts for settlement of consumer disputes.
- Special consumer courts (known as Consumer Dispute Redressal Agencies) have been established under the Act, at District, State and National level.
- Consumer now need not go to ordinary Civil Courts which are costly, time consuming and not easily accessible.
- The consumer courts give quick and inexpensive remedy by following simple procedure. There is no court fee and the consumer can participate in the court proceedings even without an advocate.
- The Act dismisses the legal principle of Caveat Emptor (Buyer Beware) and incorporates the new principle Caveat Venditor (Seller Beware).
- Complaint with the consumer forum can be lodged (a) consumer (b) Voluntary consumer Association (c) central or State Government (d) any person or persons representing the group of persons having the same interest. This is a necessary deviation from the principle of privates of contract.
- Complaint under the Act can be filed before the consumer court for the cause of action arisen under any law such as Sale of Goods Act, Drugs and Cosmetics Act etc. on any one of the following: Against.
 - 1) The unfair practice or restrictive trade practice adopted by the opposite party
 - 2) Defect in goods purchased;
 - 3) Deficiency in service hired;
 - 4) Excess price charged over the prescribed price;
 - 5) Supply of hazardous goods endangering life and safety.
 - 6) Even barter transactions are covered under the Act.

- Consumer Protection Councils have been established under the Act at Central and State levels to promote and protect the interests of the consumer. Ministry of Consumer Affairs will be its chairman.
- Certain rights of the consumer have been statutorily recognized and the Consumer Protection Council has been entrusted with the task of ensuring these rights.
- Services rendered by public utilities like Railways, Telecommunications, Electricity Boards and other governmental bodies like Development Authorities, Banks, Insurance companies are covered under the Act. For any deficiency in service provided even by the government by charging some money (for consideration) a consumer can file a complaint.
- Education is a service even that which provided by the University.
- Medical services provided by private hospitals and private Doctors are covered by the Act.

The Act provides both compensatory and specific relief to the consumer.

Consumer Courts can take up the complaints even though the issue was agreed to be referred to an arbitrator. The Act applies to all goods and services.

1.3.2 The Rights of Consumers

Consumer Protection Act, 1986 seeks to promote and protect the rights of consumers in multifarious ways. Some of the rights that are given to the consumers under the Act are: -

- The right to be protected against marketing of goods (and services)⁸ which are hazardous to life and property;
- The right to be informed about the quality, quantity, potency, purity, standard and price of goods (or services, as the case may be)⁹ so as to protect the consumer against unfair trade practice;

⁸ Inserted by the Consumer Protection (Amendment) Act, 1993.

⁹ *ibid*

¹⁰ *ibid*

- The right to be assured wherever possible, access to a variety of goods (and services)¹⁰ at competitive prices;
- The right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
- The right to seek redressal against unfair trade practices (or restrictive trade practices)¹¹ or unscrupulous of consumers; and
- The right to consumer education¹².

It may be specifically mentioned that prior to the 1993 Amendment, the consumers' rights to safety, information, redressal and representation etc. were confined to goods only, as the term 'service' was not mentioned in the context of any of these rights. However, by the Amendment Act of 1993, the terms 'service' has been added to all these rights. Nevertheless, the basic issue which deserves immediate attention is not only their inclusion or extension in the 1986 Act, and for that matter in other legislation after 1986, but is their enjoyment by the ordinary individual consumer.

1.3.3 Consumer Disputes Redressal Agencies

Section 9 of the Consumer Protection Act, 1986 provides for the setting up of three Consumer Disputes Redressal Agencies each at the district, state and national levels. These are:

- 1) Consumer Disputes Redressal Forum-The District Forum.
- 2) Consumer Disputes Redressal Commission-The State Commission.
- 3) National Consumer Disputes Redressal Commission- The National Commission.

¹¹ *ibid*

¹² These rights have been mentioned both in the prefatory Note of the Objects and Reasons clause as well as in Section 6 of the 1986 Act.

These for a have been established in line with the guidelines provided by the United Nations. The United Nations guidelines of Consumer protection¹³ provide for measures enabling consumers to obtain redress in the following words:-

Governments should establish or maintain legal and/administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers. Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers. Information on available redress and other dispute-resolving procedures should be made available to consumers.

The 'Consumer dispute' raised in a complaint is settled by the Consumer Disputes Redressal Agency under the Consumer protection Act in accordance with the procedure laid down in Section 13 of the Act which prescribes that the District Forum (as well as the State Commission and the National Commission) shall have the same powers as are vested in a Civil Courts under the Code of Civil Procedure in respect of summoning and enforcing attendance of any defendant or witness and examining the witness on oath; discovery and production of any document or other material object producible as evidence; the reception of evidence on affidavits; the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source; issuing of any commission for the examination of any witness; any other matter which may be prescribed¹⁴ .

A review of the provisions of the Consumer Protection Act discloses that the quasi-judicial agencies created by the Act are not courts though invested with some of the power of a civil court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these Fora / Commissions will not supposed to supplant but supplement the existing

¹³ United Nations General Assembly Consumer Protection Resolution No.39/248 dated 9th April, 1985

¹⁴ Indian Medical Association V/s. V.P. Shantha, III (1995) CPJ 1 (11) (SCC)

judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services. The forum so created is uninhibited by the requirement of Court fee or the formal procedures of a court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the complainant himself; any recognized consumers' association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf all even the Central Government and State Government can act on his/their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for 'business to consumer' disputes and not for 'business-to-business' disputes¹⁵.

¹⁵ Laxmi Engineering Works Vs. P.S.G. Industrial Institute, AIR 1995 SCC 1428 at page 1431: II (1995) CPJ (SCC)

CHAPTER-2: Consumer Protection in India-A Historical Perspective

2.1 Consumer Protection Act

Though The Consumer Protection Act is unique in the protection of consumers, there are so many laws in the country to take care of the consumer. It is also evident from the objects of the consumer protection act, 1986, which assert that this Act is to provide for better protection of interests of consumers. In this chapter let us examine the role played by these legislations in checking the menace of the trading as well as the professional community. The following acts are worth mentioning:

- Indian Penal Code, 1860.
- The Indian Contract Act, 1872.
- The Negotiable Instruments Act, 1881.
- The Sale of Goods Act, 1930.
- The Agricultural Produce (Granting and Marketing) Act, 1937.
- The Drugs and Cosmetics Act, 1940.
- The Drugs (Control) Act, 1950.
- The Industries [Development and Regulation) Act, 1951.
- The Indian Standards Institution (Certification Marks) Act, 1952.
- The Prevention of Food Adulteration Act, 1954.
- The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954.
- The Essential Commodities Act, 1955.
- The Trade and Merchandise Marks Act, 1958.
- The Monopolies and Restrictive Trade Practices Act, 1969.
- The Patents Act, 1970.
- The Hire Purchase Act, 1972.
- The Prevention of Black Marketing Maintenance of Supplies of Essential Commodities Act, 1980.
- The Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Enforcement), Act, 1985.
- Law of Torts.

2.2 The Sale of Goods Act, 1930

The Sale of Goods Act is an important piece of consumer protection law which provides remedy for defect in goods. The term “goods” has been defined under Section 2 (7) of the Act. It may be noteworthy that the same definition was adopted by Consumer Protection Act. Even MRTP Act has taken it with some additions. Though this Act covers all transactions of sale of goods to consumers and non-consumers, consumers in specific have certain relieve. Let us see the scheme of the Act to trace out the relevant areas of consumer protection.

2.3 Drugs and Cosmetics Act, 1940

The purpose of the enforcement of the provisions of Drugs and Cosmetics Act is to control the rampant evil of misnamed or substandard drugs from being sold, and to see that no genuine drug is sold without license. But the purpose is frustrated due to certain shortcomings in law itself and the paucity of enforcement machinery. The problem of adulteration of drugs and also of production of spurious and substandard drugs continues to pose serious threat to the lives of consumers. With this view necessary amendments were made in the Act so as to impose more stringent penalties on the antisocial elements, indulging in the manufacture or sale of adulterated or spurious drugs or drugs not of standard quality which are likely to cause death or grievous hurt to the user¹⁶. Still the Act was found lacking to control the menace of the hazardous drugs, already banned in advanced countries but flourishing in the Indian market. Therefore, the Act was amended in 1982 inserting the new Section 10-A and 26-A, thereby conferring power on the Central Government to prohibit manufacture, sale and distribution thereof¹⁷, thus providing the Central Government with drastic powers to control the banned drugs, in which respect it was lacking earlier¹⁸.

¹⁶ Drugs and Cosmetics (Amendment) Act, 1964

Drugs and Cosmetics (Amendment) Act, 1972

¹⁷ Drugs and Cosmetics (Amendment) Act, 1982

¹⁸ Section 18

2.4 The Drugs (Control) Act, 1950

This act seeks to ensure the easy availability of the essential imported drugs and medicines at reasonable prices to the consumers by controlling the sale, supply and distribution of drugs. The Act safeguards the interest of the consumer by making it compulsory to give a cash memorandum if the amount of purchase is five rupees or more, and on request, if the amount of purchase is less than Rs. Five¹⁹. But in practice, often a dealer would himself discourage the buyer from insisting on cash memorandum saying he will have to pay additional sales tax which could well be saved. But doing so at the outlet the buyer forfeits his right to protect his interest, in case the drug sold to him is substandard or spurious. These provisions require strict enforcement.

2.5 The Prevention of Food Adulteration Act, 1954

It provides for preventing adulteration of food and to protect the health of the citizen. It is a piece of consumer legislation and regulates to some extent the consumer supplier relations. The consumers demand enforcement of discipline among the producers or manufacturers of food to ensure safety in the realm of food. The consumer's legitimate ignorance and his almost total dependence on the fairness and competence of those who supply his daily needs have made him a ready target for exploitation. The Act is, therefore, intended to protect the consumer against outright frauds and to ensure the purity of food and the maintenance of public health by eradicating the evil of adulteration of food.

2.6 Law of Torts and Consumer Protection

Law of torts is a branch of common law of England developed out of precedents. In earlier days, all the cases were being raised before the Common Law Courts for relief and remedy. Apart from strict liability, the only plausible remedy to the consumer against the defective goods was proof of negligence. Proving negligence is not that easy in a civil court. Negligence suits are complex and involve lengthy

¹⁹ Section 9

and expensive trials. To relieve an affected person from discharging the heavy burden of establishing negligence of the producer there has been a shift in the social policy in industrially advanced countries from requiring the plaintiff to prove the fault of the manufacturer to demonstrating fault in the product. In India the progress in the path is slow. The present law of negligence is based on the celebrated decision of **Donoghue vs. Stevenson**²⁰.

2.7 Essential Commodities Act, 1955

The preamble to the Act says that it is an Act to provide in the interest of the general public for the control of the production, supply and distribution of, and trade and commerce in, certain commodities. The dominant object and intendment of the Act is to secure equitable distribution and availability at fair prices of essential commodities in the interest of the consuming public and not the interest of the dealer.

2.8 Indian Penal Code [Sections 274, 275 & 276], 1860

The age old Indian Penal Code make punishable the adulteration of drugs, sale of adulterated drugs²¹, and sale of drug as a different drug or preparation²², with the meager punishment of imprisonment up to six months or with fine up to rupees one thousand or with both, which may be appropriate at that time But in the changing scenario of this social-economic crime in which offender plays havoc with lives of thousands of patients as consumers, the provisions require an amendment to deal with offenders with severe punishment having a deterrence. Therefore, these provisions should be suitably amended providing with at least imprisonment of life and fine up to Rs.50, 000/- as punishment.

²⁰ 1932 AC 562

²¹ Section 275

²² Section 276

2.9 MRTP Act, 1969

The MRTP Act, 1969 is one of its kinds which was enacted to meet the requirements of Articles 39(b) and (c) of the Constitution. The (Amendment) Act 1984 introduced the concept of unfair trade practices and also upgraded the position of Registrar of Restrictive Trade Practices to Director General of Investigation and Registration. Further, the powers of MRTP Commission were enhanced. The (Amendment) Act of 1991 had sweeping changes in the Act. It had a change of direction where control effect has been mitigated and liberalization aspect has been highlighted. The Act was made applicable even to Government and public sector undertaking. All the provisions relating to concentration of economic power (except those dealing with division and severance of undertakings under Sections 27, 27A and 27B) have been removed. Now, the emphasis is on promotion of health trade competition and protection of the interests of the consumer.

2.10 Consumer Protection under MRTP Act, 1969

The Act is popularly known as four in one Act. This inter alia covers four areas viz.

- Concentration of economic power (C.E.P.)
- Monopolistic Trade Practices (MTP)
- Restrictive Trade Practices (RTP)
- Unfair Trade Practices (UTP)

2.10.1 Concentration of Economic Power (CEP)

To diffuse the concentration of economic power the Act provides for division and severance of undertakings under Section 27 and 27 A respectively under the following circumstances. Division of trade, undertaking or interconnected undertaking can be ordered by the Central Government on the recommendation of MRTP Commission. The Commission makes the recommendation only when in its opinion, the working of an undertaking is prejudicial to public interest or it leads to monopolistic trade practice or restrictive trade practice. Further, it can initiate enquiry,

- Upon receiving a complaint of facts from any trade association or from any consumer or a registered consumers' association whether such consumer is a member of that consumers' association or not, or
- Upon a reference made to it by the Central Government or a State Government; or
- Upon its own knowledge or information.

Similarly, the MRTP Commission may recommend severance of interconnected undertakings under Section 27A when it is convinced that the continuance of interconnection of the principal undertaking with any other undertaking is detrimental to

- The interests of the principal undertaking; or
- The future development of the principal undertaking or;
- Steady growth of the industry to which the principal undertaking pertains; or
- The public interest

2.10.2 Monopolistic Trade Practice (MTP)

The expression monopolistic trade practice has been defined under the Act, but a consumer/consumer association is not empowered to lodge a complaint against monopolistic trade practice though public is affected by it. Moreover, there is no practical utility of monopolistic trade practices since all the orders passed by the Central Government, against the undertakings have been stayed by the Supreme Court and none has been ever decided.

2.10.3 Restrictive Trade Practice (RTP)

The expression restrictive trade practice has been defined under Section 2 (o) of the Act. Certain trade agreements enumerated under Section 33 (1) are termed as deemed restrictive trade practices. There are special provisions of restrictive trade practices relating to resale price maintenance under Sections 39 to 41, which are bad per se RTP makes emphasis on free and fair competition. The acid test of RTP

is public interest. MRTP Commission has absolute powers to enquire and pass an order.

There is a voluminous growth of case law under restrictive trade practice. On the scrutiny of the Act, one may find out that the Act has twin objects of protecting the interests of the trading community as well as the consumers. There also appears to be some overlapping leading to confusion in the mind of the consumer; for certain matters he has remedies both under Consumer Protection Act as well as MRTP Act. He will be better placed if he approaches the consumer fora. Hence consumer education plays a vital role in remedying the situation.

2.10.4 Unfair Trade Practice (UTP)

Section 36A defines unfair trade practice. Sections 36A to 36E dealing with UTP were added by the (Amendment) Act of 1984, which were based on Sacchar Committee's recommendations. Misleading advertisements and certain other practices were terms as unfair trade practices. The (Amendment) Act 1991 made the definition of UTP actionable per se. MRTP Commission has absolute powers to inquiry and pass orders against UTP.

2.10.5 Redressal Authorities under Act

In the case of concentration of economic power and monopolistic trade practice, Central Government has the ultimate authority to pass an order. In the matter relating to restrictive trade practices and unfair trade practices, MRTP Commission has ultimate authority to pass an order. But in all the four categories, the Commission's enquiry is compulsory and the Central Government cannot pass an order without the recommendation of the Commission.

2.10.6 Constitution and Powers of the Commission

The MRTP Commission is established by the Central Government. It consists of the Chairman and two other members. The Chairman should be the judge of a High Court or the Supreme Court. The other shall be prominent persons in certain fields

like economics, law, public administration etc. The term of office is 5 years and a member is eligible for reappointment till he reaches the age of 65 years.

In comparison, MRTP Commission is a high powered quasi-judicial body situated only in Delhi. But in consumer fora one of the members shall be a woman. There are no such provisions under the MRTP Act. In comparison the consumer fora, including the National Commission do not have the above mentioned powers. This has been reiterated by the Supreme Court in **Morgan Stanley Mutual Fund vs. Kartick Das**²³.

MRTP Act, 1969 contains provision relating to the protection of consumer. With the advent of unfair trade practice, the scope for consumer protection through MRTP Act had widened. In fact, the Act was enacted to take care of various aspects affecting the economy and consumer protection is a part of it. Basically, there are two categories of cases that come up for decision before the MRTP Commission ONE: Issues between trades TWO: Issues between consumers and traders. Disputes between the traders, mostly steal the show, as the consumer has no easy accessibility to the Commission. There is also a point of over lapping. In the case of unfair trade practice, the consumer has choice to approach either the MRTP Commission or a consumer forum. If he approaches the Commission, it may prove costly and time consuming. Still we come across reported cases under the MRTP Act which could be equally raised at a consumer forum. This only speaks volumes that the consumer awareness and education are at a low level. Voluntary Consumer Associations and Consumer Protection Councils have to play a greater role in bridging the gap of information.

2.11 The Indian Contract Act, 1872

The Contract Act provides the basic principles of formation of contract, its validity, enforcement and remedies. This provides solution to various contractual situations pinpoints the responsibilities/asserts the rights of the parties. This is a very important and fundamental piece of legislation in commercial parlance. This covers

²³ 1994 SCC 225

all aspects of contracts in general and certain special contract like, indemnity, guarantee, bailment, pledge and agency. In essence, the remedies under the Act are available to all, consumers as well as non-consumers. Hence certain principles like PRIVACY OF CONTRACT were justified and retained under the Act. But as far as consumer protection is concerned, application of privity of contract principle in strict to hampers the interests of the consumers.

2.12 Weights and Measures Act, 1976

This Act contains detailed provisions to regulate hierarchy of standards in the country. Further, the coverage of legal control under the enforcement laws is wider. The law covers measurement/measuring instruments used in commercial transactions for industrial production or for the protection of human health/safety.

In the field of commercial transactions, the law ensures that articles or goods which are sold by weight, measure or number should be weighed, measured or counted accurately in the presence of the purchaser. In so far as measurements for industrial production are concerned, the law envisages proper control on the accuracy of the measurement carried out in Industrial fields so as to ensure inter-changeability of particulars and components with a view to permit mass production of machines and their parts and accessories.

2.13 Conclusion

The Consumer Protection Act, 1986 ushered in a new era of dealing with the cause of the consumer. In the early stages of the enforcement of the Act so many impediments were experienced. But the diligent and sedulous efforts by various consumer's association, pro-consumer interpretations of the Redressal Agencies and sympathetic attitude of the legislature all made the survival and success of the Act possible. The success story of the Act is evident from the enormous increase in number of cases during the first sixteen years. The phenomenal growth in the subject can be largely attributed to the Amendment Acts of 1993 and 2002 which removed so many bottlenecks in the Act and made the Act more functional and practicable. Some land mark decisions by National Commissions and Supreme

Court viz. **Cosmopolitan Hospitals Vs. Smt. Vasantha P. Nair²⁴**, **Lucknow Development Authorities Vs. M.K. Gupta²⁵**, **Laxmi Engineering Works Vs. P.S.G. Industrial Institute²⁶** have made the Act more viable and useful at the same time, there are still some hitches which need to be sorted out. To cite a few

1. The decision of National Commission to keep the medical services by Government hospitals out of the ambit of the Act in **C.U.T.S. Vs. State of Rajasthan²⁷**.
2. The decision of the Supreme Court that shares before allotment are not goods in **Morgan Stanley Mutual Fund Vs. Katrik Das²⁸**.

²⁴ I (1992) CPJ 302 (N.C.)

²⁵ AIR (1994) SCC 787

²⁶ (1995) 3 CTJ 289 (SCC)

²⁷ (1991) I CPR 241 (N.C.)

²⁸ (1994) 4 SCC 225

CHAPTER-3: Consumer Protection Act, 1986: An Overview

3.1 Introduction

Consumer Protection Act, 1986 is an irresistible piece of social benefit legislation. It has championed the cause of common man by opening new vistas of relief not available to him hitherto. It has helped the consumer in many ways, viz,

1. Breaking the barriers of caveat emptor, privity of contract/ locus standi etc;
2. Simplifying the procedures for seeking remedy and bringing justice to the doorsteps of a common man;
3. Reducing time and cost in litigation considerably;
4. Bringing about a sense of consumer oriented conduct and a sense of public accountability in public utility services and other state run agencies.

The Act has aroused a lot of public awareness in a short span of twenty years. The mushroom growth of the number of cases is a standing testimony to it. Indeed, the enactment has opened the floodgates for the suppressed cause of the consumer and in a welfare state like India betterment of consumer lot it an inevitable consequence. In any progressive society, the business community has to behave sensibly keeping in mind the social responsibility of business. In this connection State has a pivotal role in striking a balance between the conflicting interests of business and public welfare. In fact, business is a part of society and it cannot grow in isolation. Even a businessman is a consumer in a broad sense and hence the Consumer Protection Act, is meant for all in one way or the other. It is pertinent to mention that Ralph Nader, the father of Consumer Movement in the world, has suggested that every citizen is a consumer, although for legislative purposes the term consumer has been given a restricted meaning. It is relevant to examine various meanings attached to the word "CONSUMER".

Every person who consumes anything for sustenance and survival is a consumer. This is an ordinary meaning. According to Oxford English Dictionary, a consumer

is “one who purchases goods or pays for services”. As per Oxford Advanced Learners Dictionary, he is a “person who buys goods for uses services”. But the legal definition, for the purpose of protection, is somewhat lengthy though restricted in its sense. The word “Consumer” defined under Section 2(1)(d) of the Consumer Protection Act covers the following persons: -

1. A buyer of goods or a person who has obtained goods on hire purchase or lease for consideration,
2. User of goods with the permission of the buyer or hire purchaser,
3. Hirer of services for consideration,
4. Users of services with the approval of the hirer,
5. A buyer of goods (though for commercial purpose) to earn livelihood by means of self-employment)

The following are not consumer: -

1. A person obtaining goods for re-sale,
2. A person obtaining goods for commercial purpose not simply to earn livelihood by self-employment,
3. A person obtaining goods or availing services free of charge or without the approval of the buyer or hirer.

Thus, though the definition is wide, it has restricted certain categories of people from being consumers. We shall discuss elaborately the same topic at a later stage when we analyze various definitions used in the Act. It would suffice to say for the time being that the legislature has certain intention and viewpoint in giving such a definition of consumer. Let us first examine the preamble for the objects and reasons for the enactment.

3.2 Purpose of The Act

‘The Act is dedicated, as its Preamble shows, to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes

and for other connected matters. In the statement of objects and reasons it is said that that the Act seeks to provide speedy and simple redressal to consumer disputes. Quasi-judicial machinery is sought to be set up at the District, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give reliefs of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of orders given by the quasi-judicial bodies have also been provided²⁹.

3.2.1 The Act protects the consumer in the following respect: -

1. It seeks, inter alia, to promote and protect the rights of consumers such as;
 - a) The right to be protected against marketing of goods which are hazardous to life and property;
 - b) The right to be informed about the quality, quantity, potency, purity standard and price of goods to protect the consumer against unfair trade practice;
 - c) The right to be assured, wherever possible, access to variety of goods at competitive prices;
 - d) The right to be heard and to be assured that consumers' interest will receive due consideration at appropriate fora;
 - e) The right to seek redressal against unfair trade practices or restrictive trade practice or unscrupulous exploitation of consumers; and
 - f) Right to consumer education.
2. These objects are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central, State and District level.

²⁹ Singh, Dr. Avtar:-Law of Consumer Protection –Principles & Practice being a study of the Consumer Protection Act, 1986(Second Edition, 1997)

3. To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the District, State and Central level. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.
4. The Bill seeks to achieve the above objects.

The importance and scope of the preamble was thoroughly examined by the Supreme Court in **Lucknow Development Authority Vs. M.K.Gupta**³⁰ by Justice R.M. Sahai who observed:

3.3 Object of The Act

The Act is dedicated, as its preamble show, to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for other connected matters. In the Statement of Objects and Reasons it is said that the Act seeks to provide speedy and simple redresser to consumer disputes. Quasi-Judicial Machinery is sought to be set up at the District, State and Central levels. These quasi-judicial bodies observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers Penalties for non-compliance of orders given by the quasi-judicial bodies have also been provided.

Section 6 of the Act spells out these objects and charges the Central Consumer Council with the responsibility of fulfilling these objects. The Section says that the objects for the Central Council shall be to promote and protect the right of the consumer that have been listed in Section 6. They are as follows: -

³⁰ AIR (1994) SCC.787

3.4 Rights of the Consumers

3.4.1 Protection against hazardous goods:

‘The Act seeks to protect and consumer against marketing of goods and services, which are hazardous to life and property. It is the concern of the Government and its authorities to prevent dangerous goods from finding their way into markets. The consumer is assured by the Act when he falls a prey to the purchase of such goods or hiring of services. Purchase of spurious drugs, adulterated food or inferior quality of cement affect life or property of consumers.

The subject matter of dangerous goods also finds a place in law of torts. In **Donoghue Vs. Steveson**³¹ the manufacturer of ginger beer was held liable to the ultimate consumer for his negligence in supplying beer contaminated with the remains of a dead snail’³².

3.4.2 Right to Consumer Information

‘The consumer has been assured of the right to have information from the producer/supplier about the quality, quantity, potency, purity, standard and prices of the goods he buys. Right to correct information also implies right to have No false or misleading information. In the latter case it amounts to unfair trade practice against which there is a remedy under Section 14 of the Consumer Protection Act. Similarly, there is a remedy even under MRTP Act, 1969 (vide Sections 36A and 36D).

3.4.3 Right of access to variety of goods and services at competitive prices

Every consumer is given a right to have access to variety of goods and services at competitive prices. In the absence of this right, he may end up with inferior goods or services and he may be made to pay exorbitant prices. In India, a market place of teeming millions of mass illiterates, specific efforts are needed to ensure his right to the consumer. The Central, State and District Councils under the Consumer

³¹ 1932 A.C. 562

³² Singh, Dr. Avtar-Law of Consumer Protection-Principles & Practice being a study of Consumer Protection Act, 1986(Second Edition 1997)

Protection Act have been entrusted with the responsibility of bringing about the organization of markets and market practices in such a way that all dealers are supplied with a variety of goods for the benefit of the consumer and that the goods with a variety are being offered at competitive prices.

3.4.5 Right to due attention and consideration

Every consumer is vested with the right to being heard and the right of being considered. The Consumer Protection Councils are charged with the responsibility of assuring the consumers that the appropriate fora would hear them and the consumers will receive due attention and consideration from such forum.

3.4.6 Right of Redressal and Right against Exploitation

The whole scheme of the Act revolves around the right of redressal which has been found with favour. The Act meticulously provides for the establishment of three tier Redressal fora at the District, State and Central level. These fora are quasi-judicial in nature. They ensure speedy, easy and economical remedy to the aggrieved consumer. Despite some initial problems, the Consumer Dispute Redressal Agencies are busy providing judicial relief. The cases are so overwhelming that it indicates that the fora have been receiving tremendous response from the agonized public. In spite of speedy redressal and absence of second appeal, there are lakhs of consumer cases pending with the fora.

3.4.7 Right to Consumer Education

Knowledge and information are two pillars of the sound foundation of civilized societies. It is rightly said that where people do not exercise their legal remedies, the system of remedies tends to become rusted. Hence for the proper functioning of the legal system, it is necessary that knowledge of the availability of a legal remedy should be so widely disseminated that people as a whole become conscious of their rights. By increased information as to rights and remedies the consumer will be better empowered to pursue his remedies. A consumer complaint which gives the impression that the consumer is fully conscious of and alive to his right would bring about more positive response from the supplier. In fact, this is one of the missions

sought to be accomplished by the Act. The Consumer Protection Councils have been entrusted with the responsibility of providing to the people, proper education in terms of their remedies under the Act.

To sum-up, the six rights enumerated under Section 6 of the Act as rights of the consumer are sought to be promoted and protected by the Consumer Protection Councils at Central, State and District levels.

3.5 Provisions of Consumer Protection Act, 1986

The Act is unique in its approach in dealing with the cause of the consumer. There are number of special effects under the Act, which are terribly missing in other consumer laws like Sale of Goods Act, Contract Act, Drugs and Cosmetic Act, Standard of Weights and Measures Act etc. Hence the Act can be called as the Kind of all consumer legislations. Let us examine the various salient features of it.

3.5.1 Shift from Caveat Emptor to Caveat Venditor

The existing law e.g. of Goods Act invariably carry forward the common law principle of caveat emptor (Buyer Beware) which is neither apt nor warranted. The doctrine is acceptable only where there is a free flow of market information and the buyer is fully equipped with the knowledge and information about the market. But under the complex modern market mechanism where innovative methods of marketing with the proliferation of goods and services prevail, the consumer is the most baffled lot. Since the buyer and seller are not on equal footing the seller is placed in a dominant position, it is imperative that the buyer must be accorded special protection. And hence the shift from the doctrine of Caveat Emptor to Caveat Venditor (Seller beware).

3.5.2 Deviation from the principle of privity of contract

Under the Contract Act, only the party to the contract can sue which is popularly known as “A Stranger to the Contract cannot sue”. The Act has reasonably departed from the above principle for good. If we examine the definition of ‘Consumer’

under Section 2(1)(d), we find that even a user of goods or services (with the approval of the contracting party who paid for the same) is a consumer and hence he can make a complaint. This indeed, is a necessary departure.

3.5.3 Extension of locus standi

The Act recognizes the fact that justice often fails to reach the doorsteps of the needy in a heterogeneous society like India where almost fifty per cent of the population is illiterate and more than sixty per cent are lower middle class and poor mostly living in villages. In such a case it cannot be expected that every aggrieved consumer is capable of knocking at the doors of the consumer forum situated at district and state headquarters. It is often the case the either it is not known to the consumer that there is an easy remedy through fora or that he cannot afford to spare the time and money.

It is relevant in this context that the cause of such consumer be allowed to be espoused by someone else other the advocates voluntarily. Here voluntary consumer associations have a yeomen role to play. The same has been well recognized by the legislature when it defined the term “Complaint” under Section 2(1)(b) of the Act. Section 2(1)(b), read with Section 12 recognizes the following as complainants having locus standi who can make a complaint. They are;

- i. A consumer; or
- ii. Any voluntary consumer association registered under the Companies Act, 1956 or under any other law the time being in force; or
- iii. The Central Government or any State Government;
- iv. One or more consumers, where there are numerous consumers having the same interest;
- v. In case death of a consumer, his legal heirs or representative.
- vi. From the above, it is evident that the Act made strides in the principle of locus standi by extending it to other.

3.5.4 Justice Within Reach

Above all, this is a predominant and the most laudable feature of the Consumer Protection Act. With the advent of the establishment of three tier redressal fora at district, state and national level, the common man is relieved from the pain and pangs of approaching the ordinary civil court. It is every body's knowledge that litigation through civil court, results in time and cost overruns which abhors.

Now that the fora are available which exclusively deal with the consumer disputes, there is no procedural jargon and a complainant can proceed with the case even without an advocate. There are more than 2000 voluntary consumer associations operating in the country which are authorized to take up the cause of any individual consumer. Moreover, the cases are supposed to be disposed of within 3 to 5 months. All these things have been possible because of the separate consumer courts.

3.5.5 Certain Services brought within the purview of the Act.

- a. Services including the services relating to immovable property rendered by public utilities and other government agencies have been covered under the Act. Hitherto these services were not properly checked under the existing legislations In **Lucknow Development Authority Vs. M.K. Gupta**³³, the Apex Court emphasized the need for construing the provisions of the Act in favour of the consumer.
- b. Medical services rendered for consideration are brought within the purview of the Consumer Protection Act (**Indian Medical Association Vs. V.P. Shantha**)³⁴.
- c. Individual services like tailoring have been covered under the Act. (**A.C. Modagi Vs. Cross Well Tailors**)³⁵.

³³ AIR (1994) SCC.787

³⁴ III (1995) CPJ 1 (11) (SCC)

³⁵ II (2008) CPJ 586

d. Education is a service under the Act. Holding of examinations, declaration of results is a service within the Act even if it is done by a university. (**Ravinder Singh Vs. Maharshi Dayanand University**)³⁶.

Amendment Acts of 1993, 2002 and 2005 have widened the scope. There were major amendments in 1993 and 2002 and the recent amendment, 2005 which correct the anomalies in the Act which made the working of the Act easy and more functional.

3.5.5.1 Definitions and their Interpretation

Section 2 of the Act is the interpretation clause and it contains a number of terms which are defined. It is very important to understand them clearly together with case only. They form the basis for the application and interpretation of the provisions of the Act. Some of them are very important for the discussion and they are depicted in the following diagram.

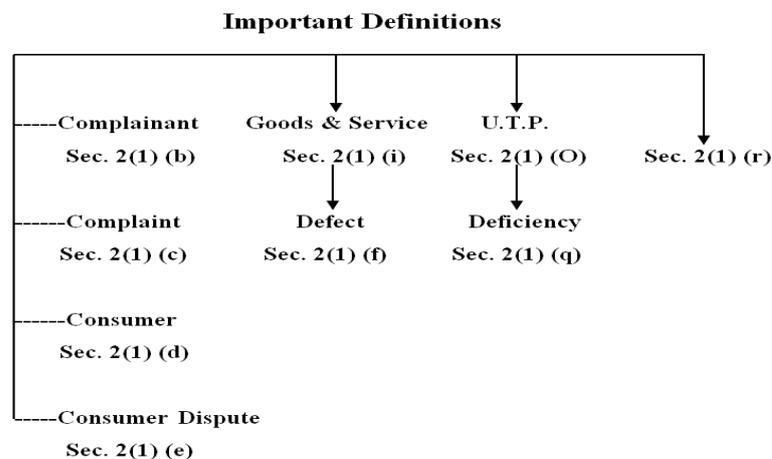


Chart: 3.1

3.5.5.2 Complaint Section 2(1) (b)

“Complainant” means

- i. A consumer; or

³⁶ I(2007) CPJ 36

- ii. Any voluntary consumer association registered under the Company's Act, 1956 or under any other law for the time being in force;
- iii. The central government or any state government;
- iv. One or more consumers, where there are numerous consumers having the same interest;
- v. In case of death of consumer, his legal heir or representative;

The person who makes a complaint is a complainant. Under the Act five categories of complainants are given. The fourth category of suits are in the nature of representative suits as under Civil Procedure Code has been added by the Amendment Act of 1993 and the fifth category i.e. legal heirs have been added by the Amendment Act of 2002. These are welcome steps.

3.5.5.3 Complaint Section 2(1) (c)

“**Complaint**” defined in Section 2(1) (c) means of allegation in writing made by a complainant that

- i. Any unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
- ii. The goods bought by him or agreed to be bought by him suffer from one or more defects;
- iii. The service hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
- iv. A trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint a price in excess of the price-
 - a. fixed by or under any law for the time being in force;
 - b. Displayed on the goods or any package containing such goods;
 - c. Displayed on the price list exhibited by him by or under any law for the time being in force;
 - d. agreed between the parties;
 - e. goods which will be hazardous to life and safety when used, are being offered for sale to the public-

- in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
 - if the trader could have known with due diligence that the goods so offered are unsafe to the public;
- i. Service which are hazardous or likely to be hazardous to life and safety of the public when used are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety.

The last items are clauses (v) and (vi) have been added by the Amendment Acts, 1993 and 2002. The complaint under the Act should necessarily on any one of the items mentioned therein. Moreover, it is to be in writing, unlike the one under Criminal Procedure Code.

3.5.5.4 Consumer Section 2(1) (d)

- i. The legislature has done a lot of favour to the consumer, trading community, as well as professionals by defining the terms, consumer. Though the term has been subject to judicial review many a time, at Amendment Acts of 1993 and 2002 and subsequent decisions such as **Laxmi Engg. Works Vs. P.S.G. Industrial Institute**³⁷ has set right the issue.
- ii. **In Provident Fund Commissioner Vs. Shiv Kumar Joshi (2000)** the Supreme Court has held that an employee, who is a member of the Employees' Provident Fund Scheme, is a consumer and duties performed by the Regional Provident Fund Commissioner under such scheme is "service" and thus, in case of delay in release of provident fund, complaint for deficiency in service, is maintainable.

The main purpose of the definition given under Section 2(1) (d) is to restrict the availability of consumer remedies to consumers only. The method adopted is to

³⁷ (1995) SCC CTJ 289

confine the Act to non-business buyers from business sellers. The definition is as follows:

- a. buys any good 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 purposes; or
- b. hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person but does not include a person who avails of such services for any commercial purposes;

The term “Consumer” is defined in Section 2(1)(d) of the Consumer Protection Act, 1986 in two parts, one in reference to a consumer who purchases goods and the second in reference to a person who hires services. Thus the Act covers transactions for supply of goods³⁸ and rendering of services. It covers the whole range of commodity market as well as services market. The Supreme Court in its decision **Lucknow Development Authority Vs. M.K. Gupta**³⁹ noted that 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 for private or public services. In OXFORD DICTIONARY a consumer is defined as “a purchaser of goods or services. In BLACK’S LAW DICTIONARY it is explained to mean “one who consumes”, consumers are individuals who purchase, use, maintain, and dispose of

³⁸ Shares before allotment have been held not to be in the category of good [Morgan Stanley Mutual Fund Vs. Kartick Das, (2004) 4 SCC 225 at 239]

³⁹ (1994) 1 SCC 243

products and services. Consumer is a member of that broad class of people who are affected by pricing policies, financing practices quality of goods and services, credit reporting, debt collection and the trade practices for which State and Federal consumer protection laws are enacted. The legislature has taken precaution not only to define complaint 'Complaint', 'consumer' but even to mention in detail what would amount to an unfair trade practice by giving an elaborate definition in clause (r).

As far as the reported case law is concerned, perhaps the first reported case on the issue was **Oswal Fine Arts Vs. HMT, Madras**⁴⁰ in this case the grievance of the complainant was that an offset printing machine supplied to him by the respondent company was defective and that in spite of repeated requests, the defects were not set right to his satisfaction. On the basis of the serious loss and hardship caused to him, he claimed a compensation of Rs. One Core and sixty Lakh, i.e. 16.9 million rupees. The respondent company raised objections regarding the maintainability of the claim. According to them firstly the matter was already sub-judiciary before the Madras High Court and secondly the machine had been purchased by the complainant concern for commercial purposes. The National Commission dismissed the complaint and categorically held that a "person who obtains goods for a commercial purpose is specifically excluded from the scope of the expression 'Consumer' by the definition contained in Section 2(1)(d)"⁴¹

However the real controversy stated from the National Commission in **Western India State Motors Vs. Sobhag Mal Meena**⁴². In this case, the complainant, who was running a taxi service in Jaipur, had purchased a car from a local car dealer. The car developed certain problems and even after getting it repaired quite a few times, the complainant was not satisfied and he approached the State Commission, Rajasthan alleging that the car suffered from serious manufacturing defects which could not be set right by repair. The complainant claimed compensation for the

⁴⁰ I (2001) CPJ 330 (N.C.)

⁴¹ Ibid

⁴² I (2001) CPJ 44 (N.C.)

mental agony and hardship he had faced in sending the car for repairs every time. The opposite party's manufacturer and dealer-however, raised the contention that the State Commission had no jurisdiction to deal with the complaint inasmuch as the complainant was not a consumer since he had purchased the vehicle for the purpose of running it as a taxi. The Rajasthan State Commission did not give any consideration to this crucial point. In fact, it decided the case on merits and awarded compensation of Rs. 2,000/- to the complainant. On appeal by the opposite parties, the National Commission, however, ruled that the State Commission should have dealt with this objection. The National Commission sustained the objection and ruled that the vehicle had been purchased for a commercial purpose. The Commission observed:

“As per the definition of the expression ‘Consumer’ contained in Section 2(1)(d)(i) of the Act, the said expression would not include “a person who obtains goods for resale or for any commercial purpose.” There cannot be any doubt that the plying of a taxi for hire is clearly a ‘commercial purpose’ and the purchase of a vehicle make specifically for being used as a taxi is a purchase made for a “commercial purpose”. Such being the position the complainant before the State Commission was not a consumer and the State Commission should have rejected the petition on that short ground⁴³.”

Saraf has also raised the question that if an owner of a handcart who uses it for carrying goods in the market finds the cart to be defective, should he be denied access to a Consumer Forum for filing a complaint against the seller? Is he using the handcart for a commercial purpose? According to Saraf, the same remarks would apply to a rickshaw puller who buys tool for engaging in the profession. Where is the line to be drawn between a ‘Commercial’ and a non-commercial’ purpose? He has, therefore, suggested that where the goods purchased cannot be used for gain without the application labour or skill of the buyer the purpose should not be deemed to be a commercial purpose, but the owner of such goods should

⁴³ Saraf D.N. “*Law of Consumer Protection in India*” (1995) p. 242

have the right to invoke the jurisdiction of an appropriate Consumer Disputes Redressal Agency for removal of defects in the goods or their replacement⁴⁴.

It may be submitted that though the observations and comments of Saraf are apt and significant, they do not seem to be applicable to the case of **Western India State Motor v. Sobhag Mal Meena**⁴⁵, primarily because the purchase of the car in this case was made by a person conducting a regular tax service with a fleet of vehicles, which business was being conducted on a fairly large scale. Therefore, in my opinion the case was rightly decided by the National Commission.

3.5.5.4.a Whether Agricultural Purpose is a Commercial Purpose?

This issue whether agricultural purpose can be treated as a commercial purpose came up before the courts on many occasions.

*Jyoti Marketing & project Ltd. Vs. M. Pandian*⁴⁶ is also a leading and significant case which came before the National Commission involving similar case. In this case the respondents were two brothers owning seven acres of land and growing sugar-cane crop that had purchased a motor pump set of 7.5 horse power from the appellant for lift irrigation of the land being cultivated by them. They also claimed that they were earning an income of Rs. 50,000/- per year by the cultivation of sugar-cane. The main issue involved in this case for determination was whether the purchase of the pump set, which failed to work from the first day of its installation, could be deemed to be a purchase for commercial purpose as contended by the appellants.

After considering the evidence, the State Commission found that the complainants had purchased the pump set for agricultural purpose and therefore, it could not be said that its purchase was for a commercial purpose and hence the complainants were 'Consumer'. It was further held that as the pump set was not replaced within the warranty period, it amounted to deficiency in the rendering of service by the

⁴⁴ ibid

⁴⁵ I (2001) CPJ 44 (N.C.)

⁴⁶ (2002) 1 CPR 781 (N.C.)

manufacturers as well as the marketing agent and local dealer. The State Commission concluded:

“The fact the sugar-cane raised in fields are sold for manufacture of sugar cannot render the operation of cultivation as anything but agricultural. Even paddy crops raise are ultimately sold in the form of paddy and it would be ridiculous to contend that agricultural operations raising paddy is commercial in nature. We, therefore, hold that the pump set has been purchased by the complainants only for agricultural operations and not for any commercial activity. They are, therefore, consumers well within the meaning of Section 2(1)(d)(i) of the Act”⁴⁷.

After going through a plethora of case law, the following principles can be deduced on commercial purpose.

1. The buyer who purchased goods for earning livelihood by self-employment is a consumer and the goods so purchased are not for commercial purpose.
2. Where the goods purchased are for carrying any activity on large scale for the purpose of earning profit and there is a close nexus between the purchase of goods and the large scale activity, the purchaser of such goods is not a consumer. (**Raj Kumar Vs. S.C.Verma**)⁴⁸.
3. Agricultural activities are distinct from commercial activities and any purchase made for agriculture cannot be stamped as purchase for commercial purpose. But it is not to say that every agricultural activity excludes commercial purpose e.g. machinery and equipment purchased for drip irrigation scheme for grape grove is for commercial purpose. (**Jain Irrigation System Vs. Malgonda Annapati**)⁴⁹.
4. The last word on commercial purpose is what the Supreme Court said in Laxmi Engineering Works case that “.....commercial purpose within the meaning of

⁴⁷ ibid

⁴⁸ 2001 (1) CPR 437

⁴⁹ (1998) CTJ 545 (N.C.)

the definition of expression 'consumer' in Section 2(1)(d) of the Act is always a question of fact to be decided in the fact and circumstances of each case".⁵⁰

Hopefully, the controversy sparked off by the expression 'commercial purpose' appears to have been set at rest especially in the light of the newly added explanation to the definition.

3.5.5.4.b Position of Users who are not buyers

"The Act takes into its protective spell persons other than buyers who use the goods with the permission of the buyers or who use the services with the permission of the hirer of those services. This becomes apparent from the definition of the Consumer in Section 2(1) (d) which expressly provides that the word "Consumer" includes any user of goods other than the persons who buys such goods when such use is made with the approval of the buyer. So it is true reference to such user of services.

Where the contract in favour of the user can be inferred, an action may lie under the contract whether or not an action under the Act is also available. 'A person other than the original party to the transaction who hires any services, that is to say, a beneficiary of those services, can also maintain a complaint under the Act'.⁵¹ It is necessary that such beneficial use must be with the permission of the person who hired the services. The relative of a person accompanying him on the latter's Scooter to a petrol pump to get petrol was held to be not in category of persons using goods since using goods or services with the assent of the buyer and, therefore, the matter of his injury caused by leaking petrol which caught fire was not within the jurisdiction of the Consumer Forum⁵². Where the contract in favour of the user can be inferred, an action may lie under the contract whether or not an action under the Act is also available''⁵³.

⁵⁰ supra

⁵¹ B.S. Sidhu Vs Secretary, Central Government Post & Telegraph Deptt, [1991] 2 CPJ 90 Har.

⁵² D.V. Lakshminarayana Vs. Divisional Electric Engg, [1991] II CPJ 303 AP: 1991 CPR 90.

⁵³ Singh, Dr. Avtar—*Law Consumer of Protection –Principles & Practice being a study of the Consumer Protection Act, 1986* (Second Edition, 1997)

3.5.5.5 Consumer Dispute Section 2(1) (e)

Consumer dispute is defined as “a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint”.

Obviously, the origin of consumer dispute is denial (total) or disputing (qualified denial) of the allegations made in the complaint by the opposite party against whom such allegation is made. Thus the allegation may be against:

- i. Defective goods supplied;
- ii. Deficiency in service provided;
- iii. Unfair or restrictive trade practice adopted by the opposite party;
- iv. Charging higher price than that he is required under a law or otherwise;
- v. Supply of hazardous goods endangering life and safety.

We shall examine the meaning and scope of the definition of goods, defect, service, deficiency, unfair trade practice and restrictive trade practice to have a full view of the expression consumer dispute.

3.5.5.6 Goods Section 2(1) (i)

The term ‘goods’ has not been specifically defined under the Act. The definition given under Section 2(7) of the Sale of Goods Act has been adopted. It reads as follows: “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 land which are agreed to be severed before sale or under the contract of sale.”

3.5.5.7 Defect Section 2(1) (f)

3.5.5.7.a Defect in Goods

The allegation regarding defect in goods may be against an individual trader or government or a public undertaking. Under Section 2(1)(f) ‘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 the time being in force or under any contract or implied or as is claimed by the trader in any manner whatsoever in relation to any goods’.

The Prevention of Food Adulteration Act, 1954 provides the standard of cream that ought to be maintained in milk or ice cream made of milk. Any failure to maintain that standard is defect in the goods. The Standard of Weights and Measures Act specify that packages should be in standard quantities. If it is not done it is defect in goods. Similarly, many drugs are marketed according to their power or potency. Such requirements are prescribed by law or sometimes declared by the manufacturers. If the requirement is not met, it is potency –related defect.

The words required by law would include not only statutory requirements but also those under common law. In the same way if the goods are not as promised by the supplier, say, goods supplied were not corresponding to the sample or description under Sale of Goods Act, 1930, the goods are said to be defective. In **Jalaludin Vs. Manager**⁵⁴ where due to a defect in the manufacture of scooter supplied, the rider died consequent upon the breakdown of the axle of the scooter. His father was allowed to recover Rs.1,40,000/- with interest @ 18% after two months from the accident date and also Rs. 3,000/- by way of costs. In **Solidaire India Ltd. Vs. K. Indira**⁵⁵ there was a breakdown of a television set in the very first week and its repair on eleven occasions could yield no result. It was held to be a defect.

3.5.5.8 Service Section 2(1) (o)

It may be pertinent to note that defect refers to goods and deficiency relates to services. With the progress in tertiary sector especially in India the volume of service and service providers are increasing day by day and consequently litigation for deficiency in service is also on the rise. Another reason for the growth of this field is that services provided by public utilities and Governmental Agencies are

⁵⁴ II (2005) CPJ Guj.

⁵⁵ III (2005) CPJ Kerala

also governed by the Act. Prior to this enactment, the woes of the consumer were unheard and ignored. Another growth area for the deficient services is the services provided by the private hospitals and private doctors. The crusade against the private doctors was virtually launched by the National Commission in **Cosmopolitan Hospitals Vs. Smt. Vasantha P. Nair**⁵⁶, which was later consolidated by the Supreme Court in **Indian Medical Association Vs. V.P. Shantha**⁵⁷.

“Service” means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information but does not include the rendering of any service free of charge or under a contract of personal service;

3.5.5.9 Deficiency 2(1) (g)

The term “deficiency” is defined in Section 2(1)(g) as follows:

“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.

In its decision in **Lucknow Development Authority Vs. M.K. Gupta**⁵⁸ the Supreme Court examined the scope of the term ‘Service’ in the context of Consumer Protection Act.

⁵⁶ (1992) 1 CPR 820 (N.C.)

⁵⁷ III (1995) CPJ 1 (11) (SCC)

⁵⁸ AIR (1994) SCC 787

Similarly, Education is a service. Holding or examination, declaration of results is a service within the Act even if it's done by a university. (**Revinder Singh Vs. Maharshi Dayanand University**).⁵⁹

3.5.5.9.a Free Service

It may be recalled that contract of personal service and free service are excluded from the purview of the definition of service. The issue of free service was discussed by the National Commission in a landmark case of **C.U.T.S. Jaipur Vs. State of Rajasthan & Others**⁶⁰. This is a case where free service rendered by the Govt. hospitals was involved. In this case a complaint was filed by a Jaipur based voluntary consumer Organization on behalf of a lady who underwent an abdominal tubectomy operation at the government hospital, Kota (Rajasthan) as part of the Family Planning Program. She developed serious complications after the surgical operation, reducing her to the condition of a physically invalid person, suffering continuous physical pain as well as great mental agony. It was alleged in the complaint that what was a simple surgery had resulted in such serious complications to the patient, on account of the negligence on the part of Civil Surgeon who had performed the operation as well as due to the lack of proper post-operative care and attention. The complainant demanded compensation for the loss and injury suffered by the patient. The Rajasthan State Commission dismissed the petition on the ground that neither the lady nor her husband had 'hired' any service for consideration for the purpose of performing the operation for sterilization and that neither of them could be considered as a 'Consumer'

The question whether medical services fall within the ambit of the definition of service or not has been finally settled by the Supreme Court in India in **Indian Medical Association Vs. V.P. Santha**⁶¹. The Supreme Court of India has settled the law on the point by holding that the medical practitioners, government hospitals and private hospitals/ nursing homes where the charges are required to be paid

⁵⁹ CPJ (1997) 36 (N.C.)

⁶⁰ (1991) 1 CPR 241 (N.C.)

⁶¹ III (1995) CPJ 1 (11) (SCC)

by everybody availing the services or where charges are required to be paid by persons availing services but certain categories of persons who cannot afford to pay are rendered service free of charges would be covered by the definition of 'Service' under the Act and are amenable to the provision of the Act along with the management of the hospital jointly and severally.

3.5.5.10 Restrictive Trade Practice Section 2(1) (nnn) (RTP)

“Restrictive trade practice” means a 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 costs or restrictions and shall include-

1. Delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;
2. Any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services;

3.5.5.11 Unfair Trade Practice Section 2(1) (r) (UTP)

“Unfair Trade Practice” means a trade practice which, for the purpose of promoting the sales, use or supply of any goods or for the provision of any service, adopts any unfair method or deceptive practice including any of the following practices, namely: -

The practice of making any statement, whether orally or in writing or by visible representation which-

1. Falsely represents that the goods are of a particular standard, quality, quantity or grade, composition, style or model;
2. Falsely represents that the services are of a particular standard, quality or grade;
3. Falsely represents any re-built, second-hand renovated, reconditioned or old goods as new goods;

4. represents that the goods or services have sponsoring or approval, performance, characteristics, accessories, uses or benefit, which such goods or services do not have;
5. represents that seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
6. Makes a false or misleading representation concerning the need for, or usefulness of, any goods or services;
7. Gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:
8. Makes to the public a representation in a form that purports to be:
 - a. A warranty or guarantee of a product or of any goods or services; or
 - b. A promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result.

If such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

9. Materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
10. Gives false or misleading facts disparaging the goods, services, or trade of another person.

“Apeejay School and Another Vs. M.K. Sangal and Others”⁶² is the good example of practice of unfair trade practice. In this case Unreasonable Clause Conditions printed in the prospectus that admission fee and bus charges not refundable-Whether they are unreasonable and unfair. It is evident from the facts of the present case that the conditions printed in the prospectus of the school that in case a student leaves the school within a month of his/her admission he/she will be refunded half of annual dues and that registration fee, tuition fee and admission fee and bus charges are not refundable was an unreasonable and unfair clause⁶³.

In a recent case titled as **‘Citi Bank Vs. J. Ramsai’**⁶⁴, TAMIL NADU CONSUMER DISPUTES REDRESSAL COMMISSION, CHENNAI has dismissed the appeal with the cost of Rs. 500/- and confirming the order of the lower Forum and the time for compliance was given was two months only. The fact of the case: -

‘Consumer Protection Act, 1986-Sections 2(1)(g)- Banking Services- Credit Card- Invalid, declared not accepted by shopkeeper- Complainant had sufficient drawing power, well within funds limits- Contention, shopkeeper if not accepted credit card, O.P. not liable- Contention not acceptable- By issuing credit card, O.P. assures that credit will be available to holder of card and on its presentation, it will be honored- Shopkeeper if refuses to accept credit card that would amount to refusal by finding a convenient peg in form of shopkeeper attributed to mistake in misreading which itself would amount to negligence- O.P. charges heavily for issuing card and services- There are apparent and hidden charges- Customer when presents card in shop and it is not accepted, irreparable damage to one’s prestige would be caused- Deficiency in services and unfair trade practice- O.P. liable to pay compensation’⁶⁵.

In another recent case titled as **‘Divya Sood (SMT.) Vs. Gurdeep Kaur Bhuhi’** NATITONAL COMMISSION⁶⁶ also upheld the order passed by the STATE

⁶² (2003) I CPJ 9 SCDRC.

⁶³ Barowalia, J.N.-*Commentary on the Consumer Protection Act, 1986* (2000) 2nd edition

⁶⁴ I (2005) CPJ 226

⁶⁵ *ibid*

⁶⁶ I (2007) CPJ 44 (N.C.)

COMMISSION OF BANGLORE, hence the revision petition is dismissed. The brief facts of the case are: -

1. In this case an advertisement was given by 'THE BODY CARE' in the 'Times of India' that without dieting, weight would be reduced. The complainant, who has paid the amount, after undergoing the treatment, found the said advertisement was bogus because after taking the treatment, her weight did not reduce. Hence she filed complaint to the District Forum, Bangalore. District Forum held it an unfair trade practice and awarded a sum of Rs. 25,000/- as compensation and also directed the O.P. to refund the amount of Rs. 10,500/- paid by the complainant to the Petitioner.
2. Being aggrieved by the District Forum order O.P. filed appeal before the State Commission of the Bangalore. State Commission also confirmed the order of the District Forum. National Commission also upheld the order passed by the State Commission, revision petition is dismissed.

3.6 Constitution of Consumer Protection Councils

3.6.1 Sections 4 to 8

The purpose of the Act is to provide for better protection of consumers by establishing Consumer Protection Councils and other authorities. From the above it appears that legislature has given good weightage to the councils. The Act envisages setting up of Consumer Protection Councils at the Central, State and District levels.

The Central Protection Council is established by the Central Government under Section 4 of the Act. State Consumer Protection Councils and District Consumer Protection Councils are to be established by the respective State Governments. Briefly the purpose of their establishment is to promote and protect the interest of the consumer. Specific rights of consumers mentioned under Section 6 of the Act were the objects of the Consumer Protection Councils.

3.6.2 Central Consumer Protection Council

Section 4(1) of the Act lays down that the Central Government is to establish Central Consumer Protection Council which according to Section 4 (2) shall have:

- a. The minister in charge of consumer affairs in the Central Government to be its Chairman, and
- b. such number of other official or non-official representing such interest as may be prescribed.

It may be added that the Consumer Protection Rules 1987 lay down that the Central Council shall consist of 150 members. They interalia include: the Minister in charge of Consumer affairs, Minister of State or Deputy Minister in Department of Civil Supplies; the Minister in charge of consumer affairs in states; members of Parliament; the Commissioner of scheduled castes and scheduled tribes; representatives of the Central Government Departments and autonomous organizations concerned with consumer interests; representatives of Consumer Organizations; representatives of Women; representatives of farmers, trade and industries etc. The rules also lay down that the terms of the council shall be three years. Regarding the procedure for the Council's meetings, it has been laid in Section 5(1) and (2) that the Central Council shall meet as and when necessary. At least one meeting of the Council shall be held every year. It has been left to the Chairman to decide the place and time of the meetings of the council. The primary object of the Central Consumer Protection Council as per Section 6 is to promote and protect the rights of the consumers. All those rights which have been mentioned before have been reproduced under this heading.

3.6.3 State Consumer Protection Councils

Section 7 of the 1986 Act envisages the establishment of the Consumer Councils at the state level also. The objects of the State Consumer Protection Council are the same, that is the promote and protect the consumer's rights mentioned in the statement clause and Section 6 of the Act. No specific procedure had been laid down

in the Consumer Protection Rules for the establishment of the State Consumer Councils.

According to Section 7(2) the State Council shall consist of the following members namely: (a) The minister in charge of consumer of consumer affairs in the State Government who shall be its chairman; and (b) such number of other official or non-official members represented such interest as may be prescribed by the State Government. Section 7(3) has laid down the procedure regarding the meeting of these State Councils. According to this section the State Council shall meet as and when necessary but not less than two meetings shall be held every year. The State Councils shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government in view of the above provisions. It is hoped that these councils shall take special interest in consumer matters and shall go a long way in championing the consumers cause.

3.6.4 District Consumer Protection Councils

The Consumer Protection (Amendment) Act, 2002 had added two new section viz. Section 8A and 8B which provide for the establishment and objects of District Consumer Protection Councils. According to section 8A the State Government shall establish a District Consumer Protection Council for every district. The District Councils shall have the Collector of the district as its Chairman and such other official and non-official members representing various interests as prescribed by the State Government. The objects of the District Council shall also be to promote and protect the rights of the consumer within that District. Every District Council shall meet as and when necessary but shall have at least two meetings every year.

3.6.5 Redressal Agencies

Section 9 authorizes the Central and State Governments to establish CDRAS (Consumer Dispute Redressal Agencies). The State Governments can have District level fora and State Commission at State headquarters. Central Government can

establish National Commission at Central level. It is a three tier quasi-judicial mechanism.

CHAPTER-4: Consumer Disputes and Their Redressal

Agencies: Composition and Jurisdiction

4.1 Introduction

The Consumer Protection Act, 1986 provides for a three tier quasi-judicial body to deal with the consumer disputes at District, State and National levels. While District Fora are of the lowest order in the hierarchy, they have only original jurisdiction. The State Commissions as well as the National Commission have original, appellate and revisional jurisdiction. This augurs well for the aggrieved consumer that there is appeal at each level. There is finally an appeal to the Supreme Court from the National Commission. The volume of cases lodged with and decided by the Fora indicates that there is tremendous response from the consumers all over the country and the trend is upward. Naturally, as already mentioned elsewhere, in a populous country like India, there is always a need for separate courts to tackle the matters pertaining to consumers exclusively. The need was finally fulfilled through the establishment of Consumer Fora all over the country under the Act which initiated a new era of consumer protection. The National Commission is the apex body of consumer fora, established by the Central Government.

4.2 District Forum: Composition and Jurisdiction [Section 10]

The District Forum shall consist of: -

- a. The President who shall be a District Judge or shall be eligible to be a District Judge.
- b. Two other members (one of the two must be a woman) of ability, integrity and standing with adequate exposure, knowledge or experience in the fields of economics, law, administration, accountancy, etc.
- c. The members should also be above 35 years of age and have a bachelor degree from the recognized university. The President and the member are appointed by State Governments on the recommendation of the Selection Committee.

The Selection Committee at the state level consists of:

- i. President of the State Commission;
- ii. Secretary, Consumer Affairs;
- iii. Secretary, Law.

The Amendment Act, 2002 has for the first time added disqualifications for appointment as a member. A person is disqualified from being appointed as a member if he-

- a. Has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or
- b. Is an undischarged insolvent; or
- c. Is of unsound mind and stands so declared by a competent court; or
- d. Has been removed or dismissed from the service of the government or a body corporate owned or controlled by the Government; or has, in the opinion of the state Government, such financial or other interests as is likely to affect prejudicially the discharge by him of his functions as a member; or
- e. Has such other disqualification as may be prescribed by the State Government?

Every member of the Forum can serve up to the age of 65 years or a term of 5 years whichever is earlier and he eligible for re-appointment for another term of 5 years or up to the age of 65 years whichever is earlier.

4.3 Jurisdiction of District Forum

The fora have pecuniary, subject matter and territorial jurisdiction.

4.3.1 Pecuniary Jurisdiction

The District Fora have jurisdiction to entertain complaints where the value of goods or services and the compensation if any, claimed is not more than **Rs. 20 lakhs**. Prior to the amendment of 2002, it was limited to less than **Rs.5 lakhs**.

4.3.2 Jurisdiction Based on Subject Matter

Section 11 clearly restricts the jurisdiction of District Forum to consumer disputes regarding goods and services only. But in early days certain public utilities like Telecom and Railways stiffly resisted the jurisdiction of the consumer fora over their services. It was contested by Telephonic Department that telephone services did not come within ambit of 1986 Act, and rather they were governed by the age old Indian Telegraph Ac, 1881 and Indian Telephone Rules but National Commission good a very liberal construction in interpreting the term ‘goods’ and ‘services’ of public utilities including those of Telecommunications within the purview of the 1986 Act.

The following cases can be cited as illustrations: -

1. **Mahanagar Telephone Nigam Ltd. Vs. Dr. Vinod V. Karkare**⁶⁷.
2. **C.R. Ramachandran Vs. D.T.E Palakkad**⁶⁸.
3. **Chief General Manager, Calcutta Telephone Vs. M.K. Gupta**⁶⁹.

Regarding railways cases (railways being the largest in public transport in India) the National Commission has taken a similar stand. In **General Manager, S.E. Rly & Others Vs. Anand Prasad Sinha and others**⁷⁰, the National Commission rose to the occasion once again in making significant observations regarding the jurisdictional objection taken by the appellant before the State Commission. The contention of the appellant (Railways) was that a complaint was not a maintainable against Railways since the passengers traveling by train could not be regarded as consideration so as to fall within the purview of the Act of 1986. The National Commission rejected the appeal and observed:

“We are constrained to observe that we are indeed surprised that such a plea should have been put forward by the S.E. Railway Administration. The expression ‘service’ contained in Section 2 (1) (0) of the Act specifically included within its

⁶⁷ II (2009) CPJ 655

⁶⁸ I (2009) CPJ 379

⁶⁹ II (2009) CPJ 116

⁷⁰ I (2009) CPJ 10 (N.C.)

scope the provisions of facilities in connection with transport facilities to the public for consideration paid by them by way of fare, levied for ticket. It is in fact one of the largest public utility undertakings in the country intended to render service to the public by providing transportation by rail through its large network from Kanyakumari to Jammu. We have no hesitation in holding that passengers traveling by trains on payment of the stipulated fare charged for the ticket are consumers and the facility of transportation by rail provided by the railway administration is a service rendered for consideration as defined under the Act”⁷¹.

4.3.3 Territorial Jurisdiction

Section 11 of the Act provides that a complaint shall be instituted in the District Forum with in the local limits of whose jurisdiction.

- i. The opposite party or the defendant actually and voluntarily resides or carries on business or has a branch office / personally works for gain, at the time of institution of the complaint; or
- ii. Any one of the opposite parties where there are more than one actually and voluntarily resides or carries on business or has a branch office or personally works for gain or has a branch office or personally works for gain at the time of institution of the complaint, provided that the other opposite party / parties acquiesce in such institution or the permission of the forum is obtained in respect of such opposite parties; or
- iii. The cause of action arises wholly or in part.

In **Air France Vs. M.S Sondi Arora**⁷² where complainant purchased air tickets from general sales agent of present petitioner at Jalandhar and part of such cause of action arose at Jalandhar. National commission held that district forum at Jalandhar have jurisdiction to entertain the complaint of the complainant. The above provisions under Section 11 (20 of the Consumer Protection Act, 1986 are similar to those under Section 20 of the Civil Procedure Code 1908.

⁷¹ ibid

⁷² 2007 (2) CPR 41 (NC)

However, the Amendment Act of 1993 of the Consumer Protection Act, 1986 had come in handy by substituting the words “carries on business or has branch office for carries on business. But under explanation to Section 20 of CPC, 1908 one has to file a suit at the registered office and not at branch office.

4.3.4 State Commission

As per Section 9 (b) of the Act, every State and Union Territory shall establish a State Commission. The State Commission being higher in the hierarchy has original, appellate and revisional jurisdictions within the respective State or Union Territory.

4.3.4.1 Composition of State Commission (Section 16)

- i. The State Commission shall consist of:
- ii. A President, a present or past Judge of a High Court;

Two other members who shall be persons of ability, integrity and standing and 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 whom shall be a woman. The members should also be graduates, from recognized university, above the age of 35 years and should not be disqualified for appointment.

Further, not more than fifty percent of the members should have judicial background. A person having judicial background means a person having knowledge and experience for at least a period of 10 years as a presiding officer at the district level court or any tribunal of equivalent level. The appointment of President shall be made in consultation with the Chief Justice of the respective High Court.

The appointment of other members (one of whom shall be a woman) shall be made on the recommendations of the Selection Committee, which is formed with

- a. the President of State Commission as chairman;

- b. Secretary, Consumer Affairs;
- c. Secretary, Law as members

Section 16 (3) prescribes that every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier and they shall be eligible for reappointment for another term of five years or up to the age of sixty-seven years, whichever is earlier.

4.3.4.2 Jurisdiction of State Commission

The State commission has original, appellate and revisional jurisdiction in addition to pecuniary, subject matter and territorial ones. As far as pecuniary jurisdiction of State Commission is concerned, earlier it could decide the matters with above **five lakhs but not exceeding twenty lakh rupees**. But after the **2002 Amendment Act, now the limit is above Rs. Twenty lakh but up to Rs. One crore**. The subject matter is 'good' and 'service' as in the case of District Fora.

State Commission has appellate jurisdiction under Section 15 of the Act. Any party aggrieved by an order made by the District Forum can prefer an appeal before the State Commission within 30 days of order however the State Commission may entertain an appeal even after the expiry of 30 days on sufficient cause.

It is noteworthy that Section 15 says any party aggrieved by the order which is akin to Section 55 of the MRTP Act. It is in consonance with public law character and as such it should be liberally construed to allow government / consumer associations to file an appeal in addition to the complainant. Again the period of thirty days has been in debate and different courts expressed different opinions on the issue whether the period should be counted from the date of the order or date of the receipt of order by the aggrieved party.

- 1. Haryana Agro Industries Corporation Vs. Virender Pal Singh⁷³**
- 2. Haryana State Electricity Board Vs. Dinesh Kumar⁷⁴**

⁷³ I (2001) CPJ 672

⁷⁴ I (2002) CPJ 359

3. Marrikkam (Motors) Ltd. Vs. Mary Poulse⁷⁵

The National Commission finally observed on an appeal in case no. (2) above that the expression date of order in Section 15 should be construed as date of knowledge of the order.

4.3.5 The National Commission

Section-9 of the Consumer Protection Act, 1986 deals with the establishment of various fora. The National Commission is the highest in the hierarchy of consumer Dispute Redressal Agencies. The National Commission has some administrative powers against all lower fora. The Central Government was entrusted with the job of setting up National Commission. Section 9 (c) provides that there shall be established for the purpose of this Act a National Consumer Disputes Redressal Commission established by the Central Government by notification.

4.3.5.1 Composition of National Commission (Section 20)

The National Commission shall consist of: -

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

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

- b. Not less than four, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely: -
 - i. Be not less than thirty-five years of age;
 - ii. Possess a bachelor's degree from a recognized university; and

⁷⁵ II (2001) CPJ 283

- iii. Be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:
- iv. Provided that not more than fifty percent of the members shall be from amongst the persons having a judicial background.

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

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

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

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

1.(A) i The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.

- ii. If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.
2. The salary or honorarium and other allowances payable to and the other terms and conditions of service of the members of the National Commission shall be such as may be prescribed by the Central Government.
3. Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier:
 - Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of seventy years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:
 - Provided further that a person appointed as a President of the National Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1):
 - Provided also that a member may resign his office in writing under his hand addressed to the Central Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned.
4. Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer

Protection (Amendment) Act, 2002 shall continue to hold such office as President or member, as the case may be, till the completion of his term.

The National Commission consists of (a) a President, who 'is or has been a Judge of the Supreme Court' and is appointed by the Central Government Section 20 (a) and (b) not less than four other members who shall be 'persons of ability, integrity and standing' and 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 whom shall be a woman' and who possess a bachelor's degree from a recognized University and is of thirty five years or above. [Section 20 (b)].

4.3.5.2 Jurisdiction of the National Commission (Section 21)

After the Amendment Act, 2002, the jurisdiction, powers and authority of the National Commission may be exercised by Benches which shall be constituted by the President of the National Commission with one or more members as the President may deem fit. Subject to the other provisions of the Act, this National Commission shall have following jurisdiction: -

- a. To entertain: -
 - i. Complaints where the value of the goods or services and compensation, if any claimed exceed rupees (Rs. One Crore)⁷⁶; and
 - ii. Appeals against the orders of any State Commission; and
- b. to call for the record and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

⁷⁶ Subs by Act 62 of 2002.

4.4 General Classification of the Original Jurisdiction

The original jurisdiction can be classified in to following manner:

- i. Pecuniary jurisdiction
- ii. Subject matter Jurisdiction
- iii. Territorial jurisdiction

As far as the territorial jurisdiction of National Commission is concerned, the whole of the India comes under its purview pecuniary jurisdiction and subject matter jurisdiction can be examined in detail.

4.4.1 Pecuniary Jurisdiction

Regarding the other areas like defect in goods, unfair trade practices etc. the Commissions exercised only Appellate, Revisional jurisdiction. Therefore, now after the recent amendment this aspect would be taken care of, as the pecuniary jurisdiction of the National Commission has been raised.

A consumer, any recognized consumer organization registered under the Indian Companies Act, 1956 or any other law or the Central or State Government may initiate proceedings before the National Commission by filing a complaint under section 2(1) (a) of the Act, if the value of the goods or services and compensation, if any, exceeds rupees twenty lakhs. Prior to the amendment of the Act in 2002, the pecuniary limit was rupees twenty lakhs.

4.4.2 Subject matter jurisdiction

The National Commission enjoys jurisdiction over all goods and services. The term goods have meaning as under the sale of Goods Act, 1930. They basically mean movable goods.

As far as the services are concerned there is clear inclusive definition given under the Act {Section 2 (1) (o)} which means service of any description made available to the potential users and includes but not limited to the provisions of facilities in

connection with banking, financing, transport, processing, supply of electrical or other energy. Board or lodging or both, housing construction, entertainment, amusement or the purveying of news or their information but does not include the rendering of any service free of charge or under a contract of personal service.

In case of goods, the jurisdiction of Consumer for a was indisputable, but in the matter of service especially provided by the public, utility services, there were number of cases in which it was contested that certain services e.g.; by railways, telecommunications, housing boards, doctors were not within the ambit of the consumer forum.

The National Commission had taken a similar stand in cases against other public undertakings. For instance, in **General Manager South Eastern Railway & Others Vs. Anand Prasad Sinha & Others** ⁷⁷, **Union of India Vs. Niles Agerwal** ⁷⁸, **Telecom District Manager Patna Vs. Kalyanpur Cement Ltd**⁷⁹, **District Manager Telephones, Lucknow Vs. Madhu Enterprises, Lucknow**⁸⁰ the National Commission has occasion to make significant observation regarding the jurisdiction objection taken by the appellant before the State Commission. The contention of the appellant was that a complaint against the Railways was not maintainable under the Consumer Protection Act, 1986 since the passengers traveling by a train could not be regarded as ‘consumer’ and that the railway administration was not providing any ‘service’ for consideration so as to fall within the purview of the 1986 Act, The National Commission, while upholding the decision of the State Commission, observed:

“We are constrained to observe that we are indeed surprised that such a plea has been put forward by the South Eastern Railway Administration. The expression ‘service’ contained in Section 2(1) (o) of the Act specifically includes within its scope the provision of facilities in connection with transport. The Railway Administration is providing transport facilities to the public for consideration paid

⁷⁷ I (2010) CPJ 10 (N.C.)

⁷⁸ I (2010) CPJ 203 (N.C.)

⁷⁹ II (2010) CPJ 286 (N.C.)

⁸⁰ II (2010) CPJ 579 (N.C.)

by them by way of fare, levied for the ticket. It is in fact one of the largest public utility undertaking in the country intended to render service to the public by providing transportation by rail through its large network from Kanya Kumari in the South to Jammu Tawi in the North. We have no hesitation to hold that passengers traveling by train on payment of the stipulated fare charges for the ticket are ‘consumers’ and the facility of transportation by rail provided by the railway administration is a ‘service’ rendered for consideration as defined under the Act”⁸¹

Similarly, Electricity Board took an identical stand that their services were not within the ambit of the Act. And Housing Boards were no exception. For Electricity Boards, In

*4.4.2.1 Haryana State Electricity Board v. Dinesh Kumar*⁸²

In the case of ‘Housing and Construction’ the following earlier cases are relevant:

- i. P.U. Awas Evam Vikas Parishad (Housing & Development Board) Vs. Garima Shukla & Others**⁸³.
- ii. U.P. Awas Vikas Parishad Vs. C.P. Sharma & Others**⁸⁴
- iii. All India Defence Personal Welfare Association (Regd) Vs. Punjab Housing Development Board**⁸⁵.

The issue involved in the above was whether the type of service which the Housing and Development Board was rendering to the public to consideration was a service within the meaning of the Consumer Protection Act, 1986. The National Commission answered the question in the affirmative and held.

The mere fact that Housing and Development Board is a statutory body does not mean that it is outside the purview of the Consumer Protection Act. The Housing and Development Board is engaged in serving the public in the manner of providing

⁸¹ Ibid

⁸² II (2009) CPJ 38

⁸³ I (2009) CPJ 1 (N.C.)

⁸⁴ I (2009) CPJ 7 (N.C.)

⁸⁵ I (2009) CPJ 445

housing by acquisition of land, development of sites, construction of houses thereon and allotment of plots/ houses to the public. The Board is clearly engaged in rendering service for consideration to the public and therefore those who are allotted plots/houses from the Board are clearly consumer falling within the definition in Section 2 (1) (d) (ii) of the Act. Again under Section 2 (1) (o) of the Act the definition of the term 'service' is very comprehensive: it means 'service of any description' including banking, financing, insurance, transport, processing, supply of electrical or other energy, entertainment etc. This leaves no room for doubt that the type of service which the Board renders to the public for a consideration is clearly covered by Section 2 (1) (o).

The National Commission took a similar stand in cases against various other housing boards too. But the agencies providing this service did not agree with the pronouncements of the National Commission. They started filing with petitions before the various High Courts and the Supreme Court of India, challenging the orders of the National Commission. The Lucknow Development Authority, for instance, contended that while defining the term service, the 1986 Act had specified certain services like banking, insurance and transport and that housing had not been included in that list Accordingly they argued that the Consumer Fora had no jurisdiction to entertain any complaints against the housing industry. The Supreme Court accordingly issued a stay order and the National Commission had no alternative but to stay the execution of the various orders on the subject passed by the Consumer Fora at the district and state and national level. Even though the argument of the housing agencies was incorrect, in order to overcome the long drawn battle that would otherwise ensue, the government has not specifically added 'housing construction' in the list of services specified in the 1986 Act. However, the amendment took a long time and meanwhile cases on the subject piled up. Now that the matter is finally resolved, all those judgments of various Consumer Fora which were kept in abeyance will be implemented. This is definitely an instance of the victory of the emerging consumer movement in India over unethical and irresponsible services in **Lucknow Development Authority Vs. M.K. Gupta**⁸⁶,

⁸⁶ A.I.R. (1994) SCC 787

the Supreme Court of India has made significant observations on the applicability of the Consumer Protection Act, 1986 to the government and semi-government bodies in general and to the 'housing industry' in particular. The apex court has observed.

“What remains to be examined is if housing construction or building activities carried on by a private or statutory body was service within the meaning of clause (o) of Section 2 (1) of the Act as it stood prior to inclusion of the expression 'housing construction' in the definition of 'service' by an Ordinance 24 of 1993. As pointed out earlier, the entire purpose of widening of the definition is to include in it not only day to day buying and selling activity undertaken by a common man but even to such activities which are otherwise not commercial in nature yet they partake of a character in which some benefit is conferred on the consumer. Construction of a house or flat is for the benefit of a person for whom it is constructed. He may do it himself or hire service defined in the Act. Similarly, when a statutory authority develops land or allots a site or constructs a house for the benefit of a common man it is as much service as by a builder or contractor. The one is contractual service and other statutory service. A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into agreement with a builder or contractor is a potential user and nature of transaction is covered in the expression 'service of any description, it further indicated that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but not exhausting the service which could be covered the earlier part. So any service except when it is free of charge or under contract of personal service is included in it. Since housing activity is a service it was covered in the clause as it stood before 1993”⁸⁷.

4.4.3 Appellate Jurisdiction

Being an apex body, the National Commission enjoys appellate as well as Revisional jurisdiction. Section 21 of the Act provides that the National

⁸⁷ Ibid

Commission shall have jurisdiction to entertain appeals against the orders of State Commission.

The Consumer Protection Rules, 1987 provide for procedures. As per the Rules, the memorandum of appeal should be legibly written or typed. It should contain grounds of appeal and six copies thereof shall be submitted by the appellant to the National Commission in person or be sent by registered post to the Commission. Each memorandum shall be accompanied by a certified copy of the orders of the State Commission and other documents which support the grounds on which the appellant relies. The Commission fixes a date for the hearing of the appeal. It is obligatory on the part of the parties or their agents to appear before the Commission. If the appellant or his agent fails to appear the Commission may dismiss the appeal or proceed ex parte, and if the respondent makes a default the Commission shall proceed ex parte and decide the appeal on merits. The Commission has also the power to adjourn the hearing but not more than one adjournment shall ordinarily be given. The time limit to decide the appeal is 90 days but in extraordinary circumstances more time may be taken. Similarly, the time limit for filing appeals is 30 days from the date of order of the State Commission which may be relaxed if sufficient cause is shown for not filing appeal in time. It may be relevant to note that Section 5 of the Limitation Act, 1963 also provides for relaxations in filing appeals, applications or petitions (but not suits) on the grounds sufficient cause.

In a very recent case titled as “**V. SHANBHAN (DR.) Vs. SHANKAR AND ANR**”⁸⁸ an appeal was preferred by the O.P. against the order in the NATIONAL COMMISSION. Regarding the appeal, the question arose at various levels of State Commission on the starting point of period of limitation. Whether the limitation starts from the date of the order or from the date of knowledge of the order, different State Commissions took different views on the subject.

‘**Haryana State Electricity Board Vs. Dinesh Kumar**’⁸⁹ appears to be one of the earliest cases on the issue of limitation. In this case the District Forum Hissar had

⁸⁸ I (1997) CPJ 418

⁸⁹ I (1992) CPJ 359

partly allowed the respondent's claim with regard to the excessive demands raised against him by the appellants for electricity charges. The order of the District Forum was dated 25th July 1990. However, the appeal was preferred before the State Commission only on 21st September, 1990 and the plea taken was the order under appeal was received by the appellants only on 17th September 1990. Thus the main issue involved in that case was whether the period of limitation prescribed under Section 15 of the Consumer Protection Act, 1986 starts from the date of the order itself or from the date of the receipt of a copy thereof to be communicated to the appellant under Rule 4 (10) of the Haryana Consumer Protection Rules, 1988?

It was contended on behalf of the appellants that the rule required that the orders of the District Forum shall be communicated to the parties free of charge and accordingly the time began to run from the date of the communication of the order and not from the date when it was pronounced or signed by the District Forum. On the other hand, the respondent argued that Section 15 of the Act was categorical that the appeal had to be preferred within the period of 30 days from the date of the order, and that this mandate could not be overridden by the, inference or implication of any subsidiary rule. The Haryana State Commission observed that the language of Section 15 was concise and categorical. It first conferred a right of appeal on a person aggrieved by the order of the District Forum and thereafter clearly prescribed the limitation for preferring the same. The Commission held that the language used by the legislature was precise and unambiguous and that it did not mandate that the appeal was to be preferred within a period of 30 days from the date of the order. The Commission observed:

“To conclude, we are of the view that the terminus of quo for determining the period of limitation prescribed under section 15 of the Act is firmly fixed like a pole star on the date of the District Forum itself. The answer to the question posed at the outset is rendered in the terms that the period for determining the limitation prescribed by Section 15 of the Act runs from the date of the order under appeal,

and not from any alleged date of the receipt of the copy thereof forwarded under Rule 4 (10) of the Rules”⁹⁰.

The Haryana State Commission upheld its own decision in the above mentioned case again in **Haryana Agro Industries Corp. Ltd. Vs. Virender Pal Singh & Another**⁹¹. However the terminus for preferring an appeal by registered post has been considered by the Haryana Commission to be “the date of its posting by the appellant and not the date of its actual receipt in the office of the State Commission” (**Shashi Radio & Electricity Company Vs. Sudesh Singhal**)⁹².

On the first point, the Kerala State Commission has expressed the totally opposite view to the one expressed by the Haryana State Commission. In **Marrikkar (Motors) Ltd. Vs. Mary Poulse**⁹³, the Kerala Commission laid down that the limitation for filing an appeal under the Consumer Protection Act, 1986 was to be reckoned from the date of knowledge of the order and not from the date of its passing. In this case the order of the District Forum was dated 7th January 1991 and appeal was filed before the State Commission on 23rd February, 1991. It was contended by the appellant that though the order was dated 7th January 1991, it was issued on 24th January. The appellant further stated that he came to know of the order only on 23 February and accordingly the appeal was filed. Thus the issue for determination was precisely the same as before the Haryana Commission, that is, whether the period of limitation started from the date of passing of the order or from the date when it came to the knowledge of the appellant. The Kerala State Commission referred to the Supreme Court decision in **Madan Lal Vs. State of U.P. & Others**⁹⁴. In that case it was stated that Section 17 of the Indian Forest Act, 1927 allows an appeal to be preferred against the order passed by the Forest Settlement Officer and prescribes a time limit of three months from the date of the order for presenting the appeal. Thus the question involved was

⁹⁰ *ibid*

⁹¹ I (2001) CPJ 672

⁹² I (2003) CPJ 2

⁹³ II (1991) CPJ 283

⁹⁴ AIR 1975 SCC. 2085

whether the order in question should be treated as having been passed on the date it bore or when it came to the notice of the appellant – the Forest Department.

The Supreme Court followed its decision in **Raja Harish Chandra Singh Vs. Deputy Land Acquisition Officer**⁹⁵ and held that the time ran from the date when the Forest Department came to know of the Order. The Apex Court also said that the Forest Act did not state what would happen if the forest settlement officer made an order under Section 11 without notice to the parties and in their absence. The court observed:

“In such a case, if the aggrieved party came to know of the order after the expiry of the time prescribed for presenting an appeal from the order, would the remedy be lost for no fault of his? It would be absurd to think so. It is a fundamental principle of justice that a party whose rights are affected by an order must have notice of it. The principle is embodied in O.20 R.I. of the Code of Civil Procedure, though the Forest Settlement Officer adjudicating on the Claims under the Act is not a Court, yet the principle, which is really a principle of fair play and is applicable to all tribunals performing judicial or quasi-judicial functions, must also apply to him”⁹⁶.

In the light of the above mentioned two Supreme Court decisions, the Kerala State Commission held that the expression ‘date of the order’ in Section 15 should be construed as ‘date of knowledge of the order.’

The matter again came up for consideration before the National Commission in two revision petitions against the decision of the Haryana State Commission. In **Hindustan Paper Corporation Ltd. Vs. Dhir Copy House & Another**⁹⁷, the order of the District Forum had been pronounced on 18th September 1989. The revision petitioner filed an appeal only on 18th October 1991. The Haryana State Commission, while relying on its own order in **Haryana State Electricity Board, Hissar Vs. Dinesh Kumar**⁹⁸, dismissed the appeal on the ground that the starting

⁹⁵ AIR(1961) SCC. 1500

⁹⁶ *ibid*

⁹⁷ II (1991) CPJ 528 (N.C.)

⁹⁸ I (2008) CPJ 359

point of the limitation for preferring an appeal was the date of the order appealed against and not the date of receipt of the copy thereof. Similarly, in **NV Wheels World Vs. Sarjit Singh**, the District Forum Ambala passed an ex-parte order against the revision petitioner. The copy of the order was stated to have been received by the petitioner on 19th November 1991 and the appeal before the State Commission was filed on 19th December 1991. The Haryana State Commission once again rejected the plea on the basis of the same decision – **Haryana State Electricity Board, Hisar Vs. Dinesh Kumar**⁹⁹.

On appeal, the National Commission set aside the orders of the Haryana State Commission. The National Commission observed that in both the cases the orders were passed against the opposite parties in their absence and they came to know of the orders only when the copies thereof were received by them. According to the National Commission, in such circumstances, the expression ‘date of order’ occurring in Section 15 of the Consumer Protection Act, 1986 should be construed as date of the knowledge of the order. When so construed, the appeals in both cases were within limitation. Thus the National Commission expressed complete agreement with the decision given by the Kerala State Commission that the expression ‘date of the order’ in Section 15 should be construed as ‘date of knowledge of the order’.

The issue in a slightly modified form arose again before Haryana State Commission in **Housing Board, Haryana & Another Vs. Housing Board Colony, Welfare Association, Kurukshetra & Another**¹⁰⁰.

The order of the District Forum was pronounced against the appellant Board in open court on 22nd October, 1992. The Board had been duly represented by an advocate in that case. However, the appeal was preferred on 30th November 1992 – beyond the strictly prescribed period of thirty days under Section 15 of the Act. The board took up the plea that the terminus for determining the period of thirty days was to begin only from the date of the receipt of the order by the appellant. The appellant

⁹⁹ *ibid*

¹⁰⁰ II (2003) CPJ 680

relied on the decision of the National Commission in **Hindustan Paper Corporation Ltd. Vs. Dhir Copy House & Another**¹⁰¹. The Haryana State Commission, however, refused to accept the plea of the appellant. According to the State Commission and rightly so, the observations of the National Commission in the above case were clearly confined to the situation where the party was absent in the proceedings ex-parte against him and that it could be of ‘little relevance in the situation where a party is fully represented before the District Forum by counsel and is either actually or constructively present at the time of the announcement of the order. According to the Haryana State Commission, the two situations were ‘radically different’. The State Commission observed that the statutory provisions oblige the presence of the parties at the hearing at equally at the decision either by their counsels or by any authorized person. That being so, it was ‘obviously not open to a party to first infringe the said rule and then to take the benefit of its own wrong by setting up a specious, plea that it had no knowledge of an order announced in an open court’. The State Commission made the following significant observations on the issue.

It is a well settled rule of our justice system that the actual or the presumed knowledge of the Counsel is equally the knowledge of his client... the ordinary courts and other quasi-judicial bodies where parties are represented by their counsel, it is never conceivably open to them that they do not have the knowledge of the proceedings personally. This is particularly so with regard to the pronouncement of the orders in open Court. It has never been allowed to be said that a party represented by counsel in a Court of law would not have the knowledge of the order from the date of its announcement. It is by now settled law that limitation in a context of the orders of a judicial or quasi-judicial bodies would run from the date of the announcement of the order. Of course cases of hardship and of peculiarities on their own merits can be alleviated by the condonation of delay on showing sufficient cause. However, the terminus of limitation has always been sought to be fixed like a pole star. The State Commission, therefore, concluded:

¹⁰¹ II (2002) CPJ 528 (N.C.)

“In the light of the foregoing discussion, the answer to the question posed at the outset has to be tendered in the terms that – the date of knowledge of the order of the District Forum wherein the party is represented before it by Counsel is the pronouncement of that order in open Court and no other”¹⁰²

Thus in view of the above cases, it may be noted that the controversy has been set at rest by the decision of the National Commission.

The second expression ‘sufficient cause’ has also been contested before the CDRAs in a number of cases. In this context, the decision of the Rajasthan State Commission needs specific mentioning. The State Commission in **Public Health & Engineering Department Vs. District Forum & Others**¹⁰³ has endeavored to clarify the term ‘sufficient cause’. The Commission observed:

“The expression ‘sufficient cause’ has been held to mean a cause which is beyond the control of the party invoking the aid of the proviso. A cause for delay, which by due care and attention, the party could avoid, cannot be considered as sufficient cause. It has authoritatively been laid down while considering Section 5 of the Limitation Act, 1963, that the test whether or not a cause is sufficient is to see whether it could have been avoided by the party by exercise of due care and attention; in other words whether it is a bonafide cause inasmuch as nothing shall be deemed to be done bonafide or in good faith which is not done with due care and attention”¹⁰⁴.

It is a legally accepted principle that if the appellant is able to satisfy the court that he was withheld from filing the appeal due to some sufficient cause, he can be allowed to file the appeal even beyond the expiry of the limitation period.

There is another interesting question from the different angle that is whether an autonomous board or corporation is different footing than a private party, for

¹⁰² *ibid*

¹⁰³ 1991 (2) CPR 101

¹⁰⁴ *ibid*

seeking condonation of delay in filing an appeal under the proviso to Section 15 of the Act of 1986.

The question came before the Haryana State Commission in: **Housing Board, Haryana Vs. Dr. S.L. Chaudhury & Others**¹⁰⁵. The State Commission answered the question in the negative and observed:

“From the above it is manifest that even a much larger and bigger body like the State, be it the Central Government or the State Government, is on no different footing that the private litigant for the purposes of condonation of delay against the bar limitation. An autonomous Board or a Corporation being a much smaller and a compact body, would, obviously be or even a lower footing vis-à-vis the Central or the State Government¹⁰⁶.”

It is thus clear that in order to seek any condonation for delay in filing an appeal under this section, the appellant has to satisfy the consumer forum that he was unable to file the appeal in time as there was some sufficient cause for not doing so.

4.4.3 Revisional jurisdiction

It is not uncommon under civilized laws, that higher courts exercise control over the functioning of the lower courts. A sort of judicial supervision is commonly prevalent,

Under the Consumer Protection Act, 1986, the State Commissions and National Commission exercise the power of the revisional jurisdiction. The commissions are vested with the revisional jurisdiction purpose of ensuring that the State Commission or the District Fora as the case may be exercise their powers within the limits of jurisdiction fixed for them by the law. In case, any State Commission exercised jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity, the National Commission has the power to call for the records and pass

¹⁰⁵ I (2001) CPJ 140

¹⁰⁶ *ibid*

appropriate orders in that matter. The power may be exercised while the proceedings are pending or after the decision has been handed down by the State Commission. However, in **Telecom District Manager, Patna Vs. Kalyanpur Cement Ltd**¹⁰⁷, the National Commission held that the revisional jurisdiction vested in it severely restricted as it is limited to disputes where there has been wrongful, illegal and improper exercise of jurisdiction or failure to exercise jurisdiction.

In **Hanuman Prasad Vs. New India Assurance Co. Ltd**¹⁰⁸, the National Commission accepted the revision petition of the owner of a tractor whose application against the insurer for indemnity for loss caused by accident was rejected both by the District forum and the State Commission. The ground of rejection was that his claim against lorry which damaged his tractor and its insurer was pending under the Motor Vehicles Act.

The National Commission allowed the revision petition and the case was sent back to the State Commission for retrial since the insurer of the tractor who rejected the claim after a long time and in the meantime did not permit the claimant to get the tractor caused him business loss and for this he had a legitimate claim to compensation which required a trial.

Interestingly, the National Commission allowed a revision petition and the case was remitted for retrial where a member of the State Commission passed an order sitting singly. The National Commission rightly held that the provisions of the Act do not contemplate any such order. [**Raj Kumar Mangla Vs. Bal Bharti Public School**]¹⁰⁹. A defect in jurisdiction is a valid ground for accepting revision petition even though an application for condonation of delay has already been dismissed by the State Commission. **Haryana Urban Development Authority Vs. Vipin Kumar Kohli**.¹¹⁰ A sum of money was deposited in a Delhi bank for the credit of

¹⁰⁷ II (2009) CPJ 286 (N.C)

¹⁰⁸ I (2004) CPJ (N.C.)

¹⁰⁹ II (2005) CPJ 84 (N.C.)

¹¹⁰ I (2010) CPJ 235 (N.C.)

HUDA at Faridabad. The contention was that the Delhi Forum had no jurisdiction. While examining the question of jurisdiction the National Commission observed:

“At the outset we may state the settled law that a defect of jurisdiction, whether it is pecuniary or territorial, strikes at the very authority of the forum to pass any order and such an order is a nullity and its invalidity can be raised whenever or wherever it is sought to be enforced. Even though the application for condonation was dismissed in limine by the State Commission we examined the question as it related to the inherent lack of jurisdiction of the District Forum”¹¹¹.

The National Commission has expunged the adverse remarks passed in the order by State Commission in **Maruti Udyog Ltd. Vs. Ashok Vijay Vargaya**¹¹².

The National Commission observed that the – State Commission in the instant case had without any justifying cause made certain adverse remarks attributing to the revision petitioner of very serious misconduct of fabricating records with a view to conducting the case for condonation of delay. There was no evidence to justify the remarks. The State Commission was directed to delete the remarks from its order.

The National Commission observed: “No supporting material whatever has been referred to in the order nor shown to us by the counsel for the respondents on the basis of which the State Commission considered it fit to make these adverse remarks against revision petitioner. In those circumstances, we don’t think it is just or fair to confirm or approve to these remarks made by the State Commission but would direct that they shall stand deleted from its order”¹¹³.

Whether the National Commission can review its own decision; it can be examined in the following case: **Satyam Fibres India Ltd. Vs. Indian Bank**¹¹⁴.

There was an allegation that the judgment of the Commission was obtained through a fraud. The Commission, though reluctantly, agreed to reopen and review its own

¹¹¹ *ibid*

¹¹² I (2006) CPJ 303 (N.C.)

¹¹³ *ibid*

¹¹⁴ I (2005) CPJ 115 (N.C.)

orders because it felt that there is no power to reopen its own orders. The National Commission, being the apex body-in consumer cases, has taken up and decided so many cases under original, appellate and revisional jurisdiction.

Recently the Supreme Court examined the jurisdictional authority of National Commission as to whether the National Commission was justified in referring the complaint to an arbitrator to ascertain facts. **Sky Pak Couriers Ltd. Vs. Tata Chemicals Ltd.**¹¹⁵

In respect of certain complaints filed before the National Commission, the Commission suggested to the parties that since the evidence had to be taken on question of fact, determined after scrutiny of various documents and oral evidence, it is best that both parties agree for reference to arbitration. It was also stated that this was not arbitration under the Arbitration Act but only a consensual adjudication which will be binding on both the parties. It was further stated that after completion of adjudication proceedings the award shall be forwarded to the National Commission for being incorporated into the order of this Commission so that final orders in the matter be passed in accordance with the award. In some of the cases, however, one of the parties filed objections to the awards and in some others, objections were not filed and/or were not allowed to be filed. In all these cases, objections had not been considered and the National Commission passed orders based on the awards.

The Supreme Court set aside the orders of the National Commission remitting the complaints to it for being disposed of in accordance with the directions in this judgment and held

“For the settlement of consumer disputes the Consumer Protection Act, 1986 provided for the establishment of consumer fora at three levels. The fora are quasi-judicial bodies empowered to give relief in an appropriate way and to award computation where necessary. It is difficult to conceive that such commissions would be authorized to refer the disputes for consensual adjudication merely

¹¹⁵ (2010) 4 SCC 580

because to arrive at a decision it is necessary to take evidence in the proceedings. The fora under the Act have no jurisdiction to refer disputes for consensual adjudication and then make that decision order of the Commission itself. Even if there exists an arbitration clause in an agreement in a complaint alleging deficiency of service the existence of the arbitration clause will be no bar to the entertainment of the complaint by the forum since the remedy provided in addition to the provisions of any other law.

There is no provision in law, that adjudication of matters before a court or tribunal can be entrusted to a third party/individual and the decision of the third person is then made a decree of the court / commission etc. Though an award passed by an arbitrator is made a decree of a court that is under the provisions of the Arbitration Act and not de hors the Act. In the instant case by referring the matters to third persons for consensual adjudication and making those awards rule of the Court by passing orders, based on those awards, the Commission was not applying its own mind for adjudication of the disputes. It was merely putting its imprimatur on the decision of third parties.

By doing so, the Commission had abdicated its own functions and duties. Such a procedure is unwarranted and unjustified¹¹⁶.

In view of this recent decision, by the Supreme Court, the position is clear that the fora cannot refer the matter to arbitration nor can then ask the parties to refer it to arbitration.

However, a matter which is the subject matter of arbitration can be taken up by the fora. Recently in Kasi Housing & Development Ltd. Vs. M.M. Kalaiselva, the Madras High Court held that it is permissible for the consumer fora to entertain a complaint seeking refund and compensation although there was an agreement between the parties to refer the matter to arbitration in case of a dispute.

¹¹⁶ ibid

4.5 Powers of the Redressal Agencies

Under Section 13 the Forum enjoys the powers of a civil court in respect of the following matters: -

1. Summoning and enforcing 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 from any other relevant source.
5. Issuing any commission for the examination of any witness; and
6. Any other matter which may be prescribed.

This is a very important provision of the Act where the fora are vested with a variety of powers in issuing orders to the opposite party to do any one or more of the following viz.: -

- i. To remove defects pointed out by the appropriate laboratory from the goods in question;
 - ii. To replace goods with new goods of similar description which shall be free from any defect?
 - iii. To return to the complainant the price, or the charges paid by the complainant;
1. To pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party (even punitive damages can be granted)
 2. To remove the defects in goods or deficiencies in the services in question;
 3. To discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;
 4. Not to offer the hazardous goods for sale;
 5. To withdraw the hazardous goods from being offered for sale;

6. To cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
7. To pay such sum for loss or injury suffered by a large number of consumers who are not even identifiable;
8. To issue corrective advertisements to neutralize the effect of misleading advertisement at the cost of the opposite party;
9. To provide for adequate costs to parties.

It may be relevant to mention that Section 25 declares that the orders issued under Section 14 are enforceable as a decree of a civil court.

4.6 Power to Dismiss Frivolous or Vexatious Complaints [Section 26]

In the case of frivolous and vexatious complaints, the fora have power to dismiss them and can grant costs to the opposite party up to Rs. 10,000/-. The above provision granting power to the fora to penalize the complainant of the frivolous complaint by imposing a maximum sum of Rs. 10,000/- has been criticized by some writers stating that even under Section 35 A of the Code of Civil Procedure, 1908, the maximum imposition was only Rs. 2500/- but I sincerely believe that Rs. 10,000/- is not a big amount considering the purchasing power of a rupee in the 21st century. Moreover, legislature is prescribing only the maximum limit. So there is no threat of grievous hurt to any complainant. Rather I personally feel that the provisions of the CPC should be amended to raise the amount to Rs. 10,000/-.

Besides the above powers, the fora can also authorize any officer in writing to exercise the power of entry and search of any premises.

4.7 Powers of The Forum When the Matter is Sub-Judiciary with A Civil Court

Ordinarily under Section 10 of the Code of Civil Procedure when a matter is pending with a competent civil court the issue and title being substantially the same such matter is stayed by the subsequent court.

The question is whether a consumer forum can take up a matter already pending with civil court. In **Oswal Fine Arts Vs. HMT, Madras**¹¹⁷, the National Commission dismissed the complaint on the plea that the matter was already sub-judiciary before the Madras High Court.

However, in **S.K. Abdul Sukur Vs. State of Orissa & Others**¹¹⁸, the National Commission held that the mere fact that witnesses may have to be examined and their cross examination may also be necessary is not by itself a valid ground for refusing adjudicating of the dispute before the redressal fora under the Consumer Protection Act.

4.8 Limitation for Filing Complaints before the Fora (Section 24A)

A new Section 24A was inserted by the Consumer Protection (Amendment) Act 1993 which provides that a consumer can file a complaint before the District Forum, State Commission or National Commission within two years from the date on which the cause of action arose. However, a complaint may be entertained even after the specified period on sufficient cause shown by the complainant.

But the District Forum, State Commission or National Commission has to record the reasons in writing for condoning the delay. With the insertion of Section 24A it has been possible to have a definite uniform period of limitation. Previously different fora had prescribed different periods of limitation which created a lot of confusion.

Now the provisions of provisions of Limitation Act, 1963 need not be resorted to another important point is that the period of limitation prescribed under Section 24A cannot be cut short by a contract to the contrary.

¹¹⁷ I (1991) CPJ 330 (N.C.)

¹¹⁸ II (1991) CPJ 202 (N.C.)

It was decided in **Integrated Organics Vs. New India Assurance Co. Ltd.**¹¹⁹, where there was a clause in the insurance contract specifying one year for instituting legal proceeding for the claim held that the clause in the contract reducing the period of limitation is inoperative.

4.9 National Commission: Powers and Procedures

Since the National Commission is a quasi-judicial body, it enjoys the powers of the civil court as mentioned under Section 13 and other powers i.e. administrative powers etc. Section 22 is the main section specifying powers and procedures of National Commission.

4.10 Section 22: Powers and Procedure Applicable to the National Commission

1. The provisions of Sections 12, 13 and 14 and the rules made there under for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the commission, be applicable to the disposal of disputes by the National Commission.
2. Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.

Obviously the working procedure of the National Commission is the same as that of the District Forum under Sections 12, 13 and 14 and for the rest it has been left to the Central Government's prescribed rules. The Commission is also authorized to issue orders directing the party in question to do any one or more of the things specified in Section 14.

As far as the procedure for National Commission is concerned, certain rules have been prescribed by the Central Government and they are followed by the National Commission.

¹¹⁹ (2005) CPJ 439 Delhi

In the **first place**, the fora can order removal of defects from the goods in question as pointed out by the appropriate laboratory. Now, if the language of Section 14 (1) (a) is strictly construed, it would imply that the fora can order removal of defects from the goods only in those cases where the defect has been pointed out by the appropriate laboratory. The obvious question that arises in the present context is, can this order be passed if the defect is otherwise patent or is admitted by the opposite party itself? Alternatively, will such a defect fall under sub section (b) of this clause or should the agency concerned treat the expression pointed out by the appropriate laboratory from the goods as redundant? It has, therefore, been suggested that the sub-clause should be amended and that it would be better if it simply reads as follows “remove all such defects from the goods as in question”.

Secondly, the fora can order any person to replace the goods sold by him with new goods of similar description which should be free from any type of defects. It is a matter of common observance that under the warranties issued by the manufacturers of various goods, it is generally provided that if a defective part cannot be repaired, it shall be replaced. However, Section 14 (1) (b) does not provide any guidance to the fora as to when they should order the replacement of goods. Should a replacement order be made only in those situations where the defect has not been pointed out by the appropriate laboratory, such as when the defect is patent or when it is not possible to remove the defect in a manner that it may not be detected even on close examination of the goods? It has been suggested that the replacement should be ordered in the latter contingency only. The above mentioned suggestions were made by certain stalwarts in the field of consumer protection including D.N. Saraf which are worth considering.

Thirdly, a District Forum has the power under Section 14(1) (c) to order return of price of the goods or charges for services paid by the consumer. It appears that such an order is likely to be passed only in those cases where the removal of defects or the replacement of goods is not possible for any reason whatsoever. This sub-clause enables a District Forum to pass orders for refund of price even though the warranty does not confer this right on the complainant. Thus where a television or a refrigerator does not give satisfactory service even after defective parts under the

warranty have been repaired or replaced, the Forum could pass orders for returning to the complainant the price paid for the television or the refrigerator.

Fourthly, a District Forum can order payment, of compensation but only in the event of the opposite party which must have resulted in loss or damage and not otherwise. If, however, the complainant fails to prove negligence, he is not entitled to ask for any compensation even though he might have suffered loss or damage due to the defect in product or deficiency in service. In this context, it may be argued that 'in the modern technological age, when the concept of product liability has taken firm roots. In the industrially advanced countries, this seems to be a retrograde provision. Due to the difficulties involved in proving negligence in most cases, the principle has been accepted that instead of fault of the person (manufacturer, distributor, seller or provider of service) it would serve the ends of justice if the fault of the product is demonstrated and it is shown that the damage or loss was attributable to the fault of the product. Obviously, therefore, when the complainant proves that a product is defective or service is deficient, and he suffered damage due to no fault of his own, he should not further be required to prove negligence.

Fifthly, the National Commission has assumed the power to issue directions though the 1986 Act contains no provisions in this regard. This power seems to be implicit due to the fact that when the Consumer Fora have been invested with the power to entertain complaints of various types, they should be deemed to have the authority to provide suitable remedies. Thus under Section 2 (1) (c) (iii), the complainant may file a complaint that the services mentioned in the complaint suffer from deficiency in any respect, It should be deemed to have the corresponding power to issue direction in general that such deficiency be removed. In **Common Cause Vs. DESU**¹²⁰, a petition was filed by a Delhi – based voluntary consumer organization against the Delhi Electricity Supply Undertaking regarding the serving of wrong and delayed electricity bills to the consumers. The complainant association challenged the deficiency in service on the part of the opposite party, had been made by the complainant association in the public interest without reference to any loss

¹²⁰ I (1991) CPJ 113 (N.C.)

or damage suffered by any particular individual. The opposite party gave several undertakings to the Commission after 'suggestions' had been made by the Commission regarding disposal of complainants of delayed billing, wrong billing, meter reading, and redressal of grievances of consumers. In the light of these undertakings, the National Commission felt that any directions in this regard were not called for. On the basis of the same reasoning it may be presumed that the State and National Commission could pass directions in respect of removal of defects in goods without reference to actual loss or damage caused to a particular individual due to the defect.

Lastly, though Section 14 of the Act does not expressly authorize Consumer Fora to order a refund of the excess amount charged in a price by a seller, this power has to be implied. The issue has arisen in a few cases. In **Bharat Tractors, Muzaffarpur Vs. Ram Chandra Pandey**¹²¹, for instance, the National Commission had the occasion to resolve this issue. The State Commission in the case had come to the conclusion that the appellant had realized from the complainant an excess amount of Rs. 3,563.25/- by way of cost of a tractor. In view of this finding, the State Commission had directed that the appellant should refund to the Complainant the amount with 16 percent interest. The National Commission found no reason to disturb this direction. Thus it seems desirable that express power is conferred on the Commission in respect of providing sustainable remedies to the complainant for unfair trade practice and charging of excessive price.

Thus the 1993 and the 2002 Amendments have conferred considerable powers on the Consumer Fora and it is expected that these agencies shall make increasing use of these powers for protecting the interest of a large number of consumer's forum unscrupulous traders and irresponsible government undertakings.

On the point of compensation under Section 14 (1) (d), the Supreme Court has given an interesting decision in **Spring Meadows Hospital & Others Vs. Harjot Ahulwalia**¹²² where it has been held that parents of the child who suffered

¹²¹ I (2008) CPJ 152 (N.C.)

¹²² 1998 29 CLA 170; AIR (1998) SCC 1801

permanent injury due to the negligence of the doctors can claim damages for their mental agony. This, in fact, is a land mark decision which opened the new area of vicarious benefits. In this case, a young boy became permanent retarded due to wrong dose of sedation.

4.11 Enforcement Powers

The provisions regarding the enforcement of the orders made by the Consumer Fora and the imposition of penalties in the event of their violations have, been incorporated in Sections 25 and 27 of the Act respectively. Section 25 lays down:

Enforcement of orders of the District Forum, the State Commission or the National Commission: -

1. Where an interim order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.
2. No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the process thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.
3. Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.

The Amendment Act of 2002 for the first time has given very wide & effective powers to the Consumer For a to attach the property of a person even if an interim order made under this Act is not complied with.

According to Section 27, where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the Consumer Fora, such trader or person or the complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extent to ten thousand rupees, or with both. Prior to the Amendment of 1993, the word 'complainant' was not there in this section. The inclusion of the term 'complainant' will secure accountability on the part of the complainants, too. Thus the main purpose behind the provisions contained under Section 27 of the Act is to seek compliance with the orders passed by the Redressal Fora. Section 27 is in a way "a king-pin in the execution of the orders of the redressal agencies."

However, the scheme for enforcement of the orders of the Consumer Fora under the 1986 Act has to be necessarily viewed in a larger perspective. This certainly involves the correlating of Sections 25 and 27 of the Act. Both these provisions are directed towards speedy enforcement of the orders of the District Forum, the State Commission or the National Commission respectively. Both sections are in the nature of "execution proceedings of the orders made by the three redressal agencies". While Section 25 visualizes the enforcement of such orders by a civil process, as if they were a decree or order made by a court of law in a suit pending therein, Section 27 confers a quasi-criminal sanction for their enforcement by way of punishment with imprisonment or imposition of monetary penalties.

After a detailed discussion of the various sections on the issues, the Haryana State Commission reached the conclusion that no appeal could lie under Section 15 against the imposition of penalty by the District Forum in exercise of its power under Section 27. It was pointed out that if Parliament had not provided for an appeal from an order, it could not be created on the ground that such an order was onerous in nature. The State Commission, therefore, observed:

“The right to appeal is pure creature of the statute. There is no inherent or natural right to a first appeal. If the Parliament in its wisdom does not provide any appeal from an order, it cannot be created on the ground that such an order is onerous in nature. The best judge for the provision of the substantive right of appeal is the Legislature and not the courts on any grounds of compassion or sentiment. Consequently, if for the exhaustive reasons given above, it is found that the order under Section 27 is not appealable, the same cannot be made so by interpretation on the ground of the rigour and onerous of the penalties imposable under the said section.

The Haryana State Commission took an identical stand also in the later case of **J.S. Kalra Vs. National Insurance Co. Ltd**¹²³. Similarly, the Rajasthan State Commission also expressed its agreement with the view taken by the Haryana State Commission in the above case and pronounced a similar decision in **Agarwal State Corporation Vs. Jagdish Prasad Vyas**¹²⁴.

4.12 The Rajasthan Commission Observed

“The various provisions of the Act would be rendered otiose and the very purpose of the Act would be frustrated if the orders of the redressal forums are not enforced under the pain of penalty. Certain strict liabilities are, therefore, imposed by a public welfare legislation on persons which must be observed by them. These duties are made statutory liabilities of the persons; the breach whereof is made punishable in order to ensure strict enforcement thereof. The object of Section 27 of the Act is to provide sanction against the breach of duties on the person against whom complaints are made. Failure or omission to comply with an order to redressal forum falls under the category of ‘administrative penal law’ or public welfare offences’. Friedman in his book Law in a General Society has stated, ‘on a balance of social interest the wide spread, though by no means universal tendency of modern statutes to impose strict liability for violation of public welfare laws is, therefore,

¹²³ I (2007) CPJ 339

¹²⁴ (2009)1CPR 70

justifiable. Bearing this in mind the scheme for enforcement of the orders of the redressal agencies under the Act has to be viewed in a larger perspective”¹²⁵.

4.13 Procedure followed by National Commission

Rule 14 provides for the procedure to be followed by the National Commission. And Rule 15 specifies the procedure for hearing an appeal. Rule 15A inserted on 14-8-1991 mentions the sitting of the National Commission: thus an overview of these Rules is important for the purpose of appreciating the procedural aspects.

Rule 14 Procedure to be followed by the National Commission:

1. A complaint containing the following particulars shall be presented by the complainant in person or by his agent to the National Commission or be sent by registered post, addressed to the National Commission:
 - a. The name, description and the address of complainant;
 - b. The name, description and address of the opposite party or parties, as the case may be, so far as they can be ascertained;
 - c. The facts relating to the complaint and when and where it arose;
 - d. Documents in support of the allegations contained in the complaint;
 - e. The relief which the complainant claims.
2. The National Commission shall, in disposal of any complaint before it, as far as possible, follow the procedures laid down in sub-sections (1) and (2) of Section 13 in relation to the complaint received by the District Forum.
3. On the date of hearing or any other date to which hearing could be adjourned, it shall be obligatory on the parties or their agents to appear before the National Commission. Where the complainant or his agent fails to appear before the National Commission on such days, the National Commission may in its discretion either dismiss the complaint for default or decide it on merits. Where the opposite party or its agent fails to appear on the date of hearing the National Commission may decide the complaint ex-parte.

¹²⁵ ibid

4. The National Commission may, on such terms as it deems fit and at any stage of the proceedings, adjourn the hearing of complaint but the complaint shall be decided as far as possible within a period of three months from the date of notice received by opposite party where complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities.
5. If after the proceeding conducted under sub-rule (3) the National Commission is satisfied with the allegations contained. In the complaint, it shall issue orders to the opposite party or parties, as the case may be, directing him or them to take one or more of the thing as mentioned in sub-section (1) of Section 14. The National Commission shall also have the power to direct that any order passed by it, where no appeal has been preferred under Section 2 or where the order of the National Commission has been affirmed by the Supreme Court under that section, be published in the Official Gazette or through any other media and no legal proceedings shall lie against the National Commission or any media for such publication.

4.14 Rule 15 Procedure for Hearing the Appeal

1. Memorandum shall be presented by the appellant or his agent to the National Commission in person or be sent by registered post addressed to the Commission.
2. Every memorandum filed under sub-rule (1) shall be in legible handwriting preferably typed and shall set forth concisely under distinct heads, the grounds of appeal without any argument or narrative and such grounds shall be numbered consecutively.
3. Each memorandum shall be accompanied by a certified copy of the order of the State Commission appealed against and such of the documents as may be required to support grounds of objection mentioned in the memorandum.
4. When the appeal is presented after the expiry of the period of limitation as specified in the Act, the memorandum shall be accompanied by an application supported by an affidavit setting forth the facts on which the appellant relied to

satisfy the National Commission that he has sufficient cause for not preferring the appeal within the period of limitation.

5. The appellant shall submit six copies of the memorandum to the Commission for official purpose.
6. On the date of hearing or on any other day to which hearing may be adjourned, it shall be obligatory for the parties or their agents to appear before the National Commission. If appellant or his agent fails to appear on such date, the National Commission may in its discretion either dismiss the appeal or decide ex-parte on merits. (If the respondent or his agent fails to appear on such date, the National Commission shall proceed ex-parte and shall decide the appeal on merits of the case.)
7. The appellant shall not, except by leave of the National Commission urge or be heard in support of any ground of objection not set forth in the memorandum but the National Commission, in deciding the appeal, may not confine to the grounds of objection set forth in the memorandum.

Provided, that the Commission shall not rest its decision on any other ground than those specified in the memorandum unless the party who may be affected thereby, has been given, an opportunity of being heard by the National Commission.

8. The National Commission may, on such terms as it may think for at any stage, adjourn the hearing of the appeal, but not more than one adjustment shall ordinarily be given and the appeal should be decided as far as possible, within 90 days from the first date of hearing.
9. The order of the National Commission shall be communication to the parties free of cost.

Rule 15-A Sitting of the National Commission and signing of order: –

1. Every proceeding of the National Commission be conducted by the President and at least two members, thereof sitting together:

Provided that where the member or members for any reason are unable to conduct the proceeding till it is completed, the President shall conduct such proceeding de novo.

2. Every order made by the National Commission shall be signed by the President and at Least two members who conducted the proceeding and if there is any difference of opinion among them, the opinion of majority shall be the order of the National Commission.

Provided that where the proceeding is conducted by the President and three members thereof and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and such point or points shall be decided according to the opinion of the majority of the National Commission.

Rule 14 (2) emphasizes that the National Commission shall follow the procedure laid down in Section 13 (1) and 13 (2). In fact, the procedure is common to the entire Three-District forum, State Commission and National Commission. The Consumer Protection Rules, 1987 again amended in 2005 and some new Rules had been added in the Act.

In order to dispose of the complaints in a speedy manner, the rules framed by the various states provide that it shall be obligatory on the complainant and opposite party or his authorized agent to appear before the National Commission on the date of hearing. In case of failure on the part of the agent to appear on the date of hearing, the National Commission has the power to dismiss the complaint in default or decide it on merits. If it is the opposite party's default, the forum or commission may decide the complaint of the party. The commission may, at any stage, adjourn the hearing but not more than one adjournment is ordinarily given and the complaint has to be decided within 90 days from the date of notice received by the opposite party in cases in which testing of goods complained against is not necessary. Where testing is involved, the time limit is 150 days.

4.15 Observation of State Commission

“It is clear from the above two sections [Sections 25 and 27] that they are directed towards the speedy enforcement of the orders passed by the redressal forums. Section 25 of the Act contemplates the enforcement of such orders by a civil process as if they were decrees or orders made by a court of law. Section 27 of the Act provides a quasi-criminal sanction for the enforcement of the orders for enforcement by way of punishment with imprisonment or imposition of fine. Normally orders passed during execution proceedings are not appealable. A careful study of the scheme of the Act shows that Sections 15, 19 and 23 are confined to the appeals against orders passed on the original complaints. This strengthens our conclusion that no right of appeal has been conferred by the Act against an order of imposition of penalties”¹²⁶.

The Rajasthan State Commission, however, accepted the contention of the appellant that in the event of non-maintainability of the appeal, the proceedings of the appeal may be treated as revision in the alternative under Section 17(b) of the Act. The Commission accordingly observed:

“The State Commission has the power to call for the records and pass any appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State on fulfillment of the conditions mentioned therein. The revisional powers have been conferred in order to correct miscarriage of justice arising from misconception of law, irregularities resulting in injustice are brought to its notice, call for the records and examine them. The discretion in the exercise of revision jurisdiction should be exercised within the four corners of clause (b) of Section 17. Section 17 (b) enables the State Commission to correct and when necessary certain classes of errors of jurisdiction committed by the District Forum and the object behind it is to provide the means to an aggrieved party to obtain rectification of non-appealable order in exceptional cases”¹²⁷.

¹²⁶ *ibid*

¹²⁷ *ibid*

The Gujarat State Commission, however, followed the Rajasthan State Commission and allowed the appeals in two of its decisions.

Notwithstanding the conflicting decisions pronounced by the various State Commissions on the issue of appeal, they have laid down certain guidelines for the use of the penal power under Section 27.

The National Commission in '**Union of India Vs. Chairman, Madras Provincial Consumer Association**'¹²⁸ observed:

“If action is to be taken under Section 27 of the Act natural justice requires that the person sought to be proceeded against should be issued a notice and his explanation should be heard before any conclusion is reached that an order of punishment and imposition of any sentence is called for.”

A critical analysis of the various provisions of the Consumer Protection Act, 1986 clearly reveals that notwithstanding the enactment of the Amendment Acts, 1993 and 2002, there are still some lacunae in the Act. Though this is a model piece of socio-economic legislation, some of the provisions seem to have been drafted without much care and attention. Perhaps this is the reason why the 1986 Act has been amended twice in quick succession. Nevertheless, the points generally raised throughout the present study deserve attention for the further amendment of the Act to make it more effective and consumer oriented.

4.16 Power to Grant Costs to the Opposite Party in False and Vexatious Claims [Section 26]

Similar to the power of the civil court, the redressal forums have been given power to dismiss frivolous or vexatious complaints. The complainant may also be ordered to pay an amount not exceeding Rupees ten thousand to the opposite party for the embarrassment caused to him. Let us first read the text of Section 26.

¹²⁸ II (2009) CPJ 524 (N.C.)

4.17 Section 26 Dismissal of frivolous or vexatious complaints

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

Obviously, all the three fora, District Forums, State Commission and National Commission, have the power to dismiss a complaint which appears to have been filed frivolously or with a view to cause vexation.

In a leading case namely –‘**Morgan Stanley Mutual Fund Vs. Kartick Das**’¹²⁹, the Supreme Court of India observed:

“There is an increasing tendency on the part of litigants to indulge in speculative and vexatious litigation and adventurism which the fora seem readily to oblige. Such a tendency should be curbed. Having regard to the frivolous nature of the complaint, it is a fit case for award of costs, more so, when the appellant has suffered heavily. Therefore, cost of Rs. 25,000/- is awarded to in favour of the appellants. The appellants have suffered immensely because they were not served with a copy of the order of injunction. The forum should have examined whether and an ex parte injunction without notice to the opposite side could ever be granted at all. The grounds urged in the injunction application were found to be insufficient for the grant of such a relief.”

A complaint against a doctor claiming Rs.55, 90,000 for weakening the heart values of a marine engineer was held to be attempting to take advantage of the fact that there was no court fee. The complainant was called upon to pay costs of Rs.10,000 for each of his two opponents as cost for his frivolous proceedings **Brij Mohan Khev Vs. N.N. Banka**¹³⁰.

¹²⁹ (1994) 4 SCC 225

¹³⁰ III (2008) CPJ 140 (N.C.)

4.18 The Amendment Act of 2002 has introduced certain new provisions viz. Section [22A, 22B, 22C and 22D]

4.18.1 Section 22A Power to set aside ex parte orders

Where an order is passed by the National Commission ex parte against the opposite party or a complainant, as the case may be, the aggrieved party may apply to the Commission to set aside the said order in the interest of justice.

4.18.2 Section 22B transfer of cases

On the application of the complainant or of its own motion, the National Commission may at any stage of the proceedings, in the interest of justice, transfer any complaint pending before the District Forum of one State to a District Forum of another State or before one State Commission to another State Commission.

4.18.3 Section 22C Circuit Benches

The National Commission shall ordinarily function at New Delhi and perform its function at such other place as the Central Government may, in consultation with the National Commission, notify in the Official Gazette from time to time.

4.18.4 Section 22D vacancy in the Office of the President

When the office of President of a District Forum, State Commission, or of the National Commission, as the case may be, is vacant or a person occupying such office is by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior most member of the District Forum, the State Commission or of the National Commission, as the case may be;

Provided that where a retired Judge of a High Court is a member of the National Commission, such member or where the number of such members is more than one, the senior-most person among such members, shall preside over the National Commission in the absence of President of that Commission.

The President or a member may resign by addressing his resignation to the Central Government. In the event of a casual vacancy caused by resignation or removal of the President, the Central Government has to make a fresh appointment to ensure that there is no dislocation of work. It has, however, been provide in the Consumer Protection Rules that the senior-most member shall discharge the functions of the President till the office is filled in accordance with the provisions of the Act [Rule 12 (6)]¹³¹. The same arrangements will hold good in case the President is unable to perform his duties due to illness or absence or any other cause. It is also provided that no proceedings of the Commission shall be invalidated by reason only of any vacancy among its President or members or any defect in the constitution [Section 29 A]. This is a statutory provision which will enable the Commission to function even when one or more members remain absent.

4.18.5 Administrative Powers of National Commission (Section 24B)

Control in the judicial hierarchy is a sine qua non for the smooth functioning of the judiciary. Such control is exercised by the Supreme Court over all the High Courts of the country and the High Court exercises control over the subordinate courts of their respective states. Similarly, the National Commission exercises control over all State Commissions of the country. This has been enabled by the newly inserted section 24 B through the Amendment Act of 1993. The section lays down that the National Commission shall have administrative control over all the State Commissions in three areas of operation.

1. The National Commission has power to call for periodical returns regarding institution, disposal and pendency of cases before the State Commission.
2. The National Commission can issue instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one part to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents.

¹³¹ Subs by G.S.R. 95 (E) dtd 27th February, 1997 (w.e.f. 27.2.1997)

3. The National Commission has been given power to oversee the functioning of the State Commissions to ensure that the objects and purposes of the Act of 1986 are fulfilled.
4. By virtue of the powers given under Section 24B, the National Commission exercised control over State Commissions in a variety of cases. For instance, in provincial Automobiles Co. Ltd. where the president of the appropriate forum, was not appointed, and the matter required expeditious trial because the complainant was lying seriously ill, the complaint was ordered to be transferred to some other forum.

4.18.6 Additional Powers under the Rules

By virtue of powers given to Central Government, certain rules were made by the Central Government and they are Consumer Protection Rules, 1987. Under Rule 10 certain additional powers have been conferred on the Fora on procedural aspects adjudication. Rule 10 reads as follows

4.19 Rule 10 Additional powers of the National Commission, State Commission and District Forum

The National Commission, the State Commission, the District Forum shall have power to require any person: -

- a. To produce before, and allow to be examined and kept by an officer of the National Commission, the State Commission or the District Forum, as the as may be specified in this behalf, such books, accounts, documents or commodities in the custody or under the control of the persons so required as may be specified or described in the requisition, if the examination of such books, accounts, documents or commodities are required for the purpose of this Act.
- b. To furnish to an officer so specified, such information as may be required for the purpose of this Act.
- c. Where during any proceeding under this Act, the National Commission, the State Commission or the District Forum, as the case may be, has any ground to

believe that any book, paper, commodity or document which may be required to be produced in such proceedings, are being or may be, destroyed, mutilated, altered, falsified, or secreted, it may, by written order authorize any officer to exercise the power of entry and search of any premises. Such authorized officer may also seize such books, papers, documents or commodities as are required for the purposes of this Act; Provided that such seizure shall be communicated to the National Commission, the State Commission or the District Forum, as the case may be not exceeding 72 hours of making such seizure after specifying the reasons in writing for making such seizure.

- d. The National Commission, the State Commission or the District Forum, as the case may be, on examination of such seized documents or commodities, as the case may be, may order the retention thereof or may return it to the party concerned.

CHAPTER-5: Grievances of Consumer in Telecom Industry in Kota City

5.1 Current Issues

5.1.1 The Consumer Protection Regulations, 2005

‘The consumer Protection Act, 1986 has been passed with the object to promote some basic rights of the consumers, namely the right to safety, to be informed of quality potency and purity of products, to access to variety of goods of competitive prices, to redressal of grievances and to consumer education. The consumer Protection Act, 1986 appears to have been enacted in a great hurry. It is therefore not surprising to find several missing links, lacunae and loopholes. It is true that 1991, 1993 and 2002 amendments and the Consumer Protection Regulations, 2005 have tried to bridge the gap’¹³². In exercise of the powers conferred by the Section 30-A of the consumer Protection Act, 1986, the National Consumer Disputes Rederessal Commission with the previous approval of the Central Government has made these regulations. The Consumer Protection Regulations, 2005 came into force with effect from 31st May, 2005. Consumer Forum is quite different from Regular Courts and it is nearer to the Lok Adalat with more powers. So now Consumer Forum is friendlier to the consumers. The Consumer Protection Regulations, 2005 are ancillary or supportive to the already existing sections and rules of the consumer Protection Act, 1986. These regulations deal with Arrangements in Consumer Forum, Dress Code for the Judges and Advocates, Hearing Hours, Cause Lists, Issue of Notice, Cost for Adjournments, Arguments, Limitations, Review, Appearance of Voluntary Consumer Organizations, Ex Parte Interim Orders, Final Orders, Preservations of Records, Certified Copy, Inspection of Records, Return of Institution and Disposal of Cases, Parcsha Yad-Dast, institution Scrutiny and Nomenclature of the Complaints, Appeals and Revisions Petitions etc.

¹³² An artical by Ashok R. Patil, Research Scholar, P. G. Department of Law, Karnataka University, Dharwad, Karnataka, [Kar.L.J. 2005 (6)]

It is a very good move by the National Consumer Disputes Redressal Commission, which has made the Consumer Protection Regulations, 2005. It has tried to fill the loop holes of 18 years of experience of the consumer Protection Act, 1986. Many of procedures mentioned here in these regulations are already being followed by the Consumer Forum, but now they have got the shape of regulations.

5.1.2 Supreme Courts Directives: -

In '**Dr. J.J. Marchant and others Vs. Shrinath Chaturvedi**'¹³³, 'the Supreme Court with a view to avoid delay in disposal of complaints within the prescribed period under the Consumer Protection Act, directed the National Commission to take appropriate steps including :-

- a. By exercise of administrative control, competent persons are appointed as members on all levels so that there may not be delay in composition of the Forum for want of members;
- b. It would oversee that time limit prescribed for filing defense version and disposal of complaints is strictly adhered to;
- c. It would see that complaint and defense version should be accompanied by documents and affidavits;
- d. In cases where cross-examination of the persons who have filed affidavit is necessary, suggested questions of cross-examination be given to that person. And reply should also be filed on affidavit.
- e. In cases where Commission deemed fit to cross examine the witnesses in person, video conference or telephone conference at the cost of the person who so applies could be arranged or could be through a Commission. It will be helpful in cross examination of experts, such as Doctors etc.

¹³³ (2002) 4 Comp LJ 145 (SCC); (2003) III CPJ 8 (SCC).

‘It is submitted that aforesaid directions given by the Supreme Court and the other suggestion given elsewhere will go long way to curtail delay in deciding the consumer cases’¹³⁴.

In a recent case of **V.N Shrikhande (Dr) Vs. Anita Sinha Fernandis**¹³⁵. The Supreme Court has held that the long silence on the part of the complainant is fatal. Sleeping over the matter for years and filing a complaint so belatedly will provide no relief. The discovery rule evolved by the courts in United States is not applicable in a case where the complainant had been found to be passive all along.

5.2 Whether Consumer Forums have jurisdiction to decide matters involving telecom disputes?

To understand the recent situation of such judiciary matters, researcher includes a central government based case study to describe it these are as follows:

5.3 Case Study: Telecom Regulatory Authority of India

A Consultation Paper on Complaints/ Grievance Redressal in the Telecom Sector¹³⁶

In this case study there are some keys issues has been notified, these are as follows:

1. The telecom sector in India has grown rapidly in last decades. From a subscriber base of around 90 million in March, 2006, the number of telecom subscribers in India reached around 1.04 billion by June 2016. These subscribers filed approximately 10.23 million complaints just in the Jan-March Quarter in 2016 with the Telecom Service Providers (TSPs). The complaints were on account of wrong billing, indifferent or poor quality of service, non-provision of contracted services, etc. Unsatisfactory resolution of the consumer complaints, by the TSPs, is resulting in complaints and grievances being forwarded to the Telecom

¹³⁴ An essay written by Dr. V. K. Agarwal on “SPEEDY JUSTICE UNDER THE CONSUMER PROTECTION ACT: A CRITICAL EVALUATION (2004) 2 Comp LJ J 97-102 P.

¹³⁵ 2011 CTJ 1 (SCC)

¹³⁶ https://traf.gov.in/sites/default/files/Consultation_paper_28_july_2016l.pdf

Regulatory Authority of India (TRAI) and Department of Telecom (DoT) on a regular basis.

2. It is imperative that consumer complaints and public grievances in the telecom space are resolved in a timely, efficient and cost-effective manner through a system that is easily available all across the country. Without such a system, benefits of the telecom revolution, which encompasses provision of a variety of services, such as banking, money transfer, govt. services, to the public will miss the intended target.
3. Telecom Regulatory Authority of India (TRAI) Act was enacted with the objective to protect the interest of consumers of the telecom sector and to promote and ensure orderly growth of telecom sector. The Preamble of this Act, reads:

“An Act to provide for the establishment of the [Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector,] and for matters connected therewith or incidental thereto.”

4. In year 2000, the TRAI Act 1997 was amended to create the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) which has been given the responsibility of dispute resolution in Section 14 of the Act. However, the TDSAT has been given powers to adjudicate any dispute only -
 - a. Between a licensor and a licensee;
 - b. Between two or more service providers;
 - c. Between a service provider and a group of consumers;

The same Section places matters relating to the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal.

A consumer has the option to file a case with Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer

Redressal Commission in case he or she is not satisfied with the resolution of the complaint by his/her telecom service provider. Since amount involved in most of the consumer complaints related to telecom service is very meagre in comparison to the litigation cost and in view of the time taken by the Consumer Courts/Forums in deciding the case, consumers in general are not willing to approach the Consumer Courts/Forums for redressal of their complaints.

5. In 2004, when the subscriber numbers were far fewer, considering this framework inadequate the Authority had released a ‘Consultation Paper on Establishment of the Office of Ombudsman in the Telecommunication Sector’¹³⁷. After the stakeholder consultation process, the Authority had made the following recommendations¹³⁸ to the Government:

- a. Establishment of an Ombudsman would be a desirable development and such an institution needs to be established;
- b. Ombudsman to be created by amendment to License;
- c. Once the proposal is accepted in principle, the locations and staffing pattern etc. of the Ombudsman can be finalized by the Government, in consultation with the Authority;
- d. Funding of the Office of Ombudsman may be provided from the licence fee collected annually from the telecom sector. A very negligible percentage of the revenue of the service providers (for less than 0.01%) will be sufficient to meet the expenses; and
- e. Ombudsman should handle and investigate all unresolved complaints within a time frame. The Ombudsman would facilitate through its mediation, the terms for the resolution, settlement and/or withdrawal of the complaints.

The unresolved complaints will inevitably go to the Consumer Courts.

6. These recommendations were, however, not agreed to by the Government¹³⁹

7. The Indian telecom sector has since 2004 witnessed phenomenal growth; it is poised to becoming one of the largest in the world. It has reached all corners of

¹³⁷ Consultation Paper No. 1/2004 dated 07.01.2004

¹³⁸ Recommendations on Establishment of Office of Ombudsman in the Telecommunication Industry dated 10.08.2004

¹³⁹ Baijal, Pradeep(Chairman: Telecom Regularity Authority of India)(10th Aug, 2004) letter to Shri Nripendra Mishra, Secretary, DoT, Sanchar Bhawan, New-Delhi.

the country and populace. There has been a sea change in the profile of the Indian telecom consumers. Today a mobile phone is necessary for all sections of the society whatever their wherewithal be. The role and impact of telecommunication services has metamorphosed from being a communication tool to a critical instrument for the social and economic development of the country. It is therefore appropriate to revisit the issue of redressal of individual consumer complaints and grievances in the telecom space. This paper is issued with this objective. This Paper presents an overview of the existing consumer grievance mechanisms and its efficacy; the mechanisms in place in other countries and within India in other sectors of similar size and impact; and the problem areas. It seeks views, opinions and comments for possible options/alternatives from stakeholders.

5.3.1 Complaint Redressal System Elsewhere

In 2004 the Authority had recommended to the Government to consider establishing the office of Ombudsman for the telecom sector¹⁴⁰. A gist of the recommendations is presented in the Introduction to this Consultation Paper. These Recommendations were not accepted by the Government. Establishing an office of Ombudsman remains an effective Alternative Dispute Resolution (ADR) mode to resolve sector specific public grievances, in India and in other countries. Some of the different models of the Office of Ombudsman are discussed to examine their feasibility in context of this Consultation.

5.3.1.1 International Practice - Ombudsman in Telecom Sector

At international fora, Australia and United Kingdom have established Ombudsman for Telecommunication Sector, to help consumers to resolve their disputes with their service providers, which they are not able to resolve through provider's normal procedures.

¹⁴⁰ Recommendations on Establishment of Office of Ombudsman in the Telecommunication Industry dated 10.08.2004

Telecommunications Industry Ombudsman (TIO) was established by the Australian Government in 1993 as a body independent of the industry, the Government and the consumer organizations. TIO is governed by a Council and a Board of Directors and is managed by an independent ombudsman appointed by the Board on the recommendations of the Council. The Council comprises five TIO Member Representatives and five Consumer Representatives, with an independent Chairman. TIO is an industry-funded scheme and the income is derived from the members who are charged fees for complaint resolution services provided by the TIO.

Office of the Telecommunications Ombudsmen (OTELO), UK was introduced on the 1st January 2003. OTELO is a free and independent entity and can investigate consumer complaints against any telecom companies who have signed up as members of the Telecommunications Ombudsman Service. It is independent of the communications industry and the regulator. It is managed by a Council, which appoint the Ombudsman, keep the service independent, review its performance and recommend any changes that might need to be made in the way the Ombudsman operate. It is funded by its member-companies. It has a board made up of member companies and independent representatives. The board makes sure that OTELO is appropriately funded and approves the annual budget.

5.4 Problems of grievances of consumers in telecom sector of Kota city

To address the grievances issues of consumers in telecom sector in Kota city, major issues are regarding as follows:

- a. Unusual Billings of postpaid customer.
- b. Unnecessary value added services without customer consent.
- c. Rapid call drops and no network coverage issue with in the city
- d. Data package tariff and usage issues.

From the Kota city, researcher done the research in the period of **July 2014 to Jan 2018** where researcher collected the data concluded & running court cases with in

this period. In this period total 651 cases were registered on various issues, out of which 99 were Telecom Billing Cases, 82 were Mobile device case and only 17 Mobile Network coverage cases.

These cases can be representing as:

Table No: 5.1					
Cases Registered in District Consumer Forum Kota					
Cases Registered	Total Cases	Dismissed	Allowed	None	Partly Allowed
All Cases	651	223	66	126	236
Telecom Billing	99	24	21	15	39
Device Cases	82	15	16	13	38
Telecom Network	17	9	5	2	1

Source: District Consumer Kota

So as consideration for case researcher take only Billing and network issues.

5.5 Solution later on in S & R

The Hon'ble Supreme Court in the case of General Manager, Telecom vs. M. Krishnan (AIR 2010 SC 90) has held as follows: - "6. In our opinion when there is a special remedy provided in Section 7B of the Indian Telegraph Act regarding disputes in respect of telephone bills, then the remedy under the Consumer Protection Act is by implication barred. Section 7B of the Telegraph Act reads as under:

5.5.1 Section 7B Arbitration of Disputes:

1. Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person or whose benefit the line, appliance or apparatus is, or has been provided, the dispute shall be determined by arbitration and shall, for the purpose of such determination, be referred to an arbitrator appointed by the

Central Government either specifically for the determination of that dispute or generally for the determination of disputes under this Section.

2. The award of the arbitrator appointed under Sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court.”

5.6 Whether private telecom operators are covered under Section 7B of the Indian Telegraph Act?

The Judgment of the Hon’ble Supreme Court in M. Krishnan’s case was in respect of a case involving BSNL, i.e. a department under the Central Government. Section 7B of the Indian Telegraph Act applies to disputes between the telegraph authority and the person for whose benefit the line is taken. The term “telegraph authority” is defined under section 3(6) of the Indian Telegraph Act 1885. “telegraph authority” means the Director General of Posts and Telegraph, and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under the Act.

The Director General of Posts and Telegraph is a post established by and under the Central Government. At the time of enactment of the Indian Telegraph Act i.e. in the year 1885, no private operators were in the field and telecommunication system was a monopoly of the Government. Thus the public sector departments such as BSNL and MTNL which were established later were liable to work under the control of The Director General of Posts and Telegraph. Mobile telephony and moreover private operators entered into the telecom market in the year 1995 as licensees. Thus the private telecom operators do not come under the purview of “telegraph authority” and as such Section 7B of the Indian Telegraph Act is not applicable to private telecom operators.

5.7 Whether the TRAI Act, 1997 bars the jurisdiction of Consumer Forums in matters relating to services provided by the telecom operators?

After mobile telephone revolution in India, several mobile service providers have been granted licenses to provide mobile telephone services to the consumers. To regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interest of service providers and consumers of the telecom sector and for matters connected therewith, the Parliament has passed “The Telecom Regulatory Authority of India Act, 1997”.

Under the said Telecom Regulatory Authority of India Act, 1997, a provision has been made for establishment or incorporation of an authority namely Telecom Regulatory Authority of India to regulate the functioning of telecommunication service providers and other matters including and relating to mobile telephones also. Under Section 14 of the said Act, a provision has been made for establishment of Appellate Tribunals to adjudicate any dispute relating to the telecommunication services. For the purpose of facilitation, Section 14 of the Telecom Regulatory Authority of India Act, 1997 is reproduced as under:

“14. Establishment of Appellate Tribunal – The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to:

- a. Adjudicate any dispute
 - i. Between a licensor and a licensee
 - ii. Between two or more service providers
 - iii. Between a service provider and a group of consumers.

Provided that nothing in this clause shall apply in respect of matters relating to:

- b. The complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or

the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986 (68 of 1986);

From the bare perusal of the above said provisions, now it is clear beyond doubt that the telephone services and to be more Cellular mobile telephone services have been specifically covered under the Telecom Regulatory Authority of India Act, 1997 and the provisions of the said Act are in addition to the previous Indian Telegraph Act, 1885. From perusal of Section 14 (B), it is very much clear that even when a consumer approaches the Consumer Disputes Redressal Forum, then the provisions of the Telecom Regulatory Authority of India Act, 1997 or the jurisdiction of the Appellate Tribunals established under the Telecom Regulatory Authority of India Act, 1997 ceases, rather the provisions of the Consumer Protection Act get precedence over the powers vested with the Appellate Tribunals established under the Telecom Regulatory Authority of India Act, 1997. The adjudicatory body of TRAI, i.e. TDSAT can only adjudicate disputes between a service provider and a group of consumer as per Section 14(a)(iii) of the TRAI Act, 1997. Thus individual consumer disputes shall be dealt with by the Consumer Forums and this power of the Consumer Forums is expressly saved under section 14B of the TRAI Act, 1997.

Further, the TRAI has passed “The Telecom Consumers Protection and Redressal of Grievances Regulations, 2007” vide Notification dated 4th May 2007 and have been published in Gazette of India. Under Regulation No.1 Clause (3), it has been provided that these regulations shall apply to –

“all service providers including Bharat Sanchar Nigam Limited and Mahanagar Telephone Nigam Limited, being the companies registered under the Companies Act, 1956 (1 of 1956) providing:

- i. Basic Telephone Service
- ii. Unified Access Services
- iii. Cellular Mobile Telephone Service.”

5.8 Regulation 25 of the above said Regulations is very much relevant, which for the sake of convenience is reproduced as under

“25. Right of consumers to seek redressal under the Consumer Protection Act, 1986 or any other law for the time being in force:

1. The provisions of these regulations are in addition to any right conferred upon the consumers under the Consumer Protection Act, 1986 (68 of 1986) or any other law for the time being in force.
2. Any consumer may, at any time.
 - a. during pendency of redressal of his grievance, whether by filing of complaint or appeal, under these regulations; or
 - b. before or after filing of complaint or appeal, under these regulations, exercise his right conferred upon him under the Consumer Protection Act, 1986 (68 of 1986) or any other law for the time being in force and seek redressal of his grievance under that Act or law.”

From the bare perusal of the above said Regulations framed by the Telecom Regulatory Authority of India exercising the powers conferred upon it under Section 36 and Section 11 of the Telecom Regulatory Authority of India Act, 1997, it is abundantly clear that the provisions of the Consumer Protection Act, 1986 prevail over the Telecom Regulatory Authority of India Act, 1997 and the jurisdiction and powers of the Consumer Disputes Redressal Forums are over and above the jurisdiction and powers of the Tribunals established for the purpose of adjudication of disputes relating to telecommunication services.

From the bare perusal of the above said Regulations framed by the Telecom Regulatory Authority of India exercising the powers conferred upon it under Section 36 and Section 11 of the Telecom Regulatory Authority of India Act, 1997, it is abundantly clear that the provisions of the Consumer Protection Act, 1986 prevail over the Telecom Regulatory Authority of India Act, 1997 and the jurisdiction and powers of the Consumer Disputes Redressal Forums are over and

above the jurisdiction and powers of the Tribunals established for the purpose of adjudication of disputes relating to telecommunication services.

5.9 What is the effect of the Judgment of the Hon'ble Supreme Court passed in M. Krishnan's case?

It is settled law that the law enacted by the Parliament cannot be changed or made useless by judicial interpretation. The provisions of the enactments have to prevail over the judicial decisions. The question of interpretation comes only when the provisions of legislative enactments are either not clear, ambiguous or cannot depict the true meaning. When the provisions of the legislative enactments are plain, clear and unambiguous, then these cannot be negotiated through judicial interpretation. By judicial verdict the court cannot amend the law made by the Parliament or State Legislature. It has been further held by the Hon'ble Supreme Court that mere a direction of the Hon'ble Supreme Court without laying down any principle of law is not a precedent. It is only where the Hon'ble Supreme Court lays down a principle of law that will amount to a precedent. The courts are subordinate to law and not above the law.

In M. Krishnan's case, the Hon'ble Supreme Court has not dealt with the provisions of Section 14 of TRAI Act, 1997 and Regulation 25 of The Telecom Consumers Protection and Redressal of Grievances Regulations, 2007. Since these two laws were not cited before the Hon'ble Court, the Judgment also does not contain any reference of the same and as such the said Judgment is not applicable to the facts involved in the present case.

A three Judges bench of the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi vs. Gurnam Kaur (AIR 1989 SC 38). The Hon'ble Court held that "a decision should be treated as given per incuriam when it is given in ignorance of the terms of the statute or of a rule having the force of a statute." It was further held that "A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide

in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

In M. Krishnan's case, the provisions of TRAI Act, 1997 and the Regulations of 2007 were not brought to the notice of the Supreme Court and thus the Judgment of the Supreme Court cannot be held to be a precedent.

Further, Section 3 of the Consumer Protection Act says that "3. Act not in derogation of any other law – The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force".

Thus taking into account the above mentioned provisions of Indian Telegraph Act, 1885, the TRAI Act, 1997, The Telecom Consumers Protection and Redressal of Grievances Regulations, 2007 and the concept of per incuriam and sub-silentio, it should be held that Consumer Forums have the jurisdiction to entertain matters involving telecom disputes.

5.10 Phone bill disputes not covered under Consumer Protection Act: Supreme Court

In **Tata Cellular Vs. UOI**¹⁴¹ Supreme Court of India has passed an order that in case of telecom disputes, consumer forums/courts do not have jurisdiction as appropriate remedy is by way of arbitration.

5.10.1 Consumer courts can look into disputes about time-share companies:

A number of decisions have been handed down by various consumer courts holding that time share in a resort is acquisition of an interest in an immovable property and

¹⁴¹ (2010) AIR SCC 651

hence, disputed relating to it were not maintainable under the consumer protection act.

However, the matter has been clarified in civil appeal no.120 of 2003 titled as **K.N Sharma Vs. Toshali Resorts international**¹⁴² decided by the Supreme Court on Jan 10 2003 in which the apex court has observed that “even in respect of matters where immovable property is involved , the question to be examined was whether there was any service to be rendered in relation thereto and whether the complaint made was in respect of the same or not.” The apex court categorically held that non-provision of committed services was maintainable under the consumer protection act. This decision has been duly followed in later decisions handed down by the national consumer commission. The Punjab State Consumer Commission has in a recent judgment in **Harinder Singh Dhall Vs. Avalon Resort Pvt Ltd.**¹⁴³ followed the same approach.

5.11 Banker’s Lien

In **K. Meenakshi Sundaram Vs. Bank Of India**¹⁴⁴ The Tamil Nadu State commission has held that though a suit for recovery may be barred under the limitation act, the liability of the debtor is not extremist and the bank can exercise the right of lien over the security kept with it.

5.11.1 Deceptive Promises:

Seven-year protection, five-year warranty and four year guaranteed service: These are some of the claims made by manufacturers of electrical and electronic gadgets. And such claims allure many consumers, who tend to believe that the unit purchased comes with a warranty for free service or replacement for a specified period of time. However, it may not be the case at all times.

¹⁴² (2003) CPJ 120 SCC

¹⁴³ (2011) CTJ 452 (S.C)

¹⁴⁴ 2011 CTJ 423(S.C)

Most gadgets come with warranty for one year of free service and/or replacement. The further period of 2,6 years is warranted only if the purchaser enters into a separate service contract and pays for the same at the time of purchase. Generally, this is not done, in which case the manufacturers would be right to disown its responsibility. So the manufacturers generally dupe the consumers by providing free warranty with terms and conditions on the warranty. The manufacturers do so while remaining in the ambit of law and hence, the consumers are not left with any remedy against the same. For e.g.; the car manufacturing companies provide three or more free services with a new car but actually only the labour charges on the respective services are free and the consumer still have to pay for the parts.

5.11.2 There are deductions by the builder:

These days builders enter into agreements with the consumers by inserting insignificant looking clauses in the offer documents which the consumer signs without giving much thought to it. Generally, the clauses in the offer documents signed by the consumers pertain to deduction of certain amounts from the consumers deposited money if he or she prematurely withdraws from the scheme.

In a similar case **Sahara India Commercial Corporation Ltd. Vs. C. Madhubabu**¹⁴⁵ the complainant had deposited Rs28050 for a plot of land with Sahara India costing Rs.5.61 lacs the complainant for some reasons surrendered the plot and demanded a refund. The company refused to refund any money as it was within its right to deduct 10% of the total cost of Rs5.61 lacks. The national commission by its order reported at held that the company was entitled to deduct the amount as it did. The commission observed that, “when there is a written agreement between the parties it is well settled that the consumer for a have to consider the relief in the light of such an agreement and it is not open to them to add or subtract any of the conditions or words thereof while doing so”.

¹⁴⁵ 2011 CTJ 365(N.C)

Supreme Court in the case of **State of Karnataka Vs. Vishwabharti House Building Coop. Society & others**¹⁴⁶ opined that that consumer protection act cannot be said to be unconstitutional. In the given case the party under consumer protection act may approach up to the Supreme Court and may otherwise take recourse to the judicial review the interests of the parties must be held to have been sufficiently safeguarded. The provisions relating to the power to approach appellate court a party aggrieved by a decision of the forums/State Commissions as also under the power under articles 226/227 and 32 of the constitution to the High Court and Supreme Court, resp. apart from this section 23 of the consumer protection act provide for adequate safeguards. In the event the complainant feels that he will have a better and effective remedy in a civil court he may seek an order of injunction.

5.12 Delivery of postal articles and Consumer Protection act, 1986

The contention of the postal department that they were covered under section 6 of Indian Post Office Act,1890 which exempts the govt. for any loss or missed-delivery of goods or damage of any postal article in course of transmission. It was held that the postal department was taking recourse to an act of 1890 which is totally antiquated and out of tune with the spirit of a democratic govt. functionaries which are subject to scrutiny and all such functionaries are accountable for any lapse that a comprehensive review of the Indian Post Office Act,1890 is undertaken so as to incorporate suitable amendments and modifications to bring it in tune with functioning of a democratic and accountable govt.

5.12.1 Problems in Consumer Protection Act:

1. The consumer courts are overburdened with cases despite the fact that there is not much awareness among the general public regarding redressal of their rights vis-à-vis the companies and manufacturers.
2. Lack of infrastructure: there is a severe lack of infrastructure for the smooth and efficient functioning of the consumer redressal forums constituted by the state

¹⁴⁶ AIR 2010 SCC 1043 :2010(1) CPJ 1 (SCC)

eg. most of the district forums are being run in ramshackle buildings and from market places.

3. The qualification of the presiding officers of the forums is mostly of retired judges. It needs to be given proper attention so that regular judicial officers are posted in the fora.
4. Lack of awareness amongst the general public: Despite the relentless campaign launched by the govt. There is still much to be desired as per as general awareness about the consumer protection act and the fora which espouse to give the consumer lot of relief from unscrupulous business establishment needs to be strengthened.
5. Although it is a laudable provision in the consumer protection act that on mere application of the consumer the complaint can be taken up for adjudication, still there seems to be a requirement for legal practitioner's to be more active in the consumer for a.
6. The consumer protection does not provide for sufficient amount of compensation nor is there any provision for sending the wrongdoers to the gallows.
7. The provision of court fees in the consumer protection act cases acts as a deterrent to the general public in so far as there are court fees even for very petty cases.
8. The judgments of the national commission are not binding on the state consumer commissions, they are not regarded as laws like the orders of Hon'ble Supreme Court, and so the District forums sometimes misuse their powers.

CHAPTER-6: Research Methodology

6.1 Research Methodology

Research methodology is a way to systematically solve the research problem. It may be understood as a science of studying how research is done scientifically. In research we study the various steps that are generally adopted by a researcher in studying his research problem along with the logic behind them. It is necessary for the researcher to know not only the research techniques but also the methodology. Researchers not only need to know how to develop certain indices or tests, how to calculate the mean, the mode, the median or the standard deviation or chi-square, how to apply particular research techniques, but they also need to know which of these methods or techniques, are relevant and which are not.

Researchers also need to understand the assumptions underlying various techniques and they need to know the criteria by which they can decide that certain techniques and procedures will be applicable to certain problems and others will not. All this means that it is necessary for the researcher to design his methodology for his problem as the same may differ from problem to problem. Research is equally important for social scientists in studying social relationships and in seeking answers to various social problems. It provides the intellectual satisfaction of knowing a few things just for the sake of knowledge and also has practical utility for the social scientist to know for the sake of being able to do something better or in a more efficient manner. Research in social sciences is concerned both with knowledge for its own sake and with knowledge for what it can contribute to practical concerns. This double emphasis is perhaps especially appropriate in the case of social science. On the one hand, its responsibility as a science is to develop a body of principles that make possible the understanding and prediction of the whole range of human interactions. On the other hand, because of its social orientation, it is increasingly being looked to for practical guidance in solving immediate problems of human relations.

6.2 Rationale of the Study

This study entitled “An critical appraisal of consumer grievances and their redressal mechanism for service industry a case study of telecom industry with special reference to Kota city” is an analytical & case study based research that attempts to analyze the major issues & causes that help in knowing the correct nature and extent of consumer’s grievances specially in Kota city of the Hadoti region. It will also help in knowing the reasons of lack of awareness about the rights of consumers as given in Consumer Protection Act, 1986.

The proposed research work will also throw light on the effectiveness of present redressal system of consumer’s grievances especially in Kota city. With the help of the proposed study, we would also come to know the various flaws in the Consumer Protection Act, 1986, due to which consumers are not properly protected. The study will also reveal this fact that how much time is taken in solving the different grievances of the consumers in Telecom Industry. The study will also throw light on the status of pendency of cases in Telecom Industry filled by the consumers in courts and to what extent they got relief as per the provisions of the Act.

6.3 Research Gap

After having a review of a number of research work done earlier it is found that there is enough study done on analyzing the gravity, complexity and the severity of the consumer grievance and general status of the case.

6.4 Objectives

This research comprises the primary objective and 8 secondary objectives to fulfill the analytical requirement of the study.

6.4.1 Primary objective

“To identify and analyze the Consumer Grievances and Redressal Mechanism in Telecomm Service Industries in Kota City.”

6.4.2 Secondary objectives

To fulfill the requirement of the primary objective following are secondary objectives are as:

1. The present redressal system of Telecom Industry in Kota city is not effective in solving the consumer grievances.
2. The provisions of the Consumer Protection Act, 1986 are able to fully protect the consumer's rights and solving their grievances.
3. The consumers of Kota city are fully aware about their rights as mentioned in Consumer Protection Act, 1986.

6.5 Hypothesis of the study

For the mentioned secondary objective and associative parameters researcher proposes following Hypothesizes:

H₁₀: $\mu_1 = \mu_2$: There is no significant relationship between the effective redressal system of Telecom Industry and the rectification of consumer grievances.

H_{1a}: $\mu_1 \neq \mu_2$: There is a significant relationship between the effective redressal system of Telecom Industry and the rectification of consumer grievances.

H₂₀: $\mu_1 = \mu_2$: There is no significant relationship between the Consumer Protection Act, 1986 and the protection of the consumer rights.

H_{2a}: $\mu_1 \neq \mu_2$: There is no significant relationship between the Consumer Protection Act, 1986 and the protection of the consumer rights.

H₃₀: $\mu_1 = \mu_2$: There is no significant relationship between the awareness about Consumer Protection Act, 1986 and knowledge of consumer of Kota city.

H_{3a}: $\mu_1 \neq \mu_2$: There is no significant relationship between the awareness about Consumer Protection Act, 1986 and knowledge of consumer of Kota city.

6.6 Research Plan

Once the problem is defined, the next step is to prepare a plan for getting the information needed for the research. The present study adopts Analytical & Descriptive Case Study approach where in there is a need to gather a large amount of information before making a conclusion.

6.7 Sampling Plan

6.7.1 Universe

The universe consists of all survey elements that qualify for inclusion in the research study. The precise definition for the universe for a particular study is set by the research question, which specifies who or what is of interest. For this study, researcher serves the research period from **July 2014 to Jan 2018** where researcher collected the data concluded & running court cases with in this period. IN this period total 651 cases were registered on various issues, out of which 99 were Telecom Billing Cases, 82 were Mobile device case and only 17 Mobile Network coverage cases.

These cases can be representing as:

Cases Registered in District Consumer Forum Kota					
Cases Registered	Total Cases	Dismissed	Allowed	None	Partly Allowed
All Cases	651	223	66	126	236
Telecom Billing	99	24	21	15	39
Device Cases	82	15	16	13	38
Telecom Network	17	9	5	2	1

Source: District Consumer Kota

So as consideration for universe researcher takes 116 cases associated with telecom billing and network issues.

6.7.2 Sample Size

As researcher to choose the correct sample size in the research from the available Universe, following inputs have been defined as:

1. Sample Size (n): Number of respondents which is to be determined for research.
2. Population Size (N): Available number of people in the universe = 116
3. Marginal Error (ME): Confidence interval that is +/- 5% error to allow.
4. Standard of Deviation (σ^2): Assumed Variance in responses = 0.5
5. Z Score (z): 1.96
6. Confidence Level: the level of confidence is 95% and the level of significance is 5%

So the formula applied for unknown large population size in the study is:

$$n = \frac{z^2 * \sigma^2 * \frac{N}{(N-1)}}{ME^2 + \left\{ \frac{z^2 * \sigma^2}{(N-1)} \right\}}$$

$$n = \frac{(1.96)^2 * (0.5)^2 * \frac{116}{(116-1)}}{(0.05)^2 + \left\{ \frac{(1.96)^2 * (0.5)^2}{(116-1)} \right\}}$$

$$n = \frac{(3.8416) * (0.25) * \frac{116}{(115)}}{(0.0025) + \left\{ \frac{(3.8416) * (0.25)}{(115)} \right\}}$$

$$n = \frac{\frac{111.4064}{(115)}}{(0.0025) + \left\{ \frac{0.9604}{(115)} \right\}}$$

$$n = \frac{\frac{111.4064}{(115)}}{\frac{0.2875 + 0.9604}{(115)}}$$

$$n = \frac{\frac{111.4064}{(115)}}{\frac{1.2479}{(115)}}$$

$$n = \frac{111.4064}{1.2479}$$

$$n = 89.2751022$$

$$n \cong 90$$

Therefore, researcher required to survey at least 90 respondents by using simple random sampling.

6.7.3 Sampling Technique

Simple Random Sampling technique used for the purpose of this research.

6.7.4 Sampling Area

The scope of the proposed research was consumer grievance cases associated with telecom industry in Kota city. These cases were selected on the basis of types of cases and non-settlement issues.

6.8 Data Collection

The present study is quantitative as well as in qualitative data in nature which is usually converted in quantitative after words and secondary data used for the purpose of analysis. Both primary and secondary data of the consumer grievance court cases has been collected from district court.

6.9 Sources of Data

6.9.1 Primary Data

Primary data collected through interview schedule, questionnaires, focus group discussion and observations. Interviews with consumers or subject expert

conducted to understand the overall perspective on the issues, challenges and best practices pertaining to consumer grievance and their redressal system.

6.9.2 Secondary Data

Secondary data collected through the district courts records and public prosecutors etc.

6.10 Data Analysis

The data collected analyzed with the help of statistical techniques with help of latest statistical analysis software like SPSS Ver.23, Systat13.2 etc.

6.11 Time Period of Study

The study covers a period of 3 years i.e. from July 2014 to Jan 2018. As this period covers both Critical and incidental issues occurred on consumer grievance in telecomm industry in Rajasthan.

6.12 Scope of the Study

This research will be helpful for rectification of the Customer Grievance in Telecomm industries and the loop holes of the redressal mechanism. Some future scope of the study is as follows:

1. The findings of the study will not only be helpful to the academicians, but also to the policy planners and executors of the law framing and implementing agencies.
2. The findings of the study may motivate other scholars to do the investigative research on consumer grievances and their redressal mechanism at other micro level as well as macro level.
3. The finding of the study will be helpful in tracing out the flaws in the existing laws and redressal mechanism pertaining to consumer grievances and will also suggest remedial measures for its improvement.

4. The conclusions of the study may be helpful in checking out modalities for making consumers aware about their exploitation and rights.
5. In essence the findings of the study will help in making the consumers more aware about their rights thereby protecting them from various kind of exploitation.

6.13 Limitations of the Study

1. Limited reports, research paper, study report are available.
2. Less availability of the NGO's which are working on concept of SHG federations.
3. In-depth Information may not be provided by the federations.
4. Some federations have two tier (SHG to federation) and some are working on three tier (SHG to cluster to federation) system
5. Less availability of documents on HR policy of the selected federations.
6. Limited finance and time resource with the researcher
7. Lack of adequate secondary sources
8. Sustainability issue pertaining to the federations

CHAPTER-7: Data Analysis and Interpretation

7.1 Introduction

This chapter deals with detailed analysis of the data obtained from the respondents and testing of hypothesis and comparison of various factors taken into consideration to identify and understand the better scenario of the initiatives taken in the field of consumer grievance handling and redressal system by telecom industry and district court as laid down objectives of the study.

For the purpose researcher has collected primary data with the help of structured questionnaire filled by the following respondents. The researcher's data collection strategy projects for only one questionnaire where 3 basic parameters used in consideration. These are as follows:

1. Consumer awareness regarding Consumer Protection Act, 1986
2. Consumer experience regarding redressal mechanism
3. Consumer satisfaction regarding grievance resolution

All these questionnaires were answered by 90 consumers belonging to different class and culture.

For the analysis of data, the researcher with the help of software (MS-Excel, SPSS 23.0 and Systat 13.2) has used some models and statistical techniques like (χ^2) Chi-Square Test, Z-Test, ANOVA, Correlation and Regression Analysis etc.

7.2 Demographic profile

Q.1. Kindly specify your gender?

Table 7.1		
Respondents Gender		
Particular	Responses	Percentage
Male	56	62%
Female	32	36%
Transgender	2	2%
Total	90	100%

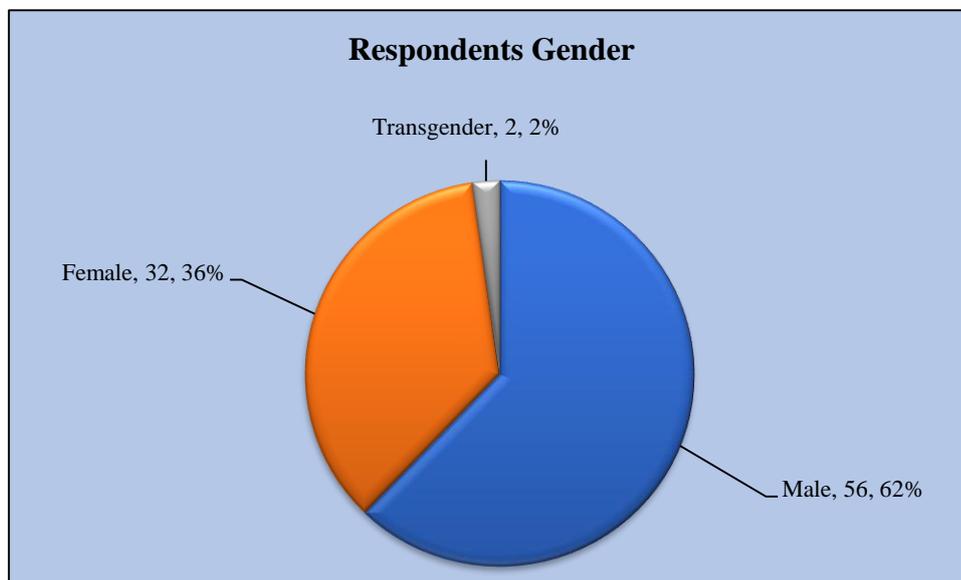


Chart 7.1

Analysis:

From the above table 7.1 and chart 7.1 data represents the gender factor of the respondents, where 62% were male, 36% were female and only 2% were transgender.

Interpretation:

From the above analysis most respondents were male, where female percentage is moderate and transgender quite few.

Q.2. Kindly specify your age?

Table 7.2		
Respondents Age		
Particular	Responses	Percentage
20-30Years	37	41%
31-40Years	35	39%
41-50Years	15	17%
51-60Years	3	3%
Total	90	100%

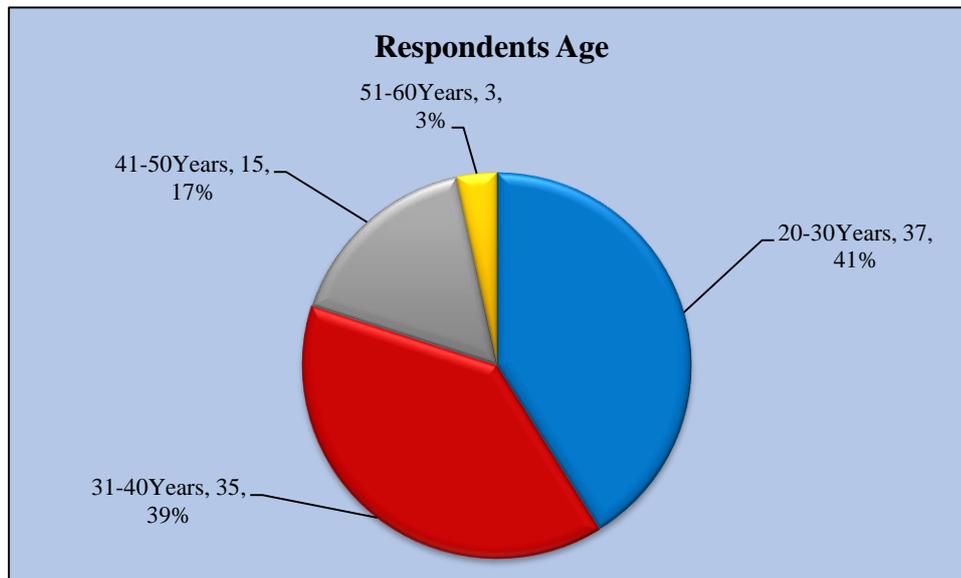


Chart 7.2

Analysis:

From the above table 7.2 and chart 7.2 data represents the age factor of the respondents, where 41% were between 20-30 years, 39% ae between 31-40 years, 17% were between 41-50 years and only 3% were between 51-60 years.

Interpretation:

From the above analysis most respondents were belonging to 20 years to 40 years with 80%, where only 20% of respondents belongs to 41 years to 60 years.

Q.3. Kindly specify your qualification?

Table 7.3		
Respondents Qualification		
Particular	Responses	Percentage
X th Pass Only	1	1%
XII th Pass	8	9%
Graduate	47	52%
Postgraduate	30	33%
Ph.D.	1	1%
Other	3	3%
Total	90	100%

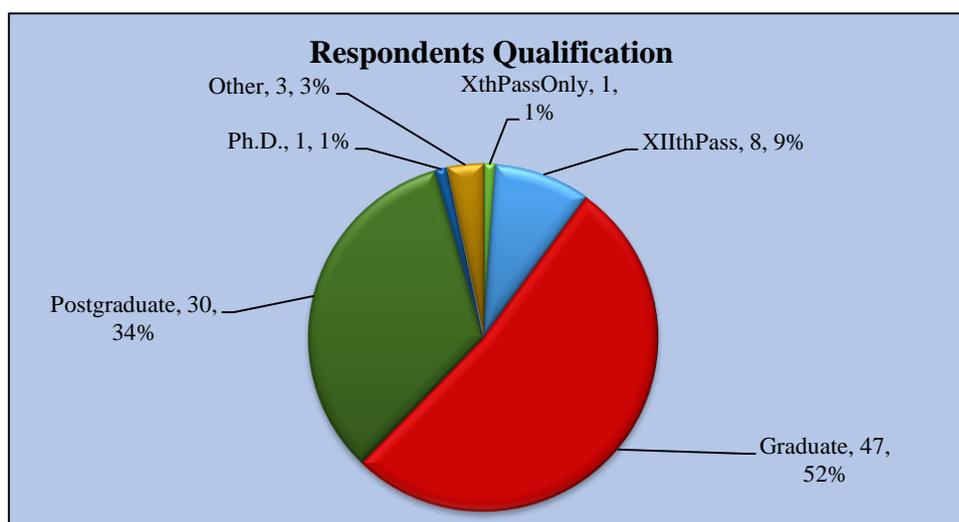


Chart 7.3

Analysis:

From the above table 7.3 and chart 7.3 data represents the qualification factor of the respondents, where only 1% were Xth pass, 9% were XIIth pass, 52% were graduates, 33% were postgraduate, only 1% is Ph.D. and 3% were other qualification holders.

Interpretation:

From the above analysis most respondents were graduates and post graduates with 85% where other qualification holders were very few comes under the 15% bracket.

Q.4. Kindly specify your occupation?

Table 7.4		
Respondents Occupation		
Particular	Responses	Percentage
Student	3	3%
Business Man	18	20%
Govt. Employee	34	38%
Private Employee	30	33%
Working Woman	2	2%
Other	3	3%
Total	90	100%

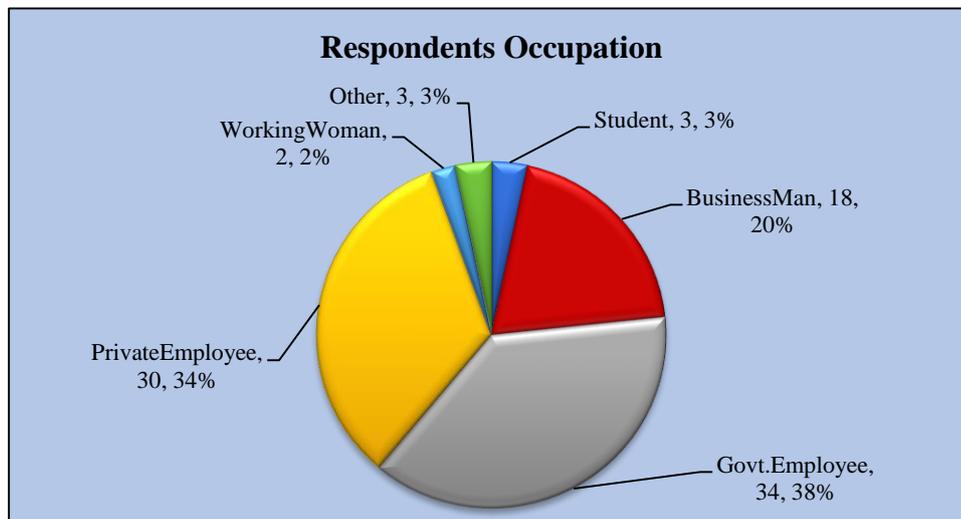


Chart 7.4

Analysis:

From the above table 7.4 and chart 7.4 data represents the occupation factor of the respondents, 3% were students, 20% were business man, 38% govt. employee, 33% were private employee, 2% were working woman and 3% were from other occupations.

Interpretation:

From the above analysis most respondents were government and private employees were with 71%, after that business man were with 20% where other occupation holders were coming under the 9% bracket.

7.3 Consumer awareness regarding Consumer Protection Act, 1986

Q.5. Do you know about the Consumer Protection Act, 1986?

Table 7.5		
Knowledge of Consumer Protection Act, 1986		
Particular	Responses	Percentage
Yes	21	23%
No	55	61%
Partially	10	11%
Do Not Know About It	4	4%
Total	90	100%

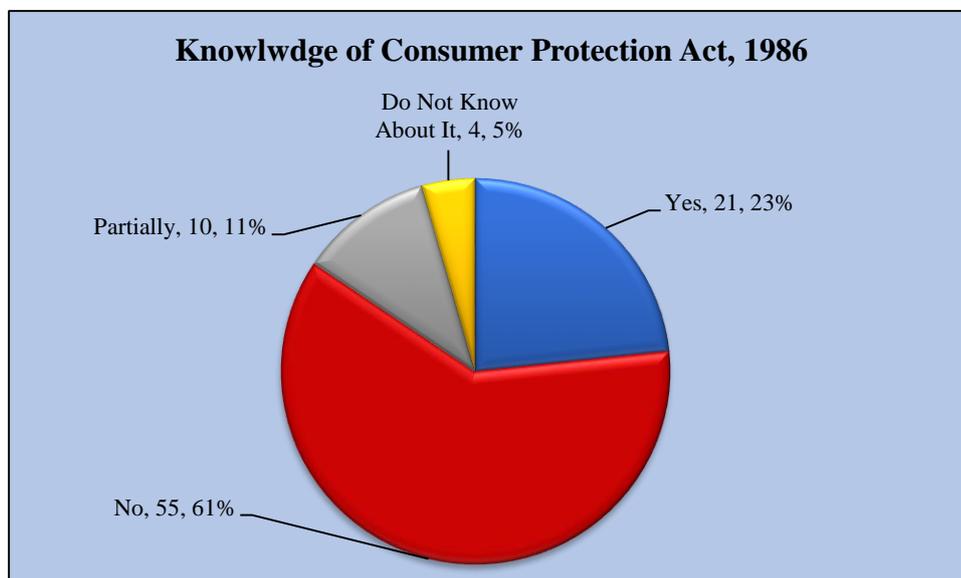


Chart 7.5

Analysis:

From the above table 7.5 and chart 7.5 data represents about the knowledge of Consumer Protection Act, 1986 of the respondents, where only 23% were aware about Consumer Protection Act, 1986, 61% were not aware about Consumer Protection Act, 1986 11% were partially aware and 5% were do know anything about it.

Interpretation:

From the above analysis most respondents were aware about the Consumer Protection Act, 1986 where big chunk of the sample population 65% do not have clue about it where only 34% respondents do know about it.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.6				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp) ²	(Obs-Exp) ² /Exp
21.00	22.50	-1.50	2.25	0.10
55.00	22.50	32.50	1056.25	46.94
10.00	22.50	-12.50	156.25	6.94
4.00	22.50	-18.50	342.25	15.21
90	90	Chi-Square Value =		69.20

Hence,

From the above calculation Table 7.6 the χ^2 Chi-Square value is = **69.20**

∴ Number of Response Parameters are 4

∴ Degree of freedom = (n-1) = (4-1) = 3

The χ^2 Chi-Square table value at 5% of significance at 3 degree of freedom is **7.815**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**69.20**) is greater than the tabular value of χ^2 Chi-Square (**7.815**). This states that the difference is significant and therefore the Null Hypothesis is false. Hence H_0 is rejected and H_a is accepted.

Therefore, this result leads to the non-uniform distribution of proportion of the data hence researcher proposed that respondents were not fully aware about the Consumer Protection Act, 1986.

Q.6. Do you know about its specific use of this act?

Table 7.7		
Knowledge of Use of Consumer Protection Act, 1986		
Particular	Responses	Percentage
Yes	25	28%
No	55	61%
Partially	2	2%
Do Not Know About It	8	9%
Total	90	100%

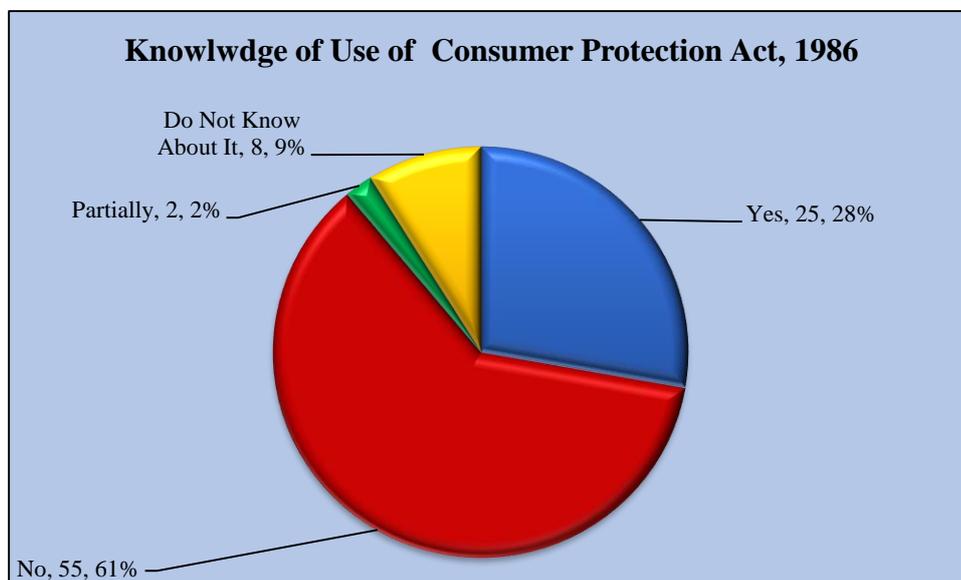


Chart 7.6

Analysis:

From the above table 7.7 and chart 7.4 data represents about the knowledge of Consumer Protection Act, 1986 of the respondents, where only 28% were aware about Consumer Protection Act, 1986, 61% were not aware about the Act, 2% were partially aware and 9% were do know anything about it.

Interpretation:

From the above analysis most respondents were aware about the Consumer Protection Act, 1986 where big chunk of the sample population 70% do not have clue about it where only 30% respondents do know about it.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.8				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp) ²	(Obs-Exp) ² /Exp
25.00	22.50	2.50	6.25	0.28
55.00	22.50	32.50	1056.25	46.94
2.00	22.50	-20.50	420.25	18.68
8.00	22.50	-14.50	210.25	9.34
90	90	Chi-Square Value =		75.24

Hence,

From the above calculation Table 7.8 the χ^2 Chi-Square value is = **75.24**

∴ Number of Response Parameters are 4

∴ Degree of freedom = (n-1) = (4-1) = 3

The χ^2 Chi-Square table value at 5% of significance at 3 degree of freedom is **7.815**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**75.24**) is greater than the tabular value of χ^2 Chi-Square (**7.815**). This states that the difference is significant and therefore the Null Hypothesis is false. Hence H_0 is rejected and H_a is accepted.

Therefore, this result leads to the non-uniform distribution of proportion of the data hence researcher proposed that respondents were not fully aware about the proper or exact use of Consumer Protection Act, 1986.

Q.7. Do you feel this will help you to protect your consumer rights against frauds?

Table 7.9		
Knowledge about Consumer Rights Helps against Frauds		
Particular	Responses	Percentage
Yes	24	27%
No	52	58%
Partially	3	3%
Do Not Know About It	11	12%
Total	90	100%

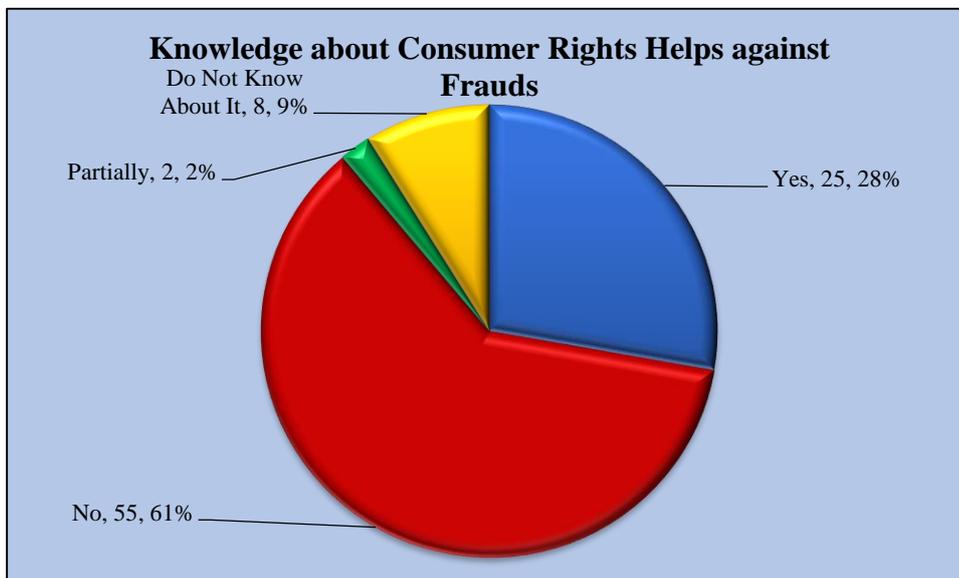


Chart 7.7

Analysis:

From the above table 7.9 and chart 7.6 data represents about the knowledge about the Consumer Rights helps against the frauds. Where only 27% of respondents were aware about Consumer Rights, 58% were not aware about Consumer Rights, only 3% were partially aware and 12% were do know anything about it.

Interpretation:

From the above analysis most respondents are awareness about the consumer rights, where big chunk of the sample population 70% do not have clue about it where only 30% respondents do know about it.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.10				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp) ²	(Obs-Exp) ² /Exp
24.00	22.50	1.50	2.25	0.10
52.00	22.50	29.50	870.25	38.68
3.00	22.50	-19.50	380.25	16.90
11.00	22.50	-11.50	132.25	5.88
90	90	Chi-Square Value =		61.56

Hence,

From the above calculation Table 7.10 the χ^2 Chi-Square value is = **61.56**

∴ Number of Response Parameters are 4

∴ Degree of freedom = (n-1) = (4-1) = 3

The χ^2 Chi-Square table value at 5% of significance at 3 degree of freedom is **7.815**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**61.56**) is greater than the tabular value of χ^2 Chi-Square (**7.815**). This states that the difference is significant and therefore the Null Hypothesis is false. Hence H_0 is rejected and H_a is accepted.

Therefore, this result leads to the non-uniform distribution of proportion of the data hence researcher proposed that respondents are not fully aware about the Consumer Rights at all.

7.4 Consumer experience regarding redressal mechanism

Q.8. When you registered your complaint regarding the network drop or billing issue, how the vender reacts and entertained your issues?

Table 7.11		
Response of Vender on Problem Addressing by Customer		
Particular	Responses	Percentage
Understand my problem and promise to resolve initially	5	6%
Start to ask so many question about the issue and did not understand my issue	57	63%
Vender refuse to accept the complaint and ask to get help from some customer care helpline	28	31%
Total	90	100%

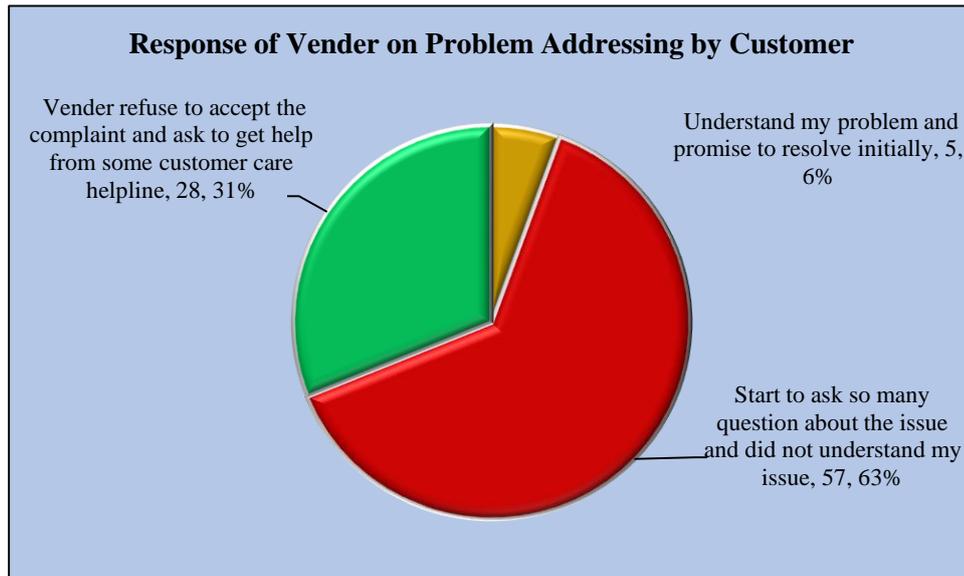


Chart 7.8

Analysis:

From the above table 7.11 and chart 7.8 data represents about the redressal system at telecom local vender regarding the issue arises by customer. Where only 6% of respondents were being entertained initially, 63% were faced unusual questioning by vender and no suitable response from them and 31% respondents said that vender

did not take the complaint at all and refuse the request from their side and for the help from the customer care.

Interpretation:

From the above analysis most respondents were faced irresponsible behaviour from vender, where only 6% respondents get the initial support but afterwards they also have unresolved issues.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.12				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp)²	(Obs-Exp)²/Exp
25.00	30.00	-5.00	25.00	0.83
55.00	30.00	25.00	625.00	20.83
2.00	30.00	-28.00	784.00	26.13
90	90	Chi-Square Value =		47.80

Hence,

From the above calculation Table 7.12 the χ^2 Chi-Square value is = **47.80**

∴ Number of Response Parameters are 3

∴ Degree of freedom = (n-1) = (3-1) = 2

The χ^2 Chi-Square table value at 5% of significance at 2 degree of freedom is **5.991**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**47.80**) is greater than the tabular value of χ^2 Chi-Square (**5.991**). This states that the difference is significant and therefore the Null Hypothesis is false. Hence H_0 is rejected and H_a is accepted.

Therefore, this result leads to the non-uniform distribution of proportion of the data hence researcher proposed that respondents did not get and proper response from telecomm vender.

Q.9. Did you get the satisfied solution from the vender?

Table7.13		
Agreement on Satisfied Solution from the Vender		
Particular	Responses	Percentage
Yes	1	1%
No	83	92%
Partially	6	7%
Total	90	100%

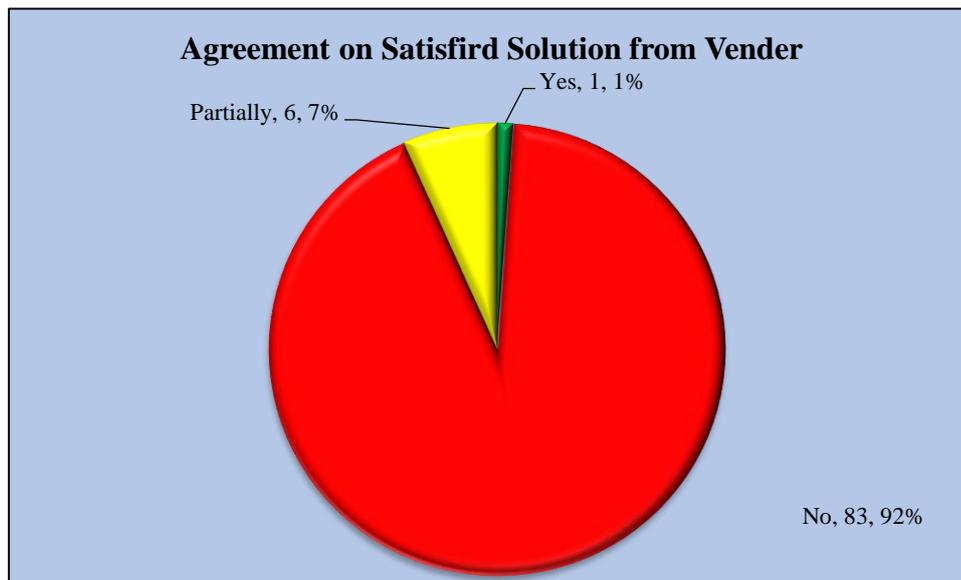


Chart 7.9

Analysis:

From the above table 7.13 and chart 7.9 data represents about the agreement on satisfied solution provide by vender to the consumer. Where only 1% of respondents got the satisfied response, 92% did not get the proper solution and satisfaction from the vender and 7% were partially satisfied on initial basis.

Interpretation:

From the above analysis most respondents were awareness about the satisfied solution provide by vender to the consumer where a major percentage of respondents did not get proper solution regarding problem faced by the consumer.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.14				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp) ²	(Obs-Exp) ² /Exp
1.00	30.00	-29.00	841.00	28.03
83.00	30.00	53.00	2809.00	93.63
6.00	30.00	-24.00	576.00	19.20
90	90	Chi-Square Value =		140.87

Hence,

From the above calculation Table 7.14 the χ^2 Chi-Square value is = **140.87**

∴ Number of Response Parameters are 3

∴ Degree of freedom = (n-1) = (3-1) = 2

The χ^2 Chi-Square table value at 5% of significance at 2 degree of freedom is **5.991**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**140.87**) is greater than the tabular value of χ^2 Chi-Square (**5.991**). This states that the difference is significant and therefore the Null Hypothesis is false. Hence H_0 is rejected and H_a is accepted.

Therefore, this result leads to the non-uniform distribution of proportion of the data hence researcher proposed that respondents faced unresolved issues regarding the problem faced by consumer like network coverage and reception problem, or unusual billing by telecomm vender etc.

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Q.10. Did the vender try to blame you for the issue that registered by you?

Table 7.15		
Vender Blame Customer for the Issue		
Particular	Responses	Percentage
Yes, blamed me for the issue	76	84%
No, did not blame me	2	2%
Partially blamed me but understand my situation	12	13%
Total	90	100%

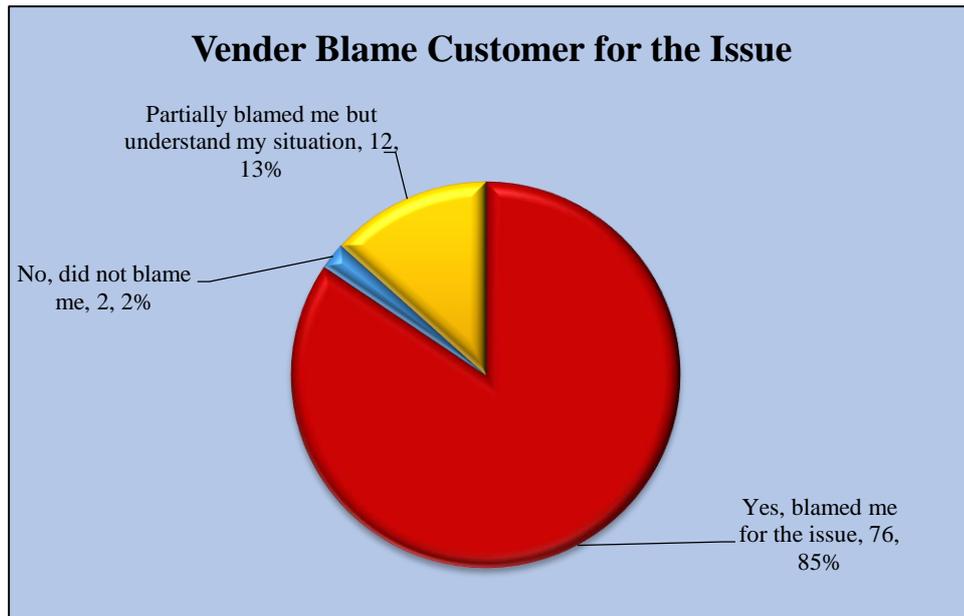


Chart 7.10

Analysis:

From the above table 7.15 and chart 7.10 data represents about the vender blamed the customer initially, where 85% of customer blamed by vender for the issue, only 2% did not got blamed by the vender and 13% were partially blamed but vender understand the situation only.

Interpretation:

From the above analysis most of the respondents / customers were blamed by the vender for the issues regarding billing or any other network issue and very few did not face such situation.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.16				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp) ²	(Obs-Exp) ² /Exp
76.00	30.00	46.00	2116.00	70.53
2.00	30.00	-28.00	784.00	26.13
12.00	30.00	-18.00	324.00	10.80
90	90	Chi-Square Value =		107.47

Hence,

From the above calculation Table 7.16 the χ^2 Chi-Square value is = **107.47**

∴ Number of Response Parameters are 3

∴ Degree of freedom = (n-1) = (3-1) = 2

The χ^2 Chi-Square table value at 5% of significance at 2 degree of freedom is **5.991**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**107.47**) is greater than the tabular value of χ^2 Chi-Square (**5.991**). This states that the difference is significant and therefore the Null Hypothesis is false. Hence H_0 is rejected and H_a is accepted.

Therefore, this result leads to the non-uniform distribution of proportion of the data hence researcher proposed that respondents faced unresolved issues regarding the problem faced by consumer where customer being blamed by the vender most of the time without any specific reason.

Q.11. Did the vender disrespect you and refused to resolve your issue?

Table7.17		
Vender Disrespect Customer & Refuse to Resolve Issue		
Particular	Responses	Percentage
Yes, disrespect me & blamed me for the issue	61	68%
No, did not disrespect me & did not blame me for the issue	8	9%
Partially blamed me but understand my situation	21	23%
Total	90	100%



Chart 7.11

Analysis:

From the above table 7.17 and chart 7.11 data represents about the vender disrespect the customer and blamed for the issue, where 68% of customer has been suffered by vender for the issue, only 9% did not got faced such situation and 23% were partially blamed but vender understand the situation only.

Interpretation:

From the above analysis most of the respondents / customers were disrespected and blamed by the vender for the issues regarding billing or any other network issue,

where some time may happen in such condition where abusing and quarreling and very few did not face such situation.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.18				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp)²	(Obs-Exp)²/Exp
61.00	30.00	31.00	961.00	32.03
8.00	30.00	-22.00	484.00	16.13
21.00	30.00	-9.00	81.00	2.70
90	90	Chi-Square Value =		50.87

Hence,

From the above calculation Table 7.18 the χ^2 Chi-Square value is = **50.87**

∴ Number of Response Parameters are 3

∴ Degree of freedom = (n-1) = (3-1) = 2

The χ^2 Chi-Square table value at 5% of significance at 2 degree of freedom is **5.991**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**50.87**) is greater than the tabular value of χ^2 Chi-Square (**5.991**).

This states that the difference is significant and therefore the Null Hypothesis is false. Hence H_0 is rejected and H_a is accepted.

Therefore, this result leads to the non-uniform distribution of proportion of the data hence researcher proposed that respondents faced unresolved issues regarding the unusual condition faced by consumer where customer being not even blamed by the vender but also disrespected by them also.

Q.12. How would you scale your satisfaction regarding grievance redressal at Telecom vender's side?

Table7.19		
Satisfaction regarding Grievance Redressal at Telecom Vender's Side		
Particular	Responses	Percentage
Highly Dissatisfied	39	43%
Dissatisfied	27	30%
Neither Satisfied Nor Dissatisfied	15	17%
Satisfied	6	7%
Highly Satisfied	3	3%
Total	90	100%

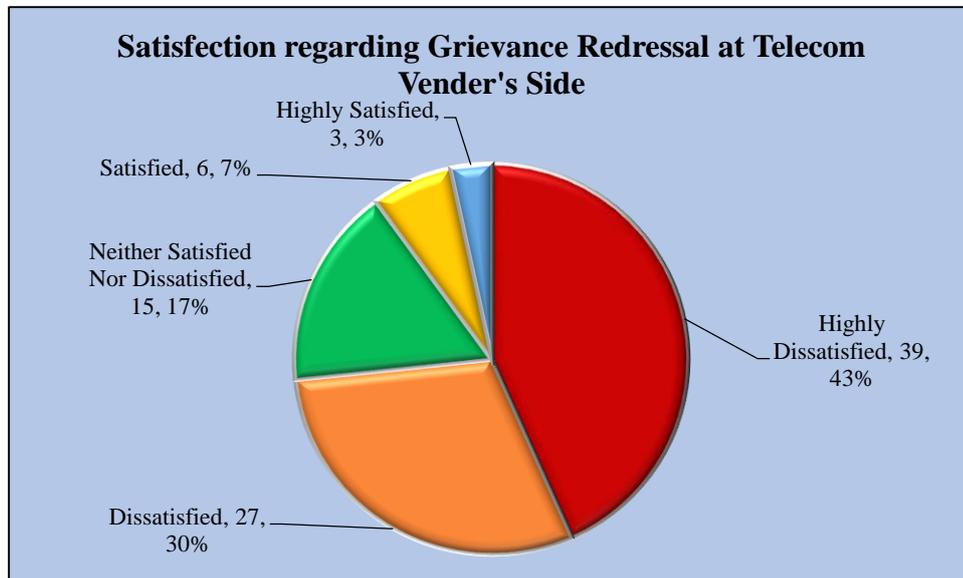


Chart 7.12

Analysis:

From the above table 7.19 and chart 7.12 data represents about the satisfaction level regarding the telecom vender's side grievance redressal system, where 43% of customer were highly dissatisfied, 30% were dissatisfied only. However, 17% were neither satisfy nor dissatisfied, whereas only 7% were satisfied only and a very less 3% of customers were highly satisfied.

Interpretation:

From the above analysis most of the respondents / customers were dissatisfied because of the ineffective redressal mechanism at telecom venders, some of the customers were in dilemma so they can not decide the actual satisfaction level at all rest 10% of customers were satisfied with venders redressal system but finally they have to file the case against the telecom vender as they did not get proper justice.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.20				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp) ²	(Obs-Exp) ² /Exp
39.00	18.00	21.00	441.00	24.50
27.00	18.00	9.00	81.00	4.50
15.00	18.00	-3.00	9.00	0.50
6.00	18.00	-12.00	144.00	8.00
3.00	18.00	-15.00	225.00	12.50
90	90	Chi-Square Value =		37.50

Hence,

From the above calculation Table 7.18 the χ^2 Chi-Square value is = **37.50**

∴ Number of Response Parameters are 5

∴ Degree of freedom = (n-1) = (5-1) = 4

The χ^2 Chi-Square table value at 5% of significance at 4 degree of freedom is **9.488**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**37.50**) is greater than the tabular value of χ^2 Chi-Square (**9.488**). This states that the difference is significant and therefore the Null Hypothesis is false. Hence H_0 is rejected and H_a is accepted.

Therefore, this result leads to the non-uniform distribution of proportion of the data hence researcher proposed that most of the respondents dissatisfied with telecom vender's grievance redressal system, which has to be improvise.

7.5 Consumer satisfaction regarding grievance resolution

Q.13. For what telecom issue you filed case against the retailer or telecom industry?

Table 7.21		
Cases Filed Against the Telecom Vender		
Particular	Responses	Percentage
Unusual billing amount	44	49%
Plan change without customer consent	25	28%
Undesirable packages & tariffs activation	14	16%
No network issue with in the city	5	6%
Continuous call dropping	2	2%
Total	90	100%

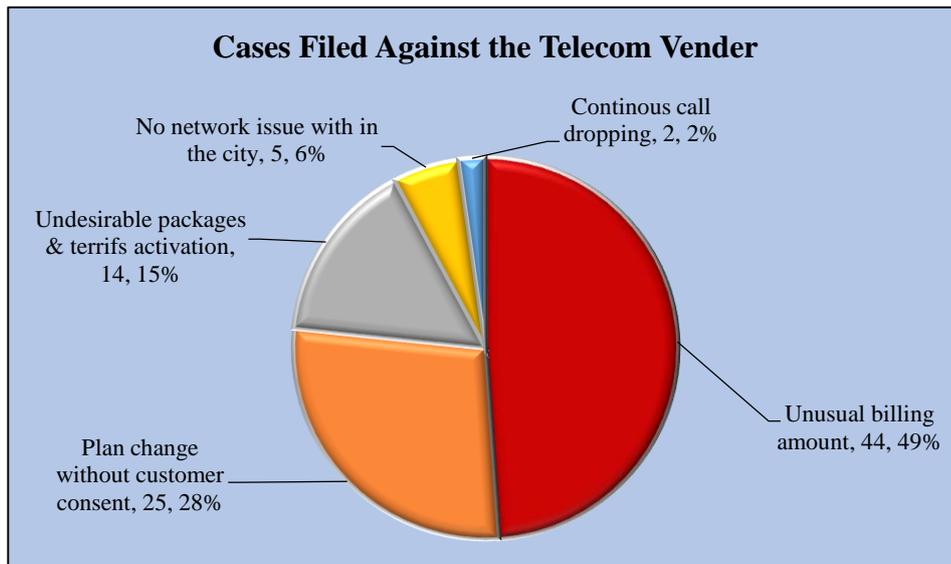


Chart 7.13

Analysis:

From the above table 7.21 and chart 7.13 data represents about cases filed against the telecom vendors in district court Kota, where 49% cases were filed on unusual billing amount, 28% were filed on plan change without customer consent, 16% filed on undesirable packages & tariffs activations, 6% were filed on no network issue with in the city and 2% cases were filed on continuous call dropping issue.

Interpretation:

From the above analysis most of the respondents / customers filed cases on several issues but most of the cases were based on unusual billing, plan changing and package activation.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.22				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp) ²	(Obs-Exp) ² /Exp
44.00	18.00	26.00	676.00	37.56
25.00	18.00	7.00	49.00	2.72
14.00	18.00	-4.00	16.00	0.89
5.00	18.00	-13.00	169.00	9.39
2.00	18.00	-16.00	256.00	14.22
90.00	90.00		Chi-Square Value =	64.78

Hence,

From the above calculation Table 7.22 the χ^2 Chi-Square value is = **64.78**

∴ Number of Response Parameters are 5

∴ Degree of freedom = (n-1) = (5-1) = 4

The χ^2 Chi-Square table value at 5% of significance at 4 degree of freedom is **9.488**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**64.78**) is greater than the tabular value of χ^2 Chi-Square (**9.488**). This states that the difference is significant and therefore the Null Hypothesis is false. Hence H_0 is rejected and H_a is accepted.

Therefore, this result leads to the non-uniform distribution of proportion of the data hence researcher proposed that most of the cases were based on evidences and verifications where respondents were dissatisfied with telecom vender's grievance redressal system.

Q.14. How do you find your-self in a situation after filing the case?

Table7.23		
Customer's Situation Analysis After Filing The Case		
Particular	Responses	Percentage
Easy way to get justification and judgment	20	22%
Got into trouble after filing the case	15	17%
Wastage of time and money	38	42%
Initially facing problems now hope to get justice	17	19%
Total	90	100%

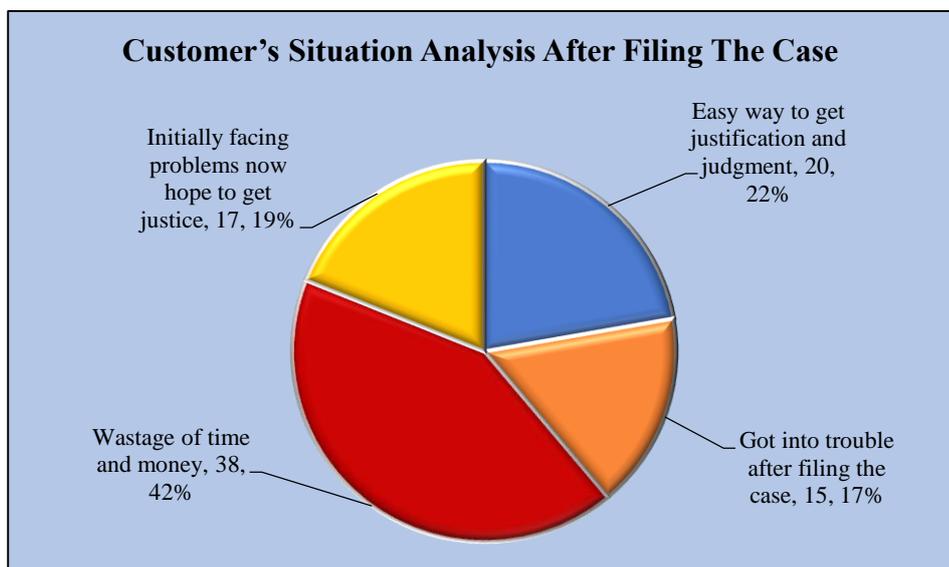


Chart 7.14

Analysis:

From the above table 7.23 and chart 7.14 data represents about the customer's situation analysis after filing the case against the telecom venders in district court Kota, where 22% customers were felt that it is the easy way to get the justice, 17% were felt that they got into the trouble after filing the case, 42% felt that it was the waste of time and money and 19% were felt that initially they faced problems and issues but now they have hope to get justice as their cases are still in pending status.

Interpretation:

From the above analysis (59%) most of the respondents / customers felt that they did not get anything after filing the case, even they have faced troubles from various ends and most of them lost hope in judiciary mechanism.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.24				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp) ²	(Obs-Exp) ² /Exp
20.00	22.50	-2.50	6.25	0.28
15.00	22.50	-7.50	56.25	2.50
38.00	22.50	15.50	240.25	10.68
17.00	22.50	-5.50	30.25	1.34
90.00	90.00	Chi-Square Value =		14.80

Hence,

From the above calculation Table 7.24 the χ^2 Chi-Square value is = **14.80**

∴ Number of Response Parameters are 4

∴ Degree of freedom = (n-1) = (4-1) = 3

The χ^2 Chi-Square table value at 5% of significance at 3 degree of freedom is **7.815**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**14.80**) is greater than the tabular value of χ^2 Chi-Square (**7.815**). This states that the difference is significant and therefore the Null Hypothesis is false. Hence H_0 is rejected and H_a is accepted.

Therefore, this result leads to the non-uniform distribution of proportion of the data hence researcher proposed that most of the customers were lost hope in district court's grievance redressal mechanism where, they did not get any justice.

Q.15. Do you feel that you will get the judgment with in a specific time frame?

Table7.25		
Agreement On Justification With in the Specific Time Frame		
Particular	Responses	Percentage
Yes	22	24%
No	55	61%
Maybe	13	14%
Total	90	100%

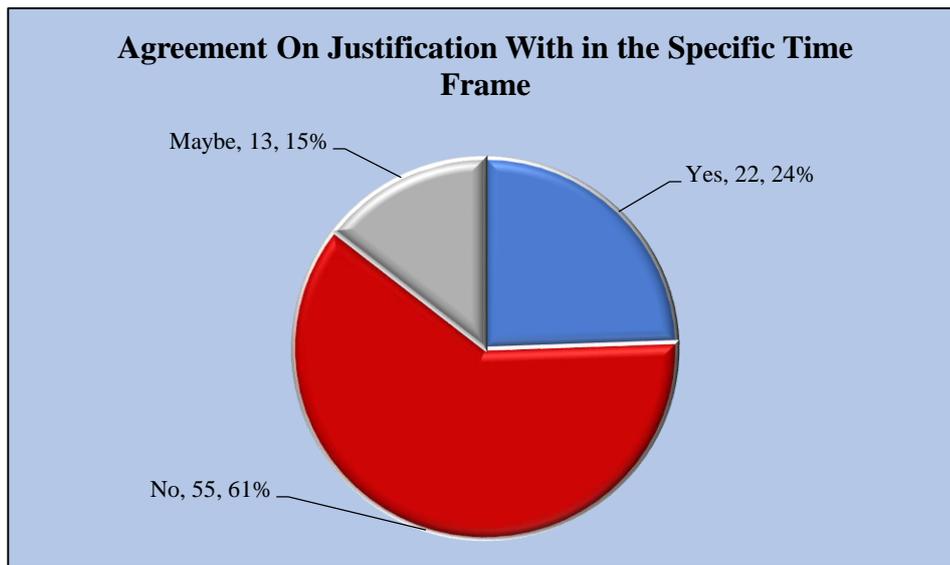


Chart 7.15

Analysis:

From the above table 7.25 and chart 7.15 data represents about the customer's agreement on justification with in the specific time frame in district court Kota, where 24% customers were agreed that they will get the justice with in the time, 61% were felt that they did not get / got the justice with in the specific time frame and 15% were felt that they might get the justice with the time frame.

Interpretation:

From the above analysis (61%) most of the respondents / customers felt that they did not get / got the justice with in the standard / specific time limit. Whereas most

of the cases are still in pending status or they might get concluded after a long time period, which projects the real inefficiency judiciary mechanism.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.26				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp)²	(Obs-Exp)²/Exp
22.00	30.00	-8.00	64.00	2.13
55.00	30.00	25.00	625.00	20.83
13.00	30.00	-17.00	289.00	9.63
90.00	90.00	Chi-Square Value =		32.60

Hence,

From the above calculation Table 7.26 the χ^2 Chi-Square value is = **32.60**

∴ Number of Response Parameters are 3

∴ Degree of freedom = (n-1) = (3-1) = 2

The χ^2 Chi-Square table value at 5% of significance at 2 degree of freedom is **5.991**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**32.60**) is greater than the tabular value of χ^2 Chi-Square (**5.991**). This states that the difference is significant and therefore the Null Hypothesis is false. Hence H_0 is rejected and H_a is accepted.

Therefore, this result leads to the non-uniform distribution of proportion of the data hence researcher proposed that most of the customers were faced long duration to get the justice in district court's grievance redressal mechanism where, there still pending cases were present and yet to be concluded.

Q.16. Did you get appropriate guidance & help during the hearing and judgment?

Table 7.27		
Customer's Agreement On Getting Appropriate Guidance & Help During Case Hearing		
Particular	Responses	Percentage
Yes	15	17%
No	64	71%
Partially	11	12%
Total	90	100%

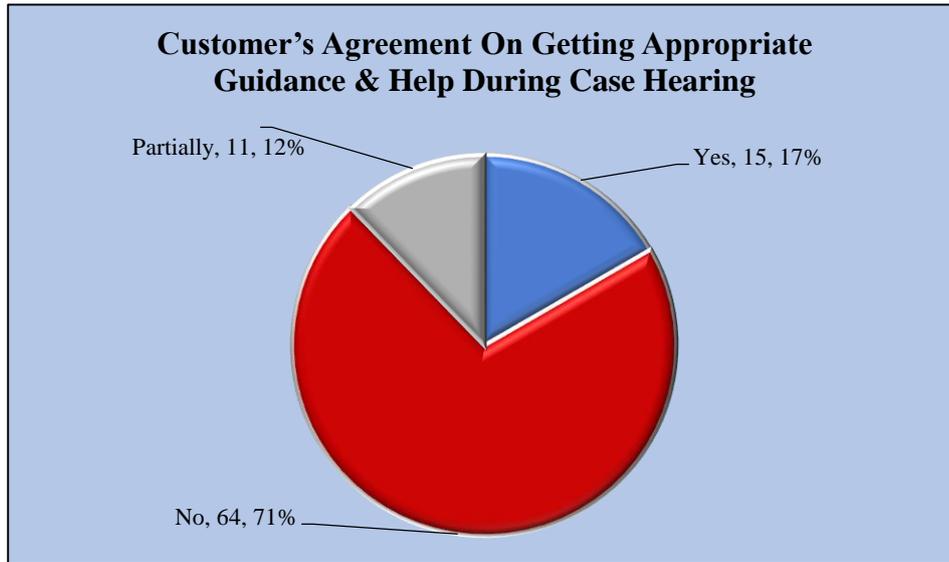


Chart 7.16

Analysis:

From the above table 7.27 and chart 7.16 data represents about the customer's agreement on getting appropriate guidance & help during case hearing, where 17% customers were agreed that they did get guidance & help during the hearing, 71% were denied for such appropriate guidance & help and 12% respondents said that they did get guidance & help but not in an effective way.

Interpretation:

From the above analysis (71%) most of the respondents / customers did not get any kind of guidance & help whereas rest were in dilution that might have guidance during the hearing of the case.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.28				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp) ²	(Obs-Exp) ² /Exp
15.00	30.00	-15.00	225.00	7.50
64.00	30.00	34.00	1156.00	38.53
11.00	30.00	-19.00	361.00	12.03
90.00	90.00	Chi-Square Value =		58.07

Hence,

From the above calculation Table 7.28 the χ^2 Chi-Square value is = **58.07**

∴ Number of Response Parameters are 3

∴ Degree of freedom = (n-1) = (3-1) = 2

The χ^2 Chi-Square table value at 5% of significance at 2 degree of freedom is **5.991**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**58.07**) is greater than the tabular value of χ^2 Chi-Square (**5.991**). This states that the difference is significant and therefore the Null Hypothesis is false. Hence H_0 is rejected and H_a is accepted.

Therefore, this result leads to the non-uniform distribution of proportion of the data hence researcher proposed that most of the customers did not get any appropriate guidance or any kind of help during the help they were just like dummy at the of hearing and did not get any idea what is going on.

Q.17. What is the status of your case till now?

Table 7.29		
Customer's Case Status from June 2014 to Jan 2018		
Particular	Responses	Percentage
Dismissed	25	28%
Allowed	20	22%
Partially Allowed	31	34%
Still Pending	14	16%
Total	90	100%

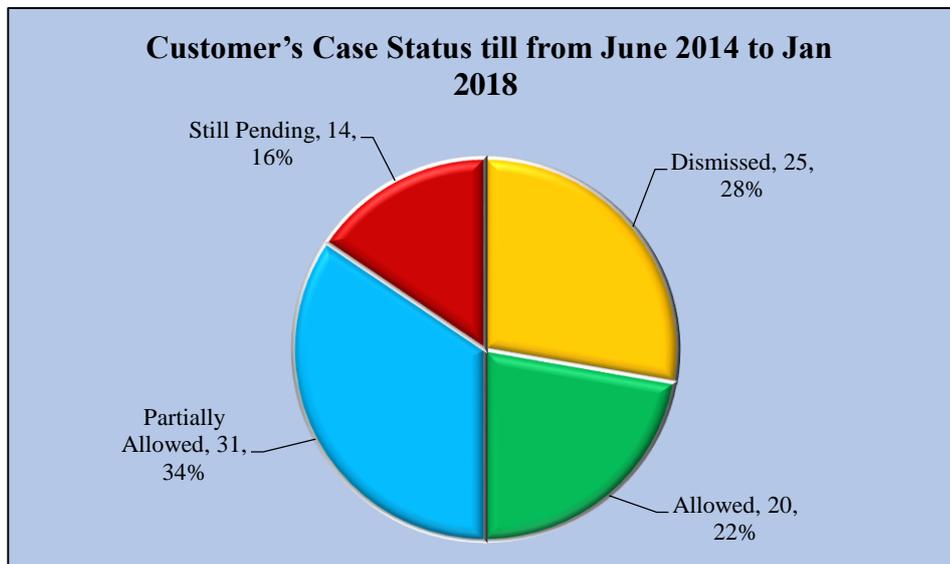


Chart 7.17

Analysis:

From the above table 7.29 and chart 7.17 data represents about the customer's filed case status, filed from June 2014 to Jan 2018, where 28% cases were dismissed, 22% cases were allowed in the favour of customer's interest, 34% cases were partially allowed where customer's and vender's were based on mutual agreement and 16% case were still in pending status.

Interpretation:

From the above analysis (84%) most of the cases were concluded till Jan 2018. But still 14% cases are still pending and some of them are older than two or more years.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.30				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp) ²	(Obs-Exp) ² /Exp
25.00	22.50	2.50	6.25	0.28
20.00	22.50	-2.50	6.25	0.28
31.00	22.50	8.50	72.25	3.21
14.00	22.50	-8.50	72.25	3.21
90.00	90.00	Chi-Square Value =		06.98

Hence,

From the above calculation Table 7.30 the χ^2 Chi-Square value is = **06.98**

∴ Number of Response Parameters are 4

∴ Degree of freedom = (n-1) = (4-1) = 3

The χ^2 Chi-Square table value at 5% of significance at 2 degree of freedom is **7.815**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**06.98**) is smaller than the tabular value of χ^2 Chi-Square (**7.815**). This states that the difference is not significant and therefore the Null Hypothesis is true. Hence H_0 is accepted.

Therefore, this result leads to the uniform distribution of proportion of the data hence researcher proposed that most of the cases were concluded from the period of June 2014 to Jan 2018, which leads to the utmost efficiency of redressal mechanism but the given period is too high to conclude the cases with in the time (reference of question no. 15 & 18).

Q.18. In what time period you get the justice?

Table 7.31		
Actual Time Period & Status of Case Conclusion		
Particular	Responses	Percentage
Within 90 days	8	9%
Less than six months	13	14%
Less than a year	21	23%
More than a year	34	38%
Still in pending status after two years	14	16%
Total	90	100%

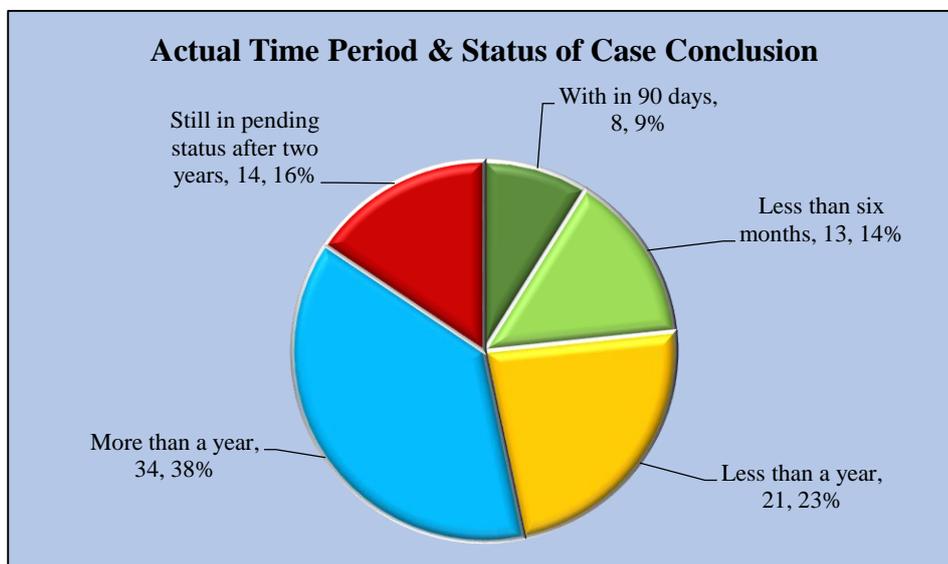


Chart 7.18

Analysis:

From the above table 7.31 and chart 7.18 data represents about actual time period & status of the cases filed against the telecom venders in district court Kota till Jan 2018, where 9% cases were concluded within the 90 days' time frame, 14% cases were concluded less than six months, 23% cases concluded with in a year, 38% of cases took more than a year, where 16% cases are still pending after two years' period.

Interpretation:

From the above analysis (76%) most of the cases took more than a standard time of six months' period to get concluded. Where, still 16% cases are pending.

Calculation:

To analyze this data on behalf of the associative hypothesis researcher applied χ^2 Goodness of Fit test to decide whether the discrepancy between theory and experiment is significant or not i.e. to test whether the difference between the theoretical and observed values can be attributed to chance or not. Let the Null Hypothesis H_{01} be that there is no significant difference between the observed values and the corresponding expected (or theoretical) values. Then the Alternative Hypothesis H_{a1} is that the above difference is significant.

Table 7.32				
Data Calculation				
Observe Value	Expect Value	Obs-Exp	(Obs-Exp)²	(Obs-Exp)²/Exp
8.00	18.00	-10.00	100.00	5.56
13.00	18.00	-5.00	25.00	1.39
21.00	18.00	3.00	9.00	0.50
34.00	18.00	16.00	256.00	14.22
14.00	18.00	-4.00	16.00	0.89
90.00	90.00	Chi-Square Value =		22.56

Hence,

From the above calculation Table 7.32 the χ^2 Chi-Square value is = **22.56**

\therefore Number of Response Parameters are 5

\therefore Degree of freedom = (n-1) = (5-1) = 4

The χ^2 Chi-Square table value at 5% of significance at 4 degree of freedom is **9.488**.

Result Conclusion:

As per from the calculation part researcher determined that the calculated value of χ^2 Chi-Square (**22.56**) is greater than the tabular value of χ^2 Chi-Square (**9.488**). This states that the difference is significant and therefore the Null Hypothesis is false. Hence H_0 is rejected and H_a is accepted.

Therefore, this result leads to the non-uniform distribution of proportion of the data hence researcher proposed that the redressal mechanism for consumer grievance and settlement of district court Kota is in the questionable status. Where they took unexpected time to get conclude the cases.

7.6 Hypothesis Testing

Hypothesis may be defined as a preposition or set of preposition set forth as an explanation for the occurrence of same specified group of phenomena either asserted merely has a provisional conjecture to guide some investigation or accepted as highly probable in the light of established facts. To attain the objectives of research 3 Major hypotheses were formulated. In this part the detailing of hypothesis testing has been discussed which are as follows:

H₁₀ : $\mu_1=\mu_2$: There is no significant relationship between the effective redressal system of Telecom Industry and the rectification of consumer grievances.

H₁₀ : $\mu_1\neq\mu_2$: There is a significant relationship between the effective redressal system of Telecom Industry and the rectification of consumer grievances.

Consumer Experience Regarding Redressal Mechanism				
Q. No.	Parameters	Values		H₀ Hypothesis
		Calculated	Tabular	Test Result
13	Cases Filed Against the Telecom Vender	64.78	9.488	Rejected
14	Customer's Situation Analysis After Filing The Case	14.80	7.815	Rejected
15	Agreement On Justification With in the Specific Time Frame	32.60	5.991	Rejected
16	Customer's Agreement On Getting Appropriate Guidance & Help During Case Hearing	58.07	5.991	Rejected

17	Customer's Case Status from June 2014 to Jan 2018	06.98	7.815	Accepted
18	Actual Time Period & Status of Case Conclusion	22.56	9.488	Rejected

From the above test results, it is clear that all the parameters regarding effectiveness of redressal mechanism of telecom industry and the rectification of customer's grievance awareness have calculated value greater than the tabulated value. But only on the Customer's Case Status from June 2014 to Jan 2018 have calculated value smaller than the tabular value, which leads to trivial faith in judiciary system at district level court in Kota city. However, the null hypothesis H_0 is rejected. It shows that in Kota city the redressal mechanism of telecom industry is not effective and efficient where they are least bothered about the grievance of the potential customer as they did not have any knowledge or idea about the Consumer Protection Act, 1986.

H₂₀ : $\mu_1 = \mu_2$: There is no significant relationship between the consumer protection Act, 1986 and the protection of the consumer rights.

H_{2a} : $\mu_1 \neq \mu_2$: There is no significant relationship between the consumer protection Act, 1986 and the protection of the consumer rights.

Table 7.34				
Consumer Satisfaction Regarding Grievance Resolution				
Q. No.	Parameters	Values		H₀ Hypothesis
		Calculated	Tabular	Test Result
5	Knowledge of Consumer Protection Act, 1986	69.20	7.815	Rejected
6	Knowledge of Use of Consumer Protection Act, 1986	75.24	7.815	Rejected
7	Knowledge about Consumer Rights Helps against Frauds	61.56	7.185	Rejected
8	Response of Vender on Problem Addressing by Customer	47.80	5.991	Rejected
9	Agreement on Satisfied Solution from the Vender	140.87	5.991	Rejected
10	Vender Blame Customer for the Issue	107.47	5.991	Rejected
11	Vender Disrespect Customer & Refuse to Resolve Issue	50.87	5.991	Rejected
12	Satisfaction regarding Grievance Redressal at Telecom Vender's Side	37.50	9.488	Rejected

There is no significant relationship between the Consumer Protection Act, 1986 and the protection of the consumer rights.

From the above test results, it is clear that all the parameters regarding Consumer Protection Act, 1986 and the Consumer Protection Rights have calculated value greater than the tabulated value. Hence the null hypothesis H₀ is rejected. It shows that in Kota city a potential customer's Consumer Protection and Consumer Rights

did not coincide with each other and this is because of the limited or restricted knowledge or idea about the Consumer Protection Act and Consumer Rights. Which leads to increase the fraud or misguided cases in telecom industry in Kota City, Rajasthan.

H₃₀ : $\mu_1=\mu_2$: There is no significant relationship between the awareness about consumer protection Act. 1986 and knowledge of consumer of Kota city.

H_{3a} : $\mu_1\neq\mu_2$: There is no significant relationship between the awareness about consumer protection Act. 1986 and knowledge of consumer of Kota city.

Table 7.35				
Consumer Awareness Regarding Consumer Protection Act, 1986				
Q. No.	Parameters	Values		H₀ Hypothesis
		Calculated	Tabular	Test Result
5	Knowledge of Consumer Protection Act, 1986	69.20	7.815	Rejected
6	Knowledge of Use of Consumer Protection Act, 1986	75.24	7.815	Rejected
7	Knowledge about Consumer Rights Helps against Frauds	61.56	7.185	Rejected

From the above test results, it is clear that all the parameters regarding customer awareness about Consumer Protection Act, 1986 have calculated value greater than the tabulated value. Hence the null hypothesis H₀ formulated is rejected. It shows that in Kota city a potential customer did not have any knowledge or idea about the Consumer Protection Act, 1986. Which leads to increase the fraud or misguided cases in telecom industry in Kota City, Rajasthan.

CHAPTER-8: Research Conclusion, Suggestions & Recommendations

8.1 Conclusion

The very judicial reforms had helped in increasing the number of courts and introduction of modern methods or alternate dispute resolution methods like mediation, conciliation, arbitration and Nyaya Panchayat etc. But the consumer grievances were left on the mercy of the ordinary torts and contracts laws as it was thought sufficient to take care of consumer grievances. At last the consumer protection Act, 1986 was enacted and came to sort out the grievances of the consumer. Further we have tried to examine the rule played by these legislations. These legislations in India looking after the interest of the consumers but the remedy under them is either through a civil court or a criminal court which at the most imposes penalty on the guilty. Some of the important Acts have been discussed earlier in this chapter. We have discussed about these Act's object, scope and applicability for the protection of the consumers and how these acts were helpful in the historical development of the enactment of the consumer Act, 1986. Next stage of discussion deals with the various rights of the consumers. It is the concern of the Govt. and its authorities to prevent hazardous goods from finding their way to the market. This right was first time came into notice in the landmark case "Donoghue vs. Stevenson". We have already discussed about the various important definitions and their interpretation as well as the salient features of the consumer protection Act, 1986. We have also discussed the consumer protection councils and redressal agencies established by this Act at District, State and National Levels.

Under Section 26 these redressal agencies got the power to dismiss the frivolous, vexatious complaints and grant cost to the opposite party up to Rs. 10,000/- to Rs. 25,000/-. The power of the Forum extended when the matter is sub-judiciary with a civil court, this issue was settled by the National Commission in *Oswal Fine Arts Vs. H.M.T., Madras*, the National Commission dismissed the complaint on the plea that the matter was already sub-judiciary before the Madras High Court.

Appellate Jurisdiction: Being an apex body the National Commission enjoys the appellate jurisdiction as well as revisional jurisdiction. In this chapter we have already discussed in detail about the various powers and procedures of the National Commission. Section 22 of the consumer protection Act, 1986 deals with the powers and procedures of the national commission. We have also discussed the provisions regarding the enforcement of the orders made by the consumer forum and the imposition of penalties in the event of their violations have been incorporated in section 25 & 26 of the Act respectively.

We have also done a detail discussion on the conflicting verdicts of different state commissions on the issue concerning the right to the appeal under section 15 against the imposition of penalty by the district forum in exercise of its power under section 27. The first reported case on this issue was “Kohinoor Carpets, Panipat & Ors. Vs. Rajinder Arora”. The amendment Act 2002 has introduced certain new provisions viz. Section 22-A, Sec. 22-B, Sec. 22-C & Sec.22-D. The consumer Forum has power under section 26 to grant cost to the opposite party in false and vexatious claims and has power of dismissal of frivolous or vexatious complaints.

We have also discussed in this chapter the administrative powers under section 24-B of the National Commission along with the other powers. Rule 10 defines and explains the additional powers of the National Commission, State Commission and District Forum. At the end, in this chapter, we have discussed the procedures under section 15 for hearing the appeal. We have concluded with discussing the current issues and problems in the consumer protection act. Looking at the whole situation we see that CPA is not at all a bad idea though at the same time some measures are necessary to be taken for the protection of physicians so that carry their work without any fear.

It is a very good move by the National Consumer Disputes Redressal Commission, which has made the Consumer Protection Regulations, 2005. It has tried to fill the loop holes of 18 years of experience of the consumer Protection Act, 1986. Many of procedures mentioned here in these regulations are already being followed by the Consumer Forum, but now they have got the shape of regulations. But at the same

time some regulations may not be practically effective because the Consumer Forum is impossible to dispose of 75-100 matters every month, especially in lower forums. And also this provision is redundant; when there is specific provision i.e. Section 13(3A) in the consumer Protection Act, 1986. In spite of it, if it is pressed, it may result '**in justice hurried is justice buried**'. The fees fixed for getting certified copy or any document on the file is very high. The cost of unnecessary adjournment of Rs. 100 to 500 is high in case of petty cases, in which a claim itself is less than Rs. 500. So the discretionary power of fixing and imposing cost shall be given to the Judges because they know the ground realities of the matters, otherwise the petty matters may not be attracted by the Consumer Forum. And the inspection of records shall be made free of cost otherwise there are the possibilities that the clerical staff may indulge in corruption by taking money from the party to show it free.

After the detail discussion in this project report now we can conclude that though the consumer protection Act, 1986 is a comprehensive piece of legislation and it seeks to promote and protect the rights of the consumers and through its enactments from time to time an attempt has been made to provide the cheap and speedy remedy to the aggrieved consumers by way of an alternative to the time consuming and expensive process of civil litigations. Even then a lot of work is done and lot more is required to be done. The Act has worked and served the country efficiently. Now the only thing that the consumers of this country require is the transformation from "the helpless" to the "informed and assertive masses". In fact, the procedure which is followed by the consumers in the consumer courts should not be very technical so that any simple man can peruse the case himself as now days in practice the consumers do not require any advocate for consumer case if the consumer chose to fight case himself, he can do it by his own. In this way complications of filing cases like civil courts can be avoided and this remedy is easily available to every simple person.

Some of my suggestions are given below to make this three tire machinery more effective, efficient and popular among the people.

8.2 Suggestions

During the study, a lot of observations are made. It is seen that the most of the cases are still in pending conditions in courts and in the redressal systems are still not up to the satisfaction level. So it can be suggesting that justice system & management must revise the functioning & procedures to retain the believe among the consumers.

Therefore, researcher proposed some suggestions and recommendation to upgrade the redressal system and framework of justice.

1. As we have seen from the experience of past 20 years, consumer protection is a growing area and as its scope shall widen in times to come, there is a need to expand the hierarchy of Consumer Courts. The Amendment Act of 2002 has raised the pecuniary limit of the District Forums to Rs.20 lakhs. This will increase the burden on these forums. More District Forums will have to be set up in States to deal with the increased work load of cases. The existing District Forums will also have to work fast to finish pending cases.
2. In light of new technologies like new forms of contracts, sale of goods through electronic media and internet etc. there is a need to regulate these sales also. The information Technology Act, 2000, does talk about e-commerce and contracts entered into with help of internet but it does not deal with protection of interests of consumers who have bought goods or hired services under these contracts. The members of the National Commission should also induct people who are trained in these fields, as complaints regarding these sales and transactions will soon reach the consumer courts also.
3. As there is a tremendous backing of cases and the Consumer Protection (Amendment) Act, 2002 also suggests setting up of circuit benches of the National Commission, there can be circuit benches in all the States. This would not only help in clearing the pending cases, the National Commission will be more approachable to people. In today's world of inflation, the amount of Rupees One Crore is also not that huge that a person from South Indian States should be expected to come to Delhi for redressal.

4. The Consumer Protection (Amendment) Act, 2002 also provides that there can be more than four members on the bench of the National Commission. A better proposal would be to have separate benches for goods and services also, like we have different benches (service matters, labour matters, family matters etc.) in different High Courts. This would divide the burden of cases in the National Commission. There could be separate benches for services like insurance, housing medical services, financial services.
5. The Legal Service Authority Act has recently been amended and there is a provision now for setting up of permanent Lok Adalats. Some cases which are very old under the Consumer Protection Act, 1986 can also be referred to Lok Adalats so that the purpose of speedy redressal can be achieved. Parties can be informally brought together and their complaints can be summarily heard and compromised. Services of retired judges, person of eminence from different fields, law teacher etc. can be utilized. These decisions can then be sent to the National Commission which can pass a formal decree in terms of the compromise decision.
6. Mobile courts could also be set up which can go to different places which can hear the complaints summarily and decide matters. The menace of foreign goods has invaded the markets. Nowadays the markets are flooded with eatables and other consumer goods which are not made in India. When these goods are brought the seller does not undertake any guarantee for their safety or usefulness. This leaves the consumer in a lurch and he does not know who to approach and where to seek redressal. There should not only be control on the entry of foreign goods in the market but also a forum where complaints regarding defects in these goods can be requested.

8.3 Recommendations

1. The Consumer Protection Act, 2002 has provided for attachment of property of a party, in case of noncompliance of an order of a Consumer Court. This is a welcome step towards giving more powers to the Consumer Courts. However, more powers are required to be given to the courts so that they can give effective and speedy justice to the people. More powers like power to give imprisonment and enhanced penalty acts as a deterrent to the people.
2. The Government under the Consumer Protection Act 1986 can also plea to set up a Reserve Fund whereby some percentage from the compensation being paid to parties can be compulsorily deposited. This fund can be utilized in those cases where the complainant has suffered due to some defect in goods/deficiency in service, and the other party is not in a position to adequately compensate for the loss.
3. Compulsory consumer education should be introduced at school as well as college level, so that it may inculcate a sense of responsibility in the public at large and the consumer education can make aware of their rights that they do not accept blindly defective goods or services which are doled out before them. They should raise their voices against it and should protect their rights. Only then the sellers will understand their responsibility and then definitely they will maintain the quality, standard of good and services.
4. Another need of hour is to declare the right to healthy environment and sanitation as a consumer right. This would generate a sense of responsibility and accountability among the Govt. Departments which deal with public utilities. One more area in which consumers require a lot of protection is the small investor's protection. These areas should also be included in the Consumer Protection Act. So, the Consumers would be given the speedy and inexpensive redressal services instead of expensive and time consuming civil litigations.

Summary

Consumer protection is not a new problem for India. This was, inter alia one of the prominent socio-economic problems inherited by the nation with independence in 1947. Since then, the enactment of various consumer-oriented laws by the national and state governments from time to time to tackle this malady bear ample testimony to its existence, growth and ramification.

The existing laws on consumer protection were not very much suited to the present day needs of the consumer. They either had cumbersome procedures that caused inordinate delay or they were costly and inaccessible to the common man. The remedy available through Civil Courts was also not apt. Moreover, the existing laws were somewhat trader oriented and hence not very much helpful. (for instance, Sale of Goods Act cannot be invoked for barter transactions). Under Contract Act, a stranger (a person not a party) to the contract cannot sue.

This research dissertation is divided into 9 chapters whose brief description is given below:

Chapter-1 is introductory in nature and describes that the judicial reform pertaining to Consumer Grievances had been in the national agenda for quite some time. Increase in the number of courts, the introduction of modern methods of management, resort to alternative dispute resolution methods like mediation, conciliation and arbitration and revival of indigenous Nyaya Panchayats were some of the proposals made from time to time. All these were attempted with varying degrees of success. The ordinary tort and contract laws were thought sufficient to take care of consumer grievances.

Basically, two issues were prominent. The first and foremost was to make provisions for the consumer rights and second was to provided redressal mechanism. The Indian legal system provided some rights to the consumers but was not sufficient to protect them. Because of with two-thirds of the people being poor and illiterate, the problem got aggravated at the functional level. The legal system expects people to know their rights and assumes that they are capable of asserting those rights, but the two-thirds of Indian consumers were ignorant or not having the

sufficient knowledge, or access to justice, so the system offered little relief to them. They were left either to suffer in silence or to use direct action methods risking the consequences for violating the rule of law.

Chapter-2 pertains to the Consumer Protection in India and throws light on the historical development on this issue. The Consumer Protection Act is unique for the protection of consumers' right, though there are many other laws in the country. In India, among the laws related to the protection of consumer rights, few important laws are as follows: -

1. The Indian Contract Act, 1872.
2. The Sale of Goods Act, 1930.
3. The Prevention of Food Adulteration Act, 1954.
4. The Essential Commodities Act, 1955.
5. The Monopolies and Restrictive Trade Practices Act, 1969.
6. The Prevention of Black Marketing Maintenance of Supplies of Essential Commodities Act, 1980.
7. The Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Enforcement), Act, 1985.

It is also evident from the objects of the consumer protection act, 1986 that this Act is to provide for better protection of interests of consumers. This chapter examines the role played by these legislations in checking the menace of the trading as well as the professional community.

Chapter-3 deals with an irresistible piece of social benefit legislation. It has championed the cause of common man by opening new vistas of relief not available to consumer. It has helped the consumer in many ways, like:

1. Breaking the barriers of caveat emptor, privacy of contract/ local stands etc.

2. Simplifying the procedures for seeking remedy and bringing justice to the doorsteps of a common man;
3. Reducing the time and cost in litigation considerably;
4. Bringing about a sense of consumer-oriented conduct and a sense of public accountability in public utility services and other state run agencies.

The Act has aroused a lot of public awareness in a short span of twenty years. The mushroom growth of the number of cases is a standing testimony to it. Indeed, the enactment has opened the floodgates for the suppressed cause of the consumer and in a welfare state like India betterment of consumer lot it an inevitable consequence. In any progressive society, the business community has to behave sensibly keeping in mind the social responsibility of business. In this connection, the State has a pivotal role in striking a balance between the conflicting interests of business and public welfare. The significance of Constitution of Consumer Protection Councils, in Sections 4 to 8: The purpose of the Act is to provide for better protection of consumers by establishing Consumer Protection Councils and other authorities. From the above, it appears that the legislature has given good weight age to the councils. The Act envisages setting up of Consumer Protection Councils at the Central, State and District levels.

Chapter-4 pertains to Consumer disputes and their redressal mechanism, where Section 9 authorizes the Central and State Governments to establish CDRAS (Consumer Dispute Redressal Agencies). The State Governments can have District level for and State Commission at State headquarters. Central Government can establish National Commission at the Central level. It is a three tier quasi-judicial mechanism.

Jurisdiction Based on Subject Matter

Section 11 clearly restricts the jurisdiction of District Forum to consumer disputes regarding goods and services only. But in early day's certain public utilities like Telecom and Railways stiffly resisted the jurisdiction of the consumer forever their services. It was contested by Telephonic Department that telephone services did not

come within ambit of 1986 Act, and rather they were governed by the age-old Indian Telegraph Act, 1881 and Indian Telephone Rules but National Commission took a very liberal construction in interpreting the term 'goods' and 'services' of public utilities including those of Telecommunications within the purview of the 1986 Act. The following cases can be cited as illustrations: -

1. Mahanagar Telephone Nigam Ltd. Vs. Dr. Vinod V. Karkare
2. C.R. Ramachandran Vs. D.T.E Palakkad
3. Chief General Manager, Calcutta Telephone Vs. M.K. Gupta.

Regarding railways cases (railways being the largest in public transport in India) the National Commission has taken a similar stand. In General Manager, S.E. Rly & Others Vs. Anand Prasad Sinha and others, the National Commission rose to the occasion once again in making a significant observations regarding the jurisdictional objection taken by the appellant before the State Commission. The contention of the appellant (Railways) was that a complaint was not maintainable against Railways since the passengers traveling by train could not be regarded as a consideration so as to fall within the purview of Act 1986.

Chapter-5 pertains to Contemporary Issues of consumer grievances and protection regulation, The Consumer Protection Regulations, 2005. 'The consumer Protection Act, 1986 has been passed with the object to promote some basic rights of the consumers, namely the right to safety, to be informed of quality potency and purity of products, to access to variety of goods of competitive prices, to redressal of grievances and to consumer education. It is therefore not surprising to find several missing links, lacunae and loop-holes.

National Consumer Disputes Redressal Commission, which has made the Consumer Protection Regulations, 2005, has tried to fill the loop holes of 18 years of experience of the consumer Protection Act, 1986. Many of procedures mentioned here in these regulations are already being followed by the Consumer Forum, but now they have got the shape of regulations.

Supreme Courts Directives: -

In 'Dr. J.J. Marchant and others Vs. Shrinath Chaturvedi', 'the Supreme Court with a view to avoid delay in disposal of complaints within the prescribed period under the Consumer Protection Act, directed the National Commission to take appropriate steps including:

- a. By the exercise of administrative control, competent persons are appointed as members on all levels so that there may not be a delay in the composition of the Forum for want of members;
- b. It would oversee that time limit prescribed for filing defense version and disposal of complaints is strictly adhered to;
- c. It would see that complaint and defense version should be accompanied by documents and affidavits;
- d. In cases where the cross-examination of the persons who have filed affidavit is necessary, suggested questions of cross-examination be given to that person. And reply should also be filed on an affidavit.
- e. In cases where Commission deemed fit to cross-examine the witnesses in person, video conference or telephone conference at the cost of the person who so applies could be arranged or could be through a Commission. It will be helpful in cross-examination of experts, such as Doctors etc.

'It is submitted that aforesaid directions given by the Supreme Court and the other suggestion given elsewhere will go long way to curtail delay in deciding the consumer cases'.

Chapter-6 is on Research Methodology which is a way to systematically solve the research problem. It may be understood as a science of studying how systematically the research is done. In this, we study the various steps that are generally adopted by a researcher in studying his research problem, along with the logic behind them. It is necessary for the researcher to know not only the research techniques but also the methodology. Researchers not only need to know how to develop certain indices

or tests, how to calculate the mean, the mode, the median or the standard deviation or chi-square, how to apply particular research techniques, but they also need to know which of these methods or techniques, are relevant and which are not.

Objectives:

The present research was undertaken with the following objectives

Primary objective:

“To identify and analyze the Consumer Grievances and Redressal Mechanism in Telecomm Service Industries in Kota City.”

Secondary objectives:

To fulfill the requirement of the primary objective, the following are the secondary objectives:

1. To trace out the consumer grievances in Telecomm Services Industries in Kota City
2. To examine the effectiveness, of the Consumer Protection Act, 1986 in solving the consumer’s grievances.
3. To find out to what extent, the consumers of the Kota City are not aware of their right as given in the Consumer Protection Act. 1986 and other Acts related Acts.
4. To study as to what extent, consumers of Telecomm Industries in the Kota city have taken legal remedy to protect their right.

Hypothesis of the study:

For the mentioned secondary objective and associative parameters researcher proposes the following Hypotheses:

H₁₀: $\mu_1 = \mu_2$: There is no significant relationship between the effective redressal system of Telecom Industry and the rectification of consumer grievances.

H_{1a}: $\mu_1 \neq \mu_2$: There is a significant relationship between the effective redressal system of Telecom Industry and the rectification of consumer grievances.

H₂₀: $\mu_1 = \mu_2$: There is no significant relationship between the consumer protection Act, 1986 and the protection of the consumer rights.

H_{2a}: $\mu_1 \neq \mu_2$: There is no significant relationship between the consumer protection Act, 1986 and the protection of the consumer rights.

H₃₀: $\mu_1 = \mu_2$: There is no significant relationship between the awareness about consumer protection Act, 1986 and knowledge of consumer of Kota city.

H_{3a}: $\mu_1 \neq \mu_2$: There is no significant relationship between the awareness about consumer protection Act, 1986 and knowledge of consumer of Kota city.

Collection of Data:

The primary data collection is done by survey, where the researcher selects those respondents, who were the victims of issues related to faulty products or services. The questionnaire is based on the main factor related to the Consumer Protection, including:

- A. Consumer awareness regarding consumer protection act 1986
- B. Consumer experience regarding redressal mechanism
- C. Consumer satisfaction regarding grievance resolution

Research Plan:

The present study is descriptive in nature and uses the survey as there is a need to gather a large amount of information before making a conclusion. It adopts Analytical & Descriptive Case Study approach.

Data Analysis:

The data collected was analyzed with the help of statistical tools and techniques like (χ^2) Chi-Square Test, Z-Test, ANOVA, with help of latest statistical analysis software like SPSS Ver.23, Systat13.2 etc.

Time Period of Study:

The study covers a period of 3.5 years i.e. from July 2014 to Jan 2018. As this period covers both Critical and incidental issues occurred on consumer grievance in the telecom industry in Rajasthan.

Scope of the Study:

This research will be helpful for rectification of the Customer Grievance in Telecomm industries and the loop holes of the redressal mechanism. Some future scope of the study is as follows:

1. The findings of the study will not only be helpful to the academicians, but also to the policy planners and executors of the law framing and implementing agencies.
2. The findings of the study may motivate other scholars to do the investigative research on consumer grievances and their redressal mechanism at the micro level as well as macro level.
3. The finding of the study will be helpful in tracing out the flaws in the existing laws and redressal mechanism pertaining to consumer grievances and will also suggest remedial measures for the improvement.
4. The conclusions of the study may be helpful in checking out modalities for making consumers aware of their rights and exploitation.
5. In essence, the findings of the study will help in making the consumers more aware of their rights thereby protecting them from various kind of exploitation.

Limitations of the Study:

1. Limited reports, research paper, study reports were available.
2. Less availability of the respondents.
3. Restrictions related to proving In-depth Information by governing bodies and redressal system.
4. Less availability of subject related documents.
5. Limited finance and other resources.
6. Lack of adequate secondary sources.
7. Limited time span of 3 years.

Chapter-7 pertains to Data Analysis & Interpretation. The data obtained from the respondents was analyzed and the testing of the hypotheses was done. The comparison of various factors taken into consideration to identify and understand the better scenario of the initiatives taken in the field of consumer grievance handling and redressal system by telecom industry and district court as laid down objectives of the study.

All these questionnaires were answered by 90 consumers belonging to different class and culture.

For the analysis of data, the researcher with the help of software (MS-Excel, SPSS 23.0 and Systat 13.2) has used some models and statistical techniques like (χ^2) Chi-Square Test, Z-Test, ANOVA, Correlation and Regression Analysis etc.

Hypothesis Testing:

Table 9.1			
Hypothesis Significance Testing			
Sr. No.	H₀ : Null Hypothesis	Question	Decision
A.	There is no significant relationship between the effective redressal system of Telecom Industry and the rectification of consumer grievances.	Q.13 to Q.18	Rejected
B.	There is no significant relationship between the consumer protection Act, 1986 and the protection of the consumer rights.	Q.5. to Q.12	Rejected
C.	There is no significant relationship between the awareness about consumer protection Act. 1986 and knowledge of consumer of Kota city.	Q.5. to Q.7	Rejected

Chapter-8 pertains with the research conclusion and suggestions. The very judicial reforms had helped in increasing the number of courts and introduction of modern methods or alternative dispute resolution methods like mediation, conciliation, arbitration and Nyaya Panchayat etc.

Next stage of discussion deals with the various rights of the consumers. It is the concern of the Govt. and its authorities to prevent hazardous goods from finding their way to the market. This right first came into the notice with the landmark case “Donoghue vs. Stevenson”.

Under Section 26 these redressal agencies got the power to dismiss the frivolous, vexatious complaints and grant cost to the opposite party up to Rs. 10,000/- to Rs. 25,000/-. The power of the Forum extended when the matter is sub-judiciary with a civil court, this issue was settled by the National Commission in *Oswal Fine Arts Vs. H.M.T., Madras*, the National Commission dismissed the complaint on the appeal that the matter was already sub-judiciary before the Madras High Court.

It is a very good move by the National Consumer Disputes Redressal Commission, which has made the Consumer Protection Regulations, 2005. It has tried to fill the loop holes of 18 years old act i.e. the consumer Protection Act, 1986. Many of procedures mentioned here in these regulations are already being followed by the Consumer Forum, but now they have got the shape of regulations. But at the same time, some regulations may not be practically effective because it is impossible to dispose of 75-100 matters every month, especially in lower forums. And also this provision is redundant; when there is specific provision i.e. Section 13(3A) in the consumer Protection Act, 1986. In spite of it, if it is pressed, it may result 'in justice hurried is justice buried'.

After the detail discussion in this project report, now we can conclude that though the consumer protection Act, 1986 is a comprehensive piece of the legislation and it seeks to promote and protect the rights of the consumers and through its enactments from time to time an attempt has been made to provide the cheap and speedy remedy to the aggrieved consumers by way of an alternative to the time consuming and expensive process of civil litigations. Even then a lot of work is done and lot more is required to be done. The Act has worked and served the country efficiently.

In the term of suggestions during the study, a lot of observations are made. It is seen that the most of the cases are still in pending conditions in courts and the redressal systems are still not working up to the satisfaction level. So it is suggested that justice system & management must revise the functioning & procedures to retain the belief of the consumers.

Therefore, researcher proposed the following suggestions and recommendation to upgrade the redressal system and framework of justice.

1. As we have seen from the experience of past 20 years, consumer protection is a growing area and as its scope shall widen in times to come, there is a need to expand the hierarchy of Consumer Courts. The Amendment Act of 2002 has raised the pecuniary limit of the District Forums to Rs.20 lakhs. This will increase the burden on these forums.

2. In light of new technologies like new forms of contracts, sale of goods through electronic media and internet etc. there is a need to regulate these sales also. The information Technology Act, 2000, does talk about e-commerce and contracts entered into with help of internet but it does not deal with protection of interests of consumers who have bought goods or hired services under these contracts.
3. As there are tremendous backlog of cases and the Consumer Protection (Amendment) Act, 2002 also suggests setting up of circuit benches of the National Commission, there can be circuit benches in all the States.
4. The Consumer Protection (Amendment) Act, 2002 also provides that there can be more than four members on the bench of the National Commission.
5. The Legal Service Authority Act has recently been amended and there is a provision now for setting up of permanent Lok Adalats. Some cases which are very old under the Consumer Protection Act, 1986 can also be referred to Lok Adalats so that the purpose of speedy redressal can be achieved.
6. Mobile courts could also be set up which can go to different places which can hear the complaints summarily and decide matters. The menace of foreign goods has invaded the markets. Nowadays the markets are flooded with eatables and other consumer goods which are not made in India.

Supervisor

Research Scholar

Prof. (Dr.) Gopal Singh

Pushpendera Singh Chauhan

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Annexure II: Questionnaire for Consumer Grievance and Redressal Mechanism

Respected Sir / Madam,

I am **Pushpendra Singh Chauhan** research scholar at University of Kota, Ph.D. Reg. No. RS/257/13 students of Department of Commerce & Management as a part of my research survey. I am doing the Ph.D. on “**A CRITICAL APPRAISAL OF CONSUMER GRIEVANCES AND THEIR REDRESSAL MECHANISM FOR SERVICE INDUSTRY: A CASE STUDY OF TELECOM INDUSTRY WITH SPECIAL REFERENCE TO KOTA CITY**”. I kindly request you to help in my research by answering the question below. Data collected from you will be kept highly confidential & will not be disclosed to anyone at any cost. it is purely for academic purpose.

Thanking you

Instruction: Given below are some statements. please read each of them carefully and select the appropriate choice as given below, by making a tick mark in the box across each item:

Demographic profile:

Q.1. Kindly specify your gender:

- a. Male
- b. Female
- c. Transgender

Q.2. Kindly specify your age:

- a. 20-30 years
- b. 31-40 years
- c. 41-50 years
- d. 51-60 years

Q.3. Kindly specify your qualification:

- a. Xth Pass Only
- b. XIIth Pass
- c. Graduate
- d. Postgraduate
- e. Ph.D.
- f. Other

Q.4. Kindly specify your occupation:

- a. Student
- b. Business Man
- c. Govt. Employee
- d. Private Employee
- e. Working Woman
- f. Other

A. Consumer awareness regarding consumer protection act 1986

Q.5. Do you know about the Consumer Protection act 1986?

- a. Yes
- b. No
- c. Partially
- d. Do Not Know About It

Q.6. Do you know about its specific use of this act?

- a. Yes
- b. No
- c. Partially
- d. Do not know about it

Q.7. Do you feel this will help you to protect your consumer rights against frauds?

- a. Yes
- b. No
- c. Partially
- d. Do not know about it

B. Consumer experience regarding redressal mechanism

Q.8. When you registered your complaint regarding the device and network or billing issue, how the vender reacts and entertained your issues?

- a. Understand my problem and promise to resolve initially
- b. Start to ask so many question about the issue and did not understand my issue
- c. Vender refuse to accept the complaint and ask to get help from some customer care help line

Q.9. Did you get the satisfied solution from the vender?

- a. Yes
- b. No
- c. Partially

Q.10. Did the vender try to blame you for the issue that registered by you?

- a. Yes, blamed me for the issue
- b. No, did not blame me
- c. Partially blamed me but understand my situation

Q.11. Did the vender disrespect you and refused to resolve your issue?

- a. Yes, disrespect me & blamed me for the issue
- b. No, did not disrespect me & did not blame me for the issue
- c. Partially blamed me but understand my situation

Q.12. How would you scale your satisfaction regarding grievance redressal at Telecom vender's side?

- a. Highly Dissatisfied
- b. Dissatisfied
- c. Neither Satisfied Nor Dissatisfied
- d. Satisfied
- e. Highly Satisfied

C. Consumer satisfaction regarding grievance resolution

Q.13. For what telecom issue you filed case against the retailer or telecom industry?

- a. Unusual billing amount
- b. Plan change without customer consent
- c. Undesirable packages & tariffs activation
- d. No Network issue with in the city
- e. Continuous call dropping

Q.14. How do you find your-self in a situation after filing the case?

- a. Easy way to get justification and judgment
- b. Got into trouble after filing the case
- c. Wastage of time and money
- d. Initially facing problems now hope to get justice

Q.15. Do you feel that you will get the judgment with in a specific time frame?

- a. Yes
- b. No
- c. May be

Q.16. Did you get appropriate guidance & help during the hearing and judgment?

- a. Yes

- b. No
- c. Partially

Q.17. What is the status of your case till now?

- a. Dismissed
- b. Allowed
- c. Partially Allowed
- d. Still Pending

Q.18. In what time period you get the justice?

- a. 90 days
- b. Less than six months
- c. Less than a year
- d. Less than two year
- e. More than two years

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Annexure III: Published Papers in UGC Referred Journals

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DR. KRISHAN BIR SINGH

Editor's Office

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Contact -0141-2359838 09413970222, 08107775568

E-mail: dr.kbsingh@yahoo.Com

professor.kbsingh@gmail.Com

मुख्य सम्पादक – डॉ. कृष्णवीर सिंह का मानद पद एवं कार्य पूर्णतः अवैतनिक है।

इस शोध पत्रिका के प्रकाशन, सम्पादन एवं मुद्रण में पूर्णतः सावधानी बरती गई है। किसी भी प्रकार की त्रुटि महज मानवीय भूल मानी जाये। शोध पत्र की समस्त जिम्मेदारी शोधपत्र लेखक की होगी। त्रुटि हेतु सम्पादक, प्रकाशक एवं मुद्रक जिम्मेदार नहीं होगा।

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Silent Feature of Telecommunication Industry A New Scenario



* Pushpendra Singh Chauhan



* Research Scholar, Dept. of Commerce & Management, U.O.K. Kota

ABSTRACT

The telecommunication industry in India is rapidly growing and witnessing many developments. It has gone through several transformations that has led to severe competition in the industry. This article traces the major policy reforms in the Indian telecommunication sector. Moreover, the article also discusses the changes strategies adopted by the two key market players - Vodafone and Airtel. The paper will provide a comprehensive knowledge on the recent developments in the sector and will help highlight the changes in the telecommunication industry.

Keywords: telecommunication, industry, India, change
Jel classification: 196, o33

Introduction:

The telecommunications industry in India has witnessed many developments and undergone tremendous changes. It is one of the fastest growing industries in the world and has proved to be an international success story. India has developed as the second largest telecommunication market with 898 million subscribers as on March, 2013. Indian telecom sector has undergone a major process of transformation through several policy reforms and regulations. The sector is becoming more competitive day-by-day, with the introduction of new players and has truly revolutionized the way we communicate and share information. This article is an attempt to capture the changing scenario of the telecommunication industry of India. The study also tries to unravel the change strategies adopted by the key players in the industry.

Changing telecom scenario

With the announcement of the new economic policy in July 1991, the telecom sector was declared open to the private sector. In 1994, the government announced the national telecom policy which further stimulated the growth of the industry by provision of world class services at reasonable rates, promotion of exports, stimulation both domestic and foreign direct investments. The entry of private players in the sector necessitated the need for regulation. As a result, the telecom regulatory authority of India (Trai) was established in 1997 to regulate telecom services. Trai has been issuing a large number of regulations from time to time thus, transforming the once government owned monopolistic telecom market to a multi-operator open competitive market. Soon thereafter, the new telecom policy was declared in the year 1999 which laid down a clear road map for future reforms by opening by all

the sectors in telecommunications to private players. During the recent years, various policy initiatives and developments have given a boost to the telecom sector. The following section describes some of the major changes in the recent years.

Technological developments

The growth of telecom industry has also been fuelled by the launch of newer telecom technologies like 3G, and 4G, and emergence of cloud technologies. Efforts are continuously made to develop affordable technology for masses and reinvigorate the maturing urban markets and help in bringing balanced growth of economy.

Declining tariff

The telephone tariffs have declined dramatically over the years making the mobile telephone affordable to the common man. A large number of options have been made available to the subscribers to choose from the market depending upon their usage profile. All this has resulted in increased competition among the various market players. The stiff competition amongst players has further reduced the tariffs (Indian Infrastructure Report, 2005). The call rates have significantly declined and have gone as low as 0.5 paise per second (Trai). Ghosh (2003) emphasized on progressive reduction in tariffs as the most significant development since 1999.

Changing customer demands

Narinder K. Chibber (2008) pointed out that mobile telecommunication technology is rapidly evolving with people demanding mobile services with longer bandwidth and new innovative services like seamless connectivity, 3G and 4G.

Mobile value added service (MVAS)

MVAS industry in India has an estimated size of US \$ 2.7 billion which derives its revenues mainly from game applications, music downloads, etc. The same is estimated to grow to US \$ 10.8 billion by 2015, creating a next wave of change in the semi-urban and rural areas.

Telecom equipment manufacturing

The astounding growth of the telecom sector has led to the development of the telecom equipment manufacturing and other supporting industries. The indian mobile handset market posted revenue of rs. 359.46 billion in 2012-13, compared to rs. 313.30 billion in the earlier fiscal year. Thus, it can be observed that deregulation, launch of newer technologies, changing customer behaviour along with intense competition among the players were the key drivers of change in the telecommunication industry. The industry is poised for more changes in the coming years with new policy initiatives.

Mobile number portability (MNP)

MNP services were launched in the year 2011 which allowed subscribers to retain their existing mobile telephone number even they switch from one service provider to another irrespective of mobile technology. Implementation of mnp has not only benefitted the subscribers by offering them a wide range of choices but has also prompted service providers to offer innovative, affordable, and competitive tariff plans for the benefit of the subscribers (tra).

Foreign direct investment (fdi) The government has decided to allow 100% fdi in telecommunications sector which is expected to enable foreign telecommunication companies to buy out their indian partners. At present india permits up to 74% fdi in this sector - 49% through the automatic route and the rest after foreign investment promotion board approval. The government intends to make india a teleport hub. This initiative is expected to attract foreign investments, better technology, and sustainable employment opportunities in the country.

Coping with change- change strategies adopted by key market players

Change is one reality with which organizations must constantly cope in order to survive. In an industry marked by cut-throat competition and continuous change it is essential that companies adapt quickly and effectively. To this end, companies are making strategic moves in an attempt to strengthen their position and increase their value. The subsequent section focuses on the strategies and action plans of vodafone and bharti airtel - the key players of the indian tele-communications industry - to cope with the fast chang-

ing scenario.

And as a part of this, the chief executive communicates directly with all the employees via regular e-mail and video updates focusing particularly on business performance strategy and the vodafone way. The influence of the top leader is further reinforced with local ceo communications with the employees.

Bharti Airtel :- Bharti Airtel limited, a group company of bharti enterprises, is among asia's leading integrated telecom services provider. It has its presence in 20 countries and its global revenues touched rs. 803.1 billion. It has been ranked 4th globally for its customer base. Keeping in line with the competitiveness of the industry, airtel has introduced many changes in its organization. Airtel announced a major initiative for leadership and growth across the organization in 2007. This was the result of the organization's objective to transition high performers across businesses and provide them with larger responsibilities. A new leadership team was constituted which came into effect from 1st april, 2007.

Capturing New Markets

In 2010, airtel made its in-roads into the african market. This was aligned with the emerging global reality that the future growth is increasingly going to be rooted in emerging and developing economies. The company has successfully transplanted their business model and blended it with the local needs (airtel annual report, 2010-11).

Conclusion :- The telecom sector over the years has seen significant growth and development. The opening up of the indian economy led to the deregulation of the sector which intensified the competition amongst its various players. The effect of competition has been felt in the declining tariffs, provision of different and innovative tariff plans customized for different segments, loyalty programs and celebrity endorsements. Further, organizations have been constantly trying to align their vision and organizational structures with the dynamic and ever changing business environment. Airtel and vodafone, which are the leading telecom operators in the indian market, serve as perfect examples of organizations managing change successfully over the years. The industry in the coming years is predicted to be even more competitive and aggressive with launch of new technology and it will be interesting to see how the major players adapt themselves and move in sync with the fluctuations in environment.

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मुख्य सम्पादक – डॉ. कृष्णबीर सिंह का मानद पद एवं कार्य पूर्णतः अवैतनिक है।

इस शोध पत्रिका के प्रकाशन, सम्पादन एवं मुद्रण में पूर्णतः सावधानी बरती गई है। किसी भी प्रकार की त्रुटि महज मानवीय भूल मानी जाये। शोध पत्र की समस्त जिम्मेदारी शोधपत्र लेखक की होगी। त्रुटि हेतु सम्पादक, प्रकाशक एवं मुद्रक जिम्मेदार नहीं होगा।

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Silent Feature of Grievances And Redressal System In Consumer Protection Act, 1986



* Pushpendra Singh Chauhan

* Research Scholar U.O.K. Kota, Dept. of Commerce And Management

ABSTRACT

The consumer is the focus of all marketing activities of the business organizations. Every organization should take care of the interest of the consumers to win their confidence. It helps the entities in growing the customer base and, thus increasing sales and profits. However some organizations don't follow this approach. In practice widespread exploitation of consumers is found due to unwanted behavior of businessmen and ignorance of consumers. To protect the Interest of consumers, the Govt. of India enacted Consumer Protection Act and revised it many a times to make it more effective. This paper is an effort to make a review of the effectiveness of Consumer Protection Act 1986. Through this paper I tried to visualize the scope and usefulness of this act in protecting consumers' interests and rights. Some suggestions are also given to make the act more effective.

Key-Words: Consumer Protection, Consumer Rights, Unfair Practices, Consumer Problems, Challenges, District Forum, State Commission, National Commission.

Introduction

In present Marketing Environment the Consumer is considered as King of the market. However, a consumer does not have perfect knowledge of market, goods, services, his rights and responsibilities. On the other hand, the main purpose of a businessman is to maximize his earnings by whatever means. To achieve this goal some business organizations forget to impart their responsibilities towards their customers and the society. They try to take undue advantage by indulging in some unfair practices such as supply of poor quality goods, rendering deficient services, adulteration etc.

It is the duty of the government of a country to safeguard the interest of citizens. To protect the interests of consumers in India, our Government took various measures. The most effective measure so far is the enactment of Consumer Protection Act, 1986.

Methodology

Need of the Study: The study is required to find the role and actual status of the Act in protecting the rights of consumers. How much effective is the consumer grievances redressal system? What is the level of awareness about the act among consumers?

Scope of the Study:

The study is restricted only to the protection of consumers' interests and rights in India.

Objectives of the Study:

- To know the problems of consumers and unfair practices used by businessmen.
- To study the role of consumer protection act in safeguarding the interests of consumers.
- To review the effectiveness of Consumer Protection

Act, 1986, in lowering consumer exploitation in India
Data Collection Method:

Secondary Data: Data is collected through different sources like; Books, Magazines, Journals, Internet, Newspapers etc.

Brief History of Consumer Protection Act, 1986:

The Consumer Protection Bill 1986 was introduced to provide protection to the interest of consumers in the country. The Bill was passed by both the Houses of Parliament and received the assent of the President on 24th December, 1986 (68 of 1986).

List of Amending Acts:

1. The Consumer Protection (Amendment) Act, 1991 (34 of 1991)
2. The Consumer Protection (Amendment) Act, 1993 (50 of 1993)
3. The Consumer Protection (Amendment) Act, 2002 (62 of 2002)

Definition of Consumer:

As per Act, a consumer means any person who: Data. International Journal of Emerging Research in Management & Technology ISSN: 2278-9359 (Volume-6, Issue-2)

(a) Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment.

• And includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person.

• But does not include a person who obtains such goods for resale or for any commercial purpose; or
(b)

- Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment.
- And includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment when such services are availed of with the approval of the first mentioned person.
- But does not include a person who avails of such services of any commercial purpose.

Rights of Consumer:

- **Right to Safety:** A consumer has right to safety against such goods and services which are hazardous to his health, life and property.
- **Right to be informed:** A consumer has the right that he should be provided with all the information related to quality, purity, potency, standard, date of manufacture, method of use, etc. of the commodity.
- **Right to Choose:** A consumer has the right to buy any goods or services of his choice from among the different goods or services available in the market.
- **Right to be Heard :** A consumer has the right that his complaint be heard.
- **Right to Seek Redressal:** A consumer has the right to seek compensation against unfair trade practices of the seller.
- **Right to Consumer Education:** A consumer has the right to get knowledge about rules, regulations and statutes that can help in protecting his rights and interests.

Consumer Problems:

- **Ignorant Consumers:** In most of the cases consumers are not aware about their rights and responsibilities.
- **Unorganized Consumers:** Consumers are unorganized. A single consumer raising his voice against exploitation is not as effective as the voice of an organized consumers' body can be.
- **Widespread Exploitation:** Due to the above two problems, consumers are being exploited on a large scale.

Unfair Practices:

Some common types of unfair practices are as follow:

- Adulteration in consumer goods
- Inferior quality of goods
- Deficiency in services
- Misleading advertisement
- Spurious Goods

- Overcharging of price
- Avoiding guarantee or warrantee
- Black marketing, etc.

Redressal System under Act:

Relief to Consumers:

District Forum	State Commission	National Commission
Set up by State Govt.	Set up by State Govt.	Set up by Central Govt.
Works at District level.	Works at State level.	Works at National level.
Three members including one president.	Three members including one president.	Five members including one president.
Among three one must be a lady.	Among three one must be a lady.	Among five one must be a lady.
The president must have qualification of a District Judge.	The president must have qualification of a High Court Judge.	The president must have qualification of a Supreme Court Judge.
Disputes involving a sum upto Rs. 20 Lakhs.	Disputes involving a sum above Rs. 20 Lakhs and upto Rs. 1 Crore.	Disputes involving a sum above Rs. 1 Crore.
Against its decision one can file an appeal with State Commission within 30 days.	Against its decision one can file an appeal with State Commission within 30 days.	Against its decision one can file an appeal with State Commission within 30 days.

On making complain in any of the forum /commission one can expect the following relief:

- Removal of defect in the goods
- Removal of deficiency in the service
- Replacement of goods
- Refund of price
- Compensation for loss
- Discontinuation of unfair practice, etc

Success Stories:

Following are some cases resolved under Consumer Protection Act, 1986.

1. **The Karnataka Telecom Dept. Employees Co-operative Society Ltd. Vs. Smt. N.B. Thriveni**

Case in Brief:

Complainant/Respondent who is a member of OP/Petitioner Society, deposited a total of Rs.6,50,000/- on different dates and OP assured to allot a house site within two years. But the promise was not kept. A Complaint was filed before the District Forum which allowed the complaint and directed the OP to refund Rs.6,50,400/- with 12% p.a. interest and further allowed Rs.3,000/- as costs.

2. **Rajasthan Housing Board Vs. Dhan Raj**

Case in Brief:

Complainant/Respondent applied to OP/Petitioner for allotment of Kiosk in auction on the basis of advertisement published in paper. Complainant's bid was the highest but it was rejected. Alleging unfair trade practice and deficiency in service, Complainant approached the District Forum. The Forum allowed the complaint and directed the OP to accept Complainant's offer bid along with compensation of Rs.5,000/- and Rs.3,000/- as litigation expenses. Appeal filed by OP was dismissed by the State Commission vide impugned order against which this revision petition has been filed. Revision Petition allowed. No terms and conditions or judgment in support of the contention of the respon-

dent that the petitioner was bound to accept bid merely on the basis of the bid being highest was placed before the Commission.

No concluded contract came into force between the parties and complainant's offer was only an offer and petitioner had every right to accept or reject the bid. It was noted that petitioner had reserved the right to reject any bid in the bid advertisement. As per written statement, previous bid for the same kiosk was Rs.90,052/- whereas complainant bi was only Rs. 76,151/- . In such circumstances the petitioner had not committed any deficiency in rejecting bid.

Consumer Complaints Filed and Disposed under CPA 1986:

Statistics

Total Number of Consumer Complaints Filed /Disposed Since inception under Consumer Protection Law

S.No.	Name of Agency	Cases filed since inception	Cases disposed of since inception	Cases Pending	% of total Disposal
1.	National Commission	105916	94270	11646	89.00%
2.	State Commission	728526	627289	101237	86.10%
3.	District Forums	3583422	3551649	301773	92.17%
	Total	4687864	4273208	414656	91.15%

Average Time Taken:

According to the provisions of the Act, a case has to be disposed of within 90 days. But in many cases it takes years to get the justice. Although, there is no accurate data available regarding average time taken by Consumer Courts in India but it can be understood with the statement of the present Consumer affairs minister Ram Vilas Paswan published in an online version of "The Time of India" dated Nov. 24, 2014 that the practice of cases continuing for years must end. "The objective of consumer forums becomes meaningless if, these works like normal courts and people have to wait for 2-3 years for an order.

Challenges:

1. Awareness: Even after twenty years of enactment of the act most of the people of our country are not aware about their rights and responsibilities.
2. Corruption: Rampant corruptions present in the government bodies as well as in corporate sector are a major hindrance in the way of consumer

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protection.

3. Delay: Quick decision is a big challenge for all councils and agencies for redressal of consumer grievances. It is observed in many cases that even after provision of time bound decisions, one has to wait years to get justice.

III.SUGGESTIONS

1. Number of forums and councils should be increased. One more tier can be included in Three Tier channel in the form of Sub-division or Block level.
2. Fee to file complains should be lowered to promote and motivate consumers for filing complaints. The compensation should be made by way of fine and charges levied on defaulters.
3. There should be more precise rules regarding compensation to aggrieve. In some cases quite different decisions came from different levels of Redressal agencies.
4. Consumer education should be included in school curriculum from elementary level to make the coming generations more aware about it.
5. It should be mandatory to all traders to provide receipts or memos for every sale to their customers.
6. A separate vigilance department should be made to take steps own its own by making surprise random visits in markets of different part of the Country.
7. Special programmes should be encouraged at village level (like; Debate, skit, role play, drama etc.) for awareness among people about consumer protection on National and International Consumer Days'.

Conclusion

The consumer protection Act, 1986 is the most effective act till date in India to protect the interest of consumers. However, to make it more effective and useful an urgent need is felt to improve some old and to make some new provisions. To aware the consumer at mass level is needed mostly in rural areas and it's a big challenge. The number of dispute settlement bodies also should be increased to meet the requirement. There should be more transparent method to file complaint and proceeding of judgement. Last but not least timely relief is the key of justice. It is said that justice delayed is justice denied. Hope, in near future we will see a more effective form of Consumer Protection Act as the new government seems more conscious about it.