

LAW ON CONSUMER PROTECTION IN INDIA

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CHAPTER 1: INTRODUCTION ON CONSUMER PROTECTION ACT

➤ Introduction:

The industrial revolution and the development in the international trade and commerce has led to the vast expansion of business and trade, as a result of which a variety of consumer goods have appeared in the market to cater to the needs of the consumers and a host of services have been made available to the consumers like insurance, transport, electricity, housing, entertainment, finance and banking. A well organised 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. The advertisements of goods and services in television, newspapers and magazines influence the demand for the same by the consumers though there may be manufacturing defects or imperfections or short comings 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 adulterated and sub-standard articles in the market has to be checked. In spite of various provisions providing protection to the consumer and providing for stringent action against adulterated and sub-standard articles, very little could be achieved in the field of Consumer Protection. It has become necessary to protect the consumers from the exploitation and to save them from adulterated and sub-standard goods and services and to safe guard the interests of the consumers.

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- Hence **The Consumer Protection Act came into existence in 1986** with an intention to provide effective and efficient safeguards to the consumers against various types of exploitations and unfair trade practices and for the purpose, to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith.

The Consumer Protection Act, 1986 is one of the benevolent social legislation intended to protect the large body of consumers from exploitation. It has become the vehicle for enabling people to secure speedy and in-expensive Redressal of their grievances.

➤ **Objectives:**

- 1.) The Act seeks to promote and protect the rights of consumers.
- 2.) Establishment of Consumer Protection Council at the State and Centre level to protect the rights of consumers.
- 3.) To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be setup at the district, State and Central levels. 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 noncompliance of the orders given by the quasi-judicial bodies have also been provided.

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➤ **List of Amending Acts:**

The Consumer protection (Amendment) Act, 1991

The Consumer protection (Amendment) Act, 1993

The Consumer protection (Amendment) Act, 2002

The Consumer protection (Amendment) Act, 2019

The Consumer Protection Act, 2019 came into effect from November, 2019. This new Act proposes a slew measures and tightens the existing rules to further safeguard consumer rights. Introduction of a central regulator, strict penalties for misleading advertisement and guidelines for e-commerce and e-commerce and electronic service providers are some of the key highlights. Some major changes that were incorporated in the Consumer Protection Act, 2019 are:

(1) The Act has increased the pecuniary jurisdiction, which means ability of the courts to take up cases depending upon value of the case. Since the access to district courts is better compared to State and National Commissions, the limit has increased to Rs.1 crore.

(2) The new Act allows the Consumer to file their complaint with the court from anywhere. This comes as a big relief as earlier they were required to file complaint in the area where the seller or service provider was located.

(3) Provisions for direct selling extended to e-commerce are also available now.

(4) Also the provisions for the consumer court to refer the dispute for settlement through mediation are made available.

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CHAPTER 2: DEFINITIONS

➤ **Who can file a complaint?**

As per section 2(b) of the Consumer Protection Act, 1986

“Complainant” means

- i) a consumer; or
- ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for 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 of death of a consumer, his legal heir or representative; who or which makes a complaint;

➤ **What is a complaint?**

As per section 2(c) of the Consumer Protection Act, 1986 “Complaint” means any allegation in writing made by a complainant that

- i) an 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;

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- iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
- iv) a trader or service provider, as the case may be, has charged for the goods or for the service 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;
- v) goods which will be hazardous to life and safety when used or being offered for sale to the public,-
 - (a) 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;
 - (b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;
- vi) services 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.

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➤ **Who is a Consumer?**

As per section 2(d) of the Consumer Protection Act, 1986 “Consumer” means any person who

- i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under 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
- (ii) 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.

Explanation. — For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment.

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CHAPTER 3: RIGHTS AND CONSUMER PROTECTION
COUNCILS

➤ **Rights guaranteed to the consumer under the Consumer protection Act:**

- (1) Right to safety: the right to be protected against the marketing of goods and services, which are hazardous to life and property.
- (2) Right to be informed: the right to be informed about quality, quantity, potency, purity, standard and price of goods and services, as the case may be so as to protect the consumer against the unfair trade practices.
- (3) Right to choose: right to be assured wherever possible, access to variety of goods and services at competitive prices.
- (4) Right to be heard: right to be heard and assured that consumers interest will receive due consideration at appropriate forum.
- (5) Right to Redressal: right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers.
- (6) Right to Consumer Education: this right allows the illiterate consumer to seek information about the existing acts and agencies are set up for their protection

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➤ **Consumer Protection Councils:**

These are established to protect the consumers. It ensures the consumers rights are adhered to. It protects the consumer from being sold goods and services which are detrimental to life and property. They are established at District, State and Central level.

The purpose of these Councils are to review consumer related policies of the government and suggest measures for further improvements for protecting and promoting rights of the consumers. The composition of these councils is broad based. The Minister In charge of Consumer Affairs in the Centre is the Chairman of the Central Consumer Protection Council and it has other official and non-official members. The State Consumer Protection Council is headed by Minister In-charge of Consumer Affairs in the State and the District Consumer Protection Council is headed by the Collector of the District. These Councils are advisory in nature and their object is to protect the rights of the consumer enshrined under the act.

➤ **Objectives of Consumer Protection Councils:**

The main object is to promote and protect the rights of the consumers such as;

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

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- 3.) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
- 4.) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;
- 5.) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- 6.) the right to consumer education.

➤ **National Consumer Helpline :**

National Consumer Helpline (NCH) is the grievance redressed mechanism of the department of Consumer Affairs. It recognizes the need of consumers for a telephone helpline to deal with multitude of problems arising in their day-to-day dealings with business and service providers.

The main mission of NCH is to provide information and guidance to empower Indian Consumers and persuade business to reorient their policy and management systems to address consumer concerns and grievances adopting world class standards.

NCH provides a national toll free no-1800-11-4000. SMS can also be sent to +918130009809 mentioning the name and city

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➤ **Central Consumer Protection Authority :**

The Consumer Protection (Amendment) Act 2019 proposes establishment of a Central regulator, Central Consumer Protection Authority to address issues related to consumer rights, unfair trade practices, misleading advertisements and impose penalties for selling faulty and fake products.

The Central Consumer Protection Authority will have the powers to inquire or investigation into matters relating to violations of consumer rights or unfair trade practices suo moto, or on a complaint received, or on a direction from the Central government

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CHAPTER 4: CONSUMER DISPUTES REDRESSAL AGENCIES

➤ **Consumer Disputes Redressal Agencies :**

These agencies (popularly known as Consumer Forums or Consumer Courts) are established under section 9 of the Consumer Protection Act, 1986 to seek redressal against unfair trade practices or unscrupulous exploitation of consumers and helps in fair settlement of the genuine grievances of the consumer. The Agencies are set up under the Consumer Protection Act 1986 at District, State and National level to provide simple and inexpensive quick redressal against consumer complaints, where a Consumer can file complaint in the consumer court against any defective goods purchased or deficient service rendered including restrictive/ unfair trade practice adopted by any trader/person within two years from the date on which cause of action arose.

Consumer Courts is a special purpose court in India that deals with cases regarding consumer disputes, conflicts and grievances. They are judiciary hearings set up by the government to protect the consumers' rights. Its main function is to maintain the fair practices & contracts by sellers.

With the boost in economy and the various services being offered on both online and offline platforms, there was a dire need to regulate consumer-service provider relationships and address the grievances for maintenance of a harmonious relationship. That is where consumer courts play a major role and provide for a grievance redressal platform

In India, the CPA 1986 envisages three-tier grievance redressal mechanisms:

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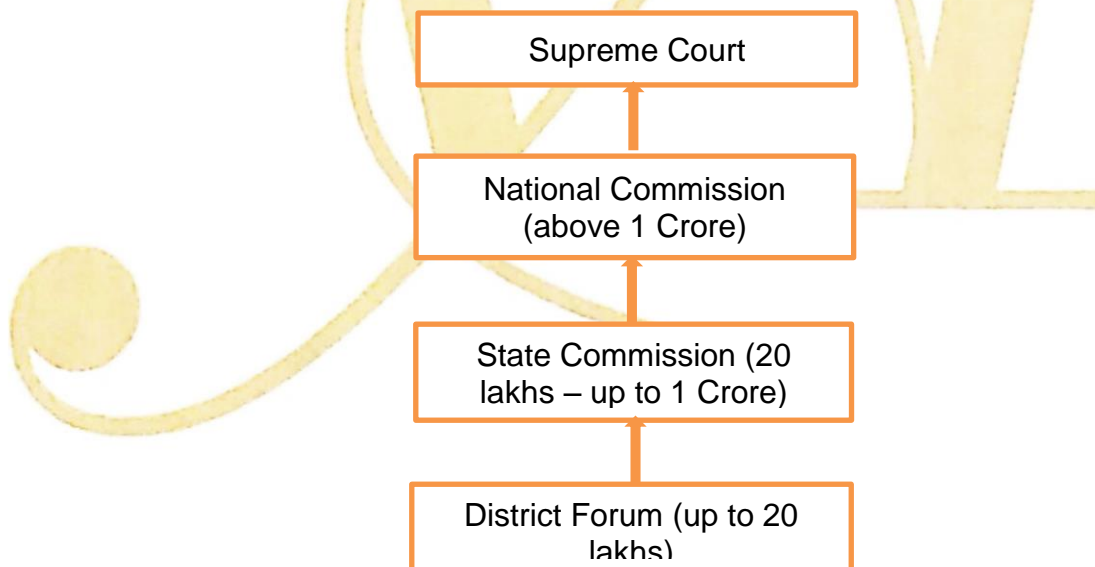
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- 1.) District Consumer Disputes Redressal Commission
- 2.) State Consumers Dispute Redressal Commission
- 3.) National Consumers Dispute Redressal Commission

To provide cheap, speedy and simple redressal to consumer disputes, quasi-judicial machinery is set up at each District, State and National levels called District Forums, State Consumer Disputes Redressal Commission and National Consumer Disputes Redressal Commission respectively. At present, there are 610 District Forums, 35 State Commissions with apex body as a National Consumer Disputes Redressal Commission (NCDRC) having its office at New Delhi.

Structure for Redressal Mechanism:



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1. District Consumer Disputes Redressal Commission

Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government in each district of the State by notification; provided that the State Government may, if it deems fit, establish more than one District Forum in a district.

- **Composition of District Forum:**

- (1) As per section 10 of the Consumer protection Act, 1986, each District Forum shall consist of;
 - (a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;
 - (b) two other members, 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 recognised university,
 - (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:

Provided that a person shall be disqualified for appointment as a member if he—

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- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the state Government involves moral turpitude
- (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
- (e) has, in the opinion of the state Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualifications as may be prescribed by the State Government;

(1A) every appointment under sub-section (I) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:—

- (i) The President of the State Commission - Chairman
- (ii) Secretary, Law Department of the State - Member
- (iii) Secretary in charge of the Department dealing with consumer affairs in the State - Member

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Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

- (2) Every member of the District Forum shall hold office for a term of five years or up to the age of sixty-five 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 sixty-five years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee:

Provided further that a member may resign his office in writing under his hand addressed to the State 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:

Provided also that a person appointed as the President or as a member, before the commencement of the Consumer Protection

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

(3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.

Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the District Forum.

- **Jurisdiction of District Forum:**

Section 11 of the Consumer Protection Act, 1986 provides jurisdiction of the District Court which states that,

(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed "does not exceed rupees **twenty lakhs**.

But as per the Consumer Protection (Amendment) Act 2019 , the District Forum shall have jurisdiction to entertain complaints where

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the value of goods or services and the compensation , if any, claimed does not exceed **one crore rupees.**

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises

2. State Consumer Disputes Redressal Commission:

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A Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government in the State by notification.

• **Composition of State Commission:**

(1) As per section 16 of the Consumer Protection Act, 1986 each State Commission shall consist of:

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;

(b) not less than two, 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 recognised university and

(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:

Provided that not more than fifty per cent. of the members shall be

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from amongst persons having a judicial background.

Explanation. — For the purposes of this clause, the expression "persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment 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
- (e) has, in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualifications as may be prescribed by the

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State Government.

(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely:—

- | | | |
|---------------------------------------------------------------------------------------|----|-----------|
| (i) President of the State Commission | -- | Chairman; |
| (ii) Secretary of the Law Department of the State | -- | Member; |
| (iii) Secretary incharge of the Department dealing with Consumer Affairs in the State | -- | Member: |

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State

Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as chairman.

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

(ii) A Bench may be constituted by the President with one or more members as the President may deem fit.

(iii) If the members of a Bench differ in opinion on any point, the

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point shall be decided according to the opinion of the majority, if it 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 of 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 State Commission shall be such as may be prescribed by the State Government.

Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.

- (3) 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

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-seven years,

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whichever is earlier, subject to the condition that he fulfills 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 State Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1) of this section:

Provided also that a member may resign his office in writing under his hand addressed to the State 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 the 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.

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- **Jurisdiction of State Commission:**

Section 17 of the Consumer Protection Act, 1986 provides jurisdiction of State Commission which states that,

(1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction

a) to entertain

- (i) complaints where the value of the goods or services and the compensation, if any, claimed **exceeds rupees twenty lakhs but does not exceed rupees one crore**

But as per the Consumer Protection (Amendment) Act 2019, the State Commission shall have jurisdiction to entertain complaints where the value of goods or services and the compensation, if any, claimed **exceeds one crore rupees does not exceed ten crore rupees** and

- (ii) appeals against the orders of any District Forum within the state.

b) To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within state, where it is appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so

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vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A complaint shall be instituted in a State Commission within the local limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

3. National Consumer Disputes Redressal Commission:

A National Consumer Disputes Redressal Commission established by the Central Government by notification.

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• **Composition of National Commission:**

(1) As per section 20 of the Consumer Protection Act, 1986, 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

- (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:

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Provided that not more than fifty per cent. of the members shall be from amongst the persons having a judicial background.

Explanation. — For the purposes of this clause, the expression "persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

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 undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government.
- (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) has such other disqualifications as may be prescribed by the Central Government :

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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, to be nominated by the Chief Justice of India - Chairman
 - (b) the Secretary in the Department of Legal Affairs in the Government of India - Member
 - (c) Secretary of the Department dealing with consumer affairs in the Government of India - Member;
- (1A) (i) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.
- (ii) A Bench may be constituted by the President with one or more members as the President may deem fit.
 - (iii) 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 or 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.

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- (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 fulfills 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

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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.

• **Jurisdiction of National Commission:**

Section 21 of the Consumer protection Act, 1986 provides jurisdiction of National Commission which states that

Subject to the other provisions of this Act, the National Commission shall have Jurisdiction:

a) to entertain

(i) complaints where the value of the goods or services and the compensation, if any, claimed exceeds **rupees one crore**

But as per the Consumer Protection (Amendment) Act 2019, the National Commission shall have jurisdiction to entertain complaints where the value of goods or services and the compensation, if any, claimed **exceed ten crore rupees**

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(ii) appeals against the orders of any State Commission within the state.

b.) To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission, where it is appears to the National Commission that such State Commission has exercised a 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.

➤ **Time period for filing a Consumer Complaint :**

One of the main and vital challenges in consumer disputes is the period of 'limitation'. It is pertinent to state that section 24A of the Act defines the limitation period for filing the complaints under the Consumer Protection Act. The time period to file a complaint under the Consumer Protection Act is within 2 years from the date on which the cause of action or deficiency in service or defect in goods arises. However a complaint may also be filed after a period of 2 years, if the complainant satisfies the court that he/she has sufficient reasons for not filing the complaint within such period.

The Hon'ble Supreme Court of India in a landmark judgment, in the matter of **National Insurance Company Ltd v/s. Hindustan Safety Glass Works Ltd.** has held that where supplier is responsible for causing delay in the settlement of the consumer claim, the consumer shall be entitled under law

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to file a complaint in the consumer court even after the expiry of the period of 2 years. Hence it is important to note that in all the consumer complaints, the limitation period under section 24A cannot be strictly construed to disadvantage a consumer.

➤ **Procedure to file a Complaint :**

Procedure for filing complaints and seeking redressal are simple which is shown under section 12 of the Consumer Protection Act, 1986. There is no prescribed performa for the submission of complaint. Before lodging a complaint a legal notice is to be sent by the aggrieved party to the service provider who provides goods or services. The notice communicates the intention of the complainer to resort to litigation and informs him about the defect in goods or the deficiency in the service or any unfair trade practices. The notice can also work as an attempt to settle the complaint without approaching the Forum i.e. if the service provider is willing to offer compensation or any other remedy. However, if the complaint is filed then it must be written. It may be filed with the registry directly or by post. Complaint should be accompanied by the necessary documents and verified affidavit of the complainant. A nominal amount of fees is also required to be deposited for making complaints before the Forum.

Every complaint filed shall be accompanied by a fee as specified in the table given below in the form of crossed Demand Draft drawn on a nationalized bank or through crossed Indian Postal Order drawn in favour of the President of the District Commission and Registrar of the State Commission and

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payable at the respective place where the state Commission or the National Commission is situated

Sr No.	Total value of goods and services and compensation claimed	Amount of fee payable (Rupees)
	<u>District Forum</u>	
1.	Upto 1 lakh Rupees- for complainants who are below poverty line holding Antyodaya Anna Yojna Cards	Nil
2.	Upto 1 lakh Rupees- for complainants other than Antyodaya Anna Yojna Cards	100
3.	Above 1 lakh and upto 5 lakh rupees	200
4.	Above 5 lakh and upto 10 lakh rupees	400
5.	Above 10 lakh and upto 20 lakh rupees	500
	<u>State Commission</u>	
6.	Above 20 lakh and upto 50 lakh rupees	2000
7.	Above 50 lakh and upto 1 Crore rupees	4000
	<u>National Commission</u>	
8.	Above 1 Crore rupees	5000

Complainant should contain the following information:

1. Name and complete address of the complainant.
2. Name and complete address of the opposite party or parties.

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3. Date of purchase of goods or service availed.
4. Amount paid for the above purpose or for service availed
5. Description of the fact of the complaint.
6. Documentary evidence regarding the complaint (Bills, receipts and copies of connected correspondence.
7. Relief expected as redressal of complaint.

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

A complaint when made in District Forum, State Commission or National Commission shall be filed in four sets with additional sets equal to the number of opposite parties.

The complaint can be filed within 2 years from the date on which cause of action has arisen. Complainant can be represented through authorised person or agency or can plead his case/complaint on his own, this means that he is not under compulsion to hire the services of lawyer.

A complaint filed in the Consumer Court is numbered by the registrar. The hearing date for the complaint will be given after 7 days from the date of filing. Moreover a daily cause list is also prepared and displayed in Court hall, which consists of next date of hearing and the particular stage for which the case has been posted.

On receipt of a complaint, the Consumer Court (District Forum/ State Commission/ National Commission) by order allow the complaint to be proceeded with or rejected. But a complaint shall not be rejected unless an

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opportunity of being heard has been given to the complainant. Further the admissibility of complaint shall ordinarily be decided within 21 days from the date on which the complaint was received and if it does not decide the issue of admissibility of the complaint within the time prescribed, it shall be deemed to have been admitted. Once when a complaint is allowed to be proceeded, the Consumer Courts may proceed with the complaint in the manner provided under this act and it shall not be transferred to any other court, Tribunal or any authority set up by or under any other law for the time being in force.

➤ **Procedure on admission of complaint :**

As per section 13 of the Consumer Protection Act, 1986, the Consumer Court on admission of the complaint, if it relates to any goods or any services;

- (a) refer a copy of the admitted complaint, within 21 days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by consumer court.

In New India Assurance Co. Ltd v/s. Hilli Multipurpose Cold Storage Pvt. Ltd., Supreme Court held that Consumer forum can grant a further period of 15 days to the opposite party for filing his version or reply and not beyond that.

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(b) where the Opposite party on receipt of the complaint denies or disputes the allegation contained in the complaint or omits or fails to take any action to represent his case within the time given by consumer court then the consumer court can proceed to settle the consumer dispute as specified in the act.

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of goods, the court shall obtain the sample of goods from the complainant, seal it and authenticate in the manner prescribed and refer the sample sealed to the laboratory along with the direction that it makes an analysis or test whichever may be necessary with a view to find out whether such goods suffer from any defect alleged in the complaint and to report its finding in the consumer court within a period of 45 days of the receipt of reference or within such extended period as granted by the court.

(d) the complainant is required to deposit in the court such fees as specified for the payment to the appropriate laboratory for carrying out necessary analysis or test in relation to the goods in question. On receipt of the report from the appropriate laboratory, the court shall forward the copy of the report along with the remarks as the court may feel appropriate to the opposite party.

(e) If any of the parties disputes the correctness of the findings or disputes the correctness of the method of analysis or test adopted by the appropriate laboratory, the consumer court shall require the opposite

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party or the complainant to submit their objections in regard to the report made by the appropriate laboratory.

- (f) the Consumer Court shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also to the objection made in relation thereto and issue an appropriate order.
- (g) the Consumer Court shall proceed to settle the consumer dispute on the basis of evidence brought to its notice by the Complainant and the opposite party.

Once the complaint gets admitted, the opposite party/parties has to produce their written statement within 30 days. Once the Opposite parties produce their written version to the complaint, the evidence stage comes where the parties to the complaint have to submit their examination in chief and produce the original evidence on which they rely. After that comes the final stage for written arguments of both the parties. The Consumer Forum should try and decide the complaint within 3 months of its filing.

At the first hearing of the complaint or at any later stage, if it appears to the court that there exists an element of settlement which may be acceptable to the parties, except in such case as may be prescribed, it may direct the parties to give in writing within 5 days consent to have their dispute settled

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by mediation in accordance with the provision of the Consumer protection Act, 2019.

The Consumer Court can settle the consumer dispute ex parte on the basis of the evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the court. The Consumer Court may either dismiss the complaint for default or decide it on merits where the complainant fails to appear on the date of hearing before the court. No proceeding complying with the procedure shall be called in question in any court on the ground that the Principle of natural justice has not been complied with.

Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of 3 months from the date of receipt of notice by the opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of the commodities. No adjournment shall be ordinarily granted by the Consumer Court unless sufficient cause is shown and the reason of grant of adjournment has been recorded in writing by the Court.

Where, during the pendency of any proceeding before the Consumer Court, if it appears to be necessary, it may pass interim order as just and proper in the facts and circumstances of the case. In the event of complaint being disposed of after the period so specified, the court shall record in writing the reasons for the same at the time of disposing of the said complaint.

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Every proceeding before the Consumer court shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Code and it shall be deemed to be a civil court for the purpose of section 195 and chapter XXIV of Code of Civil Procedure. In the event of death of a complainant who is a consumer or the opposite party against whom the complaint has been filed, the provisions of order XXII of the first schedule of the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to the plaintiff and defendant shall be construed as reference to the complainant and the opposite party, as the case may be.

➤ **Findings of the Consumer Court :**

If the proceedings are conducted and if the Consumer Court is satisfied that the goods complained against suffer from any defects specified in the complaint or that any allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing them to do one or more of the following things as per section 14 of the Consumer protection Act, 1986.

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question.

(b) to replace the goods with new similar goods which shall be free from any defect.

(c) to return to the complainant the price or as the case maybe the charges paid by the complainant.

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- (d) 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 negligence of the opposite party.
- (e) to remove the defects in goods or deficiencies in the services in question.
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it
- (g) not to offer hazardous goods for sale
- (h) to withdraw the hazardous goods from being offered for a sale and to cease manufacture of such hazardous goods.
- (i) to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently.
- (j) to issue corrective advertisement to neutralise the effect of Misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement.

Every proceeding referred to above shall be conducted by the President of the respective commission and at least one member thereof sitting together. Every order made by the Consumer Court shall be signed by its president and the members who conducted the proceedings.

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Every order of District Forum, the State Commission or the National commission shall if no appeal has been preferred against such order shall be treated final



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CHAPTER 5: REVIEW, APPEAL AND REVISION

➤ **Review :**

The power of Review of court is an essential feature of Rule of Law. It is an established procedure that allows courts to review orders or judgment passed by the Subordinate courts or the same Courts, if there exists a prima facie error of law or miscarriage of justice.

Prior to amendment of the Act in 2002, the power of review was not vested in any Forum. In the **Narshi Thakershi v/s. Pradyumansinghji**, the Hon'ble Supreme Court laid down the proposition that power of review is not an inherent power, it must be conferred either specifically or by necessary implication. It was only subsequent to amendment in 2002, the Act conferred powers solely to the National Consumer dispute Redressal Commission to review the orders made by it. The Lower Forums particularly District Consumer Dispute Redressal Commission and the State Dispute Redressal Commission did not have the power to review their orders. This being the position, consumer found themselves faced with legal hurdles where, for example, to have an ex parte interim order reversed, the consumer was obliged to approach the National commission

As per section 22(2) of the Consumer protection Act, 1986, 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. An application for review under sub section (2) of section 22 shall be filed to the National Commission,

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within 30 days from the date of the order or receipt of the order as the case may be. It should clearly set out the grounds for review. Unless otherwise order by National Commission, an application for review shall be disposed of by circulation without oral arguments as far as practicable between the same members who have delivered the other sought to be reviewed.

Power of review has two facets, namely procedural review and substantive review. The Act as amended in 2002 stipulates that the power of review is vested with the National Commission. The disability of the lower forums to review or set aside ex parte order is at odds with the objective of the Act. This application of law has escalated the risk of depriving the consumer of its rights.

But now the District Commission, State Commission and National Commission are given the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within 30 days of such order as per the amended Consumer protection Act of 2019

➤ **Execution Application :**

An Execution Application can be filed in Consumer Court under section 25 and 27 of Consumer protection Act, 1986. Section 25 of Consumer protection Act deals with the attachment of the property and section 27 of the Consumer protection Act deals with penalty and imprisonment of the contemnors/respondents. An Execution Application can be filed to make the

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Opposite Party pay penalty or even be jailed for non-compliance of court order.

An Execution Application can be filed where an interim order made under this Act is not complied with or when either of the parties fail or omit to comply with any order made by the District Forum, State Commission or the National commission as the case may be.

In the event a complaint has been filed and the Opposite party does not acknowledge the same and/or does not respond to notice(s) sent by Forum and an ex parte order is passed in favour of the Complainant, an Execution Application can be filed by complainant in such ex parte order of the Consumer forum to enforce the order.

The Execution Application should contain the following documents:

- (1) Execution Application with Notarised Attested Affidavit
- (2) Certified Copy of the Consumer court Order
- (3) 4 copies of all the documents for the court and additional sufficient copies for the other side

➤ **Transfer of Cases :**

- (1) On the application of the complainant or of its own motion, the State Commission as per section 17A of the Act at any stage of proceeding, transfer any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

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(2) On the application of the complainant or of its own motion, the National Commission as per section 22B of the Act, 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 other State Commission.

Transfer Application must be supported by Notarised Attested Affidavit along with 4 copies for commission and one copy each for the respondent (with file cover). The Transfer Application along with all the copies should be paginated and duly indexed in the following sequence:-

1. Index
2. List of Dates
3. Transfer Application with notarised attested affidavit
4. Copy of the complaint appeal filed before forum below. (All the annexures must be attested as true copy on the last page with name and signature)

The documents should be filed in English language only or translated copy of any other language. There should be legible copies of all supporting documents. No documents will be accepted unless filed 2 days in advance from the date of hearing.

➤ **Appeal** :

(1) any person aggrieved by an order of the District forum may prefer an appeal against such order to the state commission under section 15 of the

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Consumer Protection Act, 1986 within a period of 30 days from the date of the order in such form and manner as prescribed.

(2) any person aggrieved by an order of the State Commission may prefer an appeal against such order to the National commission under section 19 of the Consumer Protection Act, 1986 within a period of 30 days from the date of the order in such form and manner as prescribed.

(3) any person aggrieved by an order of the National Commission may prefer an appeal against such order to the Supreme Court under section 23 of the Consumer Protection Act, 1986 within a period of 30 days from the date of the order in such form and manner as prescribed.

(4) Court may entertain an appeal after the expiry of 30 days if it is satisfied that there was a sufficient cause for not filing it within that period. The appeal must be supported by a Notarised Attested Affidavit along with 4 sets (with file cover) + No. of opposite parties. All the copies should be paginated and duly indexed.

(5) The following documents are required to file an appeal:

- (a) Index
- (b) List of Dates
- (c) Memorandum of grounds of appeal along with the correct name and address of the parties.
- (d) Certified copy of the order passed by the Consumer Court
- (e) Appeal with Notarised Attested Affidavit
- (f) Application for Condonation of delay, if any, submitted along

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with the reason.

- (g) Copy of Complaint, pleadings, evidence, reply and rejoinder filed in Consumer Court and other documents relied on by both the parties.
- (h) a statutory deposit of Rs 25000/- or Rs 35000/- or Rs 50,000/- or 50% of the award or the compensation amount whichever is less is to be made by the appellant/ opposite party in State Commission or National Commission or Supreme Court respectively where the appeal is filed in the form of demand draft (in favour of the Registrar)
- (i) no court fee is required to file an appeal.

(6) The documents should be filed in English language only or translated copy of any other language. There should be legible copies of all supporting documents. No documents will be accepted unless filed 2 days in advance from the date of hearing. Also the Caveat Application filed in the Commission in the Revision Petition has to be filed in 4 sets along with the proof of service on the Opposite Parties.

(7) An appeal filed before State Commission and National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of 90 days from the date of its admission.

(8) No adjournment shall be ordinarily granted by the State Commission or the National commission, as the case may be, unless sufficient cause is

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shown and reasons for grant of adjournment have been recorded in writing by the Commissions.

(9) In the event of an appeal being disposed of after the period so specified, the State Commission or the National Commission as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

➤ **Revision Petition :**

Revision petition as provided under the act to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum or the State Commission can be filed with the Registry of the State Commission or National commission as the case may be within a period of 90 days from the date of receipt of the order on all working days. Revision petition must be supported by Notarised Attested Affidavit along with 4 copies for commission and one copy each for the respondent (with file cover). The Revision Petition along with all the copies should be paginated and duly indexed in the following sequence:-

- 1.) Index
- 2.) List of Dates
- 3.) Memo of parties (with fresh complete address and telephone number)
- 4.) Revision Petition with the Notarised Attested Affidavit
- 5.) Stay application or if any other application, with Notarised Attested Affidavit

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- 6.) Application for Condonation of Delay, if any with Notarised Attested Affidavit
- 7.) Certified copy of orders of District Forum or state Commission as the case may be.
- 8.) Supporting Documents if any
- 9.) Copy of the complaint, Reply and Rejoinder filed before District forum or the State Commission as the case may be as well as the copy of evidence if recorded and the other documents relied upon by both the parties.
- 10.) No court fee is required to file the Revision Petition.

The documents should be filed in English language only or translated copy of any other language. There should be legible copies of all supporting documents. No documents will be accepted unless filed 2 days in advance from the date of hearing.

➤ **Difference between Appeal and Revision:**

At times it is observed that consumer when aggrieved with the order of consumer forum or commission is in a flux as to what is the remedy available to him for knocking at the door of higher court. Consumer protection Act, 1986 provides remedy of appeal and revision both to the consumer if not satisfied with the order of the consumer forum. The consumer has to understand the difference between the Appeal and Revision before choosing the remedy for him.

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Appeal gives the consumer to open his case before the higher court on all counts – facts of the case, law applied and evidence recorded. Everything has to be judged by the appellant court as to whether lower court has considered all the material placed on record and had applied the law laid down in correct manner. However the complainant cannot educe any new facts or evidence at this stage, can only emphasize for the facts earlier said which could not be considered by the lower court.

Revision is mainly on the point of jurisdiction of the court/forum and higher court is not to look into matter in detail about facts, evidence etc. This remedy can be invoked before any order passed by the lower court/forum if forum had no jurisdiction to deal with the case and while exercising the revisional jurisdiction, higher court may issue appropriate directions to the lower court/forums.

The difference between appeal and revision has been clarified by the Apex Court on number of occasions and recently Bombay High Court has put special efforts and gone on the issue. Supreme Court while dealing in the matter of **Lachman Dass v/s. Santhokh Singh**, wherein it was held “An appeal is a continuation of proceedings wherein the entire proceedings are again left open for consideration by appellant authority. But in the case of revision, it has no power to reassess or reappraise the evidence unless the statute expressly provide.

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Various Landmark Judgements on Consumer protection Act:

(1) General Manager Telecom, BSNL V/s Krishnan

Here in 2009, the jurisdiction of the consumer forum was challenged. This called for broad expansion of the scope of section 3 of the Consumer Protection Act and was further clarified in the 2012 in case of *J. Subramanian V/s M/s Bharti Airtel* where in it was held that the provisions in Consumer Protection Act would be in addition to and not in derogation to the provisions of any other act existing at that the time.

(2) Buddhist Mission Dental College V/s Bhupesh Khurana

Here capitation fees were paid under the belief of the false advertisement when the students availed the service of college which offered attractive facilities and prospects on paper but failed to materialise in reality. It was found in the case none of the facts mentioned were true and hence considered the advertisement to be misleading. The final judgement was given to the tune of considering imparting of education to be a service which was reaffirmed with the paying of fees and was ruled that the inability to offer services advertised constitute deficiency of services and hence determined the cause of action for the consumers and expanded the scope of section 2(1)(d).

(3) Deputy Registrar V/s Ruchika Jain

This case distinguished and differentiated between the services rendered by education institutions in terms of imparting education and conducting exams. As previously determined, the provision for educational facilities

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were considered under the ambit of ‘services’ as defined under the act while that of conducting exams was considered to be a statutory function. It was therefore held that a student appearing for the exams could not be considered to be a consumer within the meaning of Section 2(1)(b) read along with Section 2(1)(o) as they had not hired or availed the services of the educational institutions. This decision was further reaffirmed in the 2009 judgment of *Bihar School Examination v Suresh Prasad Sinha* which also held that the conducting of exams did not come under the definition of ‘services’ as explained in the act but was merely a statutory function.

(4) Spring Meadows Hospital V/s Harjol Ahluwalia

Due to the medical negligence of the staff of a hospital, a child had died and it was contested before the court in the case of *Spring Meadows Hospital v Harjol Ahluwalia*, as to whether the parents of the child had a cause of action against the hospital. It was ruled in favour of the parents by expanding the definition of the ‘consumer’ as under Section 2(1)(d) of the Consumer Protection Act, 1986. It was held that when the child was taken to the hospital to avail the services of the hospital, they would fall under the definition of a ‘consumer’ as they were a beneficiary of the services. Both the parents and the child were to be included and thus both were entitled to compensation. This principle was further reinstated in the case of *Indian Medical Association v V.P. Shantha* where 12 major conclusions of the judgment were highlighted with ample emphasis being laid on the definition of ‘service’ as under Section 2(1)(o) of the Consumer Protection Act. This helped to clear the fog regarding the inclusion of the services rendered at hospitals and nursing homes under the definition as mentioned in Section

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2(1)(o) of the act. There were numerous judgments over the years that dealt with protecting the interests of the consumers and thereby, affixed the role of Consumer Protection Act as a welfare legislation. All these rulings could be bracketed under different headings including education, medical sector, real estate etc. This showed the pervasive nature of the relevance of the Consumer Protection Act legislation in all walks of free market economy which involved purchase of goods and the rendering of services.

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CHAPTER 6: CONCLUSION

➤ **Conclusion :**

Consumer Protection makes markets work for both the businesses and consumers. Consumers need to be able to obtain accurate, unbiased information about the products and services they purchase. Thus this enables them to make the best choices based on their interests and prevents them from being mistreated or misled by the businesses.

In order to protect the long term interests of businessmen and also to keep Government intervention at minimum, it is important for the Government to raise their quality of goods and services and provide an appreciable standard of materials and services to the consumer. The Consumer Protection Act, 1986 is merely legislation which tries to keep check on these multiple aspects relating to the promotions of interest of consumers.

Hence the Consumer protection Act is a consumer specific legislation designed to provide for speedy and inexpensive remedy to the consumers. The Act for the first time gives statutory recognition to the rights of the Consumers where three tier redressal machinery at the District, State and National level has been constituted to resolve the consumer disputes.

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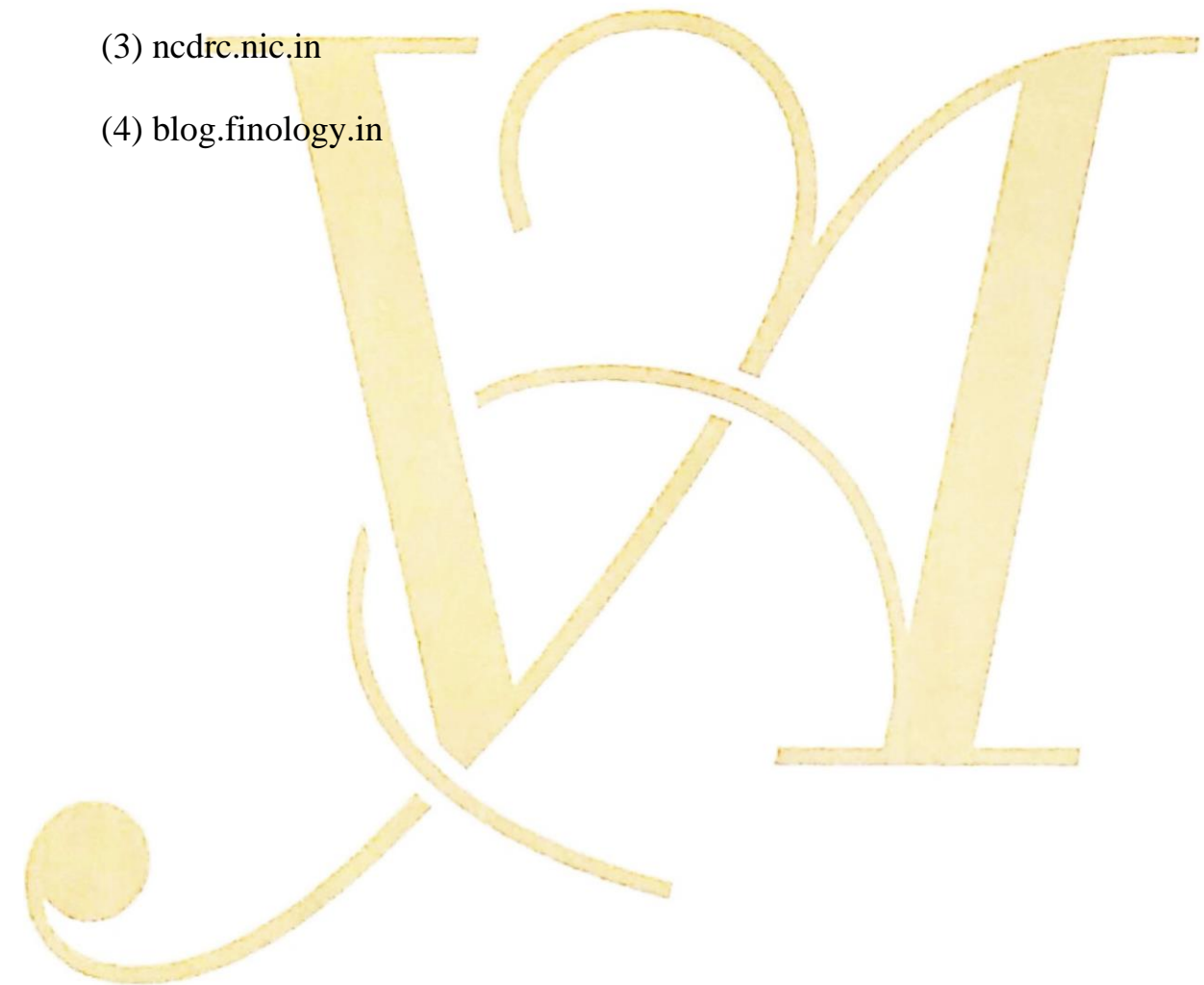
The above information is obtained from following sources:

(1) chdsla.gov.in/right_menu/act/pdf/consumer.pdf

(2) indiacode.nic.in

(3) ncdrc.nic.in

(4) blog.finology.in



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