

National Judicial Academy



NATIONAL SEMINAR FOR PRESIDENTS OF DISTRICT CONSUMER FORUM (SE-11)

9th & 10th March, 2019

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List of Resource Persons

S.No.	Name	Designation
1.	Hon'ble Mr. Justice R.K. Agrawal	President, National Consumer Dispute Redressal Commission
2.	Hon'ble Mrs. Justice S.G. Gokani	Judge, High Court of Gujarat
3.	Hon'ble Mr. Justice K. Kannan	Chairman, Railway Claims Tribunal
4.	Hon'ble Mr. Justice Anand Pathak	Judge, High Court of Madhya Pradesh
5.	Dr. J.N. Barowalia	Former Principal Secretary (Law), Government of Himanchal Pradesh
6.	Dr. S.M. Kantikar	Member, National Consumer Dispute Redressal Commission

**NATIONAL SEMINAR FOR PRESIDENTS OF DISTRICT CONSUMER FORUM
(SE-11)**

A one and a half day National Seminar for Presidents of District Forum was organised by the National Judicial Academy on 09th & 10th March, 2019. The seminar provided a forum to participant Presidents of District Consumer Forum to discuss the inadequacies in the Consumer Protection Act & methods to overcome problems faced by the District Consumer Forums. Presidents of District Forum from across the states of India participated in the seminar.

Hon'ble Mr. Justice R.K. Agrawal, Hon'ble Mrs. Justice S.G. Gokani, Hon'ble Mr. Justice K. Kannan, Hon'ble Mr. Justice Anand Pathak, Dr. J.N. Barowalia and Dr. S.M. Kantikar participated as Resource person in the various sessions and guided the participants.

. The program was divided into 5 sessions.

Day-1 (09th March, 2019)

- Session 1: Consumer Disputes Redressal Mechanism in India: Emergence and Overview
- Session 2: Enhancing Consumer's Access to Speedy and Quality Justice: Role of District Consumer Forum
- Session 3: Housing and Construction Industry: Timely Delivery, Quality and Maintenance

Day-2 (10th March, 2019)

- Session 4: Consumer Disputes: Medical Negligence and Insurance Sector
- Session 5: Determination of Compensation: Key Issues

DAY 1 (9th March, 2019)

SESSION: 1

CONSUMER DISPUTE REDRESSAL MECHANISM IN INDIA: EMERGENCE AND OVERVIEW

Speakers: *Justice R.K. Agrawal and Dr. J.N. Barowalia*

The Session was commenced by Hon'ble Director Mr. Justice G. Raghuram extending a warm welcome to the Resource persons & participant Presidents of District Consumer Forums by giving a brief introduction about the seminar, and the various programmes conducted by the National Judicial Academy since its inception. Justice R.K. Agrawal then took over the session by giving the introductory brief about the evolution of Consumer protection in India. He stated that India always had a culture of valuing customer or consumer and therefore Customer Protection is deep rooted in the rich soil of Indian civilization, which dates back to 3200 B.C. He further elaborated as to how the concept of consumer protection flourished from the times of Manu, till independence and to the making of the Consumer Protection Act, 1986.

In *Ancient Times*, the welfare of the subjects was the primary area of concern for the rulers. The ancient law giver, Manu describes the social, political and economic conditions of ancient society in '*Manu Smriti*'. Even in *Medieval period*, consumer protection continued to be the prime concern of the Muslim rule. While in the *Modern Time*, the father of the Nation, Mahatma Gandhi, having realized the important role of consumers in the development of the economy remarked that, "*Customer are the most important visitor on our premises, they are not dependent on us, we are dependent on them. They are not an interruption in our work. They are the purpose of it. They are not outsiders in our business. They are part of it; we are not doing them a favour by serving them. They are doing us a favour by giving us an opportunity to do so. .*" Unified nationwide modern legal system was formed during the *British Period*, however the traditions and customs of the Indian legal system were not ignored by the British Regime for promoting customer's interest. *After independence*, the rights of the citizens were guaranteed by the Preamble, Fundamental Rights and Directive Principle of State Policy in the Constitution of India and by the major enactments stated as under: The Drugs (Control) Act, 1950; The Prevention of Food Adulteration Act, 1954; The Essential Commodities Act, 1955; The Monopolies and Restrictive Trade Practices Act, 1969 (Replaced by the Competition Act, 2002); The Bureau of Indian Standard Act, 1986.

The above stated enactments were not adequate as they were operative in different areas and did not provide for unified and effective machinery, therefore by a resolution passed by the United Nations in the year 1985 laying down certain guidelines for better protection of the consumers, the Parliament of India enacted the Consumer Protection Act in the year 1986 to provide for speedy and cheaper redressal of the grievance of the customers. The Act served as a milestone in the history of socio-economic legislation of the country as the provisions of the Act are compensatory in nature.

Further, in the case of *State of Karnataka v. Vishwabharathi House Building Coop. Society & Ors.*¹, the Apex Court upheld the Constitutionality of the Act. While in the case of *Lucknow Development Authority v. M.K. Gupta*², the Apex Court explained about the effectiveness of the Act.

Furthermore, in the case of *Indian Medical Association v. V.P. Shantha & Ors.*³, the Supreme Court has settled the issue of doctors and medical professionals and held that if the doctor is found negligent in performing of his duties he is open to both civil and criminal liability.

Thereafter elaborate discussion was done on the unique features of the Act which are-

- Consumer alone can approach the Consumer Fora;
- Complaint should be decided within 90/150 days from the date of receipt of notice by opposite party;
- Preamble itself provide for the better protection to the customers;
- Proceedings are summary in nature;
- Provisions of the Act shall be in addition to any other law and not in derogation (Section 3). The Hon'ble Supreme Court in the case of *Virendra Jain v. Alaknanda Cooperative Group Housing Society Ltd. & Ors.*⁴, has categorically stated that the availability of alternative remedies is not a bar to the entertaining of a complaint filed.
- Limitation period for filing the complaint is two years (Section 24A). In *ABI v. B.S. Agricultural Industries*,⁵ scope of this section was discussed by the Hon'ble Supreme Court.

Redressal agencies provided under the Act is divided into 3 levels-

- i. At the Apex Level- National Consumer Dispute Redressal Commission
- ii. At the State Level- State Consumer Dispute Redressal Commission
- iii. At the District Level- District Consumer Dispute Redressal Forum

An aspect inherently intertwined with the problem of pendency is lack of infrastructure which involves both physical as well as manual, as the State Governments are not taking any steps to fill up the vacant posts, unnecessary adjournments and the litigants and the honorarium of the full/part time of the members is another concern which resists the qualified, expert and talented people to join the fora. Even after the order of approval to the Model Ruled, namely, '*The Consumer protection (Appointment, Salary, Allowances and Conditions of Service of Presidents and of the State Commission and the District Forum) Rules, 2017*' by the Supreme Court in *State of Uttar Pradesh and Others v. All Uttar Pradesh Consumer Protection Bar Association*⁶, only three to four States have notified the Model Rules even after the order of compliance within three months.

¹ (2003) 2 SCC 412

² (1994) 1 SCC 243

³ (1995) 6 SCC 651

⁴ (2013) 9 SCC 383

⁵ (2009) 5 SCC 121

⁶ (2017) 1 SCC 444

The speaker in his conclusive remarks he mentioned about the *Consumer Protection Bill, 2018* which was made to meet the new challenges and also to replace the Act of 1986, but unfortunately was lapsed as it was not passed by the Rajya Sabha. He demanded that the old rule of '*caveat emptor*' must give way to the rule of '*caveat venditor*' and ended his speech by making the following recommendations for quick disposal of cases-

- Complete justice between the parties must be done on the basis of the material and documents before it as the fora follow the principle of natural justice.
- Additional Benches must be constituted to dispose of the increasing number of cases.
- A separate cadre of the staff.
- Newly appointed judicial members should be imparted extensive training.
- The three tier redressal mechanism has been virtually hijacked by the lawyers resulting into undue adjournments and therefore the appearances should be banned in small cases involving less than one lakh rupees.
- ADR mechanism must be extensively used as held by Hon'ble Supreme Court in *Bijoy Sinha Roy v. Biswanath Das & Ors.*⁷
- The guidelines stated under Consumer Protection (Administrative Control over the State Commission and the District Forum) Regulations, 2018 should be strictly followed.

The second speaker, Dr. J.N. Barowalia initiated his discussion by stating the case, *State of Karnataka v. Krishna Appa*⁸. Every one of us is a consumer and is robbed everyday by organized traders. After independence India has finally obtained the socialistic pattern of society. On 9th April, 1985 when UNO issued a guideline stating that every Member State should recognize Consumer Protection; India enacted the law. Consumer is the sovereign or the king, and the production of the goods depends in relation to the demand of majority. The father of the nation, Mahatma Gandhi has rightly said, "Business, truthfulness, honesty and ethics should go together."

The Consumer Protection Act, 1986 is a beneficial legislation and so provides a number of rights to the consumer and puts number of obligations on the traders. Object of the Act as the preamble of it proclaims is to provide for the better protection of interest of the consumers, and to make provisions for the establishment of consumer courts and other authorities for settlement of consumer disputes. Chapter III is regarded as the sole of the Act which provides a speedy and simple redressal and then discussed about the three-tier redressal system. There was no fees to be required to file a complaint before 2004, further few important provisions of the Act including Section 13(3), 14, 22A and 24A were discussed.

Sixty percent of the population demands for food articles, it is the duty of the Centre and State Inspectors to look after the adulterated food and file a complaint for the same in the forum. But they only file complaints in relation to luxurious articles.

⁷ (2018) 3 SCC 224

⁸ (2000) 4 SCC 75

Furthermore, he pointed on one of the landmark judgment, *Kamlesh Aggarwal v. Narain Singh Dabbas & Anr*¹⁰. and elaborated how Section 27 of CrPC can be proceeded under The Consumer Protection Act, 1986.

Consumers are being exploited readily by the offers made by the seller, whereas the advertisement cost should be fixed by the Government because indirectly the poor consumer is paying for it. For effective implementation of the Act it is important to create awareness of consumer rights, social awareness, and create an active consumer movement.

SESSION 2

ENHANCING CONSUMER'S ACCESS TO SPEEDY AND QUALITY JUSTICE: ROLE OF DISTRICT CONSUMER FORUM

Speakers: *Justice S.G. Gokani and Dr. J.N. Barowalia*

Chair: *Justice R.K. Agrawal*

Justice S.G. Gokani commenced the session by asking the participants about the problems they are facing while delivering quality and speedy justice; the basic problems involved: non-availability of human resources, ways of service of summons, no assistance of legal experts, the procedure of dealing with the cases and infrastructure deficit. Further the participant listed some other problems that they face while delivering the orders-

- While dealing with the builders, law enforcement authorities are not effecting service of the notice as builders being influential pressurize the authorities as well as the complainant.
- The certificate of order under Section 25(3) is delivered to the collector but no actual result can be seen.
- Chit Funds/ Ponzi Schemes.
- There is no immediate relief provided to the complainant, due to which they are not willing to reach to the forums.

After understanding the problems of the participants, the speaker gave a power point presentation mentioning, 'Customer is the king because it is the choice of customer which prevails'. In the era of science and technology, vast competition prevails in the market but it can be seen in the last few years that the market is found to be influenced by false and misleading advertisements; gifts, prices and discounts are offered to attract the public. Previously "Caveat Emptor", i.e. buyers beware but now it is replaced by "Caveat Venditor", i.e. let the seller beware of the Government laws and policies.

¹⁰ (2015) 11 SCC 661

Thereafter the speaker discussed the historical perspective of the Consumer Movement by mentioning the leading case *Carlill v. Carbolic Smoke Ball Company*¹¹ and *Donoghue v. Stevenson*.¹²

The speaker then pointed out on few important definitions of Goods, Defects, Deficiency, Service and Unfair Trade Practice. Unfair Trade Practice includes false representation, misleading price of product and service, misleading selling at bargain price, offering free gifts, copied products and goods which do not fall within the prescribed standards. Rights of a customer includes- Right to Safety, Right to Choose, Right to be heard, Right to be Informed, Right to seek redressal and Right to Consumer Education. Powers of District Forum and State Commission, which are quasi-judicial bodies includes-

- Power akin to the Civil Courts. (Section 13(4))
- Power like a Criminal Court. (Section 27(2))
- Power to make Summary judgments. (Section 27(3))
- Executive Powers (Section 25).

The Speaker requested The National Judicial Academy to forward the following problems to Hon'ble Supreme Court for consideration-

- Remission of more powers to the President/ Head of District Consumer Forum.
- Recruitment of stenographers and legal researchers.
- Need of advancement of technology and institution speak-out technology for writing of orders.
- Reengineering court procedure through effective use of ICT.

The second half of the session was taken up by Dr. J.N. Barowalia, where he initiated the discussion by talking about the Preamble of the Consumer Protection Act, and pointed out that the important point about delivering order is not the writing but the capability of delivering quality judgement. Furthermore, he discussed about the problems faced by consumer forum such as-

- No access to good libraries.
- No funding for stationary.
- Shortage of permanent members.
- Poor infrastructure.
- No recruitment of stenographers.

¹¹ (1893)1 Q.B. 256

¹² (1932) A.C. 562

SESSION 3

HOUSING AND CONSTRUCTION INDUSTRY: TIMELY DELIVERY, QUALITY AND MAINTAINANCE

Speakers: *Justice S.G. Gokani and Dr. J.N. Barowalia*

Justice S.G. Gokani initiated the session by stating that Housing Construction was included in the definition of ‘Service’ of Consumer Protection Act, 1986 by *Ordinance no 24 of 1993*, and discussed about the meaning of House, Apartment (Section 2(e) of The Real Estate (Regulation and Development) Act, 2016) and Building (Section 2(j) of The Real Estate (Regulation and Development) Act, 2016). Thereafter the speaker cited the decision of *Lucknow Development Authority v. M.K. Mehta*¹³ wherein the Supreme Court held that, Housing Construction by a private person or statutory body is a service included within the meaning of Section 2(1) (o).

Furthermore, important judgements of Supreme Court were cited under five heads-

1. When allotment is not made

In *Chandigarh Housing Board Society v. Avtar Singh and Others*¹⁴ it was held that members covered by definition of “consumer” under S. 2(1) (d) (ii), thus, members of Societies had every right to complain against illegal, arbitrary and unjustified forfeiture and refund at the rate of 18% interest paid by them is totally justifiable.

2. When there are defects in service

In *H.P. Housing Board v. Varinder Kuma Garg and another*¹⁵ the respondent was given the option to either keep the flat or to keep the compensation, when the defects were found in the service.

3. Illegal Construction in violation of Sanitation Plan

In *Esha Ekta Apartments Co-operative Housing Society Ltd and Others v. Municipal Corporation of Mumbai and Others*¹⁷ where the Court said that the conduct of the builder in present case deserves to be noticed, he knew about the permissible limits yet he violated the limits and so illegal constructions cannot be regularized and demolition orders cannot be quashed. While in *Dipak Kumar Mukherjee v Kolkata Municipal Corporation and Ors*¹⁸ the court held that the Courts shall pass order of demolition of unauthorized construction of building if it is based on violated sanctioned plan.

4. Delay in Delivery

In *Haryana Urban Development Authority v. Darsh Kumar & Others*¹⁹ it was held that when a

¹³ (1994) 1 SCC 243

¹⁴ (2010) 10 SCC 194

¹⁵ (2005) 9 SCC 430

¹⁷ (2013) 5 SCC 357

¹⁸ (2013) 5 SCC 336

¹⁹ (2005) 9 SCC 449

body like a development authority is not in a position to deliver the allotted plot must offer an alternative plot immediately at the same price in the same sector or near thereto. While considering a long delay in giving possession, in that case compensation at the rate of 12% from the date of deposit till delivery of possession and even after that the amount has not being paid, the rate of interest would increase to 15%.

5. Compensation

In *Ghaziabad Development Authority v Balbir Singh*²⁰ it was held that the jurisdiction of National Commission/Forums extends to cases of service rendered by statutory and public authorities. The word Compensation has wide connotation quoted from M.K. Gupta's case with approval.

In *Haryana Urban Development Authority(HUDA) v Krishna Goel*²¹ it was held that the current rate of interest would be 12% per annum from the date of deposit repayment and the Commission/Forum will follow the principle laid down by the Court in the case of Balbir Singh (19) in future cases.

In *Bangalore Development Authority v. Syndicate Bank*²² it was held that where the grievance is of the delay in delivery of possession and the development authority deliver the house during the pendency of the complaint at the agreed price, and such delivery is accepted by the allottee complainant, the question of awarding any interest on the price paid by him from the date of deposit to the date of possession does not arise. Further in *Charan Singh v Healing Touch Hospital & Others*²³ wherein the court held that calculations of damages depend on facts and circumstances of such case. It is on the Consumer Forum to grant compensation to the extent it finds reasonable, fair and proper according to the established judicial standards.

Two legal questions were placed by the chair to the participants to understand the concept more appropriately in which one question was related to deciding the standards of reasonable and fair compensation and the other was about the circumstances under which the punitive damages must be given. The participants promptly took part in the discussion and it was discussed that the facts and circumstances must be looked upon from the point of view of a reasonable man to decide the compensation, while punitive damages is given when there are numerous sufferers who are unidentified with the object of deterrence.

²⁰ (2004) 5 SCC 65

²¹ (2005)9 SCC 466

²² (2007)6 SCC 711

²³ (2000)7 SCC 668

DAY 2 (10th March, 2019)

SESSION 4

CONSUMER DISPUTES: MEDICAL NEGLIGENCE AND INSURANCE SECTOR

Speakers: *Justice K. Kannan and Dr. S.M. Kantikar*

Justice Kannan addressed the session by giving the broader outlines of medical negligence, in context of 1960's when in India no cases against the doctors were filed. It was after the Act came into existence that the Professionals were made accountable of their negligent act. In one of the cases taken up by the Division Bench of Madras High Court, the Court held that if doctors should be upraised in the performance and if the test is going to be whether the person was able to survive or was inflaming, then that should be done by the expertise and the judiciary must not be provided with vast power to interpret the negligence in terms of a simple test.

Dr. S.M. Kantikar then took over the session to discuss the manner in which the cases of medical negligence are to be adjudicated. It was pointed out that till 2010 there were only 26 cases of medical negligence but the number has increased to 365 in 2016. Furthermore, he discussed about the importance of medical records to decide the breach. Following points must be looked upon to decide the breach of duty-

- Practice parameters must be looked upon under the guidelines of SOP.
- Complete Evidence must be collected and then compared with the specific standard of that particular case.
- Minority view is very important in such cases, and the doctor in certain circumstances can succeed if the minority view is in the favor of doctor.

Also there are few important medical record that forum should look into, which are- Referral note, Discharge report (it is the constructed mirror report of what the doctors have performed during the course of hospitalization), Confidential report (names of the patients must be changed in cases of detection of communal diseases), Report on correction of MR with the reason listed for doing so, and the notification copy when it was notified that the reports are to be destroyed. Hospitals are under an obligation to preserve the report for 3 years from the date of discharge according to the guidelines issued by the Medical Council of India in 2002. The court expects the reports to be-

- Neat and legible
- Timely and accurate with professional tone.

If the medical report is not found proper then the court can held the doctors and hospitals liable as the case may be.

The speaker then discussed a hypothetical situation where the patient refuses to take the medicine or treatment, and if not taken will severely harm the patient which can ultimately result into death.

Whether the doctor can be held liable? The doctor cannot be liable as consent of the patient in the light of the recent judgement on passive euthanasia²⁶ and privacy²⁷ cannot be derogated.

Thereafter Justice Khanna dealt with the issues in insurance sector. In cases where insurer is the opposite party, the forum must make the insurer pay because the insurer is in business only for making payment while the inquiry should not begin without seeking a disclosure of pre-litigation communications. Before moving forward, the forum must check the extent of insurance cover and the amount claimed by the claimant, while if the gap is narrow it should suggest a settlement amount or refer it to a mediator but if the gap is large, the forum should see that if either of the parties would be able to scale up or down the claim to bridge the gap.

He extended the discussion to Insurance Regulatory and Development Authority Regulations, 2002 and discussed important precedents of Supreme Court. *In United India Insurance Co. Ltd. v Manubhai Dharmasinhbhai Gajera & Ors.*²⁸ it was held that contracting illness during the subsistence of the policy is no ground to deny renewal. While in the case of *New India Assurance Co Ltd v. Satpal Singh Muchal*²⁹ it was held that even the past of an insured lodging a case against an insurer cannot be a reason for denying renewal.

SESSION 5

DETERMINATION OF COMPENSATION: KEY ISSUES

Speakers: *Justice K. Kannan and. Justice Anand Pathak*

Justice K. Kannan initiated the session by discussing about making the quantum of compensation just and fair by explaining the doctrine of multiplier principle and making a reference to the judgement of Supreme Court in the case of *Balram Prasad & Anr. v. Kunal Saha*³⁰. While making a reference to *Sarla Verma v. DTC*³¹, discussion was made on the factors to calculate compensation in case of death.

Justice Anand Pathak discussed about the kind of damages that the court or any judicial authority comes across, which includes Compensatory damages, Punitive damages, Economic and Non-economic damages. Furthermore he shared his experience about how he is incorporating the compensation mechanism. For instance, sometimes cases are dismissed in default, advocates then file an application for restoration on the case. Instead of imposing costs, an option can be given to either plant a sapling and further an undertaking to maintain it must be taken in the form of affidavit. The speaker urged the participants to be innovative while awarding compensation.

²⁶ Common Cause (A Regd. Society) v. Union of India (2018) 5 SCC 1

²⁷ Justice K. S. Puttaswamy (Retd.) and Anr. v. Union Of India and Ors. (2017) 10 SCC 1

²⁸ (2008) 10 SCC 404

²⁹ (2009) 12 SCC 673

³⁰ (2014) 1 SCC 384

³¹ (2009) 6 SCC 121

Furthermore, Justice Kannan stated that in case of Punitive damages, Section 73 and Section 74 of The Contract Act must be taken as a guide while deciding the penalty. While in cases of accidents, statutory determination is the key point to be remembered, as these matters are of gentle nature.

Under the Consumer Protection Act, scope for damages covers following areas-

- Medical Negligence
- Housing Issues
- Insurance liability (Many categories and Acts such as Insurance Act, Carrier's Act, Merchant Shipping Act, Life Insurance Act, Carriage by Air Act, Crop damages, Consequential loss due to failure of service , Theft, etc. are covered)

Thereafter Justice Kannan pointed out on various heads of compensation claim which should be made, out of which one is in relation to personal injuries which could be either pecuniary or non-pecuniary claims. Pecuniary claims are the claims which could be immediately provided involving medical negligence of past or future, transport expenses and loss of income, while non pecuniary damages involves pain and suffering, loss of amenities (lowers the degree of happiness) and functional disability.

He also mentioned that the Disabilities (Equal opportunities, Protection of Rights and Full participation) Act, 1995 issued guidelines for the assessment of disability, on 13th June 2001. The formula which can used to determine assessing disability given under the guidelines is-

$a+b(90-a)$ Where, 'a' is the higher score and 'b' is the lower score.

90

While it is very important to remember that, Death and Personal injuries are very different and should be dealt differently. In *V. Krishnakumar v. State of Tamil Nadu*³⁴, the multiplier principle was taken into consideration. To secure an amount which if involved in a steady economy with slightly inflationary trend will yield a return equivalent to what the victim would have earned if the accident would have not accrued is the guiding principle to grant the compensation in personal injuries. In *National Insurance Company v. Preni Sethi*³⁵ which provides with different heads of pecuniary damages.

The programme coordinator, Mr. Krishna Sisodia concluded the conference by giving a vote of thanks to the participants and asked for their valuable feedback.

³⁴ (2015) 9 SCC 388

³⁵ (2017) 16 SCC 318