

# **National Judicial Academy**



## **SEMINAR FOR PRESIDENTS OF DISTRICT CONSUMER FORUM (SE-02)**

**22nd November to 24<sup>th</sup> November, 2019**

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**SEMINAR FOR PRESIDENTS OF DISTRICT CONSUMER FORUM  
(SE-02)**

A three day National Seminar for Presidents of District Forum was organised by the National Judicial Academy on 22<sup>nd</sup> to 24<sup>th</sup> November 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.C. Chavan, Hon'ble Mrs. Justice S.G. Gokani, Hon'ble Mr. Justice K.Kannan, Dr. J.N. Barowalia and Dr. S.M. Kantikar participated as Resource person in the various sessions and guided the participants.

**DAY 1(22<sup>nd</sup> November, 2019)**

**SESSION 1**

**Consumer Disputes Redressal Mechanism in India: Emergence and Overview**

**Speakers:** *Justice R.C. Chavan, Dr. J.N. Barowalia*

The session commenced with an introduction of the speakers himself by an introduction session of the participant Presidents of the District Consumer Forums. The session witnessed revisiting consumer jurisprudence and engaging with some illuminating experience of how consumers suffer. The session was carried on by asking the participants about whether their experience in the consumer forum were satisfactory or they faced some shortcomings with respect to the mechanism. The participants pointed out some short –comings they have faced on the basis of their experience, the major one being unavailability of proper execution machinery. According to them, the police authorities fail to understand the execution machinery properly. Other short-comings that were pointed out by the participants were overburdening of cases, Order 21 of the Code of Civil Procedure, 1908 not being categorically spelt in the Consumer Protection Act, 1986.

The discussion then shifted to the quorum in relation to the proceedings before the District Commission wherein Section 36(1) of the Consumer Protection Act, 2019 which provides that every proceeding conducted by the District Commission shall consist of the President of that Commission and atleast one member thereof, sitting together. An interactive discussion followed on the point as to whether having a non-judicial officer to take charge of the case is reasonable or not. Whereas one line of thought argued that the non-judicial members are not well-trained as they are not from judicial background, the others including advocated that the purpose of having a consumer forum with a non-legal member is to cut down the legal formalities of procedure and add a human touch to the orders to facilitate justice. It was agreed upon the contention that when a non-judicial officer takes charge of an office, he becomes committed to the power.

The strategies that were discussed upon to resolve the above challenges were:-

- **The role of lawyers**-Since lawyers are present in every Commission, they were suggested to do the bridgework
- **The role of media**- This strategy uses the media as a tool to make the orders public. Firstly, the orders are expected to be executed, if not then let the complainant be provoked sufficiently to take the matter to press. The effect of an action would make the other consumers aware of the happenings.
- **Pressure on the police** to deal with the problem of inadequate manpower.

Reference was made to the Preamble and Article 47 of the Constitution as the source of the Consumer Protection Act in India. It was remarked that Consumer Protection Act is considered to be the Magna Carta in the field of consumer protection and a milestone of socio-economic legislations. Discussions were then made on the objective of the Act, the rights of the consumers, an important one being right to consumer awareness which lacks implementation. The provisions of the Act has not been utilized fully- till now no complaint has been filed by the Central and the State governments on behalf of the public. He gave his insights on the matter of frivolous complaints coming before the forum by remarking that the Act is clear about the protection of the consumers and there is always a chance of misuse of the Act at the same time. The Act is a social legislation and therefore we should be particular of who misused the Act. Adequate cost that is to be awarded to the party can be categorized under 2 heads- one is the monetary cost which includes costs like bringing the witness to the Court and the other is the social or overhead cost that includes the agonies that has been suffered by the party.

## SESSION 2

### Enhancing Consumer's Access to Speedy and Quality Justice: Role of District Consumer Forum

**Speakers:** *Justice R.C. Chavan, Dr. J.N. Barowalia*

The session was initiated with a note that complaints should be entertained, even if they are petty ones. This is required to uphold quality justice. Access to speedy and quality justice should be ascertained because it is the consumers who are the sufferers. Another problem is that of delay, which hinders the proper enforcement of the Consumer Protection Act. It was pointed out that lack of infrastructure is one of the major causes of delay. Deciding cases expeditiously would encourage more complainants for adjudication of the cases.

Discussions were made on some of the salient features of the Consumer Protection Act, 2019 .The new Act is much more detailed and contains more Chapters than the old Act. The discussion made on the salient features of the Act are as follows:-

- **Expanded definition of consumers** under Section 2(7) of the new Act to include any person who buys any goods, whether through offline or online transactions, electronic means, teleshopping, direct selling or multi-level marketing.
- **Inclusion of E-Commerce transactions** in the new Act under Section 2(16)
- **Inclusion of unfair contract** as a new ground for filing complaint under section 2(6)(i).

- **Expanding definition of unfair trade practice** under 2(47) of the new Act - The new Act included three additional grounds to qualify as an unfair trade practice-
  - i. Not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed
  - ii. Refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days
  - iii. Disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.
- **Product liability as a separate chapter in Chapter VI-** The Act has brought within its scope the concept of product liability which makes not only the product manufacturer liable, but also the product seller or the service provider.
- **Establishment of the Central Consumer Protection Authority** to act as a regulatory authority and enforcement of the rights of consumers as a class. This function of the authority is preventive in nature.
- **Filing of e-complaints** from the place of residence of the consumer or where he/she works
- **Provision for mediation** as a method of alternate dispute resolution to make the process of dispute resolution much speedier and to reach an amicable settlement between the parties.
- **Increase in the pecuniary jurisdiction** of the district forum, the State and the National Commission. The district forum may entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees; one crore to ten crore as the jurisdiction of the State Commission and amount exceeding ten crores as the jurisdiction of the National Commission.

### SESSION 3

#### Housing and Construction Industry, Timely Delivery, Quality and Maintenance: Consumer

#### Courts v. RERA

Speakers: Justice R.C. Chavan, Dr. J.N. Barowalia

The session started with a comment that housing sector is under great stress today. This may be attributed to the outlook of the sector as to what kind of demands of the customers are to be met. The sector contributes to a substantial portion of GDP. Reference was made to the subprime crisis in the U.S as a result of which the banking sector collapsed altogether. It was deliberated that the justice should be done without killing

the sector. The speakers concurred to the fact that housing problem is a big problem. Two major problem with the sector pointed out - firstly, any builder who starts a project or provides services has to pay money to the politicians and secondly, the installments that they take are being diverted to other projects. The fault is that of the builder and not the person who pays the money.

The Real Estate (Regulation and Development) Act, 2016 ensures protection to such people as well as boost the real-estate industry. The question of whether the RERA act will bar the complainants to file complainants under the Consumer Protection Act or not has already been decided by the Supreme Court in affirmative. To decide the cases, one should consider where has the money gone, how much of it have been diverted.

It was deliberated that the decree are not meant to be kept as a mere paper decree and there is no room for sympathy that is to be kept for the builders, if they are at fault. However, if the builder is stressed because of some genuine reason which is beyond his control, then there is no necessity to provide relief to the complainant a mere paper decree. The idea is to ensure that some real relief is being provided to the consumers.

Further discussions were made on the objective of the RERA, meaning of House, Apartment (Section 2(e)), Building (Section 2(j)) and sanctioned plan 2(zq) under the Act and encouraged that complaints be taken to the consumer forum with relation to the real estate industry.

## **DAY 2(23<sup>rd</sup> November, 2019)**

### **SESSION 4**

#### **Consumer Disputes: Medical Negligence**

**Speakers:** *Justice R.C. Chavan, Justice K. Kannan, Dr. S.M. Kantikar*

The session began by revisiting the history of medical negligence litigation and was pointed out that issues arising out of medical negligence has been challenged for a long time. It was argued in a case in Madras High Court that medical negligence cases cannot be brought under the ambit of the Consumer Protection Act, 1986 as no doctor can ever ensure that the patient will be cured. If negligence is sought to be adjudicated, it is not necessarily of the judicial mind in the consumer forum to look into the matter, but other high trained persons from other fields. However, this view has changed overtime any adjudication is possible before the consumer forum. Ordinarily medical negligence cases can be brought before a consumer forum. However, where the case involves too many meddled questions on fact and law, which a consumer court is not competent to deal with, the case may be taken to a civil court.

An open question was put forth to the participants as to what steps have they taken if any to simplify the procedure for medical negligence cases or whether have they adopted a summary procedure for such cases and how? The suggestions that were discussed in the session were-

- In the cases of gross negligence by the doctors, summary procedure may be adopted( *res ipsa loquitor* )
- Assigning a medical Board to look into the matter and make it submit a report
- Usage of Interrogatory proceedings wherein the chief and the cross-examiner is not summoned and answers are collected through affidavits
- Examining whether the doctor has concurred with the standards of practice what is expected to be followed or not after taking a medical literature to support a particular line of treatment.

Power-point presentations were used to further elaborate on the same. Medical negligence may be covered under civil and criminal liability, the general exceptions being covered under Section 88, 92 and 93 of the Indian Penal Code, 1860.

To determine whether the doctor is negligent or not, the standards that are to be seen is that of Bolam's case<sup>1</sup> which laid down the following test:

- There is a usual and normal practice
- The defendant did not adopt it
- The course adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care

However an error of judgement is not necessarily a medical negligence.

It was commented that by and large the courts have been protective to the doctors. However, courts have been defensive to the doctors in some cases like the cataract and sterilization cases. Discussions were made on the concept of informed consent as is required in establishing medical negligence as a part of Canterbury principles. Some areas that require strict application of professional negligence are situation that exposes a patient to a greater economic loss, administration of contaminated medicine, false assurances and being insensitive to a poverty-stricken patient.

Some decision that were discussed are as follows:-

- *IMA v Shanta*<sup>2</sup> - The decision helped to settle the contours of law and of deficiency of service.

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<sup>1</sup> Bolam v. Friern Hospital Management Committee [(1957) 2 All ER

<sup>2</sup> (1995)6SCC 651

- *Spring Meadows Hospital and Anr v. Ahluwalia*<sup>3</sup> - The decision introduced the concept of compensation to the secondary victim.
- *Dr. JJ Merchant v Shrinath Chaturvedi*<sup>4</sup>– It dealt with the complicated questions of law and fact.
- *Marghesh K. Parikh v Dr. Mayur Mehta*<sup>5</sup> - It dealt with failure to provide with the details of the treatment.
- *Bijoy Sinha Roy v Biswanath Das*<sup>6</sup> - The Court held that a hospital which lacks an ICU but has a surgical facility is to considered as professionally incompetent.

Some other decisions that were discussed were *Jhunjhunwala v Dhanwanti Kaur*<sup>7</sup> and *Arunkumar Manglik v. Chirayu Health & Medical Care*<sup>8</sup>

Elaborate discussions succeeded on the point that a doctor should exercise a reasonable degree of skill and care coupled with a reasonable degree of care.<sup>9</sup> Deliberations were made on the four Ds to conclude negligence- Duty towards patient, Deficiency towards duty, directly resulted in injury (that is there should be a direct link between the negligence and the duty) and damage which may be physical, mental. Other points that were discussed are-

- Liability of the entity-doctors/hospitals or others
- *Parvat Kumar Mukherjee v Ruby General Hospital*<sup>10</sup>- Medical fee can wait, death cannot.
- Contributory negligence by the patient
- Use of mediation in medical negligence cases to be made effective by assuring the party that the settlement would be confidential.

## SESSION 5

### Consumer Disputes: Insurance Sector

**Speakers: Justice R.C. Chavan, Justice K. Kannan, Dr. S.M. Kantikar**

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<sup>3</sup> (1998) 4 SCC 39

<sup>4</sup> (2002)6SCC635

<sup>5</sup> (2011)1SCC31

<sup>6</sup> (2018) 13 SCC 224

<sup>7</sup> (2019)2SCC 282

<sup>8</sup> (2019)7SCC 401

<sup>9</sup> Dr. Laxman Balakrishna Joshi v. Dr. Trimbak Babu Godbole, AIR 1969 SC 128

<sup>10</sup> II (2005) CPJ 35.



A question was put forth to the participants that in how many cases are insurance companies made party to the case and do the insurance companies appear through their juniors just to seek adjournments? The participants while agreeing to the fact that more than fifty percent of the cases involve insurance companies as the party they agreed to the latter question too. Then the discussion moved on to the nature of defense that is generally taken, which are as follows:

- Terms and conditions of the contract
- Reference to an arbitral clause
- Suppression of fact by the complainant
- consumer at fault
- Misrepresentation
- Inflated claims
- Laches
- Continuous policies not provided
- Police investigation not over
- Inflated claims
- Driving under influence of alcohol , no proper driving license or own damage in vehicle insurance cases
- For medical negligence cases, non-disclosure of essential facts and fraud committed are the main defences

### **Dealing with the insurance sector**

All over the world as is understood, insurance business is to make payment. Therefore, the insurer should be always made liable to make the payment. The disclosure of the pre-litigation communication should be sought before beginning an enquiry. Then a check over the difference between the insurance cover and the amount claimed by the complainant is to be assessed. If the difference is small, then referral can be made to mediation to settle the dispute amicably. If the difference is big, then attempt should be made so that either of the parties scale up or down the claim. The need for consumer protection is on the account of gross imbalance of power between the insurer company and the ordinary person.

Insurance Regulatory and Development Authority (Protection of Policy-holders' Interests) Regulations, 2002 and some important judgments were discussed namely-

- *New India Assurance Co Ltd v. Satpal Singh Muchal*<sup>11</sup> – The Court held that lodging a complaint against the insurer cannot be held as a ground to deny renewal.
- *United India Insurance Co. Ltd. v Manubhai Dharmasinhbhai Gajera & Ors*<sup>12</sup> , wherein it was held that contracting illness during the period when the policy is subsisting cannot be a ground to refuse renewal.

### **Change in litigation culture: Using Mediation as a tool**

In many foreign countries, matters will be taken to any Court to settle an important position of law. Most of the matters are settled by mediation so that it can be amicably settled and do justice to the parties. Therefore, mediation should be encouraged as a tool to settle disputes wherever possible.

## **SESSION 6**

### **Consumer Dispute: E-Commerce**

**Speakers:** *Justice R.C. Chavan, Justice K. Kannan, Dr. S.M. Kantikar*

The session set in motion with thoughts on the definition of e-commerce as provided in the Consumer Protection Act, 2019 under Section 2(16). It was highlighted that that unlike the Sale of Goods Act, 1930, which has mention of *caveat emptor*, the Consumer Protection Act has brought in the concept of *caveat venditor*.

### **E-Commerce and Jurisdiction**

Previously, the issues of jurisdiction were a big one. However, the new Act has provided for extended jurisdiction. The Supreme Court has already upheld that access to justice is a fundamental right.<sup>13</sup> The discussion then moved on to Chapter VI of the 2019 Act which makes even service providers liable along with the product manufacturers. The consequences of this was illustrated as even if service providers like Amazon or Flipkart sells a product on their website without sufficient product information, it will be liable along with the product manufacturer. Reference was also made to Section 85 and Section 86 of the 2019 Act dealing with the liability of the product service provider and product seller respectively. It was remarked that as far as the liability of the service providers are concerned, the law does not require the guarantee of the quality of the product, but only guarantee the quality of the website. Since E-commerce promotes oligopolistic form of market, therefore a proper orientation of the consumer forum is necessary.

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<sup>11</sup> (2009) 12 SCC 673

<sup>12</sup> (2008) 10 SCC 404

<sup>13</sup> Anita Kushwaha v Pushap Sudan, (2016) 8 SCC 509.

The Court should now ordinarily accept jurisdiction and make the service provider also liable. Also it was suggested that the order should be made reasonably public.

### **Mediation as a tool in e-commerce**

Mediation should be preferably adopted as a method of settlement of disputes because- it will lead to the continuance of the relationship of the parties and secondly, it will resolve disputes amicably and thus do justice. Reference was drawn to U.S.A. where 80-85 percent of the cases are settled through mediation where the cases are not worth going through a trial. Mediation requires adequate manpower and mediation advocacy. Trained mediators are required in every district in places where there is a mediation center. Along with mediation, which might result in reducing the problem of overburdening of cases, efforts are being made to introduce artificial intelligence into the legal system.

## **DAY 3(24<sup>th</sup> November, 2019)**

### **SESSION 7**

#### **Determination of Compensation: Key Issues**

**Speakers:** *Justice K Kannan, Justice SG Gokani*

The session was introduced by specifying that the introduction of product liability as a separate chapter in the 2019 Act is a major change with respect to the issue of compensation. Prior to the enactment of the Act, a consumer would have to approach the civil court on account of any harm to the person, but the new Act enables the person to approach the consumer forum and get compensation as relief. References were made to Mahatma Gandhi's quote, who has considered commerce without morality as one of the seven sins.

#### **Quantification of damages**

Discussions were made on the types of compensation namely compensatory, economic, pecuniary and non-pecuniary. Compensation should include monetary loss, any mental suffering, a component of prevention of similar kinds of cases and a punitive component.

Some of the leading case laws discussed on the matter are-

- *Lucknow Development Authority v M.K.Gupta*<sup>14</sup>- Compensation to be proportionate to the injustice suffered by the consumers. The word “compensation” is a very wide connotation and includes physical, mental, emotional suffering, insult, injury or loss.
- *Huda and Anr. v Shakuntala Devi*<sup>15</sup> - Sine qua non for entitlement of compensation is proof of loss by the consumer due to the negligence of the opposite party..
- *V. Krishnakumar v. State of Tamil Nadu*<sup>16</sup> - The doctrine of vicarious liability, timely referral and standard precautions and relevance of proper and relevant record keeping.
- *Balram Prasad v. Kunal Shah*<sup>17</sup>- Non pecuniary damages to be awarded along with pecuniary ones.
- *Reshma Kumar v Madan Mohan*<sup>18</sup> - *Restitutio in integrum* (restitution to original)
- *R.D. Hattangadi v M/S Pest Control Pvt Ltd*<sup>19</sup> Non-pecuniary loss requires some amount of sympathy linked with the nature of the disability caused.
- *Divisional Controller KSRTC v Mahadev and Anr*<sup>20</sup> - Compensation cannot be determined on the basis of arithmetical precision. ‘Just’ compensation has to be rational and judicious approach has to be taken to determine it and should not be an outcome of whims, wild guesses and arbitrariness.
- *Spice Jet Ltd. v Ranju Aery*<sup>21</sup>-Compensation for deficiency in service

Deliberations were made on distinction between compensation and damage. Compensation comes from the word recompense. It is the translation in terms of monetary loss. Damage may include a component of compensation but it includes something more than that.

While awarding just and fair compensation, there must be an effort on the part of the complainant to mitigate the damage. After examining this, one should apply judicial standard, elicit the objective material evidence and then award compensation.

Thoughts were reflected on Section 14 of the 1986 Act and Section 39 of the 2019 Act which deals with the issue of compensation. Scope for compensation or damages under the Consumer Protection Act may be categorized into three- deficiency in service, defects in products and restrictive trade practice. The distinction between damages under contract and tort was discussed upon.

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<sup>14</sup>AIR 1994 SC 787

<sup>15</sup> (2017)2SCC 301

<sup>16</sup> AIR 2015 SCW 4283

<sup>17</sup> (2014)1 SCC 384

<sup>18</sup> (2009)13 SCC422

<sup>19</sup> AIR 1995 SC 755

<sup>20</sup> (2003)7 SCC 197

<sup>21</sup> (2017) 1 CPJ 546(NC)

There was a discussion on compensation issue in relation to death and personal injuries. A reference was made to the multiplier theory *Sarla Verma v DTC*<sup>22</sup>, *National Insurance v Pranay Sethi*<sup>23</sup> and *V. Krishnakumar v State of Tamil Nadu*.<sup>24</sup>

Some of the points which can impact in a reduction of the compensation or damages are contributory negligence of the complainant, laches, in pari delicto cases and when the plaintiff has been guilty of some wrong. It was emphasized that mediation as a tool to settle disputes should be referred to wherever possible.

## **SESSION 8**

### **Experiences and Challenges in adjudication of Consumer Disputes:**

#### **Open House Discussion**

**Speakers:** *Justice K Kannan, Justice SG Gokani*

The session was started by stating that when victims come for compensation, request is made to take a balanced approach. A question put forth for the purpose of exchange of views among the participants and the speakers - after an order is passed, can one directly send a person to jail, in case the order is not followed? A reference was made to Gujarat where cases like this case come up before the Court and there is no law settled on this. Most of the participants agreed to the view that a person cannot be arrested and sent to jail directly in case the order is not complied with. It was explained that right to be heard is a fundamental right of a person, therefore some reasonable opportunity must be provided to the person who is alleged to have not complied with the order to put forth his arguments. Not hearing the person might lead to a breach of natural justice. A question was put by one participant as to whether a judicial magistrate has the power to recall the process as this might oust his jurisdiction? It was deliberated that while settling disputes regarding consumer protection, one is invoking a civil law, therefore when one is invoking arrest, something must be grossly wrong.

Another noteworthy question that was put up by the participants was whether the consumer protection rules of the new Act will have a prospective or a retrospective effect? It was explained by the speakers that procedural laws are generally retrospective in nature, whereas the substantive laws are prospective in

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<sup>22</sup> (2009)6 SCC 121

<sup>23</sup> (2017) 16 SCC 318

<sup>24</sup> (2015) 9 SCC 388

nature. Since Rules are generally procedural in nature, therefore it will have a retrospective effect. A reference was made to *Salem Advocates Bar Association v Union of India*.<sup>25</sup>

Another pertinent question that came up was how to deal with matters involving private educational institutions where the Supreme Court has held that students are not consumers and such cases are not brought before the consumer forum? They will not have any other option but to approach the Civil Court.

It was contended by the speakers that to conform to the higher judiciary is a judicial discipline. However, if one is not satisfied with the position he/she might re-iterate his/her position that they would entertain such cases also to come before the consumer forum. Also when a person approaches a Court to contend that the Court does not have jurisdiction in a matter, it is for the person who claims the oust of jurisdiction to prove so.

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<sup>25</sup> (2005)6 SCC 344