

**National Conference of the Non-Judicial Members of the State Consumer Disputes  
Redressal Commission (Special Event)  
03<sup>rd</sup> - 04<sup>th</sup> January, 2015**

**Programme Report**

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The National Judicial Academy organized National Conference of the Non-Judicial Members of the State Consumer Disputes Redressal Commission (Special Event) during 03<sup>rd</sup> - 04<sup>th</sup> January, 2015. The main objective of this Conference was to enhance the capacity of the members of the SCDRC towards fair and speedy disposal of the consumer disputes. The Conference will focus on discussing main issues in the consumer dispute redressal at the state level and the proactive role of the members of the SCDRC. The discussions provided opportunity to participants to gain knowledge on the recent areas of Consumer laws. The resource persons included Justice V.B. Gupta, Justice J.D. Kapoor, Dr. Ashok Patil, Mr. R.K. Nair, Dr. S. M. Kantikar and Mr. George Cheriyan.

**Following are the main issues discussed in the Conference:**

**Session I:**

**Recent Trends in Consumer Rights and Unfair Trade Practices**

Consumer protection involves the legal framework along with the commitment of the government. Mr. George Cheriyan referred to the UN Guidelines on Consumer Protection 1985 which called upon all the states to develop and strengthen consumer protection laws. The Guidelines gave certain rights to all the consumers worldwide.

Mr. Cheriyan also referred to Indian Consumer Protection Act, 1986 which gives 6 rights to all consumers. Interestingly, the legislature has deliberately not included right to basic needs and healthy environment in it. Mr. Cheriyan called the three-tier redressal mechanism given under the Act of 1986 as the backbone of thus Act. But the problem remains whether this redressal mechanism is approachable to a common man. Mr. Cheriyan gave certain statistical highlights which is provided under the report published by the CUTS International, namely "*State of the Indian Consumers, 2012*", which has been declared as the official data by the government. The Report covered 19 states for the survey and the data was collected from the government agencies, consumer redressal bodies etc. He stated following:

1. Only 52% of the countries have a National Consumer Policy, which mainly include high income group countries. Indian Does not have any Consumer Policy.
2. Only 20% of the Indian population is aware of the Consumer Protection Act, 1986.
3. Only 42% of the Indian population is aware that there are certain consumer rights. The situation is worse in Southern states which have high percentage of literate population.
4. Only 0.3% have approached consumer forum, whereas 93% of the consumers have never made any formal complaint against their grievances. 78% feel that approaching consumer fora is difficult.
5. There is a huge backlog of pending cases with the consumer fora. 67% of the cases in the fora are not decided within the stipulated time period of 90 days.

6. In the Consumer Awareness Index, it was pointed out that highest awareness about consumer laws exist in UT of Chandigarh while the lowest is in the state of Bihar.

For the Unfair Trade practices, Mr. Cheriyan extensively dealt with the misleading advertisements. It was stated that self regulation has failed to curtail the evil practices of misleading advertisements. He further stated that the primary reason for such advertisements is that membership of Advertising Standards Council of India (ASCI) is not compulsory for all advertisers. Mr. Cheriyan further dealt with the limitations of the Consumer Forums in India in dealing with such an unfair trade practice, the primary among which being delay in deciding cases and lack of suo motu powers to investigate with the forums. He also made certain recommendations to restrain the practice of misleading advertisements, including:

1. Setting up an independent body for misleading advertisements.
2. Strict enforcement of existing laws.
3. Strengthening self regulation mechanism.
4. Empowering Competition Commission of India in this regard.

## **Session II**

### **Consumer Dispute Redressal Mechanism in India: Emergence and Overview**

Prof (Dr.) Ashok R Patil started by emphasizing the problems of business impact on consumers, which include High prices, deceptive practices, poor service, unsafe products and high pressure selling. He also highlighted the shift from the principle of Caveat emptor to Caveat Venditor wherein the liability is on seller. He referred to the survey by CUTS wherein it was found that only 18% of the population is fully satisfied with the redressal mechanism of the Act of 1986. About 89% of the cases are represented by the advocates when the system was meant to be non-adversarial. He pointed out main reasons of delay in consumer forum to be following:

- 1) Adjournments sought by advocates
- 2) Lack of adequate of Administrative staff
- 3) Education status of complaint
- 4) Vacancies of member/president in consumer
- 5) Limited number of benches
- 6) Limited Infrastructure
- 7) Delay in lab testing
- 8) Limited training initiatives
- 9) Financial status of complainant
- 10) Delay in service of summons and notice
- 11) Due to heavy pendency

He suggested that the State Commission should take lead in lobbying with the state government for the effective implementation of the Act. An independent department in the Ministry to enhance the process was also suggested. He referred to the National Bawla Committee Report where it was recommended to have additional benches for increasing number of cases. He made a reference to another survey by IIPA in 2013 where it was pointed out that it is because of delay that about 75.6% consumers are not coming forward to file complaint, about 84.6% consumer are not coming due to inadequate compensation and about 85% of consumers are not even aware of their rights. He also referred to the judgement of the Supreme Court in *Lukhnow development*

*authority v. M.K gupta* wherein it was held that the provisions of the Act have to be construed in favour of the consumers.

### **Session III**

#### **Break out Groups Discussion: Role of SCDRC in Enhancing Consumers' Access to Justice**

After the discussion, representative of group 1, 2 & 3 presented their views respectively. They suggested the following ways to enhance the consumer's access to justice:

#### **Group –I**

- 1) It is necessary to have awareness about the Consumer protection act and the remedies and for that there should be publicity in regional language.
- 2) When an appeal is presented against the order in favour of consumer, some cost should be given to him to bear the costs and contest the appeal.
- 3) When the litigant himself is coming to court then we can guide him about the necessary documents. Sort of a help desk
- 4) 24 December & 15 March should be celebrated by courts/forums and proper advertisements in paper Publicity can be done.
- 5) Involvement of law students in awareness programs.
- 6) Victims should be provided with the copies of important forms to file the complaint.
- 7) Publicity regarding the insurance policy taken by the government should done mainly the policies in interest of farmers.

#### **GROUP-II**

- 1) Introducing a new bench of district forum at Taluk Level as poor/rural people cannot reach the forum.
- 2) Impose cost on adjournments that should add up in the consumer's welfare fund to help the consumer financially.
- 3) Setting up a Help desk at the forum for guidance and help the people.
- 4) Priority should be given to poor and the needful.
- 5) SCDRC should ensure compliance of the order and should fix a date for execution / date of compliance.

#### **GROUP-III**

- 1) Rules should be laid down to govern the legal aid fund for the needful. Rules can help in effective use of welfare fund.
- 2) Creation of a help desk at every forum as already present in West Bengal. Establishing a Help Desk to help the consumer.
- 3) Publicity of Judgments in regular column of good judgments and monetary expenses for the same can be taken from Consumer Welfare Fund.
- 4) Timely decision making should be exercised.
- 5) Priority should be given to the handicapped/senior citizen/disabled people. Cases of such people should be heard first regardless of their serial number so that they do not face inconvenience.
- 6) If a consumer himself appears in the forum then those cases should be given precedence over cases represented by the advocates/counsel.
- 7) Complaints made by Postal services/ email should be accepted.
- 8) Whenever an appeal is filed then charge interest should be charge on the total deposited money.

- 9) Judgments should be published in English but the procedure could be in the regional language.

#### **Session IV**

#### **Scope and Ambit of Defects and Deficiencies in Consumer Disputes**

This round of session was addressed by the Hon'ble Resource person Justice V.B Gupta. Justice Gupta emphasized on the defects and deficiencies in consumer disputes. The Hon'ble spokesperson stated the following points:

- 1) The consumer protection act is very exhaustive and wide. He focused and deliberated about the Section 2(g) of the act, which defines 'deficiency' and it states 'any fault...' which cover fault of 'any' kind and he said that the language given in the act is very wide and exhaustive. He further cleared that Section 2(r) of the act covers even the unfair trade practices. Unfair trade practices amount to a deficiency under the ambit of section 2(r) of the act.
- 2) Justice Gupta urged the members to put stress on the bare provisions of the act as every detail is mentioned in the act. He further stated and clarified that the *proviso* mentioned in section 15 of the act regarding the amount deposited should be 50% is only for the admission stage and after that it's not restricted to 50% of the amount.
- 3) Further, he stated that every person is a consumer in daily life. The Hon'ble spokesperson also stated the reasons of delay in consumer forums. He stated very strongly that courts are not the real reason in most of the cases. Delay is caused due to further dates demanded by the parties and the advocates keep on filing applications for a further date. He supported the efficient working of the National commission and stated that NCDRC works very hard all day and the judges even do overtime service to clear the backlog of cases. He stressed on the point that the advocates are the reason for delay in trial as they keep on filing application to get another date of hearing. Courts are not delaying the matter, it's the counsel who are responsible the delay. He also stated that the commission cannot refuse any complaint and it has to register every complaint whatsoever in number.
- 4) He also stated that there should be a *Sue Motto* power in certain offences.
- 5) Companies should not be treated leniently.
- 6) He put light on the concept of Quick disposal i.e., one trial, one appeal. Right now there are 3 appeals available. Three chances are present now State Commission then National Commission and then to the Supreme Court.
- 7) Cost should be paid by demand draft to the complainant directly, else the lawyer takes it all.
- 8) He also cleared that High court does not have jurisdiction powers over writ petitions of consumer cases as The Consumer Protection Act is an special act.
- 9) Hon'ble Justice also made a vital suggestion that in a case if the culprit is a government official, then cost should be recover from the salary of the delinquent officer.

## **Session 5**

### **Insurance Sector and Consumer Disputes**

Mr. Nair emphasised the importance of consumer protection in insurance sector. He said there public confidence in the insurance sector. He gave reference to Sri Krishna Committee report. He again said that Consumer Protection is the core of improvement in Financial Sector. There are a number of entities channelising finances called intermediaries. These intermediaries hamper free flow of money rather than accelerating the process by increasing the cost. Banks are governed by RBI Act. Banks are important for the purposes of saving, investing, payment system of country, access to central bank funding, interconnections among banks, etc. There are a number ways aggrieved person in financial sector may get remedies in. There is an in house Grievance Mechanism which permits 27 grounds of deficiency. IDRA Grievance Redressal Cell and Insurance Ombudsman Scheme is superior to Banking Ombudsman. Here also a non adversarial system is followed and so there is no need to have an advocate. Such ombudsmen are headed by the following- insurance expert, civil servants, judicial officers, etc. There is an IGMS system where Complaints are lodged and Complainants are provided with Complainant number and Company shall reply to complain. This is a part of Corporate Governance. Many Companies have their own complaint mechanisms.

Two types of disputes are entertained here: claim related and policy related. There is also a problem of fraudulent calls to old persons in insurance sector. IRDA does not mandate any bonus from insurance companies. In Pension Sector there is PFRDA to meet needs of elderly persons, payment of annuity, important from social point of view and there is a scope for evolution of an ombudsman scheme. Mr. Nair told the importance of section 2 (o) of Consumer Protection Act. Financial Sector is a complex sector. There is an investment of about 4 lakh crores, 53 Companies and 1 reinsurance Company. Insurance is a contract between insurer and insured. There is a debate where there is caveat emptor and where there is caveat venditor. The main cause of dispute is information asymmetry due to lack of awareness and transparency. Then the importance of Insurance Frame work and Regulation in this sector by IRDA, Insurance Act and onsite and offsite inspection, etc. was highlighted. Grievance Redressal is by- grievance cell, IRDA, Arbitration, Conciliation, Ombudsmen, Consumer Courts and Civil Courts. He also talked about Financial Code. And reference was made to FSAT for appeals. Now Mr. Nair concluded by stating that regulators should be held accountable and also judicial oversight may improve the process.

J. Kapoor said that anomalies in this sector shall invite liability as deficiency of services. A lot of emphasis was made on good faith then why there is a need for certification of health condition demanded from public. He said that Consumer Protection is a socially beneficial legislation and so any interpretation in this respect shall be made in consonance with its social objective.

Insurance Companies are the richest. Policy distribution process is quick but when the turn comes to indemnify the procedure is slowed. Terms of insurance should be strictly benefited and any benefit of ambiguity shall be given to the consumer. Insurance sector is the biggest culprit and benefit of any ambiguity shall be given to the consumer. Agents should properly explain the policy to the consumer. Information should be recorded within 15 days. Cover note and Insurance policy shall have the same pedestal. Onus of prove of a non disclosure shall lie on the insurer. 90% people of India are diseased. No estoppel can be demanded against settlement. Meaning of “Agents” and “Insurance Agents” was explained by J. Kapoor. Insurance companies are the most criticized ones. Agents go to house of people to sell them policy and fool them. J

Kapoor said the defence of utmost good faith and non disclosure of material facts should be rejected due to dependence of the insured on insurance agents who fail to explain the policy properly. Insurance Companies are liable for act and omission of insurance agents vicariously. Any person who harasses consumers, compensation may be from salary of such person. J. Kapoor emphasized the importance of deterrence. After suffering a loss person goes to take indemnity from an insurance company. He should not suffer more mental agony after his loss. Insurance contract is an independent contract.

J. Kapoor now discussed the problem of Exclusion clauses in the contract of insurance. These clauses are the main culprit. They should be given meaningful meaning.

## **Session 6**

### **Medical Negligence and Consumer Disputes**

Dr. Kantikar explained level of care expected in medical cases which has been explained in the case of *Laxman Balkrishna Joshi v. Trimbak Babu Godbole*. There are various remedies available to an aggrieved in the case of medical negligence-civil, criminal and miscellaneous. Civil remedies are under Tort Law, Breach of Contract and Consumer Protection act. Criminal remedies are under IPC. Miscellaneous remedies are under Indian Dental Care Act, Indian Medical Council Act, etc. In order to prove a case of medical negligence four Ds are to be proved. Duty, Deficiency, Directly resulted injury and Damage. Duty of care may rest on any of the following: Doctor, Non medical staff and Institution. Establishment of responsibility is a vital task in such case. In inadequacy of nursing facilities Hospital is held responsible. In cases of anesthesia injection it is difficult to establish how much dose was required and whether there is any breach of any duty. There are multiple factors which should be considered. Drugs could have unknown side effects. It is difficult to ascertain when Duty of care starts.

In Stage 1 doctor shall ascertain whether to undertake case. There is a case where a neurosurgeon performs gall bladder related operation, which leads to death of lady, the doctor held liable. Super specialist should do his own work. In stage 2 the doctor shall decide what treatment should be given. In case a doctor misrepresented that he is a cardio surgeon fell in this discussion. Such a doctor shall be held liable. In stage 3 Actual administration of treatment takes place. Anomalies in this respect would also make a doctor or hospital liable.

Duty of care and standard of such care should be ascertained. Quality and suitability of a treatment should be explained. A hospital is mostly held responsible for employing unqualified doctors. Dr. Kantikar explained the case of *Bull v. Devon*.

There are various methods of assessment of standard of care. One of such test was evaluated in the case of *Bolam v. Friern*.<sup>[2]</sup> Bolam's test thus says that standard of care reflects standard of current practice and not the standard setting. In *Bolitho v. City and Hackney Health Authority*<sup>[3]</sup> Bolam's Test was challenged. In this test it was held that Expert opinion should be considered if they have logical basis which should be responsible, reasonable and respectable. Reference was made to Jacob Mathew's case and Martin D'souza's case.

Dr. Kantikar then discussed a direct link between negligence and injury should be established by establishing the proximate cause of an injury. Following practices may invite Liability in case of medical negligence- Denial of medical service, negligent maintenance of equipment, negligent

hiring and retention of employees and agents, negligent supervision. In the case of *Parvat Kumar v. Ruby General Hospital*[4] it was held that fees can wait but not death or treatment to save.

Then Dr. Kantikar discussed *Egg Shell Skull Rule*. The term implies that if a person had a skull as delicate as that of the shell of an egg, and a tortfeasor who was unaware of the condition injured that person's head, causing the skull unexpectedly to break, the defendant would be held liable for all damages resulting from the wrongful contact, even if the tortfeasor did not intend to cause such a severe injury. Thus the doctor is liable for all damages even if the damages are more serious because of the patient's pre existing illness or condition.

Res Ipsa Loquitor is also applicable in such cases. It means that the facts speak for themselves. Contributory negligence is a defense for such a doctor. But the onus of proof lies on the doctor. *Shaikh v. Vijay* is a case of ethical issue in this area.

Lack of informed consent invites a number of cases. In the case of *Manju Anil Chawla v. Jivandhara Hospital & ors.* patient herself concealed previous illness therefore there was no negligence. In the case of *Montu v. PGIMS, Rohtak* no negligence was allocated on the part of doctor because the person could not prove AIDS was caused due to negligence of doctor. In *Manipal Hospital v. Alfred Benedict* case the doctor was held negligent. In *Jayapal Reddy v. Yashoda Hospital & ors* it was held that negligence stands established due to unscrupulous hysterectomy.

Thus it was concluded that ethical dimensions of negligence should be judicially acknowledged. Then in the end of the session participants discussed issues relating to assignment of liability to pediatrics and gynecologists. Also another issue which was raised was that the prima facie duty has to be established by the complainant. Participant then discussed over the issue of ophthalmic operations.

## **Session VII**

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

The last session of the conference was addressed by **Justice J.D. Kapoor** and deliberated upon the compensation aspect in medical negligence. He stated that there are 7 principles for medical negligence which are ought to be followed:

- a. Whether the treating doctor had the ordinary skill and not the highest degree to treat the patient?
- b. Whether the doctor has done something or not done something and where any other prudent doctor would not do so?
- c. Whether the risk was such that death or injury was imminent?
- d. Whether there was an error of judgment in opting a particular line of treatment? Degree of error?
- e. What was the main cause of death? Whether it was a direct cause?
- f. Whether there was an administrative deficiency?

He further concluded that Principle of equity should be applied while granting compensation.

