

Introduction

Charaks' s oath (1000 B.C) and Hippocratic oath (460 B.C.) illustrates the duties and responsibilities of the persons who adopt the Noble profession of Medicine. "However, the events, which have been taking place in recent times, have raised doubts in the minds of members of society on the sincerity and commitment of those in the profession to adhere to the Hippocratic oath (460 B.C)." In fact, medical negligence is a matter of major concern today not only in India but all over the world. For instance, malpractice litigation has become rampant in the U.S.A. with colossal damages being awarded. AT the standards in the medical profession are deteriorating. ? Pursuits of money rather than the pursuit of excellence appears to be the most important motive force in patient care (Desh Pande, 1992).

Doctors are liable under the prevailing laws such as Civil Penal Code, Indian Penal Code, Law of Contractors, Sale of Goods Act, Law of Torts and other specific Legislation. ? Under S\section 304-A of the Indian Penal Code (IPC), the doctor who committee criminal liability is punishable with imprisonment for a term which may extend upto two years, or with a fine, or both. Civil liability arises in case of medical service rendered on payment of fee, under section 73 and 74 of the Indian Contract Act (L.D. Lele, 1992). Under the Law of Torts (a wrong that is independent of contract) civil liability is applicable to doctors of all categories, that is whether they provide their service for a fee or as charity without doctors committing professional misconduct and it can direct the removal of the name of any person enrolled on a State Medical Register on the Grounds of professional misconduct. ? the above mentioned laws have some drawbacks such as:-

1. Delay in Justice?
2. Huge legal fee
3. Limited access to the courts
4. Difficulties involved in proving both negligence and cause
5. Deficiency in IMC Act; Such as:
 - a. Lack of Provision to receive complaints from patients.
 - b. to award any compensation when negligence

Every profession has its guidelines and needs a scrutiny. Every professional body should ideally scrutinize whether their members are following the principles and practices as laid down by their ethics. Unfortunately MCI and other Associations have not been efficient, the only alternative is CPA 1986.

The CPA was passed by the Indian Parliament to safeguard and protection the interest of consumers. CPA aims at simplification of procedures for seeking redressal of grievances of patients or their relatives. The process can be initiated without any cost or without any court fee.

The principle of consumer protection is essentially the protection of the unwary customer against the trader, who might be unscrupulous in the quality of the saleable material to get rid off or the dictum of Cavest Emptor-Let buyer beware.

Who is liable:

1. Doctors with independent practice rendering only free services.
2. Private hospitals charging all.
3. All hospital having free as well as paying patients, they are liable to both.
4. Doctors/hospitals paid by an Insurance firm for treatment of a client or an employer for the treatment of an employee.

Who is not liable:

1. Doctors in hospitals which do not charge of their patients.
2. Hospitals offering free services to all patients.

Strength. weaknesses, opportunities & threats (swot) analysis of CPA:

SWOT analysis is the situational analysis in terms of strengths, weakness, opportunities and threats that can be studied for any questions has given ample scope for identifying, diagnosing and assessing the situation in the form of strengths, weakness, environmental threats and opportunities.

Swot Analysis of CPA

Strengths	Weaknesses
<ol style="list-style-type: none"> 1. Valued as noble profession 2. Professional pride that doctors have 3. Giant strides in the medical profession 4. Significant proportion of doctors 5. government commitment to protect the Rights of the Consumers. 6. Strong consumer movement in the country. 7. Influence of international consumer Movement. 8. The Hippocratic Oath that doctors Take at the time of Graduation. 9. Vigilant press. 	<ol style="list-style-type: none"> 1. Highly technical orientation of the Medical field 2. Declining credibility of medical Profession. 3. Highly prevalent professional jealousy. 4. Lack of objectivity and empirical Nature of several regimens 5. Growing commercialisation of medical profession. 6. Inept medical record keeping 7. Lack of sufficient staff in the consumer Forums. 8. Attitude of lawyers in frequently asking for adjournments. 9. Huge back log in clearing medical cases in consumer forums.

Opportunities	Threats
<ol style="list-style-type: none"> 1. Growing patient consciousness for quality care. 2. Successful application of the CPA to other services/goods. 3. Possibility of introducing medical audit has made. 4. Possibility of strengthening of MCI Agreeing to the application of CPA 5. Realisation of need for regular CME programmes. 6. Proven instances of medical negligence. 	<ol style="list-style-type: none"> 1. Low level of awareness Among patient. 2. Illiteracy and low socio-economic Status of patients. 3. Exaggerated claims encouraged by mercenary type lawyers. 4. Tendency of insurance companies to opt for out of court settlements. 5. Strong opposition extended by the IMA. 6. Growing urge to practice defensive medicine

Prevention of Malpractice Litigations;

“Prevention is better than cure”. Prevention can be done in three levels.

A) – Primary Prevention:

1. – Good Communication and informed consent:

The concept of informed consent has come to the fore in recent years and many actions have been brought by patients who alleged that they did not understand the nature of the medical procedure to which they have given consent. All information must be explained in comprehensible non-medical terms, preferable in local languages about the

- a. diagnosis
- b. nature of treatment
- c. risks involved
- d. Prospects of success
- e. Prognosis if the procedure is not performed, and
- f. alternative methods of treatment.

The physicians duty to disclosure is subject to the exceptions;

- a. if the patient prefers not to be informed, and
- b. if the doctor believes in the exercise of coming to sound medical judgement, that the patient is so disturbed or anxious that the information provided would not be processed rationally or it would probably cause significant psychological harm. This is known as therapeutic privilege. In such a case it is advisable that the

doctor should consult the patient's family physicians. Revelation of risk is always a compromise between reasonable information and the danger of frightening off the patient from beneficial treatment, The three important components of such consent are information, voluntariness and capacity.

2. – Defensive Medicine:

An off-shoot of protection against CPA is defensive medicine. Medical professionals of late, started practicing defensive medicine in order to protect themselves against overzealous patients complaints. It is not easy to practice defensive medicine. The patient can also sue a doctor for over prescribing or unnecessary hospitalization. In U.S.A. there is a system in which there are periodic checks to see if doctors are unnecessarily subjecting patients to a wide range of tests or keeping them in hospitals on flimsy minor grounds. In a country like India wherein the patients are by and large from lower socio-economic strata it becomes very difficult for treating physicians to go in for defensive medicine as it costs heavily the patient who can ill afford such a treatment approach.

B) Secondary prevention:

Some cases of negligence or deficiency of services will come up to the Court or Forum even after adequate precautions are taken.

1. The State Medical Council should be better empowered and have a separate complaints cell. It should ideally consist of:
 - a. Office bearer of MCI
 - b. Judge
 - c. Prominent public figure

This will stop unnecessary litigations and provide true justice.

2. Accreditation of Hospital – A system of accreditation of private hospitals and Nursing Homes have to be introduced in order to achieve and maintain the optimum standard of diagnosis and care.
3. Quality Assurance programme: a system of quality assurance programme is to be introduced as a regular feature in every hospital. The measurements involve two basic concepts.

They are:

- a. Quality art of care
- b. Technical art.

4. Proper Medical Records: the hospital should ensure the entries made in its medical records are thorough and proper.? The medical records are thorough and proper.? The medical record is often the single most important document available to the hospital in the defence of a negligent action and ordinarily is admissible as evidence of what transpired in the care of patient.
5. Regular patient satisfaction surveys to detect early any areas of patient dissatisfaction and take prompt, preventive/corrective action.

Tertiary prevention:

The following innovative methods are being practiced in the Western world to counter the adverse outcome of the CPA, in India also these practices may be emulated.

A) Medical indemnity insurance:

It covers in respect of errors and omission on the part of professional rendering their services. The Insurer should send a proposal from and renew it for subsequent period. The policy will damnify any act committed by the insured who shall be a registered medical practitioner, giving rise to any legal liability to third parties. The limit of indemnity granted under the policy is for any one policy is Rs. 1000/- compulsory excess or voluntary excess applicable.

R.D. Lele, 1992 opines that the doctors should be careful in not disclosing the medical indemnity insurance coverage for the simple reason that, the patient may exploit it for litigation purposes.

B) Counter Suits:

In order to prevent harassment from overzealous patients, in some of the advanced countries the medical professionals have started the concept of counter suits. In this the doctors initiate counter suits against patients for being sued without valued grounds. In a survey in U.S.A. counter suing of patients by doctors brought down the incidence of malpractice suits by almost 75percent. This has encouraged many doctors to resort to a similar strategy and their lawyers who sue doctors without any rhyme or reason (R.D. Lele, 1992)

Doctors and the Consumer Protection Act

The recent landmark judgement by the Supreme Court, stating that medical services to patients, for which fees are charged, come under the purview of Consumer Protection Act 1986, has put a curtain on the long- drawn-out debate between doctors and consumers on the issue. Whilst the matter was still under deliberation by the Court, several claims were made from within the medical profession, probably as part of a strategy. Consumer courts were not equipped or competent to judge on intricate medical matters involved in medico-legal litigation, implying that

there was wide scope for injustice. Once their powers were augmented, medical councils, and not Consumer Courts, should take these matters up. The Consumer Protection Act would ultimately be against the interests of patients because there would be defensive medicine. These arguments release a lot of hot air but shed no light. Now that the dust has settled it is worth examining how the medical community has responded to the very positions it tried to take.

During the past two years - whilst the case was before the Supreme Court - there was a public uproar on the kidney transplant racket. How did the medical community- and the medical councils in our various states - respond to it? Many doctors knew of those who had indulged in such practices but chose to be tight-lipped bystanders. The medical councils stirred into a semblance of activity only after the media turned on the heat. Their activity seems to have conveniently petered out. But then, historically, the medical councils, meant to be the guardians of ethical standards in medical practice, have chosen to look the other way, avoiding taking action and even neglecting to exercise the powers they already have. How, then, can the argument -- that the medical community in general and medical councils in particular would provide adequate regulation and redressal to safeguard the plight of patients were they granted extra powers -- inspire confidence?

As regards defensive medicine, by its very nature, it will be intended to safeguard the interests of the doctor.

Transferring the expenses incurred on this account to patients will constitute an unfair practice under the Consumer Protection Act. Does this mean that the doctor is to be defenseless? The need for such defense would be minimised if we had standard protocols for the investigation and treatment of common diseases. We understand that the Indian Academy of Paediatrics is evolving protocols for paediatric problems. This is a step in the right direction. As long as the doctor follows nationally accepted protocols, normally he cannot be accused of negligence or malpractice.

The bench of the Consumer Court is headed by a retired judge who can avail of expert services if and when needed. In Bombay, the court requires the complainant to provide attestments from two medical doctors that there is a basis for admitting the case. This means that when the case against a doctor is before the CPA court, at least two medical doctors feel there is prima facie merit in it: What is more, if the complaint proves to be frivolous, the complainant can be fined upto Rs. 10,000/- Surely, there is no room for apprehension. The judgement, by itself, does not encourage the filing of suits against doctors. By and large, the Indian citizen does not like to litigate.

Is the Consumer Protection Act a dampener for medical practice? I do not think so. On the contrary, taken in the right spirit, it is a boon for ethical, patient-oriented doctors. Doctors claiming to adhere to ethics have always lamented that colleagues stooping to unethical practices have an unfair advantage because there is no control over these practices. The CPA should help in curbing this unfair advantage.

If doctors would like fewer legal restrictions on themselves, they must regulate - and be seen to regulate - themselves through adherence to the principles of medical ethics.

WHO is QUACK ?

A quack is a person who pretends to have knowledge which he does not possess; who promises to do what he is either not sure he can perform or what he is certain he cannot perform; who represents his practice to be more successful than that of other men; who pretends to cure diseases known and admitted to be incurable; whose manner is confident and imposing; whose tone and language are unhesitating and boastful; who employs remedies, the nature and

composition of which he keeps unknown and who deals in specifics and universal remedies. He is addicted to handbills, newspapers and similar modes of making known his pretensions and proceedings. This is the quack and the conduct of this man is quackery.

Consumer Protection - Frequently Asked Questions Answered

- [Who can file a complaint and What are the issues to consider when filing a consumer complaint?](#)
- [Where do I file my complaint and How many Consumer Forums / Courts are there in India? Do other Courts \(District Courts/High Courts\) accept consumer disputes?](#)
- [What Do I Put In My Complaint ? Is There A Fee For Filing A Complaint ? Is There Any Time Limit For Filing A Complaint ?](#)
- [Do I Have To Be There Myself To File A Complaint ? Can More Than One Consumer File A Single Common Complaint ?](#)

- [How Do I Inform The Opposite Party about the complaint ?](#)
- [Can I Approach The Consumer Courts If I bought the Goods or Services for Commercial Purposes?](#)
- [What are the Rights of a Consumer ?](#)
- [What should I do in case my Rights as a Consumer are violated?](#)
- [What are some other useful tips in case of defective products?](#)
- [What are the required documents and facts?](#)
- [What are my legal rights?](#)
- [Have I exhausted all other remedies?](#)
- [Can I still go to Court if my complaint is redressed in part?](#)
- [If some one performs a free service for me which is defective can I still approach the courts for any relief ?](#)
- [What relief can I expect on my complaint for defective products?](#)
- [What are the questions that would help you sustain your case?](#)
- [What Does The Act Apply To?](#)
- [Can I Argue And Present My Complaint In Court Myself?](#)

- **Address of National Consumer Forum and State Consumer Forums in India**

2. PREVENTIVE MEASURES

How To Avoid Litigation

GENERAL GUIDELINES FOR LEGAL DEFENSE

Not defending yourself and hospital is negligence. We should always make all possible points in defense in first instance of making a reply to the complainant. Subsequent points during hearing of the case are liable to be rejected.

- **TECHNICAL DEFENSES**
- **FACTUAL DEFENSES**

TECHNICAL DEFENSES

1. The medical service rendered was free of charge (now, this is applicable in certain situations only).
2. Concurrent adjudication in another court.
3. The court does not have pecuniary/territorial jurisdiction.
4. Complaint is time-barred.
5. Complicate issues involved, required recording of evidence of experts, hence case should be relegated to a civil court. Such a plea must be taken at the beginning of the trial.
6. The complaints are frivolous and vexatious and liable to be dismissed under section 26 of the Act.
7. Inform your insurance company in writing with a copy of the complaint.

FACTUAL DEFENSES

1. Mention your qualifications, training, experience, expertise etc. Support with relevant documents.
2. Mention hospital infrastructure facilities, special facilities, back-up support, etc. with documents.
3. Complainant has not come to the court with clean hands i.e. he has suppressed material facts, e.g. previous illness, treatment etc.
4. Inconsistency between notices sent directly or through consumer groups and the complaint made in the court.
5. Written evidence of consent of the patient/relative/attendant to assumption of inherent and special risks in the treatment.
6. Circumstances of the case; viz. There was an emergency, lack of facilities (e.g. rural area) no one to give history of patient's illness etc.
7. Burden of proof of:
(i) duty of care; (ii) breach of that duty; (iii) causation; (iv) damage, etc. is on the complainant.

8. Reasonable knowledge, skill and care exercised (Rely/quote standard text books with attested photocopies).
9. Consolation/treatment by patient from other doctor/other systems of medicine simultaneously.
10. Many other reasons/more than one reason/for occurrence of damage.
11. Contributory negligence.

3. DO'S AND DON'TS FOR DOCTORS

Do's for Doctors

- Mention your qualifications/ training/ experience/ designation on the prescription. Qualifications mean recognized degrees/ diplomas as regulated by the Indian Medical Degrees Act, 1916 as amended from time to time. Mention of scholarships/ membership/ awards which are no qualifications should be avoided.
- Always mention date and timing of the consultation.
- Mention age and sex of the patient. In a pediatric prescription weight of the patient must also be mentioned.
- Always put your hand on the part that the patient/ attendant says is painful. Apply your stethoscope on him, even if for cosmetic reasons.
- Listen attentively. Look carefully. Ask questions intelligently.
- If, after completing the examination, the patient/ attendant feels that something has been left out or wants something to be examined, oblige him.
- Always face the patient. Do not stare. Some patients tolerate very little eye contact. Learn to observe out of the corner of our eyes.
- In case you have been distracted/ inattentive during the history taking, ask the patient/ attendant to start all over again. He will never mind it. As far as possible consultations should not be interrupted for non-urgent calls.
- Ask the patient to come back for review the next day, in case you have examined him hurriedly or if you are not sure about the diagnosis/ treatment.
- Mention "diagnosis under review" until the diagnosis is finally settled.
- In complicated cases record precisely history of illness and substantial physical findings about the patient on your prescription.
- If the patient/ attendants are erring on any count (history not reliable, refusing investigations, refusing admission) make a note of it or seek written refusal preferably in local language with proper witness.
- Mention the condition of patient in specific/objective terms. Avoid vague/ non-specific terminology.
- Record history of drug allergy.
- Write names of drugs clearly. Use correct dosages (by revising knowledge periodically) and mention clearly method and interval of administration. Here one must use local or sign language. Do not forget writing precautions like Ast./ p.c./ a.c./ locally/ with milk/ h.s.etc. in local language.
- If a drug is a poison (e.g., certain local applications), warn in writing.
- Mention additional precautions, e.g., food, rest, avoidance of certain drugs, allergens, alcohol, smoking, etc., if indicated.
- Give instruction to the patient in comprehensible terms, making sure that the patient understands both the instruction and the importance of strictly adhering to them, e.g., while prescribing to potent anti-inflammatory drug, warn that if he experience any stomach trouble he should stop taking the drug and consult a doctor immediately.

- Mention likely side-effects, and action to be taken if they occur.
- Remember to advise in writing pathological tests/ radiological tests at specified intervals for certain drugs which require such monitoring if such drugs are prescribed. Some examples are: Sodium Valporate, Carbamezapine, Gold Salts, Methotrexate and other immuno-suppressives, Chloramphenicol, etc.
- Always advise the patient not to stop taking a drug suddenly which is required to be tapered before it is stopped.
Remember major drug interactions.
- Specifically mention review, SOS/or follow-up schedule.
Mention if patient/ attendant are/ is under effect of alcohol/ drugs.
In case a particular drug/equipment is not available, make a note.
Prescribe with caution during pregnancy/ lactation.
- Adjust doses in case of a child/ elderly patient and in renal or Hepatic disorders.
- In case of chronic ailments, mention treatment to be taken immediately in case of an emergency. For example, a patient on anti-epileptic treatment should be advised to take an injection of diazepam when convulsions occur.
In case of any deviation from standard care, mention reasons.
- Mention whether prognosis explained. If necessary take a signature of patient/ attendant, after explaining the prognosis in written local language.
Mention where the patient should contact in case of your non-availability/ emergency.
- If you are not sure what disease a patient has after a through work-up, get a consultation. Develop a list of physicians you trust and respect in each of the specialties. Nurture your relationship with them, and consult them about difficult cases.
- Whenever referring a patient, provide him with a referring note.
In case of emergency/ serious illness, ring up the concerned doctor in the patient's presence. Show your concern. Always keep with you and refer the latest edition of the standard text book of your branch of medicine. Always subscribe to at least one standard journal and participate in at least updates/ conferences every year.
- Update your knowledge and skill from time to time. If a doctor does not keep pace with recent advances, the quality of care suffers and does not measure upto the standards of reasonable care and skill. Many doctors tend to deteriorate in their knowledge, skills and attitude, over a period to time. Not only do they not make any attempt to update themselves but they slip downwards. (Doctors may become incompetent due to other causes: age, mental illness, addiction to alcohol or drug abuse.)
- Update not only your own knowledge and skill, but also that of your staff.
Update the facilities and equipment according to prevailing current standards in your area.
- Preferably employ qualified assistants. If not available, impart proper training and skill at your or some appropriate centre and obtain a certificate for the same.
- Medication to relieve pain especially in post-operative and cancer cases must be carried out carefully.
- Always obtain a legally valid consent before undertaking surgical/ diagnostic procedure. Learn the difference between "informed persuasion" and "informed consent". The first is legally wrong, though at times it may be medically correct. (For details on consent, see under "Preventive Steps Against Litigation" in "Medical profession and Consumer Protection Act", 1994 edn.) In

case of MTP/ Sterilization, always follow the guidelines issued by the Government of India (See Appendix VI in Medical Profession and Consumer Protection Act, 1994 edn.)

- While administering an injection/vaccination always check:
 1. Name of the injection (a wrong injection may be given by mistake or oversight);
 2. Expiry date;
 3. Reconfirm the route of administration;
 4. If it is to be diluted, check the dilution factor (1:2, 1:4 etc.);
 5. Rate of administration (fast, slow, in drip, etc.);
 - 6 Site of infection, e.g. antero-lateral, thigh, if age 1 year, gluteal region, deltoid, etc.;
 7. That a disposable syringe and needle are used. If that is not possible, use syringe and needle after proper sterilization.
 8. In case the patient is agitated/ not co-operating, restrain him properly with 1 or 2 assistants or wait until he calms down. It is not unusual for a broken needle leaking to a claim for compensation;
 9. Confirm that it has been kept at the required temperature;
 - 10 If required to be reconstituted, check the diluent and whether it has got to be cooled before using.
- Routinely advise X-rays in injury to bones and joints and related diseases of bones/ joints.
- Always rule out pregnancy before subjecting the uterus to X-ray. Always read reports carefully and interpret the results of tests/ X-rays properly and make a note of it.
- In all instances of "swab cases" and "instrument cases", the surgeon in charge has been directly or vicariously held liable for negligence. The surgeon in charge must therefore personally ensure that such mishaps do not occur. The period for the responsibility of the surgeon extends to and includes the post-operative care. He must therefore ensure proper post-operative care to the patient.
- Always seek proper legal and medical advice before filing reply to the complainant referred to you from a consumer court.

Don'ts for Doctors

- Don't prescribe without examining the patient, even if he is a close friend or relative (Telephone advice is an exception).
- Never examine a female patient without presence of female nurse/ attendant, especially during genital and breast examinations.
- Don't insist on the patient to tell the history of illness or be examined in presence of others. He has right to privacy and confidentiality.
- Do not permit considerations of religion, nationality, race, party, politics or social standing to intervene between you and your patient.
- It may not be reasonable for a doctor to assume what the patient is saying is truthful where what the patient/ attendant says is clearly contradicted by the symptoms.
- Don't smoke while examining a patient.
- Don't examine a patient when you are sick, exhausted, or under influence of alcohol or any intoxicated substance.
- Don't be overconfident. Don't look overconfident.
- Don't prescribe a drug or indulge in a procedure of you cannot justify its indication.

- Don't prescribe a drug or indulge in a procedure of you cannot justify its indication.
- Don't prescribe/ administer a drug which is banned, e.g. Analgin.
- Don't over-prescribe/ administer: too much of the drug, too large a dose, for too long.
- Don't under-prescribe: not prescribing the needed drug, dose is too small, length of treatment is too short.
- Don't prescribe multiple drugs. Such prescription may be due to inability to form a correct diagnosis or other causes. Possibilities of drug interactions increase with polypharmacy.
- Don't write instructions on a separate slip. Don't allow substitutions.
- Don't adopt experimental method in treatment. If there is some rationale do it only after informed consent.
- Don't do anything beyond your level of competence. Competence is defined by your qualification, training and experience.
- Don't give a drug parenterally if it can be given orally. There may be some exceptions.
- When you are not sure what and why to do. Consult your senior/ specialist/ colleague.
- Don't refuse if the patient/ attendants want to leave against medical advice. It is their right. Document this properly.
- Never avoid a call for help from a nurse on duty at night. In all probability a genuine emergency may be there.
- Never order an investigation unless the result is likely to help you direct the treatment or make a difference in what you tell a patient.
- Don't allow modern diagnostics tests to substitute your clinical judgment. At best, they can only supplement it. Always analyze the cost-benefit ratio before rushing to get these tests done. In case a particular test had high false positive or false negative results, explain this to the patient before getting it done.
- Never label any condition as "functional" until you are as certain as possible of the accuracy.
- Don't withhold information, however, harsh and difficult, in seriously/ terminally ill patients. It must be conveyed with compassion and gradually, if time permits. The doctors and especially their assistants must train in the art of sensitive communication. It would be wise to take into confidence the family members, close relatives and friends, this would often make the acceptance easier and quicker.
- Don't leave at the moment of death. There is a tendency especially on the part of senior doctors to go away at this time when his presence and experience are most needed.
- Don't hesitate to extend your condolences and sympathies to the bereaved persons. Don't forget to provide genetic counseling to couples and parents with known family history/ children having genetic abnormalities, e.g., Thalassemia, Hemophilia, etc.
- Don't issue death certificates unless you have yourself verified it.
- Don't divulge secrets you come to know during discharge of your professional duties. There are five exceptions to this general principle;
 1. if the patient gives consent;
 2. when it is undesirable on medical grounds to seek a patient's consent;
 3. the information is required by due legal process;
 4. for the purposes of medical research, after obtaining permission from competent authority.

- Don't deny medical care to a patient with HIV infection/ AIDS. Observe all necessary precautions.
- Don't inform that the person is infected with HIV unless confirmatory test results are received. Don't give untrue, misleading or improper reports, documents, etc.
- Don't refuse the patient's right to examine and receive an explanation about your bill regardless of the source of payment; whether or not it is reimbursed by the government or by his employer/ insurance company.
- Don't refuse the patient's right to know about the hospital rules and regulations.
- Never talk loose of your colleagues, despite intense professional rivalry. Never criticise⁴ your brother in profession. The patient/ attendants may incite you to say/ do something. They may seek your comments on the other doctor's treatment. There is always a polite way to set aside their comments and queries. Remember if you ha seen the case from the start you would have done the same. If your colleague has made an error of judgment regarding diagnosis or treatment, you never know under what circumstances this happened.

Consumer Protection Act (CPA) related to Medical Profession

INTRODUCTION

The Doctor patient relationship in our country has undergone a sea change in the last decade and a half. The lucky doctors of the past were treated like God and people revered and respected them. We witness today a fast pace of commercialization and globalization on all spheres of life and the medical profession is no exception to these phenomena. As a result, the doctor-patients relationship has deteriorated considerably. Earlier too, doctors were covered by various laws, i.e. the Law of Torts, IPC etc., but since the passing of the Consumer Protection Act in 1986, litigation against doctors is on the increase. The medical profession is definitely perturbed by this and a rethink is necessary on standards of medical practice or 'defensive medicine'.

Surgeons/Urologists busy themselves in acquiring knowledge, perfecting operative techniques and assimilating the newest technologies that are evolving so rapidly. Sometimes the course of the disease or therapeutic decisions does not run along predictable lines. The patient-doctor relationship is then put to test.

Doctors practicing ethically and honestly should not have any reason for fear. Law whether civil, criminally or consumer law, can only set the outer limits of acceptable conduct i.e. minimum standards of professional care and skill, leaving the question of ideal to the profession itself.

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(After including the amendments made vide the Consumer Protection (Amendment) Act, 2002 [62 of 2002] which was passed by Rajya Sabha on 11.4.2002, Lok Sabha on 30.7.2002{with some amendments} and again by Rajya Sabha on 22.11.2002 and the President of India gave assent on 17. 12.2002 and the notification was issue on 18.12.2002. The provisions of the Act are being brought into force w.e.f. 15.3.2003.

Amendments are shown in bold & italic form

The Consumer Protection Act, 1986

(68 of 1986)

24th December; 1986

An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

PRELIMINARY

CONSUMER PROTECTION COUNCILS

CONSUMER DISPUTES REDRESSAL AGENCIES

MISCELLANEOUS

CHAPTER I

PRELIMINARY

1. **Short title, extent, commencement and application.**—(1) This Act may be called the Consumer Protection Act, 1986.
 - (2) It extends to the whole of India except the State of Jammu and Kashmir.
 - (3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.
 - (4) Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.
2. **Definitions.** - (1) In this Act, unless the context otherwise requires,—
 - (a) "appropriate laboratory" means a laboratory or organisation—
 - (i) recognised by the Central Government;
 - (ii) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or
 - (iii) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or

test of any goods with a view to determining whether such goods suffer from any defect;

- (aa) "branch office" means—
- (i) any establishment described as a branch by the opposite party; or
 - (ii) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment;
- (b) "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;
- (c) "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;
 - (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;";
- (d) "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;

- (e) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.
- (f) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods;
- (g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;
- (h) "District Forum" means a Consumer Disputes Redressal Forum established under clause (a) of section 9;
- (i) "goods" means goods as defined in the Sale of Goods Act, 1930 (3 of 1930);
- (j) **“manufacturer” means a person who—**
 - (i) **makes or manufactures any goods or part thereof; or**
 - (ii) **does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or**
 - (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer;

Explanation. — Where a manufacturer dispatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so dispatched to it are assembled at such branch office and are sold or distributed from such branch office;

- (jj) "member" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;
- (k) "National Commission" means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;
- (l) "notification" means a notification published in the Official Gazette;
- (m) "person" includes,—
 - (i) a firm whether registered or not;
 - (ii) a Hindu undivided family;

- (iii) a co-operative society;
- (iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not;
- (n) "prescribed" means prescribed by rules made by the State Government, or as the case may be, by the Central Government under this Act;
- (nn) "regulation" means the regulations made by the National Commission under this Act;**
- (nnn) "restrictive trade practice" means a trade practice which tends to bring about manipulation of price or conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—**
 - (a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;**
 - (b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services;
- (o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;
- (oo) "spurious goods and services" mean such goods and services which are claimed to be genuine but they are actually not so;**
- (p) "State Commission" means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9;
- (q) "trader" in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;
- (r) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely;—
 - (1) the practice of making any statement, whether orally or in writing or by visible representation which,—
 - (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
 - (ii) falsely represents that the services are of a particular standard, quality or grade;
 - (iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
 - (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
 - (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(viii) makes to the public a representation in a form that purports to be—

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation. - For the purposes of clause (1), a statement that is—

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation. .—For the purpose of clause (2), "bargaining price" means—

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

(b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(3) permits—

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;

(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(3A) withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme.

Explanation. — For the purposes of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time, published, prominently in the same newspapers in which the scheme was originally advertised;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

(6) manufacture of spurious goods or offering such goods for sale or adopts deceptive practices in the provision of services.

(2) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

3. **Act not in derogation of any other law.**—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

CHAPTER II

CONSUMER PROTECTION COUNCILS

4. **The Central Consumer Protection Council.**—(1) The Central Government *shall*, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).

(2) The Central Council shall consist of the following members, namely:—

- (a) the Minister in charge of the consumer affairs in the Central Government, who shall be its Chairman, and
 - (b) such number of other official or non-official members representing such interests as may be prescribed.
5. **Procedure for meetings of the Central Council.**—(1) The Central Council shall meet as and when necessary, but at least one meeting of the Council shall be held every year.
- (2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.
6. **Objects of the Central Council.**—The objects of the Central Council shall be to promote and protect the rights of the consumers such as,—
- (a) the right to be protected against the marketing of goods and services which are hazardous to life and property;
 - (b) 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;
 - (c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
 - (d) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;
 - (e) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
 - (f) the right to consumer education.
7. **The State Consumer Protection Councils.**— (1) The State Government shall, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council for..... (hereinafter referred to as the State Council).
- (2) The State Council shall consist of the following members, namely:—
- (a) the Minister incharge of consumer affairs in the State Government who shall be its Chairman;
 - (b) such number of other official or non-official members representing such interests as may be prescribed by the State Government.
 - (c) ***such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.***
- (3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.
- (4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.
8. **Objects of the State Council.** — The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of section 6.
- 8A. (1) ***The State Government shall establish for every district, by notification, a council to be known as the District Consumer Protection Council with effect from such date as it may specify in such notification.***
- (2) ***The District Consumer Protection Council (hereinafter referred to as the District Council) shall consist of the following members, namely:—***

- (a) *the Collector of the district (by whatever name called), who shall be its Chairman; and*
 - (b) *such number of other official and non-official members representing such interests as may be prescribed by the State Government.*
 - (3) *The District Council shall meet as and when necessary but not less than two meetings shall be held every year.*
 - (4) *The District Council shall meet at such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.*
- 8B. The objects of every District Council shall be to promote and protect within the district the rights of the consumers laid down in clauses (a) to (f) of section 6.

CHAPTER III

CONSUMER DISPUTES REDRESSAL AGENCIES

9. **Establishment of Consumer Disputes Redressal Agencies.** - There shall be established for the purposes of this Act, the following agencies, namely:—
- (a) a 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.
 - (b) a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government in the State by notification; and
 - (c) a National Consumer Disputes Redressal Commission established by the Central Government by notification.
10. **Composition of the District Forum.** — (1) 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—
 - (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 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, namely:—

- (i) the President of the State Commission — Chairman.
- (ii) Secretary, 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.

(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 (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.

11. Jurisdiction of the District Forum.—(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.

(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.

12. Manner in which complaint shall be made.—(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by –

- (a) *the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;*
- (b) *any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;*
- (c) *one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or*
- (d) *the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.*

(2) *Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.*

(3) *On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:*

Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

(4) *Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:*

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

Explanation. - For the purpose of this section “recognised consumer association” means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force”.

13. Procedure on admission of complaint. — (1) *The District Forum shall, on admission of a complaint, if it relates to any goods,—*

- (a) *refer a copy of the admitted complaint, within twenty-one 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 thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;*

- (b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);
- (c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;
- (d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;
- (e) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;
- (f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;
- (g) the District Forum 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 as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 14.

(2) the District Forum shall, if the complaint admitted by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,—

- (a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;
- (b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute,—
 - (i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or

(ii) *ex parte* on the basis of 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 Forum.

(c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.

(3) No proceedings complying with the procedure laid down in subsections [1] and [2] shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

(3A) Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:

Provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum:

Provided further that the District Forum shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that in the event of a complaint being disposed of after the period so specified, the District Forum shall record in writing, the reasons for the same at the time of disposing of the said complaint.

(3B) Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness, and

(vi) any other matter which may be prescribed.

(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.

- (7) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

14. Finding of the District Forum. — (1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:—

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (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 the negligence of the opposite party.

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;

- (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 the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;

(ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(hb) 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:

Provided that the minimum amount of sum so payable shall not be less than five per cent. of the value of such defective goods sold or service provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

- (i) to provide for adequate costs to parties.

- (2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

- (2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

- (3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

- 15. Appeal.** — Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not finding it within that period.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent. of that amount or twenty-five thousand rupees, whichever is less:

- 16. Composition of the State Commission.** — (1) 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 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 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 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.

(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, 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.

17. Jurisdiction of the State Commission. — (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 compensation, if any, claimed exceeds rupees **twenty lakhs** but does not exceed rupees **one crore**; and

(ii) appeals against the orders of any District Forum within the State; and

(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 the State, where it 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 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 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 State Commission 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.

17A. Transfer of cases. - On the application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

17B. Circuit Benches.-The State Commission shall ordinarily function in the State Capital but may perform its functions at such other place as the State Government may, in consultation with the State Commission, notify in the Official Gazette, from time to time.

18. Procedure applicable to State Commissions.—The provisions of Sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

(18A. Omitted)

19. Appeals.—Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal

against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent. of the amount or rupees thirty-five thousand, whichever is less:

- 19A. Hearing of Appeal** - *An appeal filed before the State Commission or the 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 ninety days from the date of its admission:*

Provided that no adjournment shall be ordinarily granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission:

Provided further that the State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that 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.

- 20. Composition of the National Commission.**—(1) 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 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 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; or**
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or**
- (e) has in the opinion of the Central Government such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or**
- (f) has such other disqualifications as may be prescribed by the Central Government :**

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

- (a) a person who is a Judge of the Supreme Court, —
Chairman;
to be nominated by the Chief Justice of India**
- (b) the Secretary in the Department of Legal Affairs —
Member;
in the Government of India**
- (c) Secretary of the Department dealing with consumer —
Member.;
affairs in the Government of India**

- (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.**

- (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 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.**
- 21. Jurisdiction of the National Commission.** — 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 compensation, if any, claimed exceeds rupees **one crore**; and
 - (ii) appeals against the orders of any State Commission; and
- (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 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 the exercise of its jurisdiction illegally or with material irregularity.
- 22. Power of and procedure applicable to the National Commission.** — (1) *The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.*
- (2) *Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.*
- 22A. Power to set aside ex parte orders.** - *Where an order is passed by the National Commission ex parte against the opposite party or a complainant, as the case may be, the aggrieved party may apply to the Commission to set aside the said order in the interest of justice.*
- 22B. Transfer of cases** - *On the application of the complainant or of its own motion, the National Commission may, at any stage of the proceeding, in the interest of justice,*

transfer any complaint pending before the District Forum of one State to a District Forum of another State or before one State Commission to another State Commission.

22C. Circuit Benches - *The National Commission shall ordinarily function at New Delhi and perform its functions at such other place as the Central Government may, in consultation with the National Commission, notify in the Official Gazette, from time to time.*

22D. Vacancy in the Office of the President - *When the office of President of a District Forum, State Commission, or of the National Commission, as the case may be, is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior-most member of the District Forum, the State Commission or of the National Commission, as the case may be:*

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

23. Appeal. — Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order of the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent. of that amount or rupees fifty thousand, whichever is less.

24. Finality of orders. — Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

24A. Limitation period. - (1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.

24B. Administrative Control.—(1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely:—

- (i) calling for periodical return regarding the institution, disposal pendency of cases;
- (ii) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;
- (iii) generally overseeing the functioning of the State Commissions or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their *quasi-judicial* freedom.

- (2) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (1).
- 25. Enforcement of orders of the District Forum, the State Commission or the National Commission.** — (1) Where an interim order made under this Act, is not complied with the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.
- (2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.
- (3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.
- 26. Dismissal of frivolous or vexatious complaints.** — Where a complaint instituted before the District Forum, the State Commission or as the case may be, the National Commission, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order
- 27. Penalties.** — (1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:
- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).
- (3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.
- 27A. Appeal against order passed under section 27** - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from -
- (a) the order made by the District Forum to the State Commission ;
- (b) the order made by the State Commission to the National Commission; and
- (c) the order made by the National Commission to the Supreme Court.
- (2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.
- (3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission :

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

CHAPTER IV

MISCELLANEOUS

- 28. Protection of action taken in good faith.** — No suit, prosecution or other legal proceedings shall lie against the members of the District Forum, the State Commission or the National Commission or any officer or person acting under the direction of the District Forum, the State Commission or the National Commission for executing any order made by it or in respect of anything which is in good faith done or intended to be done by such member, officer or person under this Act or under any rule or order made thereunder.
- 28A. Service of notice, etc.** - (1) *All notices required by this Act to be served shall be served in the manner hereinafter mentioned in sub-section (2).*
- (2) *The service of notices may be made by delivering or transmitting a copy thereof by registered post acknowledgment due addressed to opposite party against whom complaint is made or to the complainant by speed post or by such courier service as are approved by the District Forum, the State Commission or the National Commission, as the case may be, or by any other means of transmission of documents (including FAX message).*
- (3) *When an acknowledgment or any other receipt purporting to be signed by the opposite party or his agent or by the complainant is received by the District Forum, the State Commission or the National Commission, as the case may be, or postal article containing the notice is received back by such District Forum, State Commission or the National Commission, with an endorsement purporting to have been made by a postal employee or by any person authorized by the courier service to the effect that the opposite party or his agent or complainant had refused to take delivery of the postal article containing the notice or had refused to accept the notice by any other means specified in sub-section (2) when tendered or transmitted to him, the District Forum or the State Commission or the National Commission, as the case may be, shall declare that the notice had been duly served on the opposite party or to the complainant :*
- Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgment due, a declaration referred to in this sub-section shall be made notwithstanding the fact that the acknowledgment has been lost or mislaid, or for any other reason, has not been received by the District Forum, the State Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice.*
- (4) *All notices required to be served on an opposite party or to complainant shall be deemed to be sufficiently served, if addressed in the case of the opposite party to the place where business or profession is carried and in case of complainant, the place where such person actually and voluntarily resides.*
- 29. Power to remove difficulties.**—(1) If any difficulty arises in giving effect to the provisions of this Act, the (Central Government may, by order in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act

(2) Every order made under this section shall, as soon as may be after it is made be laid before each House of Parliament

(3) *If any difficulty arises in giving effect to the provisions of the Consumer Protection (Amendment) Act, 2002, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty:*

Provided that no such order shall be made after the expiry of a period of two years from the commencement of the Consumer Protection (Amendment) Act, 2002.

(4) *Every order made under sub-section (3) shall be laid before each House of Parliament.*

29A. Vacancies or defects in appointment not to invalidate orders.—No act or proceeding of the District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its member or any defect in the constitution thereof.

30. Power to make rules. - (1) *The Central Government may, by notification, make rules for carrying out the provisions contained in clause (a) of sub-section (1) of section 2, clause (b) of sub-section (2) of section 4, sub-section (2) of section 5, sub-section (2) of section 12, clause (vi) of sub-section (4) of section 13, clause (hb) of sub-section (1) of section 14, section 19, clause (b) of sub-section (1) and sub-section (2) of section 20, section 22 and section 23 of this Act.*

(2) *The State Government may, by notification, make rules for carrying out the provisions contained in clause (b) of sub-section (2) and sub-section (4) of section 7, clause (b) of sub-section (2) and sub-section (4) of section 8A, clause (b) of sub-section (1) and sub-section (3) of section 10, clause (c) of sub-section (1) of section 13 clause (hb) of sub-section (1) and sub-section (3) of section 14, section 15 and clause (b) of sub-section (1) and sub-section (2) of section 16 of this Act.*

30A. Power of the National Commission to make regulations - (1) *The National Commission may, with the previous approval of the Central Government, by notification, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.*

(2) *In particular and without prejudice to the generality of the foregoing power, such regulations may make provisions for the cost of adjournment of any proceeding before the District Forum, the State Commission or the National Commission, as the case may be, which a party may be ordered to pay.*

31. Rules and regulations to be laid before each House of Parliament - (1) *Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.*

(2) *Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.*

File:C:/ CAP-AMENDED

18.12.2002

1.CPA 1986 & Medical Profession Related Provisions

Consumer Protection Act 1986 & Its Medical Profession related Provisions After The Judgment Honorable Supreme Court of India dated 13-11-95

DEFINITIONS

Complainant means

Any allegation, in writing made by a complaint that the service hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect.

Consumer means

Any "person" who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised any include any beneficiary of such 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.

Comments

Consideration means fees/payment. Fees may have been fully paid in cash or cheques, or undertaking that it will be paid, which is accepted by the doctor/hospital. The fees may have been given partly (as advance) with the understanding that the remaining bill will be paid subsequently. The payment may be done by the patient himself, or by someone else for the patient, e.g. father for his child, husband for wife, any person for someone.

A person who receives medical treatment in Government or Charitable Hospital, which provides treatment to one and all free of cost is not a consumer under the Act.

A person who receives treatment in a Government or charitable hospital which provides treatment free of cost to some and on consideration to some would be a consumer, even if he has not paid any fees.

In case of death of patient who is a consumer, legal heirs (representatives), of the deceased will be considered as "consumer". If the payment has been made by any person who is not a legal heir of the deceased he too will be considered as 'consumer'.

The three words used above (deficiency, person, service) explained under this act are as follows:

Deficiency means

Any fault, imperfection, short coming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

Person include

1. a firm whether registered or not;
2. a Hindu undivided family;
3. a co-operative society;
4. every other association of persons whether registered under the Societies Registration Act, 1860, or not.

Service means

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

DEFINITIONS

Comments

On the meaning of the word "service" in relation to medical profession, the Supreme Court in *Indian Medical Association v. V.P. Shantha & Ors.* (supra) came to the following conclusions:

- Service rendered to a patient by a medical practitioner (except where the doctor rendered service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in section 2(1) (o) of the Act.
- The expression 'contract of personal service' in section 2(1) (o) of the Act cannot be confined to contracts for employment of domestic servants only and the said expression would include the employment of a medical officer for the purpose of rendering medical service to the employer. The service rendered by a medical officer to his employer under the contract of employment would be outside the purview of 'service' as defined in section 2(1) (o) of the Act.
- Service rendered at a Government hospital/health centre/dispensary or at a non-government hospital/nursing home where no charge whatsoever is made from any person availing the service and all patients (rich and poor) are given free service- is outside the purview of the expression "service" as defined in section 2(1) (o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.
- Service rendered at a non-government hospital/nursing home where charges are required to be paid by the person availing such services falls within the purview of the expression 'service' as defined in section 2(1) (o) of the Act.
- Service rendered at Government hospital/Health centre/ Dispensary or at a non-government Nursing home where charges are required to be paid by persons who are in a position to pay and persons who cannot afford to pay are rendered service free of charge would fall within the ambit of the expression 'service' as defined in section 2(1) (o) of the Act irrespective of the fact that the service is rendered free of charge to persons who are not in a position to pay for such services. Free service, by such doctors and hospitals would also be 'service' and the recipient a 'consumer' under the Act.
- Service rendered by a medical or hospital/nursing home cannot be regarded as service rendered free of charge, if the persons availing the service have taken an insurance policy for medical care where under the policy charges for consultation, diagnosis and medical treatment are borne by the insurance

company and such service would fall within the ambit of 'service' as defined in section 2(1) (o) of the Act.

- Similarly, where as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family member dependent on him, the service rendered to such an employee and his family members by a medical practitioner or a hospital/nursing home would not be free of charge and would constitute 'service' under section 2(1) (o) of the Act.

Consumer Protection Act 1986 & Its Medical Profession related Provisions After The Judgment Honorable Supreme Court of India dated 13-11-95

CONSUMER DISPUTES REDRESSAL AGENCIES

Redressal Forums have been established as three different levels:

- "District Forum" by State Government. At least one in each district in certain cases on District Forum may cover 2 or more district, or there may be two or more District Forums in one District.
- "State Commission" by State Government.
- "National Commission" (National Consumer Disputes Redressal Commission) by Central Government.

DISTRICT FORUM

This shall consists of:

- a person who is, or has been or is qualified to be a District Judge, who shall be its President
- two other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of or shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.

Jurisdiction of District Forum

- The District Forum shall be jurisdiction to entertain complaints where the value of goods or services and the compensation, if any, claimed does not exceed rupees five lakhs.
- A complaint shall be instituted in 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.

Manner in which complaint shall be made

A complaint may be filed with a District Forum by:

- The consumer to whom such service is provided or is agreed to be provided
- Any recognized consumer association, whether the consumer to whom the service is provided or is agreed to be provided is a member of such association or not
- One or more consumer, where there are numerous consumers having the same interest, with the permission of the district forum, on behalf of, or for the benefit of, all consumers so interested
- The Central or the State Government.

DISTRICT FORUM

Procedure on receipt of complaint

- a. The District Forum shall on receipt of a complaint:
 - a) Refer a copy of such complaint to the opposite party 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 the District Forum.
 - b. Where the opposite party, on receipt of a copy of the complaint, denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute
 - i.) On the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint; or
 - ii.) On the basis of 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 Forum;

In addition to procedure prescribed under section 13 (2) of the Act, further procedure has been provided for under the respective State Rules, which are almost identical in each state. Such further procedure as provided in Consumer Protection (Rajasthan) Rules, 1987 is as under:

1. Where the opposite party admits the allegation made by the complainant, the District Forum shall decide the complaint on the basis of the case and documents present before it.
2. If during the proceeding conducted under section 13 of the Act, the District Forum fixes a date for hearing of the parties, it shall be obligatory on the complainant and opposite party or its authorized agent to appear before the

- District Forum in such date of hearing or any other date to which hearing could be adjourned.
3. Where the complainant or his authorized agent fails to appear before the District Forum on Such day, the District Forum may in its discretion either dismiss the complaint in default or if a substantial portion of the evidence of the complainant has already been recorded, decide it on merits. Where the opposite party or its authorized agent fails to appear on the day of hearing, the District Forum may decide the complaint ex-parte.
 4. Where any party to a complaint to whom time has been granted fails to produce his evidence or to cause the attendance of his witness, or to perform any other act necessary to the further progress of the complaint, for which time has been allowed, the District Forum may notwithstanding such default:
 - a) If the parties are present, proceed to decide the complaint forthwith; or
 - b) If the parties or any of them is absent, proceed as mentioned above in sub-rule
 5. The District Forum may, on such terms as it may think fit at any stage, adjourn the hearing of the complaint but more than one adjournment shall ordinarily be given and the complaint should be decided within 90 days from the date of notice received by the opposite where complaint does not require analysis or testing of the foods and within 150 days if it requires analysis or testing of the goods.



DISTRICT FORUM

Powers of Civil Court to District Forums

The District Forum is also vested, under section 13(4), with the following powers as are vested in a civil under the Code of Civil Procedure 1908, while trying a civil suit in the following matters:

1. the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;
2. the discovery and production of any document or other material object producible as evidence;
3. the reception of evidence on affidavits;
4. the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from the appropriate laboratory or from any other relevant source;
5. issuing of any commission for the examination of any witness.

Additional powers requiring production of documents, etc.

The National Commission, State Commission and District Forums are also vested with additional powers, under rule 10 of the Consumer Protection Rules, 1987 to require any person:

1. (a) to produce before, and allow to be examined and kept by an officer of the National Commission, the State Commission or the District Forum, as the case may be, specified in this behalf, such books, accounts, documents or

commodities in the custody or under the control of the persons so required as may be specified or described in the requisitions, if the examination of such books, accounts, documents or commodities are required for the purpose of this Act;

(b) to furnish to an officer so specified, such information as may be required for the purpose of this Act.

2. (a) Where during any proceedings under this Act the National Commission, the State Commission or the district Forum as the case may be has any ground to believe that any book, any paper, commodity, or document which may be required to be produced in such proceeding are being, or may be destroyed, mutilated, altered, falsified or secreted, it may, by writing order authorized any officer to exercise

the power of entry and search of any premises. Such authorized officer may also seize such books, papers, documents or commodities as are required for the purpose of this Act:

Provided that such seizure shall be communicated to the National Commission or the District Forum, as the case may be, as soon as it is made or within a period not exceeding 72 hours of making such seizure;

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

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DISTRICT FORUM

Finding of the District Forum

If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint about the services are allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:

1. to remove the defect pointed out by the appropriate laboratory from the goods in questions;
2. to replace the goods with new goods of similar descriptions which shall be free from defect;
3. to return to the complainant the price, or as the case may be, the charges paid by the complainant;
4. to pay such amount as may awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;
5. to remove the defects or deficiencies, in the services in question;
6. to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;
7. not to offer the hazardous goods for sale;
8. to withdraw the hazardous goods from being offered for sale;
9. to provide for adequate costs to parties.

Comments

The provisions relating to goods may apply in case of supply of defective medicines, equipments, blood etc.

Appeal against orders of the District Forum

Any person aggrieved by an order made by the District Forum may appeal against such order to the State Commission within a period of 30 days from the date of the order. The State Commission may entertain an appeal after 30 days, if it is satisfied that there was sufficient cause for not filing it within that period.

The expression 'date of order' should be constructed as date of knowledge of the order, i.e., when copies of the order are received by the party.