

**COMMITTEE ON SUBORDINATE
LEGISLATION**

(TENTH LOK SABHA)

TENTH REPORT

[CONSUMER PROTECTION]

[Presented on 25 August, 1994]



**LOK SABHA SECRETARIAT
NEW DELHI**

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LOK SABHA SECRETARIAT

CORRIGENDA

TO

THE TENTH REPORT OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (TENTH LOK SABHA)

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1993-94)

- Shri Amal Datta — *Chairman*
2. Shri Prithviraj D. Chavan
 3. Shri Guman Mal Lodha
 4. Shri Dharampal Singh Malik
 5. Shri Rasheed Masood
 6. Shri M.V.V.S. Murthy
 7. Shri D. Pandian
 8. Dr. A.K. Patel
 9. Shri Rajendra Kumar Sharma
 10. Shri K.G. Shivappa
 11. Shri Mohan Singh (Dcoria)
 12. Prof. K.V. Thomas
 13. Shri Umrao Singh
 14. Shri Swarup Upadhyay
 15. Shri Ratilal Kalidas Varma

SECRETARIAT

- | | |
|----------------------|-------------------------------|
| Shri G.L. Batra | — <i>Additional Secretary</i> |
| Shri S.C. Gupta | — <i>Joint Secretary</i> |
| Shri R.K. Chatterjee | — <i>Deputy Secretary</i> |
| Shri Ram Kumar | — <i>Under Secretary</i> |

**REPORT OF COMMITTEE ON SUBORDINATE LEGISLATION ON
RULES FRAMED UNDER THE CONSUMER PROTECTION ACT,
1986**

I

INTRODUCTION

1. The Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to present the Report on their behalf, present this Tenth Report.

2. The Committee considered and adopted this Report at their sitting held on 12 January, 1994. The minutes of the sittings relevant to this Report are appended to it.

3. The Committee on Subordinate Legislation decided to examine the rules framed under the Consumer Protection Act, 1986 with a view to see whether the rules framed thereunder by the Central Government were adequate and reasonable and also to ensure that the protection meant for consumers became functional. With a view to ascertain the views of the eminent persons/organisations working in the field of consumer protection, the Committee decided to invite their comments and hear them. The comments/suggestions received from 49 non-governmental organisations located in the State capitals/Union Territory Administration in the country were examined.

4. The Committee thereafter took oral evidence of the representatives of the following leading non-governmental organisations/individuals operating in the field of consumer protection at their sittings held on 20 August, 6 and 7 September, 1993:—

- (1) Consumer Co-ordination Council, New Delhi.
- (2) Common Cause, New Delhi.
- (3) Consumer Unity and Trust Society, West Bengal and Rajasthan.
- (4) Indian Medical Association, New Delhi.
- (5) Medical Council of India, New Delhi.
- (6) Consumer Guidance Society, Jamshedpur.
- (7) Shri Amrit Nahata, ex-M.P.

5. The Committee also took oral evidence of the representatives of the Ministry of Civil Supplies, Consumer Affairs and Public Distribution on 28 September, 1993 with a view to eliciting the views of the Government on the inadequacies pointed out/suggestions made by the

representatives of the various non-governmental organisations in respect of Consumer Protection Act, 1986 and the rules framed thereunder.

6. Suggestions made by the representatives of various non-governmental organisations and reaction of the Government thereto are dealt with in the succeeding paragraphs.

II

PHYSICAL PRESENCE OF THE COMPLAINANT IN CONSUMER COURTS

7. Sub-rule (3) of rule 14 of the Consumer Protection Rules, 1987 provided as under:—

“Procedure to be followed by the National Commission—

..

..

..

- (3) On the date of hearing or any other date to which hearing could be adjourned, it shall be obligatory on the parties or their agents to appear before the National Commission. Where the complainant or his agent fails to appear before the National Commission on such day, the National Commission may in its discretion either dismiss the complaint for default or decide it on merits. Where the opposite party or its agent fails to appear on the date of hearing, the National Commission may decide the complaint *ex parte*.”

Almost all the representatives of the non-governmental organisations operating in the field of consumer protection submitted that provision regarding physical presence of the complainant before the National Commission should be done away with. They suggested that no complaint should be dismissed merely on the ground that either the complainant/appellant or his agent had failed to appear before the National Commission. In this connection, Shri Amrit Nahata, ex M.P. stated that these Forums/Commissions were not neutral between the complainant and the opposite party. If any complaint was made to the National Commission, it was presumed that the Commission would guard the interest of the Consumer. If the relevant documents and required evidence in the form of documents were submitted to the Commission, presence of the complainant was not necessary. In his opinion, ‘The National Commission should decide the case on the merits. The presence of the complainant should not be obligatory under the rules or under the Act.’

9. In this regard, the Secretary, Ministry of Civil Supplies, Consumer Affairs and Public Distribution stated as under:—

“We are of the view that at least one appearance of the complainant or his agent should be mandatory. Otherwise, the apprehension is

that all kinds of anonymous and frivolous complaints may be acted on by the forum. But we do feel that after one mandatory appearance, the forum should have the option to grant leave of absence or exemption from attendance. So, we could consider amending the rule to the extent that after one attendance, the complainant may be exempted from further attendance by the forum if it is so considered desirable."

In support of his argument the witness added—

"The possibility of anonymous complaints could not be ruled out. Rules did not provide for submitting any kind of identification of the complainants either in the form of an affidavit or attestation by some responsible person which could serve the purpose. At the moment the rules made it mandatory for the complainant to be present first in the Court."

10. The Committee note that under sub-rule (3) of rule 14 of the Consumer Protection Rules, 1987, it is obligatory on the parties or their agents to appear before the National Commission on the date of hearing or any other day to which the hearing is adjourned. The Committee consider that only one appearance before the National Commission will serve the purpose of identification of the complainant and genuineness of the complaint. The complainant/appellant should be exempted from further attendance in the National Commission and be allowed to appear through a representative or an agent at the subsequent hearings. They recommend that the rules should be amended accordingly.

III

DISPOSAL OF COMPLAINTS

11. Sub-rule (4) of rule 14 provided as under:—

"Procedure to be followed by the National Commission—

..

- (4) The National Commission may, on such terms as it deems fit and at any stage of the proceedings, adjourn the hearing of complaint but the complaint shall be decided, as far as possible, within a period of three months from the date of notice received by opposite party where complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities."

Representatives of non-governmental organisations were of the view that as far as practicable the complaint should be decided within 90 days. The representative of the Consumer Guidance Society submitted that when the Consumer Protection Act was made, the whole spirit was that we should

be able to give quick and cheap redressal to the consumers. Seeing the present state of judiciary, it was felt that this Act should overcome certain deficiencies which were existing in the country today and the justice should be given in a fixed time-frame. The 90 days' clause was put in the Consumer Protection Act only to ensure that the cases were not delayed and justice was given within the 90 days' period. That was one of the most important criteria which was necessary. In no circumstances, this period of 90 days should be extended.

12. When asked to comment on whether in all cases it would be possible to decide the complaints within a period of 90 days' or in exceptional cases, where expert views like those of Medical Council were required to be obtained, the period needed to be extended, the Secretary, Ministry of Civil Supplies, Consumer Affairs and Public Distribution stated during evidence—

"I appreciate your point. I agree that there is a need to allow the technical opinion to be expressed fully. As against 90 days, a provision has also been made for increasing the time-limit from 90 days to 180 days."

13. The Committee are of the opinion that the words 'shall' and 'as far as possible' occurring in sub-rule (4) of rule 14 of the Consumer Protection Rules, 1987 are contradictory to each other and thus frustrate the underlying intention of disposal of complaints within the minimum prescribed period of 90 days. All cases of complaints should be decided by the National Commission within 90 days. Only where an expert opinion is required or testing/analysis of commodities is required, the period may be extended upto 180 days. With a view to achieve this end, the Committee recommend that sufficient number of persons with requisite qualifications and experience in every field of consumer dispute should be empanelled for the various Consumer Forums so that the dispute can be disposed of within the prescribed period. The Committee do not appreciate the idea of increasing the time-limit for disposal of complaints from 90 days to 180 days excepting in the rarest of the rare cases where expert opinion is required.

IV

ADJOURNMENTS

14. Sub-rule (8) of rule 15 of the Consumer Protection Rules, 1987 read as under:—

"15. *Procedure for hearing the appeal:*—

(8) The National Commission, on such terms as it may think fit and at any stage, adjourn the hearing of the appeal, but not more than one adjournment shall ordinarily be given and the appeal should be decided as far as possible, within 90 days from the first date of hearing."

Narrating his experience on the working of this rule, Shri Amrit Nahata, ex M.P. stated that although rules provided for not granting of second adjournment, there were cases where 30 adjournments were given for no rhyme or reasons. The lawyers and the parties managed things and interest of the consumer quite often got defeated. He, therefore, suggested that 'The rules can be strengthened to say that under no circumstances the second adjournment be given. It should be seen that a complaint is resolved as early as possible.'

15. Reacting to this suggestion, the Secretary, Ministry of Civil Supplies, Consumer Affairs and Public Distribution, during evidence, stated—

"Even now the existing provisions lay down that the second adjournment should not ordinarily be granted."

He agreed that in many cases unnecessary adjournments were taking place. Government had already taken note of the shortcoming of this rule. In his view, the rules had to be a little more mandatory. His submission was 'We have to make it mandatory except in very very unavoidable circumstances like serious illness. We could consider amendment of the rule.'

16. The Committee trust that the Ministry of Civil Supplies, Consumer Affairs and Public Distribution would take immediate steps to amend the rule suitably in order to help the complainant to get a quick decision and to minimise the adjournments.

V

QUORUM

17. Sub-rule (1) of Rule 15 A, as inserted by the Consumer Protection (Amendment) Rules, 1991, read as under:—

"15A. *Sitting of the National Commission and signing of orders.*—

(1) Every proceeding of the National Commission shall be conducted by the President and at least two members thereof sitting together:

Provided that where the member or members for any reason are unable to conduct the proceeding till it is completed, the President shall conduct such proceeding *de novo*.

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18. In this connection, Shri Amrit Nahata, ex-M.P. stated that in many district forums, many times the quorum was not there. He suggested that if one member was absent for six or even for four sittings, his or her membership should cease. In his opinion, if a member was not interested in attending the sittings of the forum regularly, there was no point in keeping him or her as member.

19. The Secretary, Ministry of Civil Supplies, Consumer Affairs and Public Distribution accepted the suggestion saying that 'this point is very valid.' Explaining the position, he stated that the State Governments had been making the appointments. He proposed that, in consultation with the National Commission, Government would try to work out a mechanism so that in case a member of a particular forum did not attend a certain number of meetings, then he was either changed or dropped.

20. As a step to improve functioning of the forum it was suggested during evidence that apart from the members, who had been attending the meetings of the National Commission/State Commissions and District Forums regularly, some more members might be put on the panel so that such a member could be asked to attend the meeting as and when required. In reply, the Secretary of the Ministry explained the position as under:—

"That provision is there, in any case, because out of the total number of members in a particular forum, the quorum is of a fewer members. So in any case if one or two members are absent the others can complete the quorum. But we will examine this in consultation with the National Commission to improve the functioning and regularity of the forum."

21. The Committee desire the Ministry to examine the matter with a view to amend the relevant rule of the Consumer Protection Rules to the effect that if a particular member of the National Commission or State Commission or District Forum does not attend three consecutive meetings of the forum except for reasons beyond his control, he or she should cease to be a member of the Commission/Forum. The appropriate Government may be saddled with the responsibility to record such cessation of membership as well as filling up of consequential vacancies.

VI

APPLICABILITY OF CONSUMER PROTECTION ACT TO MEDICAL PRACTITIONERS

22. Section 2(1) (0) of the Consumer Protection Act, 1986, as amended, defines the word 'service' as follows:—

"2 (1) In this Act, unless the context otherwise requires:—

..

..

..

(0) 'Service' means service of any description which 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 service."

23. The medical practitioners have been demanding that they should be excluded from the purview of the Act. The doctors opined that the Consumer Forums should not process the cases of complaints against medical practitioners as there were no medical experts on such bodies to appreciate the work done by the doctors. The Committee then elicited the views of the representatives of the non-governmental organisations about the agitation started by the doctors and medical practitioners that they should be kept outside the purview of the Consumer Protection Act. In this connection, the President, Consumer Unity and Trust Society, West Bengal, stated that "any service is covered under the definition of 'service' under the Consumer Protection Act." The doctors could not claim exemption on the ground that the Consumer Courts did not have technical personnel. He pointed out that 'Even in the law of Torts, a District Judge can adjudicate and he is not a medically qualified person.'

24. Another representative from the same Organisation added that as far as doctors were concerned, there had been a judgement of the Orissa State Commission which had said that the service which was being rendered by them in Government hospitals was also included in the purview of the Act. It was only due to the amendments in the Act, including the 'Services', that gave a chance for these controversies.

25. During evidence, the Secretary, Ministry of Civil Supplies, Consumer Affairs and Public Distribution, explained the position as under:—

"The recent amendments have not made any change in the position which has been existing since the inception of the Act. Earlier also the doctors were covered under the Act and now also they are covered under the Act. We have not made any changes in this regard. There was a proposal to bring in government doctors within the purview of the Act. But that was not persisted with. So, so far as doctors are concerned, a *status quo* has been maintained. That is the position as far as the recent amendments to the Act are concerned. We have not made any changes."

26. The Committee are not convinced with the reply of the Ministry of Civil Supplies, Consumer Affairs and Public Distribution in the matter. While it is true that the presence of medical experts is not held as essential and that the courts are able to decide the cases after hearing the expert opinion / witnesses on all technical matters, the presence of a judge having the experience and competence for appreciation of the evidence is of crucial significance both in arriving at a correct decision as well as in instilling public faith in the decisions so given. The Committee are, therefore, of the view that the Consumer Forums should have a sitting or retired District Judge as the Chairman of the Forum which may proceed to decide such cases upon taking evidence of the expert witnesses wherever necessary.

Further, a grave concern was voiced before the Committee by certain interests for keeping the Doctors and other medical personnel falling under

the Government umbrella outside the purview of the Consumer Protection Act. It has been argued that the law as it stands is apt to give an impression that it entails discriminatory treatment to the medical practitioners in the private profession *vis-a-vis* those serving under the aegles of the Government. The Committee are inclined to feel that the Government would do well if they undertake some rethinking in the matter so as to set the things in order and to do away with any misgivings on the score in the general public.

VII

POWER TO REVIEW THE DECISIONS DELIVERED BY NATIONAL COMMISSION

27. It has been suggested that the National Commission should have the power to review its own decisions. When asked about the views of the Ministry in this regard, the Secretary of Ministry of Civil Supplies, Consumer Affairs and Public Distribution stated that 'it might result in delay. There is provision for an appeal against the decisions. In this case, invariably, what would happen is, in each case, the people will first come for full bench review and then again go for appeal. We had examined this aspect and we felt this was really not necessary'.

28. When pointed out that the Courts at all levels have the powers to review their own decisions, the Secretary of the Ministry stated that 'we will examine the need for review by the bench itself'.

29. The Committee trust that the Ministry would examine the matter further and apprise them of the decision taken expeditiously.

VIII

EXCLUSION OF LAWYERS FROM APPEARING IN CONSUMER COURTS

30. Almost all the representatives of the various non-governmental organisations engaged in the task of protection of the rights of the consumers were of the opinion that lawyers should be banned from appearing in the Consumer Courts.

31. In this connection, the President of the Consumer Unity and Trust Society, West Bengal and Rajasthan, had stated that the lawyers generally tend to delay the proceedings. So, another recommendation which has a direct bearing on the disposal of cases within a reasonable time was the exclusion of lawyers from the Consumer Forums. The High Power Working Group also recommended for the exclusion of lawyers except under three circumstances. A lawyer may be allowed (i) if the complainant has engaged a lawyer; (ii) if the complainant has no objection of the

opposite party engaging a lawyer; and (iii) if the court feels that the questions of law are so many or the issues of law are complex, in which case it may direct both the parties to engage lawyers.

32. The Committee then ascertained the reaction of the Secretary of the Ministry of Civil Supplies, Consumer Affairs and Public Distribution in this regard. He informed during evidence that the matter was under consideration of the Government and they had not been able to take a final decision in the matter.

33. The Committee recommend that the Government should implement the recommendation of the High Power Working Group regarding exclusion of lawyers from appearing in the the Consumer Courts except under certain circumstances by amending the Consumer Protection Act/relevant rules to this effect without any further delay.

IX

ROLE OF NON-GOVERNMENTAL ORGANISATIONS

34. The non-governmental organisations are playing a dominant role in the field of consumer protection. They are creating awareness among the people about the necessity of Consumer Protection Act, 1986. They are helping the consumers by extending all sorts of assistance in filling a complaint with the various forums in the country in case the aggrieved parties do not get relief elsewhere. These organisations also keep themselves in constant touch with Consumer Forums in their functioning and in guiding them in case of necessity as to how and what kind of relief can be given to the consumers to their satisfaction. These are voluntary organisations and whenever any consumer channelises his complaint through these organisations, they take due care and ensure that justice is done to the affected consumers. Their representatives have also asserted that a large majority of consumer grievances coming to them gets straightaway settled soon after their writing to the party complained against. The burden on Consumer Forums is thus reduced to a large extent wherever the non-governmental organisations are active. In the process, the non-governmental organisations have to incur certain expenditure. On request, they also appear in the different Consumer Courts in the country set up for redressal of grievances of the consumers.

35. The non-governmental organisations are not getting any kind of assistance from the Government. Neither they are organised nor they are given recognition for the services rendered by them.

36. On being asked whether some sort of assistance could be rendered to these organisations such as supply of stationery, secretarial and typing assistance, office accommodation, etc., the Secretary, Ministry of Civil

Supplies, Consumer Affairs and Public Distribution, submitted during evidence that they would examine the matter. The Secretary, however, pointed out that once these organisations were recognised and given the infrastructural assistance, there might be a mushroom growth of such organisations. When it was impressed upon him that the financial assistance or any kind of assistance extended to these organisations by the Government would ultimately amount to giving assistance to the consumers and the Consumer Forums and that would relieve the consumers of the burden in meeting the expenses towards filing their complaints and appearing before the Consumer Courts etc. Thus, extending such assistance would help the system of providing relief to the consumers through the Consumer Protection Act. The Secretary of the Ministry agreed to consider this aspect.

37. The Committee observe that extending infrastructural assistance such as supply of stationery, secretarial and typing assistance, office accommodation, etc., and in the process, incurring some expenditure by Government will be meaningful and go a long way in helping the system of providing relief to the consumers and the Consumer Forums under the Consumer Protection Act, 1986 as well as in spreading consumer education. Under the conditions prevailing in India, most of the consumers are not aware of the relief the Consumer Courts could provide and the ways and means to approach the Consumer Courts. In such a situation, these non-governmental organisations can play a vital role in educating the people and protecting the rights of the consumers. The Committee trust that the Government would render all possible infrastructural assistance to the non-governmental organisations which is in line with the present policy of the Government.

NEW DELHI;
January, 1994

Pausa, 1915 (Saka)

AMAL DATTA,
Chairman,
Committee of Subordinate
Legislation.

APPENDICES

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APPENDIX I

*Summary of Recommendations made in the Tenth Report of the Committee
on Subordinate Legislation
(Tenth Lok Sabha)*

S.No.	Reference to Para No. in the Report	Summary of Recommendations
1	2	3
1.	10	The Committee note that under sub-rule (3) of rule 14 of the Consumer Protection Rules, 1987, it is obligatory on the parties or their agents to appear before the National Commission on the date of hearing or any other day to which the hearing is adjourned. The Committee consider that only one appearance before the National Commission will serve the purpose of identification of the complainant and genuineness of the complaint. The complainant/appellant should be exempted from further attendance in the National Commission and be allowed to appear through a representative or an agent at the subsequent hearings. They recommend that the rules should be amended accordingly.
2.	13	The Committee are of the opinion that the words 'shall' and 'as far as possible' occurring in sub-rule (4) of rule 14 of the Consumer Protection Rules, 1987 are contradictory to each other and thus frustrate the underlying intention of disposal of complaints within the minimum prescribed period of 90 days. All cases of complaints should be decided by the National Commission within 90 days. Only where an expert opinion is required or testing/analysis of commodities is required, the period may be extended upto 180 days. With a view to achieve this end, the Committee recommend that sufficient number of persons with requisite qualifications and experience in every field of consumer dispute should be empanelled

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for the various Consumer Forums so that the dispute can be disposed of within the prescribed period. The Committee do not appreciate the idea of increasing the time-limit for disposal of complaints from 90 days to 180 days excepting in the rarest of the rare cases where expert opinion is required.

3. 16 The Committee trust that the Ministry of Civil Supplies, Consumer Affairs and Public Distribution would take immediate steps to amend the rule suitably in order to help the complainant to get a quick decision and to minimise the adjournments.
4. 21 The Committee desire the Ministry to examine the matter with a view to amend the relevant rule of the Consumer Protection Rules to the effect that if a particular member of the National Commission or State Commission or District Forum does not attend three consecutive meetings of the forum except for reasons beyond his control, he or she should cease to be a member of the Commission/Forum. The appropriate government may be saddled with the responsibility to record such cessation of membership as well as filling up of consequential vacancies.
5. 26 The Committee are not convinced with the reply of the Ministry of Civil Supplies, Consumer Affairs and Public Distribution in the matter. While it is true that the presence of medical experts is not held as essential and that the courts are able to decide the cases after hearing the expert opinion/witnesses on all technical matters, the presence of a judge having the experience and competence for appreciation of the evidence is of crucial significance both in arriving at a correct decision as well as in instilling public faith in the decisions so given. The Committee are, therefore, of the view that the Consumer Forums should have a sitting or retired District Judge as the Chairman of the Forum which may proceed to decide such cases upon taking evidence of the expert witnesses wherever necessary.

Further, a grave concern was voiced before the Committee by certain interests for keeping the

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doctors and other medical personnel falling under the Government umbrella outside the purview of the Consumer Protection Act. It has been argued that the law as it stands is apt to give an impression that it entails discriminatory treatment to the medical practitioners in the private profession *vis-a-vis* those serving under the aegis of the Government. The Committee are inclined to feel that the Government would do well if they undertake some rethinking in the matter so as to set the things in order and to do away with any misgivings on this score in the general public.

6. 29 The Committee trust that the Ministry would examine the matter further and apprise them of the decision taken expeditiously.
7. 33 The Committee recommend that the Government should implement the recommendation of the High Power Working Group regarding exclusion of lawyers from appearing in the Consumer Courts except under certain circumstances by amending the Consumer Protection Act/relevant rules to this effect without any further delay.
8. 37 The Committee observe that extending infrastructural assistance such as supply of stationery, secretarial and typing assistance, office accommodation, etc., and in the process, incurring some expenditure by Government will be meaningful and go a long way in helping the system of providing relief to the consumers and the Consumer Forums under the Consumer Protection Act, 1986 as well as in spreading consumer education. Under the conditions prevailing in India, most of the consumers are not aware of the relief the Consumer Courts could provide and the ways and means to approach the Consumer Courts. In such a situation, these non-governmental organisations can play a vital role in educating the people and protecting the rights of the consumers. The Committee trust that the Government would render all possible infrastructural assistance to the non-governmental organisations which is in line with the present policy of the Government.
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MINUTES

APPENDIX II

(vide para 3 of the Report)

XXIII

MINUTES OF THE TWENTY-THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1992-93)

The Committee on Subordinate Legislation met on Friday, 20 August, 1993 from 15.30 to 16.30 hours.

PRESENT

Shri Amal Datta—*Chairman*

MEMBERS

2. Shri Shravan Kumar Patel
3. Shri A. Venkata Reddy
4. Shri Mohan Singh
5. Kumari Frida Topno

SECRETARIAT

Shri S.C. Gupta—*Joint Secretary*

WITNESS

Shri H.D. Shourie, Director, Common Cause.

2. At the outset, Chairman welcomed Shri H.D. Shourie, Director, Common Cause, who had been trying to do a lot for the consumers to learn to protect themselves.

3. When the Committee sought the views on the subject of the deficiencies in the rules under the Consumer Protection Act, Shri Shourie stated that there were large number of areas in which there was need for improvement and there was considerable scope for further improvements to be effected in the implementation of that Act for the formulation or strengthening of the rules. He informed that a large number of cases were pending for the last two years either because of the date had to be given after two or three months or the rest were fixed for adjournments, filing papers and so on. He was, therefore, of the view that not more than two adjournments should be given in any case and the Act should also provide that every case must be decided in a period of ninety days. If at shall more than two adjournments were to be given than very detailed reasons and justification must be recorded so that the Court could become responsible for that. He further informed that the writ jurisdiction should not be exercised in the case of Consumer Protection Act in the High Courts.

4. When the Committee asked him about the doctors to bring them under the jurisdiction of the Consumer Protection Act, he informed that he was not in favour to bring hospitals within its ambit as the fantastic demands were being made to harass the doctors. He further added that in case where the complaint was of more than one lakh then there should be first an initial scrutiny by the court and in case of doctors, it should be got endorsed by a specialist of that line from a government hospital.

5. Shri Shouric suggested that a prescribed form should be utilised for submission of complaints so that the Consumers might know what replies had to be furnished by him in a prescribed complaint form alongwith all related documents so that the whole thing would get streamlined and the expectations of the people would be fulfilled.

6. He further suggested that there should be a Consumers Court under Section 3 of the Consumer Protection Act which could also recognise the importance of the Consumers.

The Committee then adjourned.

XXIV

MINUTES OF THE TWENTY-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1992-93)

The Committee on Subordinate Legislation met on Monday, 6 September, 1993 from 15.00 to 17.00 hours.

PRESENT

Shri Amal Datta—*Chairman*

MEMBERS

2. Shri Chhitubhai Gamit
3. Shri Guman Mal Lodha
4. Shri Mohan Singh
5. Shri Shivendra Bahadur Singh
6. Shri Tara Singh
7. Kumari Frida Topno

SPOKESMEN

1. Shri Pradeep S. Mehta,
President,
Consumer Unity and Trust Society,
Calcutta.
2. Ms. Mamta Sharma,
Co-ordinator (Law),
Consumer Unity and Trust Society,
Jaipur.
3. Shri Amrit Nahata,
Ex. M.P.

SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
 2. Shri R.K. Chatterjee— *Deputy Secretary*
 3. Shri Ram Kumar — *Under Secretary*
2. At the outset the Chairman welcomed the representatives of the various societies engaged in the field of consumer protection.

3. On being asked about the adequacy of the Consumer Protection Act, the representative highlighted the following points:—

- (i) An upper ceiling of 90 days should be fixed for resolution of the complaints and in no case the time limit should exceed 180 days.
- (ii) A lawyer could be engaged to resolve a complaint only if the complainant has engaged a lawyer or the complainant has no objection to the opposite party engaging a lawyer; and if the court feels that case is of complex nature.
- (iii) No complaint should be rejected merely for want of physical presence of the complainant or his agent in the court.
- (iv) The rules should be strengthened so that under no circumstances a second adjournment is given. It should be seen that a complaint is resolved as early as possible.

4. The representatives stated that the Consumer rights provided in Section 6 of the Consumer Protection Act were merely decorative. If there was any violation of the rules justification was not provided in the rules. He stated that the rules relating to the funding of the Central Council and the State Council had to be strengthened.

5. On being asked about the agitation of the doctors and medical practitioners for having brought under the purview of the Consumer Protection Act, the representatives stated that they should come under the purview of this Act.

The Committee then heard the views of another representative Shri Amrit Nahata, Ex. M.P., regarding the rules framed under the Consumer Protection Act. Shri Nahata made the following observations:—

1. The Act prescribes and defines certain powers whereas the rules provide for some additional powers. He desired that the additional powers be made part of the Act and legislated by Parliament.
2. The Central Consumer Protection Council, should have the power to make recommendation to Parliament.
3. Under rule 10, the National Commission should have the power to review its own decisions.
4. If all the documents, are attached then the physical presence of the complainant should not be obligatory under the rules or under the Act.
5. The word "as far as possible" should be deleted from Sub-rule 4 under rule 13 so as to read that all complaint shall be decided within a period of three months, and the administrative machinery and the National Commission should ensure that justice is administered within the stipulated period to time.
6. The Consumer may be required to submit only one copy of the document. If the forum wants more copies, it may make its own arrangement so that the Consumer is not burdened with more and more costs.
7. Since government is a part of the Central Consumer Protection Council, the recommendation of the Council should be made to the Parliament where they will be laid on the Table of the House.

The Committee then adjourned.

MINUTES OF THE TWENTY FIFTH SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION
(TENTH LOK SABHA) (1992-93)

The Committee met on Tuesday, 7 September, 1993 from 15.00 to 17.00 hours.

PRESENT

Shri Amal Datta—*Chairman*

MEMBERS

2. Shri Chhitubhai Gamit
3. Shri Ram Singh Kashwan
4. Shri Guman Mal Lodha
5. Shri Mohan Singh
6. Shri Shivendra Bahadur Singh
7. Shri Tara Singh
8. Kumari Frida Topno

SECRETARIAT

Shri R.K. Chatterjee—*Deputy Secretary*

Shri Ram Kumar—*Under Secretary*

I. REPRESENTATIVES OF THE CONSUMER SOCIETY JAMSHEDPUR

Shri Bijon Mishra—*President*

II. REPRESENTATIVES OF THE INDIAN MEDICAL ASSOCIATION

1. Dr. V.C. Velayudhan Pillai—*President*
2. Shri Jagdish C. Sobti—*General Secretary*
3. Dr. Y.P. Munjal—*Joint Secretary*
4. Dr. N.K. Grover—*Chairman, Action Committee*

III. REPRESENTATIVE OF MEDICAL COUNCIL OF INDIA

Dr. (Mrs.) M. Sachdeva—*Secretary*

The Committee first heard the views of Shri Bijon Mishra the representative of the Consumer Guidance Society of Jamshedpur, Jamshedpur, regarding rules framed under the Consumer Protection Act.

In reply the representative stated that he belonged to a voluntary Consumer protection group working in Jamshedpur, which is thrust upon initially educating the Consumers and making them aware about their

rights and responsibilities. Expressing his opinion about the rules framed under the Consumer Protection Act, the representative highlighted the following points:—

- (i) Rules should be framed in such a way, that a complainant is given justice within a fixed time frame of 90 days;
- (ii) The complainant should not be charged any kind of fee like court fee.
- (iii) The complainant should pursue his case on his own and need not engage a lawyer thereby avoiding expenditure.
- (iv) The complainant need not have to appear for a admission of a case but can said it by a registered post and the case could be registered and the complaint could be accepted by the court.

The Representative further stated that though the Consumer Protection Act is aimed at giving quick and cheap redressal to the Consumers, the points raised above are not being uniformly followed in all the states. Like in the District Singhbom, cases are not admitted till personal appearance is not made. Decisions are being made on the procedure as directed by the President or Chairman in the district forums and State Commission. He opined that a uniform code should be recommended in all the courts.

On being asked by the Chairman as to how will a court be convinced whether a complaint received by post is genuine or not, the representative replied that the complaints should be channelised through consumer protection organisations which in turn will correspond with the concerned enterprise. This will solve 60% of the complaints. Otherwise, a complaint which comes by registered post to the district forums, if it is supported by the relevant documents shall also be admitted.

The Representative further stated that the Consumer Courts should meet frequently and should be made a full-time court excepting holidays. Retired persons having good background and reputation in society should be employed so that they devote their full time in the courts and thus avoid possibility of giving more than one adjournment, except in the case of sickness. On being asked whether they faced any difficulty in getting the witnesses to come and attend the District Forums, the representative replied that the witnesses should be called to attend the Consumer Courts and examined on oath only when it is absolutely necessary. He further stated that by and large, people get clear-cut judgements on the basis of written complaints through the evidence produced by the complainant. Delay is likely to take place only when testing of the quality of goods is carried out, where technical opinion is necessary.

The Committee then asked the representative to state the most prominent cases with which Consumer Courts are involved. The Representative stated that the Common complaints received by the consumer courts are concerning share market where consumers are neither

getting share money, nor allotted shares nor they are getting back the invested money or money deposited with manufacturers of automobiles etc. He further stated that most of the redressal of grievances are done at the level of the voluntary organisations by writing to the concerned companies itself thereby saving the time of the consumer going to the courts.

The Committee further drew the attention of the representative to the problem regarding consumer disputes with doctors. The representative opined that not only the Medical practitioners and the municipalities but all the services should come under the purview of the Consumer Protection Act.

The witness then withdraw.

The Committee then heard the Representatives of the Indian Medical Association. The Chairman asked the representative from the Indian Medical Association to suggest the changes as desired by them in the rules framed under the Consumer Protection Act. On being asked by the Committee, the representative highlighted the following points:—

- (i) that the Consumer Protection Act should not be brought to bear on doctors;
- (ii) that the doctors will always be afraid of the compensation they will have to pay for not conducting certain investigations owing to non-availability the requisite facilities for investigation to be carried out in a patient. If the Consumer Protection Act is brought on them, the doctors will be compelled to do more investigations costing higher charges thereby.

On being pointed out by the Chairman that the Consumer Protection Act is just a renewal of a old forum and that there is already a provision in the ordinary law for giving damages against doctors the representative said that the method of judgement in the old forum was to give value to the opinion of the experts in the field and he felt that the Consumer Protection Forum is not really competent to arrive at a conclusion without expert opinion and to award compensation to the patients for any act of negligence by the Doctor.

When asked whether it is possible for the doctors not to attend a case which is brought before them the representative stated that normally emergency cases have to be attended, but for fear of litigation and medico legal cases, private doctors do not take accident cases and with the Consumers Protection Act, the fear could be much more and the doctors may start defensive practice. Another representative also felt that the Consumer Protection Act has become a tool of harrassment. The Act has already been misused by some consumers who threaten the doctors in the name of consumers courts. Some patients have even refused to made payments after treatment. He further felt that only establishments should be made to come under the Act and not the profession.

On being pointed out by the Member whether it was in the knowledge of the representative that doctors in the nursing homes are making such arrangements with the doctors in civil hospitals so that the patients are diverted to go to the nursing homes for getting treatment compulsory on payment instead of treating them free of cost, the representative stated that with the introduction of the Consumer Protection Act, the situation is likely to get worse. He further stated that the medical profession is not against punishing a doctor who is found guilty for his negligence. Their prime objection is that there is no machinery to take depositions of the experts and give decision as the normal courts do. The Committee stated that since ordinary courts take longer time to resolve the cases, the Consumer Forum have been formed. Further as per suggestion received from a well known persons in the field of Consumer Protection and public interest litigation in order to provide a safeguard, every complaint against the doctor is to be endorsed by two persons who are specialised in that particular field of medicine or surgery and during deposition the doctors can definitely say that they can produce witness to support their case in the forum. In the opinion of the representative, the Medical Council must be given the powers to decide about the medical system and to find the suitable experts.

On being asked by the Member whether the Medical profession people have been punished by the Medical Council of India on account of negligence or omission or commission in the discharge of their duties, the representative stated that there was a case of negligence where the concerned doctor's licence to practice was removed permanently.

On being asked by the Chairman, about the Constitution of the body to be set up under the Medical Council Act to provide for speedy redressal to the complainant, the representative stated that the Chairman should be nominated by the Medical Council of India and the other members would consist of a legal expert, an eminent public man of the area, an eminent medical specialist in the relevant speciality to which the complaint pertains and a representative of Indian Medical Association of the area. It may even consist of an activist of the Consumer Protection. The aim is to receive justice.

The Committee then heard another representative of the Medical Council of India. She stated that the Medical Council of India has certain guidelines and sections under which the council frames its own regulations. It maintains a medical register of all the doctors, gives the provisional registration number to the Doctors and then on successful completion of the internship of the doctors it gives a permanent registration number which enables the doctors to set up their own practice anywhere in India. Every state is having a State Medical Council and the centre maintains the compilation of all the State Medical Register. Provision have been made in the Indian Medical Council Act to punish the erring doctors, and there is

an Ethical Committee to go into the complaints registered by the complainant and punishes the guilty. The representative further submitted the list of the proposal set by the MCI to the Government of India:—

“Incompetency or non-bonafide error of judgement/decision or negligence should in fairness be determined by the Medical Council of India/State Councils who are Statutory authorities for licensing.

It is the considered opinion of the Council that for better protection of the interests of patients (Consumer) Central and State Councils be constituted under the Chairmanships of Central and State Health Ministers which should include representatives of MCI/State Medical Councils/IMA etc., with objectives to Central & State Consumer Protection Councils provided in the Consumer Protection Act.

MCI and State Medical Councils should act as Disputes Redressal Councils at the national and State levels respectively who would form District/State and National Level Agencies for dispute redressal.

By and large, the Council agrees with the guidelines submitted by IMA in respect of Amendment of MCI Act, 1956.

However, it should be appreciated the necessary financial support will be needed by the Councils to act as dispute redressal mechanism which are to be easily accessible to the aggrieved and ensure quick for redressal the grievances as separate infrastructures have to be set up for the purpose by the concerned Councils.”

A member then read out the amendments proposed by the Indian Medical Association in the Medical Council Act.

According to that any violation of the conduct rules mentioned in the Medical Council Act is subject to punishment but it does not provide for any compensation to be made to the patient in case of proved negligence of the doctor. The Consumer Protection Act provides for the same. The representative suggested that a medical tribunal under the Medical Council Act or tribunals at different levels be set up. But he opined that the amount of compensation awarded is large, which can be made to pay monthly rather than making lumpsum payment.

The witnesses then withdraw.

The Committee then adjourned.

XXVII

MINUTES OF THE TWENTY-SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1992-93)

The Committee met on Tuesday, 28 September, 1993 from 11.00 to 12.30 hours.

PRESENT

Shri Amal Datta—*Chairman*

MEMBERS

2. Shri Ram Niwas Mirdha
3. Shri Mohan Singh
4. Shri Tara Singh
5. Shri Ratilal Kalidas Varma

SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
2. Shri Ram Kumar — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF CIVIL SUPPLIES, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION

1. Shri N.S. Choudhary, Secretary
2. Smt. Sathi Nair, Joint Secretary
3. Shri Anurag Saxena, Under Secretary

2. The Committee took up oral evidence of the representatives of the Ministry of Civil Supplies, Consumer Affairs and Public Distribution regarding rules/regulations framed under the Consumer Protection Act.

3. During evidence, it was pointed out by the Committee that many complaints were dismissed by the Consumer Forums merely on the ground that complainant was not physically present before the forum and it was suggested that the provision regarding physical presence of the complainant before the National Commission should be done away with. In response, the Secretary, Ministry of Civil Supplies, Consumer Affairs and Public Distribution stated as under:—

“We are of the view that at least one appearance of the complainant or his agent should be mandatory. Otherwise, the apprehension is that all kinds of anonymous and frivolous complaints may be acted

on a by the forum. But, we do feel that after one mandatory appearance the forum should have the option to grant leave of absence or exemption from attendance. So, we could consider amending the rule to the extent that after one attendance the complainant may be exempted from further attendance by the forum if it is so considered desirable." In support of his argument the witness stated that: "The possibility of anonymous complaints could not be ruled out. Rules did not provide or submitting any kind of identification of the complainants either in the form of an affidavit or attestation by some responsible person which could serve the purpose. At the moment the rules made it mandatory for the complainant to be present physically in the court."

4. When asked to comment on the suggestion that the lawyers should be banned from appearing in Consumer Courts, the Secretary of the Ministry stated that the matter was under consideration of the Government and they had not been able to take a final decision in the matter.

5. On being pointed out that some sort of limitation should be placed on the number of adjournments which could be given in a particular case in order to have quick decisions the Secretary agreed that in many cases, unnecessary adjournments were taking place and the Government had already taken note of that shortcoming in the rule. He viewed that the rule had to be little more mandatory and submitted as under:—

"We have to make it mandatory except in very very unavoidable circumstances like serious illness. We could consider amendment of the rule."

6. On being drawn his attention to the sittings of the forum, the Committee pointed out that forums were not able to function properly as many as times, the members of the forums were absent from the sittings, the Secretary, Ministry of Civil Supplies etc. proposed that the Government would in a consultation with the National Commission, try to work out a mechanism so that in case a member of a particular forum did not attend a certain number of meetings then either he was changed or dropped. On being suggested that apart from the members who had been attending the meetings of the National Commission/State Commission and district forums regularly, some more members might be put on the panel so that such members could be asked to attend the meetings as and when required, the Secretary, Ministry of Civil Supplies submitted as under:—

"That provision is there, in any case, because out of the total number of members in a particular forum, the quorum is of a fewer members. So in any case if one or two members are absent the others can complete the quorum. But we will examine this in consultation with the National Commission to improve the functioning and regularity of the forum."

7. It was pointed out by the Committee that a large number of Consumer grievances got settled by the non-governmental organisations at their level, thus reducing the burden on the Consumers Forums. In the process, such Non-Governmental Organisations have to incur certain expenditure. On being asked whether some sort of assistance could be rendered to these Organisations such as supplying stationary, secretarial assistance, typing assistance, office accomodation etc., the Secretary, Ministry of Civil Supplies, Consumer Affairs and Public Distribution submitted that matter would be examined. He, however, pointed out that once these organisations were recognised and given the infrastructural assistance, there might be a mushroom growth of such organisations. When it was impressed upon the Secretary that the financial assistance or any kind of assistance extended to these organisations by the Government would ultimately amount of giving assistance to the Consumers and the consumer forums and this would relieve the burden on the consumers in meeting their expenses the Secretary of the Ministry agreed to consider that aspect.

8. On being asked for his comments regarding representations from the doctors that they should be excluded from the purview of the Act, the Secretary, Ministry of Civil Supplies, Consumer Affairs and Public Distribution explained the position as under:—

“The recent amendments have not made any changes in the position which has been existing since the inception of the Act. Earlier also the doctors were covered under the Act and now also they are covered under the Act. We have not made any changes in this regard. There was a proposal to bring in Government doctors within the purview of the Act. But that was not persisted with. So, far as doctors are concerned, a *status quo* has been maintained. That is the position as far as the recent amendments to the Act are concerned. We have not made any changes.”

9. When asked to comment whether in all cases it would be possible to decide the complaints within the prescribed period of 90 days or in exceptional cases, when expert views like those of Medical Council were required to be obtained, the period needed to be extended, the Secretary of the Ministry stated as under:—

“I appreciate your point. I agree that there is a need to allow the technical opinion to be expressed fully. As against 90 days, a provision has also been made for increasing the time-limit from 90 days to 180 days.”

10. To the suggestion that the National Commission should have the power to review its own decisions, the Secretary of the Ministry stated that it might result in delay. There was a provision for an appeal against the decisions. In that case, invariably, what would happen was that in each case, people would first go to full bench for review and then again go for

an appeal. This aspect has been examined and it had been felt that it was not necessary.

11. When pointed out that the Courts at all levels had the power to review their own decisions, the Secretary of the Ministry stated that "we will examine the need for review by the bench itself."

The Committee then adjourned.

XXXI

MINUTES OF THE THIRTY-FIRST SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (TENTH LOK SABHA) (1993-94)

The Committee met on Wednesday, 12 January, 1994 from 11.00 hours to 12.30 hours.

PRESENT

Shri Amal Datta—*Chairman*

MEMBERS

2. Shri Guman Mal Lodha
3. Dr. A.K. Patel
4. Shri Rajendra Kumar Sharma
5. Shri K.G. Shivappa
6. Shri Mohan Singh (Deoria)
7. Prof. K.V. Thomas

SECRETARIAT

Shri Ram Kumar—*Under Secretary*

2. The Committee considered the draft Tenth Report with slight modifications.

3. ** ** **

The Committee then adjourned.

***Omitted portions of the Minutes are not covered by this Report.