

Sample FAQs – Related to Consumer Protection

Q1. I have instituted a complaint before the Consumer Court against a Medical Practitioner. My complaint has been challenge on the ground that a Medical Practitioner cannot be sued under the Consumer Act. What does law provide?

A. Yes, a **medical practitioner can be sued under the Consumer Protection Act 1986** for his or her *professional negligence resulting in damage to patient*. Section 2 (d) in defining a consumer in Clause (ii) uses the expression ‘hires and avails of’. The word “hire” means employ of wages or fees”. Secondly the words “any service” in s. 2 (d) (ii) in Consumer Protection Act. A eloquent to bring the delinquent medical practitioners within the ambit of Consumer Protection Act. Thirdly, s. 2 (o), Consumer Protection Act which defines service exempts only two types of services, one “service free of charge” and another “contract of personal service” postulates a relationship of master and servant. A medical man whose service is requisitioned for a patient answers the clause ” contract of service” but never “a contract of personal service”. So, a negligent medical professional can be proceeded under the Consumer Protection Act 1986.

Q2. I had purchased seeds from a party. The seeds did not germinate. The other party took the plea that I was not a consumer. Whether purchase of seeds for the purpose of agriculture is purchase for commercial purpose?

A. Purchase made for agriculture is not for commercial purpose. Therefore, the complainant is a consumer and entitled to seek redressal of his grievance in a Consumer Court against the party which supplied defective seed to him.

Q3. I had got a confirmed ticket on Sahara Airways. The flight was later cancelled on account of technical snag. Is it a deficiency in service?

A. Cancellation of flight on account of technical snag is not deficiency in service as it is due to unavoidable circumstances. However, you ought to be allowed refund of the fare but no compensation can be granted on account of any loss suffered by you (if any) because of the said cancellation.

Q4. I was allotted a Maruti Car. There was a delay in delivery of the car. Subsequently, the dealer called upon me to make further payment as the price of the car had gone up. Am I liable to bear the price increase on account of delay caused by the dealer?

A. You are not liable to pay any price increase in the above mentioned circumstances since the increase in price is totally on account of the delay on the part of the dealer for which a consumer cannot be made to suffer.

Q5. Does rejection of application for grant of loan by a Bank constitute deficiency in service for which I can approach the Consumer Court?

A. The Bank has a wide discretion in the matter of granting loans and advances and continuing disbursement of loans sanctioned. The Consumer Courts cannot sit in judgement over the discretion exercised by the Bank and as such you will not succeed in any such action, if taken by you.

Q6. The transformer, which was supplying electricity to me, got burned and was replaced by the department after about two months. However, I was billed with consumption charges. Am I liable to pay any such charges when there was no consumption of electricity by me?

A. When the electricity was not supplied and the electricity bills produced by you showed that there was no consumption of electricity by you and admittedly the reason for that was burning of the transformer, you are not liable to pay any minimum charges.

Q7. I had applied for electricity connection. However, power supply was not provided to me. Can I seek redressal of my grievance in Consumer Court?

A. Your grievance is that your application for electricity connection was not granted. Electricity may be a service but the hiring of the service is not complete till the Electricity Board sanctions service. Hence, you can't approach a Consumer Court for redressal of your said grievance. Your remedy is to file a civil suit in the Court of law against the Electricity Board.

Q8. Can Consumer Forums adjudicate disputes involving scale of pay?

A. No, Consumer Forums do not adjudicate disputes involving scale of pay.

Q9. I had applied for subscription in Rajlakshmi scheme of UTI. The essence of the scheme was that the sum of money deposited with the UTI would grow 21 times in 28 years. However subsequently, the UTI extended the maturity date by two years. Can I approach a Consumer Court?

A. Unilateral alteration of terms of payment by the UTI in their above scheme is "Deficiency in Service" for which you can seek relief in a consumer court.

Q10. My car met with an accident. The insurance claim was rejected on the ground that my driver was not holding valid driving license. Should I approach a Consumer Court for seeking the Insurance claim?

A. The Consumer Court will not be able to grant you any relief since the driver employed by you did not have a driving license. You were bound under law to check the ability of the person employed by you and the failure in holding a license for driving will debar you from claiming the Insurance Claims.

Q11. I had purchased a fridge, which suffered from several defects, and those defects could not be removed or repaired by the Company. Can I seek redressal of my grievance?

A. You can certainly seek redressal before the **Consumer Forum**. In a similar case as yours, the Forum appointed a Local Commissioner who corroborated the version of the complainant. It was held by the Forum that the fridge was found to be defective within the period of warranty. The opposite party was directed to replace the unit with a new one.

Q12. I filed a complaint before the State Commission regarding payment of policy amount in death claim, which was allowed to me by the State Commission. I wish to file another complaint claiming the Double Accident Benefit. Can I do so?

A. It is well-settled principal of law that one can not educate the same cause of action before a court of law or before another adjudicating Forum after it had already been adjudicating upon earlier. This is the basis for the relevant provisions under the **Code of Civil Procedure, 1908 (CPC)** which embody a sound principal of law to obviate multiplicity of litigation. Even though Consumer Forums are not governed by the CPC yet the sound principles of law and procedure embody in that CPC are followed by the Forums. Consequently, second complaint filed on the same cause of action would not be maintainable.

Q13. I had applied for allotment for a plot and paid Rs.100 as registration fees. At the time of draw my name was not included. I lodged a complaint before the Consumer Forum, wherein the Housing Board argued that I was not a “Consumer” since no allotment had taken place. What is the correct position in law?

A. Where the complainant had paid for the cost of application form as well as the registration fee, he is the potential user and the nature of transaction is covered by the expression “service of any description”. As such the complaint is maintainable. The Housing Board is deemed to have undertaken to include your name in the draw of lots for allotment of a plot. However, your application has not been considered because your name was not included in the draw. The only inference that can be drawn is that the person who prepared the list was negligent in discharge of his duty. You can proceed on this ground.

Q14. My grievance is that I had registered with the M.I.G. scheme of the Haryana Housing Board and the board had escalated the price of the flats three times within a period of two years. Does my case lie within the jurisdiction of Consumer Forums?

A. It has been laid down that under Consumer Protection Act the pricing policy of flats cannot be adjudicated upon by **Consumer Forums**. The question of pricing of the flat by Housing Board is not a Consumer dispute. If any amount has been illegally charged from you by Housing Board , you can recover the same through a civil court.

Q15. A Complainant filed a case against our company who’s grievance related to transactions dating back to years 1994-95 while the complaint was filed in the year 1999. Is the complaint within time?

A. Section 24 A of the Consumer Protection Act, 1986 provides a limitation period of two years within which the complaint is required to be filed. In the light of the above, the complaint is time barred and hence not maintainable.

Q16. My grievance is that I am not getting regular supply of water. What can I do against the concerned Government Authority before a Consumer Forum?

A. The Government supplying water is performing a statutory functions which can not termed to be rendering of service. Hence the Consumer Forums have no jurisdictions to entertain such a complaint.

Q17. My grievance is that a Hospital where I was treated declined to give me the medical records pertaining to my treatment and operation for Ulcer. Can it be termed a deficiency in service on the part of the hospital?

A. There is no negligence on the part of the hospital by reason of such failure to supply the said papers unless there was a legal duty cast on the hospital to furnish such documents to the patients, which has to be seen from their Rules and Regulations.

Q18. A registered letter sent to me was not delivered. What is the liability of an employee of the Post Office in this matter?

A. Section 6 of the Indian Post Office Act 1878 provides that the Government shall not incur any liability by reasons of the loss, mis-delivery or delay or damage to any postal article in course of transmission by post except in so far as such liability is made in express terms to be undertaken by the Government and no Officer the Post Office shall incur any liability by reason of such loss, mis-delivery, delay or damage unless he had caused the same fraudulently or by his willful act or default. In view of the said Section 6, your complaint is not maintainable unless there is allegation of fraud or willful act of negligence of any postal employee.

Q19. A Superfast Train in which I was travelling was delayed for long hours without any reason. Can this be a ground for filing a complaint against the Railways?

A. Additional charges are taken by the Railways from the passengers travelling by a Superfast Train. If the trains are delayed for long hours and the delay has not been properly explained it amounts to deficiency in service and therefore the Railway is bound to refund the excess charges.

Q20. I am a shareholder of HLL. Despite having made all the payments, the share certificates were delivered very late. I have claimed the loss in terms of the escalation in the market price of the share. Is my claim valid?

A. Share market is a speculative market and there is bound to be fluctuation in value of shares of the company depending on market condition. Merely because the value of the share went up you are not entitled to get compensation at the increased rate, as damages are remote damages.

Q21. I had paid the telephone bill but inspite of that the telephone department disconnect my telephone without any notice. Can the department disconnect the telephone without notice to the subscriber?

A. Disconnection cannot be effected without notice to the subscriber. The Department is bound by law to give such a notice. You can seek compensation for the same alongwith restoration of the connection.

Q22. I had bought a scooter in last May, after some months it is creating problem to me. When I complained to Service center they serviced it and say the problem was removed. But last week it is creating the same problem again. When I complained them they return me the Scooter next day and they say again that the problem was removed. But today it is creating the same problem to me. Can I go to file a case in consumer forum.

A. You can definitely file a case before the Consumer Forum but the ideal remedy at this stage would be to complain to the company i.e. Bajaj Scooters Ltd. against the service center and wait for their response. In case nothing is done even after this, then it will be prudent to file a case in the Consumer Forum.

Q23. We have been buying Parag milk packet 500 ml from a retailer. The packet though gives only 400ml. What action can we take against the company.

A. There is clear case of cheating and you can file a criminal complaint under Section 421 of the Indian Penal Code. Besides filing a Criminal complaint, you can also approach a Consumer Court for this purpose. You must collect adequate evidence before doing the same, i.e.; retain a sealed packet of Parag Milk which indicates the quantity of 500ml but actually weighs 400ml.

Q24. I had deposited a booking amount with Pal- Peugeot, later the same was cancelled but no refund has come so far, for the last two years. The matter was referred to Delhi Consumer forum who referred to than (Maharashtra) consumer forum. Documents were sent to them but of no avail, again it was sent by us to Delhi as the deposit was made to Premnath Motors Delhi but Delhi Consumer forum has again written to follow than.

A. You should file an appeal before the State Commission against the order of the Consumer Forum Since the cause of action arose at Delhi, i.e.; the Distributor was located at Delhi and money also seems to have been paid at Delhi the Delhi Consumer Forum had the jurisdiction in case the distributors (who work at Delhi) have been made parties to the said petition. You should file an appeal against both the manufacturers as well as the distributors, i.e.; Prem Nath Motors against the order.

Q25. I purchased on 1.1.2000 from a shop in Panjim, Goa a bottle of Scotch Whiskey. I find that it is not original in that it tastes too sweet. It appears to be spurious. I have written letters to the MD, Goa Tourism but there is no reply. What remedy is available to me to the relief.

A. You can certainly file a complaint before the Consumer Forum against supply of Spurious Whisky supplied to you as well as also lodge a Criminal Complaint in this regard. However, the difficulty (which is a major one) is that since the bottle of Whisky has been open, it will be virtually impossible to prove that the contents of the Whisky are the same as they were when the bottle was sealed. Since, the legal system is totally based on evidence / proof, it would not be a

worthwhile exercise to institute any legal proceedings in the facts and circumstances of the present case.

Q26. I understand that under the Consumer Protection Act, a complain has to be made within 2 years from the date on which the cause of action arose. What happens in a case where the 2 year period has elapsed because the I spent the time writing(and replying to) to the manufacturer in the hope that he would replace the good? What argument can I give to the Forum in response to the plea of 2 years which I know will be taken by the manufacturer?

A. It is correct that the Consumer Protection Act, provides for a limitation period of two years for filing a complaint and the said period starts from the date when the cause of action arose. The same is provided under Section 24-A of the Consumer Protection Act, 1986. However, the Consumer Forum has the power to entertain a complaint even after the said period in case it is convinced that the complaint could not be filed within the said period on account of certain sufficient cause. Thus you would have to give a good explanation in order to have the delay condoned from the Consumer Forum. In case the only ground pleaded by you is that you were corresponding with the Manufacturer and hoping to get the goods replaced, the same would not be construed as sufficient reasons for condoning the delay.

Q27. Can I claim for replacement. If they do not replace the vehicle can I move to consumer forum. Who should I make a party i.e. the dealer, or the LML company or both of them. The dealer is in Karol Bagh the company office in Greater Kailash and factory's regd. office in Kanpur in which Jurisdiction/Zone should I file the complaint. Or any other detail which you feel Justified to provide me.

A. You should again inform the Company about all the facts and steps taken by them for removing the defect in writing and further pursue the matter with the Company and try to get the defect rectified. In case your efforts fail you can file the complaint with Consumer Forum at Delhi by making both the Company and the Dealer as parties to the complaint. Replacement is allowed by Forum if the defect is such that it is not possible to rectify the same. Give the Delhi address of the company and file the complaint at Delhi.

Q28. I injured my knee in a game of football on 31st December 1997. It was diagnosed as ACL TEAR. For that I was operated upon in the knee on 2nd March 1998. After the operation my knee developed stiffness, which is unusual in such cases even after undergoing physiotherapy for two months I was unable to bend or straighten my knee. So after two months of operation my knee was manipulated under anesthesia to relieve stiffness. A plaster was put on the knee for one month. I was told to start walking . I used to walk with a limp. For about 8 months I continued to walk with a limp but then my condition deteriorated & in March-99 I had to start using crutches to move around. To find out the cause of this pain I underwent investigative arthroscopy in June-99 which revealed the following 1. ACL Laxity 2. meniscus tear 3. patellofemoral osteoarthritis . I was advised by the doctor to do physiotherapy, and take painkillers for the pain, I am still doing physiotherapy, but neither the pain has reduced nor am I able to walk without crutches, this whole experience has affected my life badly. Can I sue the doctors for negligence /

inefficiency. My both operations were carried out in military hospitals, and they were done free of cost since I am serving in army. So I can not go to Consumer protection court. Please advise?.

A. You can file a writ petition in the High Court of judicature against the hospital, making doctors responsible for your condition a party. You can also seek damages alongwith the appropriate action against the **doctors and the management** in the **writ petition**.

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