

# CONSUMER PROTECTION ACT 1986

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# POSITION BEFORE 1986

- Limited manufacturers
- Lengthy procedure of courts
- Necessary to engage lawyer
- Individual buyers



Consumer Protection Act was passed in 1986 and rights given to the consumer for expeditious settlement of consumer disputes through self representation

# RELEVANT TOPICS:

- ✓ Objects
- ✓ Definition
  - Complainant, Complaint
  - Consumer
  - Goods, Services
  - Defect, deficiency
  - Unfair Trade Practice
- ✓ Consumer Protection Councils
- ✓ Consumer Redressal Forums - Jurisdiction

# OBJECTS OF THE ACT (Sec 6):

- Right to be protected against marketing of hazardous goods
- Right to be informed about quality, quantity, potency, purity, standard and price of goods
- Right to be assured access to a variety of goods at competitive prices
- Right to be heard
- Right to seek redressal
- Right to consumer education



# COMPLAINANT – Sec 2 (1) (b)

Complainant means –

- (i) An individual consumer
- (ii) Any registered consumer association
- (iii) The Central or State Government
- (iv) One or more consumers having same interest
- (v) In case of death, legal heir or representative

# COMPLAINT – Sec 2 (1) (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;
- (ii) the goods bought by him suffer from one or more defects;
- (iii); the services hired suffer from deficiency in any respect
- (iv) a price in excess of that displayed or fixed has been charged;
- (v) hazardous goods or services are being offered for sale in contravention of law.

# CONSUMER – Sec 2 (1) (d)

Consumer means any person who –

- (i) Buys any goods for a **consideration**, and includes any user of such goods , provided such use is made with the approval of the first mentioned person
- (ii) Hires or avails of any services for a consideration and includes any beneficiary of such services, who avails of such services with the consent of the first mentioned person.

However, ‘Consumer’ does not include a person who has obtained goods or availed services for **resale** or for any **commercial purpose** (excluding when used exclusively for earning livelihood by means of **self employment**).

## **GOODS – Sec 2 (1) (i)**

“Goods” mean goods as defined in the Sale of Goods Act, 1930 (i.e. movable property other than actionable claims and money)

## **SERVICE – Sec 2 (1) (o)**

Service of any description which is made available to potential users but does not include:

- a) rendering of any service free of charge; or
- b) under a contract of personal service

[Indian Medical Association vs. V P Shantha]



# CASE STUDIES

Explain with reason which of the following are consumers and can apply under Consumer Protection Act:

- i) A purchased curtains which turn out to be torn
- ii) Disconnection of electric supply on account of arbitrary and excessive billing
- iii) Failure to deliver car within stipulated period
- iv) Failure to deliver taxi within stipulated period
- v) Failure to intimate change in departure time of flight
- vi) Free treatment in a government hospital

## DEFECT – Sec 2 (1) (f)

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

~or under any contract

~or as is claimed by the trader in any manner whatsoever in relation to any goods.

## DEFICIENCY – Sec 2 (1) (g)

Any fault, imperfection or 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 in relation to any service.

# UNFAIR TRADE PRACTICE – Sec 2 (1) (r)

A trade practice which

~for the purpose of promoting the sale, use or supply

~of any goods or service

~adopts any unfair method or deceptive practice

It includes ten kind of practices like selling second hand goods as new, representing wrong affiliation or sponsorship etc (learn any 5 types)

# COUNCILS

Central Consumer Protection  
Council (Section 4-6)



State Consumer Protection  
Council (Section 7 & 8)



District Consumer Protection  
Council (Section 8A & 8B)

# CENTRAL CONSUMER PROTECTION COUNCIL

## (Section 4-6)

Object – As given in section 6

Members –

- i) The Minister in charge of Consumer Affairs in Central Government, shall be its chairman
- ii) Such number of other official and non-official members as may be appointed by CG representing such interest as may be prescribed.

Procedure for meetings –

- to be held as and when necessary but at least once each year
- time and place to be decided by Chairman
- prescribed procedure as per rules to be followed.

# STATE CONSUMER PROTECTION COUNCIL

## (Section 7 & 8)

Object – Shall promote and protect within the State the rights given under section 6

Members –

- i) The Minister in charge of Consumer Affairs in State Government ('SG'), shall be its chairman
- ii) Such number of official and non-official members, representing such interest as may be prescribed by SG
- iii) Such number of official and non-official members as may be nominated by the Central Government ('CG')

Procedure for meetings –

- to be held as and when necessary but at least twice each year
- time and place to be decided by Chairman
- prescribed procedure as per rules to be followed.

# **DISTRICT CONSUMER PROTECTION COUNCIL**

## **(Section 8A & 8B)**

Object – Shall promote and protect within the district the rights given under section 6

Members –

- i) The Collector of the district, shall be its chairman
- ii) Such number of other official and non-official members representing such interest as may be prescribed by SG

Procedure for meetings –

- to be held as and when necessary but at least twice each year
- time and place to be decided by Chairman
- prescribed procedure as per rules to be followed.

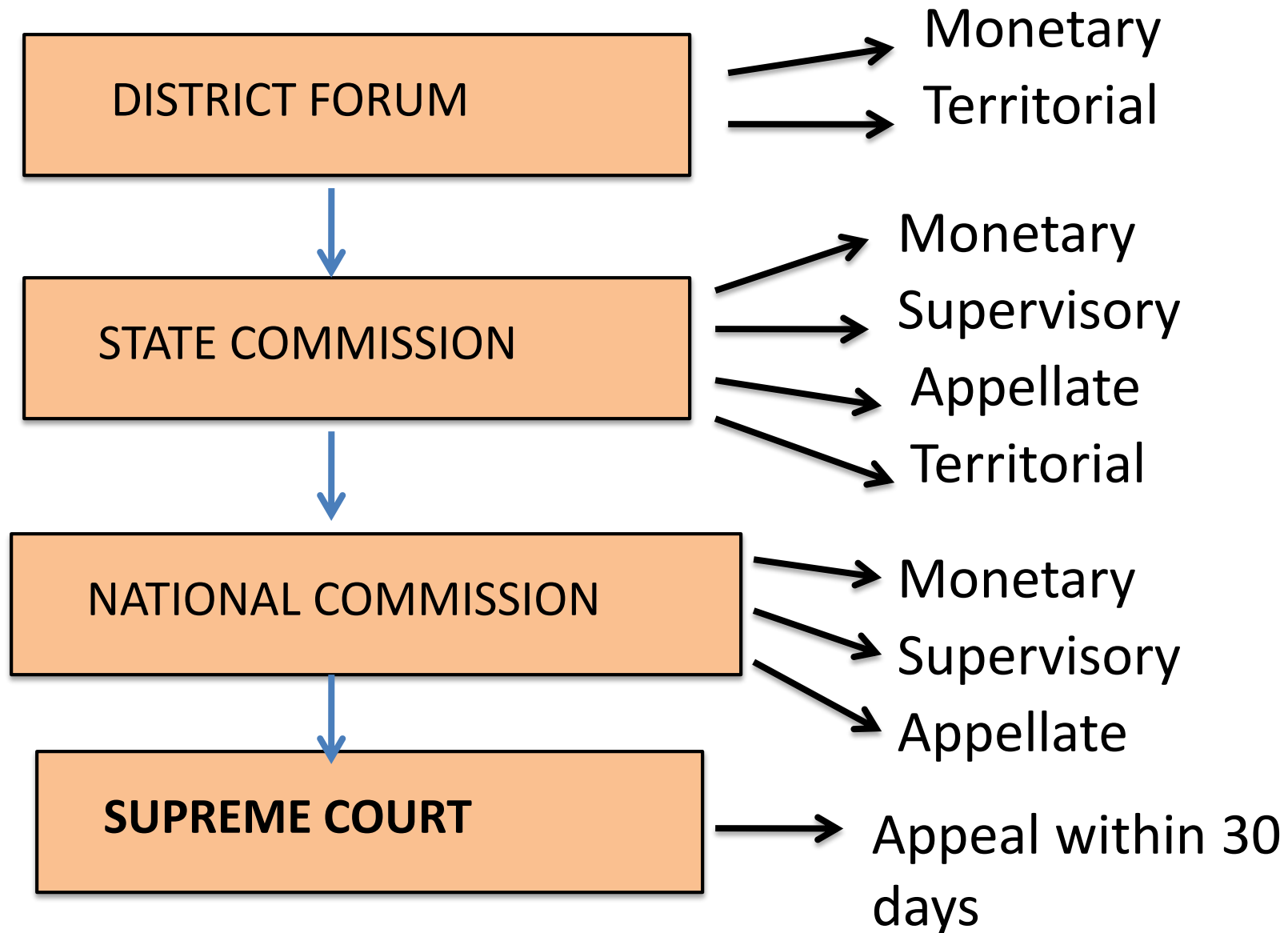


# CASE STUDIES

Q. A buys a bottle of cold drink from a shop and gives it to B as birthday treat. There was a worm in its contents because of which B fell ill. Who is a consumer in this case under CPA, 1986? Can the shopkeeper also file a case under CPA against the manufacturer for his loss of repute?

Q How many meeting should a District Council have during the year and who is its chairperson?

# REDRESSAL AGENCIES



# JURISDICTION OF DISTRICT FORUM (Section 11)

## Monetary –

Where goods/services/compensation  $\leq$  20 lakhs

## Territorial –

Within the local limits of whose jurisdiction:

- i) the opposite party or parties reside OR carry on business OR have a branch office OR personally work for gain, at the time of institution of complaint
- ii) Any of the opposite parties actually reside OR work AND assent of DF or other opposite parties is taken
- iii) the cause of action arises, either wholly or in part

# JURISDICTION OF STATE COMMISSION(Section 17)

## Monetary –

Where goods/services/compensation > 20 lakhs AND <=1 Crore

## Appellate-

Against the orders of district forum within the State

## Supervisory/ Revisionary –

To call for records and pass appropriate orders in a dispute pending before/decided by District Forum (DF) where it appears:

- that DF has failed to exercise jurisdiction
- that DF has wrongly exercised jurisdiction
- that DF has acted with material irregularity.

## Territorial – on same lines as District Forum

# **JURISDICTION OF NATIONAL COMMISSION**

## **(Section 21)**

Monetary –

Where goods/services/compensation  $\geq$  1 Crore

Appellate–

Against the orders of State Commission

Supervisory/ Revisionary – on same lines as State Commission

# **PENALTY FOR FRIVOLOUS/VEXATIOUS COMPLAINT (SECTION 26)**

Where a complaint instituted is found frivolous/vexatious, DF/SC/NC shall:

- i) Dismiss the complaint; and
- ii) Make an order imposing costs, not exceeding 10K

# SOME RECENT CONSUMER CASES

## Worli company to be paid ₹61K for faulty dishwasher

Rebecca Samervel | TNN

*25,700 + 21,000 + 11,000*  
Mumbai: A consumer forum has directed IFB Industries to pay Rs 25,700 to a Worli-based company for the damage its dishwasher caused to their utensils. IFB Industries will also have to refund the Rs 25,700 paid for the gadget and give Rs 11,000 as compensation.

In January 2010, a representative of Lavi Impex Pvt Ltd purchased a dishwasher model called Neptune from Vijay Sales store in Dadar after he was shown a promotional video. The

### DAMAGED CROCKERY

company representative was told that daily utensils and crockery would be "absolutely clean" after the wash. However, on using the dishwasher, the representative found out that he was misled.

In a complaint filed before the Central Mumbai District Consumer Disputes Redressal Forum in 2011, the representative alleged that the dishwasher did not clean utensils properly; its heater was not functioning and it was defective. He lodged a complaint with the service centre. The gadget was replaced,

but the problem persisted. Over time different engineers tried to rectify the problem and gave him various instructions but none worked. The representative claimed that when he followed the instructions, the crockery suffered scratches and cracks. He then sent a legal notice, dated July 1, 2011, through an advocate.

Finally, a complaint was filed in the forum. Vijay Sales and IFB were served notices. As both remained absent, the matter was proceeded ex parte against them. The forum held that in their absence, the contentions of the complainant remained unchallenged. "The complainant has produced sufficient evidence to show the purchase of dishwasher. It was replaced, but the problem continued," the forum said. It further held that the complainant suffered loss due to damage of utensils.

"The purpose of purchasing a dishwasher was not served as the utensils got scratches and cracks. As the evidence produced by the complainant is not challenged, we conclude that the complainant is entitled for refund of purchase amount," the forum said.

# Couple makes airline pay for ticket cancellation

Rebecca Samervel | TNN

**Mumbai:** A district consumer forum has directed an airline to pay a compensation of Rs 5.26 lakh to a Pune-based couple for the inconvenience they faced when their tickets were cancelled in 2011 without prior intimation. "They faced inconvenience and trauma due to the sudden cancellation of their tickets and had to stay in a strange place... This is beyond imagination," said a Pune district forum while holding Jet Airways guilty of deficiency in service.

Raminohan and Shumala Nagarkar had purchased Mumbai-Dallas round-trip tickets from the airline through a travel agent. The Nagarkars were to board a flight from Mumbai to New York on May 23, 2011, but it was cancelled due to bad weather and they were required to stay at the airport for four days and three nights. The couple alleged



“The tourists had to face inconvenience and trauma due to the sudden cancellation of their air tickets. They had to stay in a strange place... This is beyond imagination

## Consumer forum

that they sustained monetary loss and faced agony, frustration and inconvenience while proceeding to New York from Mumbai. They were also required to spend on their stay during that period. Similarly, while return-

ing from New York to Mumbai, their tickets were cancelled at the airport. The Nagarkars alleged that they had to travel by another flight on a different airline and paid Rs 99,566.

The couple filed a complaint in the consumer forum on June 25, 2012. The Nagarkars told the court that after they filed the complaint, the airline gave them a cheque of Rs 99,566 and two coupons worth nearly Rs 30,000.

The forum observed that the couple had complained to the airline about their problems, but did not receive a positive response. The forum also said that the correspondence revealed the airline initially said the Nagarkars did not reach the airport on time for their flight to Mumbai, but later blamed its sub-contractor for the cancellation. "Jet cannot pass its responsibility on another airline... It is liable to pay compensation as well as refund cost of ticket," the forum said.

June 19



# Stranded bus passenger to get ₹77K relief<sup>7</sup>

TIMES NEWS NETWORK

A bus operator has been ordered to pay a compensation of Rs 77,000 to woman from Goa because he failed to pick her up on her return journey to Goa from Belapur, Navi Mumbai, and left her stranded on the road late in the night.

The order was issued last month against Mumbai-based Neeta Travels by the Goa state consumer disputes redressal commission. The commission ordered the bus operator to make the payment within 30 days, failing which the operator shall pay an interest at the rate of 9% per annum until the payment is made.

The order follows a complaint made

by Maria Gracias of Margao, a bank officer who was deputed for a training programme at CBD Belapur, from August 21, 2006 to August 25, 2006. She booked to-and-fro tickets through Neeta Travels. On her return journey on August 25, she was to board the bus at 9.45pm below a bridge at CBD. She arrived at the spot at 9.25pm but the bus never turned up.

Gracias claimed that at quarter to midnight, she was the only person at the bus stop when four men started approaching her in a suspicious manner. Trembling and fearful, she rushed with her luggage to the nearby police outpost. The policemen allowed her to use the telephone. When she called up the bus operator, she was shocked to learn

that her name did not appear on the passengers' list for Goa that day. The bus operator finally told her that the bus had already reached Panvel and that they could not help her. Later, the college staff took her back to the college at 2am. Gracias returned to Goa on an unreserved train seat the next day.

She lodged a complaint against Neeta Travels with the district consumer forum and though she claimed over Rs 1 lakh as compensation, the forum awarded her only Rs 41,000. Aggrieved, she appealed to the Goa state consumer disputes redressal commission. The commission noted that the "situation was indeed traumatic and agonizing for a woman" and ordered that she be paid Rs 77,000 as compensation.

NOV 10

# Cheque forgery: Bank told to pay victim ₹7.2 lakh

TIMES NEWS NETWORK

**Mumbai:** The Thane district consumer disputes redressal forum has directed Canara Bank to pay Rs 7.2 lakh to an Ulhasnagar resident from whose account Rs 1 lakh was fraudulently withdrawn in 2007.

In his complaint lodged with the forum in 2009, Ramker Jaiswal said some unknown person had withdrawn Rs 1 lakh from his account by encashing a forged bearer cheque at the Ambernath branch of Canara Bank. He said that the cheque was cleared though the signature on it looked different from his own, which was available in the bank records.

Refuting Jaiswal's allegations of deficiency of service, the bank had said the complainant himself had encashed the cheque by signing it. It further claimed that Jaiswal had neither lodged any complaint of cheques having gone missing nor issued any 'stop payment' instructions.

The forum, however, did not accept the bank's defence, saying the Re-

serve Bank of India had given clear instructions on the precautions to be taken by banks while clearing bearer cheques for withdrawal amount of Rs 50,000 and above. The forum said the bank official was required to verify the identity of the person pre-

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senting the cheque by checking his PAN card or bank records, which includes the account holder's signature. Stating that the bank failed to adopt these precautions, the court directed the bank to reimburse the amount within three months, along with 10% interest per annum from July 2007.

# Builder asked to pay ₹2cr for failure to hand over homes

Rebecca Samervel | TNN

**Mumbai:** In one of the highest payouts in a consumer complaint in recent months, the Maharashtra State Consumer Disputes Redressal Commission has ordered a builder to pay a total of Rs 1.97 crore in compensation to 82 complainants, after they had not received possession of residential premises booked in Thane in 1997.

The commission observed, "Having received part-consideration from each of the complainants and failure on their part to complete the construc-

tion work and hand over possession of the respective tenements, the opponents are under statutory obligation to refund the amounts received, together with reasonable interest."

Paranjape Construction Company will also have to return the sum paid by the complainants, which comes to an average of Rs 1 lakh each. The commission directed the builder to refund the sum received from each together with 15% interest from June 1997.

In all 82 complaints, the victims sought refund of the amount paid with compensa-

tion. The builder had come up with a project called 'Paranjape Nagar', comprising multi-storied buildings, row-houses and bungalows. Each complainant paid amounts ranging from Rs 50,000 to Rs 3 lakh, said advocate S D Patil who argued on behalf of the complainants.

According to the complainants, the construction could not take off for want of requisite approvals either from local bodies or the government and due to a row between the builder and some villagers. They alleged that despite repeated requests and notices, the builder neither

handed over the possession of the respective tenements nor refunded the amounts received from each of them. They filed the complaints in 2000.

During the pendency of the complaint, some complainants died and their legal heirs took their places. Despite sending several notices, the builder did not make a representation in the forum. The commission then passed the order ex parte.

The commission said that since the builder did not counter the allegations, it held that there was deficiency in service on his part.

Some lost in transit costs

Exempt airports



# SC awards record ₹6cr<sup>10</sup> for medical negligence

## Kolkata Hosp, Docs Fined For Patient's Death

Dhananjay Mahapatra | TNN

**New Delhi:** The Supreme Court on Thursday awarded a record Rs 5.96 crore compensation, which with interest will exceed Rs 11 crore, for medical negligence to Kunal

**FULL COVERAGE: P 14**

Saha, a US-based NRI doctor. It marked victory in a 15-year battle for Saha, who sued four doctors and Kolkata's AMRI hospital for the death of his wife Anuradha in 1999.

Courts have tended to be cautious about fixing liability for medical negligence since

## PAYOUT PLUS INTEREST OVER ₹11CR

**April 25, 1998 |** Anuradha (pic), wife of US-based doc Kunal Saha, contracts rare skin disease while on vacation in Kolkata

**May 11 |** Admitted to AMRI hospital, turns critical due to poor diagnosis and steroid overdose

**May 28 |** Dies after being shifted to Mumbai's Breach



Candy Hospital

**March 1999** Consumer redressal panel awards Saha ₹1.7cr compensation

**2009 |** SC absolves doctors and AMRI of criminal negligence

**Oct 24, 2013 |** SC asks doctors, AMRI to pay Saha ₹6cr compensation, which will exceed ₹11cr with interest

the matter is regarded as technical. But a bench of Justices Chandramauli Kumar Prasad and V Gopala Gowda set a precedent by enhancing the Rs 1.73 crore relief awarded to Saha by the National Consumer Disputes Redressal Commission by almost 250%.

Doctors Balram Prasad, Sukumar Mukherjee and Baidyanath Halder were held guilty of negligence in treating Anuradha, who had contracted a rare skin disease.

**► Had sought ₹102cr, P 14**  
**► ₹2.5L for botched op, P 3**

# 'Failed treatment is not med negligence'

Jehangir B Gai

**Background:** Medicine is not exact science. There are several factors that contribute to the success or failure of a treatment. Unless a doctor deviates from the standard accepted medical procedure, or if he does not exercise ordinary skill and prudence expected of a professional, he cannot be held liable for the treatment's outcome.

**Case Study:** B.L. Gupta (57), a businessman dealing with electric bulbs and tubes, had diabetes that was controlled through medication, without complications. In February 1999, he took laser treatment for his eyes and did not have any problem. In September 2000, he developed some pain in the eyes for which he went to Dr Shruff's Charity Eye Hospital in Delhi, where he underwent an operation on the left eye. Later, he was referred to Dr Lingam Gopal at Sankara Nethralaya in

Chennai for further evaluation and line of management.

In Chennai, he was advised to undergo a surgical treatment of the right eye and laser treatment in the left eye. He was put on waitlist as there was a backlog of patients. Meanwhile,

**Businessman B.L. Gupta alleged multiple surgeries had been performed to extract money and the negligence resulted in the loss of his vision, which led to depression**

Gupta was advised to approach other medical facility. He went to Navjyoti Eye Centre in Delhi for further management.

Upon examination, Navjyoti doctors found that Gupta could only perceive light, but not hand movements or finger counting. They operated upon both the eyes. After some time, Gupta experienced deterioration in vision. He underwent

two more surgeries at Navjyoti. As his condition did not improve, doctors referred him to the Eye Research Centre and Retina Foundation in Ahmedabad, and then to Sankara Nethralaya, which gave the same advice. Navjyoti doctors then operated upon Gupta for glaucoma for intra-ocular pressure. As his condition did not improve, Gupta went to AIIMS in Delhi, which certified that he had totally lost his vision.

Gupta alleged that Navjyoti doctors were negligent and had failed to follow the advice given by experts at the Ahmedabad Centre and Sankara Nethralaya. He lodged a complaint against Navjyoti, claiming Rs 1 crore compensation. Gupta died during the pendency of the complaint, but the litigation was continued by his heir.

Navjyoti doctors said Gupta was diabetic for 30 years and suffered from diabetic retinopathy. He had diminished vi-

sion at the time of the first consultation in 2000. They had advised immediate surgery of the left eye for vitreous haemorrhage. The decision to operate was taken to save his vision. They said the first surgery went off well and Gupta was satisfied, so he agreed to further surgeries. All the surgeries were successful, and Gupta gained some vision. Subsequently, he developed other complications which had no link with the surgery performed by them.

The national commission observed that Gupta was frequently referred for expert opinion to ensure correct treatment. On November 1, it dismissed Gupta's complaint.

**Conclusion:** The outcome of the treatment is irrelevant.

*(The author is a consumer activist and has won the government of India's National Youth Award for consumer protection. His e-mail is jehangirgai@rediffmail.com)*

**THANK YOU!**