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Consumer Handbook on Mediation: Frequently Asked Questions

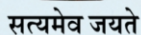
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CONSUMER HANDBOOK ON MEDIATION (FAQ)



Published by:

**Ministry of Consumer Affairs, Food and Public Distribution,
Government of India, New Delhi**

&

**Chair on Consumer Law and Practice,
National Law School of India University, Bengaluru, Karnataka**

2021



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Prof. (Dr.) Ashok R. Patil

Chair Professor

Chair on Consumer Law and Practice

NLSIU, Bengaluru

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Preface

First of all, I would like to thank and congratulate Ministry of Consumer affairs, Food and Public Distribution, Government of India for incorporating ‘Mediation’ Chapter under Consumer Protection Act, 2019, through their untiring efforts.

Right to timely access to justice is a well-recognised fundamental right. The term justice means giving a person what he or she deserves. Mediation under Chapter V of Consumer Protection Act, 2019 has empowered the consumers to negotiate on his own for what he deserves. Introduction of Mediation in Consumer Protection Act, 2019 is commendable since it is a milestone in the history of Consumer Law.

The Ministry of Consumer affairs, Food and Public Distribution, Government of India has facilitated the cost efficient and time saving platform for resolution of consumer disputes in the form of mediation. Now it is the responsibility of the educational institutions, academicians, professionals, Non-Governmental Bodies and Voluntary Consumer Organization’s to popularize and to create awareness about the ‘Mediation’ as an effective tool to resolve consumer disputes and an attempt of the same has been made through this hand book.

This Handbook contains useful information on Mediation in Consumer Disputes. With an aim to familiarise the reader with the concept and process of mediation, various questions framed on layman’s point of view have been answered in this

hand book. We are grateful to Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, Government of India, New Delhi, for their valuable inputs & the support and motivation they extended in preparation of this Handbook.

I would like to thank Prof. (Dr.) Sudhir Krishnaswamy, Vice-Chancellor, NLSIU, Bangalore and Prof. (Dr.) Nigam Nuggehalli, Registrar, NLSIU, Bangalore; for their constant support and encouragement. Also I would like to thank Mr. Akshay B. Yadav, Mr. Sanjay Utagi and Ms. Vasavi Hegde for their support in bringing out this Handbook.

Prof. (Dr.) Ashok R. Patil
Professor of Law,
National Law School of India
University, Bengaluru

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ACRONYMS

ADR	: Alternative Dispute Resolution
CPA, 2019	: Consumer Protection Act, 2019
CPC	: Code of Civil procedure, 1908
DCDRC	: District Consumer Disputes Redressal Commission
MACAD	: Motor Accident Claims Annuity (Term) Deposit
MAMA	: Motor Accidents Mediation Authority
MCPC	: Mediation and Conciliation Project Committee
MVC	: Motor Vehicles Claim
NALSA	: National Legal Services Authority
NCDC	: National Consumer Disputes Redressal Commission
SCDRC	: State Consumer Disputes Redressal Commission

1. INTRODUCTION

Mediation, as a mode of alternative dispute resolution has a long history in the diplomatic arena. As pointed out by Hon'ble Chief Justice of India, N V Ramana, our ancient epic Mahabharata, is best example of an early attempt at mediation as a conflict resolution tool, where Lord Krishna attempted to mediate the dispute between the Pandavas and Kauravas. Also it is the best example of how the failure of mediation may lead to disastrous consequences taking lot of time.

In the Modern days, due to rapid increase in the commercial disputes, the interest in the mediation has increased sharply. The increased interest towards mediations is directly attributable to dissatisfaction with the cost, time consumed and lengthy & complicated procedures adopted in the traditional dispute resolution systems. This has made people & business entities to focus and consider the advantages of mediation, particularly its simple and easy procedure that offers parties full control over both the process of resolution and the outcome of the process.

Since mediation is amicable settlement of the disputes, using mediation to settle the disputes has been proved very satisfactory because of very high rates of success. Parties' themselves deciding the outcome of the dispute is a notable feature of the mediation. An achieved result acceptable to both the parties of the dispute, gives no scope for further litigation on the decided subject unless there is

serious violation in the procedure adopted for the mediation. Considering its time & cost advantage and unstructured procedure, mediation has been recently introduced for resolving the consumer disputes to provide win-win situation to the consumer & business entities. However, still there is scope for creating awareness among the consumers & business entities to popularise mediation and make them use the mediation as an effective tool of ADR. This document seeks to create awareness among the consumers, business entities, academicians, students, consumer right activists and common people who are interested to know how mediation works in settlement of consumer disputes.

2. THE CONCEPT OF MEDIATION

The Mediation is a not a new concept in the field of law. Mediation as a method of dispute resolution can be traced to the ancient times as well. Also, in pre-British India, mediation was popular among businessmen. Impartial and respected businessmen called Mahajans were requested by business association members to resolve disputes using an informal procedure, which combined mediation and arbitration. In the modern days, mediation is known but least practised method of alternative disputes resolution due to lack of awareness. Developments in the medieval and the modern period led to growth of written laws which defined the rights of individuals very well. With the passage of time, to claim the rights, the written laws were adopted by the individuals as tools for dispute resolution. These written laws proved to be tools for adversarial remedies for the parties, which again made a way for non-adversarial methods. Considering the same, need for recognition of mediation was felt by the legislature, which was performed by it through incorporation of the mediation in various laws and the Consumer Protection Act, 2019 is one such example.

2.1. Definitions of terms:

2.1.1 Dispute

Dispute means disagreement or holding opposite views between two or more persons on any point.

According to legal dictionary, dispute is a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other.

2.1.2 Disputed parties

Parties claiming different interests or rights and holding opposite views in dispute are referred as disputed parties.

2.1.3 Negotiation

Dictionary meaning of the term ‘Negotiate’ is to bargain for something to agree at some point. Negotiation is a process where two or more parties having conflicting interests in any dispute bargain among themselves to reach a settlement where they can both agree on. Negotiations are made by the parties through discussions between themselves or their representatives without an involvement of the third party.

2.1.4 Mediation

The term mediation can be defined as a voluntary dispute resolution process where the third party facilitates negotiation between the disputed parties to negotiate for their rights and interests by themselves. The third party who facilitates the negotiation between the disputed parties is called mediator.

As described by the *Mediation and Conciliation Project Committee of Supreme Court of India*, ‘Mediation’ is a voluntary, binding process in which an impartial and neutral mediator facilitates disputing parties in reaching a settlement. A mediator does not impose a solution but creates a conducive environment in which disputing parties can resolve all their disputes.

Mediation is tried and tested alternative method of dispute resolution.

2.1.5 Mediator

Mediator is a neutral and impartial person who carries out the process of mediation between the disputed parties. In fact, he facilitates the negotiation between the parties by acting as platform for negotiation.

2.2. Types of Mediation

2.2.1 Court- Referred Mediation

Court referred mediation is one where a case has been filed before the Court and Court refers such matter for mediation under Sec. 89 of the Code of Civil Procedure, 1908. Court referred mediation is post litigation mediation. As in case of Consumer protection Act 2019, wherein Section 37, 49 & 59 empowers the Consumer Commissions to refer the Cases to the Mediation Cell Attached to it.

2.2.2 Private Mediation

The private mediation is one where qualified mediators offer the services of mediation on a private, fee-for-service basis to the Court, to members of the public, to members of the commercial sector and also to the governmental sector to resolve disputes through mediation. Private mediation can be used in connection with disputes pending in Court and pre-litigation disputes. The list of recognised private mediation institute can be accessed at this web link: http://www.ciac.in/download/GOI_ODR.pdf.

3. ADVANTAGES OF MEDIATION

3.1. Voluntary Process

Mediation is a voluntary process and parties are at liberty to opt out of the mediation process at any stage if they don't find it useful. 'Voluntary Nature' is essence of mediation, where parties are not compelled to go through it, which ensures compliance with the settlement reached.

3.2. Control of the parties

In mediation, during the entire process, parties have full control over the scope and outcome of the mediation. Parties themselves decide the scope of reference or issues of dispute subjected for mediation and also the outcome of the mediation process i.e to settle or not and also terms of settlement.

3.3. Active participation of parties

Unlike other dispute resolution methods, mediation provides the parties an opportunity to actively participate in the mediation proceedings and to negotiate directly. Mediation facilitates parties to present their case by their own.

3.4. Cost and time efficient

Due to absence of strict and rigid procedure, the mediation is time efficient and cost efficient method of dispute resolution. Fees of

professionals and other expenses in mediation will be very less compared to traditional methods of dispute resolution.

3.5. Convenient to the parties

Simple and flexible procedure makes the mediation convenient to the parties. There will be no fixed/conditional adjournments in the mediation. Hearing can be modified to suit the demands of each case, which allows the parties to carry on with their day-to-day activities.

3.6. Ensures fair process

The mediator chosen will be impartial, neutral and independent. The laws ensure that the mediator doesn't have pre-existing relationship/ interest of any kind with the parties or subject matter. If any suspicion arises on impartiality of the mediator, the parties have option to change the mediator.

3.7. Confidentiality

Mediation process is much more confidential than conventional methods of dispute resolution. The name and facts of the cases which are resolved through adjudicating bodies are easily accessible to everyone, since they enter public domain and hence there will be threat to confidentiality. Especially in consumer disputes, consumers and sellers (including E-commerce companies) are more concerned about the privacy and confidentiality. In case of matters settling through mediation, laws ensure confidentiality of the proceedings.

3.8. Amicable settlement of disputes

Mediation provides amicable settlement of the disputes which in turn helps to maintain, improve and restore relationships of the disputed parties.

3.9. Final settlement of all the disputes in full/comprehensive

In respect of the matters/issues which are referred for Mediation, at each stage of the dispute resolution process, long term and underlying interests of the parties are taken into account. While in examining alternatives, in generating and evaluating options and finally in settling the dispute main focus will be on the present and the future and not on the past. This provides an opportunity to the parties to comprehensively resolve all their differences. Further, there can be no appeal against the things settled through the mediation which leaves no scope for further disputes but ensures full, final and comprehensive settlement of the dispute.

3.10. Win-win deal for the disputed parties-more chances of compliance

Mediation provides win-win situation for the disputed parties, since the parties to the dispute enter in to mutually beneficial settlement by themselves. When the parties themselves sign the terms of settlement, satisfying their underlying needs and interests, there will be compliance.

3.11. Refund of court fees

Rules made under various laws provide for the refund of the 'Court Fees' in the case of settlement of dispute in court referred mediation.

4. ROLE OF MEDIATORS

Mediation is an informal and non-adversarial method of dispute resolution intended to assist the disputing parties to reach a mutually acceptable solution. The role of the mediator is facilitative rather than suggestive in any mediation proceeding. Mediator being an impartial and neutral third person facilitates the resolution of a dispute without suggesting what should be the solution. The mediator has greater role to play in mediation proceedings, he facilitates proper communication between the parties, removes obstacles in communication, assists in the identification of issues and the exploration of options and facilitates mutually acceptable agreements to resolve the dispute. He performs all these functions without violating the ‘right of self-determination’ of the parties.

The role of the mediator on basis of his functions can be classified in to two heads

- (i) Facilitative role to facilitate the process of mediation
- (ii) Evaluative role to assist parties to evaluate the case to arrive at a settlement

(i) **Facilitative Role** where a mediator facilitates the process of mediation involves the following activities

- Creating a conducive environment for the mediation process.

- Explaining the process and ground rules of mediation.
- Facilitating communication between the parties using the various communication techniques.
- Identifying the obstacles to communication between the parties and removing them.
- Gathering information about the dispute.
- Identifying the underlying interests.
- Maintaining control over the process and guiding focused discussion.
- Managing the interaction between parties.
- Assisting the parties to generate options.
- Motivating the parties to agree on mutually acceptable settlement.
- Assisting parties to reduce the agreement into writing.

(ii) **Evaluative Role** refers to evaluation of the case by the mediator to assist in reaching settlement, it involves following activities.

- Helping and guiding the parties to evaluate their case through reality - testing.
- Assisting the parties to evaluate the options for settlement.

5. MEDIATION AS DISTINGUISHED FROM CONCILIATION AND ADJUDICATION

5.1. Mediation and Conciliation

The term conciliation is not defined in the Arbitration and Conciliation Act, 1996. The process of mediation is a third party facilitated negotiation, whereas conciliation is a process similar to mediation where the third party has suggestive role in the process. Both the processes are voluntary and confidential facilitated by a neutral third person to help the parties to reach a negotiated settlement. However in conciliation, third person has got greater power such as suggestion as to terms of a possible settlement and making proposals for settlement. The difference between the mediation and conciliation can be better understood by going through the role of third parties (i.e mediator and the conciliator) in the respective processes.

In mediation the Mediator assists the negotiation between the parties. His assistance is facilitative in nature rather than suggestive. The role of the mediator is minimum in respect of the procedure and outcome of the resolution process. On the other hand the powers of the Conciliator are larger as he can suggest proposals for settlement. The difference lies in the fact that the ‘conciliator’ can make proposals for settlement, ‘formulate’ or ‘reformulate’ the terms of a possible settlement while a ‘mediator’ would not do so but would merely facilitate a settlement between the parties.

The evaluative role of mediator is limited to the function of helping and guiding the parties to evaluate their case through reality testing and assisting the parties to evaluate the options for settlement. But in the process of conciliation, the conciliator himself can evaluate the cases of the parties and the options for settlement for the purpose of suggesting the terms of settlement. The role of a mediator is not to give judgment on the merits of the case or to give advice to the parties or to suggest solutions to the parties.

5.2. Mediation and Adjudication

As discussed earlier, mediation is a voluntary process where a neutral and impartial third party facilitates the negotiation between the disputed parties. Mediation is an alternative, informal method of dispute resolution. On the other hand ‘adjudication’ is conventional method of dispute resolution adhering to the fixed procedure established by the law. Adjudicator generally called Judge/Presiding officer adjudicates the dispute between the parties in the process of adjudication.

Mediator is not an adjudicator since his powers are very narrow compared to the powers of the adjudicator. Adjudicators like judges, arbitrators and presiding officers of tribunals make the decision on the basis of pleadings and evidence. The adjudicator follows the formal and strict rules of substantive and procedural laws. The decision of the adjudicator is binding on the parties. Also the decision of the adjudicator can be challenged before the higher/appellate bodies through an appeal or revision.

In adjudication, the decision is taken by the adjudicator alone and the parties have no role in it. In mediation the mediator is only a facilitator and he does not suggest or make any decision. The

decision is taken by the parties themselves. The settlement agreement reached in mediation is binding on the parties. In court referred mediation there cannot be any appeal, or revision against the decree passed on the basis of such settlement agreement. In private mediation, the parties can agree to treat such settlement agreement as a conciliation agreement which then will be governed by the provisions of the Arbitration and Conciliation Act, 1996. Also the mediation has got various costs and time advantages which are discussed in the later chapter of this hand book.

5.3. Chart Showing Difference between Mediation, Conciliation and Adjudication

	MEDIATION	CONCILIATION	ADJUDI- CATION
Role of the third party	The role of the Mediator is mainly facilitative.	The role of the Conciliator is active but not just facilitative. Also he has suggestive role.	Adjudicator decides the outcome of the adjudication.
Role of the disputed parties	Parties are actively and directly involved.	Parties are actively and directly involved.	Parties are not actively and directly involved.
Law governing procedure and Decision	Procedure and settlement are not controlled, governed or restricted by statutory	Section 61 of the Arbitration and Conciliation Act of 1996 provides for the Application and	Procedure and settlement are governed, restricted

	provisions. Procedure is flexible, parties are at liberty to decide outcome of the process.	Scope of Conciliation.	and controlled by provisions of the relevant statutes.
Consent of the parties	The consent of the parties is not mandatory for referring a case to mediation.	The consent of the parties is mandatory for referring a case to conciliation.	Consent of the parties is immaterial.
Nature of Outcome	Binding settlement is reached only if the parties arrive at mutually acceptable agreement. And settlement is not appealable before any court / tribunal.	Conciliation order/decreed is not appealable.	Decision is binding on the parties. Also the decision may be challenged by the way of appeal/ revision.
Nature of the process	Non-adversarial	Non-adversarial	adversarial
Provision for passing	The referral court applies	The Agreement is enforceable as it is	The decision of

decree on Agreement	the principles of Order XXIII Rule 3, CPC for passing decree or order in terms of agreement.	a decree of a court as per Section 74 of the Arbitration and Conciliation Act, 1996	the court is enforceable.
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***Source:** Mediation Training Manual of India by the Mediation and Conciliation Project Committee, Supreme Court of India.

6. JUDICIAL APPROACH ON PROMOTING MEDIATION

Always the judicial approach has been towards promoting the mediation as a mode of alternative dispute resolution. The Hon'ble Supreme Court and the High courts have on many occasions emphasised the need to resort to mediation in respect of matters fit for mediation. The Hon'ble Supreme Court and the High courts have highlighted mediation as one of the prominent non-adversarial methods of alternative dispute resolution. Through various judgments of Supreme Court and High Courts the necessity of the mediation in Indian scenario can be analysed. Some of the important judgements and orders of The Hon'ble Supreme Court and the High courts are discussed below.

6.1. “Mediation” is also a well-known term – It is a dispute resolution with the assistance of a neutral third party who tries to help the disputing parties to arrive at a negotiated settlement.

AFCONS INFRASTRUCTURE LIMITED AND ANOTHER v. CHERIAN VARKEY CONSTRUCTION COMPANY (PRIVATE) LIMITED AND OTHERS, 2010 (8) SCC 24.

Facts:

The Cochin Port Trust, the second respondent entrusted the work of construction of certain bridges and roads to the appellants under

an agreement dated 20.4.2001. The appellants sub-contracted a part of the said work to the first respondent under an agreement dated 1.8.2001. It is not in dispute that the agreement between the appellants and the first respondent did not contain any provision for reference of the disputes to arbitration. The first respondent filed a suit against the appellants for recovery of Rs. 2,10,70,881/- from the appellants and their assets and/or the amounts due to the appellants from the employer, with interest at 18% per annum. In the said suit an order of attachment was made on 15.9.2004 in regard to a sum of Rs. 2.25 crores. Thereafter in March 2005, the first respondent filed an application u/s. 89 of the Code before the trial court praying that the court may formulate the terms of settlement and refer the matter to arbitration. The appellants filed a counter dated 24.10.2005 to the application submitting that they were not agreeable for referring the matter to arbitration or any of the other ADR processes u/s. 89 of the CPC. Trial court allowed said application. It recorded the fact that first respondent (plaintiff) was agreeable for arbitration and appellants (defendants 1 and 2) were not agreeable for arbitration. The trial court allowed the said application u/s. 89 by a reasoned order dated 26.10.2005 and held that as the claim of the plaintiff in the suit related to a work contract, it was appropriate that the dispute should be settled by arbitration. It formulated sixteen issues and referred the matter to arbitration. The appellants filed a revision against the order of the trial court.

The High Court by the impugned order dated 11.10.2006 dismissed the revision petition holding that the apparent tenor of s. 89 of the Code permitted the court, in appropriate cases, to refer even unwilling parties to arbitration. Hence, the present appeal was filed.

Issues:

- (i) What is the procedure to be followed by a court in implementing Section 89 and Order 10 Rule 1A of the CPC?
- (ii) Whether consent of all parties to the suit is necessary for reference to arbitration u/s. 89 of the CPC?"

Decision:

Held, the court should first ascertain whether the parties are willing for arbitration. The court should inform the parties that arbitration is an adjudicatory process by a chosen private forum and reference to arbitration will permanently take the suit outside the ambit of the court. Only if both parties agree for arbitration, and also agree upon the arbitrator, the matter should be referred to arbitration. If parties are not agreeable for arbitration and conciliation, the court should, keeping in view the preferences/options of parties, refer the matter to any one of the other three other ADR processes. If the reference to the ADR process fails, on receipt of the Report of the ADR Forum, the court shall proceed with hearing of the suit. Hence, court has no power, authority or jurisdiction to refer unwilling parties to arbitration u/s. 89, if there is no arbitration agreement. Therefore, where there is no pre-existing arbitration agreement between the parties, the consent of all the parties to the suit will be necessary, for referring the subject matter of the suit to arbitration u/s. 89 of CPC.

In this Supreme Court case, it was also held that **“Mediation” is also a well-known term and it refers to a method of non-binding dispute resolution with the assistance of a neutral third party who tries to help the disputing parties to arrive**

at a negotiated settlement. It is also synonym of the term ‘conciliation’.

Para 19. All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special Tribunals/Forums) are normally suitable for ADR processes:

- (i) All cases relating to trade, commerce and contracts, including
 - disputes arising out of contracts (including all money claims);
 - disputes relating to specific performance;
 - disputes between suppliers and customers;
 - disputes between bankers and customers;
 - disputes between developers/builders and customers;
 - disputes between landlords and tenants/licensor and licensees;
 - disputes between insurer and insured;
- (ii) All cases arising from strained or soured relationships, including
 - disputes relating to matrimonial causes, maintenance, custody of children;
 - disputes relating to partition/division among family members/co- parceners/co-owners; and
 - disputes relating to partnership among partners.
- (iii) All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes, including

- disputes between neighbours (relating to easementary rights, encroachments, nuisance etc.);
 - disputes between employers and employees;
 - disputes among members of societies/associations/
Apartment owners Associations;
- (iv) All cases relating to tortious liability including
- claims for compensation in motor accidents/other accidents; and
- (v) All consumer disputes including
- disputes where a trader/supplier/manufacture/service provider is keen to maintain his business/professional reputation and credibility or 'product popularity.

6.2. Full Court Fee to be refunded if Case Referred to Mediation by Court Ends in Compromise Decree.

NUTAN BATRA v. M/S BUNIYAAD ASSOCIATES (FAO (OS) (COMM) 42/2018 & CM No. 9553/2018); 2018 SCC OnLine Del 12916; 2018 Indlaw DEL 3824

Facts:

Nutan Batra (appellant) filed a suit against M/s Buniyad Associates (Respondents) claiming the infringement of the intellectual property right. The suit is valid for the purposes of court fees and jurisdiction at Rs. 1,10,00,000/- and a court fees of Rs. 1,10,000/- is paid there on. The subject matter of the suit is a commercial dispute as defined under Sec.2(1)c of Commercial Appellant Division of High Court Ordinance. The commercial Court ordered

to refer the suit to Mediation before the Delhi High Court Mediation and Conciliation Centre, which resulted in Settlement Agreement and directed that the Nutan Batra would be entitled to refund of 50% of the court fee paid, in terms of Sec.16A of the Court Fee Act. Nutan Batra filed an application to refund the entire court fees as under Sec. 16 of the Act read with Sec. 89 of the Code of Civil Procedure, 1908. The Single Judge dismissed the application and held that this application is misconceived and dismissed because Sec. 16-A has been specifically added for Delhi and which provides that only 50% of the Court fee is refundable and that too if the case comprised before commencement of evidence in the suit. The appellant filed the appeal before the High Court of Delhi challenging the order of Single Judge.

Issue:

Whether the appellant is entitled to refund the entire Court-fee paid?

Decision:

The court held that the parties are referred to mediation under the aegis of the Delhi High Court Mediation and Conciliation Centre by the order of the Court. The Mediation was successful and the parties arrived at a settlement. This satisfies the condition laid down under Sec.16 of the Court Fee Act thus the plaintiff is entitled to refund of entire court-fee paid.

6.3. Government should consider the feasibility of enacting Indian Mediation Act to take care of various aspects of mediation in general.

M.R. Krishna Murthi v. The New India Assurance Co. Ltd. and Ors., 2019(2)KLJ253,

When a practicing advocate, had suffered in nasty accident at the young age of 18 years, in which his entire left leg was crushed, approached the Court with the plea seeking reform in the Motor Vehicle Accident Claims system, the bench of Dr. AK Sikri and SA Nazeer, JJ asked the Government to consider **the feasibility of enacting Indian Mediation Act** to take care of various aspects of mediation in general. The Court also issued the following directions:

- i. The Government may examine **the feasibility of setting up Motor Accidents Mediation Authority (MAMA) by making necessary amendments in the Motor Vehicles Act.**
- ii. In the interregnum, NALSA is directed to set up **Motor Accident Mediation Cell which can function independently under the aegis of NALSA** or can be handed over to MCPC. Such a project should be prepared within a period of two months and it should start functioning immediately thereafter at various levels as suggested in this judgment. We reiterate the directions contained in order dated November 6, 2017 in Jai Prakash case for implementation of the latest Modified Claims Tribunal Agreed Procedure. For ensuring such implementation, NALSA is directed to take up the same in coordination and cooperation with various High Courts. MACAD Scheme shall be implemented by all Claim Tribunals on All India basis. Banks, Members of Indian Banks Association, who had taken decision to implement MACAD Scheme, would do the same on All India basis.

- iii. The Government should look into the feasibility of framing necessary schemes and for the availability of annuity certificates. This exercise may be done within the period of six months and decision be taken thereupon.
- iv. There should be programmes from time to time, in all State Judicial Academies, to sensitizing the Presiding Officers of the Claims Tribunals, Senior Police Officers of the State Police as well as Insurance Company for the implementation of the said Procedure.

Considering the suggestions of the Hon'ble Supreme Court in the above case Mediation Bill, 2021 has been drafted.

7. FREQUENTLY ASKED QUESTIONS ON MEDIATION

7.1. What is Mediation?

Mediation is an alternative method of dispute resolution. Mediation is the process in which a third neutral party called ‘mediator’ mediates to facilitate the negotiation between the parties of dispute.

7.2. How Mediation Differs from Conciliation?

In mediation, the role of the mediator is rather to assist the parties in reaching their own decision on a settlement of the dispute. In conciliation the conciliator can make proposal for settlement and suggest the parties’ possible terms of settlement.

7.3. What is Consumer Dispute?

“Consumer dispute” means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

[Section 2(8) of CPA, 2019]

7.4. What is “Mediation” under Consumer Protection Act, 2019?

In Consumer Dispute the word “Mediation” means the process by which a mediator mediates the consumer disputes.

[Section 2(25) of CPA, 2019].

Mediation in consumer disputes is carried out for any consumer complaints filed before the District Commission, State Commission and National Commission, which is suitable for reference to mediation.

7.5. What types of Consumer Disputes are appropriate to settle through Mediation?

All the consumer disputes can be referred for mediation, except the following matters:

- a) The matters relating to proceedings in respect of medical negligence resulting in grievous injury or death;
- b) Matters which relate to defaults or offences for which applications for compounding of offences have been made by one or more parties;
- c) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion;
- d) Cases relating to prosecution for criminal and non-compoundable offences;
- e) Cases which involve public interest or the interest of numerous persons who are not parties before the Commission.

Provided that, in any case other than those mentioned in this rule, the Commission before which the case is pending may choose not to refer it to mediation if it appears to the Commission that no elements of a settlement exist which may be acceptable to the parties or that mediation is otherwise not appropriate having regard to the circumstances of the case and the respective positions of the parties.

[Rule 4 of Consumer Protection (Mediation) Rules, 2020.]

7.6. Where the mediation of consumer disputes takes place?

The mediation shall be held in the consumer mediation cell attached to the District Commission, the State Commission or the National Commission, as the case may be.

[Section 79(1) of CPA, 2019].

The term ‘Mediation cell attached to the..... Commissions, may include the institutional mediation .i.e. Mediations conducted by reputed institutions.

7.7. At which stages of a dispute Consumer Commission can refer case for Mediation?

A Consumer Commission may refer a consumer dispute for mediation at the first hearing of the complaint after its admission, or at any later stage, if it appears to the Consumer Commission that there exists any elements of a settlement which may be acceptable to the parties.

[Section 37(1) of CPA, 2019].

7.8. How a reference for mediation in Consumer Disputes is made?

If it appears to the DCDRC/SCDRC/NCDRC as the case may be, that there exists elements of settlement which may be acceptable to the parties, it may direct the parties to give in writing, within five days, consent to have their dispute settled by mediation.

Where the parties agree for settlement by mediation and give their consent in writing, the District Commission shall, within five days of receipt of such consent, refer the matter for mediation.

Provisions of Chapter V will apply on reference to mediation.

[Section 37/ Section 49/Section 59 of CPA, 2019]

7.9. Can the parties of the Consumer Dispute make an application for mediation?

In a consumer dispute, parties are not barred by the law for filing an application requesting reference of their dispute to the mediation. On such application by any/all of the parties, consented by all the parties, the District Commission may consider to refer the matter for mediation as provided in Section 37(2) of CPA, 2019.

7.10. Who is the mediator in consumer disputes?

For the purpose of the mediation in consumer disputes, mediator will be a person among the panel of the mediators. The Panel of the mediators will be prepared by the DCDRC/SCDRC/NCDRC as the case may be; the mediation cell attached to the respective commission will maintain such panel on the recommendation of a selection committee consisting of the President and a member of that Commission.

[Section 75 of CPA, 2019].

7.11. Is there any procedural code prescribed under law for mediation?

The mediator shall be guided by the principles of natural justice and fair play but shall not be bound by the provisions of the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

[Regulation 11(4) of Consumer Protection (Mediation) Regulations, 2020.]

7.12. How it works: What are the principal stages in Mediation?

Following are the functional stages of the mediation process:

1) Introduction and Opening Statement

During this stage the Mediator establishes neutrality by disclosing everything about him. He creates an awareness and understanding of the process in the minds of the parties. He develops rapport with the parties to gain confidence and trust. He tries to create a healthy environment that is conducive to constructive negotiations. Further, he motivates the parties for an amicable settlement of the dispute.

2) Joint Session

This session is meant for common hearing of all the parties of the dispute. In this stage the mediator gathers information, provides an opportunity to the parties to hear the perspectives of the other parties. The mediator tries to understand perspectives, relationships and feelings of the parties to the dispute. Further this session is used to understand facts, the issues, obstacles and possibilities of settlement. Joint session ensures that each participant is being heard.

3) Separate Session(s)

This is a session to understand the dispute at a deeper level and the underlying interests of the parties. It provides a forum for parties to further vent their emotions and to disclose confidential information which they do not wish to share with other parties. Being a private session it helps parties to

realistically understand the case. Mediator can bring the parties to a solution-finding mood and encourage parties to generate options and find terms that are mutually acceptable.

4) Closing

This is concluding stage of mediation.

When the parties come up with the terms of settlement, the mediator orally confirms the terms of settlement and reduced such terms in writing in a document called settlement agreement which will be signed by all parties to the dispute. Mediator also may affix his signature on the signed agreement, certifying that the agreement was signed in his/her presence. A copy of the signed agreement is furnished to the parties. The original signed agreement sent to the referral body for passing appropriate order in accordance with the agreement.

If a settlement between the parties could not be reached, the case would be returned to the referral body merely reporting “not settled”. The report will not assign any reason for non-settlement or fix responsibility on any one for the non-settlement.

[Source: Mediation Training Manual of India by Mediation and Conciliation Project Committee, Supreme Court of India]

7.13. What is the language used in the Mediation

There is no prescribed language for Mediation in consumer dispute; however mediation is usually done in a language understood by both the parties. During the mediation, the mediator explains everything in a language and manner understood by the parties and their counsel.

7.14. How a mediator is chosen for any given matter?

The District Commission, the State Commission or the National Commission will, while nominating any person from the panel of mediators, considers his suitability for resolving the consumer dispute involved.

[Section 76 of CPA, 2019]

7.15. Can a mediator be changed in mediation of any consumer dispute?

Replacement of the Mediator can be done in several cases. The District Commission or the State Commission or the National Commission, as the case may be, if it is satisfied, will replace such mediator by another mediator in the following events:

- On the information furnished by the mediator; or
- On the information received from any other person including parties to the complaint and after hearing the mediator.

[Section 78 of CPA, 2019]

7.16. What information parties shall provide to the mediator for conducting the mediation proceedings?

The parties shall provide all such information to the mediator as may be reasonably required by him for conducting the mediation proceedings.

[Regulation 11(6) of Consumer Protection (Mediation) Regulations, 2020.]

7.17. Is information shared during “Mediation Proceedings” kept confidential?

Yes! Information shared in mediation proceedings cannot be shared for any purposes except for the mediation of the dispute for which it is shared. The parties and the mediator shall maintain confidentiality in respect of the events that transpire during the mediation proceedings and shall not use or rely upon any information, document etc. produced, the proposals and admissions made or the views expressed during the mediation proceedings.

There shall be no audio or video recording of the mediation proceedings.

[Regulation 13 of Consumer Protection (Mediation) Regulations, 2020.]

7.18. How to believe a mediator is impartial and neutral?

It is mandatory duty on the mediator to disclose the parties any personal, professional or financial interest in the outcome of the consumer dispute. Also the mediator has to disclose the circumstances which may give rise to a justifiable doubt as to his independence or impartiality.

[Section 77 of CPA, 2019].

Further before commencement of the mediation each mediator in a case assigned to him has to disclose

- (i) whether he has or in the past had any personal, business or professional relationship or connection with any of the parties to the consumer dispute or other proceedings or any person associated or connected in any manner,

to any of the parties or their associates, affiliates, parent companies, subsidiaries companies, directors, partners or employees;

- (ii) (ii) whether there exists any circumstance which may give rise to be reasonable doubt as to his independence and impartiality.

[Regulation 10(3) of Consumer Protection (Mediation) Regulations, 2020.]

7.19. How much time the mediation takes?

The time period provided for mediation is three months. The mediation shall stand terminated on expiry of three months from the date of first appearance before the mediator unless the time for completion of mediation is extended by the Consumer Commission, in which case it shall stand terminated on expiry of such extended time.

[Regulation 11(2) of Consumer Protection (Mediation) Regulations, 2020.]

7.20. Is mediation compulsory in Consumer Disputes?

Mediation is not compulsory in consumer disputes. Only where the parties agree for settlement by mediation and give their consent in writing, the concerned Commission will refer the matter for mediation.

[Section 37(2) CPA, 2019].

7.21. What if a party doesn't appear to mediation proceedings?

If a party does not participate in the mediation proceedings, the Consumer Commission may direct such a party to participate in the proceedings.

[Regulation 11(5) of the Consumer Protection (Mediation) Regulations, 2020.]

7.22. Are parties allowed to appear before the mediator through their respective counsel or authorised representatives?

The parties shall be entitled to appear before the mediator in person or through their respective counsel or authorised representatives.

[Regulation 11(3) of the Consumer Protection (Mediation) Regulations, 2020.]

7.23. What happens if mediation fails?

The Concerned Commission on failure of settlement by mediation will proceed to hear such complaint.

[Section 38 (1), Section 49, Section 59 of CPA, 2019].

7.24. In case of failure of mediation, will the stand taken by the party/parties be disclosed to the respective commission?

If no agreement is executed between the parties, within the time prescribed in these regulations, the mediator shall intimate so, to the Consumer Commission, without in any manner disclosing as to what transpired during the mediation proceedings, what was the stand taken by the parties or why the agreement could not be reached.

[Regulation 11(9) of the Consumer Protection (Mediation) Regulations, 2020.]

7.25. Can anything said before the mediation proceedings, be used before the Consumer Commission or any other Court?

The parties of the mediation proceedings shall not use or rely upon any information, document etc. produced, the proposals and admissions made or the views expressed during the mediation proceedings.

[Regulation 13 of the Consumer Protection (Mediation) Regulations, 2020.]

7.26. Can one prefer appeal on mediation settlement agreement?

No appeal can be filed from any order passed by the District Commission pursuant to a settlement by mediation under section 80.

[Section 41(1) of CPA, 2019]

7.27. How much is the fee paid to the mediator in consumer disputes?

Mediator's Fees for mediation of a consumer dispute will be decided by the President of the respective Consumer Commission considering the nature of the dispute.

[Regulation 8 (2) of Consumer Protection (Mediation) Regulations, 2020.]

7.28. Who shall pay the fees to the mediator?

The fee of the mediator shall be shared equally by the two sets of parties.

[Regulation 8 (2) of Consumer Protection (Mediation) Regulations, 2020.]

7.29. What are ethics and code of conduct for Mediator?

Regulation 10 of Consumer Protection (Mediation) Regulations, 2020 provides code of conduct for mediators.

Regulation 10: Code of conduct.—

- (1) The empanelled mediators shall not communicate, directly or indirectly with any of the parties or their associates, affiliates, promoters, holding companies, subsidiaries companies, directors, partners or employees or with any of their counsel during pendency of the mediation proceedings, except during the course of the mediation, in the presence of the parties or their counsel.
- (2) The empanelled mediator shall not accept any gift or hospitality from any of the parties or their associates, affiliates, promoters, holding companies, subsidiaries companies, directors, partners or employees or any of their counsel.
- (3) In addition to the disclosure required under clauses (a) and (b) of section 77 each mediator shall disclose the following information before commencement of the mediation in a case assigned to him, namely:-
 - (i) whether he has or in the past had any personal, business or professional relationship or connection with any of the parties to the consumer dispute or other proceedings or any person associated or connected in any manner, to any of the parties or their associates, affiliates, parent

companies, subsidiaries companies, directors, partners or employees;

- (ii) Whether there exists any circumstance which may give rise to be reasonable doubt as to his independence and impartiality.

7.30. What all training a mediator has to undergo for mediating consumer disputes?

Regulation 9 of Consumer Protection (Mediation) Regulations, 2020 speaks about training for mediators.

Regulation 9:—the mediators shall be given appropriate training in conducting mediation by such experts as may be nominated by the Mediation Cell and it shall be obligatory for them to attend such training.

7.31. Who is the authority to establish mediation cells ?

The State Government shall establish, by notification, a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State.

[Section 74(1) of CPA, 2019]

The Central Government shall establish, by notification, a consumer mediation cell to be attached to the National Commission.

[Section 74(2) of CPA, 2019]

7.32. What is term of panel of mediators?

The panel of mediators prepared, is valid for a period of five years.

[Section 75(3) of CPA, 2019]

7.33. What all things a mediator has to disclose for mediating a dispute under Consumer Law?

Mediator of a mediation cell, for mediating the Consumer Disputes has duty to disclose—

- (a) Any personal, professional or financial interest in the outcome of the consumer dispute;
- (b) The circumstances which may give rise to a justifiable doubt as to his independence or impartiality; and
- (c) such other facts as may be specified by regulations.

[Section 77 of CPA, 2019]

In addition to the disclosure required under clauses (a) and (b) of section 77 each mediator shall disclose the following information before commencement of the mediation in a case assigned to him, namely:-

- (i) whether he has or in the past had any personal, business or professional relationship or connection with any of the parties to the consumer dispute or other proceedings or any person associated or connected in any manner, to any of the parties or their associates, affiliates, parent companies, subsidiaries companies, directors, partners or employees;
- (ii) whether there exists any circumstance which may give rise to be reasonable doubt as to his independence and impartiality.

[Regulation 10(3) of Consumer Protection (Mediation) Regulations, 2020.]

7.34. What are provisions dealing with settlement under Consumer Law?

Settlement

“Settlement” means a settlement arrived at in the course of mediation.

[Rule 2 (f) of Consumer Protection (Mediation) Rules, 2020.]

Agreement on disputes shall be reduced to writing

Pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.

[Section 80(1) of CPA, 2019]

Agreement along with the settlement report shall be forwarded to the concerned commission

The mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission.

(3) Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.

[Section 80(2) of CPA, 2019]

Concerned Commission shall pass suitable orders

The District Commission or the State Commission or the National Commission, as the case may be, shall, within seven days of the

receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.

[Section 81(1)]

Enforcement of ‘Settlement’ reached between parties

Every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under this Act.

[Section 71 of CPA, 2019]

7.35. Whether the application fee paid in a consumer commission is refundable on settlement through mediation?

Refund of fee.—Where the Commission refers the parties to mediation, the complainant shall be entitled to receive full amount of application fee paid in respect of such complaint, if a settlement is reached between such parties.

[Rule 5 of Consumer Protection (Mediation) Rules, 2020]

7.36. Whether arbitral or judicial proceedings can be resorted in respect of a matter which is the subject-matter of the mediation?

The parties shall not initiate any arbitral or judicial proceedings in respect of a matter which is the subject-matter of the mediation

and also when such parties have expressly undertaken not to initiate any such proceeding.

[Rule 6 of Consumer Protection (Mediation) Rules, 2020.]

7.37. Who are eligible for empanelment as mediator for mediation of Consumer Disputes?

Eligibility for empanelment as mediator.—

The following persons shall be eligible to be empanelled with a Mediation Cell—

- (i) retired Judges of Supreme Court of India;
- (ii) retired Judges of the High Courts;
- (iii) retired Members of a Consumer Commission;
- (iv) retired District and Session Judges, retired Additional District and Session Judges or other retired Members of the Higher Judicial Services of a State;
- (v) retired Judicial officers, having experience of not less than ten years;
- (vi) an advocate with a minimum experience of ten years at Bar;
- (vii) the mediators empanelled with the Mediation Cell of the Supreme Court of India, High Court or a District Court;
- (viii) a person having experience of at least five years in mediation or conciliation;
- (ix) experts or other professionals with at least fifteen years' experience or retired senior bureaucrats or retired executives

[Regulation 3 of Consumer Protection (Mediation) Regulations, 2020.]

7.38. Who are disqualified from acting as mediator under Consumer Law?

Disqualifications for empanelment.—

1. The following persons shall be disqualified for being empanelled as a Mediator, namely:-
 - (i) a person who has been adjudged as insolvent;
 - (ii) Person against whom criminal charges involving moral turpitude are framed by a criminal court and are pending;
 - (iii) a person who has been convicted by a criminal court for any offence involving moral turpitude;
 - (iv) a person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority and are pending or have resulted in a punishment.
2. A person who is or has been interested in or connected with the subject matter of the consumer dispute or is related to or has been associated or connected in any manner, including in a professional capacity, with any of the parties to the consumer disputes or any of their associates, affiliates, promoters, holding companies, subsidiaries companies, partners, directors or employees, shall be disqualified for being nominated as a mediator in that case.

[Regulation 4 of Consumer Protection (Mediation) Regulations, 2020.]

7.39. When a person can be removed from the panel of mediators?

If a mediator is discovered to be disqualified or he in any manner misconducts himself as a mediator or he is otherwise found unsuitable to continue as a mediator, the Mediation Cell may remove his name from the panel of mediators after giving an opportunity of hearing to him.

[Regulation 6 of Consumer Protection (Mediation) Regulations, 2020.]

7.40. Is a person who has completed his term as mediator, eligible for re-empanelment?

Yes. Only such mediators shall be eligible for re-empanelment who, in the opinion of the Mediation Cell, have successfully and efficiently discharged their functions as empanelled mediators and such re-empanelment is made on the basis of the recommendation of the Selection Committee.

[Regulation 7 of Consumer Protection (Mediation) Regulations, 2020.]

7.41. What the regulations say about fee payable to the mediators?

Fee of mediators.—

- (1) A consolidated fee, in a successful mediation shall be paid to the mediator, who conducts the mediation proceedings, from the time of reference till their conclusion.
- (2) The fee of the mediator empanelled with a Consumer Commission, including costs of secretarial assistance and

other ancillary expenses, shall be fixed by the President of the respective Consumer Commission, case wise, considering the nature of the dispute.

- (3) In an unsuccessful mediation, half of the aforesaid fee will be paid to the mediator.
- (4) The fee of the mediator shall be shared equally by the two sets of parties.
- (5) The mediator who successfully conducts part of the proceedings will be paid such fee as may be fixed by the President of the Consumer Commission.
- (6) The fee shall be deposited in advance, with the Mediation Cell.
- (7) If a party does not deposit his share of the fee or the cost of mediation, the Consumer Commission may, on the application of the mediator or any other party, direct the party in default to deposit the same within a week, and if—
 - (i) he fails to deposit such fee or cost, the Consumer Commission may permit the other parties to deposit the same and recover the said amount, from the party in default, in the manner prescribed for the execution of a money decree by a Civil Court;
 - (ii) no other party deposits the share of the party in default, the Consumer Commission may terminate the mediation proceedings.

[Regulation 8 of Consumer Protection (Mediation) Regulations, 2020.]

7.42. What is role of the mediator during the mediation process?

Role of mediator.—(1) The mediator shall attempt to facilitate a voluntary resolution of the disputes between the parties, assist them in removing the misunderstandings, if any, and generating options to resolve their disputes, but shall not impose any term or any settlement upon the parties.

(2) The mediator shall explain the terms of the agreement, to the parties, before obtaining their respective signatures on it.

[Regulation 12 of Consumer Protection (Mediation) Regulations, 2020.]

7.43. Can a mediator communicate with the concerned commission directly?

The mediator shall not communicate with the Consumer Commission except by way of his report, with copies to all the parties.

[Regulation 14 of Consumer Protection (Mediation) Regulations, 2020.]

7.44. Can a mediator be prosecuted or summoned as witness for any act or information relating to the mediation in any matter?

Immunity—(1) No mediator shall be liable for any civil or criminal proceedings, for any act done or omitted to be done bonafidely by him, in his capacity as a mediator.

(2) The mediator shall not be summoned by a party to appear in a Court or other forum, to testify in regard to any information received or the action taken by him during the mediation proceedings.

[Regulation 15 of Consumer Protection (Mediation) Regulations, 2020.]

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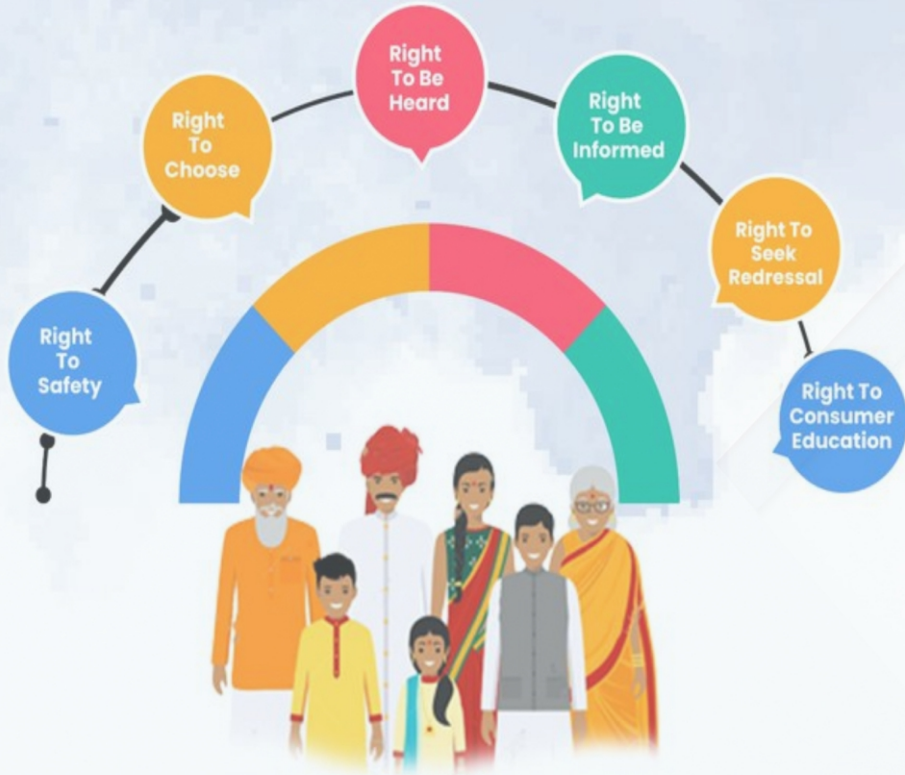
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National Consumer Rights Day

24 December 2021



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Government of India, Krishi Bhawan, New Delhi-110001
Website: <https://consumeraffairs.nic.in/>

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Chair on Consumer Law and Practice,
National Law School of India University, Nagarbhavi, Bengaluru,
Karnataka- 560072
Website: <https://clap.nls.ac.in/>