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**FEDERATION OF CONSUMER AND SERVICE ORGANIZATIONS**

(Regd. No.CAG/01/2016 as a Consumer advocacy group with TRAI )

No.5, 4<sup>th</sup> Street, Lakshmipuram,  
Tiruchirappalli – 620 010. T.N. State.

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The Chairman,

05<sup>th</sup>, June, 2016

Telecom Regulatory Authority of India,

New Delhi – 110 002.

Kind attn to: Prof. M. Kasim, Advisor (B&CS)-III,

Dear Sir,

Sub: Forward our view on Consultation Paper On Issues related to Quality of Services in Digital Addressable Systems and Consumer Protection Dt.

18.05.2016

With all regards and great respects, we furnish the following facts in the Consumer Protection for kind consideration and necessary action in the interest of telecom consumers in our Nation:

1. In recent statistics around 100 millions subscribers/ consumers are availing the service. All service providers are speaking with sweet tanques on consumer redressal as quoted by Father of our Nation Shir Mahathma Gandhiji. He speaks about the consumer with the true and facts such “ He is most important vistors of our permises.
2. But, there is no system available to redress the consumer complaint other than Self Redressal System of the Service Providers.

3. This SRSOSP (Selv Redressal System of Service Providers) is nothing but to comply the statutory obligations of regulator and Govt.
4. The Telecom Consumer Grievance Redressal System is very weak in our country. At present, the services providers themselves are having own system to redress in the name of Nodal Officers as well as Appellate Authorities only comply the statutory obligations. But, they are originally not redressing the grievances.
5. The TRAI advice to the telecom consumers to approach the Consumer Forum for Redressal, if the consumer not satisfied with the Redressal system of Service Providers.
6. But unfortunately/ errantly, the Hon'ble Supreme Court had bared the telecom consumers in approaching Consumer Forums for their redress considering Justice Markandey Katuj had passed an Exparty order in the case of General Manager Telecom Vs. M. Krishnan.
7. The Order directed the Telecom Consumers to seek remedies through the Indian Telegraph Act, 1885 by barring remedy through Consumer Protection Act, 1988.
8. The Telephone was invented by Alexander Graham Bell in the year 1876. In 1878, the first telephone exchange was established at New Haven. In the year 1882, first telephone exchange was opened at Calcutta in India having only 93 subscribers. In the year 1885, when the Indian Telegraph Act was enacted. Now around 80.3% of the populations are using the mobile service alone
9. The large bench of Hon'ble Supreme Court of India in the case of Indian Medical Association Vs. Santha, it had clearly observed that the Section 3 of the Consumer Protection Act is the provisions of the Act shall be in addition to and not in derogation to any other provisions of any other law for the time

being in force. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers.

10. His Lordship Markandey Katuj, J. (same judge) in “**State of U.P. Versus Jeet S. Bisht**” (supra), in para No.66 of the judgment has observed as under :-

“66. It is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent.”

11. Several telecom service providers have been granted licenses to provide their differential services to the consumers. To regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interest of service providers and consumers of the telecom sector and for matters connected therewith, the Parliament has passed “The Telecom Regulatory Authority of India Act, 1997”. Under the Telecom Regulatory Authority of India Act, 1997, the ‘telecommunication services’ have been defined.

12. Telecom Regulatory Authority of India to regulate the functioning of telecommunication service providers. Under Section 14 of the said Act, a provision has been made for establishment of Appellate Tribunals to adjudicate any dispute relating to the telecommunication services. For the purpose of facilitation, Sub Section B of Section 14 of the Telecom Regulatory Authority of India Act, 1997 is reproduced as under :-

**(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986 (68 of 1986);**

13. From the bare perusal of the above said provisions, now it is crystal clear that the telecom service have been specifically covered under the Telecom

Regulatory Authority of India Act, 1997 and the provisions of the said Act are in addition to the previous Indian Telegraph Act, 1885. From perusal of Section 14 (b), it is very much clear that even when a consumer approaches the Consumer Disputes Redressal Forum, then the provisions of the Telecom Regulatory Authority of India Act, 1997 or the jurisdiction of the Appellate Tribunals established under the Telecom Regulatory Authority of India Act, 1997.

14. The justice Markandaya Katchu's order in imposing restriction in filing medical negligence case before the Consumers Forum in *V. Krishan Rao –Vs- Nikhil Super Specialty Hospital* was modified by another bench in SLP (C) No.15084/2009 dated 08.03.2010 (4) SCALE – 662 wherein it has been observed in Para – 49 & 50 as follows:

“49. In view of the discussions aforesaid, this Court is constrained to take view that the general direction given in paragraph 106 in *D'souza (Supra)* cannot be treated as binding precedent and those directions must be confined to the particular facts of the case”.

50. “ With great respect to the Bench which decided *D'souza (supra)* this Court is of the opinion that the directions in *D' souza (supra)* are contrary to (a) the law laid down in paragraph 37 of *Indian medical Association (supra)*, (b) and paragraph 19 in *Dr. J.J. Merchant (supra)*, (c) those direction in paragraph 106 of *D' souza (supra)* equate medical negligence in criminal train and negligence fastening civil liability whereas the earlier larger Bench in *Mathew (supra)* elaborately differentiated between the two concepts, (d) Those directions in *D' souza (supra)* are contrary to the said Act which is the

governing statute, (e) those directions are also contrary to avowed purpose of the Act, which is to provide a speedy and efficacious remedy to the Consumer. If those general directions are followed then in many cases the remedy under the said Act will become illusory, (f) those directions run contrary to principle of 'Res ipsa loquitur' which has matured into a rule of law in some cases of medical negligence where negligence is evident and obvious".

15. The same observation may be also applicable to the Exparty order in the case of General Manager Telecom Vs. M. Krishnan, this is barring aggrieved telecom consumers to approach the Consumer Forums.

#### **OTHER MODE OF REDRESSAL:**

16. Some of the Consumer activists view that at the present Consumer Forums are under heavy dominating of advocates and redress and justice not easily available at this Forums. Apart even the provisions in appearing consumer directly with a mere petition on white paper is not in practical now. We also conceded this view; now the disposal of Consumer Complaints are taking years to gather and heavy fees to be paid to the lawyer. The lawyers are influencing the Forums and it is not suitable for redress small causes.
17. In such case, we suggest to empower to the Appellate Advisory Committee to pass appropriate order on consumer complaint as followed by Electricity Consumer Grievance Redressal Forum instead of giving suggestion in disposing the Consumer Complaint.

In the above circumstances and facts, we appeal before the Telecom Regulatory Authority of India to consider the following suggestions to protect the large numbers of telecom consumers (which spread to gross route level and around 80.30% of citizens') as follows:

- i. To consider in setting up Consumer Forums specifically for telecom consumers in taking to consideration that the numbers of telecom consumers are increasing day by day and they are facing so many problems in the line of Electricity Consumer Grievance Redressal Forum and
  
- ii. To take appropriate action to file a review or suitable petition before the Hon'ble Supreme Court of India in modifying the order (which is barring aggrieved telecom consumers in approaching Consumer Forums) getting its node in filling deserving complaint before the Consumers Forums.

Thanking You, Sir,

Yours Sincerely,

M. Sekaran,

President.