

Consumer finance disputes in Indian courts

Karan Gulati Renuka Sane

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Why study courts?

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- ▶ The complexity of financial products and the existence of market failures necessitate higher standards of protection.
- ▶ Grievance redress processes at regulators are fragmented:
 - ▶ Four different regulators, each have their own system of grievance redress.
 - ▶ These often have vacancies and refuse to hear cases.
 - ▶ Officials at ombudsman offices reportedly advised policyholders to instead approach consumer courts.¹
- ▶ In 2018, the Banking Ombudsman passed an award in less than 1% of cases. The rest it held non-maintainable or without merit.
- ▶ The National Commission's (appellate court) disposal was 4 times that of the Ombudsman.

¹Chitra (2017).

Courts and regulators

- ▶ Finance disputes constitute the largest concentration of cases in consumer courts.²
- ▶ Studying the role of courts provides information on the nature of disputes and precedent.
- ▶ The information can also be a tool for regulators to tighten existing consumer protection provisions.

²Kinhal and Ranjan (2020).

The role of courts

- ▶ India has enacted a new Consumer Protection Act.
- ▶ However, laws are fruitless unless there is a legitimate expectancy from courts to enforce them.
- ▶ To better understand the role of courts, we study:
 1. The structure of the courts;
 2. How courts decide cases; and
 3. Shortcomings in the current framework.

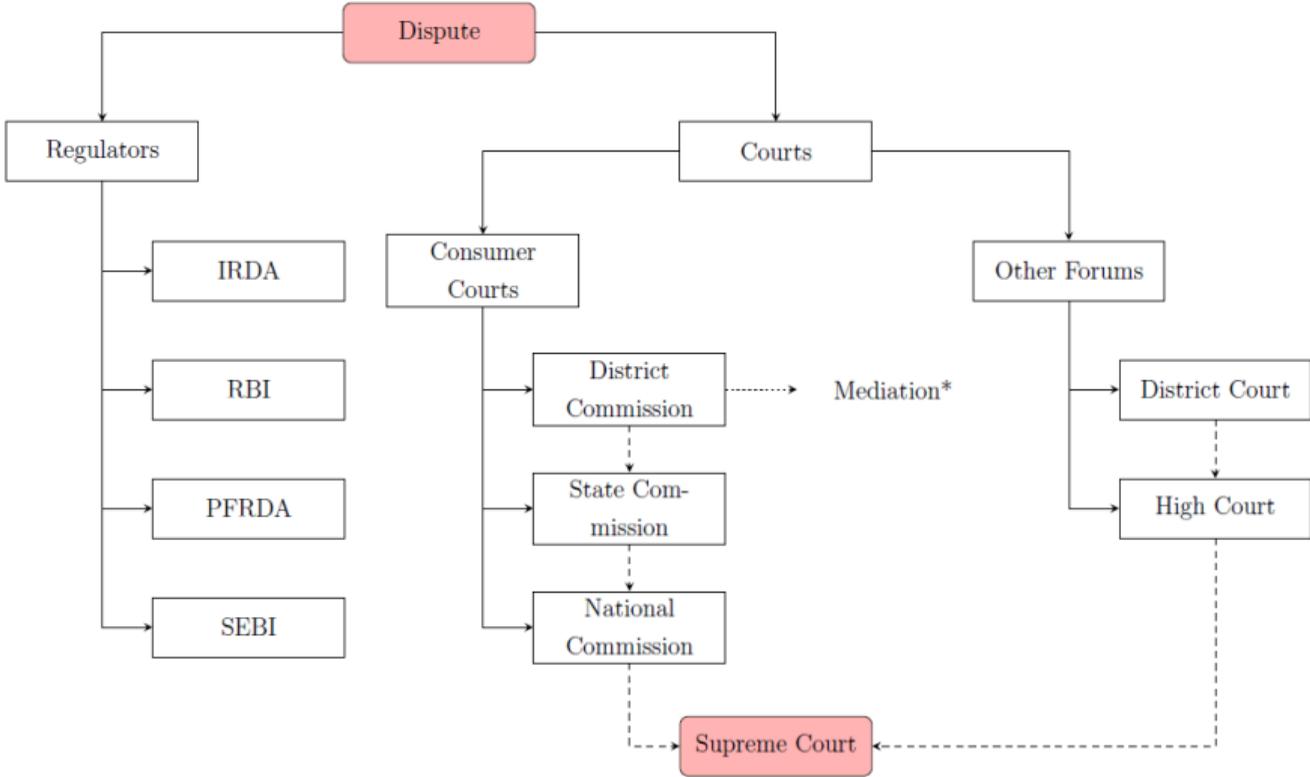
Grievance redress through courts in India

A consumer finance complaint

- ▶ Grievances may arise out of complaints by consumers, regulators, banks, creditors, etc.
- ▶ We restrict ourselves to complaints made by consumers.
- ▶ This means complaints in writings by those who consume the goods or services.
- ▶ For example, an investor who takes a loan for *commercial* purposes would is not included in our analysis.³
- ▶ We do not delve into debt recovery mechanisms or proceedings initiated by industry regulators.

³HDFC Bank Ltd v Subodh Ghanshyam Prabhull (2014) CPJ 336 (NC). 

Structure of grievance redress



Structure of courts

- ▶ The CPA established three levels of grievance redress bodies:
 1. District;
 2. State; and
 3. National commissions.
- ▶ However, ordinary courts (District and High Courts) may also be approached.
- ▶ This has resulted in dual channels for the settlement of finance disputes.
- ▶ In both cases, the dispute may be appealed till the Supreme Court.

What can the courts do?

- ▶ A consumer commission is bound by the powers conferred upon them by the CPA. It may order the opposite party to:
 1. remove the defect;
 2. return the price of the goods or the charges for the services along with interest;
 3. pay compensation or punitive damages; or
 4. withdraw the goods or services from the market.
- ▶ High Courts are bound to decide cases either within the confines of a statute or the constitution.
- ▶ Going one step further, the Supreme Court has held itself not to be restricted in any way to grant adequate relief.

What have the courts done?

Caseload

- ▶ We source data from Confo-net, the case management system of the National Commission.
- ▶ Initiation
 1. 207,876 unique cases were instituted between 1989 and 2019. Not all these were to be decided on merit.⁴
 2. Only 91,999 cases were initiated for actual adjudication.
 3. Of these, 16,288 were Banking and Insurance cases.
- ▶ Disposal
 1. Confo-net only provides information about disposal from 2008.
 2. Since then, the commission decided 5343 cases (1374 banking and 3969 insurance cases).
 3. It took 1.99 years for banking cases to be decided. For insurance cases, this is 2.38 years.
 4. This excludes cases initiated and decided before 2008.

⁴They included caveat cases, execution, interlocutory, miscellaneous, and transfer applications. 

Caseload (Cont.)

	Banking		Insurance		Total	
	Initiated	Decided	Initiated	Decided	Initiated	Decided
Total	5147		14819		19966	
To be decided on merit	4005		12283		16288	
1990 - 1994	0		3		3	
1995 - 1999	59		233		292	
2000 - 2004	170		556		726	
2005 - 2009	1011		3392		4403	
2010 - 2014	1061	738	2918	2055	3979	2793
2015 - 2019	1704	412	5181	1262	6885	1674
Parties in Person	482 (12%)		628 (5%)		1110 (7%)	

Methodology

- ▶ We build a set of cases related to consumer finance.
- ▶ This included sourcing judgments from:
 1. Commercial legal databases (SCC and Manupatra);
 2. Books on consumer protection; and
 3. Reports of courts and regulators.
- ▶ In total, we reviewed over 300 cases and referred to those most cited by subsequent judgments. This resulted in referencing 40 cases.
- ▶ This is a representation of consumer experiences; but is not the entire universe of cases heard by courts.

Banking

- ▶ Courts have attempted to side with individual consumers, given that they have come with *clean hands*.
- ▶ In particular, there are four types of cases where the courts have sided with consumers.
 1. *Banks do not comply with the RBI circulars or guidelines*: Guidelines on Interest Payment.
 2. *In the absence of guidelines*: Policy regarding the period for giving credit.
 3. *Price Disputes*: Incorrect outstanding amounts.
 4. *Non-price Disputes*: Harsh collection procedures.
- ▶ However, courts have also bucked the trend of pro-consumer decisions, especially in cases of delay.

Insurance

- ▶ Though courts have taken a pro-consumer stance in banking disputes, this has not been the case when interpreting insurance contracts.
- ▶ In a 1966 constitution bench decision, the Supreme Court observed that:
*it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves...*⁵
- ▶ It is now settled that the court cannot rewrite or create a new contract between the parties.
- ▶ This is only when consumers *knew* the terms of the contract.
- ▶ If the terms were kept hidden, courts have taken a pro-consumer stance.
- ▶ Notably, courts have relied on knowledge and not understanding of the terms.

⁵General Assurance Society Ltd v. Chandumull Jain, AIR 1966 SC 1644. 

Challenges

Low compensation

- ▶ Courts tend to award low compensation.
- ▶ For example, in *Dr Virendra Pal Kapoor v. UOI*, a senior citizen invested 50,000 in a unit-linked product in 2007.⁶
- ▶ Upon payout in 2012, he had lost the entire sum except for Rs. 248 on account of hidden charges.
- ▶ He had been mis-sold a higher-risk policy without any caution.
- ▶ The issuer was directed to return the original amount of Rs. 50,000.
- ▶ **No interest** was granted.

One way to address this is update and consolidate laws regarding compensation in light of modern market understanding and not leaving it to the sole discretion of courts.

⁶Dr Virendra Pal Kapoor v. UOI and Ors, 2014 SCC OnLine All 15648.

Delay

- ▶ As per the CPA, complaints should be decided within three months unless detailed analysis is required, in which case they should be decided within five months.
- ▶ Appeals have to be decided within three months.
- ▶ It takes 1.99 years for the settlement of a banking dispute.
- ▶ This is 2.38 years for insurance disputes.
- ▶ 65% banking and 71% insurance cases do not meet the three- or five-month goals.

Delays may be addressed by the National Commission exercising its power to call for statistics; and separating judicial and administrative functions.⁷

⁷Datta et al. (2019)

Caveat Emptor

- ▶ Courts have held that if the customer signed the documents, she is responsible for the terms.
- ▶ Currently, the strategy in Indian litigation is focused on the doctrine of *caveat emptor*: let the buyer beware.
- ▶ Though commissions can declare certain unfair terms as void under the new Act, this does not address the ability to understand the terms.
- ▶ In 2018, a Bill was introduced in parliament that addressed these challenges. However, it has not passed till now.⁸

This asymmetry can be remedied by ensuring that firms provide and explain information that may be important for consumers to make decisions.

⁸Unfair (Procedural and Substantive) Terms of Contracts Bill 2018.

No class action

▶ Substantive Laws

1. A Representative Class: The National Commission has prescribed high adequacy standards for bringing class actions.
2. The new CPA: This has taken away the power to initiate class actions from individuals and vested them to a new regulator.

▶ Procedural and financial hindrances

1. Stamp Duties: These are best viewed as the cost of bringing an action. They can often be prohibitive.
2. Third-Party Funding: There is considerable uncertainty on whether courts will hold a TPF agreement as "*just*".
3. Contingency Fees: Contingency fees is the fees of the legal counsel as a stake in the outcome. This is prohibited in India.

Specialization

- ▶ Consumer courts in India have been created to resolve *all* consumer disputes.
- ▶ Members lack specialization in finance disputes.
- ▶ The National Commission includes retired judges, bureaucrats, and a professor of medical negligence.
- ▶ This is unlike other countries where sectoral experts adjudicate finance disputes.

One solution is the constitution of an advisory council on consumer finance. The council may be responsible for making representations about policies and reviewing their effectiveness.⁹

⁹FSLRC (2013).

Conclusion

Conclusion

- ▶ Courts play an important role in consumer finance disputes.
- ▶ They have generally sided with consumers in banking disputes.
- ▶ However, in the case of insurance, courts have taken a pro-industry contractual compliance stance.
- ▶ They also tend to:
 1. award low compensation,
 2. after a long time taken for adjudication,
 3. do not have a system for class action suits, and
 4. lack specialization

Thank you