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The Protection Act 2018

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THE CONSUMER PROTECTION ACT, 1986

A basic introduction to the subject of consumer protection in India

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The Consumer Protection Act, 1986

Revised Third Edition

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PREFACE TO THIRD EDITION

We are pleased to present the *third* edition of our book on the Consumer Protection Act, 1986. This book is written in a language that is concise and easy to understand. Although all the relevant topics have been discussed at length and a reference has been made to all important cases on the subject, care has been taken not to add unnecessarily to the bulk of the book. A Table of Cases appended to the book adds to the utility of this book.

The bare text of the Consumer Protection Act, 1986, has been included in *Appendix I* to the book for the convenience of students. Illustrative cases have been summarised in *Appendix II* for the reader's benefit. Some Universities have recently introduced the pattern of asking short, one-line (or two-lines) answers to questions. Questions and answers of this type have been dealt with in *Appendix III* to the book.

We trust that this book will prove to be of immense value to students. Suggestions, if any, are always welcome.

- Publishers

BOOKS RECOMMENDED FOR FURTHER READING

Avtar Singh	Law of Consumer Protection
Gurjeet Singh	The Law of Consumer Protection in India
Dr. Gurbax Singh	Law of Consumer Protection
R. N. P. Choudhary	Consumer Protection Law
MeenuAgrawal	Consumer Behaviour & Consumer Protection in India.
Dr. V. K. Agarwal	Consumer Protection Law & Practice
Singhal	Medial Ethics and Consumer Protection Act
J. V. N. Jaiswal	Consumer Protection Act & Medical Practitioners
Rajyalakshmi Rao	Consumer is King: Know your rights and remedies
S. S. Chahar	Consumer Protection Movement in India: Problems & Prospects
G. G. Howells	Consumer Protection Law
B. W. Harvey	The Law of Consumer Protection and Fair Trading

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Chapter 1 INTRODUCTORY

This Chapter is divided into three parts:

A. Aims and objects of the Consumer Protection Act

B. A bird's eye view of the Act

C. Whether the provisions of the Act are in derogation of other laws : What matters will *not* be entertained under the Act.

Explain in detail the aims and objects of the Consumer Protection Act. B.U. Apr. 2009, May 2012, Apr. 2016, Jan 2017, May 2017.

The Consumer Protection act was enacted with the object of better protection of consumers and settlement of consumer disputes. Discuss. B.U. Apr. 2008, Apr. 2010.

What do you mean by "complaint"? Explain in detail the aims and objects of the Consumer Protection Act B.U. Apr 2016.

Discuss the objectives and provisions of the Consumer Protection Act .B.U. Nov 2011.

What are the rights of consumers under the Consumer Protection Act? B.U. Nov. 2013

A. AIMS AND OBJECTS OF THE CONSUMER PROTECTION ACT

" There is sufficiency in the world for a man's *need* - but *not* for his *greed*. "

- Mahatma Gandhi

In the olden days, the application of the Latin maxim, '*Caveat Emptor*' (Let the buyer beware), an expression which appeared in English law for the first time in 1523, had severely restricted the rights of a consumer and had put him at the mercy of the seller. However, in the course of time, several exceptions to the maxim were recognised, which had the effect of curtailing the impact of this rule on the hapless buyer. At the same time, the need to protect the consumer was widely felt, because more and more unscrupulous traders and service providers, armed with market knowledge and manipulation skills, exploited the gullible consumer. It came to be recognised that the consumer was often at the mercy of the manufacturers, who often acted in concert (cartel) to exploit the confused consumer. Moreover, the consumer was also bombarded from all sides with tempting advertisements - in the press, cinema, TV and other media - which advertisements often contained more untruth than truth.

Guarantees given at the time of sale were dishonoured with impunity. The consumer was also exposed to a glut of adulterated and spurious products in the market - in addition to sub-standard services for which he was fleeced.

History shows that the interests of buyers and those of sellers have always pulled in opposite directions. The seller tries his best to get the highest price for his product and the buyer is always on the defensive, as he knows that he is likely to be exploited and taken for a ride. This is not a fair tug-of-war, as the lightweight buyer is invariably pitted against the heavy-weight seller - or worse still, a cartel of heavy-weight sellers. On one side are the professional traders, sellers and service providers. On the other end is the gullible consumer who does *not* usually have the time, resources, capacity, competence or expertise to make a prudent choice when confronted with competing products, each of which claims to be better than all the others. The only alternative often open to him is to rely on his past experience - or a recent advertisement he saw on the television - or the advice of a friend - or, sometimes, just his gut feeling.

In India, the problem is that the hapless consumer is exploited *not only* by the private enterprise - *but even by* government companies. It is well-known that Indian consumers often prefer to suffer in silence rather than knock the doors of justice. The Indian consumer, tolerant as he is by nature, has always been hesitant to move the courts of law for redressal of his problems. Given the conditions in which civil courts function, he is *not* desirous of spending more time in the courtroom than in his office or place of business. He has, therefore, taken philosophical solace in the thought that, in India at least, defective goods, deficient services and misleading advertisements have become a part of his life.

Of course, even before the Consumer Protection Act was passed, the consumer was *not* totally without a remedy under various other laws. Thus, provisions did exist (and they still do) for the protection of consumers in the law of torts and in various other Acts like the Indian Contract Act, the Indian Penal Code, the Sale of Goods Act, the Prevention of Food Adulteration Act, the Essential Commodities Act, the Agricultural Produce (Grading and Marking) Act, the Drugs and Cosmetics Act, the Trade and Merchandise Marks Act, the Bureau of Indian Standards Act, *etc.* However, such remedies are, very often, *not only* illusory and unsatisfactory, *but also* involve a lot of time and expenses.

A need was thus felt to enact a comprehensive piece of legislation dedicated to the protection of the consumer and the recognition of his rights. The passing of the Consumer Protection Act filled this lacuna in 1986 and made it possible for the country to reach the democratic goal of '*Justice within Reach*'.

The main *object and purpose of this legislation* is to render *simple, inexpensive and speedy justice* through a *three-tier system of quasi-judicial machinery* - at the district, state and national levels. The *goal of the Act* is to "rm the common man with an instrument to fight restrictive and unfair trade practices often indulged in by traders, defective goods and deficient services doled out to him day after day and his being lured by advertisements which are as misleading as they are attractive.

The *object and purpose* of the Consumer Protection Act, as stated in its *Preamble*, is:

- to provide better protection of the interest of consumers
- to make provisions for the establishment of consumer councils and other authorities for the settlement of consumer disputes; *and*
- for matters connected therewith.

The *Preamble* appears to have intentionally used the expression "better protection", as consumer rights *were* protected, to some extent at least, even before the Act was passed, by other branches of law referred to above. As observed by *Sahai J.* of the Supreme Court (in *Lucknow Development Authority v. M. K. Gupta*, AIR 1994 SC 787), —

"To begin with, the *Preamble of the Act*, which can afford useful assistance to ascertain the legislative intention, shows that the Act was enacted to provide better protection to the interest of the consumers. The use of the word 'protection' furnishes the key to the mind of the makers of the Act. The law of consumer protection has come to meet the long-felt necessity of protecting the common man from wrongs for which the remedy under the ordinary law has, for various reasons, become illusory."

Following this approach, the Supreme Court *held* that even government bodies would be liable under the Act for deficiency in services purchased by the consumer. Thus, today, it makes no difference whether a defective TV set is sold by a private manufacturer or a government company. Both are equally liable under the Act. Likewise, the Act sees no difference between inefficient services of a courier company and equally (or more) inefficient services of the Post Office. If the gullible consumer is being taken for a ride, it does *not* matter whether the perpetrator of this wrong is a private entity or a government authority. *The Consumer Protection Act looks at all businesses with the same eye.*

It is also relevant to note that the Consumer Protection Act was passed as a result of a widespread *global consumer protection movement*. On the basis of a Report of the Secretary-General on Consumer Protection in 1983, the United Nations recommended that the governments of all countries of the world should develop, strengthen and implement a coherent consumer protection policy, *keeping in mind the guidelines set out in the Report*. The governments were further called upon to provide a good infrastructure - including financial facilities - to develop, implement and monitor consumer protection policies. It is against this global background that '*consumerism*' was born in India in the form of the Consumer Protection Act in 1986.

The guidelines referred to above provide the framework, especially for developing countries, to strengthen their consumer policy and consumer protection laws, thereby promoting international consumer co-operation in the field of consumerism. The said guidelines enjoin the governments of all countries to ensure:

- (a) the physical safety of the consumer;
- (b) protection of the interests of consumers;
- (c) consumers' access to information needed to make informed choices;
- (d) measures enabling consumers to obtain redress;
- (e) distribution of essential goods and services;
- (f) satisfactory production and performance standards;
- (g) adequate business practices and informative marketing; and
- (h) international consumer co-operation in the field of consumer protection.

Time and again, courts have held that the provisions of the Act should be construed *in favour of the consumer* to achieve the purpose of the enactment, which is a social benefit oriented legislation. The Act, therefore, deserves a liberal construction. The court's approach should be *rational and not technical*. If two interpretations are possible, the one favouring the consumer should be adopted.

To conclude, it can be said that we have come a long way from the doctrine of *Caveat Emptor*. Thanks to the global movement of consumerism, where the consumer is sought to be put on a pedestal, the maxim that seems to be more appropriate today is *Caveat Venditor* (Let the seller beware). However, the question that still remains to be answered is : Can one say, even today, that the consumer is King?

Sources of consumer protection in India

It is interesting to see that consumerism has received an impetus in India from the following five angles - which may also be considered to be the *prime sources of consumer protection* in the country:

- (a) Statute law
- (b) Judicial activism
- (c) Public interest litigation
- (d) Consumer associations and voluntary organisations (NGOs)
- (e) Legal aid authorities.

(a) Statute law

As seen above, even before 1986, the uncodified law of torts, as well as several other enactments (some of which were listed earlier) did contain scattered provisions meant to protect the rights of the consumers. However, there was no dedicated and comprehensive law on consumer protection and it is this lacuna that was filled up in 1986 by the Consumer Protection Act.

(b) Judicial activism

Judicial activism has gone a long way in coming to the aid of the helpless consumer. As observed by the Supreme Court (in *S. P. Gupta v. Union of India*, AIR 1982 SC 149),-

"The judiciary *cannot* remain a mere bystander or spectator, but it must become an active participant in the judicial process, ready to use law in the service of social justice through a proactive goal-oriented approach." Thus, thanks to judicial activism, the right to life guaranteed by Art 21 of the Constitution of India has been interpreted to mean a right to a healthy life and to live with dignity.

(c) Public Interest litigation

The technical rules of *locus standi* have been relaxed in public interest litigation and courts have taken cognition of letters and post cards written directly to them, as well as newspaper and television reports, to provide justice to citizens exposed to poverty, illiteracy and other social disadvantages. A series of cases filed by the social activist-cum-lawyer, *Mr. M. C. Mehta*, have raised the general standard of health and have sought to provide a pollution-free environment in our country.

(d) Consumer associations and voluntary organisations (NGOs)

Various consumer associations and voluntary organisations (NGOs) have also played a vital role in educating consumers and protecting their rights. Some organisations deserve a special mention, as for instance, the *Consumer Education and Research Centre* in Ahmedabad, the *Consumer Guidance Society of India* at Mumbai and Goa, *Common Cause* in New Delhi, the *Akhil Bhartiya Grahak Panchayat* at Hyderabad, the *Citizens' Action Group* at Mumbai, the *Mumbai Grahak Panchayat* at Mumbai, the *Consumer Unity & Trust Society (CUTS)* at Jaipur, *Jagrut Grahak* at Baroda, the *All-India Bank Depositors' Association* in Mumbai and the *Bombay Telephone Users' Association*, also in Mumbai. Organisations such as these have gone to great lengths to ensure that consumer rights do *not* exist only on paper and that such rights are respected and protected in everyday life. It is pertinent to note that such organisations can file a complaint under the Act on behalf of a consumer - *even if* the consumer is *not* a member of that organisation.

(e) **Legal aid authorities**

Under the Legal Services Authorities Act, it is the duty of the National Legal Services Authority, constituted under the Act, "to take necessary steps by way of social justice litigation with regard to *consumer protection*, environmental protection and any other matter of social concern to the weaker sections of society".

Consumer Protection in England

In England, in the olden days, consumer protection machinery was closely linked to the existing units of local government, namely, the county and the parish. Throughout the eighteenth century, the thrust of consumer protection was to protect the consumer from excessive prices and from short measures. Interestingly, certain commodities like *bread, beer, meat and fuel* were singled out as being commodities which it was the Crown's duty to regulate, both as regards quality and quantity. *Today*, of course, things have changed in England and the *Consumer Protection Act, 1987*, imposes strict liabilities on persons who violate consumer rights.

Discuss in detail the different provisions of the Consumer Protection Act.

B.U. Nov. 2008

State any two objects of the Consumer Protection Act. (2 marks)

B.U. Nov. 2015 Apr. 2016

Define 'consumer' and discuss in detail the different provisions of the Consumer Protection Act.

B.U. Apr. 2016 Jan. 2017 May 2017

Who is a "consumer"? Discuss in detail consumer safety and protection of consumers under the Consumer Protection Act.

B.U. Nov. 2009 Nov. 2010

"The Consumer Protection Act was enacted with the object of better protection of consumers and for settlement of consumer disputes." B.U. Apr. 2013

What is meant by a "consumer"? Explain in detail the aims and objects of the Consumer Protection Act.

B.U. Apr. 2014 Apr. 2015 Nov. 2015

What is a consumer dispute? What are the aims and objects of the Consumer Protection Act?

B.U. Nov. 2014

State the three tier system of solving consumer complaint under the Consumer Protection Act, 1986.

B.U. May 2017

B. A BIRD'S EYE VIEW OF THE ACT

What is the main objective of the Act?

The *main objective* of the Consumer Protection Act is to protect the interests of consumers and make them aware of their rights. For this purpose, *Consumer Councils* have been established at the district, state and central levels. To make effective redress available to the consumer, a three-tier system of *consumer courts* (referred to in the Act as *consumer disputes redressal agencies*), have been established - once again, at the district, state and central levels -

where justice is neither expensive nor delayed.

Thus, the Act has adopted a *two-pronged approach* in the matter of consumer protection, namely:

- establishment of Consumer Protection Councils, *and*
- establishment of consumer disputes redressal agencies (quasi-judicial agencies that function as consumer courts).

At what levels are Consumer Protection Councils established?

Ss. 4 to 8-A of the Act deal with establishment of Consumer Protection Councils. There is one *Central Consumer Protection Council* for the whole country. This is headed by the Union Minister in charge of Consumer Affairs. In every state, there is the *State Consumer Protection Council*, headed by the State Minister in charge of Consumer Affairs. The Act was amended in 2002 to also provide for a Consumer Protection Council at the grass-root level, in the form of the *District Consumer Protection Council*, headed by the Collector of the district - by whatever name called.

What are the objects of the Consumer Councils?

The *objects* of these Consumer Protection Councils, laid down in S. 6 of the Act, are to promote and protect the following rights of consumers:

- (a) the right to be protected against the marketing of goods and services which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods and services, as the case may be, so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
- (d) the right to be heard and to be assured that consumers' interests receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; *and*
- (f) the right to consumer education.

What is the three-tier system of redressal agencies (consumer courts)?

The Consumer Protection Act provides for a *three-tier system of quasijudicial agencies for redressing consumer grievances*. These agencies act like *consumer courts* at the district, state and central levels. There is at least one *District Forum* in every district and this has truly brought justice to the doorstep of every consumer. Then, there is one *State Commission* in each state and a *National Commission* located in New Delhi. [S.9]

The District Forum is headed by a person who is, or has been, or is qualified to be a *District Judge*. The State Commission is headed by a person who is, or has been, a *Judge of a High Court*, and the National Commission by a sitting or retired *Judge of the Supreme Court*. Provisions have also been made to ensure that there is *at least one woman Member* in each of these consumer courts.

As there is one State Commission for every state and only one National Commission (which sits in New Delhi), provisions have been made in the Act for *Circuit Benches* of State Commissions and the National Commission to sit at other places also. [Ss. 17-B & 22-C]

Who can file a complaint under the Act?

A complaint can be filed under S. 2(b) of the Act by the following *five* categories of persons, namely, -

- (a) a consumer;
- (b) any voluntary consumer association registered under the Companies Act, 1956, or under any other law;

- (c) the Central Government or any State Government;
- (d) one or more consumers - where there are numerous consumers having the same interest;
- (e) in case of death of a consumer, his legal heir or representative.

Who is a consumer?

Under S. 2(d) of the Act, any person who buys goods for consideration and not for resale or for any commercial purpose is a consumer. Likewise, any person who avails of or hires a service for consideration but *not* for any commercial purpose is a consumer.

[The term 'consumer' is discussed at length in Chapter 2.]

When can a consumer file a complaint?

A consumer can file a complaint under the circumstances stated in S. 2(c) of the Act, as *for instance*,

- when he has been a victim of a *restrictive or an unfair trade practice*;
- when the *goods* bought by him suffer from one or more *defects*;
- when the *services* hired or availed of by him suffer from *deficiency* in any respect;
- when the trader or service provider has charged him an *excessive price*; or
- *hazardous goods or services* are being offered to the public.

Where can a consumer file his complaint?

When the value of the goods or services in question and the compensation claimed does not exceed ₹ 20 lakhs, the consumer can approach the District Forum in his district. When such value exceeds ₹ 20 lakhs but does not exceed ₹ 1 crore, he can file a claim before the *State Commission*. For claims exceeding ₹ 1 crore, the *National Commission* has exclusive original jurisdiction.

Where can a consumer file an appeal?

Appeals from a District Forum are to be filed before the State Commission of that state and appeals from a State Commission lie before the National Commission. All orders of the National Commission are appealable before the Supreme Court of India.

The District Forum, being the lowest court in the three-tier system, has no appellate jurisdiction.

What is the procedure adopted by consumer courts? What types of orders can they pass?

The *procedure* to be adopted for this quasi-judicial adjudication under

S. 13 of the Act is fairly simple. After considering the written complaint, the defence of the opposite party and the evidence produced by both sides, an order is passed in the matter. The scope and ambit of such orders is indeed vast and a District Forum, a State Commission or the National Commission may pass any of the following *twelve* types of orders under S. 14 of the Act, namely, —

- (a) to remove the defect in the goods;
- (b) to replace the goods with new goods of similar description;
- (c) to refund the price or charges paid;
- (d) to pay compensation to the consumer for the loss or injury suffered by him;
- (e) if loss or injury has been caused to a large number of consumers who are *not* identifiable conveniently, - to pay such sum as may be determined by the District Forum (*not* being less than 5% of the value of the goods or services in question) to be utilised in such manner as may be prescribed;
- (f) to remove the defect in the goods or the deficiency in the services;
- (g) to discontinue the unfair or restrictive trade practice and *not* to repeat the same in the future (*cease-and-desist order*);
- (h) *not* to offer hazardous goods for sale;
- (i) to withdraw hazardous goods being offered for sale;

- (j) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- (k) to issue a corrective advertisement to neutralise the effect of a misleading advertisement;
- (I) to provide for adequate costs to the parties.

It is also provided that if the procedure prescribed by the Act has been followed, *no proceeding under the Act can be challenged on the ground that the principles of natural justice have not been complied with.* [S. 13]

Is there any provision for laboratory testing of the goods complained of?

Provisions have been made in the Act for cases where the complainant alleges a defect in the goods which *cannot* be determined without proper analysis or a test of such goods. In such cases, a sample of such goods is to be sent to an *appropriate laboratory* for testing, and both the parties are allowed to file written objections, if any, in respect of the report of the laboratory. [S. 13]

Are there provisions under the Consumer Protection Act to provide quick relief to consumers?

One of the main aims of the Act is that the consumer must get expeditious relief - and matters should *not* drag on for years and years, as it happens in civil courts. In order to expedite disposal of complaints filed under the Act, it is provided that all consumer complaints should be disposed of as *expeditiously as possible* - and an endeavour should be made to dispose of a complaint *within a period of three months*. If goods are sent for laboratory testing, the corresponding period is *five months*. Similarly all appeals before a State Commission or the National Commission have to be disposed of, as far as possible, within *ninety days* from the date of admission of the appeal.

In order to avoid delays (which are inseparably attached to litigation in civil courts), the Act contains a salutary provision that, *ordinarily, no adjournments are to be granted*. Only if *sufficient reason* is shown, an adjournment may be granted - and that too, for reasons to be recorded in writing. Additionally, the party taking such an adjournment can be ordered to pay *costs*.

Again, all complaints are *not* to be admitted as a matter of course. Under S. 12 of the Act, a complaint may be dismissed at the threshold, as for instance, if it does *not* pertain to a claim covered by the Consumer Protection Act, e.g., a case of breach of contract, pure and simple, *not* involving any consumer rights.

So also, *specific time-frames* have been incorporated in the Act to avoid delays. Thus, the admissibility of a complaint is to be ordinarily decided within a period of *twenty-one days* from the date on which the complaint is received. If admitted, a copy of the admitted complaint must be served on the opposite party within *twenty-one days* from the date of its admission. Likewise, the opposite party must file his defence within a period of *thirty days*.

[All the above time-frames are, no doubt, most laudable in theory. However, the actual working of the various redressal agencies unfortunately paints quite a different picture.]

Are there provisions in the Consumer Protection Act to provide inexpensive relief to consumers?

Apart from the fact that the consumer courts constituted under the Consumer Protection Act are in a position to dispose of matters faster than the ordinary civil courts, care has been taken to ensure that consumer justice is *not expensive*. *When originally enacted, no provision had been made for payment of any court fees* - in striking contrast to the steep court fees which would be payable if the same complaint was filed in a civil court. It was only later, that a provision was inserted in the Act in 2002 for payment of nominal court fees as prescribed by the Rules framed under the Act. Keeping in mind that consumer protection has to be made available even to the lowest possible rung of the population, these Rules have prescribed payment of token fees. Thus, for instance, for a claim upto ? 1 lakh filed before a District Forum, the court fees payable are ? 100 only. Additionally, if the complainant is below the 'Poverty Line', even this paltry amount is

not payable. Likewise, for a claim of ₹ 20 lakhs, the court fees payable are only ₹ 500.

Are professional persons like doctors covered by the Act?

Yes. After the landmark judgment of the Supreme Court in *Indian Medical Association v. V. P. Shanta* (discussed at length in Appendix II), it is well-established that professionals, like doctors, fall within the ambit of the Act. The only exception is when such services are rendered free of charge.

How do consumer courts deal with frivolous or vexatious complaints?

To discourage filing of frivolous or vexatious complaints, the Act specifically provides that such complaints are to be dismissed and costs (*not exceeding ₹ 10,000*) may be awarded to the opposite party. [S. 26]

[S. 26 is discussed at length in Chapter 5 of the book.]

What if orders passed under the Act are not obeyed?

Penalties are also prescribed (by S. 27 of the Act) for non-compliance of the orders passed by the District Forum, a State Commission or the National Commission, in order to ensure that the justice meted out by these quasijudicial bodies is effectively translated into reality.

[S. 27 is discussed at length in Chapter 5 of the book.]

Is there any bar of limitation under the Consumer Protection Act?

Vigilantibus et non dormientibus jura subveniunt: Justice comes to the aid of he who is vigilant - and not he who slumbers or sleeps. In order to discourage lethargy on the part of a claimant, a provision has been made in the Act that no claim can be admitted unless it is filed within a period of *two years* from the date on which the cause of action arose. [S. 24-A]

C. WHETHER THE PROVISIONS OF THE ACT ARE IN DEROGATION OF OTHER LAWS : WHAT MATTERS WILL NOT BE ENTERTAINED UNDER THE ACT

S. 3 of the Act provides that the provisions of the Consumer Protection Act are *in addition to - and not in derogation of - the provisions of any other law in force in India*. The section is worded in a wide manner, so that, even if any other Act provides a remedy under that Act, a consumer can nevertheless approach the appropriate consumer court - as long as the other Act does not expressly bar the jurisdiction of the consumer courts.

The National Commission has *held* that just because there is an arbitration clause in an insurance policy, it does not mean that a complaint *cannot* be filed under the Consumer Protection Act. In such a case, the complainant has an option to go for arbitration under the policy or file a complaint under the Consumer Protection Act. (*New Jaipur Dyeing & Tents Works v. Oriental Insurance Co. Ltd.*, (1991) 2 CPR 149)

As observed by the National Commission in *Jagdamba Rice Mills v. Union of India* [(1991) 1 CPJ 273]-

"We are therefore inclined to hold that, in light of section 3, the remaining provisions of the Act provide *additional* rights, remedies, forums and executing processes for consumer disputes, irrespective of arbitration clauses, either contractual or statutory. The precious rights and remedies of consumers are *not* be cut down by construction."

If, however, the dispute has already been *referred* to arbitration, consumer redressal under the Consumer Protection Act would *not* be available. (*O. G. Sampath v. V. K. Lalco Pvt. Ltd.*, (1995) 3 CPJ 228)

Again, if a matter is purely a case of breach of contract, it *cannot* be a consumer dispute and the parties should be left to litigate in a civil court. In such cases, no relief ought to be granted by the Consumer Protection Act for a mere breach of contract. (*Suraj Steel v. R. P. Sharma*, F. A. 488 decided on 25-7-1989)

A failure to deliver cement under a contract was thus *held* to be a case of a pure breach of contract - and no complaint could be entertained under the Consumer Protection Act. (*Executive Engineer v. Hariganga Cement Co.*, (1996) 1 CPJ 299)

Likewise, a District Forum has no jurisdiction to refund any amount collected under the Sales Tax Act, because there is a comprehensive machinery provided by that Act for claiming a refund. (*Sales Tax Officer v. Ramniwas Agarwal*, (1993) 1 CPR 84)

Again, if there is pending litigation between the parties regarding a matter which otherwise falls under the Consumer Protection Act, that is, the matter is *sub judice* before a court, such a dispute will *not* be

entertained by a consumer court. In such a case, it is *not* that the consumer court lacks jurisdiction in the matter; rather, it is *not prudent* to entertain such disputes to avoid multiplicity of **legal proceedings and the** possibility of conflicting decisions. (*Special Machines v. Punjab National Bank*, (1991) 1 CPR 52)

However, if the pending suit is withdrawn, the matter can be entertained by a consumer court under the Consumer Protection Act. (*L/C v. Barkha Singh*, (1993) 2 CPR 579)

Likewise, when a person had filed a criminal complaint which was dismissed, it was *held* that he could *not* raise the same matter again under the Consumer Protection Act. (*Rakesh Mangal v. Pioma Industries*, (1993) CCJ 487)

Claims arising out of accidents caused by motor vehicles fall within the exclusive jurisdiction of the Accidents Claims Tribunal -and *cannot* be the subject-matter of a consumer complaint. (*Chairman, Thiruvalluvar Transport Corp. v. Consumer Protection Council*, AIR 1995 SC 1384)

Similarly, matters which come under the exclusive jurisdiction of the Railways Claims Tribunal *cannot* be tried under the Consumer Protection Act. (*Searsole Chemicals Ltd. v. Eastern Railways*, (1995) 2 CPJ 405)

So also, where a consumer complaint filed under the Act requires a *great deal of evidence*, both oral and documentary or involves *complicated questions of fact and law*, the matter can be sent to a regular court for adjudication. (See Chapter 4.)

End of chapter 1

Chapter 2 DEFINITIONS (S. 2)

This Chapter is considered under two heads:

A. Definitions of important terms used in the Act

B. Other terms defined.

A. DEFINITIONS OF IMPORTANT TERMS USED IN THE ACT

Define “consumer” and discuss in detail the different provisions of the Consumer Protection Act.

Write a short note on : Consumer. B.U. Apr. 2009 Apr. 2011 Nov. 2012 Apr. 2013 Nov. 2014

Who is a “consumer”? Discuss consumer safety and protection of consumers under the Consumer Protection Act. B.U. Nov. 2010 Apr. 2011

Define ‘consumer’ under the Consumer Protection Act. (2 marks) B.U. Nov. 2015

“Consumer”

The definition of the word ‘consumer’, as used in the Act, is important, as it is only a consumer who is protected under the Act and a *consumer* can approach the three-tier consumer redressal agencies set up under the Act.

The definition of ‘consumer’ has intentionally been framed in a very comprehensive manner and covers every person who pays money for goods or services and deserves to get what he pays for.

S. 2 (d) of the Act recognises *two* categories of consumers:

- Consumers of goods Consumers of services.

Consumers of goods

With reference to goods, the term ‘consumer’ means a person who *buys* any goods for consideration which is (a) paid, or (b) promised to be paid, or (c) partly paid and partly promised, or (d) under any system of deferred payment. The term also covers any user of such goods other than the person who has bought the goods when such use is made with the approval of the buyer. Thus, if a person buys a car which is used by his wife with his permission, the wife would also be a ‘consumer’.

The term does *not*, however, cover a person who obtains such goods for (i) *resale* or (ii) for any *commercial purpose*. (See below.)

Consumers of services

As regards services, the term 'consumer' means a person who *hires or avails* of any services for consideration which is (a) paid, or (b) promised to be paid, or (c) partly paid and partly promised, or (d) under any system of deferred payment. The term also covers any beneficiary of such services other than the person who hires or avails of the services for consideration, when such services are availed of with the approval of the person who has paid for such services. Thus, when a father engages a surgeon for operating on his minor son, the son would also be a 'consumer'. Likewise, the nominee of an insurance policy is also a 'consumer'. (*LIE v. ChaturBihari Lai*)

In one case, the person who was actually using a telephone with the subscriber's permission was *held* to be a consumer. He could, therefore, claim compensation from the telephone company for a deficiency in service - although he was himself *not* a subscriber of that telephone company. (*Mahanagar Telephone Nigam Ltd. v. Vinod Karkare*, (1991) CPJ 655)

The Karnataka State Commission has *held* that a tenant is *not* a consumer. He pays rent for his room - and *not* for the services of his landlady. (*J. Vittal Shenoy v. K. Shardabal*, I (1993) CPJ 454)

The term 'consumer' does *not*, however, cover a person who avails of such services for *any commercial purpose*. (See below.)

Thus, the concept of a *consumer* arises under the Act only when consideration is paid for the services hired or availed of. The Supreme Court has thus *held* that a patient who gets free treatment in a government hospital is *not a consumer*; it makes no difference that he pays a nominal amount as registration charges for covering administrative expenses. However, a patient in a private hospital who pays for his treatment is a *consumer*. (*Indian Medical Asso. v. V. P. Shanta*, (1995) 6 SEE 651)

Commercial purpose and resale excluded from the definition

As seen above, services availed of for a commercial purpose and goods purchased for resale or for a commercial purpose lie outside the ambit of the Act.

For the purposes of S. 2 (d), 'commercial purpose' does *not* include use by a person of goods bought and used by him and services availed by him *exclusively for the purposes of earning a livelihood by means of self-employment*, as when a person buys a copying machine to operate a small kiosk where he makes and supplies xerox copies for a living.

Thus, the National Commission has *held* that when a person buys a car to use it as a taxi, he is *not* a consumer, as "there *cannot* be any doubt that plying of taxis for hire is clearly a commercial purpose". (*Western India State Motors v. Subhag Mai*, (1991) 1 CPJ 44)

However, in a later decision, the National Commission has clarified that when a person buys a car to use it as a self-employed operator, he is a consumer and is entitled to recover compensation under the Act, in that case for a manufacturing defect in the car bought by him. (*Hindustan Motors Ltd. v. N. D. Tamankar*, (1996) 1 CPJ 313)

What is meant by the term "consumer"? Explain in detail the aims and objects of the Consumer Protection Act. B.U. Apr. 2015

The Supreme Court has *held* that a person who buys 'G P Sheets' as raw material for his factory, which rolls out tin sheets, purchases such goods for *resale*. He is, therefore, *not a consumer*. (*Rajeev Metal Works v. MMTC of India*, (1996) 9 SEE 422)

In one case, a Charitable Trust was running a Diagnostic Center, where patients were required to pay for CT scans, but about 10% of them were given free service. The Supreme Court *held* that the CT scan machines were purchased by the Trust for a *commercial purpose* - and hence, the sale was *not* covered by the Act. (*Kalpavruksha Charitable Trust v. Toshniwal Brothers (Bombay) Private Ltd.*, AIR 1999 SC 3356)

When a person imported a photo typesetting machine for use in his printing press, it was *held* that the machine was bought for a *commercial purpose*, and hence, the buyer was *not* a consumer. (*Sterocraft v. Monotype India Ltd.*, (1991) 1 CPJ 111). But when a similar machine was purchased for self-employment, as the purchaser only wished to earn his livelihood from the machine, it was *held* that he was a consumer, as the machine was *not* purchased for a commercial purpose. (*Sanjay Pantv. Chetana Machineiy & Paper Mart*, (1993) CLJ 493)

Similarly, when a person bought a tractor for his own agricultural use, he was *held* to be a consumer - despite the fact that he had let it out for a small income when it was *not* in use. (*Bhupendra Bahadur v. Regional Manager*, (1995) 2 CPJ 139)

What is *not* service

Define "Consumer dispute".(2 marks) B.U. Nov. 2011 Nov. 2012 Apr. 2014

It has been *held* that a person who pays stamp duty on a document and presents it for registration does *not* become a consumer, as he is not availing of any 'services' as defined in the Act. (*S. P. Goel v. Collector of Stamps*, 1 (1996) CPJ 11).

Likewise, tax is a compulsory payment of money to the government for public purposes - and is *not* payment for any 'service' rendered by the government. Similarly, when court fees are paid by litigants, such litigants *cannot* be said to be 'hiring' the services of the civil courts. In such cases, the State is only discharging its sovereign function of providing justice to its citizens.

"Consumer dispute"

A "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint. [S. 2(e)]

"Complaint"

The word 'complaint' is defined by S. 2 (c) of the Act to mean any allegation in writing made by a complainant, with a view to obtaining any relief provided by or under the Act, that -

- (a) an *unfair trade practice* or a *restrictive trade practice* has been adopted by any trader or service provider;
- (b) the *goods* bought by him - or agreed to be bought by him - suffer from one or more *defects*;
- (c) the *services* hired or availed of - or agreed to be hired or availed of - by him suffer from *deficiency* in any respect;
- (d) a trader or a service provider has charged for the goods or services, a *price* in excess of the price:
 - fixed by or under any law;
 - displayed on the goods or on any package containing the goods;
 - displayed on the price list exhibited by him under any law; or
 - agreed to between the parties.
- (e) goods, which when used, will be *hazardous to life and safety*, are offered for sale to the public in contravention of any safety standards prescribed for such goods by the law or if the trader could have known (with due diligence) that the goods so offered are unsafe;
- (f) *services*, which when used, are hazardous or likely to be *hazardous to life and public safety* are being offered by the service provider which such person could have known (with due diligence) to be injurious to life and safety.

Write a short note on : "Consumer dispute". B.U. Apr. 2009

What do you mean by "complaint" ? Explain In detail the aims and objects of the Consumer Protection Act.

What Is a complaint under the Consumer Protection Act? (2 marks) B.U. Nov. 2015

Define "complainant " under the Consumer Protection Act(2 marks)B.U.Nov.2010.Apr.2014

"Complainant"

Under S. 2(b) of the Act, a complainant means any of the following *five classes of persons* who makes a complaint, namely, -

- (a) a consumer;
- (b) any voluntary consumer association registered under the Companies Act, 1956, or under any other law;
- (c) the Central Government or any State Government;
- (d) one or more consumers - where there are numerous consumers having the same interest;

(e) in case of death of a consumer, his legal heir or representative.

What are “defective goods”? (2 marks) B.U. Nov. 2010 Nov. 2012

“Defect”

S. 2 (f) of the Act lays down that a ‘defect’ means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard, which is required to be maintained under any law in force or under any contract (express or implied) or as is claimed by the trader in any manner whatsoever in relation to any goods.

In England, under the Consumer Protection Act, 1987, there is a defect in a product “if the safety of the product is *not* such as persons generally are entitled to expect”.

According to the National Commission, the purchaser of a newspaper is *not* covered by the Act. An alleged incorrect piece of news in a newspaper *cannot* be said to be a ‘defect’ in the goods purchased by him. Nor can the consumer contend that he hired the services of the newspaper and that there was deficiency in such services. (*Devanand Gehlot v. Rajasthan Patrika*, (1991) I CPJ 599)

The National Commission has *held* that if there is a ‘defect’ in the *title to property*, it is *not* covered by any of the types of ‘defects’ contemplated by the Act. (*Kuldeep Singh v. Roshanlal*, II (1993) CPJ 170)

The following have been *held* to be ‘defective goods’ under the Act:

- An air conditioner with an unusually loud noise
- A scooter which broke down soon after purchase
- A motor-cycle which had many defects from the very day of purchase
- A TV set which broke down within a week after its purchase and had to be repaired eleven times
- A video-cassette player which displayed zig-zag pictures
- Adulterated rape-seed oil, after the consumption whereof the consumer, an advocate, and his wife suffered from numbness of the limbs
- Printing machinery with manufacturing defects
- A laser printer which gave trouble in functioning from the very beginning
- A defective stabilizer which damaged other electric equipment of the complainant
- A sofa set which broke down in one-and-a-half months
- A chilling unit with a defective compressor
- A pressure cooker which burst in normal use, causing injury to the consumer’s wife
- Defective cement, where floors laid with the cement developed cracks within a short time
- Cotton seeds which were unsuitable, as the plants dropped their flowers, and therefore, there was no production of cotton
- A steel cupboard where two of its shelves were missing.

write a short note on : Detect and deficiency.B,U'Nov'2013.Nov'2015 .Apr. 2016

Write a short note on: Deficiency.

Define ‘deficiency’ under Protection Act- (2 mark) Nov’ 2014

“Deficiency”

Under S. 2(g) of the Act, ‘deficiency’ means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance, which is required to be maintained under any law in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

The National Commission has *held* that non-delivery of a video cassette entrusted for carriage to a courier is deficiency in service, entitling the consumer to compensation. (*Skypack Couriers Pvt. Ltd. v. Anupama Bagla*, I (1992) CPJ 84)

In one case, where two registered letters containing Bank Drafts were negligently delivered by the Post Office to the wrong person, who encashed the same fraudulently, it was *held* that this was deficiency in service on the part of the Post Office, for which compensation would be payable to the consumer. (*Dept. of Posts v. J. K. Diagnostics*, (1993) II CPR 591)

In one case, there was a delay in the departure of a flight from Bhubaneswar to New Delhi. Consequently, the passengers boarding the same aircraft from New Delhi were also delayed. The airlines had *not* bothered to find out if the flight had left Bhubaneswar on time. Nor did it make any proper arrangement for food or stay of the stranded passengers. This was *held* to be deficiency in service on the part of the airlines and the passengers were entitled to compensation. (*The Station Manager, Indian Airlines v. B. B. Das*, I (1992) CPJ 183)

The National Commission has *held* that if cushioned seats are *not* provided by the Railways for passengers travelling by First Class (as stipulated by the Railway Board), this amounts to deficiency in service and the passengers are entitled to compensation for the physical discomfort and mental stress experienced in undertaking the journey on non-cushioned seats. (*N. Prabhakaran v. Gen. Manager, Southern Railways, Madras*, I (1992) CPJ 323)

Delay in handing over possession of a house already allotted, despite having received the full price, also amounts to deficiency in service. (*Kanhaiya Lai v. Sec., Rajas Housing Board*, (1991) 1 CPJ 37) Likewise, non-delivery of a car within the time stated on the invoice, after having received the full price from the customer is deficiency in service, in addition to being an unfair trade practice. (*V. Gopalakrishnan v. Sancheti Motors, Pvt. Ltd.*, (1992) I CPR 57)

With reference to *providers of electricity*, it has been *held* that the following would amount to deficiency in service, namely, -

- Raising bills without actual meter reading
 - *Not* sending bills at the prescribed time as per the billing cycle and harassing the consumer with heavy arrears bills
 - Sending arrears bills without indicating the period covered by the bills.
 - The following have also been *held* to amount to 'deficiency in service', namely, —
 - Failure on the part of a bank to credit an amount deposited in the account of the consumer
 - Payment of a cheque by a bank despite having received instructions from the account-holder to 'stop payment' of that cheque
 - Supply of contaminated blood by a Blood Bank
 - Supply of stale food by an airline to a passenger
 - Illegal disconnection of a subscriber's telephone
 - Illegal disconnection of the electric supply of a subscriber
- Callous and indifferent services of a hospital - where, instead of being given oxygen, a patient was administered nitrous oxide, as a result of which he died
- Allotment of the same roll number to three different students at a University examination.

The National Commission has *held* that if a bank adjusts an amount placed by the account holder as a Fixed Deposit against the loans availed of by an account-holder, as per its agreement with the account-holder, it *cannot* be said that this is 'deficiency in service'. (*Branch Manager, Bank of Maharashtra v. Manohar Sitaram*, II (1993) CPJ 158)

Insurance cases

A jeep which met with an accident was insured under a policy which expressly excluded use for hire. As the jeep was given out on hire when an accident occurred, the insurance company rejected the claim. The State Commission held that the rejection of the claim was justified, and that this would *not* amount to deficiency in service. (*Rakesh Sharma v. National Insurance Company Ltd.*, (1995) 1 CPR 557)

Non-renewal of an insurance policy also does *not* amount to deficiency in services. (*C. K. Bhaskaran v. National Insurance Company Ltd.*, (1995) 2 CPJ, 97)

“Service”

The term “service” is defined by S. 2 (o) of the Act to mean service of any description which is made available to potential users.

The term *includes, but is not limited to*, the following services, namely, provision of facilities in connection with -

- banking
- financing
- insurance
- transport
- processing
- supply of electrical or other energy
- boarding and / or lodging
- housing construction
- entertainment
- amusement
- purveying of news or other information.

However, *the term does not include* -

- the rendering of any service *free of charge*; or
- the rendering of any service under a *contract of personal service*.

As is clear from the above, the word “service” is first defined in a very broad manner. Next, some illustrative examples of service are given, as listed above. This is, however, *not* an exhaustive list of all possible types of services; it is only illustrative in nature. Lastly, *two* forms of service are expressly excluded from the ambit of the definition.

Write a short note on: Service.B.U. May 2012

Define “service”.(2 marks) B.U. Apr. 2011

Whether service rendered by the government is covered by the Act

The Act makes no exception in favour of government agencies. So, if their activities amount to “service” (as defined above), the Act becomes applicable. In other words, as far as transmission of letters and parcels is concerned, it would make no difference whether this is done by the Post Office or by a private courier. Thus, if a Post Office delivers a speed-post parcel much later than the agreed period of time, the consumer would be entitled to compensation for the loss suffered in addition to a refund of the postal charges. Likewise, when a train passenger was on the Waiting List, but was superceded by the railways authorities to provide a berth to a VIP passenger, the Railways were ordered to pay ₹ 1,000 as compensation and Rs 300 as costs to the passenger. (*M. Meenakrishisundaram v. Gen. Manager, Southern Rly.*, (1991) 2 CPJ 137)

Educational institutions

Educational institutions which charge a fee are covered by the Act - as ' they do provide a “service”. Thus, in one case, a child's admission was withdrawn by its parents well before the term started and the same seat was filled up by the school by admitting a new student. However, the school refused to refund the fees and other annual charges. The Delhi State Commission *held* that it could *not* do so - and was bound to refund such fees. (*Apeejay School v. M. K. Sanyal*, (1993) CLJ 423).

Likewise, a University which took ten long years to issue a Certificate to , the complainant was ordered to pay Rs. 10,000 as compensation for the deficiency in its services. (*Bangalore University v. Parida Ansari*, (1993) 2 CPR Kar)

The National Commission has, however, ruled that a University *cannot* be liable under the Act when it is conducting an examination, evaluating answer papers and publishing results. In doing such things, it is *not* rendering any “service”. The student also could *not* be said to be a “consumer”, as he was *not* hiring any “services” of the University. (*Alex Rebello v. Bangalore University*, (2003) 2 CPJ 7)

Tailoring services

In one case, a tailor charged ₹ 75 for stitching a pant. However, it was so , badly stitched that the cloth became virtually useless. It was argued that tailors render personal service to the customer and would, therefore, *not* be covered under the Act. Rejecting the argument, the National Commission *held* that a tailor *does* render a “service” to his potential customer. Nor is there any ‘engagement for personal services. There is also no master-servant relationship [between him and his customer. The services rendered by him are *not* under any contract of personal service. Tailors and tailoring houses are, therefore, covered by the Act. In the circumstances, the tailor was ordered to refund the tailoring charges and also pay the consumer ₹ 365 for the cloth, 200 by way of compensation and 100 towards costs. (*A C. Modagi v. Crosswell Tailors*, (1993)1 CTJ 315)

Doctors

After the decision of the Supreme Court in *Indian Medical Asso. v. V. P. Shanta* [(1995) 6 SEE 651], it has become well-established that a doctor *does* render “service” to a patient when he treats him for a fee. It was strongly contended on behalf of the medical profession that a doctor-patient contract is a contract of personal service. Now, as contracts of personal service are specifically excluded by the definition, a doctor’s service should fall outside the ambit of the Act. Rejecting this argument, the Supreme Court *held* that such a contract is a contract *for* personal service - and *not* a contract *of* personal service.

Thus, *the only exception* available to doctors and hospitals would be where a patient is treated *free of charge*. Hence, a government or municipal hospital, where all the wards are “free wards”, lie outside the ambit of the Act. The fact that a patient in such a hospital pays a nominal amount for registration makes no difference - as this amount covers administrative expenses, and is *not* charged for providing the medical treatment. As regards private hospitals, where all the patients are charged for treatment, “services” are rendered by the hospital and the patient is a “consumer”. Hence, such hospitals fall within the ambit of the Act.

As regards hospitals which charge patients, but which have some beds or wards for poor patients who are treated free of charge, the Supreme Court *held* that such hospitals - including the free wards - are covered by the Act.

The Supreme Court also rejected an argument that if a patient pays for treatment, but is later reimbursed under a medical insurance policy, such treatment is to be regarded as being without consideration. Such cases would thus also fall within the scope of the Act.

In cases where the maxim, *res ipsa loquitur* (- the thing speaks for itself -) applies, as when a sponge or a forceps is left behind in the abdomen during a surgery, the surgeon would be liable for negligence and compensation would be awarded to the patient - or to his or her heirs.

Write a short note on : Lawyering services.

Define “restrictive trade practice” under the Consumer Protection Act. (2 marks) B.U. May 2012

What is a restrictive trade practice under the Consumer Protection Act? (2 marks) B.U. Apr. 2013

Solicitors and lawyers

In England, solicitors have been *held liable* to compensate their clients when they have been shown to be negligent, as for instance, where there was a failure to put up a defence in respect of which full documentary evidence was given by the client to the solicitor. (*Cook v. 5*. (1996) 1 All ER 248)

Likewise, a solicitor was *held to be liable* where a gift contained in a will failed as the solicitor did *not* ensure that the will was properly attested. (*Ross v. Counters*, (1980) Ch D 297)

In a case decided by the National Commission, a legal practitioner working under the banner ‘Legal Aid

Cell' was misleading clients by describing himself as the 'Official Legal Aid Organization'. A client was victimized into paying him 7,500 as court fees when the actual court fees were only ₹ 30. On a complaint filed under the Act, he was ordered to refund the amount and also pay ₹ 25,000 as compensation to the client, with the court observing as under: "We have to condemn, in the strongest terms, the unscrupulous attempts to misuse and exploit the genuine legal aid organization for operating upon the gullible members of the public."

In one case, it was alleged that the complainant had engaged an Advocate only to file a Caveat, and that the Advocate had used the Vakalatnama to file a suit. In deciding the matter, the Kerala State Commission took the view that allegations of fraud and impersonation leveled against an Advocate by his client are *not* capable of being determined by a consumer redressal agency, (*Daivathan v. M. Balachandran*, (1997) 3 CPJ 307)

"Consumer disputes redressal agencies"

The *three-tier consumer disputes redressal agencies* set up under S. 9 of the Act are as under:

- A Consumer Disputes Redressal Forum is *set up in every district* and known as the "District Forum".
- A Consumer Disputes Redressal Commission is *set up in every State* and known as the "State Commission".
- A National Consumer Disputes Redressal Commission is *located in New Delhi*, and is known as the "National Commission".

[Provisions relating to these consumer disputes redressal agencies have been considered in detail in Chapter 4.]

"Restrictive trade practice"

A restrictive trade practice is defined by S. 2(nnn) of the Act to *mean* a trade practice which tends to bring about manipulation of price or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such a manner as to impose unjust costs or restrictions on the consumer. The term *includes* the following two trade practices, namely, -

- (a) Delay beyond the period agreed to, by a trader in supplying the goods or providing the services, which delay has led, or is likely to lead, to a rise in the price.
- (b) Any trade practice which requires a consumer to buy, hire or avail of any goods or services, as a condition precedent to buying, hiring or availing of other goods or services.

Instances of restrictive trade practices

- Delivery of a new car or scooter, much beyond the agreed date, so that a higher price may be charged to the purchaser.
- Accepting advertisements only for two newspapers simultaneously.
- Refusal or undue delay in allotting a new gas connection -unless a stove is also bought from the same shop.
- Compulsory purchase of an antenna with a TV set.
- Refusal to lease out a bank locker unless a Fixed Deposit is placed with the bank.
- Forcing school students -
 - to purchase uniform cloth only from the school;
 - to purchase text books only from the school bookshop;
 - to purchase booklets of 'Fete Tickets' in specified quantities.

Write a short note on : Restrictive trade practices under the Consumer Protection Act.B.U. Apr. 2014
Enumerate the various unfair trade practices as per the Consumer Protection Act.B.U. Nov. 2008
Apr. 2013

Write a short note on : Unfair trade practices.B.U. Apr. 2007 Apr. 2010 Nov. 2012 Nov. 2013 Nov. 2015
Apr. 2016 May 2017

Write a short note on : False representations.B.U. Apr. 2008 Apr. 2010
“Unfair trade practice”

S. 2 (r) of the Act defines an ‘unfair trade practice’ as a trade practice which adopts any unfair method or unfair or deceptive practice for the purpose of promoting the sale, use or supply of any goods or for providing any service.

After laying down the definition of the term as above, it is provided that the term *includes* any of the *eighteen* trade practices listed below. In other words, the following is *only an illustrative, and not an exhaustive list of unfair trade practices*:

- (i) Making any statement which falsely represents that *goods* are of a particular standard, quality, quantity, grade, composition, style or model.
- (ii) Making any statement which falsely represents that *services* are of a particular standard, quality or grade.
- (iii) Making any statement which falsely represents any re-built, secondhand, renovated or old goods as new goods.
- (iv) Making any statement which represents that *goods or services* have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do *not* have.
- (v) Making any statement that *the seller or the supplier* has a sponsorship or approval or affiliation which such seller or supplier does *not* have.
- (vi) Making any statement which makes any false or misleading representation concerning the need for, or usefulness of, any goods or services.
- (vii) Making any statement which gives to the public any warranty or guarantee of the performance, efficiency or length of life of a product or any goods which is *not* based on an adequate or proper test thereof. [In such cases, the burden of proving that such a warranty or guarantee is based on an adequate or proper test is on the person who raises such a defence.]
- (viii) Making any statement to the public which purports to be a warranty or guarantee of any goods or services or a promise to replace, maintain or repair the goods - if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out.
- (ix) Making any statement which materially misleads the public regarding the price at which a product or like products or goods or services have been, or are ordinarily sold or provided.
- (x) Making any statement which gives false or misleading facts disparaging the goods, services or trade of *another* person.

Clause (x) above refers to advertisements where a manufacturer claims the superiority of his product, whilst disparaging that of a competitor with false or misleading statements. It is to be noted that comparative advertisements are *not* prohibited. It is only when such comparison is false or misleading that the matter will be covered by the Act.

[For the purpose of all the ten clauses above, the ‘statement’ may be oral or in writing or may be made by any visible representation. It may be:

- on the article or its wrapper or container;
- on anything attached to, or inserted in, or accompanying the article; *or*
- contained in anything that is sold, sent, delivered or transmitted or made available to a member of the public.]

- (xi) Permitting the publication of any advertisement - whether in a newspaper or otherwise - for the sale or supply at a *bargain price*, of goods or services that are *not* intended to be offered for sale or supply at the bargain price, for a period that is reasonable or in quantities that are reasonable, having regard to the nature of the market, the size of the business and the nature of the advertisement.

[For this purpose, a “bargain price” means:

- (a) a price that is stated in any advertisement to be a bargain price by reference to an ordinary price or

otherwise; or

- (b) a price that a person who reads, hears or sees the advertisement would reasonably understand to be a bargain price, having regard to the prices at which the product advertised or like products are ordinarily sold.]
- (xii) Permitting the offering of gifts, prizes or other items with the intention of *not* providing them as offered or creating an impression that something is being given or offered free of charge when, in fact, it is fully or partly covered by the amount charged in the transaction as a whole.
- (xiii) Permitting the conduct of any contest, lottery, game of chance or game of skill, for the purpose of promoting - directly or indirectly - the sale, use or supply of any product or any business interest.
- (xiv) Withholding from the participants of any scheme offering gifts, prizes or other items free of charge, information about the final results of the scheme when such scheme is over.
- (xv) Permitting the sale or supply of any goods intended or likely to be used by consumers, knowing - or having reason to believe - that the goods do *not* comply with the prescribed standards relating to performance, composition, contents, design, construction, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods.
- (xvi) Permitting the hoarding or destruction of goods or refusal to sell the goods or provide the service - if such hoarding, destruction or refusal raises, or tends to raise, or is intended to raise, the cost of those or similar goods or services.
- (xvii) Manufacturing of spurious goods or offering such goods for sale.
- (xviii) Adopting deceptive practices in the provision of services.

Instances of unfair trade practices

- Spurious watches, *not* made by HMT, sold as 'HMT watches'.
- Blouse pieces sold with the mark 'Reliance' and 'Vimal', creating an impression on gullible consumers that these were manufactured by Reliance Industries India Ltd.
- Sale by an institute of 'lucky stones' with the wordings, "Let it touch you and see your future change."
- Selling "high fashion summer and spring wear at discounts upto 50%", when the items put up for sale consisted mainly of shop-soiled, outdated and out-of-fashion clothes.
- Advertising sub-standard garments as "export quality garments at throw-away prices".
- Guaranteeing the mileage of a new scooter at 40 km per litre, when the actual performance was less than 30 km per litre.
- Falsely advertising that certain Debentures of a company would earn more than 80% interest per annum.
- Guarantee by a courier company that a packet would be delivered in less than 24 hours - when the packet was actually delivered after five days.
- An advertisement stating that "Half a Philips bulb is as good as any other bulb".
- Offering free gifts with sewing machines after increasing the prices of the sewing machines.
- Offering bumper prizes based on a lucky draw to purchasers of Avon cycles.
- 'Made for each other' contest for couples - at least one of whom had to be a smoker.

Write a short note on : Appropriate laboratory. B.U. Apr. 2008

What is "appropriate laboratory"? (2 marks) B.U. Nov. 2010 Nov. 2013 Apr. 2014 Nov. 2014 Apr. 2015 May 2017

"Appropriate laboratory"

When a consumer complaint is filed under the Act, alleging a 'defect' in goods, it may become necessary to send such goods to a laboratory for a test report. As both the complainant and the opposite party may try to obtain 'favourable' test reports, it is provided that such goods can be tested only by an 'appropriate laboratory', as defined below.

Under S. 2 (a) of the Act, an 'appropriate laboratory' is -

- a laboratory or organisation recognised by the Central Government or by the State Government, subject to the guidelines prescribed by the Central Government; *or*
- any such laboratory or organization established by or under any law and which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods, with a view to determining whether such goods suffer from any defect.

Under the Consumer Protection Rules, 1987, State Governments have been authorised to recognise a laboratory as an 'appropriate laboratory'. For the purpose of obtaining such recognition, the applicant laboratory must make an application in triplicate in the prescribed form to the State Government. Two copies of the application are then forwarded by the State Government to the Bureau of Indian Standards (BIS) to assess the suitability of the laboratory as per BIS standards. The fees charged by the BIS are to be paid by the applicant.

On receiving the recommendation of the BIS, the State Government decides whether to recognise a particular laboratory as an 'appropriate laboratory' under the Act. Such recognition, if granted, is valid for a period of *three years*.

A list of *appropriate laboratories* is available with the Ministry of Food & Civil Supplies. This list gives the names of all laboratories which are established or recognised by the government. Some names that appear in the said list are: Indian Agricultural Research Institute, New Delhi

- Central Rice Research Institute, Cuttack
- National Aeronautical Laboratory, Bangalore
- Central Potato Research Institute, Shimla
- Electronics Regional Test Laboratory, Mumbai.

Under the provisions of the Act, if the complainant alleges a defect in goods which *cannot* be determined without a proper analysis or test, a sample of such goods is to be sent to an appropriate laboratory for testing. The complainant must deposit the fees payable to the laboratory for carrying out the necessary test and such fees are then paid to the laboratory. When the laboratory submits its report, both sides are given a copy of the report and are permitted to file their written comments on the report and also address oral arguments as regards the correctness or otherwise of the report before a decision is taken in the matter.

It is also relevant to note that, under S. 13 of the Act, an endeavour is to be made by the District Forum to dispose of a complaint filed before it within a period of *three months*. If, however, the subject-matter of the complaint requires a laboratory analysis or testing, the corresponding period is five *months*.

Write a short note on: Goods.

Write a short note on: Manufacturer.

Define "manufacturer". (2 marks) B.U. Apr. 2010 Apr. 2011 Nov. 2012

B. OTHER TERMS DEFINED

"Goods"

Under S. 2(i) of the Act, the word "goods" is to be given the same meaning as the word is defined in the Sale of Goods Act, 1930. The definition of this word under the said Act is as follows:

"Goods" means every kind of movable property other than actionable claims and money. The word *includes* stock and shares, growing crops and things attached to, or forming part of, the land, which are agreed to be severed before sale or under the contract of sale.

"Spurious goods and services"

"Spurious goods and services" mean such goods and services which are claimed to be genuine - but *they are actually not so*. [S. 2(o)]

"Manufacturer"

Under S. 2(j) of the Act, a "manufacturer" means a person who -

- (i) makes or manufactures any goods or part thereof; *or*
- (ii) does *not* make or manufacture any goods but assembles parts thereof made or manufactured by others; *or*
- (iii) puts or causes to be put, his own mark on any goods made or manufactured by other manufacturers.

“Trader”

A “trader”, in relation to any goods, means a person who sells or distributes goods for sale, and includes the manufacturer of such goods. Where goods are sold or distributed in a package, the term also includes the packer thereof. [S. 2(q)]

A trader covers a person who buys or sells goods - and *not merely* a person who buys and sells goods. (*Venkatrao v. Alma Sugar Mills*, AIR 1979 Born 38)

It has been *held* that a film producer is *not* a trader. It *cannot* be said that his business is to buy, sell and distribute films. (*Attar Hussamin v. Fadi Bros. Ltd.*, AIR 1946 Born 481)

“Branch office”

A branch office is defined to mean -

- (a) any establishment described as a branch by the opposite party; *or*
- (b) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment. [S. 2(aa)]

“Notification”

A notification means a notification published in the Official Gazette. [S. 2(1)]

Define “person” under the Consumer Protection Act. (2 marks) B.U. Nov. 2013

“Person”

Under S. 2(m) of the Act, a person is defined to include:

- (a) a firm, *whether registered or not*;
- (b) a Hindu undivided family;
- (c) a co-operative society;
- (d) every other association of persons, whether registered under the Societies Registration Act or *not*.

“Prescribed”

The word “prescribed”, as used in the Act, means prescribed by rules made by the State Government, or as the case may be, by the Central Government, under the Consumer Protection Act. [S. 2(n)]

“Regulation”

“Regulation” means the regulations made by the National Commission under the Consumer Protection Act. [S. 2(nn)]

End of chapter 2

Chapter 3-CONSUMER PROTECTION COUNCILS (Sections 4 to 8-B)

In this Chapter, provisions relating to Consumer Protection Councils are discussed under the following heads:

- A. Central Consumer Protection Council
- B. State Consumer Protection Council
- C. District Consumer Protection Council

Write a short note on Central Consumer Protection Council. B.U. Apr. 2009 Nov. 2010 Apr. 2014

Explain In detail : Central Consumer Protection Council and State Protection Consumer Council.

B.U. Nov. 2011 Nov. 2012

What Is the composition of the Central Consumer Protection Council?(2 marks) B.U. Apr. 2013

A. CENTRAL CONSUMER PROTECTION COUNCIL

Under S. 4 of the Act, a Council known as the Central Consumer Protection Council (Central Council) is to be established by the Central Government by a notification published in the Official Gazette.

The Central Council consists of the following members:

- the Union Minister in charge of Consumer Affairs - who is the Chairman of the Central Council; *and*
- such number of other official or non-official members representing such interests as may be prescribed by Rules made by the Central Government under the Act.

The Central Council meets as and when necessary - but must hold *at least one meeting every year*. Such meetings are to be held at such time and place as the Chairman may think fit. The procedure to be followed as regards transacting business at such meetings is prescribed by the Rules made by the Central Government under the Act.

Originally, it was provided that the Central Council should hold at least *three meetings every year*. However, this was reduced to a minimum of *one* meeting by an *amendment passed in 1993*. One can only wonder as to what the rationale behind this amendment was - and what can be achieved by the Council with a statutory requirement of one single meeting in a year!

Under the *Consumer Protection Rules, 1987*, the following provisions have been made for meetings of the Central Council:

1. *Not less than ten days' written notice* of a meeting is to be given to every Member of the Council.
2. Every such notice must specify the date, time and place of the meeting and must contain a statement of business to be transacted at the meeting.
3. Meetings are to be presided over by the Chairman, namely, the Union Minister in charge of Consumer Affairs. In his absence, the meeting must be presided over by the Vice Chairman, namely, the Union Minister of State or the Deputy Minister in charge of Consumer Affairs. In the absence of both the Chairman and the Vice Chairman, the Central Council must elect one Member of the Council to preside at the meeting.
4. The Central Council may constitute, from amongst its Members, such working groups as it may deem necessary to perform its functions under the Act. The findings of such working groups are to be placed before the Central Council for its consideration.
5. Resolutions passed by the Central Council are to be recommendatory in nature.

Under the said Rules, the term of the Members of the Central Council is *three years*. However, a Member may resign from the Council and the casual vacancy so caused is to be filled up by the Central Government.

Objects of the Council

The main *objects* of the Central Council, laid down in S. 6 of the Act, are to promote and protect the rights of consumers, such as (a) the right to be protected against the marketing of goods and services which are *hazardous to life and property*;

- (b) *the right to be informed* about the quality, quantity, potency, purity, standard and price of goods or services, as the case maybe, so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a *variety of goods and services at competitive prices*;
- (d) *the right to be heard* and to be assured that consumers' interests will receive due consideration at appropriate forums;
- (e) *the light to seek redressal* against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; *and*
- (f) *the right to consumer education*.

Clause (a) : Hazardous goods

The right to be protected against hazardous goods ensures that a consumer who has become a victim of hazardous goods will have a cheap and speedy remedy under the provisions of the Act. Thus, adulterated food is as dangerous to life as adulterated cement is to property *and* life.

The classic decision of the Court of Appeal in *Donoghue v. Stevenson* (1932 AC 562) has broadened the category of persons responsible to compensate the consumer for the loss and injury caused to him by hazardous goods. In the case before the court, where a dead snail was found in a bottle of a drink (half of which the customer had already consumed), it was *held* that the manufacturer of the product would be liable to compensate the consumer.

The protection against hazardous goods has covered diverse articles like hair dyes, fireworks, pushchairs, lifts, industrial chemicals, toys, scented erasers and even tombstones.

Clause (b): The right to be informed

The need for consumer information is to protect the consumer against false and misleading claims of a manufacturer, as for instance, the potency or efficacy of a hair oil to promote hair growth or prevent hair loss. Certain standards of purity have been evolved and manufacturers who meet such standards are allowed to *mark* their products with marks like 'ISI', 'Agmark', 'Woolmark', *etc.*

In one case, a consumer addressed a query to a Dairy Board in Gujarat wherein he wanted to know the way in which imported "palmolein oil was used by the Board. When the Board refused to furnish the information, it was *held* that the consumer had the right to such information. (*Consumer Protection Council v. National Dairy Dev. Board*, (1991 2 CPJ 617)

Clause (c): Variety of goods at competitive prices

Under clause (c), the Central Council has been given the responsibility to ensure market practices under which dealers and retailers are supplied with a variety of goods which are offered to consumers at competitive prices.

Clause (d): The right to be heard

The fourth responsibility of the Central Council is to ensure that consumers are heard, as a matter of right, by the appropriate forums constituted under the Act. As seen earlier, one of the main objects of the Act is to free the consumer from the delay and expenses which go hand-in-hand with litigation in the ordinary civil courts of the country.

The Supreme Court has observed that mere delay on the part of a consumer court to dispose of a case before it - nine years, in the present case,

— is *not* a ground for holding that the complainant ought to have been directed approach a civil court to redress his grievance. (*Dr. Merchant v. Shrinath*

Chaturvedi, AIR 2002 SC 2934)

Clause (e): The right to seek redressal

Clause (e) deals with the protection which every consumer must enjoy against restrictive and unfair trade practices as well as against unscrupulous exploitation by manufacturers and traders.

Thus, when the price of a car was deposited in advance and the car was promised to be delivered within two months, delivery of the car much later was *held* to be an unfair trade practice, entitling the consumer to 14% interest on the deposit amount during the delayed period. (*M. O. Hasan v. Joseph Thomas*, (1991) 2 CPJ 30)

In this connection, *Benjamin*, the learned author of 'Sale of Goods' has observed as under:

"The buyer may, by virtue of haste, ignorance, gullibility, inferior buying position or simple imprudence, enter into a transaction in which the goods supplied, or the terms of the contract, or both, are unsatisfactory to him and in many circumstances, it may be felt that he is deserving of protection."

Clause (f): Right to consumer education

The right to consumer education is a primary right of every consumer. If the consumer is *not* even aware of his rights, how can he be expected to enforce them? It is only when consumers are conscious of their rights that they would get energized in their struggle against exploitation by unscrupulous manufacturers and traders. As rightly said, "When people do *not* exercise their legal remedies, the system of remedies tends to get rusted." (V. M. *Shukla*)

Consumer rights under IOCU

The International Organisation of Consumers' Union (IOCU) has formulated the following *eight consumer rights* (most of which are also recognised by the Consumer Protection Act in India):

1. The right to safety
2. The right to be informed
3. The right to choose
4. The right to be heard
5. The right to redress
6. The right to consumer education
7. The right to a healthy environment
8. The right to basic needs.

Write a short note on : State Consumer Protection Council. B.U. Nov. 2009 Apr. 2011 May 2012

Explain In detail : Central Consumer Protection Council and state Consumer Protection Council.

B.U. Nov. 2011 Nov. 2012

B. STATE CONSUMER PROTECTION COUNCILS

S. 7 of the Act envisages the establishment of a Consumer Council known

as the 'Consumer Protection Council for _____' (as for instance, the 'Consumer

Protection Council for Maharashtra') to be established by the State Government in every State in the country. The State Council consists of the following members:

- the Minister in charge of Consumer Affairs in the State Government, who is the Chairman of the State Council;
- such number of other official or non-official members as may be prescribed by Rules made by the State Government; *and*
- such number of other official or non-official members, *not exceeding ten*, as may be nominated by the Central Government.

The State Council meets as and when necessary, but must hold at *least two meetings every year*. The meetings are to be held at such time and place as the Chairman may think fit. The procedure to be followed as regards transacting business at such meetings is prescribed by the Rules made by the State Government under the Act.

The *objects of the State Councils* are to promote and protect, within the State, the rights of consumers laid down in clauses (a) to (f) of S. 6 (discussed at length above).

C. DISTRICT CONSUMER PROTECTION COUNCILS

The Act, as originally enacted, provided for Consumer Councils only at the central and state levels.

However, *the Act was amended in 2002* to provide for a District Consumer Protection Council to be established in each district in India to provide a forum for promoting and protecting consumer rights at the grass-root level in the country. [S. 8-A]

The District Council consists of the following persons:

- the Collector of the district (by whatever name called), who is the Chairman of the District Council; *and*
- such number of other official and non-official members representing such interests as may be prescribed by Rules made by the State Government.

This Council too meets as and when necessary, but must hold *at least two meetings every year*. The meetings are to be held at such time and place as the Chairman may think fit. The procedure to be followed as regards transacting business at such meetings is prescribed by the Rules made by the State Government under the Act.

The *objects of the District Councils* are to promote and protect, within the district, the rights of consumers laid down in clauses (a) to (f) of S. 6 (discussed at length above).

End of chapter 3

Chapter 4 CONSUMER DISPUTES REDRESSAL AGENCIES

(CONSUMER COURTS)

Explain the three tier redressal agencies under the Consumer Protection Act.

B.U. Apr. 2007 Nov. 2009 Apr. 2010 Nov. 2010 May 2012 Nov. 2012 Nov. 2013 Apr. 2014 Apr. 2015

Discuss In detail the consumer disputes redressal agencies under the Consumer Protection Act.

B.U. Apr. 2009 Jan. 2017

The Act provides for a *three-tier pattern of redressal agencies* in respect of consumer disputes. These redressal agencies are like *consumer courts* established to give relief to consumers. In every district, a redressal agency called the Consumer Disputes Redressal Forum ("District Forum") has been established by the State Government. At the State level, a Consumer Disputes Redressal Commission to be known as the "State Commission" is established, and at the national level, the Act provides for the establishment of a National Consumer Disputes Redressal Commission ("the *National Commission*") by the Central Government and this Commission is based in New Delhi. [S. 9]

All consumer complaints where the value of goods or services and the compensation claimed (if any) is *less than Rs.20 lakhs* are to be filed before the District Forum. When such value is *more than Rs. 20 lakhs but less than Rs.1 crore*, the State Commission has jurisdiction in the matter. When such value is *more than Rs. 1 crore*, the complaint has to be filed before the National Commission.

In other words, the pecuniary jurisdiction of these consumer courts is as under:

Claims less than Rs. 20 lakhs Claims between Rs.20 lakhs and Rs.1 crore Claims over Rs.1 crore.

As regards appeals, an appeal against an order passed by a District Forum lies to the State Commission and orders passed by the State Commission are appealable before the National Commission. Appeals against orders passed by the National Commission are to be filed before the Supreme Court of India. [S. 27-A]

Provisions relating to the said consumer redressal agencies are discussed in this Chapter under the following *three* heads:

- A. District Forum
- B. State Commission
- C. National Commission.

District Forum State Commission National Commission

Write a short note on :District ForumB.U.Apr.2013

A. DISTRICT FORUM (Ss. 10-15)

UnderS. 9 of the Act, at least one District Forum is to be established by the State Government in every district of the country. If the State Government deems fit, it may establish more than one District Forum in a particular district.

The District Forum enjoys original jurisdiction only. It can entertain a consumer dispute when the value of the goods or services and the compensation claimed, if any, does *not* exceed ? 20 lakhs. Such a complaint is to be filed before a District Forum within the local limits of whose jurisdiction -

- the opposite party or each of the opposite parties actually and voluntarily resides *or* carries on business *or* has a branch office *or* personally works for gain at the time of the institution of the complaint; *or*
- any of the opposite parties (where there are more than one) actually and voluntarily resides *or* carries on business *or* has a branch office *or* personally works for gain at the time of the institution of the complaint, *provided that*, in such cases, the permission of the District Forum has been obtained *or* the opposite party that does *not* so reside, *etc.* acquiesces in such institution; *or*

- the cause of action arises - wholly or in part.

Under S. 10 of the Act, a District Forum is composed of the following:

- (a) A person who is, or has been, or is qualified to be, a District Judge, who is the President of the District Forum.
- (b) Two other Members, *one of whom must be a woman*, who have the following qualifications, namely, -
 - (i) he is *not* less than thirty-five years of age;
 - (ii) he possesses a bachelor's degree from a recognised university; *and*
 - (iii) he is a person of ability, integrity and standing with adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

The above appointments are to be made by the State Government on the recommendations of a Selection Committee headed by the President of the State Commission of that State.

A person is disqualified from being appointed as a Member of a District Forum if:

- (a) he has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; *or*
- (b) he is an undischarged insolvent; *or*
- (c) he is of unsound mind and stands so declared by a competent court; *or*
- (d) he has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; *or*
- (e) he has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; *or*
- (f) he has such other disqualifications as may be prescribed by the State Government.

Members of the District Forum hold office for a term of *five years* or until they attain the *age of sixty-five years* - whichever is earlier. Subject to this age limit, a Member can be re-appointed for further terms of five years each.

Manner of filing complaints

Under S. 12 of the Act, a complaint relating to goods or services may be filed before a District Forum by (a) the consumer to whom such *goods* are sold or delivered or agreed to be sold or delivered;

- (b) the consumer to whom such *service* is provided or agreed to be provided;
- (c) any recognised consumer association - *whether or not* the affected consumer is a member of such association;

[A "recognized consumer association" means any voluntary consumer association which is registered under the Companies Act, 1956, or any other law in force in India.]

- (d) one or more consumers, when there are numerous consumers having the same interest, on behalf of, or for the benefit of, all the consumers who are so interested, - *provided* the permission of the District Forum has been obtained;

- (e) the Central Government or the State Government, either in its individual capacity or as a representative of the interests of consumers in general.

Such a complaint is to be accompanied by the amount of court fees prescribed by the Consumer Protection Rules. The nominal fees currently payable are on a slab basis, as under:

- 1. Upto Rs.1 lakh: Rs. 100 (unless the complainant is a person who is 'Below Poverty Line', in which case, no court fees are payable).

2. Rs.1 lakh – Rs. 5 lakhs : Rs. 200

3. Rs. 5 lakhs-Rs.10 lakhs :Rs. 400

4. Rs.10 lakhs – Rs. 20 lakhs : Rs. 500.

Explain the procedure to be followed by the District Forum under the Consumer Protection Act.

B.U. Nov. 2015 Apr. 2016

Procedure to be followed

On receipt of a complaint, the District Forum must pass an order - ordinarily *within a period of twenty-*

one days from the receipt thereof - on whether to *reject* the complaint or to *allow* it to be proceeded with. An order rejecting the complaint must, however, be passed after giving an opportunity to the complainant to be heard in the matter. When a District Forum *admits* a complaint, it must then follow the procedure laid down in S. 13 of the Act, which may be summarised as under.

- A copy of the complaint is sent to the opposite party *within twenty- one days* of its admission and the opposite party is called upon to file his version within a period of *thirty days* (which can be extended by a further period of *fifteen days*).
- If the complaint refers to an alleged defect in goods and such a defect requires a proper analysis or test, a sample thereof is sealed by the District Forum and sent to *an appropriate laboratory* for a report to be filed by the laboratory within a period of *forty-five days* or such extended period as may be allowed by the District Forum. The complainant must also pay the fees payable to the laboratory. A copy of the laboratory's report is to be made available to both the parties who may file their objections thereto in writing and address oral arguments on its correctness or otherwise.
- After hearing the parties and going through the evidence of both the sides (including the report of the laboratory, if any), the District Forum may pass any of the orders which it is authorised to pass under S. 14 of the Act (given below).

If the opposite party fails to appear or to file its version within the prescribed time, the District Forum may pass an order on the basis of the evidence produced before it. *If the complainant fails to appear* before it, the District Forum may *either* dismiss the complaint for default or decide it on its merits.

It is expressly clarified by S. 13 of the Act that if the above procedure is followed, no proceedings of the District Forum can be challenged in any court *on the ground that the principles of natural justice have not been complied with*.

If the complainant or the opposite party dies during the pendency of the proceedings, the provisions of Order 22 of the Code of Civil Procedure, 1908, (CPC) become applicable.

All proceedings before the District Forum are to be conducted by the President of the District Forum and at least one Member of the District Forum sitting together. Every order passed by it is to be signed by the President and the Member or Members who conducted the proceeding. If a Bench of the District Forum consisting of two Members is equally divided over any point, such a point is to be referred to the third Member and the opinion of the majority is to be regarded as the order of the District Forum.

The Act also provides that all complaints are to be disposed of as expeditiously as possible, and an endeavour is to be made to dispose of every complaint within *three months* from the date of its receipt by the opposite party. Where any laboratory testing is involved, this period is extended to *five months*. When a complaint is decided after this period, the reasons for the delay must be recorded in writing by the District Forum at the time of passing the final order.

Adjournments are *not* to be granted unless sufficient cause "is shown and the reasons for the adjournment are recorded in writing. An order is also required to be passed as regards the costs occasioned by such an adjournment.

At any time during the pendency of the proceedings, the District Forum may pass such *interim orders* as it may deem just and proper in the facts and circumstances of the case.

The District Forum has been clothed with the same powers as are vested in a civil court under the CPC in the following matters, namely,

- (i) the summoning and enforcing the attendance of any party or witness and examining a witness on oath;
- (ii) the discovery and production of any document or other material object producible as evidence;
- (iii) the reception of evidence on affidavits;
- (iv) issuing of any commission for the examination of any witness; *and*
- (v) any other matter which may be prescribed.

Every proceeding before the District Forum is deemed to be a 'judicial proceeding' within the meaning of

Ss. 193 and 228 of the Indian Penal Code, 1860, and the District Forum is deemed to be a 'civil court' for the purposes of S. 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

In addition to the above, under the Consumer Protection Rules, 1987, the District Forum, State Commission and the National Commission also have the power -

- (a) to require any person to produce books, papers, documents or commodities if their examination is required for the proceedings;
- (b) to require any person to furnish such information as may be required for the purpose of the Act; *and*
- (c) to authorise any officer to seize any book, paper, document or commodity if there are reasonable grounds to believe that the same would be destroyed, mutilated, altered, falsified or secreted.

Types of orders which may be passed

S. 14 of the Act authorises the District Forum to pass a wide range of orders if it is satisfied that the goods complained against suffer from any defect or if there is deficiency of service as specified in the complaint. The District Forum can pass an order directing the opposite party to do one or more of the following *twelve* things, namely, -

- (a) to remove the defect in the goods which has been pointed out by an appropriate laboratory;
- (b) to replace the goods with new goods of similar description, ensuring that such goods are free from any defect;
- (c) to refund the price or charges paid by the complainant to him;
- (d) to pay compensation to the consumer for the loss or injury suffered by him due to the negligence of the opposite party;
[Even punitive *damages* may be awarded if the circumstances so warrant.]
- (e) if loss or injury has been caused to a large number of consumers who are *not* identifiable conveniently - to pay such sum as may be determined by the District Forum (not being less than 5% of the value of the goods or services in question) to be utilised in such manner as may be prescribed;
- (f) to remove the defect in the goods or the deficiency in the services;
- (g) to discontinue the unfair or restrictive trade practice and not to repeat the same in the future (cease-and-desist order);
- (h) *not* to offer hazardous goods for sale;
- (i) to withdraw hazardous goods being offered for sale;
- (j) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- (k) to issue a corrective advertisement to neutralise the effect of a misleading advertisement;
- (l) to provide for adequate costs to the parties.

Compensation for physical and mental harassment

The National Commission has *held* that if there is an inordinate delay in the settlement of an insurance claim, the complainants are entitled to compensation for physical and mental harassment. (*Padamsri Tobacco Co. v. New India Assurance Co. Ltd.*, (2002) 2 CPJ 96)

Consumer courts are quite competent to award damages for harassment, inconvenience, mental agony, *etc.* in a fit case. Thus, when a passenger on a flight found a piece of wire in his mouth when consuming food served on board the flight, it was *held* that he was entitled to compensation for the inconvenience and mental shock suffered by him. (*Indian Airlines v. S. N. Sinha*, (1992) CPJ 62)

So also, compensation is payable for causing physical discomfort and mental stress to a passenger for *not providing cushioned seats in First Class* (as stipulated by the Railway Board). (*N. Prabhakaran v. Gen. Manager, Southern Railways, Madras*, (1992) 1 CPJ 323)

Complicated questions of fact or law

Where a consumer complaint filed under the Act requires a great deal of evidence, both oral and documentary, or involves complicated question of fact and law, the matter can be sent to a regular court for adjudication. Thus, in one case, where a customer sued a bank, the question involved revolved around the loan facilities offered by the bank. Both the sides produced voluminous documents and several complicated

questions as regards the nature of the security were raised. In the circumstances, it was *held* that the summary procedure of the Act was *not* equipped to deal with such complicated matters and the parties were relegated to litigation in a civil court. (*Duiiar Enterprises v. Punjab National Bank*, (1993) 2 CPR 652)

Likewise, in a compensation claim against an Electricity Board, compensation was claimed for non-sanctioning of an additional load to the complainant. As it was found that a great deal of evidence would be required to ascertain the factual situation, the dispute was dismissed as it could *not* be adjudicated in the summary manner provided by the Act. (*Guru Nanak Plastic Industries v. Rajasthan State Electricity Board*, (2003) 4 CPJ 89)

Write a short note on the appellate functions of the consumer courts under the Consumer Protection Act.

B.U. Nov. 2015

Write a short note on : Appeal under Consumer Protection Act, 1986.B.U. May 2017

What is the jurisdiction of the State Commission? (2 marks) B.U. Nov. 2011 Nov. 2014

Write a short note on: State Commission. B.U. Nov. 2008 Nov. 2011

What are the various consumer for a under the Consumer Protection act ?Write a note on the forum at the state level?.B.U.Nov 2014.

Appeals

Under S. 15 of the Act, any person who is aggrieved by an order passed by the District Forum may file an appeal against it before the State Commission *within a period of thirty days from the date of the order*. On sufficient cause being shown, the State Commission may entertain such an appeal even after the expiry of this period. However, before his appeal can be entertained, the appellant must deposit with the State Commission, 50% of the amount ordered to be paid by him by the District Forum or X 25,000, *whichever is less*.

It is pertinent to note that the provision mandating appeals to be filed within thirty days from the date of the order appealed against can lead to injustice in certain cases. For instance, if a party is made aware of the order of the District Forum only after, say, twenty-five days from its date, it would give him only five days to file his appeal. Or, to take the example to its logical limit, if the order was made known to him after a period of thirty-one days, his right of appeal would be effectively extinguished.

It is perhaps for this reason, that is, to mitigate the inconvenience and injustice arising in such cases, that the Supreme Court has observed that the period of thirty days ought to be reckoned from the date on which a copy of the order was ready and made available to the appellant. (*Housing Board, Haryana v. Housing Board Colony Welfare Asso.*, AIR 1996 SC 92)

Although specific provisions have been made in the Act for filing appeals against orders passed by the District Forum, in a fit case, as for instance, when the District Forum has passed an order without any jurisdiction, a writ petition can be filed in the High Court under Art. 226 of the Constitution of India. (*A/. Taneja v. Calcutta District Forum*, AIR 1992 Cal 95)

B. STATE COMMISSION (Ss. 16-19)

Can a person be disqualified from becoming a member under the consumer Protection act?(2 marks) B.U.Apr.2015.

A consumer redressal forum, known as the State Commission, is to be established in every State. It has an *original*, *appellate* and *supervisory* jurisdiction, as under:

- (a) The State Commission can entertain complaints directly filed before it if the value of the goods or services or the compensation claimed exceeds X 20 lakhs but does *not* exceed X 1 crore. (*Original jurisdiction*)
- (b) It entertains appeals against orders passed by the District Forum within the State. (*Appellate jurisdiction*)
- (c) It can call for the records and pass appropriate orders in any consumer dispute pending before, or decided by, any District Forum, where it appears to the State Commission that the District Forum has exercised jurisdiction not vested in it, *or* has failed to exercise jurisdiction vested in it, *or* has exercised

its jurisdiction illegally or with material irregularity.

Supervisory jurisdiction) As regards its *original jurisdiction*, the Act provides that a complaint can be filed in the State Commission within the limits of whose jurisdiction, - the opposite party, or each of the opposite parties, actually and voluntarily resides or carries on business or has a branch office or personally works for gain at the time of the institution of the complaint; or
- any of the opposite parties actually and voluntarily resides or carries on business or has a branch office or personally works for gain at the time of the institution of the complaint, provided that permission of the State Commission is given or such a party acquiesces in such institution; or the cause of action arises - wholly or in part. The State Commission is also empowered to exercise administrative control over all District Fora within its jurisdiction in the following matters, namely,
(a) calling for periodical returns regarding the institution, disposal and pendency of cases; and
(b) issuing instructions regarding adoption of a uniform procedure when hearing matters, in the matter of service of documents, etc.

It also has the power of generally overseeing the functioning of the District Fora to ensure that the objects of the Act are best secured without in any way interfering with their quasi-judicial freedom.

Under S. 16 of the Act, the State Commission consists of:

(a) a person who is, or has been, a Judge of a High Court, who is the President of the State Commission.

(Such a person is appointed by the State Government after consultations with the Chief Justice of the High Court.)

(b) *not* less than two and *not* more than such number of members as may be prescribed, *one of whom must be a woman*, and who have the following qualifications, namely, (i) he is *not* less than thirty-five years of age; (ii) he possesses a bachelor's degree from a recognised university; and

(iii) he is a person of ability, integrity and standing with adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

It is also provided that *not more than fifty per cent* of the Members should be from amongst persons having a judicial background, that is, having knowledge and experience for at least *ten years* as a Presiding Officer at a district level court or a tribunal at an equivalent level. Appointments of members are to be made by the State Government on the recommendations of a Selection Committee headed by the President of the State Commission.

A person is disqualified from being appointed as a Member of a State Commission if:

- (a) he has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or
- (b) he is an undischarged insolvent; or
- (c) he is of unsound mind and stands so declared by a competent court;
- (d) he has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- (e) he has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) he has such other disqualifications as may be prescribed by the State Government.

The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof, constituted by the President with one or more Members as he deems fit. Although the State Commission ordinarily functions in the capital of the State, a provision is also made for establishment of Circuit Benches at other places in the State, as may be notified by the State Government.

A Member of the State Commission holds office for a term of *five years* or upto the *age of 67 years*, *whichever is earlier*. A Member may resign his office in writing under his hand addressed to the State Government and if such a resignation is accepted, his office becomes vacant and is to be filled by another person with the prescribed qualifications.

If the Members of any Bench of the State Commission differ in opinion on any point, such a point is to be decided according to the majority opinion. If there is no majority, that is, the Members of a Bench are equally divided (as for instance, when the Bench consists of two Members), the point in controversy is to be

referred to the President, who may hear the point in question himself or refer it to another Member or Members. Such a point is then to be decided according to the majority of the Members who have heard the case, including those who first heard it.

Every order of the State Commission is deemed to be final if no appeal has been filed against it before the National Commission within a period of *thirty days* from the date of the order. The National Commission may, however, entertain an appeal even after the expiry of this period, if *sufficient cause* is shown for *not* filing the appeal within the said period. Before such an appeal is filed, the appellant must deposit 50% of the amount ordered to be paid by him by the State Commission or ? 35,000, *whichever is less*. [S. 19]

An appeal filed before the State Commission is to be heard as expeditiously as possible and an endeavour is to be made to finally dispose of the appeal within a period of *ninety days* from the date of its admission. If an appeal is finally decided after the said period (of ninety days), the Commission must record the reasons for the same at the time of passing the final order.

Adjournments are *not* to be granted unless sufficient cause is shown and the reasons for the adjournment are recorded in writing. An order is also required to be passed as regards the costs occasioned by such an adjournment.

The procedure to be followed by the State Commission when disposing of complaints filed before it is the same as the procedure applicable to the District Forum (seen earlier) with such modifications as may be considered necessary by the State Commission. Additionally, the State Commission also has the power to, at any stage, transfer any complaint pending before a District Forum to another District Forum within the same State if the interest of justice so requires. This can be done either on the application of the complainant or even *suo motu* (that is, on its own motion).

C. NATIONAL COMMISSION (Sections 20 - 23)

What is the jurisdiction of the National Commission?(2 marks) B.U. May 2012

Write a short note on National Commission/B.U. Nov 2010

What are Circuit benches?(2 marks)B.U.Apr.2015

The National Commission, located in New Delhi, is the highest redressal forum established under the Act. It has *original*, *appellate* and *supervisory jurisdiction* as under:

- (a) It has jurisdiction to entertain complaints where the value of the goods or services or the compensation claimed is *more than ? 1 crore*. (*Original jurisdiction*)
- (b) It also has jurisdiction to entertain appeals against the orders of any State Commission. (*Appellate jurisdiction*)
- (c) It can also call for the records and pass appropriate orders in any consumer dispute pending before, or decided by, a State Commission, where it appears to the National Commission that the State Commission has exercised jurisdiction *not* vested in it, *or* has failed to exercise jurisdiction vested in it, *or* has exercised its jurisdiction illegally or with material irregularity. (*Supervisory jurisdiction*)

As regards its appellate jurisdiction, it is provided that an appeal is to be heard by the National Commission as expeditiously as possible and an endeavour is to be made to finally dispose of the appeal *within a period of ninety days* from the date of its admission. If an appeal is disposed of after the said period, the Commission must record the reasons for the same at the time of passing the final order. *Adjournments* are *not* to be granted unless sufficient cause is shown and the reasons for the adjournment are recorded in writing. Orders are also required to be passed as regards the costs occasioned by such adjournments. Under S. 20, the National Commission is composed of:

- (a) a person who is, or has been, a Judge of the Supreme Court - who is the President of the National Commission. (This person is appointed by the Central Government after consultations with the Chief Justice of India.)
- (b) not less than *four* and *not* more than such number of Members as may be prescribed (at present, *eleven*), who have the following qualifications, namely, -
 - (i) he is *not* less than thirty-five years of age;

- (ii) he possesses a bachelor's degree from a recognised university; *and*
- (iii) he is a person of ability, integrity and standing with adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

At least one Member of the National Commission should be a woman and *not more than fifty per cent* of the Members should be from amongst persons having a judicial background, that is, having knowledge and experience for at least *ten years* as a Presiding Officer at a district level court or a tribunal at an equivalent level. Appointments of members are to be made by the Central Government on the recommendations of a Selection Committee headed by a Judge of the Supreme Court.

A person is disqualified from being appointed as a Member of the National Commission if:

- (a) he has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; *or*
- (b) he is an undischarged insolvent; *or*
- (c) he is of unsound mind and stands so declared by a competent court; *or*
- (d) he has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; *or*
- (e) he has, in the opinion of the Central Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; *or*
- (f) he has such other disqualifications as may be prescribed by the Central Government.

A Member of the National Commission holds office for a term of *five years* or upto the *age of 70 years, whichever is earlier*. A Member may resign his office in writing under his hand addressed to the Central Government and if such a resignation is accepted, his office becomes vacant and is to be filled by another person with the prescribed qualifications.

If the office of the President is vacant for any reason, his duties are to be performed by the senior-most Member of the National Commission. However, if a retired Judge of a High Court is a Member of the National Commission, he must preside over the National Commission in the absence of its President.

The jurisdiction, powers and authority of the National Commission may be exercised by Benches of the Commission constituted by the President with one or more members as he deems fit. Although the National Commission ordinarily sits in New Delhi, a provision is also made for *Circuit Benches of the Commission* to sit at places other than New Delhi, as may be notified by the Central Government.

If the Members of any Bench of the National Commission differ in opinion on any point, such a point is to be decided according to the majority opinion. If there is no majority, that is, the Members of a Bench are equally divided (as for instance, when the Bench consists of two Members), the point in controversy is to be referred to the President, who may hear the point in question himself or refer it to another Member or Members. Such a point is then to be decided according to the majority of the Members who have heard the case, including those who first heard it.

Every order of the National Commission is deemed to be final if no appeal has been filed against it to the Supreme Court within a period of *thirty days* from the date of the order. The Supreme Court may, however, entertain an appeal even after the expiry of this period, if *sufficient cause* is shown for not filing the appeal within the said period. Before such an appeal is filed, the appellant must deposit 50% of the amount ordered to be paid by him by the National Commission or rs.50,000, *whichever is less*.

An appeal filed before the National Commission is to be heard as expeditiously as possible and an endeavour is to be made to finally dispose of the appeal within a period of *ninety days* from the date of its admission. If an appeal is finally decided after the said period (of ninety days), the Commission must record the reasons for the same at the time of passing the final order.

Adjournments are *not* to be granted unless *sufficient cause* is shown and the reasons for the adjournment are recorded in writing. An order is also required to be passed as regards the costs occasioned by such an adjournment.

The procedure to be followed by the National Commission when disposing of complaints filed before it is

the same as the procedure applicable to the District Forum (seen earlier) with such modifications as may be considered necessary by the National Commission. The court fees payable for compensation claims filed directly before the National Commission have currently been fixed at a nominal sum of Rs.5,000 only.

When disposing of consumer complaints, the National Commission also enjoys the following *five* powers:

1. It can review any order made by it when there is an error apparent on the face of the record. (S. 22)
2. When the National Commission passes an order *ex parte* (that is, without hearing the opposite party), on an application made by the opposite party, it can set aside such an order in the interest of justice. (S. 22-A)
3. At any stage of the proceeding, it can, in the interest of justice, transfer a complaint pending before the District Forum of one State to a District Forum of another State or a complaint pending before one State Commission to another State Commission, either on the application of the complainant or even *suo motu*, that is, on its own. (S. 22-B)
4. The National Commission also exercises *administrative control* over all the State Commissions in the following matters, namely, -
 - (a) calling for periodical returns regarding the institution, disposal and pendency of cases; *and*
 - (b) issuing instructions regarding adoption of a uniform procedure when hearing matters, in the matter of service of documents, *etc.* (S. 24-B)

Lastly, the National Commission also has the power of generally overseeing the functioning of the State Commissions and District Fora to ensure that the objects of the Act are best secured without in any way interfering with their quasi-judicial freedom. (S. 24-B)

End of Chapter 4

Chapter 5 MISCELLANEOUS

(Sections 24A to 31)

The following topics are considered in this Chapter:

- A. Bar of limitation
- B. Frivolous or vexatious complaints
- C. Penalties
- D. Enforcement of orders
- E. Protection of action taken in good faith
- F. Service of notices
- G. Vacancies and defects *not* to invalidate orders
- H. Power to remove difficulties
- I. Power to make rules and regulations.

A. BAR OF LIMITATION

Vigilantibus et non dormientibus jura subveniunt: Justice comes to the aid of he who is vigilant - and *not* he who slumbers or sleeps. In order to discourage lethargy on the part of a claimant, the law generally provides a time-frame for instituting legal proceedings, after which it gets time-barred. Interestingly, when originally enacted, the Consumer Protection Act did *not* contain any provision relating to time-barred complaints. In the circumstances, the National Commission took the view that the provisions of the Limitation Act, 1963, would apply to complaints filed under the Act. However, the Supreme Court disagreed with this view and observed that if the legislature had thought it fit *not* to prescribe any period of limitation for proceedings under the Act, the courts would *not* be justified in applying the provisions of the Limitation Act by implication. (*Francis Martins v. Mafalda Rodrigues*, (1999) 6 SCC 627)

It was in these circumstances that S. 24-A was inserted into the Act and it is now provided that no

complaint can be admitted by the District Forum or the State Commission or the National Commission unless it is filed *within a period of two years* from the date on which the cause of action has arisen. However, a complaint may be admitted even after the expiry of this limitation period if *sufficient cause* is shown for *not* filing the complaint within the said time. Reasons for the condonation of delay have, however, to be recorded in writing when admitting a complaint which is filed after expiry of the above period of limitation. [S. 24-A]

Thus, complaints filed against a bank after a period of *ten years*, against a gas company *twelve years* after disconnection of a gas service and against an educational institute *ten years* after the cause of action were *dismissed*. In such cases, it is clear that the claim is "*hopelessly stale*".

Insufficiency of funds and wrong advice given by a counsel have been *held not* to be good grounds for condonation of delay. (*New India Assurance Co. Ltd. v. Indra Kumar*, (1992) 1 CPR 210)

Where there was a delay of *183 days* in filing a complaint, an argument that the complainant was bed-ridden for more than six months was rejected as no supporting document had been produced. (*C. H. Vittal Reddy v. Manager, District Co-op. Bank Ltd.*, (2003) 1 CPJ 175)

Likewise, when condonation of delay of *three-and-a-half-months* was sought on the ground that the file in question had been misplaced in the counsel's office, but no affidavit of the counsel had been filed, the complaint was dismissed. (*Depot Manager, APSRTC v. S. Jayaprakash Gupta*, (1999) 3 CPJ 191)

Where, however, the act complained of is of a *continuing nature*, every day during which the wrong is continued creates a fresh period of limitation. Thus, where an agreement for the sale of a flat was *not* complied with by the builder, the Supreme Court *held* that the builder's default is a continuing wrong and it remains actionable till the default is made good. (*Lata Construction v. Dr. Rameshchandra Shah*, AIR 2000 SC 380)

However, an insurance claim is not a continuing wrong and therefore, claims filed beyond the period of limitation are liable to be rejected. (*HSEB, Panipat v. United India Insurance Co. Ltd.*, (1993) 2 CPR 662)

As this limitation period of two years has been provided by the Act, it *cannot* be cut short by a provision in a contract. Thus, a clause in an insurance contract prescribing a limitation period of *one year* was *held* to be *inoperative*. (*Integrated Organics v. New India Assurance Co. Ltd.*, (1995) 1 CPJ 439)

B. FRIVOLOUS OR VEXATIOUS COMPLAINTS

A "frivolous complaint" is one without any foundation and is made without any reasonable or probable cause, solely with a view to annoying, oppressing, vexing and harassing the respondent. As once observed, a frivolous complaint is "one without a due foundation". (*Jama v. Satukdas*, AIR 1920 Nag 78)

A complaint which is *not* wholly false can also be frivolous or vexatious. The charge may be partly true - but if it is filed with the malicious motive of harassing the respondent, it can be said to be vexatious. (*Balkaji v. Mukand Singh*, 1920 Nag 108)

Under S. 26 of the Act, if a complaint filed before a District Forum or a State Commission or the National Commission is found to be *frivolous or vexatious*, it may be dismissed for reasons to be recorded in writing. In such cases, the complainant is also to be ordered to pay to the opposite party, such costs as may be specified in the order, *not however exceeding ? 10,000*.

This ceiling on costs to be imposed in such cases (? 10,000) was *not* there in the Act as originally enacted, but was added by *an amendment in 1993*. It is difficult to understand why this limit was incorporated in the enactment when a false or frivolous or baseless or vexatious complaint can often saddle the opposite party with costs and charges running into lakhs of rupees.

Additionally, the ridiculously low amount of court fees prescribed by the Consumer Protection Rules is an added incentive for filing bogus complaints. *Originally, no court fees had been prescribed for consumer complaints*. It was only with effect from 5th March, 2004, - that a Schedule of court fees has been prescribed by the said Rules. Thus, for instance, for a claim upto ? 1 lakh filed before a District Forum, the court fees payable are a paltry sum of ? 100. Additionally, if the complainant is below the 'Poverty line', even this amount is *not* payable. Likewise, *for a claim of ? 20 lakhs*, the court fees payable are only ? 500. No wonder

that unscrupulous litigants, including some NGOs, take advantage of this provision and flood the consumer redressal agencies with complaints that are as frivolous as they are false.

Commenting on a case where an *ex parte* injunction was issued against Morgan Stanley Mutual Fund, to prevent a public issue of securities and the Mutual Fund was *not* even served with a copy of the *ex parte* injunction order, the Supreme Court *held* (in *Morgan Stanley Mutual Fund v. Kartick Das*, (1994) 4 SCC 225) that such litigation is clearly a misuse of consumer fora and observed as follows:

"There is an increasing tendency on the part of litigants to indulge in speculative and vexatious litigation and adventurism, which the consumer fora seem readily to oblige. Such a tendency should be curbed."

The National Commission dismissed a claim by a marine engineer against a doctor, claiming ₹ 55,90,000 for weakening his heart valves. The complaint was *held* to be an attempt to take advantage of the absence of court fees under the Consumer Protection Act (as was the position at that time) and the complainant was ordered to pay ₹ 10,000 to the respondent as costs for instituting frivolous proceedings. (*Brij Mohan Kherv. Dr. N. N. Banka*, (1995) 1 CPJ 99)

In another case, a claim was filed against Canara Bank, alleging that the bank withdrew the credit facilities of the complainant and did *not* return the share certificates handed over to the bank. It was shown that the credit facilities had been withdrawn because the complainant had failed to regularise his account. The share certificates had *not* been returned because he was heavily indebted to the bank to which such certificates were given by way of security. The National Commission dismissed the complaint, observing that there was no fault on the part of the bank and the complaint was frivolous and vexatious.

(*Prakash Shenai v. Canara Bank*, (2003) 1 CPJ 131)

What is the effect of filing a frivolous complaint under the Consumer Protection act"/(2 marks)

B.U.Nov.2012

State Penalty for filing frivolous complaint under Consumer Protection act, 1986(92 marks)

B.U.May 2017

C. PENALTIES

S. 27 of the Act contains provisions for failure of a person to comply with orders passed by the consumer redressal agencies under the Act. It provides that if any trader or any person against whom a complaint is made or the complainant himself fails or omits to comply with any order passed by a District Forum or a State Commission or the National Commission, such a person becomes punishable with imprisonment for a minimum term of one month and a maximum of three years or with fine ranging between ₹ 2,000 and ₹ 10,000, or both.

The redressal agency whose order is *not* complied with is clothed with the powers of a Judicial Magistrate of the First Class for trial of offences under the Act. Such offences may be tried in a summary manner by the District Forum or the State Commission or the National Commission, as the case may be.

Earlier, an option was given by the Act to award punishments lower than the minimum punishments stated above in a fit case. However, this discretion was taken away by the *2002 Amendment* of the Act.

Looked at from a practical angle, S. 27 of the Act can be said to be *the* most important section of the Act - without which the consumer courts would be nothing more than '*paper tigers*'.

Thus, when the directors of a construction company did *not* comply with an order passed against them under the Act, the National Commission directed them to be imprisoned for three months. (*Sambhawana Builders Aggrieved Members v. Sambhawana Builders Pvt. Ltd.*, (1997) 1 CPR 14)

Again, when in a case where a company which was directed to refund a depositor's money failed to do so, the National Commission *held* that the penalties prescribed by S. 27 of the Act could be inflicted personally on the directors who were responsible for the company's default. (*Ravikant v. Veena Bhatnagar*, (1996) 1 CPJ 260)

D. ENFORCEMENT OF ORDERS

If an interim order made under the Act is *not* complied with, the District Forum or the State Commission or the National Commission (as the case may be) may order that the property of the person who has *not*

complied with the order be attached. Such an attachment can remain in force for a *maximum period of three months*, at the end of which, if the non-compliance continues, the property which is attached may be sold. Out of the proceeds of such a sale, the complainant may be paid such damages as may be deemed fit, and the balance, if any, is to be given to the party entitled to such property. When any order has been passed under the Act, ordering a party to pay any amount, and such an amount is *not* paid, the party entitled to the amount may file an application before the District Forum or the State Commission or, the National Commission, as the case may be, which can issue a Certificate in respect of such an amount to the Collector of the district - by whatever name called. The Collector must then proceed to recover the amount mentioned in the Certificate in the same manner as arrears of land revenue. [S. 25]

In one case, the State Commission had directed a builder to pay ₹ 5.6 lakhs as compensation and non-bailable warrants had been issued for non-compliance of the order. The order was, however, suspended for one week, ¹provided the builder deposited a sum of ₹ 1 lakh. However, instead of depositing the amount, the builder filed an appeal before the National Commission. Dismissing the appeal, the National Commission observed that there was no ²ground to entertain such an appeal and that there was no infirmity in the order passed by the State Commission. (*Almighty Construction v. Gurupushya Amrut Co-op. Housing Society Ltd.*, (2002) 2 CPJ 93)

E. PROTECTION OF ACTION TAKEN IN GOOD FAITH

S. 28 of the Act lays down that no suit, prosecution or other legal proceeding will lie against the Members of the District Forum, the State Commission or the National Commission or any officer or person acting under their direction for executing any order passed by it or in respect of anything which is in good faith done, or intended to be done, by such Member, officer or person under the Act or under any rule or order made thereunder. Needless to state, such protection is lost if the act in question is *not* done, or intended to be done, in good faith.

The Supreme Court has observed that an honest intent, free from fraud or fraudulent design is a constant element of the concept of "good faith". The quality and quantity of the honesty required for constituting good faith depends on the context and object of the Act in which the term is used. (*Brijendra Singh v. State of U. P.*, AIR 1981 SC 636)

F. SERVICE OF NOTICES

If a notice is required by the Act to be sent, a copy thereof may be delivered by registered post acknowledgment due to the party concerned by speed post or by such courier services as are approved by the District Forum or the State Commission or the National Commission, as the case may be, or by any other means of transmission of documents, as for instance, by fax. When an acknowledgment or other receipt purporting to be signed by the addressee is received or the postal article containing the notice is returned with an endorsement of a postal employee or courier service to the effect that the addressee had refused to take delivery of the postal article containing the notice or refused to accept the notice by any other means, the District Forum or the State Commission or the National Commission may declare that such a notice was duly served.

All such notices are deemed to have been served if addressed to the opposite party at the place where its business or profession is carried on or to the complainant where he actually and voluntarily resides. [S. 28-A]

G. VACANCIES AND DEFECTS NOT TO INVALIDATE ORDERS

No act or proceeding of the District Forum or the State Commission or the National Commission can be declared to be invalid by reason only of the existence of any vacancy amongst its Members or any defect in the constitution thereof. [S. 29-A]

Thus, if there is a vacancy in the office of the President of a State Commission, this does *not* render the Commission nonfunctional. Hence, an order passed by it, even in the absence of a President, is *not void or illegal*. (*Gulzari Lal Agarwal v. Accounts Officer*, (1996) 10 SC 590)

H. POWER TO REMOVE DIFFICULTIES

S. 29 of the Act, *which is only of academic interest today*, lays down that if any difficulty arises in giving effect to the provisions of the Act *within a period of two years of its commencement*, the Central Government may, by order in the Official Gazette, make such provisions as appear to it to be necessary or expedient for removing such a difficulty. However, such a provision *cannot* be inconsistent with anything contained in the Act.

I. POWER TO MAKE RULES AND REGULATIONS

The Central Government and the State Government have been empowered to make *rules* as specified in S. 30 of the Act. Likewise, the National Commission has been authorised to make *regulations* for the purpose of giving effect to the provisions of the Act. [S. 30-A]

All rules and regulations made by the Central Government and the National Commission are to be laid before both Houses of Parliament. Likewise, rules made by the State Government are to be placed before the State legislature. [S. 31]

End of Chapter 5

Appendix -1 THE CONSUMER PROTECTION ACT, 1986 (68 of 1986)

24th December, 1986

An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows: **CHAPTER**

PRELIMINARY

1. Short title, extent, commencement and application

- (1) This Act may be called the Consumer Protection Act, 1986.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.
- (4) Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.

2. Definitions

(1) In this Act, unless the context otherwise requires, (a)

"appropriate laboratory" means a laboratory or organisation (i) recognised by the Central Government;

(ii) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or

(iii) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect; (aa)

"branch office" means —

(i) any establishment described as a branch by the opposite party; or

(ii) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment;

(b) "complainant" means —

(i) a consumer;

(ii) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force;

(iii) the Central Government or any State Government,

(iv) one or more consumers, where there are numerous consumers having the same interest;

- (v) in case of death of a consumer, his legal heir or representative, who or which makes a complaint;
- (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 or service provider;
 - (ii) the goods bought by him or agreed to be bought by him; suffer from one or more defects;
 - (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
 - (iv) a trader or service provider, as the case may be, has charged for the goods or for the service mentioned in the complaint a price in excess of the price -
 - (a) fixed by or under any law for the time being in force;
 - (b) displayed on the goods or any package containing such goods;
 - (c) displayed on the price list exhibited by him by or under any law for the time being in force;
 - (d) agreed between the parties;
 - (v) goods which will be hazardous to life and safety when used or being offered for sale to the public, —
 - (A) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
 - (B) if the trader could have known with due diligence that the goods so offered are unsafe to the public;
 - (vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;
- with a view to obtaining any relief provided by or under this Act;
- (d) "consumer" means any person who —
 - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment "when such use is made with the approval of such person, *but does not include a person who obtains such goods for resale or for any commercial purpose; or*
 - (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 'hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person *but does not include a person who avails of such services for any commercial purposes.*

Explanation: For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;

- (e) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.
- (f) "defect" means 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 under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods;
- (g) "deficiency" means any fault, imperfection, 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 by a person in pursuance of a contract or otherwise in relation to any

- service;
- (h) "District Forum" means a Consumer Disputes Redressal Forum established under clause (a) of section 9;
 - (i) "goods" means goods as defined in the Sale of Goods Act, 1930;
 - (j) "manufacturer" means a person who —
 - (i) makes or manufactures any goods or part thereof; or
 - (ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or
 - (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer;
 - (jj) "member" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;
 - (k) "National Commission" means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;
 - (l) "notification" means a notification published in the Official Gazette;
 - (m) "person" includes,—
 - (i) a firm whether registered or not;
 - (ii) a Hindu undivided family;
 - (iii) a co-operative society;
 - (iv) every other association of persons whether registered under the Societies Registration Act, 1860, or not;
 - (n) "prescribed" means prescribed by rules made by the State Government, or as the case may be, by the Central Government under this Act;
 - (nn) "regulation" means the regulations made by the National Commission under this Act;
 - (nnn) "restrictive trade practice" means a trade practice which tends to bring about manipulation of price or conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include —
 - (a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;
 - (b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services;
 - (c) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, *but does not include the rendering of any service free of charge or under a contract of personal service*;
 - (oo) "spurious goods and services" mean such goods and services which are claimed to be genuine but they are actually not so;
 - (p) "State Commission" means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9;
 - (q) "trader" in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;
 - (r) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely —
 - (1) the practice of making any statement, whether orally or in writing or by visible representation which, —

- (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
 - i) falsely represents that the services are of a particular standard, quality or grade;
 - (iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
 - (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
 - (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
 - (vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
 - (vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;
- Provided that* where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;
- (viii) makes to the public a representation in a form that purports to be —
 - (i) a warranty or guarantee of a product or of any goods or services; or
 - (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
 - (ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
 - (x) gives false or misleading facts disparaging the goods, services or trade of another person.
- Explanation:* For the purposes of clause (1), a statement that is —
- (a) expressed on an article offered or displayed for sale, or on its wrapper or container; or
 - (b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or
 - (c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;
- (2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.
- Explanation :* For the purpose of clause (2), “bargain price” means —
- (a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or
 - (b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;
- (3) permits —
- (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating

- impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;
- (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;
 - (3A) withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme.

Explanation : For the purposes of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time, published, prominently in the same newspapers in which the scheme was originally advertised;

- (4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- (5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.
- (6) manufacture of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services.
- (2) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

3. Act not in derogation of **any other law**

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

CHAPTER II

CONSUMER PROTECTION COUNCILS

4. The Central Consumer Protection Council

- (1) The Central Government *shall*, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).
- (2) The Central Council shall consist of the following members, namely:
 - (a) the Minister in-charge of the consumer affairs in the Central Government, who shall be its Chairman, and
 - (b) such number of other official or non-official members representing such interests as may be prescribed.

5. Procedure for meetings of the Central Council

- (1) The Central Council shall meet as and when necessary, but at least one meeting of the Council shall be held every year.
- (2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

6. Objects of the Central Council

The objects of the Central Council shall be to promote and protect the rights of the consumers such as, —

- (a) the right to be protected against the marketing of goods and services which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;

- (d) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- (f) the right to consumer education.

Note

The objects of the *Central Council* have been set out in section 6 of the Act. The Act also provides that the *State Council* and the *District Council* have *exactly the same objects*.

7. The State Consumer Protection Councils

- (1) The State Government shall, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council for (hereinafter referred to as the State Council).
- (2) The State Council shall consist of the following members, namely: —
 - (a) the Minister in-charge of consumer affairs in the State Government who shall be its Chairman;
 - (b) such number of other official or non-official members representing such interests as may be prescribed by the State Government.
 - (c) such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.
- (3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.
- (4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

8. Objects of the State Council.

The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of section 6.

8A. The District Consumer Protection Council

- (1) The State Government shall establish for every district, by notification, a council to be known as the District Consumer Protection Council with effect from such date as it may specify in such notification.
- (2) The District Consumer Protection Council (hereinafter referred to as the District Council) shall consist of the following members, namely:
 - (a) the Collector of the district (by whatever name called), who shall be its Chairman; and
 - (b) such number of other official and non-official members representing such interests as may be prescribed by the State Government.
- (3) The District Council shall meet as and when necessary but not less than two meetings shall be held every year.
- (4) The District Council shall meet at such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

8B. Objects of the District Council

The objects of every District Council shall be to promote and protect within the district the rights of the consumers laid down in clauses (a) to (f) of section 6.

Note

Sections 8A and 8B were inserted by the 2002 Amendment of the Consumer Protection Act.

CHAPTER III

CONSUMER DISPUTES REDRESSAL AGENCIES

9. Establishment of Consumer Disputes Redressal Agencies

There shall be established for the purposes of this Act, the following agencies, namely: —

- (a) a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State

Government in each district of the State by notification:

Provided that the State Government may, if it deems fit, establish more than one District Forum in a district.

- (b) a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government in the State by notification; and
- (c) a National Consumer Disputes Redressal Commission established by the Central Government by notification.

10. Composition of the District Forum

(1) Each District Forum shall consist of, —

- (a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;
- (b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely:

—

- (i) be not less than thirty-five years of age,
- (ii) possess a bachelor's degree from a recognised university,

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration: *Provided that* a person shall be disqualified for appointment as a member if he

—

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- (e) has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualifications as may be prescribed by the State Government;

(1 A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely: —

- (i) the President of the State Commission — Chairman.
- (ii) Secretary, Law Department of the State — Member.
- (iii) Secretary in-charge of the Department dealing with consumer affairs in the State — Member.

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of subsection

(1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee:

Provided further that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1 A) in place of the person who has resigned:

Provided also that a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

- (3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.

Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the District Forum.

11. Jurisdiction of the District Forum

- (1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs.
- (2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction, —
- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

12. Manner in which complaint shall be made

- (1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by -
- (a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;
- (b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;
- (c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or
- (d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.
- (2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.
- (3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

- (4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to

any other court or tribunal or any authority set up by or under any other law for the time being in force.

Explanation: For the purpose of this section “recognised consumer association” means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force”.

13. Procedure on admission of complaint

- (1) The District Forum shall, on admission of a complaint, if it relates to any goods,—
- (a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;
 - (b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);
 - (c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an* analysis or test, whichever may be necessary, with a view to finding out whether | such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;
 - (d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;
 - (e) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;
 - (f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;
 - (g) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 14.
- (2) The District Forum shall, if the complaint admitted by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services, —
- (a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;
 - (b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the

consumer dispute, —

- (i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or
- (ii) *ex parte* on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.
- (c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.
- (3) No proceedings complying with the procedure laid down in subsections [1] and [2] shall be called in question in any court on the ground that " the principles of natural justice have not been complied with.

(3A) Every complaint shall be heard as expeditiously as possible and endeavor shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities: *Provided that* no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum:

Provided further that the District Forum shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that in the event of a complaint being disposed of after the period so specified, the District Forum shall record in writing, the reasons for the same at the time of disposing of the said complaint.

- (3B) Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.
- (4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely: —
 - (i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
 - (ii) the discovery and production of any document or other material object producible as evidence;
 - (iii) the reception of evidence on affidavits;
 - (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
 - (v) issuing of any commission for the examination of any witness, and
 - (vi) any other matter which may be prescribed.
 - (5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, 1860, and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973.
 - (6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.
 - (7) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

14. Finding of the District Forum

- (1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods

complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely: —

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;

- (e) to remove the defects in goods or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- (hb) to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or service provided, as the case may be, to such consumers: *Provided further that* the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

- (he) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;
- (i) to provide for adequate costs to parties.
- (2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

- (2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

- (3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

15. Appeal

Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not finding it within that period.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent of that amount or twenty-five thousand rupees, whichever is less:

16. Composition of the State Commission

- (1) Each State Commission shall consist of —

- (a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;

- (b) not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely: —
- (i) be not less than thirty-five years of age;
 - (ii) possess a bachelor's degree from a recognised university; and
 - (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent of the members shall be from amongst persons having a judicial background.

Explanation; For the purposes of this clause, the expression "persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment as a member if he —

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- (e) has, in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualifications as may be prescribed by the State Government.

(1 A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely: —

- (i) President of the State Commission— Chairman;
- (ii) Secretary of the Law Department of the State — Member;
- (iii) Secretary in-charge of the Department dealing with Consumer Affairs in the State — Member:

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

(1B) (i) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.

- (ii) A Bench may be constituted by the President with one or more members as the President may deem fit.
- (iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.

(2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government.

Provided that the appointment of a member on whole-time basis shall be made by the State

Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.

- (3) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of subsection (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:

Provided further that a person appointed as a President of the State Commission shall also be eligible for re-appointment in the manner provided in clause (a) of subsection (1) of this section:

Provided also that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1 A) in place of the person who has resigned.

- (4) Notwithstanding anything contained in sub-section (3), a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

17. Jurisdiction of the State Commission

- (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction —

(a) to entertain -

- (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore; and
(ii) appeals against the orders of any District Forum within the State; and
(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction —

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or
(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or
(c) the cause of action, wholly or in part, arises.

17A. Transfer of cases

On the application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

17B. Circuit Benches

The State Commission shall ordinarily function in the State Capital but may perform its functions at such other place as the State Government may, in consultation with the State Commission, notify in the Official Gazette, from time to time.

18. Procedure applicable to State Commissions

The provisions of Sections 12,13 and 14 and the rules made thereunder for the disposal of complaints

by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

19. Appeals

Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent of the amount or rupees thirty-five thousand, whichever is less:

19A. Hearing of Appeal

An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission:

Provided that no adjournment shall be ordinarily granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission:

Provided further that the State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that in the event of an appeal being disposed of after the period so specified, the State Commission or, the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

20. Composition of the National Commission

(1) The National Commission shall consist of—

(a) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President;

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of India;

(b) not less than four, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—

(i) be not less than thirty-five years of age;

(ii) possess a bachelor's degree from a recognised university; and

(iii) be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent of the members shall be from amongst the persons having a judicial background.

Explanation: For the purposes of this clause, the expression "persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment if he —

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or

- controlled by the Government; or
- (e) has in the opinion of the Central Government such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or
 - (f) has such other disqualifications as may be prescribed by the Central Government:
- Provided also that* every appointment under this clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following, namely:—
- (a) a person who is a Judge of the — Chairman;
Supreme Court, to be nominated by the Chief Justice of India
 - (b) the Secretary in the Department — Member;
of Legal Affairs in the Government of India
 - (c) Secretary of the Department — Member;
dealing with consumer affairs in the Government of India
- (1 A) (i) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.
- ii) A Bench may be constituted by the President with one or more members as the President may deem fit.
 - iii) If the Members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.
- (2) The salary or honorarium and other allowances payable to and the other terms and conditions of service of the members of the National Commission shall be such as may be prescribed by the Central Government.
- (3) Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier:
- Provided that* a member shall be eligible for re-appointment for another term of five years or up to the age of seventy years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of subsection (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:
- Provided further that* a person appointed as a President of the National Commission shall also be eligible for re-appointment in the manner provided in clause (a) of subsection (1): *Provided also that* a member may resign his office in writing under his hand addressed to the Central Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1 A) in place of the person who has resigned.
- (4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 2002 shall continue to hold such office as President or member, as the case may be, till the completion of his term.
- 21. Jurisdiction of the National Commission**
- Subject to the other provisions of this Act, the National Commission shall have jurisdiction —
- (a) to entertain-
 - (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and
 - (ii) appeals against the orders of any State Commission; and
 - (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such

State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

22. Power of and procedure applicable to the National Commission

- (1) The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.
- (2) Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.

22A. Power to set aside ex parte orders

Where an order is passed by the National Commission *ex parte* against the opposite party or a complainant, as the case may be, the aggrieved party may apply to the Commission to set aside the said order in the interest of justice.

22B. Transfer of cases

On the application of the complainant or of its own motion, the National Commission may, at any stage of the proceeding, in the interest of justice, transfer any complaint pending before the District Forum of one State to a District Forum of another State or before one State Commission to another State Commission.

22C. Circuit Benches

The National Commission shall ordinarily function at New Delhi and perform its functions at such other place as the Central Government may, in consultation with the National Commission, notify in the Official Gazette, from time to time.

22D. Vacancy in the Office of the President

When the office of President of a District Forum, State Commission, or of the National Commission, as the case may be, is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior-most member of the District Forum, the State Commission or of the ' National Commission, as the case may be:

Provided that where a retired Judge of a High Court is a member of the National Commission, such member or where the number of such members is more than one, the senior-most person among such members, shall preside over the National Commission in the absence of President of that Commission.

23. Appeal

Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order of the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent of that amount or rupees fifty thousand, whichever is less.

24. Finality of orders

Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

24A. Limitation period

- (1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.
- (2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.

24B. Administrative Control

- (1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely: —
 - (i) calling for periodical return regarding the institution, disposal pendency of cases;
 - (ii) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;
 - (iii) generally overseeing the functioning of the State Commissions or the District Fora to ensure that the objects and purposes of the Act are best served without in anyway interfering with their *quasijudicial* freedom.
- (2) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in subsection (1).

25. Enforcement of orders of the District Forum, the State Commission or the National Commission

- (1) Where an interim order made under this Act, is not complied with the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.
- (2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.
- (3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.

26. Dismissal of frivolous or vexatious complaints

Where a complaint instituted before the District Forum, the State Commission or as the case may be, the National Commission, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order

27. Penalties

- (1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be "less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:
- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).
- (3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.

27A. Appeal against order passed under section 27

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an appeal under section 27, both on facts and on law, shall lie from (a) the order made by the District Forum to the State Commission;

- (b) the order made by the State Commission to the National Commission; and
- (c) the order made by the National Commission to the Supreme Court.
- (2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.
- (3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission:
Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

CHAPTER IV

MISCELLANEOUS

28. Protection of action taken in good faith

No suit, prosecution or other legal proceedings shall lie against the members of the District Forum, the State Commission or the National Commission or any officer or person acting under the direction of the District Forum, the State Commission or the National Commission for executing any order made by it or in respect of anything which is in good faith done or intended to be done by such member, officer or person under this Act or under any rule or order made thereunder.

28A. Service of notice, etc.

- (1) All notices required by this Act to be served shall be served in the manner hereinafter mentioned in sub-section (2).
- (2) The service of notices may be made by delivering or transmitting a copy thereof by registered post acknowledgment due addressed to opposite party against whom complaint is made or to the complainant by speed post or by such courier service as are approved by the District Forum, the State Commission or the National Commission, as the case may be, or by any other means of transmission of documents (including FAX message).
- (3) When an acknowledgment or any other receipt purporting to be signed by the opposite party or his agent or by the complainant is received by the District Forum, the State Commission or the National Commission, as the case may be, or postal article containing the notice is received back by such District Forum, State Commission or the National Commission, with an endorsement purporting to have been made by a postal employee or by any person authorized by the courier service to the effect that the opposite party or his agent or complainant had refused to take delivery of the postal article containing the notice or had refused to accept the notice by any other means specified in subsection (2) when tendered or transmitted to him, the District Forum or the State Commission or the National Commission, as the case may be, shall declare that the notice had been duly served on the opposite party or to the complainant:

Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgment due, a declaration referred to in this sub-section shall be made notwithstanding the fact that the acknowledgment has been lost or mislaid, or for any other reason, has not been received by the District Forum, the State Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice.

- (4) All notices required to be served on an opposite party or to complainant shall be deemed to be sufficiently served, if addressed in the case of the opposite party to the place where business or profession is carried and in case of complainant, the place where such person actually and voluntarily resides.

29. Power to remove difficulties

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act

- (2) Every order made under this section shall, as soon as may be after it is made be laid before each House of Parliament
- (3) If any difficulty arises in giving effect to the provisions of the Consumer Protection (Amendment) Act, 2002, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of the Consumer Protection (Amendment) Act, 2002.

- (4) Every order made under sub-section (3) shall be laid before each House of Parliament.

29A. Vacancies or defects in appointment not to invalidate orders

No act or proceeding of the District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its member or any defect in the constitution thereof.

30. Power to make rules

- (1) The Central Government may, by notification, make rules for carrying out the provisions contained in clause (a) of sub-section (1) of section 2, clause (b) of subsection (2) of section 4, sub-section (2) of section 5, sub-section (2) of section 12, clause (vi) of sub-section (4) of section 13, clause (hb) of sub-section (1) of section 14, section 19, clause (b) of sub-section (1) and sub-section (2) of section 20, section 22 and section 23 of this Act.
- (2) The State Government may, by notification, make rules for carrying out the provisions contained in clause (b) of subsection (2) and subsection (4) of section 7, clause (b) of sub-section (2) and sub-section (4) of section 8A, clause (b) of sub-section (1) and sub-section (3) of section 10, clause (c) of sub-section (1) of section 13, clause (hb) of sub-section (1) and sub-section (3) of section 14, section 15 and clause (b) of sub-section (1) and sub-section (2) of section 16 of this Act.

30A. Power of the National Commission to make regulations

- (1) The National Commission may, with the previous approval of the Central Government, by notification, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such regulations may make provisions for the cost of adjournment of any proceeding before the District Forum, the State Commission or the National Commission, as the case may be, which a party may be ordered to pay.

31. Rules and regulations to be laid before each House of Parliament

- (1) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case maybe; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.
- (2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.

Appendix - II

ILLUSTRATIVE CASES UNDER THE CONSUMER PROTECTION ACT, 1986

1. Consumer Unity & Trust Society (CUTS), Calcutta

versus

The Chairman & Managing Director, Bank of Baroda [(1991) 1 CPR 263 NC]

In this case, the Respondent bank suspended its business operations for some time on account of an illegal strike of its employees. The complainant society (CUTS) filed a claim of ₹ 110 crores on behalf of the customers of the bank on the ground that these account-holders had been put to great inconvenience and loss by reason of the suspension of the bank's business during this period.

In its reply, the bank contended that the illegal strike of the workers - which lasted for more than three weeks - had disabled it from rendering services to its customers during this period. There were demonstrations outside the bank, obstructing entry into or exit from its offices. Therefore, it was argued that the suspension of business during this period was wholly out of its control.

The National Commission pointed out that compensation is payable under the Consumer Protection Act for any loss or injury caused to a consumer due to the negligence of the respondent. In the present case, the bank employees had gone on strike without any notice and had obstructed bank officers from entering or leaving the premises. They had also held demonstrations which prevented the normal business activities of the bank. Such acts are punishable offences under the Banking Regulation Act, 1949. The Commission came to the conclusion that the inability of the bank to conduct banking operations during this period was for reasons beyond its control and was clearly a case falling under the well-established concept of *force majeure*.

The National Commission, therefore, came to the conclusion that there was no negligence on the part of the bank and the suspension of business by it was the direct consequence of the illegal strike of its employees. Thus, no compensation was payable by the bank. Moreover, no particulars had been filed by the complainant as to how the said figure of ₹ 110 crores was arrived at. The complaint was, therefore, dismissed.

2. Union of India

versus

Chairman, Madras Provincial Consumers' Association [1993 CCJ 12]

In this case, a complaint was filed by a voluntary consumers' association, the grievance of the complainant being that whilst the catering department of the Southern Railway was supplying three kinds of meals (vegetarian, nonvegetarian and economy meals), passengers ordering the vegetarian or the non-vegetarian meals were served with drinking water in polythene sachets, but those ordering the economy meal were *not* given any drinking water with their meals.

The District Forum *held* that the sale of an economy meal without drinking water would tantamount to supply of 'defective goods' under the Consumer Protection Act and ordered the railway authorities to serve drinking water with all meals, including economy meals, from 1 January, 1991. After giving this direction, the District Forum surprisingly added (in its order) that if this order was *not* obeyed, "Mr. R. Narasimhan, the General Manager of Southern Railway, Madras shall be sentenced to one year's simple imprisonment under S. 27 of the Consumer Protection Act, 1986".

On an appeal filed against this order, the National Commission struck down the order of the District Forum. As regards the punitive part of the order, the National Commission observed that the question of punishment can arise only when an order under the Act has, in fact, been disobeyed. The District Forum *cannot* anticipate that such disobedience would take place, and pass an order of punishment in advance. It added that even after there was a violation of the order, that is, when S. 27 of the Act is attracted, the person to be proceeded against would be issued a notice and he would be heard before he is sentenced. The National Commission, therefore, *held* that the District Forum was *not* competent to pass such an "inbuilt order of

imprisonment” for a future breach.

It was *also held* that in the case of any food served, which does not fall in the category of regular meal (curd and rice, in the present case), there would be no responsibility to serve drinking water along with such food.

1. **Dynavox Electronic Pvt. Ltd.**

versus

B. J. S. Rampuria Jain College

The complainant college had, in this case, purchased a photocopy machine which was *not* in a working condition, and even after several repairs, its working remained unsatisfactory. Various letters to the company also did *not* have any result. A complaint was, therefore, filed in the District Forum at Bikaner, where the college was situated.

The company argued that the District Forum at Bikaner had no jurisdiction in the matter, as the manufacturer company was based in Delhi and the order for the machine had also been received in Delhi.

Rejecting the arguments of the company, it was *held* that since the machine was supplied and installed at Bikaner, a part of the cause of action had arisen in Bikaner, and therefore, the District Forum at Bikaner did have jurisdiction to entertain the complaint.

4. **Akhil Bhartiya Grahak Panchayat**

versus

Chairman, Life Insurance Corporation of India [(1991) 1 CPJ 171]

In this case, LIE had denied to a policy holder, information about the surrender value, special surrender value and bonus in respect of insurance policies.

Ordering LIE to pay compensation for the *mental and financial loss* suffered by the policy-holder, the Maharashtra State Commission *held* that a policyholder who pays premium to an insurance company is a ‘consumer’ of insurance services; there is nothing offending if he seeks information from the company (as contended by LIE). In such cases, a contractual relationship as a consumer is established between the corporation and the policy-holder and as a service organisation, the corporation is bound to extend the necessary courtesy and supply the information to him. The hostile and indifferent attitude of LIE was *held* to be ‘deficiency in services’ under the Consumer Protection Act and compensation of ₹ 20,000 was therefore ordered to be paid to the consumer.

5. **Common Cause**

versus Indian Airlines Corporation [(1991) 1 CPR463]

Common Cause, a Delhi-based NGO, filed a complaint before the National Commission in respect of the alleged lack of attention which Indian Airlines, the Airport Authority of India and the Director-General of Civil Aviation, paid to the safety of aircrafts and passengers travelling therein. It was pointed out that no proper facilities such as modern landing aids were made available at most airports in India, thus causing loss and inconvenience to passengers, as for instance, by way of delayed or cancelled flights, delay in baggage clearance and even unsatisfactory catering services.

Indian Airlines and the government authorities placed before the Commission, a detailed course of action that was being taken by them in the immediate future for setting right all the consumers’ grievances set out in the complaint. On the faith of these assurances, the National Commission disposed of the matter without passing any mandatory orders against the respondents.

It is submitted that assurances such as these are often empty assurances (as past conduct of governmental organisations bear out) and that consumer interest would have been better protected if specific orders or directions had been given in the matter. Additionally, there is no satisfactory machinery to monitor these holy "assurances" given by such authorities - and it is well-known that these assurances are often breached with impunity.

6. Indian Airlines Corporation

versus Rajesh Kumar Upadhyay [(1991) 1 CPJ 2006]

A complaint was filed before the State Commission against Indian Airlines in respect of a flight which was scheduled to fly from Lucknow at 2 p.m., but which took off only at 6.50 p.m. The reason for the delay was that the aircraft which was to operate this flight was late in reaching Lucknow. The complainant also alleged that, because of this delay and the failure on the part of the Airlines staff to provide refreshment, lunch or tea to the waiting passengers, his wife, who was travelling with him, developed weakness and became indisposed. It was also stated that despite this fact being brought to the notice of the Airlines staff, no medical assistance was offered to her. A sum of ₹ 5 lakhs was, therefore, claimed as compensation for the "irreparable loss", along with a further sum of ₹ 10,000 for expenses for prosecuting the complaint.

After hearing the parties, the Commission came to the conclusion that the airlines was *not* responsible for the illness of the passenger and that there was no negligence on its part to provide refreshments to the waiting passengers, it, however, observed that the passengers are *not* responsible for the delay of the flight and was pleased to order the airlines to pay ₹ 200 as compensation "for the loss of time as a result of a delay of four hours and fifty minutes in starting the flight in question from Lucknow".

It was against this order (to pay ₹ 200 as compensation) that Indian Airlines filed an appeal before the National Commission, which observed that since the State Commission had come to a conclusion as above, it should have rejected the complaint as being devoid of any merit. It *held* that when there was no plea in the complaint about any loss or inconvenience to the passenger on account of any negligence on the part of the Airlines, there was no justification whatsoever for ordering the payment of ₹ 200 as compensation. The Commission observed that flights get delayed due to various reasons like poor visibility, bad weather, bird hits, tyre bursts, etc., which are factors beyond the control of the airlines. Thus, if the delay *cannot* be attributed to the negligence of the airlines, there was no justification for ordering the payment of ₹ 200 - or any amount whatsoever.

In the circumstances, the National Commission set aside the compensation order of the State Commission, observing that it was "manifestly illegal and without jurisdiction".

7. Consumer Education & Research Centre

versus Indian Airlines Corporation [(1991) 2 CPJ 621]

The point raised in this case was regarding a newspaper report stating that passengers travelling on a particular flight of Indian Airlines (which had a monopoly in air services at that time) from Kolkata to New Delhi on a particular day, were put to great inconvenience and delayed for more than ninety minutes because one VIP, the Chief Minister of Tripura, who was travelling by that flight, had *not* turned up on time. It was contended that passengers travel by air primarily to save time - but delayed flights had become a common phenomenon, causing tremendous inconvenience to air passengers. The complaint stated that the monopoly carrier was behaving arbitrarily, delaying and cancelling flights all the time.

The National Commission dismissed the complaint, pointing out that the complainant NGO had *not* been authorized by the passengers of that particular flight to represent them. Secondly, the Commission was of the view that a newspaper report *may or may not* be correct - and no

affidavit had been filed by the NGO stating that the facts set out in the complaint were true to its personal knowledge.

It is submitted that the complaint in this case seems to have been dismissed on a technical ground, without considering the true spirit of public interest litigation. Several High Courts and even the Supreme Court have allowed writ petitions based on newspaper reports. Delaying flights to accommodate politicians and VIPs had become very common in those days (of Indian Airlines monopoly) and the aims and objects of the Consumer Protection Act would have been better served if the complaint had been considered on merits.

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8. **Orissa Consumers' Association**

versus

Transport Commissioner, Orissa [(1991) 1 CPR 281]

In this case, a consumer association filed a complaint as regards emission of pollutants by automobiles, pointing out that it is a serious health hazard for citizens.

After hearing the parties at length, the Orissa State Commission admitted the complaint and passed an order against the Transport Commissioner, directing him to make the necessary inquiries and take suitable action to eradicate vehicular pollution within a period of three months.

This case is a good example of the emerging trend to use the machinery of public interest litigation (PIL) to highlight environmental violations before the redressal agencies constituted under the Consumer Protection Act. Decisions such as these clearly show that the redressal agencies are, today, not concerned only with defective goods and deficient services.

9. **Manjulaben Parmar**

versus

Life Insurance Corporation of India [(1991) 1 CPR 589]

This is another instance of the glaring indifference shown by insurance companies towards policy-holders - and the ultimate victory of the consumer.

In this case, the insured had expired within nine months from the date of taking the policy. The claim submitted by the widow of the deceased was rejected by the LIE on the ground of alleged nondisclosure of chest pain by the deceased at the time of taking the policy. However, the evidence on record showed that he was *not* aware of any heart disease at the time of signing the insurance form and had answered all the questions correctly and honestly.

The complainant in this case (the widow of the deceased insured) was supported by the Consumer Education & Research Centre (CERC), Ahmedabad, and it was argued that *exemplary damages* ought to be awarded to the claimant in view of the oppressive, arbitrary and inhuman conduct of the officers of a government corporation. CERC pointed out that this was only one of the thousands of cases where the legitimate claims of policy-holders had been rejected by LIE in a casual manner - and claimants had to undergo humiliation, deprivation and hardship following the death of the bread-winner of the family. CERC also relied upon the observations made in an English case, *Books v. Bernard* (1964 A C 1129), where it has been *held* that when there is oppressive, arbitrary and unconstitutional action by servants of the government, payment of *exemplary damages* would be justified.

The State Commission directed the LIE to pay ? 40,000 to the claimant, being the amount payable under the policy, along with interest at 18% p. a. Although the Commission did *not* consider this to be a fit case for ordering exemplary damages, the following observations made by it in the course of its order are relevant:

"Even if we may not allow the exemplary damages, we are of the opinion that a person takes life insurance with the full hope and confidence that in the event of his death, his family will *not* suffer and be able to survive, with insurance amounts. An insured coming from the lower middle tracts and dependent upon a Government Corporation, it is the duty of the officers of the Corporation to deal with the claimants' cases with a view to help them and *not* to find out or insist upon any small discrepancy or fault. This is more true when the state itself is carrying on the insurance business by way of monopoly to the exclusion of others."

10. **Commercial Officer, Telecom Office, Pune**

versus

Bihar State Warehousing Corporation

The question raised in this case was whether a wrongful shifting of a telephone by the Telephone Department would amount to “deficiency in service”.

The State Commission, after hearing arguments of both the sides, came to a conclusion that a telephone facility is a service and the wrongful shifting of a telephone would amount to ‘deficiency’ in service. The complainant was, therefore, awarded compensation of ₹ 5,000 by way of damages.

In appeal, the National Commission took the view that the State Commission was *not justified* in awarding ₹ 5,000 as damages. It observed that compensation should always be quantified on a rational basis after considering the evidence produced before the court. In the present case, there was only a bald allegation that, because of the disconnection of the telephone, the business of the complainant had suffered. To what extent and in what manner it suffered was *not* demonstrated, keeping in mind that there were two or three other telephones in the same office. The National Commission therefore concluded that only nominal damages ought to have been awarded and that the sum of Rs.5,000 was “unreasonable and excessive”. In the circumstances, the quantum of compensation was reduced to Rs. 1,000.

On behalf of the Telephone Department, it was argued that since the Indian Telegraph Act provides for arbitration in such cases, the remedy under the Consumer Protection Act cannot be invoked at all by a consumer. Rejecting this argument, the National Commission *held* that the provisions of the Indian Telegraph Act “do *not* preclude an aggrieved consumer from seeking redressal before the forums constituted under the Consumer Protection Act which is a special statute enacted by Parliament for the specific purpose of providing a speedy, cheap and efficacious remedy to consumers before the special forums created for this purpose”. Overruling this objection, it was *held* that consumer courts under the Consumer Protection Act would have jurisdiction to pass orders in such cases.

It is submitted that although the second part of the ruling is significantly in accordance with the spirit of the Act, finding an award of damages of ₹ 5,000 as being “unreasonable and excessive” is not really in keeping either with the spirit of the Act or of changing times.

**11. Consumer Education Research Centre
versus Godrej Soaps Ltd.
[(1991) 1 CPJ 589]**

The Consumer Education Research Centre (CERC), Ahmedabad, filed a complaint against Godrej Soaps Ltd., a leading manufacturer of consumer products, alleging that it was selling a hair-dye which was injurious to its users. It was contended that the dye contained a substance called ‘P-pd’ which when used with hydrogen peroxide was carcinogenic (cancer-causing) and caused adverse effects upon the health and safety of human life. Additionally, the company was also advertising the product using the words “total safety”.

In response, the company took the stand that there was no scientific data which had established that P-pd was carcinogenic. In reply, CERC argued that, in such cases, one *cannot* wait for people to die and then issue a health warning. It was, therefore, argued that, in order to prevent a future tragedy, the manufacturer should *not* be allowed to sell any product which is likely to cause injury to human beings, that is, a product that is hazardous to human life. In the alternative, it was urged that the hair-dye should at least carry a warning on the pack itself.

The Gujarat State Commission partly accepted CERC’s contention and suggested that the company drop the words “total safety” from its advertisements. The manufacturer readily accepted this suggestion and the matter was thus closed.

The outcome in this case is a reflection of the tendency prevalent in modern times when huge corporates prefer to modify their behavior rather than engage in long-drawn litigation. However, consumer activists were not at all satisfied with the end result of this case and felt that the Commission ought to have directed the company to affix mandatory warnings on the product itself-as is done in the case of cigarettes - and that such an order would have better served the larger interests of consumers.

12. Common Cause

versus Drug Controller of India [(1991) 2 CPJ 698]

In this case, Common Cause, the well-known consumer association based in New Delhi, filed a complaint before the National Commission in connection with the contamination of fluids marketed by some pharmaceutical companies in India, in particular, as regards contaminated intra-venous fluids available in chemists' shops and supplied to hospitals.

It was pointed out that, due to an enormous increase in 'the number of drug formulations marketed in the country, the inspectorate wings of the drug control organisations in various states were "woefully inadequate" to meet the situation.

After hearing both sides at length, the National Commission disposed of the complaint with the following observations:

"We feel greatly concerned that such an unsatisfactory state of affairs should exist in our country with respect to a matter which is of such fundamental importance and vital concern to the health, life and safety of the people. We are making this observation in the hope that it will alert the Government and the State Governments to the need for taking immediate action to remedy the situation by augmenting the strength of the drug control staff at different levels in each state and also to provide adequate laboratory facilities in every state for testing the quality and potency of drugs."

It is submitted with respect that observations such as these have scant effect in our country. The "hope" expressed by judicial authorities have been seldom translated into reality. It requires a strong will on the part of the authorities themselves, which unfortunately is a rare commodity in India.

13. General Manager, South Eastern Railway

versus Anand Prasad Sinha

In this case, a retired Judge of the Patna High Court had travelled by first class with his wife. He filed a compensation application against the Railways for the *mental and physical suffering and inconvenience* suffered by them in the course of the journey.

It was pointed out that the fans were *not* working in the first class compartment, and despite pointing this out to the Conductor, no action was taken to set them right. The iron shutters of the windows were also *not* in a working condition, and the shutters with the glass panes could *not* be used as the glass was missing. The rexine of the berth was badly torn and two exposed rusty nails had caused *physical injuries* to the wife, for which she had to take medical treatment. It was the case of the complainant that, due to the bad condition of the compartment, he and his wife had to suffer *great mental stress and restlessness* throughout the journey and that his wife had also sustained *physical injuries*.

The State Commission ordered an inspection of the compartment in question and it was reported that it was "in a very bad condition". Rejecting the contention of the railways authority that passengers on a train are *not* "consumers", the State Commission ordered payment of compensation of ₹ 10,000 each to the complainant and his wife. After directing payment of this compensation, the Commission went on to observe as under:

"In view of the status of the complainant and the condition in which they were forced to travel, the aforesaid amount of compensation is *not sufficient*, but on the assurance given by the railway administration that steps are being taken to improve the conditions, we hope the present amount of compensation will meet the ends of justice."

An appeal against this order was filed by the railway administration before the National Commission, which *held* as follows:

- Passengers who travel by train and pay the stipulated fare *are* “consumers” under the Consumer Protection Act, and the facility of transportation provided by the railway administration is “service” rendered for consideration.
- The State Commission had *not* indicated the basis adopted by it in ordering payment of compensation to the tune of Rs. 10,000 each to both the passengers. Any compensation which is awarded by a court must have a “rational relation” to the nature and extent of the injury and inconvenience suffered by the claimants. Also, the status of the complainant is of little relevance in such cases, as *all passengers* who have paid for first class travel in a train are entitled to similar treatment, irrespective of any question of status.
- The compensation awarded by the State Commission was “manifestly excessive” and the same was reduced to rs. 1,500 each, as this amount would be “fair and reasonable” in the circumstances of the case.

It is indeed difficult to understand how compensation of rs. 10,000 to a first class passenger can be said to be “manifestly excessive”. Again, although it is correct to say that compensation should always have a “rational relation” to the injury, loss or inconvenience suffered by a claimant, it is difficult to understand how a sum of Rs. 1,500 would qualify as being “fair and reasonable”. In such cases, it is difficult - if not impossible - to arrive at any mathematically calculated figure of compensation. If the State Commission can be said to have arrived at a figure of Rs. 10,000 without any basis, can the same thing not be said about the revised figure of Rs.1,500, which too was arrived at without any basis?

14. Consumer Unity & Trust Society (CUTS), Jaipur

versus

State of Rajasthan

[(1991) 1 CPR 241, (1993) 1 CTJ 89 (CP)]

The question raised in this case was whether a person who avails of medical treatment in a government hospital is a ‘consumer’.

Answering the question in the negative, the National Commission *held* that, since availing of services in a government hospital is *not* for consideration, the patient is *not* a ‘consumer’ as defined in the Consumer Protection Act.

On the question whether the service of a doctor is a ‘contract of personal service’, and therefore excluded from the ambit of the Act, the National Commission left the question undecided - as it was *not* directly in issue before it. However, this question was ultimately answered in the negative by the Supreme Court in *Indian Medical Association v. V. P. Shanta*, discussed below.

A rather unique contention was taken up in this case, namely, that since the public pays tax to the government, this can be considered to be the consideration for the medical services rendered by a government hospital. Rejecting this argument, the National Commission *held* that direct and indirect taxes paid by a citizen to the state *cannot* constitute ‘consideration’ for services provided to a citizen. The concepts of ‘Tee’ and ‘Tax’ are different. Whereas *fees* are paid voluntarily for a particular privilege, payment of *taxes* is obligatory and is in the form of a levy to be paid to the state for the general purposes of the government. Taxes are *not* paid for any particular or special service rendered by the government. Fees are paid for a special purpose and there is a *quid pro quo* for that purpose. Tax, on the other hand, is for general and public purposes and there is no element of *quid pro quo* between the tax-payer and the authorities which levy the tax. When a citizen pays tax, he *cannot* be said to ‘hire’ any ‘services’.

The National Commission therefore *held* that a complaint relating to the negligence of a doctor in a government hospital does not fall within the scope of the Consumer Protection Act. The *only remedy in such cases* is to file a civil suit in the matter.

15.

Indian Medical Association

versus V. P. Shanta [AIR 1996 SC 550]

Before the historic decision of the Supreme Court in this case, strong views had been expressed on both sides on the question whether doctors and hospitals fall within the ambit of the Consumer Protection Act.

The doctors' lobby had contended that judges have neither the knowledge nor the expertise to deal with complicated medical issues. On the other hand, the Indian Medical Council (which has branches in various States) consists of medical experts and can handle cases of medical negligence through its Disciplinary Committees and can initiate disciplinary and other action against erring doctors. It was also argued that, in any case, doctors *are* already liable under other laws of the land, as for instance, the law of torts and the Indian Penal Code. So, where was the need to have one more dagger hanging over doctors' heads?

Supporting the case for including doctors and hospitals within the purview of the Consumer Protection Act, consumer activists argued that, all over the world, courts of law (consisting of Judges with no specialized knowledge of medicine) decide cases relating to the medical profession. So, *why not* in India? Again, in our own country, Judges do *not* have special knowledge in nuclear physics or atomic energy - but this does *not* prevent them from passing orders in cases dealing with such subjects. Again, since Medical Councils consist of persons who are doctors themselves, it is likely that such persons would be biased in favour of persons belonging to their own profession (against whom they are hearing a complaint). It was also pointed out that Medical Councils are almost defunct in several states and thus, no effective justice can be expected for patients who have suffered on account of the 'deficient' services of a doctor or a hospital.

Legal luminaries addressed arguments for both sides before the Supreme Court, which was mainly concerned with whether the services of a doctor are "services" as the term is defined under the Consumer Protection Act. As this definition expressly excludes 'contracts of personal service', it was strongly urged that the medical profession does not offer any "service" and a patient is therefore *nota* "consumer" under the Act. It was pointed out that the relationship between a medical practitioner and a patient is one of trust and confidence and therefore, it is a contract of personal service, which is expressly excluded from the definition of "service" under the Act.

Rejecting the above contention, the Supreme Court pointed out that such an argument ignores the well-recognised distinction between a "contract of personal service" and a "contract for personal service". A contract for services implies a contract whereby one party undertakes to render services, for instance, professional or technical services, to another, in the performance of which he is not subject to any detailed direction, control or supervision by the person who avails of such a service. A contract of service, on the other hand, implies a relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance. Thus, a doctor's contract is a contract *for* personal services and *not* one *of* personal services. It is, therefore, *not* excluded by the definition of "service" as contained in the Consumer Protection Act.

The Supreme Court also rejected the contention that the composition of the courts set up by the Consumer Protection Act is such that its members would *not* be able to appreciate the complex issues arising in medical cases. Likewise, it found no merit in the argument that the summary procedure provided by the Consumer Protection Act is unsuitable for such claims.

The decision of the Supreme Court in this case may be summarised in the form of the following propositions:

1. Service rendered to patients by a medical practitioner (except when a doctor treats his patient free of charge) by way of consultation, diagnosis and treatment, both medical and surgical, would fall within the ambit of the term "service" under the Act.
2. The fact that doctors are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils does *not* exclude the services rendered by them from the ambit of the Consumer Protection Act.

3. Medical services rendered free of charge to all patients - as in a government or municipal hospital - is not "service" as defined under the Act.
4. The payment of nominal registration charges in free hospitals does *not* mean that the treatment is for a consideration. Such charges are levied for administrative expenses and paper work - and *not* for medical treatment.
5. If a hospital has free as well as paying patients, *all* the patients - free and paying - fall within the ambit of the Consumer Protection Act.
6. It *cannot* be said that services of a private hospital are without consideration just because a patient gets reimbursement of such expenses from his employer or from an insurance company (as for instance, under a Medclaim Policy).

Appendix - III QUESTIONS & (SHORT) ANSWERS

QUESTIONS

1. When did the Consumer Protection Act come into force?
2. What is an "appropriate laboratory" under the Consumer Protection Act?
(B.U. Nov. 2009; Nov. 2010; Jan. 2017)
3. Define the term "complainant" under the Consumer Protection Act. (B. U. Nov. 2008; Nov. 2010)
4. Who is a "consumer" under the Consumer Protection Act?
5. Define "consumer dispute" under the Consumer Protection Act. (B.U. April 2009)
6. What are "defective goods" under the Consumer Protection Act? (B.U. Nov. 2009; Nov. 2010)
7. What is "deficiency" under the Consumer Protection Act? (B.U. Jan. 2017)
8. Define a "manufacturer" under the Consumer Protection Act. (B.U. April 2009)
9. What is a "restrictive trade practice" under the Consumer Protection Act?
10. What is an "unfair trade practice" under the Consumer Protection Act? Give two examples.
11. What is a 'bargain price' under the Consumer Protection Act with reference to an unfair trade practice?
12. Define "person" under the Consumer Protection Act. (B.U. April 2010)
13. Define "service" under the Consumer Protection Act. (B.U. Nov. 2009)
14. What is meant by "spurious goods and services" under the Consumer Protection Act?
15. Who is a "trader" under the Consumer Protection Act?
16. What is the composition of the Central Consumer Protection Council? (B.U. Nov. 2008)
17. What is the composition of a State Consumer Protection Council?
18. What is the composition of a District Consumer Protection Council?
19. State any two objects of the Central Consumer Protection Council.
20. What is the monetary jurisdiction of the District Forum?
21. Can there be three District Forums in the same district under the Consumer Protection Act?
22. What is the composition of a District Forum?
23. Is there any retirement age for member of a District Forum? If so, what is such age?
24. If the cause of action arises only in part within the jurisdiction of a District Forum, does it have jurisdiction to entertain such a consumer complaint?
25. Is it mandatory for a District Forum to proceed with a complaint filed before it?
26. What is a "recognised consumer association" for the purpose of Section 12 of the Consumer Protection Act?
27. Within what period of time must a District Forum send a copy of an admitted complaint to the opposite party?
28. When goods are sent by the District Forum for testing to an appropriate laboratory, who has to bear the charges of the laboratory?
29. If a complainant fails to appear before the District Forum on the date of the hearing of his complaint, is it mandatory for the District Forum to dismiss the complaint?
30. Is there any time limit suggested by the Consumer Protection Act for a final disposal of complaints filed before it?

31. What is the maximum number of adjournments which may be granted by the District Forum when adjudicating on a consumer complaint?
32. Does the District Forum have any jurisdiction to pass interim orders in matters pending before it?
33. What type of orders can a District Forum pass for protecting consumers against hazardous goods?
34. Before which authority can an appeal be filed against an order of a District Forum?
35. What is the composition of a State Commission?
36. What is the monetary jurisdiction of a State Commission?
37. Name two disqualifications for being appointed as a Member of a State Commission.
38. When filing an appeal against an order of a State Commission, does the appellant have to make any deposit? If yes, what is the amount to be so deposited?
39. What is the composition of the National Commission?
40. What is the monetary jurisdiction of the National Commission?
41. After what period of time do consumer complaints get time-barred under the Consumer Protection Act?
42. What provision has been made in the Consumer Protection Act as regards frivolous complaints? (B.U. Nov. 2006)
43. What are the penalties imposed on a person for non-compliance of the Act?
44. When filing an appeal against an order of the National Commission, does the appellant have to make any deposit? If yes, what is the amount to be so deposited?
45. Is there an appropriate authority entitled to entertain an appeal against the National Commission? If yes, what is the stipulated time period for such an appeal?
46. Will a vacancy in the National Commission invalidate an order passed by it?
47. Which authority is empowered by the Consumer Protection Act to make rules and regulations?
48. Under the Consumer Protection Act, are rules made by the State Government to be placed before Parliament?
49. If any difficulty arises today in giving effect to the provisions of the Act, can the Central Government invoke S. 29 to remove such a difficulty?
50. How many Schedules are appended to the Consumer Protection Act?

Answers

1. Chapters I, II and IV of the Consumer Protection Act came into force on 15th April, 1987 and Chapter III (dealing with Consumer Disputes Redressal Agencies) came into force on 1st July, 1987.
2. Under S. 2(a) of the Act, an 'appropriate laboratory' is a laboratory or organization recognised by the Central Government or by the State Government subject to the guidelines prescribed by the Central Government, or any such laboratory or organization established by or under any law which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods, with a view to determining whether such goods suffer from any defect.
3. Under S. 2(b) of the Act, a complainant means any of the following five classes of persons who makes a complaint, namely, (a) a consumer; (b) any voluntary consumer association registered under the Companies Act, or under any other law, (c) the Central Government or any State Government; (d) one or more consumers - where there are numerous consumers having the same interest; and (e) in case of death of a consumer, his legal heir or representative.
4. The term 'consumer' means a person who buys any goods or who hires or avails of any services for consideration which is (a) paid, or (b) promised to be paid, or (c) partly paid and

partly promised, or (d) under any system of deferred payment, as also any user of such goods or a beneficiary of such services. The term does *not*, however, cover a person who buys goods for *resale* or for *any commercial purpose*, or who avails of the services for *any commercial purpose*. [S. 2(d) of the Consumer Protection Act]

5. A consumer dispute means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint. [S. 2(e) of the Consumer Protection Act]
6. Defective goods are goods which suffer from any 'defect'. Under S. 2(f) of the Act, the term 'defect' means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard, which is required to be maintained under any law in force or under any contract (express or implied) or as is claimed by the trader in any manner whatsoever in relation to any goods.
7. Under S. 2 (g) of the Act, deficiency is any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance required to be maintained by or under any law in force or has been undertaken to be performed by a person in pursuance of a contract or in relation to any service.
8. Under S. 2 (j) of the Consumer Protection Act, a 'manufacturer' means a person who makes or manufactures any goods or part thereof, or does not make or manufacture any goods but assembles parts thereof made or manufactured by others, or puts or causes to be put, his own mark on any goods made or manufactured by other manufacturers.
9. Under S. 2 (nnn) of the Act, a restrictive trade practice is a trade practice which tends to bring about manipulation of price or its conditions of delivery or affects the flow of supplies in the market relating to goods/services so as to impose unjustified costs or restrictions on consumers including -
 - (i) delay beyond the period agreed to, by a trader in relation to goods/services which has led or is likely to lead to rise in price; and
 - (ii) any trade practice requiring a consumer to buy, hire or avail of any goods/services (as the case may be) before buying, hiring or availing of other goods/services.
10. Under S. 2 (r) of the Act, unfair trade practice is a trade practice which, for the purpose of promoting the sale, use or supply of any goods/services, adopts any unfair method or unfair or deceptive practice including -
 - (i) the practice of making any statement (oral/written/visible representation) falsely representing goods/services to be of a particular standard, quality, quantity, grade, composition, style or model.
 - (ii) the practice of hoarding or destruction of goods, refusal to sell goods or to make them available for sale or to provide any service, if such an act tends to raise cost of those or other similar goods/services.
11. With reference to an unfair trade practice, a 'bargain price' means
 - (i) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or
 - (ii) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price, having regard to the prices at which the product advertised or like products are ordinarily sold.
12. S. 2(m) of the Consumer Protection Act defines a 'person' as:
 - (a) a firm, whether registered or not;
 - (b) a Hindu undivided family;
 - (c) a co-operative society;
 - (d) every other association of persons, whether registered under the Societies Registration Act or not.
13. The term 'service' is defined to mean service of any description which is made available to potential users. The term includes, but is not limited to, the following services, namely, provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding and / or lodging, housing construction, entertainment, amusement, purveying of news

or other information. However, the term does not include the rendering of any service free of charge or the rendering of any service under a contract of personal service. [S. 2(o) of the Consumer Protection Act]

14. 'Spurious goods and services' mean such goods and services which are claimed to be genuine - but they are actually *not* so. [S. 2(oo) of the Consumer Protection Act]
15. In relation to any goods, a 'trader' under the Consumer Protection Act is a person who sells or distributes goods for sale, and includes the manufacturer of such goods. Where goods are sold or distributed in a package, the terra also includes the packer thereof. [S. 2(g) of the Consumer Protection Act]
16. The Central Council consists of the following members: (a) the Union Minister in charge of Consumer Affairs - who is the Chairman of the Central Council; and (b) such number of other official and non-official members representing such interests as maybe prescribed by Rules made by the Central Government under the Act. [S.4]
17. The State Council consists of the following members: (a) the Minister in charge of Consumer Affairs in the State Government, who is the Chairman of the State Council; (b) such number of other official or non-official members as may be prescribed by Rules made by the State Government; and (c) such number of other official or non-official members, *not exceeding ten*, as may be nominated by the Central Government. [S.7]
18. The District Council consists of the following persons: (a) the Collector of the district (by whatever name called), who is the Chairman of the District Council; and (b) such number of other official and non-official members representing such interests as may be prescribed by Rules made by the State Government. [S.8-A]
19. (i) The right of consumers to be protected against the marketing of goods and services which are hazardous to life and property; and (ii) the right to consumer education.
20. The District Forum can entertain complaints in cases where the value of the goods or services in question or the compensation claimed does not exceed Rs. 20 lakhs.
21. Yes. There can be three District Forums in the same district -as it is expressly provided (by S. 9 of the Act) that the State Government may, if it deems fit, establish more than one District Forum in a given district.
22. A District Forum consists of the following:
 - (a) A person who is, or has been, or is qualified to be, a District Judge, who is the President of the District Forum.
 - (b) Two other Members, one of whom must be a woman, who have the following qualifications, namely, (i) he/she is *not* less than thirty-five years of age; (ii) he/she possesses a bachelor's degree from a recognised university; *and* (iii) he/ she is a person of ability, integrity and standing with adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.
23. The retirement age for a Member of a District Forum is 65 years. [S. 10]
24. Yes, a District Forum can entertain such a consumer complaint, because S. 11 of the Act lays down that it can do so if the cause of action arises within its jurisdiction wholly or in part - provided the monetary limit of 7 20 lakhs is not exceeded.
25. No. When a complaint is received by the District Forum, it may allow such a complaint to be proceeded with or it may reject it. If it rejects a complaint, it can do so only after giving to the complainant an opportunity to be heard in the matter.
26. A 'recognised consumer association', for the purpose of S. 12 of the Consumer Protection Act, is any voluntary consumer association which is registered under the Companies Act, 1956, or under any other law in force in India.
27. Under S. 13 of the Consumer Protection Act, the District Forum must send a copy of the admitted

- complaint to the opposite party within twenty-one days from the date of its admission.
28. When goods are to be sent for a laboratory test, the District Forum may require the complainant to deposit to the credit of the District Forum, such fees as may be specified. This amount is then remitted to the laboratory to enable it to carry out the required test.
 29. No. If a complainant fails to appear before the District Forum on the date of the hearing, the District Forum may either dismiss the complaint for default or decide it on merits.
 30. The District Forum must dispose of all complaints filed before it as expeditiously as possible. When no laboratory testing is involved, it must endeavour to do so within a period of three months. But, when there is a laboratory test of the goods in question, the period is extended to five months.
 31. The Consumer Protection Act does not lay down any ceiling on the number of adjournments which may be granted by the District Forum when adjudicating a consumer complaint. It, however, provides that, ordinarily, no adjournment should be given; but if sufficient cause is shown, an adjournment may be given for reasons recorded by the District Forum in writing and the party asking for the adjournment may be asked to pay costs.
 32. Yes. It is provided by the Consumer Protection Act that, where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.
 33. In such cases, a District Forum may order the opposite party (i) not to offer the hazardous goods for sale and (ii) to withdraw such goods from being offered for sale. (S. 14)
 34. If any person is aggrieved by an order passed by the District Forum, he can file an appeal against it before the State Commission (of that state) within a period of thirty days from the date of the order.
 35. The State Commission consists of:
 - (a) a person who is, or has been, a Judge of a High Court, who is the President of the State Commission.
 - (b) *not* less than two and *not* more than such number of members as may be prescribed, one of whom should be a woman, who have the following qualifications, namely, (i) he/ she is *not* less than thirty-five years of age; (ii) he/she possesses a bachelor's degree from a recognised university; and (iii) he/she is a person of ability, integrity and standing with adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.
 36. The State Commission can entertain complaints in cases where the value of the goods or services in question or the compensation claimed exceeds ?Rs.20 lakhs but does not exceed ? 1 crore.
 37. A person is disqualified from being appointed as a Member of a State Commission (i) if he has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or (ii) he is an undischarged insolvent.
 38. If an appeal is filed before the State Commission, the appellant must deposit 50% of the amount ordered to be paid by him by the District Forum or Rs.25,000, whichever is less.
 39. The National Commission consists of:
 - (a) a person who is, or has been, a Judge or _____ Court -who is the President of the National Commission.
 - (b) not less than *four* and *not* more than such number of Members as may be prescribed (at present, *eleven*), one of whom should be a woman, who have the following qualifications, namely, (i) he/she is *not* less than thirty-five years of age; (ii) he/she possesses a bachelor's degree from a recognised university; and (iii) he/she is a person of ability, integrity and standing with adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.
 40. The National Commission can entertain complaints in cases where the value of the goods or services in question or the compensation claimed exceeds Rupees one crore.
 41. S. 24-A of the Consumer Protection Act lays down that the District Forum, the State Commission and the National Commission cannot admit a complaint unless it is filed within two years from the date on

which the cause of action has arisen - unless the complainant shows that he had sufficient cause for not filing the complaint within the said period.

42. S. 26 of the Consumer Protection Act provides that if a complaint is found to be frivolous or vexatious, it must be dismissed for reasons recorded in writing. Additionally, the complainant must pay such costs, not exceeding ₹ 10,000, as may be specified in the order.
43. Under S. 27 of the Act, a person not complying with the order made by District Forum/ State Commission/National Commission, is punishable with:
 - (i) Imprisonment for a term not less than 1 month but which may extend to a period of 3 years; or
 - (ii) Fine which is not less than ₹ 2,000 but which may extend upto ₹ 10,000.
44. If an appeal is filed before the National Commission, the appellant must deposit 50% of the amount ordered to be paid by him by the National Commission or ₹ 50,000, whichever is less.
45. An appeal can be filed against an order of the National Commission before the Supreme Court within a period of thirty days from the date of such an order.
46. No act or proceeding of the National Commission becomes invalid by reason only of the existence of any vacancy amongst its members or any defect in its constitution. (S.29-A)
47. Under the Act, the Central Government and the State Governments can make rules, whereas the National Commission is authorised to make regulations with the previous approval of the Central Government.
48. Under the provisions of the Act, rules made by the State Government are to be placed before the State legislature - and not before the Parliament. [S.31]
49. S. 29 of the Act cannot be invoked today as the Central Government could exercise the power given to it thereunder only during a period of two years from the commencement of the Act.
50. Nil. The Consumer Protection Act does not contain any Schedules.

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