CHAPTER SIX

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6.1 Introductory

The Consumer Protection Act was enacted in the year 1986. With the enactment of this Act, an era of consumer concern and consumer protection was ushered in with great fanfare and with a great hope and aspiration for the emergence of an exploitation free society. However, within a short span of three to four years, a need was felt to amend this legislation. This is a separate matter that the government at that time did not show much inclination to amend the statute at least for the first five years. Exactly after five years of its enactment, came the first amendment in the shape of the Consumer Protection (Amendment) Act, 1991. Due primarily to the publicity done by the government as well as due to the radical and the dedicated activism shown by the consumer protagonists, a large number of exploited consumers started thronging the Consumer Disputes Redressal Agencies in order to seek redressal for their grievances against the manufacturers, traders, distributors, sellers, retailers and supplier of defective goods as well as against the providers of deficient services. Soon the need was felt for another major amendment. The government also showed positive reaction to the demand for amendment of the statute by the consumer organisations, activists and by the consumers alike. Thus the Consumer Protection Act, 1986 was radically and drastically amended in the year 1993 by virtue of the Consumer Protection (Amendment) Act, 1993.
As regards the consumer protection law and policy, things moved so fast in India that not even ten years had passed when there was a demand for another amendment. One of the reasons for this demand was the publication of a large number of articles on the efficacy or otherwise of the Consumer Protection (Amendment) Act, 1993. Thanks to the Government of the time, they decided to go ahead, a historic and a monumental decision that culminated in the form of coming into existence the Consumer Protection (Amendment) Act, 2002. The efficacy of this amendment was also perhaps for the next ten years or so.

Therefore, due to the repeated demands by the consumers as well as by the various prominent consumer protection organizations from the across the country, the government once again yielded to some of their suggestions. And its logical concomitant was the introduction of an Amendment Bill, namely, the Consumer Protection (Amendment) Bill, 2013 which was introduced in the Parliament on 16 December 2011. Before I discuss some of the proposed amendments, I consider it appropriate to give prominent place to the Consumer Protection Act, 1986 (The Principal Act); the Consumer Protection (Amendment) Act, 1991; the Consumer Protection (Amendment) Act, 1993; and the Consumer Protection (Amendment) Act, 2002. Their brief discussion is as follows.

In this connection, the present researcher would like to submit at the outset that though the Consumer Protection (Amendment) Bill, 2011 has already been introduced in the Lok Sabha, there is hardly any guarantee as to whether this Bill shall be passed as it is, that is, without any modifications whatsoever, or it will be passed with certain modifications. That is why the researcher has not touched every section and sub-section in the proposed Amendment Bill, but has analysed and commented upon those sections and sub-sections which she deemed comparatively more important from the point of view of the present research work.

Notwithstanding all these observations, it is heartening to note that once again the Consumer Protection Act, 1986 is going to be amended. If one looks at this development from a positive angle, one gets a feel that the Government is certainly serious in promoting and protecting consumers’ interests and that is why every ten years, there is a major amendment in the law. Otherwise there are hardly any instances of amendment of any law four times ever since its enactment. In the following paragraphs, I would like to discuss in brief all the amendments preceded by the brief discussion on the Principal Act of 1986.
6.2 The Preamble and Statement of Objects and Reasons for the Enactment of the Consumer Protection Act, 1986 (The Principal Act)\(^1\)

The Consumer Protection Act, 1986 has proved to be a milestone in the history of consumer legislation in the country. The 1986 Act, ever since its enactment, has paved way for many new developments in the consumer protection law and policy in India. Consumer activists and organisations and the consumer law experts alike had all praise for the new statute from the very beginning, which according to most of them, was an attempt by the Government in India to democratise justice, thereby bringing inexpensive and time bound justice almost to the door steps of the consumers. How far could this be possible, is a topic for a full-fledged study and research. It would, however, be suffice to say that the a new era of consumer activism was dawned in the country once the Consumer Protection Act, 1986 was implemented and the Three-Tier Consumer Disputes Redressal Agencies established under this Act became functional.

In the following paragraphs, the present researcher has discussed in brief the Preamble and the Statement of Objects and Reasons for the Enactment of the Consumer Protection Act, 1986 (The Principal Act).

6.2.1 The Preamble to the Consumer Protection Act, 1986

The Preamble to the Consumer Protection Act, 1986 (the Principal Act) reads as under:

"An Act to provide for better protection of the interests of consumer 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."

6.2.2 Statement of the Objects and Reasons for the Enactment of the Consumer Protection Act, 1986

As mentioned in the earlier chapters, the Consumer Protection Act, 1986 proved to be a milestone in the arena of consumer protection law and policy in India. Following was the Prefatory Statement for the Consumer Protection Act, 1986:

The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and for that purpose, to make provision for the

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\(^1\) Act No. 68 of the 1986.
establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith. It seeks, inter alia, to promote and protect the rights of consumers such as:

(i) The right to be protected against marketing of goods which are hazardous to life and property (The Right to Safety);

(ii) The right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices (The Right to Information);

(iii) The right to be assured, wherever possible, access to an authority of goods at competitive prices (The Right to Access);

(iv) The right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums (The Right to be Heard);

(v) The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers (The Right to be Redressed); and

(vi) The right to consumer education (The Right to Consumer Education)

These objects are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central and the State level. To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the district, state and central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.

The Consumer Protection Act, 1986 came into force on 24 December 1986. The Consumer Disputes Redressal Mechanism envisaged under the Act was soon established and a new era of consumer concern was dawned in the country. Nearly five years after its enactment, the Consumer Protection Act, 1986 was amended by virtue of the Consumer Protection (Amendment) Act, 1991. When the 1986 Act was enacted, hardly had anybody imagined and visualised that the Act will so soon be amended. Nevertheless, it was amended. This is a separate issue that only minor amendment was made in the law leaving everything to the
major amendment that ultimately came into being in the year 1993 thereby amending and over-hauling the 1986 Act to a very large extent.

6.3 Statement of Objects and Reasons for the Enactment of the **Consumer Protection (Amendment) Act, 1991**

As the researcher has mentioned in the earlier paragraphs also, the **Consumer Protection Act, 1986** was first amended by virtue of the **Consumer Protection (Amendment) Act, 1991**. Following was the Statement of Objects and Reasons for the Enactment of the **Consumer Protection (Amendment) Act, 1991**.

*In view of the recent decision of the National Consumer Disputes Redressal Commission (National Commission) regarding the order under sub-section (2) of section 14 of the Act, it was felt that the said Act required certain modifications. Accordingly, the Consumer Protection (Amendment) Ordinance, 1991, was promulgated to provide, inter alia,*

(i) *For amendment of sub-section (2) of section 14 to provide that every proceeding of the District Forum shall be conducted by the President and at least one Member thereof sitting together;*

(ii) *That every order made by the District Forum shall be signed by its President and Member or Members who conducted the proceeding;*

(iii) *That where the proceeding is conducted by the President and a Member of the District Forum and they differ on any point or points, the same shall be referred to the other Member on such point or points and the opinion of the majority shall be the order of the District Forum;*

(iv) *To validate the orders which have been signed by the President and one Member of the District Forum or the State Commission before amendment; and*

(v) *That in the case of vacancy in the office of the President, the person who is qualified to be appointed as President of the District Forum of the State Commission may be as President of the District Forum or the State Commission may be appointed to hold such office.*

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2 Amendment Act 34 of 1991.
6.4 Statement of the Objects and Reasons for the Enactment of the Consumer Protection (Amendment) Act, 1993

As mentioned above, the passing of the Consumer Protection (Amendment) Act, 1991 was soon followed by the passing of the Consumer Protection (Amendment) Act, 1993, thus just in less than the period of two years. Following was the Statement of Objects and Reasons for the passing of the Consumer Protection (Amendment) Act, 1993.

In 1986, the Consumer Protection Act was enacted to provide for better protection of the interests of consumers and for that purpose to make provisions for the establishment of consumer councils and other authorities for the settlement of consumer disputes and matters connected therewith. The working of the redressal agencies set up under the Act has helped to arouse the expectations of the people and also brought to focus certain inadequacies in the coverage of the Act. The Consumer Protection (Amendment) Act, 1993 seeks to plug those loopholes and to enlarge the scope of areas covered and to entrust more powers to the redressal agencies under the Act. Accordingly the Bill, inter alia, seeks to provide for the following:

(i) To enlarge the scope of the Act so as to enable the consumer to file class action complaints where such consumers have a common interest and to file complaints relating to restrictive trade practices adopted by a trader;

(ii) To enable the consumers who are self-employed to file complaints before the redressal agencies where goods bought by them exclusively for earning their livelihood, suffer from any defect;

(iii) To add “services” relating to housing constructions;

(iv) To enable filing of class action complaints on behalf of group of consumers have the same interest;

(v) To provide for the constitution of selection committees for the selection of non-judicial members of various redressal agencies;

(vi) To increase the monetary jurisdiction of District Fora / State Commissions / National Commission;

3 Amendment Act 50 of 1993.
(vii) To confer additional powers on the redressal agencies by way of awarding costs to the parties, for ordering removal of defects or deficiency from the services, and for empowering to recall goods likely to endanger the safety of the public, etc.;

(viii) To impose punishment on the complainant in case of frivolous or vexatious complaints; and

(ix) To provide for a limitation period of one year for filing complaints.

6.5 Statement of the Objects and Reasons for the Enactment of the Consumer Protection (Amendment) Act, 2002

As mentioned above, the Consumer Protection (Amendment) Act, 1993 considerably amended and over-hauled the Principal Act of 1986. One of the key features of this Amendment Act was enhancement of the pecuniary jurisdiction of the Consumer Disputes Redressal Agencies, though there were number of other key issues that came for amendment. Following was the Statement of the Objects and Reasons for the enactment of the Consumer Protection (Amendment) Act, 2002.

The enactment of the Consumer Protection Act, 1986 was an important milestone in the history of the consumer movement in the country. The Act was made to provide for better protection and promotion of consumer rights through the establishment of Consumer Councils and quasi-judicial machinery. Under the 1986 Act, Consumer Disputes Redressal Agencies have been set up throughout the country with the District Forum at the district level, State Commission at the state level and the National Commission at the national level to provide simple, inexpensive and speedy justice to the consumer with complaints against defective goods, deficient services and unfair and restrictive trade practices. The Act was also amended in the years 1991 and 1993 to make it more effective and purposeful.

Although the Consumer Disputes Redressal Agencies have, to a considerable extent served the purpose for which they were created, the disposal of case has not been fast enough. Several bottlenecks and shortcomings have also come to light in the implementation of various provisions of the Act. With a view to achieving quicker disposal of consumer complaints by the Consumer Disputes Redressal Agencies securing effective implementation of their orders, widening the scope of

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4 Amendment Act 62 of 2002.
some of the provisions of the Act to make it more effective, removing various lacunae in the Act and streamlining the procedures, amendments are proposed in the Act, which, inter alia, include the following, namely:

(i) Provisions for creation of Benches of the National Consumer Disputes Redressal Commission and State Consumer Disputes Redressal Commission as well as holding of Circuit Benches of these Commissions;

(ii) Prescribing the period within which complaints are to be admitted, notices are to be issued to opposite party and the complaints are to be decided. Similar provisions have been proposed also in respect of appeals;

(iii) No adjournment to be ordinarily allowed where a speaking order giving reasons would be made;

(iv) Enhancing the pecuniary limits of jurisdiction of consumer disputes redressal agencies so that the District Forums are unable to deal with complaints involving value of goods or services and claims compensation upto Rs. 20 lakhs (against Rs. 5 lakhs at present), fixing the pecuniary limits of jurisdiction of State Commissions from Rs. 20 lakhs upto Rs. 1 crore (as against above Rs. 5 lakhs upto Rs. 20 lakhs at present) and National Commission above Rs. 1 crore (as against above Rs. 20 lakhs at present);

(v) Enabling provision for charging of fee in respect of complaints filed before the consumer disputes redressal agencies;

(vi) Provision for depositing, either fifty per cent of the amount of compensation or fine or the amounts mentioned below whichever are less, before the admission of appeal, namely:

   (a) Rs. 25,000 in case of appeal to the State Commission from the District Forum;

   (b) Rs. 35,000 in case of appeal to the National Commission from a State Commission;

   (c) Rs. 50,000 in case of appeal to the Supreme Court from the National Commission;

(vii) Exclusion of services availed for commercial purposes from the purview of the consumer disputes redressal agencies;
(viii) Prescribing minimum qualifications as well as disqualifications for Members of the consumer disputes redressal agencies;

(ix) Provision for re-appointment of President and Members of the District Forum, State Commission and the National Commission, for another term of five years;

(x) Extending the provisions of the Act to service provider indulging in unfair or restrictive trade practices of offering services which are hazardous;

(xi) Bringing sale of spurious goods or services within the meaning of unfair trade practices;

(xii) Expressly conferring the powers of a Judicial Magistrate of the first class on the consumer disputes redressal agencies with a view to trying offences under the Act;

(xiii) Provision for recovery of amounts ordered to be paid by the consumer disputes redressal agencies with a view to trying offences under the Act;

(xiv) Provision for issue of interim order by the consumer disputes redressal agencies, in case where it is considered necessary by such agencies;

(xv) Provision for substitution of legal heir or representative as a party to the complaint in the event of the death of the complainant or the opposite party.

The Consumer Protection Councils at the Central and State levels are important bodies for the promotion and protection of consumer rights. It is proposed to make the establishment of these Councils a necessary requirement. It is also proposed to provide for the establishment of District Consumer Protection Councils for promotion and protection of consumer rights at the district level.


Following the amendment of the Consumer Protection Act, 1986 by the Consumer Protection (Amendment) Act, 2002, the consumer protagonists as well as the consumer protection law experts had shown great satisfaction over the point that the government was apparently serious in promoting and protecting consumer interests. However, as ever, many critics

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5 Amendment Bill No. 127 of 2011. It was introduced in the Lok Sabha on 16 December 2011.
criticised even this amendment and they were never tired of asking for yet another amendment. And quite surprisingly, the government policy fell in line with these demands. Following are the Statement of the Objects and Reasons for the introduction of another Amendment Bill in the Parliament:

The Consumer Protection Act, 1986 was enacted by Parliament to provide for better protection of the interests of consumer and for that purpose to make provision for establishment of consumer councils and other authorities for the settlement of consumer disputes, and for matter connected therewith. The aforesaid Act has been amended in the Years 1991, 1993 and 2002 to make the provisions of the Act more effective. Although the working of the Consumer Disputes Redressal Agencies has served the purpose under the said Act to a considerable extent, the disposal of cases has not been as quick due to the various constraints. Several shortcomings have been noticed while implementing various provisions of the Act.

With a view to widening and amplifying the scope of some of the provisions of the said Act, to facilitate faster disposal of cases and to rationalize the qualifications and procedure of selection of the President and Members of the National Commission, State Commission and District Forum, it has been felt necessary to amend the said Act. The Consumer Protection (Amendment) Bill, 2011, inter alia, makes the following provisions, namely:

(a) define the expression ‘unfair contract’ and include the same within the scope of the Act:

(b) confer power upon the State Government to direct, by notification:

(i) that a District Forum shall exercise the jurisdiction of any other District where no District Forum has been constituted; or

(ii) that the President or a member of a District Forum shall discharge the functions of President or members of any other District Forum in which there exists a vacancy of President or members, as the case may be;

(c) confer power upon the State Government to refer back the recommendation of the Selection Committee to it for making fresh recommendation, within a period of two months from such recommendation and for reasons to be recorded in writing, in case the State Government is of the opinion that any person recommended by the Selection Committee for appointment as
President or member of a District Forum or a member of the State Commission, as the case may be, has not been found fit for appointment as such;

(d) make a provision that the Selection Committee shall take into consideration the observations or performance appraisal report, if any, made by the President of the State Commission or the President of the National Commission, as the case may be, in respect of any member of the District Forum or the State Commission, as the case may be, being considered for reappointment as such;

(e) make a provision to the effect that the President or member of the District Forum or ceasing to hold office as such, shall not appear, act or plead before any District Forum in that State in which he had been working as the President or member, as the case may be, of the District Forum;

(f) make a provision to provide that the District Forum shall ordinarily function in the district headquarters and 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;

(g) make a provision for making of a complaint by electronic form also to the District Forum;

(h) make a provision for admissibility of the complaint to be decide within twenty-eight days instead of twenty-one days from the date on which the complaint was received and in case the District Forum does not decide the issue of admissibility of the complaint within the said period it shall be deemed to have been admitted except in the case where the complainant has failed to appear before the District Forum on the day of hearing without any reasonable ground;

(i) confer power upon the District Forum to issue an order to the opposite party to pay reasonable rate of interest on such price or charges as may be decided by the District forum in case the price of goods or charges paid by the complainant have been ordered to be returned to the complainant;

(j) make provision for additional disqualification of a member of the District Forum or the State Commission or the National Commission if he is or
continues to be, after appointment, a member or office bearer of any political party;

(k) make provision for increase of the minimum age for appointment as member in case of the State Commission from thirty-five years to forty-five years and in the case of the National Commission from thirty-five years to fifty-five years;

(l) make provision for increase of the period of experience for appointment as member in case of the State Commission from ten years to twenty years and in case of the National Commission from ten years to thirty years;

(m) make provision for substitution of the explanation relating to definition of the expression “person having judicial background” in case of the National Commission, as to include therein the persons who are or have been a Judge of a High Court or the Supreme Court;

(n) make provision that the President or member of the District Forum, the State Commission and the National Commission, on ceasing to hold office as such, shall not appear, act or plead before the District Forum or the State Commission or the National Commission, as the case may be;

(o) make provision that the conditions of service of the members of the National Commission shall be the same as are applicable to a Judge of a High Court;

(p) confer power upon the National Commission or the State Commission, as the case may be, to direct any individual or organisation or expert to assist the National Commission or the State Commission, as the case may be, on application by a complainant or otherwise, if the National Commission or the State Commission is of the opinion that it involves the larger interest of consumers;

(q) make a provision that an order of the District Forum, the State Commission or the National Commission may be enforced by it as if it were a decree of a civil court or it may send, in case of its inability to execute such order to the court having jurisdiction;

(r) make a provision for payment by every person not complying with the order of the District Forum, State Commission or the National Commission, as the case may be, of an amount of not less than five hundred rupees or one-half
per cent of the value of the amount awarded, whichever is higher, for each
day of delay of such non-compliance of the order, till it is paid, in addition to
the payment of the awarded amount;

(s) confer power upon the Central Government to call upon the National
Commission to furnish, periodically or as and when required any
information concerning the pendency of cases in the prescribed form; and
confer power upon the State Government to call upon the State Commission
or any District Forum to furnish, periodically or as and when required any
information concerning the pendency of cases in the prescribed form;

(t) make provisions for furnishing of returns and statement and particulars in
regard to the pendency of cases, by

(i) the District Forum to the State Commission,

(ii) the State Commission to the National Commission,

(iii) the National Commission to the Central Government

3. The Bill seeks to achieve the aforesaid objectives.

6.7 Critical Evaluation of the Consumer Protection Act, 1986

The Consumer Protection Act, 1986 was first amended in the year 1991 and then the Act was
amended in the year 1993. And finally it was amended once again in the year 2002 “inspite of
many crossings and red lights, diversions and directions on the way.”6 According to the
consumer protection law experts, the rational and judicial implementation and interpretation
of the law laid down through new and the amended clauses is the most crucial job to be
undertaken by the Consumer Disputes Redressal Agencies. According to the critics, and
rightly so, there are yet “many bends and edges when courts are placed before a situation
where they are to apply their wisdom in interpreting the statute and come to some conclusion
compatible to the very intention and purpose of this welfare legislation.”7 It may, therefore,
be appropriate to discuss some of the relevant issues that have emerged out of the three
amendments.

6 Prem Lata, “Consumer Protection Act Amendments and their Reflected Results”, Consumer Protection and

7 id.
In the first place, for instance, the term ‘Unfair Trade Practice’ inserted by the **Consumer Protection (Amendment) Act**, 2002 which had clearly been spelt out and defined under section 2 of the 1986 Act, had attracted a lot of attention of the business groups. Manipulation in price or affecting flow of supply of goods in the market, delay in supply of goods as agreed had a direct check due to the elaborate definition made in the 2002 Act. The suppliers of goods and the providers of service have been coming with their own interpretation to the clauses suitable to them and many chapters are expected and are likely to be opened in the due course of time to frustrate justice in the favour of the exploited consumers.\(^8\)

According to the consumer protection law experts, the courts are expected to see through the mirror for the actual reflection and to identify the catch will be affecting the interests of the consumers at large. Once one parameter is set and accepted, that is going to become the law in practice. This is indeed a very crucial time for the Consumer Disputes Redressal Agencies to deal with the subject very carefully and wisely, too, so as to protect the very intention and purpose of the legislature. It has also affected greatly the companies / institutions giving very glaring picture of their products / performance through their advertisements in media. As a matter of fact, they are in great trouble as consumer courts are issuing orders of full reimbursement to the consumer in case of failure to fulfil their realistic promises they make, may it be job guaranteed course or promise to a girl to make her fair with their product.\(^9\)

One of the important amendments in the **Consumer Protection Act**, 1986 was regarding the following of the procedure under sections 12 and 13 respectively of the Act with the idea and purpose of speedy disposal and summary procedure as suggested to be followed. Various prominent judgments of the National Consumer Disputes Redressal Commission and the Hon’ble Supreme Court of India have already set the law by now that courts may ignore the technicalities not only of the **Code of Civil Procedure**, 1908 but even petty factual matters as and when felt necessary for meeting the ends of justice while disposing the consumer disputes.\(^10\)

The 2002 Amendment specifically laid down that days are fixed within which period certain procedure is to be completed and in case of failure to do so, the reasons are to be recorded for the delay by the Consumer Disputes Redressal Fora. Section 12 was amended for the purpose

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8 *id.*

9 *id.*

10 *id.*
and it has been provided that the complaint shall either be admitted or shall be rejected by giving an opportunity to be heard, to the consumer within twenty days from the date of registration of the complaint. Once the complaint is admitted, it shall not be transferred to the other court or tribunal or to any other authority under any other law, whatsoever. It means that if at all the case does not fall under the provisions of the consumer law, it shall be decided at the first stage itself. This was very much desired which suits both consumer as well as the court.

However, the truth is that the Consumer Disputes Redressal Agencies with all their efforts are not able to do much justice for want of adequate infrastructure though many schemes have been announced by now in the interests of the consumers. According to the consumer law experts and critics, if this practice continues for another few years, this may also become an accepted procedure thereby frustrating the very purpose of the amendment. This issue, therefore, needs utmost attention. It must also be understood that it is not only the law in the books which can change the scene overnight. As a matter of fact, this is result of the collective efforts of the total machinery involved in the procedure which can actually help the general public at large for converting an idea into reality.\textsuperscript{11}

One of the positive outcomes of the 2002 Amendment was with regard to the role of the High Courts in the context of consumer protection. For example, the \emph{Consumer Protection Act, 1986} says that an appeal against the order of the District Consumer Disputes Redressal Forum goes to the State Consumer Disputes Redressal Commission which is the next higher forum for consumer matters and an appeal against the order of the State Consumer Disputes Redressal Commission goes to the National Consumer Disputes Redressal Commission, the next higher forum for appeal against the orders of the former. However, none could stop anyone from filing an appeal before the High Court of a State against the order of the District Consumer Disputes Redressal Forum. A High Court certainly enjoys higher status than the District Forum, the latter being the district level court and the High Courts in the country did entertain a few appeals. In some situations, the orders of a High Court and Orders of a State Consumer Disputes Redressal Commission of the same state were different even on the same subject. Quite interestingly, however, the orders of the High Court in a state are absolutely binding for the district level Consumer Disputes Redressal Forum. This was the anomaly

\textsuperscript{11} ibid., pp. 6-7.
which was experienced and the issue was apparently seemed to have been settled by the
*Consumer Protection (Amendment) Act, 2002*.\(^{12}\)

The 2002 Amendment had specifically taken steps to spell out the appellate courts, that is, the
State Consumer Disputes Redressal Commission for the District Consumer Disputes
Redressal Fora and the National Consumer Disputes Redressal Commission for all the State
Consumer Disputes Redressal Commissions. Finally, the appeal against the orders of the
National Consumer Disputes Redressal Commission shall lie before the highest court of the
land, that is, before the Hon’ble Supreme Court of India.

Thus the *Consumer Protection (Amendment) Act, 2002* made the things clear to an extent.
The appeals, as far as consumer protection cases are concerned, will not go to any other court
/ tribunal except to the next higher forum envisaged and established under the 1986 Act. This
amendment has certainly shown effective results. Many High Courts have rejected such
appeals clearly spelling out that the Consumer Disputes Redressal Agencies were only
competent to deal with such matters. This further placed the Consumer Fora on a high
pedestal and removed a lot of anomaly.\(^{13}\)

As regards the issue concerning the award of the interim relief to the consumer, the power to
grant interim relief / interim order has proved a great blessing and as consumers are now not
required to wait for their reconnection of electricity or telephone till the matter is disposed of
finally. A lot of corrupt practices could be curbed by the Consumer Disputes Redressal
Agencies at their level only by way of summoning the senior officials when found some
employee arbitrarily disconnecting electricity. There is now fear among the erring employees
which was perhaps never seen earlier as they used to virtually sit on the files for years
together. Now these people may not be able to do so due to the intervention by the courts by
way of issuance of interim orders. Not only that the Consumer Fora are now directing the
erring authorities to personally penalize the employee responsible for causing damages to the
sufferer consumer on the strength of the Supreme Court of India’s verdict in *Lucknow
Development Authority v. M.K. Gupta*.\(^{14}\)

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\(^{12}\) *ibid.*, p. 12.

\(^{13}\) *ibid.*, pp. 8, 12.

\(^{14}\) 1993 CTJ 929 (SC).
On the issue of transfer of cases, it may be appropriate to mention that there has been a lot of confusion with regard to transfer of cases from one Consumer Disputes Redressal Forum to another or from one State Consumer Disputes Redressal Commission to another. With section 17A in place by virtue of the new amendment, it is crystal clear that a State Commission at any stage can transfer a case from one District Consumer Forum to another. Similar is the situation with the National Commission having power to transfer the cases from the one State Consumer Disputes Redressal Commission to another Commission. This has now cleared the doubts whereas earlier no one was seen ready to shoulder the responsibility due to unclear version on the subject.15

With regard to the issue relating to the pecuniary jurisdiction of the Consumer Disputes Redressal Agencies, according to the experts, and rightly so, raising of the pecuniary jurisdiction for the District Forum from rupees five lacs to rupees twenty lacs has not brought much addition to the cases on this ground. Cases are no doubt increasing day by day but this is because of the confidence that the complainants are reposing and showing in the Consumer Disputes Redressal Agencies. It is noticed that many market goods are covered within rupees five lacks even. Housing and insurance claims also at large are covered at the most within rupees ten lacs. For the upper middle class of the society wherein the cost of land in the posh area has increased manifold, housing construction claims needed a little hike. But then the Consumer Disputes Redressal Agencies can entertain only the question of services and for settlement of services matter even rupees ten lacs could be sufficient. It may yet be premature to say anything at this stage. May be in another few years, things may change. Now when the passing of another Consumer Protection (Amendment) Act is on the anvil, we have to wait and watch the policies of the legislature.16

Many eyebrows were raised on the condition of depositing of an amount of Rs. 25,000/- or fifty per cent of the decreetal amount with the appellate court for filing the appeal. The complaints of the consumers target the traders and the service providers. Therefore, the appellants are generally the erring traders and service providers. This added clause is in fact reducing all the necessary appeals. Big companies have a battery of eminent lawyers on their panel who go for appeal in almost every case without going into the merit of the case causing

15 Prem Lata, 2005, pp. 6-8, 12, at p. 7.
16 ibid., pp. 7-8.
a lot of harassment to an ordinary consumer. Hence according to the consumer law experts, and rightly so, this provision needs to be understood in its proper spirit and context.\textsuperscript{17}

On the point of the limitation, some of the consumer protection law experts have voiced their grievances against a few provisions of the 1986 Act. According to these critics, the \textit{Consumer Protection Act}, drafted and legislated in an endless hurry, has many a loophole. One such lacuna is manifest here also. The 1986 Act provides in sections 15, 19 and 23 respectively a period of 30 days for filing an appeal from the District Consumer Disputes Redressal Forum to the State Consumer Disputes Redressal Commission, from the State Consumer Disputes Redressal Commission to the National Consumer Disputes Redressal Commission and from the National Consumer Disputes Redressal Commission to the Hon’ble Supreme Court of India. Then we have section 24 which reads as under:

Section 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.

While the framers of the \textit{Consumer Protection Act} did provide a period for filing an appeal, they forgot to spell out the period within which a revision could be filed. Thus, it was for the apex National Commission to painfully deliberate on this point and it held in its order dated 19 November 2001 in \textit{Kerala Protection Centre v. District Executive Officer}\textsuperscript{18} that revision petitions must not be entertained if filed after ninety days. Ninety days’ outer limit was thought advisable by a novel reasoning when it observed that “though the \textit{Consumer Protection Act}, 1986 does not provide for any limitation for revisions, yet the Act sets a time schedule for decisions of the complaints. It is important that the revision petitions should be filed at an early date. Period for filing appeal is 30 days. In our view, revision should ordinarily be filed within a period of 90 days otherwise it is likely to be dismissed on the grounds of latches”. It has once again reiterated this position in its order dated 12 April 2002 in Revision Petition No. 804 of 2000.\textsuperscript{19}

Not only that but totally ignoring the provisions of section 24 which states that an order attains finality if it is not appealed against within 30 days, the National Commission has provided in Regulation 14(1)(i) of the \textit{Consumer Protection Regulations}, 2005 that a revision

\textsuperscript{17} ibid., p. 8.
\textsuperscript{18} 2002 CTJ 264.
\textsuperscript{19} Prem Lata, 2005, pp. 6-8, 12, at p. 7.
can be filed within 90 days of the order sought to be revised. What a wonderful innovation against the clear mandate of law?

It also appears that hardly anyone in the National Consumer Disputes Redressal Commission really reads the law interpreted by the higher courts or gives scant regard to such rulings. The above Regulation was promulgated in 2005 (providing 90 days time for filing a revision), but as early as on 11th December 2001, the Hon’ble Calcutta High Court in *Ajay Bhadra v. State Consumer Disputes Redressal Commission, West Bengal*\(^{20}\) had categorically held that after the order had become final (after 30 days), no revision at all could be entertained.

If the National Commission keeps aside its zeal that it has to expand its horizons and has to become all pervasive, whether law permits or not, and the eminent Members and the Hon’ble President objectively examine the provisions of section 21(b) of the *Consumer Protection Act*, the authoritative pronouncements of the Hon’ble Supreme Court of India laying down the scope of the revisional power and the verdicts of the High Courts about the limitation of the National Consumer Disputes Redressal Commission’s powers, both on substance and on the limitation period, they will hopefully reach the conclusions, as the present researcher has researched and analysed.

It may be repeated and reiterated that the law should be followed and administered as it is written. If a body, whether a Court, a Tribunal or a Commission wants to enlarge its jurisdiction, it can be so done only if the law is suitably amended. One must not twist the law in the manner one wants, even the lay people know this very well. Here I am talking about the National Consumer Disputes Redressal Commission which has to scrupulously follow the law and has to set up a model which hundreds of Consumer Courts working under its supervision are to diligently emulate.\(^{21}\)

### 6.8 Suggested Amendments in the *Consumer Protection Act, 1986*

Keeping in view the fact that the *Consumer Protection (Amendment) Bill, 2011* has already been introduced in the *Lok Sabha* and that it is likely to be passed (with or without modifications, whatsoever) in the near future, the present researcher, with all modesty, would still like to offer a few suggestions for the amendment of the law.

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\(^{20}\) 2002 CTJ 505.

For instance, it may be appropriate to mention that the majority of the orders of the Consumer Disputes Redressal Fora are in the nature of money decree passed by a civil court. The two sections that deal with the execution of the orders of the Consumer Disputes Redressal Fora are sections 25 and 27 respectively of the *Consumer Protection Act*, 1986.

Section 25 of the unamended Act mandates that the order made by a Consumer Forum is executed in the same manner as if it were the decree or order made by a court in a suit and this section further provides that in the event of its inability to execute the order, the District Consumer Disputes Redressal Forum, the State Consumer Disputes Redressal Commission or the National Consumer Disputes Redressal Commission is required to send its order to the court within whose jurisdiction the judgment debtor voluntarily resides or carries on business or personally works for gain and if the judgment debtor is a company, to the court within whose jurisdiction the registered office of such company is situated. Simultaneous execution is permissible by invoking two or more modes of execution against the same judgment debtor. It is not out of context to say that simultaneous execution for attachment and sale of property as well as arrest of judgment debtor is permissible. The decree holder can proceed to execute the order against the judgment debtor simultaneously.\(^{22}\)

Section 5 of the *Limitation Act* applicable to extend the period prescribed to certain cases does not apply to the proceedings under Order 21 of the *Code of Civil Procedure*, 1908. The same provision of the *Code of Civil Procedure* by implication is applicable to the proceedings for execution of the interim orders passed by the District Consumer Disputes Redressal Forum, the State Consumer Disputes Redressal Commission or the National Consumer Disputes Redressal Commission, as the case may be. Period of time for the execution of the interim orders passed by a civil court is 12 years from the date of passing of the decree and on the same analogy, the period of limitation for execution of an order passed under the *Consumer Protection Act*, 1986 by the District Fora, the State Commissions or the National Commission is 12 years from the date of passing of the order.\(^{23}\)

By virtue of the enactment of the *Consumer Protection (Amendment) Act*, 2002, section 25 of the Act has undergone substantial change, instead it has been transformed into an instrument


\(^{23}\) *id.*
in the hands of the District Collector in regard to the attachment and sale of property of the judgment debtor.

This section has three sub-sections. Sub-section 1 provides consequences for non-compliance of an interim order passed by the District Forum, or the State Commission or the National Commission, as the case may be. It provides for attachment of the property of the person who has not complied with the interim order of that consumer forum. Sub-section 2 mandates for the sale of the attached property and damages out of sale proceeds to the complainant. This provision of law enables the person whose defiance to the interim order of consumer forum led to the sale of his property to receive the balance sale proceeds after adjusting the amount awarded as damages to the complainant.

A combined reading of sub-sections 1 and 2 leads us to the inference that the consequence of any defiance to the interim order of the Consumer Disputes Redressal Forum would result in attachment and sale of his property and the procedure for such attachment and sale of the property, in the absence of any specific provision in the Act, would be in accordance with the terms of Order 21 of the CPC.\textsuperscript{24}

It is interesting to see that the District Consumer Disputes Redressal Forum, the State Consumer Disputes Redressal Commission and the National Consumer Disputes Redressal Commission are empowered to execute their interim order while they are deprived by the section 25(3) of the Amended Act. Section 25(3) mandates the District Forum, State Commission and the National Commission to send the order for execution to the District Collector to attach and sell the property of the judgment debtor under provisions of the Revenue Recovery Act. The un-amended Act had empowered the Consumer Forua / Commissions had no power to pass interim order prior to the amended Act and in the alternative to send the order of execution to a competent civil court.\textsuperscript{25}

Execution of the order under section 25 of the Act is required to undergo cumbersome procedure as contemplated under Order 21 of the Civil Procedure Code. Compared to the execution of order under section 25 of the Act, section 27 of the Act provides for speedy and effective result. Section 27 of the Act is penal in its nature and confers the powers of the judicial magistrate of first class on the District Forum, the State Commission or the National

\textsuperscript{24} ibid., p. 150.

\textsuperscript{25} id.
Commission, while trying the petition under section 27 of the Act to impose punishment for non-compliance of the order, 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 Rs. 2,000/- but which may extend to ten thousand rupees, or with both.

Sub-section 3 of section 27 of the Act provides for summary trial of all offences under the Act. The procedure to be followed for summary trial is not provided anywhere in it. Therefore, obviously, the procedure prescribed by section 262 of the Criminal Procedure Code has to be followed by the Fora / Commissions while trying the offence under section 27 of the Act.26

In the absence of the specific provisions of the Act for attachment and sale of the properties of the person who failed to obey the interim order of the Consumer Forum, the procedure provided under Order 21 of the Civil Procedure Code is applicable. It is to be noted that section 60 of the Civil Procedure Code exempts certain properties from attachment and sale in execution of a decree. In other words, section 60 of the Civil Procedure Code specifies what properties are to be attached and sold and what properties are not liable to be attached and sold in execution of decree. Few such properties are, the necessary wearing apparel, cooking vessels, beds and bedding of the judgment debtor, his wife and children, tools of artisans, books of account, a mere right to sue for damages, stipends and gratuities allowed to the pensioners of the government and any right of personal service etc.27

Execution proceedings under section 25 and section 27 of the Consumer Protection Act, 1986 are civil and criminal in nature respectively. Both the proceedings are independent of each other and as such the decree holder is not required to proceed first under section 25 of the Act and then invoke section 27 of the Act. Section 27 of the Act imposes punishment of non-compliance of the order passed by the District Forum, the State Commission or the National Commission, as the case may be. This provision of law is applied by the Fora/Commissions by exercising the powers of Judicial Magistrate First Class. Therefore, enforcement of order under section 27 of the Act is quite different from the enforcement of decree contemplated under Order 21 Rule 37 of the Civil Procedure Code.

26 id.
27 id.
The decree against the judgment debtor is enforced under Order 21 of the *Civil Procedure Code* either by attachment and sale of his properties, movable or immovable, as the case may be, or by his detention in the civil prison. The judgment debtor shall not be arrested in execution of decree unless the decree holder deposits in terms of Order 21 Rule 39 of the *Civil Procedure Code* sufficient amount for the subsistence of the judgment debtor from the time of his arrest until he can be brought before the court and the decree holder should also supply as required by Order 21 Rule 39 of *Civil Procedure Code* such monthly allowance as can be fixed by the court. Section 27 of the Act is criminal in nature and the District Forum having been conferred on it the powers of the Judicial Magisterate of First Class conducts summary trials in accordance with the terms of section 262 of the *Criminal Procedure Code*. Therefore, a proceeding initiated under the *Criminal Procedure Code* does not require the decree holder to deposit any amount for the subsistence of the judgment debtor.\(^{28}\)

Various Consumer Disputes Redressal Agencies across the country have been flooded with the applications filed under section 27 of the *Consumer Protection Act*, 1986 for disobedience to the final order passed by the Consumer Disputes Redressal Fora. Obviously, being afraid of and having conceived the agonizing experience that he has to undergo for execution of the order, the decree holder opts to initiate the proceedings under section 27 of the 1986 Act which is less time consuming and more effective as it creates apprehension of fear of punishment in the mind of the judgment debtor.\(^{29}\)

As per the *Consumer Protection (Amendment) Act*, the Consumer Disputes Redressal Agencies, on being conferred the powers of Judicial Magistrate of the First Class, shall be deemed to be the Judicial Magistrate of the First Class while trying proceedings under section 27 of the *Consumer Protection Act*. The Supreme Court of India in the case of *State of Karnataka v. Vishwabharathi House Building Co-operative Society and Others*\(^{30}\) upheld the constitutionality of section 27 of the 1986 Act.

An application under section 27 of the *Consumer Protection Act*, 1986 is not a complaint to be regulated by the procedure under section 13 of the Act. Most of the reported decisions are in regard to the offences committed under section 27 of the Act. In *Doctor V.P. Mainra v.*

\(^{28}\) 2003 CTJ 85 (SC).

\(^{29}\) 2005 CTJ 469 (HC).

\(^{30}\) 2003 CTJ 85 (NC).
Dawson Leasing Ltd.\textsuperscript{31}, the Hon’ble Delhi High Court held that the proceedings under sections 27 of the \textit{Consumer Protection Act} would be covered by section 446 of the \textit{Indian Companies Act} and as such the Consumer Disputes Redressal Forum could not continue any further proceedings except with the leave of the winding up court. The court held: “It is clear from the language of section 27 that for failure to comply with the orders of the District Forum, the person who was to comply with such an order, is punishable with imprisonment or with fine or with both. Obviously a company incorporated under the Act which is juristic or artificial entity cannot be imprisoned. It is for this reason that when an order is made against a company, its directors would be liable for such a punishment / penalties prescribed under section 27 of the \textit{Consumer Protection Act}.” The High Court transferred to it the execution proceedings filed under section 27 of the \textit{Consumer Protection Act} from the District Forum-II, New Delhi and from Ghaziabad.

In \textit{S. Raghvachair v. V.S. Narayanan and Anr.}\textsuperscript{32}, the Madras High Court had an occasion to deal with the scope and applicability of section 27 of the Act. The High Court was dealing with the jurisdiction of consumer forum in view of the reference being registered by the BIFR and in view of section 22 of the \textit{Sick Industrial Companies (Special Provisions) Act}, 1985. It was held on the analogy of exclusion of section 138 off the \textit{Negotiable Instruments Act}, 1988 from the purview of section 22 of the SICA that petition filed under section 27 of the Act is not included in the word ‘suit’ as envisaged in section 22(1) of the \textit{Sick Industrial Companies (Special Provisions) Act}, 1985.

The Hon’ble Supreme Court held in \textit{Seth Hiralal Patni v. Sri Kali Nath}\textsuperscript{33}, that judgment debtor is stopped from taking objection as to the territorial jurisdiction in execution. In \textit{C. Ravindran Pillai v. Paul Varghese}\textsuperscript{34}, it was held by the Kerala State Consumer Disputes Redressal Commission that the question of jurisdiction of consumer forum on the ground that the judgment debtor not residing within its jurisdiction at the stage of execution proceedings does not arise when he failed to raise objection in the execution proceedings before the District Consumer Disputes Redressal Forum.

\textsuperscript{31} 2007 CTJ 793 (HC).
\textsuperscript{32} AIR 1962 SC 199.
\textsuperscript{33} 2005 CTJ 1178
The judgment of a civil or criminal court is effective to be enforced the moment it is pronounced by the judge in the open court. Order 21 Rule 11(1) of the CPC empowers the decree holder to execute the decree for payment of money on his oral application at the time of the passing of the decree whereon the court may order immediate execution of the decree by the arrest of the judgment debtor, prior to the preparation of a warrant if he is within the precincts of the court. Therefore, the decree holder in a suit enjoys the right to enforce the decree on the date of pronouncement of the judgment. Unfortunately, the decree holder under the Act is deprived of the advantage as enjoyed by the decree holder in a civil court.

Section 15 of the Act stipulates a period of 30 days of the order to prefer appeal by the aggrieved party. The Consumer Disputes Redressal Agencies in the country have been granting time to the judgment debtor to comply with the order within 30 days from the date of communication of such order. In some case, the judgment debtor intentionally avoids service of the copy of the order and thereby he gains time to circumvent the procedure by obstructing the enforcement of the order. By the procedure presently adopted, the valuable right of the decree holder of enjoying the fruits of the order from the date of judgment is not enforceable under the Act till the judgment debtor is served with the copy of the order and till a period of 30 days thereafter. A civil court does not stipulate time in the judgment or decree for its execution.

It may be appropriate to mention here that civil liability is remedial and criminal liability is penal. Execution of order under section 25 of the Act cannot be left at the mercy of the District Collector who is preoccupied with the administrative affairs of various departments in the district. It is not possible for the District Collector to execute such orders passed by the Consumer Forum in regard to the direction for removal of defective goods or replacing the defective goods or the orders directing to cease and desist from providing hazardous services, and to restrain the judgment debtor from practising of unfair trade practices, execution of registered sale deeds in respect of the service of housing etc.

Consumer Disputes Redressal Agencies have no enforcement machinery for execution of warrants they issue against a judgment debtor who evades either the service of notice or avoids to appear before the consumer forum despite the service of notice on him. The Criminal Procedure Code is exhaustive and deals with all aspects which include the arrest and detention of the accused after he is convicted and sentenced. However, the criminal court cannot proceed with the trial when the accused is absent and till he is produced before it, the
case would come to a standstill. Therefore, the Forum, while trying the application filed under section 27 of the Act, by adopting the procedure for summary trial contemplated in the Criminal Procedure Code cannot proceed further except issuing warrants against the judgment debtor who intentionally avoids to make appearance taking advantage of the golden rule in criminal law that no order in absence of the accused can be passed against him.

The police executes the warrant of arrest issued by the Consumer Forum; they prefer to execute the warrant of arrest issued by regular courts as they file the cases in the court. Sometimes, influential people manage the police concerned so as to avoid execution of the warrants issued against them. Therefore, warrants are kept pending for several years and in these circumstances, execution of order under section 25 of the 1986 Act would be effective and yield results as the decree holder will have the opportunity for attachment and sale of the properties pertaining to the judgment debtor. Suitable amendment is sought in section 25 of the 1986 Act restoring the power to the District Forum, the State Commission and the National Commission is regard to attachment and sale of the properties of the judgment debtor in execution of final order passed by them so as to achieve the goal set by the concept of speedy justice.

6.9 Conclusion

In conclusion, one can state that the Consumer Protection Act, 1986 is a beneficent and benevolent piece of legislation that has nearly revolutionized the justice delivery system in the country. There is no denying the fact that the Principal Act of 1986 had a large number of defects and deficiencies. The government had realized it at the very early stages. Hence in order to point out the defects and deficiencies and to suggest the suitable amendments in the law, the Government of India had constituted a number of working groups from time to time. The findings of these Working Groups have been referred to and quoted even at appropriate places in the body of the present thesis. Most of the recommendations given by these Working Groups have generally been accepted and have also been reflected in the amendments, both in the 1993 Amendment and in the 2002 Amendment. However, there are still some important recommendations that have not been implemented. One can certainly hope that the remaining loopholes in the Consumer Protection Act, 1986 shall be plugged in the near future when the law is next amended, hopefully by the Consumer Protection (Amendment) Act, 2014 if it is passed in the next session of the Parliament as the Consumer Protection (Amendment) Bill has already been introduced in the Lok Sabha.
Notwithstanding, the large number of suggestions with regard to the amendment of the law, that is, the Consumer Protection Act, 1986, the success of the consumer movement does not depend alone on the enactment, implementation and amendment of law. However, there are a large number of factors that play an important role in the success of any socio-economic movement in a civil society. As a matter of fact, in order to make the consumer movement a thundering success, public awareness must be created which can ideally be done through dissemination of information in the community libraries, the research centres, the audio-visual centres and the institutions of “community service”, and in the courses in the institutions of higher learning to educate the public. Since the neglect of the rural areas is lamentable, the 1986 Act should provide for the establishment of such forums in villages also to bring justice to the doorsteps of the poor and illiterate consumers. According to some people, the government should also appoint two members to the forum who need to be the persons of eminence and reputation without political considerations. Universities and colleges should also mobilize students to create consumer awareness on rights and remedies also at the rural level. According to these activists, Consumer Disputes Redressal Fora and the Legal Aid Centres in the country should play their role in the implementation of this beneficial piece of legislation and by way of creation of awareness among the consumers about their rights by giving them the proper guidance and assistance in protecting their interests. Besides the multifarious steps recommended in the above lines, the consumers themselves have the responsibility towards the effective implementation of consumer rights.\footnote{For further details, see: Harloveleen Kaur, “Consumer Protection Act: Suggestions to Remove Deficiencies and Defects”, Consumer Protection and Trade Practices Journal, Vol. 13, 2005, pp. 26-27, at p. 27.}

We as consumers should first believe in performing our duties well. The Father of the Nation Mahatama Gandhi used to say that “If we perform our duties well, our neighbours will enjoy their rights well”. We must follow this advice and we will be able to enjoy a society where consumer sovereignty will be the order of the day.