5.1 INTRODUCTION

The year 1986 is a Magna Carta in the history of consumerism. It was this year that witnessed the enactment of the Consumer Protection Act. This Act is one of the benevolent social legislation intended to protect the large body of the consumers from exploitation. The Consumer Protection Act, 1986 has come as a panacea for consumers all over the country and has assumed the shape of practically the most important legislation enacted in the country during past few years. It has become the vehicle for enabling people to secure speedy and in-expensive redressal of their grievances. With the enactment of this law, consumers now feel that they are in a position to declare "Sellers Beware" whereas previously the consumers were at the receiving end and generally told "Buyers Beware".

Only statutory umbrella could be a right, perfect and an effective dose for a consumer to have his say. That consumer is the king, came slowly to receive statutory recognition in India, both in the form of educating a consumer and also compensating him by summary and inexpensive proceedings. In fact, recognising the rights of a consumer keeps the manufacturer and a trader alert, creative and innovative which in any developing country are essential tools and means of development. The consumer wants a full value for his money whether he purchases goods or hires services. If the manufacturer is made accountable for defects or deficiencies, the improvement would follow a consequence.

Seeking redressal through courts is not only time consuming but also a costly process. It was therefore felt necessary that not only the consumer is to be educated and his interests are to be protected but redressal forums
providing summary and inexpensive reliefs are a must if consumer movement in India is to receive a boost and effectively counter the strong lobby of manufacturers or traders. The Consumer Protection Act. (CP Act) 1986 was therefore enacted. It has been comprehensively amended by Consumer Protection Amendment Act, 1991, 1993 and 2002. The Act is supplemented by the Consumer Protection Rules.

Now in this chapter, efforts have been made to discuss the provisions under CP Act, 1986 and amendments. Efforts have also been made to analyse critically and evaluate the case references of various judgements given by District Fora, State Commission and National Commission.

5.2 OBJECTIVES & SCOPE OF THE ACT

The Consumer Protection Act, 1986 was enacted to provide for better protection to the interest of consumers and for that purpose to make provisions for the establishment of consumer council and other authorities for the settlement of consumers' disputes and for matters connected therewith.

The Act, *inter alia*, seeks to promote and protect the rights of consumers such as:

(i) right to be protected against marketing of goods which are hazardous to life and property.

(ii) right to be informed about the quantity, potency, purity, and price of goods to protect the consumer against unfair trade practices.

(iii) right to be assured, wherever possible, access to variety of goods at competitive prices.

(iv) right to be heard that consumer's interest will receive due consideration at appropriate forums.

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

(vi) right to consumer education.
The objectives are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State levels.

The Act applies to all goods and services, except otherwise provided by the Central Government by notification. To provide speedy and simple redressal of consumer disputes, a quasi-judicial machinery is set up at the District, State and Central levels. The three-tier system of quasi-judicial bodies will observe the principles of natural justice and are empowered to give reliefs of a specific nature and to award, wherever appropriate compensation to consumers. Penalties for noncompliance of the orders given by the quasi-judicial bodies have also been provided.

5.3 NATURE OF CONSUMER PROTECTION ACT, 1986

While other legislations may be either punitive or preventive, the Consumer Protection Act compensates the consumer. The provisions of the Act are in addition to and not in derogation of the provisions of any law for the time being in force (Sec.3). In Marine Container Services South Pvt. Ltd. V. Government 1998(3) SCC 247, it has been held that the Contract Act applies to all litigants before the Commissioner under the Consumer Protection Act. The Consumer Protection Act therefore gives the consumer an additional remedy besides those which may be available under other existing laws. Existence of an arbitration clause in the agreements is no bar to the entertainment of complaint by the Redressal Agency as the remedy under the Act is in addition to the provision of any other law (Skypak Couriers Ltd. V. Tata Chemicals Ltd-2000(5) SCC294). However, the Consumer Forums under the Act have not taken over the jurisdiction of Civil Courts. If the dispute between the parties is pending in Civil Court, no Consumer Forum will adjudicate the dispute. Similarly, if evidence to be laid by the parties to the dispute is voluminous or complicated, the parties will be referred to the appropriate Civil Court.
Consumer Protection Act, thus enshrines the rights of a consumer to be informed about the quality, potency, price etc. of the goods to be protected against unfair trade practices, to seek inexpensive and expeditious redressal of grievances before the Consumer Forums. Consumer Protection Act is a benevolent piece of legislation to protect a large body of consumers from exploitation (Charan Singh V. Healing Touch Hospital - 2000 (7) SCC 668).

5.4 TERMINOLOGY

5.4.1 Consumer [Sec.2(i)(d)]

A consumer is a person who:

(i) buys any "goods" for a consideration; or
(ii) hires or avails of any "services" for a consideration;
(iii) "uses the goods" with the approval of the person who has bought the goods for consideration;
(iv) "is beneficiary of services" with the consent of the person who has hired the services for consideration.

Consideration may have been paid or promised, or partly paid and partly promised. A person may also buy the goods or may hire or avail of the services under any system of deferred payment. Buying of goods and hiring of services have to be necessarily for a consideration. There should be a completed transaction of sale and purchase.

A person claiming himself as 'consumer' should satisfy, among others, three conditions namely, (i) the service should have been rendered to him, (ii) the service should be hired by him, and (iii) he should have paid the consideration for hiring the service.

A person who buys goods and uses them himself, exclusively for the purpose of earning his livelihood, by means of self employment, is within the definition of the expression 'consumer' (Laxmi Engineering Works v.P.S.G. Industrial Institute -AIR 1995 SC 1428).
To seek redressal under the Consumer Protection Act, it is necessary to first prove that one is a 'Consumer' as defined under the Act. The term 'consumer' has also been defined separately for the purpose of goods and services.

5.4.2 Goods: The meaning of the word "Goods" under the Consumer Protection Act is the same as defined in the Sale of Goods Act, 1930. Goods means every kind of movable property other than actionable claims and money.

5.4.3 Services: Service means service of any description which is made available to potential users. It includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing construction, entertainment, amusement etc. Service, however, does not include the rendering of any service free of charge or under a contract of personal service [(Sec. 2(0)].

The definition of the word, 'service' as defined under the Act is very wide enough to include every type of service that could be contemplated. It is inclusive but not exhaustive. There may be many other types of services. If rendering of service falls within the definition and if a person is a consumer, he has a right to claim compensation for deficiency in service, if any. Only service which is rendered free of charge or under a contract of personal service is excluded. However, the facility of medical treatment offered in the Government hospital does not constitute service [(Consumer Unity and Trust Society v. State of Rajasthan-1991 CPR-241 (NC)].
A medical treatment rendered to a patient by the doctor is clearly a service in Mappooyan V. Premavathy Illango, reported in 1994(2)(88), it was held that the medical treatment given by a private medical practitioner is a service. Similarly, insurance companies, borrowing and financial institutions, transport agencies, electric supply companies, all render services. Default or negligence in regard to settlement of an insurance claim is deficiency of service. Wrong disconnection of telephone connection, not working of telephone or telephone lying dead for unreasonable time is deficiency of service. All types of negligence can be bracketed under "deficiency" of service. But non-payment of insurance claim where the insurance company has sufficient reasons to decline a claim, is not deficiency of service (New Jaipur Dyeing v. Oriental Insurance Co. - 1991(1) CPR-149).

Service of any nature hired for consideration would be service within the ambit of definition. Hiring of marriage hall is also hiring of service (H.R. Gill v. Suryavanshi Kshatriya Dnyati Samaj - 1992(1) CPR-647). Only gratuitous service, i.e., service hired without consideration or free services are excluded from the ambit of the service.

5.4.3 Contract of Personal Service

A 'service' under a contract of personal service does not come within the preview of 'service' under the Act. A service offered by an advocate to his client is under a contract of personal service and therefore is not included in the definition. A client hiring the service of an Advocate is not a consumer within the meaning of the word "consumer" under the Act. Service rendered by a private tutor is also an example of personal service.

For the service rendered, the person has to pay a charge or a fee for a price demanded for the service. Where a person contacts for installation of a telephone, he is required to pay installation charges, call charges etc. It is clearly a case of hiring or contract for service. The transport facilities like
travelling by railway or airlines by paying for the service, etc. is covered by the term service. Settlement of insurance claims will be covered by the definition of service. Contracting with Housing and Development Board is hiring service of the board as the board is engaged in offering services for allotment of plots and houses to the public [(Sushil Devi v. Raj Sudha - 1991 CPJ 620 (Del.)]. The Banking service is expressly included in the word ‘service’. However, if failure to render service is beyond the control of the Bank, no claim for compensation can be sustained [Federal Bank v. Bion Mishra - 1991 CPJ 16 (NC)]. The student who pays tuition fees and hires the services of an institution acquires the rights of a consumer.

5.4.4 Consumer Dispute

On a complaint before the Consumer Redressal Forum against a person, who denies or disputes the allegations contained in the complaint, a consumer dispute arises [Sec.2(1) (c)]. Separate allegations may form separate disputes requiring separate finding on each dispute.

5.4.5 Who can be a complainant?

A complainant before the Consumer Redressal Forum can be:

(i) A consumer, or
(ii) Any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force, or
(iii) The Central Government or any State Government who makes a complaint [(Sec 2(1) (b))]; or
(iv) One or more consumers, where there are numerous consumers having the same interest.

_Locus Standi_: A person seeking redressal of his complaint, must come within any of the four categories, otherwise he has no _locus standi_ to proceed with the case before the Consumer Redressal Forum. If any person, other than the person falling under any of the above four categories, files any complaint,
the same is liable to be dismissed on the ground that he has no *locus standi*. A public cause can be taken up by an association in the form of public interest litigation. Legal heir/representative of a deceased consumer entitled to the estate of the deceased have a *locus standi* and can file a complaint (Dr. Sr. Louie and Anr. v. Kannolil Pathumma - 1993 [CP]30 NC). A nominee of a person insured under LIC has a *locus standi*. The Consumer Redressal Forum being a statutory creation under the Consumer Protection Act has no jurisdiction over the matters on which no complaint lies.

5.4.6 What is a Complaint?

A 'complaint' is 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;

(ii) the goods bought by him or agreed to be bought by him, suffer from one or more "defects";

(iv) a trader has charged for the goods mentioned in the complaint, "a price in excess" of the price fixed by or under any law for the time being in force, or displayed on the goods or on any package containing such goods;

(v) goods which will be "hazardous to life and safety" when used or being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.

A complaint must be made with a view to obtaining any relief provided under the Act (Sec. 2(1) (c)).

5.4.7 Unfair Trade Practice

It is for the complainant to establish that he has suffered loss by damage on account of unfair trade practice adopted by any trader. Unfair trade practice relates to both purchase of goods and also rendering of services. The
unfair trade practice shall have the same meaning as in Section 35A of the Monopolies and Restrictive Trade Practices Act, 1969 [Sec.2(1)(r)]. The 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, a trader adopts any unfair method or deceptive practice. Unfair trade practice is not only related to goods but also to services rendered (Mukesh Jain v. V.K. Gupta - 1991 ICPR 364 NC). Collecting service charges during free guarantee period or collecting repairs and service charges but not repairing the goods sold is unfair trade practice and deficiency of service.

5.4.8 Restrictive Trade Practice

Restrictive trade practice means any trade practice which requires a consumer to buy, hire or avail of any goods or, services, as a condition precedent for buying, hiring or availing of other goods or services [Sec.2(1) (nn)]. Thus, no trader can put any preconditions for sale of particular type of goods or services if the consumer requires to buy, hire or avail of services of other goods or services.

Unfair trade practice and restrictive trade practices are discussed in detail in Chapter IV. The MRTP Act and MRTPC are replaced by enacting the Competition Act, 2002 and establishing Competition Commission. Pending cases relating to unfair trade practices are to come under Consumer Protection Act, 1986.

5.4.9 Manufacturer

The term "manufacturer" means a person who

(i) makes or manufactures any goods or parts thereof; or

(ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others and claims the end-product to be goods manufactured by himself; or

(iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself.
Where a manufacturer despatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer eventhough the parts so despatched to it are assembled at such branch office and are sold or distributed from such branch office. [Sec.2(1)(i)].

A 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 carried on by the head office of the establishment [Sec.2(1) (aa)].

5.4.10 Defects

It is for the complainant to establish that the goods mentioned in the complaint suffer from one or more defects. Defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by the trader by or under any law for the time being in force or under any contract express or implied or as is claimed by the traders in any manner whatsoever, in relation to any goods [Sec.2(1)(f)].

Failure to deliver the full quantity as ordered is a defect. Defect may be a major or superficial defect. In a case, where the car sold was defective and not up to the standard and quality, the dealer was ordered to repair the car within two months and give fresh guarantee for a further period of one year (Ravindra Singh Jamwal, v. Prem Nath Motors Pvt. Ltd.-1991(1) CPR-336).

5.4.11 Deficiency

It is for the complainant to establish that services mentioned in the complaint suffer from deficiency in any respect. 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 [sec. 2(1) (g)]. Lack of facilities promised by Housing Board is deficiency. Non-allotment of shares is not deficiency in service [L.C. Chandgotiya v. Northern Leasing and Industries Ltd. 1991 (2) CPJ 19 (Raj)].

It is for the complainant to establish that the trader has charged for the goods mentioned in the complaint, a price in excess of the price-

(a) fixed by or under any law for the time being in force; or
(b) displayed on goods; or
(c) displayed on any package containing such goods

A trader can therefore be charged for having collected price in excess of what is displayed or published.

5.4.12 Hazardous goods

In respect of goods which are hazardous to life traders shall display information regarding the contents, manner and effects of use of such goods. Such goods offered for sale without such display or caution can be a case of complaint.

5.5 CONSUMER PROTECTION COUNCILS

The interest of consumers are sought to be promoted and protected under the Act by establishment of Consumer Protection Council at the central and state level. These Councils are advisory bodies. Chapter II of the Consumer Protection Act, 1986 comprising of sections 4 to 8 deals with Consumer Protection Councils. In terms of the Act, the Central Government first constituted the Central Consumer Protection Council (CCPC) on 1.6.1987 and it has been reconstituted from time to time. The CCPC was last constituted in May, 2003 for three years. So far, the Council has held 23 meetings. The last meting was held on 16.7.2003.
5.5.1 Central Consumer Protection Council

Section 4 provides that the central government may by notification establish a council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council) which shall consist of the following members, viz;

(a) The minister in charge of consumer affairs who shall be its chairman
(b) Such number of other official or non-official members representing such interest as may be prescribed.

The membership has been thus left to the rule making power of the government. The Consumer Protection Rules were promulgated in 1987. As per the Consumer Protection Rules, the Central Council shall consists of 150 members and the term of the council shall be 3 years.

Section 5 of the Act provides that the Central Council shall meet as and when necessary but at least one meeting shall be held every year. 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. Section 6 states the objectives of the Central Council as being promotion and protection of the rights of the consumers.

5.5.2 State Consumer Protection Council

Section 7 provides for the establishment of State Consumer Protection Councils by State Governments (by notification) to be known as Consumer Protection Council. The State Council shall consist of a Minister in charge of Consumer Affairs of the State Government who shall be its Chairman and such other official and non-official members representing such interest as may be prescribed by the State Government. The State Council shall meet as and when necessary but not less than two meetings shall be held every year. The procedure to be observed in regard to the transaction of its business at such
meetings shall be prescribed by the State Government. As per section 8, the objectives of the State Consumer Protection Councils are described in Section 7 to be same as those of the Central Council, namely the points, enumerated in Section 6.

**5.6 CONSUMER DISPUTES REDRESSAL AGENCIES**

A three-tier system of Consumer Disputes Redressal Agencies in the Districts, States and the Centre is envisaged by Section 9 of the Act. The District Forum is at the base level. Next in hierarchy is State Commission. Both District fora and State Commission are constituted in each State. At National level and at the top of the hierarchy is National Commission. The objects of setting up of these forums is to provide inexpensive redressal to consumer related litigation without much of legal technicalities and formalities.

**5.6.1 District Forum**

A Consumer Disputes Redressal Forum known as the "District Forum" is established by the State Government in each District of the State [sec-2(h) & Sec. 9(a)]. The state Government may, if it deems fit establish more than one District Forum in a district.

**5.6.1.1 Composition**

Each State Government shall establish in each district a Consumer Redressal Forum, Known as District Forum. Each District Forum shall consist of:

i. **President** : A person who is, or has been, or is qualified to be a District judge shall be the President of District Forum.

ii. **Members** : A District Forum shall have two other members who shall be persons of ability, integrity and have adequate knowledge or experience or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of the two members shall be a woman.
Every appointment 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.

Every member of the District forum shall hold office for a term of five years or upto the age of 65 years whichever is earlier. The member shall not be eligible for re-appointment. A member may resign his office in writing addressed to the State Government. On such resignation being accepted, the office of the member shall become vacant and may be filled up by the appointment of a person possessing any of the above qualifications as applicable to the category of the member who has resigned.

The salary or honorarium and other allowances payable to the members and the other terms and conditions of service of the members of the District forum shall be prescribed by the State Government (Sec. 10).

5.6.1.2 Jurisdiction of the District forum

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 as per the Consumer Protection Amendment Act, 2002. Jurisdiction is based on the claim sum laid by the complainant and not on the basis of relief granted. The value of the goods or services is irrelevant. However, where no compensation is claimed, the value of the goods or services will determine monetary claim and jurisdiction.

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 for may be filed with a District Forum by
i. The consumer

ii. Any recognized consumer association, whether the consumer is a member of such association.

iii. 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

iv. The central or the State Government (Sec. 12).

5.6.1.3 Powers of District forum

The District Forum shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure 1908, namely -

i. The summoning and enforcing attendance of any defendant or examining the witness on oath;

ii. The discovery and production of any document or other material object as evidence;

iii. The receipt 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. Any other matter which may be prescribed [sec. 13(4)]

The District Forum shall have power to require any person:

i. To produce or allow to be examined books, accounts, document or commodities in the custody of the person;

ii. To furnish such information as may be required;

iii. To authorize any officer to search any premises and seize books, papers, documents or commodities as required and which are likely to be destroyed, mutilated, altered, falsified or secreted.

After examination of such seized documents or commodities, the District-Forum may order the retention thereof or may order the return of the same to the party concerned (Rule 10). It is for the consumer to establish with evidence that the defects alleged in the goods exist. Similarly, onus is on the consumer where he alleges deficiency in service. After being satisfied that the defect or deficiency, as the case may be, exists, the District forum may pass
such orders as it deems fit in accordance with the above provisions. Forum has power to recall its judgment or orders if it is obtained by fraud.

5.6.1.4 Finding of the District Forum: Relief to the Complainant

After the proceeding is conducted, if 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:

i. Remove the defect from the goods as pointed out by the appropriate laboratory; or

ii. Replace the goods with new goods of similar description which shall be free from any defect; or

iii. Return to the complainant the price, or, as the case may be, the charges paid by the complainant; or

iv. 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;

v. To remove the defects or deficiencies in the services in question;

vi. To discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

vii. Not to offer the hazardous goods for sale;

viii. To withdraw the hazardous goods from being offered for sale;

ix. To provide for adequate costs to parties (Sec-14).

The forums have powers not only to direct the opposite party, to rectify the defect or to replace the goods with the new goods with renewal of guarantee or warranty period, but it has powers also to direct payment of compensation to the complainant if the consumer has suffered loss, injury or damage on account of defect or deficiency as a result of negligence of supplier [A.P. State Electricity Board V. A.P. State Electricity Consumer Association - 1992 CPJ 148 NC].

As per the report made available upto September 2003 the number of cases filed and disposed of in District Forums are given in Table 5.1.
**Table 5.1 : Statement of cases filed/disposed off/pending in District Fora**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of State</th>
<th>Case filed since inception</th>
<th>Case disposed of since inception</th>
<th>Cases Pending</th>
<th>% Of Disposal</th>
<th>As on</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Andhra Pradesh</td>
<td>122301</td>
<td>113847</td>
<td>8454</td>
<td>93.09</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>3.</td>
<td>Arunachal Pradesh</td>
<td>233</td>
<td>201</td>
<td>32</td>
<td>86.27</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>4.</td>
<td>Assam</td>
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<td>8175</td>
<td>1047</td>
<td>88.65</td>
<td>30.6.2003</td>
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<td>Bihar</td>
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<td>37070</td>
<td>13184</td>
<td>73.77</td>
<td>31.7.2003</td>
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<td>6.</td>
<td>Chandigarh</td>
<td>25262</td>
<td>23344</td>
<td>1918</td>
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<td>30.9.2003</td>
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<tr>
<td>7.</td>
<td>Chattisgarh</td>
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<td>30.9.2003</td>
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<td>30.9.2003</td>
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<td>30.6.2003</td>
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<td>30.9.2003</td>
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<td>31.7.2003</td>
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<td>6426</td>
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<td>30.9.2003</td>
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<td>949</td>
<td>175</td>
<td>84.43</td>
<td>31.12.2001</td>
</tr>
<tr>
<td>33.</td>
<td>Uttar Pradesh</td>
<td>308306</td>
<td>238404</td>
<td>69902</td>
<td>77.33</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>34.</td>
<td>Uttarakhand</td>
<td>16237</td>
<td>14019</td>
<td>2218</td>
<td>86.34</td>
<td>31.12.2002</td>
</tr>
<tr>
<td>35.</td>
<td>West Bengal</td>
<td>46878</td>
<td>43461</td>
<td>3417</td>
<td>92.71</td>
<td>31.12.2002</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1817861</strong></td>
<td><strong>1572641</strong></td>
<td><strong>245220</strong></td>
<td></td>
<td><strong>86.51</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: [http://fcamin.nic.in/annual repd4.htm](http://fcamin.nic.in/annual repd4.htm)
5.6.2 State Commission

5.6.2.1 Composition

Each State Commission shall consist of

i. **President**: A person who is or has been a judge of a High Court, shall be appointed by the State Government as the President of the state Commission in consultation with the Chief Justice of the High court.

ii. **Members**: Two other members who shall be persons of ability integrity and who have adequate knowledge or experience of, or have shown capacity in dealing with the problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of the two members shall be a woman.

Every appointment shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:

i. President of the State Commission - Chairman.

ii. Secretary of the Law Department of the State - Member

iii. Secretary in charge of department dealing with consumer affairs in the State – Member.

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 as prescribed by the State Government.

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 and shall not be eligible for reappointment (Sec. 16).
5.6.2.2 Jurisdiction of the State Commission

The state Government shall have jurisdiction:

i. To entertain complaints where the value of the goods or services and compensation, if any claimed exceeds Rs. 20 lakhs but does not exceed Rs. 1 crore;

ii. To entertain appeals against the orders of any District Forum within the State; and

iii. 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. Such supervisory powers can be exercised 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 materials irregularity (Sec. 17)

State Commission is the final apex body in each State. Unless the National Commission or the Supreme Court sets aside its order, the decisions of State Commission are binding on District Fora in the State. In revisional jurisdiction, finding of fact by a District Forum cannot be interfered with by the State Commission.

The following table shows the functioning of the various State Commissions as regards the number of cases filed and disposed of.
Table 5.2: Statement of cases filed/disposed off/pending in State Commissions

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of State</th>
<th>Case filed since inception</th>
<th>Case disposed of since inception</th>
<th>Case Pending</th>
<th>% of Disposal</th>
<th>As on</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Andhra Pradesh</td>
<td>13606</td>
<td>11731</td>
<td>1875</td>
<td>86.22</td>
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</tr>
<tr>
<td>2</td>
<td>A &amp; N Islands</td>
<td>48</td>
<td>36</td>
<td>12</td>
<td>75.00</td>
<td>31.1.2003</td>
</tr>
<tr>
<td>3</td>
<td>Arunachal Pradesh</td>
<td>30</td>
<td>22</td>
<td>8</td>
<td>73.33</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>4</td>
<td>Assam</td>
<td>1492</td>
<td>694</td>
<td>798</td>
<td>46.51</td>
<td>30.6.2003</td>
</tr>
<tr>
<td>5</td>
<td>Bihar</td>
<td>8014</td>
<td>3313</td>
<td>4701</td>
<td>41.34</td>
<td>31.7.2003</td>
</tr>
<tr>
<td>6</td>
<td>Chandigarh</td>
<td>4131</td>
<td>3898</td>
<td>233</td>
<td>94.36</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>7</td>
<td>Chattisgarh</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.00</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>8</td>
<td>D &amp; N Haveli</td>
<td>0</td>
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<td>0</td>
<td>0.00</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>9</td>
<td>Daman &amp; Diu</td>
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<td>5</td>
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<td>30.9.2000</td>
</tr>
<tr>
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<td>Delhi</td>
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<td>16342</td>
<td>4901</td>
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<td>Goa</td>
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<td>1177</td>
<td>303</td>
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<tr>
<td>12</td>
<td>Gujrat</td>
<td>14353</td>
<td>10063</td>
<td>4290</td>
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<tr>
<td>13</td>
<td>Haryana</td>
<td>21498</td>
<td>14807</td>
<td>6691</td>
<td>68.88</td>
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<tr>
<td>14</td>
<td>Himachal Pradesh</td>
<td>8299</td>
<td>7620</td>
<td>679</td>
<td>91.82</td>
<td>30.9.2003</td>
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<tr>
<td>15</td>
<td>Jammu &amp; Kashmir</td>
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<tr>
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<td>Jharkhand</td>
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<td>0.00</td>
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</tr>
<tr>
<td>17</td>
<td>Karnataka</td>
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<td>10596</td>
<td>2672</td>
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<td>30.9.2003</td>
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<tr>
<td>18</td>
<td>Kerala</td>
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<td>14598</td>
<td>2827</td>
<td>83.78</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>19</td>
<td>Lakshadweep</td>
<td>9</td>
<td>9</td>
<td>0</td>
<td>100.00</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>20</td>
<td>Madhya Pradesh</td>
<td>15993</td>
<td>13897</td>
<td>2096</td>
<td>86.89</td>
<td>30.6.2003</td>
</tr>
<tr>
<td>21</td>
<td>Maharashtra</td>
<td>25875</td>
<td>14661</td>
<td>11214</td>
<td>56.66</td>
<td>30.6.2003</td>
</tr>
<tr>
<td>22</td>
<td>Manipur</td>
<td>47</td>
<td>20</td>
<td>27</td>
<td>42.55</td>
<td>30.6.2003</td>
</tr>
<tr>
<td>23</td>
<td>Meghalaya</td>
<td>129</td>
<td>90</td>
<td>39</td>
<td>69.77</td>
<td>30.6.2003</td>
</tr>
<tr>
<td>24</td>
<td>Mizoram</td>
<td>85</td>
<td>50</td>
<td>35</td>
<td>58.82</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>25</td>
<td>Nagaland</td>
<td>56</td>
<td>46</td>
<td>10</td>
<td>82.14</td>
<td>30.6.2003</td>
</tr>
<tr>
<td>26</td>
<td>Orissa</td>
<td>11759</td>
<td>6098</td>
<td>5661</td>
<td>51.86</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>27</td>
<td>Pondicherry</td>
<td>666</td>
<td>613</td>
<td>53</td>
<td>92.04</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>28</td>
<td>Punjab</td>
<td>13095</td>
<td>9885</td>
<td>3210</td>
<td>75.49</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>29</td>
<td>Rajasthan</td>
<td>24799</td>
<td>13973</td>
<td>10826</td>
<td>56.35</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>30</td>
<td>Sikkim</td>
<td>25</td>
<td>20</td>
<td>5</td>
<td>80.00</td>
<td>30.8.2003</td>
</tr>
<tr>
<td>31</td>
<td>Tamilnadu</td>
<td>15154</td>
<td>11122</td>
<td>4032</td>
<td>73.39</td>
<td>30.6.2003</td>
</tr>
<tr>
<td>32</td>
<td>Tripura</td>
<td>569</td>
<td>278</td>
<td>291</td>
<td>48.86</td>
<td>30.6.2002</td>
</tr>
<tr>
<td>33</td>
<td>Uttar Pradesh</td>
<td>38406</td>
<td>9763</td>
<td>28643</td>
<td>25.42</td>
<td>30.9.2003</td>
</tr>
<tr>
<td>34</td>
<td>Uttaranchal</td>
<td>537</td>
<td>165</td>
<td>372</td>
<td>0.00</td>
<td>31.12.2002</td>
</tr>
<tr>
<td>35</td>
<td>West Bengal</td>
<td>8965</td>
<td>6773</td>
<td>2192</td>
<td>75.55</td>
<td>30.9.2003</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>318009</strong></td>
<td><strong>210778</strong></td>
<td><strong>107231</strong></td>
<td><strong>66.28</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: [http://fcamin.nic.in/annual rep04.htm](http://fcamin.nic.in/annual rep04.htm)
5.6.3 National Commission

Central Government has established National Consumer Disputes Redressal Commission known as “National Commission”.

5.6.3.1 Composition

The National Commission shall consist of

i. **President**: A person who is or has been a judge of the supreme court to be appointed by the Central Government. Such appointment shall be made after consultation with the Chief justice of India.

ii. **Members**: Four other members who shall be persons of ability, integrity and have adequate knowledge or experience of, or exercise of, or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of the members shall be a woman. Every appointment shall be made by the Central Government on the recommendation of a selection Committee consisting of the following namely:

★ i. A person who is a judge of the supreme Court, to be nominated by the Chief Justice of India – Chairman

★ The Secretary in the Department of Legal Affairs in the Government of India – Member.

★ Secretary of the Department dealing with consumer affairs in the Government of India – Member.

The salary or honorarium and other allowances payable to and the other terms and conditions of services of the members of the National Commission shall be such as may be prescribed by the central Government (Sec. 20). 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 and shall not be eligible for reappointment (Sec. 20).
5.6.3.2 **Powers of the National Commission**

The National Commission shall have the same powers and additional powers as that of District Forum.

The National Commission shall have jurisdiction:

- To entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds Rs. 1 crore.
- To entertain appeals against the orders of any state Commission; and
- 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 exercise of its jurisdiction illegally or with material irregularity (sec. 21).

The following table clearly shows the picture of total number of cases filed, disposed of and pending in National Commission as on 31.12.2003.

**Table 5.3 : Statement of cases filed/disposed of/pending in National Commissions**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of State</th>
<th>Case filed since inception</th>
<th>Case disposed off since inception</th>
<th>Case Pending</th>
<th>% of Disposal</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>National Commission</td>
<td>32910</td>
<td>24974</td>
<td>7936</td>
<td>75.89</td>
</tr>
<tr>
<td></td>
<td>State Commission</td>
<td>318009</td>
<td>210778</td>
<td>107231</td>
<td>66.28</td>
</tr>
<tr>
<td></td>
<td>District Forums</td>
<td>1817861</td>
<td>1572641</td>
<td>245220</td>
<td>86.51</td>
</tr>
</tbody>
</table>

5.7 **APPEALS**

5.7.1 **Appeal to State Commission**

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. The State Commission may entertain an appeal after the expiry of thirty days if it is satisfied that there was sufficient cause for not filing the appeal within that period (Sec. 15). The State Commission may under its supervisory or reversionary powers call for the
records in any dispute pending before the District Forum and pass appropriate orders.

However, the appeal should be accompanied by a separate application showing sufficient cause for delay in filing the appeal as order on the application is a condition precedent for hearing the appeal.

5.7.2 Appeal to National Commission

Any person aggrieved by an order made by the State Commission, may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order. The National Commission may entertain an appeal after the expiry of thirty days if it is satisfied that there was sufficient cause for not filing it within that period (Sec. 19).

5.7.3 Appeal to Supreme Court

Any person, aggrieved by an order made by the National Commission may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order. The Supreme Court may entertain an appeal after the expiry of the period of thirty days, if it is satisfied that there was sufficient cause for not filing the appeal within thirty days (Sec. 23.)

It shall set forth in brief the objections of the order appealed for and the grounds relied upon in support of the appeal. The petition shall also state the date of the order appealed as the date on which it was received by the appellant. In computing the period of 30 days of filing an appeal to supreme court from the order of National Commission, the time required for obtaining a copy of such order shall be excluded.

5.8 AMENDMENT TO THE CONSUMER PROTECTION ACT, 1986

A long awaited comprehensive Amendment Bill to amend the Consumer Protection Act, 1986 has been passed by the Parliament and become an Act on 17th December, 2002 and Consumer Protection Rule came in force w.e.f. 15th March 2003.
The jurisdictional limit of the three redressal agencies are enhanced. The powers of District Forums to adjudicate disputed are extended from Rs.5 lakhs to Rs.20 lakhs, that of State Commission from Rs.20 lakhs to Rs.1 core and that of National Commission, above 1 crore.

Persons hiring services for commercial purposes are no longer to be defined as consumers and therefore cannot approach the Consumer Courts in respect of defective services as well.

With the Section 3 of the Consumer Protection Act telephone department, railways, banks and many other service are out of the purview of Consumer Protection Act.

The admissibility of the complaint will be decided within 21 days of its being filed. The notice to the opposite party will be sent within 21 days from the date the complaint is admitted. The complaint shall be heard as expeditiously as possible and an endeavour shall be made to decide the complaint within 90 days from the date of receipt of the notice by the opposite party. Where analysis or testing of the product is required, the complaint is expected to be disposed of within 150 days.

No adjournment shall be ordinarily granted by the Court unless sufficient cause is shown and the reason for grant of adjournment is to be recorded in writing by the Court. In case of any adjournment, the cost will be awarded to the order side.

Creation of benches of the National Commission and State Commissions and holding of circuit benches.

Provision for issue of interim orders by the redressal agencies.

In case of the office of the President of the District Forum, State Commission, or National Commission is for some reason vacant, the senior most member of the District Forum, State and National Commission shall perform his function. The proviso clarifies that where a retired judge of the
High Court is the member of the National Commission, such member or where there is more than one such member, the senior most among them shall preside in the absence of the President.

★ Recovery of compensation amount ordered by the redressal agency through certificate case in the same manner as arrears of land revenue.

★ The Bill requires the mandatory establishment of Central, State and District Consumer Protection Council.

Since the amendment is to curtail the grant of adjournment, complaints are to be heard expeditiously. The establishment of Circuit Benches for the functioning of the State and National Commission from time to time could mean temporary establishment areas beyond the State and National capitals. With these amendments Consumer Protection Act is further strengthened and consumers interest will be well protected.

5.9 CONSUMER PROTECTION ACT - A CRITICAL REVIEW

The Consumer Protection Act, 1986 is one of the beneficial social legislation intended to protect the large body of consumers from exploitation. The Act has come as a panacea for consumers all over the country and has taken the shape of practically the most important legislation enacted in the country during past few years. It has become the vehicle for enabling people to secure speedy and inexpensive redressal of their grievances. The Act postulates establishment of central consumer protection council and state consumer protection councils for the purpose of spearheading consumer awareness. To provide cheap, speedy and simple redressal to consumer disputes, quasi-judicial machinery is set up at district, state and national level. At present there are 569 district forums, 35 State Commissions with apex body as National Consumers disputes Redressal Commission (NCDRC) having its office in New Delhi.
No doubt the Act is consumer friendly. It has created an awareness among the consumers, producers, etc that "Consumers is the King" in the market place. Consumers now feel and declare that "Seller Beware" instead of "Buyers Beware". Still it suffers from its implementation.

Lack of sincere desire on the part of government machinery is probably the principal reason for poor implementation of this Act. Having constituted the Consumer Courts in the first place with great reluctance and under considerable pressure from the Supreme Court, many State Governments obviously have no interest in their smooth functioning. This is apparent in the way vacancies in the post of Presiding Officers and members are treated.

A common feature of these courts is their temporary closure on account of long delays in appointing new members. Monitoring of the working of consumer courts by the National Commission revealed distressing figure. In Orissa, twenty members in various district fora are vacant by April 2004 and it is apprehended that fortysix judiciary and non-judiciary posts would be vacant by Dec 2004 (The Sambad dt 29.4.04). The picture is more or less similar in nature in many states.

Most of the redressal agencies suffer from poor infrastructural facilities which in turn, affect the functioning of the courts and lead to unnecessary delays.

Lack of funds for the district fora is one of the important factors for its poor implementation. The funds provided by union ministry of consumer affairs were very much inadequate for the District fora. It is learnt from interaction with some of the members of the fora in Orissa that it is difficult even to meet their postage expenses.
A common complaint against these courts is that they adopt highly technical and often time consuming procedure. The consumer courts are supposed to follow summary procedure and the law provides for simple uncomplicated method of handling the complaints. One of the positive features of the law is that a consumer need not pay court fee and can fight his or her own case without engaging a lawyer. But the reality is quite different. The present study reveals the style of functioning of some of these courts which are in no way different from civil courts. When this researcher interacted with many consumers it is learnt from them that most of the consumers felt it would be better for them to engage lawyers inorder to win a case. The National Commission in several appeals filed before it has advised the fora to move away from hyper-technicalities. It is no wonder that increasing number of consumers prefer to hire lawyers at great cost to fight their case.

Besides unnecessary adjournments there are several other reasons for the delay. Parties not filing the documents intime, irregular and short duration of courts' sittings, steady increase in the number of complaints, complainants failing to furnish accurate and complete address of the opposite parties and technical and time-consuming procedure adopted by the Fora are some of the reasons for delay in disposal of cases.

Whether one admits or not the facts remains that the salary structure for the members in the District Fora and State Commission barring the President of State Commission is demoralising.

The work load of the courts are increasing day by day, but there are no corresponding increases in the facilities provided, whenever the number of pending cases increases, the law provides for constitution of an additional forum so as to ensure quick disposal of cases. But, very few states have bothered to constitute additional District forum. The case of Orissa is very interesting. More than 50 percent cases are filed only in five District Fora viz.,
Cuttack, Puri, Balasore, Berhampur and Sundargarh. Other Districts fora do not have even hundred cases.

Delay in disposal of cases is one of the major set back in effective implementation of the Act. In Orissa alone, there are 4,600 cases pending in different District fora till March, 2004. Since inception, 9208 cases were filed in State Commission and out of that only 4690 cases were disposed of (The Sambad dt.29.4.2004).

Procedures adopted by the courts have contributed in no small measure to the delays in addressing complaints. "No adjournments, certainly not more than one" used to be the constant refrain of former President of National Commission, Justice, V.B. Eradi. Adjournments continue to delay the process of justice. A comprehensive survey of consumer courts, sponsored by Union Ministry of Consumer Affairs and conducted by the Indian Institute of Public Administration (IIPA) in 1994 revealed that barring a few courts, in most of the others, adjournments were given frequently and repeatedly at the request of advocates appearing for the opposite party. As a result, consumers in many cases had to go to the court as many as five to twelve times before a case was decided (Girimaji Puspa, 1994).

With the amendment of Consumer Protection Act, 2002, it is felt that arms of Consumer Courts are further strengthened. Consumers are also required to file only such cases which are coming under the purview of the Consumer Protection Act.

Despite all these problems, consumers have benefited enormously from the law.
REFERENCES

Consumer Protection Act, 1986 - Bare Act, Orissa Law Reviews, Cuttack.


The Consumer Protection (Amendment) Act., P.A.S. Patil,