CHAPTER - III
CONSUMER SAFEGUARD MECHANISMS IN INDIA

The main objective of the Consumer Protection Act, 1986 is to provide a speedy and simple redressal to consumer disputes. According to the Supreme Court of India, "the philosophy and object of the 1986 Act is to provide expeditious justice to the aggrieved consumer. Accordingly, the language and the procedure prescribed under the statute have been kept relatively simple and non-technical and free from the constraints of the Court Fee Act of 1870. Quasi-judicial machinery is set-up at the District, State and Central levels to create a suitable mechanism within the easy reach of consumers. These quasi-judicial bodies observe the principles of natural justice and have been empowered to give reliefs of a specific nature and award compensation to consumers. It also includes penalties for non-compliance of the order given by the quasi-judicial bodies.¹

The Consumer Forums have to protect the interests of consumers and would be within their rights if any deficiency in service is noticed from the facts disclosed in the complaint sent by them but which the consumer had failed to formulate and articulate in the complaint. The consumer forums are bound only to observe principles of natural justice and, therefore, when they take contingency of any deficiencies in service or unjust reduction in the amount payable to the complainant suo motu on the basis of facts disclosed,

full opportunity must necessarily be given to the opposite party to justify and
defend its action. Under the Consumer Protection Act, 1986 engagement of
lawyers by the complainant is not a must for pleading their cases before the
consumer forums.\textsuperscript{2}

The scope and object of the said legislation came up for consideration
before the apex court in common cause, A Registered Society v. Union of
India, it was held: the object of the legislation, as the preamble of the Act
proclaims, is 'for better protection of the interests of consumers'. During the
last few years preceding the enactment there was in this country a marked
awareness among the consumers of goods that they were not getting their
money's worth and were being exploited by both traders and manufacturers
of consumer goods. The need for consumer redressal mechanism was,
therefore, increasingly felt. Understandably, therefore, legislation was
introduced and enacted with considerable enthusiasm and fanfare as a path-
breaking benevolent legislation intended to protect the consumer from
exploitation by unscrupulous manufacturers and traders of consumer goods.
A three-tier agency comprising the District Forum, the State Commission and
the National Commission came to be envisaged under the Act for redressal of
grievances of consumers.\textsuperscript{3}

Section 9 of the Consumer Protection Act, 1986 deals with the
establishment of three-tier Consumer Disputes Redressal Agencies, namely:

\textsuperscript{2} Swati Mehata, "Consumer Protection in India: The path covered and the journey
1) The District Forum

2) The State Commission; and

3) The National Consumer Disputes Redressal Commission

Establishment of Consumer Disputes Redressal Agencies - There shall be established for the purposes of this Act, the following agencies, namely:—

(a) a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government in each district of the State by notification: Provided that the State Government may, if it deems fit, establish more than one District Forum in a district.

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

(c) a National Consumer Disputes Redressal Commission established by the Central Government by notification.

The above section empowers and directs the Union and State governments to constitute a three tier hierarchy of dispute redressal agencies, quasi judicial tribunals for redressing the grievances of consumers, the apex body being the 'National Commission' at national level, a 'State Commission' in each state or union territory and 'District Forum' in each district.

A totally new terminology is adopted for these consumer disputes redressal agencies, which are loosely referred to as consumer courts in information booklets and website of Government of India. According to
Webster's Ninth College Dictionary, 'FORUM' means "a judicial body, or assembly court". A 'COMMISSION' means "a Government agency having administrative, legislative or judicial powers". The word FORUM, however, has become very popular with consumers and all concerned within a short time.4

3.1. District Forum

3.1.1. Composition of the District Forum5— (1) Each District Forum shall consist of,—

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely:—

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

(ii) possess a bachelor's degree from a recognized university,

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

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

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

(b) is an undischarged insolvent; or

5 Consumer Protection Act, 1986, Sec. 10.
(c) is of unsound mind and stands so declared by a competent court; or

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

(e) has, in the opinion of the state Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualifications as may be prescribed by the State Government; Every appointment under sub-section (I) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:

(i) the President of the State Commission — Chairman.

(ii) Secretary, Law Department of the State — Member.

(iii) Secretary in charge of the Department dealing with Consumer affairs in the State — Member.

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

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

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

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

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

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

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

The above section deals with Composition of District Forum,
appointment, qualifications and disqualifications for appointment, Salary or honorarium and allowances, terms and conditions of service of President and Members.

In Mrs. M. Raghava Rani v Govt. of Andhra Pradesh, the recommendation of the candidate for appointment to District Forum Warangal was disagreed on the ground that the Government was not satisfied with the qualifications of the writ petitioner on taking into consideration the information given to the Minister for Food and Civil Supplies orally by some people of Warangal. The recommendation of reappointment of lady member of Ongole was disagreed on the ground that in the absence of performance report from the President of the District Forum the writ petitioner was not entitled for extension.

The A.P. High Court in the above case has relied upon the ratio laid down by the Supreme Court in State of Rajasthan v Anand Prakash Solanki\(^6\), and held that the power conferred on the Government under Consumer Protection Act to appoint President and Members of the District Forum is purely administrative in the nature. This power can be exercised only on the recommendation of selection committee constituted under Section 10 (1A) of the Act. The Act does not empower the State Government to override the recommendation of the selection committee and appoint somebody else of its own choice, though it can disagree with the recommendations made by the selection committee; but such disagreement or disapproval shall be only for

\(^6\) AIR 2003 SC 3849.
valid reasons.

**Jurisdiction: meaning and scope:** - Jurisdiction is a term of comprehensive import embracing every kind of judicial action. It is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. Jurisdiction defines the powers of courts to inquire into facts, apply the law, make decisions, and declare judgment. The legal right by which judges exercise their authority. It exists when court has cognizance of class of cases involved, proper parties are present, and point to be decided is within powers of court. Power and authority of a court to hear and determine a judicial proceeding; and power to render particular judgment in question. The right and power of a court to adjudicate concerning the subject matter in a given case. The term may have different meanings in different contexts.

A plea that the District Forum has no jurisdiction to entertain complaint and pass orders cannot be taken by a party after he participated in the proceedings and was satisfied with the verdict regarding jurisdiction.\(^7\)

**Kinds of Jurisdiction:-** Generally, The jurisdiction of a court may be of three types viz.

i) Territorial

ii) Pecuniary and

iii) Subject matter

Section 11 of the Act clearly mentions the territorial, pecuniary and subject

matter jurisdictions of the District Forums.

3.1.2. Jurisdiction of the District Forum. — (1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed "does not exceed rupees twenty lakhs.

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction, —

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or

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

(c) the cause of action, wholly or in part, arises.

3.1.3. Manner in which complaint shall be made8. — (1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or

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8 Consumer Protection Act, 1986, Sec.12.
any service provided or agreed to be provided may be filed with a District Forum by –

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;  
(b) any recognized consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;  
(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or  
(d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

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

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

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

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

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

The District Consumer Forum has no "suo mottu" jurisdiction to entertain any complaints pertaining to defects in goods or deficiencies in services. The Forum can take cognizance of a dispute only upon filing of a complaint by the aggrieved party or other competent persons. Section 12 of the Act deals primarily with the "locus standi" of a person whether natural or artificial to file a complaint with the District Forum. "Locus Standi" means a place of standing, standing in a Court. It denotes a right of appearance in a court of justice, or before a legislative body, on a given question.9

3.1.4. Procedure on admission of complaint10. — (1) The District Forum shall, on admission of a complaint, if it relates to any goods, —

(a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the

complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;
(e) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;

(g) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (/) and issue an appropriate order under section 14.

(2) the District Forum shall, if the complaint admitted by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,—

(a) refer a copy of such complaint to the opposite party directing him to
give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute,—

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or

(ii) ex parte on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.

(c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.

(3) No proceedings complying with the procedure lay down in subsections [1] and [2] shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

(3A) Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three
months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:

Provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum:

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

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

(3B) Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;
(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness, and

(vi) any other matter which may be prescribed.

(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.

(7) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

3.1.5. Finding of the District Forum

(1) If, after the proceeding

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11 Ibid. Sec. 14.
conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
(b) to replace the goods with new goods of similar description which shall be free from any defect;
(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party. Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;
(e) to remove the defects in goods or deficiencies in the services in question;
(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
(g) not to offer the hazardous goods for sale;
(h) to withdraw the hazardous goods from being offered for sale;
(ha) to cease manufacture of hazardous goods and to desist from
offering services which are hazardous in nature;

(hb) to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or service provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

(i) to provide for adequate costs to parties.

(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

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

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

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

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

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

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

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

3.2. State Commission

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12 Ibid. Sec.15.
3.2.1. **Composition of the State Commission**\(^\text{13}\) — (1) Each State Commission shall consist of—

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

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

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

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

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

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

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

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

Provided further that a person shall be disqualified for appointment as

\(^\text{13}\) Ibid. Sec.16.
a member if he—

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

(b) is an undischarged insolvent; or

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

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

(e) has, in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualifications as may be prescribed by the State Government.

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

(i) President of the State Commission -- Chairman;

(ii) Secretary of the Law Department of the State -- Member;

(iii) Secretary in charge of the Department dealing with Consumer Affairs in the State -- Member:

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

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

(ii) A Bench may be constituted by the President with one or more members as the President may deem fit.

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

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

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

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

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

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

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

(4) Notwithstanding anything contained in sub-section (3), a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.
3.2.2. **Jurisdiction of the State Commission**\(^{14}\) — (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction —

(a) to entertain —

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore; and

(ii) appeals against the orders of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

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

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in

\(^{14}\) Ibid. Sec.17.
such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

3.2.3. **Transfer of cases**\(^{15}\) - On the application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

3.2.4. **Circuit Benches**\(^{16}\) - The State Commission shall ordinarily function in the State Capital but may perform its functions at such other place as the State Government may, in consultation with the State Commission, notify in the Official Gazette, from time to time.

3.2.5. **Procedure applicable to State Commissions**\(^{17}\) - The provisions of Sections 12, 13 and 14 and the rules made there under for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

3.2.6. **Appeals**\(^{18}\) - Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such

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15 Ibid. Sec. 17A.
16 Ibid. Sec. 17B.
17 Ibid. Sec. 18.
18 Ibid. Sec. 19.
form and manner as may be prescribed:

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

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

3.2.7. Hearing of Appeal\textsuperscript{19} - An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission:

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

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

Provided also that in the event of an appeal being disposed of after the

\textsuperscript{19} Ibid. Sec. 19A.
period so specified, the State Commission or, the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

3.3. National Commission

3.3.1. Composition of the National Commission—(1) The National Commission shall consist of—

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

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

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

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

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

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

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

Explanation — For the purposes of this clause, the expression "persons having judicial background" shall mean persons having knowledge and

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20 Ibid. Sec.20.
experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

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

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

(b) is an undischarged insolvent; or

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

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

(e) has in the opinion of the Central Government such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualifications as may be prescribed by the Central Government:

Provided also that every appointment under this clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following, namely:—

(a) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India – Chairman.

(b) the Secretary in the Department of Legal Affairs in the Government of India – Member.

(c) Secretary of the Department dealing with consumer affairs in the Government of India – Member
(i) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.

(ii) A Bench may be constituted by the President with one or more members as the President may deem fit.

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

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

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

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of seventy years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:
Provided further that a person appointed as a President of the National Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1)

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

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

3.3.2. Jurisdiction of the National Commission— Subject to the other provisions of this Act, the National Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State

21 Ibid. Sec.21.
Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

3.3.3. **Power of and procedure applicable to the National Commission**

(1) The provisions of sections 12, 13 and 14 and the rules made there under for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.

(2) Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.

3.3.4. **Power to set aside ex parte orders**

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

3.3.5. **Transfer of cases**

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

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22 Ibid. Sec. 22.
23 Ibid. Sec. 22A.
24 Ibid. Sec. 22B.
3.3.6. Circuit Benches\textsuperscript{25} - The National Commission shall ordinarily function at New Delhi and perform its functions at such other place as the Central Government may, in consultation with the National Commission, notify in the Official Gazette, from time to time.

3.3.7. Vacancy in the Office of the President\textsuperscript{26} - When the office of President of a District Forum, State Commission, or of the National Commission, as the case may be, is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior-most member of the District Forum, the State Commission or of the National Commission, as the case may be:

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

3.3.8. Appeal\textsuperscript{27} — Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient

\textsuperscript{25} Ibid. Sec. 22C.
\textsuperscript{26} Ibid. Sec. 22D.
\textsuperscript{27} Ibid. Sec.23.
cause for not filing it within that period.

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

3.3.9. Finality of orders28—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.

3.3.10. Limitation period29—(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

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

3.3.11. Administrative Control30—(1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely:—

28 Ibid. Sec.24.
29 Ibid. Sec.24A.
30 Ibid. Sec. 24B.
(i) calling for periodical return regarding the institution, disposal pendency of
cases;

(ii) issuance of instructions regarding adoption of uniform procedure in the
hearing of matters, prior service of copies of documents produced by one
party to the opposite parties, furnishing of English translation of judgments
written in any language, speedy grant of copies of documents;

(iii) generally overseeing the functioning of the State Commissions or the
District Forum to ensure that the objects and purposes of the Act are best
served without in any way interfering with their quasi-judicial freedom.

(2) The State Commission shall have administrative control over all the District
Forum within its jurisdiction in all matters referred to in sub-section (1).

3.3.12. Enforcement of orders of the District Forum, the State Commission
or the National Commission — (1) Where an interim order made under this
Act, is not complied with the District Forum or the State Commission or the
National Commission, as the case may be, may order the property of the
person, not complying with such order to be attached.

(2) No attachment made under sub-section (1) shall remain in force for more
than three months at the end of which, if the non-compliance continues, the
property attached may be sold and out of the proceeds thereof, the District
Forum or the State Commission or the National Commission may award such
damages as it thinks fit to the complainant and shall pay the balance, if any, to
the party entitled thereto.

31 Ibid. Sec. 25.
(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.

3.3.13. Dismissal of frivolous or vexatious complaints[^32] — Where a complaint instituted before the District Forum, the State Commission or as the case may be, the National Commission, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order.

3.3.14. Penalties[^33] — (1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:

(2) Notwithstanding anything contained in the Code of Criminal Procedure,

[^32]: Ibid. Sec.26.
[^33]: Ibid. Sec. 27.
1973, (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.

3.3.15. Appeal against order passed under section 27\textsuperscript{34} - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from -

(a) the order made by the District Forum to the State Commission ;

(b) the order made by the State Commission to the National Commission; and

(c) the order made by the National Commission to the Supreme Court.

(2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission :

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry

\textsuperscript{34} Ibid. Sec.27A.
of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.