OBJECTIVES OF THE ACT

The Consumer Protection Act brings a new dawn of hope for the consumers. For the first time in India, we have this legislation which recognises three important rights of consumers: (1) Right to choice, (2) Right to information, and (3) Right to obtain redress.

The Consumer Protection Act 1986 received the President’s assent on December 24, 1986. It contains 31 sections in 4 chapters. In terms of sub-section (3) of section 1, the government has issued two notifications on April 1 and June 10, 1987 respectively providing that the provisions of Chapters I, II and IV, shall come into force on April 15, 1987 and those in Chapter II dealing with 'Consumer Redressal Agencies' on July 1, 1987. The act applies to the whole of India except the State of Jammu & Kashmir.

The preamble to the act indicates that the act is intended to provide for better protection of the interests of consumers and for that purpose, to make provisions for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and other matters connected therewith.

The preamble further envisages to achieve certain objectives by promoting and protecting following rights of consumers:

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

These objects are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central and State level.

The position of 'consumers' in the Indian set-up is quite peculiar. Though consumer awareness is increasing, he is the person who is most harassed and uncared for in the present-day economic and social scenario. Very often he has to compromise with sub-standard quality goods and forgo many after-sales services because of his weak position in the market on account of rapid inflation and shortfall in supplies.

In the back-drop of such thinking, the Consumer Protection Act is greatly welcome. However, it needs to be understood that mere legal provisions cannot improve the situation. Success would greatly depend on the enlightened consumers, the effective redressal machinery and the support and cooperation of the consumers and their organisations and other sections of the society.

The Act covers wide areas. It applies to all goods and services unless the same have been specifically exempted by the Central Government from the purview of the Act. The concept of 'goods' in the Act is the same as it is under the Sale of Goods Act 1930. 'Service' has been defined to mean the service of any description which is made available
to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. The Act applies to all sectors whether private, public or co-operative, as against the MRTP Act which does not apply to undertakings owned or controlled by the government and co-operative societies.\(^1\) Thus, the ambit of the Act is far more wide than the MRTP Act which applies to monopolistic, restrictive and unfair trade practices.

**PROVISIONS OF THE ACT FOR CONSUMER PROTECTION**

The Consumer Protection Act, 1986 has envisaged the setting up of the Consumer Protection Councils at the Central and State levels, namely, the Central Consumer Protection Council and the State Consumer Protection Councils.

(A) **Central Consumers' Protection Council**

The Central Government is empowered to constitute the Central Consumer Protection Council (hereinafter referred to as the Central Council) which may consist of the following 150 members, namely:

(a) the Minister in-charge of Department of Civil Supplies who shall be the Chairman of the Central Council;

(b) the Minister of State (where he is not holding independent charge) or Deputy Minister in the Department of Civil Supplies who shall be the Vice-Chairman of the Central Council;

(c) the Ministers of Food and Civil Supplies or Minister in-charge of Consumer Affairs in States;

(d) eight Members of Parliament - five from Lok Sabha and three from the Rajya Sabha;

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1. As per MRTP (Amendment) Act, 1991, Government Undertakings and Co-operative Societies have been included within the ambit of MRTP Act.
(e) the Commissioner for Scheduled Castes and Scheduled Tribes;
(f) representatives of the Central Government Departments, autonomous organisations concerned with consumer interests - not exceeding twenty;
(g) representatives of the Consumer Organisations or consumers - not less than thirty-five;
(h) representatives of women - not less than ten;
(i) representatives of farmers, trade and industries - not exceeding twenty;
(j) persons capable of representing consumer interests not specified above - not exceeding fifteen;
(k) the Secretary in the Department of Civil Supplies shall be the member-secretary of the Central Council.

The Central Government has notified the Constitution of the Council with 115 members. The Council has held three meetings so far. The first meeting was held in September 1987 in which the emphasis was on promoting a strong and responsible consumer movement in the country. The second meeting was held in April 1988 in which the focal point of discussion was the implementation of the Consumer Protection Act. In the third meeting which was held in September 1988, again there was an emphasis on speedy and effective implementation of the Act by the State Governments and Union Territories Administrations.

The term of the Council shall be three years. The Council may meet as and when necessary, but not less than three meetings of the Council shall be held every year. Each meeting of the Council shall be called by giving not less than 10 days' notice in writing to every member, specifying the time, place and agenda of the meeting. However, no proceedings of the Council shall be invalid merely by reasons of existence of any vacancy in or any defect in the constitution of the Council.
Power to Constitute Working Group

The Council is empowered to constitute from amongst its members, such working groups as it may deem necessary. Every working group so constituted shall perform such functions as are assigned to it by the Central Council. It seems that such working groups may prove to be more useful and effective in dealing with the specific problems allocated to them. The findings of such working groups are required to be placed before the Council for its consideration. The resolutions by the Council shall be recommendatory in nature.

Objects of the Central Council

Section 6 of the Consumer Protection Act provides that the objects of the Central Council shall be to promote and protect the rights of the consumers, such as -

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

The Central Council may have a significant role in the formulation of the Central Government economic policy. In addition it may respond to request for information and advice on particular issues relating to the protection of consumers. Although the decisions of the Councils are recommendatory but they may have a significant impact on
the several authorities concerned with the matters of consumer protection.

(B) **State Consumer Protection Councils**

The State Governments are also empowered to establish Consumer Protection Councils for their respective States. The State Council shall consist of such members as may be notified by the State Government by notification from time to time. The objects of every State Council like Central Council shall be to promote and protect within the State the rights of the consumer as laid down in the clauses (a) to (f) of Section 6. So far 22 States and Union Territories have set up the Consumer Protection Councils under the Act. But, how far these Councils have been successful in protecting the consumers' interest, is not free from doubt.

**MECHANISM FOR PROTECTING CONSUMER RIGHTS**

The Consumer Protection Act, 1986 provides for the establishment of a three-tier quasi-judicial machinery for redressing consumer grievances as under:

(A) **District Forum**

(B) **State Commission**

(C) **National Commission.**

(A) **District Forum**

A Consumer Disputes Redressal Forum to be known as the 'District Forum' is required to be established by the State Government with the prior approval of the Central Government in each district of the State.

(i) **Composition of the District Forum**

The Act provides that each District Forum shall consist of a president and two members, to be appointed by the State Government. The President of the Forum is required to be
a person who is, or has been, or is qualified to be a District Judge. Out of the two members of the Forum one must be a person of eminence in the field of education, trade or commerce, and the other must be a lady social worker. The intention for having the members from other than the legal profession seems to be that the District Forum should be able to understand and appreciate the over-all technical and social impact, while deciding the issues under the Act. The inclusion of a lady social worker in District Forum is of considerable importance keeping in view the nature and functioning of the Forum.

Every member of the District Forum shall hold the office for a term of five years or upto the age of 65 years, whichever is earlier, and shall not be eligible for reappointment. However, 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. The vacancy so caused may be filled by the appointment of a person possessing any of the qualifications mentioned above in relation to the category of the member who has resigned.

(ii) Jurisdiction of the District Forum

The District Forum shall have a jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed is less than rupees one lakh. 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 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 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 personally work for gain, as the case may be, acquiesce in such institution, or

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

A complaint in relation to any goods sold or delivered or any service provided, may be filed with the Forum by -

(a) the consumer to whom such goods are sold or delivered or such services provided;

(b) any recognised consumer association, whether the consumer to whom the goods sold or delivered or service provided is a member of such association or not; or

(c) the Central or the State Government.

It is evident from the aforesaid provisions that the complaint may be filed by the affected consumer himself or by any recognised consumer association even if that consumer is not the member of such association. The recognised consumer association means any voluntary consumer association registered under the Companies Act 1956, or any other law for the time being in force.

Further, the Central and State Governments have also been vested with wide powers to file complaint in relation to any goods sold or delivered or any services provided. The Governments may file the complaint of their own, whenever they find that the goods sold are defective, or services provided are deficient; or prices are over-charged.

(iii) Complainant

Clause (b) of Section 2(1) of the Consumer Protection Act defines the term 'complainant' which means -
(i) a consumer; or
(ii) any voluntary consumer association registered under
    the Companies Act 1956 (1 of 1956) or under any other
    law for the time being in force; or
(iii) the Central Government or any State Government, who
    or which makes a complaint.

For the first time, the registered consumers' associations have been recognised and have been assigned important role of protecting the consumers. Clause (n) of Section 2 of the Monopolies and Restrictive Trade Practices Act also defines "registered consumers' association". It means a voluntary association of persons registered under the Companies Act 1956 (1 of 1956) or any other law for the time being in force which is formed for the purpose of protecting the interests of consumers generally and is recognised by the Central Government as such association on an application made in this behalf in such form and such manner as may be prescribed. The Central Government has made the rules namely, the M.R.T.P. (Recognition of Consumer Association) Rules, 1987 for the purpose. According to these rules, every consumer association which is desirous of being recognised as a registered consumers' association, must have not less than ten consumers as its members and shall make an application on the prescribed form with a requisite fee of Rs. 500.00 to the Central Government in the Department of Company Affairs. The Department of Company Affairs may after scrutiny, issue a Certificate of Recognition or may refuse to issue such certificate. The applicant shall be informed of the reasons for such refusal. However, before issuing a Certificate of Recognition, the applicant may be required to furnish such additional information as may be called for. Every registered consumers' association is required to furnish a copy of the certificate of recognition to the concerned Consumer Disputes Redressal Commission established under the Consumer Protection Act.
(iv) **Consumer**

The term 'consumer' has been defined in clause (d) of section 2(1) of the Consumer Protection Act, 1986. 'Consumer' means any person who, -

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose, or

(ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.

The aforesaid definition of 'consumer' is wide enough to include not only the person who buys any goods for consideration but also includes any user of such goods other than the buyer. Similarly, it covers any person who hires any services for consideration and also includes any beneficiary of such services other than the hirer.

However, it does not include a person who obtains any goods for resale or for any commercial purpose.
(v) Complaint

Clause (c) of section 2(1) of the Consumer Protection Act defines 'complaint' which means any allegation in writing made by a complainant that -

(i) as a result of any unfair trade practice adopted by any trader, the complainant has suffered loss or damage;
(ii) the goods mentioned in the complaint suffer from one or more defects;
(iii) the services mentioned in the complaint suffer from deficiency in any respect;
(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 any package containing such goods,

with a view to obtaining any relief provided by or under this Act.

It may be noted that the provisions relating to unfair trade practices have already been incorporated in the Monopolies and Restrictive Trade Practices Act in 1984. Under the MRTP Act, the unfair trade practices, like misleading advertisements and false representations, bargain sales, bait and switch selling, offering of gifts and prizes with the intention of not providing them conducting promotional contests, and hoarding and destruction of goods have been prohibited. The meaning of the expression 'unfair trade practice' for the purposes of the Consumer Protection Act, 1986 is the same as in section 36A of the MRTP Act. But for a complaint under sub-clause (i) of clause (c) of section 2(1) of the Consumer Protection Act, it is necessary that the complainant must have suffered loss or damage as a result of any unfair trade practice. There is no such limitation under the MRTP Act. Under that Act, the MRTP Commission may inquire into any unfair trade practice irrespective whether any loss or damage has been suffered or not as a result of
such practice. However, the relieves available against the unfair trade practice under the MRTP Act are by way of temporary injunction under Section 12A; 'consent order' or 'cease and desist order' under Section 36D; and compensation under Section 12B. Under the Consumer Protection Act, the relief may be granted by directing the opposite party to remove the defect; to replace the goods; to return the price; and to pay compensation for loss or injury suffered by the consumer. Since the provisions of the Consumer Protection Act are in addition to and not in derogation of the provisions of any other law for the time being in force, it is left to the choice the consumer to decide his cause of action.

(vi) Complaint Against Defective Goods

The complaint may be in respect of the goods which suffer from one or more defects. The term 'goods' has the same meaning as defined in the Sale of Goods Act, 1930. According to Section 2(7) of the Sale of Goods Act, 'goods' means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. The definition is comprehensive one. It includes grass, crops and standing timber which are agreed to be cut before sale or under the contract of sale. It also includes stocks and shares.

In the United Kingdom, Section 43(1) of the Restrictive Trade Practices Act, 1976 defines 'goods' to include ships and aircrafts, mineral substances and animals including fish, and reference to the production of goods include reference to the getting of minerals and taking of such animals. The Fair Trading Act, 1973 further extends the scope of the term 'goods' by including buildings and other structure. However, in India, the definition of 'goods' under the Act does not include building and structures.
The term 'defect' has been defined in clause (f) of Section 2(1) of the Consumer Protection Act. 'Defect' means any fault, imperfection or shortcoming in the quality, quantity, potency, purity of standard which is required to be maintained by or under any law for time being in force or as is claimed by the trader in any manner whatsoever in relation to any goods. The definition is wide enough to cover all kinds of faults, or shortcomings in the quality, quantity, potency, purity or standard of goods. The 'trader' in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof. Thus, the term 'trader' is not restricted to only seller or distributor of the goods but also extends to the manufacturer and packer of such goods. '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 even though the parts so despatched to it are assembled at such branch office and are sold or distributed from such branch office.

(vii) Complaint Against Deficient Service

The complaint may relate to any services which suffer from deficiency in any respect. The term 'service' has been defined in clause (o) of Section 2(1) of the Consumer Protection Act as under:
'Service' means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

The aforesaid definition is similar to the definition of 'service' given in clause (r) of Section 2 of the MRTP Act. The definition is very wide and inclusive. It includes amenities and facilities like provisions of finance, transport, energy, etc. which satisfy the various desire and needs of the society. The services rendered by Hotels, Cinemas, Laundries, etc. are also covered by the above definition.

However, the definition excludes two types of services, namely - (i) rendering of any service free of charge, or (ii) under a contract of personal service. It may be noted that the services like medicine, law, accountancy, engineering, etc. have not been specifically enumerated. But it seems that these services are also covered within the scope of the above definition since these are available to potential users.

The literal meaning of the word 'service' is work done to meet some general need, an act of helpful activity, the supplying of utilities as water, electricity, gas, required by the public: supplying of repair service; supplying of public communications or public transport. The use of the expression 'made available to potential users' in the above definition reveals that the service must be made available to potential users who are willing to pay for the service. Further, the expression, 'but does not include rendering
of any service free of charge' indicates that the service must be rendered for remuneration.

The complaint can be made in respect of only those services which suffer from any deficiency. '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. The definition is sufficiently wide to cover any fault, shortcoming, etc. in the quality, nature and manner of performance of any service.

(viii) Complaint Against Excess-Price

A complaint may be made against a trader who has charged for the goods 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 any package containing such goods. This is a very important provision under which a relief may be claimed against over-charging or prices. Now a days, it is a common practice to display maximum price with local taxes extra on the package of containing goods. Many times it has been noticed that the retailers charge 15-20% more than maximum price on the pretext of local taxes and they do not issue any bill, cash-memo etc. indicating such taxes. It is submitted that such cases should also be covered within the scope of the aforesaid provisions and the sellers and retailers should be held liable accordingly.

(ix) Procedure to be Followed by the District Forum

Section 13 of the Consumer Protection Act lays down the procedure to be followed for the settlement of consumer dispute by District Forum. According to these provisions the Forum shall, on receipt of a complaint relating to any
goods or services refer a copy of the complaint to the opposite party directing him to give his version of the case within a period of thirty days. However, the period may be extended up to fifteen days by the District Forum. Thus, in no case the opposite party be allowed to give his version after the expiry of forty-five days.

Where the opposite party denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the above stipulated time, the District Forum shall proceed to settle the consumer dispute on the basis of the evidence brought to its notice.

However, where the defects alleged in the goods are such that they cannot be determined without proper analysis or test of the goods, the District Forum is required to obtain a sample of the goods from the complainant. The District Forum must seal the sample so obtained and authenticate it and refer it to the appropriate laboratory. But, before sending any sample to any laboratory, 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 laboratory for carrying out the necessary analysis or test in relation to the goods in question. The Forum shall remit the amount so deposited to the laboratory to enable it to carry out the analysis on test.

The Forum shall direct the laboratory to make an analysis or test with a view to finding out whether such goods suffer from any defect alleged in the complaint or suffer from any other defect. The laboratory is required to submit its report to the Forum within a period of forty-five days of the receipt of reference or within such extended period as may be granted by the Forum.
The Forum shall forward a copy of the report along with such remarks as it may feel appropriate to the opposite party. If any of the parties disputes the correctness of the findings of the appropriate laboratory, or dispute the correctness of the methods of analysis or test adopted by the appropriate laboratory, the Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the laboratory. The Forum 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 laboratory and also as to the objection made in relation thereto and issue an appropriate order under section 14 of the Consumer Protection Act.

However, section 13(3) of the Act provides that no proceedings complying with the aforesaid procedure shall be called in question in any court on the ground that the principles of natural justice have not been complied with. It may be noted that the requirements of natural justice do not remain fixed nor they remain the same in every case and in all circumstances. The applicability of the principles of natural justice depends on: (i) the scheme and policy of the statute; (ii) nature of jurisdiction conferred on the authority; (iii) character of rights of the persons affected; and (iv) relevant circumstances disclosed in a particular case. Under the Consumer Protection Act, the procedure to be followed requires - referring of complaint to the opposite party; providing him an opportunity to give his version of the case; analysis or testing of the goods by appropriate laboratory; and considering the evidence produced by the complainant and the opposite party. This procedure seems to be on the lines of the principles of natural justice.
(x) **Power of District Forum**

For the purpose of the settlement of the consumer dispute under the Act, the District Forum has been vested with the same powers as vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely -

i. the summoning the enforcing 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 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.

Further, section 13(5) of the Act expressly provides that every proceeding before the District Forum shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the 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. Thus, the proceedings before the Forum will be judicial proceeding for certain purposes like contempt of court, giving of false evidence, etc. and the Forum shall be treated as a civil court for these purposes.

(xi) **Production of Documents, etc.**

The District Forum has the power to require any person to furnish such books, accounts, documents, or commodities, the examination of which may be required a person to furnish such information as may be required for the purpose of the Act. The expression 'required for the purpose of the Act' is quite significant to determine the relevancy of the
document for the purpose of proceedings. Whether a person, when called upon to produce a document, etc. can raise an objection on the ground of irrelevancy of the document etc.? It appears that he has a right to object on the ground irrelevancy of the document, etc. at a proceeding, but such irrelevancy must be demonstrated.

(xii) Powers of Entry, Search and Seizure

Where during any ground to believe that book, paper, commodity or document which may be required to be produced in such proceeding are being, or may be destroyed, mutilated, altered, falsified or secreted, it may, by written order authorise any officer to exercise the power of entry and search of any premises. Such authorised officer may also seize such books, papers, documents or commodities as are required for the purpose of the Act. The seizure must be communicated to the Forum as soon as it is made or within a period not exceeding seventy-two hours of making such seizure, after specifying the reasons for making such seizure. The Forum on examination of such seized documents or commodities, may order the retention thereof or may return it to the party concerned.

It is yet to be seen how far the Forum will make use of this provision, but it is hoped that the effective use of the provision will certainly strengthen the hands of the Forum for the redressal of the consumer dispute.

(xiii) District Forum - Whether a Quasi-Judicial Body

The provisions of the Act reveals that the District Forum is not a court and is not bound to follow the procedure prescribed for trial of action in courts nor by strict rule of evidence. For the settlement of the consumer dispute the Forum has to follow the procedure laid in section 13 of the Act which is quite parallel to the principles of natural
justice. Thus, it seems to be a quasi-judicial body under the Act.

(xiv) Orders of the District Forum

Where 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 take 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.

Every order made by the Forum shall be signed by the President and all the members constituting it, and, if there is any difference of opinion, the order of the majority of the members constituting it shall be the order of the Forum.

(xv) Appeal Against the Orders of the District Forum

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. However, the Commission may entertain an appeal even after the expiry of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period. The expression 'sufficient cause' requires liberal construction so as to advance substantial justice.

where no negligence or any inaction or want of bonafide is imputable to the party. The determination of 'sufficient cause' will depend on facts and circumstances of each case. It is a discretion to be exercised by the Commission in a judicial manner and in the interest of justice.

(B) **State Commission**

A Consumer Disputes Redressal Commission to be known as the 'State Commission' is required to be established by the State Government with the prior approval of the Central Government in the State.

(i) **Composition of the State Commission**

Each State Commission shall consist of a President and two other members, to be appointed by the State Government. The President should be a person who is or has been a judge of a High Court, appointed by the State Government. The two other members should be persons of ability, integrity and standing and should have adequate knowledge or experience of, or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom should be a woman. However, the appointment of a sitting Judge of a High Court to the Commission can be made only, after consultation with the Chief Justice of that High Court. The salary or honorarium and other allowances payable to, and other terms and conditions of service (including tenure of office) of, the members of the State Commission shall be such as may be prescribed by the State Government.

(ii) **Jurisdiction of the State Commission**

The State Commission shall have jurisdiction -

i. to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one lakh but does not exceed rupees ten lakhs; and
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, 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.

Thus, the jurisdiction of the State Commission is original as well as appellate. The original jurisdiction is vested in the Commission only in respect of complaints where the value of goods or services and compensation claimed exceeds rupees one lakh but not more than rupees ten lakhs. The appellate jurisdiction is confined to appeals from the orders of any District Forum within the State. Further, the State Commission may call for records and pass orders in any consumer dispute where it appears that a District Forum has acted illegally or with material irregularity, or has exceeded its jurisdiction or has failed to exercise its jurisdiction.

(iii) Procedure Applicable to State Commission

The procedure for the disposal disputes to be adopted by the State Commission shall be the same as is to be followed by the District Forum. Thus, the procedure specified in sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the State Commission. Further, rule 10 of the Consumer Protection Rules confers the same additional powers to the Commission as are vested to the District Forum regarding the production of documents, search and seizure.
It may, however, be noted that the State Governments have yet to make their own rules in exercise of their powers under section 30(2) of the Act. It is submitted that the State Governments may adopt the similar rules as laid down by the Central Government, namely, the Consumer Protection Rules, 1987. It will help in maintaining the uniform law in all over the country.

(iv) Appeal Against the Orders of the State Commission

Section 19 of the Act provides that person aggrieved by an order made by the State Commission on a complaint (where the value, goods or services and compensation claimed exceeds rupees one lakh but not more than rupees ten lakhs) may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order. However, 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.

It may be noted that an order made by the State Commission on an appeal against the orders of the District Forum, is not appealable to the National Commission. Thus, the provision exists only for a single appeal to the State Commission from the orders of the District Forum and no further appeal will lie from the orders of the State Commission on the National Commission.

An appeal under section 19 of the Act can be preferred only by a 'person aggrieved'. The expression 'person aggrieved' does not mean a person who is disappointed or annoyed at a decision. The words 'aggrieved' connotes some legal grievance, e.g., deprivation of something an adverse effect on the title of something and so on. He must show that the order affects his own right or is not in accordance with law or confers a right on a person to which he is not entitled.
The expression 'aggrieved person' does not include a mere busybody who is interfering in things which does not concern him. Since the Consumer Protection Act deals with the matters of great public importance, it is submitted that the words 'aggrieved person' should be given a wider meaning and not a narrow construction.

(C) National Commission

The highest authority to settle the consumer disputes under the Act is an independent statutory body - the National Commission.

(i) Composition of the National Commission

The Act provides that National Commission shall consist of a President and four other members to be appointed by the Central Government. The President should be a person who is or has been a Judge of the Supreme Court. The person to be appointed as a member should be a person of ability, integrity and standing with adequate knowledge or experience, or capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of the members should be a woman. However, no sitting Judge of the Supreme Court shall be appointed under the aforesaid provisions except after consultation with the Chief Justice of India. Before appointment, the President and members are required to take an undertaking that they do not and will not have any such financial or other interests as is likely to effect prejudicially functions as such member.

It may be noted that no act or proceedings of the National Commission shall be invalid by reasons only of the existence of any vacancy among its President or members or any defect in the constitution thereof.
(ii) Casual Vacancies

The President or a member of the National Commission may, by writing under his hand, resign his office at any time; or may be removed from the office in accordance with the provisions of the Consumer Protection Rules. A casual vacancy so caused by resignation or removal is required to be filled by fresh appointment. Where any such casual vacancy occurs in the office of the President of the National Commission, the senior-most member of the Commission holding office for the time being, shall discharge the functions of the President until a person appointed to fill such vacancy assumes the office of the President. Similarly when the President is unable to discharge the functions owing the absence, illness or any other cause, the senior-most member of the Commission shall discharge the functions of the President until the day on which the President resumes the charge of his function.

(iii) Removal of the President and Members

The Central Government may remove the President or any member from office on any of the following grounds, namely -

(a) he has been adjudged an insolvent; or
(b) he has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
(c) he has become physically or mentally incapable of acting as the President or the member; or
(d) he has acquired such financial or other interest as is likely to affect prejudicially his functions as the President or a member; or
(e) he has so abused his position as to render his continuance in office prejudicial to the public interest.

But, the Government's power of removal on the grounds specified in clauses (d) and (e) above, is subject to an
inquiry to be held by the Central Government in accordance
with such procedure as it may specify in this behalf and
finds the President or a member to be guilty of such ground.
However, it seems that the procedure for such an inquiry
and removal is yet to be prescribed by the Central Government.
It is submitted that the procedure for such an inquiry to
be adopted by the Central Government must be fair and rea­son­able. In this regard, it is suggested that the Central
Government should refer such an inquiry to the Supreme Court
and then it should proceed for the removal on the basis of
the report of that inquiry. It is hoped that this procedure,
if followed, will help to secure the independence of the
Commission.

It may be noted that the State Governments have yet
to make rules in this regard, under the Consumer Protection
Act. It is submitted that the State Governments may adopt
the aforesaid rules with necessary modifications for the
removal of the President and members of their respective
State Commissions and District Forums.

(iv) Term of Office and Remuneration

The salary, 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. In this connection
the Central Government has laid down the relevant provisions
in the Consumer Protection Rules, 1987. According to rule
12(2), the President and the members shall hold office for
such period, not exceeding five years as may be specified
by the Central Government in the notification, but shall
be eligible for re-appointment. However, no President or
a member shall hold office as such for a total period excee­ding
 ten years or after he has attained the age of 65 years,
whichever is earlier.
The terms and conditions of service of the President and the members shall not be varied to their disadvantage during their terms of office.

Rule 11 of the Consumer Protection Rules, lays down the salaries, honorarium and other allowances payable to the President and Members of the National Commission. According to these rules, where the President of the National Commission is a sitting Judge of the Supreme Court, he shall enjoy all the benefits which he should have enjoyed as sitting Judge of the Supreme Court. Where the President is not a sitting Judge of the Supreme Court, he shall receive a consolidated honorarium of Rs. 8,000.00 per month. Other members, if sitting on whole-time basis shall receive a consolidated honorarium of Rs. 6,000.00 per month or if sitting on part-time basis, a consolidated honorarium of Rs. 300.00 per day for sitting. The President and other members shall also be entitled to travelling and daily allowance on official tours at the same rates as are admissible to Group 'A' Officer of the Central Government. The salary, honorarium and other allowances shall be defrayed out of the Consolidated Fund of India.

(v) Independence of the National Commission

The Consumer Protection Act and the Consumer Protection Rules have laid down many provisions to secure the independence of the National Commission. The terms and conditions of service of the President and the members shall not be varied to their disadvantage. They are also required to take an undertaking that they do not and will not have any such financial or other interests as is likely to effect prejudicially their functions as such members. Further, the procedure for the removal of the President and members as laid down under rule 13 of the Consumer Protection Rules is such that it prevents the Central Government from acting on any extraneous ground or arbitrarily. In order to ensure the impartial
working of the President and members, they are prohibited from taking any appointment in or being connected with the management or administration of any organisation which have been the subject of any proceeding under the Act during their tenure. The prohibition is for a period of five years from the date on which they ceases to hold such office. It may be noted that the contravention of these provisions has not been made an offence. A person who contravenes can, at the worst, be only prevented by an injunction by a civil court.

To secure a similar independence of the State Commissions and District Forums, it is submitted that the State Governments (which have yet to frame the rules under the Act) may also adopt the similar rules for the sake of convenience and uniformity in all over the country.

(vi) Sittings and Secretariat of the National Commission

The office of the National Commission shall be located in the Union Territory of Delhi. The official seal and emblem of the Commission shall be such as the Central Government may specify.

The sitting of the Commission as and when necessary shall be convened by the President. The working days and office hours of the Commission shall be the same as that of the Central Government. The Central Government shall appoint such staff as may be necessary to assist the Commission in its day-to-day work and to perform such other functions as are provided under the Act and the rules or assigned to it by the President. The salary payable to such staff shall be defrayed of the Consolidated Fund of India.

(vii) Jurisdiction of the National Commission

Section 21 of the Act provides that 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 ten lakhs; and

ii. appeals against the orders of any State Commission;

and

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

It is evident from the aforesaid provisions that the jurisdiction of the National Commission is original as well as appellate. The original jurisdiction is limited to the complaints where the value of the goods or services and compensation exceeds rupees ten lakhs. The appellate jurisdiction is confined to appeals against the orders of any State Commission. Thus, no appeal can lie to National Commission against the orders of the District Forum. It is the State Commission of each State which can entertain an appeal from the District Forums of the State.

Further, the National Commission is empowered to call for records and pass appropriate orders in any consumer dispute where it appears that the State Commission has acted illegally or with material irregularity or exceeded its jurisdiction or has failed to exercise its jurisdiction.

(viii) Procedure to be followed by the National Commission

Section 22 of the Act provides that the National Commission shall in the disposal of any complaints or of any proceedings, have the same powers as are vested in a
civil court under the Code of Civil Procedure, 1908, while trying a suit, in the matter of—(i) summoning and enforcing the attendance of any witness and examining him on oath; (ii) discovery and production of any document or other material object producible as evidence; (iii) reception of evidence on affidavits; (iv) 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. Further, every proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Thus, the proceedings before the Commission will be judicial proceedings for certain purposes like contempt of court, giving of false evidence etc. and the Commission shall be treated as a civil court for these purposes.

In addition to the aforesaid provisions, the Commission has also to follow the procedure as may be prescribed by the Central Government.

Accordingly the procedure has been laid down in rule 14 of the Consumer Protection Rules. These rules provide that a complaint containing the following particulars shall be presented by the complainant in person or by his agent to the National Commission or be sent by registered post addressed to the Commission.

(a) the name, description and the address of the complainant;
(b) the name, description and address of the opposite party or parties, as the case may be, so far as they can be ascertained;
(c) the facts relating to complainant and when and where it arose;
(d) documents in support of the allegations contained in the complaint;
(e) the relief which complaint claims.

On receipt of a complaint the National Commission has to follow the same procedure as is to be followed by the District Forum under sub-section (1) and (2) of section 13 of the Act. The Commission is required to refer a copy of the 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 Commission. Where the opposite party denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the stipulated time, the Commission shall proceed to settle the consumer dispute on the basis of the evidence brought to its notice. However, if the defects alleged in the goods are such that they cannot be determined without proper analysis or test, the Commission should refer the sample of the goods to the appropriate laboratory for the necessary analysis or test and report thereof. Any objections in regard to the report should be made to the Commission in writing and thereafter the Commission should give a reasonable opportunity to both the parties of being heard and issue an appropriate order.

It shall be obligatory on the parties or their agents to appear before the Commission on the date of hearing or any other date to which hearing could be adjourned. Where the complainant or his agent fails to appear before the Commission on such days, the Commission may in its discretion either dismiss the complaint for default or decide it on merits. Where the opposite party or its agent fails to appear on the date of hearing, the Commission may decide the complaint ex-parte.
The Commission may adjourn the hearing of complaint at any stage of the proceedings and on such term as it deems fit. But the complaint shall be decided, as far as possible, within a period of three months from the date of notice received by opposite party where complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities. The time limit has been prescribed with the intention to avoid delay in the redressal of the consumer disputes. This will provide the consumers not only a timely relief but will also create a confidence in them.

Where the Commission, after the proceedings conducted, in the aforesaid manner, is satisfied with the allegations contained in the complaint, it shall issue orders to the opposite party directing him to take one or more of the things, namely, - to remove the defect; to replace the goods with new goods; to return the price; to pay the compensation as awarded. The Commission also has the power to direct that any order passed by it, where no appeal has been preferred under section 23 or where the order of the Commission has been affirmed by the Supreme Court under that section, be published in the Official Gazette or through any other media and no legal proceedings shall lie against the Commission or any media for such publication.

(ix) Procedure for Hearing the Appeal

The procedure to be followed by the National Commission for hearing the appeal has been prescribed in rule 15 of the Consumer Protection Rules. According to these rules, the memorandum shall be presented by the appellant or his agent to the National Commission in person or be sent by registered post addressed to the Commission. The memorandum must set forth the grounds of appeal without any argument or narrative and must be accompanied by a certified copy of the order of the State Commission appealed against and
such of the documents as may be required to support grounds of objection mentioned in the memorandum. However, under section 19 of the Act, the appeal is to be preferred within a period of thirty days from the date of the order of the State Commission. When such an appeal is presented after the expiry of the period of limitation, the memorandum must also be accompanied by an application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the National Commission that he has sufficient cause for not preferring the appeal within the period of limitation.

It shall be obligatory for the parties or their agents to appear before the National Commission on the date of hearing or any other day to which hearing may be adjourned. If the appellant or his agent fails to appear on such date, the Commission may in its discretion either dismiss the appeal or decide ex-parte on merits. If the respondent or his agent fails to appear on such date, the National Commission shall proceed ex-parte and shall decide the appeal on merits of the case.

The appellant shall not urge or be heard in support of any ground of objection not set forth in the memorandum, except by the leave of the Commission. But the Commission, in deciding the appeal, may not confine to the grounds of objection set forth in the memorandum. However, the Commission shall not rest its decision of any other ground other than those specified in the memorandum unless the party who may be affected thereby, has been given an opportunity of being heard by the Commission.

The Commission, on such terms as it may think fit and at any state, adjourn the hearing of the appeal, but not more than one adjournment shall ordinarily be given and the appeal should be decided, so far as possible within ninety
days from the first date of hearing. The order of the National Commission on appeal shall be signed and dated by the members of the Commission and shall be communicated to the parties free of charge.

**WORKING OF THE ACT - A CRITICAL REVIEW**

Within a short period the new legislation has made considerable impact and has restored, in a significant way, the prestige of the consumer who cannot be taken for a ride now. This has been possible because unlike laws relating to restrictive and unfair trade practices which are basically preventive in nature, the provisions of the act are compensatory in effect and provide simple, speedy and inexpensive redressal to the consumer's grievances. Even where damages have been prescribed, as for example, section 12B of the MRTP Act, the procedure is long and time-consuming and beyond the reach of ordinary man. In this respect, the Consumer Protection Act is a great improvement.

A perusal of the decisions given by the National and State level Commissions and district redressal forums show that very effective work has been done by these organisations. Some of the areas where reliefs have been given after matters were brought to the notice of the relevant forums are, briefly mentioned here.

In the cases relating to sale of televisions, prompt after-sale services were ordered and parts were directed to be changed free of cost during the warranty periods. In one case, amount spent towards buying certain components of a defective ET&T TV set amounting to Rs. 700.00 were directed to be re-imbursed to the purchaser.

A sitting Judge of the Patna High Court filed a petition before the State Commission complaining defects and deficiencies in an Ambassador Car purchased by him. The manufacturing
company appeared before the Commission and undertook to remove all defects and carry out dending and painting of the car within 15 days to the satisfaction of the purchaser.

A complaint was filed before the Delhi District Forum against fading of colour of a suit purchased by a lady customer against the seller. As a result of the complaint, she received Rs. 650.00 in full and final settlement of her claim. In another case, a discoloured sari was ordered to be replaced and the directions were promptly complied with.

In some cases relating to sale of refrigerators, complaints were ordered to be redressed to the satisfaction of the purchasers. In one case at Patna, the district forum ordered a compensation of Rs. 5,000.00 to the complainant and for the replacement of the refrigerator to match the earlier specification.

On a complaint against a manufacturer of scooters regarding non-refund of booking advance, the complainant was returned a sum of Rs. 702 - 500, representing advance and Rs. 202.00 as interest.

A soft drink manufacturing company, which had promised to give a VIP Suitcase to its dealers on sale of 300-400 crates of soft drink and did not fulfil it, immediately gave the suitcase, when a dealer filed a complaint before the district forum.

On receiving a complaint, the Nellore District Redressal Forum directed the dealer of the H.P. Gas Agency to give cooking gas connection to the complainant before a specified date.

In another case, the forum directed the gas company not to insist on customer's purchasing a particular brand
of stove as a condition precedent for the supply of gas connection. The company was directed to sell stoves of consumer's choice.

A complaint was filed against a reputed manufacturer of shoes - Bata Company - stating that the shoe tore off within two weeks of its purchase. As a result of the complaint, the complainant received the cost of the shoe back.

In a case filed before a District Forum relating to non-receipt of refund of a fixed deposit on maturity made with a corporation, the grievance was removed and the corporation paid the dues to the complainant to her satisfaction.

The redressal machinery has been able to secure relief not only from the private parties but also from the public sector undertakings and State and Central Government authorities. Relief in some cases has been given on complaints concerning Railways, Mahanagar Telephone Nigam etc.

A complaint was filed before the Patna district forum against the Chief Executive Officer, Patna Municipal Corporation, for not providing street light. It was claimed by the complainant that he had paid taxes to the corporation which includes cost of providing street light also. On notice being received, the municipal corporation provided light in the particular street. The case was disposed-off with the observation by the forum that the municipal corporation should be conscious of its obligation in future also.

A few complaints came up for consideration before the Delhi Forum concerning Delhi Electric Supply Undertaking (DESU). A complaint was filed against DESU for issuing bills on the average basis. On hearing both the parties, DESU was ordered to send bills on correct reading. In another case, DESU was directed to settle the claim regarding outstanding
dues on removal of meter and this was done to the satisfaction of the customer.

It, however, needs to be understood that the objective of the Act is to provide compensation and relief and not to enrich the consumers. Therefore, satisfaction will be possible only if realistic claims are made - not highpitched ones to gain purely pecuniary benefits or to harass someone.

These are few instances from only two States and one Union Territory which establish the potential of the new Act and the machinery provided to take care of the consumers' interests. With enactments like the Consumer Protection Act, one can visualise a better future for the consumers provided they themselves are vigilant and conscious of their rights.

On examining various provisions of the Act and rules made thereunder, following deficiencies have been located:

(1) States are not administratively bound to initiate the functioning of the Act.

(2) Despite required legislation being passed, the law is approachable by all. It is here that media could intervene and assist in developing the consumer protection culture by providing necessary information.

(3) The Consumer Protection Act envisages the setting up of State and District Forums for speedy redressal of Consumer grievance. The Presidents of the State Commission and District Forums are required to be Judges of High Court and District Court respectively. The other members who constitute majority of these bodies are to be non-judicial persons of eminence while appointing these persons due case should be taken so that they are not influenced by the Presidents of their respective Commissions and Forums and decisions are not highly legalistic and conservative.
The definition of 'Consumer' as per Section 2(1) of the Act is defective. As per definition, the word 'Consumer' does not include a person who obtains goods for resale or for commercial purposes. This creates hardship in certain cases e.g. a widow buying a sewing machine for earning money through tailoring.

In a recent case before NCDRC (Synco Textiles Private Ltd. Vs. Greeves Cotton & Company Ltd.), the term 'Consumer' has been examined in detail.

FACTS OF THE CASE

The appellant company was operating an oil mill to produce edible oil and oil-cakes from oilseeds. The plant and machinery in its factory were used for conversion of raw materials into finished products. The appellant purchased from the respondent three generating sets for a total cost of Rs. 5,53,000.00. The grievance of the appellant was that the generating sets were found to be defective and the respondent failed to replace the defective parts.

National Commission by a majority decision observed that under Section 2(1)(d)(i) of the Act, any person who obtains goods for resale or for any commercial purposes was excluded from the definition of consumer and that the words 'for any commercial purpose' were wide enough to take all cases where goods were purchased for being used in any activity directly intended to generate profits.

Although the majority decision was given by 3 members of the Commission, the separate dissenting order given by a member, Y. Krishna also needs to be noted. Justice Krishan observed that the words 'for commercial purpose applies only to 'goods' and not for 'services' and that while interpreting sections 2(1)(d)(i) and 2(1)(d)(ii), it would be patently anomalous if the buyers of goods purchased for production (plant and machinery, raw materials etc.) were excluded from
the provisions of the Act but hirers (buyers) of services (power, water etc.) for the same purpose of production were included under the Act. Such a contradiction in the application of Act had to be avoided, he observed.

The observation of Justice Krishan has strong logic. It is therefore, imperative that the misleading phrase 'for any commercial purpose', he clarified.

Another lacunae in the definition of 'Consumer' lies with respect to 'services'. Section 2(1)(d)(ii) of the Act provides that 'Services' should be hired 'for a consideration. This restricted definition of consumer did not allow National Commission to award compensation to patients when treatment was given negligently in Government Hospitals and patients suffered physically and financially. National Commission found itself unable to award any compensation in two cases viz. (i) Consumer Unity and Trust Society, Jaipur Vs. The State of Rajasthan and Others - (NCDRC Order dated 15.12.89); (ii) Mrs. Mable Rossewelt Vs. State of Kerala - (NCDRC Order dated 10.07.1990).

In the above two cases patients were treated in Government hospitals. As no consideration was paid for the treatment, the patients were not treated as consumer and hence were not entitled for any compensation. It was also interpreted that even if patient was admitted in the paying ward or contributed to CGHS would not entitle him to be treated as Consumer under the Act. In these cases there is no consideration for the treatment.

National Commission was so much concerned with the medical negligence in the case of Mrs. Roosewelt Vs. State of Kerala that legalistic angle was forsaken and a suggestive Judgement was given to award compensation to the family of the patient. Therefore, definition of the word 'Consumer
requires serious consideration of the parliament and clarificatory amendments are needed.

National Commission should be empowered to issue (i) cease and desist order; (ii) grant interim relief; (iii) direction for recall of unsafe goods and replacement of defective goods.

A high powered committee be appointed to take follow-up action and to review the working of the Consumer Protection Act.

SUPREME COURT'S JUDGEMENT

On August 5, 1991, Supreme Court directed that every district should have consumer forum within two months and every district should be presided over by an exclusively appointed Judicial Officer in terms of the prescription of the statute.

The State Governments have protested to the Ministry of Civil Supplies and Public Distribution against this stipulation of the Supreme Court because they would now be required to make available staff on a regular basis which would place additional financial burden on them. To mitigate the financial hardship of the State Governments, the ministry decided in concurrence with the Supreme Court that regular District Judges could be allowed to attend to the work of the district forum on a part time basis. But ministry's officials have complained that some State Governments have not been sending progress reports and others have been 'most irregular'. Only eleven States have constituted the State Commissions and one district forum for every district.3

On 22nd October, 1991, the Supreme Court issued contempt notices to Secretaries of several State Governments for not complying with its Order of 5th August, 1991 for setting up Consumer Forums in each district.

**CONSUMER PROTECTION (AMENDMENT) ORDINANCE, 1991**

Consumer Protection Act, 1986 has been amended by a Presidential Ordinance in 1991. The amendment seeks to regulate procedure of making decisions and delivering judgments by District and State Forums. Main features of the amendment are:

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

(b) that every Order made by the District Forum shall be signed by its President and member or members who conducted the proceeding;

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

(d) to validate the Orders which have been signed by the President and one member of the District Forum or the State Commission before amendment; and

(e) that in the case of vacancy in the office of the President, the person who is qualified to be appointed as President of the District Forum or the State Commission may be temporarily appointed to hold such office.
CONSUMER PROTECTION (AMENDMENT) ACT, 1991

A bill to replace above ordinance was also introduced in Parliament. The Bill has been passed by Rajya Sabha on 1st August, 1991 and received assent of the President on 16th August, 1991. All the provisions of Ordinance have been incorporated in the Act.