CHAPTER – 3

THE CONSUMER PROTECTION ACT, 1986–AN OVERVIEW

3.1 INTRODUCTION

The third chapter of the present work is very important as the study revolves round this chapter. In this chapter we have discussed the objectives, features, provisions of the Act.

The Consumer Protection Act, 1986 is a landmark legislation bringing about the sea change in the avenues open to the common man to seek redressal of grievances as a consumer.

There has been a long felt necessity of protecting the common man from his complaints against traders and manufacturers for supplying substandard or defective goods or over-charging the prices.
The remedies thus, far available under the common law were both expensive and time taking, negating the purpose of seeking justice.

Hence, Consumer Protection Act was brought into statute book in the year 1986, to provide a speedy and simple redressal to consumer dispute. This chapter will be based on the following points:

3.2 ORIGIN AND OBJECTIVES OF THE CONSUMER PROTECTION ACT, 1986

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

Statement of Objects and Reasons
The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and for that purpose, to make provision for the establishment of consumer councils and the consumer disputes and for matters connected therewith.

It seeks, inter alia, to promote and protect the rights of consumers such as –

- the right to be protected against marketing of goods which are hazardous to life and property;
- the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

- the right to be assured, wherever possible, access to variety of goods at competitive prices;

- the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;

- the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and

- 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 levels.

To provide speedy and simply redressal to consumer disputes; a quasi-judicial machinery is sought to be set up at the District, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief's of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.
The Consumer Protection (Amendment) Bill, 1993 which became Act 50 of 1993 adds the following statement of objects and reasons:

Statement of Objects and Reasons

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

The working of the redressal agencies set up under the Act has helped to arouse the expectations of the people and also brought to focus certain inadequacies in the coverage of the Act.

The Consumer Protection (Amendment) Bill, 1993 seeks to plug these loopholes and enlarge the scope of areas covered and entrust more powers to the redressal agencies under the Act. Accordingly, the Bill inter alia, seeks to provide for following:

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

ii. to enable the consumers who are self-employed to file complaints before the redressal agencies where goods bought by them exclusively for earning their livelihood, suffer from any defect;
iii. to add "services" relating to housing constructions;

iv. to provide for the constitution of selection committees for the selection of nonjudicial members of various redressal agencies;

v. to increase the monetary jurisdiction of District Fora/State Commissions/National Commission;

vi. to confer additional powers on the redressal agencies by way of awarding costs of the parties for ordering removal of defects or deficiency from the services, and for empowering to recall of goods likely to endanger the safety of the public etc.;

vii. to impose punishment on the complainant in cases of frivolous or vexatious complaints; and

viii. to provide for a limitation period of two year for filing complaints.

The Act is dedicated, as its preamble shows, to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for other connected matters. In the statement of objects and reasons it is said that the Act seeks to provide speedy and simple redressal to consumer disputes.
A quasi-judicial machinery is sought to be set up at the District, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief's of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for noncompliance of orders given by the quasi-judicial bodies have also been provided.

The Act seeks to protect the consumer in the following respects:

✓ The right to be protected against marketing of goods and services which are hazardous to life and property;

✓ The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices;

✓ The right to be assured, wherever possible, access to a variety of goods and services at competitive prices;

✓ The right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;

✓ The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
✓ The right to consumer education.

3.3 SAIENT FEATURES OF THE ACT.

In the preamble of the Act, it was stated, an act to provide for the better protection of the interest of consumers, are for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer's disputes and for matters connected there with.

The Act extends to the whole of India except the State of Jammu and Kashmir and is applies to all goods and services (excluding express) provided by the Central Government by notification. The Act is divided in three chapter as under:

Chapter I – Preliminary
Chapter II - Consumer Protection Councils
Chapter III - Consumer Disputes Redressal Agencies.

The important features of the Act are as follows:

1) The 'complainant' means (a) a consumer; or (b) any voluntary consumer association registered under the companies Act, 1956 or any other law for the time being in force; or (c) the Central Government or any State Government; who or which marks a
complaint against goods and services. Now, not only the consumer but also consumers association or Government has right for complaint. It will be more helpful to consumer protection movement.

2) The 'Complaint' means any allegation in writing made by the 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 the 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 obtaining any relief provided by or under this Act Sec. 2(1)(c).

So the Act apply to all goods and services and it extends to Government services like railway, post, telephone, telegram, radio, T.V. electricity, banks, insurance etc. However unfair trade practice shall not include an unfair trade practice adopted by the owner of an
undertaking to which part A of Chapter III of the MRTP Act applies. Thus it is comprehensive in coverage.

3) It establishes two councils
(i) the Central Consumer Protection Council and
(ii) the State Consumer Protection Councils.

These councils comprising non-officials and officials members. They will provide a platform for discussion of consumer problems and will advise the concerned Central or State Government on policies and programme to safeguard consumer's interest.

4) The objects of the council shall be to promote and protect the rights of the consumers such as:
(i) the right to be protected against marketing of goods which are hazardous to life and property
(ii) the right to be informed about the quality, quantity potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices;
(iii) the right to be assured, wherever possible, access to a variety of goods at competitive prices,
(iv) the right to be heard and be assured the consumer's interests will receive the consideration at appropriate forums,
(v) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers, and
(vi) the right to consumer education (Sec.6).

It seems that it provides for almost all rights of the consumers.

5) The Act seeks to provide prompt, simple and effective remedy the grievances of the general public. There shall be established for the purposes of this Act, the following consumer disputes redressal agencies, namely

(i) District forum;
(ii) State Commission and
(iii) National Commission.

The district forums will entertain complaints, where the value of the goods involved or compensation claimed is less than Rs. 1 lakh.

Where the value or claimed compensation is above Rs. 1 lakh but below Rs. 10 lakhs, the complaint will go before the State Commission.

National Commission will have powers to award compensation for damages above Rs. 10 lakhs.

The composition of these agencies includes qualified judge, a person of eminence in the field of education, trade commission etc, and a woman.
The appeal can be made against the judgement as per the Act. The commission has also revision power.

6) The quasi-judicial machines provides speedy redressals. The procedure is very simple and time bound. No fees have been prescribed for filing of complaints before any redressal forum.

7) The Act provides penalties. Where the trader or person against whom complaints is made fails or omits to comply with any orders of the district from state commission or national commission, he will be punishable with imprisonment for a term which shall not be less than 1 month but which may extend to 3 years or with fine which shall not be less than Rs. 2000 but which may extend to 10,000 or with both.

3.4 WHO IS A CONSUMER?

Section 2 (1)(d) defines “consumer” means any person who,

i. buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
ii. hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.

Explanation.
For the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

The term "consumer" is defined in Section 2(1)(d) of the Consumer Protection Act, 1986 in two parts, one in reference to a consumer who purchases goods and the second in reference to a person who hires services.

Thus, the Act covers transactions for supply of goods and rendering of services. The Supreme Court in its decision in Lucknow Development Authority V.M.K.Gupta¹ noted that the word "consumer" is a comprehensive expression. It extends from a person who buys any

¹ (1994) 1 SCC 243, 253
commodity to consume either as eatable or otherwise from a shop, business house, corporation, store, fair price shop to use for private or public services.

In OXFORD DICTIONARY a consumer is defined as "a purchaser of goods or services".

In BLACK'S LAW DICTIONARY it is explained to mean "one who consumes."

Individuals, who purchase, use, maintain and dispose of products and services. A member of that broad class of people who are affected by pricing policies, financing practices, quality of goods and services, credit reporting, debt collection and other trade practices for which State and Federal consumer protection laws are enacted."

The legislature has taken precaution not only to define 'complaint', 'complainant', 'consumer' but also even to mention in detail what would amount to an unfair trade practice by giving an elaborate definition in clause (r).

The Act, thus, aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services.

The common characteristic of goods and services are that they are supplied at a price to cover the costs and generate profit or income for the seller of goods or provider of services. But the defect in one or
the deficiency in the other may have to be removed and compensated differently.

The former is normally capable of being replaced or repaired, whereas the latter may be required to be compensated by award of the just equivalent of the value or damages for loss.

So far as a buyer of goods is concerned the definition says that a consumer means a person who buys any goods for a consideration. This would have the effect of covering all kinds of transfer of goods for consideration whether in terms of money or other goods (barter or exchange) or services.

The Sale of Goods Act, 1930 confines itself to sales for a money consideration and would not apply to a barter or exchange of goods unless the price be calculated in terms of money. It is not necessary that consideration should be paid at once. It may be paid at once thereby resulting in a cash sale. It may be partly paid and partly promised or may have to be paid under some deferred system of payment, as, for example, hire-purchase, resulting in a credit sale.

3.5 WHAT CAN A CONSUMER COMPLAIN AGAINST & TO WHOM CAN A COMPLAINT UNDER THE ACT BE MADE?

1. Protection against hazardous goods:

The Act says in the first place that the consumer has a right to be protected against the marketing of goods, which are hazardous to life
and property. While it is the concern of the Government and its authorities to prevent dangerous goods from finding their way into markets\(^2\), the consumer is assured by this Act that if he has been victimised into purchasing goods, which have injured his person or property, he will have a speedy and effective remedy under the redressal hierarchy constituted under the Act. For example, adulterated food\(^3\) is dangerous to life and weak cement is dangerous to life as well as to property.

The subject matter of dangerous goods is generally taken care of under the law of tort. Since the time of Donoghue v. Stevenson\(^4\) where a bottle of drink sprang the remains of a dead snail to the fright of the customer at a restaurant who had already taken a part of the contents aggravating her illness and the manufacturer was held liable to the distant user, it has become an established principle that a producer sending goods into the market would be liable to the ultimate user if his person or property is injured in the normal use of goods.

The decision has broadened the category of persons liable because the whole chain from the level of the producer up to the ultimate consumer is liable. It has also widened the range of persons to whom the liability is incurred.

Further, in the words of Winfield:

\(^2\) The Government has several laws at its disposal for this purpose such as, for example, laws against movement of narcotic drugs.

\(^3\) Achla C Dalvi v. Lipton India Ltd., (1992) 1 CPJ 90, unwholesome tea, replacement also unwholesome; Consumer Unity and Trust Society v. Union of India, (1992) 1 CPJ 56 NC, mixed rape-seed oil causing disability

\(^4\) Ibid
"The principle has been extended from articles of food and drink and includes, inter alia, kiosks, tombstones, hair dye, industrial chemicals, lifts, motor cars, and pants, toys and scented erasers and poisonous pencils."

Likewise the term "consumer" includes the ultimate user of the article or anyone who is within physical proximity to it.

2. Right to information:

The consumer has been given the right to be informed by the producer about the quality, quantity, potency, purity, standard and prices of goods he buys.

This is intended to save the consumer from unfair trade practices like false and misleading descriptions about the nature and quality of the goods, exaggerated statements about their power or potency, for example, that the hair oil is capable of promoting hair growth or preventing hair loss, where there is no such power to an appreciable extent, or that the medical preparation is capable of curing baldness or leucoderma, or that the goods are of some standard of purity which, for example, is indicated by the use of certification trade marks like Agmark, or Woolmark when in fact the goods are not of that standard or purity.

5 Paine v. Colne Valley Electric Supply Co., [1938] 4 All ER 803
6 Brown v. Cottersill, [1934] 51 TLR 21, child injured by a falling tombstone
7 Haseldine v. Daw, [1941] 2 KB 343, liability to persons stranded in a lift.
A misrepresentation as to price may occur, for example, in a concealed way in throwing open clearance, grand clearance or reduction sales or in an offer of a free gift along with a particular product when, in fact, neither the prices are less than the original ones nor the so-called free gift is really free.

3. **Right of access to variety:**

The Central Council as constituted under the Act has been charged with the responsibility of bringing about the organisation of markets and market practices in such a way that all dealers are supplied with a variety of goods for the benefit of the consumer and that the goods with a variety are being offered at competitive prices.

It is only then that the consumer will have access to variety and will be able to enjoy the benefit of competitive prices. This would require a certain degree of liberty of shopkeepers in selecting and stocking goods of choice. Shopkeepers' freedom in this respect is often curtailed by the abuse of monopoly power in the shape of monopolistic or restrictive trade practices.

4. **Right to due attention at appropriate forums:**

The Central Council is, in the fourth place, charged with the responsibility of assuring to consumers that they would be heard as of right by the appropriate forums and the consumer will receive due attention and consideration from such forums. Thus it is the duty of the
council so to organise and compose the different forums under the Act that an aggrieved consumer is heard as of right and receives due consideration at the hands of the appropriate redressal forums.

5. Unscrupulous exploitation:

The consumer has been given the right to seek redress against restrictive or unfair trade practices or unscrupulous exploitation. While the concept of unfair trade practices as defined in Section 36-A of Monopolies and Restrictive Trade Practices Act, 1969 has already been explained above where also these words occur, the concept of unscrupulous exploitation of the consumer is a new one in this section.

Where money was deposited in advance for the supply of a car within two months and the car was actually supplied some time after two months, the retention of the money beyond the period was held to be an unfair trade practice entitling the party to 14% interest on the deposit for the period of delay.*

Booking of a lawn for marriage purposes on a non-refundable deposit has been held to be an unfair trade practice. Accordingly, the deposit money was ordered to be refunded with 8% interest when the depositor was not allowed to use the lawn at an earlier date because of the rescheduling of the marriage date, the lawn being free that day.10

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6. Right to consumer education:

It was observed in the preface of the 5th edition of V.M. Shukla's LEGAL REMEDIES that where the people do not exercise their legal remedies, the system of remedies tends to become rusted.

Hence, for the proper functioning of the legal system it is necessary that knowledge of the availability of a legal remedy should be so widely disseminated that people as a whole become conscious of their rights.

This has been made one of the missions of the Consumer Protection Act, 1986 and the Central Council has been charged with the responsibility to provide to the people proper education in terms of their remedies under the Act. Once the people are rendered conscious of their power, they may, perhaps, feel energised to struggle against exploitation by manufacturers and traders. People's awareness is likely to prove a better tool for putting the trade on some level of discipline than tons of Government controls. Controlling hands and tools of the Government are easily corruptible. They also suffer from slow motion.

They often fail in their mission. But consciousness of the people as a whole, for every person is a consumer one way or the other, when aroused by proper consumer education, is likely to be above petty temptations and, therefore, more effective in its mission.
3.6 CONSUMER PROTECTION COUNCILS

3.6.1 CENTRAL CONSUMER PROTECTION COUNCIL [S.4]

The Central Government is required by the Act to establish by notification a Council to be known as the Central Consumer Protection Council (referred to in short as) Central Council. Its composition is as follows:

"The Council shall consist of the following members, namely,-

a) the Minister-in-charge of consumer affairs in the Central Government, who shall be its Chairman; and

b) such number of other official or non-official members representing such interests as may be prescribed."

The membership has been thus left to the rule-making power of the Government. The Consumer Protection Rules were promulgated in

\[11\] Section 4 is as follows:

4. The Central Consumer Protection Council-(1) The Central Government may, by notification establish with effect from such date as it may specify in such notification, a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).

(2) The Central Council shall consist of the following members, namely:

(a) the Minister-in-charge of the Department of Food and Civil Supplies in the Central Government, who shall be its Chairman, and

(b) such number of other official or non-official members representing such interests as may be prescribed.
The membership of Council is given in Section 3 of the Rules. It is to be composed of the following 150 members:

- The Chairman shall be the Minister-in-charge of the Department of Civil Supplies;

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

- The Ministers of Food and Civil Supplies or Minister-in-charge of Consumer Affairs in States;

- eight members of Parliament-five from the Lok Sabha and three from the Rajya Sabha;

- the Commissioner of Scheduled Castes and Tribes;

- representatives of the Central Government Departments [and] autonomous organisations concerned with consumer interests not exceeding twenty;

- representative of the Consumer Organisations or consumers not less than thirty-five;

- representatives of women-not less than ten;

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✓ representatives of farmers, trade and industries-not exceeding twenty;

✓ persons capable of representing consumer interests not specified above-not exceeding 15;

✓ Secretary in the Department of Civil Supplies shall be the member secretary to the Central. Council.

The term of the council is for three years.\(^{13}\)

A member can resign by submitting his written resignation to the Chairman. The vacancy would be filled from the category to which the resigning member belonged and also only for the period for which he would have continued.

**Procedure of Central Council [S.5]**

The Council has to observe the procedure in regard to the transaction of its business partly as prescribed by Section 5 and partly by rules.

Section 5 is as follows:

\(^{13}\)Section 3(2) of the Rules.
5. Procedure for meetings of the Central Council:-

(1) The Central Council shall meet as and when necessary, but at least one meeting of Council shall be held every year.

(2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

The Council has to meet as and when necessary but not less than one meeting has to be held each year. The place of meeting is to be prescribed by the Chairman.

Its meetings have to be presided over by the Chairman. or, in his absence by the Vice-Chairman and in his absence, the Council shall elect a Chairman from among the members.

Meetings have to be called by giving ten days' notice to the members in writing.

The notice must specify the place, day and hour of the meeting and a statement of the business to be transacted.

Its proceedings shall be valid notwithstanding any vacancy or any defect in its constitution.

The Council is authorised to constitute working groups from amongst its members who shall perform the functions delegated to them
by the Council and their findings have to be placed before 'the Council for its consideration.

The non-official members shall be entitled to first class to and for railway fare and a daily allowance of Rs. 100 for attending meetings or for working in a working group. Members of Parliament shall be entitled to traveling and daily allowances as are admissible to them.

The resolutions of the Council are of recommendatory nature.

The objects of the Council are specified in Section 6 which are also the objects of the Act and which have already been noted.

3.6.2 **STATE CONSUMER PROTECTION COUNCILS [Ss. 7 & 8]**

Under Section 7 of the Act, State Governments are required to establish their respective Protection Councils. Rules as to composition etc. are to be prescribed by the State Governments. The objects of the State Consumer Protection Councils are described in Section 7 to be the same as those of the Central Council, namely, the points enumerated in Section 6. Sections 7 and 8 are as follows:

**7. The State Consumer Protection Councils**

(1) The State Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council for... (hereinafter referred to as the State Council).
(2) The State Council shall consist of the following members, namely:

- the Minister in charge of consumer affairs in the State Government who shall be its Chairman;

- such number of other official or non-official members representing such interests as may be prescribed by the State Government.

(3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

8. Objects of the State Council

The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of Section 6.
3.7 CONSUMER DISPUTES REDRESSAL AGENCIES

ESTABLISHMENT [S.9]

9. Establishment of Consumer Disputes Redressal Agencies-

There shall be established for the purposes for 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 following agencies are required to be established for the purposes of the Act.
1. A Consumer Disputes Redressal Forum to be known as the "District Forum". This is to be established by the State Government in each district of the State by means of a notification. State Governments may establish more than one forum in a single district.

2. A Consumer Disputes Redressal Commission to be known as the "State Commission". This has also to be established by the State Government in the State by means of a notification.

3. A National Consumer Disputes Redressal Commission to be established by the Central Government by means of a notification.

The Act thus envisages a hierarchy of three Redressal Forums:

- District Forums
- State Commissions
- National Commission.

A Commission, which has been duly constituted, becomes competent to act even if one of the members has not taken charge and the vacancy thus caused is not filled by the State.¹⁴

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¹⁴ *Ishvarlal Jonabhai Desai v. Skypack International Couriers*, [1991] II CPJ 478 Guj. Section 29-A added by the amendment of 1993 (w.e.f. 18-6-1993) provides that no act or proceeding of the District Forum, State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the continuation thereof.