CHAPTR-III

OBJECTIVES AND SCOPE OF THE CONSUMER PROTECTION ACT, 1986

3.0.0 INTRODUCTION

The Consumer Protection Act, 1986 was enacted to provide for better protection of the interest of the consumers and for the purpose to make provisions for the establishment of Consumer Councils and other authorities in the settlement of consumer disputes and for matters connected therewith. It seeks, *inter-alia*, to promote and to protect the rights of consumers such as protection 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 the interest of consumers will receive due consideration at appropriate forums, the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers and right to consumer education. The object is also to provide speedy and simple redressal to consumer disputes-quasi judicial machinery is sought to be set up at District, State and Central Levels. These quasi-judicial bodies are to observe principles of natural justice and have been empowered to give relief of specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of orders given by quasi-judicial bodies have also been provided.
3.1.0 PREAMBLE OF CONSUMER PROTECTION ACT

It is not necessary that every act passed by legislature must have the preamble. However, when preamble is added to an Act, it is a part of Act itself. The preamble of consumer protection Act, 1986 reads as follows:

“An act to provide for better protection of the interest of consumers and 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 therewith.”

From above, it would be seen that the consumer protection Act, 1986 seeks to provide for better protection of the interest of consumers and for that purpose to make provision for establishment of consumer councils and other authorities for the settlement of consumers’ disputes.

3.2.0 SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION

The title of present Act is “the consumer protection Act, 1986”. It clearly reflects that purpose of the Act is to protect the interest of consumer.

Chapter I, II and IV of the Act came into force w.e.f. 15th April, 1987 and chapter III of the Act came into operation with effect from Ist July, 1987 in the whole India except the state of Jammu and Kashmir since separate legislation has been inacted for the state of Jammu and Kashmir know as the Jammu and Kashmir Consumer Protection Act, 1987.

Save as otherwise expressly provided by the Central Government by notification, the provisions of the Consumer Protection Act, 1986 as amended from time to time has made applicable to all the goods and services.

The Act seeks to protect the consumers in the following respects:-
(1) It seeks, inter-alia, to promote and protect the rights of consumers such as

The consumer protection

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

b) 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 consumers against unfair trade practices;

c) The right to be assured, wherever possible, of access to a variety of goods and services 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 restrictive trade practices or unscrupulous exploitation of consumers; and

f) The right to consumer education.

Chapter-II of the Consumer Protection Act, 1986 provides for establishment of central consumer protection council and state consumer protection council while Chapter III of the Act which is in fact is regarded as the soul of the Act, provides for establishment of three tier consumer disputes redressal agencies namely (i) the district form, (ii) the state commission, (iii) the national consumer disputes redressal commission.

(2) Section 6 of the Act spells out these objects and charges the Central Council with the responsibilities of fulfilling these objects. The section says that the objects of the Central Council shall be to promote and protect the rights of the consumers which have been listed in Section 6. They are as follows:
a) 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.

b) Right to Consumer Information :- The consumer has been given the right to informed by the producer about the quality, quantity, potency, purity, standard and prices of goods he buys.

c) Right of Access to Variety of Goods and at Competitive Prices :- The central council as constituted under the Act has been charged with the responsibility of bringing about the organization 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.

d) Right to Due Attention at Appropriate Forums :- That Central Consumer Protection Council has been charged with the responsibility of assuring 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.

e) Right Against Unscrupulous Exploitation, Restrictive and Unfair Trade Practices :- The consumer has been given the right to seek redress against restrictive or unfair trade practices¹ or unscrupulous exploitation.

f) Right to Consumer Education :- This has been made one of the missions of the Consumer Protection Act, 1986 and the Central Consumer Protection 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 energized to struggle against exploitation by manufacturers and traders. Controlling hands and tools of the govt. 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) To provide speedy and simple redressal to consumer disputes, a quasi judicial machinery is sought to be set up at district, state and central level.

3.3.0 WHO CAN MAKE A COMPLAINT?

To initiate an action under the Consumer Protection Act, 1986, (hereinafter referred to as the Act) what is required is a complaint from the complainant. The term ‘complaint’ has been defined in section 2(1)(d) of the Act. According to clause (b) of section 2(1) of the Consumer Protection Act, a complaint can be made by any of the following:

(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; or
(iv) one or more consumers, where there are numerous consumers having the same interest;
(v) In case of death of a consumer, his legal heir or representative.

3.3.1 CONSUMER

According to Section 2(1)(d) of the Act 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 but does not include a person who avails of such services for any commercial purpose.

The aforementioned definition of the term ‘consumer’ is really comprehensive so as to cover not only consumer of goods but also consumer of services.²

The deviation is wide enough to include in ‘consumer not only the person who buys any goods for consideration but also any user of such goods with the approval of the buyer, likewise it covers any person who hires or avails of any services for consideration and also includes any beneficiary of such services, when availed with the approval of the hirer. In this way, any user of goods or any beneficiary of services, other than the actual buyer or hirer, is a consumer and thus he is competent to make a complaint before the

² In Black’s law dictionary a consumer is explained one who consumes, individuals who purchase, use, maintain, and dispose of products and services.
Consumer Disputes Redress Forums. It includes anyone who consumes goods or services at the end of the claim of production.\(^3\)

The definition of consumer may be discussed in following two parts:-

(i) Consumer of goods

(ii) Consumer of services

According to sub-clause (i) of section 2(1)(d) a consumer of goods means any person who –

(a) buys any goods for consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and

(b) includes any user of such goods other than the person who buys the, when such use is made with the approval of the buyer but

(c) does not include a person who obtains such goods for resale or for any commercial purpose. Commercial purpose does not include use by a consumer of goods bought by and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

The above provision discloses that a person claiming himself to be a consumer should fulfill the following requirements:

(i) there should be a sale transaction between the seller and the buyer,

(ii) the sale must be of goods,

(iii) the buying of goods must be for consideration,

(iv) the consideration has been paid or promised or partly paid and partly promised, or under any system of deferred payment; and

(v) the user of the goods may also be a consumer when such use is made with the approbation of the buyer.

It may, however, be noted that a person who obtains the goods for resale or for any commercial purpose is not included within the meaning of the term consumer. This clearly reveals that the intention of the legislature is to restrict the benefits of the Consumer Protection Act to ordinary consumers buying goods or hiring services for consumption and not for resale or large scale commercial activity. Where the goods have been purchased or used by the consumer exclusively for the purpose of earning his livelihood, by means of self employment, such use of the goods will not be treated as ‘commercial purpose.\(^4\)

**Consumer of Services**

The term ‘consumer’ also covers any person who hires or avails of any ‘services for consideration and also includes any beneficiary of such sentences. According to sub-clause (ii) of section 2(1)(d) of the Act, a consumer of services includes any person, who

(i) hires or avails of any services for consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment, and

(ii) includes any beneficiary of such services other than the person who hires or avails of them, when such services are availed of with the approval of the hirer.

For the purpose of consumer of services, it is essential that the services must have been hired or availed of for the consideration. But it is not essential that

\(^4\) The consumer protection Act, 1986 Explanation under clause (d) of Sec. 2(1).
the payment of consideration must be made immediately, it may be paid afterwards or even in installments.

The services which are rendered free of change or under contract of personal service are outside the purview of the Act.

### 3.3.2 VOLUNTARY CONSUMER ASSOCIATION

According to sub-clause (ii) of clause (b) of section 2(1) of the Consumer Protection Act, any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force, is competent to make a complaint under the Act. The complaint can be made by recognized consumer association, whether the consumer to whom the goods sold or delivered or service provided is member of such association or not.⁵

### 3.3.3 CENTRAL OR STATE GOVERNMENT

Sub-clause (iii) of clause (b) of section 2(1) of the Act provides that the Central Government and State Government can be a complainant under the Act. According to clause (d) of section 12, a complaint in relation to any goods sold or delivered or any service provided, may be filed with the consumer Redressal Forum by the Central Government or the State Government. In this way, the Central Government or any State Government can file the complaint as consumer of goods or services under section 12(d).

### 3.3.4 CLASS ACTION

The Consumer Protection (Amendment) Act, 1993 has provided for 'class action' under Sub-Clause (iv) of clause (b) of section 2(1) read with clause (c) of section 12 of the Act. Prior to this amendment, there was no such

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⁵ See V.K. Aggarwal, Consumer Protection-Law & Practice (3rd Ed.) at p. 61.
provision of ‘class action’. In this type of action, proceedings are brought by one or more members of a class on behalf of persons who are permitted to do so by the court.

On the basis of these provisions one or more consumers, where there are numerous consumers baring the same interest to file ‘class action’ camp taint with the permission of the consumer forums.

3.3.5 LEGAL HEIR OR REPRESENTATIVE

In case of death of a consumer his/her legal heir or representative can also file a complaint

3.4.0 SUBJECT MATTER OF COMPLAINT

Clause (c) of section 2(1) of the Consumer Protection Act lays down as to against what a complaint can be made under the Act. According to this provision a complaint can be made in writing by a complaint in regard to one or more of the following:

(i) an unfair trade practice or a restrictive trade practices has been adopted by any trader or service provider;

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

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

(iv) a trader or service provider, as the case may be, has charged for the goods or the services mentioned in the complaint a price in excess of the price (a) fixed by or under any law for the time being in force; (b) displayed on the goods or any package containing such goods;
(c) displayed on the price list exhibited by him or under any law for the
time being in force; (d) agreed between the parties
(v) goods which will be hazardous to life and safety when used, are being
offered for sale to the public
(a) In contravention of any standards relating to safety of such goods as
required to be complied with, by or under any law for the time being in
force;
(b) If the trader could have known with due diligence that the goods so offered
are unsafe to the public;
(vi) Services which are hazardous or likely to be hazardous to life and
safety of the public when used, are being offered by the service provider
which such person could have known with due diligence to be injurious to
life and safety.

The complaint is required to be made in writing which should contain
name, description and address of the complainant and the opposite party. The
complaint must state the facts and be supported by documentary evidence if
any. It must also state the relief sought by the complainant.

3.4.1 COMPLAINT AGAINST DEFECTIVE GOODS

From above it is clear that, a complaint may be filed in respect of the
goods which suffer from one or more defects. ‘Defect’ means any fault,
imperfection or shortcoming in the quality, quantity, potency, purity or
standard which is required to be maintained by or under any law for the time
being in force or under any contract express of implied or as is claimed by any
trader. The term ‘trader’ includes any seller, distributor, manufacturer and
packer of goods\(^6\).

\(^6\) Supra No. 19, p. 64.
The definition of ‘defect’ reveals that the standards, quality, quantity etc. of the goods must be corresponding with the claims made by the trader in relation to those goods any fault, imperfection of shortcoming in the quality, quantity, potency, purity or standard should be such which is required to be maintained by or under any law for the time being in force, or under any contract express or implied, or as is claimed by the trader.

3.4.2 COMPLAINT AGAINST DEFICIENT SERVICES

The complaint can be made in respect of 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 follows:

‘Service means service of any description which is made available to potential users and includes but not limited, to the provision of facilities in connection with banking, financing, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing construction 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.

It is worth mentioning here that some services like medicine, law, engineering, accountancy etc. have not been specifically enumerated. But it seems that these services are also covered in the scope of the aforesaid definition as these services are available to potential users.

The literal meaning of the word ‘service’ is work done to meet some general, an act of helpful activity, the supplying of utilities as water, electricity, gas, required by the public; supplying of repair service; supply 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 definition of ‘service’ given under clauses of section 2(1) of the Act may be split into the following three parts:

(i) service of any description which is made available to potential users and

(ii) includes but not limited to the provisions of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing construction, entertainment. Amusement or the purveying of news or other information, but

(iii) does not include the rendering of any service free of charge or under a contract of personal service.

It is clear that the main part is followed by the inclusive clause and by the exclusionary clause. In the main part, the expression service of any description indicates that the definition is very wide and tends to any service made available to potential users.

Deficiency

The term ‘deficiency has been defined in section 2(1)(g) of the Act. Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be contained 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 aforementioned definition of deficiency is wide enough to include any short of imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in relation to any service. Hence the deficiency may be in quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or which has been undertaken to be performed by a person in pursuance of contract or otherwise in relation to any service. Therefore, the deficiency may take place on account of the violation of any standards of quality, nature and manner of performance laid down in any of the existing laws. The deficiency may also be caused due to non performance of the promise made in a contract regarding the quality, nature etc. of the services negligence while rendering be the services may also come within the purview of the Act e.g., negligence in carrying out the repair of goods; negligence by the department of telephones while wrongful disconnecting the telephone; negligence by doctor while rendering services for consideration may amount to deficiency in service.

It may be noted that prior to the amendment made by the consumer Protection (Amendment) Act, 1993 a complaint could only be made in respect of the services which were hired by the consumer and suffer from deficiency in any respect. But after the passing of amendment, now a complaint can be filed in respect of the services hired or availed of or agreed to be hired or availed of suffer from deficiency in any respect. Thus, the Consumer Protection Act, 1986 covers various types of services and provides remedy in case of deficiency of any service. Thus, the Consumer Protection Act, 1986 is a welfare legislation. Its object is to provide speedy, inexpensive and good
remedies to the consumers of goods and services. It is a supplement Act not in derogation of the existing Laws.

3.5.0 CONSUMER DISPUTES ADJUDICATORY BODIES AND REDRESSAL AGENCIES

There are different adjudicatory bodies and consumer disputes redressal agencies under the consumer protection Act, 1986.

**Advisory Bodies** :- The Consumer Protection Councils are the advisory bodies under the Consumer Protection Act and they have been charged with promotion and protection of the rights of the consumers. They play an important role in giving publicity to the matters of consumer concern, furthering consumer education and protecting consumers from unscrupulous exploitation. Consumer Protection Councils comprising of official and non-official members have been established at the district, state and centre levels. The councils meet periodically to deal with consumer problems and take corrective measures for protecting the rights of the consumers.

The following are the three types of Consumer Protection Councils:

(a) The Central Consumer Protection Council, (b) The State Consumer Protection Council (c) The District Consumer Protection Council

(a) **The Central Consumer Protection Council**

Central Government has established a council known as Central Council by notification, headed by Minister, Incharge of consumer affairs in the Central Government as Chairman of the Central Council. The Central Council is to meet at least once every year.\(^7\)

(b) **The State Consumer Protection Councils**

The State Governments have established councils known as State Councils by notification, headed by Minister incharge of consumer affairs in

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the State Government as Chairman of the State Council. The State Council is to meet at least twice every year.\(^8\)

**(c) The District Consumer Protection Councils**

The State Governments have established for every district a council known as District Consumer Protection Council by notification, headed by Collector of the district as Chairman of the District Council. The District Council has to meet twice every year.\(^9\)

The objects of the Central Council, State Council and District Council are the same which are of the Act allowed by the Forum.\(^10\)

**3.5.1 ADJUDICATORY BODIES**

For the protection of consumer rights, a three-tier quasi-judicial machinery has been set up at the national, state and district levels. It adjudicates disputes regarding defective goods, deficient services, unfair trade practices, overcharging and hazardous goods. The *Consumer Protection Act* applies to all goods and services and covers public, private, joint and co-operative sectors. It however excludes goods obtained for commercial and resale purposes and services which are rendered free of charge or rendered under the contract of personal service.

The three-tier machinery consists of the District Forum, the State Commission and the National Commission.

Section 9 of the Consumer Protection Act, 1986 provides a three-tier quasi-judicial machinery at the district, State and National level to enforce the provisions of the Act. At the district level there is a ‘District Forums to

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8. Ibid, Section 7.
9. Ibid, Section 8A.
entertain consumer complaints where the value of goods or services and compensation does not exceed twenty lacs, and at the State level there is a ‘State Commission’ to deal with the complaints where the claim exceeds rupees 20 lacks but does not exceed rupees one crore. At the national level there is a ‘National Commission’ for complaints exceeding rupees one crore.

3.6.0 DISTRICT FORUM

At the district level, each district of the State shall have a Consumer Disputes Redressal Forum to be known as ‘District Forum’. Each District forum is to be established by the State Government by notification to be published in Official Gazette. In some cases, one District Forum for district may be too inadequate to deal with the complaints of consumers of metropolitan cities or large districts. To overcome this difficulty, the ‘Consumer Protection Amendment Act, 1993 has incorporated a proviso under clauses of section 9 of the Act, according to which the State Government may, if it deems fit, establish more than one District Forums in a district. It is, therefore, clear that the State Governments are now free to establish more than one District Forum in a district, if they deem it necessary keeping in view the requirements of that district.  

3.6.1 COMPOSITION OF THE DISTRICT FORUM

The District Forum is to consist of a President and two members (one of whom shall be a woman). The appointments have to be made by the State Government on the recommendation of a selection committee constituted under sub-section (1A) of Section 10 of the Act. It seems that the new procedure has been inserted under sub-section(1A) of Section 10 by the

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Consumer Protection (Amendment) Act, 1993 with a view to make fair appointments on these vital positions which are of public importance.

According to sub-section (1) of Section 10 of the Consumer Protection Act – (a) the President of the Forum should be a person who is, or has been, or is qualified to be a District Judge; (b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely: (i) be not less than 35 years of age, (ii) possess a bachelor’s degree from a recognized university, (iii) be persons of ability, integrity and standing, and have adequate knowledge or experience of, at least ten years in dealing with the problems relating to economics law, commerce, accountancy, industry, public affairs or administration. The inclusion of a woman as a member of the District Forum is of considerable importance keeping in view the nature and functioning of the Forum and the Act. Some disqualifications for appointment as a member have also been prescribed.

Sub-section (1A) of Section 10 of the Act provides that for selecting the President and the members of the District Forum, the selection committee shall consist of the following:

President of the State Commission – Chairman
Secretary Law Department of the State – Member
Secretary in-charge of the Department – Member

dealing with consumer affairs in the State

The appointments of the President and Members of the District Forum will be made by the State Government on the recommendation of the Selection
Committee. It may be noted that there is a majority of officials the selection committee.\footnote{12}

\textbf{3.6.2 TENURE AND JURISDICTION}

Under the existing law all the appointments of members are valid for a period of five years or upto age of 65 years whichever is earlier. Provided that a member shall be eligible for re-appointment for another term of five years or upto the age of 65 years, whichever is earlier, subject to condition that he fulfils the qualifications and other conditions for reappointment mentioned in clause(b) of sub-section. Reappointment is also made on the basis of the recommendations of the selection committee.

Jurisdiction means the extent of the authority to administer justice not only with reference to the subject matter of suit but also to the territorial and pecuniary limits.

It is a fundamental rule that a judgment of Court without jurisdiction is a nullity.\footnote{13}

\textbf{3.6.3 PECUNIARY JURISDICTIONS}

Section-11(1) of the Act provides pecuniary jurisdiction of the District Forum. It states that the District Forum has the jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lacs. The pecuniary jurisdiction depends upon the amount of relief claimed and not upon the value of the subject-matter, nor upon relief granted.

Section 11(2) of the Act provides that a complaint shall be instituted in a district forum within the local limits of whose jurisdiction,

\footnote{12}{The Consumer Protection Act. 1986, Sec. 10(1A).}
\footnote{13}{Ibid, Sec. 10(2).}
(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office, or personally works for gain or;

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

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

These provisions are more or less identical with the provisions of section 20 of the Code of Civil Procedure. One major point of departure is the deletion of explanation of Section 20 of the Code which provides that a Corporation shall be deemed to carry on business at its sole or principal office in India, or in respect of any cause of action arising where it has also a subordinate office, at such place. This explanation has given a privileged position to Corporations which ordinary traders do not enjoy. A suit against an ordinary trade can be brought not only at the principal office but at any place, where it has a branch office.14

A provision to this effect has also been inserted by the Consumer Protection (Amendment) Act, 1993 by introducing clause (aa) in section 2(1) of the Act. It provides that a branch office means (i) any establishment described as a branch by the opposite party; (ii) any establishment carrying on

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either the same or substantially the same activities as that carried on by the head office of the establishment.

It is, thus, clear that all giant corporations which have branch offices in all nooks and corners of the country may be reached for redressal of grievances by filing of complaints in Consumer Disputes Redressal Agencies which is close to the place of stay of the consumer.

3.7.0 THE STATE COMMISSION : ITS COMPOSITION

The next body in the hierarchy of Consumer Disputes Agencies is the State Commission. Each State is required to set up the State Commission.15

Section 16(1) of the Consumer Protection Act provides that the State Commission consists of:
(a) a person who is or has been a judge of a high court, appointed by the state government who shall be its president; Provided that no appointment under this clause shall be made except after consultation with the chief justice of the High Court.

(b) not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall be not less than 35 years of age, possess a bachelor’s degree and be persons of ability integrity and standing and have adequate knowledge or experience of at least ten years in dealing with problems relating to Economics, Law, Commerce, Accountancy, Industry, Public Affairs or Administration.

The appointment of the President and the members are made by the State Government. The appointment of the President shall be made only after consultation with the Chief Justice of the High Court of the State. In the case

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15 The Consumer Protection Act, 1986, Sec. 9(b).
of appointment of the member, a selection committee shall be constituted by the State Government for recommending the name of members.

The section committee shall consists of the following:

(a) President of the State Commission – Chairman
(b) Secretary, Law Department of the State – Member
(c) Secretary in charge of the department – Member

dealing with consumer affairs in the state.

It is hoped that the aforesaid procedure laid down for the appointment of members of the State Commission will help the State Government in making fair appointment of these important positions.

3.7.1 TENURE AND JURISDICTION

A member of the State Commission shall hold office for a term of five years or upto the age of 67 years whichever is earlier. Provided that a member shall be eligible for re-appointment for another term of five years or upto age of 67 years whichever is earlier, subject to condition that he fulfils the other conditions for reappointment mentioned in clause (b) of sub-section(1) and such appointment is made on the basis of the recommendations of the selection committee.

Section 17 of the Act empowers the State Commission to exercise three types of jurisdiction, namely: (i) Original jurisdiction, (ii) Appellate Jurisdiction, and (iii) revisional jurisdiction.

3.7.2 ORIGINAL JURISDICTION: PECUNIARY

(i) Pecuniary :- Section 17(a)(i) of the Act provides that the State Commission can certain complaints where the value of the goods or services and compensation, if any, claimed exceeds twenty lacs of rupees but does not exceed one crore.
The pecuniary jurisdiction depends upon the amount of relief claimed (including compensation) and not upon the value of the subject-matter, nor upon the relief granted.\(^\text{16}\)

When the complaint before the Forum under the Act, claims two relief's in the alternative, the Forum has to consider for the purpose of jurisdiction the value of the relief which is higher.\(^\text{17}\) Where a claim of compensation is pleaded in a consumer complaint, then the total value of the goods and/or services as well as that of compensation would determine the pecuniary limit of jurisdiction. It is the aggregate value of the goods and compensation or the aggregate value of the services as well as that of compensation that determines the pecuniary jurisdiction.

**(ii) Territorial :-** According to section 17(2) a complaint shall be instituted in a state commission with in the limits of whose jurisdiction,

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

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

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\(^\text{16}\) *Akhil Bharatiya Grahak Panchayat v. Life Insurance Corporation of India*, (1991)1 CPR 112 (Maha. CDRC).

\(^\text{17}\) *Chowgali Industries Ltd. v. G. Venkatesan* (1991)II CPR 300 (Tamil Nadu CDRC).
(c) the cause action, wholly or in part, arises.

3.7.3 APPELLATE JURISDICTION

According to section 17(a)(ii) of the Act, the State Commission shall have jurisdiction to entertain appeals against the order of any District Forum within the State. Under section 15 of the Act, 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 orders. However, the state commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period. However, no appeal by a person, who is required to pay any amount in terms of an order of the District forum, shall be entertained by the State Commission unless the appellant has deposited fifty percent of that amount or 25 thousands whichever is less.

3.7.4 REVISIONAL JURISDICTION

The State Commission under Section 17(b) of the Act can exercise its revisional jurisdiction in any consumer dispute which is pending before or has been decided by any District Forum within the State where it appears that such district form:

(i) has exercised a jurisdiction not vested in it by law, or
(ii) has failed to exercise a jurisdiction so vested, or
(iii) has acted in exercise of its jurisdiction illegally or with material irregularity.

The State Commission can exercise its power in revision only under the aforesaid situations. The commission has only to see whether the requirements of law have been duly complied with by the District Forum whose order is
subject of revision and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order. Any error by the District Forum which does not have any relation to jurisdiction cannot be made a ground for revision.\textsuperscript{18}

3.8.0 THE NATIONAL COMMISSION : ITS COMPOSITION

The Consumer Protection Act, 1986 provides for the establishment of the National Commission by the Central Government by notification to be published in Official Gazette.\textsuperscript{19} The National Commission is the apex body at the centre to settle the consumer disputes under the Act.

Section 20 of the Consumer Protection Act lays down that—

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

(b) not less than four, and not more than such number of members, as may be prescribed, and one of them shall be woman and who shall be persons of integrity and standing and have adequate knowledge or experience of, at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. The others qualification and disqualifications are the same which are those of members of district forum or state commission.

The President of the National Commission shall be appointed by the Central Government only after consultation with the Chief Justice of India. The members of the National Commission shall be appointed by the Central Government on the recommendation of a Selection Committee consisting of the following, namely

\begin{itemize}
\item\textsuperscript{18} Supra Note 1, at p. 408.
\item\textsuperscript{19} The Consumer Protection Act. 1986, Sec. 9(c).
\end{itemize}
(i) a person who is a judge of the Supreme Court – Chairman to be nominated by the Chief Justice of India

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

(iii) Secretary of the Department dealing with Consumer affairs in the Government of India – Member

The procedure for the appointment of the members of the National Commission will help the Central Government in making appointment of suitable persons on these important positions. The procedure also ensures the independent functioning of the National Commission.

3.8.1 TENURE

Sub-section (3) of Section 20 provides that every member of the National Commission shall hold office for a term of five years or upto the age of seventy years, whichever is earlier. Provided that a member shall be eligible for re-appointment for another term of five years or upto the age of 70 years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment.

3.8.2 JURISDICTION OF THE NATIONAL COMMISSION

The National Commission has been vested with three types of jurisdiction namely

(i) Original jurisdiction, (ii) Appellate jurisdiction and (iii) Revisional jurisdiction.

(i) Original Jurisdiction :- According to Section 21(a)(i) of the Act, the National Commission shall have jurisdiction to entertain complaints where the value of the goods or services and compensation, if any claimed, exceeds one
crore of rupees. The pecuniary jurisdiction depends upon the amount of the relief claimed and not upon the value of the subject-matter, nor upon the relief granted. Its jurisdiction extends to the whole of India.

(ii) **Appellate Jurisdiction** :- Under Section 21(a)(ii) of the Act, the National Commission shall have jurisdiction to entertain appeals against the order of any State Commission. Section 19 of the act lays down that an appeal can lie to the National Commission only against the order made by the State Commission in exercise of its power under its original jurisdiction.

An appeal may be preferred to the National Commission within period of thirty days from the date of the order of the State Commission. 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 has been held that the period of thirty days is to run not from the ‘date of the order’ but from the ‘date of the knowledge of the order’, that is to say from the date on which the order was communicated to the appellant. However no appeal by a person, who is required to pay any amount in terms of an order of state commission shall be entertained by the national commission unless the appellant has deposited fifty percent of the amount or Rs. 35000/- which ever is less.

(iii) **Revisional Jurisdiction** :- The revisional jurisdiction has been vested in the National Commission under Section 21(b) of the Act. The revisional jurisdiction may be exercised where it appears to the National Commission that a State Commission – (i) has exercised a jurisdiction not vested in it by

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law, or (ii) has failed to exercise jurisdiction so vested, or (iii) has acted in the exercise of its jurisdiction illegally or with material irregularity. The National Commission in revision should not-interfere if there is no error of jurisdiction or any material irregularity or improper exercise of jurisdiction. The National Commission has the power 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.

In *Telecom Distt. Manager v. Kalyanpur Cement*,\(^{24}\) it was held by the National Commission that under section 21(b) of the Consumer Protection Act, its jurisdiction in revision is severely limited. In other words, the jurisdiction of the National Commission is limited to disputes where there has been wrongful, illegal and improper exercise of jurisdiction or failure to exercise jurisdiction.

### 3.8.3 ADMINISTRATIVE CONTROL

Section 24B of the Act provides that the National Commission shall have administrative control over all the State Commissions in the following matters namely:

(i) calling for periodical returns regarding the institution, disposal and pendency of cases;

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

\(^{24}\) (1991) (II) CPJ 286 (NCDRC).
(iii) generally overseeing the functioning of State Commissions or district fora to ensure that the objects and purposes of the Act are best served without in any way of interfering with their quasi judicial freedom.

(iv) The state commission shall have administrative control over all the district fora within its jurisdiction in all matters referred to in sub-section (1).

3.9.0 SUPREME COURT

Under Section 23 of the Act, it is provided that if any person aggrieved by the order of the National Commission may prefer and appeal against such order to the Supreme Court, within a period of thirty days, from the date of order in such form and manner as may be prescribed. The appeal can be preferred only against such order of National Commission which has been made by it in exercise of its power conferred under sub clause (i) of clause (a) of section 21 of the Act. This sub clause deals with the original jurisdiction of the National Commission to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds one crore of rupees. Thus, an appeal to the Supreme Court can lie only against the order made by the National Commission in exercise of its original jurisdiction. It means the provisions exist only for single appeal. The appeal from the orders of the State Commission shall lie to the National Commission under sub clause (ii) of clause (a) of section 21 of the Act and there cannot be second appeal to the Supreme Court. The reason to have the provisions for single appeal seems to be to save the consumer from unnecessary harassment by the opposite party. There has not been any specific ground provided for appeal to the Supreme Courts. Another proviso has been inserted that no appeal by a person, who is required to pay any amount in terms of an order of the national Commission,
shall be entertained by the Supreme Court unless the appellant has deposited in the prescribed manner 50% of the amount or Rs. Fifty thousand, whichever is less.\(^{25}\)

### 3.10.0 GRIEVANCE REDRESSAL PROCEDURE OF CDRAs

Sections 12, 13 and 14 contain detailed provisions concerning the procedure to be followed by the District Forum and the State Commission while entertaining a complaint and setting consumer disputes. Before the Amendment of the Act in 1993, section 22 only provided that in the disposal of any complaints or if any proceedings before it, the National Commission shall have the powers of a civil court and shall follow such procedure as may be prescribed by the Central Government. The Amendment Act of 1993 had made certain modifications in this section. Though the National Commission shall continue to have the powers of a civil court in the disposal of any complaints or any proceedings before it, it has now been vested with the power to issue an order to the opposite party to do anyone or more of things referred to in section 14(i) (a). It has further been laid down that the National Commission shall follow the procedure prescribed by the Central Government. There are, however, no material differences in the provisions of the 1986 Act laying down procedure for the District Forum and State Commission on the one hand and the procedure prescribed by the Central Government for the National Commission on the other hand. Now the Amendment Act of 2002 has made certain modifications in the section that the provisions of section 12, 13 and 14 and the rules made there under for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary

\(^{25}\) Inserted vide Consumer Protection (Amendment), 2002.
by the Commission, be applicable to the disposal of dispute by the National Commission.

3.11.0 COMPLAINT PROCEDURE FOR DISTRICT FORUM AND STATE COMMISSION

Section 12 of the 1986, which was considerably modified by the Consumer Protection (Amendment) Act, 1993, again modified by the Consumer Protection (Amendment) Act, 2002\(^\text{26}\) lays down the procedure for filling a complaint before the District Forum in relation any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided by:

(a) The consumer to whom such goods are sold or delivered or agreed to be sold or such services provided or agreed to be provided;

(b) Any recognized consumer association whether the consumer to the goods sold or delivered or agreed to be sold or delivered or services provided or agreed to be provided is a member of such association or not;

(c) One or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum or State Commission, on behalf of or for the benefit of, all consumers so interested or;

(d) The central or the state government as the case may be, either in its individual capacity, or as representative of the interest of the consumer in general.

Thus, four types of complaints have been given *locus standi* under the 1986 Act to file a complaint. The greatest step that the government has taken through the Amendment Act of 1993 is the introduction of this new provision,

\(^{26}\) Substituted by the Consumer Protection (Amendment) Act, 2002.
whereby one or more consumers shall be able to file complaints on behalf of even a large number of consumers having a similar cause of action and interest to be represented by others. This shall definitely deter unscrupulous traders from resorting to unfair and restrictive trade practices and shall in turn reduce the exploitation of a vast majority of consumers.

As regards the procedure, on receipt of any complaint, which may relate to unfair trade practice, restrictive trade practice, defect in goods, deficiency in services, excessive price charged, or sale of products hazardous of life and safety, the District Forum or State Commission, shall refer the same to the opposite party directing them to give their version of his case. If more than one opposite parties are involved, each one of them has the right to get the copy of the complaint. Ordinarily, the opposite party must file reply within a period of thirty days of the receipts of the complaint. However, the District Forum or the State Commission have the power to extend the period beyond thirty days in appropriate cases depending upon the circumstances of each and other case. If the opposite party admits the allegations leveled against them, the CDRAs shall dispose off the complaint on the basis of the materials on the record. However, if they deny or dispute the allegations contained in the complaint, or omit or fail to take any action to represent their case within the stipulated time, the CDRAs shall proceed to settle the consumer dispute in the manner specified in section 13(1)(c) to (g). The District forum will follow the procedure given in section 13(2) if the complaints admitted by it under section 12 relates to goods in respect of which the procedure specified in sub-section(1) can not be followed or if the complaint relates to any service, power
to pass interim orders have been given to district forum or State Commission under Section 13(3-B).

3.12.0 COMPLAINT PROCEDURE FOR NATIONAL COMMISSION

Under the Consumer Protection Rules, 1987 of the central government, a complaint filed in the National Commission must contain the following particulars:

(a) The name, description and the address of the complaint; (b) the name, description and the address of the of the opposite party or parties; (c) the facts relating to complaint and when and where it arose; (d) documents in support of the allegations contained in the complaint and (e) the relief which the complaint claims [Rule 14(a) to (e)].

It has been mentioned that in the disposal of any complaint before it, the National Commission should, as far as possible, follow the same procedure which has been laid down in sub clause (1) and (2) of section 13 of the Act for the District Forum under rule 14(3), it is provided that it shall be obligatory on the parties or their agents to appear before the National Commission on the dates fixed for hearing. Where the complainant or his agent fails to appear before the National Commission, the National Commission has been given power to either dismiss the complaint for default or decide it on merits. Similarly, if the opposite party makes any such default, the National Commission may decide the complaint *ex parte.*

The National Commission has the power to adjourn the hearing at any stage of the proceedings. However, a complaint has to be decided, as far as possible, within a period of three months from the date of receipt of the notice by the opposite party in case where a complaint does not require analysis or
testing of commodities etc. and within five months if it requires testing. It is thus required that proceedings under the CDRAs, are time bound and these agencies are to dispose off the case within stipulated time.

In connection with the settlement of the complaints within the stipulated time, it is pertinent to mention here that prior to the Amendment of 1991, section 14(2) of the Act provided that every order made by a District Forum was to be signed by all the members constituting it. This particular section acted as a major hurdle in the functioning of the CDRAs. Ultimately, the government issued the Consumer Protection (Amendment) Ordinance, 1991.\(^{27}\)

It may be noted here that with the enactment of the Amendment Act of 1991, the decision-making procedure in consumer cases has been considerably facilitated. Of course, many cases have come before the CDRAs involving difference of opinion on decision between the President and the other members.\(^{28}\) In all such cases, as the amended provision requires, it has been held:

“Where a case is heard by the President and one Member and there is difference of opinion between them on any point or points, the only procedure to be adopted is to refer the Point or Points on which they differ to the remaining member who had not heard the case and the decision of the case shall depend upon the majority of the members.”\(^{29}\) The Consumer Protection (Amendment) Act, 1993 has conferred additional powers on the CDRAs to

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27 No. 6 of 1991. The ordinance was promulgated by the President of India on June 15, 1991.
29 Ibid at p. 112.
order the withdraw or removal of all such goods which are likely to endanger life and safety.

Thus various consumer disputes redressal agencies have been established under the Consumer Protection Act, 1986. A simplified and time-bound procedure to file the complaint and to dispose off the same has also been laid down. However, it has been observed that the agencies are following technical procedure of civil courts. Thus, there is unnecessary delay in the disposal of complainants and speedy justice in denied to the consumers. There is urgent need to give thought to this problem so that objects of the Act may be achieved.