

Q: What are the different Authorities and their jurisdiction under the consumer protection act, 1986 for the settlement of disputes?

Ans: CONSUMER DISPUTES REDRESSAL AGENCIES

Section 9 of the Consumer Protection Act, 1986 contains the provision relating to the establishment of Consumer Disputes Redressal Agencies. Section 9 provides.

There shall be established for the purposes of this Act, 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 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 Commission established by the Central Government by notification. We will now discuss these Consumer Disputes Redressal Agencies one by one,

DISTRICT FORUM

Composition of the District Forum

Section 10 of the Consumer Protection Act deals with the composition of the District Forum. It provides the following:

(1) Each District Forum shall consist of -

(a) a person who is, or has been or is qualified to be a district judge, who shall be its president:

(b) two other members, who shall be persons of ability, integrity and standing, and 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 shall be a woman

(I-A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely

(i) the President of the State commission-Chairman

(ii) Secretary, law department of the state-Member

(iii) Secretary in charge of the Department dealing with consumer affairs in the state-Member

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years whichever is earlier shall not be eligible for re-appointment.

Provided that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by the appointment of a person possessing only of the qualifications mentioned in subsection (1) in relation to the category of the member who has resigned.

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

The Consumer Protection (Amendment) Act, 2002, has made several changes in Section 10 as noted above. In sub-section (1) for clause (b) the following has been substituted, namely:

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

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

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

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

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

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

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent Court; or (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government, or

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

(f) has such other disqualification as may be prescribed by the State Government. A welcome feature of the above provision is that it provides that besides the President, one of the two other members shall be a woman.

The second change brought about by the amendment of 2002 is in respect of sub-section (1-A) while the provision of sub-section (1-A) has been left intact, a provision to sub-section has been inserted. This proviso runs as follows:

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

In order to duly constitute District Forum, the presence of the chairman of the selection committee is necessary. To meet the eventuality of the absence of the chairman, Proviso to sub-section (1-A) provides for referring the matter to the Chief Justice who may nominate a sitting judge of the High Court to act as Chairman to complete the constitution of the District Forum.

The third change brought about by the amendment of 2002 in Section 10 is in respect of sub-section (2). According to the amendment, for sub-section (2), the following sub-section has been substituted the new sub-section (2) provides the following:

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

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

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

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

The fourth and the last change about by the amendment of 2002 in Section 10 is in sub-section (3) wherein a proviso has been added.

The proviso to sub-section (3) runs as follows

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

Reference may be made here to case namely-Common Cause, a Registered Society v. Union of India. In this case 'common cause a registered society through a public interest litigation under Article 32 of the Constitution of India brought to the notice of the Supreme Court that in respect of the implementation of the provisions of the Consumer Protection Act, 1986 the State Government were showing laxity. Even after two years of the passing of the Act district forum have not been established. District Forums have been established only in a few districts. The court could hardly believe that in next five years the State Government could not establish district forum. The Supreme Court was told that

if for the time being ad hoc arrangements were made the State Government would not take the problem seriously and the poor consumer would suffer utmost. The Supreme Court was also apprised of the fact that where ad hoc arrangements were made in District courts, other litigants whose cases were pending. were suffering from such arrangement. After hearing the above arguments, the Supreme Court gave the following directions in respect of the establishment of the district forums;

(1) where a present District Judge is serving as the President of the forum, if his workload remains 150 cases per month consecutively for six months the High Court will apprise of this fact to the State Government and the State Government after the receipt of this communication shall establish district forum in accordance with Section 9 of the Act.

(2) In the districts where the workload is not more than that fixed by the order of Sth August, 1991 the ad hoc arrangement can continue upto 7th January, 1993 and in the meantime the State Government shall take steps on independent District Forum in each district. After the end of the said first year, the High Court shall be free to end ad hoc courts.

There is no such rule that member of the District Forum must be from the district where he has been appointed.

Jurisdiction of the District Forum

According to Section 11 of the Consumer Jurisdiction Act, 1986

(1) Subject to the other provisions of the Act, the District Forum shall have jurisdiction to entertain complaints where the nature of goods and services and the compensation, if any, claimed does not exceed five lakhs.

(2) A complaint shall be instituted in a district forum within the local limits of whose jurisdiction,

(a) the opposite party or each of the opposite parties, where there are more than one at the time of institution of the complaint, actually 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 given on the opposite parties who do not reside or carry on business be, acquiesce in such institution; or

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

The District Consumer Forum is a creature of the Consumer Protection Act, 1986 and it has jurisdiction and competence to deal with matters provided therein. Jurisdiction of the District Consumer Forum is provided in Section 11 of the Act of 1986. Section 13 of the Act deals with the procedure to be followed by the District Forum. After the proceedings are conducted under Section 18, the District Forum can direct one or more things as provided in Section 14 of the Act. The District Consumer Forum cannot act beyond the jurisdiction conferred on it under law. These directions are required to be confined to the limits provided under the Act of 1986. It cannot take upon itself the authority which has not been conferred by the Act. It cannot order an administrative enquiry into misconduct of a doctor who is employed by the State Government. It has no business to do so if an employee of the State Government has committed any misconduct, it is for the State Government to proceed against such an employee in accordance with the Disciplinary Rules. It does not need any guidance from the authority like the

District Forum constituted under the Act of 1986. In view of the Bombay High Court the District Forum exceeded its jurisdiction in directing the superiors of the petitioner to hold administrative inquiry into the conduct of the petitioner concerning the treatment of the complainant. The directions lack competence. monetary jurisdiction of the District Forum has been enhanced from rupees five lakhs to rupees twenty lakhs.

In *State of Gujarat v. Rajesh Kumar Chimanlal Barot*. The question for consideration was whether the claim of Gram **Panchayat** that it should get financial aid for arranging water for its inhabitants and the benefit **subsidised** electricity comes within the jurisdiction of Consumer Disputes **Redressal Forum** ? The Supreme Court held that the said forums have no jurisdiction in this respect. The Supreme Court further added that the said Forums cannot usurp jurisdiction on the ground that one of the parties is Gram **Panchayat** and the money involved is very small.

Where a party participates in the proceedings of the District Forum and is satisfied in respect of the jurisdiction of the forum, later on he cannot take the ground that the forum has no jurisdiction. A consumer can file the complaint against a corporation which operates within local limits of jurisdiction of the forum even though the headquarters of the corporation may be situated outside the jurisdiction of the forum.⁷ Where a motorcar was booked at Pondicherry but actual delivery is made at Madras the District Forum of Madras (now Chennai) has the jurisdiction to entertain the application,

The jurisdiction in respect of money can be determined only when a complainant files the complaint and the final money to be awarded shall not be affected.

Where there is arbitration agreement between the parties and one party wants to claim damages from the other party and there is no provision relating ascertain compensation and the other party fails to refer matter to arbitration, and one party files the case for refund of money and compensation, the case will be, maintainable.

It may also be noted here that in consumer disputes technical rules of evidence do not apply. This has been held by the Jammu and Kashmir High Court while interpreting Section 11 of Jammu and Kashmir Consumer Protection Act 1987.

The same rule applies to Consumer Protection Act, 1986.

Manner in which complaint shall be made :- Before the amendment of 2002 Section 12 of the Consumer Protection Act, 1986 dealt with the manner in which complaint shall be made. It provides the following: A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a district forum, by----

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided

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

(c) one or more consumers, where there was numerous consumers having the same interest, with the permission of the District Forum on behalf or for the benefit of all consumers so interested, or

(d) the Central or State Government

(Finding of the District Forum.-Section 14 of the Consumer Protection Act, 1986 provides :

(i) if After the proceeding conducted under Section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely :

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question,

(b) to replace the goods with new goods of similar description which shall be free from any defect,

(c) to return to the complainant the price, or as the case may, 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,

(e) to remove the defects of deficiency in the services in question,

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them,

(g) not to offer the hazardous goods for sale;

(h) to withdraw the hazardous goods from being offered for sale:

(i) to provide for adequate costs to parties;

(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together; Provided that where the member for any reason, is unable to conduct the proceeding till it is completed, the President and the other member shall conduct such proceeding de novo.

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

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

Provided that every appointment under this clause shall be made by the State Government under this clause shall be made by the State Government on the commendation of a Selection Committee consisting of the following. namely :-

- (i) President of the state commission-Chairman
- (ii) Secretary of the law Department of the State-Member
- (iii) Secretary incharge of the department dealing with consumer affairs in the state Member

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

(3) Every member of the State Commission shall hold office for a term of five years upto the age of sixty-seven years, whichever is earlier and shall not be eligible for re appointment.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before commencement of the consumer protection (Amendment) Act, 1993, shall continue to hold or such office as President or member, as the case may be till the completion of his term.

In Section 16 as noted above important changes have been made by the Consumer Protection (Amendment) Act, 2002. The changes brought about by the amendment of 2002 are so many and vital that it will be appropriate to state the new Section 16. The new Section 16 is as follows:

"16. Composition of the State Commission.-(1) Each State Commission shall consist of---

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President: Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;

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

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

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

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

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

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

Jurisdiction of the State Commission (Section 17)

Subject to other provisions of this Act, the State Commission shall have jurisdiction,

(a) to entertain-

(i) complaints where the value of the goods or services and compensation, of any claimed exceeds rupees five lakhs but does not exceed rupees twenty lakhs, and Cabal to notion

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

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by the District Forum within the State where it appears to the State Commission, that appears 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.

Section 17 as noted above has also been amended by the Consumer Protection (Amendment) Act, 2002. The old Section 17 has been renumbered as Section (1)(a) and (b) in place of old Section 17 (a) and (b). Secondly, in clause (a) sub-clause (1) for the words "exceeds rupees five lakhs" but does not exceed rupees twenty lakhs the words "exceeds rupees twenty lakhs but does not exceed rupees one crore", have been substituted. Thus the monetary jurisdiction of the State Commission has been extended upto rupees one crore. Thirdly, after sub-section (1) as so renumbered, the new sub section (2) has been inserted. The new sub-section (2) is as follows:

National Commission

Composition of the National Commission.-Section 20 which deals with the composition of the National Commission provides :

(1) the National Commission shall consist of -

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

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

(b) four other members who shall be persons of ability, integrity and standing and 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 shall be a woman Provided that every appointment under this clause shall be made by the Central

Government on the recommendation of a selection committee consisting of the following namely:

(a) a person who is a judge of the Supreme Court to be nominated by the Chief Justice of India **-chairman**

(b) the Secretary in the Department of Legal Affairs in the Government of India **-Member**

(C) Secretary of the Department, dealing with Consumer Affairs in the Government of India **-Member**

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

(3) Every member of the National Commission shall hold office for a term of five years or upto the age of seventy years, whichever is earlier and shall not be eligible for re appointment.

(4) Notwithstanding anything contained in sub-section

(3), a person appointed as President or a member before the commencement of the Consumer Protection (Amendment) Act, 1993. shall continue to hold such office as President or member, as the case may be, till the completion of his term.

The above Section 20 had the above provisions before the amendment of 2002. The Consumer Protection (Amendment) Act, 2002 has made many changes in Section 20. It will therefore, be appropriate to state the provisions of Section 20

as they are after the Amendment Act of 2002. The present Section 20 runs as follows:

"20. Composition of the National Commission.-

(1) The National Commission shall consist of-

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

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

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

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

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

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

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

Jurisdiction of the National Commission

Before the amendment of 2002, Section 21 of the Consumer Protection Act, 1986 provided :

Subject to the other provisions of this Act, the National Commission shall have jurisdiction,

(a) to entertain-

(i) complaints where the value of the goods or services and compensation if any, claimed exceeds rupees twenty 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 the exercise of its jurisdiction illegally or with material irregularity.

Substitution of words "rupees one crore" in place of the words "rupees twenty lakhs" in clause (a)(i) of Section 21:

The Consumer Protection (Amendment) Act, 2002 has enhanced the monetary jurisdiction of the National Commission. Thus under the present provision, the National Commission shall have jurisdiction to entertain complaints where the value of goods or services and compensation, if any, claimed exceeds rupees one crore.

Section 2 (1) (i) of Consumer Protection Act, say that "goods" means goods as defined in the Sale of Goods Act, 1930 (3 of 1930). In Lucknow Development Authority V. M.K. Gupta⁵³ it was argued that Section 2 (1) of the Act defines "goods" as defined in the Sale of Goods Act, 1930 and that this definition does not include immovable things. And as such in respect of house or building or the matter of their allotment do not come within jurisdiction of Consumer Commission. The Supreme Court rejected this argument. There had been delay in giving custody of the house to the respondent and that is why he claimed deficiency in service and filed the complaint therefor. The jurisdiction of the Commission cannot be challenged even though it was a matter relating to the service. The Supreme Court held a common feature of goods and service is that they can be supplied for a price so that the seller and one who supplies services may gain profit. But there is a difference between the two that the defect in goods can be removed but compensation can be awarded for deficiency in service.

Q-2 Define The Term 'Consumer' under the Consumer Protection Act, 1986 and Discuss the salient Features of the consumer protection act 1986.

1. Creation of Benches and holding of Circuit Benches.-Provisions have been made for the creation of Benches of the State Commission and the National Commission as well as the holding of Circuit Benches of National Commission and State Commissions.

2. Enhancement of Monetary jurisdiction.-The monetary jurisdiction of District Forum has been enhanced from Rupees five lakhs to rupees twenty lakhs. The monetary jurisdiction of State Commission has been increased from rupees twenty lakhs to rupees one crore. Besides this, the National Commission will have jurisdiction where the value of goods or services exceeds rupees one crore.

3. Restriction on allowing of Adjourments.-The Amendment Act of 2002 has provided that ordinarily no adjournment shall be allowed. In case an adjournment is necessary due to certain reasons, while allowing such an adjournment reasons shall be recorded by the District Forum, State Commission or the National Commission, as the case may be.

4. Charging of fee in respect of complaints.-A new, but retro gate change brought about by the Amendment Act of 2002 is that along with every complaint prescribed fee shall be charged.

5. Deposition of fifty per cent of the amount payable under order appeal or a fixed amount whichever a condition to precedent for admission of appeal.-In case of an appeal to the State from an order of the District Forum, the appellant will have to deposit fifty per cent of the amount of compensation or fine or the amount of Rs. 25000/- whichever before the admission of the appeal. In case of an appeal the National Commission from an order of the State Commission, appeal for admission can be entertained only if the appellant deposits fifty per cent of the amount payable under the State Commission or Rs. 35000/- whichever is less lastly in case of an appeal to the Supreme Court from an order of the National Commission, the appellant will be required to deposit fifty per cent of the amount payable under the order of the National Commission or Rs. 50,000/- whichever is less.

6. Period within which complaints are to be admitted, notices are to be issued to the opposite party and complaints are to be decided.-Yet another good change brought about by the Amendment Act of 2000 is to fix the period within which complaints have to be admitted, notices to the opposite party have to be issued and complaints have to be decided,

7. Services availed for commercial purposes excluded from the purview of Consumer Disputes Redressal Agencies.-Before the commencement of the Consumer Protection (Amendment) Act. 2002, only goods used for commercial purposes had been excluded from the purview of Consumer Disputes Redressal Agencies. As was expected, the Amendment Act of 2002 has made the provision

excluding services availed also from the purview of Consumer Disputes Redressal Agencies.

(8). Issues of Interim Orders by Consumer Disputes Redressal Agencies.- Yet another change brought about by the Amendment Act of 2002 is to allow Consumer Disputes Redressal Agencies, namely, District Forum, State Commission or the National Commission, as the case may be, to issue interim orders if such redressal agencies consider it necessary in the interest of justice.

9. Re-appointment of President and Members of Consumer Disputes Redressal Agencies for another term of five years.- It has been provided by that the Consumer Disputes Redressal Agencies namely the District Forum, State Commission or the National Commission, as the case may be, can be appointed for another term of five years provided that they possess the requisite qualifications.

10. Extension of Provisions of the Act to services which are hazardous.- The provisions of Consumer Protection Act have been extended to services which are hazardous.

11. Sale of Spurious Goods brought within the meaning of Unfair Trade Practices. - The Amendment Act of 2002 has brought the sale of spurious goods within the meaning of unfair trade practices.

12. Powers of Judicial Magistrate conferred on Consumer Disputes Redressal Agencies for trying offences under the Act.- For trying offences under the Consumer Protection Act, the Amendment Act of 2002 has conferred powers of Judicial Magistrate as Consumer Disputes Redressal Agencies.

13. Empowering Consumer Disputes Redressal Agencies to recover amounts as arrears of land revenue. The Consumer Protection (Amendment) Act, 2002 has empowered Consumer Disputes Redressal Agencies to recover amounts ordered to be paid by the Consumer Disputes Redressal Agencies as arrears of land revenue.

14. Engagement of legal practitioner by opposite party only if the complainant engages a legal practitioner or has objection to the engagement of a legal practitioner by opposite party or he himself is a legal practitioner. - Engagement of a legal practitioner by the opposite party has been allowed where the complainant himself is a legal practitioner or engages a legal practitioner or has no objection to the engagement of a legal practitioner by the opposite party.

15. Substitution of legal heir or representative as a party to complaint or opposite party in case of death.-The Amendment Act of 2002 has made a provision for substitution of legal heir or representative as a party to the complainant or the opposite party as the case may be, in the event of death.

Objects and Reasons :

The preamble of the Consumer Protection Act, 1986 states that the Act is being enacted "to provide for better protection of interests of consumers" with a view to protect the interests of the consumers and to save them from exploitation at the hands of traders and other agencies, the Consumer Protection Bill, 1986 was passed in the Parliament. As per statement of objects and reasons, the Consumer Protection Bill seeks to provide for better protection of the interests of consumers for that purpose, to make provisions for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for the matters connected therewith, seeks, inter alia, to promote and protect the rights of 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 price of goods to protect the consumer against unfair trade practice;
- (c) the right to be assured, wherever possible, access to variety of goods at competitive prices:
- (d) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practice 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 levels. 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 reliefs 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 bill seeks to achieve the above objects.

After having been passed by both the Houses of Parliament, the Consumer Protection Bill, 1986 received the assent of the President on December 24, 1986. Thus the said bill became an Act, i.e., Consumer Protection Act, 1986 (Act 68 of 1986). According to Section 1 (3) of the Consumer Protection Act, 1986 it shall come into force on such date as the Central Government may, by notification,

appoint and different dates may be appointed for different states, and for different provisions of the Act. Thus for different states and different provisions different dates for the enforcement of the Act could be appointed. According to the notification of the Central Government, except for the state of Jammu and Kashmir, Chapters 1, 2 and 4 came into force on 15th April, 1987 in the whole of India. Chapter 3 came into force except for the state of Jammu and Kashmir, on 1st July, 1987 in whole of India as pointed out by R.M. Sahai J. in Lucknow Development Authority v M. K. Gupta, this legislation is a milestone in history of social legislation and is directed towards achieving public benefit.

A few years after the coming into force of the Consumer Protection Act 1986 certain difficulties were experienced especially in view of the decision of the National Consumer Disputes Commission, i.e., national commission regarding the order under sub-section 2 felt that the Act required certain modifications that is why Consumer Protection (Amendment) Ordinance, 1991 was promulgated to provide inter alia, -

(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 the President and member or members who conducted the proceeding. Subsequently, the Ordinance became the Consumer Protection (Amendment) Act, 1991 and the Ordinance was repealed.

Consumer Protection Act, 1986 was amended once again by the Consumer (Amendment) Act, 1993. As per statement of objects and reasons of the Amendment Bill since 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 the areas covered and entrust more powers to the redressal agencies under the Act. Accordingly the Bill, inter alia, seeks to provide the following :

(i) to enlarge the scope of 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 the trader;

(ii) to enable the consumers who 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 enable filing of class action complaints on behalf of groups of consumers having same interest:

(v) to provide for the constitution of selection committees for the judicial members of various redressal agencies;

(vi) to increase the monetary jurisdiction of District Forum/State Commissions/ National Commission;

(vii) 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.

(viii) to impose punishment on the complainant in cases of frivolous or vexatious complaints; and

(ix) to provide for limitation period of one year for filing complaints.

The Bill seeks to provide the aforesaid objects.

The Consumer Protection (Amendment) Act, 1993 came into force on 18th June, 1993. Sections 2 to 22 of the Amendment Act, of 1993 were substituted in place of the original sections of the original Act. Thus Amendment Act of 1993 brought about vast changes in the Consumer Protection Act, 1986, The Act was amended for the third time by the Consumer Protection (Amendment) Act 2002. It has brought about many important changes

Purpose of the Act

While trying to "to ascertain the purpose of the Act (i.e. Consumer Protection to 1986) the objective it seeks to achieve and the nature of social purpose it seeks to promote " R.M. Sahia, J aptly observed, in Lucknow Development Authority v. M.K. Gupta

The preamble of the Act can afford a useful assistance to ascertain the legislative intention it was enacted to provide for the protection of the interest of consumer. Use of the word 'Protection' furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that the preamble cannot control otherwise plain meaning of a provision. In fact the law meets long felt necessity of protecting the common man from wrongs for which the remedy under the ordinary law for various reasons has become illusory. Various legislations and regulations permitting the state to intervene and protect the ests of the consumer ave become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves. inefficiently... The importance of the Act lies in promoting to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business described as 'a network of rackets' or a society in which, producers have secured powers to 'rob the rest and the right of the public bodies which are degenerating into store house of inaction where papers do not

move from one desk to another as a matter of duty or responsibility but for extraneous considerations leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, wide spread, deep that the society instead of bothering complaint and fighting for it is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining in checking the rot. A scrutiny of various definitions such as consumer 'service' trader, unfair trade indicate that the legislature has attempted to widen the reach of the Act.

Further, "The provisions of the Act, thus have to be construed in favour of the consumer to achieve the purpose of the enactment as it is a social benefit oriented legislation. The primary duty of the court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the enactment.

This matter was brought before the Supreme Court by special leave. The Supreme Court held that the decision of the national commission is erroneous. Therefore, the Supreme Court reversed the decision of the national commission and restored the decision of the state commission. The Supreme Court held:

"The contract Act applies to all litigants before the commission under the Consumer Protection Act included whether in proceedings before the commission or otherwise an agent is entitled to invoke the provisions of Section 230 of the Contract Act, if the facts support him, his defence based thereon cannot be brushed away."

(d) "Consumer 16 In Consumer Protection Act, 1986, unless the context required, 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 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 any commercial purpose, or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid or 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 purposes" 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 above clause (ii) of clause (d) of Section 2(1) and explanation thereof have been amended by Consumer Protection (Amendment) Act, 2002. At the end of above clause (ii), words "but does not include a person who avails of such services for any commercial purpose" have been inserted. These words have been inserted for clarifying the provision and for removing any doubt in this respect. It may be noted that such a clarification already existed in respect of goods in sub-clause (i).

Besides the above change a new explanation has been substituted in place of the old one. The new explanation clarifies that besides the goods, "commercial purpose" does not include services availed inclusively for the purpose of earning

his livelihood by means of self-employment. The new explanation thus provides the following:

"Explanation.-For the purposes of this clause 'commercial purpose' does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment."

Examples of Persons who are consumers.-Who is a consumer? A person hiring services from a travelling company is a consumer? A holder of insurance policy will come within the definition of consumer⁸ A person taking the services of Post and Telegraph department after paying necessary charges is a consumer. Where the message given in the telegram about the attaining of maturity by the daughter of the person, consumer was transmitted as her death, the consumer court awarded a compensation of Rs. 2,500.⁹ Where photographs sent by speed post were delayed and as a result of a marriage proposal could not mature, a compensation of Rs. 1000/- was really awarded. Similarly where a letter insured for Rs. 1000/- was lost, a refund of Rs. 1000/- along with a compensation of Rs. 1000/- was awarded.!

Allottees of flats by Development Authorities: Allottees of flats of Developers Authorities such as Lucknow Development Authority, Delhi Development Authority etc and State Housing Boards are consumers¹². Even a person who applies for allotment in a housing scheme is a consumer where a person deposited the required amount of money for allotment of house and the lots were to be drawn but his name, though eligible was not included, it was held to be a deficiency in service and was awarded the interest @ 18% on his deposit'. It has also been held that delay in delivery of possession of house would entitle the allottee to claim interest on the deposits besides the costs of the case,

A person who opens a savings account in a Bank is also consumer, 15 Where a customer deposits a cheque in her savings bank account and the bank fails to credit cheque to her savings bank account as the cheque is lost, the bank has to compensate the amount of cheque to customer account alongwith interest thereon. 16 Where bank allows the facility of overdraft to its customer, then this is a 'service' and the customer will be deemed to be a consumer.

A person who takes policy of insurance of goods booked through transport carrier is a consumer. The meaning of the word 'consumer' has been explained by the Supreme Court in the following words:

The consumer as the term implies is one who consumes. As per definition, the consumer is the one who purchases goods for private use or consumption. The meaning of the word 'consumer' is broadly stated in the definition as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get what he pays for in real quality and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer supplier, wholesaler and retailer."

The definition of consumer includes one who hires or avails of any service for a consideration. The ordinary, plain and grammatical meaning of 'hire' is to acquire the temporary use of a thing or the services for a consideration and it is in this sense that the word has been used in Section 2 (i) (d) (ii) of the Consumer Protection Act.²⁰ The definition of 'consumer' in Section 2 (1) (d) (ii) is very wide. It includes not only one who 'hires or avails of any service for a consideration' but also includes 'any beneficiary of such services, Other than the one who hires or avails of the services for consideration.

Thus where a child is admitted in a hospital for treatment then the both the child and his parents would be consumers'. If injury is caused to any one of these two it would be proper to award compensation to both. This has been held by the Supreme Court in *Ws. Spring Meadows Hospital v. Harjol Ahluwalia*²¹ The facts of this case are following:

A minor child was being treated in a nursing home in Noida but there being no improvement in the condition of the child his parents brought him to M/s Spring Meadows Hospital where he was examined and the doctors of the hospital diagnosed that the child was suffering from typhoid. The doctor prescribed some medicine and injections and the nurse asked the father of the child to bring the injection from the market. The father of the child brought the said injection and gave it to the nurse. The nurse injected the same to child-The patient immediately on being injected collapsed. The resident doctor who attended the patient told the parents that the child had suffered a cardiac arrest and then by manually pumping the chest the doctor attempted to revive the heart heart. It was alleged by the father of the child that before inserting the injection the nurse had not made any tests. The patient (child) was put on oxygen cylinder and manual respirator Though the child was kept alive his condition did not improve. Thereafter the doctors of the hospital told the father of the child that hospital did not have adequate facilities for the treatment of the child and advised that the child should be admitted to the All India Institute of Medical Sciences. Thus, on their advice, the child was admitted to All India Institute of Medical sciences. The All India Institute of Medical Sciences discharged the child by saying that though the child will remain alive, yet this condition will be that of vegetation because his mind has suffered an irreparable damage and it is not possible to improve his damaged organs. M/s. Spring Meadows hospital assured the father of the child that they would admit the child and would do their best to keep the condition of the child stable. The parents of the child filed the case, on behalf of the child against the

Spring Meadows Hospital for claim of Rs. 28 lakhs as compensation on account of causing irreparable damage to the child

The Supreme Court held:

"If the parents of the child having hired the services of the hospital are consumer within the meaning of Section 2 (i) (d) (ii) and the child also is consumer being a beneficiary of such services hired by his parents in the inclusive definition in Section 2 (1) (a) of the Act, the commission will be fully justified in awarding compensation to both of them for the injury each of them has sustained. In the case in hand the commission has awarded compensation in favour of the minor child taking into account the cost of equipments and the recurring expenses that would be necessary for the said minor child who is merely having a vegetative life. The compensation awarded in favour of the parents of the minor child is for their acute mental agony and the life long care and attention which the parents would have to bestow on the minor child."

It was argued on behalf of the hospital that not only the hospital authorities had immediately on their taken the assistance of several specialists to treat the child but also even after the child was discharged from the All India Institute of Medical Sciences, humanitarian approach has been taken by the hospital authorities and child has been taken care of by the hospital even without charging any money for the services rendered and consequently in such a situation the award of damages for mental agony to the parents, is wholly unjustified. The Supreme Court answered:

"We, however, fail to appreciate this argument advanced on behalf of the learned counsel for the appellants inasmuch as the mental agony of the parent will not be dismissed in any manner merely seeing the only child living a vegetative state on account of negligence of the hospital authorities on a hospital bed. The agony of the parents would remain so long as they remain alive and the so-called

humanitarian approach of the hospital authorities in no way can be considered to be a factor in denying the compensation for mental agony suffered by the parents.

"

As regards medical services received from a private doctor or a

Examples of persons who are not consumers.--A bus passenger is not a 'consumer' within the meaning of the term 'consumer' under Consumer Protection Act, similarly, a Regional Transport Officer who is a statutory officer under Motor Vehicles Act is not a 'consumer' because he does not render any service of which the bus passengers may complain thus a regional transport officer does not come under the definition of a 'manufacturer'.

Where a complainant has filed a case against the Railway Administration for loss of assigned goods and later on he gives his rights to an insurance company under the rule of subrogation, the insurance company is not entitled to continue the case as it is not a 'consumer' within the meaning of Consumer Protection Act, 1986.³⁹ Thus the insurance company does not become consumer on subrogation. Where the appellant charitable trust, runs a diagnostic centre but only ten percent of people avail its services and provided free C.T. Scan and the appellant makes the commercial use of goods (machine) then such an appellant is not a 'consumer'.

Q-3 Discuss the Provisions Regarding Constitution Powers and Jurisdiction of the State consumer council under the consumer Protection Act, 1986.

Central Consumer Protection Council.-According to Section 4 of the Consumer Protection Act, 1986 :

(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 to be referred as the Central Council).

(2) The central 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 Consumer Protection (Amendment) Act, 2002 has brought about a very significant change in Section 4 as noted above. In sub-section (1) of Section 4 for the words "The Central Government may", the words "The Central Government shall have been substituted. The insertion of the word "shall" in place of "may" is very significant because it now makes mandatory for the Central Government to establish the Central Consumer Protection Council.

Consumer Protection Rules, 1987 has fixed the number of members of the central council. Rule 3 provides for the constitution of the central consumer protection council, and the working groups. Rule 3 provides.

(i) the Central Government shall, by notification, in the Official Gazette constitutes the central Consumer Protection Council which shall consist of the following members not exceeding 150, namely

(a) the Minister in charge of the consumer affairs in the Central Government 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 charge of consumer affairs in the Central Government who shall be the vice-chairman of the central councils;

(c) the Minister in charge of consumer affairs in states;

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

(e) the secretary of the National Commission for scheduled castes and scheduled tribes;

(f) representative of the Central Government departments, autonomous organisation concerned with consumer-Not exceeding twenty:

(g) representatives of the consumer organisations for consumer -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 term of the council shall be three years:

(3) Any member may, by writing under his hand to the chairman of the central council, resign from the council. The vacancies so caused or otherwise shall be filled from the same category by the Central Government and such person shall hold office so long as the member whose place he fills would have been entitled to hold office, if the vacancy had not occurred.

(4) For the purpose of monitoring the implementation of the recommendation of the Central Council and to suggest that working of the council, the central council may institute from amongst the members of the council a standing working group, under the chairmanship of the member-Secretary of the council. The standing working group shall consist of not exceeding 30 members and shall meet as and when considered necessary by the Central Government.

Section 5 of the Consumer Protection Act, 1986 provides -

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

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

The procedure of the central council has been prescribed by Rule 4 of the Consumer Protection Rules, 1987. Rule 4 provides : Under sub-section (2) of Section 5, the Central Council shall observe the following

procedure in regard to the transaction of its business :-

(1) The meeting of the central council shall be presided over by the chairman. In absence of the chairman, the vice-chairman shall preside over the

meeting of the central council .In the absence of the chairman and the vice-chairman the central council shall elect a member to preside over that meeting of the council.

(2) Each meeting of the central council shall be called by giving not less than ten days from the date of the issue, notice in writing to every member.

(3) Every notice of a meeting of the central council shall specify the place and the said hour of the meeting and shall contain statement of business to be transacted thereafter.

(4) 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. (5) For the purpose of performing its functions under the Act, the Central Council may constitute from amongst its members, such working groups as it may deem necessary and every working group so constituted shall perform such functions as are assigned to it by the central council. The findings of such working groups shall be placed before the central council for its consideration.

(6) The non-official members shall be entitled to first class or second air-conditioned by all trains (including Rajdhani Express) to and fro Railway fare or actual mode of travel whichever is less. Outstation non-official members shall be entitled to a daily allowance of one hundred rupees per day for attending the meetings of the central council or any working group, local non-official members shall be paid actual conveyance, hire charges subject to a ceiling of Rs. 75/- per day irrespective of the classification of the city members of Parliament shall be entitled to travelling and daily allowances at such rates as are admissible to such members.

(7) The resolutions passed by its Central Council shall be recommendatory in a nature.

Objects of the Central Council

According to Section 6 of the Consumer Protection Act, 1986, 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 the 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 consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;

(d) the right to be heard and 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.

The State Consumer Protection Councils

Section 7, of the Consumer Protection Act, 1986 provides :

(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 (hereinafter to be referred as the State Council)

(2) The state Council shall consist of the following members namely (a) the Minister-in-charge of consumer affairs, in the State Government who shall be its chairman;

(b) such number of other official or non-official members representing such interest as may be prescribed by the State Government.

(3) The State Council shall meet as and when necessary but not less than two meetings should 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.

Some significant changes have been brought about in above noted Section 7 by the Consumer Protection (Amendment) Act, 2002. In sub-section (1) of Section 7. for the opening words "The State Government may" the words "The State Government shall" has been substituted. This is very significant change because some State Governments are reluctant to establish State Consumer Protection Council. Because of the use of the word "may" in the old provision, they consider it discretionary. Now since the word 'may' has been replaced by the word 'shall' it has become mandatory for State Governments to establish State Consumer Protection Council. The Amendment Act of 2002 has also brought some change in sub-section (2). In sub-section (2) after clause (b) a new clause i.e., clause (c) has been inserted. Clause (c) provides : "(c) such number of other official or non-official members, not exceeding ten as may be nominated by the Central Government." Clause (c) thus qual clause (b) by providing that such number of other official or non-official members may be nominated by the Central Government but such number must not be more than ten.

Objects of the State Council

Section 8 of the Consumer Protection Act provides that 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 (g) of Section 6.

Clauses (a) to (f) of Section 6 state the objects of the Central Council. It is thus seen from Section 8 that the objects of the state council are same as those of the Central Council.

The District Consumer Protection Council

Section 8A [which has been inserted by the Consumer Protection (Amendment) Act, 2002] of the Consumer Protection Act, 2002 provides : (1) The State Government shall establish for every district, by notification, a council to be known as the District Consumer Protection Council with effect from such date as it may specify in such notification.

(2) The District Consumer Protection Council (hereinafter referred to as the District Council) shall consist of the following members, namely:

(a) The Collector of the district (by whatever name called), who shall be its Chairman, and

(b) such number of other official and non-official members representing such interests as may be prescribed by the State Government. (3) The District Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The District Council shall meet at such time and place within the district 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. This is a welcome new provision because it has now become mandatory for the State

Governments to establish the District Consumer Protection Council in each district. objects of the District Council.

Section 8B (which is also a new insertion by the Consumer Protection (Amendment) Act, 2002) provides the following: The objects of every District Council shall be to promote and protect within the district the rights of the consumers laid down in clauses (a) to (f) of Section 6.

As in case of the State Consumer Protection Council, the objects of the District Council are same as those of the Central Consumer Protection Council as specified in Section 6.

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