

DIVISION TWO

**COMMENTARY ON  
CONSUMER PROTECTION ACT**

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**CONSUMER PROTECTION ACT**

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**Introduction**

**1.1** The moment a person comes into this world, he starts consuming. He needs clothes, milk, oil, soap, water, and many more things and these needs keep taking one form or the other all along his life. Thus we all are consumers in the literal sense of the term. When we approach the market as a consumer, we expect value for money, i.e., right quality, right quantity, right prices, information about the mode of use, etc. But there may be instances where a consumer is harassed or cheated.

The Government understood the need to protect consumers from unscrupulous suppliers, and several laws have been made for this purpose. We have the Indian Contract Act, the Sale of Goods Act, the Dangerous Drugs Act, the Agricultural Produce (Grading and Marketing) Act, the Indian Standards Institution (Certification Marks) Act, the Prevention of Food Adulteration Act, the Standards of Weights and Measures Act, etc. which to some extent protect consumer interests. However, these laws require the consumer to initiate action by way of a civil suit involving lengthy legal process which is very expensive and time consuming.

The Consumer Protection Act, 1986 was enacted to provide a simpler and quicker access to redressal of consumer grievances. The Act for the first time introduced the concept of consumer and conferred express additional rights on him. It is interesting to note that the Act doesn't seek to protect every consumer within the literal meaning of the term. The protection is meant for the person who fits in the definition of consumer given by the Act.

Now we understand that the Consumer Protection Act provides means to protect consumers from getting cheated or harassed by suppliers. The question arises how a consumer will seek protection? The answer is the Act has provided a machinery whereby consumers can file their complaints which will be entertained by the Consumer Forums with special powers so that action can be taken against erring suppliers and the possible compensation may be awarded to consumer for the hardships he has undergone. No court fee is required to be paid to these forums and there is no need to engage a lawyer to present the case.

Following chapter entails a discussion on who is a consumer under the Act, what are the things which can be complained against, when and by whom a complaint can be made and what are the relief available to consumers.

<b>Para 1.2</b>	<b>CONSUMER PROTECTION ACT</b>	<b>2.4</b>
<p><b>Who is a consumer</b></p> <p><b>1.2</b> Section 2(d) of the Consumer Protection Act says that consumer means any person who</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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;</li> </ul> <p><i>Explanation.</i> For the purposes of the sub-clause (i), commercial purpose does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.</p> <p><b>1.2-1 Consumer of goods</b> - The provision reveals that a person claiming himself as a consumer of goods should satisfy that</p> <p><b>1-2-1a</b> THE GOODS ARE BOUGHT FOR CONSIDERATION - <i>There must be a sale transaction between a seller and a buyer; the sale must be of goods; the buying of goods must be for consideration.</i> The terms sale, goods, and consideration have not been defined in the Consumer Protection Act. The meaning of the terms sale, and goods is to be construed according to the Sale of Goods Act, and the meaning of the term consideration is to be construed according to the Indian Contract Act.</p> <p><b>1-2-1b</b> ANY PERSON WHO USE THE GOODS WITH THE APPROVAL OF THE BUYER IS A CONSUMER - When a person buys goods, they may be used by his family members, relatives and friends. Any person who is making actual use of the goods may come across the defects in goods. Thus the law construe users of the goods as consumers although they may not be buyers at the same time. The words "...with the approval of the buyer" in the definition denotes that the user of the goods should be a rightful user.</p> <p><i>Example :</i> A purchased a scooter which was in B's possession from the date of purchase. B was using it and taking it to the seller for repairs and service from time to time. Later on B had a complaint regarding the scooter. He sued the seller. The seller pleaded that since B did not buy the scooter, he was not a consumer under the Act. The Delhi State Commission held that B, the complainant was using it with the approval of A, the buyer, and therefore he was consumer under the Act. [<i>Dinesh Bhagat v. Bajaj Auto Ltd.</i> (1992) III CPJ 272]</p> <p><b>Note :</b> This is an exception to the general rule of law that a stranger to a contract cannot sue.</p>		

<b>2.5</b>	<b>CONSUMER PROTECTION ACT</b>	<b>Para 1.2</b>
<p><b>1-2-1c</b> ANY PERSON WHO OBTAINS THE GOODS FOR RESALE OR COMMERCIAL PURPOSES IS NOT A CONSUMER - The term for resale implies that the goods are brought for the purpose of selling them, and the expression for commercial purpose is intended to cover cases other than those of resale of goods. When goods are bought to resell or commercially exploit them, such buyer or user is not a consumer under the Act.</p> <p><i>Examples :</i></p> <ol style="list-style-type: none"> <li>1. A jeep was purchased to run it as a taxi. The question was whether the buyer of the jeep was a consumer under the Act. The Rajasthan State Commission held that to use the jeep as a taxi with the object to earn profits was a commercial purpose, and therefore, the buyer/user was not a consumer within the meaning of the Act. [<i>Smt. Pushpa Meena v. Shah Enterprises (Rajasthan) Ltd.</i> (1991) 1 CPR 229].</li> </ol>		

2. L Ltd. purchased a computer system from Z. The computer system was giving constant trouble and Z was not attending it properly. L Ltd. filed a complaint against Z with the National Commission. Z contended that L Ltd. was not a consumer under the Act because computer system was used for commercial purposes. L Ltd. argued that computer system was not directly used for commercial purposes rather it was used to facilitate the work of the company. The Commission rejected the argument on the grounds that the system made part of the assets of the company, and its expenses were met by it out of business income. Thus the said purchase was a purchase for commercial purposes and L Ltd. was held not to be a consumer under the Act.

One thing is plain and clear from the decided cases that what is important to decide is - Whether a particular good is used for commercial purposes. If it is the buyer/user is not a consumer, and if it is not - the buyer/user is a consumer.

**1.2-1d PERSON BUYING GOODS FOR SELF EMPLOYMENT IS A CONSUMER** - When goods are bought for commercial purposes and such purchase satisfy the following criteria :

- the goods are used by the buyer himself;
- exclusively for the purpose of earning his livelihood;
- by means of self-employment,

then such use would not be termed as use for commercial purposes under the Act, and the user is recognised as a consumer.

*Examples :*

1. A buys a truck for plying it as a public carrier by himself, A is a consumer.
2. A buys a truck and hires a driver to ply it, A is not a consumer.
3. A has one cloth shop. He starts another business of a photocopier and buys a photocopy machine therefor. He hasn't bought this machine exclusively for the purpose of earning livelihood. He is not a consumer under the Act.

**Note :** That this is an exception to the rule that a buyer of commercial goods is not a consumer under the Act.

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<p>The intention of the legislature is to exclude big business houses carrying on business with profit motive from the purview of the Act. At the same time it is pertinent to save the interests of small consumers who buy goods for self employment to earn their livelihood, like a rickshaw puller buying rickshaw for self employment, or a farmer purchasing fertilizer for his crops, or a taxi driver buying a car to run it as a taxi, etc.</p> <p><i>Example :</i> A was running a small type institute to earn his livelihood. He purchased a photocopy machine-canon NP 150. It proved defective. He sued the seller who contended that A is not a consumer under the Act as he purchased the photocopier for commercial use. The Commission held that by no stretch of imagination it can be said that the photocopier would bring large scale profits to A. It was a part of his small scale enterprise. He was construed as consumer under the Act. <i>However, if such a buyer takes assistance of two or more persons to help him in operating the vehicle or machine, etc., he does not cease to be a consumer.</i></p> <p><i>Examples :</i></p> <ol style="list-style-type: none"> <li>1. A buys a truck, ply it himself and hires a cleaner who accompany him all the time and at times drives also when A is busy otherwise, A is a consumer.</li> <li>2. P, an eye surgeon, purchased a machine from R for the hospital run by him. The machine was found to be a defective one. R contended that P was not a consumer under the Act as the machine was bought for commercial purposes. The National Commission rejected this contention and held that P is a medical practitioner, a professional working by way of self employment by using his knowledge and skill to earn his livelihood. It was not proved by any evidence that P is running a huge hospital. Thus the purchase of machinery is in the nature of self employment. [<i>Rampion Pharmaceuticals v. Dr. Preetam Shah</i> (1997) 1 CPJ 23 (NCDRC)].</li> </ol> <p><b>1.2-2 Consumer of services</b> - A person is a consumer of services if he satisfy the following criteria :</p>		

**1.2-2a SERVICES ARE HIRED OR AVAILED OF** - The term **hired** has not been defined under the Act. Its Dictionary meaning is - to procure the use of services at a price. Thus the term **hire** has also been used in the sense of **avail** or **use**. Accordingly it may be understood that consumer means any person who avails or uses any service.

*Example* : A goes to a doctor to get himself treated for a fracture. Here A is hiring the services of the doctor. Thus he is a consumer.

*What constitutes hiring has been an issue to be dealt with in many consumer disputes.* If it is established that a particular act constitutes hiring of service, the transaction falls within the net of the Consumer Protection Act, and *vice-versa*.

*Examples :*

1. A passenger getting railway reservation after payment is hiring service for consideration.
2. A landlord neglected and refused to provide the agreed amenities to his tenant. He filed a complaint against the landlord under the Consumer

2.7	CONSUMER PROTECTION ACT	Para 1.2
	<p>Protection Act. The National Commission dismissed the complaint saying that it was a case of lease of immovable property and not of hiring services of the landlord. [<i>Smt. Laxmiben Laxmichand Shah v. Smt. Sakerben Kanji Chandan</i> [1992] 1 Comp. LJ 177 (NCDRC)].</p> <p>3. A presented before the Sub-Registrar a document claiming it to be a will for registration who sent it to the Collector of Stamps for action. The matter remain pending for about six years. In the meantime A filed a complaint under the Consumer Protection Act alleging harrasment by the Sub-Registrar and Collector and prayed for compensation. The National Commission held the view that A was not a consumer under the CPA. Because there was no hiring of services by the complainant for consideration and because a Government official doing his duty as functionary of the State under law could not be said to be rendering a service to the complainant. [<i>S.P. Goel v. Collector of Stamps</i> (1995) III CPR 684 (SC)].</p> <p><b>1.2-2b CONSIDERATION MUST BE PAID OR PAYABLE</b> - Consideration is regarded necessary for hiring or availing of services. However, its payment need not necessarily be immediate. It can be in instalments. For the services provided without charging anything in return, the person availing the services is not a consumer under the Act.</p> <p><i>Examples :</i></p> <ol style="list-style-type: none"> <li>1. A hires an advocate to file a suit for recovery of money from his employer. He promises to pay fee to the advocate after settlement of the suit. A is a consumer under the Act.</li> <li>2. A goes to a Doctor to get himself treated for a fracture. The Doctor being his friend charged him nothing for the treatment. A is not a consumer under the Act.</li> <li>3. B issued an advertisement that a person could enter the contest by booking a Premier Padmini car. S purchased the car and thus entered the contest. He was declared as winner of the draw and was thus entitled to the two tickets from New Delhi to New York and back. S filed a complaint alleging that the ticket was not delivered to him. The National Commission held that S was not a consumer in this context. He paid for the car and got it. B was not liable so far as the contract of winning a lottery was concerned. [<i>Byford v. S.S. Srivastava</i> (1993) II CPR 83 (NCDRC)].</li> </ol> <p><i>The Direct and Indirect taxes paid to the State by a citizen is not payment for the services rendered.</i></p> <p><i>Example</i> : T was paying property tax for his house to the local corporation. This corporation was responsible for proper water supply to the premises under its work area. T raised a consumer dispute over the inadequacy of water supply by the corporation. The National Commission held that it was not a consumer dispute as water supply was made by the corporation out of its statutory duty and not by virtue of payment of taxes by T. - <i>Mayor, Calcutta Municipal Corporation v. Tarapada Chatterjee</i> (1994) 1 CPR 87 (NCDRC).</p>	

<b>Para 1.3</b>	<b>CONSUMER PROTECTION ACT</b>	<b>2.8</b>
<p><b>1.2-2c BENEFICIARY OF SERVICES IS ALSO A CONSUMER</b> - When a person hires services, he may hire it for himself or for any other person. In such cases the beneficiary (or user) of these services is also a consumer.</p> <p><i>Example</i> : A takes his son B to a doctor for his treatment. Here A is hirer of services of the doctor and B is beneficiary of these services. For the purpose of the Act, both A and B are consumers.</p> <p><b>Note</b> : This is an exception to the rule of privity to the contract.</p> <p><i>Note that in case of goods, buyer of goods for commercial purpose ceases to be a consumer under the Act. On the other hand, a consumer of service for commercial purpose remains a consumer under the Act.</i></p> <p><i>Example</i> : S applied to Electricity Board for electricity connection for a flour mill. There was a delay in releasing the connection. S made a complaint for deficiency in service. He was held a consumer under the Act. - <i>Shamsher Khan v. Rajasthan State Electricity Board</i> (1993) II CPR 6 (Raj.).</p> <p><b>Complaint</b></p> <p><b>1.3</b> An aggrieved consumer seeks redressal under the Act through the instrumentality of complaint. It does not mean that the consumer can complain against his each and every problem. The Act has provided certain grounds on which complaint can be made. Similarly, relief against these complaints can be granted within the set pattern.</p> <p><b>1.3-1 What constitutes a complaint [Section 2(1)(c)]</b> - Complaint is a statement made in writing to the National Commission, the State Commission or the District Forum by a person competent to file it, containing the allegations in detail, and with a view to obtain relief provided under the Act.</p> <p><b>1.3-2 Who can file a complaint [Sections 2(b) &amp; 12]</b> - At the outset it is clear that a person who can be termed as a consumer under the Act can make a complaint. To be specific on this account, following are the persons who can file a complaint under the Act :</p> <ul style="list-style-type: none"> <li>(a) a consumer; or</li> <li>(b) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force, or</li> <li>(c) the Central Government or any State Government,</li> <li>(d) one or more consumers, where there are numerous consumers having the same interest.</li> </ul> <p><i>In addition to the above following are also considered as a consumer and hence they may file a complaint :</i></p> <p><i>Beneficiary of the goods/services</i> : The definition of consumer itself includes beneficiary of goods and services - <i>K.B. Jayalaxmi v. Government of Tamil Nadu</i> 1994(1) CPR 114.</p> <p>Where a young child is taken to the hospital by his parents and the child is treated by the doctor, the parents of such a minor child can file a complaint under the Act - <i>Spring Meadows Hospital v. Harjot Ahluwalia</i> JT 1998(2) SC 620.</p> <p><i>Legal representative of the deceased consumer</i> : The Act does not expressly indicate that the LR of a consumer are also included in its scope. But by</p>		

<b>2.9</b>	<b>CONSUMER PROTECTION ACT</b>	<b>Para 1.3</b>
<p>operation of law, the legal representatives get clothed with the rights, status and personality of the deceased. Thus the expression consumer would include legal representative of the deceased consumer and he can exercise his right for the purpose of enforcing the cause of action which has devolved on him - <i>Cosmopolitan Hospital v. Smt. Vasantha P. Nair</i> (1) 1992 CPJ NC 302.</p> <p><i>Legal heirs of the deceased consumer</i> : A legal heir of the deceased consumer can well maintain a complaint under the Act - <i>Joseph Alias Animon v. Dr. Elizabeth Zachariah</i> (1) 1997 CPJ 96.</p> <p><i>Husband of the consumer</i> : In the Indian conditions, women may be illiterate, educated women may be unaware of their legal rights, thus a husband can file and prosecute complaint under the Consumer Protection Act on behalf of his spouse - <i>Punjab National Bank, Bombay v. K.B. Shetty</i> 1991 (2) CPR 633.</p> <p><i>A relative of consumer</i> : When a consumer signs the original complaint, it can be initiated by his/her relative - <i>Motibai Dalvi Hospital v. M.I. Govilkar</i> 1992 (1) CPR 408.</p>		

**Insurance company :** Where Insurance company pays and settles the claim of the insured and the insured person transfers his rights in the insured goods to the company, it can file a complaint for the loss caused to the insured goods by negligence of goods/service providers. For example, when loss is caused to such goods because of negligence of transport company, the insurance company can file a claim against the transport company - *New India Assurance Company Ltd. v. Green Transport Co.* II 1991 CPJ (1) Delhi.

**1.3-3 What a complaint must contain [Section 2(1)(c)]** - A complaint must contain any of the following allegations :

- (a) An unfair trade practice or a restrictive trade practice has been adopted by any trader;  
*Example :* A sold a six months old car to B representing it to be a new one. Here B can make a complaint against A for following an unfair trade practice.
- (b) The goods bought by him or agreed to be bought by him suffer from one or more defects;  
*Example :* A bought a computer from B. It was not working properly since day one. A can make a complaint against B for supplying him a defective computer.
- (c) The services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect.  
*Example :* A hired services of an advocate to defend himself against his landlord. The advocate did not appear every time the case was scheduled. A can make a complaint against the advocate.
- (d) A trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods.  
*Example :* A bought a sack of cement from B who charged him Rs. 100 over and above the reserve price of the cement declared by the Government. Here A can make a complaint against B.

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<p>(e) Goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.</p> <p><i>Example :</i> A bought a tin of disinfectant powder. It had lid which was to be opened in a specific manner. Trader did not inform. A about this. While opening the lid in ordinary way, some powder flew in the eyes of A which affected his vision. Here A can make a complaint against the trader.</p> <p><b>Note :</b> The terms unfair trade practice, restrictive trade practice, Goods, Defect, service, Deficiency, trader, Excess price, and Hazardous goods have been discussed in detail in the chapter separately.</p> <p><b>1.3-4 Time frame within which a complaint can be filed</b> - Section 24A of the Act provides that a consumer dispute can be filed within two years from the date on which the cause of action arises. Since this provision was inserted in the Act in 1993, before that the Consumer Forums were following the Limitation Act, 1963, which says that a suit can be filed within three years after the cause of action arises.</p> <p>The point of time when cause of action arises is an important factor in determining the time period available to file a complaint. There are no set rules to decide such time. It depends on the facts and circumstances of each case.</p> <p><b>Examples :</b></p> <ol style="list-style-type: none"> <li>1. A got his eye operated by B in 1989. He got a certificate of blindness on 18th December, 1989. He was still in hope of gaining his sight and went for second operation in 1992 and was discharged on 21-1-1992. He filed a complaint against B on 11-1-1994. B opposed on the ground that more than 2 years were over after 18-12-1989, thus the complaint is not maintainable. The Commission held that here the cause of action for filing the complaint</li> </ol>		

would arise after the second operation when A lost entire hope of recovery. Thus the suit is maintainable - *Mukund Lal Ganguly v. Dr. Abhijit Ghosh* III 1995 CPJ 64.

2. A house was allotted on 1-1-1999. Defects appeared in the house on 10-1-1999. Here the cause of action will arise on 10-1-1999.

It may be noted that these time frames are not absolute limitations. If the Consumer Forum is satisfied that there was sufficient cause for not filing the complaint within the prescribed period, it can entertain a complaint beyond limitation time. However the Forum must record the reasons for condonation of delay.

*Example* : A deposited some jewellery with a bank. Bank lost it. Bank kept giving her false sense of hope to retrieve the jewellery, and thus A was put in a state of inaction. Later on when A filed a suit on the Bank, it claimed that the suit was not maintainable as the limitation time after the cause of action arose has lapsed. The Commission reprimanded the bank and admitted the case - *Agnes D'Mello v. Canara Bank* [1992] I CPJ 335 (NCDRC).

**1.3-5 Relief available against complaint [Sections 14 and 22]** - A complainant can seek any one or more of the following relief under the Act:

<b>2.11</b>	<b>CONSUMER PROTECTION ACT</b>	<b>Para 1.3</b>
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- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;
- (e) to remove the defects or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (i) to provide for adequate costs to complainant.

**1.3-6 When a complaint cannot be filed** - A complaint on behalf of the public which consists of unidentifiable consumers cannot be filed under the Act.

*Example* : A complaint was filed on the basis of a newspaper report that passengers travelling by flight No. 1C-401 from Calcutta to Delhi on May 13, 1989 were made to stay at the airport and the flight was delayed by 90 minutes causing great inconvenience to the passengers. It was held that such a general complaint cannot be entertained. No passenger who boarded that plane came forward or authorised the complainant to make the complaint - *Consumer Education and Research Society, Ahmedabad v. Indian Airlines Corporation, New Delhi* (1992) 1 CPJ 38 NC.

A complaint by an individual on behalf of general public is not permitted - *Commissioner of Transport v. Y.R. Grover* 1994 (1) CPJ 199 NC.

An unregistered association cannot file a complaint under the Act.

*Example* : The complainant was an association formed in the Gulf and was unregistered in India. It was held that since the petitioner was not a voluntary organization registered under any law in force in India, cannot come within clause (d) of section 2(1) of the Act and hence cannot file a complaint - *Gulf Trivendrum air Fare Forum v. Chairman & Managing Director, Air India* 1991 (2) CPR 129.

A complaint after expiry of limitation period is not permitted. A complaint cannot be filed after the lapse of two years from the date on which the cause of action arises unless the Forum is satisfied about the genuineness of the reason for not filing complaint within the prescribed time.

*Example* : A supplied defective machinery to B on 12-1-1998. B filed a suit against A on 10-3-2001. It was not admitted before the Forum for the reason that the time available to make complaint lapsed.

**1.3-7 Dismissal of frivolous and vexatious complaints** - Since the Act provides for an inexpensive procedure (Court fees is not charged in consumer

<b>Para 1.4</b>	<b>CONSUMER PROTECTION ACT</b>	<b>2.12</b>
<p>complaints under the Act) for filing complaints, there is a possibility that the Act is misused by people for filing vexatious claims. To discourage frivolous and vexatious claims, the Act has provided that such complaints will be dismissed and the complainant can be charged with the costs not exceeding Rs. 10,000.</p> <p><i>Example :</i> A filed a complaint against B to recover compensation of Rs. 55,99,000 with the motive of indulging in speculative litigation taking undue advantage of the fact that no court fee was payable under the Consumer Protection Act. The National Commission held that the complainant has totally failed to make a case against B, and dismissed the complaint as frivolous and vexatious imposing Rs. 10,000 as costs to A - <i>Brij Mohan Kher v. Dr. N.H. Banka</i> I 1995 CPJ 99 NC.</p> <p><b>Unfair Trade Practice and Restrictive Trade Practice [Section 2(1)(r) and (nn)].</b></p> <p><b>1.4</b> We have discussed that a consumer can make a complaint when an unfair or a restrictive trade practice is followed by a trader. What can be termed as an unfair or a restrictive trade practice is another question of law.</p> <p><b>1.4-1 What is an Unfair Trade Practice</b> - The Act says that, unfair trade practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely</p> <p>(1) The practice of making any statement, whether orally or in writing or by visible representation which</p> <ul style="list-style-type: none"> <li>(i) falsely represents that the goods are of particular standard, quality, quantity, grade, composition, style or model;</li> <li>(ii) falsely represents that the services are of a particular standard, quality or grade;</li> <li>(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;</li> <li>(iv) represents that the goods or services have sponsorship, approval performance, characteristics, accessories, uses or benefits which such goods or services do not have;</li> <li>(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;</li> <li>(vi) makes false or misleading statement concerning the need for, or the usefulness of, any goods or services;</li> <li>(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;</li> <li>(viii) makes to the public a representation in a form that purports to be a warranty or guarantee of a product or of any goods or services; or a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or</li> </ul>		

<b>2.13</b>	<b>CONSUMER PROTECTION ACT</b>	<b>Para 1.4</b>
<p>if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;</p> <ul style="list-style-type: none"> <li>(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf other representation is made;</li> <li>(x) gives false or misleading facts disparaging the goods, services or trade of another person.</li> </ul> <p><b>Note :</b> A statement is said to be made to public when it is</p>		



<p>(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or</p> <p>(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or</p> <p>(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, by the person who had caused the statement to be so expressed, made or contained.</p> <p>(2) Permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a <i>bargain price</i>, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.</p> <p><b>Note :</b> Bargain price means</p> <p>(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or</p> <p>(b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be bargain price having regard to the prices at which the product advertised or like products are ordinarily sold.</p> <p>(3) Permits the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole; or the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;</p> <p>(4) Permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing</p>	
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Para 1.5	CONSUMER PROTECTION ACT	2.14
<p>or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;</p> <p>(5) Permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.</p> <p><b>1.4-2 What is a Restrictive Trade Practice</b> - Section 2(1)(nn) of the Act provides that, restrictive trade practice means any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, hiring or availing of other goods or services.</p> <p>An analysis of above definition reveals that where sale or purchase of a product or service is made conditional on the sale or purchase of one or more other products and services, it amounts to restrictive trade practice.</p> <p>Technically, this type of arrangement is called tie-up sales or tying arrangement. The effect of such an arrangement is that a purchaser is forced to buy some goods or services which he may not require alongwith the goods or services which he wants to buy. Thus where a buyer agrees to purchase product X upon a condition that he will also purchase product Y from the seller, the sale of product Y (tied product) is tied to the sale of product X (tying product).</p> <p>The buyer has to forego his free choice between competing products. This results in neutralizing healthy competition in the tied market.</p> <p><i>Example :</i> A, a gas distributor instead his customers to buy gas stove as a condition to give gas connection. It was held that it was a restrictive trade practice - <i>Re. Anand Gas RTPE 43/1983 (MRTPC)</i>.</p> <p>However, where there is no such precondition and the buyer is free to take either product, no tying arrangement could be alleged even though the seller may offer both the products as a single unit at a composite price.</p>		

**Example :** A is a furniture dealer. He is selling Sofa at Rs. 20,000 and Bed at Rs. 15,000. He has an offer that whoever will buy Sofa and Bed both, he will charge Rs. 30,000 only. Here the choice is open to the customer to buy the products single or composite. This is not a restrictive trade practice.

**Note :** The term restrictive trade practice has a very wide meaning when read in context of the MRTP Act, 1969. However under Consumer Protection Act, 1986, it has been used in a narrower sense.

#### **Goods and Defect [Section 2(1)(i) and (f)]**

**1.5** A consumer can make complaint when he come across defective goods. Here it is required to understand what are the items which can be considered as goods and what constitutes defect under the Act.

**1.5-1 Goods** - The Consumer Protection Act does not define the term Goods. It says that - goods means goods as defined in the Sale of Goods Act, 1930.

Section 2(7) of the Sale of Goods Act, 1930, defines goods as - Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or

**2.15**

CONSUMER PROTECTION ACT

**Para 1.5**

forming part of the land which are agreed to be severed before sale or under the contract of sale.

The definition reveals that

- (a) Goods must be movable;
- (b) Things attached to or forming part of land which can be severed satisfy the movability criteria;
- (c) Actionable claim and Money have been specifically excluded from definition of goods.

**Note :** For elaboration on the term goods, refer para 15-2-1d.

**1.5-2 Defect** - Section 2(1)(f) of the Act provides that, 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 of the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods.

This is an exhaustive definition. It means that the Act recognises only those defects which are covered by the definition. Any type of defect not mentioned here will not be entertained by Consumer Forums. Moreover the defect has to be in relation to goods only, i.e., if an item does not fall within the definition of Goods, no defect can be complained therein. However, the coverage of this definition is very wide.

**Examples:**

1. A Pressure Cooker burst and caused injury to the user. It was held to be a manufacturing defect - *T.T. (P.) Ltd. v. Akhil Bhartiya Grahak Panchayat II* [1996] CPJ 239 NC.
2. Failure to handover registration book along with jeep purchased by complainant is a defect. [*Ramesh Chandra v. Commercial Tax Officer* [1993] 3 CPR 182 (Ori.).
3. Where laboratory test report showed that soft drink was not fit for human consumption, it was held defective - *Narayanan Vyankatkrishnan Iyengar v. Shakti Foods* [1994] 2 CPJ 652 (Mah.).
4. Rape seed oil adulterated with toxic substances, which led to paralysis of limbs and other disabilities, has been considered as defective - *Barsad Ali v. MD West Bengal Essential Commodities Supply Corporation Ltd.* (1993) 1 CPR 217 WB.
5. Electric household appliances which are not in accordance with the standards prescribed by ISI, being unsafe are defective - *Farooq Hazi Ismail Saya v. Gavabhai Bhesania* (1991) 2 CPJ 452 (Guj.).
6. Gas Cylinder with excessive gas is defective goods - *Dayanand A Avasare v. Bharat Petroleum Corporation Ltd.* (1993) 1 CPR 278 (Mah.).
7. Development of cracks of half inch to three and a half inch in walls and mosaic floor in a flat after taking possession from a Housing Board - *R. Shanmugasundaram v. Tamil Nadu*

Housing Board (1998) 1 CPJ 96 NC.		
8. A supplied white marble to B. Later on the colour of the marble changed. B sued alleging supply of defective marble. It was held that A should have		
Para 1.6	CONSUMER PROTECTION ACT	2.16
expressly told B that the marble would not retain its colour when polished. In the absence of such assertion, it is deemed that A made B to understand that the marble would retain its white colour and when the colour changed, it comes within the scope of ♦defect♦ in goods under the Act - <i>Chitranjan Sahu v. N.C. Jain II</i> (1993) CPJ 1127 (Ori.).		
9. A sold a stolen car to B. B wanted to sue A for defect in the title of the car. Here B cannot sue A under the Consumer Protection Act as the defect in title of goods would not constitute defective goods as defined under the Act.		
<b>Service and Deficiency [Section 2(1)(o) and (g)]</b>		
<b>1.6</b> When a service is found deficient by a consumer, he can make a complaint under the Act. Thus the prime requirement is that the matter must fall within the definition of service, and it must entail a deficiency as per the norms given by the Act.		
<b>1.6-1 What can be termed as a service</b> - Section 2(1)(o) of the Act provides that ♦service♦ means service of any description which is made available to potential users and includes the provision of facilities in connection with <i>banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information</i> , but does not include the rendering of any service free of charge or under a contract of personal service.		
The definition provides a list of eleven sectors to which service may pertain in order to come under the purview of the Act. The list of these sectors is not an exhaustive one. Service may be of any description and pertain to any sector if it satisfy the following criteria:		
<ol style="list-style-type: none"> <li>1. service is made <i>available to the potential users, i.e.,</i> service not only to the actual users but also to those who are capable of using it.</li> <li>2. it <i>should not be free of charge, e.g.,</i> the medical service rendered free of charge in Government hospital is not a service under the Act;</li> <li>3. it should not be under a <i>contract of personal service</i>.</li> </ol>		
When we talk about ♦service♦ under the Consumer Protection Act, we take it as a regular commercial transaction. Thus the services rendered under the contract of personal service are specifically excluded from the definition.		
The expression ♦contract of personal service♦ is not defined under the Act. In common parlance, it means - a contract to render service in a private capacity to an individual. For example, where a servant enters into an agreement with a master for employment, or where a landlord agrees to supply water to his tenant, these are the contracts of personal service. The idea is that under a personal service relationship, a person can discontinue the service at any time according to his will, he need not approach Consumer Forum to complaint about deficiency in service.		
There is a difference between ♦contract of personal service♦ and ♦contract for personal service♦. In case of ♦contract of personal service♦, the service seeker can order or require what is to be done and how it should be done. Like a master can tell his servant to bring goods from a particular place. But in a ♦contract for		

2.17	CONSUMER PROTECTION ACT	Para 1.6
personal service♦, the service seeker can tell only what is to be done. How the work will be done is at the wish of the performer. Like when a person gives a suit to the tailor for stitching, he does not tell him which method he should use to stitch it.		
<b>Note :</b> That it is ♦contract of personal service♦ is excluded from the definition of service, ♦contract for personal service♦ is recognised as service under the Act.		
It does not make a difference whether the service provider is a Government body or a Private body. Thus even if a statutory corporation provides a deficient service, it can be made liable under the Act.		

*Example* : A applied for electricity connection for his flour mill to Rajasthan State Electricity Board. The Board delayed in re~~leasing~~ the connection. It was held deficient in performing serv~~ice~~.

Some other sectors/professionals/services which are not specified in the definition of service but which have been considered by the Consumer Forums as service sectors from time to time are listed below:

Advocates, Airlines, Chartered Accountants, Courier, Chit Fund, Education, Gas Cylinder/LPG, Medical services, Postal services, Railways, Investment related services, and Telephone services.

Thus, the test is - whether the person against whom the complaint is made performs a service for consideration which is sought by a potential user.

**1.6-2 What is meant by ~~deficiency~~ in service** - Section 2(1)(g) of the Act provides that, ~~deficiency~~ means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been under~~taken~~ to be performed by a person in pursuance of a contract or otherwise in relation to any service.

Reading the above definition by breaking it into elements, we get~~ing~~

(a) ~~deficiency~~ means any fault, imperfection, shortcoming or *inadequacy in the quality, nature and manner of performance*

*Examples :*

1. A boarded a train. The compartment in which he and his wife travelled was in a bad shape-fans not working, shutters of windows were not working, rexin of the upper berth was badly torn and there were rusty nails which caused some injuries to the wife of A. A made a complaint against the railway department. It was held that the complaint constituted ~~deficiency~~ in service~~ing~~ and the compensation of Rs. 1500 was awarded to A - *General Manager, South Eastern Railway v. Anand Prasad Sinha I* [1991] CPJ 10 (12) NC.
2. Dr. A treated P under Allopathic system, though he himself was a Homoeopathic practitioner. Later on P alleged A for wrong treatment. The Commission held it as deficiency in service - *Poonam Verma v. Ashwin Patel* [1996] II CPJ 1 SC.
3. A booked a car for B and promised to deliver it within one month of booking. The car was not delivered even after four months. Here A could be held liable for deficiency in service.

Para 1.6	CONSUMER PROTECTION ACT	2.18
One interesting aspect is that deficiency in service should occur during the happening of performance. Thus it is crucial to determine when the performance of a service commenced.		
<i>Example</i> : A contracted with B to supply, erect and commission cold rolling mill. A supplied the mill, but failed to erect and commission the mill. B filed a suit alleging deficiency of service on A's failure to erect and commission the mill. The National Commission observed that the deficiency must pertain to performance of service. Since A never started erecting and com <del>missioning</del> the mill, the question of performance did not arise. Thus the case is not that of deficiency of service - <i>Jaipur Metals &amp; Electricals Ltd. v. Laxmi Inds.</i> [1991] II CPJ 602 (NC).		
(b) Such quality and manner of performance of service should have been required to be maintained by or under any law for the time being in force or undertaken to be performed by a person in pursuance of a contract or otherwise.		
<i>Example</i> : A, the builder, promised under written agree <del>ment</del> to provide a flat to B. Subsequently he expressed his inability to give possession of the flat and entered into a fresh agreement to pay Rs. 9,51,000 to B in place of flat. A didn <del>t</del> even pay this money. B sued A. The Commission held that since A had not even paid the money as per subsequent contract, the rights of earlier contract can be involved by B. And that there was a deficiency of service on the part of builders - <i>Lata Con<del>struction</del> v. Dr. Rameshchandra Ramniklal Shah</i> AIR 2000 SC 380 (384).		

- (c) *The deficiency must be in relation to a service* - The words "in relation to any service" in the definition signifies that the deficiency is always in terms of service. Thus if the grievance pertains to a matter which does not fall in the definition of service, the concept of deficiency would not apply.

*Example* : A deposited Rs. 100 with B as application fee and executed bond for the purpose of drilling tubewell. B did not drill the tubewell because it was not feasible. A alleged deficiency in service. It was held that depositing Rs. 100 as application fee and executing a bond does not amount to hiring of services, thus the deficiency of service cannot be complained of in the matter - *Mangilal v. Chairman District Rural Development Agency* [1991] 1 CPJ 474 (Raj.).

#### *Deficiency in service due to circumstances beyond control*

In normal course, if the service is found deficient as per the above criteria, it is held deficient and the compensation is awarded. However there may be abnormal circumstances beyond the control of the person performing service. If such circumstances prevent a person from rendering service of the desired quality, nature and the manner, such person should not be penalised for the same.

*Example* : A undertook to supply water to B for irrigation of crops. Due to power grid failure of the State, A could not get sufficient power to perform the service. Here A cannot be held liable for deficiency in service.

However, negligence on the part of performer may not be excused under the cover of circumstances beyond control.

2.19	CONSUMER PROTECTION ACT	Para 1.7
<p><i>Example</i> : A agreed to supply water to B for irrigation of crops. He failed to do so because of a power breakdown due to burning of transformer. As a result crops damaged. B sued A for providing deficient service. The National Commission held that it was duty of A to get the transformer repaired immediately. Since he was negligent in doing so, he is liable for the deficiency in service - <i>Orissa Lift Irrigation Corpn. Ltd. v. Birakishore Raut</i> [1991] 2 CPJ 213 (NC).</p>		
<p><b>Trader and Manufacturer [Section 2(1)(q) and (j)]</b></p>		
<p><b>1.7</b> When a person finds any defect in the goods, be it manufacturing defect, or excessive price, or lack of information about hazardous nature, or restrictive or unfair trade practice, he can make a complaint against the trader. Thus it is very important to know who can be termed as a trader under the Act.</p>		
<p><b>1.7-1 Trader</b> - Section 2(1)(q) of the Act says that "trader" means any person who sells or distributes any goods for sale and includes the <i>manufacturer</i> thereof, and where such goods are sold or distributed in package form, includes the <i>packer</i> thereof.</p>		
<p>Generally speaking "trader" means any person who carries on a trade. Under the Consumer Protection Act, even a packer has been included in the definition of trader. Packer means one who packs the goods.</p>		
<p><i>Examples</i> :</p>		
<ol style="list-style-type: none"> <li>1. A got an agency of "Indana" products. He sells and distributes these products in North India. He is a trader under the Act.</li> <li>2. A manufactures combs. He is a trader under the Act.</li> <li>3. A provide bottles to pack the perfume manufactured by B. Here A is also a trader under the Act.</li> </ol>		
<p><b>Note</b> : "Trader" is a wider term which includes a manufacturer also.</p>		
<p><b>1.7-2 Manufacturer</b> - In terms of clause (j) of section 2(1) of the Act, "manufacturer" means a person who</p>		
<ol style="list-style-type: none"> <li>(i) makes or <i>manufactures</i> any goods or parts thereof; or</li> <li>(ii) does not make or manufacture any goods but <i>assembles</i> parts thereof made or manufactured by others and claims the end-product to be goods manufactured by himself; or</li> </ol>		

- (iii) puts or causes to be *put his own mark* on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself.

Thus manufacturer is a person who either himself manufactures goods, or assemble any goods manufactured by others, or puts his own mark or trade mark on the goods manufactured by others.

*Examples :*

1. A Ltd. were into manufacturing of Pressure Cookers. B bought a Cooker which burst out while using. B sued A Ltd. for compensation. Here A Ltd. being manufacturer of the Cooker is liable for the loss.

Para 1.8	CONSUMER PROTECTION ACT	2.20
<p>2. A Ltd. used to buy components and assemble computers therefrom. They were selling them under the brand name <b>Rotal</b>. B bought a Rotal computer which turned out to be defective. Here B can hold A Ltd. Liable for the loss as they will be considered manufacturer of Rotal computer under the Act.</p> <p>3. N bought H-4 Cotton seeds from the market which were labelled as produced and marketed by the Hindustan Levers Ltd. N established that the seeds were defective. He sued HLL. HLL contended that it did not manufactured the seeds but had only marketed them, and that some company based in Gujarat produced the same. The Commission held that in this case HLL comes under the third limb of the definition of manufacturer under the Act. Thus it is liable for the loss suffered by N - <i>Namdeo Baijrao Raut v. Hindustan Lever Ltd.</i> [1993] 3 CPR 346 (Mah. CDRC).</p> <p>It may be noted that where a manufacturer despatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so despatched to it are assembled at such branch office and are sold or distributed from such branch office.</p> <p><i>Example :</i> A Ltd. based in Delhi was having a branch office in Chennai. It used to sent components of computers to its Chennai branch which was assembling and selling them. B purchased a computer from Chennai branch which turned out to be defective. Here A Ltd. is responsible for the loss, and not the Chennai branch.</p> <p><b>1.7-3 Who should be sued by a consumer - manufacturer or seller</b> - Generally when a consumer finds defect in the goods, he sues the person from whom he bought the goods. Reason being privity of contract.</p> <p>If the defect is a manufacturing defect, the consumer may sue the manufacturer also along with the seller. This is an option with the consumer. Thus the manufacturer is a possible party, and not a necessary party.</p> <p><i>Example :</i> A was manufacturer of <b>X</b> brand cars and B was a dealer for them. C bought a car from B and found it defective. Here he may sue B alone, or A and B both.</p> <p><b>Charging Excessive Price</b></p> <p><b>1.8</b> A complaint may be made against a trader who has charged a price in excess of the price :</p> <ol style="list-style-type: none"> <li>(a) fixed by or under any law for the time being in force, or</li> <li>(b) displayed on the goods, or</li> <li>(c) displayed on any package containing the goods.</li> </ol> <p><i>Examples :</i></p> <ol style="list-style-type: none"> <li>1. Government fixed control rate of milk at Rs. 15 per litre in the month of June 2001. A sold it at the rate of Rs. 18 per litre in the same period. Price charged by A are excessive.</li> <li>2. The price displayed on a one Kg. packet of salt was Rs. 4. Suddenly there was paucity of salt in the market. A started selling the same @ Rs. 6 per kg. The price charged by A is excessive.</li> </ol>		

2.21	CONSUMER PROTECTION ACT	Para 2.1
It may be noted that when price of an article is not fixed by law, or when the same is not displayed on goods or on the package containing goods, no complaint can be made under the Act for excess		

pricing.

*Example* : Mahaboobnagar Milk Chilling Centre charged 15 paise extra per half litre of milk supplied in sachets in comparison to the other varieties of milk. The National Commission held that in the absence of any law requiring an article to be sold at or below a particular price fixed thereunder, and when there was no declaration of the price on the packet containing the goods, a case for excessive pricing may not be construed.

### **Hazardous Goods**

**1.9** The term ♦Hazardous goods♦ has not been defined in the Act. The dictionary meaning of the term is - dangerous or risky. However, the term is used in context of ♦goods♦ only, i.e., a person can make a complaint if he is not informed about the hazardous nature of the goods but the same is not true in case of hazardous services.

The rationale behind this provision is to ensure physical safety of the consumers. The law seeks to ensure that those responsible for bringing goods to the market, in particular, suppliers, exporters, importers, retailers and the like should ensure that while in their care these goods are not rendered unsafe through improper handling or storage.

Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers.

*Example* : A bought an insecticide from B. B did not inform A that touching this insecticide with bare hands can create skin problem. A, while using the insecticide came in contact with it and suffered from skin problem consequently. Here B can be held liable under the Act.

### **Consumer Protection Councils.**

**2.1** Ram, an engineer by profession shifted to Delhi. He bought a computer from Shyam, a dealer who gave him all guarantees and warranties. The moment he plugged in the computer, some noise came and the computer was shut down. He called up Shyam, but got no response from him. After making many calls to him, he understood that he was cheated of his money.

Ram could have gone to courts, but knowing the lengthy and expensive procedures involved, he preferred not to initiate any action against Shyam. One day while watching television he came across a programme on consumer protection. Ram got interested in it and noted the address of consumer council which was sponsoring the programme. Thereafter he contacted the Council and talked about his computer affair. The Council made him aware that there is a speedy and inexpensive way to assert his right as a consumer, and that where and how a complaint can be filed for that, and that he need not hire an advocate for the suit, and assured him of any assistance he may need for the same.

The Consumer Councils are created to advise and assist the consumers in seeking and enforcing their rights. We have Consumer Protection Councils

Para 2.2	CONSUMER PROTECTION ACT	2.22
both at Centre level and State level, that is one Central Council and many State Councils.		
These councils work towards the promotion and protection of consumers. They make investigations and give publicity to the matters concerning consumer interests, take steps towards furthering consumer education and protecting consumer from exploitation, advice the Government in the matter of policy formulation keeping consumer interest as pivotal concern, etc. Although their suggestions are recommendatory in nature, but they have significant impact in policy making.		
While deciding about the composition of these councils, the State keeps in mind that it should have proper representation from all the possible areas affecting consumer interests. Again the rules as to when should these councils meet, what should they aim at, how they conduct their business are framed by the Government with a view to balance the efficacy and practicability of its business.		
<b>Objects of the Councils [Sections 6 and 8]</b>		
<b>2.2</b> There is one basic thought that ♦consumer need to be protected♦. Another thought is - how he can be protected ? Definitely, there has to be some agency to work towards this protection. The Act has provided for constitution of Consumer Councils for this purpose.		

Now, when we say that these councils are there to protect the consumers, a question arises - consumers are protected against what ? Thus the Act has detailed some rights of consumers which need to be protected by the councils. These are :

**Right to safety** - It is right to be protected against the marketing of goods and services which are hazardous to life and property.

Unsafe goods may cause death or serious injury to the user due to defective ingredients, defective design, poor workmanship, or any other reason. At times safety hazards are found due to absence of proper instructions to use the product. Thus it is to be ensured that

Manufacturers and traders ensure that the goods are safe for the users, in case of hazardous goods, they give clear instructions as to mode of use, consumer is informed of the risk involved in improper use of goods, vital safety information is conveyed to consumers.

Manufacturers or distributors who become aware of the unforeseen hazards after the goods are supplied must inform the authorities and the public in order to forewarn consumers about such hazards.

Where a product is found such as is likely to be hazardous even when properly used, traders should either recall it and modify the same, or replace it with a new product, or adequately compensate for it.

**Right to information** - It is right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, with a view to protect the consumer against unfair trade practices.

2.23	CONSUMER PROTECTION ACT	Para 2.3
<p>Adequate information is very important in order to make a right choice. In our country, however, consumers do not get adequate comparative information about the quality, quantity, potency, purity, standard and price of different kinds of goods or services which are available. As a result buying decisions become difficult. Therefore consumers need to be given maximum information about the wide variety of competing goods available in the market.</p> <p><b>Right to choose</b> - The right to choose can be made meaningful by ensuring access to a variety of goods and services at competitive prices.</p> <p>Fair and effective competition must be encouraged so as to provide consumers with the widest range of products and services at the lowest cost.</p> <p><b>Right to represent</b> - It is right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums.</p> <p>The Consumer Protection Act, 1986 has well taken care of this right by making available the instrumentality of Redressal Forums. Every consumer has a right to file complaint and be heard in that context.</p> <p><b>Right to redressal</b> - It is a right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers.</p> <p>When consumers are wronged in a market place transaction, appropriate and adequate redress must be available. The Act has ensured this right by establishing Consumer Forums and recognising restrictive and unfair trade practices as a ground to make a complaint.</p> <p><b>Right to education</b> - The right to consumer education is a right which ensures that consumers are informed about the practices prevalent in the market and the remedies available to them.</p> <p>For spreading this education, media, or school curriculum, or cultural activities, etc. may be used as a medium.</p> <p>Note that the Central Council's object is to ensure these rights of the consumers throughout the country while the State Councils look to ensure these rights to consumers within their territories.</p> <p><b>Central Council</b></p> <p><b>2.3-1 Composition [Section 2 and rule 3]</b> Members of the councils are selected from various areas of consumer interest, who are, when possible, leading members of statewide organisations representing segments of the consumer public so as to establish a broadly based and representative consumer council.</p> <p>The Consumer Protection Act has authorised the Central Government to make rules as to the composition of the Central Council. Accordingly, the Central Government has provided that the</p>		



Central Council shall consist of the following members not exceeding 150, namely :
<ol style="list-style-type: none"> <li>the Minister in-charge of Consumer Affairs in the Central Government who shall be the Chairman of the Central Council;</li> <li>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 Council;</li> </ol>

Para 2.4	CONSUMER PROTECTION ACT	2.24
<ol style="list-style-type: none"> <li>the Secretary in-charge of Consumer Affairs in the Central Government who shall be the member-secretary of the Central Council;</li> <li>the Minister in-charge of Consumer Affairs in States;</li> <li>eight Members of Parliament five from the Lok Sabha and three from the Rajya Sabha;</li> <li>the Secretary of the National Commission for Scheduled Castes and Scheduled Tribes;</li> <li>representatives of the Central Government Departments and autonomous organisations concerned with consumer interests not exceeding twenty;</li> <li>representatives of the Consumer Organisations or consumers not less than thirty-five;</li> <li>representatives of women not less than ten;</li> <li>representatives of farmers, trade and industries not exceeding twenty;</li> <li>persons capable of representing consumer interest not specified above not exceeding fifteen;</li> </ol> <p><b>2.3-2 Vacancy</b> - 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, are 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.</p> <p><b>2.3-3 Term</b> - The term of the Council is three years.</p> <p><b>2.3-4 Meetings of the Central Council [Section 5 and rule 4]</b> - Central Council is required to organise at least one meeting every year. In addition, it may meet as and when necessary. Time and place of the meeting is decided by the Chairman of the council.</p> <p>Each meeting of the Central Council shall be called by giving, not less than ten days from the date of issue, notice in writing to every member.</p> <p>Every notice of a meeting of the Central Council shall specify the place and the day and hour of the meeting and shall contain statement of business to be transacted thereat.</p> <p>The meeting of the Central Council shall be presided over by the Chairman. In the 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.</p> <p>The resolutions passed by the Central Council are recommendatory in nature.</p> <p>No proceedings of the Central Council shall be invalid merely by reasons of existence of any vacancy in or any defect in the constitution of the Council.</p> <p><b>State Consumer Protection Councils (State Councils) [Section 7]</b></p> <p><b>2.4-1 Composition</b> - The power to establish State Councils is with the States. The Act provides that the Minister incharge of consumer affairs in the State</p>		

2.25	CONSUMER PROTECTION ACT	Para 3.1
<p>Government shall be the Chairman of the State Council. About the number and qualifications of the rest of the members, State is the deciding authority.</p> <p><b>2.4-2 Meetings</b> - The State Council meet at least twice a year. In addition, it may meet as and when necessary. The council may meet at such time and place as the Chairman may think fit.</p> <p>Procedure in regard to the transaction of its business is prescribed by the State Government.</p>		

### Working Groups [Rule 3]

2.5 For the purpose of monitoring the implementation of the recommendations of the Central Council and to suggest the working of the Council, the Central Government may constitute 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.

### Consumer Forums.

3.1 Ram, a resident of Panipat district, took his son Shyam to a doctor for eye treatment. Due to negligence of the doctor, Shyam lost sight of his left eye. Ram filed a suit against the doctor in District Forum claiming Rs. 4 lakh as compensation. The District Forum dismissed his complaint on the ground that negligence of the doctor could not be proved.

Ram appealed to Haryana State Commission against this order. State Commission also upheld the decision of District Forum. Now Ram approached the National Commission and made an appeal there. Ram knew that after National Commission also, he is still left with an option to approach the Supreme Court against the order of the Commission. However, the National Commission decided in favour of Ram.

The Consumer Protection Act provides for a 3 tier approach in resolving consumer disputes. There are three levels of consumer courts.

First, there is the district court, called District Consumer Disputes Redressal Forum (*District Forum*),

Next comes the State Consumer Disputes Redressal Commission (*State Commission*),

At the national level, there is National Consumer Disputes Redressal Commission (National Commission).

District Forum and State Commission are formed by States with the permission of the Central Government while the National Commission is formed by the Central Government. These forums have not taken away the jurisdiction of the civil courts but have provided an alternative remedy.

The Consumer Protection Act, 1986 has given powers to the Central and State Governments to make rules with regard to various aspects of the consumer protection machinery. In our discussion, we have included the Consumer Protection Rules, 1987 made by the Central Government, wherever required.

Para 3.2	CONSUMER PROTECTION ACT	2.26
<b>Constitution of the Forums.</b>		
3.2 The composition of the District Forum and the State Commission has been detailed out by the Consumer Protection Act, 1986. As for the National Commission, the Consumer Protection Rules, 1987, elaborates upon its composition.		
<b>3.2-1 District Forum [Section 10]</b>		
3.2-1a COMPOSITION - District Forum consist of one president and two other members (one of whom is to be a woman).		
The president of the Forum is a person who is, or has been qualified to be a District Judge, and other members are 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.		
The object underlying the inclusion of non-judicial members appears to be to impart a balance to the functioning of the District Forum by ensuring that the members are able to understand the economic and social impact of the matters. Further inclusion of one female members ensures that the matters are viewed from a woman's angle also.		
3.2-1b APPOINTING AUTHORITY - Every appointment of the president and members of the District Forum is 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.		

<p>(iii) Secretary incharge of the Department dealing with consumer affairs in the State ♦ Member.</p> <p><b>3.2-1c TERM OF OFFICE [SECTION 10(2)]</b> - Every member of the District Forum is to hold office for a term of five years or up to the age of 65 years, whichever is earlier. However, he/she shall not be eligible for re-appointment.</p> <p><b>3.2-1d VACANCY</b> - A vacancy in the office of president or a member may occur after the expiry of his term, or by his death, resignation, or removal.</p> <p>In terms of proviso to section 10(2), 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 the requisite qualifications in relation to the category of the member who has resigned.</p> <p>The Consumer Protection Act does not have any specific provision for removal of the president and members of the District Forum. But the consumer protection rules made by various States provide for such removal. Accordingly, a president or member of a District Forum may be removed by the State Government, who</p> <ul style="list-style-type: none"> <li>(a) has been adjudged an insolvent, or</li> <li>(b) has been convicted of an offence involving moral turpitude, or</li> <li>(c) has become physically or mentally incapable of performing his duties, or</li> </ul>
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2.27	CONSUMER PROTECTION ACT	Para 3.2
	<p>(d) has acquired such financial interest in the matter as would prejudicially affect his functions as president or member, or</p> <p>(e) has abused his position so as to render his continuance to office prejudicial to public interest.</p> <p><b>3.2-1e TERMS AND CONDITIONS OF SERVICE [SECTION 10(3)]</b> - 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. Different States have made different rules in this regard.</p> <p><b>3.2-2 State Commission [Section 16]</b> - After the District Forum, State Commission is next in the hierarchy of Consumer Redressal Forums under the Act.</p> <p><b>3.2-2a COMPOSITION</b> - State Commission consists of a president and two members one of whom is to be a woman.</p> <p>President is a person who is or has been a Judge of a High Court, and the members, are 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.</p> <p><b>3.2-2b APPOINTING AUTHORITY</b> - President of a State Commission is appointed by the State Government after consultation with the Chief Justice of the High Court.</p> <p>Other members of the Commission are made by the State Government on the recommendation of a selection committee consisting of the following, namely</p> <ul style="list-style-type: none"> <li>(i) President of the State Commission ♦ Chairman.</li> <li>(ii) Secretary of the Law Department of the State ♦ Member.</li> <li>(iii) Secretary, incharge of Department dealing with consumer affairs in the State ♦ Member.</li> </ul> <p><b>3.2-2c TERM OF OFFICE [SECTION 16(3)]</b> - Every member of the State Commission shall hold office for five years or upto the age of 67 years whichever is earlier and he shall not be eligible for re-appointment.</p> <p><b>3.2-2d VACANCY</b> - Rules as to the vacancy related in the office of the president or any member are similar to those discussed in context of the members of the District Forum. Refer para 3.2-1d for the details.</p> <p><b>3.2-1e TERMS AND CONDITIONS OF SERVICE [SECTION 16(2)]</b> - 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.</p>	

**3.2-3 National Commission [Section 20]** - The National Commission is the top most layer in the three level hierarchy of the Consumer Forums.

**3.2-3a COMPOSITION** - The National Commission consists of a president, and four other members (one of whom is to be a woman).

The president should be the one who is or has been a Judge of the Supreme Court, and the members should be the persons of ability, integrity and standing

Para 3.2	CONSUMER PROTECTION ACT	2.28
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.		
<b>3.2-3b APPOINTING AUTHORITY</b> - The President is appointed by the Central Government after consultation with the Chief Justice of India;		
The appointment of other members of the Commission is made by the Central Government on the recommendation of a selection committee.		
This selection committee consists of, 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.		
Note that before appointment, the president and member(s) of the National Commission have to take an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as such member.		
<b>3.2-3c TERM OF OFFICE [SECTION 20(3)]</b> - Every member of the National Commission is to hold office for a term of five years or upto the age of seventy years, whichever is earlier and is not eligible for re-appointment.		
<b>3.2-3d VACANCY</b> - A vacancy in the office of president or a member may occur after the expiry of his term, or by his death, resignation, or removal.		
In terms of proviso to rule 12(3), the president or a member may resign his office in writing under his hand addressed to the Central Government, or he can be removed from his office in accordance with the provisions of rule 13.		
<i>Removal of the president and members in certain circumstances:</i> In terms of Rule 13 of the Consumer Protection Rules, 1987, the Central Government may remove from office, the President or any member, who		
(a) has been adjudged as an insolvent; or		
(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or		
(c) has become physically or mentally incapable of acting as the President or the member; or		
(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the President or a member; or		
(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or		
(f) remain absent in three consecutive sittings except for reasons beyond his control.		
Note that the President or any member shall not be removed from his office on the grounds specified in clauses (d), (e) and (f) above except on an inquiry held		

2.29	CONSUMER PROTECTION ACT	Para 3.3
by Central Government in accordance with such procedure as it may specify in this behalf and finds the President or a member to be guilty of such ground.		

**Note :** 1. A casual vacancy caused by resignation or removal of the President or any other member of the National Commission is filled by fresh appointment.

2. When the President of the National Commission is unable to discharge the functions owing to absence, illness or any other cause, the senior most member of the National Commission with judicial background, if authorised so to do by the President in writing, shall discharge the functions of the President until the day on which the President resumes the charge of his functions.

**3.2-3e TERMS AND CONDITIONS OF SERVICE** [SECTION 20(2)] - In terms of the rules 11 and 12 made by the Central Government in pursuance of the powers given under the Act, the terms and conditions of service of the president and the members of the Commission are as follows:

- (a) The President of the National Commission is entitled to salary, allowances and other perquisites as are available to a sitting Judge of the Supreme Court.
- (b) The members, if sitting on whole-time basis, are entitled to a consolidated honorarium of ten thousand rupees per month or if sitting on part-time basis, a consolidated honorarium of five hundred rupees per day of sitting.
- (c) The President and the members are entitled to travelling and daily allowances on official tours at the same rates as are admissible to group A Officers of the Central Government.
- (d) The President and the members of the National Commission are entitled to conveyance allowance of one hundred fifty rupees per day of its sitting or a sum of one thousand and five hundred rupees per month, as may be opted by them.

**Notes :** 1. The terms and conditions of service of the President and the members should not be varied to their disadvantage during their tenure of office.

2. The money payable to these members and the president shall be defrayed out of the Consolidated Fund of India.

Further it is worth noting that in case any defect lies in the constitution of the District Forum, or State Commission or National Commission, or any vacancy remains therein while proceedings are made for any dispute, such defect or vacancy shall not affect the validity of the order of the Forum. [Section 29A].

#### **Jurisdiction.**

**3.3** The term jurisdiction may be defined as authority or legal power to hear and decide the cases. Thus a court may adjudicate only those matters which fall under its jurisdiction. The question of jurisdiction has to be considered with reference to the value, place, and nature of the subject matter.

*Example :* A and B reside in Bombay. They have some dispute. Here the dispute may be subjected to the jurisdiction of the Bombay courts (except matters pertaining to Supreme Court). Courts of Delhi, or Chennai, or any other place for that matter cannot adjudicate the issue.

<b>Para 3.3</b>	<b>CONSUMER PROTECTION ACT</b>	<b>2.30</b>
The general rule is that if the court rendering the judgment suffers from want of jurisdiction, its judgment is nullity and may be ignored.		
Jurisdiction of Consumer Forums (i.e., consumer courts) differ in terms of monetary value of claims, geographical area, and appellate powers.		
<b>3.3-1 District Forum</b>		
<b>3.3-1a PECUNIARY JURISDICTION</b> - District Forum entertains the cases where the value of claim is upto Rs. 5 Lakh. Where a claim exceed this limit, the matter is beyond the jurisdiction of the Forum.		
<i>This limit of Rs. 5 lakh is as to the value of claim filed by the party. Value of goods or services in question or value of relief granted is not relevant for this purpose.</i>		
<i>Example :</i> A purchased machinery for Rs. 7 lakhs. After working for some time, the machine broke down due to some manufacturing defect. A filed a claim for compensation worth Rs. 4.5 lakh. Since the value of claim is less than Rs. 5 Lakh, it will fall under the jurisdiction of District Forum.		
The complainant has a right to reduce value of his claim in order to bring his claim within the jurisdiction of a junior forum.		
<i>Example :</i> A filed a complaint with a District Forum claiming Rs. 6,00,000 as against a supplier of machinery. The complaint was rejected on the ground that it was beyond the jurisdiction of the District Forum. A revised his claim to		

Rs. 4,99,999 and filed the plaint again with the same District Forum. The plaint was accepted and tried.

**3.3-1b TERRITORIAL JURISDICTION** - Every District Forum has definite geographical limits within which it can exercise its jurisdiction. A case is supposed to fall within such territory when at the time of the institution of the complaint

- (a) The party against whom the claim is made actually and voluntarily resides or carries on business or has a branch office or personally works for gain in that area, or
- (b) Where there are more than one opposite party, each such party actually and voluntarily resides or carries on business or has a branch office or personally works for gain in that area, or
- (c) Where there are more than one opposite party, and any such party actually and voluntarily resides or carries on business or has a branch office or personally works for gain in that area, provided the other parties not so residing or working agrees, or the District Forum gives permission in this regard,
- (d) The cause of action, wholly or in part, arises in that area.

**3.3-1c APPELLATE JURISDICTION** - District Forum is the lowest rung of the ladder of the consumer courts. Thus this is not an appellate court, i.e., no appeal lies in this court.

### 3.3-2 State Commission

**3.3-2a PECUNIARY JURISDICTION** - State Commission entertains the cases where the value of claim exceeds Rs. 5 lakh. But where value of a claim exceed Rs. 20 lakh, the matter is beyond the jurisdiction of the Commission.

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2.31	CONSUMER PROTECTION ACT	Para 3.3
<p><i>Example</i> : A of Delhi bought a house from housing board for Rs. 4 lakh. Due to defect in the house, its wall fell down on the daughter of A and she dies. A sue the Housing Board claiming Rs. 15 lakh as compensation. This matter will lie with the State Commission of Delhi.</p> <p><b>Note</b> : That although the value of house is less than 5 lakh, the decisive factor regarding jurisdiction is the value of claim.</p> <p><b>3.3-2b TERRITORIAL JURISDICTION</b> - The Consumer Protection Act does not specifically provides for the territorial jurisdiction of the State Commission. Thus it is governed by the general principle of the law which are contained in section 20 of the Civil Procedure Code.</p> <p>Broadly these principles are on the similar lines on which the territorial jurisdiction of District Forum is based. Thus a suit can be instituted in the State Commission <i>within whose local limits</i></p> <ol style="list-style-type: none"> <li>(a) the party against whom the claim is made actually and voluntarily resides or carries on business or personally works for gain, or</li> <li>(b) where there are more than one opposite party, each such party actually and voluntarily resides or carries on business or personally works for gain, or</li> <li>(c) where there are more than one opposite party, and any such party actually and voluntarily resides or carries on business or has a branch office or personally works for gain, provided the other parties not so residing or working agrees, or the State Commission gives permission in this regard, or</li> <li>(d) the cause of action, wholly or in part, arises.</li> </ol> <p><b>3.3-2c APPELLATE JURISDICTION</b> [SECTION 17(a)(ii)] - State Commission has power to adjudicate upon the appeals made against the order of the District Forums. Any person aggrieved by an order made by the District Forum may prefer an appeal against such order within 30 days from the date of order. However, the State Commission may entertain an appeal after the expiry of 30 days if it is satisfied that there was sufficient cause for delay.</p> <p><b>Note</b> : 30 days are counted not from the date of order but from the date when the order is communicated to the appellant.</p> <p><b>3.3-2d REVISIONAL JURISDICTION</b> [SECTION 17(b)] - State Commission may call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where State Commission is of the view that the District Forum</p> <ul style="list-style-type: none"> <li>- has exercised jurisdiction which it was not entitled to, or</li> <li>- has failed to exercise such jurisdiction which it was entitled to, or</li> </ul>		

- has exercised its jurisdiction illegally or with material irregularity.

Such revisional jurisdiction may be exercised by the Commission on its own or on the application of a party.

### 3.3-3 National Commission

**3.3-3a PECUNIARY JURISDICTION** - Since National Commission is the highest level of Consumer Forums, it may entertain all the matters where the value of claim exceeds Rs. 20 lakh.

Para 3.4	CONSUMER PROTECTION ACT	2.32
<p><b>3.3-3b TERRITORIAL JURISDICTION</b> - The territorial jurisdiction of the National Commission is whole of India except the State of Jammu &amp; Kashmir.</p> <p>However, the Consumer Protection Act is applicable only if the cause of action arise in India. If the cause of action arises out of India, National Commission has no jurisdiction over the matter as it cannot be tried in India under the Act.</p> <p><i>Example:</i> The complainant alleged that they were not properly treated by the Egyptian Airlines authorities at Barcelona. It was held that the cause of action arose at Barcelona, so the complaint under the Act is not maintainable in India - <i>Gulab Hotchand Bhagchandaney v. Egyptian Airlines</i> III 1994 CPJ 172 (NC).</p> <p><b>3.3-3c APPELLATE JURISDICTION</b> - The National Commission has jurisdiction to entertain appeals against the order of any State Commission. The appeal may be made within 30 days from the date of the order of the State Commission. However the National Commission may entertain an appeal filed after the expiry of 30 days if it is satisfied that there was sufficient cause for not filing the appeal within the given time.</p> <p><b>3.3-3d REVISIONAL JURISDICTION [SECTION 21(b)]</b> - National Commission can call for the records and pass the appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission if it is of the view that the State Commission</p> <ul style="list-style-type: none"> <li>- has exercised jurisdiction which it was not entitled to, or</li> <li>- has failed to exercise such jurisdiction which it was entitled to, or</li> <li>- has exercised its jurisdiction illegally or with material irregularity.</li> </ul> <p>Note that the revisional jurisdiction is available to the National Commission only in the cases where there has been wrongful, illegal, and improper exercise of jurisdiction or failure to exercise jurisdiction on the part of State Commission.</p> <p><i>Example:</i> K made an appeal to the National Commission against the order of the State Commission whereby the State Commission had made an order against him although he was not a party to the dispute by the complainant. The National Commission observed that the order of the State Commission was vitiated by illegal exercise of jurisdiction resulting in material irregularity and accordingly, the same was liable to be set aside - <i>Kinetic Engineering Ltd. v. Samasi Saunand</i> [1993] II CPR 409 (NC).</p> <p><b>Procedures</b></p> <p><b>3.4</b> We understand that the Consumer Forums are the bodies who function like courts in order to settle the consumer disputes. Their composition is so made as to best represent the interests of the consumers, and they have specified jurisdictions. The next question is - what procedure these Forums adopt in order to deal with the consumer disputes.</p> <p>Section 13 of the Act has detailed the procedure in context of District Forum only. For State Commission, section 18 says that it will follow the same procedure as followed by District Forum with such modifications as necessary, and for the National Commission, section 22 gives power to the Central Government to make rules in this regard. These rules in turn have included</p>		

2.33	CONSUMER PROTECTION ACT	Para 3.4
therein the procedure given by section 13. In addition, these rules have prescribed some procedures to be followed by the parties to the complaint.		

A complaint may be made with respect to the goods or services. When complaint relates to goods, the criteria for the decision is - whether the goods are defective or not. Now the question is - how to hold that the goods are defective. The most logical way is to get the goods tested to determine the defect. However, in certain cases defect can be determined without technical support or it may happen that the test is not feasible. These are

- The opposite party admits the defect.
- The defect is obvious and is visible to naked eyes, like in a complaint about contamination of water, the sample of water given was so dirty that the Forum did not consider it necessary to send it for test.
- When the complainant is not in possession of the subject matter of the complaint, *e.g.*, in a matter the complainant had given to the dealer the tyre and tube which had burst, the dealer sent the same to the manufacturer. Thus the complainant was not in possession of the same.
- When subject matter of the complaint gets destroyed, like in case a pressure cooker burst, its remains can't be sent to the laboratory for testing.
  - In case of complaint regarding deficiency in service there is no question of testing or analysis.

Thus the procedure to be followed by the Forums can be discussed under the two heads

1. where laboratory test is required to determine the defect in goods.
2. where no laboratory test is required to determine the defect in goods or the complaint relates to services.

**3.4-1 Procedure to be followed by the District Forum [Section 13]** - The following procedure is equally applicable to the District Forum, State Commission with required modifications, and National Commission with additional procedures required by the rules.

**3.4-1a** WHERE LABORATORY TEST IS REQUIRED TO DETERMINE THE DEFECT IN GOODS - A consumer is supposed to file as many copies of the complaint as there are number of judges, with all essential information, supporting papers like correspondence, and specifying the compensation demanded.

On receipt of such complaint

- (a) The District Forum should refer a copy of the complaint to the opposite party directing him to give his version of the case within a period of thirty days which can be extended to forty five days.

Where the opposite party on receipt of a complaint referred to him denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum would take the following steps to settle the dispute :

Para 3.4	CONSUMER PROTECTION ACT	2.34
<p>(b) The District Forum may require the complainant to deposit specified fees for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question.</p> <p>(c) The District Forum will obtain a sample of the goods, seal it, authenticate it and refer the sample so sealed to the <i>*appropriate laboratory</i> for an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect.</p> <p>The District Forum will remit the fees to the appropriate laboratory to enable it to carry out required analysis or test.</p> <p>The laboratories supposed to report its findings to the District Forum within a period of fifty-five days. This period is extendible by the District Forum.</p> <p>(d) Upon receiving laboratory's report, its copy will be forwarded by the District Forum to the opposite party alongwith its own remarks.</p> <p>(e) In the event of any party disputing the correctness of the findings, or the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the objecting party to submit his objections in writing.</p>		



<p>(f) The District Forum will give an opportunity of hearing to the objecting party.</p> <p>(g) The District Forum shall issue appropriate order after hearing the parties.</p> <p><b>3.4-1b</b> WHERE NO LABORATORY TEST IS REQUIRED TO DETERMINE THE DEFECT IN GOODS OR THE COMPLAINT RELATES TO SERVICES</p> <p>(a) On receiving the complaint, the District Forum should refer a copy of the complaint to the opposite party directing him to give his version of the case within a period of thirty days which can be extended to forty five days.</p> <p>(b) The opposite party on receipt of a complaint referred to him may</p> <p>(i) admit the complaint</p> <p>(ii) deny or dispute the allegations contained in the complaint, or</p> <p>(iii) omits or fails to respond within the time given by the District Forum.</p> <p>(c) Where the opposite party admits the allegation, the District Forum should decide the matter on the basis of the merits of the case and the documents before it.</p> <p>Where the opposite party denies or disputes the allegations made in the complaint, the District Forum will proceed to settle the dispute on the basis of evidence brought to its notice by both the parties.</p> <p>Where the opposite party omits or fails to respond within the time given by the Forum, the District Forum will proceed to settle the dispute on the basis of evidence brought to its notice by the complainant.</p> <p>(d) The District Forum shall issue an appropriate order after hearing the parties and taking into account available evidence.</p>
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2.35	CONSUMER PROTECTION ACT	Para 3.4
<p><b>Note :</b> Although this procedure may be followed by all - the District Forum, State Commission, and National Commission, we have used the name of District Forum while describing the procedure.</p> <p><i>*What is an appropriate laboratory under the Act</i></p> <p>Section 2(1)(a) of the Act defines an appropriate laboratory as a laboratory or organisation</p> <p>(i) recognised by the Central Government;</p> <p>(ii) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or</p> <p>(iii) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect.</p> <p><b>Note :</b> Rule 2A of the Consumer Protection Rules, 1987 provides the procedure to be followed by the laboratories in order to get recognition from the States. We have not discussed this procedure here since it is beyond purview of our study.</p> <p><b>3.4-2 Procedure to be followed by the National Commission [Section 22]</b> - Section 22 of the Act provides that the National Commission shall follow such procedure as prescribed by the Central Government. The Consumer Protection Rules, 1987 framed by the Central Government lay down the procedure which is as follows :</p> <p>(1) A complaint containing the following particulars shall be presented by the complainant in person or by his agent to the National Commission or be sent by registered post, addressed to the National Commission :</p> <p>(a) the name, description and the address of the complainant;</p> <p>(b) the name, description and address of the opposite party or parties, as the case may be, so far as they can be ascertained;</p> <p>(c) the facts relating to the complaint and when and where it arose;</p> <p>(d) documents in support of the allegations contained in the complaint;</p> <p>(e) the relief which the complainant claims.</p>		

- (2) The National Commission shall, in disposal of any complaint before it, as far as possible, follow the procedures laid down section 13 of the Act. (discussed in **para 33.4-1**)
- (3) On the date of hearing, it shall be obligatory on the parties or their agents to appear before the National Commission. Where the complainant or his agent fails to appear, the National Commission may either dismiss the complaint for default or decide it on merits. Where the opposite party or its agent fails to appear on the date of hearing the National Commission may decide the complaint *ex parte*.
- (4) The complaint shall be decided as far as possible within a period of three months from the date of notice received by opposite party where complaint

Para 3.5	CONSUMER PROTECTION ACT	2.36
does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities.		
(5) After the proceedings, the National Commission shall issue the orders accordingly. (Refer <b>para 33.5-3</b> )		
<b>Powers of the Consumer Forums [Sections 13(4), 14(1) and Rule 10]</b>		
<b>3.5</b> For the purpose of adjudicating a consumer dispute, section 13(4) has vested the Consumer Forums with certain powers of a civil court. Apart from these powers, the Central Government has provided some additional powers to them under Rule 10 of the Consumer Protection Rules, 1987. Finally section 14 of the Act has provided them with the power to issues orders.		
<b>3.5-1 Powers akin to those of civil court [Section 13(4)]</b> - The Forums are vested with the Civil Court powers with respect to the following :		
<ul style="list-style-type: none"> <li>(a) summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;</li> <li>(b) discovery and production of any document or other material object producible as evidence;</li> <li>(c) receiving of evidence on affidavits;</li> <li>(d) requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;</li> <li>(e) issuing of any commission for the examination of any witness; and</li> <li>(f) any other matter which may be prescribed.</li> </ul>		
<b>3.5-2 Additional powers of the consumer forums [Rule 10]</b> - The National Commission, the State Commission and the District Forum have following additional powers :		
<ul style="list-style-type: none"> <li>(a) Requiring production of any books, accounts, documents, or commodities from any person, examining and retaining them.</li> <li>(b) Obtaining information required for the purpose of the proceedings from any person.</li> <li>(c) enter and search any premises and seize from such premises books, papers, documents, commodities required for the purpose of proceedings under the Act.</li> </ul>		
<b>3.5-3 Power to issue order [Section 14(1)]</b> - If, after the proceedings, the Forum is satisfied that the complainant suffer from any defect in goods or deficiency in service, it may issue an order to the opposite party directing him to do one or more of the following things, namely :		
<ul style="list-style-type: none"> <li>(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;</li> <li>(b) to replace the goods with new goods of similar description which shall be free from any defect;</li> <li>(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;</li> </ul>		

2.37	CONSUMER PROTECTION ACT	Para 3.7
(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 or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (i) to provide for adequate costs to complainant.

#### **Sitting of the Forums**

**3.6** The law has provided certain norms as to the number of judges who will handle a dispute. The rationale must have been to make the decisive body as broad as possible.

**3.6-1 Sitting of the District Forum** - For conducting any proceedings to resolve a consumer dispute, at least two members of the Forum must be there one of whom should be the president.

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* i.e. from the beginning.

*Example* - A District Forum has three members, P the president, and X and Y, the other two members. P and X started dealing with a particular case. In the meantime, X fell ill and dropped out. Now the proceedings in the given case will be started afresh by P and Y (or any other member appointed in place of X).

**3.6-2 Sitting of the State Commission** - Every proceeding is required to be conducted by the president of the State Commission and at least one member thereof sitting together.

However, if for any reason the member is unable to conduct the proceeding till it is completed, the president and the other member shall conduct such proceeding afresh.

**3.6-3 Sitting of the National Commission** - The disputes must be disposed of by at least three members of the National Commission, one of whom must be the president (or the senior most member authorised to work as president).

Where the member(s) for any reason are unable to conduct the proceeding till it is completed, the president (or the senior most member acting as president) shall conduct the proceeding afresh.

*Note that the rules regarding sitting are mandatory. Any failure to comply with the same may invalidate the order.*

#### **Orders of the Forums**

**3.7** The orders of the Consumers Forums are like orders of the Civil Court and are enforceable like a decree of the court. The order of a junior Forum is appealable with the senior Forum, and when no appeal is instituted, the order is final. However, the law has prescribed certain norms as to the signing of orders without complying which the orders cannot be made.

Para 3.7	CONSUMER PROTECTION ACT	2.38
<p><b>3.7-1 District Forum - Signing requirement</b> - Section 14(2A) provides that every order made by the District Forum shall be signed by its President and the member or members who conducted the proceeding.</p> <p><i>Example</i> : A complaint was dismissed by the President of a District Forum where other members of the Forum were not parties to it. On appeal, the State Commission held that section 14(2) of the Act makes it abundantly clear that for the decision on a complaint, one member of the Forum is must besides the President. Thus in the present case, the President of the Forum alone is not competent to dismiss the claim - <i>Pankaj v. Chairman Central Secondary Education Board</i> [1991] 1 CPR 711 Delhi (CDRC).</p> <p>If there is difference of opinion between any two members, matter should be referred to the third member for a decision. And the decision of the majority would be final. Thus any order passed by a single member of the District Forum is not warranted.</p> <p><b>3.7-2 State Commission - Signing requirement</b> - Every order made by the State Commission shall be signed by its President and the member or members who conducted the proceeding.</p> <p>If there is difference of opinion between any two members, matter should be referred to the third member for a decision. And the decision of the majority would be final.</p> <p><b>3.7-3 National Commission - Signing requirement</b> - Every order made by the National Commission must be signed by the president (or the senior most member acting as president), and at least two</p>		

members who conducted the proceeding, and in case of any difference of opinion, the opinion of the majority shall be the order of the Commission.

**3.7-4 Appeals against orders** - Appeal is a legal instrumentality whereby a person not satisfied with the findings of a court has an option to go to a higher court to present his case and seek justice. In the context of Consumer Forums -

1. An appeal can be made with the State Commission against the order of the District Forum within 30 days of the order which is extendable for further 15 days. [Section 15]
2. An appeal can be made with the National Commission against the order of the State Commission within 30 days of the order or within such time as the National Commission allows. [Section 19]
3. An appeal can be made with the Supreme Court against the order of the National Commission within 30 days of the order or within such time as the Supreme Court allows. [Section 23]

**3.7-5 Finality of orders** - Where no appeal has been preferred against the order made by the District Forum, or State Commission, or the National Commission, such order shall be final. [Section 24]

**3.7-6 Penalties for non-compliance** - Every order made by the District Forum or State Commission, or the National Commission may be enforced in the same manner as if it were a decree of the court. [Section 25]

2.39	CONSUMER PROTECTION ACT	Para 3.7
<p>All the persons - the trader, or complainant, or the opposite party, are supposed to comply with the orders. When any such person fails or omits to comply with the order, the District Forum, or State Commission, or the National Commission, as the case may be, may punish him with</p> <ul style="list-style-type: none"> <li>- imprisonment for a term ranging between one month and three years, or</li> <li>- with fine ranging between Rs. 2,000 and Rs. 10,000, or</li> <li>- with both.</li> </ul>		