

a pair of Ropes and Danda *i.e.*, a stick. The present day hand-cups and police latties are the successors of the "Pasa and Danda". You are well aware that the "Talavari" has become the present day "Talayari", the village servant in Coastal Andhra and the "Dandapasi" has become a caste called as "Dandasi" at item 18 part 1 of schedule under Presidential Order, 1950 and still existing in North Coastal Andhra Pradesh discharging the inferior duties of Dharma. If we go a little deeper into the past, the 12 years punishment of Vanavasa (transportation to forest) of Ramayana and Mahabharatha can be reflected in the present day limitation of 12 years to claim title over the immovable property or to establish title by adverse possession. The intention of Kaikeyi in Ramayana and that of *Sakuni* and *Duryothana* in Mahabharath are the same as the present day arguments on these aspects. The ancient agriculturist is not ignorant of what was held by the House of Lords in *Ashby v. White nor the maxim, "Ubi Jus ibi remedium"*.

Not only Dharma but also the nomenclatures are still continuing. For

example the Adalat is derived from the Sadar Dewani Adalats and Sadar Fouzdari Adalats which were Company Courts until 1857 in South India. In North, the criminal Courts were called as Sadar Nizamate Adalat. The infrastructure of a Court was surprisingly lavish in those days. The Civil Judicial Consultation Papers dated 4-3-1802 described the Court room at Madras as having 3 new teak benches for the Judges, mahogany desks, 1 large table covered with green cloth, 1 teak platform, 4 teak long seats, 6 mahogany chairs and 18 sisso chairs and after 200 years, the infrastructure and the facilities in the present day Courts are not a matter to be proud of.

We have come a long way in point of time. We have changed few nomenclatures, we have changed our laws including our Constitution number of times, but we have not changed the main thread of Dharma nor did we change in our attitude to the concept of Dharma. While reminiscing our past, we must understand that the people expect too much from our Judicial Institutions, where as we could give too little!

A CRITICAL VIEW OF CONSUMER PROTECTION (AMENDMENT) BILL, 2001

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1. The Consumer Protection Act, 1986 is a landmark legislation enacted in Indian to further promote the interests of the consumers. With its vast potential it awakened Indian consumer and opened up new horizons of hope and relief,

revolutionising the consumer movement in the country. The experience of the past 14 years shows its tremendous success in invigorating the consumer movement and in protecting the consumers.

The Act was amended in 1991 and again in 1993. Based on the experience gained during this period of 14 years by taking note of certain bottlenecks and inadequacies, Government of India now introduced Amendment Bill, 2001 in Parliament Budget Session proposing to amend it further, to give more teeth to the Act, and provide more effectiveness with a view to achieving quicker disposal of complaints and more effective implementation of orders of Consumer Fora.

Prescribing period within which the complaints are to be admitted, notices are to be issued to the opposite parties and the complaints are to be decided, not adjourning without speaking order, compulsory deposit of certain money before admission of appeal, reappointment of Presidents and Members of the Consumer Fora for another period of 5 years, prescribing minimum qualifications and disqualifications of Members, enabling legal heirs or representative of a party to continue the proceedings, dispensation with *de novo* enquiry when the Member is unable to continue hearing and enhancement of pecuniary limits of jurisdiction of Consumer Forum are all welcome changes. Exclusion of services hired or availed for 'commercial purposes' from the purview of the Act and excluding jurisdiction of the Consumer Forum when a judicial remedy is available in another forum under special law, are also significant proposals, though altering the spectrum of operation of C.P. Act. Certain proposals, however, require a detailed study and certain further amendments are necessary.

As persons associated with administration of Consumer Justice at grass root level the writers, while welcoming the above proposals, make few more suggestions for further strengthening the Act, for better protection of the consumers.

The following proposals made in the Bill are most welcome:

Interim orders :—The proposed sub-section 3(b) in Section 13 reads as follows:-

“Where during the pendency in proceedings before the District Forum it appears to it necessary, it may, pass such interim order, as is just and proper in the facts and circumstances of the case.”

Conferring such power of Consumer Forum to pass interim orders is a very significant step in providing real justice to the consumer, particularly, in cases of arbitrary and illegal disconnections and threats of disconnections of power and the telephone services, as the very purpose of approaching the forums, in the absence of interim order, is defeated if the event takes place meanwhile.

2. Enforcement of interim orders :—The amendment proposed to Section 25 further empowers the Consumer Forum enforce such interim order by attachment and sale of property of the person not complying with the order.

Proposed Section 25(1) reads:

“Where an interim order made under this Act is not complied with the District Forum or the State Commission or the National Commission, as the case may be, may order property of the person not complying with such order, to be attached; (2) No attachment made under sub-section (1) shall remain in force for more than 3 months and at the end of which if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission, may award such damages. As it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

3. Punitive damages :—The most significant proposal is to add proviso to clause (b) of Section 14 (1) of the C.P. Act -

to empower the forums to award punitive damages. The proposed proviso reads:

“Provided the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit.”

Traders with their massive affluence and indifference often ignore the claims and do not feel the pinch even when the order is passed directing refund, or replacement of goods, or payment of compensation (which, according to the decisions, shall be only just equivalent to the loss or injury caused). Punitive damages would put them under effective check.

4. Qualifications and disqualifications of Members :—For the first time the Act proposes to prescribe qualifications and disqualifications for the Members of District Forum, State Commission or National Commission. The minimum age of 35, graduation and minimum experience of 10 years in dealing with problems relating to economics, law, commerce, accountancy, public affairs of administrative is being prescribed for the Members at all the three levels. Either the State or Centre has framed rules regarding disqualifications now a provision is proposed to be added in the Act itself providing that a person shall be disqualified for appointment of Member if he — (a) has been convicted and sentenced to imprisonment for an offence involving moral turpitude, or (b) is of undischarged insolvent, or (c) is of unsound mind and stands so declared by a competent Court, or (d) has been removed or dismissed from the service of the Government, or a Government owned or controlled Corporation, or (e) has in the opinion of State/Central Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a Member or, (f) was such other disqualification as may be prescribed by the State/Central Government.

Reappointment :—The expression “shall not be liable to be reappointed, “ in Section 10(2), 16(3) and 20(3) is being omitted, providing for reappointment of President and Members, subject to the same qualifications and disqualifications prescribed for further appointment, the restriction being the upper age limit of 65 years for District Forum, 67 years for State Commission, and 70 years for the National Commission.

Proportion of Judicial and Non-Judicial Members :—While providing for appointment of more than two Members to a State Commission and more than 4 to National Commission, a proviso is proposed to be added to Section 16, which reads: “provided not more than 50% of the Members shall be from amongst persons having a *judicial background*, in Section 16 as well, as in Section 20 of the Act. An identical explanation is added in both the sections that “the expression ‘persons having judicial background’ shall mean persons having *knowledge* and experience at least for a period of 10 years as Presiding officer at the District level Court or any Tribunal of equal level.” While the expression ‘not more than 50%’ ensures that required number of lay Members, it does not ensure minimum number of Members with judicial background. Probably a balance can be achieved by omitting the words “not more than” and ensuring that equal number of judicial Members (Members with judicial background) as well as non-judicial Members are appointed. “Judicial experience as a Judge of High Court or Tribunal of equivalent level” may be more appropriate for Section 20 (1A) of the Act.

5. Additional Benches of State and National Commissions :—Nearly three lakhs cases were filed so far by the consumers and Consumer Associations in the Consumer Fora. About two lakhs cases are still pending in District Fora and also in State Commissions and National Commission. Creation of Additional

Benches in State Commissions and National Commission helps to reduce the pendency and to cope up with ever increasing institution of cases. The proposal is very well thought of.

The State Government should also immediately be called upon to create two or three Benches in each State where there is heavy pendency. The proposed amendment to Section 16, sub-section (1B) reads:-

“(i) The jurisdiction, powers and authority of the State Commission may be exercised by the Benches thereof; (ii) A Bench may be constituted by the President with one or more Members as the President may deem fit.”

In order to enable the President to constitute the Benches, the strength is being increased. The proposed Section 16(1)(b) reads :—

“Not less than 2 and not more than such number of members as may be prescribed.....”

6. Similarly, sub-section (1A) is proposed to be introduced in Section 20, enabling the President of National Commission to constitute Benches, which exercises jurisdiction of the National Commission.

The proposal is very well thought of and yields good results if State Governments immediately respond and frames rules prescribing the minimum number of Members to be appointed to each State Commission and Central Governments, to the National Commission. A proviso contemplates State Government prescribing circumstances for appointment of Members.

7. One Member Bench ?

The wording in the proposed clause (ii) of sub-section (1B) of Section 16 and 20(1A) (ii) provides for a Bench with ‘one Member’, (either he is a judicial Member or a lay

Member). Adjudication by a lay Member of Members is not in tune with the scheme and spirit of the Act. As a matter of fact, there is no provision for even President to sit singly and take up the matters. The minimum quorum prescribed in Section 14 is two. Section 14(2) reads that every proceedings referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one Member thereof sitting together. Section 14 in toto applies to the State Commission as per the existing Section 18 itself and to the National Commission as per the proposed amended Section 22 meaning that either State Commission’s President or the National Commission’s President can adjudicate sitting along with another Member only. No change is proposed in Section 18.

Two aspects need further examination i.e., (i) one Member Bench, (ii) President of the Bench.

Professor White in “Administration of Justice”, pointing out the merits and demerits of decision making by layman favours a Tribunal consisting of a legal expert and layman. The Apex Court observed in *Indian Medical Association v. V.P. Shanta*, 1995 (3) CPR 912, “the object of creating a Tribunal with a President who is, or has been a Supreme Court Judge, High Court Judge or District Judge (or is eligible to be appointed as District Judge) for the National Commission, State Commission and District Forum respectively and Members with experience in various fields is to combine with legal competence, the merits of lay decision making by the Members having knowledge and experience in dealing with problems relating to various fields which are concerned with consumers.” The danger in a layman’s decision is that the dispute may not be resolved in accordance with the prescribed rules of law and claimant may be seen as deserving rather than his entitlement under law. The decision by a sole Judge or sole Member, or by two judicial

Members or two non-judicial Members will be contrary to the scheme and spirit of the Act. It is advisable to specify in clause 2 of sub-section (1-B) Section 16, "the Bench may be constituted by the President with himself and with one or more Members, or a Bench with two or more Members, one of whom shall be a Member with judicial background (may be called a judicial Member) who shall preside over the Bench." The proposed amendment provides also for functioning as circuit Benches at places outside the headquarters.

8. The Remedies under Special Law :—Section 3 of the Act is being substituted by a totally different wording changing the area of operation of the Act. The interpretation of the existing Section 3 is that the provisions of the Act are in addition to the existing laws and they are to be applied harmoniously with the provisions of other legislations and that they are supplementary in nature, having no overriding effect. The Act does not affect the remedies available to the consumers under the provisions of any other law. The proposed Section 3 reads: "The provisions of the Act shall apply to all claims except the claims in respect of which the corresponding remedies of judicial nature are available under any special law for the time being in force."

The situations consumers face can be placed into three categories - (i) where remedies are available under general and also special through a Tribunal created under special law and remedies provided except under such special law are barred specifically under the Act *e.g.*, Railway Claims Tribunal Act; (2) where remedies are available; under general law and special law as well and the Tribunals created under special law, but remedies except under special law are not specifically barred *e.g.*, Reserve Bank of India Act; (3) where reliefs are available under other Acts but no special Tribunals are constituted under such Acts *e.g.*, Special Relief Act.

While a consumer, undoubtedly cannot approach the Consumer Forum in first category of cases and can undoubtedly approach the civil Court or Consumer Forum in third category of cases a question is likely to arise in cases of second category under the proposed section. It is desirable that a consumer shall have option to approach the Consumer Forum or a Forum under special law, in cases falling under second category. There appears to be no reason or justification for barring the jurisdiction of a Consumer Forum when the special law itself does not specifically bar the jurisdiction under other Acts and to disturb the law settled and applied for one- and-a-half decade.

The worst sufferers of the proposed change will be small investors, when the defaulting finance companies take shelter under RBI Act by rushing to Company Law Board with schemes, which they do not intend to implement and for violation of which Company Law Board has no power to punish and has to approach a criminal Court.

At present, when the Company Law Board passed an order before filing of a complaint, the Fora do not entertain such complaints. If during the pendency of the complaint, the Company Law Board is seized of the matter, the Consumer Fora do not rush to pass an order. Finally, when the Company Law Board passes an order approving a scheme in the interest of depositors (as well as the company), the Consumer Fora pass orders adopting the said scheme. When the Company does not comply with the order passed by the Forum, the consumer has an option to approach the Forum under Section 25 or for punishing under Section 27 of CP Act, or approach Company Law Board for prosecution under RBI Act. This is one example of great hardship to a large class of consumers, who will be deprived of a speedy remedy, as well as choice of Consumer Forum.

9. Pecuniary jurisdiction :—The pecuniary jurisdiction of the District Forum is proposed to be raised to Rs.20 lakhs by substituting the words “Rs.5 lakhs” by the wording “Rs.20 lakhs” in Section 11 and that of the State Commission upto Rs.20 lakhs by substituting the words “exceeds Rs.5 lakhs, but less than Rs.20 lakhs” by the words “exceeds Rs.20 lakhs and does not exceed Rs.1 crore.” The National Commission to deal with matters where the value of the claim and compensation exceeds Rs.1 crore by amending Section 20(2). This, while reducing the original work of State Commission and National Commission and allowing more time for hearing appeals, increases the workload of District Fora. More number of District Fora have to be created.

10. Territorial jurisdiction :—When Section 11(2) of the Act was amended in 1993 enabling the complainant to file his complaint before the District Forum in whose jurisdiction the opposite party has a branch office, corresponding amendment was not made with respect to the complaints to be filed before the State Commission. As a matter of fact, there is no section corresponding to Section 11 applicable to State Commission. Now Section 17(2) is proposed to be inserted with language identical to Section 11(2) of the Act.

11. Speedy disposal :—In order to speed up the disposal of complaints filed before the Fora, time limit for various stages are prescribed by inserting 12 (3) proviso which reads: “Provided further that the admissibility of the complaint shall ordinarily be decided within 21 days from the date on which the complaint was received.” The proposed amendment to Section 13(1)(a) reads: “Refer copy of the admitted complaint within 21 days from the date of its admission to the opposite party directing it to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by the

District Forum *i.e.*, a maximum of 42 days for issuing notice to the opposite party and 45 days for filing the version by the opposite party only is available under the amended provisions. The proposed Section 13 (3)(a) (which applies to State Commission by virtue of Section 18 and to National Commission by proposed Section 22, reads: “every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of 3 months from the date of receipt of notice by the opposite party where the complaint does not require an analysis or testing and within 5 months if it requires analysis or testing of commodities.” A restriction is also placed on the Forum in granting adjournments by specifying that “no adjournment shall be ordinarily granted unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum.” A provision is also made to discourage adjournments by mandating the Forum that it “shall make such order as to the costs occasioned by the adjournment as may be provided in the regulations made under the Act.”

The restriction of proceeding *do novo* when one of the Members is unable to continue the hearing, is dispensed with, by omitting the proviso in Section 14 (2) of the Act, and empowering under the substituted proviso, ‘the other Member to continue the proceedings from the stage at which it was last heard by the previous Member.’

Similarly, with respect to appeals Section 19(a) reads: “an appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of 90 days from the date of its admission.”

12. Dismissal for default and *ex parte* order :—Section 13 (2)(b) is amended by adding the words “*ex parte* on the basis

of evidence”, by way of clarification and clause (c) providing for order on merits or dismissal for default, when the complainant fails to appear on the date of hearing.

13. Legal representatives :—Subsections (4), (5) and (6) of Section 13 however, remain unchanged. A new subsection (7) is proposed to be added providing for adding of legal representatives, it reads: “in the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been made, the provisions of Order 22 of the 1st Schedule of Code of Civil Procedure shall apply subject to the modifications.....”

14. Reliefs :—Substantial amendment made to Section 14(1) include to the Consumer Forum to award punitive damages by adding a proviso after clause (d).

Clauses (ha), (hb) and (hc) are proposed to be added empowering the District Forum to order - clause (ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature.’ “(hb) - to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers, who are not identifiable conveniently.” The amount that can be so ordered is fixed as not less than 5% of the value of such defective goods sold or service provided as the case may be. It is also provided further that “the amount so obtained shall be credited in favour of such person and utilised in such manner as may be prescribed (by Government).

Corrective advertisement :—Clause (hc) of Section 14(1) proposes to empower the forum to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement”, *e.g.*, advertisement of water resistant” watch “voltage fluctuation, no problem” giving an impression that the

watch is water proof, though, in fact, the opposite party claims that such water resistant watch shall not be used in rain or while washing hands and the manufacturer of the stabiliser defends that the voltage fluctuation is no problem, only within certain limits, though, it was not so mentioned in the advertisement and the consumers are often misled. While ordering compensation or granting relief to the particular Consumer, the Forum, in the interest of all Consumers who are likely to become victims, can, now, issue corrective advertisement at the cost of the opposite party.

15. Compensation :—The only section that empowers the Consumer Forum to award compensation in the Act is Section 14(1)(d). It is suggested that since the Act covers the complaints with respect to unfair, restrictive trade practices, hazardous goods, and now, spurious goods and enables the consumer to claim compensation in case of loss or injury caused by use of such goods or services or adopting unfair or restrictive trade practices also, at the end of clause (d) the words “due to defect in goods or on account of hazardous nature of the goods or of due to adopting unfair or restrictive trade practices,” may be added.

16. Discouraging appeals :—A proviso is being added to Section 13 which reads: “provided further that no appeal by a person who is required to pay an amount in terms of an order of the District Forum, shall be entertained by the State Commission, unless the appellant has deposited in the prescribed manner 50% of the amount or Rs.35,000/- whichever is less. Similarly, the proviso to Section 19 prescribes 50% of the amount or Rs.35,000/- whichever is less and Section 23 prescribes deposit of 50% of that amount of Rs.50,000/- whichever is less. It is to be noted that while the subject-matter of the dispute and the amount the Forum might order may go upto Rs.20 lakhs and the State Commission upto Rs.1 crore, in view of the enhanced jurisdiction, the deposit of

Rs.25,000/- and Rs.35,000/- or Rs.50,000/- for admitting an appeal against the said orders is very much favourable to the opposite parties and works hardship to the complainants. It is suggested that instead, procedure adopted in Order 45, Rule 1 CPC may be adopted prescribing that the decretal amount shall be deposited if the stay of execution of the lower Court's judgment or decree is ordered. Further, the controversy that is raised in view of the wording in Section 24 which remains unchanged needs to be eliminated.

17. Effect of filing appeal :—Status of an order of a District Forum or State or National Commission, as the case may be, when an appeal is preferred, is subject to doubt and remains an unresolved question. Section 24 of the Act reads: "Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final." Based on the said wording of Section 24 it is being argued that mere filing of an appeal keeps the order of the lower Forum (or State Commission) in abeyance. If this argument is to be accepted the relief to the consumer becomes illusory due to delaying tactics of the opposite party in protracting the appeal proceedings by means of deposit of few thousand rupees. It is to be noted that Civil Procedure Code contains a specific provision (Order 41 CPC) for filing an appeal and for grant of stay of operation of lower Court's judgment or a decree (Order 41, Rule 5 CPC). Absence of provision relating to grant of stay by the appellate Forum in Section 17 or Section 19 is relied upon by the respondents also to argue that the appellate Forum has no power to stay operation pending hearing of the appeal. In order to avoid confusion, a specific provision on the lines in CPC Order 41 can as well be made in Section 17 and 19 of the Act. Section 24 can be suitably amended by deleting words "if the appeal is filed" and by inserting "subject to

provisions of Sections 17 and 19 of the Act."

Prohibition of appeals :—As is often said that a litigant would go to any superior Court if there is any appeal against judgment of the Supreme Court. Even under Civil Procedure Code appeal is not permitted in certain cases of petty nature as a policy, to reduce the number of appeals and to give early finality. No appeal is available against the judgment of a Court in the matter of small cause nature if the value is less than Rs.10,000/- as per Section 96(4) of CPC. Under Consumer Protection Act also similar provision can be made prohibiting appeal in cases where the value of the claim is less than a certain amount say Rs.10,000/-

18. Transfer of proceedings :—The proposed Section 17-A empowers the State Commission, either on application by the complainant or on its own motion, to transfer a complaint from one District Forum to another District Forum within the State, and similarly, the National Commission is empowered under Section 22-B to transfer a complaint on its own motion, or on application of the complainant from one District Forum of a State to District Forum of another State or from one State Commission to another State Commission. It is significant that the opposite party is not entitled to seek transfer of the complaints from one Forum to another or one State Commission to another.

19. Vacancies :—Existing Section 18-A, which prescribes that in case of vacancy of the office of the President of the District Forum or the State Commission, the duties of the office shall be performed by such person who is qualified to be appointed as President of the District Forum, or the State Commission, is being omitted. Section 22-D proposed to be inserted reads: "where the office of the President of the District Forum, State Commission or the National Commission as the case may be is vacant

or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior most member of the District Forum, State Commission or the National Commission, as the case may be.” The proviso reads: “Where there is a retired Judge of a High Court as Member of the National Commission or when number of such Members is more than one, senior-most among them shall preside over the National Commission in the absence of the President. Then why not a similar provision for State Commission? Proposed amendment provides for appointment of one or more Members with judicial background to the State Commission too.

Reviewing and setting aside *ex parte* order :—While the District Forum and the State Commission are not empowered to set aside the order passed by them on merits, though *ex parte*, it is proposed to empower the National Commission by inserting Section 22-A for setting aside an *ex parte* order passed by it, or, to review any order made by it when there is ‘an error apparent on the face of the record by inserting subsection (2) in Section 22. A similar provision is just and necessary in case of orders passed by District Forum and the State Commission also, since for rectifying an error apparent on the record, the party need not be driven to superior Forum.

Fee :—A provision that is likely to create a major controversy is prescribing fee for complaints. The proposed Section 12(2) reads: “every complaint filed under subsection (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.” The very object of the Act is to provide inexpensive remedy to consumer. Fixing a fee as in the case of civil suit (though, at a lesser rate) certainly is against the spirit and the intentment of the Act. The fund starved State Governments

may jump at the provisions and fix arbitrarily huge amount as fee payable, which act would destroy the very purpose of the Act and the consumer movement.

20. Restriction of legal practitioners :—The proposed Section 29-B restricts engagement of legal practitioners by the opposite party, unless the complainant has engaged a legal practitioner, or himself as a legal practitioner, or the complainant has no objection to the opposite party to engage or legal practitioner. Probably this section also may invite opposition from Bar and create some controversy.

21. Service of notices :—The proposed Section 28-A enables service of notices by using modern communication facilities including speed post, courier services, and fax messages. It is significant that even at present the notices are sent under ‘certificate of posting’ or through ‘registered post’ and the endorsement seen on the covers are acted upon by the Forums. Under Civil Procedure Code, the endorsement is made by a process server of the Court on oath while the acknowledgment of a registered letter is acted upon as proof of service, the Courts are slow to treat asservice on endorsements of “left”, “refused”, or “not claimed”. They go for substituted service. There is no duty cast on the postal officials under Indian Post Offices Act to make a signed endorsement by any particular official. It is unsafe to act upon such endorsement on postal covers, or, on the endorsements of the staff of courier services who are not governed by any statute and whose integrity, sincerity and credibility is not yet established in the trade. It needs to be examined whether an amendment can be made to Post Offices Act to require Post Master or Postman to certify ‘service’, refusal’ or ‘not claimed’ or ‘not available at the address’. Service by fax message, of course, is a welcome feature. Service by e-mail wherever available, can also be included.

23. State and District Consumer Protection Councils :—Though the Act provides for creation of the State Consumer Protection Council, some of the States do not appear to have constituted for obvious reasons. The word ‘may’ is proposed to be substituted by ‘shall’ making it mandatory for the State Governments to constitute the said Protection Councils. New Sections 8-A and 8-B are being added mandating the State Government to establish a District Consumer Protection Council also in each district.

22. Section 27 :—The proposed Section 27(2) reads: “notwithstanding anything contained in Code of Criminal Procedure, 1913, District Forum or State Commission or the National Commission, shall have the power of a Judicial Magistrate of 1st class for trial of offences under this Act, and on such conferment of powers, the District Forum, State Commission, or National Commission on which such powers are conferred, shall be deemed to be a Judicial Magistrate of first class for the purpose of Criminal Procedure Code.”

(3) “All offences under this Act may be tried summarily by the District Forum, State Commission, or National Commission, as the case may be.”

The proviso to Section 27 is proposed to be deleted. Conferring of powers of a Judicial Magistrate of first class on District Forum, State Commission, or National Commission, proposed, presumably, in view of the judgment of Karnataka High Court creates more problems than it intends to solve. Once they are deemed to be Judicial First Class Magistrates, it may be argued that appeal lies to Sessions Court against the judgment of such Judicial Magistrate under Criminal Procedure Code.

It looks odd for a Sessions Judge to sit in appeal against the orders passed by a High Court Judge or Supreme Court Judge, though

retired. The Delhi High Court and other High Courts have already held that the principles natural justice have to be followed for enquiring into such offences under Section 27. It would be more advisable to prescribe the procedure (as a sub-section in Section 27) instead of creating a new concept of the Forum being a First Class Magistrate leading to a new line of argument which would ultimately make the provision totally ineffective and consequently the Act itself.

23. Enforcement of orders under Civil Procedure :—Under the existing Act, the consumer has two courses open for enforcing the orders passed in his favour by Consumer Forum - to get the orders executed under Civil Process under Section 25(i) by the District Forum, State Commission or National Commission and/or (ii) in the event of its inability, through civil Court, as if it is a decree of a civil Court. We have clear provisions for attachment of the movable or immovable properties and for deciding third party claims under Civil Procedure Code. The proposed Section 25(2) provides for issue of a certificate to the Collector and recovery of the amount ordered as land revenue under Revenue Recovery Act by the collector. The idea seems to be that the execution under civil process is slow and the recovery by the revenue officials under Revenue Recovery Act is faster and more effective. But it is to be noted that the orders passed by the Forum are not only to make payment of money but also may be directions such as registration of sale deed (in housing service), for replacement of goods, or repair of goods. A *lacuna* might be created in the absence of execution under civil process for endorsing such orders. It is suggested that the proposed Section 25(1) and (2) may be enlarged to cover final orders also. The proposed Section 25(1) reads: “Where an interim order made under this Act, is not complied with, the District Forum, or the State Commission, or the National Commission, as the case may be,

may order the property of the person not complying with such order to be attached.

Clause (2) reads: “no attachment made under sub-section (1) shall be remained in force for more than 3 months at the end of which if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum, or the State Commission, or the National Commission may award such damages as it thinks fit to the complainant, and shall pay the balance, if any, to the party entitled thereto. A maximum limit of 3 months for attachment to be enforced is to be deleted, since the attachment shall be in force till sale is held and delivery is made to the purchaser. it is desirable to retain the existing Section 25, however, excluding the applicability of provisions relating to detention under civil prison and making proposed Section 25 available as additional course open to the complainant, or the person in whose favour the order is passed. The proposed Section 25 (1) and (2) can be inserted as 25-A (1) and (2).

24. Definitions :—

Consumer :—A significant amendment proposed to the definition of ‘consumer’ is to exclude a person hiring the services for ‘commercial purpose’ like the person who purchases goods for commercial purpose. Hitherto, the goods purchased for commercial purpose or for resale only were excluded from the purview of the Act. The expression “does not include a person who avail such services for any commercial purpose” is proposed to be added in sub-clause (2) of Clause (d) of Section 2(1), however, creating an exception to the self-employed person through Explanation.

There is a difference between the purchase of goods for resale or commercial purpose and utilizing services for commercial purpose. Both cannot be placed on the same footing. There is no justification for

excluding them particularly when at the time of passing the Act, initially, after thorough deliberation, a distinction was deliberately made to achieve the objectives of the Act.

By the proposed amendment the services hired by shops, industries, professionals, hospital *etc.*, are kept out of the purview of the Act. If the electricity is disconnected to a hospital while an operation is being conducted, though the hospital paid the bills up-to-date, the sufferer is the individual consumer. Similarly, when in a complex where tenants are individuals, professionals or commercial concerns, if electricity is disconnected, though the bills were paid by the management up-to-date and a lift does not function or where supply of water is disconnected, the management of the complex which has taken services for commercial purpose, in view of the proposed change, cannot approach the Forum and again sufferers are individual residents, clients and customers. They too cannot file on their own as “beneficiaries” under services hired since the persons who hired the services are excluded now.

Similarly, a commercial concern or its employee cannot approach the Consumer Forum, if the employee suffers on account of negligence of airways or railways, travelling on ticket purchased by a commercial concern.

Viewed from a different angle also the amendment is not desirable. It is common knowledge that there is great impact of the Act on the functioning of providers of various services including the public undertakings such as electricity boards, Telephones, Airways Railways and corporate hospitals leading to better attention to the consumer and improvement of efficiency in services. Quantitatively, the service provided to commercial concerns when compared to services provided to individual consumers is not a minor percentage. When deficiencies relating to major part of the services are

taken away from the purview of the Act leaving only a small proportion of their services for the scrutiny of the Forum, their attention to the customers and to improve their efficiency is likely to be weakened. The impact of the Act would be reduced to minimal. The consumer movement itself may suffer adversely.

Definition of complainant is being widened by adding sub-clause (ii) which reads:-

“In case of death of a consumer his legal heir or representative.”

Complaint :—In Section 2 (1) (c) (iv) clause (4) is being amended to include allegations against ‘service provider’ also.

Adopting unfair or restrictive trade practices or charging excess price or offering services which are hazardous to life and safety:- Clause (5), sub-clause (b) as proposed reads:-

“If the trader could have known with due diligence that the goods so offered are unsafe to the public.”

Similar wording is adopted with respect to the hazardous services now being proposed to be included in sub-clause (vi).

The definition of “manufacturer” also is being amended to include any manufacturer who assembles goods from the parts made by others or puts his mark on any goods manufactured by another, whether he claims such goods to be manufactured by himself or not.

The definition of restrictive trade practice is enlarged. The proposed definition reads as follows:-

“restrictive trade practice” means a trade practice which tends to being about manipulation of price or its conditions of delivery or to affect flow of supplies in

the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restriction and shall include—

- (a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price.
- (b) Any trade practice which requires a consumer to buy, hire or avail of any goods, or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services.”

25. Difference of opinion :—Section 14(2-A) proviso reads : “where the proceeding is conducted by the President and one Member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other Member for bearing on such point or points and the opinion of the majority shall be the order of the District Forum.” Often a difficulty arises on account of vacancy of a Member remaining unfilled for a long time when the President and the only member available differ. Since there can be no final order till a Member is appointed (which often takes a very long time) the consumer is badly affected on account of delay. A provision can be made for referring point or points on which they differ to the President of another District Forum to be nominated by State Commission for the purpose by a general or special order. Similar provision can also be made with respect to the similar situation arising on a difference of opinion between the President and the only Member of a State Commission for reference to another State Commission, to be nominated by the National Commission, or to the Judicial Member of another Bench of the Commission, if any, nominated by the President of the State Commission.

26. Separate Directorate :—In spite of much awakening many a person tend to ignore their rights and neglect to approach the Consumer Fora for various reasons. A trader adopting unfair trade practice or providing deficient services goes unchecked despite his large scale practice of deception. Though the act empowers Centre or State Governments to file complaints against the traders, no such instances are reported so far, while nearly 3 lakhs cases were filed so far by consumers and the Consumer Associations.

Creation of separate Directorate of Consumer Affairs in State and Centre with powers of investigation into defects, deficiencies and particularly unfair and restrictive trade practices, either on application or on information, or *suo moto* and to file complaints, is an absolute necessity. Society cannot afford to suffer if individual consumer ignores. The State has to act.

27. *Suo moto* cognizance :—For the same reason Consumer Fora also may be empowered to take cognizance *suo moto* or on the basis of newspaper reports.

28. Charging excess price :—Section 2(1)(c)(iv) defines the complaint as an allegation that a trader or service provider as per Bill has charged for the goods (or services) 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 displayed on the price list or agreed between parties. But there is no corresponding clause in Section 14 of the Act specifically providing relief to a complainant in cases of such excess charging. While Section 14(1)(a) to (e) of the Act provided for granting relief in cases of defect in goods or deficiency in service; clauses (f) to (h) and proposed (ha) to (hc) deal with

cases relating to unfair trade practice and hazardous goods. The act of charging excess price cannot be brought under the 'defects' or 'deficiencies in services' and should be covered only by expression of 'unfair trade practice'. An appropriate provision can be made to clarify the ambiguity by adding a sub-clause (ee) "to direct refund of the price collected in excess of the price fixed under or by any law for the time being in force, or displayed on the goods, or any package containing such goods," or displayed on the price list or agreed between parties". Though this may not have much impact on trader, proposed power to award punitive damages may be effective in such a situation.

29. Order on admission :—The procedure under Section 13 of the Act contemplates where the opposite party either denies the claim or fails to show-cause but there is no provision as to what the Consumer Forum shall do when the opposite party admits the claim (though naturally, it shall pass an order in favour of the complainant and the Fora do pass such orders, notwithstanding the absence of any specific provision in the Act). Order 15, Rule 1 CPC provides for pronouncing the judgments when the parties are not in issue on any question of law or fact. A similar provision in sub-sections (1) and (2) of Section 13 can as well be incorporated for clarity. A clause (aa) can be added to the effect that when the opposite party admits the claim, Forum may pass an order allowing the claim to the extent it is admitted and proceed to enquire into the disputed claim.

Conclusion :—In view of the far reaching consequences which may arise under the proposed amendments to the main Act, there is no gainsaying that it is not merely desirable but is imperative that a thorough discussion should take place keeping in view that the paramount interest of the consumer is protected without least affecting his rights.