

of passing off. Therefore IP rights also deal with various forms of “affiliation” and “allegiance” that also needs projection.

### **Conclusion:**

In conclusion it is stated that Intellectual Property Rights are basically dealing with human rights as it effects the basic rights of association, liberty, claims of protection to creative talents, right of health, right of expression, right of sustainable development

from all angles thereby improving the socio-economic culture of the Nation and thus can be said as a quest for identity not only to the inventors but also to the nation thus permitting a unity in diversity. Standardization of IP regime is acceptable conditionally as the individual aspiration of each nation also needs to be catered to, so that each individual nation can prosper. Transfer of technology can be allowed provided; it does not erode the natural diversities and cultures of individual nations.

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## **AN OVERVIEW OF THE CONSUMER PROTECTION AMENDMENT ACT, 2002**

*By*

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The dominating position of the public and private enterprises providing services like banking, financing, insurance, transport, processing board and lodging, entertainment, amusement, electricity and water and the blind race for earning money by fair or foul means by some of the well-organised producers and businessmen lacking trust and honesty against the illiterate, ignorant, unorganized consumers led to consumer exploitation in India not only illiterate but educated consumers knew well they were being exploited get they were tolerating it because of expensive and time consuming procedural delays in instituting cases for damages in the Civil Courts. The Indian Parliament recognizing the need of the hour, enacted the Consumer Protection Act, 1986, which is a landmark in the history of socio economic legislation and can be termed as ‘Magna Carta’ in the field of can protection for checking the unfair trade practices and deficiency in relation to goods and services. (Dr. V.K. Agamwal, Consumer Protection: Law and Practice, 5th ed., 2003, p.20.)

Consumer Protection Act, 1986 unlike other Acts is no more a farce in sealed files, but is fast emerging as the true saviour of the rights of the consumers. (*Majumdar, P.K., Law of Consumer Protection in India, 4th ed., Orient Publishing Company, 2002.*) The importance of the Consumer Protection Act, which came into force with effect from 1st day of July, 1987 lies in promoting welfare of the society by enabling the consumers to participate directly in the market economy. As per the preamble, the Act is to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith. (Commentary on The Consumer Protection Act, 2nd ed., *J.N. Barowalia*, Universal Publishing Co. Pvt. Ltd. 2000.)

The Working Group and also those of the Expert Group set up in July, 1997,

proposed for amendment of the Consumer Protection Act was formulated and the Amendment Bill, 2001 (Bill No.XLII of 2001), was introduced in the Rajya Sabha on April 26, 2001. The Bill was referred to the Standing Committee on Food, Civil Supplies and Public Distribution for examination. The committee submitted a report on October 30, 2001. The bill was passed with some modifications as the Consumer Protection (Amendment) Act, 2002 (Supra n, l, p.48). The major objective of the Amendment Act, 2002 are:

- (i) Facilitating quicker disposal of complaints. Delay in disposal of cases by the redressal agencies at the District, State and National level which were expected to undertake speedy disposal of consumer complaints has been a cause of major concern.
- (ii) Enhancing the capability of redressal agencies.
- (iii) Widening the scope of various provisions of the Consumer Protection Act to make it more effective
- (iv) Strengthening or clarifying the powers of the redressal forums.
- (v) Streamlining the procedure, removing lacunae and bringing clarity to certain provisions.

### **Definition:**

Legal heir or representative of a consumer, in case of death of the consumer is included within the meaning of "complainant", (Sub-clause (v) to clause (b) of Section 2(1) of the Act has been inserted by the Amendment), this means that, in case of death of consumer, his legal heir or representative can make a complaint. Even prior to 2002-amendment the beneficiary of services is included in the definition of 'consumer' under Section 2(1)(d), but as it suggested this was limited to only

services and to remove lacunae the definition of complainant was amended.

The definition of "complaint" is broadened to include allegations against service providers of adopting unfair or restrictive trade practices, or charging of excess price or offering goods or services, which are hazardous to life and safety, (Sub-clause (i)(iv) and (v) are added to clause (c) of Section 2(1) has been inserted by the Amendment). The amendment has widened the scope of the provision to cover changing of excess price not only for the goods but also for the services.

The definition of "consumer" now excludes any person who avails of services for commercial purposes, which has services for commercial purposes, which has separately been defined. Commercial undertakings, which are already excluded from approaching the redressal agencies in respect of deficient goods, will thus be excluded from seeking relief from such agencies in respect of deficient services as well, (Sub-clause (ii) of clause (d) of Section 2(1) the words, "but does not include a person who avails of such service for a commercial purpose" was inserted). The Consumer Protection Act, 1986 is intended primarily to serve the interests of individual consumers. Prior to the 2002 amendment consumer of service for commercial purpose was not barred from claiming protection under the Act. On the contrary 'consumer of goods' for commercial purpose was specifically excluded from the purview of the Act under Section 2(1)(d)(i), (*Maruti Udyog Ltd. v. M.S. Hameed* (1992) 1 CPR 278 (Ker); *A.S. Films v. Bhatia Sehgal Construction Corporation*, (1992) 1 CPR 288 (Del); *Universal Health Services (P) Ltd. v. Pertech Computers Ltd.*, (1992) 1 CPR 506 (Maha)).

The definition of "manufacturer" is amended to include any manufacturer who assembles goods from parts made by others or puts his mark on any goods made or

manufactured by any other manufacturer whether he claims such goods to be manufactured by himself or not, (Clause (j) has been substituted). Prior to the Amendment there was an Explanation to the definition of manufacturer which provide that where a manufacturer dispatches any goods from his branch office then the branch office will not become the manufacturer even if the goods are assembled there, now this has been done away with.

The Consumer Protection (Amendment) Act, 2002 has inserted a new clause providing that 'regulation' means the regulations made by the National Commission under this Act, (Clause (nn) has been inserted in Section 2(1)).

The definition of "restrictive trade practice" (A new provision under clause (nnn) of Section 2(1) has been inserted), is enlarged to mean manipulation of price or conditions of delivery or flow of supplies leading to unjustified cost and restriction on the consumers and includes delay beyond the agreed period which has led or is likely to lead to rise in the price. The "restrictive trade practice" which shall now also include 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. This definition given in the Consumer Protection Act is narrower as compared to the definition given under the MRTTP Act.

The definition of "unfair trade practice", (The Amendment Act, 2002 has inserted a new sub-clause (3A) in Section 2(1)(r)), is enlarged to include withholding of information about final results of any scheme offering gifts, prizes or other items free of charge and manufacture of spurious goods and sale of spurious goods or adoption of deceptive practices in the provision of services. "Spurious goods and services" are defined as goods and services, which are claimed to be genuine but are actually not so.

The definition of "service" is made clearer by clarifying that the services mentioned are only illustrative, (Section 2(o) the words, "but not limited to have been added").

### ***Consumer Protection Councils:***

Section 4 is amended so that the establishment of the Central Consumer Protection Council, which is in larger interests of consumers, becomes a necessary requirement. Prior to the amendment the Central Government may establish the Consumer Protection Council, but now the words "The Central Government may" has been substituted to "The Central Government shall", See Section 4(1) after the Amendment.

This amendment has been made to strengthen the composition of the State Consumer Protection Councils, clause (c) to Section 7(2) has been added by the Consumer Protection (Amendment) Act, 2002 providing that the State Council shall also have such number of other official or non-official members, not exceeding ten as may be nominated by the Central Government. Section 7 is amended so that the establishment of the State Consumer Protection Council, which is in the larger interests of consumers, becomes a necessary requirement. It also provides for inclusion of up to ten official and non-official members nominated by the Central Government in the State Council.

The Amendment Act, 2002 has incorporated a new provision under Sections 8A of the Act authorising the State Government to establish for every district, a District Consumer Protection Council. The State Government shall constitute such councils by notification in the Official Gazette. The District Consumer Protection Council for every district is constituted with objects similar to those of the Central and State Councils. The State Government have been given free hand to have such number of

official and non-official members of the District Council as may be prescribed by the concerned State Government. It is for the State to lay down rules as to term of the District Council, procedure for meetings of the District Council.

Under Sub-Section 3 of Section 8A it has been made mandatory for the District Councils to hold at least two meeting in a year. This is the minimum statutory requirement but the council is free to hold as many meetings as it deem necessary. Further sub-section (5) provides that the District Council shall meet at such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

The Amendment Act also inserted Section 8B, stating the object of the District Council which shall be promoting and protecting the rights of consumers at grass root level.

The amendments to Section 10 provide minimum age of thirty-five years, minimum qualification of graduation and minimum experience of ten years for members of the District Forum. It also provides disqualification for the office of the District forum under a proviso to clause (b) of the Section 10(1) of the Act. According to this provision a person shall be disqualified for appointment as a member if he—

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent Court; or
- (d) has been removed or dismissed from the service of the Government or a

body corporate owned or controlled by the Government; or

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

#### ***Re-appointment:***

Prior to the Amendment, a member of the District Forum was not eligible for re-appointment. However after the amendment a member shall be eligible for re-appointment for another term of five years or upto the age of sixty-five years, whichever is earlier, subject to the condition that he fulfils the qualifications and conditions for appointment mentioned above, (See Report of the Standing Committee on Food, Civil Supplies and Public Distribution (2001), Lok Sabha Secretariat, New Delhi, p.8).

#### ***Procedure before District Forum:***

The pecuniary jurisdiction for the District Forum under Section 11 has been enhanced from five lakh rupees to 20 lakh rupees so as to enable more consumers to avail the services of the District Forum.

Prior to 2002-amendment, it was not very clear from the provision as to whether the Central or the State Government can file a complaint only when the goods have been sold or services provided to the Government or its department or whether the general complaint as to quality or quantity, purity or standard *etc.*, of the goods or services supplied in the market can be made to protect the interest of the consumers. But now after the Amendment Act, 2002, the Central or State Government can file the complaint, either in its individual capacity or as a representative of interests of consumers in

general, (Section 12(1)(d) has been amended under the Consumer Protection (Amendment) Act, 2002).

Sub-section (2) of Section 12 is inserted providing that every complaint filed with District Forum shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

Sub-section (3) of Section 12 has also been inserted by the Amendment Act, 2002 which provides that on receipt of a complaint, the District Forum, may, by order allow the complaint to be proceeded with or rejected. The admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received. However, an opportunity of being heard has been given to the complainant.

The words "Procedure on receipt of complaint" is substituted by "procedure on admission of complaint" in Section 13. Sub-section (3A) has been inserted in Section 13 by the Amendment Act, 2002 to provide explicitly that the complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities.

The Amendment Act, 2002 has provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum.

Sub-section (3B) has been inserted in Section 13 of the Act by the Amendment Act, 2002 which provides that where during the pendency of any proceeding 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.

The Amendment Act, 2002 has inserted clauses (ha), (hb) and (hc) in Section 14(1) of the Act. These clauses further empower the District Forum to issue orders directing the opposite party, *inter alia*, to cease to manufacture of hazardous goods and desist from offering services which are hazardous in nature; to pay such sum not less than five per cent of the value of defective goods sold or services provided where loss or injury has been suffered by a large number of consumers who are not conveniently identifiable; and to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement. A proviso, to clause (d) of Section 14(1) has also been inserted by the 2002 amendment, which confers additional power to District Forum to grant punitive damages in such circumstances as it deems fit.

A proviso to Section 15 has been added by the 2002 Amendment which states as follows, "no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent of that amount or twenty five thousand rupees, whichever is less."

#### ***Amendments with regard to State Commission:***

With regard to the appointment of the members a proviso has been inserted to Section 16 with a view to avoid delay in recommending the names for the appointment of the members of the State Commission. Prior to the amendment the provision of the Act was for the appointment of only two members other than the President in the State Commission. But, by the Amendment Act, 2002 a provision has been made for the appointment of not less than two, and not more than such number of members, as may be prescribed, and one of



whom shall be a woman. The Amendment Act, 2002 has laid down the minimum age limit of thirty-five years and minimum educational qualification of bachelor's degree from a recognized University. The amendment Act further puts a limit of not more than 50% of the members shall be from amongst persons having a judicial background.

The pecuniary jurisdiction of the State Commission has been amended from "five lakhs but does not exceed rupees twenty lakhs" to "twenty lakhs but does not exceed one crore". Section 17 is also amended to clarify the territorial jurisdiction of the State Commission, (See sub-section (2) of Section 17).

Section 17A is inserted by the Amendment Act, 2002 provides that on the application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

Section 17B inserted by the Amendment Act, 2002 provides that the State Commission shall ordinarily function in the State capital but may perform its functions at such other place as the State Government may, in consultation with the State Commission, notify in the Official Gazette from time to time.

With regard to vacancies the amendment Act omitted Section 18(A) and has incorporated a new provision under Section 22D providing that in case of vacancy in the office of the President, the senior-most member shall perform the duties of the President. Section 22D of the Act provides that when the office of President of a District Forum, State Commission, or of 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, the State Commission or of the National Commission as the case may be.

### *Amendments with regard to National Commission:*

According to Section 19A inserted by the Amendment Act, 2002 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 dispose of the appeal within a period of ninety days from the date of its admission. The first proviso of Section 19A provides that no adjournment shall be ordinarily granted by the State Commission or the National Commission as the case may be, unless sufficient cause is shown and the reason for grant has been recorded. The second proviso to Section 19A of the Act provides that the State Commission or the National Commission as the case may be, shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations of the Act.

With regard to the appointment of members of the National Commission prior to the Amendment only four members other than the President in the National Commission can be appointed in the National Commission. But, by the Amendment Act, 2002, a provision has been made under Section 20 for the appointment of not less than four members, and not more than such number, as may be prescribed, and one of whom shall be a woman. Further the Amendment Act, 2002 has laid down the minimum age limit of thirty-five years and minimum qualification of Bachelor's degree from a recognised University. The amendment Act further puts a limit of not more than 50% of the members shall be from amongst persons having a judicial background. The provisions with regard to reappointment and vacancies in offices are similar to that of District Commission.

### ***Orders that can be given by Forums:***

A new Section 22A has been inserted in the Act by the Amendment Act, 2002. This section empowers the National Commission to set aside *ex parte* orders against the opposite party or complainant in the interest of justice.

A new Section 22B is inserted by the Amendment Act, 2002 empowering the National Commission to transfer any complaint pending before the District Forum of one State to a District Forum of another State. A new Section 22C is inserted that empowers the National Commission to perform its functions at such other place as the Central Government may, in consultation with the National Commission, notify in the Official Gazette from time to time.

Section 25 is substituted to provide for attachment by the District Forums, State Commission or National Forums, as the case may be, of the property of a person not complying with an interim order. It also provides that on application from any person entitled to receive any amount from another person under an order made by a District Forum, State Commission and National Commission which remains due, the District Forum, State Commission and National Commission, as the case may be, may issue a certificate to the Collector for recovery of the amount as arrears of land revenue. These new provisions are expected to overcome the delays and other difficulties faced in execution of orders of the redressal agencies through Civil Courts.

The amendments to Section 27 empower the Districts Forum, State Commission and National Commission, as the case may be, with the powers of a Judicial Magistrate of the first class for the summary trial of offences under the Act notwithstanding anything contained in the Code of Criminal Procedure.

This is considered necessary to clarify that the District Forums or State Commissions or National Commission can themselves try offences under the Act and impose

penalty of imprisonment. It also deletes the proviso to Section 27(1), which empowered the redressal agencies to impose a sentence of imprisonment or fine lesser than the minimum prescribed. Section 27A is a new provision inserted which provides for appeal against order passed under Section 27.

New Section 28A provides that all notices required by this Act can be served by using modern communication facilities including speed post, courier services and FAX messages. This will help to quicken proceedings.

### ***Miscellaneous Provisions:***

The amendments inserted in Section 29 enables the Government to make orders to remove any difficulty with respect to the amended provisions of the Act for a period of two years after their coming into force.

The amendment substitutes a new section for Section 30 to deal with the powers of the Central Government and the State Government to make rules. New Section 30A empowers the National Commission to make regulations with the previous approval of the Central Government where required for the purpose of giving effect to the provisions of the Act.

### ***Conclusion:***

Although the Consumer Protection Act is a revelation the disposal of cases have not been fast enough. Several bottlenecks and shortcomings have also come to light in the implementation of various provisions of the Act. With a view to achieve quick disposal of consumer complaints by the Consumer Disputes Redressal Agencies, securing the effective implementation of their orders, widening the scope of the provisions of the Act to make it more effective, removing various lacunae in the Act and streamlining the procedure, several amendments were required.

The amendments bridges the gaps that existed in the Consumer Protection Act, 1986 and it also added many new provisions such as power to transfer cases, granting *ex parte*

orders and providing for the grant of interim relief. The amendment also strengthened the power of the consumer forums and gave more teeth to them. Making the existence of Consumer Councils compulsory was an important part of the Amendment.

Overall the amendment tries to strengthen the rights of the consumers. However sub-

section (2) of Section 12 provides that a complaint has to accompany with fees. This provision is against, the basic objective of establishing Consumer Courts which was to provide justice to poor consumers free of cost. Through this insertion the establishment of Consumer Courts will also run more or less on the pattern of Civil Courts.

## RIGHTS AND PRIVILEGES OF A CITIZEN IN DEMOCRACY

By

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Supreme Court of India in *Peoples Union for Civil Liberties (PUCL) v. Union of India* rendered a well considered judgment (reported in AIR 2003 SC 2363) pertaining to voters' right to know antecedents of candidates contesting election to legislatures. The test laid down in *Association for Democratic reforms* (AIR 2002 SC 2112) that "for survival of the democracy, right of the voter to know the antecedents of a candidate would be part and parcel of his fundamental right" held that conclusions arrived at in the aforementioned case would be the basis for free and fair election which is a "basic structure of the constitution." In *Jyoti Bau's* case (AIR 1982 SC 983) it was held that "a democracy is anomalously enough neither fundamental right nor a common law right. It is pure and simple a statutory right". His Lordship Justice *P.Venkataram Reddy* agreeing with the conclusions of Justice *M.B. Shah* expressed his views of disagreement across a limited area pertaining to right to information of the voter within a sweep of Article 19(1)(a) of the Constitution. While dealing with the case reported in AIR 1982 SC 983 the Learned Judge has expressed that "The right to vote if not fundamental right, certainly a constitutional right". And further held "it is not very accurate to describe it as a statutory right pure and simple". His Lordship framed the issue "can it be said that all such

information which will no doubt enable the voter and public to have a comprehensive idea of the contesting candidate and that the failure to provide for it by law would infringe the fundamental right under Article 19(1)(a)?" answered "while there cannot be a lip service to the valuable right to information, it should be not stretched too far". His Lordship held that disclosure of information pertaining to educational qualification of a candidate is not an essential component of the right to information flowing from Article 19(1)(a).

For the membership of the Parliament under Article 84 and the qualification of the State Legislative under Article 173 envisages that a citizen of India possessing such other qualification as may be prescribed in that behalf by or under any law made by Parliament is fully qualified to fill a seat in Parliament. Article 173 for a membership of the State Legislature is couched in the same language. It is absolutely clear that the only qualification prescribed, to be a candidate to get one self elected is that he should be a citizen of India until unless the Parliament in its wisdom prescribed all or any other qualification. Parliament and Legislative Assembly are created under the constitution and protect the candidate and elected Representatives alike. So also the Supreme Court and High Courts are also the creation