

Consumer Protection Act:
A Note on Third Amendment
And Scope for
Further Amendments

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CONSUMER PROTECTION ACT- A NOTE ON THIRD AMENDMENT AND SCOPE FOR FURTHER AMENDMENTS

The Consumer Protection Act or for that matter, any other social welfare legislation when it emerges out of both houses of Parliament may suffer from inadequacies or ambiguities. During the course of implementation some difficulties may arise in giving effect to the provisions of the Act or inadequacies or ambiguities may come to surface. Then the need for additional provisions or modification / omission of existing provisions would come to light. Meanwhile, the judicial authorities while adjudicating the cases would take up such issues to decide on the basis of established principles of law. For instance, when the Consumer Protection Act was enacted there was no provision about the period of Limitation. When belated cases started coming up before the redressal agencies the need for a provision for prescribing limitation was felt. Till Sec 24-A was inserted in 1993, such issues were decided in accordance with the Limitation Act.

In the ever-changing circumstances and social order there is need to constantly review the legislations and propose amendments to save them from redundancy or from becoming obsolete. The first amendments were made to this Act by the Parliament by Act 34 of 1991, which came into force from 15.6.91. In eighth meeting of the Central Consumer Protection Council on 17.10.90, it was recommended to constitute a high power-working group. Government of India constituted high power working group on January 7, 1991 to consider suggestions to make the Consumer Protection Act and the MRTP Act more effective. This working group recommended many amendments and accordingly the second amendments were brought in by Act 50 of 1993 with effect from 18.6.93. But, the following five suggestions made by the working group were not included:

1. The scope of the word complaint should be enlarged to

- include warranties, conditions of contract, service agreements etc.,
2. Consumer Organisations should be permitted to file complaints without complainant being a party. This will enable the consumer organisations to file class action complaints.
 3. Similarly, health services in Government hospitals need to be brought within the purview of the Act.
 4. Opposite Parties may be permitted to engage the services of a lawyer if complainant engages a lawyer or gives consent to the O.P. to engage a lawyer or if the Forum desires their appearance due to legal complexities.
 5. Art.323B of the Constitution to be suitably amended to exclude the Writ Jurisdiction of the High Courts on the decision of the redressal agencies duly constituted under the Act.

In the post-operational period of the Act un-clarified assumptions and issues have come up for discussions before the redressal agencies constituted under the Act and also before the Supreme Court. While disposing the matters, these judicial authorities provided clarifications as per the established principles of law.

In spite of the earlier two amendments, there existed some gaps. Further in pursuit of better protection to the consumers the Central Consumer Protection Council, the Ministry of Consumer Affairs and the National Commission provided insight into the required amendments. Thus the amendments were proposed for the third time to the Parliament and by Act 62 of 2002 these amendments came into effect from 15.3.2003. These amendments have greater significance because they almost restructured some of the provisions of the Act. The number of amendments made in 2002 is more than the sections provided in the principal Act. These amendments can be broadly classified into two categories. The first category of amendments is intended to streamline the procedural aspects of the Act whereas the

second category of amendments is intended to widen the scope of the Act.

Section 2(1) gives definitions to several expressions used in the Act. A large majority of case law has grown around this section. This particular section received as many as 10 amendments inspite of almost equal number of amendments made earlier. Section 2(1)(b)(v) is inserted to bring in the legal heir or representative of the deceased consumer under the definition of complainant. Prior to insertion of this clause this matter has come up before various Fora and the parties contended the matter to their advantage, consequently delaying the proceedings. The questions were whether the legal representative of the deceased can invoke the remedy under the Act?

In *M/s Cosmopolitan Hospitals and Another V. Vasantha P.Nair*¹ the National Commission held that the widow of the deceased could also invoke the remedy, as his representative, to enforce cause of action. Similarly in *Dr Sr. Louie and Am. V. Kannolil Pathumma and Another*² the National Commission has held that the legal heirs who are entitled to the estate of the deceased can file a complaint under the Act.

The well-settled principle of law is that the rights, which a dead man leaves behind him, vest in his representative. The National Commission in *Cosmopolitan Hospital's* case observed as follows; "It is true that in the definition of the expression 'consumer' there are no express words indicating that his legal representative is also included within its scope.... But by operation of law, the legal representative gets clothed with the rights, status and personality of the deceased for the purpose of enforcing the cause of action which had devolved on him". The National Commission has also opined that the expression consumer to be given extended meaning to include legal representatives of deceased consumers. Otherwise the family of the deceased will

¹I(1992)CPJ 302(NC)

²I(1993)CPJ 30(NC)

be left without any remedy. In view of these discussions and to achieve the legislative purpose underlying the Act, the above clause is inserted.

- By amending Section 2(1)(c)(i) the service provider is also brought under the provisions of the Act, in case if he adopts an Unfair Trade Practice or a Restrictive Trade Practice. Hitherto only trader was mentioned under the Act. This amendment ensures that the service providers resorting to unfair trade practice or restrictive trade practice cannot escape from their liability under the law.
- Construction of Section 2(1) (c)(iv) is changed to widen the scope of this section. Prices exhibited in price list and the price agreed between the parties is binding and the trader or service provider should not charge in excess of the price as mentioned above.

Previously the redressal agencies held that price couldn't be a subject matter before the redressal agencies. In view of the rampant price manipulations Parliament in its wisdom brought this amendment to cover more issues under this section.

- Significant among these amendments are the amendments made to section 2(1) (d) (ii) in which consumer of services for commercial purpose has been excluded from the ambit of this Act. Hirer of any services or the beneficiary of such services is a consumer but does not include a person who avails services for any commercial purpose. Accordingly the explanation provided there under is also amended.

The reason for making this amendment is obvious because when a person who buys goods for resale or for any commercial purpose is not included in the definition, how can a person who hires services for any commercial purpose would become a consumer? The redressal agencies are established to protect the interest of the consumer but not the interests of the businessmen. Hitherto good number of cases have been filed by the commercial organisations complaining deficiency of service

against telephones department, electricity department, banks, insurance companies etc. This amendment may reduce the workload of the redressal agencies because such disputes filed by the commercial organisations alleging deficiency of service by the service provider will not be entertained hereafter.

- The expression manufacturer under sub-clause (j) of clause (1) of section 2 is amended for widening its scope.

Prior to this amendment a person assembling parts made by others or a person who puts or caused to be put his own mark on any goods were not included in the definition of manufacturer unless he claimed such goods are manufactured by him. Now there is no need to claim that he is the manufacturer of those goods to come under the definition of manufacturer. Similarly the explanation provided under this section excluding the branches of the manufacturers from the definition is omitted. Thus the expression manufacturer has now have wider amplitude. As the branches are included in the definition it gives scope for the Fora within whose jurisdiction the branch office is located, to adjudicate a complaint against such manufacturer.

- Section 2(1) (nn) inserted by the third amendments, gives definition for the expression 'Regulation'. It means the regulation is formulated by the National Commission. This inclusion is necessitated due to the insertion of Section 30-A in the Act.
- Section 2 (1) (nn) is substituted by sub-clause (nnn) to provide wider meaning to bring in more variety of mischiefs under the provisions of the Act, which reads as follows.
"Restrictive Trade Practice means any trade practice which tends to bring about manipulation of price or its conditions of delivery or to effect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions 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;”

As per the definition provided earlier the consumer can make a complaint in case the seller or the service provider makes a condition to buy goods or avail services as a condition precedent for buying goods, hiring services of his choice. The earlier definition was narrow and not able to cover the real tricks of the market but the present amendment now covers various mischiefs, like purposeful delay in supply in order to manipulate price, creates artificial scarcity of products or services, affects flow of supplies in the market to impose unjustified costs on the consumers etc.

- There is also an important amendment to section 2(1)(o), which has to be studied in detail, as the Supreme Court exhaustively discussed this section in different cases. In fact, lakhs of cases have been filed in various Fora, all over the country, particularly under this section. Though the expression service has been elaborately given, still in many disputes the scope of this section is discussed time and again. As per the definition, ” service of any description which is made available to potential users” comes under the ambit of the Act. But two kinds of services are exempted from the definition, which are “services rendered free of charge” and “services rendered under a contract of personal service”. In between the general definition and exclusionary part of the definition some services like banking, electricity supply, insurance transport etc are included. These inclusions gave rise to many interesting discussions to understand the legislative intention.

In Lucknow Development Authority V. M.K.Gupta³ the Supreme Court has construed three parts of the definition as under;

³II(1993)CPJ7(SC)

Main Part: 'Service' means service of any description, which is made available to potential users

Inclusionary Part: and includes the provision of facilities in connection with 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

Exclusionary Part: but does not include the rendering of any service free of charge or under a contract of personal service. In the inclusionary part some 12 services are mentioned in the definition.

Based on this, some argued that the intention of the legislature is to bring only those services mentioned in the definition under the ambit of the Act. The medical professionals contended that the operation of this Act should be restricted to commercial transactions as the law makers' intention is made clear in the inclusionary part of the definition in which the medical services are not included. To put an end to these conflicting views, four words are inserted to the inclusionary part of the definition by the third amendments to read as follows;

“and includes but not limited to, the provision of facilities in connection with banking....”

With this amendment the Parliament made it clear that all services come under the purview of this enactment, but not limited to the services mentioned in the inclusionary part of the definition alone. The same has been made clear even in the preliminary chapter in clause 4 of section 1, which reads as follows;

“Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.”

- Sub-Section (oo) is inserted to define spurious goods and services to mean such goods and services which are claimed to be genuine but they are actually not so.

The present day market is flooded with many spurious goods drugs and services. The unscrupulous traders are marketing these spurious goods and services unabated. There is no remedy to control this menace unless the original manufacturers take up the issue. Hitherto the Act was silent about the spurious goods and services. This insertion enables the consumers to prefer complaints on spurious goods and services, which are ruling the markets.

- Another important development that took place after the third amendments was that the consumer protection councils at National and State levels must be established without any choice. To this effect Sections 4 and 7 are amended. In the new construction of these sections the word 'may' is substituted with the word 'shall'. Thus it has become mandatory for the governments to establish these consumer protection councils. Further, prior to the 2002 Amendment, there was no provision for number of members of State Council. Now Sec. 7(2)(c) makes provision for maximum of 10 members (official or non-official) to be nominated by the Central Government.
- Section 8A is inserted to make it mandatory to the State Governments to establish District Consumer Protection Councils also in every district to promote and protect the rights of the consumers at the grass root level.
- The most needed amendments have been made to section 10, which deals with composition of the District Forum. Prior to these amendments no academic qualifications were fixed to the members without judicial background. Similarly there was no age restriction. As per the new provisions the members, to be appointed to the redressal agencies, must possess a bachelors degree from a recognised university and be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in solving problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. Another qualification

prescribed is that the member should not be less than 35 years of age.

Earlier the member was not eligible for reappointment. But the third amendments created a provision for reappointment for another term. This insertion of section 10(2) would provide an opportunity to utilise the services of an experienced member for one more term subject to the upper age limit of 65 years. When a trained member is available, who is willing to offer his services for one more term, there will be no justification to appoint a fresh candidate having no experience in the adjudication of matters as a quasi judicial authority.

- The pecuniary jurisdictions of District Forum, State Commission and the National Commission are enhanced by amending sections 11, 17 and 21. Consequently the District Forum now will have jurisdiction to entertain complaints whose value does not exceed rupees 20 lakh. Complaint above 20 lakh and not exceeding rupees 1 crore will come under the jurisdiction of the State Commission. All the complaints above rupees 1 crore come under the jurisdiction of the National Commission. By enhancing the monetary jurisdiction of District Forum and State Commission the consumers need not go to distant places to file their complaints. Thus the justice delivery system is brought close to the consumers.
- The amendments that are carried out with reference to section 12 would provide not only quick admission of complaints but also discourage false and frivolous complaints.
- The Central or the State Government, as the case may be, either in its individual capacity or as representative of interest of consumers in general, as per section 12 (1) (d) can file complaints before the Fora.
- Under amended Sec. 12 (3) a complaint shall not be rejected unless an opportunity of being heard has been given to the complainant. The admissibility of the complaint shall ordinarily be decided within 21 days from the date on which the

complaint was received. This provision would help quick disposal of complaint

- Section 12(4) imposes a ban on transfer of complaint to any other court or tribunal once it is admitted.
- Earlier, Section 13 was titled as ‘the procedure on receipt of complaint’. Now the title is changed to, read as “the procedure on admission of complaint”, as the Forum cannot proceed further without admitting the complaint. By substituting the word ‘admission’ in the place of ‘receipt’ the procedure starts from admission rather than from the date of receipt of complaint. Section 13 has undergone many changes. Which are as follows:

1. A copy of the admitted complaint must be referred to the opposite party within 21 days from the date of admission.
2. If the complainant fails to appear on the date of hearing the Forum may dismiss the complaint for default or decide it on merit.

In case of a complaint being dismissed for default there is no provision in the Act to restore the complaint.

But in *New India Insurance Company V Srinivasan*⁴ the apex court held that a second complaint can be filed.

3. The new sub Sec. 3A to Sec. 13 lays down that 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. If analysis or testing is required it will be decided within 5 months.
4. No adjournment shall be granted without sufficient cause and the reasons for grant of adjournment should be recorded.
5. Costs occasioned by the adjournment shall be collected

⁴(2000)CPJ 19(SC)

6. In case the complaint is not decided within the time frame, the reasons for delay should be recorded in writing.
7. The Redressal Agencies can pass an interim order under new sub Sec. 3B to Sec. 13.
8. In the event of death of a complainant who is a consumer or of opposite party the provision of order XXII of the first schedule to the Code of Civil Procedure, 1908 shall apply.

Due to these amendments this section now provides clarity on several issues and more so on the time frame to decide the complaints. This would facilitate a better understanding on the provisions of this section and quick delivery of justice.

- Amendments to section 14 are note worthy because this is the only section enumerates the relief that can be granted to the aggrieved consumers. A proviso is inserted to sub-clause (d) of clause (1) of this section to empower the redressal agencies to grant punitive damages.

Sub-clause (a) of Clause (1) of Section 4 was construed in such a way that it enables the District Forum to issue an order to the opposite party to remove the defect from the goods pointed out by the appropriate laboratory. At present very negligible number of cases referred to appropriate laboratories, as the complainants are not coming forward to do so. As such the District Fora are deciding the defect, if the defect is apparent or proved beyond doubt. If the defect is not pointed out by the appropriate laboratory this sub-clause does not empower the Fora to order opposite party to remove the defect. In order to remove this lacuna an amendment is made to sub-clause (e) to empower the District Fora to order the opposite party to remove the defect even if not referred to the appropriate laboratory.

Significant amendments are made to section 14 by insertion of sub-clauses (ha), (hb) and (hc) as given hereunder;

- (ha) : to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature.

Inclusion of this section acts as a deterrent to the manufacturers and service providers of hazardous goods. This is a preventive measure to protect the consumers from the hazardous goods and services.

- (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;

Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or service provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilised in such manner as may be prescribed;

This sub-clause might bring in a considerable change in the administration of organisations involved in public utility services

In an earlier case decided against railways, majority of the unidentifiable consumers could not reap the benefit of the order. In this case the railways mistakenly categorised Dadar Express as super fast train whereas in reality it was only an express train. The difference in fare of an express train from that of super fast train was ordered to be refunded to complainants. In this case majority of the passengers could not get the benefit of this order, as they were not specified in the complaint.

In *Society for Civic Rights V. Union of India and Others*⁵ the National Commission held that the complaint has been filed on behalf of an unspecified number of users of telephone services. But the scheme of the Act requires a specific identifiable consumer or consumers, to file complaint(s) as complainant consumers alone can receive the relief, which may be granted under the Act.

These decisions would amply suggest that the provisions

⁵I(1991)CPIJ 199(NC)

of the Principal Act are not adequate to grant relief to unidentifiable consumers, though the facts prove that large number of consumers suffered due to defect in goods or deficiency in service. Thus the insertion of (hb) would help many innocent consumers and empower the registered consumer associations to file complaints on behalf of consumers who cannot be identified conveniently.

- (hc): to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement.

In the present era of globalisation of economy, competition is increasing amongst multi-national companies as well as others. Advertisement is a powerful tool to withstand the fierce competition to win the patronage of the consumers. The advertisement costs are mounting up to billions of dollars, which are in turn being paid by the consumers and consumers alone. Majority of these advertisements involve in tall claims as well as false claims. Bait advertisement, misleading advertisement though considered as unethical, the present business environment is promoting such advertisements to the disadvantage of the consumers, pitifully at their cost. Insertion of sub-clause (hb) is a step towards checking such advertisements and taking corrective actions. This is very apt in the present scenario of global market.

- With the increase in the work load of redressal agencies there is necessity to provide more number of members to dispose heavy pendency by establishing additional benches for State Commissions and National Commission. Realising this need sections 16 and 20 are amended to facilitate appointment of more number of members to the State Commission and National Commission. At present there are only two members besides president for State Commission. Now a provision is created to increase this number. Further sub-section (1B) is inserted empowering the president of the State Commission

to constitute an additional bench to decide the matters simultaneously.

- Similarly sub-section (1A) of section 20 empowers the National Commission President to constitute a bench, which also requires more number of members.

If the benches are constituted at state level and national level the rate of disposal would improve.

- Similarly amendments are made to Sections 17 and 22 empowering the State Commission and National Commission to transfer the complaints in the interest of justice. In case of State Commission the complaint can be transferred from one District Forum to the other within the State. The State Commission cannot transfer the case to a District Forum outside the state. But the National Commission has the power to transfer the case from one District Forum of one state to another District Forum of another State or from one State Commission to another State Commission. These transfers can be made either on application of the complainant or on its own motion.
- In the principal Act, time frame was provided for disposal of original complaint, but no such time frame was contemplated to the appeals before the State Commission or the National Commission. A step towards speedy disposal of appeals, section 19-A has been inserted to make it obligatory on the part of State Commission or National Commission to dispose of the appeals within a period of 90 days from the date of its admission. For such quick disposal no adjournment shall be granted ordinarily, unless sufficient cause is shown. The Commission while granting adjournment shall record in writing the reasons for granting adjournment. Costs occasioned by such adjournment shall be imposed on the party seeking such adjournment.
- Another important change made to Section 19 is that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by

the National Commission unless the appellant deposits 50 per cent of the amount or Rs. 35,000 whichever is less. In case of appeal to the State Commission the deposit shall be 50 per cent or Rs. 25,000 whichever is less. To prefer such an appeal to the Supreme Court the appellant must deposit 50 per cent or Rs. 50,000 whichever is less. These amendments would act as a deterrent to those who prefer an appeal just for the heck of protracting trial, as no fee is required to be paid. The decree holder or the person in whose favour the order is passed need not deposit the amount.

- The insertion of section 22A, 22B and 22C would empower the National Commission on the following procedural matters;
- Section 22(2) gives power to the National Commission to re-view any order made by it, when there is an error apparent on the face of record.
- Section 22A provides an opportunity both to the complainant as well as opposite party to apply to the Commission to set aside ex-parte order passed against them.
- Section 22B empowers the National Commission to transfer any case from one forum to the other or from one State Commission to the other in the interest of justice.
- Section 22C empowers National Commission to perform its functions at any other places than its usual place of sitting.
- Section 22D provides procedure to be followed in case of vacancy in the office of the president. Now the senior most member of the District Forum, State Commission or the National Commission can perform the duties of the president. In case of National Commission if High Court retired judges are serving, as members of the Commission, the senior-most person among such retired High Court Judges would perform the duties of the president. This provision would facilitate the redressal agencies to function uninterruptedly, even though the office of the president is vacant. Thus the proceedings before these redressal agencies do not come to a grinding halt.
- Amendments to section 25 are very significant in view of the

powers conferred on the redressal agencies to pass interim order. The language, the construction and the contents of this section is thoroughly changed from that of the old section. As per the amendments if an interim order made under this Act is not complied with, the redressal agencies may order the property of such person attached. If the non-compliance continues beyond three months, the property attached may be sold and damages will be awarded to the complainant out of the sale proceeds and the balance, if any, shall be paid to the party entitled thereto.

- Earlier if the order of redressal agency is not complied with, it had the power to enforce the order as if it were a decree or order made by a court in a suit pending therein. But there used to be abnormal delay in enforcing the orders. In some cases the orders passed by the redressal agencies remained un-enforced due to several reasons. Probably to correct this situation the responsibility of recovering the amounts due to the party, as arrears of land revenue, to the collector of the district (by whatever name called). The person entitled to the amount from an order of the redressal agency may make an application to the redressal agency for issuance of a certificate for the said amount to the collector of the district. There is no provision to make an appeal under section 25.
- Section 27 has been made inflexible in the sense that the redressal agencies do not have power now to impose lesser penalty than specified in the section. Prior to these amendments there was a proviso to give lesser penalty, which is omitted. As this section prescribes imprisonment to the person for his disobedience of the order, powers of a judicial magistrate is required to make such an order. In view of this the third amendments empower the redressal agencies with the powers of a judicial magistrate of the first class for the trial of offences under this Act. These redressal agencies shall be deemed to be a judicial magistrate of first class for the purpose of the Code of Criminal Procedure, 1973.

- Sub-section (3) of Section 27 suggests that all offences under this Act may be tried summarily by the redressal agencies.

In Mahbir Singh Deswal V. M/s Aroma Handloom store⁶ the National Commission held that no appeal lies against an order under section 27 unless the redressal agency exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction so vested or has acted in the exercise of its jurisdiction with material irregularity. The parliament in its wisdom thought that the order under Section 27 should be made appealable. Thus a new Section 27-A is inserted to create a provision for appeal against the order passed under Section 27 and at the same time it ousted the jurisdiction of other courts to entertain appeal on the order under this section. This section is constructed as under;

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an appeal under section 27, both on facts and on law, shall lie from
 - (a) an order made by the District Forum to the State Commission
 - (b) an order made by the State Commission to the National Commission
 - (c) an order made by the National Commission to the Supreme Court

Every appeal shall be preferred within 30 days from the date of order, unless sufficient cause is shown for not performing the appeal within the period of 30 days.

- (2) Except as aforesaid, no appeal shall lie to any court from any order of the District Forum, State Commission or the National Commission.
- An amendment, which enables quick service of notices, is made by insertion of Section 28A. As per this new section all notices required by this Act to be served, shall be served by registered post, by speed post, by courier or by any other means of transmission of documents including FAX message.

⁶III(1995)CPJ71(NC)

Clause (3) may act as a deterrent for those who refuse to take notice of the redressal agencies because the new provision enables the redressal agencies to declare that the notice had been duly served, if the postal employee or the authorised courier agent makes an endorsement to the effect that the opposite party or his agent or complainant had refused to take delivery of the article containing the notice or refuse to accept the notice sent by any other means specified in Sub-Section (2).

Another important inclusion relating to the notices is in sub-clause (4), which reads as follows:

“All notices required to be served on an opposite party or to complainant shall be deemed to be sufficiently served, if addressed in the case of the opposite party to the place where business or profession is carried and in case of complainant, the place where such person actually and voluntarily resides”.

This sub-clause may eliminate the procedure of sending notices by substitute service thus saving time for quick disposal of the complaint.

Another noteworthy provision that is created by these third amendments is the insertion of section 30A empowering the National Commission to make regulations, with the previous approval of the Central Government, for the purpose of giving effect to the provisions of this Act. The Central Government also by order can remove the difficulty that arises in giving effect to the provisions of this Act. The Central Government can also remove the difficulty, by an order, that arises in giving effect to the provisions of the Consumer Protection (amendment) Act 2002 within two years. Such orders shall be laid before each house of parliament (Sec. 31). But in case of the power of National Commission, to make regulations, such time limit is not imposed. Whenever a difficulty arises in giving effect to the provisions of the Act, the National Commission can make regulations without waiting for an amendment to be brought. Bringing amendments to the Act is a time consuming process and as such insertion of 30 A enables removal of such difficulties by making regulations.

SCOPE FOR FURTHER AMENDMENTS

In the statement of objects and reasons mentioned in the preamble it is categorically stated that the Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers, and also it seeks, inter alia, to promote and protect the rights of consumers such as right to safety, right to information, right to choose, right to be heard, right to redressal and right to consumer education. These rights are sought to be promoted and protected by the Consumer Protection Councils established at National, State and District levels. But such responsibility is not assigned to the redressal agencies constituted under the Act. Merely because some six rights are mentioned in the statement of objects and reasons, whether such rights could be enforceable? In *Aswini Kumar Ghose and Another Vs. Arabinda Bose and Another*⁷, the Supreme Court explained the relevance of statement of objects and reasons. The apex court held as follows “As regards the propriety of the reference to the statement of objects and reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the bill in the house and what objects he sought to achieve. Similarly in *A.C. Sharma V Delhi Administration*⁸ the Supreme Court observed as under:

“Statement of objects and reasons for introducing a Bill in the legislature is not admissible as an aid to the construction of the statute as enacted: far less can it control the meaning of the actual words used in the Act? It can only be referred to for the limited purpose of ascertaining the circumstances which actuated the sponsor of the Bill to introduce it and the purpose of doing so”.

In the light of the aforesaid discussions what is the status of these rights?

⁷*AIR* 1952 SC 362

⁸*AIR* 1973(SC)913

Again the same set of rights is repeated under section 6 of the Act as the objects of Central, State and District Consumer Protection Councils. Except specifying the objects nothing further has been mentioned in the Act to reveal the powers of these Councils to achieve those objects. What these Councils can do in case of violation of the rights enshrined in the Act is not specified. There are no remedies provided for, in case of violation. Where there is no remedy, there is no right. At the most one can say that these rights are imaginary but not real.

Interestingly there is no mention in Chapter III about these rights. It is only the Section 14 under this Chapter that provides some remedies to consumer problems. Section 14 (1) deals with various remedies available to consumers but only limited reliefs are available as far as the rights mentioned in the statement of objects and reasons are concerned. Hence, more or less, these rights are like the Directive Principles of State Policy as provided in the Indian Constitution. The redressal agencies constituted under the Act can grant only such reliefs mentioned in section 14 of the Act. In *Rajasthan State Electricity Board V Natwarla*⁹ decided by Rajasthan State Consumer Disputes Redressal Commission and in *Rajasthan State Industrial Corporation V premier paints*¹⁰ decided by National Commission it was held that the redressal agencies may grant only such reliefs as are enumerated in Section 14 (1) of the Act and not beyond. This section 14 (1) has provisions to provide limited reliefs to the consumer in respect of the following rights; (1) right to be protected against marketing of goods which are hazardous to life and property and (2) right to protect the consumer against unfair trade practices as described under 2(1)(c).

In order to make the rights mentioned in section 6 enforceable, necessary amendments may be made to section 2(1)(c) and section 14 (1). Any allegation in writing made by a complainant that anyone has infringed the rights enlisted in

⁹ (1992)ICPR 168

¹⁰ (1991)IICPJ 592

section 6 should be construed as a complaint and accordingly suitable relief may be incorporated in Section 14 (1) to empower the redressal agencies to provide relief in case of violation of these rights. Surprisingly the Consumer Protection Councils established under the Act did not discuss issues relating to violation of the rights. The State Governments or Central Government are yet to file a complaint before these redressal agencies, invoking the rights, as if no such infringements are taking place in Indian markets. Further, two more rights may be included in the Act to provide better protection to the consumers, namely,

Right to basic needs and 2. Right to live in healthy environment.

Section 2 requires insertion of the expression 'Certificate' mentioned in Section 25 of the Act.

Section 2(1)(d) may be amended to include prospective buyer. A person who refrains from buying goods due to the reason that in his opinion goods offered for sale are hazardous or required information is not forthcoming or no access is provided to variety of goods at competitive prices, may be considered as a prospective buyer who must also have a right to file a complaint against such trader who violates these rights.

Similarly Consumer Protection Councils established under the Act, may be included in the definition of complainant under section 2 (1) (b), since the very purpose of establishing these councils is to safeguard the rights of the consumers.

Consumer Fora may be empowered to take up issues suo moto, which might act as a deterrent to unscrupulous traders. It may also prevent malpractices at market places, which the consumers are finding difficult to prevent.

An amendment to Sec. 2(r)(1) may be made, which deals with the definition of unfair trade practice, to make the dealers/local agents responsible to pursue the matter with

the principal / manufacturer for quick refund of deposit. Since, in Indian market huge booking deposit for supply of goods is a prevalent practice and such deposits are not promptly refunded even after cancellation of booking. The following proviso may be inserted under section 2(r) (1).

“Induces the consumer to deposit some amount with his principal/manufacturer and later denies his responsibility in refund of such deposits on maturity or on cancellation of booking” - such practice may be treated as unfair trade practice.

Similarly unilateral agreements may be covered under unfair trade practice.

In India good number of laws is enacted to safeguard the interests of the consumers, particularly all the public utility services are covered under their own Acts. With a view to arrest unnecessary litigation the Jurisdiction of Civil Courts are specifically ousted in some of the enactments. Even if such a clause, for ousting the jurisdiction of other Courts, is not incorporated in the legislation, it is customary to the opposite parties to contend that the Consumer Courts do not have jurisdiction over such matters, as their services are governed by a separate Act. Nowadays the departments are trying to get their respective Acts amended in order to oust the Jurisdiction of other Courts. Consumer Protection Act was enacted for better protection of the consumers, because many other laws enacted for consumer protection failed miserably to achieve the objects. As they have become ineffective this Act was enacted in the form of additional remedy to the consumers. Section 3 of the Act clearly says that this Act shall be in addition to and not in derogation of provisions of any other law for the time being in force. If the intention of the Parliament is to make this Act truly an additional remedy to the consumers, necessary amendment may be introduced in Section 3 as follows;

“Notwithstanding anything contained in the provisions of any other law for the time being in force, the provisions of this Act shall be an additional remedy and shall be applied harmoniously with the provisions of other laws for the time being in force. The redressal agencies shall have jurisdiction on all disputes related to goods and services which are not expressly excluded by the Central Government from the provisions of this Act”.

The Consumer Protection Councils established under the Act should meet more number of times to discuss various problems of consumers and to take preventive steps to protect the interest of the consumers. Thus Sections 5, 7(3) and 8A(3) may be amended to make provision for minimum two mandatory meetings for the Central Council and desirably they should meet once in three months for State Council and District council. The frequent meetings would enable these councils to discuss on current problems to initiate appropriate preventive measures. How well the recommendations of these councils are implemented by the respective Government would come for review every three months. This would facilitate the councils to pursue the matter with the government before the resolutions of the Council go into a cold storage.

In the recent amendments made under Section 10(1)(b) certain qualifications are prescribed for members. In addition to the mentioned qualification, it is desirable that the member should possess necessary skill and knowledge on how to resolve consumer disputes, consumer related problems, market practices and tricks and above all experience in consumer education or creating awareness to consumers. A person having knowledge on consumer related issues than market related subjects would perform well as member. He would exhibit his skill in resolving consumer disputes with his background.

There appears to be contradiction between Section 12(1)(a) and Section 2(1)(d). Section 12(1)(a) reads; “The consumer to whom such goods are sold or agreed to be sold or delivered or such service provided or agreed to be provided; whereas in Section 2(1)(d), it does not include in the definition of a consumer “either the person to whom goods are agreed to be sold or delivered or the person to whom services are agreed to be provided”. Hence, section 2(1)(d) may be amended to include such persons to whom goods are agreed to be sold or delivered or service agreed to be provided.

Section 12(2) may be suitably amended not to collect any fee for such complaints where the value of claim is less than Rs. 25,000.

Section 12 mentions list of persons who can file a complaint, the section may be amended to include Consumer Protection Councils established under the Act.

Section 12 (b) empowers the recognised Consumer Associations to file a complaint on behalf of the consumer. This section may be amended to read that these recognised Consumer Associations can file complaints in their individual capacity or as a representative of interests of consumers in general. If recognised Consumer Associations are given with such an opportunity they can take up more number of cases for the benefit of large number of consumers.

A long felt need of empowering the redressal agencies to pass an interim order is fulfilled by insertion of sub-section 3-B to section 13. Now the question that confronts is what type of interim order the forum can pass? The above sub-section makes it clear that such interim order as is just and proper in the facts and circumstances of the case. Does it mean that the interim order can be beyond the scope of section 14?

In the Manager, Milk Chilling Centre V s. Mahaboobnagar Citizen Council¹¹ the State Commission directed A.P. Dairy Development Co. operative Federation Ltd., to supply milk at least with three per cent fat at a reasonable price of not more than Rs. two per half litre and Rs. four per litre double toned milk and Rs. 2.20 per half litre and Rs. 5.50 per litre toned or standardised milk in sachets. The National Commission held that a redressal agency can grant only those reliefs which are enumerated in clauses (a) to (d) of Sub-section (1) of Section 14 of the Act and that the directions issued by the State Commission could not be brought within the scope of these clauses.

In view of such decisions the matter is not very clear as to what type of reliefs the District Forum can give. If the redressal agencies confine their powers only to the provisions of section 14, how an interim order will be just and proper in the facts and circumstances of the case can be passed by the redressal agencies?

In Annamalai Finance Ltd. V S.M.N. Consumer Protection Council¹² the National Commission observed that the Consumer Forums have no power under section 14 of the Act to give any directions.

Amidst such decisions, as referred above, whether the redressal agencies constituted under the Act have powers to direct the service providers like B.S.N.L. or Electricity Department not to disconnect the service or restore the service.

In National Dairy Development Board V Consumer Protection Council and Ors¹³ the National Commission held that any relief that cannot be granted even by a final order under section 14 (1) of the Act cannot also be granted by an interim order.

Usually the interim orders are sought for giving directions to the opposite party not to act in a manner, which is prejudicial to the interests of the petitioner. Under such circumstances the redressal agencies may give directions, in the interest of justice,

¹¹ II(1991)CPJ 592

¹² I(1992)CPJ 6(NC)

¹³ II(1992)CPJ 247(NC)

under the presumption that such powers are implicitly vested in them.

In view of these decisions, section 13 (3B) may be amended to empower the redressal agencies to pass such interim order giving direction, and if necessary, not limiting to the provisions contained in section 14 (1) of the Act.

A time frame is also provided for settlement of disputes under section 13. In many of the disputes it is difficult to follow the time limit. In reality notice of 30 days is mandatory under section 13 (1) (a) to the opposite party. Secondly a party to a proceeding under the Act is entitled to a reasonable opportunity to cross-examine the witness examined by the adversary. In order to observe the principles of natural justice as observed by National Commission in *Narmada Cement Co. Ltd. V Hotel Nandadeep and Ors*¹⁴ justice should not merely be done but also must appear to be done. Hence, instead of fixing 3 months for disposal, the time limit may be extended to 4 months to avoid criticism that reasonable opportunities are not being given to the parties.

The market places are full of unfair trade practices and majority of the consumers are exploited only because of such practices. There are more such practices than enlisted under the definition. Curbing unfair trade practices means removing many of the ills prevalent in the market places. Though these practices, to some extent can be controlled by Fair Business Practices Councils, Consumer Organisations, definitely power of the legislation would have greater impact. Under Consumer Protection Act, though, variety of such practices are highlighted but effective remedies are not provided. Under Section 14 (1) (f) the relief provided is to direct the opposite party to discontinue the unfair trade practice or not to repeat it. This relief may provide future benefit to many consumers but no relief to the complainant. In one case it is so decided that if a complaint is filed alleging unfair trade practice the Fora can give relief as per

¹⁴(1992)CPIJ 245 (NC)

section 14 (1) (f) but cannot give compensation. This decision suggests the need for amendment of 14(1) (f) to empower the Fora to order for compensation/punitive damages to the complainant and also to various other consumers who suffered loss or injury on account of these unfair trade practices.

A new clause (hb) inserted by Amending Act to Sub-section (1) of section 14 empowers the Fora to order payment of such sum to a large number of consumers who are not identifiable conveniently. This sub-clause may need explanation whether the consumers who are not parties before the Fora are entitled for such compensation as may be awarded under this sub clause and the procedure prescribed thereof.

In *Society of Civil Rights Vs. Union of India*¹⁵ the National Commission held that a complaint filed on behalf of unspecified number of consumers was not in conformity with the provisions of the Act. In view of such decisions clause (hb) needs explanation.

The minimum sum payable may be increase to 10 percent instead of 5 percent of the value of such defective goods sold or service provided. Further the proviso also need amendment in such a way to enable the Fora to credit such amounts in their account or to District, State or National Consumer Welfare Fund, as the case may be, to utilise it for the consumer welfare activities.

As per section 14 (2) the President must conduct every proceeding along with at least one member. Section 14 (2-A) makes it mandatory that every order must necessarily be signed by the President. But section 22-D, which is inserted by the third amendments, empowers the senior-most member of the District Forum to perform the duties of the President, if the President is unable to perform his duties or the office of the President falls vacant. In view of this latest amendment to section 22, there is a need to amend section 14 (2) and 14 (2-A) accordingly.

Though spurious goods and services are defined under section 2 (00) there is no relief provided to the persons who are

¹⁵ (1991) 1 CPR 104(NC)

supplied with spurious goods or spurious services. Section 14 (1) may be accordingly amended to provide relief for those who suffered due to spurious goods and spurious services.

Section 15, 19 and 23 are amended to insist the appellant to deposit certain amount for filing an appeal before the higher Court. In case of majority of appeals stay is not granted. In absence of stay orders the lower courts are going ahead with execution proceedings and penalty proceedings and also allowing the decree holder to withdraw the deposit paid by the other party to file an appeal. In case the order of the lower court is dismissed and the deposit amount is released to the decree holder by the lower court, it becomes a laborious process for the appellant to recover his deposit. In view of this, deposits made in connection with an appeal should be made to appellate court so that the lower court will not have access to release such deposits. Alternatively a restriction must be placed on lower Fora not to release such deposits till a specific order is given by the appellate Commission. In any case, such appeal shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission and as such there may not be inordinate delay in handing over such amount to the decree holder, in case the appeal is dismissed.

Sub-section (1B) as inserted to section 16 creates a provision to constitute a bench with one or more members of State Commission. Similar provision is also made under sub-section (1A) to Section 20 for National Commission. The intention of the lawmakers is very clear on the composition of the redressal agencies. The intention is to provide 3-member bench to settle the disputes. As per the recent amendments additional benches can be constituted even with one member, which is against the spirit of the legislation. Hence, necessary amendments may be made to constitute these benches with minimum two members and preferably three. In such a case there is need to amend section 16 (b) and section 20 (b) also in order to increase the members adequately to constitute the additional benches. These benches

should be preferably circuit benches to have their sittings at different places in order to bring the justice delivery system to the doorsteps of the consumers.

Neither Section 17 nor Section 19 has any provision to give a stay order on the Judgment or decree passed by the lower courts, similar to that of Order 41 Rule 5 of CPC. The Act may be amended to insert such a provision.

Under Section 22(2) the National Commission shall have the power to review an order made by it, when there is an error on the face of record. Similar power may be given to State Commission and District Forum.

Similarly, power to set aside ex parte order should also be given to the District Forum and State Commission as National Commission is empowered to set aside any ex parte order under Section 22A.

The new construction of Section 25, provides more power to District Forum, State Commission as well as National Commission to execute interim order in an effective and speedy manner. Such powers may be extended for execution of final order. As per section 25 (3) the final order can be executed by issuing a certificate for the said amount to the Collector of a district, who in turn recovers the amount in the same manner as arrears of land revenue. As the execution of orders is getting delayed, the parliament in its wisdom amended this section to make the execution fast. But this procedure is also time consuming and may fail to provide desired result. As such, instead of substituting section 25, it may be retained as it is and whatever new provisions are created in the third amendments for non-compliance of interim order may be inserted by a subsection or a separate section.

Section 5 also requires suitable amendment for execution of final order and to avoid other legal problems.

Further, this section is silent as regards maintainability of appeal. It was held by National Commission ¹⁶ that an appeal

¹⁶I(1995)CPJ58(NC)

against order of execution is not maintainable. In another case¹⁷ it was held that no appeal against orders made under sections 25 and 27. Subsequent to this order, by Amendment Act, section 27-A is inserted creating a provision for appeal against order made under section 27. But such amendment is not made to section 25. If the legislative intention is not to provide for an appeal against order under section 25, the same may be inserted, to remove the ambiguity.

In order to ensure speedy justice and to reduce delay in serving notices to the parties as well as receiving acknowledgments or receipts signed by the parties, the 2002 amendments brought radical changes by inserting section 28-A. New methods for serving notices are proposed. Service by E-mail may also be included. Undoubtedly it facilitates quick service. But accepting the endorsement of a postal employee stating that the addressee or his agent refused to take delivery of the notice is not safe to act upon. Manipulation of endorsements may not be that difficult. For the mischief played by a postal employee, the parties may become victims. Unless the parties have an opportunity to explain such frauds, it amounts to condemning the party unheard. Hence, this section may be suitably amended.

Section 30-A is inserted by Amendment to empower the National Commission to make regulations for the purpose of giving effect to the provisions of the Act. It is desirable if time frame is provided to the Government to communicate its approval for such regulations within a reasonable period. The legislative intention is to settle the matters within three months under this Act, the same spirit may be extended to the provisions of this section and the Central Government shall approve the proposed regulations within ninety days so as to enable the National Commission to make necessary provisions for effective implementation of the Act, which in turn ensures speedy justice.

Whenever amendments are made to Central Act, necessity

¹⁷ II (1999) CPJ 605

may arise to suitably amend State rules or bring in new set of rules to give effect to such amendments. For instance section 25 is amended to execute the order passed by District Forum, State Commission or National Commission by Collector of the District who shall proceed to recover the amount in the same manner as arrears of land revenue. In order to give effect to this provision the State Government must invariably insert a corresponding provision in the State rules. Till such time application of these provisions may become difficult. To overcome this difficulty section 31 (2) may be amended to make it mandatory to the State Government to make suitable rules to give effect to the amendments immediately, before next session of the state assembly. In case of urgency the new rules may be made effective by an Ordinance later replaced by an Act of Assembly.

SUGGESTIONS FOR AMENDING THE CONSUMER PROTECTION CENTRAL RULES 1987

- 1 A definition may be provided for the expression 'Certificate' under section 2, as mentioned under section 25 of the Act.
- 2 Under Rule 3 the maximum number of members to the Central Council may be increased to 200 to accommodate more number of representatives of the consumer organisations or consumers. Minimum one representative of consumer organisations from each state and in case of more number of organisations are functioning in any particular State one per cent of the organisations may be allowed to represent from that State. Similarly the number of representatives of women may be increased.
- 3 A new rule may be inserted empowering the Central Government to nominate members to the Central Council every year for three years term so that every year 1/3 of the members retire. This retirement by rotation would make the council work continuously without becoming defunct. The Central Council thus becomes a permanent body to promote and protect the interests of the consumers.

4. There is need to have atleast two mandatory meetings of the Central Council every year to transact more business and pursue the implementation of its recommendations by calling for an action taken report (ATR) in the next meeting which may be held after six months. If any of its recommendations are not implemented by the government, such recommendations may be reviewed in the next meeting either to withdraw such recommendations or to represent them to the Government.
5. The Central Government may constitute from amongst the members of the Council, various working committees on issues of paramount importance. These committees would discuss such issues in-depth and present its findings to the Central Council for making a resolution. For this purpose these committees may invite experts to their meetings to arrive at logical conclusions.
6. Under Sub-rule 6 of Rule 4 a provision may be created to provide free accommodation for the members of the Central Councilor payment at actuals in lieu of free accommodation.
7. Sub-rule 7 of Rule 4 may be substituted to give power to the recommendations of the Central Council as under.
“The Central Government, as far as possible, shall endeavour to implement the recommendations of the Central Council within a reasonable period, though the resolutions passed by the Central Council shall be recommendatory in nature”.
8. The members of National Commission may receive a consolidated honorarium of twenty thousand rupees per month, or if sitting on part time basis, a consolidated honorarium of Rs. 1,000 per day of sitting.
9. In case of a member with judicial background not available Sub-Rule 6 of Rule 12 may be suitably amended to empower the senior-most member, without judicial background to discharge the functions of the President.
10. Sub-Rule (7) of Rule 12 may be deleted, as it does not serve any purpose. In case of violation of this Sub-Rule no action has

been specified. It is also very difficult to establish violation of this sub-rule.

11. Remaining absent for three consecutive meetings is not such a grave offence to be compared to the other disqualifications mentioned from clause (a) to (e) of Sub-rule of Rule 13:- Hence, clause (f) may be deleted.
12. Rule 14 Sub-rule (4) may be amended to decide the complaint within four months (duly amending the Act) as three months period is not adequate in the present circumstances.

To make the Consumer Protection Act, effective and purposeful, above suggestions need to be taken seriously in the interest of consumer justice administration in the country. The very fact that the Department of Consumer Affairs is on the job to invite suggestions for the further modifications in the Consumer Protection Act is an evidence of the positive and constructive approach of the Central Government in this regard.

Annexure

MODEL FORM OF NOTICE, COMPLAINT, AFFIDAVIT AND REPLY
MODEL FORM-1 NOTICE BEFORE FILING THE COMPLAINT

Name and address

.....
(of the trader, dealer, firm, company, etc.)

.....
(Complete address)

IN RE: (Mention the goods/services complained of giving details)

.....
Dear Sir,

This is to bring to your kind notice that I had purchased.....from your for a consideration of Rs..... paid in cash vide your cash memo/Receipt/Invoice No.....(or through cheque No dated..... drawn onbank for a sum of Rs

The said goods are suffering from the following defects:

- (i)
- (ii)etc

I have reported the above matter to you several times (give reference of earlier letters, if any) but despite all my pleadings you have not made good the defect in the goods (or deficiency in services) which is indeed regrettable and highly unbusiness like. On account of your aforesaid dereliction of duty and failure and neglect to rectify the same I have suffered losses/incurred expenses

(give details)

which you are liable to compensate to me.

You are hereby finally called upon to

(i) remove the said defects in the goods
and/or

(ii) replace the goods with new goods
and/or

(iii) return the price/ charges paid

(iv) pay compensation for financial loss/injury/interest
suffered due to your negligence
(give details)

in the sum of Rs with interest @ %
per annum within days of the receipt of this
notice failing which I shall be constrained to initiate against
you for redressal of my aforesaid grievances and recovery of
the aforesaid amount such proceedings, both civil and criminal
as are warranted by law, besides filing a complaint under
the statutory provisions of The Consumer Protection Act,
1986 exclusively at your own risk, cost, responsibility and
consequences which please note.

Place.....

Dated.....

Sd/-

.....

Model Form –2 -The complaint

BEFORETHEHON'BLEDISTRICTCONSUMERDISPUTES

REDRESSALFORUMAT

OR

BEFORETHEHON'BLESTATECONSUMERDISPUTES

REDRESSALCOMMISSIONAT

OR

BEFORETHEHON'BLENATIONALCONSUMERDISPUTESREDRESSAL

COMMISSIONATNEWDELHI

INRE:COMPLAINTNOOF20.....INTHEMATTEROF:

(FULLNAME)(DESCRIPTION)(COMPLETEADDRESS)

.....Complainant

VERSUS

(FULLNAME)(DESCRIPTION)(COMPLETEADDRESS)

..... Opposite Party/ Parties

**COMPLAINTUNDERSECTION12/SECTION17/
SECTION21OFTHECONSUMERPROTECTIONACT,1986.****RESPECTFULLYSHOWETH****INTRODUCTION**

(In this opening paragraph the complainant should give his introduction as well as that of the opposite party/parties.

TRANSACTION

(In this paragraph complainant should describe the transaction complained of, *i.e.*, particulars and details of goods/ services availed; items of goods/kind and nature of service; date of purchase of goods/availing of service; amount paid as price/consideration, full or in part towards the goods/service; Photocopies of the bill/cash memo/voucher or receipt should be attached and properly marked as Annexure – A,B,C and so forth or 1,2,3 and so forth.)

DEFECT/DEFICIENCY

(In this paragraph complainant should explain the grievance, *i.e.*, whether the loss or damage has been caused by some unfair trade practice or restrictive trade practice adopted by any trader or there is some defect in the goods or there has been deficiency in service or the trader has charged excessive price for the goods. One should elucidate the nature of unfair trade practice adopted by the trader, *i.e.*, relating to the quality of goods/services; sponsorship; warranty or guarantee for such period promised. The nature and extent of defects in goods should be explained and so should the deficiency in service. In case of excessive price one should specify the details of actual price fixed by or under any law for the time being in force or as set out on goods and their packing vis-a-vis the price charged by the trader. Complaint can also be filed against offer for sale of goods hazardous to life and safety when used. You should narrate your grievance and rest assured it is being read /heard by compassionate and pragmatic judges. Photocopies of relevant documents must be attached.)

RECTIFICATION

(In this paragraph complainant should highlight what attempts were made by him to set things right, *i.e.*, personal visits or negotiations; communication in writing if any; whether any legal notice was got served and / or whether he has approached any other agency for redressal like, Civil or Criminal Court of competent jurisdiction; the stage of its proceedings, its outcome, if any, alongwith copies (certified preferably) of such proceedings. The nature of response got from the trader when irregularities were brought to his notice, should also be disclosed here).

OTHER PROVISIONS

(In this paragraph reference may be made to any other law or rules or regulations of particular procedure which is applicable to the

case and/or which has been violated by the trader and consumer's rights under the same. There are incidental statutory obligations, which traders must fulfil and in case of their failure to do so the case in *prima facie* made out and Forum would take cognizance).

EVIDENCE

(In this paragraph complainant should give details of documents and/or witnesses he will rely upon to substantiate his case. The documents attached as Annexures as stated above may be incorporated in a proper list and a list of witnesses (if any) may be filed similarly).The annexures should be attested as "True Copy".

JURISDICTION

(In this paragraph complainant should liquidate the claim in the complaint, *i.e.*, upto 20 lakh; 20 lakh to one crore; or above and set out the pecuniary jurisdiction of the Forum/ State Commission/National Commission, as the case may be. The territorial Jurisdiction should be highlighted to obviate any formal objection).

LIMITATION

That the present complaint is being filed within the period prescribed under section 24A of the Act.

RELIEF CLAIMED

(In this paragraph complainant should describe the nature of relief he wants to claim. *i.e.*, for removal of defects in goods or deficiency in service; replacement with new goods; return of the price or charges, etc., paid and/or compensation on account of financial loss or injury or detriment to his interest occasioned by negligence of the opposite party and elucidate how you have calculated the amount of compensation claimed).

PRAYERCLAUSE

It is, therefore, most respectfully prayed that this Hon’ble Forum/ Commission may kindly be pleased to(De-tails of reliefs which complainant wants the Court to grant)

Place:.....

Dated:.....

Complainant Through
(Advocate or Consumer Association,
etc.)

Verification.

I, the complainant above named, do hereby solemnly verify that the contents of my above complaint are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein. Verified this day of 20 at Complainant.

Note: Although it is not compulsory, complainant may file an affidavit in support of the complaint which adds to the truth and veracity of allegations and gives credibility to the cause. It need not be on a Stamp paper but one should get it attested from an Oath Commissioner appointed by a High Court. The format is just as simple.

Model Form –3- Affidavit in support of the complaint

BEFORE THE HON'BLE IN RE: COMPLAINT NO. OF
20..... IN THE MATTER OF:

.....
..... Complainant

.....
..... Opposite party

AFFIDAVIT

Affidavit of
Shri..... So. Shri.....
aged..... years, resident of
.....

- (1) That I am complainant in the above case, thoroughly conversant with the facts and circumstances of the present case and am competent to swear this affidavit.
- (2) That the facts contained in my accompanying complaint, the contents of which have not been repeated herein for the sake of brevity may be read as an integral part of this affidavit and are true and correct to my knowledge.

Deponent

Verification:

I, the above named deponent do hereby solemnly verify that the contents of my above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein.

Verified this..... day of..... 20.....
at.....

Deponent

Model Form –4- Reply by the trader to the complaint

BEFORE THE HON'BLE..... THE CONSUMER
DISPUTES REDRESSAL FORUM/COMMISSION AT.....

IN RE: COMPLAINT NO..... OF 20.....

IN THE MATTER OF:

..... Complainant
VERSUS
..... Opposite Party

DATE OF HEARING.....

**WRITTEN STATEMENT ON BEHALF OF RESPONDENTS
TO THE COMPLAINT OF THE COMPLAINANT**

RESPECTFULLY SHOWETH:

Preliminary Objections

- 1 That the present complaint is wholly misconceived, groundless and unsustainable in law and is liable to be dismissed as such. The transaction question was without any consideration and free of charge.
- 2 That this Hon'ble Forum/ Commission has no jurisdiction to entertain and adjudicate upon the dispute involved in the complaint in as much as it is not a consumer dispute and does not fall within the ambit of the provisions of the Consumer Protection Act, 1986, hereinafter called the said Act and is exclusively triable by a Civil Court and as such the complaint is liable to be dismissed summarily on this score alone.
- 3 That the dispute raised by the complainant in the present complaint is manifestly outside the purview of the said Act and in any event, the Act is in addition to and not in derogation of the provisions of the..... Act. The proceedings initiated by the complainant under the Act are honest, null and void and without jurisdiction.
- 4 That the definitions of 'Complainant', 'Complaint' 'Consumer Dispute' and 'Service', as defined in Section 2(1) of the said Act do not cover the claims arising under the present dispute and that from the aforesaid definitions, the complainant is not 'consumer' and the controversy involved in the complaint is not a 'consumer dispute'.
- 5 That the present complaint is baseless and flagrant abuse of process of law to harass and blackmail the answering respondent.
- 6 That the complainant has no *locus standi* to initiate the present proceedings.
- 7 That the complaint is bad for non-joinder of necessary and proper party and is liable to be dismissed on this score alone.

8. That the complainant has already filed a Civil Suit for in a court of competent jurisdiction which is pending disposal in the Court of and the present complaint has become infructuous.
9. That the present complaint is hopelessly barred by limitation.
10. That this Hon'ble Forum/Commission has no territorial or pecuniary jurisdiction in as much as the amount involved in the subject-matter exceeds/is less than the limit prescribed by Section 11(1) Section 17(1)(a)(i)/Section 21(a)(i) of the Act.
11. That the present complaint is frivolous and vexatious and liable to be dismissed under Section 26 of the Act.
12. That the present complaint has not been verified in accordance with law.

On Merits:

In these paragraphs respondent must reply each and every allegation made and contention raised by the complainant, factual and legal as well. In case one has already made good the defect or deficiency, elucidate steps taken. One may have, *inter alia*, following goods defences as well.

1. That the transaction entered between the parties to the above dispute is a commercial one and the complainant cannot claim any relief from this authority in as much as
(give details)
2. That the complainant had purchased the goods as a seller/retailer/distributor, etc., for consideration of resale and as such is barred from moving this Hon'ble Forum/Commission for the alleged defect/deficiency etc. in as much as
(give details)
3. That the complainant has already availed the warranty period during which the answering respondent has repaired/replaced the goods in question. The complainant is thus legally stopped from enforcing this complaint or to take benefit of his own wrong.
4. That the present complaint is an exaggeration beyond proportion despite the fact that the complainant is himself respon-

sible for delay and laches in as much as he has on several occasions changed his option for class of goods/type of allotment scheme of flats/model of vehicle, etc
(give details)

- 5 That the answering respondent is well within his rights to charge extra price for the subject-matter of the above dispute in as much as time was not the essence of delivery thereof. The complainant is liable to pay the increased price w.e.f on account of escalation due to excise duty/budgetary provisions etc. in as much as.....(give details)
- 6 That the complainant has accepted the goods and/or service towards repair/replacement etc. without protest and the present complaint is merely an after thought.
- 7 That without prejudice the answering respondent as a gesture of goodwill is prepared to.....
(give details of rectification, if any, which can be done in case of minor or tolerable problems to avoid harassment to consumer and litigation problems)

The allegations of defect/default/negligence and/or deficiency in service are wholly misconceived, groundless, false, untenable in law besides being extraneous and irrelevant having regard to the facts and circumstances of the matter under reference.

Prayer clause with all the submissions made therein is absolutely wrong and is emphatically denied. Complainant is not entitled to any relief whatsoever and is not entitled Model Form costs.

Sd/-
(Opposite Party)

Place:

Dated:

through

(Advocate)

Verification

I, the above named respondent do hereby verify that the contents of paras to of the written statement on merits are true and correct to my knowledge. While paras to of preliminary objections and to of reply on merits are true to my information, belief and legal advice received by me and believed to be true while the last para is prayer to this Hon'ble Court. Verified at this day of 20.....

Sd/-

(Opposite party)