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**STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS
AND PUBLIC DISTRIBUTION (2012-13)**

FIFTEENTH LOK SABHA

**MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION
(DEPARTMENT OF CONSUMER AFFAIRS)**

**THE CONSUMER PROTECTION
(AMENDMENT) BILL, 2011**

TWENTY SIXTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2012/ Agrahayana, 1934 (Saka)

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(AMENDMENT) BILL, 2011**

Presented to Lok Sabha on

Laid in Rajya Sabha on



LOK SABHA SECRETARIAT

NEW DELHI

December, 2012/ Agrahayana, 1934 (Saka)

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**COMPOSITION OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS
AND PUBLIC DISTRIBUTION (2012-13)**

Shri Vilas Muttemwar - Chairman

MEMBERS

Lok Sabha

2. Smt. Harsimrat Kaur Badal
3. Shri Shivraj Bhaiya
4. Shri Kantilal Bhuria
5. Shri Arvind Kumar Chaudhary
6. Shri Harishchandra Chavan
7. Shri Sanjay Dhotre
8. Shri Eknath M. Gaikwad
9. Shri Abdul Mannan Hossain
10. Shri Prataprao Ganpatrao Jadhav
11. Shri Sohan Potai
12. Shri Ponnamm Prabhakar
13. Shri A. Sai Prathap
14. Shri C. Rajendran
15. Shri Purnmasi Ram
16. Shri Chandulal Sahu (Chandu Bhaiya)
17. Shri Adhi Sankar
18. Shri N. Chaluvarya Swamy
19. Shri Jagdish Thakor
20. Shri Laxman Tudu
21. Vacant*

Rajya Sabha

22. Dr. Bhushan Lal Jangde
23. Shri Lalhming Liana
24. Dr. Bharatkumar Raut
25. Ms. Rekha
26. Dr. N. Janardhana Reddy
27. Dr. T.N. Seema
28. Shri Birender Singh
29. Shri Veer Singh
30. Shri Kaptan Singh Solanki
31. Vacant

* Shri Lal Chand Kataria, MP appointed Minister w.e.f 28.10.2012

SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Smt. Veena Sharma - Director
3. Ms. Amita Walia - Deputy Secretary
4. Smt. Shikha - Executive Assistant

INTRODUCTION

I, the Chairman of the Standing Committee on Food, Consumer Affairs and Public Distribution (2012-13) having been authorized by the Committee to present the Report on their behalf, present this Twenty Sixth Report on "The Consumer Protection (Amendment) Bill, 2011" pertaining to the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs).

2. The Consumer Protection (Amendment) Bill, 2011 was introduced in Lok Sabha on 16th December, 2011. Hon'ble Speaker referred the Bill to the Standing Committee on Food, Consumer Affairs and Public Distribution under Rule 331E(i)(b) of the Rules of Procedure and Conduct of Business in Lok Sabha on 26th December, 2011 for examination and report. The preliminary meeting of the Committee was held on 9th January, 2012 to decided the course of action in connection with the examination of the Bill. Accordingly, as decided at the aforesaid sitting, the Committee invited the views/suggestions of the Individuals/Institutions/ Stakeholders etc. on the various provisions of the Bill through the Print and Electronic Media including the LSTV. In response to the Press Advertisement issued, the Committee received number of Letters/Memoranda containing views/suggestions from various Institutions/Individuals/Stakeholders etc. which were considered by the Committee while examining the Bill. The Committee also elicited opinion of various Experts and Associations/Agencies who have direct bearing on the Bill and heard the views of some of them namely, VOICE, Sarthak-Advocates & Solicitors, Akhil Bhartiya Grahak Panchayat, Shri C.K. Chaturvedi, Former District Judge, Delhi President Consumer Forum, Citizens Rights Association (Regd.) and Sqn Ldr. S.D. Mitroo (Retd.), Disaster Management Consultants who tendered their views/suggestions on the various proposed amendments to the Bill before the Committee at their sitting held on 3rd August, 2012.

3. The Committee also invited comments/suggestions from all the State Governments/UT Administrations and consequently, received responses from 14 State Governments/UT Administrations who were broadly in agreement to the various provision of the Bill. Of these 7 State Governments/UT Administrations namely: Andaman and Nicobar Islands, Gujarat, Himachal Pradesh, Jharkhand, Mizoram, Punjab and Rajasthan have also sent their considered views/suggestions on various provisions of the Bill.

4. The Committee were briefed by the representatives of the nodal Ministry viz. Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) on the various aspects of the Bill at their sitting held on 19th June, 2012. Thereafter, the Committee took oral

evidence of the representatives of the Department of Consumer Affairs at their sitting held on 22nd August, 2012. The Committee considered and adopted the draft Report on the Bill at their sitting held on 13th December, 2012.

5. During the examination of the Bill, the Committee were immensely benefited by the suggestions made by the Members of the Committee for which I express my sincere thanks to them. The Committee also wish to express their thanks to all the State Governments/UT Administrations and Individuals/Institutions/Stakeholders/ Organisation etc. who placed before the Committee their valuable suggestions for consideration which were of great help while arriving at the conclusion during examination of the Bill.

6. The Committee also wish to express their thanks to the representatives of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) as well as the Consumer Protection Unit of the same Department for furnishing the detailed information/material as and when desired, in connection with the examination of the Bill.

7. The Committee would also like to place on record their deep sense of appreciation of the invaluable assistance rendered by the officials/staff of Lok Sabha Secretariat attached to the Committee.

8. For facility of reference and convenience, the observations/ recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi
13th December, 2012
20 Agrahayana, 1934 (Saka)

VILAS MUTTEMWAR,
Chairman,
Standing Committee on Food,
Consumer Affairs and Public Distribution

CHAPTER-I

A. INTRODUCTORY

The Consumer Protection Act, 1986 (CPA) was enacted to protect the interests of the consumers. This was a landmark legislation in the field of consumer protection which provided for establishment of three-tier quasi-judicial consumer disputes redressal machinery at the District, State and National levels to render simple, inexpensive and speedy justice to consumers. These redressal agencies have the jurisdiction to adjudicate the complaints received from consumers against any defect in the goods purchased or deficiencies in the services availed or any unfair/restrictive trade practices, etc. adopted by any trader or person. At present, 631 District Consumer Disputes Redressal Fora (District Fora) and 35 State Consumer Disputes Redressal Commissions (State Commissions) have been established in the country besides the National Consumer Disputes Redressal Commission (National Commission) established at the national level in New Delhi.

B. NEED FOR AMENDMENT OF THE ACT

1.2 The Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) have informed that the Act was earlier amended thrice, in 1991, 1993 and 2002 depending on the experience gained in the implementation of the various provisions of the Act. As a pro-active measure, the Central Consumer Protection Council in its 23rd meeting held in July 2003 recommended that a Working Group may be set up for considering further amendments to the Act to make it more purposeful to protect the interests of consumers. Accordingly, a Working Group was set up in January, 2004 in order to examine the provisions of Act and to consider relevant amendments to make the Act more meaningful, vibrant, dynamic and functional.

1.3 The Working Group's recommendations were considered in the Department of Consumer Affairs and based on these recommendations a number of amendments to the said Act were proposed. These proposed amendments were circulated to all the State Governments, concerned Central Ministries/ Departments and the National Consumers Disputes Redressal Commission (NCDRC) in July, 2006. In response, a large number of comments were received which were carefully considered and in the light of these comments, it was felt that the proposed amendments need to be recast. Accordingly, these proposals were revised and re-circulated to all concerned in January, 2009 soliciting comments from all Central Government Ministries/Departments, and all the States and UTs besides the National Consumer Disputes Redressal Commission (NCDRC).

1.4 In the light of the comments received on the draft proposals circulated in January, 2009, the Department of Consumer Affairs in consultation with the Ministry of Law and Justice formulated the amendment proposals.

1.5 After obtaining concurrence of the Ministry of Law and Justice to the proposals, a Bill, namely, "The Consumer Protection (Amendment) Bill, 2010", was prepared. In the meantime on 27 July, 2010, fresh additional comments of the Department of Financial Services were received on the proposed sections regarding 'unfair trade practice' and 'unfair contract' which were examined by Finance Minister along with Minister for Agriculture, Consumer Affairs, Food & Public Distribution, Minister for Law & Justice, Minister for Human Resource Development, Secretary (Financial Services), Secretary (Consumer Affairs) etc. These changes were got approved by the Ministry of Law and Justice and formed part of the draft proposals of the Bill. "The Consumer Protection (Amendment) Bill, 2011" was finally prepared and introduced in Lok Sabha on 16 December, 2011.

1.6 The Consumer Protection (Amendment) Bill, 2011 was introduced in Lok Sabha on 16 December, 2011 which was referred to the Standing Committee on Food, Consumer Affairs and Public Distribution by Hon'ble Speaker for examination and report on 26 December, 2011.

1.7 In order to obtain views/suggestions from various Institutions/ Individuals/ Stakeholders/ Experts etc. a Press Advertisement was issued and in response thereto the Committee received a number of letters/Memoranda containing their views. The Committee was briefed by the representatives of the Department of Consumer Affairs on the various aspects of the Bill. The Committee also invited comments/suggestions of the State Governments/UT Administrations. Consequently, the Committee received responses from 14 State Governments/UT Administrations. Of these 7 State Governments/UT Administrations namely: Andaman and Nicobar Islands, Gujarat, Himachal Pradesh, Jharkhand, Mizoram, Punjab and Rajasthan have sent their considered views/suggestions on various provisions of the Bill. The Committee have been informed that the State of Jammu and Kashmir has its own law on the subject titled 'Jammu and Kashmir Consumer Protection Act, 1987' and the rules made there under.

The Committee took oral evidence of 6 non-official Experts and Associations/Agencies who have direct bearing on the Bill to hear the views/suggestions on the various proposed amendments to the Bill, namely:

(a) VOICE

- (b) SARTHAK-advocates & solicitors
- (c) Akhil Bhartiya Grahak Panchayat
- (d) Sh.C.K. Chaturvedi, Former Distt Judge, Delhi President Consumer Forum
- (e) Citizens Rights Association (Regd.)
- (f) Sqn Ldr. S.D. Mitroo (Retd.), Disaster Management Consultants

C. Shortcomings of the Consumer Protection Act, 1986

1.8 As informed by the Department of Consumer Affairs, based on the experience and implementation of the Consumer Protection Act, 1986 and practical difficulties so faced, following shortcomings were noticed in the Act:

- (i) A number of definitions in the Act were restrictive and did not cover all situations/contingencies not specifically mentioned in the definition, e.g. definition of branch office, defect, deficiency etc.
- (ii) The seller of goods or provider of services after selling such goods or rendering of such services, could refuse to take back or withdraw the goods or withdraw or discontinue the service and refuse to refund the consideration thereof, if paid, and there was no legal restriction on him in this regard.
- (iii) Refusal of the seller of goods/service provider to furnish a bill to the consumer for payment made was not considered as an unfair trade practice against which a complaint could not be filed in a Consumer Fora.
- (iv) 'Unfair contract' has not been specifically included as a ground for filing a complaint in the Consumer Fora.
- (v) Although the Department of Consumer Affairs has been writing to States/UTs that where a District Forum has become non-functional due to vacancy of President or Member, the President of the adjacent Consumer Fora may be given additional charge of the non-functional District Forum, however, there was no legal provision in the Act for the same.

- (vi) Although the Act provided for the National Commission as well as State Commissions for setting up additional benches for quicker disposal of cases, similar provision was not available for the District Forum.
- (vii) There was a lack of clarity in the Act as to whether the President of the District Forum is also eligible for reappointment like the Members, leading to ambiguous interpretations in different States.
- (viii) Although the Act has provisions for the National Commission and State Commissions to hold circuit bench sitting at notified places other than the headquarters, similar provision was not available for the District Forum.
- (ix) Although the computerization and computer networking of the Consumer Fora is being done yet there was no legal provision for online filing of complaints and payment of fees in the Consumer Fora.
- (x) There was presently no time limit mentioned for the other member to give his opinion on points referred to him in cases where the proceeding is conducted by the President and One Member, and they differ on any point or points.
- (xi) While mentioning the composition of the Selection Committee for appointment of the Members of the State Commission, it was not clear that the appointment of the Members only is through the Selection Committee but not that of the President.
- (xii) Unlike the National Commission, the State Commission did not have any power to review any order made by it.
- (xiii) Unlike the President, State Commission, who is in fact the Chairman of the Selection Committee for Selection of Members of both State Commission as well as District Forum, the President, National Commission was not part of the Selection Committee for selection of Members in the National Commission.

All the above shortcomings are proposed to be rectified through the proposed Amendments included in the Consumer Protection (Amendment) Bill, 2011.

D. Objectives of the Proposed Amendments

1.9 Some of the important objectives of the amendments proposed in the Consumer Protection (Amendment) Bill, 2011 are given below:-

a) Widening the scope and amplifying the provisions of the Act

- (i) The definition of 'complaint' is being widened to include loss suffered by the consumer as a consequence of an unfair contract.
- (ii) To facilitate filing of complaint, it is also proposed to widen the definition of 'deficiency in services' by including any act of omission or commission that cause damage to the consumer.
- (iii) The definition of the term 'unfair trade practices' is also being widened to make it an inclusive clause to cover all types of unfair trade practices.
- (iv) The scope of unfair trade practices is being amplified by including the unfair terms of contract, which are one sided, unilateral, unequal.
- (v) To specifically provide the power to a consumer forum to award interest to a complainant along with the price paid.
- (vi) To empower the State Commissions also to review their own orders when there is an error apparent on the face of records, so that the aggrieved party does not have to file an appeal for correcting the order.
- (vii) In order to provide an opportunity for consumer organisations and other interested parties to intervene in a consumer dispute concerning large number of consumers, pending in the State Commissions/National Commission/Supreme Court, the State/National Commission/ Supreme Court to be empowered to entertain such interested parties and also *suo motu* invite the services of the such interested parties on the lines of *amicus curiae*.

(b) Facilitating quicker disposal of complaints

Following amendments have been proposed to reduce the pendency and to facilitate quicker disposal of complaints in the consumer fora

- To ensure that no forum remains non-functional it is proposed to give powers to the State Governments, for clubbing of neighbouring District Forum or authorising/ deputing the President/Members of another

District Forums to officiate in a particular forum, wherever considered necessary.

- It is also proposed to include an enabling provision to empower the State Governments to appoint more than two members in a District Forum in order to constitute benches/circuit benches and specifically provide for appointment of judicial members to enable functioning of benches.
- It is proposed to make provision to enable the State Governments and the Central Government to frame the rules governing salary, allowances and other terms and conditions of service of officers and other staff or employees of the District Fora, State Commissions and National Commission, as may be required to suit the characteristics of the quasi-judicial body, by making appropriate amendments to include the words 'officers and other staff or employees' after the word 'Member'.
- To facilitate quicker appointments of posts of President/Members in the District Forum and the posts of Members in the State/National Commission, based on the recommendations of the Selection Committee, it is proposed to provide that the State or Central Government, as the case may be, shall convey its decision within two months of receipt of the panel if none of the persons on the panel are found suitable.
- It is proposed to enable the District Forum to hold Circuit Benches in order to take the justice to the doorstep of the consumers.
- In view of the computerisation and computer networking of Consumer Fora being undertaken which would extend facilities for filing complaints online including payment of fee, it is proposed to make it legally permissible to file complaints and make payment of fee online thus facilitating e-governance.
- To avoid delays in the matter of disposal of references made where there is a difference of opinion amongst the members in the bench, it is proposed to prescribe a time limit of disposal of such references i.e. within a period of three months from the date of such reference.

(c) **Rationalising the qualifications and procedure of selection of the Presidents and Members of consumer fora**

- To ensure that the grounds for disqualification provided for appointment of President/Members are continued to be made equally applicable to them while in office, it is proposed to amend the proviso by inserting 'and for being' before the words 'a member' in case of a District Forum, State/National Commission.
- It is also proposed to make the membership or office-bearership of a political party as a disqualification to become/ for continuing as, a member.
- To enable the Selection Committees to have a wider zone of consideration, it is proposed to include the field of 'consumer affairs' also as one of the fields of experience under qualifications for appointment of Members of District Forum, State Commission & National Commission.
- To ensure that only capable persons are appointed as Members in the Consumer Fora at all levels, it is proposed to introduce that the Selection Committee which recommends re-appointments of President and Members of the District Forum, Members of State/National Commission should take into consideration the performance appraisal of the person concerned by the President of the State and the National Commission, as the case may be, apart from looking into the qualifications and disqualifications criteria prescribed.

(d) **Strengthening Penal provisions/ Enforcement orders of consumer fora**

To ensure speedy and proper execution of the orders of the consumer fora it is proposed to provide that every order made by a consumer forum shall be enforced in the same manner as if it were a decree made by a court in a suit pending therein.

It is also proposed to add a provision that where any order made by a consumer forum is not complied with, such person not complying with the order shall be required to pay not less than five hundred rupees or one-half per cent of the value of the amount awarded, whichever is higher, for each day of delay of such non-compliance of the order till it is paid, in addition to the

payment of the awarded amount. As regards the penal provisions available in Section 27, the powers of a judicial magistrate of the 1st class for trial of offences under the Act, already available with Consumer Fora, have been made more explicit.

1.10 When asked in what way the Department proposes to make the Act more vibrant and deterrent, the Department stated that the following proposals are aimed at making the Act more vibrant and deterrent

(i) The definition of 'complaint' is being widened to include loss suffered by the consumer as a consequence of an unfair contract.

(ii) It is also proposed to widen the definition of 'defect' to make it an inclusive clause to cover more types of defects.

(iii) To facilitate filing of complaint, it is also proposed to widen the definition of 'deficiency in services' by including any act of omission or commission that cause damage to the consumer.

(iv) It is also proposed to widen the definition of the term 'unfair trade practices' to make it an inclusive clause to cover all types of unfair trade practices.

(v) It is further proposed to widen the scope of unfair trade practices by including the unfair terms of contract, which are one sided, unilateral, unequal.

(vi) It is also proposed to specifically provide the power to a consumer forum to award interest to a complainant along with the price paid for the goods or charges paid for the services, to clear any doubts as to whether the Fora possess the power to award interest also.

(vii) It is proposed to empower the State Commissions also to review their own orders when there is an error apparent on the face of records, as in the case of the National Commission, so that the aggrieved party does not necessarily have to file an appeal for correcting the order.

(viii) In order to provide for consumer organizations and other interested parties to intervene in a consumer dispute concerning large number of consumers pending in the State Commissions/National Commission, it is proposed to empower the State or the National Commission as the case may be to entertain such interested parties and also *suo moto* invite the services of the such interested parties on the lines of *amicus curiae*.

(ix) In order to ensure speedy and proper execution of the orders of the Consumer Fora it is proposed to provide that every order made by a Consumer Forum shall be enforced in the same manner as if it were a decree made by a court in a suit pending therein.

(x) It is also proposed to add a provision that where any order made by a consumer forum is not complied with, such person not complying with the order shall be required to pay not less than five hundred rupees or one-half per cent of the value of the amount awarded, whichever is higher, for each day of delay of such non-compliance of the order till it is paid, in addition to the payment of the awarded amount.

(xi) As regards the penal provisions available in Section 27, the powers of a judicial magistrate of the 1st class for trial of offences under the Act, already available with Consumer Fora, have been made more explicit

OBSERVATIONS/RECOMMENDATIONS OF THE COMMITTEE

1.11 The Committee note that the Consumer Protection Act, 1986 was enacted to provide simpler, inexpensive and quicker redressal of consumer grievances through the three tier quasi-judicial consumer disputes redressal machinery at the District, State and National levels. The Act also, for the first time, introduced the concept of 'Consumer' and conferred upon additional rights on him. Though the Act has succeeded in bringing about fair play in the supply of goods and services and redressal of consumer grievances through the consumer courts, the Committee, however, feel that in spite of three earlier amendments to the Act, there are still serious shortfalls which need to be addressed. These shortfalls include delay in disposal of cases resulting in pendency, lack of proper infrastructure in the consumer fora, technicalities in the proceedings which are difficult for the consumer to understand, need to introduce circuit benches for district forums, etc.

1.12 The Committee are of the view that in a federal system the future of consumer protection will no doubt rely on co-operation between Central and State Governments. A cooperative approach will, therefore, result in uniform implementation of consumer protection laws and rules across all jurisdictions. The Committee, therefore, desire the Ministry to effectively implement consumer related programmes and policies in close co-ordination with the State Governments, in the interest of consumers. However, the Committee find that there are certain areas in the functioning of Consumer Fora, which include providing of infrastructure to the

Fora and fixation of pay scales of the Members of the Consumer Fora, etc. on which the rules are silent with regard to the role of the Central and the State Governments. The Committee, therefore, recommend that the Government should look into this aspect and amend the provisions in the Bill so as to distinctly clarify jurisdiction of the Central and the State Governments.

1.13 The Committee also feel that there is a need for updation of the quality of goods and standards of services provided to the consumers, so as to conform to the international standards. It will also help in generating demand for our goods in the global market. To attain this standardisation, there is also a need to improve the laboratory infrastructure in the country and upgradation of professionals skills to meet the international norms and quality.

1.14 Further, the Committee find that in our country, most of the consumers are unaware about the provisions of the Consumer Protection Act and its importance and are unaware about their rights as well. Therefore, there is a strong need to spread awareness in order to educate the consumers about their rights as provided under the Act. In this regard the Committee desire the Ministry to rope in the Voluntary Consumer Organisations for spreading awareness amongst the consumers about their rights.

1.15 The Consumer Protection Act has been amended from time to time, to meet the expectations of the consumers against the irregularities involved in consumer market. Since India has become a big consumer market, there is an urgent need for strong Consumer Protection Act. The Committee are hopeful that the shortcoming that had crept in due course in the functioning of the Act would be overcome with the passage of 'The Consumer Protection (Amendment) Bill, 2011', thereby ensuring protection of the consumers' rights

1.16 The Committee note that the Act provides the District Forums the power to punitive damages in such circumstances as it deems fit. The Committee feel that punitive damages awarded under this provision are not deterrent enough to generate fear among the defaulting companies. The Committee are of the view that the intention of granting punitive damages is to discourage other parties from repeating the offence and also to deter companies from going in appeal against each District Forum Order. Taking seriousness of the matter into consideration, the Committee desire that the Consumer Fora should be given powers to grant punitive damages of not less than five times of the loss or compensation awarded to the aggrieved

consumer by the defaulting companies which can be enhanced to ten times as per its discretion to make the provisions of the Act more deterrent.

E. JURISDICTION OF THE ACT:

Section 3 of the Principal Act states that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

1.17 When the Committee desired to know whether implementation of the provisions of the Consumer Protection Act, 1986 clashed with the other Departments/ Institutions/ Organizations/ Agencies rules/regulations, the Government informed that at present, the provisions of this Act are in addition to and not in derogation of the provisions of any other law for the time being in force.

1.18 When asked whether there are any High Court/Supreme Court Judgment on the cases of consumer grievances having bearing on the proposed Amendment Bill, the Department informed that "Although at present the provisions of this Act are in addition to and not in derogation of the provisions of any other law for the time being in force, giving consumers an additional forum for redressal of their grievances in addition to existing avenues for the same; the Supreme Court judgement in C. A. No. 7687 of 2004 of G.M. Telecom Vs M. Krishnan and another, has completely changed the situation. The dispute in this case was regarding disconnection of telephone connection of respondent no.1 for non-payment of telephone bill. The Supreme Court in its judgement held that when there is a special remedy provided in Section 7-B of the Indian Telegraph Act regarding disputes in respect of telephone bills, then the remedy under the Consumer Protection Act is by implication barred. It also held that it is well settled that the special law overrides the general law.

1.19 In this regard, the 'Voluntary Organization In Interest of Consumer Education' (VOICE) are of the opinion that the Consumer Protection Act should be given overriding powers because protection of consumer's interest in the present market scenario is very important as they are ignored by the manufacturers and service providers who look for their profits. For example, in view of the Supreme Court judgment in the case of GM, telecom VS M. Krishnan, III (2009) CPJ1062, the consumers were debarred from going to the consumer forum against the telecom service providers. This issue has not yet been resolved in the last three years. The consumers are in a fix to seek justice to their complaint. The DOT was to file an appeal against the order, have not filed one so far.

1.20 As regards the jurisdiction of the provisions of the Act, the Committee were informed by the Department of Consumer Affairs:-

"Although this Department had originally proposed to give over-riding powers, in Section 3 of the Consumer Protection Act ,1986 over other Acts in the event of conflict between them, this was not agreed to in a meeting chaired by Hon'ble Finance Minister with Hon'ble Minister for Agriculture, Consumer Affairs, Food & Public Distribution, Hon'ble Minister for Law & Justice, Hon'ble Minister for Human Resource Development, Secretary (Financial Services), Secretary (Consumer Affairs) etc., for discussion of the amendment proposals, and accordingly this proposal was dropped."

1.21 When asked to state the reasons of disagreement on the proposal shown by various Ministries, the Department stated that the reasons for disagreement have not been recorded in the minutes of the meeting received. Since some important Cabinet Ministers had not agreed for inclusion of this clause during the same, this Department could not include this proposal while seeking the approval of the Cabinet or pursue this matter further.

1.22 In reply to a query, the representatives of the Sarthak- Advocates and Solicitors in their written replies stated as under:-

'If the provisions of the Act are to be given an overriding impact, it may result in the Act coming in conflict with other pieces of legislations, which may even lead to a consequence that the remedies as provided under the Act would be the sole remedies available to the consumer, unless relevant exceptions are created under the Act. On the other hand, if the present position is maintained, the rights available to a consumer under other laws will stand alongside the rights available under the Act, thereby providing the consumer with the option to chose the remedy he/she seeks to pursue. With the existing position under Section 3 of the Act, any possible conflict between the Act and other laws can always be harmonized by courts. The Statement of Objects & Reasons of the Act states that one of the purposes of the Act is "*to provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate compensation to consumer.*" Further, the district forums have been vested with several of the powers of a civil court in trying a suit before it.

1.23 The Committee note that the Consumer Protection Act, 1986 is in addition to and not in derogation of the provisions of any other law for the time being in force.

Consequently, the jurisdiction of the Act does not clash with the rules/regulations of other Department/Institution/Organization/Agencies. However, the Committee have been informed that the Supreme Court in its judgement namely G.M. Telecom Vs M.Krishnan III (2009) CPJ1062 which was regarding disputes in respect of telephone bill held that if there is a special remedy provided in the Telegraph Act then the remedy under the Consumer Protection Act is by implication barred and also held that the special law overrides the general law. Since then it has become difficult for the Consumer Forum to take any initiative as this case debarred the consumers from going to Consumer Forum. Moreover, the manufacturers or service providers are taking wider interpretation of the judgement thereby ignoring the consumers' interests. As this Act is a benevolent piece of legislation intended to protect the large body of consumers from exploitation, the Committee are of the view that the Government should try to clear the ambiguity in interpretation of the judgement and its implication on other sectors. In order to prevent the consumers from exploitation met at the hands of manufacturers or service providers, the Committee recommend the Government to make such provisions in the Act so that the rights available to consumer under other laws may stand alongside the rights available under this Act thereby providing the consumers with an option to choose the remedy they seek to get redressal of their grievances.

1.24 The Committee are of the view that at times there are cases viz. adulteration in food items such as milk, edible oils and other edible items where large number of Consumers' interest is involved but none or very few of them go to the court for some reasons or the other. In such a scenario, the Committee desire that Government should set up a machinery which takes into cognizance such cases and suo motu file a complaint on behalf of consumers to penalise the culprits. This will not only instill consumers' faith in the Government but also strengthen the Consumer movement in the country which is the ultimate objective of the Bill. The Committee, therefore, desire that the issue of constitution of an inter-ministerial Committee which can suo motu file petition in consumer Court on behalf of consumers, should also be included in the present Bill to make it more comprehensive.

F. FUNCTIONING OF CONSUMER FORA :

(i) Functional and Non-functional Consumer Fora:

1.25 The Ministry furnished the following statement showing the information regarding functional and non-functional State Commissions/District Fora:

(Update on 22.06.2012)

Sl. No.	States	Whether SC Functional or Non-functional	No. of District Fora	Functional	Non-functional	As on
1	Andhra Pradesh	Yes	29	29	0	31.03.2012
2	A & N Islands	Yes	1	1	0	31.3.2006
3	Arunachal Pradesh	Yes	16	13	3	31.03.2012
4	Assam	Yes	27	27	0	31.12.2011
5	Bihar	Yes	38	38	0	31.03.2011
6	Chandigarh	Yes	2	2	0	31.03.2012
7	Chattisgarh	Yes	18	16	2	31.03.2012
8	Daman & Diu	Yes	2	2	0	31.03.2011
9	Dadra & Nagar Haveli	Yes	1	1	0	31.03.2011
10	Delhi	Yes	10	10	0	31.01.2012
11	Goa	Yes	2	2	0	31.03.2012
12	Gujarat	Yes	30	30	0	31.03.2012
13	Haryana	Yes	21	18	3	31.03.2012
14	Himachal Pradesh	Yes	12	12	0	31.03.2012
15	Jammu & Kashmir	Yes	2	2	0	31.03.2009
16	Jharkhand	Yes	22	16	6	30.09.2011
17	Karnataka	Yes	30	30	0	31.03.2012
18	Kerala	Yes	14	14	0	31.12.2010
19	Lakshadweep	Yes	1	1	0	31.12.2011

20	Madhya Pradesh	Yes	48	48	0	31.03.2012
21	Maharashtra	Yes	40	40	0	30.06.2011
22	Manipur	Yes	9	9	0	31.12.2008
23	Meghalaya	Yes	7	7	0	30.11.2011
24	Mizoram	Yes	8	8	0	31.12.2010
25	Nagaland	Yes	8	8	0	31.12.2008
26	Orissa	Yes	31	31	0	31.03.2012
27	Pondicherry	Yes	1	1	0	30.09.2011
28	Punjab	Yes	20	20	0	31.03.2012
29	Rajasthan	Yes	34	33	1	31.12.2011
30	Sikkim	Yes	4	4	0	31.12.2011
31	Tamil Nadu	Yes	30	11	19	31.03.2012
32	Tripura	Yes	4	4	0	31.03.2012
33	Uttar Pradesh	Yes	75	75	0	31.03.2012
34	Uttaranchal	Yes	13	12	1	30.04.2012
35	West Bengal	Yes	21	21	0	31.12.2011
	TOTAL		631	596	35	

1.26 From the above statement, the Committee find that out of 631 only 596 District Forums are functional and 35 District Forums in 7 States are still non-functional. When the Committee asked whether the existing Consumer Foras are sufficient for disposal of consumer cases, they were informed that the Department felt that the number was sufficient and as and when number of cases and pendency increased, setting up of additional Fora could be considered which was already permissible under the Act.

1.27 When the Committee further enquired about the mechanism with the Ministry to ascertain accountability in the functioning of the Consumer Forum, they were explained that the functioning of Consumer Fora at District and State level were the responsibility of the respective State Governments and being quasi – judicial bodies, the Government cannot

have total control on these Fora. The National Commission is presided by a retired Supreme Court judge and as such, functions independently.

1.28 The Committee note that out of 631 District Fora, 596 are functional, 35 District Fora in 7 States namely Arunachal Pradesh, Chattisgarh, Haryana, Jharkhand, Rajasthan, Tamil Nadu and Uttaranchal still remain non-functional. The Committee are informed that the responsibility of functioning of Consumer Fora, especially at the State and District levels, rests with the State Governments. The Committee would like to know the reasons for the non-functioning of the 35 District Fora in 7 States and the steps which could be taken to make them functional and effective. The Central Government should pursue the matter with the respective States so as to ensure that all District Fora that have been created function smoothly.

(ii) Vacancy Position of the Consumer Fora

1.29 When the Committee asked about the vacant posts of President/Members in the National/State Commissions and District Forums, the Department furnished the position as under:

	Vacant Posts of President	Vacant Posts of Member
National Commission	NIL	1 (Action underway for filling up this vacancy)
State Commission	4	18
District Fora	66	261

1.30 When asked as to what steps have been taken to fill up the vacant posts of President/Members in the National/State Commissions and District Fora, the Ministry stated that "there are presently two vacant posts of Member (1 judicial and 1 non-judicial each) in the National Commission. The selection process for the post of judicial member had already been completed by this Department but the Vacancy could not be filled up as the selected Member has now indicated his inability to take up this appointment. The matter would now be taken up with the Appointments Committee of the Cabinet for appointment of the next candidate in the panel in the order of merit. As regards the vacancy of non-judicial member,

the Selection Committee has held its first meeting and is expected to hold another meeting shortly for taking a final decision in this regard. As regards filling up of vacant post of President/Members in the State Commission and District Fora, this is the responsibility of the State Government as per the Act but this Department has been pursuing the matter with the State Governments both through letters as well as at conferences/meetings held with them. Recently also, the concerns of the Parliamentary Standing Committee on Consumer Affairs, Food and Public Distributions regarding this issue as expressed in its 18th report have been taken up with the State/UTs by this Department."

1.31 The Committee are dismayed to find that there are 2 posts of Members in National Commission, 4 posts of President and 18 posts of Members in State Commission and 66 posts of President and 261 posts of Members in District Fora are still vacant. The Committee, therefore, recommend the Government to impress upon the State Governments to make concerted efforts for filling up the vacant posts in the Consumer Fora without further delay and also evolve a mechanism for filling up the posts including the staff employed in the Consumer Fora immediately when the vacancy arises so that the work do not suffer due to shortage of manpower in the Consumer Fora.

(iii) Uniformity in the Salary/ Honorarium of the Officials of the Consumer Fora:

1.32 The Committee were informed by the Department of Consumer Affairs that the establishment of the State Commissions and District Fora in the States/UTs as well as appointment of not only the President/Members of these Consumer Fora but also their employees, comes under the purview of the State Governments. The issue of uniform pay and allowances to Members/President of Consumer Fora of all States/UTs as well as establishment of a separate cadre for employees of Consumer Fora have been taken up in meetings/conferences held by this Department as well as NCDRC with the States/UTs but ultimately this decision can only be taken by the States/UTs.

1.33 When asked whether the Consumer Fora are regulated by judicial Services Rules or CCS Rules or any other rules, the Department stated that the Consumer Fora are regulated by the Consumer Protection Act 1986, the Consumer Protection Rules 1987 & the Consumer Protection Regulations 2005.

1.34 When the Committee enquired as to whether the State Governments have framed rules regarding the service conditions and pay scales of employees working in the District Forums, the Secretary stated during the briefing as under:-

"Consumer Affairs Department of the States sees to this matter. Some States have taken the initiative, for instance, in Maharashtra they have prepared the rules that in each District how many people will be in staff and what will be their pay scale."

1.35 When Hon'ble Chairman asked whether there is uniformity in the rules framed by State, the Secretary of the Department informed that so far rest of the States have not even prepared any rules in this context.

1.36 As regards the pay scales of Members of the District Fora, the representatives of the Department during evidence informed the Committee that Members of some of the State Commissions receive only Rs. 10,000 per month, though these people resolve the cases amounting from Rupees Twenty Lakhs to One Crore. He further stated that there are three Members in District Forum, one is President who is generally of judicial background and where there is less work involved, district Judge is given additional charge. In big States, Retired District judge is made the President. Resultantly whatever pay is given at the time of retirement is given to them. But Members of non-judicial background receive very less amount.

1.37 The Committee are surprised to note that the Consumer Fora established under the Consumer Protection Act, 1986, and governed by the Consumer Protection Rules, 1987 and the Consumer Protection Regulations, 2005, have no uniformity with regard to the salary/honorarium of the President, Members and also staff employed in various Consumer Fora. The Committee have been informed that since functioning of Consumer Fora comes under the purview of the State Governments, hence, the decision with regard to salary/honorarium rests with them. The Committee, however, appreciate the initiative taken by the State of Maharashtra for having framed the rules to be applicable in each district fora as to the number of people to be employed as staff and their pay scale. In view of the above, the Committee recommend that the Government should persuade the other State Governments to emulate the steps taken by Maharashtra Government and frame rules under the Act in order to bring about uniformity in the States with regard to the number of Members and staff to be employed in the Consumer Fora and also to ensure that there is no disparity amongst them in terms of pay scale.

1.38 The Committee were informed that the States have shown their inability to pay the higher salaries to the Members due to resource crunch. In this connection, the Committee desire that the Central Government should share this burden and contribute at least 30% to the salaries of the Presidents/Members and Staff of Consumer Fora so as to bring uniformity in their pay structure and to make them more efficient. The Committee, therefore, recommend the Government to make appropriate amendment in the Bill to this effect.

(iv) Maintenance of data regarding disposal/pendency of cases

1.39 The Committee were informed that so far, a total of more than 37 lakh cases have been filed in all three tiers of consumer disputes redressal agencies of which more than 33 lakh cases have been disposed off. The Committee observed that the Consumer Forum do not maintain the data relating to disposal and pendency of cases, Forum wise or category wise or indicating date since when pending.

1.40 When asked if maintaining such information was not necessary to further simplify the procedure while disposing off consumer related cases Forum wise, the Ministry stated that they agreed that maintaining such information would be helpful in analyzing and disposing of pending cases. An effort would be made to encourage the Consumer Fora at all levels to maintain such data.

1.41 The Ministry furnished the following information regarding year-wise filing and disposal of cases since 2007 in the National Commission, State Commissions and District Fora:

(a) YEAR-WISE FILING & DISPOSAL IN NATIONAL COMMISSION & STATE COMMISSIONS

(Upto 31.05.2012)

	2007		2008		2009		2010		2011		2012	
	Filed	Disposed	Filed	Disposed	Filed	Disposed	Filed	Disposed	Filed	Disposed	Filed	Disposed
National Commission	4866	4662	5873	5456	5399	7350	5444	4497	5099	4219	1585	1016

States	2007		2008		2009		2010		2011		2012	
	Filed	Disposed	Filed	Disposed	Filed	Disposed	Filed	Disposed	Filed	Disposed	Filed	Disposed
Andhra Pradesh	2101	2061	2014	1595	1485	1446	1579	1024	1240	301	288	11
A & N Islands	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.						
Arunachal Pradesh	7	5	3	4	0	0	0	0				

Assam	26	19	146	20	79	194	73	133				
Bihar	780	766	616	755	720	717	700	389				
Chandigarh	1228	1090	2376	1448	783	1127	575	1061	537	737	143	156
Chattisgarh	728	710	962	451	891	1232	843	1109	815	758	163	170
D & N Haveli/Daman &Diu	10	8	0	0	4	0	0	0				
Delhi	1541	2475	1464	1859	1359	1129						
Goa	136	93	90	177	75	121	78	65	54	25	11	36
Gujrat	2565	1618	2428	1739	2248	2516						
Haryana	3570	1792	2274	2134	1923	3906	2013	4201	1826	7202	454	1675
Himachal Pradesh	2180	1935	1508	1521	1694	1789	1722	1689	1357	1183	245	266
Jammu & Kashmir	321	200	182	236	211	236	259	286	260	280		
Jharkhand	820	268	583	515	448	418	368	435	242	363		
Karnataka	2685	3294	3149	3105	4610	4500	5569	3056	4405	4238	618	723
Kerala	449	864	463	1632	834	1684	792	1545				
Lakshadweep	2	1	0	0	2	2	0	0	0		0	
Madhya Pradesh	3101	2706	3250	3201	2764	1962	2880	2228	1986	1709		
Maharashtra	4708	3153	4673	3935	3839	3783	3532	3645	1475	169		
Manipur	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.						
Meghalaya	23	5	22	4	11	6						
Mizoram	22	21	21	25	9	9	12	12				
Nagaland	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.						
Orissa	1238	1613	1122	573	1216	1136	840	1725	871	1192		
Pondicherry	26	5	48	34	19	25	9	12	14	30		
Punjab	1716	1303	1742	1926	2020	1791	2339	1681	2056	1627	509	42
Rajasthan	3204	5213	3196	4604	2887	3902	3535	3201	3200	3155		
Sikkim	1	1	0	2	4	0	3	6	2	3		
Tamilnadu	2777	91	1039	933	566	309	1056	1180	1371	2014		
Tripura	85	82	68	121	71	63	53	57	109	86		
Uttar Pradesh	3181	3293	2832	3569	2733	2161	2760	6998				
Uttarakhand	453	115	290	289	242	391	482	330	281	310	69	84
West Bengal	707	983	502	694	769	825	967	743				
TOTAL	40391	35783	37063	37101	34516	37380	33039	36811	22101	25382	2500	3163

Note : 'N.A.' means 'Not Available'

(b) YEAR-WISE FILING & DISPOSAL IN DISTRICT FORUMS

(Upto 31.05.2012)

States	2007		2008		2009		2010		2011		2012	
	Filed	Disposed	Filed	Disposed	Filed	Disposed	Filed	Disposed	Filed	Disposed	Filed	Disposed
Andhra Pradesh	6724	6638	5561	5358	5015	4075	5418	1749	1368	85		
A & N Islands	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.						
Arunachal Pradesh	7	6	16	13								
Assam	138	57	743	802	154	60						
Bihar	3846	2942	2873	2326	3952	4046	3044	4002				
Chandigarh	1421	1348	2908	2791	2600	2477	2509	2123	2261	2420	598	677
Chattisgarh	1966	1606	1976	2105	2064	2271	2123	2018	2664	2047	575	587
D & N Haveli/Daman & Diu	13	14	6	0								
Delhi	11770	10528	11378	10358	11288	9411						
Goa	202	224	214	278	190	169	177	119	139	110	42	29
Gujarat	11714	10382	9418	7895	9970	9636						
Haryana	12299	13139	10986	8751	12050	11732	12165	12649	10985	11638	2606	2704
Himachal Pradesh	2064	2332	2153	2290	2387	2253	2229	1956	2298	1943	451	547
Jammu & Kashmir	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.						
Jharkhand	1658	1372	1748	2308	1488	1802	918	843	772	642		
Karnataka	9541	9528	10073	10189	10041	9672	11799	10817	8272	9796	1968	2013
Kerala	3113	1553	5119	5802	5608	6177	5115	5991				
Lakshadweep	1	0	2	3	5	0	8	4				
Madhya Pradesh	12008	10398	12267	11006	13889	11644	13125	12166	12394	10482		
Maharashtra	11780	12830	16956	16375	17933	14578	13708	13614				
Manipur	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.						
Meghalaya	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.						
Mizoram	509	355	253	214	869	248	72	462				
Nagaland	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.						
Orissa	5444	4306	4099	4108	4420	4250	4271	3376	4393	4129		
Pondicherry	89	108	104	61	102	12	123	67	56	60		
Punjab	7089	7031	8684	8917	10559	10247	10745	10961	10063	8962	2276	3341
Rajasthan	14247	12208	17690	15558	15543	10518	18943	16360	18050	15056		
Sikkim	4	4	19	6	7	13	12	13	23	17		
Tamilnadu	7529	357	3363	3354	3985	2520	3904	6672	3496	4523		
Tripura	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.						
Uttar Pradesh	23875	20796	24895	19671	24868	18829	25804	24514				
Uttarakhand	1220	1636	1073	939	1037	890	1218	1626	1206	1083	385	265

West Bengal	3467	3334	3907	3325	5207	4911	3849	4467				
TOTAL	153738	135032	158484	144803	165231	142441	141279	136569	78440	72993	8901	10163

Note : 'N.A.' means 'Not Available'.

From the above statement it may be observed that the data in respect of year-wise filing and disposal in State Commissions as well as District Forums has not been indicated/updated in respect of most of the States during the last three years.

1.42 The Committee are disappointed to note that the Consumer Fora do not maintain the data relating to disposal and pendency of cases, forum-wise or category-wise and the date since when pending. Further, the data in respect of year-wise filing and disposal of cases is either nil or not available in most of State Commissions as well as District Fora. In this context, the Department themselves have admitted that maintaining such information would be helpful in analysing and disposing of pending cases. The Committee, therefore, recommend the Government to impress upon the State Governments to make concerted efforts to get such an updated data maintained by the consumer fora at all levels to expedite disposal of cases.

(v) Disposal of Disputes pending in Consumer Fora

1.43 The Ministry furnished the following details showing total cases disposed off and pending since inception in the National Commission, State Commission and District Fora as on 22.06.2012:

(a)Statement of Cases Filed / Disposed of / Pending in the National Commission and State Commissions

(Update on 22.06.2012)

Sl. No.	Name of State	Cases filed since inception	Cases disposed of since inception	Cases Pending	% of Disposal	As On
	National Commission	75488	65423	10065	86.67	31.05.2012
1	Andhra Pradesh	27894	26199	1695	93.92	30.04.2012
2	A & N Islands	42	38	4	90.48	31.01.2008
3	Arunachal Pradesh	60	55	5	91.67	31.03.2012

4	Assam	2474	1603	871	64.79	29.02.2012
5	Bihar	14386	10326	4060	71.78	31.05.2011
6	Chandigarh	11822	11644	178	98.49	30.04.2012
7	Chattisgarh	7904	7505	399	94.95	31.05.2012
8	Daman & Diu and DNH	25	20	5	80.00	31.03.2011
9	Delhi	33440	31431	2009	93.99	31.05.2012
10	Goa	2253	2171	82	96.36	31.05.2012
11	Gujarat	38664	34221	4443	88.51	30.04.2012
12	Haryana	41952	39438	2514	94.01	31.05.2012
13	Himachal Pradesh	7564	6893	671	91.13	30.04.2012
14	Jammu & Kashmir	6396	5755	641	89.98	31.03.2012
15	Jharkhand	4918	4155	763	84.49	31.12.2011
16	Karnataka	42724	38068	4656	89.10	30.04.2012
17	Kerala	24767	23817	950	96.16	30.04.2012
18	Lakshadweep	17	16	1	94.12	30.04.2012
19	Madhya Pradesh	39787	35200	4587	88.47	31.03.2012
20	Maharashtra	54170	36527	17643	67.43	30.06.2011
21	Manipur	139	96	43	69.06	30.09.2008
22	Meghalaya	253	175	78	69.17	31.03.2011
23	Mizoram	183	171	12	93.44	30.04.2011
24	Nagaland	94	64	30	68.09	31.12.2006
25	Orissa	21072	15141	5931	71.85	31.03.2012
26	Puducherry	950	889	61	93.58	31.03.2012
27	Punjab	28197	21694	6503	76.94	31.03.2012
28	Rajasthan	49222	45381	3841	92.20	31.03.2012
29	Sikkim	40	40	0	100.00	31.12.2011
30	Tamil Nadu	23692	21751	1941	91.81	30.04.2012
31	Tripura	1370	1347	23	98.32	30.04.2012
32	Uttar Pradesh	64238	36307	27931	56.52	31.03.2012
33	Uttarakhand	4494	3708	786	82.51	30.04.2012
34	West Bengal	15474	14553	921	94.05	31.12.2011
	TOTAL	570677	476399	94278	83.48	

From the above statement it may be observed that percentage of disposal is poor in the states of Assam, Bihar, Maharashtra, Manipur, Meghalaya, Nagaland, Orissa and Uttar Pradesh.

(b)Statement of Cases filed/disposed of/pending in District Fora

(Update on 22.06.2012)

Sl. No.	Name of State	Cases filed since inception	Cases disposed of since inception	Cases Pending	% of Disposal	As On
1	Andhra Pradesh	189653	183888	5765	96.96	30.04.2012
2	A & N Islands	330	301	29	91.21	31.03.2006
3	Arunachal Pradesh	340	295	45	86.76	31.03.2012
4	Assam	13704	11976	1728	87.39	31.08.2010
5	Bihar	80010	69607	10403	87.00	31.05.2011
6	Chandigarh	45252	44141	1111	97.54	30.04.2012
7	Chattisgarh	35658	32452	3206	91.01	31.05.2012
8	Daman & Diu and DNH	162	144	18	88.89	31.03.2011
9	Delhi	239215	228875	10340	95.68	30.09.2011
10	Goa	6252	5624	628	89.96	31.05.2012
11	Gujarat	166792	154243	12549	92.48	30.04.2012
12	Haryana	215473	197864	17609	91.83	31.05.2012
13	Himachal Pradesh	55546	52172	3374	93.93	30.04.2012
14	Jammu & Kashmir	20792	18855	1937	90.68	31.12.2007
15	Jharkhand	32572	29835	2737	91.60	31.12.2011
16	Karnataka	149553	145522	4031	97.30	30.04.2012
17	Kerala	176561	169193	7368	95.83	30.04.2012
18	Lakshadweep	72	65	7	90.28	30.04.2012
19	Madhya Pradesh	175707	159847	15860	90.97	31.03.2012
20	Maharashtra	245230	226885	18345	92.52	30.06.2011
21	Manipur	1037	1012	25	97.59	30.09.2008
22	Meghalaya	768	661	107	86.07	31.03.2011
23	Mizoram	3466	2819	647	81.33	31.12.2010
24	Nagaland	246	205	41	83.33	30.6.2006

25	Orissa	89954	83824	6130	93.19	31.03.2012
26	Puducherry	2840	2684	156	94.51	31.03.2012
27	Punjab	148629	143302	5327	96.42	31.03.2012
28	Rajasthan	273202	246908	26294	90.38	31.03.2012
29	Sikkim	283	262	21	92.58	31.12.2011
30	Tamil Nadu	100592	95560	5032	95.00	30.04.2012
31	Tripura	2645	2451	194	92.67	29.02.2012
32	Uttar Pradesh	547869	471127	76742	85.99	29.02.2012
33	Uttarakhand	33920	32061	1859	94.52	30.04.2012
34	West Bengal	81723	76844	4879	94.03	31.12.2011
	TOTAL	3136048	2891504	244544	92.20	

From the above statement it may be observed that the data in respect of cases filed, disposed of and pending in District Fora of many of the states have not been properly updated as on 22.06.2012.

1.44 When the Committee enquired whether the Consumer Forum strictly abide by time schedule of 90 days for resolving consumer disputes and what steps are contemplated by the Government so that the cases are disposed off by the Consumer Fora within the stipulated time of 90 days, the Ministry stated that Section 13 (3A) of the Act provides that 'every 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. Rate of disposal of cases by Consumer Fora within time norms, is analyzed by this Department from the Quarterly Progress Reports submitted by states/UTs & defaulting States are advised from time to time to take necessary remedial action.

1.45 In this context, the Secretary of the Department while briefing the Committee, stated that-

" The disposal rate is quite good. But there have been cases where they have continued for very long though it is expected that they should be decided within a period of 90 days where testing is not required and it is slightly more than that where testing is required. ..."

1.46 Further, the Secretary stated during the evidence that "although there is a provision regarding timely disposal of cases within 90 days in Consumer Fora under the Consumer Protection Act but it is not being obeyed. If someone wanted to do the testing it should be done in 5 months but this has not been followed."

1.47 The Committee are disturbed to find that the percentage of disposal of cases is poor in State Commissions of 8 States namely, Assam, Bihar, Maharashtra, Manipur, Meghalaya, Nagaland, Orissa and Uttar Pradesh irrespective of the fact that State Commissions and District Fora in these States are fully functional. Further, the Committee are dismayed to find that the provisions regarding timely disposal of cases within 90 days is not being adhered to. The Committee, therefore, recommend the Government to strengthen their monitoring mechanism and critically analyse the progress reports submitted by the States/UTs regarding disposal of cases by the Consumer fora and the defaulting States be advised to take remedial steps and impress upon the Consumer fora to strictly adhere to the time schedule for disposal of cases. A clause to this effect to make timely disposal of cases mandatory, should be included in this Bill itself.

1.48 The Committee note with dismay that although there is a provision for timely disposal of cases within 90 days in Consumer Fora or 5 months where testing is required, but the same is not being obeyed/followed. In order to avoid unnecessary delay in disposal of cases, the Committee feel that there should be some alternate option available with the consumer, before they come to Consumer Fora. Hence, there should be a legal provision for in-house complaint redressal system within the manufacturer and service provider entity. The Committee, therefore, recommend the Department to issue directions to all the manufacturer/service provider/business entity for mandatory setting up of complaint handling system as per the standard set by the Central Government, such that complaints get resolved within stipulated time as determined by the Government. In case of any sort of dispute regarding the interpretation of the case itself or inability to dispose of case within stipulated period, the business entity should forward the case to Consumer Fora stating the reasons for non-redressal. The Committee feel that this method will not only reduce the burden of cases coming to consumer Fora but also resolve the cases at faster pace to certain extent.

1.49 When the Committee enquired whether there is any provision of Mediation and Conciliation process for settling consumer disputes prior to the commencement of the legal process under the Act, they were informed that there was no provision for this under the Act. However, the National Commission as well as this Department have been advising the Consumer Fora to resolve pending cases through Lok Adalat pattern also, where appropriate. Further, this Department is in the process of formulating a plan scheme for setting up Mediation Centers for dealing with consumer complaints so as to reduce the burden on the Consumer Fora. It is being proposed that these centers will be located in the Consumer Fora building itself. The Secretary, however, stated during the evidence that "the Department had proposed a scheme for next Five Year Plan for creating one Mediation Centre in each consumer forum so that small disputes are resolved there itself. This new plan has not been approved by Planning Commission. As soon this is done they will start working in this direction".

1.50 The Committee note that some of the consumers are reluctant to approach the consumer courts where the cases of lesser amount is involved. In this regard, the Committee have been informed that the Department is in the process of formulating a plan scheme for setting up Mediation Centers, within the Consumer Fora itself, for dealing with consumer complaints so as to reduce the burden on the Consumer Fora. A proposal is stated to be submitted to the Planning Commission which is yet to be approved. As soon this is done, they will start working in this direction. The Committee desire the Department to expedite setting up such a centre facilitating mediation and conciliation process in order to lessen the burden on Consumer Fora. Necessary amendment to this effect may be made in the body of the bill.

G. Role of Central/State Consumer Protection Council

1.51 The Committee have been informed that the object of the Central Consumer Protection Council is to protect and promote the rights of Consumers. The recommendations of the Council given after deliberations held during its meetings are examined by the Department for taking appropriate action/or for forwarding to the concerned Departments etc. for further necessary action. As a pro-active measure, the Central Consumer Protection Council in its 23rd meeting held in July 2003 recommended that a Working Group may be set up for considering further amendments to the Act to make it more relevant to protect the interests of consumers. The Working Group's recommendations were considered in the Department of Consumer Affairs and based on these recommendations a number of amendments to the said Act were proposed.

1.52 Further, it has been brought to the notice of the Committee that the Central/State Consumer Protection Council are not performing well as they ought to do. In this context, when the Committee asked to whom these Central/State Consumer Protection Council are accountable, the Department stated that the Consumer Protection Councils both at Central/State level are advisory bodies, which deliberate on consumer issues and suggest policy Initiatives. They are not specifically accountable to any particular authority.

1.53 In reply to a query, the Ministry informed that as per the provisions of the Act, the Central Consumer Protection Council and the State Consumer Protection Council are to meet as and when necessary but at least one meeting of the Central Consumer Protection Council and not less than two meetings of the State Consumer Protection Council are to be held every year. Information regarding the meetings of the State Consumer Protection Councils are maintained by the concerned State Governments. The Central Consumer Protection Council has met on 30.07.2008, 03.09.2009 & 31.01.2012 during the last five years.

1.54 The Committee pointed out during evidence that there should be some criteria for having such meetings at regular intervals and desired to know what action is contemplated by the Government in this regard. The representative of the Ministry responded during evidence as under:

"Sir, the Department continues to make efforts so that these meetings are held regularly but since Hon'ble Minister is the Chairman of the Central Consumer Protection Council, the meetings are organized as per his convenience".

1.55 When asked whether these councils are necessary for the effective functioning of the Consumer Fora, the Ministry stated that these Councils play an important role in guiding the Government in activating the consumer movement in the country and provide useful inputs about the functioning of Consumer Fora.

1.56 While describing the relevance of Central/State Consumer Protection Councils during the course of oral evidence, the Secretary stated that "regarding state and district level council meetings they keep asking the State Governments to constitute these councils and ensure that their meetings are held regularly so that the Government keep receiving the consumer related all the inputs from all the stakeholders. Unfortunately in many of the states these councils have not been created and even if created their meetings could not be held regularly."

1.57 The Committee are dismayed to find that National level Central Consumer Protection Council met only thrice in the last five years. Moreover, the meeting of the Central Consumer Protection Council could not be held at regular intervals due to other important engagements/commitments of Hon'ble Minister who chairs the councils. In this context, the Committee were informed by the representatives of the Department during evidence that these councils play an important role in guiding the Government in activating the consumer movement in the country and provide useful inputs about the functioning of Consumer Fora. The Committee, therefore, feel that it is imperative that the meetings of the Central Consumer Protection Councils are held regularly at least twice a year. The Committee, therefore, feel that in the absence of the Minister, the meetings can be chaired by the Minister of State or any other person which the Government deems fit to conduct such meetings. The Government may amend the relevant rules accordingly, so as to keep the consumer movement in the country activated.

The Committee are disturbed to note that in many of the States these councils have not been created and even if created their meetings could not be held regularly. The Committee feel that if these councils do not meet at regular intervals, the very purpose of their constitution is defeated. The Committee desire that if the meetings of State Consumer Protection Council are not held for a year, they should be disbanded. The Committee also feel that such Consumer Protection Councils are required to be set up at district level in all the States/UTs. Therefore, the Government should persuade the State Governments to ensure the setting up of District level Consumer Protection Councils.

CHAPTER II

Section/Clause-wise analysis of the Bill

The Consumer Protection (Amendment) Bill, 2011 which is the fourth amendment proposed to the Consumer Protection Act, 1986 contains 21 clauses. As per submission of the Department of Consumer Affairs, amendments to around 35 sections have been proposed in the Bill and it also includes a few new sections. Some of the amendments (clause-wise) are discussed below:-

Section 2(vii)

Section 2(vii) of the Bill provides to add a new sub-clause 8 in Section 2 (1)(r) of the Act

<p>Section 2(1)(r)(8)</p> <p>New sub clause</p>	<p>A new sub-clause (8) in clause (r) is proposed to be added as under:</p> <p>‘(8) after selling such goods or rendering of such services, refuses to take back or withdraw the goods or withdraw or discontinue the service and refuses to refund the consideration thereof, if paid, within a period of thirty days after the receipt of goods or availing of services if it is so requested by the consumer’.</p>
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2.2 Justification/reason given by the Department for the proposed amendments-

This provision would enable the consumers to file complaints against those sellers who sell their products and services through e-commerce and telemarketing, etc. who do not take back the goods or services if found defective by the consumers on its receipt, inasmuch as the product and services are not seen/ inspected or examined by them beforehand and simply purchased in good faith, on the basis of their advertisements.

2.3 When the Committee enquired whether there is any law to regulate the online purchases, the Ministry informed that at present there is no separate Law for online purchases. However the Consumer Protection Act, 1986, applies to all goods and services.

2.4 The Secretary further elaborated during the briefing that they have also proposed a provision for online filing of complaints for which rules will be prepared and there will also be a provision of online payment of fees.

2.5 During the meeting, the Committee showed concern that MRP of the goods is not properly displayed in most of the products sold in the market which dupes the consumer's of their rights. In this context, the Secretary of the Department stated during evidence that the Department had consultations at national level as to how consumer can be provided protection. In this context, 4-5 seminars were also held throughout the country in which discussions with all the stakeholders were held. The suggestions brought out are under consideration of the Department.

2.6 The Committee note with dismay that in our country goods once purchased by consumers in good faith are not taken back by shopkeepers. Some of the shopkeepers even write 'Goods once sold are not taken back', hence, leaving no room for consumers for getting the goods exchanged/returned even after some defect has been detected. The Committee feel that the consumers are exploited by the shopkeepers and are compelled to buy goods merely on faith. This goes even worse when the purchasing of products and services are done through e-commerce and telemarketing where there is lack of accountability and responsibility on the part of the sellers. The Committee, therefore, recommend the Government to make provision for a law to govern and guard such purchasings especially done through e-commerce and telemarketing thereby fixing responsibility on sellers and also facilitate online filing of complaints as well as payment of fees. The Committee further desire that a 'return policy' should be chalked out which should be mandatory and required amendments to this effect may be made in Section 2(vii)(8) of the Bill.

2.7 The Committee note that most of the manufactures/shopkeepers are not in the practice of displaying minimum retail price on the packing of goods sold. In some cases, they don't even mention the MRP and use code words which the consumers cannot decode. The Committee find that in the metropolitan cities a Bar Code System (e.g. in Malls) exists which is quite satisfactory as they have an account of whatever is sold. But in India, such market is very restricted. The Committee feel that this should be applied to other shops also where no Bar Code System exists. The Committee, therefore, desire that the Bar Code System should gradually be applied to all shops and it should be made mandatory in the rules that the manufacturer/shopkeeper may indicate the MRP on the packing of the goods sold. The Government should also undertake a campaign in 'Jago Grahak Jago' to aware

the consumer that alongwith a comprehensive/complete receipt taken of the amount paid to the shopkeeper, they should also note the MRP of the goods sold. The Committee desire the Government to finalise the short term and long term measures to protect the interests of the consumers. A sub-section to this effect should be included in the Bill.

Section 8

Section 8 of the Bill proposes to amend Section 12 (1), (2) & (3) of the Act

<p>Section 12 (1), (2) & (3)</p> <p>12. Manner in which complaint shall be made — (1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by</p> <p>(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;</p> <p>(b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;</p> <p>(c) one or more consumers, where there are numerous consumers having the same</p>	<p>Proposed Amendment-1</p> <p>In sub-section (1) of Section 12, the words “or in respect of any restrictive trade practice or unfair trade practice adopted” may be inserted after the words ‘agreed to be provided’.</p> <p>Proposed Amendment-2</p> <p>It is proposed to insert the words ‘(including electronic form)’ in sub-section (2), after the words ‘in such manner’.</p> <p>Proposed Amendment-3</p> <p>In the second proviso to Section 12 (3) for the words ‘twenty one days’, the words ‘twenty eight days’ shall be</p>
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interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

substituted.

Proposed Amendment-4

After the second proviso below Section 12 (3), the following proviso shall be inserted:-

‘Provided also that if the District Forum does not decide the issue of admissibility of the complaint within the period specified in the second proviso, it shall be deemed to have been admitted except in the case where the complainant has failed to appear before the District Forum on the day of hearing without any reasonable ground.’

2.8 Justification/reason given by the Department- This is considered necessary to make it explicit that complainants can also file complaints against any unfair/ restrictive trade practice adopted by any person. Since the Consumer Forums are being computerised it is proposed to make provision in the law to permit consumers to file complaints as well as pay fee online, which would make the consumer fora move towards e-governance/ time bound redressal. This is proposed so as rationalize the time for deciding admissibility of complaints. This is considered necessary to ensure timely decision regarding admission of complaints, for its eventual speedy disposal in the interest of consumers.

2.9 When asked what is the prescribed manner in which complaint should be filed in the consumer forum and whether it requires any further simplification for the convenience of the poor consumers, the Ministry stated that the present prescribed procedure of filing complaints is fairly simple and convenient.

2.10 However, one of the Experts and Associations/ Agencies opined that Consumers should be permitted to file a complaint in a simple format either online or by making a paper application to the relevant forums.

V. Unfair Trade Practices

2.11 The Committee observe that Section 2 (vii)(8) of the Bill by adding in Section 2(1)(r) of the Act intends to enlarge the scope of "Unfair Trade Practices" as defined under the Consumer Protection Act by including any refusal to return or take back goods or discontinue services within 30 days after receipt of goods or availing of services within the definition of Unfair Trade Practices. In this context when asked whether any classification of services (like services availed on one time basis or which are personal in nature or services availed on recurring basis or under long term service contract) have been made so that the consumers have the right to trial period of service according to the classification made, the Department stated that no such classification has been proposed.

2.12 When the Committee further enquired regarding a need to have multiple options like money back policy, replacement policy, exchange policy, return policy etc. with the consumers instead of single trial or return policy, the Department stated that the emphases is on the taking back of goods sold, by the trader if so desired by the Consumers. Since the subsequent course of action to be taken by the trader has not been specified, all these options would be available to him.

Misleading Advertisements-

2.13 The Committee observed that no suo-motu steps have been taken by the Department against the misleading advertisements or any other consumer complaints having large implication on consumers. In this context when the Committee asked the Department whether any proposal on these lines is under consideration of the Department, the Department in their reply stated that although no steps in this regard have been taken under the existing provisions of the Consumer Protection Act, 1986, this Ministry has taken cognizance of the growing menace of misleading advertisements and has taken the following steps for tackling the same:

"Keeping in view increasing incidences of misleading advertisements, the Ministry of Consumer Affairs, recently conducted exclusive seminars/workshops in different parts of the country to discuss ways of tackling this menace. The unanimous view that emerged from these workshops of stakeholders was that there should be a Government setup in the form of an empowered committee or an agency to tackle misleading claims in advertisements. The proposed set up must have its own investigative wing and also a panel of lawyers to take up cases in appropriate Consumer Fora. A similar set up could also be there at state/local level to take up cases. A proposal on these lines is under consideration of the Government."

2.14 The Committee note that in section 8(a) of the Bill which provides to amend section 12 (1) of the Act, Government propose to empower the complainants to file complaint against any unfair/restrictive trade practices adopted by any person or agency. The Committee find that there are innumerable service providers such as Airlines, Communication Industries, Utility Industries, Banks and other agencies/institutions who are not providing what they are supposed to. Most of the agencies/institutions/service providers are befooling the consumers by making tall and false claims through misleading advertisements (electronic and print media) and due to which exploitation and suffering of consumers are rampant. There are no stringent laws to deal with such kind of misleading advertisements. The Committee feel that as amendment in the Act is under way, there is a strong need to warn the advertisers to refrain from publicizing such misleading advertisement, which fall under unfair trade practices. In this context, during the evidence, the Committee were inter-alia informed about the functioning of Federal Trade Commission of the USA which is a quasi-judicial authority and enjoys a vast executive powers and takes care

of such unfair trade practices in that country. The Committee are of the firm view that setting up of a Commission in the present scenario is the need of the hour in our country to curb the menace of bogus and misleading advertisements due to which vast number of consumers are exploited, cheated and fleeced. The Committee recommend that the Government may look into the feasibility of bringing such provisions into the Bill and consider setting up of a kind of Unfair Trade Practices Authority which will go a long way in putting a check on mushrooming of unfair trade practices prevalent in the country.

2.15 The Committee note that Section 12(1)(c) of the Principal Act provides that where the numerous consumers having the same interest are affected, one or more consumers may make complaint, with the permission of District Forum on behalf of, or for the benefit of all consumers so interested. But the Committee find that this current provision has not proved to be effective in dealing with Class Action of consumers. The Class Action jurisdiction similar to the one used by the courts in USA needs to operate in the Fora under this Act.

Taking into consideration the views expressed by the experts, the Committee, therefore, desire that to promote Class-action complaints which would cover wide spectrum of affected consumers who need not seek redressal individually, a subsection may be included in the Bill to amend Section 12(1)(c) of the Act to the effect that one or more consumers can file complaint to get redressal of the grievances for the consumers. However, where there are numerous consumers having the same interest and sought compensation, the judgment given in such a case may apply to all consumers.

2.16 The Committee feel that the role of advocates in the consumer courts needs to be limited. If a consumer has a claim of a small amount, he avoids going to Consumer Court because he has to spend money to engage an advocate. The Committee feel that most consumer case do not involve intricate questions of Legal Interpretation. The Committee, therefore, desire that to minimize the expenditure and time consuming process resulting in delay in justice, the advocates should not be permitted to appear in the cases, where the claim amount does not exceed a prescribed amount, unless otherwise desired by the consumer or a substantial question of law is involved.

Section 2(viii)

Under Section 2(viii) of the Bill a new clause (s) is proposed to be added after Section 2(1) (r) of the Act

<p>Section 2 (1) (s)</p> <p>New Clause</p>	<p>‘(s)’ “ Unfair contract” means a contract which contains any one or more of the following types of Clauses:</p> <p>(i) requires manifestly excessive security deposits to be given by a party to the contract for the performance of contractual obligations; or</p> <p>(ii) impose any penalty on a party to the contract for the breach thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or</p> <p>(iii) refuses to accept early repayment of debts on payment of applicable penalty;</p> <p>(iv) entitles a party to the contract to terminate without reasonable cause the contract unilaterally.</p>
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2.17 Justification/reason given by the Department- This provision is intended to protect consumers who are placed in an unequal bargaining capacity by making ‘unfair contract’ also one of the grounds for filing a complaint in the consumer fora.

Unfair Contract

2.18 The Committee received innumerable suggestions regarding recasting of definition of 'unfair contract' to make it more inclusive. In this context, when asked whether the definition of 'unfair contract' can be reconsidered to make it more inclusive one, the Ministry stated that the definition of the term ‘Unfair Contract” as given in the proposed Consumer Protection (Amendment) Bill, 2011 has been finalized after consultation with the Department of Financial Services and examination in a meeting chaired by Hon’ble Finance Minister with Hon’ble Minister for Agriculture, Consumer Affairs, Food & Public Distribution, Hon’ble Minister for Law & Justice, Hon’ble Minister for Human Resource Development, Secretary (Financial Services), Secretary (Consumer Affairs) etc. We can reconsider the definition on the basis of specific input.

2.19 The Committee welcome the inclusion of term 'Unfair Contract' in the Bill under Section 2 (viii) (s). However, the Committee feel that the definition of 'Unfair Contract' should be inclusive definition. The Committee desire that the term 'Unfair Contract' should state the general ground for which a contract will be considered unfair and it may give an illustrative list of examples. Further, it should be added that 'Unfair Term Contract' includes the following, but it is not limited to the following. The Committee recommend that Section 2(viii)(s) of the Bill may be amended accordingly.

The Committee further note that the 'service' clause provided by manufacturers/business entity should also include 'Unfair Contract Term' so as not to be unfair in providing service conditions to the consumers. The Committee, therefore, recommend that Section (2) (o) of the Consumer Protection Act, 1986 which defines 'service' should be amended to make the definition of term service 'inclusive' so as to include unfair contract term. A Clause to this effect may be included in the Bill.

Section 11 & 15

Section 11 &15 of the Bill provides to amend Section 16(1) & 20(1) of the Act

<p>Section 16 (1)</p> <p>(1) Each State Commission shall consist of—</p> <p>(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:</p> <p>Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;</p>	<p>Proposed Amendment - 1</p> <p>In sub-clause (i) of clause (b) of sub-section (1) for the words, 'thirty-five years' the words, 'forty-five years' shall be substituted.</p> <p>Proposed Amendment - 2</p> <p>In sub-clause (iii) of clause (b) of sub-section (1) for the words, 'ten years' the words, 'twenty years' shall be substituted.</p>
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(b) not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—

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

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

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

Provided further that 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

Proposed Amendment - 3

In the Explanation below first proviso to sub-clause (iii) of clause (b) of sub-section (1) for the words, 'ten years' the words, 'twenty years' shall be substituted.

<p>insolvent; or</p> <p>(c) is of unsound mind and stands so declared by a competent court; or</p> <p>(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or</p> <p>(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</p> <p>(f) has such other disqualifications as may be prescribed by the State Government.</p>	
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2.20 Justification/reason given by the Department- It is proposed to increase the minimum age limit for being eligible to become a Member from 35 to 45 years as it is proposed to increase the minimum experience from 10 to 20 years, in order to improve the quality of persons applying for these posts. It is the consequential change for judicial members similar to what is being proposed for non-judicial members.

industry, public affairs or administration:

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

Explanation.—For the purposes of this clause, the expression 'persons having judicial background' shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level.

.....

Provided also that every appointment under this clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following, namely:—

(a) a person who is a Judge of the Supreme Court, — Chairman;

to be nominated by the Chief Justice of India

(b) the Secretary in the Department of Legal

It is proposed to replace the existing Explanation with the following Explanation:-

'Explanation.— For the purposes of this clause, the expression "persons having judicial background" shall mean persons who are or have been a Judge of a High Court or Supreme Court.'

Proposed Amendment – 4

In the third proviso below Section 20 (1) (b) (iii), after clause (a), the following clause shall be inserted:-

'(aa) the President of the National Commission – Member;'

<p>Affairs in the Government of India — Member;</p> <p>(c) Secretary of the Department dealing with Consumer Affairs in the Government of India</p> <p>— Member</p>	
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2.21 Justification/reason given by the Department- It is proposed to increase the minimum age limit from 35 to 55 years for being eligible to become a Member as it is proposed to increase the minimum experience from the existing 10 years to 30 years in order to improve the quality of persons applying for these posts. It is the consequential change for judicial members, as the minimum experience of 30 years is being proposed for non-judicial members, so as to improve the quality of persons applying for the post. Inclusion of President, National Commission as a member in the Selection Committee for selection of candidates to the post of Member, National Commission as the views of President, National Commission is considered necessary for selection of better candidates. Furthermore, at present, President, State Commission is the Chairman of the Selection Committees for the selection of President/Member in the District Forum as well as for Members of State Commission, while the President of the National Commission has no say in the selection process of Member, National Commission.

2.22 The Committee observed that the Department has proposed to amend Section 20 (1) of the Act and propose to increase the minimum age limit to become a Member of National Commission from 35 to 55 years as it is proposed to increase the minimum experience from the existing 10 years to 30 years [In sub-clause (i) and (iii) of clause (b) of sub-section (1) of

Section 20 respectively]. Similarly, in case of State Commission it is proposed to increase minimum age limit from 35 to 45 years as it is proposed to increase the minimum experience from 10 to 20 years[sub-clause (i) and (iii) of clause (b) of sub-section (1) of Section 16 respectively].

2.23 When asked to justify such an increase in the age limit keeping in view the fact that already a large no. of vacancies exist in various tiers of the Consumer Fora and its impact on the functioning of Consumer Fora, the Ministry stated that as per present provisions of the Consumer Protection Act, 1986, not only the requisite qualifications, but the minimum age limit as well as experience required for appointment as Member is exactly the same for the District Fora, State Commissions and the National Commission. The proposed Amendment is aimed at getting more experienced persons for each higher Consumer Fora. This increase in minimum age limit or experience would not hamper the availability of candidates for, or functioning of the Consumer Fora since no change has been made in the maximum age limit for Members which is 65 in case of District Fora, 67 in case of State Commission and 70 in case of National Commission.

2.24 The Government under Section 11 and 15 of the Bill propose to amend Section 16(1) and 20 (1) of the Principal Act. The Committee note that the minimum age limit for being eligible to become a member has been proposed to be increased from 35 to 45 years in State Commission and from 35 to 55 years in case of National Commission. Moreover, minimum experience has also been proposed to be increased from 10 to 20 years and 10 to 30 years In State Commissions and National Commission, respectively. The Committee are of the view that such increase in the minimum age limit as well as experience is very drastic and sudden. The Committee are not convinced with the view of the Government that such an increase would help in getting more experienced persons for each higher consumer fora. As for disposal of consumer related issues, there is already a proposal for getting assistance of technicians or professionals as and when required. The Committee, therefore, suggest for increase in the minimum age limit for Members of State Commission from 35 to 40 years and for Members of National Commission from 35 to 45 years. The minimum experience may be retained at 10 years for State Commission and for National Commission it should be 20 years. Accordingly, the Committee recommend that the following changes may be made in the Bill:

(a) In Section 11(i)(b), replace 'forty five years' with 'forty years'.

(b) Delete sub-clause (A) of Section 11(i)(c).

(c) In Section 15(i)(b), replace 'fifty five years' with 'forty five years'.

(d) In sub-clause (A), replace 'thirty years' with 'twenty years'.

Section 14

Section 14 of the Bill provides to add new Section as Section 19 B in the Principal Act

Section 19B	It is proposed to insert a new Section 19B as under:
New Section	'19B Power to review Order - Without prejudice to the provisions contained in section 18, the State Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.'

2.25 **Justification/reason given by the Department-** The amendment proposes to empower the State Commission, as provided to the National Commission, to review their own orders when there is an error apparent on the face of records. It was felt that such power would be in the interest of justice as at present the aggrieved parties do not have any recourse other than filing an appeal to the National Commission to set right the errors made in the order of the State Commission.

2.26 The Committee received various suggestions from number of Experts/Associations that the power of review should be given to the State Commissions as well as District Forums. When asked about the views of the Ministry on the issue, the Ministry in their reply stated that they support the proposal to empower the State Commissions also to review their own orders and this has been included as a proposed Amendment in the Bill under consideration.

2.27 The Committee appreciate the insertion of new Section 19B to the Principal Act under Section 14 of the Bill, hence, giving power to the State Commission to review any order made by it, when there is an error apparent on the face of record. However, as the consumer cases emanate from District Fora, the Committee are of the view that this power of review should be given to the District Fora as well. The Committee, therefore, recommend insertion of the words 'and the District Fora' after the words 'the State Commission' in Section 14 of the Bill.

**New Delhi
13 December, 2012
22 Agrahayana, 1934 (Saka)**

**VILAS MUTTEMWAR,
Chairman,
Standing Committee on Food,
Consumer Affairs and Public Distribution**

APPENDIX

AS INTRODUCED IN LOK SABHA

Bill No. 127 of 2011

THE CONSUMER PROTECTION (AMENDMENT) BILL, 2011

A

BILL

further to amend the Consumer Protection Act, 1986.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Consumer Protection (Amendment) Act, 2011.

Short title and
com-
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

68 of 1986. 5

2. In section 2 of the Consumer Protection Act, 1986 (hereinafter referred to as the principal Act), in sub-section (1),—

Amendment
of section 2.

(i) in clause (aa), for the word “means”, the word “includes” shall be substituted;

(ii) in clause (c), after sub-clause (v), the following sub-clause shall be inserted, namely:—

10

“(va) he has suffered a loss in pursuance of an unfair contract entered into by him;”;

(iii) in clause (f), for the word “means”, the word “includes” shall be substituted;

(iv) for clause (g), the following clause shall be substituted, namely:—

‘(g) “deficiency” include—

(i) any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

(ii) any act of omission or commission which causes any damage to the consumer on account of negligence or consciously withholding of relevant information to the consumer;’

(v) after clause (g), the following clause shall be inserted, namely:—

‘(ga) “political party” shall have the meaning assigned to it under clause (f) of sub-section (1) of section 2 of the Representation of the People Act, 1951;’

(vi) after clause (h), the following clause shall be inserted, namely:—

‘(ha) “electronic form” shall have the meaning assigned to it under clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000;’

(vii) in clause (r), after sub-clause (6), the following sub-clauses shall be inserted, namely:—

“(7) after selling such goods or rendering of such services, fails to issue bill or cash memo or receipt for the goods sold or service rendered;

(8) after selling such goods or rendering of such services, refuses to take back or withdraw the goods or withdraw or discontinue the service and refuses to refund the consideration thereof, if paid, within a period of thirty days after the receipt of goods or availing of services it is so requested by the consumer;

(9) discloses to any other person any personal information given in confidence by the consumer:

Provided that disclosure of personal information given with express or implied consent of the consumer or under provisions of any law in force or in public interest shall not be constructed as a deficiency of service’

(viii) after clause (r), the following clause shall be inserted, namely:—

‘(s) “unfair contract” means a contract which contains any one or more of the following clauses:—

(i) requires excessive security deposits to be given by a party to the contract for the performance of contractual obligations; or

(ii) impose any penalty on a party to the contract for the breach thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or

(iii) refuses to accept early repayment of debts on payment of applicable penalty;

(iv) entitles a party to the contract to terminate without reasonable cause the contract unilaterally.’

3. In section 9 of the principal Act, in clause (a), after the proviso, the following proviso shall be inserted, namely:— Amendment of section 9.

5 “Provided further that in a district where no District Forum has been established or if established, there exists at any time vacancy in the office of the President or a member, in such case, the State Government may, by notification, direct that—

(a) a District Forum, as specified in the notification, shall exercise the jurisdiction in respect of such District Forum as may be specified in the notification; or

10 (b) the President or a member of a District Forum, as the case may be, shall exercise the power or discharge the functions of the President or the member, as the case may be, of any other District Forum as may be specified in the notification.”.

4. In section 10 of the principal Act,—

Amendment of section 10.

(i) in sub-section (1), in clause (b),—

15 (I) in the opening portion, for the words “two other members”, the words “not less than two and not more than such number of members, as may be prescribed, and at least” shall be substituted;

(II) in sub-clause (iii), after the words “public affairs”, the words “consumer affairs” shall be inserted;

20 (III) after sub-clause (iii), the following proviso and *Explanation* shall be inserted, namely:—

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

25 *Explanation.*—For the purpose of this clause, the expression “persons having judicial background” shall mean persons who have served as a presiding officer for at least one year in a judicial court.’;

(IV) in the proviso,—

30 (A) in the opening portion, for the words “Provided that a person shall be disqualified for appointment”, the words “Provided further that a person shall be disqualified for appointment or for continuation as such” shall be substituted;

(B) after clause (e), the following clause shall be inserted namely:—

35 “(ee) is or continues to be, after appointment, a member or office bearer of any political party; or”;

(ii) after sub-section (1A), the following sub-section shall be inserted, namely:—

40 “(1B) The State Governments may, if it is of the opinion that any person recommended by the Selection Committee under sub-section (1A) has not been found fit for such appointment, it may, within a period of two months from such recommendation and for reasons to be recorded in writing, refer the matter to the Selection Committee for fresh recommendation.”;

(iii) in sub-section (2),—

45 (a) after the first proviso, the following provisos shall be inserted, namely:—

“Provided further that a person appointed as a President of the District Forum shall also be eligible for re-appointment in the manner provided in sub-section (1A):

Provided also that the Selection Committee shall take into consideration the observations or performance appraisal report, if any, made by the President of the State Commission in respect of the President or member of the District Forum being considered for re-appointment as such:”;

(b) in the second proviso, for the words “provided further”, the words “Provided also” shall be substituted;

(iv) after sub-section (3), the following sub-section shall be inserted at the end, namely:—

“(4) The President or member of the District Forum, on ceasing to hold office as such, shall not appear, act or plead before any District Forum in that State in which he had been as the President or member, as the case may be, of the District Forum.”.

Insertion of new section 10A. Staff of District Forum.

5. After section 10 of the principal Act, the following section shall be inserted, namely:—

“10A. (1) The State Government shall determine the nature and categories of the officers and other employees required to assist the District Forum in the discharge of its functions and provide the District Forum with such officers and other employees as it may think fit.

(2) The officers and other employees of the District Forum shall discharge their functions under the general superintendence of the President.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District Forum shall be such as may be prescribed by the State Government:

Provided that officers and other employees employed on or before the commencement of the Consumer Protection (Amendment) Act, 2011, in a District Forum, shall continue to be employed as such unless the nature and categories thereof has been determined by the State Government.”.

Amendment of section 11.

6. In section 11 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) (a) The jurisdiction, powers and authority of the District Forum may be exercised by benches thereof.

(b) A Bench may be constituted by the President with one or more members as the President may deem fit:

Provided that the single member bench shall exercise jurisdiction, power and authority in relation to such matters as may be prescribed by the State Government in consultation with the State Commission and it shall not, in any case, dispose of any case fixed for final hearing.”.

Insertion of new section 11A. Circuit benches.

7. After section 11 of the principal Act, the following section shall be inserted, namely:—

“11A. The District Forum shall ordinarily function in the district headquarters and 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.”.

Amendment of section 12.

8. In section 12 of the principal Act,—

(a) in sub-section (1), in the opening portion, after the words “agreed to be provided”, the words “or in respect of any restrictive trade practice or unfair trade practice adopted” shall be inserted;

(b) in sub-section (2), after the words “in such manner”, the words and brackets “(including electronic form)” shall be inserted;

(c) in sub-section (3),—

5 (i) in the second proviso, for the words “twenty-one days”, the words “twenty-eight days” shall be substituted;

(ii) after the second proviso, the following proviso shall be inserted, namely:—

10 “Provided also that if the District Forum does not decide the issue of admissibility of the complaint within the period specified in the second proviso, it shall be deemed to have been admitted except in the case where the complainant has failed to appear before the District Forum on the day of hearing without any reasonable ground.”.

9. In section 14 of the principal Act,—

Amendment
of section 14.

(a) in sub-section (1),—

15 (i) in the opening portion, after the words “about the services”, the words “or restrictive trade practices or unfair trade practices” shall be inserted;

(ii) in clause (c), after the word “by the complainant”, the words “along with reasonable rate of interest on such price or charges as may be decided by the District Forum” shall be inserted;

20 (iii) in clauses (g), (h) and (ha), after the word “hazardous”, the words “or unsafe” shall respectively be inserted;

(iv) in clause (hb), in the first proviso, for the words “five per cent.”, the words “twenty-five per cent.” shall be substituted;

25 (b) in sub-section (2A), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the other member shall give his opinion on such point or points referred to him within a period of three months from the date of such reference.”.

30 10. In section 15 of the principal Act, in the second proviso, the words “or twenty-five thousand rupees, whichever is less” shall be omitted.

Amendment
of section 15.

11. In section 16 of the principal Act,—

Amendment
of section 16.

(i) in sub-section (1), in clause (b)—

(a) in the opening portion, for the words “and one of whom” the words “at least one of whom” shall be substituted;

35 (b) in sub-clause (i), for the words “thirty-five years”, the words “forty-five years” shall be substituted;

(c) in sub-clause (iii),—

(A) for the words “ten years”, the words “twenty years” shall be substituted;

40 (B) after the words “public affairs”, the words “consumer affairs” shall be inserted;

(C) in the first proviso, in the *Explanation*, for the words “ten years”, the words “twenty years” shall be substituted;

(D) in the second proviso,—

45 (I) after the word “appointment”, the words “or for continuation as such” shall be inserted;

(II) after clause (e), the following clause shall be inserted, namely:—

“(ee) is or continues to be, after appointment, a member or office bearer of any political party; or”;

(ii) in sub-section (IA), for the words, brackets and figure “under sub-section (I)”, the words, brackets, letter, and figure “under clause (b) of sub-section (I)” shall be substituted; 5

(iii) after sub-section (IA), the following sub-section shall be inserted, namely:—

“(IAA) The State Governments may, if it is of the opinion that any person recommended by the Selection Committee under sub-section (IA) has not been found fit for such appointment, it may, within a period of two months from such recommendation and for reasons to be recorded in writing, refer the matter to the Selection Committee for fresh recommendations.”; 10

(iv) in sub-section (IB), in clause (iii), the following proviso shall be inserted, namely:— 15

“Provided that the President or the members, as the case may be, shall give his or their opinion on the point or points referred to him or them within a period of three months from the date of such reference.”.

(v) in sub-section (3), after the second proviso, the following proviso shall be inserted, namely:— 20

“Provided also that the Selection Committee shall take into consideration the observations or performance appraisal report, if any, made by the President of the National Commission in respect of the member of the State Commission being considered for re-appointment.”;

(vi) after sub-section (4), the following sub-section shall be inserted at the end, namely:— 25

“(5) The President or member of the State Commission, on ceasing to hold office as such, shall not appear, act or plead before the State Commission or any District Forum in that State in which he had been as the President or member, as the case may be, of the State Commission.”. 30

Insertion of new section 16A.

Staff of State Commission.

12. After section 16 of the principal Act, the following section shall be inserted, namely:—

“16A. (I) The State Government shall determine the nature and categories of the officers and other employees required to assist the State Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit. 35

(2) The officers and other employees of the State Commission shall discharge their functions under the general superintendence of the President.

(3) The salaries and allowances payable to and the other terms and conditions of service of, the officers and other employees of the State Commission shall be such as may be prescribed by the State Government: 40

Provided that the officers and other employees employed on or before the commencement of the Consumer Protection (Amendment) Act, 2011, in a State Commission, shall continue to be employed as such unless the nature and categories thereof has been determined by the State Government.”. 45

Amendment of section 19.

13. In section 19 of the principal Act, in the second proviso, the words “or rupees thirty-five thousand, whichever is less” shall be omitted.

14. After section 19A of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 19B.

5 “19B. Without prejudice to the provisions contained in section 18, the State Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.”

Power of Commission to review order.

15. In section 20 of the principal Act,—

Amendment of section 20.

(i) in sub-section (1), in clause (b)—

(a) in the opening portion, for the words “and one of whom” the words “at least one of whom” shall be substituted;

10 (b) in sub-clause (i), for the words “thirty-five years”, the words “fifty-five years” shall be substituted;

(c) in sub-clause (iii),—

(A) for the words “ten years”, the words “thirty years” shall be substituted;

15 (B) after the words “public affairs”, the words “,consumer affairs” shall be inserted;

(C) for the Explanation, the following *Explanation* shall be substituted, namely:—

20 ‘*Explanation.*— For the purposes of this clause, the expression “persons having judicial background” shall mean persons who are or have been a Judge of a High Court or Supreme Court.’;

(D) in the second proviso,—

(I) after the word “appointment”, the words “or for continuation as such” shall be inserted;

25 (II) after clause (e), the following clause shall be inserted, namely:—

“(e) is or continues to be, after appointment, a member or office bearer of any political party; or”;

30 (E) in the third proviso, after clause (a), the following clause shall be inserted, namely:—

“(aa) the President of the National Commission - Member.”;

(ii) after the third proviso, the following proviso shall be inserted, namely:—

35 “Provided also that the Central Government may, if it is of the opinion that any person recommended by the Selection Committee under this section has not been found fit for such appointment, it may, within a period of two months from such recommendation and for reasons to be recorded in writing, refer the matter to the Selection Committee for fresh recommendations.”;

(iii) in sub-section (1A), in clause (iii), the following proviso shall be inserted, namely:—

40 “Provided that the President or the members, as the case may be, shall give his or their opinion on the point or points referred to him or them within a period of three months from the date of such reference.”

(iv) for sub-section (2), the following sub-section shall be substituted, namely:—

45 “(2) The conditions of service of the members of the National Commission shall be the same as are applicable to a Judge of a High Court:

Provided that the salary or honorarium and other allowances payable to the Members of the National Commission shall be such as may be prescribed by the Central Government”;

(v) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) A member of the National Commission, on ceasing to hold office as such, shall not appear, act or plead before the National Commission or any State Commission or District Forum.”.

Insertion of new section 22E.	16. After section 22D of the principal Act, the following section shall be inserted, namely:—	5
Power of Commission to seek assistance.	“22E. Where the National Commission or the State Commission, as the case may be, on application by a complainant or otherwise, is of the opinion that it involves the larger interest of consumers, it may direct any individual or organisation or expert to assist the National Commission or the State Commission, as the case may be.”.	10
Amendment of section 23.	17. In section 23 of the principal Act, in the second proviso, the words “or rupees fifty thousand, whichever is less” shall be omitted.	
Amendment of section 25.	18. For section 25 of the principal Act, the following section shall be substituted, namely:—	
Enforcement of orders of District Forum, State Commission or National Commission.	<p>“25. (1) Every order made by the District Forum, the State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in case of its inability to execute such order, to the court within the local limits of whose jurisdiction,—</p> <p>(a) in the case of an order against a company, the registered office of the company is situated; or</p> <p>(b) in the case of an order against any other person, place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.</p> <p>(2) Where any order made by the District Forum, State Commission or the National Commission, as the case may be, is not complied with, such person not complying with the order shall be required to pay not less than five hundred rupees or one-half per cent. of the value of the amount awarded, whichever is higher, for each day of delay of such non-compliance of the order till it is paid, in addition to the payment of the awarded amount.</p> <p>(3) Without prejudice to the provisions contained in sub-sections (1) and (2), where any order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.</p> <p>(4) No attachment made under sub-section (3) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages, as it thinks fit, to the complainant and shall pay the balance, if any, to the party entitled thereto.</p> <p>(5) Where any amount is due from any person under any order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.</p> <p>(6) Notwithstanding the provisions contained in this section, it shall be the duty of the party against whom the order is passed by the District Forum or the State Commission or the National Commission, as the case may be, to report back to the District Forum or the State Commission or the National Commission, as the case may be, about the status of implementation of the order and the proceedings would be</p>	15 20 25 30 35 40 45 50

deemed to be continuing till the implementation of the order and it shall be the responsibility of the District Forum or the State Commission or the National Commission, as the case may be, to monitor the same till its implementation and to take appropriate penal action wherever necessary.”.

- 5 **19.** In section 27 of the principal Act, in sub-section (2), the words “on such conferment of powers” and the words “on whom the powers are so conferred” shall be omitted. Amendment of section 27.
- 20.** After section 28A of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 28B and 28C.
- 10 “28B. (1) The Central Government may, by a general or special order, call upon the National Commission to furnish, periodically or as and when required any information concerning the pendency of cases in such form as may be prescribed. Power to call for information.
- (2) The State Government may, by a general or special order, call upon the State Commission or any District Forum to furnish, periodically or as and when required any information concerning the pendency of cases in such form as may be prescribed by the State Government.
- 15 28C. (1) Every District Forum shall furnish to the State Commission at such time and in such form and manner as may be specified by regulations the returns and statements and particulars in regard to pendency of cases before the District Forum. Returns and reports.
- 20 (2) Every State Commission shall furnish to the National Commission and the State Government at such time and in such form and manner as may be specified by regulations the returns and statements and such particulars in regard to pendency of cases before the State Commission or the District Forum.
- (3) The National Commission shall furnish to the Central Government at such time and in such form and manner as may be specified by regulations the returns and statements and particulars in regard to pendency of cases before the National Commission, State Commission and the District Forum.
- 25 (4) The District Forum, the State Commission and the National Commission shall publish all data relating to pendency of cases (including the details of filing of a case or application and disposal thereof, daily cause list and orders passed on such date and other related information) on their respective website.
- 30 **21.** In section 30 of the principal Act,— Amendment of section 30.
- (a) in sub-section (1), for the words and figures “and section 23”, the words, figures, brackets and letter “section 23 and sub-section (1) of section 28B” shall be substituted;
- 35 (b) in sub-section (2),—
- (i) after the word and figures “section 10”, the words, brackets, figures and letter “sub-section (3) of section 10A” shall be inserted;
- (ii) for the words, brackets, letter and figures “and clause (b) of sub-section (1) and sub-section (2) of section 16 of this Act”, the words, brackets, letters and figures “clause (b) of sub-section (1) and sub-section (2) of section 16, sub-section (3) of section 16A and sub-section (2) of section 28B of this Act or any other matter which is to be, or may be, required to be prescribed” shall be substituted.
- 40

STATEMENT OF OBJECTS AND REASONS

The Consumer Protection Act, 1986 (the said Act) was enacted by Parliament to provide for better protection of the interests of consumers and for that purpose to make provision for establishment of consumer councils and other authorities for the settlement of consumer disputes, and for matter connected therewith. The aforesaid Act has been amended in the years 1991, 1993 and 2002 to make the provisions of the Act more effective.

2. Although, the working of the consumer dispute redressal agencies has served the purpose under the said Act to a considerable extent, the disposal of cases has not been as quick due to the various constraints. Several shortcomings have been noticed while implementing various provisions of the Act. With a view to widening and amplifying the scope of some of the provisions of the said Act, to facilitate faster disposal of cases and to rationalize the qualifications and procedure of selection of the Presidents and Members of the National Commission, State Commission and District Forum, it has been felt necessary to amend the said Act. The Consumer Protection (Amendment) Bill, 2011, *inter alia*, makes the following provisions, namely:—

(a) define the expression ‘unfair contract’ and include the same within the scope of the Act;

(b) confer power upon the State Government to direct, by notification,—

(i) that a District Forum shall exercise the jurisdiction of any other District where no District Forum has been constituted; or

(ii) that the President or a member of a District Forum shall discharge the functions of President or members of any other District Forum in which there exist a vacancy of President or members, as the case may be;

(c) confer power upon the State Government to refer back the recommendation of the Selection Committee to it for making fresh recommendation, within a period of two months from such recommendation and for reasons to be recorded in writing, in case the State Government is of the opinion that any person recommended by the Selection Committee for appointment as President or member of a District Forum or a member of the State Commission, as the case may be, has not been found fit for appointment as such;

(d) make a provision that the Selection Committee shall take into consideration the observations or performance appraisal report, if any, made by the President of the State Commission or the President of the National Commission, as the case may be, in respect of any member of the District Forum or the State Commission, as the case may be, being considered for reappointment as such;

(e) make a provision to the effect that the President or member of the District Forum, on ceasing to hold office as such, shall not appear, act or plead before any District Forum in that State in which he had been working as the President or member, as the case may be, of the District Forum;

(f) make a provision to provide that the District Forum shall ordinarily function in the district headquarters and 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;

(g) make a provision for making of a complaint by electronic form also to the District Forum;

(h) make a provision for admissibility of the complaint to be decided twenty-eight days instead of twenty-one days from the date on which the complaint was received and in case the District Forum does not decide the issue of admissibility of the complaint within the said period it shall be deemed to have been admitted except in the case where the complainant has failed to appear before the District Forum on the day of hearing without any reasonable ground;

(i) confer power upon the District Forum to issue an order to the opposite party to pay reasonable rate of interest on such price or charges as may be decided by the District Forum in case the price of the goods or charges paid by the complainant have been ordered to be returned to the complainant;

(j) make provision for additional disqualification of a member of the District Forum or the State Commission or the National Commission if he is or continues to be, after appointment, a member or office bearer of any political party;

(k) make provision for increase of the minimum age for appointment as member in case of the State Commission from thirty-five years to forty-five years and in the case of the National Commission from thirty-five years to fifty-five years;

(l) make provision for increase of the period of experience for appointment as member in case of the State Commission from ten years to twenty years and in case of the National Commission from ten years to thirty years;

(m) make provision for substitution of the explanation relating to definition of the expression "person having judicial background" in case of the National Commission, as to include therein the persons who are or have been a Judge of a High Court or the Supreme Court;

(n) make provision that the President or member of the District Forum, the State Commission and the National Commission, on ceasing to hold office as such, shall not appear, act or plead before the District Forum or the State Commission or the National Commission, as the case may be;

(o) make provision that the conditions of service of the members of the National Commission shall be the same as are applicable to a Judge of a High Court;

(p) confer power upon the National Commission or the State Commission, as the case may be, to direct any individual or organisation or expert to assist the National Commission or the State Commission, as the case may be, on application by a complainant or otherwise, if the National Commission or the State Commission is of the opinion that it involves the larger interest of consumers;

(q) make a provision that an order of the District Forum, the State Commission or the National Commission may be enforced by it as if it were a decree of a civil court or it may send, in case of its inability to execute such order to the court having jurisdiction;

(r) make a provision for payment, by every person not complying with the order of the District Forum, State Commission or the National Commission, as the case may be, of an amount of not less than five hundred rupees or one-half per cent of the value of the amount awarded, whichever is higher, for each day of delay of such non-compliance of the order, till it is paid, in addition to the payment of the awarded amount;

(s) confer power upon the Central Government to call upon the National Commission to furnish, periodically or as and when required any information concerning the pendency of cases in the prescribed form; and confer power upon the State Government to call upon the State Commission or any District Forum to furnish, periodically or as and when required any information concerning the pendency of cases in the prescribed form;

(*t*) make provisions for furnishing of returns and statement and particulars in regard to pendency of cases, by—

(i) the District Forum to the State Commission,

(*ii*) the State Commission to the National Commission and the State Government,

(*iii*) the National Commission to Central Government.

3. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;

K. V. THOMAS.

The 2nd November, 2011.

FINANCIAL MEMORANDUM

Clause 4 of the Bill seeks to amend section 10 of the Act to enable the State Government to appoint in the District Forum such number of members as may be prescribed in place of two members.

2. Clause 5 of the Bill seeks to insert a new section 10A to enable the State Government to determine the nature and categories of officers and other employees required to assist the District Forum in the discharge of its functions and provide the District Forum with such officers and other employees as it may think fit. The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District forum shall be such as may be prescribed by the State Government.

3. Clause 6 of the Bill seeks to insert a new sub-section (3) in section 11 so as to enable the President of the District Forum to constitute benches with one or more members.

4. Clause 7 of the Bill seeks to insert a new section 11A to enable the State Government to notify in consultation with the State Commission, the other place of sitting of the District Forum to perform its functions.

5. Clause 12 seeks to insert a new section 16A to enable the State Government to determine the nature and categories of the officers and other employees required to assist the State Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit. The salaries and allowances payable to and the other terms and conditions of service of, the officers and other employees of the State Commission shall be such as may be prescribed by the State Government.

6. It is not possible to indicate the exact expenditure involved in appointment of additional members and officers and employees of the District Forum and the State Commission as this would depend upon the actual number of such members or officers and other employees appointed. However, the expenditure on this account would be incurred by the State Governments.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to amend section 10 of the Act which empowers the State Government to prescribe the number of members of District Forum for appointment.

2. Clause 5 of the Bill seeks to insert new section 10A which empowers the State Government to prescribe the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District Forum.

3. Clause 12 of the Bill seeks to insert new section 16A which empowers the State Government to prescribe the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the State Commission.

4. Clause 20 of the Bill seeks to insert new sections 28B and 28C. Sub-section (1) of section 28B provides to prescribe the form in which any information concerning the pendency of cases shall be furnished by the National Commission to the Central Government. Sub-section (2) of said section provides to prescribe the form in which any information concerning the pendency of cases shall be furnished by the State Commission to the State Government. Sub-section (1) of section 28C empowers the National Commission to specify by regulations the time, and the form and manner in which returns and statements and such particulars in regard to pendency of cases before the District Forum shall be furnished by the District Forum to the State Commission and, by the State Commission to the National Commission.

5. The rules made by the Central Government and the regulations made by the National Commission shall be laid, as soon as they are made, before both the Houses of Parliament under sub-section (1) of section 31 and the rules made by the State Government shall be laid, as soon as may be after it is made, before the State Legislature under sub-section (2) of that section. The matters in respect of which rules and regulations may be made are matter of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers, therefore, is of normal character.

ANNEXURE

EXTRACTS FROM THE CONSUMER PROTECTION ACT, 1986

(68 OF 1986)

* * * * *

2. (1) In this Act, unless the context otherwise requires,— Definitions.

* * * * *

(aa) “branch office” means—

* * * * *

(f) “defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods;

(g) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

* * * * *

(r) “unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(1)* * * * *

CHAPTER III

CONSUMER DISPUTES REDRESSAL AGENCIES

9. There shall be established for the purposes of this Act, the following agencies, Establishment of Consumer Disputes Redressal Agencies. namely:—

(a) a Consumer Disputes Redressal Forum to be known as the “District Forum” established by the State Government in each district of the State by notification:

Provided that the State Government may, if it deems fit, establish more than one District Forum in a district;

* * * * *

10. (1) Each District Forum shall consist of,— Composition of the District Forum.

* * * * *

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

* * * * *

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

Provided that a persons shall be disqualified for appointment as a member, if he—

* * * * *

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

* * * * *

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

* * * * *

Manner in which complaint shall be made.

12. (1) A Complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by—

* * * * *

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

* * * * *

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

* * * * *

Finding of the District Forum.

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

* * * * *

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

* * * * *

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

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

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

(hb) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

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 services provided, as the case may be, to such consumers:

* * * * *

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

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they

differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

* * * * *

15. Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed: Appeal.

* * * * *

Provided further that 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.

16. (1) Each State Commission shall consist of—

* * * * *

Composition
of the State
Commission.

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

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

* * * * *

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

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

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

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

* * * * *

(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely:—

* * * * *

(1B)* * * * *

(iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.

* * * * *

(3) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier:

* * * * *

Provided further that a person appointed as a President of the State Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1) of this section:

* * * * *

Appeals.

19. Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

* * * * *

Provided further 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 has deposited in the prescribed manner fifty per cent. of the amount or rupees thirty-five thousand, whichever is less:

* * * * *

Composition of the National Commission.

20. (1) The National Commission shall consist of—

* * * * *

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

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

* * * * *

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

* * * * *

Explanation.—For the purposes of this clause, the expression “persons having judicial background” shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment, if he—

* * * * *

Provided also that every appointment under this clause shall be made by the Central Government on the recommendation of a Selection Committee consisting of the following, namely:—

(a) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India —Chairman;

* * * * *

(1A)(i) * * * * *

(iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.

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

* * * * *

23. Any person, aggrieved by an order made by the National Commission in exercise of its power conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

* * * * *

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent. of that amount or rupees fifty thousand, whichever is less.

* * * * *

25. (1) Where an interim order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

Enforcement of orders of the District Forum, the State Commission or the National Commission.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.

* * * * *

27.(1)* * * * * * Penalties.

2 of 1974.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973.

* * * * *

30. (1) The Central Government may, by notification, make rules for carrying out the provisions contained in clause (a) of sub-section (1) of section 2, clause (b) of sub-section (2) of section 4, sub-section (2) of section 5, sub-section (2) of section 12, clause (vi) of sub-section (4) of section 13, clause (hb) of sub-section (1) of section 14, section 19, clause (b) of sub-section (1) and sub-section (2) of section 20, section 22 and section 23 of this Act.

Power to make rules.

(2) The State Government may, by notification, make rules for carrying out the provisions contained in clause (b) of sub-section (2) and sub-section (4) of section 7, clause (b) of sub-section (2) and sub-section (4) of section 8A, clause (b) of sub-section (1) and sub-section (3) of section 10, clause (c) of sub-section (1) of section 13, clause (hb) of sub-section (1) and sub-section (3) of section 14, section 15 and clause (b) of sub-section (1) and sub-section (2) of section 16 of this Act.

* * * * *

LOK SABHA

A

BILL

further to amend the Consumer Protection Act, 1986.

(Shri K.V. Thomas, Minister for Consumer Affairs, Food and Public Distribution)

GMGIPMRND—3094LS(S3)—09-12-2011.

**MINUTES OF THE SIXTEENTH SITTING OF THE STANDING COMMITTEE ON
FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2011-12) HELD ON
TUESDAY, THE 19th JUNE, 2012**

The Committee sat from 1500 hrs. to 1635 hrs. in Committee Room 'E',
Parliament House Annexe, New Delhi.

PRESENT

Shri Vilas Muttemwar - Chairman

MEMBERS

LOK SABHA

2. Shri Tarachand Bhagora
3. Shri Shivraj Bhaiya
4. Shri Arvind Kumar Chaudhary
5. Shri Sanjay Dhotre
6. Dr. Ram Chandra Dome
7. Shri Prataprao Ganpatrao Jadhav
8. Shri Lal Chandra Kataria
9. Shri Marotrao Sainuji Kowase
10. Shri Gobinda Chandra Naskar
11. Shri Prabodh Panda
12. Shri Purnmasi Ram
13. Shri Ramkishun
14. Shri E. G. Sugavanam
15. Smt. Usha Verma

RAJYA SABHA

16. Smt. T. Ratna Bai
17. Shri Lalhming Liana
18. Shri Kaptan Singh Solanki

SECRETARIAT

1. Shri P.K.Misra - Joint Secretary
2. Smt. Veena Sharma - Director
3. Shri Khakhai Zou - Under Secretary

**Representatives of the Ministry of Consumer Affairs, Food and Public Distribution
(Department of Consumer Affairs)**

- | | | |
|----------------------------|---|---|
| 1. Shri Rajiv Agarwal | - | Secretary |
| 2. Shri Pankaj Agarwal | - | Special Secretary |
| 3. Shri Manoj Kumar Parida | - | Joint Secretary |
| 4. Shri T. K. Murugan | - | Director |
| 5. Shri H. D. Nautiyal | - | Registrar, NCDRC, New Delhi |
| 6. Dr. Ranjana Nagpal | - | Sr. Tech. Dir., NIC, New Delhi |
| 7. Dr. Suresh Misra | - | Chair Professor & Chairman, CCS,
IIPA, New Delhi |

At the outset, Hon'ble Chairman welcomed the members to the sitting of the Committee convened for briefing by the representatives of the M/o Consumer Affairs, Food and Public Distribution (D/o Consumer Affairs) on the Consumer Protection (Amendment) Bill, 2011. Thereafter, Secretary and other officials of the Department of Food and Public Distribution were invited to the sitting of the Committee. After welcoming them, the Chairman apprised them of the provisions of Direction 55(1) of the Directions by the Speaker.

2. Hon'ble Chairman then requested the representatives of the Department to brief the Committee on various issues such as the salient features of the Bill, aims and objectives, major weaknesses/shortcomings in the existing Consumer Protection Act, 1986, etc.

3. Thereafter, the Secretary, Department of Consumer Affairs addressed the issues raised by the Hon'ble Chairman and also briefed the Committee on the various issues related to the Bill. The supplementary queries of the Members of the Committee were also responded to by the representatives of the Department.

4. The following are some of the important points that emerged during the deliberations of the Committee:-

- (i) Need to provide prevalence to the judgment of Consumer court over other courts;

- (ii) Need to have uniformity in the qualifications and methods of appointment, fixing salaries and emoluments, etc of the Presidents and Members of the State Commissions and District Fora;
- (iii) Need to empower the Department enabling them to take strict proactive steps/action against fraudulent and misleading advertisements;
- (iv) Need to empower the Consumer Forums to take *suo-moto* action against exploitative practices of various service providers like aviation sector, telecommunication sector, etc. and;
- (v) Need to give more teeth to the Department by providing executionary powers; etc.

5. The Hon'ble Chairman then thanked the Secretary and other representatives of the Department of Food and Public Distribution for free and frank discussion and also for briefing the Committee properly.

7. A verbatim record of the proceedings has been kept.

The Committee then adjourned.

MINUTES OF THE TWENTIETH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION HELD ON FRIDAY, 3rd AUGUST, 2012.

The Committee sat from 1130 hrs to 1340 hrs in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

Present

Dr. M.S. Gill - Acting Chairman, M.P. (R.S.)

Members

Lok Sabha

2. Shri Tarachand Bhagora
3. Shri Arvind Kumar Chaudhary
4. Shri Sanjay Dhotre
5. Shri Prataprao Ganpatrao Jadhav
6. Shri Lal Chand Kataria
7. Shri Prabodh Panda
8. Shri Sohan Potai
9. Shri Purnmansi Ram
10. Shri Ramkishun
11. Smt Usha Verma

Rajya Sabha

12. Smt. T.Ratna Bai
13. Shri P.Kannan
14. Shri Sanjay Raut
15. Dr.T.N.Seema
16. Shri Kaptan Singh Solanki

Secretariat

1. Shri P.K. Misra - Joint Secretary
2. Smt. Veena Sharma - Director
3. Shri Khakhai Zou - Under Secretary

Non-official witnesses:-

Sl. No.	Name of Experts	Name of Organizations/Associations
1.	(a) Prof. Sri Ram Khanna, Managing Trustee (b) Shri Ashim Sanyal, Chief Operating Officer (c) Shri H.K. Awasthi, Legal Head	VOICE, New Delhi
2.	(a) Shri Abhishek Nath Tripathi (b) Ms. Mani Gupta (c) Shri Salim Islam	Sarthak-Advocates and Solicitors, Noida
3.	(a) Shri K.K. Swami, Vice President (b) Shri B.S.Sachdev (c) Shri Dalip Kumar Babhoota	Akhil Bhartiya Grahak Panchayat, Delhi
4.	Shri C.K. Chaturvedi, President	District Consumer Redressal Forum, New Delhi
5.	(a) Shri S.K. Agarwal, President (b) Shri M.L. Gupta, Director (c) Shri R.D. Batra, Secretary (d) Shri Vinayak Pal, Additional Secretary	Citizens Rights Associations(Regd.), Delhi
6.	(a) Sqn Ldr S.D. Mitroo (b) Shri Tarun Gandhi	Disaster Management Consultants, Delhi

2. At the outset, Joint Secretary, Committee on Food, Consumer Affairs and Public Distribution informed the members that Hon'ble Chairman would not be able to attend the sitting. Thereafter, the members present unanimously chose Dr. M.S. Gill to preside over the sitting under Rule 258(3) of Rules of Procedure. Hon'ble Acting Chairman welcomed the Members to the sitting of the Committee convened to hear the views of Delhi based non-officials on 'The Consumer Protection (Amendment) Bill, 2011' which has been referred to the Committee by Hon'ble Speaker for examination and report. The Committee then invited the representatives of these Associations/Organizations one by one to hear their views/objections on various issues related to the provisions of the Bill as given below:

- (a) Supremacy of Consumer Protection Act in addition to and not in derogation of the provisions of any other law in force.
- (b) Nature of composition of Consumer Fora at various levels.

- (c) Selection procedure of President/Members of National Commission/State Commission/District Fora.
- (d) Accountability in the functioning of Consumer Fora.
- (e) Powers of Judiciary vis-à-vis Consumer Fora.
- (f) How to reduce consumers' grievances and facilitate prompt justice.

3. The representatives of the following Associations/Organizations shared their views on the important issues related with the Bill which are given as under:

(a) VOICE

- (i) Need to establish a compulsory Mediation Centre within the Consumer Forums to facilitate reduction in no. of cases coming to Consumer Fora.
- (ii) Mandatory provision of setting up of complaint handling mechanism in the companies in accordance with IS10002.
- (iii) Provision of punitive damages should be strengthened.
- (iv) Need to import the class action of USA system into the provision of Section 12(c) of the Consumer Protection Act, 1986.
- (v) Need to make the definition of 'unfair contract' more inclusive.
- (vi) Need to exclude judges from the District Forum where a case of lower value is involved.
- (vii) Need to nominate an experienced expert on Consumer Affairs in the Consumer Forum.

(b) SARTHAK- Advocates & Solicitors

- (i) Need to provide multiple options like money back policy, replacement policy, exchange policy, return the product in entirety to the Consumers instead of a single trial or return policy.
- (ii) Need to redraft the definition of 'unfair contract'.
- (iii) Constitutional validity of composition of Consumer court.

(c) AKHIL BHARTIYA GRAHAK PANCHAYAT

- (i) Need for more Consumer Courts.
- (ii) Need to help Consumer while filing their cases in Consumer Forum in black & white.
- (iii) Need a law to regulate the online purchases.
- (iv) Provision of separate column on the packet to be stamped and dated signed by the Shopkeepers if he does not have a receipt.

- (v) To prevent Consumer Courts from becoming regular courts.
 - (vi) Heavy Penalties to safeguard the interests of Consumers against malpractices in business.
 - (vii) To avoid advocates in District Forum where primary cases are involved.
- (d) **DISTRICT CONSUMER REDRESSAL FORUM**
- (i) Emphasis on exclusive Judicial Consumer Forum.
 - (ii) 'Deficiency' should include non- reply to legal notice in a reasonable time.
 - (iii) To include 'failure to display the price of all goods' under Section 2(r).
 - (iv) The right to recall or right to withdraw goods or services be categorized with clear terms and conditions.
 - (v) Need clarification about the age limit of President.
 - (vi) Power of review to be given to every court.
 - (vii) Right to file cases from the place where the Consumer lives.
- (e) **CITIZENS' RIGHTS ASSOCIATIONS**
- (i) Consumer Disputes Redressal Mechanism is a social legislation and a unique one which cannot be treated as courts.
 - (ii) Poor performance of Consumer Protection Councils.
 - (iii) Specific assignments be given to Members of the Consumer Forum.
 - (iv) Reappointment of Members should be abolished.
 - (v) To retain the original position under Section 19(a) with regard to hearing of some appeal. Repeal of Section 27(a) which granted further appeal.
 - (vi) Power of review to be given to every court.
 - (vii) Against the increase of new benches.
 - (viii) Administrative control and monitoring of consumer forums should rest with the Government as these are commissions and forum and not the courts.
 - (ix) Need for fixed time schedule for disposal of cases.
 - (x) Consumer courts should not be located in the premises of the ordinary courts.
 - (xi) Poor consumer be provided with the parallel competent lawyer.
 - (xii) Need for Grievance Redressal Mechanism where complaint of petty amount be settled.
 - (xiii) Need for accountability and simplification of the matter.

(f) **DISASTER MANAGEMENT CONSULTANTS**

- (i) There should be a timeframe for disposal of cases as in Fast Track Courts.
- (ii) Provision of Jury System to assist the Consumer Forums.
- (iii) Maintenance of congenial environment, decorum, infrastructure, etc. of Consumer Forum.
- (iv) Need for entirely separate Department of Consumer Affairs to look into interests of consumers.
- (v) Need to make food items as 'special category' where more stringent provisions should be made.

A verbatim record of the proceedings has been kept on record.

The Committee then adjourned.

MINUTES OF THE TWENTY FIRST SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION HELD ON WEDNESDAY, 22nd AUGUST, 2012.

The Committee sat from 1500 hrs to 1610 hrs in Main Committee Room, Ground Floor, Parliament House Annexe, New Delhi.

Present

Shri Vilas Muttemwar - Chairman

Members

Lok Sabha

2. Shri Jaywant Gangaram Awale
3. Shri Sanjay Dhotre
4. Shri Ram Chandra Dome
5. Shri Lal Chand Kataria
6. Shri Marotrao Sainuji Kowase

Rajya Sabha

7. Shri P.Kannan
8. Shri Lalhming Liana
9. Shri Sanjay Raut
10. Dr.T.N.Seema
11. Shri Kaptan Singh Solanki

Secretariat

1. Shri P.K. Misra - Joint Secretary
2. Smt. Veena Sharma - Director
3. Ms. Amita Walia - Deputy Secretary
4. Shri Khakhai Zou - Under Secretary

**Representatives of the Ministry of Consumer Affairs, Food and Public Distribution
(Department of Consumer Affairs)**

1. Dr. Rajiv Agarwal - Secretary (CA)
2. Shri Pankaj Agrawala - Special Secretary (CA)
3. Shri Manoj Kumar Parida - Joint Secretary (CA)
4. Shri T.K.Murugan - Director (CPU)
5. Shri H.D. Nautiyal - Registrar, NCDRC, New Delhi
6. Dr. Ranjana Nagpal - Sr. Technical Director, NIC, New Delhi
7. Dr. Suresh Misra - Chair Professor & Chairman, CCS, IIPA, New Delhi

2. At the outset, Hon'ble Chairman welcomed the Members to the sitting of the Committee convened to take oral evidence of the representatives of the Department of Consumer Affairs on 'The Consumer Protection (Amendment) Bill, 2011'. The Committee then invited the representatives of the Department of Consumer Affairs to the sitting of the Committee and asked to explain on various issues related to the Bill as given below:

- (a) Relevance of Central or State Consumer Protection Council;
- (b) Need to make the definition of 'unfair contract' more inclusive;
- (c) Need for classification of services for the purpose of Unfair Trade Practices;
- (d) Need to provide multiple options to the Consumers in place of single trial or return policy;
- (e) Need to give power of review to all the Consumer Fora; and
- (f) Need for further simplification of the process in the Consumer Fora for its effective functioning.

3. Thereafter, the Secretary, Department of Consumer Affairs addressed to the concerns raised by the Hon'ble Chairman in his opening remarks. The following are some of the important points that emerged during the deliberations of the Committee:-

- (a) Need to have some criterion to conduct meetings of Central/State Consumer Protection Councils at regular intervals;

- (b) Need to have time- limit for early disposal of cases in Consumer Fora;
- (c) Need to evolve a mechanism by which the government can take suo -motto action on the complaints of common man involving interest of consumers at large;
- (d) Need to have a clear policy regarding appointment of President, Members and Staff to State Commissions and District Forums.
- (e) Need to fix uniform remunerative / pay and allowances for the President, Members and Staff of State Commissions and District Forums by the Central Government;
- (f) Need to have stringent laws to prevent misleading advertisements;
- (g) Need to have guidelines for manufacturers to refrain them from making false claims about the quality and performance of their products; and
- (h) Need to spread awareness amongst the consumers to make the provisions of the Act more effective.

4. The representatives of the Department answered to the queries raised by the Chairman and the members on the aforesaid issues to their satisfaction.

5. The Hon'ble Chairman then thanked the Secretary and other representatives of the Department of Consumer Affairs for their free and frank discussion.

A verbatim record of the proceedings has been kept on record.

The Committee then adjourned.

MINUTES OF THE SIXTEENTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2012-13) HELD ON THURSDAY, THE 13th DECEMBER, 2012

The Committee sat from 1530 hrs. to 1725 hrs. in Committee Room No. 62, Parliament House, New Delhi.

PRESENT

Shri Vilas Muttemwar - Chairman

MEMBERS

LOK SABHA

2. Smt Harsimrat Kaur Badal
3. Shri Kantilal Bhuria
4. Shri Arvind Kumar Chaudhary
5. Shri Sanjay Dhotre
6. Shri Eknath M. Gaikwad
7. Shri Ponnamp Prabhakar
8. Shri A. Sai Prathap
9. Shri C. Rajendran
10. Shri Laxman Tudu

RAJYA SABHA

11. Shri Lalhming Liana
12. Dr. Bharatkumar Raut
13. Shri Kaptan Singh Solanki

SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Smt. Veena Sharma - Director
3. Shri Khakhai Zou - Under Secretary

2. At the outset, the Hon'ble Chairman welcomed the Members to the sitting of the Committee, which was convened to take oral evidence of the representatives of the Ministry of Consumer Affairs, Food and Public Distribution (Food and Public Distribution) on 'The National Food Security Bill, 2011' followed by consideration and adoption of the draft report on 'The Consumer Protection (Amendment) Bill, 2011'.

3. XXXXXXXX XXXXXXXX XXXXXX

4. XXXXXXXX XXXXXXXX XXXXXX

5. After the withdrawal of the representatives of the Department of Food and Public Distribution, the Committee took up for consideration the draft report on 'The Consumer Protection (Amendment) Bill, 2011' of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) and adopted the same with slight modification.

6. The Committee authorized the Chairman to finalise the aforesaid report and present the same to both the Houses of Parliament in the current Session of Parliament.

7. Hon'ble Chairman then thanked all the Members of the Committee for the valuable contribution made by them.

The Committee then adjourned.

A verbatim record of the proceedings has been kept for record.
