

Justice V.C. Misra
Chairman

U.P. State Law Commission
Lucknow.

Ra. Vi.Aa- 1709/2012
Dated: July 18, 2012

Dear Chief Minister/Law Minister,

I have great pleasure in forwarding herewith **Fifteenth Report- 2012** of the Uttar Pradesh State Law Commission proposing certain State Amendments in **the Consumer protection Act, 1986 (Central Act No. 68 of 1986)**, titled **“The Consumer Protection (Uttar Pradesh Amendment) Bill, 2012.”**

Since the comprehensive review of the Consumer Protection Act, 1986, leads to various practical problems in the State of U.P., particularly to the State Government, consumers, District Forums and State Consumer Disputes Redressal commission and huge pendency of consumer cases at District Forums and State Commission as has been pointed out in detailed under Chapters- VI & VII of the Report, its certain provisions require amendments to make it more effective, functional and purposeful.

The Commission is confident that if recommendations are accepted and acted upon in terms of accompanying **Model Draft (U.P. Amendment) Bill, Annexure-I**, with prior assent of the President of India under Article 254 of Constitution of India, the District Forums and State Commission of certain U.P. will function smoothly and the State Government will be armed with certain powers to deal with effectively in the related matters. It will also improve the disposal of consumer cases at Consumer Fora of the State, ultimately consumers will be benefitted.

With kind regards,

Yours sincerely

(Justice V.C. Misra)

Shri Akhilesh Yadav
Chief Minister/Law Minister,
Uttar Pradesh
Encl: A Report with Proposed Amendment
Model Draft Bill, Annexure-I

THE UTTAR PRADESH STATE LAW COMMISSION

FIFTEENTH REPORT-2012

ON

THE CONSUMER PROTECTION (UTTAR PRADESH AMENDMENT) BILL, 2012

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Consumer Protection (Uttar Pradesh Amendment)

Bill, 2012, Annexure-I

UTTAR PRADESH STATE LAW COMMISSION**FIFTEENTH REPORT-2012****THE CONSUMER PROTECTION (UTTAR PRADESH AMENDMENT) BILL, 2012****CHAPTER-I****INTRODUCTION**

1.1 the enactment of the consumer Protection Act, 1986 was an important milestone in the history of the consume movement in India based on United Nations guidelines which was adopted by the General Assembly on April 9, 1985. The Act was made to provide for the better protection and promotion of consumer rights through the establishment of Consumer Councils and quasi- judicial machinery. Under the Act, consumer disputes redressal agencies have been set up throughout the country with the District Forum at the district level. State Commission at the State level and National Commission at the National level to provide simple, inexpensive and speedy justice to the consumers with complaints against defective goods, deficient services and unfair and restrictive trade practices.

1.2 Promotion of consumer welfare is the common goal of Consumer Protection. The word “consumer” has not been left to be understood as in common parlance, but has been defined with precision in clause (d) of the sub- section (1) of Section 2. A reading of the said definition makes it clear that to come within its ambit a person must either have bought any goods for consideration or should have hired any services for consideration. That is the *sine qua non* for being a consumer under the statute. Meaning of “consumer” should be broad based so as to include any one who consume goods or services at the end of the chain of production- any person who is a buyer of any goods for a consideration or any person who hires any services for a consideration has been defined as “consumer” under the Act.

1.3 The use of the word “protection” furnishes key to the minds of the makers of the Act. In fact the law on the subject meets long-felt

necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. The importance of the Act lies in promoting welfare of society by enabling the consumer to participate direct in the market economy. A scrutiny of various definitions such as “consumer”, “service”, “unfair trade practice” indicates that Legislature has attempted to widen the reach of the Act. Each of these definitions are in two parts- one explanatory and the other expandtory. The provisions of the Act thus have to be construed in favour of the consumer to achieve the purpose of the enactment as it is a social, benefit-oriented legislation.

1.4 Although the consumer disputes redressal agencies have served the purpose under the consumer protection Act to a considerable extent, the disposal of cases has not been so quick as expected by the makers of the Consumer Protection law due to various reasons. Several bottlenecks and shortcomings have also come to light in the implementation of various provisions of the Act and achieving consumer welfare.

1.5 Therefore, Uttar Pradesh State Law Commission is of the view that in case central Government does not amend the Consumer Protection Act, stare amendments are highly required in terms of **Annexure-I** with a view to achieving speedy disposal of consumer complaints by the consumer disputes redressal agencies, widening the scope of the provisions of the Act to make it more effective, removing various lacunae in the Act and streamlining the procedures in the State of Uttar Pradesh.

1.6 If such legislation is passed by the Legislature of State as State Amendment in the Consumer Protection Act, 1986, a presidential assent shall be required under Article 254 of the Constitution of India. Under circumstances, Uttar Pradesh state Law Commission decided to take up the matter suo-moto to propose certain state amendments in the consumer protection Act, 1986 (Central Act No. 68 of 1986) and submit a Report with model Amendment Draft Bill on the subject titled “**The Consumer Protection (Uttar Pradesh Amendment) Bill, 2012**”, to the State Government.

1.7 To deal with the various issues involved in the amendment of the consumer Protection Act, 1986 various meetings of the commission were held at its head quarter as well as camp office at Allahabad. There was consensus among members of the Commission and other participants of the meetings that several shortcomings have been noticed while implementing various provisions of the consumer Protection Act. With a view to widening and amplifying the scope of some of the provisions of the Consumer Protection Act, to facilitate quick disposal of cases and to make some provisions of the consumer Protection Act more effective and practicable, it has been felt to suggest necessary State amendments in the Consumer Protection Act.

1.8 Regarding various shortfalls in the Consumer Protection Act, discussions were also made with Hon,ble Mr. Justice Palok Basu, former president of the State consumer Disputes Redressal Commission, U.P. and Hon'ble Mr. Justice Bhanwar Singh, former President of the Stare Consumer Dispute Redressal Commission, Uttar Pradesh and presently Chairman, Institute of judicial training and Research, Uttar Pradesh, who have shared their vast experiences of service in dealing with the cases of consumer disputes at State Commission, as its President and Shri D.K. Misra, Registrar, Sate Consumer Dispute Redressal commission, Uttar Pradesh.

1.9 As an outcome of the aforesaid discussions of the Commission at various meetings and valuable suggestions made therein, **a draft report with a U.P amendment Model Draft Bill** titled **“The consumer protection (Uttar Pradesh Amendment) Bill, 2012”** was prepared by Shri Ishwar Dayal , Full-time Member, in consultation with the Chairperson and other Member of the Commission, thereafter, it was circulated among all the members of the commission and their views were invited thereon. The views so received was finally discussed at a meeting of the Commission held on July 2, 2012.

1.10 The Commission is of the opinion that Legislature of State should amend the Consumer Protection Act, 1986 by passing **the Consumer Protection (Uttar Pradesh Amendment) Bill, 2012** in terms of accompanying amendment draft bill **Annexure-I with prior assent of the**

President of India Under Article 254 of Constitution of India to make the Consumer protection Act, 1986 more effective and practicable in its application to the State of Uttar Pradesh. It will also help to facilitate speedy disposal of cases in the State at District Forum level and State Commission level.

1.11 The proposed amendment Bill (**Annexure-I**) among other things provides for the following provisions, namely:-

- (a) The State Government may, on recommendations of the committee constituted under sub-section (1A) of section 10 by notification, direct that-
 - (i) A District Forum, as specified in the notification, shall also exercise the jurisdiction in respect of such District forum as may be specified in the notification; or
 - (ii) The president or a member of a district Forum, as the case may be, shall also exercise the power or discharge the functions of the President or the member, as the case may be, of another District forum as may be specified in the notification; or
 - (iii) The President or a member of a District Forum, as the Case may be, is transferred to another District Forum, in the same capacity, as may be specified in the notification.”
- (b) 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;
- (c) 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 National Commission, as the case may be, in respect of any member of the District Forum or the Commission, as the case may be, being considered for reappointment as such;

- (d) 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 the District Forum where he had worked as President or member, as the case may be, of the district Forum;
- (e) 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;
- (f) make a provision for making of a complaint by electronic form also to the District Forum;
- (g) confer power upon the district Forum to issue an order to the opposite party to pay reasonable rate of interest, from the date of filing of a complaint, 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;
- (h) make provision for additional disqualification of a member of the District Forum or the State Commission if he is or continues to be, after appointment, a member or office bearer of nay political party;
- (i) make provision that the president or member of the State Commission, on ceasing to hold office as such, shall not appear, act or plead before the District Forum or the State Commission in that State Commission in that in which he had worked as the president or Member, as the case may be, of the State Commission;

- (j) make provision that the salary and allowances and other conditions of service of the President and Members of the District Forum, if appointed on whole time basis, shall be the same as are applicable to the sitting District Judge and Civil Judge (Senior Division) respectively and salary and allowances and other conditions of service of the President and Members of the State Commission, if appointed on whole time basis, shall be the same as are applicable to the sitting Judge of a High Court and the sitting District Judge respectively;
- (k) make a provision that a Bench may be constituted by the President of the District Forum with one or more members. The single member bench shall exercise the jurisdiction, power and authority to entertain complaints in such matters where the value of the goods or service and the compensation, if any, claimed does not exceed rupees fifty thousand.
- (l) Make a provision that the single member bench of the State Commission shall exercise the jurisdiction, power and authority to decide the revision against the orders passed by any district Forum within the State.
- (m) Make a provision that the District Forum shall decide the cases upto valuation of rupees thirty lakhs while the State Commission shall decide the cases above the valuation of rupees thirty lakhs to rupees one crore.
- (n) make the provisions for staff of district Forum and State Commission.
- (o) 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;
- (p) 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,

1.12 This Report has been finally settled, approved and signed by the Chairperson and Members of the Commission at its meetings held on July 18, 2012.

1.13 We wish to express our thanks to Hon'ble Mr. Justice Palok Basu, former president of the State Consumer Disputes Redressal Commission, Uttar Pradesh and Hon'ble Mr. Justice Bhanwar Singh, Chairman, Institute of Judicial Training and Research, Uttar Pradesh and former President of the State Consumer Disputes Redressal Commission, Uttar Pradesh for their valuable suggestions and also thank Mr. D.K. Misra, Registrar, State Consumer Disputes Redressal Commission, Uttar Pradesh for Providing material informations regarding subject matter.

1.14 We further wish to express our appreciation for valuable services and assistance received from Shri Rakesh Kumar Upadhyay, Part- Time Secretary of the Commission.

1.15 We also acknowledge the valuable services and assistance rendered by the other staff and official of the Commission.

CHAPTER-II

CONSUMER PROTECTION IN INDIA

- 2.1 Promotion of consumer welfare is the common goal of consumer protection. At the root of consumer protection is the recognition of an unequal relationship between consumers and producers. Protection of consumers is accomplished by setting minimum quality specifications and safety standards for both goods and services and establishing mechanisms to redress their grievances.
- 2.2 The consumer movement in India is as old as trade and commerce. In kautilya's *Arthashastra*, there are references to the concept of consumer protection against exploitation by the trader and retailer with respect to quality, short weight, measurement and adulteration of goods. Yet until the late 1970s, there was no systematic movement in the country for safeguarding the interest of consumers. But now it is widely acknowledged that the level of consumer awareness and protection is a true indicator of development of the country and progressiveness of civil society. The main reason for this is the rapidly increasing variety of goods and services which modern technology has made available. In addition, the growing size and complexity of production and distribution systems, the high level of sophistication in marketing and selling practices and in advertising and other forms of promotion, mass marketing methods and consumers' increased mobility resulting in reduction of personal interaction between buyers. And sellers, have contributed to the increased need for consumer protection.
- 2.3 Protection of consumer rights in modern times dates back to 1962. On 15 March 1962, the Consumer Bill of Rights was proclaimed by the United States President in a message to the Congress. The message proclaimed: (i) the right to choice, (ii) the right to information, (iii) the right to safety, and (iv) the right to be heard. Subsequently, the right to consumer education, the right to a healthy environment and the right to basic needs (food, clothing, and shelter) were added by consumer international. In India, 24 December is celebrated as National consumer Rights Day as the consumer Protection Act, 1986

was enacted on that day. 15 March is observed as World Consumer Rights Day since 1983, when International Organization of Consumer Unions declared it so. In India, 15 March was also adopted as the National Consumers Day and has been observed since then. Another significant day in the history of world consumer movement is 9 April 1985, when the General Assembly of the United Nations adopted a set of guidelines for consumer protection and the Secretary General of the United Nations was authorized to persuade member countries to adopt these guidelines through policy changes or law. These guidelines constituted a comprehensive policy framework outlining what governments need to do to promote consumer protection in the following areas:

- (i) physical safety,
- (ii) protection and promotion of consumer economic interests,
- (iii) Standards for safety and quality of consumer goods and services,
- (iv) Measures enabling consumers to obtain redressal,
- (v) Measures relating to specific areas (food, water, and pharmaceuticals); and
- (vi) Consumer education and information programme.

2.4 These guidelines provided an internationally recognized set of basic objectives, particularly for governments of developing countries, enabling them to identify the priorities and structure of their consumer protection policy and legislation. Subsequently, the guidelines were expanded to include 'sustainable consumption' the guidelines were expanded to include 'sustainable consumption' which was an important subject in the changed social, political and economic scenario. The importance of 'sustainable consumption' is aptly highlighted in Mahatma Gandhi's words, 'the rich must live more simply so that the poor may simply live'. Sustainable development is crucially dependent on sustainable consumption. Article 21 of the Constitution requires the State, inter alia, to protect life, which must be construed as including the right to a healthy and safe environment. A healthy and safe environment is inalienably linked with sustainability and promotion of sustainable consumption.

- 2.5 The concern in the Indian Constitution for protection and promotion of an individual's rights, and for the dignity and welfare of the citizen makes it imperative to provide for the welfare of the individual as a consumer, a client and a customer. The rights under the Consumer Protection Act, 1986 flow from the rights enshrined in Articles 14 to 19 of the Constitution of India. The RTI, 2005 which has opened up governance processes of our country to the common public also has far-reaching implications for consumer protection.
- 2.6 The consumer protection policy creates an environment whereby the clients, customers, and consumers receive satisfaction from the delivery of goods and services needed by them. Good governance requires efficiency, effectiveness, ethics, equality, economy, transparency, accountability, empowerment, rationality, impartiality and participation of citizens. The concern of consumer protection is to ensure fair trade practices; quality of goods and efficient services with information to the consumer with regard to quality, quantity, potency, composition and price for their choice of purchase. Thus, proper and effective implementation of consumer protection law promotes good governance.
- 2.7 Education is the most powerful tool for the progress of the country and is a social and political necessity. Education helps an individual-as a consumer-in making rational choices and protects him from trade and business-related exploitation. But more is needed for the effective functioning of the national market to create an increased level of awareness of consumer rights, and for this consumers have to be educated about rights and responsibilities through concerted publicity and awareness campaigns. In the awareness campaigns, special emphasis needs to be given to vulnerable groups such as women and children, students, farmers and rural families and the working class. The report of the study on the Consumer Protection Act commissioned by the Comptroller and Auditor General (C & AG) of India and conducted in July-August 2005, brought out that 66% of consumers were not aware of consumer rights and 82% were not even aware of the Consumer Protection Act. In rural areas, only 13% of the population had heard of the Consumer Protection Act.

- 2.8 The consumer protection Act was enacted in 1986 based on United Nations guidelines with the objective of providing better protection of consumers' interests. The Act provides for effective safeguards to consumers against various types of exploitations and unfair dealings, relying on mainly compensatory rather than a punitive or preventive approach. The Act applies to all goods and services unless specifically exempted, and covers the private, public, and cooperative sectors and provides for speedy and inexpensive adjudication.
- 2.9 Under the consumer protection Act 1986 a three tier, simple, quasi-judicial machinery has been established at the National, State, and District levels for hearing cases raised by consumers. The Act has been amended in the year 1991,1993 and 2002, to make provisions of the act more effective, functional and purposeful.
- 2.10 Although implementation of the Consumer Protection Act can be viewed as a success, there are still serious shortfalls in achieving consumer welfare because of the certain deficiencies, therefore, if requires amendments either by Parliament or Legislature of State if Legislature of State Passes such legislation as State Amendment prior assent of the President of India under Article 254 of Constitution of India shall be required.

CHAPTER- III

UNITED NATIONS AND CONSUMER PROTECTION

3. United Nations Guidelines for Consumer Protection

3.1 Preface

3.1.1 The General Assembly adopted guidelines for consumer protection by consensus on 9 April 1985 (General Assembly resolution 39/248). The guidelines provide a framework for Government, particularly those of developing countries, to use in elaborating and strengthening consumer protection policies and legislation. They are also intended to encourage international co-operation in this field.

3.1.2 The origins of the guidelines can be traced to the late 1970s, when the Economic and Social Council recognized that consumer protection had an important bearing on economic and social development. In 1977, the Council asked the secretary-General to prepare a survey of national institutions and legislation in the area of consumer protection. In 1977, the Council requested a comprehensive report containing proposals for measures on consumer protection for consideration by Governments. In 1981, the Council, aware of the need for international policy framework within which further efforts for consumer protection could be pursued, requested the Secretary-General to continue consultations with the aim of developing a set of general guidelines for consumer protection, taking particularly in to account the needs of the developing countries.

3.1.3 Accordingly, the Secretary-General carried out consultations with Government and international organization and submitted guidelines for consumer protection to the Economic and Social Council in 1983. During the next two years there were extensive discussion and negotiations among Government on the scope and content of the guidelines, culminating in their adoption in 1985.

3.2 GUIDELINES FOR CONSUMER PROTECTION

I.OBJECTIVES

1. Taking into account the interests and needs of consumers in all countries, particularly those in developing countries, recognizing that consumers often face imbalances in economic terms educational levels, and bargaining power, and bearing in mind that consumers should have the Right of access to non-hazardous products, as well as importance of promoting just, equitable and sustainable economic and social development, these guidelines for consumers protection have the following objective:

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumer;
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) To facilitate the development of independent consumer group;
- (f) To further international co-operation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices.

II. GENERAL PRINCIPLES

2. Government should develop, strengthen or maintain a strong consumer protection policy, taking into account the guidelines set out below. In so

doing, each Government must set its own priorities for the protection of consumers in accordance with the economic and social circumstances of the country, and the needs of its population, and bearing in mind the costs and benefits of proposed measures.

3. The legitimate needs which the guidelines are intended to meet are the following:

- (a) The protection of consumers from hazards to their health and safety;
- (b) The promotion and protection of the economic interests of consumers;
- (c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- (d) Consume education ;
- (e) Availability of effective consumer redress;
- (f) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision- making processes affecting them.

4. Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sector of the population particularly the rural population.

5. All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed. (Hereinafter reference to international standards in the guidelines should be viewed in the context of this paragraph.

6. The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies.

III GUIDELINES

7. The following guidelines should apply both to home-produced goods and services and to imports.
8. In applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations.

A. PHYSICAL SAFETY

9. Government should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulation, national or international standards, voluntary standards and maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.
10. Appropriate policies should ensure that goods produced by manufacturers safe for either intended or normally foreseeable use. Those responsible for bringing goods to the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as “distributors”) should ensure that what while 9in their care these goods are not rendered unsafe through improper handling or storage and that while in their care they do not become hazardous thorough improper handling or storage. Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers by internationally understandable symbols wherever possible.
11. Appropriate policies should ensure that if manufactures or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate the public without delay. Governments should also consider wary of ensuring that consumers are properly informed hazards.

12. Government should, where appropriate, adopt policies under which, if a product is found to be seriously defective and or to constitute a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it, if it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated.

B. REOMOTION AND PROTECTION OF CONSUMER'S ECONOMIC INTERESTS

13. Government policies should seek to enable consumers to obtain optimum benefit from their economic resource. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices, which could adversely affect the economic interests of consumers and the exercise of choice in the market place.
14. Government should intensify their efforts to prevent practices, which are damaging to the economic interests of consumers through ensuring that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory standards. Consumer organizations should be encouraged to monitor adverse practices, such as the adulteration of foods, false or misleading claims in marketing and services frauds.
15. Government should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices, which may be harmful to consumers, including means for the enforcement of such measures. In this connection, government should be guided by their commitment to the set of Multilaterally Agreed Practices adopted by the General Assembly in resolution 35/63 of 5 December 1980.
16. Government should adopt or maintain policies that make clear the responsibility of the producer to ensure that goods meet reasonable demands of durability, utility and reliability, and are suited to the purpose

for which they are intended, and that the seller should see that these requirements are met. Similar policies should apply to the provision of services.

- 17.** Government should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost.
- 18.** Government should, where appropriate, see to it that manufactures and/or retailers ensure adequate availability of reliable after-sales services and spare parts.
- 19.** Consumers should be protected from such contractual abuses as one-sided standard contracts, exclusion of essential rights in contracts, and unconscionable condition of credit by sellers.
- 20.** Promotional marketing and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements. This requires the provision of the information necessary to enable consumers to take informed and independent decision, as well as measures to ensure that the information provided is accurate.
- 21.** Government should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products.
- 22.** Governments should, within their own national context, encourage the formulation and implementation by business, in co-operation with consumer organizations of codes of codes of marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by business, consumer organizations and other interested parties. These codes should receive adequate publicity.
- 23.** Government should, regularly review legislation pertaining to weights and measures and assess the adequacy of the machinery for its enforcements.

C. STANDARDS FOR THE SAFETY AND QUALITY OF CONSUMER GOODS AND SERVICES.

24. Government should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services and give them appropriate publicity, National standards and regulations for product safety and quality should be reviewed from time to time, in order to ensure that they conform, where possible, to generally accepted international standards.

25. Where a standard lower than the generally accepted international standard is being applied because of local economic conditions, every effort should be made to raise that standard as soon as possible.

26. Government should encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services.

D. DISTRIBUTION FACILITIES FOR ESSENTIAL CONSUMER GOODS AND SERVICES.

27. Government should, where appropriate, consider:

- (a) Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; where appropriate, specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas. Such policies could include assistance for the creation of adequate storage and retail facilities in rural centers, incentives for consumer self-help and better control of the condition under which essential goods and services are provided in rural areas.
- (b) Encouraging the establishment of consumer cooperatives and related trading activities, as well as information about, them especially in rural areas.

E. MEASURES ENABLING CONSUMERS TO OBTAIN REDRESS.

- 28.** Government should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures should take particular account of the needs of low-income consumers.
- 29.** Government should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.
- 30.** Information on available redress and other dispute-resolving procedures should be made available to consumers.

F. EDUCATION AND INFORMATION PROGRAMMES

- 31.** Government should develop or encourage the development of general consumer education and information programmes. Bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. In developing such programmes special attention should be given to the needs of the needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels.
- 32.** Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects.
- 33.** Consumer education and information programmes should cover such important aspects of consumer protection as the following:
 - (a) Health, nutrition, prevention of food-borne diseases and food adulteration;
 - (b) Products hazards;

- (c) Product labeling;
- (d) Relevant legislation, how to obtain redress and agencies and organizations for consumer protection;
- (e) Information on weights and measures, prices quality, credit conditional and availability of basic necessities; and
- (f) As appropriate, pollution and environment.

34. Government should encourage consumer organizations and other interested groups, including the media, to undertake education and information programmes, particularly for the benefit low-income consumer groups in rural and urban areas.

35. Business should, where appropriate, undertake or participate in factual and relevant consumer education and information programmes.

36. Bearing in mind the need to reach rural consumers and illiterate consumers, government should as appropriate, develop or encourage the development of consumer information programmes in the mass media.

37. Government should organize or encourage training programmes for educators, mass media professionals and consumer advisers, to enable them to participate in carrying out consumer information and education programmes.

G. MEASURES RELATING TO SPECIFIC AREAS

38. In advancing consumer interests, particularly in developing countries, government should where appropriate, give priority to areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals. Policies should be adopted or maintained for product quality control, adequate and secure distribution facilities, standardized international labeling and information, as well as education and research

programmes in these areas. Government guidelines in regard to specific areas should be developed in the context of the provisions of this document.

- 39. Food.** When formulating national policies and plans with regard to food, government should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the Food and Agriculture Organization of the United Nations and the World Health Organization Codex Alimentarius or, in their absence, other generally accepted international food safety measures, including inter alia, safety criteria, food standards and dietary requirements and effective monitoring, inspection and evaluation mechanisms.
- 40. Water.** Government should, within the goals and targets set for the International Drinking Water Supply and Sanitation Decade, Formulate, maintain or strengthen national policies to improve the supply. Distribution and quality of water for drinking. Due regard should be paid to the choice of appropriate levels of services, quality and technology, the need for educations programmes and the importance of community participation.
- 41. Pharmaceuticals.** Government should develop or maintain adequate standards, provisions and appropriate regulatory systems for ensuring the quality and appropriate use of pharmaceuticals through integrated national drug policies which could address, inter alia, procurement, distribution, production, licensing arrangements, registrations systems and the availability of reliable information on pharmaceuticals. In so doing Government should take special account of the work and recommendations of the world Health Organization on pharmaceuticals for the relevant products, the use of that organization's Certification Scheme on the Quality of Pharmaceutical Products Moving in international Commerce and other international information's systems on pharmaceuticals should be encouraged. Measures should also be taken, as appropriate, to promote, the use of international Non-proprietary Names (INNs) for drugs, drawing on the work done by the world health Organization.

42. In addition to the priority areas indicated above, Government should adopt appropriate measures in other areas, such as pesticides and chemicals, in regard, where relevant, to their use, production and storage, taking into account such relevant health environmental information as government may require producers to provide and include in the labeling of products.

IV. INTERNATIONAL CO-OPERATION

43. Governments should, especially in a regional or sub regional context:

- (a) Develop, review, maintain or strengthen, as appropriate, mechanisms for the exchange of information on national policies. And measures in the field of consumer protection;
- (b) Co-operate or encourage co-operation in the implementation of consumer protection policies to achieve greater results within existing resources. Examples of such co-operation could be collaboration in the setting up or joint of testing facilities, common testing procedures, exchange of consumer information and education programmes, joint training programmes and joint elaboration of regulations;
- (c) Co- operate to improve the conditions under which essential goods are offered to consumers, giving due regard to both price and essential goods, exchange of information's on different procurement possibilities and agreements on regional products specification.

44. Government should develop or strengthen information linked regarding products, which have been banned, withdrawn or severely restricted in order to enable other importing counties to protects themselves adequately against the harmful effects of such products.

45. Government should work to ensure that the quality of products, and information relating to such products, does not vary from country to country in a way that would have detrimental effects on consumers.

46. Government should word to ensure that policies and measures for consumer protection are implemented with due regard to their not

becoming barriers to international trade, and that they are consistent with international trade obligations.

3.3 Aforesaid guidelines which were issued in 1985 and were subsequently expanded by the United Nations in 1999 to include ‘sustainable consumption’ which was an important subject in the changed social, political and economic scenario. The expanded guidelines run as under:-

I. Objectives

1. Taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection, these guidelines for consumer protection have the following objectives:
 - (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
 - (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
 - (c) To encourage high levels of ethical for those engaged in the production and distribution of goods and services to consumers;
 - (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
 - (e) To facilitate the development of independent consumer groups;
 - (f) To further international cooperation in the field of consumer protection;
 - (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices;
 - (h) To promote sustainable consumption.

II. General principles

2. Governments should develop or maintain a strong consumer protection policy, taking into account the guidelines set out below and relevant international agreements. In so doing, each

Government should set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures.

3. The legitimate needs which the guidelines are intended to meet are the following:
 - (a) The protection of consumers from hazards to their health and safety;
 - (b) The promotion and protection of the economic interests of consumers;
 - (c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
 - (d) Consumer education, including education on the environmental, social and economic impacts of consumer choice;
 - (e) Availability of effective consumer redress;
 - (f) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them;
4. Unsustainable patterns of production and consumption, particularly in industrialized countries, are the major cause of the continued deterioration of the global environment. All countries should strive to promote sustainable consumption patterns; developed countries should take the lead in achieving sustainable consumption patterns; developing countries should seek to achieve sustainable consumption patterns in their development process, having due regard to the principle of common but differentiated responsibilities. The special situation and needs of developing countries in this regard should be fully taken into account.
5. Policies for promoting sustainable consumption should take into account the goals of eradicating poverty, satisfying the basic human needs of all members of society, and reducing inequality within and between countries.

6. Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population and people living in poverty.
7. All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed. (Hereinafter references to international standards in the guidelines should be viewed in the context of this paragraph.)
8. The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies.

III. Guidelines

9. The following guidelines should apply both to home-produced goods and services and to imports.
10. In applying any procedures or regulation for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations.

A. Physical safety

11. Governments should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.
12. Appropriate policies should ensure that goods produced by manufacturers are safe for either intended or normally foreseeable use. Those responsible for bringing goods to the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as 'distributors', should ensure that while in their care these goods are not rendered unsafe through improper handling or storage and that while in their care they do not become hazardous through improper handling or storage. Consumers should be

instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers by internationally understandable symbols wherever possible.

13. Appropriate policies should ensure that if manufactures or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate, the public without delay. Governments should also consider ways of ensuring that consumers are properly informed of such hazards.
14. Governments should, where appropriate, adopt policies under which, if a product is found to be seriously defective and/or to constitute a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it; if it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated.

B Promotion and protection of consumers' economic interests

15. Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the market place.
16. Governments should intensify their efforts to prevent practices which are damaging to the economic interests of consumers through ensuring that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory standards. Consumer organizations should be encouraged to monitor adverse practices, such as the adulteration of feeds, false or misleading claims in marketing and service frauds.
17. Governments should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers, including means for the enforcement of such measures. In this

connection, Governments should be guided by their commitment to the Set of multilaterally Agreed Equitable principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in resolution 35/63 of 5 December 1980.

18. Governments should adopt or maintain policies that make clear the responsibility of the producer to ensure that goods meet reasonable demands of durability, utility and reliability, and are suited to the purpose for which they are intended, and that the seller should see that these requirements are met. Similar policies should apply to the provision of services.
19. Governments should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost.
20. Governments should, where appropriate, see to it that manufacturers and/or retailers ensure adequate availability of reliable after-sales service and spare parts.
21. consumers should be protected from such contractual abuses as one-sided standard contracts, exclusion of essential rights in contracts and unconscionable contracts, of credit by sellers.
22. promotional marketing and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements. This requires the provision of the information necessary to enable consumers to take informed and independent decisions, as well as measures to ensure that the information provided is accurate.
23. Governments should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products.
24. Consumer access to accurate information about the environmental impact of products and services should be encouraged through such means as product profiles, environmental reports by industry, information centres for consumers, voluntary and transparent eco-labeling programmes and product information hotlines.
25. Governments, in close collaboration with manufacturers, distributors and consumer organizations, should take measures regarding misleading environmental claims or information in advertising and other marketing activities. The development of

appropriate advertising codes and standards for the regulation and verification of environmental claims should be encouraged.

26 Governments should, within their own national context, encourage the formulation and implementation by business, in cooperation with consumer organizations, of codes of marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by business, consumer organizations and other interested parties. These codes should receive adequate publicity.

27. Governments should regularly review legislation pertaining to weights and measures and assess the adequacy of the machinery for its enforcement.

C. Standards for the safety and quality of consumer goods and services

28. Governments should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services and give them appropriate publicity. National standards and regulations for product safety and quality should be reviewed from time to time, in order to ensure that they conform, where possible, to generally accepted international standards.

29. Where a standard lower than the generally accepted international standard is being applied because of local economic conditions, every effort should be made to raise that standard as soon as possible.

30. Governments should encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services.

D. Distribution facilities for essential consumer goods and services

31. Governments should, where appropriate, consider:

(a) Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; where appropriate, specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas. Such policies could include assistance for the creation of adequate storage and retail facilities in rural centres, incentives for

consumer self-help and better control of the conditions under which essential goods and services are provided in rural areas;

- (d) Encouraging the establishment of consumer cooperatives and related trading activities, as well as information about them, especially in rural areas.

E. Measures enabling consumers to obtain redress

32. Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers.
33. Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.
34. Information on available redress and other dispute-resolving procedures should be made available to consumers.

F. Education and information programmes

35. Governments should develop or encourage the development of general consumer education and information programmes, including information on the environmental impacts of consumer choices and behavior and the possible implications, including benefits and costs, of changes in consumption, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. In developing such programmes, special attention should be given to the needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels. Consumer groups, business and other relevant organizations of civil society should be involved in these educational efforts.
36. Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects.

37. Consumer education and information programmes should cover such important aspects of consumer protection as the following:
- (a) Health, nutrition, prevention of food-borne diseases and food adulteration;
 - (b) Product hazards;
 - (c) Product labeling;
 - (d) Relevant legislation, how to obtain redress, and agencies and organizations for consumer protection;
 - (e) Information on weights and measures, prices, quality, credit conditions and availability of basic necessities;
 - (f) Environmental protection; and
 - (g) Efficient use of materials, energy and water.
38. Governments should encourage consumer organizations and other interested groups, including the media, to undertake education and information programmes, including on the environmental impacts of consumption patterns and on the possible implications, including benefit of low-income consumer groups in rural and urban areas.
39. Business should, where appropriate, undertake or participate in factual and relevant consumer education and information programmes.
40. Bearing in mind the need to reach rural consumers and illiterate consumers, Governments should, as appropriate, develop or encourage the development of consumer information programmes in the mass media.
41. Governments should organize or encourage training programmes for educators, mass media professionals and consumer advisers, to enable them to participate in carrying out consumer information and education programmes.

G. Promotion of sustainable consumption

42. Sustainable consumption includes meeting the needs of present and future generations for goods and services in ways that are economically, socially and environmentally sustainable.
43. Responsibility for sustainable consumption is shared by all members and organizations of society, with informed consumers, Government, business, labour organizations, and consumer and environmental organizations playing particularly important roles.

Informed consumers have an essential role in promoting consumption that is environmentally, economically and socially sustainable, including through the effects of their choices on producers. Governments should promote the development and implementation of policies for sustainable consumption and the integration of those policies with other public policies. Government policy-making should be conducted in consultation with business, consumer and environmental organizations, and other concerned groups. Business has a responsibility for promoting sustainable consumption through the design, production and distribution of goods and services. Consumer and environmental organizations have a responsibility for promoting public participation and debate on sustainable consumption, for informing consumers, and for working with Government and business towards sustainable consumption.

44. Governments, in partnership with business and relevant organizations of civil society, should develop and implement strategies that promote sustainable consumption through a mix of policies that could include regulations; economic and social instruments; sectoral policies in such areas as land use, transport, energy and housing; information programmes to raise awareness of the impact of consumption patterns; removal of subsidies that promote unsustainable patterns of consumption and production; and promotion of sector-specific environmental-management best practices.
45. Governments should encourage the design, development and use of products and services that are safe and energy and resource efficient, considering their full life-cycle impacts. Governments should encourage recycling programmes that encourage consumers to both recycle wastes and purchase recycled products.
46. Governments should promote the development and use of national and international environmental health and safety standards for products and services; such standards should not result in disguised barriers to trade.
47. Governments should encourage impartial environmental testing of products.

48. Governments should safely manage environmentally harmful uses of substances and encourage the development of environmentally sound alternatives for such uses. New potentially hazardous substances should be evaluated on a scientific basis for their long-term environmental impact prior to distribution.
49. Governments should promote awareness of the health-related benefits of sustainable consumption and production patterns, bearing in mind both direct effects on individual health and collective effects through environmental protection.
50. Governments, in partnership with the private sector and other relevant organizations, should encourage the transformation of unsustainable consumption patterns through the development and use of new environmentally sound products and services and new technologies, including information and communication technologies, that can meet consumer needs while reducing pollution and depletion of natural resources.
51. Governments are encouraged to create or strengthen effective regulatory mechanisms for the protection of consumers, including aspects of sustainable consumption.
52. Governments should consider a range of economic instruments, such as fiscal instruments and internalization of environmental costs, to promote sustainable consumption, taking into account social needs, the need for disincentives for unsustainable practices and incentives for more sustainable practices, while avoiding potential negative effects for market access, in particular for developing countries.
53. Governments, in cooperation with business and other relevant groups, should develop indicators, methodologies and databases for measuring progress towards sustainable consumption at all levels. This information should be publicly available.
54. Governments and international agencies should take the lead in introducing sustainable practices in their own operations, in particular through their procurement policies. Government procurement, as appropriate, should encourage development and use of environmentally sound products and services.
55. Governments and other relevant organizations should promote research on consumer behavior related to environmental damage in

order to identify ways to make consumption patterns more sustainable.

H. Measures relating to specific areas

56. In advancing consumer interests, particularly in developing countries, governments should, where appropriate, give priority to areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals. Policies should be adopted or maintained for product quality control, adequate and secure distribution facilities, standardized international labeling and information, as well as education and research programmes in these areas. Government guidelines in regard to specific areas should be developed in the context of the provisions of this document.
57. **Food.** When formulating national policies and plans with regard to food, governments should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the food and Agriculture organization of the United Nations and the World Health Organization Codex Alimentarius or, in their absence, other generally accepted international food standards. Governments should maintain, develop or improve food safety measures, inter alia, safety criteria, food standards and dietary requirements and effective monitoring, inspection and evaluation mechanisms.
58. Governments should promote sustainable agricultural policies and practices, conservation of biodiversity, and protection of soil and water, taking into account traditional knowledge.
59. **Water.** Governments should, within the goals and targets set for the International Drinking water Supply and Sanitation Decade, formulate, maintain or strengthen national policies to improve the supply, distribution and quality of water for drinking. Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation.
60. Governments should assign high priority to the formulation and implementation of policies and programmes concerning the multiple uses of water, taking into account the importance of water for

sustainable development in general and its finite character as a resource.

61. **Pharmaceuticals.** Governments should develop or maintain adequate standards, provisions and appropriate regulatory systems for ensuring the quality and appropriate use of pharmaceuticals through integrated national drug policies which could address, *inter alia*, procurement, distribution, licensing arrangements, registration systems and the availability of reliable information on pharmaceuticals. In so doing, Governments should take special account of the work and recommendations of the World Health Organization on pharmaceuticals. For relevant products, the use of that organizations Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce and other international information systems on pharmaceuticals should be encouraged. Measures should also be taken, as appropriate, to promote the use of international nonproprietary names (INNs) for drugs, drawing on the work done by the world health Organization.
62. In addition to the priority areas indicated above, Governments should adopt appropriate measures in other areas, such as pesticides and chemicals in regard, where relevant, to their use, production and storage, taking into account such relevant health and environmental information as Governments may require producers to provide and include in the labeling of products.

IV. International cooperation

63. Governments should, especially in a regional or subregional context;
 - (a) Develop, Review, maintain or strengthen, as appropriate, mechanisms for the exchange of information on national policies and measures in the field of consumer protection;
 - (b) Cooperate or encourage cooperation in the implementation of consumer protection policies to achieve greater results within existing resources. Examples of such cooperation could be collaboration in the setting up or joint use of testing facilities, common testing procedures, exchange of consumer information and education programmes, joint training programmes and joint elaboration of regulations;
 - (c) Cooperate to improve the conditions under which essential goods are offered to consumers, giving due regard to both price

and quality. Such cooperation could include joint procurement of essential goods, exchange of information on different procurement possibilities and agreements on regional product specifications.

64. Governments should develop or strengthen information links regarding products which have been banned, withdrawn or severely restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products.
65. Governments should work to ensure that the quality of products, and information relating to such products, does not vary from country to country in a way that would have detrimental effects on consumers.
66. To promote sustainable consumption, Governments, international bodies and business should work together to develop, transfer and disseminate environmentally sound technologies, including through appropriate financial support from developed countries, and to devise new and innovative mechanisms for financing their transfer among all countries, in particular to and among developing countries and countries with economies in transition.
67. Governments and international organizations, as appropriate, should promote and facilitate capacity-building in the area of sustainable consumption, particularly in developing countries and countries with economies in transition. In particular, governments should also facilitate cooperation among consumer groups and other relevant organizations of civil society, with the aim of strengthening capacity in this area.
68. Governments and international bodies, as appropriate, should promote programmes relating to consumer education and information .
69. Governments should work to ensure that policies and measures for consumer protection are implemented with due regard to their not becoming barriers to international trade, and that they are consistent with international trade obligations.

CHAPTER-IV

BAGLA COMMITTEE REPORT

4.1 As early as in October 1999 a meeting had been convened of the Presidents of State Consumer Disputes Redressal Commissions to assess the requirements of the Consumer For a at the district and State levels taking into account the workload as was existing in 1999 and was expected to rise in future. Certain resolutions were passed at that meeting. On the basis of those resolutions a report was submitted to the Ministry of Consumer Affairs, Government of India, by Shri S.P. Bagla¹. The Bagla Committee, in its report, makes the following recommendations:-

4.2 NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

4.2.1. The National Commission was set up in the year 1988. Initially, 37 posts of various categories were sanctioned by the Central Government for the Commission. Subsequently, six more posts were created in terms of an order of the Supreme Court. Thus the total number of posts on the establishment of the commission at present is 43 and shown in the statement at Annexure 'A'

4.2.2 There is a manifold increase in the filing of consumer cases in the Commission because of the steady growth of the consumer movement in the country. 17,805 cases have been filed in the Commission since its inception and presently 8,016 cases are pending for disposal. A statement showing the number of cases filed, disposed of and pending as on 1.11.1999 is annexed as Annexure 'B'. In order to cope up with the increase in work and for its smooth functioning, the National Commission had taken up the matter with the ministry of Food & Consumer Affairs for the creation of 35 additional posts in June, 1996. The Ministry of Finance, Department of Expenditure has however, sanctioned five temporary posts, viz. one post of Assistant Registrar, one post of Assistant, two posts of LDCs and one post of stenographer Gr. 'D'.

1. (2002) 10 SCC 103, State of Uttar Pradesh and others Vs Jeet S. Bisht and another.

4.2.3 Section 20 of the Consumer Protection Act, 1986 deals with the National Commission. It consists of the President and four Members. The President of the Commission has to be a person, who is or has been a Judge of the Supreme Court and is entitled to salary and perquisites as available to him in the Supreme Court.

4.2.4 A Judge of the Supreme Court is entitled to the following staff:-

Category of Staff Scale of pay

AR-cum-PPS Rs. 11360-16040 1
 Sr. P.A. Rs. 6500-10500 1
 Staff Car Driver Rs. 3050-4590 1
 Jamadar Rs. 2610-3540 1
 Peons Rs. 2550-3200 6

4.2.5 Similarly, the four Members of the National Commission are either former High Court Judges or Secretaries to the Government of India. A Judge of the High Court is entitled to the following staff:-

Category of Staff Scale of Pay

PPS Rs. 10000-15200 1
 PA Rs. 5500-9000 1
 Staff Car Driver Rs. 3050-4590 1
 Peon Rs. 2550- 3200 3

4.2.6 In view of the above, the President of the National Commission should be provided the same number of staff as is made available to a sitting Judge of the Supreme Court because he enjoys the same salary and perquisites as are available to a sitting Judge of the Supreme Court. The Members of the National Commission should, likewise, be provided the same staff as is given to a sitting High Court Judge except that only one peon each be posted with the Members. Further a staff car driver may be provided to them after decision on the availability of independent staff car for each Member is taken. In other words, a Principal Private Secretary, one personal Assistant and one peon should be posted with the member.

4.2.7 Two Court Masters/Readers, preferably shorthand knowing, should assist the Commission in the hearing of matters. They should be Officers in the pay scale of Rs. 6500-10500.

4.2.8 The Office of the Commission is headed by the Registrar who is assisting the Commission in all administrative and judicial matters. He also functions as head of office and exercise financial powers delegated to him by the head of Department. One Grade 'B' Stenographer has been provided to the Registrar. However, only one peon attends to the Registrar and the Deputy Registrar. It is essential that a peon is provided exclusively to the Registrar as per his entitlement.

4.2.9 The Commission has presently on post of joint Registrar. Section 24B of the Act lay downs that the National Commission shall exercise administrative control over all the state Commissions and through the State Commission over the District Forums. As such, the services of an officer of the level of joint Registrar are essential for assisting the National Commission in performing its function of administrative control.

4.2.10 There is only one post of Deputy Registrar in the Commission who looks after the Judicial, Administrative and Accounts Sections. Keeping in view the volume of work involved, it is essential that there should be at least two posts of Deputy Registrars; One Deputy Registrar may look after the work on the judicial side and the other for the administrative side.

4.2.11 Originally, only one post of Assistant Registrar was sanctioned. One more post of Assistant Registrar has now been created by the Ministry of Finance. Assistant Registrars supervise the work of Judicial and Administration branches as well as preparation of daily cause list.

4.2.12 The post of joint Registrar may be created in created in the pay scale of Rs. 14,300-18,300. The post of Deputy Registrar in this Commission is in the scale of Rs. 12,000-16,500, and are equivalent to Director and Deputy Secretary in the Govt, of India who are entitled to a Personal Assistant/Grade 'C', stenographer in the scale of Rs. 5500-9000. Therefore, one Stenographer may be provided to the Joint Registrar and one each to the Deputy Registrars.

4.2.13 The posts of Assistant Registrar in this Commission are in the pay scale of Rs. 10,1000-15,200 which is equivalent to the pay scale of an under Secretary to the Govt. of India. A Stenographer Grade 'D' in the pay scale of Rs. 4000-6000 is attached with an Under Secretary. Two posts of Grade 'D' Stenographers in the scale of Rs. 4000-6000 may, therefore, be created for the Assistant Registrars.

4.2.14 One peon each with the joint Registrar and Deputy Registrars and one peon for two Assistant Registrars may be provided in terms of Govt. of India's instructions.

4.2.15 As the National Commission exercise three types of jurisdictions viz. Original, Appellate and Revisional, three independent Branches should be set up to deal with each of the three categories of cases. On the administration side, there should be an Establishment/Administration Branch and an Accounts Branch. An officer of the level of Section officer in the scale of Rs. 6500-10,500 should be Incharge of the Judicial and Administration Sections respectively. The Establishment/Administration Branch and Accounts Branch should be supervised by an officer of the level of section officer.

4.2.16 Coming now to the staff strength in the Judicial Branches, it may be mentioned that as on 1.11.99. 1285 Original Petitions are Pending. The entire work load is being handled by one UDC and one LDC. On account of acute shortage of staff, we are even utilizing the service of two Class-IV officials to assist the Original Branch staff. Considering the volume of work and highly inadequate staff, there is an utmost need to augment the strength of the Original Branch. While determining the staff strength of the District Forum and the State Commission, it has been stated that not more than 250 files should be earmarked for a seat to be manned by a Dealing Assistant and LDC. Adopting the same criteria, five Assistant and five LDCs should be provided for the Original Branch. In other words, four more posts of Assistant and four posts of LDCs should be created to cope with the existing load of work.

4.2.17 2,627 Appeals are pending at present. There is only one Assistant in the Branch. Here again, the services of Class- IV officials are being utilized. Needless to say that the lone officials in the Branch is overburdened and staff strength must be increased commensurate with the work load. The follow up action in Appeals and Revisions is somewhat less compared to Original Petitions. It, therefore seems appropriate that posts should be created on the basis of 500 files per seat. Considering the pendency, the work must be apportioned among five seats, each of which must be manned by an Assistant and LDC. To put it concretely, at least five Assistant and five LDCs should be posted in the Branch.

4.2.18 The pendency in the Revision petition Branch is the highest. 4,104 Revision petitions are pending. Only three LDCs assisted by a couple of Class-IV officials are looking after the work of the Branch. The Revision petitions filed in the Commission are first listed before the Commission and depending upon the order passed, follow up action is taken by the officials. To handle this work load, there should at least be eight Assistant and eight LDCs.

4.2.19 In the Administration Branch, we have only one Upper Division Clerk. He is looking after the purchase of stores and stationery items. This Branch also deals with establishment matters which are dealt with by the Assistant Librarian because no official has been earmarked for establishment matters. Section Officers of Revision Petition Section is looking after the work of Administration/Establishment/Accounts Branch in addition to his duties. It is, therefore, incumbent that there should be an independent Section Officer, one Assistant and one UDC to look after Establishment/Administration/Accounts matters.

4.2.20 In Accounts Branch, only one Assistant has been provided. He does not possess any accounting qualification like S.A.S. It is pertinent to mention that deposits are made in made in this Commission by the contending parties, in accordance with the orders of the Commission. Handling of these deposits, viz. obtaining FDRs, encashing them, making payment to parties etc. entails a lot of accounting work. Accounts Branch dealing with financial matters must, therefore, have an Officer of the level of Accounts Officer

with requisite qualification and experience, one Assistant/Treasure and one type knowing UDC.

4.2.21 There is no post of Translator in this Commission. Govt. of India has recently desired this Commission to forward a proposal for the creation of a post of Hindi Translator and Hindi typist. It is therefore, recommended that a post of Hindi Translator in the pay scale of Rs. 4000-6000 and one post of Hindi typist/LDC in the pay scale of Rs. 3050-4590 may be created.

4.2.22 The National Commission is an apex body deciding consumer complaints received from all over the country. Against the decision/order of the Commission, the consumers can approach the Hon'ble Supreme Court by way of an appeal. The Office has to maintain record of decided cases because the Registry of the Supreme Court calls for the original records from the Registry of the National Commission. Presently, there is no post of Record Keeper and the Commission has disposed of about 9680 cases. In order to maintain the record, one UDC, one LDC and peon would be required.

4.2.23 A filing counter may be set up in the Commission for receiving complaints, appeals and Revisions as well as for maintaining institution registers for issue/dispatch of Notices. One post of Assistant and one post of UDC may be created for the filing counter.

4.2.24 There is no satisfactory system of inspection of records by the Counsel/parties. A post of Assistant should be created and the incumbent appointed against this post may receive applications for inspection of records and make available the same under the supervision of the Registrar.

4.2.25 The National Commission is maintaining is maintaining a library for reference purposes, for which one Assistant librarian and one junior library Attendant have been provided. As earlier stated, the Assistant Librarian is also looking after the establishment matters and, therefore,

Is unable to devote to his work whole-heartedly. A post of Librarian may be created in addition to the post of Assistant Librarian and junior Library Attendant.

4.2.26 There are three cars and two posts of Staff Car Drivers in this Commission. One of the three cars is for the President and there is one driver for two staff cars. For the time being, a post of one staff car driver is required to be sanctioned, pending the decision on the availability of independent staff car for each Member.

4.2.27 A post of Dispatch Rider is also essential for effecting service of notices issued by this Commission. This will result in considerable saving of postage used for issuing notices along with copies of Original Petitions. Appeals and Revision petitions to the opposite parties for filing their version of case.

4.2.28 There are two photo-copier machines which are being operated by Class-IV officials. These machines are highly sensitive and unless these are handled by trained operators, there may be technical and operational problems. It is, therefore, therefore, proposed that two posts of photo-copier operators may be created.

4.2.29 One Daftry for each of the judicial sections, Administration Section and Accounts Section may also be provided for arranging the record in the Branches.

4.2.30 One peon each may be provided in the three Judicial Branches, one in the Administration Branch and one in the Accounts Branch. Thus five posts of peons may be created.

4.2.31 The Office of the Commission is located on the 5Th Floor in 'A' Wing and 7th Floor in 'B' Wing of Janpath Bhawan. One sweeper may be posted on each of the two floors for cleanliness of the building. There should also be two posts of Chowkidar.

4.2.32 In view of the position, as explained above, the following staff will be necessary for the National Commission:-

Registrar	:1	
Joint Registrar	:1	
Deputy Registrar	:2	
Assistant Registrar	:2	
AR-cum-PPS	:1	
PPS	:4	
Sr. P.A.	:1+4	
Court Master	:2	
Accounts Officer	:1	
S Os	:4	
Librarian	:1	
Grade 'B' Stenographer	:1	(for Registrar)
Grade 'C' Stenographer	:3	(for joint Registrar and Deputy Registrar)
Grade 'D' Stenographer	:2	(for Assistant Registrar)
Assistants	:22	
Original Petition	:5	
First Appeal	:5	
Revision Petition	:8	
Establishment	:1	
Accounts	:1	
Filing Counter	:1	
Inspection Branch	:1	
U.D.C	:4	
Record Room	:1	
Filing Counter	:1	
Administration	:1	
Accounts	:1	
L.D.C.	:19	
Original Petition	:5	
First Appeal	:5	
Revision Petition	:8	
Record Room	:1	

Hindi Translator	:1
Hindi Typist	:1
Asstt. Librarian	:1
Junior Library Attendant	:1
Daftry	:5
Staff Car Driver	: 3 (one for President and two for the office)

Jamadar	:1
Peons	:21
Dispatch Rider	:1
Photo-Copier Operator	:2
Sweeper	:2
Chowkidar	:2

4.3 STATE CONSUMER DISPUTES REDRESSAL COMMISSIONS

4.3.1 Section 16 of the Consumer Protection Act lays down that a State Commission shall consist of a President and two members. The president of the State Commission has to be a person who is or has been a judge of the High Court.

4.3.2 A Judge of a High Court is entitled to the following staff; in addition to three peons

- i) PPS/PS-1
(In the pay scale of Rs. 10,000-15,200)
- ii) Personal Assistant-1
(In the pay scale of Rs. 5500-9000)
- iii) Staff Car Driver-1
(In the pay scale of Rs. 3050-4590)

4.3.3 The President of the State Commission may be given this staff. As regards peons, a consolidated recommendation is being made separately, out of which the President may have peons.

4.3.4 For Members personal staff may consist of two Stenographers in the pay scale of Rs. 5500-9000 and 2 peons in the pay scale of Rs. 2550-3200.

4.3.5 A court master/Reader may be provided to assist the President and Members of the State Commission in the Court. This officer should be in the pay scale of Rs. 5500-9000.

4.3.6 The State Commission should have a Registrar in the pay scale of Rs. 8,500-13,500/-. He will assist the State Commission in all judicial and administrative matters. A shorthand knowing LDC in the pay scale of Rs. 3050-4590/- who may work as Personal Assistant to the Registrar and one peon may be provided to him.

4.3.7 The State Commission exercise Original, Appellate and Revisional jurisdiction. Therefore, two sections may be created- one for the Original petitions and the other for Appeals and revisions. A post of Administrative officer (Class-II) may be created for an overall charge of these Sections. Each section should be headed by an officer of the rank of by. Superintendent in the pay scale of Rs. 5000-8000. In each of these judicial sections, seats of dealing assistant may be created to handle 250 files per seat. The dealing assistant should be assisted by an LDC. Thus one Assistant and one LDC should be provided in each of the two sections for every 250 files. The total number of staff in the judicial sections can, therefore, be worked out keeping in view the total number of pending files dealt with therein and adopting the criteria of 250 files for one Assistant and one LDC. Besides, one peon may be posted in each section.

4.3.8 In the State Commissions, orders are at times dictated in regional language because the consumers are not conversant with the English language. We, therefore, recommend that a post of regional language, Stenographer in the scale of Rs. 4000-6000 may be created.

4.3.9 A Post of Assistant and a type knowing LDC may also be created for the Establishment/Administration Branch.

4.3.10 Accounts Branch of the State Commission should be supervised by an Accountant in the pay scale of Rs. 5500-9000. One Bill Clerk and a type knowing LDC may be provided in the Accounts Branch for its smooth functioning.

4.3.11 A good Library is absolutely essential for a quasi-judicial body like the State Commission. Therefore, a trained Librarian in the pay scale of Rs. 5500-9000 may be posted for manning the library.

4.3.12 A filing counter may be created for receiving complaints, appeals and revisions, for maintaining institution registers and issue/dispatch of notices. There should be two clerks and one peons for the Filing Counter in the pay scale of Rs. 3050-4590 and Rs. 2550-3200 respectively.

4.3.13 An LDC and one Peon will be necessary for inspection of record which will be made available by them under the supervision of the Registrar.

4.3.14 A Record room may be set up in each of the State Commissions for keeping files of decided cases. One LDC and one peon may be posted in the record room for arranging files, entering in the Access register and for weeding out the record.

4.3.15 A post of Dispatch Rider is also essential for effecting service of notices issued by the State Commission. This will save considerable amount incurred on postage for sending copies of the complaints appeals revision petitions to enable the opposite party (s) to file its/their versions of the case.

4.3.16 Two posts of Daftry, two posts of Sweeper and two posts of Chowkidar may also be sanctioned, keeping in view the requirements of the office as well as the President and Members of the Commission.

4.3.17 To sum up, the staff requirement of the State Commission will be as under:-

For President:

- | | |
|-----------------------|----|
| i) PPS/PS | -1 |
| ii) PA-1 | |
| iii) Staff Car Driver | -1 |

For Members:

- | | |
|------------------|----|
| i) Stenographers | -2 |
|------------------|----|

For Office :

- | | |
|--|---|
| i) Registrar | -1 |
| ii) A.O. (Group 'B') | -1 |
| iii) Dy. Superintendent | -2 (1each for Original and Appellate/
Revision Sections) |
| iv) Court Master | -1 |
| v) Accountant | -1 |
| vi) Librarian | -1 |
| vii) Assistant (s) for Branches | |
| viii) Regional language Steno | -1 |
| ix) ix) LDC(s) for Branches | |
| x) x) P.A. to Registrar/Shorthand
knowing LDC | -2 |
| xi) Filing Clerks (LDC) | -1 |
| xii) Inspection Clerk (LDC) | -1 |
| xiii) Record Keeper (LDC) | -1 |
| xiv) LDC for Estt. Branch | -1 |
| xv) Bill Clerk (LDC) | -1 |
| xvi) Typist (LDC for A/cs. Branch) | -1 |
| xvii) Dispatch Rider | -1 |
| xviii) Daftry | -2 |
| xix) Peons | 10(for President, Members, Registry
Two branches and five offices) |
| xx) Sweeper | -2 |
| xxi) Chowkidar | -2 |

Note : One Assistant and One LDC for every 250 pending files. The number of Posts may be sanctioned keeping in view the total pendency.

4.3.18 For the States which have a pendency of less than 500 cases, the staff strength shall be as follows:-

For President

- | | | |
|----|------------------|----|
| 1. | PPS/PS | :1 |
| 2. | P.A | :1 |
| 3. | Staff Car Driver | :1 |

For Members

- | | | |
|----|--------------|----|
| 1. | Stenographer | :1 |
|----|--------------|----|

For Office

- | | | |
|-----|-------------------|----|
| 1. | Registrar | :1 |
| 2. | Court Master | :1 |
| 3. | Accountant | :1 |
| 4. | P.A. to Registrar | :1 |
| 5. | Assistant | :1 |
| 6. | U.D.C. | :1 |
| 7. | L.D.C | :1 |
| 8. | Typist | :1 |
| 9. | Peons | :1 |
| 10. | Chowkidar | :1 |
| 11. | Sweeper | :1 |

4.3.19 This staff shall look after the judicial, the administrative and the library work.

4.4 CONSUMER DISPUTES REDRESSAL FORUMS

4.4.1 Section 10 of the Consumer Protection Act lays down that each District Forum shall consist of a President and two other Members. The president of the District Forum has to be a person who is, or who has been, or is qualified to be a District Judge.

4.4.2 In Writ Petition (Civil) No. 1141 of 1988, Common cause vs. Union of India & Ors. the Hon'bel Supreme court on 7th January,, 1993 directed that if the work load of a District Forum exceeds the minimum monthly loan of 150 cases consistently for a period of six months, a regular independent district Forum as envisaged by Section 9 of the Act should be established.

4.4.3 A District Judge is an officer in the scale of Rs. 18,400-22,400, which is equivalent to the scale of Joint Secretary to the Govt. of India. Govt. of India's instructions provide that a joint Secretary is entitled to a private Secretary in the scale of Rs. 6500-10,000 and a peon in the scale of Rs. 2550-3200. As regards the two Members of the District Forum, one stenographer in the scale of Rs. 4000-6000 and one peon in the scale of Rs. 2550-3200 may be provided for them. There should also be a post of Court Master in the pay scale of Rs. 5500-9000 to assist the President and the members in the 'Court'.

4.4.4 The Registry of the District Forum should be headed by the Registrar who should be of the rank of Superintendent in the State Government, which post carries the pay scale of Rs. 5500-9000. His duties will involve assisting the Forum in Judicial and administrative matters.

4.4.5 The District Forum exercise only Original Jurisdiction. Whit a view to create seats of dealing hands in the Judicial Section, the work load should first be assessed in terms of pending files. These files may be assigned to various dealing hands who will be responsible for taking all follow-up action as per the orders of the Forum/bench. Each dealing hand of the level of UDC, assisted by an LDC, should handle at least 250 files. Thus, taking into consideration the total number of pending files and the yardstick of 250 files for a nucleus of one UDC and one LDC, the staff

requirement in the Judicial Section may be worked out . One peon will also be required for the Judicial Section.

4.4.6 The Registrar of the District Forum may also look after the work relating to maintenance of Library, preparation of pay bills, T.A. bills etc. and for maintaining the books of accounts and keeping the bank guarantees which are taken from the parties in pursuance of the orders of the District Forum. However, one accounts knowing UDC in the scale of Rs. 4000-6000 may assist the Registrar in the work.

4.4.7 Presently there is no satisfactory arrangement for receiving the complaints and for issue or dispatch of notices as well as inspection of cases in the Forum. There should be one post of Clerk in the scale of Rs. 3050-4590 for receiving the complaints, maintaining the institution registers and issue or dispatch of notices and inspection of cases.

4.4.8 A post of Dispatch Rider is also essential for effecting service of notices issued by the District Forum. This will save considerable amount incurred on postage for sending copies of the complaints to enable the opposite party (s) to file its/their version of the case.

4.4.9 There is an absence of a Record Room in most of the District Forum, as a result of which the files are not properly arranged and entered in the Access Register. The decided cases, therefore, cannot be traced out without avoidable loss of time. To begin with, one LDC and one Peon should be provided with duties of arranging the files in the record Room, entering the same in the Access register and to take follow up action for weeding out the old records.

4.4.10 One post to Safaiwala/Chowkidar be also sanctioned for cleanliness of the office of the forum.

4.4.11 In view of the position, as explained above, the following staff will be necessary for a District Forum:-

- | | | |
|----|--|----|
| 1. | P.S | :1 |
| 2. | Registrar (in the scale of superintendent) | :1 |
| 3. | Court Master | :1 |

4.	Steno	:1
5.	5.U.D.C	
6.	6.L.D.C	
7.	7. RECEIPT & Dispatch Clerk (LDC)	:1
8.	8. Record Keeper (LDC)	:1
9.	9. Accounts Knowing UDC	:1 (will look after The library work)
10.	10. Peons	:4
11.	11. Safaiwala	:1
12.	12. Dispatch Rider	:1
13.	13. Chowkidar	:1

Note: One UDC and one LDC for every 250 pending files.

4.4.12 In the smaller districts where less than 150 cases are pending, the strength will be UDC-1, LDC-1,3 Peons, 1 Chowkidar cum Safaiwala. The UDC will look after the library work also.

4.5 Thus the Bagla Committee Report has clearly explained in detailed the necessary staff for the National Commission, the State Commission and for a district Forum. Therefore the Commission is of the view that as per recommendation of the Bagla Committee necessary staff should be provided to the Consumer Disputes Redressad Forums at National Level, State Level and each District Forum so it may work smoothly, in this regard necessary amendment in the Consumer Protection Act is required.

CHAPTER-V

Dr. PD Shenoy Committee Report

5.1 Recommendations of the committee constituted under the Chairmanship of Dr. P D Shenoy. Member, National Consumer Dispute Redressal Commission (NCDRC), to consider the following issues:

- (i) To examine the administrative and financial powers of the Presidents of the State Commission and make recommendations to ensure the effective functioning of the State and District Fora.
- (ii) To study the imposition of cost and levying of fees by the State and District Fora and to suggest guidelines for their proper and effective utilization.
- (iii) To examine the necessity of conducting induction training to the new Members of the State and District Fora and make suitable recommendations.
- (iv) To suggest suitable guidelines for grant of pay and perquisites to the Members of the State and District Fora.

5.2 The following Members were Present:

1. Hon'ble Mr Justice N K Jain, President, Madhya Pradesh State Consumer Disputes Redressal Commission
2. Hon'ble Justice Mr B B Vagyani, President, Maharashtra State Consumer Disputes Redressal Commission
3. Hon'ble Justice Mr. R C Kathuria, President, Haryana State Consumer Disputes Redressal Commission.

5.3 The Committee submitted its report on 07-05-2008. The recommendations of the Committee are as follows:

1. **To examine the administrative and financial powers of the Presidents of the State Commission and make recommendations to ensure the effective functioning of the State and District Fora.** In order to translate the mandate, of the Hon'ble supreme Court in the case of State of Uttar Pradesh vs Jeet Singh Bisht and Others, (Special Leave Petition No. 6928 of 1999) as per order dated 10th July, 2002 as well as the State of Rajasthan and others vs Anand Parkash Solanki, (Civil Appeal No. 6733 of 2003) as per order dated 25th August, 2003. (Annexure ' A ' & B) into a reality

and to have effective control over the functioning of the State Commissions and the District Fora in terms of the Provisions of Section 24 B of the Consumer Protection Act, 1986;

It is recommended that various state Governments may incorporate the following Rules in their existing Consumer Protection Rules;-

- (a) The president of the State Commission shall be Head of the Department and controlling Authority for the purposes of Book/code of Financial Powers.
 - (b) Appointment of Officers and staff (except the President and Members) of the District fora and State Commission shall be made by the President of the State Commission;
Provide that the cadre, number, salaries and allowances of such officers and staff shall be fixed by the State Government by Rules to be made in consultation with the president of the State Commission.
 - (c) Salaries of such officers and staff shall be defrayed out of the consolidated fund of the State.
2. **To study the imposition of cost and levying of fees by the State and District Fora and to suggest guidelines for their proper and effective utilization.**

It is suggested that Regulation 11 (5) which provides for imposition of minimum cost need to be amended and it should be left to the discretion of the Commission or the District Forum concerned to decide about the quantum of cost depending on the facts and circumstances of each case.

As regards utilization of costs, the National Commission may frame appropriate Regulations provided for the purpose and manner of utilizing this amount. For this purpose, guidelines contained in the legal Services Act, may be followed.

Fees for filing complaints of the valuation upto Rs. 10,000/- should be NIL and accordingly Rule 9 A of the Consumer Protection Rules 1987 (Central Rules) may be amended.

With regard to payment of fees on complaints, existing Table of Rule 9 A of Consumer Protection Rules, 1987 may be substituted by the following Table:

S NO.	Total value of goods or service and the compensation claimed	Amount of fee payable
(1)	(2)	(3)
	DISTRICT FORUM	
1.	Upto to one lakh rupees–For complainants who are under the Below Proverty Line holding Antydaya Anna Yojana cards	NIL
1 A.	Upto Rs. 10,000/-	NIL
2.	Upto one lakh Rupees – For complainants other Than Antydaya Anna Yojana card holders	Rs. 100/-
3.	Above one lakh and upto five lakh rupees	Rs. 500/-
4.	Above five lakh and upto ten lakh rupees	Rs. 1000/-
5.	Above ten lakh and upto twenty lakh rupees	Rs. 2000/-
	STATE COMMISSION	
6.	Above twenty lakh and upto fifty lakh rupees	Rs. 5000/-
7.	Above fifty lakh and upto one crore rupees	Rs. 10,000/-
	NATIONAL COMMISSION	
8.	Above one crore rupees	Rs. 25,000/-
9.	Above five crore rupees	Rs. 50,000/-
10.	Above ten crore rupees	Rs. 1,00,000/-

3. To examine the necessity of conducting induction training to the new members of the State and District Fora and make suitable recommendations.

At present help is being taken of the Indian Institute of Public Administration (IIPA) for imparting training to the Members of the State Commission as well as Presidents and Members of the District Fora which is being monitored at the level of the National Commission. The programme

and orientation training needs to be de-centralized at the Headquarter level of the respective State Commissions by introducing 15 days training programme to the newly inducted Members of the State and District Fora including the Presidents of the District Fora so as to equip them with regard to the procedure to avoid illegalities being committed for the smooth functioning of the District Fora. The training programme shall take care of following aspects:

1. Consumer Protection Act, 1986 and amendments in the Consumer Protection Act, their judicial implications on different points.
2. A correct approach of the judgment writing.
3. General principles of Consumer Protection Act to be followed by the Consumer For a with reference to the settled law by the Hon'ble National Commission on the procedure of dealing the complaints by District Consumer Fora.
4. Settled law in deciding cases related to HUDA etc., Electricity, Insurance Assurance, Banking and Telecommunications.
5. Procedure of Institution, processing granting of adjournments recording of zimini orders, granting of interim injunctions, maintenance of Institution and disposal register, maintenance of statistical information as per Consumer Protection Act and instructions issued by the Hon'ble National Commission from time to time.
6. A peep into Civil Service Rules so far as working of the District Consumer Fora is concerned demystified.
7. Canons of filing of properties, purchase procedure, store procedure, writing of loss etc., demystified.
8. Initiating of disciplinary action against the staff under various Rules/ Government instructions issued by the State Government and writing of A C R s.
9. Any other topic suitable for trainees to be selected by the President of the State Commission.

The State Government shall provide suitable Budget for this Purpose and keep the amount at the disposal of the President of the State Commission.

4. To suggest suitable guidelines for grant of pay and perquisites to the Members of the State and District Fora.

Salary and other allowances of the President of the State Commission and District Forum (Minus pension drawn, if any)

The service conditions of the President of the State Commission shall be the same as that of a sitting Judge of the High Court.

Member of the State Commission appointed on a whole-time basis shall be entitled to pay and allowance as are available to a sitting District Judge.

Provided that if a Member of the State Commission appointed on a part-time basis he/she shall be paid Honorarium **of not less than** Rs. 1000/- and conveyance allowance **of not less than** Rs. 300/- per day's sitting.

The President of the District Forum shall be entitled to pay and allowances payable to a sitting district Judge (**Minus pension drawn, if any**) Members of the District Forum appointed on whole time basis shall be entitled to **not less than** Rs. 15,000/- per month by way of Honorarium plus **not less than** Rs. 3000/- as conveyance allowance per month.

Provided a Member of the District Forum appointed on a part-time basis, he/she shall be entitled to Honorarium of **not less than** Rs. 600/- and conveyance allowance of **not less than** Rs. 150/- per day's sitting.

CHAPTER-VI

CONCLUSIONS

6.1 In the light of discussions made in the earlier part of the Report and having regards to the various pronouncements of the hon'ble Supreme Court and High Courts and recommendations of Dr. P D Shenoy Committee, recommendations of Bagla Committee, Consumer Protection Act, 1986 and the Consumer Protection (Amendment) Bill, 2011, as introduced in Lok Sabha by the Central Government, the Commission is of the view that in case Central Government does not amend the Consumer Protection Act, then relevant State Amendments, in terms of accompanying **Amendment Draft Bill, Annexure-I**, in which some of the amendments proposed by the Commission are in addition to the Amendments proposed in the Aforesaid Amendment Bill, 2011, may be made by the Legislature of State with the prior assent of the President of India under Article 254 of the Constitution of India, to make Provisions of the Consumer Protection Act more effective, functional and purposeful. It will also help in speedy disposal of cases at District Forum level and State Commission level. Besides other proposals, we have proposed measure amendments in the Consumer Protection Act, as stated, under various heads, reasons thereof.

6.2 **Salary and allowances and other conditions of service of the President of the State Commission-** Recommendations of Dr. P.D. Shenoy Committee on its 4th issue for consideration i.e. **to suggest suitable guidelines for grant of pay and perquisites to the Members of the State and District Fora** has recommended that the service conditions of the President of the state Commission shall be the same as that of a sitting Judge of a High Court. Section 16 of the Consumer Protection Act, 1986 deals with the composition of the State Commission. Clause (a) of sub-section (1) of section 16 provides that “a person who is or has been a judge of a High Court, appointed by the State Government, who shall be its President”. In this regard clause (a) of sub-rule (1) of Rule 6 of the Uttar Pradesh Consumer Protection Rules, 1987 as amended by the Uttar Pradesh Consumer Protection (Eleventh Amendment) Rules, 2011, Provides

that “ The President of the State Commission shall receive the salary of the Judge of the High Court if appointed on whole time basis, or a consolidated honorarium of Rs. 500 per day for the sitting if appointed on part time basis-----.” When the Issue was discussed with Hon’ble Mr. Justice Bhanwar Singh, former President of the State Commission, he pointed out that all facilities of a judge of a High Court are not provided to the President of the State Commission. We are of the View that President of the State Commission should also be provided all the facilities which are provided to the sitting judge of a High Court besides the salary and other allowances (minus Pension drawn, if any) and Act may be amended accordingly. We have proposed amendment in the Consumer Protection Act as per recommendations.

6.3 Salary and allowances and other conditions of service of the Members of the State Commission- Regarding members of the State Commission Shenoy Committee recommended that Member of the State Commission appointed on a whole time basis shall be entitled to pay and allowance as are available to a sitting District Judge. Clause (a) of Sub-rule (1) of Rule 6 of the Uttar Pradesh Consumer protection Rules, 1987 as amended by the Uttar Pradesh Consumer Protection (Eleventh Amendment) Rules, 2011, provides that “----- other Members if sitting on whole time basis shall receive a consolidated honorarium of Rs. 15262 per month, and if sitting on part-time basis a consolidated honorarium of Rs. 400 per day for the sitting, while clause (c) provides that he shall be entitled to rent free Government accommodation, if no such accommodation is provided, he shall get house rent allowance of Rs. 3000 per month.” It is admitted fact that Member of the State Commission has appellate and rovisional jurisdiction against the orders of the District Forum. President of the District Forum is a retired District Judge or Additional District Judge rank officer. It has been told that due to less salary and poor service conditions mostly senior judicial or administrative officers are not attracted to become a Member of the State Commission. We are of the view that aforesaid recommendation of the P D Shenoy Committee on the point may be accepted and Act may be amended accordingly. In this regard we have proposed the amendment as per recommendations.

6.4 Salary and allowances and other conditions of service of the Members of the District Forum- Regarding Members of the District Forum Shenoy Committee recommended that “ Members of the District forum appointed on a whole time basis shall be entitled to not less than Rs. 15000 per month by way of honorarium plus not less than Rs. 3000 as conveyance allowance per month. In this regards clause (a) of Sub-rule (1) of Rule 3 of the Uttar Pradesh Consumer Protection Rules, 1987 as amended by the Uttar Pradesh Consumer Protection (Eleventh Amendment) Rules, 2011 provides that “---other Member if sitting on whole time basis shall receive a consolidated honorarium of Rs. 10176 per Month -----.” In our views the honorarium provided to a member of the District Forum is much less because if any retired person is appointed as member of the District Forum even his last salary drawn is not protected, therefore, the prescribed amount of honorarium is not proper and practicable. Some of the participants at the meeting have not even hesitated in saying that above petty amount provided to the members of the State Commission and the District Forum leads to a corruption. Commission is of the view that members of the District Forum atleast should receive the salary as admissible to the Civil Judge (Senior Division) from time to time and Act may be amended accordingly. We have proposed the amendment as per recommendations.

6.5 Staff for the National Commission, State Commission and for a District Forum- As discussed earlier under Chapter- IV, recommendations of the Bagla Committee has clearly explained in detailed the necessary staff for the National Commission, the State Commission and for a District Forum. Therefore the Commission is of the view that as per recommendations of the Bagla Committee necessary staff should be provided to the Consumer Disputes Redressal Forums at National Level, State Level and each District Forum level so it may work smoothly, in this regard necessary amendment in the Consumer Protection Act is required. Commission has recommended such amendment as per recommendations

6.6 Circuit Bench of District Forum- District Forums are functioning at district Head Quarters. It is felt by the Commission that in some districts there may be such Tehsil Head Quarters or other towns where complaints regarding consumer disputes are on high rate. Under these

circumstances State Government may, in consultation with the State Commission, notify such places for circuit benches for a particular District Forum. It will help t speedy disposal of complaints and local consumers will get the justice at their doorsteps, but it requires amendment to insert such provisions in the Act. We have recommended such amendment as per recommendations.

6.7 Bench at District Forum – There is no provision in the Consumer Protection Act to constitute a Bench at District Forum. In this regard Sub-section (2) of Section 14 of the Consumer Protection Act, 1986 runs as follows:-

“(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stave at which it was last heard by the previous member.

(2A) every order made by the District Forum under sub-section (1) shall be signed by the 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.

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum. Its sitting and other matters shall be such as may be prescribed by the State Government.”

6.7.1 Power to constitute the Bench and Jurisdiction of Single Member Bench at District forum- We are of the view that the President of the District Forum may be conferred powers to constitute the Bench with one or more members as the President may deem fit and single member Bench should be authorized to exercise jurisdiction, Power and authority to entertain complaints in such matters where the value of the goods or service and the compensation, if any, claimed does not exceed rupees one

lakh. It will help speedy disposal of cases at District Forum level, as it is the main problem how to deal with the pendency of cases. It requires amendment in the Act. We have proposed amendment as per recommendations.

6.8 Power of Extending Jurisdiction of a District forum to another District forum, transfer, attachment or shifting of a President or a Member of a District forum to another District forum and administrative action against President and Member of the District forum and administrative and supervisory control- Act does not provides transfer of President or Member of a District Forum to another District Forum. It also does not provides to authorize any district Forum to look after the work of another District Forum or nay President or Member, as the case may be, of a District Forum , to look after the work of President or Member of another District Forum in addition to his Present assignment. It creates problems to administer the justice at such District Forum where President or Member is not appointed or somehow it is lying vacant. It is also bone of contention that under such circumstances who is the authority to make such arrangement and have administrative and judicial superintendence. In this regard in **COMMON CAUSE A REGISTERED SOCIETY VS UNION OF INDIA AND OTHERS, (1992) 1 SCC 707, Hon' ble Supreme Court** has observed, as under :-

“6. An amendment to the Act is in contemplation as we are told at the Bar. There is some amount of dispute as to whether the amendment contains provisions for giving administrative and superintending jurisdiction to the National Forum over the State Commissions and, to the State Commissions over District Forums. Experience shows that on account of want of such authority, the national Forum is not able to exercise appropriate jurisdiction over the State Forums and the State Forums are not able to exercise appropriate control over the District Forums. Proper operation of the statute requires both administrative and judicial superintendence. While the Act has contemplated judicial superintendence, there is no provision for administrative superintendence. This is a lacuna in the statute. Realising this defect, we had pointed out earlier that requisite forum should be conferred with the powers of superintendence and we command to the Union government as quickly as possible to remove the deficiency by conferring appropriate power of

superintendence on the State and the National Commissions, Until that is done, we direct that to meet the situation, the National Commission would be entitled to exercise administrative Jurisdiction over the State Commissions and the State Commissions would be entitled to exercise such administrative jurisdiction in their respective areas of control. This order shall be forwarded to the National Commission as also to the State commissions forthwith.”

6.8.1 Aforesaid observations and dictum issued by the **Hon’ble Supreme Court** resulted in amendment of the relevant provisions of Consumer Protection Act, 1986. Section 24B was inserted by the Consumer protection (Amendment) Act, 1993 (50 of 1993) w.e.f 18.06.1993 by Parliament, which runs as under :-

“24B Administrative control- (1) The National Commission shall have administrative control over all the State Commission in the Following matters, namely:-

- (i) Calling for Periodical returns, regarding the institution, disposal, pendency of cases;
- (ii) Issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;
- (iii) Generally overseeing the functioning of the State Commission or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

(2) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (1).”

6.8.2 The ambit and scope of administrative and superintending jurisdiction of the State Commission over the District Forum was questioned in VARENDAR PAL KASHYAP Vs STATE CONSUMER DISPUTES REDRESSAL COMMISSION PUNJAB AND ANOHTER, AIR, 2001 P&H 366 before the Punjab and Haryana High Court. Regarding administrative and supervisory control of the State

Commission over District Forum, Hon'ble High Court has observed, as under :-

“9. In exercise of its administrative and supervisory control, the Commission would be well within its powers to ask for an explanation of the Member in regard to discharge of his official functions. The purpose of said explanation would obviously be to give a chance to the Member of the District Forum to explain his conduct in reference to a particular commission or omission brought to the notice of the State Commission or its President by way of complaint or otherwise. But the purpose of asking such explanation would be limited only to the extent of passing remarks, if any, against the officer concerned or for recommending to the disciplinary authority to take appropriate action in accordance with law i.e. under the provisions of S. 10 (2) of the Act and Rule 3 (5) of the Rules.

19. The Provisions of Section 24-B of the Act arms the Commission with ample power of controlling the administration of justice by effective administrative and superintending control. Principle of fairness demands that such judicial or quasi-judicial authorities must act in a way where justice should not only be done, but should be seen to be its true spirit. Allocation of work primarily falls within the domain of the Commission under its powers of superintendence and, thus, we cannot find any error on the part of the Commission in issuing order Annexure P-10 withdrawing the work from the said Member till further orders. Two specific instances have been brought on record by the Commission for passing such an order.

The State Government being the appointing and disciplinary authority, is duty-bound to take action on the information or suggestions given by the Commission. The intention of the Commission to discourage such practice is laudable, but it must exercise its powers within the ambit of four corners of law.

22. Argo (sic) we have no hesitation in holding that the issuance of the letters requiring the petitioner to explain his conduct and withdrawal of work from him are sustainable in law and squarely fall within the administrative and superintending control which the commission exercises over the District Forum and its Members.

However, Annexure P-8 (statement of charges and statement of allegations) and Annexure P-9 (letter informing appointment of inquiry officer) are the orders which in normal course and as per the statutory provisions of the Act, ought to be issued by the appointing disciplinary authority i.e. the government.”

6.8.3 Hon’ble Supreme Court in its order dated 28-01-2002 passed in **State of U.P and others Vs. Jeet Singh Bisht and another (Petition (s) for Special leave to appeal (Civil) 0928/1999)** has observed as under :-

“We do not appreciate the executive exercising Administrative control over the Presidents and Members of the District Forums as also the members of the State Commission. In our opinion, administrative control, if any, over the members of State Commission and Presiding officers of District Forums should vest only in Chairperson of State Commission. The State Government may, consistently with this take suitable decision and may amend the Rules, if necessary.”

6.8.4 In State of Rajasthan and others Vs. Anand Prakash Solanki, AIR, 2003 SC 3849, the question arises before the **Hon’ble Apex Court** that : whether a president or a Member of the District Forum, constituted under section 10 of the Consumer Protection Act, 1986 can be transferred and, if so, which is the competent authority to transfer them ? In this case President of district Forum Pali (Rajasthan) was transferred by the Rajasthan State Government. Order of transfer was challenged before the High Court. A Division Bench of the Rajasthan High Court Held that President of any District Forum can not be transferred by the State Government. The order of transfer was directed to be quashed. Feeling aggrieved by the decision of the High Court, the State of Rajasthan preferred the appeal by special leave, wherein the **Hon’ ble Supreme Court** has observed as under:-

“7.---- It is clear from a bare reading of the above said statutory provisions that though a District Forum is to be constituted and its President and members are to be appointed by the State Government, the power to appoint is exercisable only on the recommendation of a selection committee consisting of the

President of the State Commission and two Secretaries of the State as provided by sub-section (1A) of Section 10. The concept of appointment by transfer is not unknown to service jurisprudence. A power to appoint includes a power to revoke an appointment, and so also a power to make an appointment includes a power to make an appointment by transfer, subject to satisfying the requirements of section 10 of the Act. The expression 'appointment' takes in appointment by direct recruitment, appointment by promotion and appointment by transfer.

13.---- Power to transfer vests in the State government as employer and is available to be exercised on the recommendation of committee contemplated by sub-section (1A) of Section 10 of the Act. The view to the contrary taken by the High Court can not be countenanced.”

6.8.5 In **R.K. Kulshrestha Vs State of U.P through Chief Secretary and other, 2004 All. L.J. 3519**, President of District Forum, Etah was suspended by order dated 10-09-2003 passed by the President of State Commission. The important question of law involved in this petition was whether the President of the State Consumer Disputes Redressal Commission, U.P. has power to suspend or order of any enquiry against the President of a District Consumer Disputes Redressal Forum. Hon'ble Allahabad High Court observed, as under:-

“13. In our opinion the power under section 24B (2) does not include the Power to suspend or order any inquiry, because the Powers of administrative control under Section 24B are limited and specifically mentioned in sub-section (1) of that provision, and these do not include the power of taking disciplinary action against the president of the District Forum.”

6.8.6 In **State of U.P. and others Vs Jeet S. Bisht and Another, (2004) 11 SCC 352**, Hon'ble Supreme Court has held as under:-

“8. Prima facie, we are of the opinion that so far as the President and members of the District Forum are concerned, an inquiry into complaints against them ought to be held by the President of the State Commission and the complaint against the

President of the State Commission may be inquired into by a sitting or retired Chief Justice of any High Court while the complaint against a member of the State commission may be inquired into by any sitting Judge of the High Court nominated by the State Government in consultation with the Chief Justice of the High Court of the State where the State Commission is situated.”

6.8.7 In Prem Kumar Joshi and another Vs State of U.P. and others, 2005 All. L.J. 2817 the petitioners have been restrained from working as a Member and President of the District Forum respectively, and from exercising any other administrative power. Therefore this writ petition has been filed for quashing the order dated 25-05-2005. In this case the records have also been directed to be sealed and recommendation has been made to the State Government by the President of State Commission for suspension of the petitioners along with one other member of the District Forum. In view of the U.P. Consumer Protection (7th Amendment) Rules, 2005, which came into force on 14-02-2005 by which existing Rule 9 of the Uttar Pradesh Consumer Protection Rules, 1987 was substituted and new Rule 10 was also inserted, Hon’ble Allahabad High Court has held, that:-

“25. In the instant case as stopping the petitioner No. 1 from working may amount to suspension and that power has not been exercised by the competent authority, i.e. the State Government, from passing an appropriate order in accordance with law.

26.---- Power of administrative control can not be stretched to the extent that it may make the State Government, the disciplinary authority, a redundant employer. Putting the seal on the record Room so that the evidence against the petitioners may not be tampered with, may fall within the ambit of administrative control. Power of restraining them from working, which would have the effect of suspension, is not permissible.”

6.8.8 In view of the aforesaid legal position it is quite clear that as per Sub-section (2) of section 24B of the Consumer Protection Act,

1986, the State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (1). In Prem Kumar Joshi case supra Hon'ble Allahabad High Court has held that Power of administrative control can not be stretched to the extent that it may make the State government, the disciplinary authority, a redundant employer. As for as transfer or suspension of a President or Member of the District Forum is concerned it is well settled that this Power vests in the State Government as employer. In the same manner where no District Forum has been established or if established, there exist at any time vacancy in the office of the President or a Member in a District, the State Government may, direct a District Forum to exercise the jurisdiction of another District Forum and the President or a Member of a District Forum shall also exercise the power or discharge the functions of the President or a Member, as the case may be, of another District Forum as may specified in the notification.

6.8.9 on the basis of analysis of aforesaid pronouncement of the Hon'ble Supreme Court and High Courts and other related Provisions of the Act and Rules made thereunder by the State of Uttar Pradesh, we are of the view that power to give additional charge to a District Forum of another District Forum or transfer or attachment of a President or a Member of a District Forum to another District Forum should be exercised by the State Government, on the recommendation of committee constituted under sub-section (1) of section 10 of the Consumer Protection Act. It requires amendment, which we have proposed as per recommendations.

6.9 Power to refer back the recommendations of the selection committee- Sometimes it is brought to the notice of the State Government that some person recommended by the selection committee for appointment as President or Member of the District Forum or a Member of the State Commission, as the case may be, has not been found fit for appointment as such. In refer back the recommendations of the selection committee to it for making fresh

recommendation. It also requires amendment, which has been proposed by the Commission as per recommendation.

6.10 Reappointment of President of a District forum and consideration of the observation or performance appraisal report by the selection committee at the time of reappointment- First proviso to sub-section (2) of section 10 makes the provision that member shall be eligible for reappointment for another term of five years or upto the age of 65 years, which ever is earlier. There is no such provision in the act for reappointment of President of the District Forum, even if his age permits. It is also pointed out that at the time of consideration for reappointment of any member of the District Forum or State Commission by the selection committee, the observation or performance appraisal report, if any, made by the President of the National Commission or State Commission is not considered. It does not appear proper, which is must to assess the suitability of such members. His previous work and conduct etc. should also be considered by the selection committee at the time of reappointment. We are of the view that such provisions to be there in the time of reappointment. We are of the view that such provisions to be there in the Act. Therefore, in this regard we have proposed amendment as per recommendations.

6.11 Restrictions on ceasing to hold office by a President or Member of the State Commission and District Forum- to observe the impartiality and remove any apprehension in the mind of consumers, we felt that President or Member of District Forum, if otherwise possesses qualification to practice law on ceasing to hold office as such, should not appear, act or plead before the District Forum where he had worded as president or member, as the case may be, of the District Forum, and in the same manner at the State Commission level the President or Member of the State Commission, On ceasing to hold office as such, should not appear, act or plead before the State Commission or any District Forum in that state where he had worked as President or member, as the case may be, of the State Commission. It requires amendment in the Act. We have proposed such amendment as per recommendations.

6.12 Revisional jurisdiction to Single Bench at State Commission-

6.12.1 As per an Annexure of the letter dated 17-04-2012 by the Principal Secretary, उपभोक्ता संरक्षण एवं बांट माप अनुभाग-2, उ०प्र० शासन, the pendency of consumer cases in the U.P. State Commission, as on 31-10-2012 passed in **Uttar Pradesh State Vs All U.P. Consumer Protection Bar Association, Civil Appeal No. 2740 of 2007**, ordered as under :-

“----As a matter of last opportunity, we grant three months’ further time to the State of Uttar Pradesh to constitute five State Consumer Fora. In case, they have already set up three State Consumer Fora, two more consumer Fora shall be set up immediately.

During the interregnum period, the Chief Secretary of the State is directed to conduct the survey and submit a report to this Court as mentioned above. We made it clear that no further time shall be granted to the State of Uttar Pradesh for the purpose of constituting State Consumer Fora. A copy of the order be sent to the Chief Secretary directly within one week-----.”

6.12.2 After going through the pendency of Consumer cases at State Commission of Uttar Pradesh, the Hon’ble Apex Court has passed aforesaid order to constitute five State Consumer Fora. We have been told that in compliance of the aforesaid orders of the Hon’ble Apex Court five State Consumer Fora have been constituted by the State Government but so far all appointment of Members of State Commission could not be made due to vacant post of the President of the State Commission as President of the State Commission is the Chairman of the selection committee. Therefore, still position is the same. During discussion it has been suggested by Hon’ble Mr. Justice Bhanwar Sing, former President of the State Commission of U.P. that to ease the situation of pendency of consumer cases at the State Commission level single member bench should be conferred the revisional power to decide the revision against the orders passed by any District Forum, as such provision is not there in the Act. We are full agreement with the above

Suggestions and have proposed amendment accordingly as per recommendation .

6.13 Jurisdiction of District Forum and State Commission-

Section 11 of the Consumer Protection Act provides that the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed Rs. 20 lakhs. We are of the view that this limit should be enhanced to Rs 30 lakhs, to ease the pendency of consumer cases at State Commission level. It requires amendment in the section 11 of the Act, consequently relevant provision of section 17 will also require amendment i.e. for words twenty lakhs the words thirty lakhs should be there. We have proposed such amendment as per recommendation.

6.14 payment of interest to complainant- Clause (c) of sub-section (1) of section 14 provides “to return to the complainant the price or, as the case may be, the charge paid by the complainant;” in case the price of the goods or charges paid by the complaint have been ordered to be returned to the complainant. We feel that complainant, along with the price or the charges paid by him should also get the reasonable rate of interest on such price or chares as may be decided by the District Forum. Therefore, we have proposed such amendment as per recommendation.

6.15 Amendment of complaint – There is no specific provision for amendment in the Consumer Protection Act, but application for amendment of complaint can be entertained by District Forum, as no bar in allowing amendment (**AIR 2004 Mad 446(448)**). We feel that specific provision be there and application for amendment may be entertained by the District Forum before the stage of evidence. Accordingly, we have proposed amendment as per recommendations.

6.16 Amendment of second provisos to sections 15 and 19-

Section 15 of the Consumer protection Act provides that any person aggrieved by an order made by the District Forum may prefer an

appeal against such order to the State Commission. Second proviso to section 15 provides that “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.**” Similarly section 19 provides that any person aggrieved by an order made by the State Commission -----may prefer an appeal against such order to the National Commission. Second proviso to section 19 provides that “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, which ever is less.**” The bold letters shows that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum or order of the State Commission, shall be entertained by the State Commission or the National Commission, as the case may be, unless the appellant has deposited in the prescribed manner **fifty per cent. of that amount or twenty-five thousand rupees, whichever is less, at State Commission level or fifty per cent. of the amount or rupees thirty-five thousand, which ever is less** at National Commission level, as the case may be. It has been felt that generally the amount which is to be paid in terms of an order of the District Forum or the State Commission are much more, consequently, fifty percent of that amount is also much high. The amount prescribed in lieu fifty percent of the amount i.e twenty five thousand rupees and thirty thousand rupees, under second proviso to sections 15 and 19 of the Act, respectively is much less than the fifty percent amount. Therefore, it is learnt that generally affected person prefer an appeal against the orders of the District Forum and State Commission to the respective higher forum by depositing the aforesaid amount i.e twenty five thousand rupees or thirty five thousand rupees, as the case may be, even if there is no genuine ground for appeal, ultimately complainant suffers for years together due to pending of an appeal, where realization of amount is stayed on depositing the aforesaid petty amount, it causes hardship

to the consumers and also over burdened the appellate consumer fora i.e State Commission and National Commission. In our view to meet such situation the aforesaid amount which is to be deposited in lieu of fifty percent of the amount should be omitted from the Act, in that situation in case of an appeal by a person against the orders of the District Forum or State commission, as the case may be, to the State Commission or the National Commission, as the case may be, appellant has to deposit the fifty percent of the amount in terms of the orders of the District Forum or State Commission, as the case may be. We hope that to some extent it will discourage to file an appeal against such orders on frivolous or vexatious grounds. It also requires some amendment to insert such provisions in the Act. We have proposed such amendment as per recommendations.

6.17 Term of a president or a Member of a District Forum on his shifting to another District Forum- It has been brought to the notice of the Commission that if any President or Member of the District Forum shifted to another District Forum, some times he claims it as a fresh appointment, which creates some confusion regarding his tenure and it gives grounds for litigation. Sub-section (2) of section 10 of the Consumer Protection Act Provides “every Member of the District Forum shall hold office for a term of five years or upto the age of 65 years, whichever is earlier.” Therefore, the relevant provisions are quite clear on the point and there is no any confusion. Shifting given to nay President or Member of a District Forum to another District Forum as Member or President, as the case may be, it would not entitle him to reckon Period of five years afresh from the date of such shifting (**AIR 1996 Ker 22**). In our view if specific provision in this regard is made in the Act such confusion may be removed. We have proposed such amendment as pre recommendation.

6.18 After appointment, time limit to resume office of the President of a District Forum- It has been brought to the notice of the Commission that certain such Judicial Officers of Higher Judicial Service are appointed by the State Government on the recommendation of the selection committee, as President of the

District Forum who are still in service and have more than six month or so his tenure in service. Therefore, such judicial Officers assume their new assignment after their retirement. It means knowingly for this or that reasons we kept the post of presidents of the District Forums vacant for such a long period even after their appointment. It causes delay of disposal of consumer cases. We are of the view that this practice may be stopped firstly by the selection committee itself by recommending names of those eligible judicial Officers of Higher Judicial Service who have already retired or likely to be retired within the month of recommendation by the selection committee and if selection committee has recommended the names of such persons who have their more period of service, their date of retirement should be mentioned clearly in the recommendation of the selection committee, so that state government may, who is the ultimate appointing authority check such cases at the time of notification for appointment by removing such names from the list of recommendation and asking for fresh recommendation against such names from the Selection Committee or such persons may be asked by the State Government to resume their duties within fifteen days of receipt of information of his appointment after resigning from the present service, failing which their appointment shall stand cancelled . it is also felt that for months together post of President or Members, are lying vacant in the District forum for this or that reasons which causes accumulation of consumer cases at district fora . We are of the view that this practice may also be curtailed by appointing the Presidents or Member of the District Forum in time and necessary process for appointment may be stated well in time as it is well known since very beginning that particular President or Member of a District Forum is going to complete his tenure on which date. Specific provisions in this regard may be inserted in the Consumer Protection Act. We have proposed amendment to deal with such situation as per recommendations.

6.19 Furnishing of returns, statements and information and particulars regarding pending cases- There is no specific provision in the Consumer Protection Act to empower the State government to call upon the State Commission or any District Forum to furnish any

information returns, reports and statements. In our view periodically statements, returns and reports or as an when required any information regarding pendency of cases should be furnished to the State Government by the State Commission and District Forum. District Forum should also furnish these information to the State Commission and State Commission should furnish these information to the National Commission and the State Government. The District Forum and State Commission should also publish all date's relating to pendency of cases and disposal thereof. It will enable the consumers to know the Status of their consumer cases pending at District or State Fora. It requires amendment in the Act. We have proposed such amendment as per recommendation.

6.20 Besides the above proposals we have made some other proposals also to amend other provisions of the Consumer Protection Act, as per recommendations.

CHAPTER –VII

RECOMMENDATIONS

7.1 In view of the earlier discussions in the preceding Chapters, particularly under chapters 4,5, & 6 and having regards to the various judgments and orders of the Hon'ble Supreme Court and High Courts and various recommendations of the committees and the practical problems which are being faced by the consumer fora in consumer disputes justice delivery system, we are of the view that certain provisions of the Consumer Protection Act, 1986, require amendment to make them more effective functional and purposeful. It will also help in speedy Commission level in the State of Uttar Pradesh.

7.2 Therefore, keeping in mind all the issues as discussed earlier, particularly under chapter-VI, we have also drafted a **Model Amendment Bill** with this Report as **Annexure-I**, to amend the Consumer Protection Act.

7.3 Hence, we are proposing the following state amendments in the various provisions of the Consumer Protection Act, 1986, which is a Central Act, enacted by Parliament:-

7.4 The proposed model Amendment Bill(Annexure-I) contains:-

Clause (1)- Short Title Extent and Commencement-

- (1) This Act may be called the Consumer Protection (Uttar Pradesh Amendment) Act, 2012.
- (2) It shall extent whole of the State of Uttar Pradesh.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Clause (2)- Amendment of Section 2-

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

- (i) in clauses (aa) and (f), for the word “means”, the word “includes”, shall be substituted.
- (ii) for clause (g) “deficiency” include-
 - (a) 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;
 - (b) 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,;
- (iii) 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;
- (iv) 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 (I) of section 2 of the Information Technology Act, 2000;
- (v) 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 service 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’:

Clause (3)- Amendment of Section 9-

In section 9 of the Principal Act, in clause (a), after the proviso, the following proviso shall be inserted, namely:-

“Provided further that in a District where no District Forum has been established or if established, there exist at any time vacancy in the office of the President or a Member, in such case, the State Government may on recommendation of the committee constituted under sub-section (1A) of section 10 by notification, direct that-

- (a) A District Forum, as specified in the notification, shall also exercise the jurisdiction in respect of such District Forum as may be specified in the notification; or
- (b) The President or a member of a District Forum, as the case may be, shall also exercise the power or discharge the functions of the President or the member, as the case may be, of another District Forum as may be specified in the notification; or
- (c) The President or a member of a District Forum, as the case may be, is transferred to another District Forum, in the same capacity, as may be specified in the notification.”

Clause (4)- Amendment of Section 10-

- (i) In sub-section (1), for clause (a), the following clause shall be substituted, namely:-
 “ (a) a person who is, or has been a member of Uttar Pradesh Higher Judicial Service, shall be its President;”
- (ii) In clause (b),-
- (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;
- (III) after sub-clause (iii), the following proviso and Explanation shall be inserted, namely:-
 Provided that not more than fifty percent of the members shall be from amongst persons having a judicial background.
 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 to sub-clause (iii),-
- (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:-

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

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

“(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.”;

- (iv) **in sub-section (2),-**

- (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) for a term of five years or upto the age of sixty five years whichever is earlier:

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;

- (v) after sub-section (2), the following sub-section shall be inserted, namely:-

“(2A) on shifting, transfer or an additional charge, as the case may be, of any President or member, as the case may

be, of the District Forum to another District Forum as President or Member, as the case may be, would not entitle him to reckon period of five years afresh from the date of such shifting, transfer or an additional charge, as the case may be.”

- (vi) In sub-section (3), before the proviso, the following provisos shall be inserted, namely:-

“provided that in prescribing the salary and allowances payable to and other conditions of service of the President and other members, if appointed on whole time basis, regard shall be had to the salary and allowances payable to and other conditions of service, of the sitting District Judge and initial basic pay and allowances as admissible from time to time to the Civil Judge (Senior Division) respectively:-

Provided further that if the President or Member, who is appointed on whole time basis, at the time of his appointment is in receipt of a pension, in respect of any previous service under the Central or State Government, his salary in respect of service as the President or Member, as the case may be, shall be reduced by the amount of that pension:-

Provided also that if any member, who is appointed on whole time basis, at the time of his appointment, had been receiving more basic pay/salary than the initial basic pay of the Civil Judge (Senior Division), in respect of his previous service under the Central or State Government, in such cases, his last pay drawn minus pension amount, if any, shall be protected:

- (vii) In the proviso to sub-section (3) for the words “provided that” the words “provided also” shall be substituted.
- (viii) after sub-section (3), the following sub-sections shall be inserted, namely:-

“(4) every member of the District Forum, after his appointment as such by the State Government under sub-section (1A), and information thereof to such person, he shall assume his office within fifteen days of receipt of information

of his appointment, failing which his appointment may be cancelled forthwith.

Provided that if any name of a sitting member of Higher Judicial Service has been recommended for appointment as President of the District Forum by the selection committee under sub-section (1A), he shall resign forthwith from his present service to assume charge on receipt of information of his appointment as President of District Forum by the State government. The said condition shall also apply in the case of a member, if he is in Government service.

(5) The president or member of the District Forum, on ceasing to hold office as such, shall not appear, act or plead before the District Forum where he had worded as President or member, as the case may be, of the District Forum.

(6) The State Government may suspend, order an enquiry of order for Punishment against President or Member, as the case may be, of the District Forum.

Provided that an enquiry of complaint, against any president or Member, as the case may be, of District Forum, if not being investigated by any competent investigating agency constituted under law, shall be made by the State Commission, who shall submit its enquiry report with recommendations to the State Government for appropriate action.”

Clause (5)- Insertion of new section 10 A.

After section 10 of the principal Act, the following section shall be inserted, namely:-

“10A. Staff of District Forum

(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 (Uttar Pradesh Amendment) Act, 2012, in a District Forum, shall continue to be employed as such unless the nature and categories thereof has been determined by the State Government.”

Clause (6)- Amendment of section 11.

In section 11 of the principal Act,

- (a) In sub-section (1), in the end, for the words “twenty lakhs” the words “thirty lakhs” shall be substituted;
- (b) 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 to entertain complaints in such matters where the value of the goods or service and the compensation, if any, claimed does not exceed rupees fifty thousand.”

Clause (7)- Insertion of new section 11A.

After section 11 of the principal Act, the following section shall be inserted, namely:-

“11A. Circuit benches.

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.”.

Clause (8)- Amendment of section 13

After sub-section (7), the following sub-section shall be inserted, namely:-

“ Application for amendment of the complaint may be entertained by District Forum only before the stage of evidence.”

Clause (9)- Amendment of section 14

in section 14 of the principal Act,-

(a) in sub-section (1),-

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

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

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

(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.”.

Clause (10)- Amendment of section 15.

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

Clause (11)- Amendment of section 16.

In section 16 of the principal Act,-

(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;

(b) in sub-clause (iii),-

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

(B) in the second proviso,-

(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 (1A), for the words, brackets and figure “under sub-section (1)”, the words, brackets, letter, and figure “under clause (b) of sub-section (1)” shall be substituted;

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

“(1AA) 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, recommendations.”;

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

“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) After sub-section (2), the following proviso shall be inserted, namely:-

“Provided that in prescribing the salary and allowances payable to and other conditions of service of the President and

Other Members, if appointed on whole time basis, regard shall be had to the salary and allowances payable to and other conditions of service of the sitting Judge of High Court and the sitting District Judge respectively:

Provide further that if the President or Member who is appointed on whole time basis, at the time of his appointment is in receipt of a pension, in respect of any previous service under the Central or State Government, his salary in respect of service as President or Member as the case may be, shall be reduced by the amount of that pension:

Provided also that if any member , who is appointed on whole time basis, at the time of his appointment, had been receiving more basic pay / salary than the initial basic pay of the District Judge, in respect of his previous service under the Central or State Government, in such cases, his last pay drawn minus pension amount, if any, shall be protected:

(vi) In the proviso to sub-section (2), for the words “provided that” the words “provided also” shall be substituted.

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

“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.”;

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

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

Clause (12)- Insertion of new section 16A.

After section 16 of the principal Act, the following section shall be inserted, namely:-

“16A. Staff of State Commission.

(1) 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.

(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:

Provided that the officers and other employees employed on or before the commencement of the Consumer Protection (Uttar Pradesh Amendment) Act, 2012, in a State Commission, shall continue to be employed as such unless the nature and categories thereof has been determined by the State Government.”

Clause (13)- Amendment of section 17.

In section 17 of the Principal Act, in sub-section (1),-

(i) in sub-clause (i) of clause (a) for the words “twenty lakhs” the words “thirty lakhs” shall be substituted.

(ii) After clause (b), the following proviso shall be inserted, namely:-

“Provided that the Single Member Bench shall exercise the jurisdiction, power and authority to decide the revision against the orders passed by any District Forum within the state.”

Clause (14)-Amendment of section 19.

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

Clause (15)- Amendment of section 27.

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.

Clause (16)-Insertion of new Sections 28 B and 28 C

After section 28A of the principal Act, the following sections shall be inserted, namely:-

“28B. Power to call information

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.

28C. Returns and reports

(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.

(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 District Forum and the State 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.”

Clause (17)- Amendment of Section 30

In section 30 of the principal Act,-

In sub-section (2),-

(i) after the word and figures “section 10”, the words, brackets, and letter “sub-section (3) of section 10A” shall be inserted;

(ii) for the words, brackets, letter and figures “and clause (b) of subsection (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, section 28B and section 28C of this Act or any other matter which is to be, or may be, required to be prescribed” shall be substituted.

7.5 The Consumer Protection Act, 1986 is a Central Act, enacted by Parliament. Therefore, we also recommend that in case proposed amendment Bill in terms of accompanying **Model Amendment Draft bill (Annexure-I)** is passed by the Legislature of State, the following provision of Article 254 of the Constitution of India is to be followed:-

“254.(1) If any provision of a law made by the Legislature of a State is repugnant to nay provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law mode by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent prevail in that State.”

7.6 Therefore, the proposed State Amendment Bill in the Consumer Protection Act, 1986 (Central Act No. 68 of 1986) shall only prevail if it has perceived prior Presidential assent under Article 254 of Constitution of India. Hence, after passing the proposed amendment Bill by the Legislature of State, prior assent of the President of India shall also be needed.

7.7 We hope and trust that if recommendations are accepted and acted upon in terms of accompanying **Proposed U.P. Amendment Model Draft Bill, Annexure-I**, it will help to solve the solve the many problems which are being faced by the Consumer Fora at District and State level, in the State of Uttar Pradesh, as stated earlier.

7.8 We recommend accordingly.

(Justice V.C. Misra)
Chairman

(Prof. Balraj Chauhan)
Member
(Part-time)

(Ishwar Dayal)
Member
(Full-time)

ANNEXURE-I

MODEL DRAFT AMENDMENT BILL

THE UTTAR PRADESH STATE LAW COMMISSION

FIFTEENTH REPORT-2012

ON

THE CONSUMER PROTECTION (UTTAR PRADESH AMENDMENT) BILL, 2012

THE UTTAR PRADESH STATE LAW COMMISSION

FIFTEENTH REPORT-2012

ON

THE CONSUMER PROTECTION (UTTAR PRADESH AMENDMENT) BILL, 2012

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THE CONSUMER PROTECTION (UTTAR PRADESH AMENDMENT) BILL, 2012

A

BILL

to amend the Consumer Protection Act, 1986, in its application to the State of Uttar Pradesh,

It Is HEREBY enacted in the Sixty- third- year of the Republic of India, as follows:-

1. Short Title Extent and Commencement-

- (1) This Act may be called the Consumer Protection (Uttar Pradesh Amendment) Act, 2012.
- (2) It shall extent whole of the State of Uttar Pradesh.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Amendment of Section 2-

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

- (i) in clauses (aa) and (f), for the word “means”, the word “includes”, shall be substituted.
- (ii) for clause (g) “deficiency” include-
 - (a) 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;
 - (b) 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,;

- (iii) 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 (I) of section 2 of the Representation of the People Act, 1951;
- (iv) 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 (I) of section 2 of the information Technology Act, 2000;
- (v) 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 service 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’:

3. **Amendment of Section 9-**

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

“Provided further that in a District where no District Forum has been established or if established, there exist at any time vacancy in the office of the President or a Member, in such case, the State Government may, on recommendation of the committee constituted under sub-section (1A) of section 10 by notification, direct that-

- (a) A District Forum, as specified in the notification, shall also exercise the jurisdiction in respect of such District Forum as may be specified in the notification ; or
- (b) The President or a member of a District Forum, as the case may be, shall also exercise the power or discharge the functions of the president or the member, as the case may be, of another District Forum as may be specified in the notification; or
- (c) The President or a member of a District Forum, as the case may be, is transferred to another District Forum, in the same capacity, as may be specified in the notification.”

4. **Amendment of Section 10-**

- (i) In sub-section (1), for clause (a), the following clause shall be substituted, namely:-

“ (a) a person who is, or has been a member of Uttar Pradesh Higher Judicial Service, shall be its President:’

- (ii) in clause (b),-
 - (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;

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

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

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 to sub-clause (iii),-

(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:-

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

(iii) After sub-section (1A), the following sub-section shall be inserted, namely:-

“(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.”;

(iv) in sub-section(2),-

(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) for a term of five years or upto the age of sixty five years whichever is earlier:

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;

(v) after sub-section (2), the following sub-section shall be inserted, namely:-

“(2A) on shifting, transfer or an additional charge, as the case may be, of any President or member, as the case may be, of the District Forum as president or Member, as the case may be, would not entitle him to reckon period of five years afresh from the date of such shifting, transfer or an additional charge, as the case may be.”

(vi) In sub-section (3), before the proviso, the following provisos shall be inserted, namely:-

“Provided that in prescribing the salary and allowances payable to and other conditions of service of the President and other members, if appointed on whole time basis, regard shall be had to the salary and allowances payable to and other conditions of service, of the sitting District judge and initial basic pay and allowances as admissible from time to time to the Civil Judge (Senior Division) respectively:-

Provided further that if the President or Member, who is appointed on whole time basis, at the time of his appointment is in receipt of a pension, in respect of any previous service under the Central or State Government, as the case may be, shall be reduced by the amount of that pension:-

Provided also that if any member, who is appointed on whole time basis, at the time of his appointment, had been receiving more pay/ salary than the initial basic pay of the Civil Judge (Senior Division), in respect of his previous service under the Central or State Government, in such cases, his last pay drawn minus pension amount, if any, shall be protected:

(vii) In the Proviso to sub-section (3) for the words “provided that” the words “provided also” shall be substituted.

(viii) after sub-section (3), the following sub-sections shall be inserted, namely:-

“(4) every member of the District Forum, after his appointment as such by the State Government under sub-section (1A), and information thereof to such person, he shall assume his office within fifteen days of receipt of information of his appointment, failing which his appointment may be cancelled forthwith.

Provided that if any name of a sitting member of Higher Judicial Service has been recommended for appointment as President of the District Forum by the selection committee under sub-section (1A), he shall resign forthwith from his present service to assume charge on receipt of information of his appointment as President of District Forum by the State Government. The said condition shall also apply in the case of a member, if he is in government service.

(5) The President or member of the District Forum, on ceasing to hold office as such, shall not appear, act or plead before the District Forum where he had worded as president or member, as the case may be, of the District Forum.

(6) The State Government may suspend, order an enquiry or order for Punishment against President or Member, as the case may be, of the District Forum.

Provided that an enquiry of complaint, against any President or Member, as the case may be, of District Forum, if not being investigated by any competent investigating agency constituted under law, shall be made by the State Commission,

who shall submit its enquiry report with recommendations to the State Government for appropriate action.”

5. Insertion of new section 10 A.

After section 10 of the principal Act, the following section shall be inserted, namely:-

“10A. Staff of District Forum

(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:

Provide that officers and other employees employed on or before the commencement of the Consumer Protection (Uttar Pradesh Amendment) Act, 2012, in a District Forum, shall continue to be employed as such unless the nature and categories thereof has been determined by the State Government.”

6. Amendment of section 11.

In section 11 of the principal Act,

- (a) In sub-section (1), in the end, for the words “twenty lakhs” the words “thirty lakhs” shall be substituted;
- (b) 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 to entertain complaints in such matters Where the value of the goods or service and the compensation, if any, claimed does not exceed rupees fifty thousand.”

7. Insertion of new section 11A.

After section 11 of the principal Act, the following section shall be inserted, namely:-

“11A. Circuit benches.

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.”

8. Amendment of section 13

After sub-section (7), the following sub-section (8) shall be inserted, namely:-

“(8) Application for amendment of the complaint may be entertained by District Forum only before the stage of evidence.”

9. Amendment of section 14

In section 14 of the principal Act,-

(a) in sub-section (1),-

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

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

(iii) in clause (hb), in the first proviso, for the words “five percent.” the words “twenty-five percent.” Shall be substituted;

(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.”.

10. Amendment of section 15.

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

11. Amendment of section 16.

In section 16 of the principal Act,-

(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;

(b) in sub-clause (iii),-

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

(B) in the second proviso,-

(I) after the word “appointment”, the words “of 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 (1A), for the words, brackets and figure “under sub-section (1)”, the words, brackets, letter, and figure “under clause (b) of sub-section (1)” shall be substituted;

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

“(1AA) 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 recommendations.”;

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

“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) After sub-section (2), the following proviso shall be inserted, namely:-

“Provided that in prescribing the salary and allowances payable to and other conditions of service of the President and other Members, if appointed on whole time basis, regard shall be had to the salary and allowances payable to and other conditions of service of the sitting Judge of High Court and the sitting District Judge respectively:

Provided further the if the President or Member who is appointed on whole time basis, at the time of his appointment is in receipt of a pension, in respect of any previous service under the Central or State Government, his salary in respect of service as President or Member as the case may be, shall be reduced by the amount of that pension:

Provided also that if any member, who is appointed on whole time basis, at the time of his appointment, had been receiving more basic pay / salary than the initial basic pay of the District Judge, in respect of his previous service under the Central or State Government, in such cases, his last pay drawn minus pension amount, if any, shall be protected:

- (vi) In the proviso to sub-section (2), for the words “provided that” the words “provided also” shall be substituted.

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

“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.”;

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

“(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 where he had worked as President or member, as the case may be, of the State Commission”.

12. Insertion of new section 16A.

After section 16 of the principal Act, the following section shall be inserted, namely:-

“16A. staff of State Commission.

(1) 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.

(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:

Provided that the officers and other employees employed on or before the commencement of the Consumer Protection (Uttar Pradesh Amendment) Act, 2012, in a State Commission, shall continue to be employed as such unless the nature and categories thereof has been determined by the State Government.”

13. Amendment of section 17.

In section 17 of the Principal Act, in sub-section (1),-

(i) in sub-clause (i) of clause (a) for the words “twenty lakhs” the words “thirty laksha” shall be substituted.

(ii) After clause (b), the following proviso shall be inserted, namely:-

“Provided that the Single Member Bench shall exercise the jurisdiction, power and authority to decide the revision against the orders passed by any District Forum within the State.”

14. Amendment of section 19.

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

15. Amendment of section 27.

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 ate so conferred” shall be omitted.

16. Insertion of New Sections 28B and 28C

After section 28A of the principal Act, the following sections shall be inserted, namely:-

“28B. Power to call information

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 be prescribed by the State Government.

28C. Returns and reports

(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.

(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 District Forum and the State 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.”

17. Amendment of Section 30

In section 30 of the principal Act,-
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 subsection (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, section 28B and section 28C of this Act or any other matter which is to be, or may be, required to be prescribed” shall be substituted.