

## UNIT-3

### **1. CONSUMER PROTECTION ACT**

#### **Introduction**

The moment a person comes into this world, he starts consuming. He needs clothes, milk, oil, soap, water, and many more things and these needs keep taking one form or the other all along his life. Thus we all are consumers in the literal sense of the term. When we approach the market as a consumer, we expect value for money, *i.e.*, right quality, right quantity, right prices, information about the mode of use, etc. But there may be instances where a consumer is harassed or cheated.

The Government understood the need to protect consumers from unscrupulous suppliers, and several laws have been made for this purpose. We have the Indian Contract Act, the Sale of Goods Act, the Dangerous Drugs Act, the Agricultural Produce (Grading and Marketing) Act, the Indian Standards Institution (Certification Marks) Act, the Prevention of Food Adulteration Act, the Standards of Weights and Measures Act, etc. which to some extent protect consumer interests. However, these laws require the consumer to initiate action by way of a civil suit involving lengthy legal process which is very expensive and time consuming.

The Consumer Protection Act, 1986 was enacted to provide a simpler and quicker access to redressal of consumer grievances. The Act for the first time introduced the concept of 'consumer' and conferred express additional rights on him. It is interesting to note that the Act doesn't seek to protect every consumer within the literal meaning of the term. The protection is meant for the person who fits in the definition of 'consumer' given by the Act.

#### **Objective of the Act**

An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto.

## **Salient Features of the Act**

- **Wider Ambit to address New Emerging Challenges**

The New Act equip the machinery to meet the new emerging challenges like e-commerce, telemarketing, misleading advertisements, etc. and ensure efficiency in grievance redressal.

- **Inclusion of e- Commerce**

The earlier Act did not specifically include e-commerce transactions. This lacuna has been addressed by the New Act. 'E-commerce' and 'electronic service provider' have been defined under the Act. 'E-commerce' has been defined as buying or selling of goods or services including digital products over digital or electronic network. The central government has been authorized to take measures and make rules to prevent unfair trade practices in e-commerce.

- **Broader Definition of Consumer**

The definition of 'consumer' under section 2(7) is broader and includes both offline and online transactions. The ambit of consumer has been widened to cover not only online transactions but also telemarketing and multi-level marketing which will impose responsibility at all levels.

- **Enhanced Pecuniary Jurisdiction**

<b>Pecuniary Jurisdiction under CP Act, 2019</b>	
District Commission	Upto Rupees One Crore
State Commission	More than Rupees One Crore upto Rupees 10 Crore
National Commission	Above Rupees 10 Crore

The New Act (CPA 2019) provides flexibility to the consumer to file complaints with the consumer commission located at the place of residence or work of the consumer.

- **E-Filing of Complaints**

The New Act (CPA 2019) also enables consumers to file complaints electronically and for hearing and/or examining parties through video-conferencing. This is to ensure procedural ease and reduce inconvenience and harassment to the consumers.

- **Establishment of Regulator for Consumer Protection**

The New Act (CPA 2019) provides for establishment of the Central Consumer Protection Authority (CCPA) to regulate matters relating to violation of rights of consumers, unfair trade

practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.

- **Unfair Trade Practices**

The New Act (CPA 2019) introduces a specific broad definition of Unfair Trade Practices, which also includes sharing of personal information given by the consumer in confidence, unless such disclosure is made in accordance with the provisions of any other law.

- **Introduction of Mediation to resolve Consumer Grievances**

The New Act provides for mediation as an Alternate Dispute Resolution mechanism, making the process of dispute adjudication simpler and quicker. This will help with the speedier resolution of disputes and reduce pressure on consumer commissions.

- **Product Liability**

The New Act (CPA 2019) introduces Chapter VI dealing with Product Liability. These provisions based on strict liability principles will enable the complainant to claim compensation for the harm caused due to defective product or services.

## **Who is a Consumer**

Section 2(d) of the Consumer Protection Act says that consumer means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;

*Explanation.*—for the purposes of the sub-clause (i), “commercial purpose” does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

**Consumer of Goods** - The provision reveals that a person claiming himself as a consumer of goods should satisfy that—

- **THE GOODS ARE BOUGHT FOR CONSIDERATION**

– *There must be a sale transaction between a seller and a buyer;*

*The sale must be of goods; the buying of goods must be for consideration.* The terms sale, goods, and consideration have not been defined in the Consumer Protection Act. The meaning of the terms ‘sale’, and ‘goods’ is to be construed according to the Sale of Goods Act, and the meaning of the term ‘consideration’ is to be construed according to the Indian Contract Act.

- **ANY PERSON WHO USE THE GOODS WITH THE APPROVAL OF THE BUYER IS A CONSUMER -**

When a person buys goods, they may be used by his family members, relatives and friends. Any person who is making actual use of the goods may come across the defects in goods. Thus the users of the goods as consumers although they may not be buyers at the same time. The words “with the approval of the buyer” in the definition denotes that the user of the goods should be a rightful user.

*Example:* A purchased a scooter which was in B’s possession from the date of purchase. B was using it and taking it to the seller for repairs and service from time to time. Later on B had a complaint regarding the scooter. He sued the seller. The seller pleaded that since B did not buy the scooter, he was not a consumer under the Act. The Delhi State Commission held that B, the complainant was using it with the approval of A, the buyer, and therefore he was consumer under the Act.

[*Dinesh Bhagat v. Bajaj Auto Ltd.* (1992) III CPJ 272]

**Consumer of services** - A person is a consumer of services if he satisfy the following criteria:

- **SERVICES ARE HIRED OR AVAILED OF** - The term ‘hired’ has not been defined under the Act. Its Dictionary meaning is - to procure the use of services at a price. Thus the term ‘hire’ has also been used in the sense of ‘avail’ or ‘use’.

Accordingly it may be understood that consumer means any person who avails or uses any service.

*Example:* 'A' goes to a doctor to get himself treated for a fracture. Here 'A' is hiring the services of the doctor. Thus he is a consumer.

*What constitutes hiring has been an issue to be dealt with in many consumer disputes.* If it is established that a particular act constitutes hiring of service, the transaction falls within the net of the Consumer Protection Act, and *vice-versa*.

*Examples:*

1. A passenger getting railway reservation after payment is hiring service for consideration.
2. A landlord neglected and refused to provide the agreed amenities to his tenant. He filed a complaint against the landlord under the Consumer Protection Act.

The National Commission dismissed the complaint saying that it was a case of lease of immovable property and not of hiring services of the landlord.

[*Smt. Laxmiben Laxmichand Shah v. Smt. Sakerben Kanji Chandan* [1992] 1 Comp. LJ 177 (NCDRC)].

#### **CONSIDERATION MUST BE PAID OR PAYABLE –**

Consideration is regarded necessary for hiring or availing of services. However, its payment need not necessarily be immediate. It can be in instalments. For the services provided without charging anything in return, the person availing the services is not a consumer under the Act.

*Examples:*

1. A hires an advocate to file a suit for recovery of money from his employer. He promises to pay fee to the advocate after settlement of the suit. A is a consumer under the Act.
2. A goes to a Doctor to get himself treated for a fracture. The Doctor being his friend charged him nothing for the treatment. A is not a consumer under the Act.

#### **BENEFICIARY OF SERVICES IS ALSO A CONSUMER –**

When a person hires services, he may hire it for himself or for any other person. In such cases the beneficiary (or user) of these services is also a consumer.

*Example:* A takes his son B to a doctor for his treatment. Here A is hirer of services of the doctor and B is beneficiary of these services. For the purpose of the Act, both A and B are consumers.

**Note:** This is an exception to the rule of privity to the contract.

## **Complaint**

An aggrieved consumer seeks redressal under the Act through the instrumentality of complaint. It does not mean that the consumer can complain against his each and every problem. The Act has provided certain grounds on which complaint can be made. Similarly, relief against these complaints can be granted within the set pattern.

***What constitutes a complaint*** [Section 2(1)(c)] - Complaint is a statement made in writing to the National Commission, the State Commission or the District Forum by a person competent to file it, containing the allegations in detail, and with a view to obtain relief provided under the Act.

***Who can file a complaint*** [Sections 2(b) & 12] –

At the outset it is clear that a person who can be termed as a consumer under the Act can make a complaint. To be specific on this account, following are the persons who can file a complaint under the Act :

- (a) a consumer; or
- (b) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force, or
- (c) the Central Government or any State Government,
- (d) one or more consumers, where there are numerous consumers having the same interest.

***In addition to the above following are also considered as a consumer and hence they may file a complaint:***

- *Beneficiary of the goods/services:* The definition of consumer itself includes beneficiary of goods and services –  
*K.B.Jayalaxmi v. Government of Tamil Nadu* 1994(1) CPR 114.
- *Where a young child* is taken to the hospital by his parents and the child is treated by the doctor, the parents of such a minor child can file a complaint under the Act –  
*Spring Meadows Hospital v. Harjot Ahluwalia JT* 1998(2) SC 620.
- *Legal representative of the deceased consumer:* The Act does not expressly indicate that the LR of a consumer are also included in its scope. But by operation of law, the legal representatives get clothed with the rights, status and personality of the deceased. Thus the expression consumer would include legal representative of the deceased consumer

and he can exercise his right for the purpose of enforcing the cause of action which has devolved on him –

*Cosmopolitan Hospital v. Smt. Vasantha P. Nair* (1) 1992 CPJ NC 302.

- *Legal heirs of the deceased consumer*: A legal heir of the deceased consumer can well maintain a complaint under the Act  
- *Joseph Alias Animon v. Dr. Elizabeth Zachariah* (1) 1997 CPJ 96.
- *Husband of the consumer*: In the Indian conditions, women may be illiterate, educated women may be unaware of their legal rights, thus a husband can file and prosecute complaint under the Consumer Protection Act on behalf of his spouse -  
*Punjab National Bank, Bombay v. K.B. Shetty* 1991 (2) CPR 633.
- *A relative of consumer*: When a consumer signs the original complaint, it can be initiated by his/her relative - *Motibai Dalvi Hospital v. M.I. Govilkar* 1992 (1) CPR 408.

***What a complaint must contain [Section 2(1)(c)] –***

A complaint must contain any of the following allegations:

(a) An unfair trade practice or a restrictive trade practice has been adopted by any trader;

*Example*: A sold a six months old car to B representing it to be a new one. Here B can make a complaint against A for following an unfair trade practice.

(b) The goods bought by him or agreed to be bought by him suffer from one or more defects;

*Example*: A bought a computer from B. It was not working properly since day one. A can make a complaint against B for supplying him a defective computer.

(c) The services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect.

*Example*: A hired services of an advocate to defend himself against his landlord. The advocate did not appear every time the case was scheduled. A can make a complaint against the advocate.

(d) A trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods.

*Ex*: A bought a sack of cement from B who charged him Rs. 100 over and above the reserve price of the cement declared by the Government. Here A can make a complaint against B.

***Time frame within which a complaint can be filed –***

Section 24A of the Act provides that a consumer dispute can be filed within two years from the date on which the cause of action arises.

Since this provision was inserted in the Act in 1993, before that the Consumer Forums were following the Limitation Act, 1963, which says that a suit can be filed within three years after the cause of action arises.

The point of time when cause of action arises is an important factor in determining the time period available to file a complaint. There are no set rules to decide such time. It depends on the facts and circumstances of each case.

***Relief available against complaint [Sections 14 and 22]*** - A complainant can seek any one or more of the following relief under the Act:

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;
- (e) to remove the defects or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (i) to provide from adequate costs to complainant.

**When a complaint cannot be filed** - A complaint on behalf of the public which consists of unidentifiable consumers cannot be filed under the Act.

*Example :* A complaint was filed on the basis of a newspaper report that passengers travelling by flight No. 1C-401 from Calcutta to Delhi on May 13, 1989 were made to stay at the airport and the flight was delayed by 90 minutes causing great inconvenience to the passengers. It was held

that such a general complaint cannot be entertained. No passenger who boarded that plane came forward or authorised the complainant to make the complaint –

*Consumer Education and Research Society, Ahmedabad v. Indian Airlines Corporation, New Delhi* (1992) 1 CPJ 38 NC.

A complaint by an individual on behalf of general public is not permitted –

*Commissioner of Transport v. Y.R. Grover* 1994 (1) CPJ 199 NC.

An unregistered association cannot file a complaint under the Act.

### **Unfair Trade Practice and Restrictive Trade Practice** [Section 2(1)(r) and (nn)].

We have discussed that a consumer can make a complaint when an unfair or a restrictive trade practice is followed by a trader. What can be termed as an unfair or a restrictive trade practice is another question of law.

#### ***What is an Unfair Trade Practice –***

The Act says that, “unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely—

(1) The practice of making any statement, whether orally or in writing or by visible representation which—

(i) falsely represents that the goods are of particular standard, quality, quantity, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes false or misleading statement concerning the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

(viii) makes to the public a representation in a form that purports to be a warranty or guarantee of a product or of any goods or services; or a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf other representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

### **What is a Restrictive Trade Practice –**

Section 2(1)(nn) of the Act provides that, “restrictive trade practice” means “any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, hiring or availing of other goods or services”.

An analysis of above definition reveals that where sale or purchase of a product or service is made conditional on the sale or purchase of one or more other products and services, it amounts to restrictive trade practice.

Technically, this type of arrangement is called ‘tie-up sales’ or ‘tying arrangement’. The effect of such an arrangement is that a purchaser is forced to buy some goods or services which he may not require along with the goods or services which he wants to buy. Thus where a buyer agrees to purchase product ‘X’ upon a condition that he will also purchase product ‘Y’ from the seller, the sale of product ‘Y’ (tied product) is tied to the sale of product ‘X’ (tying product).

The buyer has to forego his free choice between competing products. This results in neutralizing healthy competition in the 'tied' market.

*Example:* A, a gas distributor instead his customers to buy gas stove as a condition to give gas connection. It was held that it was a restrictive trade practice –

*Re. Anand Gas RTPE 43/1983 (MRTPC).*

### **Goods –**

The Consumer Protection Act does not define the term 'Goods' It says that - "goods" means goods as defined in the Sale of Goods Act, 1930.

Section 2(7) of the Sale of Goods Act, 1930, defines 'goods' as - "Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."

The definition reveals that—

- (a) Goods must be movable;
- (b) Things attached to or forming part of land which can be severed satisfy the movability criteria;
- (c) Actionable claim and Money have been specifically excluded from definition of goods.

### **Defect –**

Section 2(1)(f) of the Act provides that, "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard *which is required to be maintained* by or under any law of the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever *in relation to any goods*.

This is an exhaustive definition. It means that the Act recognises only those defects which are covered by the definition. Any type of defect not mentioned here will not be entertained by Consumer Forums. Moreover the defect has to be in relation to goods only, *i.e.*, if an item does not fall within the definition of 'Goods', no defect can be complained therein. However, the coverage of this definition is very wide.

*Examples:*

1. A Pressure Cooker burst and caused injury to the user. It was held to be a manufacturing defect –

*T.T. (P.) Ltd. v. Akhil Bhartiya Grahak Panchayat II* [1996] CPJ 239 NC.

2. Failure to handover registration book along with jeep purchased by complainant is a defect. [*Ramesh Chandra v. Commercial Tax Officer* [1993] 3 CPR 182 (Ori.).

3. Where laboratory test report showed that soft drink was not fit for human consumption, it was held defective -

*Narayanan Vyankatkrishnan Iyengar v. Shakti Foods* [1994] 2 CPJ 652 (Mah.).

4. Rape seed oil adulterated with toxic substances, which led to paralysis of limbs and other disabilities, has been considered as defective –

*Barsad Ali v. MD West Bengal Essential Commodities Supply Corporation Ltd.* (1993)

5. Electric household appliances which are not in accordance with the standards prescribed by ISI, being unsafe are defective –

*Farooq Hazi Ismail Saya v. Gavabhai Bhesania* (1991) 2 CPJ 452 (Guj.).

6. Gas Cylinder with excessive gas is defective goods –

*Dayanand A Avasare v. Bharat Petroleum Corporation Ltd.* (1993) 1 CPR 278 (Mah.).

7. Development of cracks of half inch to three and a half inch in walls and mosaic floor in a flat after taking possession from a Housing Board –

*R. Shanmugasundaram v. Tamil Nadu Housing Board* (1998) 1 CPJ 96 NC.

8. A supplied white marble to B. Later on the colour of the marble changed. B sued a alleging supply of defective marble. It was held that A should hav expressly told B that the marble would not retain its colour when polished. In the absence of such assertion, it is deemed that A made B to understand that the marble would retain its white colour and when the colour changed, it comes within the scope of ‘defect’ in goods under the Act –

*Chitranjan Sahu v. N.C. Jain II* (1993) CPJ 1127 (Ori.).

9. A sold a stolen car to B. B wanted to sue A for defect in the title of the car. Here B cannot sue A under the Consumer Protection Act as the defect in title of goods would not constitute defective goods as defined under the Act.

## **Service**

Section 2(1)(o) of the Act provides that “service” means service of any description which is made available to potential users and includes the provision of facilities in connection with *banking, financing, insurance, transport, processing, supply of electrical or other energy, board or loading or both, housing construction, entertainment, amusement or the purveying of news or other information*, but does not include the rendering of any service free of charge or under a contract of personal service.

The definition provides a list of eleven sectors to which service may pertain in order to come under the purview of the Act. The list of these sectors is not an exhaustive one. Service may be of any description and pertain to any sector if it satisfy the following criteria:

1. service is made *available to the potential users, i.e.*, service not only to the actual users but also to those who are capable of using it.
2. it *should not be free of charge, e.g.*, the medical service rendered free of charge in Government hospital is not a service under the Act;
3. it should not be under a *contract of personal service*.

When we talk about ‘service’ under the Consumer Protection Act, we take it as a regular commercial transaction. Thus the services rendered under the contract of personal service are specifically excluded from the definition.

### **Trader and Manufacturer [Section 2(1)(q) and (j)]**

When a person finds any defect in the goods, be it manufacturing defect, or excessive price, or lack of information about hazardous nature, or restrictive or unfair trade practice, he can make a complaint against the trader. Thus it is very important to know who can be termed as a trader under the Act.

**Trader** - Section 2(1)(q) of the Act says that ‘trader’ means any person who *sells or distributes* any goods for sale and includes the *manufacturer* thereof, and where such goods are sold or distributed in package form, includes the *packer* thereof.

Generally speaking ‘trader’ means any person who carries on a trade. Under the Consumer Protection Act, even a packer has been included in the definition of trader. Packer means one who packs the goods.

*Examples :*

1. A got an agency of 'Indana' products. He sells and distributes these products in North India. He is a trader under the Act.
2. A manufactures combs. He is a trader under the Act.
3. A provide bottles to pack the perfume manufactured by B. Here A is also a trader under the Act.

**Note :** "Trader" is a wider term which includes a manufacturer also.

**Manufacturer** - In terms if clause (j) of section 2(1) of the Act, "manufacturer" means a person who—

- (i) makes or *manufactures* any goods or parts thereof; or
- (ii) does not make or manufacture any goods but *assembles* parts thereof made or manufactured by others and claims the end-product to be goods manufactured by himself; or
- (iii) puts or causes to be *put his own mark* on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself.

Thus manufacturer is a person who either himself manufactures goods, or assemble any goods manufactured by others, or puts his own mark or trade mark on the goods manufactured by others.

*Examples:*

1. A Ltd. were into manufacturing of Pressure Cookers. B bought a Cooker which burst out while using. B sued A Ltd. for compensation. Here A Ltd. being manufacturer of the Cooker is liable for the loss.

***Who should be sued by a consumer - manufacturer or seller –***

Generally when a consumer finds defect in the goods, he sues the person from whom he bought the goods. Reason being privity of contract.

If the defect is a manufacturing defect, the consumer may sue the manufacturer also along with the seller. This is an option with the consumer. Thus the manufacturer is a possible party, and not a necessary party.

*Example :* A was manufacturer of "X" brand cars and B was a dealer for them. C bought a car from B and found it defective. Here he may sue B alone, or A and B both.

## **Consumer Protection Councils.**

The Consumer Councils are created to advise and assist the consumers in seeking and enforcing their rights. We have Consumer Protection Councils both at Centre level and State level, that is one Central Council and many State Councils. These councils work towards the promotion and protection of consumers. They make investigations and give publicity to the matters concerning consumer interests, take steps towards furthering consumer education and protecting consumer from exploitation, advice the Government in the matter of policy formulation keeping consumer interest as pivotal concern, etc. Although their suggestions are recommendatory in nature, but they have significant impact in policy making.

### **Objects of the Councils** [Sections 6 and 8]

There is one basic thought that 'Consumer needs to be protected'. Another thought is - how he can be protected?

Definitely, there has to be some agency to work towards this protection. The Act has provided for constitution of Consumer Councils for this purpose.

Now, when we say that these councils are there to protect the consumers, a question arises - consumers are protected against what?

The Consumer Protection Act guarantees the following six Consumers Rights:-

**Right to safety** - It is right to be protected against the marketing of goods and services which are hazardous to life and property. Unsafe goods may cause death or serious injury to the user due to defective ingredients, defective design, poor workmanship, or any other reason. At times safety hazards are found due to absence of proper instructions to use the product.

Thus it is to be ensured that— Manufacturers and traders ensure that the goods are safe for the users, in case of hazardous goods, they give clear instructions as to mode of use, consumer is informed of the risk involved in improper use of goods, vital safety information is conveyed to consumers.

Manufacturers or distributors who become aware of the unforeseen hazards after the goods are supplied must inform the authorities and the public in order to forewarn consumers about such hazards. Where a product is found such as is likely to be hazardous even when properly used, traders should either recall it and modify the same, or replace it with a new product, or adequately compensate for it.

**Right to information –**

It is right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, with a view to protect the consumer against unfair trade practices. Adequate information is very important in order to make a right choice. In our country, however, consumers do not get adequate comparative information about the quality, quantity, potency, purity, standard and price of different kinds of goods or services which are available. As a result buying decisions become difficult. Therefore consumers need to be given maximum information about the wide variety of competing goods available in the market.

**Right to choose –**

The right to choose can be made meaningful by ensuring access to a variety of goods and services at competitive prices. Fair and effective competition must be encouraged so as to provide consumers with the widest range of products and services at the lowest cost.

**Right to represent –**

It is right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums.

The Consumer Protection Act, 1986 has well taken care of this right by making available the instrumentality of

Redressal Forums. Every consumer has a right to file complaint and be heard in that context.

***Right to redressal –***

It is a right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous, exploitation of consumers. When consumers are wronged in a market place transaction, appropriate and adequate redress must be available. The Act has ensured this right by establishing Consumer Forums and recognising restrictive and unfair trade practices as a ground to make a complaint.

**Right to education –**

The right to consumer education is a right which ensures that consumers are informed about the practices prevalent in the market and the remedies available to them. For spreading this education, media, or school curriculum, or cultural activities, etc. may be used as a medium. Note that the Central Council's object is to ensure these rights of the consumers throughout the country while the State Councils look to ensure these rights to consumers within their territories.

## Central Council

- The Central Government has the power to establish the Central Consumer Protection Council to be known as the Central Council.
- The Central Council shall be an **advisory council**
- Chairperson of central council shall be Minister-in-charge of the Department of Consumer Affairs in the Central Government.
- Central council will have such number of other official or non-official members representing such interests as may be prescribed.

### *Composition [Section 2 and rule 3]*

Members of the councils are selected from various areas of consumer interest, who are, when possible, leading members of statewide organisations representing segments of the consumer public so as to establish a broadly based and representative consumer council.

The Consumer Protection Act has authorised the Central Government to make rules as to the composition of the Central Council. Accordingly, the Central Government has provided that the Central Council shall consist of the following members not exceeding 150, namely :—

- the Minister in-charge of Consumer Affairs in the Central Government who shall be the Chairman of the Central Council;
- the Minister of State (where he is not holding independent charge) or Deputy Minister in-charge of Consumer Affairs in the Central Government who shall be the Vice-Chairman of the Central Council;
- the Secretary in-charge of Consumer Affairs in the Central Government who shall be the member-secretary of the Central Council;
- the Minister in-charge of Consumer Affairs in States;
- eight Members of Parliament—five from the Lok Sabha and three from the Rajya Sabha;
- the Secretary of the National Commission for Scheduled Castes and Scheduled Tribes;
- representatives of the Central Government Departments and autonomous organisations concerned with consumer interests—not exceeding twenty;
- representatives of the Consumer Organisations or consumers—not less than thirty-five;
- representatives of women—not less than ten;
- representatives of farmers, trade and industries—not exceeding twenty;

- persons capable of representing consumer interest not specified above—not exceeding fifteen;

**Vacancy** - Any member may, by writing under his hand to the Chairman of the Central Council, resign from the Council. The vacancies, so caused or otherwise, are filled from the same category by the Central Government and such person shall hold office so long as the member whose place he fills would have been entitled to hold office, if the vacancy had not occurred.

**Term** - The term of the Council is three years.

**Meeting of Central Council –**

- ✓ The Central Council shall meet as and when necessary, but **at least one meeting** of the Council shall be held every year.
- ✓ The Central Council shall meet at such time and place as the Chairperson may think fit

**Objective of Central Council –**

The objects of the Central Council shall be to render advice on promotion and protection of the consumers' rights under the Act.

**State Consumer Protection Councils (State Councils) [Section 7]**

- Every State Government empowers to establish a State Consumer Protection Council for such State to be known as the State Council.
- The State Council shall be an **advisory council**
- Chairperson of state council shall be Minister-in-charge of Consumer Affairs in the State Government
- State council will have such number of other official or non-official members representing such interests as may be prescribed.
- State council shall also have such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

**Composition** - The power to establish State Councils is with the States. The Act provides that the Minister incharge of consumer affairs in the State Government shall be the Chairman of the State Council.

About the number and qualifications of the rest of the members, State is the deciding authority.

### **Meeting of State Council –**

- ✓ The State Council shall meet as and when necessary but **not less than two meetings** shall be held every year.
- ✓ The State Council shall meet at such time and place as the Chairperson may think fit

### **Objective of State Council –**

The objects of every State Council shall be to render advice on promotion and protection of consumer rights under the Act within the State.

### **District Consumer Protection Council**

- The State Government empowers to establish for every District a District Consumer Protection Council to be known as the District Council.
- The District Council shall be an **advisory council**
- Chairperson of the District Council shall be Collector of the district.

### **Meeting of District Council –**

- ✓ The District Council shall meet as and when necessary but **not less than two meetings shall be held every year.**
- ✓ The District Council shall meet at such time and place within the district as the Chairperson may think fit

### **Objective of District Council –**

The objects of every District Council shall be to render advice on promotion and protection of consumer rights under the Act within the district

## **CONSUMER DISPUTES REDRESSAL AGENCIES**

### **Establishment of Consumer Disputes Redressal Agencies**

There shall be established for the purposes of this Act, the following agencies, namely,-

- a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government in each district of the State by notification: provided that the State Government may, if it deems fit, establish more than one District Forum in a district;
- a Consumer Disputes Redressal Commission to be known as the "State Commission"

established by the State Government in the State by notification; and

- a National Consumer Disputes Redressal Commission established by the Central Government by notification.

### **Composition of the District Forum**

Each District Forum shall consist of-

- a person who is, or has been, or is qualified to be a District Judge, who shall be its President;
- two other members, who shall be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.

### **Jurisdiction of the District Forum**

Subject to the other provisions of this Act, 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 rupees one Crore.
- A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or [carries on business, or has a branch office or] personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or [carries on business or has a branch office, or personally works for gain: or

(c) the cause of action, wholly or in part, arises.

### **Manner in which complaint shall be made**

A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Forum, by-

- the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;
- any recognised consumers association whether the consumer to whom the goods sold or

delivered or service provided or agreed to be provided is a member of such association or not; or

- one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or
- the Central or the State Government.

### **Procedure on receipt of complaint**

(1) The District Forum shall, on receipt of a complaint, if it relates to any goods-

(a) refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis with a view to finding out whether such goods suffer from any defect alleged in the complaint or suffer from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

(e) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on

receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;

(g) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 14.

(2) The District Forum shall, if the complaint received by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,-

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute,-

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegation contained in the complaint, or

(ii) on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.

(3) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

(4) For the purposes of this section, the District Forum shall have the same powers as are vested

in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely,-

(i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness; and

(vi) any other matter which may be prescribed.

(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

### **Finding of the District Forum**

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

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

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

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

(e) to remove the defects or deficiencies in the services in question;

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

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

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

(i) to provide for adequate costs to parties.]

(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 the member, for any reason, is unable to conduct the proceeding till it is completed, the President and the other member shall conduct such proceeding de novo:

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

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 members of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

### **Appeal**

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

PROVIDED that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not finding it within that period.

### **Composition of the State Commission**

(1) Each State Commission shall consist of-

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:

PROVIDED that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court.

(b) two other members, who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom

shall be a woman:

PROVIDED that every appointment under this clause shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely,-

- ✓ President of the State Commission-Chairman,
- ✓ Secretary of the Law Department of the State-Member
- ✓ Secretary in-charge of the department dealing with consumer affairs in the State-Member.

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

Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier and shall not be eligible for re-appointment.

### **Jurisdiction of the State Commission**

Subject to the other provisions of this Act, the State Commission shall have jurisdiction-

(a) to entertain-

(i) complaints where the value of the goods or services and compensation, if any, claimed more than Rupees One Crore upto Rupees 10 Crore and

(ii) appeals against the orders of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State where it appears to the State Commission.

### **Procedure applicable to State Commission**

The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaint by the Districts Forum shall, with such modification as may be necessary, be applicable to the disposal of disputes by the State Commission:

#### **Appeals**

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

PROVIDED that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

### **Composition of the National Commission**

(1) The National Commission shall consist of-

(a) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President:

[PROVIDED that no appointment under this clause shall be made except after consultation with the Chief Justice of India;]

(b) four other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman:

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

(3) Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and shall not be eligible for re-appointment.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

### **Jurisdiction of the National Commission**

Subject to the other provisions of this Act, the National Commission shall have jurisdiction-

(a) to entertain

i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees 10 crores; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National

Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

### **Power of and procedure applicable to the National Commission**

The National Commission shall, in the disposal of any complaints or of any proceedings before it, have

- (a) the powers of a civil court as specified in sub-sections (4), (5) and (6) of section 13;
- (b) the power to issue an order to the opposite party directing him to do any one or more of the things referred to in clauses (a) to (i) of sub-section (1) of section 14, and follow such procedure as may be prescribed by the Central Government.

### **Appeal**

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

PROVIDED that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

## 2. Environment Protection Act – 1986

### Scope and commencement of the Act

It empowers the Central Government to establish authorities charged with the mandate of preventing environmental pollution in all its forms and to tackle specific environmental problems that are peculiar to different parts of the country.

The Act is one of the most comprehensive legislations with a pretext to protection and improvement of the environment.

**Background:** The roots of the enactment of the EPA lies in the United Nations Conference on the Human Environment held at Stockholm in June, 1972 (Stockholm Conference), in which India participated, to take appropriate steps for the improvement of the human environment. The Act implements the decisions made at the Stockholm Conference.

### Constitutional

The EPA Act was enacted under

**Article 253** of the Indian Constitution which provides for the enactment of legislation for giving effect to international agreements.

**Article 48A** of the Constitution specifies that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

**Article 51A** further provides that every citizen shall protect the environment.

### Coverage:

The Act is applicable to the whole of India including the state of Jammu & Kashmir.

### Definitions:

Section 2 of the Environmental protection Act, 1986 (EPA) deals with some of the information about the definition of the Act and these definitions are as follows:

- “**environment**” includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;

- **“environmental pollutant”** means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;
- **“environmental pollution”** means the presence in the environment of any environmental pollutant;
- **“handling”**, in relation to any substance, means the manufacture, processing, treatment, package, storage transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such substance;
- **“hazardous substance”** means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment;
- **“occupier”**, in relation to any factory or premises, means a person who has control over the affairs of the factory or the premises and includes, in relation to any substance, the person in possession of the substance;
- **“prescribed”** means prescribed by rules made under this Act.

### **Salient features of the Environment Protection Act, 1986**

- The Act covers all forms of pollution; air, water, soil and noise.
- It provides the safe standards for the presence of various pollutants in the environment.
- It prohibits the use of hazardous material unless prior permission is taken from the Central Government.
- It allows the central government to assign authorities in various jurisdictions to carry out the laws of this Act.

### **Aims and Objectives of the EPA, 1986**

The chief aims and objectives of the Environment Protection Act, 1986 are listed below.

- Implementing the decisions made at the United Nations Conference on Human Environment held in Stockholm.
- Creation of a government authority to regulate industry that can issue direct orders including closure orders.
- Coordinating activities of different agencies that are operating under the existing laws.

- Enacting regular laws for the protection of the environment.
- Imposing punishments and penalties on those who endanger the environment, safety and health. For each failure or contravention, the punishment includes a prison term of up to five years or a fine of up to Rs. 1 lakh, or both. This can also be extended for up to seven years in cases.
- Engaging in the sustainable development of the environment.
- Attaining protection of the right to life under Article 21 of the Constitution.

### **Main Provisions of Environment Protection Act**

The EPA empowers the Centre to “take all such measures as it deems necessary” in the domain of environmental protection.

- ✓ Under the law, it can coordinate and execute nationwide programmes and plans to further environmental protection.
- ✓ It can mandate environmental quality standards, particularly those concerning the emission or discharge of environmental pollutants.
- ✓ This law can impose restrictions on the location of industries.
- ✓ The law gives the government the power of entry for examination, testing of equipment and other purposes and power to analyse the sample of air, water, soil or any other substance from any place.
- ✓ The EPA explicitly bars the discharge of environmental pollutants in excess of prescribed regulatory standards.
- ✓ There is also in place a specific provision for handling hazardous substances, which is prohibited unless in compliance with regulatory requirements.
- ✓ The Act empowers any person, apart from authorised government officers, to file a complaint in a court regarding any contravention of the provisions of the Act.

## **Power of the Central government for measures to protect and improve the Environment**

It is the power vested in the central government that they can take any reasonable and valid steps and measures for the purpose of the protection and improvement of the quality of the environment. These measures are taken for the prevention, control and abatement of environmental Pollution.

Such measures may include measures with respect to all namely as follows.

- ❖ Laying down the standards for the quality of the standards of the environment.
- ❖ Coordination of actions which are obliged to the state officers and other authorities under any law.
- ❖ Execution and proper planning of the worldwide national programme for the prevention, controlling and the abatement of environmental pollution.
- ❖ Restrictions to be applied in any of the industries, process and any operation shall be carried out.
- ❖ It is the power and the duty of the government to lay down the procedure to carry forward safeguards for the prevention of many inevitable accidents which may inculcate in more environmental pollution.
- ❖ Proposal of remedies should be put forward for the protection and prevention of further incidents.
- ❖ Duty and power to lay down the procedures and safeguards to handle the hazardous substance.
- ❖ Examination of manufacturing processes should be done, materials, substances which are likely to cause environmental pollution.
- ❖ Power to inspect at various premises, equipment, material and the substances and power to direct the authorities for the prevention and control of environmental pollution.

- ❖ To collect the dissemination in the respect of information related to environmental pollution.
- ❖ Preparation of the manuals, codes, guides which are considered suitable enough for controlling environmental pollution.
- ❖ One of the most important tasks is to establish the laboratories.
- ❖ Serving other matters which are necessary for the central government to deal for the effective implementation of the Environmental Protection Act, 1986.

Under Section 3 of the following act, the central government has the power to authorize or constitute other authorities for the accurate implementation of powers and duties which are mentioned above.

Section 3 of the Environmental Protection Act holds importance due to the fact of a better regulatory mechanism.

In the case of Vellore Citizens' Welfare Forum v Union of India, the Supreme Court has directed the central government to constitute the 'authority' for the implementation of powers under section 3(3). Thus, the Court directed while keeping in the notice about the degrading quality of the environment that authorities should implement the 'precautionary principle' and 'pollution pay principle'.

### **Power to give direction**

The central government in the exercise of powers designated by the Act can issue the directions in writing to any of the person or any officer. They shall be bound to comply with these given directions.

The powers to issue directions will include the power to direct which are as follows:

- (i) The direction of closure, prohibition or the regulation of any industry and its operational process.
- (ii) direction for the stoppage or regulation of the supply of electricity, including any other services.

## **The Environment (Protection) Rules, 1986**

- The rules of Environment protection came into force on 19th November 1986 and these rules provide for the following:
- The standards of quality of air, soil and water for various areas and purposes of environment.
- The standard set up to know about the limits of the environmental pollutants.
- Rules include the procedure and safeguards needed to handle the hazardous substance.
- Restrictions and some prohibitions on handling the hazardous substances in different areas and premise
- The procedures and safeguards required for the prevention of accidents which may cause environmental pollution and also the remedies for it.
- The prohibition and restrictions possessed on the location of industries in different areas.

## **Prevention, Abatement and Control of Environmental Pollution**

**Section 7** of the Environment Protection Act 1986 suggest that no person in the country shall be carrying any of the activity or operation in which there is a large emission of gases or other substances which may lead to excess environmental pollution.

**Section 7** of the act provides certain standards that ought to be maintained in which it is a must that no person is allowed to damage the environment and if a person is found guilty for causing damage to the environment by polluting the pollution pay principle.

He can be asked for the 'exemplary damages' if he is found guilty of damaging the environment.

**Section 8** provides that any person who is handling the hazardous substance needs to comply with the procedural safeguards.

If the emission is to a very large extent or is apprehended through an accident, the person responsible for it is obliged to mitigate from that place in order to reduce the environmental pollution.

He is also required to give an intimation to the higher authorities regarding the same and for that one receipt of remedies shall be required to prevent or to mitigate the environmental pollution.

In subsection (1), it is also provided that if a person wilfully delays or obstructs the person designated by the central government, he will be charged guilty under this act.

## **Procedure to be followed for the legal proceedings under the Environmental Protection Act**

The following procedure needs to be followed for the legal proceedings.

- The notice must be delivered to the occupier or his agent and it must indicate the intention or the analysis of the issue of a particular case.
- Samples of the extent of pollution to be checked must be taken in the presence of the occupier or the agent.
- The sample should be sent directly to the laboratory without any delay in the process.
- The sample should be kept in a container with a label on it and it should have the signature of both the occupier party and the person taking the sample.

The central government must recognise at least one or two laboratories under this act and the report of analysis can be used as evidence of the facts stated in any procedure done under this act.

## **Penalty for the Contravention of Rules and orders of this Act**

As it was stated earlier that the most important goal of the environmental protection act is to provide for the punishment of the offence of endangering the human environment, safety and health.

**Section 15** states that any person who is not complying to the provisions stated in this act and its failure or contravention will make him liable and punishable as the following:

- ✓ In terms of imprisonment up to the extension of the time span of five years.
- ✓ With fine which may extend to the term of one lakh rupee.
- ✓ Or the liable person has to deal with both of the punishments.
- ✓ If the contravention of the offence that continues for one year, the punishment can extend up to seven years.

**Section 24** a provision that if any offence is punishable under the Environment Protection Act and also under other Act, then the person shall not be liable under the Environment Protection Act, 1986.

This particular section reduces the punishment extent as other Act includes lesser punishment.

## **Offences by the Companies and the Governmental Departments**

**Section 16** of the Environmental Protection Act, 1986 explains the principle of vicarious liability of the Incharge person such as directors, Managers and secretary etc for if the offence is committed by any company.

He is not held liable for the following:

- ❖ If the offence is committed without his knowledge.
- ❖ If he has taken diligent care to prevent the commission of the offence.

Illustration: If any company which is emitting some hazardous substance out of its industry and is taking care of the standard level of the harm produced to the environment and if the offence committed by the industry is not in knowledge of person taking the liability, then the person will not stand as liable.

There cannot be a liability on his part if he proves the following.

- That the offence was committed without his knowledge.
- If he has exercised the diligent care to prevent the commission of any offence.

### **3. Right To Information Act, 2005**

#### **Introduction**

Every citizen of India has a right to free speech and expression under Article 19(1)(a) of the Constitution of India. This right does not only cover the communication of information but also the receipt of information since without adequate information, a person cannot form an informed opinion. Thus, the right to know and seek information is an integral part of the fundamental right enshrined under Article 19(1)(a). The Hon'ble Supreme Court has also held that the right of the citizens to know, and to receive information regarding matters of public concern is a fundamental right flowing from Article 19(1)(a).

The right of a citizen to question the government on its various policies and measures forms the very essence of a democracy. In order to exercise this right and to hold the government accountable for its actions, the people must have access to the information regarding the affairs of the government. This is what RTI does. It informs the citizen regarding the affairs of the government and thereby ensures the active participation of a citizen in the working of the democracy at all times and not just once during voting. RTI is an index to measure the growth and development of a country.

#### **brief background**

The first central legislation dealing with the right to information in India, namely, the Freedom of Information Act, 2002 was passed on December 4, 2002, but was not notified. In 2004, the UPA (United Progressive Alliance) government appointed a National Advisory Council (NAC) which had recommended some changes in the Freedom of Information Act, 2002.

The amended act known as "The Right to Information Act, 2005" was passed on 11th May 2005 and 12th May 2005 by the Lok Sabha and Rajya Sabha respectively. The President of India gave his assent to the Act on 15th June 2005 and it came into force on 12th October 2005.

#### **Objectives of the Right to Information Act, 2005**

- The objectives of the RTI Act, 2005 are as follows:
- To provide for a practical framework that allows the citizens to access the information under the control of public authorities.

- To promote transparency and accountability in the working of governments and their instrumentalities.
- To provide for the constitution of Information Commissions at state and national level for discharging the functions and exercising the powers under the Act.
- To develop an informed citizenry.
- To contain corruption.
- To lay down the exemptions to disclosure of information when such disclosure is likely to conflict with other public interests and to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal.

## **Important definitions**

### **Appropriate Government [Section 2(a)]**

Section 2(a) of the Act provides for the definition of “appropriate government”. Appropriate government means the government in relation to a public authority dealing with the right to information. Such authority is established, constituted, owned, controlled or substantially financed by the Central Government, union territory administration or the State Governments.

### **Competent authority [Section 2(e)]**

- ✓ Section 2(e) of the Act provides for ‘competent authority’. Competent authority is the authority in charge of the autonomous institutions functioning under the provisions of the Constitution. Such authority has the ultimate responsibility for the enforcement of the RTI Act in those institutions. For example, in the case of the Supreme Court of India, the Chief Justice of India is the competent authority. Competent authority means:
  - ✓ Speaker of Lok Sabha
  - ✓ Chairman of Rajya Sabha
  - ✓ Speaker of Legislative Assembly of a State/UT
  - ✓ Chairman of Legislative Council of a State
  - ✓ Chief Justice of India in the case of the Supreme Court
  - ✓ Chief Justice of a High Court
  - ✓ President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution

- ✓ Administrator appointed under Article 239 of the Constitution

### **Information [Section 2(f)]**

Section 2(f) provides for the kinds of information which can be accessed under the right to information. Information means any material in any form including:

- Records (written details including any map, drawing etc. of any act, policy or decision pertaining to a public authority)
- Documents (a part of a record or an independent document or a piece of information containing details on a particular subject or decision of public authority)
- Memos (these may be in the form of a correspondence or a note on a particular subject)
- E-mails
- Opinions (opinions of a government department or government officials conveyed in official dealings forming part of official record)
- Advices (advices on official matters forming part of official record)
- Press releases (press briefings or press notes on official matters when released in official capacity)
- Circulars (circulars notifying a particular decision or policy of government/public authority circulated in official capacity)
- Orders (any order issued by public authority in official capacity)
- Logbooks (documents containing details, measurements, data of a particular project of public authority)
- Contracts (official contracts entered into by the public authorities and the details thereof)
- Reports (reports regarding official matters including test reports, inquiry reports, expert reports on a particular subject)
- Papers (papers regarding official proceedings)
- Samples (samples from materials to be purchased/consumed in connection with government affairs)
- Models (models of programmes and projects to be undertaken)
- Data material held in any electronic form (data stored in computer, pen drives, CDs)
- Information relating to any private body that a public authority can obtain under any other law for the time being in force.

### **Public authority [Section 2(h)]**

Section 2(h) defines “public authority”. Public authority is an authority or body or institution of self-government which is directly or indirectly related to the government. Such authority may be related to the government in any of the following ways:

- It is established or constituted by or under the Constitution
- It is created by an Act of Parliament
- It is created by an Act of State Legislature
- It is established or constituted by a notification issued or order made by the appropriate government

### **The public authority also includes:**

- ❖ any body owned, controlled, or substantially financed;
- ❖ any NGO substantially financed,

directly or indirectly by funds provided by the appropriate government.

### **Record [Section 2(i)]**

As provided under Section 2(i) of the Act, a record may include any:

- Document: It may refer to any piece of information or a set of papers containing information on a particular subject.
- Manuscript: It may denote the original form of a handwritten document, map or drawing.
- File: Collection of papers or connected documents on a particular subject.
- Electronic documents in the form of microfilm, microfiche, and facsimile copy.
- Electronic documents reproduced in the form of images.
- Any other material produced or generated through a computer or any other device.

### **Right to information [Section 2(j)]**

Section 2(j) defines “right to information”. It means the right to obtain the information accessible under the RTI Act which is held by or is under the control of any public authority. Such right includes:

### **Right of inspection**

This refers to the right to look and scrutinise closely the documents, works and records. Here, no document or its copy is obtained in any form and the information is simply seen and scrutinised.

### **Right of taking notes, extracts etc.**

Taking notes or extracts means noting down certain information from the documents. Here, important information is noted down from the documents and even original extracts from the documents can also be copied. The right also permits the taking of certified copies of documents or records.

### **Right to take certified samples of material**

A citizen has a right to obtain certified samples of material purchased or used by the government.

#### **Right to obtain information in electronic mode**

Where the information sought is stored in a computer or any other electronic device, the RTI Act permits the citizen to obtain information in electronic form such as in the form of tapes, video cassettes, floppies, diskettes etc or in the form of printouts as well.

### **Dissemination of information: Section 4(3) and 4(4)**

Section 4(3) provides for wide dissemination of information in a manner that is easily accessible to the public.

- ✓ Section 4(4) provides that the dissemination of information has to be done after considering the following factors:
  - ✓ cost-effectiveness,
  - ✓ local language of an area, and
  - ✓ the most effective method of communication in a particular local area.

### **Designation of Public Information Officers: Section 5**

- Section 5(1) provides for the designation of Central Public Information Officers (CPIOs) and State Public Information Officers (SPIOs) by every public authority within 100 days from the enactment of this Act. Such officers have a duty to provide information requested under the Act.
- Section 5(2) provides for the designation of Central Assistant Public Information Officer or a State Assistant Public Information Officer at each sub-divisional level or other sub-district level. Such officers shall receive applications for information or appeals under the Act for forwarding the same to the CPIO/SPIO or the senior officer specified under Section 19(1) or the Central Information Commission or the State Information Commission, as the case may be.

### **Duty/Function of public information officers**

- ❖ Section 5(3) provides for the following duties of CPIOs and SPIOs:
- ❖ To deal with requests from the person seeking information, and
- ❖ To provide reasonable assistance to the person asking for information.

### **Request for obtaining information: Section 6**

#### **Manner of making a request for information**

Section 6(1) provides for the manner of making a request by a person who desires to obtain any information under this Act.

- **Manner of making requests:** In writing or through electronic means.
- **Language:** English/Hindi/official language of the area in which the application is being made.
- **Any fee:** Such application shall be accompanied by the prescribed fee.
- **To whom application is made:** To the CPIO/SPIO of the concerned public authority or to the Central Assistant Public Information Officer/State Assistant Public Information Officer.
- **Contents of application:** Particulars of information sought by the applicant.

#### **When the request cannot be made in writing**

The proviso to Section 6(1) deals with a case where the applicant has made an oral request for information. It states that where a person cannot make a written request, the CPIO/SPIO shall assist such person to reduce his request in writing.

#### **Applicant need not give his details**

As per Section 6(2), a person seeking information under the Act need not disclose any reason for such request or his personal details except such information that might be required for contacting him.

#### **When the information requested is held by another public authority, etc.**

Section 6(3) deals with the case where an application is made to a public authority requesting information that is held by another public authority, or the subject matter of which is more closely related with the functions of another public authority. In this case, the public authority to whom the application is filed must transfer the application, or the concerned portion of it, to that

other public authority and notify the applicant of the transfer as soon as possible. The section provides for a maximum of five days for transferring the application.

### **Disposal of request: Section 7**

Period within which information to be furnished

Section 7(1) provides for expeditious disposal of the request for information by the CPIO/SPIO.

The CPIO/SPIO shall within thirty days of receiving the request, either:

- Accept the request which means providing information after the fee prescribed has been paid, or
- Reject the request for reasons as specified under Section 8 and Section 9.

Thus, a 30 day period is provided for responding to the request.

An additional period of five days is allowed in computing the period for response in the following cases:

- ✓ When the application is received through the Assistant Public Information Officer.
- ✓ When the application is received by way of transfer.

Also, the information sought has to be provided within 48 hours of receiving the request where the said information concerns the life and liberty of a person.

### **Failure to decide within 30 days deemed as a refusal**

Section 7(2) provides that the failure of the CPIO/SPIO to decide on the request for information within the prescribed period shall be deemed as a refusal of the request.

### **Decision regarding fee**

Section 7(3) deals with the case where the applicant is required to pay a further/additional fee.

The sub-section states that where a decision is made to provide information on payment of any further fee representing the cost of providing the information, the CPIO/SPIO shall send an intimation regarding the same to the person making the request. Such intimation must provide to the applicant:-

- Information regarding the details of such additional fees as determined by the CPIO/SPIO along with the calculations made to arrive at such an amount. The intimation shall also request the applicant to pay such additional fee;

- Information regarding the right of the applicant to ask for a review of the decision regarding fees or form of access. The details of the appellate authority, the time limit, the process of review, etc. are also required to be intimated to the applicant.

### **Access to information**

- Section 7(4): The CPIO/SPIO shall provide assistance to enable access to the information where the person seeking such access is sensorily disabled.
- Section 7(5): The applicant is required to pay such fee as may be prescribed for access to information in the printed or electronic format. According to the proviso attached to this sub-section, the fee charged under the Act must be reasonable. Also, no fee can be charged from those living below the poverty line.
- Section 7(6): Failure of the public authority to provide the information within the prescribed time limit entitles the applicant for access to such information free of any charge.
- Section 7(7): Before making a decision regarding furnishing of information or rejection of a request, the CPIO/SPIO has to consider the representation made by a third party under Section 11.

### **Rejection of request under sub-section (1)**

Section 7(8) deals with the rejection of requests for information. In case, the CPIO/SPIO rejects a request, he is required to communicate the following particulars to the applicant:

- reasons for such rejection;
- the period within which he can file an appeal against the rejection;
- the details of the appellate authority.

### **Form of information**

Section 7(9) provides that generally, the information asked for under the Act has to be provided in the form in which it is sought, except where:

- ✓ It would lead to disproportionate diversion of the resources of the public authority, or
- ✓ It would prejudice the safety or preservation of the record in question.

### **Exemption from disclosure of information: Section 8**

- Section 8(1) lists the categories/types of information which is exempted from disclosure under the RTI Act. There is no obligation to disclose such information to any citizen. The categories of information so exempted include:
- Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- Information, publication of which has been expressly forbidden by Court or tribunal;
- Information, disclosure of which may amount to contempt of court;
- Information, the disclosure of which would cause a breach of parliamentary privilege
- Information including trade secrets, commercial confidence or intellectual property, the disclosure of which would jeopardise a third party's competitive position. Such information can be furnished if the competent authority determines that it is necessary to disclose such information in the public interest.
- Information accessible to a person in his fiduciary relationship. Such information can be furnished if the competent authority determines that it is necessary to disclose such information in the public interest.
- Information received in confidence from foreign government;
- Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- the information that would obstruct the process of investigating, apprehending, or prosecuting offenders etc.

Regardless of anything in the Official Secrets Act of 1923 or the permissible exclusions under sub-section (1), a public authority may allow access to information if the public interest in disclosure outweighs the harm to protected interests.

### **Grounds for rejection to access in certain cases: Section 9**

Section 9 provides that a CPIO/SPIO may reject a request for information where it would lead to infringement of copyright owned by a person other than the State.

### **Severability: Section 10**

Section 10 provides that if a request for access to information is denied because the disclosure of the information is prohibited by the Act, access may be granted to that part of the record:

- that does not contain any exempt information, and
- can be reasonably separated from any part that contains exempt information.

Thus, Section 10 deals with the furnishing of information after severance of non-exempt information from the information that is exempted.

Section 10(2) states that when access is granted to a part of a record under sub-section (1), then the CPIO/SPIO shall give notice to the applicant, informing him:

- that only a part of the record requested is being provided after severing the information that is exempted from disclosure;
- of the reasons for the decision;
- name and designation of the person who made the decision;
- the details of the fees required to be paid by the applicant; and
- of his or her right to file for a review of the decision of non-disclosure or regarding fee or the form of access provided and the particulars of the authority competent to review.

### **Third-party information: Section 11**

Section 11 contains the provision regarding the disclosure of information related to a third party.

Under Section 11(1), a third party has to be notified in writing when the CPIO/SPIO intends to disclose:

- any information which relates to, or has been supplied by the third party, and
- such information is treated as confidential by that third party.

Such written notice has to be given within five days of the receipt of the request. The notice shall:

- inform the third party of such request and
- inform the third party of the fact that the CPIO/SPIO intends to disclose such information and
- invite the third party to make a submission as to whether the information should be disclosed.

Such submission shall be taken into consideration while taking a decision regarding the disclosure of information.

The proviso to Section 11(1) states that such disclosure may be permitted if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such a third party. However, the proviso shall not be applicable to trade or commercial secrets protected by law.

- Section 11(2) provides that the third party shall be given an opportunity to make representation against the proposed disclosure within 10 days from the date of receipt of notice under sub-section (1).
- According to Section 11(3), the CPIO/SPIO has to make a decision regarding disclosure within 40 days of the receipt of a request under Section 6, if the third party has been given an opportunity of making representation under the previous sub-section. The notice of the decision has to be given to the third party in writing by the CPIO/SPIO.
- The notice given under Section 11(3) must state that the third party is entitled to file an appeal against the decision.

**Central Information Commission and State Information Commission: Chapters III and IV** Information Commissions constituted under the RTI Act are the supreme authority and the highest decision-making body under the Act. Information Commissions have been constituted at both the central and state level, known as **Central Information Commission(CIC)** and **State Information Commission(SIC)** respectively.

Sections 12-14 of the Act contain the provisions regarding the constitution, membership, etc. of the Central Information Commission, whereas, Sections 15-17 deal with the provisions relating to the State Information Commission.

	<b>CENTRAL INFORMATION COMMISSION (CIC)</b>	<b>STATE INFORMATION COMMISSION (SIC)</b>
<b>Constitution</b>	<u><b>SECTION 12</b></u> <b>Constituted by:</b> Central Government.	<u><b>SECTION 15</b></u> <b>Constituted by:</b> State Government.

**Membership:** CIC consists of the following members:-Chief Information Commissioner Central Information Commissioners(Maximum no. of Central Information Commissioners is 10.)

**Who shall appoint the members of**

**Commission:** President on the recommendation of a Committee consisting of: Prime Minister(Chairperson of the Committee)Leader of Opposition in Lok Sabha; and A Union Cabinet Minister nominated by the Prime Minister.

**Role and responsibilities of the Chief**

**Information Commissioner:** Power of general superintendence and direction and management of the affairs of CIC. The Chief Information Commissioner shall be assisted by the Information Commissioners. He has the authority to exercise all the powers and do all acts which may be exercised or done by the CIC.

**Qualification of members:** The Chief Information Commissioner and Information Commissioner shall be persons of eminence in public life with wide knowledge and experience in law, science, technology, social service, management, journalism, mass media, or administration and governance.

**Membership:** SIC consists of the following members:-State Chief Information Commissioner State Information Commissioners (Maximum no. of State Information Commissioners is 10.)

**Who appoints the members of the**

**Commission:** Governor on the recommendation of a Committee consisting of the following members: Chief Minister(Chairperson of the Committee)Leader of Opposition in Legislative Assembly; and A Cabinet Minister nominated by the Chief Minister.

**Role and responsibilities of the State**

**Chief Information Commissioner:** Power of general superintendence and direction and management of the affairs of SIC. The State Chief Information Commissioner shall be assisted by the Information Commissioners. He has the authority to exercise all the powers and do all acts which may be exercised or done by the SIC.

**Qualification of members:** The State Chief Information Commissioner and Information Commissioner shall be persons of eminence in public life with wide knowledge and experience in law, science, technology, social service,

	<p><b>Prohibition on membership:</b> The Chief Information Commissioner and the Information Commissioners shall not: be an MP or MLA, or hold any other office of profit or connected with any political party or engage in any business or profession.</p> <p><b>Headquarters:</b> The headquarters of CIC shall be in Delhi. However, the CIC may establish offices at other places in India after taking approval from the Central Government.</p>	<p>management, journalism, mass media, or administration and governance.</p> <p><b>Prohibition on membership:</b> The State Chief Information Commissioner and the Information Commissioners shall not: be an MP or MLA, or hold any other office of profit or connected with any political party or engage in any business or profession.</p> <p><b>Headquarters:</b> The headquarters of SIC shall be at such place in the State as specified by the State Government by way of notification in the Official Gazette. However, the SIC may establish its office at another place in the State with the previous approval of the State Government.</p>
<p><b>Term of Office and conditions of service</b></p>	<p><u>SECTION 13</u></p> <p><b>Term of office of Chief Information Commissioner:</b> As prescribed by the Central Government. Whether the Chief Information Commissioner is eligible for reappointment: No Chief Information Commissioner shall not hold office after attaining the age of 65 years. Term of office of Information Commissioners: As prescribed by the Central Government or till he attains the age of 65 years, whichever is earlier.</p> <p><b>Whether the Information Commissioner</b></p>	<p><u>SECTION 16</u></p> <p><b>Term of office of State Chief Information Commissioner:</b> As prescribed by the Central Government.</p> <p><b>Whether the State Chief Information Commissioner is eligible for reappointment:</b> No. No State Chief Information Commissioner shall hold office after he has attained the age of 65 years.</p> <p><b>Term of office of State Information Commissioners:</b> As prescribed by Central Government or till he attains the age of 65</p>

	<p><b>can be reappointed as an Information Commissioner:</b> No. However, an Information Commissioner may be appointed as the Chief Information Commissioner, after vacation from his office.</p> <p><b>Tenure of the Information Commissioner appointed as the Chief Information Commissioner:</b> Maximum 5 years in aggregate as the Information Commissioner and the Chief Information Commissioner.</p> <p><b>Resignation of members of Commission:</b> The Chief Information Commissioner and the Information Commissioner(s) may resign from the office by writing under his hand addressed to the President. Section 13(6) provides for assistance to the Chief Information Officer and the Information Officers by way of officials required by them for the efficient performance of functions entrusted to them under the Act.</p>	<p>years, whichever is earlier.</p> <p><b>Whether a State Information Commissioner can be reappointed as a State Information Commissioner:</b> No. However, he is eligible for being appointed as the State Chief Information Commissioner, after vacation from his office.</p> <p><b>Tenure of the Information Commissioner appointed as the State Chief Information Commissioner:</b> Maximum 5 years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.</p> <p><b>Resignation of members of Commission:</b> The State Chief Information Commissioner and the State Information Commissioner(s) may resign from the office by writing under his hand addressed to the Governor. Section 16(6) provides for assistance to the State Chief Information Officer and the State Information Officers by way of officials required by them for the efficient performance of functions entrusted to them under the Act.</p>
<p><b>Removal of members of</b></p>	<p><u>SECTION 14</u> The power to order the removal from</p>	<p><u>SECTION 17</u> The power to order the removal from</p>

<p><b>Commission</b></p>	<p>office of the Chief Information Commissioner or any Information Commissioner vests with the President under Section 14(1).</p> <p><b>Grounds for removal under Section 14(1):</b> Proved misbehavior or incapacity.</p> <p><b>Manner/process of removal:</b> The President sends a reference to the Supreme Court for inquiry into the alleged misconduct. If after such inquiry, the Supreme Court comes to the conclusion that the charges of misbehaviour are proved and recommends the removal of such a member in its report, the President shall remove such member. Interim suspension: The President has the power to: suspend such member in respect of whom reference is made to Supreme Court prohibit such aforesaid member from attending the office during enquiry, until the President has passed orders on receipt of the report of the Supreme Court on such reference.</p> <p><b>Disqualifications:</b> Notwithstanding anything contained in sub-section (1), the President of India has the power to remove the Chief Information Commissioner or the Information Commissioner if he is guilty of any of the following acts: Declaration of insolvency Conviction for</p>	<p>office of the State Chief Information Commissioner or any State Information Commissioner vests with the Governor under Section 17(1).</p> <p><b>Grounds for removal under Section 17(1):</b> Proved misbehavior or incapacity.</p> <p><b>Manner/process of removal:</b> The Governor sends a reference to the Supreme Court for inquiry into the alleged misconduct. If after such inquiry, the Supreme Court comes to the conclusion that the charges of misbehaviour are proved and recommends the removal of such a member in its report, the Governor shall remove such member. Interim suspension: The Governor has the power: to suspend such member in respect of whom reference is made to Supreme Court to prohibit such aforesaid member from attending the office during enquiry, until the Governor has passed orders on receipt of the report of the Supreme Court on such reference.</p> <p><b>Disqualifications:</b> Notwithstanding anything contained in sub-section (1), the Governor has the power to remove the State Chief Information Commissioner or the Information Commissioner if he is guilty of any of the following acts: Declaration of insolvency Conviction for</p>
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	<p>an offence involving moral turpitude Engagement in paid employment outside official duties Infirmity of mind or body Acquisition of such financial or other interest which might affect prejudicely his functions as such member</p>	<p>an offence involving moral turpitude Engagement in paid employment outside official duties Infirmity of mind or body Acquisition of such financial or other interest which might affect prejudicely his functions as such member</p>
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