

Food and Civil Supplies Department

3.2 Implementation of the Acts and Rules relating to Consumer Protection

Highlights

The Consumer Protection Act 1986 was enacted by the Government of India to provide simple, speedy and inexpensive redressal to consumer grievances. The implementation of the Act in the State suffered in the absence of the involvement of the State/District administration/ Non-Government Organisations for promotion of awareness and empowerment of consumers, inadequacy of infrastructure and effective monitoring. The Consumer Protection Councils aimed at promoting and protecting the consumer rights as envisaged in the Act were not functional. The State had huge pendency of 1.15 lakh complaint cases.

- **There was delay of over two to eleven years in establishing District Forums and Circuit Benches of the State Commission had not been constituted.**

(Paragraph: 3.2.8)

- **The building of the State Commission and 41 Forums were not constructed mainly due to shortage of funds and non-availability of land. The consumer forums both at the State and district level lacked staff and basic amenities.**

(Paragraph: 3.2.9)

- **The State had pendency of 1.15 lakh consumer grievance cases (State Commission: 30,990; District Forums: 83,812) as of 31 March 2005.**

(Paragraph: 3.2.12)

- **Only 23 per cent of the cases filed in the State Commission and 26 per cent of the cases in 70 District Forums were disposed of within the stipulated 150 days.**

(Paragraph: 3.2.13)

- **The enforcement mechanism under the Prevention of Food Adulteration Act 1954 was found to be deficient mainly for want of adequate Government Food Inspectors.**

(Paragraph: 3.2.19)

- **State and District Protection Councils were not functional and Consumer Welfare Fund was not operational.**

(Paragraphs: 3.2.20 & 3.2.21)

3.2.1 Introduction

The Government of India (GOI) enacted the Consumer Protection Act, 1986 (Act) to provide simple, speedy and inexpensive redressal to the consumers' grievances in relation to goods purchased and services availed. The Act came

into effect from 1st July 1987. The Act provides for establishment of separate three-tier quasi-judicial disputes redressal machinery at the National, State and District level (called consumer court). The consumer courts are empowered to give relief of specific nature and to award compensation to consumers. The provisions of this Act give the consumer an additional remedy besides those that are available under other existing laws. The Act was amended in 2002, to facilitate quicker disposal of complaints, streamline the procedures and strengthen the consumer movement.

The GOI. also enacted Prevention of Food Adulteration Act, 1954 for protection of consumers and for stringent action against the offenders.

3.2.2 Organizational set up

The Principal Secretary, Food and Civil Supplies Department is the nodal agency for implementation of the Act. Director, consumer Protection, functioned as Head of the Department up to 31st March 2004. Thereafter the President, State Commission, was designated as Head of the Department and District Forums are functioning under his administrative control. President, State Commission is assisted by a Registrar for direction and administration of the activities of the State Commission and District Forums. The State Commission consists of the President and at least two other members (including one lady member). District Forums comprises a President and two members (including one lady member).

3.2.3 Scope of audit

The records of the offices of the Principal Secretary, Food and Civil supplies Department, State Commission and 16¹ out of 74 District Consumer Forums (22 *per cent*) for the period 2000-05 were test checked in audit during July 2005 to October 2005. Records of Public Analyst, Lucknow, Controller of Drugs, Lucknow and Controller of Foods, Lucknow for the period 2000-05 were also reviewed in audit.

The Comptroller and Audit General of India had engaged ORG – Centre for Social Research (a division of AC Nielsen ORG-Marg Pvt. Ltd.) for a nationwide survey among consumers, manufactures, traders etc., to capture ground realities concerning the actual implementation of the Act and ascertain whether the benefits reached the people. The survey covering 3,485 consumers, 534 complainants, ten manufacturers/service providers, one laboratory and two Non Government Organisations (NGOs.) in 12 districts² was conducted during second week of July to third week of August 2005. Their findings are incorporated at relevant places in the review. The summary of findings is given in *Appendix-3.4*

3.2.4 Audit objectives

The review of the ‘Acts and Rules relating to Consumer Protection’ was conducted with a view to assess whether:

- Any documented policy for achieving the intended objective exists and rules governing implementation of the Act were formulated and notified;

¹ Lucknow, Allahabad, Bahraich, Etah, Ghazipur, Mahoba, Rai Bareli, Gautam Buddh Nagar, Barabanki, Azamgarh, Ballia, Kanpur Nagar, Basti, Hardoi, Unnao, Pratapgarh.

² Ghaziabad, Saharanpur, Etah, Hathras, Sitapur, Bahraich, Raibareli, Mahoba, Allahabad, Ghazipur, Kushinagar, Baghpat

- The adjudication mechanism had been created as prescribed in the Act;
- The infrastructure created for disposal of complaints met the expectations of the consumers and fulfilled the purpose of the enactment of the Act;
- A uniform plan for staffing and operation was prescribed and adhered to in staffing and operation of District Forums and the State Commission;
- Consumer Protection Councils were notified and functioning;
- Various steps and initiatives including schemes by GOI/State Government succeeded in creating awareness amongst the populace;
- Adequate system of monitoring of grievances of consumers was created with a view to ensuring their timely disposal;
- The efficiency of the adjudication mechanism was got evaluated from an independent agency for streamlining the prevailing system.

3.2.5 Audit criteria

The audit criteria were:

- Provision in the Acts and Rules relating to consumer protection.
- Notification issued by the Government for setting up of Consumer Protection Council.
- Norms fixed and orders issued by the Government/ State Commission for staff and other infrastructure requirements.
- Status of pendency of complaint cases against the stipulated norms.

3.2.6 Audit methodology

An entry conference was held with the Principal Secretary, Food and Civil Supplies Department in August 2005 and with the President, State Commission in September 2005 to discuss audit objectives and audit criteria.

Functioning of the State Commission, District Forums and also the Department of Food and Civil Supplies were assessed in audit with reference to adherence to the provisions of the Act and Rules relating to Consumer Protection. Availability of infrastructure, adequacy of staff and funding were also examined in audit with reference to the relevant rules and norms and order issued by the Government and the State Commission.

Exit conference was also held with the Government in December 2005 to discuss the review findings and recommendations contained therein.

Audit findings

3.2.7 Formulation of policy and notification of rules

The State Government did not have any documented policy for creation and strengthening of infrastructure of the adjudication mechanism and for greater involvement of State/District administration/NGOs for promotion of awareness and empowerment of consumers. Agencies like local administration and NGOs were also not involved for empowerment of the consumers.

The Government in August 1987 notified rules governing issues of implementation of the Act. These rules contained provisions governing emoluments, service conditions of the President / members of the State

Consumer policy and service rules were not framed

Commission and the District Forums, procedures for hearing of appeals, manner in which meetings should be conducted and procedure to be followed for testing of goods in the laboratories.

The State Commission framed service rules for its non-judicial staff and forwarded these to the Government in October 2002 for approval. These rules had, however, not been approved by the Government (December 2005).

On this being pointed out, the Government stated (January 2006) that the service rules were under finalization. It further stated that National Consumer Policy (NCP) was being framed by the GOI and the State Government would make the policy after finalisation of the NCP.

3.2.8. Creation of the adjudication mechanism

There was considerable delay in setting up of District Forums by the Government as 44 District Forums were set up after two years, four after eight years, four after nine years, eight after ten years and four more after 11 years after the Act came into force in July 1987. In four districts¹, Forums were still non-functional despite their creation way back in May 1998, due to non-creation of posts of President, Members and other staff.

Section 17B of the Act enabled the Government to set up Circuit Benches of the State Commission to speed up disposal of cases. The Government had not contemplated setting up of Circuit Benches despite huge pendency of 30,990 cases (March 2005) in the State Commission.

State Commission replied (December 2005) that Circuit Bench could not be established due to non-availability of land, building, space and shortage of staff.

Government in its reply stated (January 2006) that the four newly created districts had been abolished and orders had been issued for disposal of complaints of these districts through Forums of their parent districts.

Inadequacy of infrastructure

3.2.9 Buildings for State Commission and district forums

Based on the proposal of the State Government, GOI released a one-time grant Rs 6.80 crore during 1995-99 for construction of buildings and strengthening of infrastructure of State Commission and 63 District Forums (Rs 50 lakh for State Commission and Rs 6.30 crore for 63 Forums @ Rs 10 lakh). It was noticed in audit that Rs 2.90 crore were spent (June 2003) on construction of buildings for 22 District Forums and Rs 2.95 crore were utilized for providing other facilities in 63 Forums. The balance Rs1.05 crore (including interest) was lying unutilized in the PLA of the State Commission.

Buildings of State commission and 41 district forums not constructed

The building of the State Commission and remaining 41 Forums were not constructed mainly due to shortage of funds and non-availability of land which was to be provided free of cost by the State Government. The existing space in the rented buildings of the State Commission and District Forums was insufficient for library, record room, and courtroom and for providing other basic amenities to the consumers and staff. Against the requirement of a carpet area of 10,000 square metres, the State Commission was housed in a building with an area of 840 square metres (8 *per cent*) only.

¹ Auraiya, Baghpat, Kannauj, Sant Kabir Nagar

Inability of the State Government to provide basic infrastructure proved not only an impediment to the functioning of the adjudication machinery but made it difficult for consumers in general to become aware of the existence and the location of the redressal agency.

This was also borne out by the ORG MARG survey which stated that only 13 *per cent* of the consumers were aware of the existence of any consumer disputes redressal agency and even out of those who were aware around 21 *per cent* did not know the location of the consumer forums in their respective districts.

The Government during discussions (December 2005) stated that the land for building of the State Commission has now been finalized and after approval of the site by the State Commission necessary construction work would be taken up.

3.2.10 Absence of basic infrastructure

Audit of the records of District Forums revealed that infrastructure was inadequate to address even the basic needs of the office, staff and consumers. While drinking water facility was not available in five Forums¹, the facility was inadequate in seven Forums². Power supply was inadequate in 11 District Forums due to non-availability of facility of generators during disruption of power supply.³ Existing furniture was insufficient in eight District Forums⁴.

Fax machines were not available in seven District Forums,⁵ were out of order in two Forums⁶ and not installed in one Forum⁷ due to shortage of space. Xerox machines were not available in two District Forums⁸ and in five Forums⁹ these were not in working condition. Space for record room was insufficient in 12 District Forums¹⁰ and space for library was inadequate in all the test-checked districts.

Basic
infrastructure
available was
inadequate

Inadequacy of basic infrastructure was one of the major constraints in more effective functioning of Consumer Forums. The reasons for above shortcomings/deficiencies in basic infrastructure were shortage of space and funds.

The Government replied that efforts were being made to provide more facilities to District Forums. However keeping in view of the State's financial position, all these requirements could not be fulfilled immediately.

3.2.11 Inadequacy of staff

Despite the heavy pendency of cases in State Commission and District Forums, the Government did not initiate action to either fill up the vacant posts or to review the adequacy of existing sanctioned strength.

¹ Azamgarh, Pratapgarh, Unnao, Lucknow, Allahabad

² Barabanki, Ballia, Gautam Budh Nagar, Etah, Rai Barelli, Basti, Mahoba

³ Mahoba, Ballia, Gautam Budh Nagar, Kanpur Nagar, Etah, Rai Barelli, Basti, Allahabad, Azamgarh, Pratapgarh, Unnao

⁴ Lucknow, Pratapgarh, Mahoba, Rai Barelli, Gautam Budh Nagar, Etah, Barabanki, Basti

⁵ Barabanki, Hardoi, Pratapgarh, Bahraich, Ballia, Azamgarh, Lucknow

⁶ Ghazipur, Gautam Budh Nagar

⁷ Kanpur

⁸ Azamgarh, Pratapgarh

⁹ Pratapgarh, Unnao, Hardoi, Ballia, Basti

¹⁰ Lucknow, Azamgarh, Pratapgarh, Mahoba, Ballia, Gautam Budh Nagar, Barabanki, Kanpur Nagar, Rai barelli, Basti, Ghazipur, Unnao

Justice Bagla Committee had recommended (January 2000), 124 posts of Lower Division Clerk (LDC), 124 posts of Assistant and 38 other staff in the State Commission and 335 posts each of LDC and Assistants and 11 other staff in District Forums. The State Government had not, however, initiated any action on the recommendations of the Report.

The position of vacant posts with reference to the sanctioned staff strength and those recommended by the Bagla Committee is given in *Appendix-3.5*. Against the 56 sanctioned posts in the State Commission only 32 posts (57 per cent) were filled up and against 353 sanctioned posts in District Forums only 273 (77 per cent) had been filled up. State Commission's proposal for increase of 486 posts in the sanctioned strength of 409 in the State Commission and District Forums in line with the recommendations of the Bagla Committee, was not yet approved by the Government (January 2006). Thus, rationalization of posts in the consumer forums in tune with their workload could not be achieved thereby adversely affecting the operational efficiency of the redressal machinery.

The Government replied (January 2006) that it was not in a position to provide staff as recommended by the Bagla Committee as new posts were not being created decided by the Government earlier. However, the State Commission had been requested to select the personnel from the staff that had become surplus due to closure of the various offices/ organisations.

3.2.12 Delay in disposal of cases

Sections 13 A and 18 of the Act read with Section 13 stipulate that complaints filed in the District Forum and State Commission should be decided within a period of three months where the complaint does not require testing and analysis of commodities and within five months, if it requires analysis or testing of commodities from the date of receipt of notice by the opposite party, for which maximum period of 21 days is allowed under the Act. Section 19A of the Act stipulates that appeals against decisions of District Forums filed in the State Commission should be decided within 90 days of the date of admission.

The position of pendency of cases in the State Commission and District Forums is detailed below:

State Commission

Table 1

Year	Opening balance		No. of cases filed		Total no. of cases		No. of cases disposed of (progressive)		Percentage of disposal	
	OP ¹	FA ² +R ³	OP	FA+R	OP	FA+R	OP	FA+R	OP	FA+R
2000-01	1186	19639	251	3246	1437	22885	142(1282)	983(5503)	10	4
2001-02	1295	21902	276	3370	1571	25272	264(1546)	1458(6961)	17	6
2002-03	1307	23814	157	2549	1464	26363	137(1683)	872(7833)	9	3
2003-04	1327	25491	42	3787	1369	29278	55(1738)	407(8240)	4	1
2004-05	1314	28871	1595	11017	2909	39888	184(1922)	1645(9885)	6	4

¹ Original Petition
² Fresh Appeal
³ Revision

District Forums

Table 2

The number of pending appeals and original application increased year after year

Year	Opening balance	No. of cases filed	Total no. of cases	No. of cases disposed of	Percentage of disposal
2000-01	63288	22967	86255	19635	23
2001-02	66620	23807	90427	22700	25
2002-03	67727	24580	92307	23997	26
2003-04	68310	46167	114477	33953	30
2004-05	80524	17217	97741	13929	14

It will be seen that the number of pending appeals and original petitions was increasing each year in the State Commission and the District Forums and the existing efforts were not sufficient to dispose of the new cases as well as clear the backlogs of previous years.

3.2.13 Age wise pendency of cases

Age wise analysis of pendency as on 31st March 2005 in the State Commission and nine¹ of the test checked District Forums was as follows:

Table 3

Period of pendency	State Commission		District Forums
	Appeals (Per cent)	Complaints (Per cent)	Complaints (Per cent)
More than 10 years	1497 (6)	102 (10)	54 (1)
Seven to ten years	3339 (12)	94 (10)	553 (6)
Five to seven years	3887 (14)	106 (11)	859 (10)
Three to five years	2386 (9)	76 (8)	1358 (15)
Two to three years	5204 (19)	203 (21)	1606 (18)
One to two years	5581 (20)	317 (32)	2041 (23)
Six months to one year	4538 (16)	56 (6)	1469 (16)
Less than six months	1157 (4)	33 (2)	969 (11)
Total	27589 (100)	987 (100)	8909 (100)

* Figures in brackets indicate the percentage of cases pending for respective periods as a percentage of total pendency

** The table 3 does not include the figures in respect of Revision and Miscellaneous petitions. Hence total number of pending cases vary with the figure contained in table 1.

High percentage of cases were pending for more than six months. Only 23 per cent cases in State Commission decided within the prescribed time period

A high percentage of cases was pending for periods more than six months (98 per cent for complaints and 96 per cent for appeals in State Commission and 89 per cent in Districts Forums). No concrete action plan for tackling this issue was so far formulated either by the State Commission or the Government in line with the spirit of the Act to provide timely justice to the consumers.

It was also observed that the pace of disposal of cases in Consumer Forums was very slow.

Out of 4777 cases disposed of by the State Commission till June 2005, 23 per cent cases only were decided within the prescribed period of 90/150 days. Similarly in the District Forums out of 251666 cases disposed of till June 2005, 26 per cent cases only were decided within 90/150 days. Delay in disposal of the cases vitiated the basic objectives of the Act to provide speedy and inexpensive redressal to the consumers. The Government attributed the

¹ Lucknow, Barabanki, Hardoi, Pratapgarh, Bahraich, Azamgarh, Ballia, Ghazipur, Basti, Etah

pendency of cases to the vacancies of 42 Presidents, 39 lady Members and 38 male Members at the district level due to the litigation pending in the Hon'ble High Court of Judicature. It further stated that position was likely to improve as the vacancies had been filled up now.

Divergent practices were followed in filing of the complaints and their processing in the State Commission and District Forums. Audit scrutiny of 210 case files in the State Commission revealed that both the parties in all cases had used the services of the lawyers, which were not necessary as per the provisions of the Act.

ORG MARG survey in District Forums also revealed that 12 *per cent* of the complainants used stamp paper to file the case and 33 *per cent* deposited court fee. Adoption of incorrect procedures by consumers was attributable to inadequate dissemination of the rules and guidelines among the public.

State Commission while accepting the audit observations, replied (December 2005) that complainants have liberty to avail the services of lawyers or representative or fight their cases themselves. Court fee was deposited and stamp paper used due to lack of experience and inadequate knowledge of procedures on the part of employees of redressal agencies and that directions had been issued to refund court fee deposited in contravention of the Act.

3.2.14. Non-deposit of amount with appeals filed

As per section 15 of Consumer Protection (amendment) Act, 2002, effective from 15 March 2003, no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty *per cent* of that amount or twenty five thousand rupees, which ever is less.

Scrutiny of records of the State Commission revealed that 6,871 appeals had been filed during the period 2003 to 2005 (September 2005) but no deposit had been made and thus adherence to the provision of the Act was not ensured.

The State Commission replied (October 2005) that the Government had been requested (April 2003) to make relevant rules in this regard. However no rule had yet been made.

3.2.15 Improper procedure for service of notice

Under section 28-A inserted by amendment of the Act in 2002, the service of notices may be made by delivering or transmitting a copy thereof by registered post with acknowledgement due, duly addressed to the opposite party against whom complaint is made or to the complainant by speed post.

Audit scrutiny of the records of the State Commission revealed that 6,284 notices from May 2003 to September 2005 were served to complainants/opposite party by registered letter/speed post but the cost of postage stamp was borne by the complainant /opposite party instead of by the Commission.

In reply, the State Commission stated (October 2005) that envelopes with postage stamps were being taken from complainants in compliance with orders (September 1993) of the Government and after amendment of the Act in 2002

the Government had been requested (April 2003) for necessary directions which were still awaited.

3.2.16 Enforcement mechanism

Examination of the enforcement of the provisions contained in the Acts/Rules relating to consumer protection revealed:

Consumer Protection Act

3.2.17 Enforcement under Section 25(3)

Enforcement was weak as recoveries ordered by the State Commission and district forums were delayed

As per Section 25(3) of the Consumer Protection Act, 1986, when any award is due from any person under an order made by a District Forum or by State Commission a certificate may be issued to the Collector and Collector shall proceed to recover the amount in the same manner as arrears of land revenue.

Audit scrutiny of 49 out of 110 cases filed for non execution of decisions of the State Commission during the period 2000-05 revealed that in 48 cases no relief was made available to the applicant by the Commission under Section 25(3) (oldest case filed as early as in May 1993) as no order was issued by the State Commission due to non appearance of the opposite parties and in one case recovery order was issued (May 2002) for Rs 14.74 lakh against which recovery of Rs 5.03 lakh is still pending due to non availability of addressee (December 2005).

Audit scrutiny in 15 District Forums revealed that out of 3,972 cases of non-execution of decisions of the Forums reported during the period 2000-05, recovery orders in 192 cases under Section 25(3) were issued by the concerned Forums (*Appendix-3.6*). Recovery of the full amount was reported to the Forums only in 47 cases (24 *per cent*). District Magistrates returned 62 cases stating that recovery could not be made due to addressee not being traceable (59), stay order by the State Commission (three). No reasons were furnished for non-recovery in the remaining cases.

ORG-MARG survey also revealed that there were 37 *per cent* such cases where the decree was passed and compensation was yet to be received. On an average the compensation was due for about 21 months. For those who received compensation, the same was received within an average period of three months.

3.2.18 Enforcement under Section 27(1)

As per section 27 (1) of Consumer Protection Act, 1986, where a trader or person against whom a complaint is made fails or omits to comply with any order made by the district forums or the State Commission, as the case may be, such trader or person shall be punishable with imprisonment or fined. Audit scrutiny revealed that though arrest warrants under the above Section were issued by the Commission during the period 2000-05 in three cases, none of them was enforced (oldest cases being filed as early as in April 2001). Audit scrutiny in 15 District Forums revealed that arrest warrants were issued in 155 cases and fines imposed in 54 cases during the period 2000-05 (*Appendix-3.7*). While arrest warrant was executed in four cases, fines were recovered in fifteen cases only.

It is evident from the above that enforcement of the remedy granted under the Act was unsatisfactory and a pointer to that fact that existing provisions of the

Act were inadequate to ensure the recovery of decretal amount / execution of arrest warrants through district magistrates.

Accepting the facts stated by Audit, State Commission suggested (December 2005) that necessary directions were required to be issued at the level of Government to all District Magistrates and Superintendents of Police and after a fixed interval, regular meetings of President of Commission/Forums, District Magistrate and Superintendents of Police were required to be held for enforcement of decisions and orders of the redressal agencies. However, State Commission did not mention whether these suggestions were made to the Government.

Prevention of Food Adulteration Act, 1954

The main aim of the Act is to ensure quality of food to the consumers, to protect them from fraud/ deception and to encourage fair trade practices in food industry. Under Section 11 of the Act Government Food Inspectors (GFI) are empowered (i) to take samples of any article of food; (ii) send such samples to the Public Analyst and (iii) prohibit the sale of any article of food, in the public interest. The cases of adulterate food samples were to be put up to the Magistrate within 7 days of receipt of report from Public Analyst. Controller of Food and Controller of Drugs under Director General of Medical and Health Services had been empowered to implement the Act in the State.

3.2.19 Collection of food samples

Government had sanctioned 779 posts of GFI in the State to cover the area of all Primary Health Centres/ Blocks against which 375 GFIs were posted. The Controller of Foods, Lucknow had fixed annual target of 60 samples for each GFI to collect and send these to the Public Analyst, Lucknow for testing. Based on sanctioned posts and target fixed for each Inspector the shortfall in collection of samples during the years 2000-05 was as follows:

Table 6

Year	Samples to be drawn	Samples taken	Shortfall
2000	46740	21015	25725
2001	46740	21571	25169
2002	46740	21806	24934
2003	46740	22034	24706
2004	46740	18040	28700
2005(upto 3/05)	11685	4941	6744

The drawal of samples was grossly inadequate during the above years due to acute shortage of 404 GFIs.

Testing of food and drug samples

Samples collected by the Inspectors are required to be sealed and sent to the Public Analyst, Lucknow in the manner prescribed in the PFA Act and the Drug and Cosmetics Act, 1940. The Public Analyst is required to send his report on the food samples tested within 40 days of its receipt. Audit scrutiny of records of Public Analyst revealed the following:

There were large shortfalls in collection of samples

Food Samples**Table 7**

Year	Samples received	Samples analysed	Samples found adulterated	Time barred, broken/rejected, decomposed, sent to other labs.
2000	21015	16152	3065	3320
2001	21571	18960	2637	2807
2002	21806	20672	3099	1378
2003	22034	17891	3333	3972
2004	18040	16487	1764	1984
2005 (upto 3/05)	4941	4239	495	815
Total	109407	94401	14393	14276

As against 109407 samples of food received for testing, 94401 samples (86 per cent) only were analysed. The remaining 15006 samples (14 per cent) could not be tested due to being time barred (4085), broken/rejected (6141), decomposed (2388), sent to other laboratories (1633), pending (29) etc. In view of 14393 samples (15 per cent) being found adulterated, inadequate testing of the samples vis-à-vis targets was fraught with the risk of adulterated food remaining unchecked.

Drug Samples**Table 8**

Year	Samples received	Samples analysed	Samples found sub standard	Samples found spurious
2000	2772	720	78	35
2001	2889	512	46	21
2002	3216	1109	203	24
2003	3593	714	183	10
2004	3430	1039	170	04
2005 (upto 3/05)	481	195	34	03
Total	16381	4289	714	97

As against 16,381 samples of drug received for testing, 4,289 samples (26 per cent) only were analysed. In view of 19 per cent samples of drugs found spurious (97) and substandard (714), inadequate testing of the samples was fraught with the risk of such drugs finding their way into the market.

Audit scrutiny of records of Public Analyst revealed that as against 121 sanctioned posts of Analyst in regional laboratories, 84 posts were vacant. In Government Public Laboratory, Lucknow against 14 sanctioned posts of Analysts, 9 posts were vacant. It was stated (September 2005) by the Public Analyst that due to shortage of Analysts about 2,000 samples of drug become time barred every year.

Non-prosecution of offenders

Under section 13(2) of the above Act, prosecution is to be launched by GFI immediately on receipt of report of adulterated samples of food from Public Analyst. The position of adulterated samples and prosecuted cases during the years 2000-2003 for which the information was available, was as follows:

Only 26 per cent of the drug samples were analysed

Table 9

Year	Samples taken and sent to PA	No. of samples examined	No. of samples found adulterated	No. of cases prosecuted	No. of cases decided by courts	Where persons were convicted
2000	21015	16152	3065	1817	421	199
2001	21571	18960	2637	1777	449	107
2002	21806	20672	3099	1636	479	216
2003	22034	17891	3333	2076	350	129
Total	86426	73675	12134	7306	1699	651

As against 86,426 samples taken by GFI only 73,675 samples (85 *per cent*) were examined out of which 12,134 samples were found adulterated. Prosecution was launched in 7,306 cases only (60 *per cent*) out of which 1,699 cases (23 *per cent*) were decided by court and 651 cases (38 *per cent*) convicted. The Controller, Foods, gave no reasons for non-prosecution of 40 *per cent* cases of adulteration.

Functioning of Consumer Protection Councils

3.2.20 Consumer Protection Councils were non functional

As per Sections 7 and 8A of the Act, the State Government was required to establish State Consumer Protection Council at the State level and District Consumer Protection Councils¹ in each district to promote and protect the rights of the consumers. It was observed that the State Council was created only in November 1998 i.e. 11 years after the Act came into force. The District Councils were created in February 2004. Both the State and District Councils were, however, non-functional.

The Government stated (January 2006) that action for making the Councils functional was under process.

Awareness and empowerment of consumers

3.2.21 Non-operation of Consumer Welfare Fund

Government of India issued orders (February 2004) for creation of State Consumer Welfare Fund in each State to promote consumer awareness. The State Government created (March 2005) State Consumer Welfare Fund with a corpus of Rs 1 crore and credited (March 2005) its 50 *per cent* contribution of Rs 50 lakh to the Fund. The remaining 50 *per cent* to be contributed by the GOI was not received (December 2005). Audit scrutiny revealed (September 2005) that neither rules for operation of this Fund were framed nor was any Committee constituted to recommend proper utilization of money from the Fund. As a result, no schemes for promoting consumer awareness were started.

¹ inserted later through the Consumer Protection (amendment) Act, 2002, as operational with effect from 15 March 2003

Consumer Protection Councils were non-functional and Consumer Welfare Fund was not operated

Government stated (January 2006) that model draft rules for operation of Consumer Welfare Fund were under preparation by GOI.

ORG MARG survey also revealed that nearly 82 *per cent* of the consumers were not aware of consumer rights and 88 *per cent* unaware of the Act.

3.2.22 Monitoring mechanism

GOI prescribed (July 1995) submission of daily achievement report to the National Commission for monitoring. As against this, the State Commission sent monthly progress of disposal and pendency to the National Commission. The State Commission had not maintained various control records such as Complaint Register, Disposal Register, Execution Register and Judgment Registers etc. in a manner so as to facilitate, a review of the performance enabling effective monitoring. The State Government monitored the position of disposal and pendency only once a year, at the time of finalization of their annual report. Thus no effective monitoring system was in place.

Government replied that process and period for disposal of complaints is fixed under the Act. Hence monitoring is required to be done at the level of State Commission. It further stated that necessary action would be taken on the proposal of the State Commission for more effective monitoring.

3.2.23 Evaluation of the implementation of the Act

The efficiency of adjudication mechanism was required to be evaluated by an independent agency for streamlining the prevailing system through remedial measures but it was observed that no impact evaluation of efficiency had been got done by the Government (December 2005).

3.2.24 Conclusion

The implementation of the Act in the State suffered in the absence of a policy for creation and strengthening of infrastructure of the adjudication mechanism and greater involvement of State/District administration/NGOs for promoting awareness and empowerment of the consumers. Funds and infrastructure such as building and staff provided by the State Government for functioning of consumer forums was inadequate. Pendency of the cases was consistently rising and no action plan was put in place to speed up disposal of pending cases. Consumer Protection Councils were non-functional and consumer awareness and welfare schemes were not launched in the State. Enforcement of provisions of the 'Prevention of Food Adulteration Act' in the State was also weak affecting the consumers' interest adversely.

Recommendations

- The Government should consider framing of a policy for involvement of State/District administration and NGOs for promotion of awareness and empowerment of consumers.
- Consumer Protection Councils should be made functional for promoting and protecting the rights of consumers by dissemination of information through consumer education.

- Necessary infrastructure including staff should be provided to the State and district forums for their effective functioning.
- The system of taking and testing of samples and launching of prosecution under Prevention of Food Adulteration Act, 1954 needs improvement to ensure timely relief to consumers.
- There is a need for strengthening the recovery mechanism through District Magistrates.
- Monitoring mechanism should be revamped both at the State Commission and the Government level.

The performance audit review was discussed with the Government in December 2005. The Government accepted the facts and figures mentioned in the review and the recommendations included therein.