Q. Define the term "Consumer" under the provisions of the Consumer Protection Act, 1956.

Section 2 (1) (d) of the Consumer Protection Act, 1986 defines the term "consumer". It says '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 payments, when such services are availed of with the approval of the first-mentioned person;

Explanation :

For the purposes of 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;

Thus the term "Consumer" defined under section 2 (1) (d), is divided in two parts – First, a Consumer who purchases goods and Second, a person who hires services.

The Supreme Court in **Lucknow Development Authority V/s. M.K. Gupta** noted that, the word "Consumer" is a comprehensive expression. It extends from a person who buys any commodity to consume either as eatable or otherwise from a shop, business house, corporation, store or fair – price shop to use fro private or public purposes.

The term "Consumer" also includes any person who uses the goods with the permission of the buyer, though, he is not himself a buyer.

The next important term to consider is what do you mean by 'commercial purpose'. The National Commission in **Western India State Motors V/s. Sobhag Mal** held that, the plying of a taxi for hire is clearly a commercial purpose. But this decision requires to be considered in the light of the amendment of 1993 adding an explanation to the definition, to the effect that, purchase for self employed business is not a commercial purchase.

In contrast to the decision above, the purchaser of a tempo, which was also for commercial purpose, was allowed to enforce his right to have the defects in the machine rectified. **(D.R. Joshi V/s. Motor Industries Co.)**

The distinction between commercial purpose and domestic purpose was expressed in the case of **Super Engg. Corpn V/s. S.V. Pant** wherein the National Commission expressed the view that, the purchase of a

Offset printing machine to be used for profit-making activity on a large scale, would be a commercial purpose, but it would not be so, if the machine is to be used in small venture in order to make a living.

The second category of the consumer is, that of user of services for consideration. **“Service”** would include all kinds of professional services, be it the routine service of a barber or of the technical services of a highly qualified person like medical or legal practitioner etc. Supply of electricity has been held to be a service and not sale of goods **(Haryana Sate Electricity Board V/s. Dinesh Kumar).**

Where, free air tickets were offered by a lucky draw alongwith purchase of thing, the National Commission held that, that portion of the contract which was concerned with the free award was without consideration and therefore, the winner of such award was not a consumer. The direction of the State Commission that the tickets should be delivered or their value paid along with compensation was set aside. **(Byford V/s. S.S. Srivastava)**

Who is not a consumer?

- An applicant for a passport, has been held to be not a consumer, because the duties of the passport officer do not fall in the category of services for consideration.
- An applicant for ration card is not a consumer.
- The beneficiaries of municipal services has been held to be not in the category of consumers. **(Parab Chand Jain V/s. C.E.O. NagarPalika)**

Q. Write short notes on.

A] Complainant

Section **2 (1) (b)** of the Consumer Protection Act, 1986 defines the term "complainant" as ---

Complainant means-

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956), or under any other law for the time being in force; or

(iii) the Central Government or any State Government,

(iv) one or more consumers, where there are numerous consumers having the same interest;

(v) who or which makes a complaint;

A person seeking redress before the Consumer Redressal Forum must come within any of the four categories stated above, otherwise he has no *locus standi* to proceed with his case. The ‘Complainant’ among others means a ‘consumer’ generally.

The expression ‘complainant’ as defined in section 2 (1) (b), is comprehensive to enable consumer as well as any voluntary consumer association. This definition is very suitable in a country like India, where majority of the people are illiterate and therefore, power to file a complaint is given to the voluntary consumer associations. The only restriction laid down under the Section in this regard is that, the association must be registered under the Companies Act, 1956 or any other law for the time being in force.

However, a consumer association cannot file a complaint on behalf of unspecified or unidentified number of consumers. In the Case of **Upbhokta Sanrakshan Samiti V/s. Winsard foods Ltd.,** the consumers association found that, the biscuit packets sold by a food company were less in weights. A complainant demanding compensation for the public of the State of Rajasthan was not maintainable.

The act contemplates an identified consumer in order to make the application of its provisions or any consumer association to represent it. An act also contemplates an action in representative capacity, by providing that, when there are numerous consumers having same interest, one or more consumers must file complaint on behalf of others.

B] Complaint

In **Section 2 (1) (c)** "complaint" means any allegation in writing made by a complainant that-

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

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defect;

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

(iv) 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;

(v) goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.

With a view to obtaining any relief provided by or under this Act;

The essential features of a “Complaint” are -

1. The complaint must be in writing;
2. The complaint must be made with a view to obtain any relief under the Act;
3. The Complaint must make any of he five allegations stated under section 2 (1) (c), against a trader or manufacturer;
4. The complaint must be filed in a manner prescribed under law i.e. under section 12 of the Act.
5. The complaint must be filed before appropriate consumer commission having jurisdiction to entertain complaint. Section 17 & Section 21.

Ordinarily, the complaint must contain name, description and address of the Complainant and the purpose for which he bought the goods. It must also contain the name, description and address of the trader or manufacturer. It must state clearly, the facts of he case eg. When the things was purchase? For what purpose? when the things were consumed or used? Defects in goods or deficiency in the service etc., what injury suffered etc. These facts must be supported by all relevant and proper documents. Lastly, the complaint must mention the relief or relief's asked for against the trader or manufacturer i.e. the opposite party.

C] Consumer Dispute

Section 2 (1) (e) provides "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

A Consumer dispute would arise when there is a complaint by a consumer and the person against whom the complaint has been made denies or disputes the allegations contained in the complaint.

When a material proposition of fact or law is affirmed by one of the party and denied by the other, the issues arise and Court frames those issues in the form of questions. Each of such allegations made by the Complainant and denied by the defendant becomes a "consumer dispute

D] Defect and Deficiency

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

Such a defect must be in relation to the goods and not its title.

Defect means lack or absence of something essential for completeness. When there is a shortage in the quality of goods it amounts to defect in the goods.

If, seller fails to deliver the goods which he agreed to sell, it will be treated as a defect. There are certain legislative enactment eg. Foods & Drugs Adultration Act, which require the goods to be particular standard, and any shortcoming in such a standard, would amount to a 'defect'.

A contract between the buyer and seller may prescribe for particular quality, quantity or purity, standard etc. in such a case, if that prescribed quality, quantity etc. falls short as required by their contract, it may amount to a defect.

Even when the trader makes a particular claim about the product, whether by means of advertisement or by labels on the package or inside the package, and the goods fall short of that claim, it would amount to 'defect' in goods.

Section 2 (1) (g) further provides the definition of deficient. "Deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

The distinction between the ‘defect’ as defined under section 2 (1) (f) and the term ‘deficiency’ as defined under section 2 (1) (g) is that, the former is used in relation to goods i.e. when goods can be said to be ‘defective goods’ whereas, the term ‘deficiency’ is used in relation to ‘services’ i.e. there can be ‘deficiency in services’.

E] Service and Deficiency in service

Under **Section 2 (1) (o)** "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 lodging or both, 6[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 above definition can be divided in three parts :

- **What it means ?**

It means a service of any description. The service is not restricted only to actual users, but is also made applicable to potential or prospective users. i.e. the persons who are likely to use the services in future.

- **What it includes?**

It includes the provisions of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or ther information. Housing construction is also included in the definition of “Service”

- **What it excludes?**

The services which is rendered free of charge, and the personal service e.g. master and servant have been excluded. Therefore, if, services rendered in the hospital are totally free, then no complaint under this Act is maintainable against the hospital.

"Deficiency" under **Section 2 (1) (g)** means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

Following are the cases in which it was held that there is a deficiency in the service :

1. Delay in delivery of possession of the flat.
2. Use of substandard material in house construction.
3. Fault or negligence in setting the claim by the insurance company.

4. Fault on the part of the carrier of goods.

5. Disconnection of electric supply on account of arbitrary and excessive billing and without giving notice.

6. Bank dishonouring the bank draft or cheque despite sufficient funds in the account.

7. Failure on the part of the courier to deliver cover within stipulated period.

8. Unreasonable delay in shifting of telephone.

9. Delay by the examining body to publish the results.

F] Central Consumer Protection Council

Section 4 (1): Establishment of the Central Consumer Protection Council:
provides that the Central Government may, by notification, establish with effect from such date as it may specify in such notification, a council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).

Section 4 (2): Membership of the Central Council :
"The Central Council shall consist of the following members, namely,-

a) the Minister in charge of consumer affairs in the Central Government, who shall be its Chairman, and

b) such number of other official or non-official members representing such interests as may be prescribed."

Section 6 : Objects of the Central Council

The objects of the Central Council shall be to promote and protect the rights of the consumer, such as ,-

a) the right to be protected against the marketing of goods and services which are hazardous to life and property;

b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices;

c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;

d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;

e) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and

f) the right to consumer education."