

**“PROTECTION OF CONSUMERS: A SOCIO LEGAL
STUDY UNDER THE CONSUMER PROTECTION ACT
1986”**

DISSERTATION

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LUCKNOW

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(TARUNANSHIKA DINKAR)

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LIST OF ABBRIVETION

- AC : Appeal Cases (Law Reports)
- ACC : Accidents Compensation Cases
- ACJ : Accidents Claims Journal
- AIR : All India Reporter
- BCCA : British Columbia Court of Appeal
- BCSC : British Columbia Supreme Court
- BLR : Business Law Review
- BMLR : Butterworths Medico-Legal Reports
- Bom LR : Bombay Law Reporter
- CA : Court of Appeal
- Can SC : Canadian Supreme Court
- CANB : New Brunswick Court of Appeal
- CCJ : Consumer Claims Journal
- IA : Indian Appeals
- ICR : Industrial Case Reports
- ILO : International Labour Organisation
- ILR : Indian Law Reporter
- Mad LW : Madras Law Weekly
- Mah LJ : Maharashtra Law Journal
- Med LR : Medical Law Reports
- MLJ : Malayan Law Journal

LIST OF CASES

- A.C. Madangi v. C. Well Tailor, (1991) CPJ 586 (NC)
- Air India v. Suganda Ravi Mashelkar, I (1993) CPJ 63 (NC).
- Akhil Bhartiya Grahak Panchayat v. Chairman LIC of India, 1 (1991) CPJ 171 (Mah.)
- B. Shekhar Hedge v. Dr. S. Bhattacharya (1992) CPJ 449.
- B. V Naggraju v Oriental Insurance Co.(1996) 4 CTJ 373.
- B.L. Chakku v. District Telecom Engineer, 1 (1991) CPJ 2631.
- Bandhua Mukti Morcha v. Union of India, AIR 1984, SC 802
- Common Cause v. Union of India & Ors. 1991 (2) CPR 523.
- Common Cause, A Registered Society v. Union of India, AIR, 1993, SC 1403.
- Common Causes v. DESU, 1 (1991) CPJ 113 (NC).
- Consumer Unity and Trust Society v. Bank of Baroda, 1991 (1) CPR 263 (NC).
- Consumer Unity and Trust Society, Jaipur v. Chairman and Managing Director, Bank of Baroda) Calcutta, (1995) 3 CTJ 97.
- Cosmopolitan Hospitals and Anothers v. Smt. Vasantha P. Nair, (1992) CPR 820.
- Cosmopolitan Hospitals v. P. Nair, (1992) CPJ 259 (NC)
- Currie v. Misa, (1875) L.R. 10 Ex. 153 at p. 162.

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CHAPTER 1

1.1 INTRODUCTION

Every citizen of the country is either a consumer of goods or services or a consumer of both. In view of the sheer numbers involved, the 'consumers' should have constituted the strongest lobby in the country and should have been 'a force to reckon with' vis-à-vis the suppliers of goods and the providers of services. Unfortunately, because of lack of cohesiveness and lack of effective organizations to voice their concerns, a consumer in India has remained a faceless, voiceless, submissive and meek person, accepting whatever sub-standard goods or services being offered, as his destiny. Things may have changed a bit in favour of the upper middle class or the affluent consumers in the recent years due to some element of competition and choice in the retail sector.¹

The Preamble to the Constitution of India has incorporated that "We, the People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justice, Social, Economic and Political". Access to justice is recognized as one of the most important basic human rights today and it is very difficult, if not impossible, to realize most of the human rights without access to justice. Rule of law is the soul of every civilized society. Law is a command or an order and can be better described as the language of the State. Law has the same relationship to the State as the language has to the society. Rule of Law is the common way of life in a civilized society. However, with the passage of time, rule of law is being used not only to maintain order and to protect individual interests but is also used to protect the interests of the society and the public at large to fulfill the ideals of the modern welfare state. The interpretation of the law is the function of judiciary in a democracy like India and the main concern of administration of justice is protection of the rights of the people for the wellbeing of its subjects. In a society where a consumer is generally made victim of the unfair trade practices by the well-organized sector of the traders and businessmen and as such the illiterate, ignorant and financially weak consumer is to fight against the powerful lobby of businessmen, the public interest litigation is the only answer to protect the interests of the

¹ Rajyalakshmi Rao, Consumer is King, (New Delhi, Universal Law Publishing Co, 2009) p. 8

consumers.²

Today we are living in an era of a welfare state which has to promote the prosperity and well-being of the people. In other words, in the welfare State it is the duty of State to promote the welfare of the people by protecting a social order in which justice, social, economic and political shall be done to all the institutions of National Life. The Preamble of Constitution of India clearly states the functions of the Republic and one out of other functions is to secure to all its citizens justice, social, economic and political. The Directive Principles of State Policy contained in Part IV of the Constitution has also laid down certain economic and social policies to be pursued by various Governments in India.

The Consumer Protection Act 1986, which is social welfare legislation, is a milestone in the history of socio-economic legislation in the country and the main purpose of this Act is to protect consumer from exploitation by unfair trade practices and to provide a speedy, simple, timely and inexpensive redressal to consumer disputes and complaints.³

The Government of India has brought out a number of statutory regulations to protect the consumer interest so far. All these aimed at controlling production, supply, distribution, quality, purity and pricing of several goods and services and consumers should be informed about the availability of the goods and cautioned on unfair trade practice resorted to by unscrupulous traders and producers of goods. "Justice delayed" means "Justice denied". Consumer does not want to deny their justice in the form of getting justice delayful. Presently there are more than twenty laws meant for protecting the consumers directly or indirectly. The latest addition to the armory is the Consumer Protection Act, 1986. This is hailed as a panacea for all consumer ills. India is not in dearth of consumer protection laws. But what we are in dire need is a strong will to make use of these weapons in the arsenal.

Mahatma Gandhi, the father of the nation, has rightly pointed out in Harijan dated 4th May, 1935 that business, ethics, honesty and truthfulness should go together in the following words:-

"It is wrong to think that business is incompatible with ethics. I know that it is

² Rajyalakshmi Rao, *Consumer is King*, (New Delhi, Universal Law Publishing Co, 2009) pp 9- 10.

³ Jaspal Singh, "Consumer Protection-A Distant Dream", *AIR*. 1997 (J) p33.

perfectly possible to carry business profitably and yet honestly and truthfully. The plea that business and ethics never agree is advanced only by those who are actuated by nothing higher than narrow self-interest. He, who will serve his own ends, will do so by all kinds of questionable means, but he, who will earn to serve the community, will never sacrifice truth or honesty. You must bear in mind that you have the right to earn as much as you like, but not the right to spend as much as you like. Anything that remains, after the needs of a decent living are satisfied, belongs to the community." Although honesty, integrity and trust are three pillars on which the sound system of trade and commerce should rest; yet now-a-days; honesty, integrity, truthfulness and trust are lacking to a great extent in business and trade in India posing a serious challenge to the rule of law and the obligations of the society to adopt and inculcate moral values⁴.

In India, consumer justice is a part of social and economic justice as enunciated in the Constitution. A number of legislations have been enacted in the field of consumer protection relating to standardization, grading, packaging and branding, prevention of food adulteration, short weights and measures, hoarding, profiteering, etc. But all these are scattered pieces of legislations. The litigations under these legislations are disproportionately costly and troublesome to the small consumer. The procedures are complex, cumbersome and time consuming and the remedies available are limited in scope. The impact of these legislations in protecting the consumer has been relatively small.

The well-organized sectors of manufacturers, traders, and service providers, armed with knowledge of the market and manipulative skills, often attempt to exploit the consumers, in spite of the provisions in different laws protecting their interests. Moreover, various factors including increase in the population resulted in enormous pendency and delay in disposal of cases in the civil courts. Consumers cannot be asked to wait for years for settlement of even small claims. The Parliament, therefore, passed a potentially very important legislation, viz., the Consumer Protection Act, 1986.

In 1976, the Supreme Court of India observed that the protection of the consumer is the need of the society. It stated: "We hope the vigilant legislature will activate itself on

⁴ J. N. Barowalia, *Commentary on the Consumer Protection Act*, 3rd Ed. (Delhi: Universal Law Publishing Co. Pvt. Ltd., 2008) pp 15-16.

behalf of the little man and the law and make quick moving, easily accessible and free-of-cost consumer protection measures⁵.

John F. Kennedy, Former President of America, in a special message to the Congress on "protection of consumers" said that they have certain definite and basic rights. They are- (i) The Right to safety (ii) The Right to be informed (iii) The Right to choose and (iv) The Right to be heard. They also require additional protection against commodities which are in question relating to quality and also protecting against unhealthy marketing practices⁶.

Today it is sellers' market for consumer goods and not the buyers' market. Many items of consumer goods like edible oil, sugar, kerosene and cooking gas are in short supply though quite often artificial and manipulated. When goods are not available and the consumer has to stand in queues for hours to get what he wants there is little scope for complaint by him about quality and measures. Moreover, most of the consumers are ignorant of their legal rights against the remedies available to them most of the times; the consumers are either unwilling or unable to pursue a complaint against the traders. However, there is no doubt that competition for quality works to the benefit of the consumer, but simultaneously traders get a good margin of profit from the competitive goods. Sometimes due to fraud or negligence on the part of the manufacturers or dealers, consumers get hazardous consuming articles from the retailer and become an easy prey to a number of diseases that may prove fatal to their health or lives. In many such cases, people know very little about their socio-legal rights against the offences⁷.

In a modern society, it is the obligation of the State to maintain law and order. In the maintenance of law and order, administration of justice comes into limelight. State administers justice through judiciary. Judiciary plays an important role in protecting the rights of the citizens. Administration of justice is the prime concern of judiciary. Judiciary solves the disputes of the citizens within the territorial limits. It is difficult for everyone to approach the court to get justice. Justice before the court is often delayed and takes years to solve the dispute. Day by day, there is an increase in the number of disputes.

⁵ Supra Note 1, pp8-9.

⁶ S. Mustafa Alam Naqvi, Consumer Protection Act, 1986 and Professional obligations,

⁷ Cheena Gambhir, Consumer Protection Administration- Organization and Working, (New Delhi: Deep and Deep Publications Pvt. Ltd., 2007) pp 30-31.

As a result, the courts are over burdened with disputes. Large numbers of cases are pending before the judiciary at all levels. To solve these disputes, judiciary may take one or two decades.

To reduce the burden on the judiciary and to provide simple and speedy justice to the public at their door steps, the State has established various adjudicatory authorities in administration of justice with respect to specific subject matters, among one of them is Consumer Dispute Redressal Agencies. To protect and promote the rights of the consumer more effectively, the Government has enacted Consumer Protection Act, 1986. This Act has been amended from time to time, and the recent amendment is Consumer Protection (Amendment) Act, 2002.

In recent years, there has been an increasing public concern over the consumer protection issues all over the world. Taking into account the interest and needs of consumers in all countries particularly those in developing countries, the consumers' protection measures should essentially be concerned with (i) the protection from hazards to health and safety (ii) the promoting and protection of economic interests (iii) access to adequate information (iv) control on misleading advertisements and deceptive representation (v) consumer education (vi) effective consumer redress⁸.

The Consumer Protection Act, 1986, a milestone in the history of socio- economic legislation in India. Its implementation has now opened up a wide scope for giving relief to the unprotected consumer in India. Now, with the setting up and functioning of the Consumer's Grievance Forum and the State Commissions at the District and State level the movement is catching up the expectations of the public. Day by day, with the variety of complaints and grievances made on the question of price, quality of goods and different services rendered by different agencies and the relief's that are now being made available to the aggrieved persons, the people are becoming more and more aware of their rights and the modes of relief available to them⁹.

The impact of the Consumer Protection Act, 1986 on the functioning of the public and especially of the private corporate sector is evident even from the observations of V. Balakrishna Eradi J., President of the National Consumer Disputes Redressal Commission,

⁸ Swati Mehata, "Consumer Protection in India: The Path of Covered and the Journey Forward", Consumer Protection Judgements, Vol. 3(Aug 2010) pp 6-7.

⁹ Neelakonotho Das, "Consumer's Protection Act and the Common Man", AIR 1991 (J) p158.

made in the context of the private sector. He has observed:

“If you go to the market you will now find that if any consumer says he will complain, the article sold is replaced, though in the cash memo it is mentioned that goods once sold will not be taken back. A sense of fright has now come. The manufacturers do not want a bad name for their products. The moment a complaint is filed before a State Commission, they offer to replace the article. To the extent, we have made an impact. The exploitation of consumers by the smaller traders has become less.

Every person is a consumer in one form or other. From cradle to the grave we are consumers. No sooner a person purchases a commodity or hires certain services than he becomes a consumer. In the present socio-economic scenario, we find that the consumer is a victim of many unfair and unethical practices adopted in the market place. Most of the consumers are largely poor, illiterate, ignorant, apathetic or just defeatist and continue to be at the receiving end. This is due to lack of awareness on the part of the consumer. Besides this, the development of modern technology and large number of goods, have added to the misery. Modern technological developments have no doubt made a great impact on the quality, availability and safety of goods and services. But the consumer knows little about these highly sophisticated goods. Industrial revolution has ushered in radical changes in the lives of human beings as regards the goods and services for their day to day life. The consumer goods flooded the market and the traders started adopting various devices to sell the goods manufactured by them. Consumer was not in a position to appreciate the goods purchased by him in the market.

In the era of open market buyer and seller came face to face, where the seller exhibited his goods, and the buyer thoroughly examined and then purchased them. It was presumed that he would use all care and skill while entering into transaction. In fact, the consumer was not in a position to know the quality and quantity of goods. This helps the trader to monopolize the market and the trader became the king. The consumers are abused and exploited by unscrupulous practices of the traders mainly to make profits. This resulted in exploitation of consumer in market place. In the olden days the principle of 'Caveat emptor let the buyer beware' governed the relationship between the buyer and seller. The consumer required protection by law when the goods and services provided failed to achieve the purpose. There is wide spread dissatisfaction with respect to the quality and cost of goods

provided to the public. In addition, with the revolution in information technology, newer kinds of challenges have been thrown on the consumer like cyber crimes, plastic money etc.

All the above factors culminated in a new phenomenon resulting in the abuse and exploitation of consumers. This led to the consumer movement throughout the world. In the present situation, consumer protection though as old as consumer exploitation, has assumed greater importance and relevance. Consumerism is a recent and universal phenomenon. It is a social movement. Consumerism is all about protection of the interests of consumer. The concept of consumerism came into existence and consumer protection became one of the primary duties of the State. Responsibility was imposed on the State to protect the interest and rights of consumer through appropriate policy measures, legal structure and administrative framework. The developed countries like the United States of America and United Kingdom were first to realize the need to protect the interest of consumers. Various legislations were passed to achieve this object. In the history of the development of consumer policy, 9th April 1985 is a very significant date. On that day the General Assembly of the United Nations adopted a set of general guidelines for consumer protection. The Secretary General of the United Nations was authorized to persuade member countries to adopt these guidelines through policy. These guidelines constitute a comprehensive policy framework outlining what governments need to do to promote consumer protection with respect to safety, standards, protection and promotion of consumer welfare.

In a country like India the average consumer is not in a position to evaluate in detail the worth of the goods and services provided to him. The average consumer in India is faced, on the one hand with inflation and the resultant price rise of essential commodities and on the other hand, with problems of black marketing, artificial shortage, adulteration, short weights, misleading advertisements etc.

In recent times the educated public has become aware of their rights as consumer and are willing to fight against exploitation. India adopted a mixed economic model, where the State has to perform different functions to protect the interests of citizens. It being a Welfare State is the guardian and protector of social interest. Our Indian Constitution spells out the philosophy of a Welfare State. Preamble to the Constitution resolves to secure to all its citizens political, social and economic justice. In a Welfare State it is the duty of the state to safeguard the interests of consumers by rendering consumer justice as a part of social and

economic justice as enshrined in the Constitution. Following the constitutional mandate, a number of legislations have been enacted from time to time in the field of consumer protection like laws regulating grading, packing and branding, prevention of food adulteration, short weights and measures, hoarding, profiteering etc.

Since 1930's the legislature has from time to time brought various legislations to redress specialized aspects of consumer interest. For example Sale of Goods Act, 1930, The Standard of Weights and Measures, Act, The Drugs Control Act, 1940, Prevention of Food Adulteration Act, 1954, The Essential Commodities Act, 1955, The MRTP Act, 1969 and so on. In addition to these legislations the Indian Penal Code, 1860 and the principles of Common law contained in the Law of Torts are also applicable.

All the above legislations have not able to protect the interest of consumer. To obtain consumer justice under these legislations, the consumer has to move from pillar to post. Litigation involved high cost and proved to be troublesome to small consumer. The procedures were complex, cumbersome and time consuming and the redressal available was limited in scope. These legislations failed to protect the rights of average consumer. To a large extent they created confusion and chaos. In this complex scenario the role of court in protecting consumer rights cannot be over emphasized. They have proved responsive by widening the concept of locus standi and considerably allowing any individual or organization to go to court in the larger interest of the society. Even small courts have given wide ranging judgments relating to Public Interest Litigation. None of these legislations provided for any remedy to the consumer enabling him to seek redressal against the offending parties. He was left high and dry with only the choice of instituting a civil litigation. Litigation before the civil court is time consuming, expensive and causing enormous delay. However the ordinary consumer is not in a position to approach these courts.

The growth of the law on the protection of the consumer has been haphazard and piecemeal. The provisions scattered over a number of unrelated statutes, did not ensure adequate protection to consumer in a particular situation. Consumer movement remained confined to the elite section and failed to mobilize the masses who were the real victims of the system. Various legislations and regulations permitting the State to intervene and protect interest of the consumer have become a heaven for unscrupulous ones, as the enforcement

machinery either does not function or it functions ineffectively and inefficiently.

The government is trying to provide legal umbrella to safeguard the interest of consumer, but these legislations help us to know the exact nature and extent of dishonesty. The legislation also provides the punishment for such dishonest practices, and the Authorities with their powers, to whom the consumer can approach for the redressal of grievances. A close observation of the different enactments reveals that the procedure is so complicated that it is out of the reach of common man to understand and think of taking shelter under these laws. This is because of their ignorance, illiteracy, weak economic position, time consuming and different institutional structures, in redressing the grievances.

To improve this situation by removing the difficulties faced by the consumers and protecting the ill-informed consumers, the Parliament enacted an important legislation namely the Consumer Protection Act, 1986, which was amended several times and recently in 2002. This enactment is the first step for safe-guarding the interest of consumer community. Legislation for the benefit of consumer has been sporadic and as a part of social welfare legislation. This Act was enacted as a supplementary of the present laws that heralded a new era in consumer protection in India.

The Consumer Protection Act has opened a new era in the field of business. It imports new dimensions to the concept of law as a tool of social engineering. Legislation, however perfect, is futile unless it is enforced. The Consumer Protection Act, which was passed by the Central Government in 1986, brought a significant change in the prevailing situation. This Act made a new beginning and was a step forward in the establishment of egalitarian consumerism. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. The main objective of the Act is to promote and protect the rights of consumer This Act recognizes various rights of consumers such as right to safety, right to information, right to redress, right to representation, right to choice and right to consumer education. The Act envisages the formation of the Consumer Protection Councils at the Central, State and District levels. The main object of the Councils is to promote and protect the rights of the consumers.

This Act also provides for setting up of three tier quasi judicial authorities for redressal of consumer disputes at District, State and National level. The main thrust of the Act is to provide simple, speedy and inexpensive redressal to consumer grievances. The aim of the Act is better protection of consumer by way of settlement of consumer disputes. The dispute settlement machinery has got the power to penalize those who do not comply with the orders. It is significant to note that the Act recognizes the role of the consumer organizations in assisting the consumer in seeking justice through a nationwide network of consumer disputes. The Act applies to all goods and services in public, private or the co-operative sector. Thus, the consumer can initiate an action under the Act against the defective goods or deficient services rendered even by the public sector or government undertaking such as Railways, Telephones, Airlines, Banks, Insurance, State Electricity Board, Hosing Development Authority, etc. Since the enactment of Consumer Protection Act, 1986 there has been a demand to make the Act more effective and purposeful. There has been a feeling that the Act was drafted in hurry and needs improvements. This Act was amended from time to time for the better protection of consumer in the year 1991, 1993 and recently 2002. Changes introduced by these amendments will work effectively in the life of consumer by protecting his rights. In case of grievance, it provides an appropriate remedy that is compensation or penalizing the seller or trader.¹⁰

In modern economy consumers play a crucial role. They are the pillars of the economic structure and form the largest economic group in any country. Most of the economic activities of the government and non- government agencies are aimed at pleasing the consumers.

Thus consumption is the pivot around which all the activation moves. So consumer protection entails protecting the rights and interests of the consumer in matter of availability, quality, quantity and price of goods and services. In fact it promotes the concept of value for money and enhances the trust between the customer and the producer or provider. Consumer protection policy recognizes what consumers often face the imbalances in economic terms, educational levels and bargaining power. The consumers should have the right of access to non-hazardous products as well as the right to promote just, equitable and sustainable economic and social development. The consumer protection is a serious matter in developed

¹⁰ 1Supra Note 9, pp 20-28.

and developing countries.

The objective of business depends upon many factors. It depends largely on the socio-economic, political set up of the country. Hence, every business organization is required to set its objectives keeping in view the socio-economic and political structure of the society. The objective of business generally may be economic and social in nature. It is quite natural that earning profit is one of the main aims of business. Without profit, no business can survive in the society. Despite the profit earning objective of a business, the business also has same root of social obligation towards different groups of the society. One of the most important variables that determines the success and failure of a business is consumer¹¹.

The Act a comprehensive legislation came into force on April 15, 1987 except chapter III which came into operation from July 1, 1987, the provisions of the Act are in addition to and not in derogation of the provisions of any other law for the time being in force. The provisions are supplementary in nature and have no overriding effect. The Act envisages the formation of the Consumer Protection Councils at the Central, State and District level. The main objective of the councils is to promote and protect the rights of the consumers. These include the right to be informed about the quality, quantity, potency, purity, standard and price of goods and services; the right to be protected against marketing of goods and services which are hazardous to life and property; the right to be assured access to variety of goods and services at competitive prices; the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation; the right to be heard; and right to be consumer education¹².

The Consumer Protection Act, 1986 provides three tier quasi-judicial machinery at the National, State and District level for redressing consumer grievances. It is significant to note that the Act recognizes the role of the consumer organizations in assisting the consumer in seeking justice through this nation wide network of consumer disputes redressal agencies as envisaged under the Act. The role of the consumer organizations has also been recognized in other legislation like the Standards of Weights and Measures Act. Standards of Weights and Measures (Enforcement) Act, the Drugs and Cosmetics Act, the Prevention of Food Adulteration Act, the Essential Commodities Act. The Agricultural Produce (Grading and

¹¹ Deepa Sharma, Consumer Grievance Redressal Under the Consumer Protection Act, 1986 (Delhi: New Century Publication, 2002)p1.

¹² V.K. Agarwal, Consumer Protection Law and Practice, (Hyderabad: Gogia Law Agency, 2009) p12.

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Act, and the Monopolies and Restrictive Trade Practices Act.

The Act applies to all goods and services in private, public or the co-operative Sector. Thus, the consumer can initiate an action under the Act against the defective goods or deficient services rendered even by public sector or government undertakings such as, Railways, Telephones, Airlines, Banks, State Electricity Boards, state Roadways, etc.

The Act was first amended by the Consumer Protection (Amendment) Act, 1991. The amendments came into force w.e.f. June 15, 1991. The Amendment Act was to repeal and replace the consumer protection (amendment) Ordinance, 1991 (Ord. 6 of 1991). The amendment Act made it clear that the proceedings of the district forum may be conducted by the President and one member and not necessarily by all members. The amendment Act inserted new provisions regarding the filling up of the vacancy in the office of the President, and also the vacancies or defects in appointment not to invalidate the orders of the District forum, The State Commission and National Commission.

Each one of us is a 'Consumer right from the day child comes in the womb till the day one goes to the grave like from the milk of child and the coffin for a dead body is the consumer of the some commodity taking of the India with worlds second largest population here the issues relating to consumer effects the entire million people since everyone is a consumer in one way or other. The consumer has to be aware of his rights and play a key role. This is possible through consumerism, it referee to wide range of activities of government, business and independent organizations designed to protect right of the consumer as envisaged in Consumer Protection Act, 1986 and ensuring right standards for the goods and services for which one makes a payment.

The redressal agencies play an active role in providing relief to consumers, Each District forum and above the District Forum is the State Commission Established in each State capital and above that is national commission established in Delhi. From national commission we can file an appeal to Supreme Court with regard to be territorial jurisdiction of the Reddressal Agencies. The complaint can be instituted within the limit of opposite party or each of opposite parties or any of the opposite parties resides or carries on business or has a branch office or personally works for gain or the cause of action wholly or in part arises.¹⁷

1.2 OBJECTIVES

Consumer protection is nothing but safeguarding the interest of consumer against the abuses of marketers. Among the variants of consumer distress, one which oppresses most countless millions of our common men, is the abuses in consumer goods, rampant adulteration, unabashed substitutes and supplies and glaringly short weights and measures, food grains, condiments, edible oil, flour and powders, liquor and drugs, chemicals, petroleum products, cement, fertilizers and animal feeds are a few of the items one can pick up from the endless catalogue of goods hit by the evil. The Government of India has brought out a number of statutory regulations to protect the consumer interest so far. All these aimed at controlling production, supply distribution, quality, purity and pricing of several goods and services and consumers should be informed about the availability of the goods and cautioned on unfair trade practice resorted to by unscrupulous traders and producers of goods.

“Justice delayed” means “Justice denied”. Consumer does not want to envy their justice in the form of getting justice delayful. Presently there are about twenty laws meant for protecting the consumers directly or indirectly. The latest addition to the armory is the Consumer Protection Act, 1986. This is hailed as a panacea for all consumer ills. The Consumer Protection Act, which is social welfare legislation, is a milestone in the history of socio- economic legislation in the country and the main purpose of this Act is to protect consumer from exploitation by unfair trade practices and to provide a speedy, simple, timely and inexpensive redressal to consumer disputes and complaints.

So, it was felt important to study on the above subject matter. Through this study, it is tried to show that to what extent Consumer Protection Act, 1986 is favorable to consumers and how far Redressal Agencies eradicates the evil activities which are oftenly adopted by the business people to exploit the consumers.

Study focuses on efficacy of the Redressal Agencies in general and Bellary District Forum in particular and its findings on complaints filed by consumers in relation to defect in goods, deficiency in service, unfair trade practice and restrictive trade practice. Study makes critical evaluation of the working conditions of Redressal Agencies in general and District Consumer Forum Bellary in particular and study also attempts to give appropriate suggestions to concerned authorities to take suitable steps in improving the working conditions of the said forum and it also helps to consumers to know their rights.

1. To examine whether the objectives of Consumer Protection Act, 1986 have been achieved.
2. To understand and analyze the different kinds of remedies available under the Consumer Protection Act, 1986.
3. To examine whether Consumer agencies which have been set up under Consumer Protection Act, 1986 are really protecting the interest of the consumers.
4. To evaluate whether Bellary District Consumer Forum is equipped to protect the interest of the consumers.
5. To analyze the working method of Bellary District Consumer Forum.

1.3 HYPOTHESES

1. The objectives of Consumer protection Act, 1986 regarding speedy justice and execution of the order have not really been achieved in practice.
2. Time factor regarding filling of the complaints is not satisfactory to the consumers.
3. Formalities for filing the complaints before the forum are lengthy and complex.
4. Separate Consumer Dispute Redressal Agencies which have been set up for redressing consumer grievances are not much beneficial to consumers.
5. Bellary District consumer Forum is not accessible to consumers to get their remedies.

1.4 STATEMENT OF THE PROBLEM

In India as in many other countries the trading community is well organized. They have powerful organizations to secure their interest. Whereas the consumers in India are unorganized. Consequently, the exploitation to which the consumer is subjected to by the organized class continues unchecked. Under the prevailing social conditions, consumer needs to be protected against the sale and supply of bad, substandard and duplicate consumer products in the market, non-supply and short supply of consumer goods, unwarranted and excessive pricing and the false and misleading advertisement camouflaging the truth. In other words, he needs protection from being fleeced and cheated by the producer, the whole-seller and the retailer. United effort on the part of the consumer to protect their interest and guard against the unscrupulous activities of the trade and business has become almost impossible.

The one of the major problems is being faced by India is to the effective protection of the interest of the consumers. The present study is essential to tackle the problems of effective protection of interest of consumers. An appropriate attempt is made to understand and analyze the working condition of the District Consumer Forum, Bellary in safeguarding the rights of the consumers of Bellary District. Taking into account the recent developments in the field, measures taken by the Government to protect the consumers from exploiting by trading community such as producer, the whole seller and the retailer are also examined. The following are some of the problems of the study:

1. Whether the objectives of the Consumer Protection Act, 1986 have really been achieved?
2. What kinds of remedies are available to aggrieved parties under the Consumer Protection Act, 1986?
3. Whether the interests of Consumers are really being protected by setting up of consumer redressal agencies?
4. Whether Bellary District Forum is equipped to redress the consumers?
5. How many cases were filed, disposed and pending before the District Consumer Forum, Bellary till April 2014?
6. How many cases were disposed in favour of Consumers and against the consumers?
7. What kinds of disputes filed by consumers in District Consumer Forum, Bellary?
8. How much time did the District Consumer Forum, Bellary take to dispose the complaint? And the time taken by the District Consumer Forum is proportionate to the time prescribed under the Act or not?
9. What are findings made by the Bellary District Consumer Forum?

1.5 REVIEW OF LITERATURE

In the area of present study many researchers have not conducted as the problem one chosen for the study is new and emerging area. So available literature in the form of research reports are very meager. However, the study relating to working method of District Consumer Forum, Bellary is studied with the help of primary sources in the form of unpublished office records, questionnaire method and informal interviews with the president and other members were held on the various aspects such as the nature of complaints, time period of settlement of

the case, type of relief granted to obtain their true opinion.

A set of interview schedules were used. The schedules were administered carefully through personal interview with the respondents.

On the basis of the data obtained through interviews and other methods, the data is analyzed and examined to find out how far the redressal agencies are successful in protecting the interest of the consumers. For analyzing the data so collected simple tools of statistical analysis were worked out to draw reliable conclusions from the cases under study. Secondary sources have also been used in the form of text books, articles, journals etc. for the study.

1.6 SCOPE OF THE STUDY

The study is designed to identify problems relating to working method of the Bellary District Consumer Forum. To suggest appropriate improvements for toning up the work of this redressal agency, after analyzing the facts and taking into account the views of the functionaries, consumers and some knowledgeable persons associated with the law of consumer protection.

Since the study seeks to investigate the problems relating to organizational setup and working of the redressal agency, the aspects included in the study cover national and global view of the consumer

protection movement. Moreover, the development of the policy of consumer protection, the organizational structure, personnel and procedural aspects adopted by the redressal agency and perceptions of consumers in context to the redressal agency in Bellary.

CHAPTER -2

HISTORY OF CONSUMER PROTECTION ACT

Consumer Protection is a concept that was first introduced by John Fitzgerald Kennedy, the 35th President of the United States on 15th March 1962. He spoke about this concept in a special speech to the Congress. His speech stressed protecting the consumer's interest. Kennedy also spoke about the four basic rights of the consumer, namely:

1. Right to Safety
2. Right to be Informed
3. Right to be Heard
4. Right to Choose.

His discussion sparked a deliberation and subsequent legislation to protect consumers. 15th March is celebrated as World Consumer Rights Day, taking inspiration from Kennedy.

Another important name in the international sphere while discussing consumer protection is Ralph Nader. He is the author of the book "Unsafe at Any Speed" which indicates the faulty design of automobiles. The book led to a series of landmark laws that have prevented multiple motor vehicle accidents thus curbing deaths and injuries. He revolutionized Consumer Protection in the United States of America.

In order to understand the development of consumer protection in India, it is important to trace the beginnings of the formation of the concept.

Ancient India

Ancient India witnessed the supremacy of the Vedas as a religious text, coming from God himself. The Vedas was strictly followed by the majority in the ancient Indian society. Apart from the Vedas, this period also gave rise to the Code of Chanakya, Manu Smriti, Narada Smriti and so on. These ancient codes contained provisions which sought to safeguard the interests of the consumer, with the aim of consumer safety. The punishment was also granted when the consumer-related provisions were gone against.

Among the Dharmas, the most authoritative texts are:

- Manu Smriti
- Yajnavalkya Smriti

- Narada Smriti
- Bruhaspati Smriti
- Katyayana Smriti.
- Among these, Manu Smriti was the most influential.

Manu Smriti

Manu Smriti was all about the social, political and economic conditions of the society in the ancient times. It stressed on ethical trade practices, punishing those who were unfair to the consumers. Its prescribed code of conduct extended to adulteration as well, which is mixing of a commodity with another, resulting in impurity. All goods had a market price or a sale price, as set by the king. All weights and measures were inspected every six months, and the results of these inspections were kept a record of. Such efficient means of consumer protection has developed in such an early stage of settlement is noteworthy.

Kautilya's Arthashastra

Kautilya's Arthashastra clearly defined laws regulating weights and measures. A penalty was proposed traders who indulged in adulteration of goods namely grains, medicine, perfumes, salt and sugar. Arthashastra describes the role of the State in regulating trade and its duty to prevent crimes against consumers.[1] Black marketing and unfair trade practices were strictly looked condemned by Kautilya. There were punishments prescribed for different types of cheating, which were stringent. These fines could be as severe as cutting off the cheater's hand. The rights of the traders were also well protected by the Arthashastra.

The Arthashastra was created during Chandragupta's period. This period witnessed healthy trade practices where traders were to possess a license to sell, which was given on permission. The king granted a margin of profit to sellers while fixing sale prices. The State was responsible for protecting the consumers against unfair prices and fraudulent transactions. Such acts were punishable, including smuggling and adulteration, especially of food. Consumers were ensured this protection by an easily accessible justice system through different sets of courts. Providing justice was the duty of the king.

Medieval Period

A shift in the time period of India from ancient to medieval resulted in a focus on Islam as a religion and the laws of Islam. The Holy Quran, the main text of the Muslims, also stressed the protection of consumers. The Quran has verses that indicate that the use of unjust weights and measures is unacceptable. During the period of the Sultanate, local conditions determined the price of commodities.[2] Hence, both the Hindu and the Muslim scriptures that were being used together by the kings of different states of India promoted consumer protection.

Like the Hindu texts, the Quran also contained various rules and regulations for protecting consumers from the unfair and unjust malpractices indulged in by sellers. During the rule of Alauddin Khalji, the market had been controlled by various injunctions and prescriptions. The king fixed prices of the grains. There was a strict price control mechanism implemented in the market. Different shopping areas were established for different goods, namely

Grains

Cloth, sugar, butter, oil and so on

Horses, slaves and cattle

Miscellaneous commodities.

Shopkeepers were also punished for under weighing their goods.

Modern Period

In the modern period, the previous traditional legal systems established by Indian kings were replaced by new modern laws. The British introduced the English Common Law in India along with other legislative measures for the public and in turn, the consumers.

Some of these legislations are as follows:

The Indian Contract Act, 1872

The Sale of Goods Act, 1930

Indian Partnership Act, 1932

The Agricultural Produce(Grading and Marketing) Act, 1937

The Drugs Act, 1940

The Drugs and Cosmetic Act 1940

These legislations proved to be immensely effective in saving the interests of the consumers during the time of the British. The rules were now uniform across the country and not arbitrary to the opinions of the various kings of the Ancient and Medieval periods.

Post-Independence Period

When India attained independence, it adopted the Anglo-Saxon system of administration of justice. Hence, the previous legislation that was established by the British continued to function in independent India.

Along with the existing legislation, the country was on its path to more laws through the creation of the Indian Constitution and its adoption in 1950. Due to the democratic nature of the Constitution, the prime focus of the laws was the benefit of the general public, who were also consumers.

Certain implications of the Indian Constitution that may apply to consumers are as follows:

Article 14 of the constitution implies equality before the law and equal protection of laws. This results in manufacturers, producers, traders, sellers and consumers having an equal position before the law.

Article 39 has two clauses, (b) and (c), according to which the state is bound to direct its policy to ensure the distribution of the ownership of the material resources of the society. This distribution should be done to serve the common good.

According to Article 43, the state must strive to develop an economic organization or to make legislation in order to secure a decent standard of life to all the workers. These workers are the ones who constitute the bulk of the consumers.

The new legislation enacted after Independence are as follows:

- The Prevention of Food Adulteration Act, 1954
- The Essential Commodities Act, 1955
- The Monopolistic Restrictive And Unfair Trade Practises Act, 1969
- The Standard of Weights And Measures Act, 1976
- The Bureau of Indian Standards Act, 1986

- The Consumer Protection Act, 1986
- The Trade Marks Act, 1999
- The Competition Act, 2002

The Consumer Disputes Redressal agencies- the National Commission, the State Commission, and the District Forum soon started working and has rapidly resulted in quick action taken against those who exploit the consumers.

The efficient justice system in the sphere of consumer protection that we see today is a result of all these previous developments that have taken place in the past. This advanced system and its roots must be appreciated.

CHAPTER -3

INTERNATIONAL CONSUMER PROTECTION LEGISLATIONS

Internationalization of Consumerism aims at setting minimum objectives which consumers everywhere should be entitled to expect will be applied. The International Organization of Consumers Union is the most effective instrument through which consumerism has been internationalized. There has been an increasing recognition of the international implications of consumer law and policy. This recognition is reflected in the works of many international organisation United Nations General Assembly- Consumer Protection Resolution¹³ says that The Consumer Protection measures should essentially be concerned with the following –

- (a) The protection from hazards to health and safety.
- (b) The Promotion and Protection of Economic Interests.
- (c) Access to adequate information.
- (d) Control on misleading advertisements and deceptive representation.
- (e) Consumer Education
- (f) Effective Consumer Redress.

In his Report of 27.5.1983.¹⁴ The then Secretary General of United Nations in the meeting of Economic and Social Council International Cooperation and Co-ordination within the United Nations System-Consumer Protection, said that, The Consumer Policy is no longer be viewed solely at the national level. Since the World Economy has become so interdependent, National Consumer Protection policies have now acquired international dimensions. This is mostly due to the international character of business practices, in that the marketing of goods and services is often done on a multinational basis, and in many cases by Transnational Corporations, and also to the fact that problem encountered by consumers are often not exclusive to any one country.

In the same report, the Secretary General observed that- Finally, it may be noted that international co-operation with regard to consumer protection is needed because the development of a consumer protection policy no longer requires that measures be taken only at the national level. Since the world economy has become so interdependent, national consumer

¹³ No. 39/248, 9.4.1986.

¹⁴ . p. 5.

protection policies have now acquired international dimensions. This is mostly due to the international character of business practices, in that the marketing of goods and services is often done on a multinational basis and, in many cases, by transnational corporations, and also to the fact that problems encountered by consumers are often not exclusive to any one country. As a result, measures adopted to protect consumers in one country can have implications for consumers in other countries. For instance, consumer protection measures, such as national standards, intended to protect consumers in one country, can become barriers to international trade by making it more difficult for consumers in that country to choose among various goods and to purchase those goods at the lowest possible price, and they may also affect consumers in exporting countries by depriving them of the income generated by exports. Another area where international co-operation is required is the exchange of information on banned and severely restricted products in order to enable importing countries to protect themselves adequately.

(A) The United Nations Guidelines for Consumer Protection

On April 9, 1985 the General Assembly of the United Nations adopted by consensus i.e. without a formal vote and with no objection, a set of general guidelines for consumer protection and requested the Secretary General to disseminate them to governments and other interested parties¹⁵.

The document annexed to the General Assembly's resolution is divided into the following four sections

- (i) Objectives.
- (ii) General principles.
- (iii) Guidelines
- (iv) International co-operation.

The guidelines themselves cover seven areas. These are

- (a) Physical safety
- (b) Promotion and protection of consumer's economic interests.
- (c) Standards for the safety and quality of consumer goods and services.
- (d) Distribution facilities for essential consumer goods and services.

¹⁵. Resolution No. 39/248, 9 April 1985 (Consumer Protection).

(e) Measures enabling consumers to obtain redress.

(f) Education and information programmes.

Governments are urged to 'develop, strengthen, or maintain a strong consumer protection policy, taking into account the Guidelines" set out later in the document. The important point is made that,' In so doing each Government must set its own priorities for the protection of consumers in accordance with the economic and social circumstances of the country, and the needs of its population, and bearing in mind the costs and benefits of proposed measures. The document clearly does not accept any view that consumer protection is an inappropriate luxury for developing countries, a view now generally rejected. There is now widespread acceptance of the need for an effective consumer policy as an integral part of the development process, while recognising that priorities in developing countries differ in important respects from those of the more developed countries. Careful attention to the process of establishing appropriate priorities will be all the more important in lesser developed countries where limited infrastructure and resources are likely to severely limit what can practically be achieved in the immediate future. This problem was emphasised at the First Asean Seminar on Consumer Protection held in Manila in 1980. This by no means indicates that approaches and techniques adopted elsewhere will be irrelevant; it rather indicates that each country must carefully assess its own priorities for action in the light of its own special needs and circumstances. One additional particular problem which will often arise is that the enforcement of strict standards may be perceived by policy makers as conflicting with government policies in regard to economic development and encouragement of the development of small indigenous industries.

These guidelines are the initial attempt to create an international framework within which National Consumer Protection Policies can be worked out. E. Peterson, thus wrote¹⁶. In sum, then, for the first time since its formation 40 years ago, the world's most representative international body, the General Assembly of the United Nations, has agreed on the principles, the common understanding world-wide, of what constitutes basic, fair and sound consumer protection standards and measures. And in the case of the consumer guidelines it has done this unanimously. That is the main significance of the Guidelines. In a world where double standards persist in international trade different safety measures, warnings, quality standards and even different ethics for different markets are all too common the guidelines represent a

¹⁶ The United Nations and Consumer Guidelines, p. 351.

solid new basis for consumer participation to make the marketplace safer and more responsive to consumer needs wherever that market-place is located, rich country or poor.

The previous outline of international activities indicates that concern over consumer protection is no novelty for the United Nations. During the debate on earlier drafts one criticism made was that much of the guidelines would result in the United Nations involving itself in matters which are essentially within the domestic jurisdiction of states and that it should focus on its basic role as peace keeper. It is true that the first purpose of the United Nations set out in its charter is to maintain international peace and security and that it is also provided that nothing in the charter shall authorise the UN to intervene in matters which are essentially within the domestic jurisdiction of any state. However the view just cited gives insufficient regard to widespread recognition to the fact that consumer policy issues can no longer realistically be conceived as divorced from their international context. Such policy is ultimately concerned with basic issues of economics and social justices (especially in the context of the right of all to physical safety and a decent standard of living). A further purpose of the United Nations, which it is suggested fully justifies activities such as the adoption of the guidelines, is as are as follows:

To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. Moreover, such activities are ultimately not divorced from the goal of furthering world peace, as indicated in article 55 of the charter. It states:

With a view to the creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote-

- (a) higher standards of living, full employment, and conditions of economic and social progress and development
- (b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation and
- (c) universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

(B) The Proposed Transnational Corporations Code

The United Nations Guidelines seem likely ultimately to be supplemented by the provisions of the proposed United Nations Code of Conduct on Transnational Corporations which has been under development since 1974.

The United Nations Centre on Transnational Corporations has described the objectives of the code as follows-

The United Nations Code of Conduct on Transnational Corporations is meant to provide a stable, predictable and transparent framework that would facilitate the flow of resources across national boundaries and thereby enhance the role of foreign investments in economic and industrial growth. At the same time, the Code is meant to minimize any negative effects associated with the activities of transnational corporations. The Code seeks to achieve this by setting out, in a balanced manner, the rights and responsibilities of transnational corporations and Governments. Its twin-focus on the operations of transnational corporations and their treatment by Governments is intended to meet the concerns of both host and home countries, as well as transnational corporations. As a result, the Code would not only contribute to a reduction of friction and conflict between transnational corporations and host countries, but would also enable the flow of foreign direct investment to realize its full potential in the development process.

Most of the provisions of the code have now been agreed upon ad referendum, but some important and controversial issues remain outstanding. The code contains, inter alia, provisions designed to protect the public relating to environmental protection, disclosure of information on corporate activities to the public in the host country, and respect for the social and cultural objectives and values of and respect for human rights in the host country. Of most immediate concern here are the following very important provisions on consumer protection.

Transnational corporations shall/ should carry out their operations, in particular production and marketing in accordance with national laws, regulations, administrative practices and policies concerning consumer protection of the countries in which they operate. Transnational

corporations shall/ should also perform their activities with due regard to relevant international standards, so that they do not cause injury to the health or endanger the safety of consumer or bring about variations in the quality of products in each market which would have detrimental effects on consumers.

Transnational corporations shall/ should in respect of the products and services which they produce or market or propose to produce or market in any country, supply to the competent authorities of that country on request or on a regular basis as specified by these authorities all relevant information concerning-

Characteristics of these products or services which may be injurious to the health and safety of consumers including experimental uses and related aspects

Prohibitions, restrictions, warnings and other public regulatory measures imposed in other countries on grounds of health and safety protection on these products or services.

Transnational corporations shall/should disclose to the public in the countries in which they operate all appropriate information on the contents and, to the extent known, on possible hazardous effects of the products they produce or market in the countries concerned by means of proper labelling, informative and accurate advertising or other appropriate methods. Packaging of their products should be safe and the contents of the product should not be misrepresented.

Transnational corporations shall/ should be responsive to requests from Governments of the countries in which they operate and be prepared to co-operate with international organizations in their efforts to develop and promote national and international standards for the protection of the health and safety of consumers and to meet the basic needs of consumers.

It is important to note that the consumer protection provisions of the code had been agreed upon prior to the adoption of the Guidelines on Consumer Protection. It is also noteworthy that although in general the guidelines are addressed to governments, many of the provisions of the code (including those on consumer protection) are addressed directly to transnational corporations. It is suggested that the provisions should be seen as complementing those of the

guidelines. In particular, where regulatory action affecting a transnational corporation has been taken on health and safety grounds in one country in which the corporation operates, the code would require that it should on request make relevant information available to governments in other countries in which it operates, and that it should also make certain information available to the public in those countries. This will be of particular importance where goods produced in a country with strong product safety regulations are marketed in countries which have less adequate regulatory system either because of inadequate legal provisions or because of lack of sufficient enforcement resources. This raises the whole issue of "dumping" of dangerous products and double standards in marketing an issue which has been the subject of much attention in recent years. E. Paterson, thus wrote that in the case of the Bhopal tragedy... the Code would have established disclosure and environmental standards which possibly could have prevented or at least mitigated the damages and its rules on jurisdiction over transnational corporations would have clarified and helped to resolve this issue¹⁷.

D.J. Harland, thus concludes that.¹⁸

It seems clear that there does not exist today an international law of consumer protection, though it is possible that some recent activities will in time lead to such a development. At least in the short term, the documents referred to in this paper do not as such constitute binding rules of international law, and indeed insistence on their being adopted in the form of binding rules of international law, and indeed insistence on their being adopted in the form of binding treaties would have ensured that they were not adopted in any form. Quite apart from the controversial question as to the effect on international law of resolutions of the General Assembly of the United Nations, the terms of the Guidelines for Consumer Protection indicate that the document was intended to make recommendations for action by governments rather than to be mandatory in nature. The guidelines are intended, inter alia, to 'assist' countries in achieving or maintaining adequate protection for their population as consumers and the principles set out consistently speak of actions which governments 'should' rather than 'shall' take. The emphasis on the responsibility of individual countries for implementing consumer protection policies appropriate to their own needs also underscores the fact that the guidelines are not legally

¹⁷ . IOCU and the UN Draft Code of Conduct on Transnational Corporations, IOCU News Letters, No. 162, April 1987

¹⁸ Some International Dimensions of Consumer Law and Policy. Journal of Indian Law Institute (1987) Vol. 29 : 4. pp. 463-67.

binding on member states of the United Nations. The WHO Breast milk Substitutes Code was deliberately adopted in the form of non-binding recommendation and the FAO Pesticides Code is expressly stated to be a voluntary code. Although the form of the proposed Code on Transnational Corporations has not yet been finally agreed it is not likely that it will be adopted as a binding instrument.

However, even though guideline and codes of conduct for international business operations may not generally be binding as a matter of international law, they are likely to have important consequences which should not be ignored by lawyers and others concerned with international trade issues. Depending on the extent to which their principles come to be respected in practice, they are likely in time to affect the terms on which trade, especially international trade, is conducted. The very fact of their adoption involves an important recognition by governments of ethical and political commitment, which may result in considerable extralegal pressure being effectively brought on companies to comply. This is particularly likely to result where voluntary groups actively undertake monitoring programmes and publicise cases of non-compliance, and to be enhanced where the instrument itself makes provision for continuing monitoring and review by the responsible international organisation. Such codes and guidelines may therefore come to be generally seen as part of a growing body of international agreements which could be recognised as constituting a core of so-called 'soft law' relating to consumer protection in the international sphere. An important factor in this context is the different levels of specificity found in the various documents. The principles of the UN Guidelines for Consumer Protection are, because of the aim of the document, set out in quite general terms, whereas the Breast-milk substitutes Code and the Pesticides Code, having a much more specific focus, set out very detailed provisions on such matters as labelling and advertising.

It is possible that the recognition of the international aspects of consumer policy may ultimately lead to the development of multi-party binding treaties dealing with particular problem areas, though any such development on a widespread level is not at all likely in the immediate future. An example of a possible future development is the Council of Europe, European Convention on Products Liability in Regard to Personal Injury and Death. Directives of the European Economic Community on consumer protection matters are generally binding on member states,

but this is explained by the special nature of the EEC. In the meantime, awareness of the work of international agencies is of importance in various ways to lawyers working in the field of consumer protection.

One final point relates to the role which non-binding codes of conduct may have on courts applying domestic law. In some cases courts applying broad general clauses prohibiting unfair marketing practices may find guidance in industry codes of conduct (such as advertising codes) as to what is not acceptable conduct. Codes may similarly influence courts applying general standards used in the law of obligations, such as 'good faith', 'public policy' and 'negligence'. Further, courts exercising a statutory power to set aside unfair terms in consumer contracts may well find guidance in industry codes which deal with the content of such contracts. Where a domestic industry code is generally adhered to in an industry and widely respected as an effective code, a court may well find that its provisions are a strong indication (though not of course binding on it) of what is acceptable business conduct. Where provisions as to acceptable behaviour are laid down in international documents which have been widely supported by governments, the potential for direct influence on development of the law by courts is obvious.

Consumerism is based on the Principle of "CAVEAT VENDITOR". This rule mandates the seller of the goods to be aware about the quality of the goods sold. The goods sold by the seller must be a standard goods and according to the terms and conditions of the sale. Non conformity with the quality will be within the mischief of Consumer Protection Laws. This rule of "Caveat-Vinditor" has internationalized the spirit of co-operative activities at a governmental level on consumer policy matters.

Professor D.J. Harland, thus writes that.¹⁹ There are many examples which could be cited of international co-operative activities at a governmental level on consumer policy matters. The commission of the European Economic Community has been active on a number of matters such as the approximation of laws concerning misleading advertising and strict liability for injury caused by defective products. Much very useful work has been undertaken by the OECD

¹⁹ Recent Trends in Consumer Protection Law in Europe : A Comparative Study. The Indian Journal of International Law, Vol. 29, 1989, pp. 375-84.

Committee on Consumer Policy, especially in relation to product safety matters. On a broader sphere important developments include; (a) the 1981 World Health Organisation International Code of Marketing of Breast-milk Substitutes; (b) the 1985 Food and Agriculture Organisation International Code of Conduct on the Distribution and Use of Pesticides; (c) the work in the area of food of the FAO/WHO Codex Alimentarius Commission; (d) the United Nations General Assembly resolution of 17 December 1982 on protection against products harmful to health and the environment and subsequent development of the United Nations consolidated list of products whose consumption and/or use have been banned, withdrawn, severely restricted or not approved by governments; and (e) the work of a number of international agencies (to a large extent preceding, but with enhanced urgency following, the Bhopal tragedy) on such matters as trade in, and use of, chemicals and pesticides and precautions against industrial hazards.

Of course, it is not just governments which are concerned with international co-operation on consumer protection matters as shown by the increasing activities of consumer and other organisations in a range of coalitions on hazardous products, wastes and technologies) Health Action International, Pesticide Action Network, Action Groups to Halt Advertising and Sponsorship of Tobacco, International Baby Food Action Network and the no-More-Bhopals-Network.

Sharp increase in the production of durable consumer goods, unleashed practical 'helplessness' and 'insecurity' of the consumers vis-avis producers and sellers of such goods who joined hands in numerous producers/ seller unions. Facts of deception of the consumer, misleading advertisements, production and marketing of products that posed health hazards, artificial fixation of prices of consumer goods, etc. were revealed by the press. These facts helped to motivate public opinion in the countries concerned in such a manner that a strong social movement, sometimes dubbed 'consumerism' for protection of consumer interests gained strength. Very soon consumer protection found place in the manifestos of different political parties, consumer societies trade-unions etc. It is not out of place to mention the Message of the US President John F. Kennedy to the Congress in 1962 in which the President outlined the fundamental postulates of US State Policy towards consumer protection. According to these principles a consumer must be guaranteed the 'right to information', 'the right to security', 'the right to satisfactory choice' and 'the right to be heard'. Similar consumer rights were also

included in the First and Second Programmes on the Implementation of Consumer Protection Policy and Information adopted by the Council of Ministers of the EEC in 1974 and 1981, respectively.

(C) The United Nations Guidelines and the Implementative aspect

It is important to realise that the Guidelines are clearly not binding on countries as a matter of international law- their practical impact depends ultimately on the importance attached to them by governments. The terms indicate that the document was intended to make recommendations for action by governments rather than to be binding on them, and this is underscored by the emphasis placed on the responsibility of individual countries for implementing consumer protection policies appropriate to their own needs. Moreover, it recognises in numerous provisions that consumer protection is not a matter for governments alone and that the extent of mandatory government intervention in the marketplace is a matter for each country to decide.

The essential function of the Guidelines is to assist countries in providing a framework against which consumer policy can be developed and evaluated. They are valuable not only to governments, but also to consumer organisations as a starting point for their own work in making proposals for change. They were intended to be of particular assistance to developing countries, but their utility is certainly not so restricted. As the Australian National Consumer Affairs Advisory Council 1986, pointed out, "as consumer policy of its nature develops over a period of time there is always the possibility that for various reasons it will appear that there are gaps in coverage or that in some important areas policy is not as well developed as it might be". In other words, they may be seen as a blueprint for a comprehensive consumer policy, a checklist for evaluation of existing laws and policies and a starting point for new developments.

It is suggested that, as with any instrument of international policy, the Guidelines document should not be seen as static but rather as one that is open to supplementation over time as further experience is gained and new perceptions develop. There are some important areas which, perhaps largely for historical reasons, have traditionally usually been entrusted to government departments other than those responsible for consumer policy. No doubt this is why it does not deal with problems relating to the leasing or purchase of residential

accommodation, despite the fact that decent and affordable housing is one of the most basic of consumer needs. Likewise, it does not address, except incidentally, environmental issues, though it is important to bear in mind that in recent years there has been (undoubtedly influenced by the Bhopal disaster) increasing recognition that consumer and environmental concerns are often intimately related. It may be that ultimately it will be supplemented by additional recommendations covering these and other areas. Among the activities which the secretary-general has been asked to pursue by ECOSOC is the elaboration of specific guidelines in areas of emerging concern. It was suggested by the United Nations Seminar on Consumer Protection for Asia and the Pacific, held in Bangkok in June 1990, that specialised guidelines might be developed for the protection of vulnerable consumers, such as children and to deal with emerging issues such as financial services.

(D) Practical Aspects of Implementation

Numerous examples may be cited of both governments and consumer organisations welcoming the Guidelines and putting them to practical use in providing a framework which can assist in advancing consumer policy, in drawing on the experience of others and in avoiding unnecessary duplication of effort. The moral force of the Guidelines, representing basic principles accepted by nations generally through the decision of the General Assembly of the United Nations, is of particular importance in this context.

In Uruguay, a review was commenced of consumer legislation, taking the Guidelines as a starting point and subsequently a Consumer Defence Bill, based on the Guidelines, was presented in Parliament and a National Board of Consumer Protection established. Following consideration of the Guidelines, Ecuador established a National Consumer Protection Board. In Australia the Attorney-General requested the National Consumer Affairs Advisory Council to advise him on the extent to which consumer policy currently met the objectives set out in the Guidelines. The Council's report concluded that consumer policy in Australia largely met these objectives, but identified certain areas which deserved consideration with a view to improvement. A similar exercise has been undertaken or proposed by consumer groups in the Republic of Korea and Malaysia. The Guidelines were subsequently relied upon by the Australian Government when it introduced provisions in the Trade Practices Act forbidding, except with the consent of the relevant minister, the export of goods which do not comply with

consumer product safety standards or banning orders in force under the Act.

In March 1987 a regional consultation for Latin America and the Caribbean was held under the auspices of the UN to discuss implementation of the Guidelines. When adopting the document the General Assembly requested the UN to disseminate them as widely as possible. As part of this process, several governments in Latin America and the Caribbean requested the holding of a regional seminar on consumer protection, funding for which was made available by the United Nations Development Programme (UNDP) and donor governments. This meeting, held in Montevideo, was attended by governmental participants from 20 countries in the region and a considerable number of observers including representatives of consumer organisations, IOCU and the International Chamber of Commerce. The meeting recognised adoption of the Guidelines as an act of fundamental importance, recommended the governments adopt as soon as possible specific measures to implement the Guidelines effectively, and importantly, developed specific aspects which should be given priority. During one of the opening addresses the point was made that the area was one in which the benefits of technical co-operation could be clearly seen and that there was no need for developing countries to go through the steps already taken by other countries, both developed and developing. At this meeting a start was made towards the establishment of an informal communication network between the organisations of the region dedicated to consumer protection and the development and use the national and international data banks which can be employed in consumer protection.

(E) Regional co-operation

The Guidelines have provided a concrete stimulus for increased inter-national co-operation by consumer organisations, especially on a regional basis. The IOCU Regional Office for Latin America and the Caribbean prepared a Model Consumer Protection Legislation, based on the Guidelines and taking account of Latin American legal experience. The Model Legislation was intended as a framework for the drafting of national laws, and has been used as a guide by a number of countries in the region in their consideration of new legislation. It does not contain administrative or procedural provisions, these being left to be established by each country within the context of its own administrative and judicial organisation. In 1988 IOCU convened a conference for consumer organisations in the Caribbean but attended also by government

officials, which called for enactment of the Guidelines and established a continuing consultative committee for the Caribbean. In Africa, meetings for both English and French speaking countries were held and consumer groups were encouraged to monitor the extent of implementation of the principles of the Guidelines. An IOCU Consultative Committee for Africa was formed, which will work on the development of future common activities in the Continent and serve as a forum for the consumer movement. A further effect of the Guidelines has been their stimulus for increased and more systematic activity in the provision of training programmes, especially on a regional basis, to enhance, the effectiveness of those involved with consumer policy issues.

(F) The British Experience

In England developed during 13th and 14th centuries, the official dignitaries of the country—the lieutenants, the sheriffs and the justices of peace performed both judicial as well as administrative functions. On increasing their duties and jurisdiction in the 16th century, they were given supervisory jurisdiction with regard to the bridges, highways, lighting and cleansing of streets etc. The activity of consumer protection was confined only to control of prices of most needed commodities and protection from short supplies. The quality and quantity of bread, fuel, beer and meat were to be regulated by the crown through judicial institutions. However, the state of the consumer was not satisfactory and there was reported little or no observance of the law as regards size or price of bread and the people were deceived and oppressed. In early eighteenth century, making a mention of this fact about bread in a statute of 1709, the justices of peace and the mayors of boroughs were empowered to fix the weight and price of bread matching the prices of grain and require the bakers to mark the loaves with size and quality. To prevent contravention penalties were prescribed. This state of affairs continued till 1836 when the principle of competition propounded by Adam Smith was adopted to regulate these matters. The Adam Smith's proposition that "the interest of the producer ought to be attended to only so far it may be necessary for promoting that of the consumer" needs an appreciation. Any review of the situation in the free market economy would show that the producers should adjust themselves to consumer preferences. This truly marks the bottom-line of the phenomenon, but consumers being generally the weaker party, laws cannot be kept out of the consumer protection process. The protections granted to consumer under consumer law and

by the enactment of the statutes, like Consumer Safety Act, 1978 and the Consumer Protection Act, 1987, explains this fact.

(H) European Community

In European countries, the period of substantial development in the consumer protection laws began during 1960s and their main purpose was to prevent trading abuses caused due to imbalance of power between the ordinary persons and the producers of goods and service providers. In 1973, the consumer organizations supported the entry of Britain into the European Economic Community as they wanted to benefit from the common market and goods flowing freely into their markets. In 1975, a specific programme for consumer protection was approved by the Council of Ministers of the Community. In this respect, the President of the Commission of the European Communities observed that "we must make the community a practical reality in terms of every day life". The main objectives to be achieved by the 1975 programme included.

- (a) effective protection against hazards to consumer health and safety;
- (b) effective protection against damage to consumers economic interests;
- (c) adequate facilities for advice, help and redress;
- (d) consumer information and education;
- (e) consultation with and representation of consumers in the framing of decisions affecting their interests.

In 1981, the council of ministers of the European Economic Community, to attain harmonization in the common market and to unify the law relating to defective products adopted an important Directive, known as the EC Product Liability Directive, issued on July 25, 1985. By introducing the Directive, it was recognized that the various levels of protection afforded to consumers in different countries could distort the movement of goods in the common market and sought to remove this obstruction to free trade. So the Directive was issued to implement, throughout the common market, a strict liability system of compensation to consumers for death, personal injury or damage to property due to defects in products. The system introduced by the Directive, which supplemented the national laws, sought to prescribe minimum rights of consumers, upon which they could rely and the producers could be held responsible.

(I) Impact on India

In India, with respect to consumer protection, the phenomenal change and relevant legal developments have taken place more or less on the English pattern. Firstly, here the matters of consumer protection were a part of the administrative activity of the local authorities. With the growth and strengthening of consumer movement era, of special laws and mechanisms in the area began in 1980s. This change was marked by the enactment of the Consumer Protection Act, 1986 and incorporation of amendments in earlier laws about commodity control, prevention of food adulteration, drugs etc. in the same year to bring them in tune with new developments. After the end of the cold war and adoption of the open market economic policy in the country, measures are undertaken for the last advancement of consumer sovereignty through consumer education, efficient redressal mechanisms and regulation of competition in the open market economy. To find out the position where we stand today or to assess the present state of consumer and law in India, the matters which need to be focused include-

- (a) the consumer awareness;
- (b) improvements in technical skill of consumers to find quality of products and services;
- (c) freedom of choice and ability to exercise that choice;
- (d) techniques of marketing and buying products and hiring services;
- (e) reacting to mischievous and indecent advertising;
- (f) role of the state in protecting the consumer; and
- (g) improvements required in laws and redressal mechanism.

The legislation on the subject relevant to consumer protection in India, started with the beginning of the legislative era during the second half of the nineteenth century. Since then a considerable number of enactments and special laws have been framed and now this process is in an advanced stage trying to be in tune with the UN Guidelines for Consumer Protection, 1985. So in India the consumer protection laws have developed on the same lines as elsewhere in the world.

CHAPTER -4

CONSUMER PROTECTION LEGISLATION IN INDIA PRINCIPLES AND PRACTICE

Consumer Protection Act is a social legislation and an exclusive law for the purpose of protecting the interests of the consumer. The Consumer Protection Act, 1986 (COPRA) was made operative in two stages. Chapter I, II and IV came into force on April 15, 1987 and Chapter III came into force on July 1, 1987. And the Consumer Protection Rules, 1987 are framed by the Central Government under the power conferred by section 30(1) of the COPRA and came into force on April 15, 1987. The COPRA has been amended three times, i.e., in 1991, 1993 and 2002. And in exercise of the powers conferred by section 30A of the COPRA, the National Consumer Disputes Redressal Commission with the previous approval of the central government made the regulation, called Consumer Protection Regulations, 2005.

The provisions of COPRA shall be in addition to and not in derogation of the provisions of any other law, for the time being in force. The remedies available to a consumer under this Act constitute an additional dispensation. These are supplementary in nature and have no overriding effects so far as the existing laws are concerned. Therefore, a consumer may initiate proceedings in a civil court under the law of contract or sale of goods or law of torts or any other existing law. The provisions of the COPRA do not debar a consumer from going to a civil court for compensation for loss or damage which might have been caused to him due to defective goods or due to deficiency in service. The COPRA provides for a separate enforcement machinery and redressal forum with the aim to provide the consumers, a simple and expeditious solution to consumer problems.

When consumer is availing service from 'service provider' for consideration, then consumer expects standard service from 'service provider' without violation of any law for the time being in force. And 'service' means service of 'any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging 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. And '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. It is not exhaustive definition. Then '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 [under any contract, express or implied or] as is claimed by the trader in any manner whatsoever in relation to any goods.

Under COPRA, consumer can give complaint before consumer forum for the deficiency in service or for the defective product against the service provider or manufacturer respectively. Therefore, consumers (secondhand smokers) can exercise their rights under the COPRA by filing complaint against service providers (enforcing authorities), who are not enforcing prohibition and punishing the smokers for smoking in public places. For example, as restaurants, hotel, bus-stand, railway station, hospitals, public offices, educational institutions etc., fall under the category of service industry and it is their mandatory duty to provide adequate services to their customers. But if the owner/ manager / incharge (enforcing authorities) of these public places allow smoking and not willing to step even after the consumer's objection, then consumers can file a complaint against them before the consumer forum for their deficiency in service.

It has been underlined in the preceding chapter that- Consumerism means the welfare of the consumers by safeguarding their rights, by protecting them from unfair trade practices and from the articles injurious to public health and to save them from exploitation from the well organized world of sellers of goods and services. This indicates that consumerism will help the consumers to get more satisfaction from the purchase of goods and services with given money by getting the goods at competitive and fair rates.

Consumer movement, all over the world, has made the consumer supreme in welfare state. He has been termed as sovereign. He is said to be master and producer is termed to be servant. The principle of Caveat Emptor has been replaced by the rule of Caveat-Venditor'. Consumerism

has generated a new set of consumer rights, which may be categorized as follows.-

(a) the right to have information regarding enjoys quality, purity and the price of various articles to make proper choices.

(b) the right to be assured that the weights and measures being used are standard and correct.

(c) the right to have fair distribution of the essential goods and services at reasonable rates.

(d) the right to be protected from goods and services which are hazardous to life and property.

(f) the right to be protected from the unfair trade practices or from other unscrupulous exploitations.

(g) the right to have pollution free environment bestowed upon him by nature.

(h) the right to consumer education and awareness the right to be heard and to get speedy justice qua the enforcement of the basic human rights of the consumers in case of their infringement.

The consumer protection act has been enacted to provide the above mentioned rights to consumers and to protect their interests. The main purpose of the Act is to promote and protect the rights of consumers such as protection against marketing of goods which are hazardous to life and property, the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against their trade practices, the right to be assured, wherever possible, access to an authority of goods at competitive prices, the right to be heard and to be assured that the interest of consumers will receive due consideration at appropriate forums, the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers and right to consumer education. The object is also to provide speedy and simple redressal to consumer disputes a quasi judicial machinery is sought to be set up at District, State and Central levels. These quasi judicial bodies are to observe principles of natural justice and have been empowered to give relief of specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of orders given by quasi judicial bodies have also been provided.

Since the Act is directed towards goods and services, its effective implementation in itself shall lead to a healthy, welfare based, competitive economy. Standards, quality and parameters of performance fixed under several other regulatory and disciplinary laws find expression and fix liability through the medium of the Forums. The four-tier hierarchy of the Forums starting at the District level, State level, National level with the Hon'ble Supreme Court as the final court

of appeal is a reassurance to the citizens of the endeavour of the State to enforce rule of law. Both private manufacturing sector as well as services rendered by the public enterprises are made answerable for the defects and deficiencies. Since the plethora of judgments pronounced by the Commissions and the Apex Court keep interpretation of the statute intact, code of conduct and regulatory rules are set for the traders and service providers to follow.

(A) Procedure

Although the adjudication machinery has to follow the principles of natural justice, the procedure for adjudication is similar with very little trappings of the civil court and civil procedure. Till recently, there was even no fee payable on institution of the complaints. However, vide the Consumer Protection (Amendment) Rules, 2005 provisions have been made for payment of fee and the Consumer Protection Regulations of May, 2005 has made stringent regulations in dealing with Consumer related cases.

(B) Fee for making complaints before District Forum

Every complaint filed under sub-section (1) of section 12, subsection (1) of section 17 and clause (a) in sub-clause (i) of section 21 of the Act shall be accompanied by a fee as specified in the table given below in the form of crossed Demand Draft drawn on a nationalised bank or through a crossed Indian Postal Order in favour of the President of the District Forum, Registrar of the State Commission or the Registrar of the National Commission as the case may be, and payable at the respective place where the District Forum, State Commission or the National Commission is situated.

(C) Applicability

It has been provided in section 1(4) of the Act that it shall apply to all goods and services, unless otherwise expressly provided by the Central Government by notification. Everyone, of us, needless to say, is a consumer . The wide range of consumables used personally by us, individually, or collectively, in our homes, offices and institutions and the extensive and value added services that we avail a every steps of our living and life style, is nothing but manufacturer-consumer, traderconsumer, service provider-consumer relationship. Perhaps, the most primitive human being only depending on the elements of nature simpliciter, all by himself by the rule of 'survival of the fittest' might boast of not being a consumer. Otherwise,

there is hardly anyone in the present generation on the earth who can, enviably though, deny that he is not a consumer.

Conversely, the other counterpart is either the manufacturer or the trader, retailer, marketeer or service provider qua the consumer. They are also consumers of goods and services they enjoy. This draws a full circle, subject, of course, to statutory exceptions which oust a given relationship from the jurisdiction of the consumer law altogether.

(D) Definitions :

To be amenable to the summary jurisdiction of the Act, brief appraisal of the intention of the legislature is necessary. The definitions clause (section 2 of the Act) shows the way.

(i) Appropriate Laboratory

Certain goods may have to be got tested before any finding can be given on the quality thereof. 'Appropriate laboratory' has been defined as one recognised by the Central Government or the State Government or established by law and being maintained, financed and aided by either the Central or State Government

(ii) Branch Office

The opposite party may have a countrywide or global operation of business. Thus 'branch office' has been defined as one described as such by the opposite party itself or which is performing functions similar to that of the Head Office.

(iii) Complaint

An action can be brought by an individual consumer, any voluntary association incorporate by law, Central Government or State Government, one or entire group of consumers having a common grievance. After the death of original Consumer, his legal heirs are vested with this right to sue. All these persons have been covered by the definition of 'complainant'. 'Person' also includes a firm, a Hindu Undivided Family, a co-operative society, and every other association of persons registered under the Societies Registration Act, 1860.

To sue a foreign State for its commercial activities in India, prior permission of the Central

Government is required under the Code of Civil Procedure, 1908; **Gulf Medical Supplies Ltd. v. Ethiopian Airlines**²⁰. Application for amendment of complaint can be entertained by District Forum; **Manimalan v. K. Subrayan**.²¹

Complaint : No oral complaint can be entertained under this law. Complaint' has been defined as an allegation 'in writing' made by the complainant complaining against

- (h) An unfair trade practice or restrictive trade practice
- (i) defects in services
- (j) deficiency in services
- (k) price for the goods or services having been charged in excess of what was fixed by law, printed on the items, printed in the price list or in excess of the contractual terms.
- (l) goods hazardous to life and safety being sold in violation of any statutory safety standard or deliberately by the trader.
- (m) services hazardous to life and safety being provided deliberately.

However, if the person has bought the goods or availed the services for commercial purpose, but to the limited extent of making use of the same for self-employment and earning livelihood, the protection of the consumer jurisdiction shall still be available, depending on the facts and circumstances of each individual case. The law is growing in the developing countries. Wherever substantive part of the population is neither educated, nor gainfully employed in any organised sector. This exclusion from the mischief of 'commercial purpose' keeps their rights also intact and enforceable if they become part of the demand-supply system to carve out a source of livelihood by means of self-employment.

(E) A Critical Analysis of the Act

The importance of the Consumer Protection Act, 1986 lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of the public bodies which are degenerating into store house of inaction where papers

²⁰ 2001 CCJ 93

²¹ AIR 2004 Mad 446

do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting for it, is accepting it as part of life. The enactment of Consumer Protection Act in these unbelievable yet harsh realities appears to be silver lining, which may in course of time succeed in checking the rot. Thus the legislation is a milestone in history of socio-economic legislation and is directed towards achieving public benefit.

The reasons for the enactment of this legislation are contained in the statement of the objects which are as follows .

The Consumer Protection Bill 1986 seeks to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith.

(2) It seeks, inter alia, to promote and protect the rights of consumers such as-

- (a) the right to be protected against marketing of goods which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumers against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a variety of goods at competitive prices;
- (d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate Fora;
- (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers.

After careful consideration of various ideas, this Consumer Protection Bill, 1986, has been introduced for kind consideration of the House. This Bill is a landmark in the field of socio-economic legislation in the country. This comprehensive bill is in addition to and not in replacement of any other law on the subject of consumer protection. This Bill enshrines the rights of the consumers to be promoted and protected by the Consumer Protection Councils in the Centre and the States and the redressal machinery at the National, State and District levels. The legislation intends to provide and promote meaningful remedy for consumer grievances,

but its success will depend on effective implementation of its provisions by the Central and State Governments. More than that, there is no hesitation in saying that the success of the legislation would depend on the development of a strong broad-based voluntary consumer movement at the grass root level.

(G) Preamble of the Act

As per the preamble, the purpose of the Consumer Protection Act, therefore, is to provide for better protection of the interests of the consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes. While Chapter III (sections 9 to 27) of the Consumers Protection Act, 1986 makes provision for the establishment of three-tier consumer disputes redressal agencies, namely: (a) the District Forum; (b) the State Commission and (c) the National Consumer Disputes Redressal Commission; Chapter II (sections 4 to 8 & 8A) of the Act deals with consumer protection councils, i.e., the Central Consumer Protection Council, the State Consumer Protection Councils and the District Consumer Protection Councils. The objects of these councils are to promote and protect the rights of the consumers as laid down in section 6 of the Act.

The preamble of a statute has been said to be a good means of finding out of its meaning as it were a key to the understanding of it. The preamble and title, whatever their value might be as aids to the construction of a statute, undoubtedly throw light on the intent and design of the Legislature and indicate the scope and purpose of the legislation itself²². The petitioner cannot dispute the correctness of the recitals in the preamble to the statute. Preamble bears the same relationship to the operative part of a statute as to the recitals to the operative part of a document. Hence where the operative part of a statute is ambiguous, but not otherwise, the preamble may be resorted to, to explain or to show the scope and intention of the legislature. It is only when it conveys a clear and definite meaning in comparison with relatively obscure and indefinite enacting words that the preamble may legitimately prevail²³.

The preamble of a statute is "a key to the understanding of it" and it may legitimately be consulted to solve any ambiguity, or to fix the meaning of the words which may have more

²² Poppat Lal Shah v. State of Madras, AIR 1953 SC 274

²³ Attorney General v. H.R.H. Prince Earnest Augustus of Hanover (1957) 1 All ER 49.

than one, or to keep the effect of the statute within its real scope, whenever the enacting part is in any of these respects open to doubts²⁴. It is one of the cardinal principles of construction that where the language of an Act is clear, the preamble must be disregarded though, where the object or meaning of an enactment is not clear the preamble may be resorted to, to explain it. Again, where very general language is used in an enactment which, it is clear must be intended to have a limited application, the preamble may be used to indicate to what particular instances the enactment is intended to apply. We cannot, therefore, start with the preamble for construing the provisions of an Act, though we would be justified in resorting to it, will be required to do so, if we find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application. The preamble of an Act cannot limit or change the meaning of the plain words. No resort to the preamble would be justified in interpreting the provisions in the Act when the words used in it are clear and unambiguous. A preamble is a key to the interpretation of a Statute but is not ordinarily an independent enactment conferring' rights or taking them away and cannot restrict or widen the enacting part which is clear and unambiguous. The motive for the legislation is often recited in the Preamble but the remedy may extend beyond the cure of the evil intended to be removed²⁵.

A preamble is a key to open the mind of the Legislature but it cannot be used to control or qualify precise and unambiguous language of the enactment. It is only when there is a doubt as to the meaning of a provision that recourse may be had to the preamble to ascertain the reasons for the enactment and hence the intention of the Parliament. If the language of the enactment is capable of more than one meaning then that one is to be preferred which comes nearest to the purpose and scope of the preamble. In other words, preamble may assist in ascertaining the meaning but it does not affect clear words in a statute. The courts are thus not expected to start with the preamble for construing a statutory provision nor does the mere fact that a clear and unambiguous statutory provision goes beyond the preamble give rise itself to a doubt on its meaning. A preamble though a key to open the mind of the Legislature cannot be used to control or qualify the precise and unambiguous language of the enactment. It is only in case of doubt or ambiguity that recourse may be had to the preamble to ascertain the

²⁴ Kavalappara Kottarathil Kochuni v. State of Madras and Kerala, AIR 1960 SC 1080.

²⁵ R. Venkataswami Naidu v. Narasram Naraindas, AIR 1966 SC 660.

reason for the enactment in order to discover the true legislative intendment²⁶.

The preamble of a statute which is often described as a key to the understanding of it may legitimately be consulted to solve an ambiguity or to ascertain and fix the meaning of words in their context which otherwise bear more meanings than one. It may afford useful assistance as to what the statute intends to reach, but if the enactment is clear and unambiguous in itself then no preamble can vary its meaning. The general purpose or object of the Act given in the preamble may not show the specific purpose of the classification made. The court has, therefore, to ascribe a purpose to the statutory classification and co-ordinate the purpose with the more general Purpose of the Act and with other relevant Acts and public policies. The preamble is an aid in construing the provisions of the Act... .. when there is a preamble it is generally in its recitals that the mischief to be remedied and the scope of the Act are described. It is, therefore, permissible to have recourse to it as an aid in construing the enacting provisions. The preamble embodies and expresses the hopes and aspirations of the people²⁷.

To begin with the preamble of the Consumer Protection Act, 1986, which can afford useful assistance to ascertain the legislative intention, was enacted, 'to provide for the protection of the interest of consumers'. Use of the word 'protection' furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision. In fact, the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interest of the consumers have become a heaven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated.

²⁶ Y.A. Mamarde v. Authority under the Minimum Wages Act, AIR 1972 SC 1721.

²⁷ **Atam Prakash v. State of Haryana, AIR 1986 SC 859.**

(H) Penalties under the said Act

Section 27 of the Consumer Protection Act while providing for penalties lays down as under -

- (a) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both.
- (b) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).
- (c) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.

This provision shows that a power has been conferred on the Forum and Commissions try a criminal case and to punish an accused because the definition of the 'offence' in the Code of Criminal Procedure 1973, in Sec. 2(n), thereof says that "Offence" means any Act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871 (1 of 1871).

Therefore Sec. 4(2) of Cr. P.C. says that :

- (1) All offence under any other law shall be investigated inquired into, tried and otherwise dealt with according to the same provisions, but subject to any other enactment for the time being in force regulating the manner or place of investigating inquiring into, trying or otherwise dealing with such offences.
- (2) Now it is very clear that the failure or omission of a person to comply with the orders of the Forum or Commission has been made punishable with imprisonment and fine, but the

manner of investigation or trial has not been provided in the Consumer Protection Act and hence the provisions of the Cr.P.C. will apply to such investigation and trial. Section 3 of the Consumer Protection Act also says that.

Act not in derogation of any other law. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Thus under provisions of law for the time being in force the Forum or the Commission would have to follow the provision of the Code of Criminal Procedure and because the failure or omission to comply with the orders carry an imprisonment of three years, hence the offence would be a cognizable one according to Part II of the First Schedule of Cr.P.C. and would also be a Non-bailable one and would have to be tried as a Warrant case according to the definition given in Sec. 2(x) of Cr.P.C., but it would be triable at least by a Magistrate of the Ist Class.

Such powers of the Magistrate of Ist Class could not be said to have been conferred on the District Forum or on the Commission by any provision of the Consumer Protection Act and could only be conferred by Section 11 of Cr.P.C. or by Section 13 thereof. Thus the District Forum and the State or National Commission could not be said to be having powers to try a person for an act or omission which is punishable by imprisonment or fine or both. In this manner the provision made by Section 27 of the Consumer Protection Act is illegal and unconstitutional. No Court or Tribunal in India would be said to having powers to punish a person for disobedience of its orders, except under the Contempt of Courts Act or the provisions of Chap. XXVI, Cr.P.C. At the most the Forum or the Commission can be given a power to file a complaint against the person not obeying its orders and then the trial may be held in the regular criminal courts. Certain District Forums are freely exercising this so-called power and terror is spreading amongst the parties.

Moreover this power is unnecessary as the power to punish for its own contempt has been conferred on the Forum and the Commissions under Sec. 13(5) of the Act itself, while

their orders are executable as decree of a Civil Court under Section 25 of the Act, while full protection has been given to every member of the staff of the Forum and Commissions by Section 28 of the Act. Moreover as a matter of fact the mere failure or omission to comply with the orders of a judicial or quasijudicial authority, can never amount to an offence punishable with imprisonment or fine, if the orders are otherwise executable and enforceable, and the present provisions of Section 27 of the Act are rather out of place.

It may also be seen that an appeal lies from orders of the District Forum to the State Commission under Section 17(a)(ii) of the Act while a revision lies under Sec. 17(b) and thus the orders of punishment passed

(i) Liability

The Consumer Protection Act 1986 is concern with fault liability and not with strict liability. However, liability without fault is also incurred in this Act. In many cases of consumers products, liability is incurred without either of the mental elements are any thing which could be called fault.

The legal concept of being subject to the power of another, to a rule of law requiring something to be done or not done. Thus, a person who contracts to sell goods is liable to deliver them and the buyer is liable to pay the price. Each is required by law to do something, and can be compelled by legal process at the other's instance to do it; the other is empowered to exact the performance or payment. It is sometimes called subjection. The correlative concept is power.

(ii) Compensation

The word 'compensation' is of very wide connotation. It has not been defined in the Consumer Protection Act. According to dictionary it means, compensating or being compensated, things given as recompense. In legal sense, it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. Therefore, when the Consumer Disputes Redressal Forum has been vested with the jurisdiction to award value of goods or services and compensation, it has to be construed widely enabling the Forum/ Commission to determine compensation for any

loss or damage suffered by a consumer, which in law is otherwise included in wide meaning of 'compensation'. The provision enables a consumer to claim and empowers the Commission to redress any injustice done to him. Any other construction would defeat the very purpose of the Consumer Protection Act. The Commission or the Forum in the Act is thus entitled to award not only value of the goods or services but also to compensate a consumer for injustice suffered by him. A public functionary, if he acts maliciously or oppressively, and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. 'Compensation or damage' may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen, instead of complaining and fighting, succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore, the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally, but helps in curing social evil. It may result in improving the work culture and help in changing the outlook²⁸.

It is generally noticed that while assessing the compensation to which the consumer is entitled for the defect in goods or deficiency in service, the Consumer Disputes Redressal Agencies generally take into consideration only the financial cost incurred by the consumer. The cost incurred by the complainant/ consumer can be grouped into: (a) financial cost; and (b) social cost. 'Social cost' includes the valuation of time spent in attending the hearings and opportunity cost of alternative avenues foregone. It is hoped that with the passage of time these Redressal Fora shall take into consideration the 'social cost' also, while awarding compensation. The Consumer Fora can order the payment of compensation only in the currency of the country. The power to grant relief to the complainant under the Consumer Protection Act is in terms of the

²⁸ Lucknow Development Authority v. M.K. Gupta, AIR 1994 SC 787

Indian currency and the State Commission cannot grant relief to the complaint in Pound Sterling²⁹.

²⁹ Union Bank of India v. Seppo Rally Oy., II (1996) CPJ 128 (NC).

CHAPTER – 5

THE CONSUMER PROTECTION ACT, 1986 : AN ANALYSIS

The Consumer Protection Act, 1986 extends to the whole of India except the State of Jammu and Kashmir. However, Jammu and Kashmir has enacted the Jammu and Kashmir Protection Act, 1987 on 19.08.1987.

A. Application of the Act

The Consumer Protection Act, 1986 applies to all goods and services. The Central Government has the power to issue notification exempting any goods or services from the application of the Act. Thus the Consumer Protection Act, 1986 applies to all goods and services including private, public or co-operative sector. It means that a consumer can take an action under the Consumer Protection Act, 1986 against defective goods supplied or deficient services rendered even by public sector or government undertakings such as Railways, Telephones, Electricity Boards, Postal Authorities etc³⁰..

In *India Airlines Corporation v. Consumer Education & Research Society Ahmadabad*³¹, the National Commission prior to the 1993 amendment observed that Parliament never intended that a complaint against a corporation having its branches all over India should have a choice to file his complaint anywhere in the country irrespective of where the cause of action arose merely on account of the fact that the corporation may have a branch office functioning at the place where the complaint is instituted.

The Consumer Protection Act, 1986 is one of the importance legislation which provides simple, speedy and inexpensive services or justice to the consumer. It will not be wrong to say that this is a social-economic legislation for the protection and preservation of consumer rights. Initially, the consumer who was at once the king of the market has become the victim of it. Generally no adequate information as to the characteristics and performance of many consumer goods is available because of the reason of non-availability of its source. To provide the protection to empower the consumers under this legislation the consumer is protected against any type of

³⁰ The Consumer Protection Act, 1986 came into force on 15-4-1987.

³¹ (1991) 3 Comp. Cases 166.

deficiency in the goods. In order to understand the various terms recognized under the Consumer Protection Act, 1986, we should go through these terms.

A.1 Complainant under Section 2(1) (b)

In order to initiate proceedings under the Consumer Protection Act, 1986 a complaint is required to be filed by a complainant. A complaint can be filed by any one of the consumer; any voluntary consumer association registered under the companies Act, 1956 or under any other enactment; or the Central Government or any State Government, who or which makes a complaint; one or more consumers, where there are numerous consumers having the same interest; in case of death of a consumer, his legal heir or representative³².

It is not necessary that the complaint be made only by the aggrieved consumer himself. It can be by any recognized voluntary consumer association irrespective of the fact that the aggrieved consumer is not a member of such association. Sub-clause (v) to Section 2(1)(b), which was inserted by the Amendment Act, 2002 has made the law more specific in this regard. Though even prior to this amendment, the beneficiary of services was included in the definition of 'consumer'. The Gujarat State Commission, in *Kirti Ramniklal Parekh v. Bank of Baroda*³³ held that the son of the deceased would be a 'complainant' within the Act, being one of the beneficiaries, though not the sole beneficiary.

There must be specific identifiable consumers to file complaint. Consumers alone can receive the relief which may be granted under the Act. A complaint filed on behalf of unspecified number of users of telephone services has been held to be not in consonance with the provisions of the Act. It was so held in *Society of Civil Rights v. Union of India*³⁴. Rule 14(1) of the Consumer Protection Rules, 1987 allows a complainant or his agent to file the complaint. Further, Rule 14(3) allows parties or their agents to appear before the National Commission. Thus, an authorized agent may represent the complainant .

³² Inserted by Consumer Protection (Amendment) Act, 2002.

³³ II (1995) CPJ 350 (Guj. CDRC)

³⁴ 1991(I) C.P.R. 104 (NCDRC)

Prior to its 1993 Amendment, there was no provision for class action in the Consumer Protection Act, 1986. In this kind of action proceedings are brought by one or more members of a class on behalf of persons who are permitted to do so by the court if it finds that question of law or of fact or cause of action are common to the members of the class. In such a situation the court permits one or two members of the class to bring action on behalf of the entire class. It was necessary to provide for this class action to protect large number of consumers who may suffer damages at the hands of a producer etc. but being poor and not having sufficient resources may not be able to bring separate claims against the delinquent. In such a situation if individual action is insisted upon, the result would be only to deprive a large number of such consumers from the benefits of the Consumer Protection Act,1986. Accordingly provisions have been made in the Consumer Protection Act to enable one or more consumers having the same interest to file complaint on behalf of all such similarly aggrieved consumers with permission of the Consumer Forum on behalf of all such consumers³⁵.

A.2 Complaint under Section 2 (1) (c)

Complaint under Section 2(1)(c) of the Consumer Protection Act,1986 means any allegation in writing made by a complainant regarding an unfair trade practice or restrictive trade practice has been adopted by any trader or service provider the goods bought by him or agreed to be bought by him suffer from one or more defects; the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect a trader or service provider, has charged for the goods or for the service mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force; displayed on the goods or any package containing such goods ; displayed on the price list exhibited by him by or under any recognized law agreed between the parties goods which will be hazardous to life and safety when used or being offered for sale to the public in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law ; if the trader could have known with due diligence that the goods so offered are unsafe to the public services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety.

³⁵ The Consumer Protection (Amendment) Act, 1993 came into force on 18-6-1993.

The complaint must be in writing specifying the name, description and address of the complainant and the opposite party. It must state the facts, when and where they arose and it must be supported by documents if any. It must also specify the relief which the complainant is seeking. **In Trupti K. Patel v. M/s. Rocklines Construction(SC)** the court held that dismissal of original complaints on the ground that neither the complainants were consumers nor the respondents were 'service providers' under the Act. Point squarely covered by judgment in 'Faqir Chand Gulati case. Impugned order set aside. Complaints held maintainable. In **Sundaram Automobiles v. C.N. Anantharam**³⁶ foreclosing of pending issues between the parties at admission stage arose. Issue of liability to make payment to the complainant not having been decided, revision being admitted by the National Commission only on the point of E.M.I. and rate of interest. Foreclosing other issues, held, was unwarranted. Order of National Commission set aside. Matter remanded to be decided with connected issues expeditiously. In Bihar School Examination Board v. Suresh Prasad Sinha, 13 education Board conducted examination but did not declare the result of one candidate and candidate had to re-appear in the exam. Complaint filed before the Consumer Forum. Complaint is not maintainable. Board is a statutory authority not carrying on any commercial or service oriented activity. Board is not a service provider and candidate is not a consumer. Two students appearing in Board exam were allotted same Roll number (496) by the Education Board. Centre Superintendent allotted different Roll No. (496A) to complainant's son. Result of complainant's son not declared and he had to re-appear in the exam in the following year. Complaint filed before the consumer Forum. Consumer Forum awarded compensation of Rs. 12000 with @12% interest. Board filed appeal before Supreme Court. The Supreme Court set aside the order of Forum and held as under –

- a) Board is a statutory authority and is not carrying on any commercial professional or service oriented activity.
- b) When Board conducts an examination in discharge of its statutory function it does not offer its service to any candidate.
- c) Board is not a service provider and a student who takes an examination is not a consumer³⁷.

³⁶ 2010(13) SCC 721.

³⁷ Ibid.

In a case **State Bank of India v. M/s B.S. Agricultural Industries (I)**, the Complainant sold engines and pump sets to certain firm on credit basis and gave the Bills and documents to Bank for collection. Bank failed to collect the amount of Bills and did not return the Bills to complainant. Complaint against Bank filed before the Consumer Forum claiming compensation for deficiency in service. Complaint, however, filed after a gap of 3 years from the cause of action. Limitation prescribed under Section 24A is 2 years. Complaint barred by limitation. Despite that consumer forum granted compensation without considering the point of limitation. Order of consumer forum set aside. If complaint is time barred yet consumer forum decides it on merits, the forum would be committing an illegality. Aggrieved party would be entitled to have such order set aside³⁸.

A.2.1 Complaint against Unfair and Restrictive Trade Practice

Prior to the Consumer Protection (Amendment) Act, 1993, to make a complaint under the Consumer Protection Act, 1986 it was necessary that the complainant must have suffered loss or damage as a result of any unfair trade practice. There was, however, no such limitation under the M.R.T.P. Act. It was felt that there should also not be any such limitation under the Consumer Protection Act. The complainant should be able to file complaint even if he has any apprehension of loss or injury from any unfair or restrictive trade practice. With the amendment of 1993, this anomaly has been removed and now a complaint can be made in respect of any unfair or restrictive trade practice whether the complainant has suffered loss or damage or not as a result of such trade practice. A complaint may be filed in respect of the goods which suffer from one or more defects. The 1993 amendment enables the consumer to file a complaint not only after he has bought the goods but even if there is an agreement to buy goods. Further prior to the 1993 amendment a complaint could be made only in respect of those services which were hired by the consumer and suffer from deficiency in any respect. But now a complaint can be made in respect of the services hired or availed of, or agreed to be hired or availed of, suffer from deficiency in any respect³⁹.

The scope of Section 2(1)(c)(iv) has been widened by the Amendment Act, 2002 by inserting provisions (c) and (d). Prior to this amendment, the provision was limited to charging a price in

³⁸ 2009(2) R.C.R.(Civil) 628(SC).

³⁹ Available at : bombayhighcourt.nic.in-1993.50.pdf, (visited on 10.03.2015).

excess of the price fixed by or under any recognized law; or displayed on the goods or on any package containing such goods. Further, the provisions of charging excess price now apply not only to goods but also to services after the Amendment Act, 2002. Where there is no fixing of price of an article by law, nor a display of the price on the package containing the goods or on the goods itself, the Act does not contemplate any complaint being instituted in respect of the price charged for the article on the ground that the price charged for the article is excessive. The Consumer Forums etc. under the Consumer Protection Act, 1986 cannot undertake an investigation of the reasonableness of the price fixation made by a manufacturer, producer or dealer. In Milk Chilling Centre, **Mehaboobnagar v. Mehaboobnagar Council**, no price was displayed on the milk pouch. Complaint was that price charged with respect to milk is excessive. It was held that the complaint was not maintainable for the simple reason that neither price with respect to milk is fixed by law nor displayed on the pouch. It was further held that it is not the duty of Consumer Forum to see the reasonableness of price fixed by manufacturer, dealer or producer⁴⁰.

A.2.2 Complaint against Hazardous Goods and Services

Sub-clause (v) has also been amended and its scope widened after the Amendment Act, 2002. Now it covers cases where the trader could have known with due diligence that the goods so offered are unsafe to the public. Prior to the amendment, this Section provided '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, requiring traders to display information in regard to the contents, manner and effect of use of such goods. Prior to this, there was no provision in the Act to protect consumers from hazardous services⁴¹.

A.3 Consumer under Section 2(1) (d)

In Oxford Dictionary, a consumer is defined as "a purchaser of goods or services". In Black's Law Dictionary, it is explained to mean "one who consumes". Individuals who purchase, use maintain and dispose of products and services. A member of that broad class of people who are affected by pricing policy, financing practices, quality of goods and services, credit reporting,

⁴⁰ 1991(I) CPR 177 (NCDRC)

⁴¹ Sub-clause (vi) has been inserted by the Amendment Act, 2002.

debt collection and other trade practices for which state and federal consumer protection laws are enacted. Act makes it clear that it includes not only the person who buys any goods for consideration but also any user of such goods when such use is made with the approval of the buyer. According to section 2(d) 'Consumer means and included the following 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 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.

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 include s any beneficiary of such services other than the person who hires the services for consideration paid or promised or partly paid and partly promised or under any system of deferred payment, which such services are availed of with the approval of the first mentioned person⁴².

In Morgan Standley Mutual Fund v. Katrick Das⁴³, the Supreme Court held that the term 'consumer' means one who consumes. According to the definition of consumer is one who purchases goods for private use or consumption and includes anyone who consumes goods and services at the end of the chain or production. It covers every man who pays money as the price or cost of goods and services. The court added that the consumer deserved to get what he pays for in real quantity and true quality. He remains the centre of gravity of all business and industrial activity in every society. He therefore, needs protection from the manufacturer, producer, supplier, wholesaler and retailer. In *Regional Provident Fund Commissioner v. Shiv Kumar Joshi*,²¹ the Supreme Court held that the definition of 'consumer' is wide and covers in its ambit not only the goods but also services, bought or hired, for consideration. Such consideration is paid or promised or partly paid or partly promised under any system of deferred payment and includes any beneficiary or such person other than the person who hires the service for

⁴² Section 2(d) of The Consumer Protection Act, 1986 (Universal Bare Act-2015).

⁴³

consideration. In *Dinesh Bhagat v. Bajaj Auto Ltd.*, a scooter purchased by a person has been in possession of another person, the complainant from the date of purchase and he has been using and taking it to the respondents for repairs and service. The Delhi State Commission held that the complainant was using it with the approval of the owner and therefore he was a consumer under the Act.

The expression 'commercial purpose' is not defined in the Act. In common parlance 'commercial purpose' is that purpose the object of which is to make profit. According to Standard Dictionary the word 'commercial' means connected with or engaged in commerce; mercantile, having profit as the main aim. According to Chambers Twentieth Century Dictionary, pertaining to commerce, mercantile. 'Where the goods are purchased from a retailer the Sales of Goods Act would permit only a retailer to be sued and not the manufacturer. In Consumer Protection Act a manufacturer should be liable only with the retailer for the satisfactory quality of goods. It is pertinent to mention here that the Act says that consumer does not include a person who obtains goods for resale or for any commercial purpose. 'Resale' implies that where the goods are purchase not for consumption but for further sale by a dealer or supplier in the ordinary course of business⁴⁴.

A purchaser of shares or debentures for resale purposes has been held to be not a consumer because the transaction is for a commercial purpose. An estate agent who was acting as a middleman for buying or selling real estate for profits was held to be not a consumer. A small farmer purchasing land drip irrigation system for irrigating his grape groves has been held to be a purchaser for a commercial purpose and therefore not a consumer with the meaning of the Act. Installation of air pollution control system has been held to be commercial requirement and outside the purview of the consumer courts. In *Jay Kay Puri Bngineers and others v. Mohan Breweries and Distilleries Ltd.* the National Commission has held that even where the goods were purchased for commercial purpose, if there is a warranty for its maintenance, the purchaser becomes a consumer in respect of the service rendered or to be rendered by the manufacturer or supplier during the warranty period. The Act provides that commercial purchases do not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of selfemployment. Where the complaint was for the failure to supply accessories of a computer and it was contended by the opposite party that there was not

⁴⁴ *Sri Lakshmi Narayan Rice Mills v. The Food Corporation of India*, 1998(3) CPR 630 (NCDRC).

consumer dispute as the purchase was for commercial purpose, the test laid down by the Supreme Court in *Laxmi Engineering Works v. P.S.G. Industrial Institute* was followed in which Supreme Court said that the goods bought must be used by the buyer himself, by employing himself for earning his livelihood, and it was held that the purchase of computer in this case was for earning livelihood⁴⁵.

The definition of the term consumer as given in section 2(1) (d) of the Act covers not only consumers of goods but also consumer of services. It includes not only the person who buys the goods for consideration but also the person who uses such good with the approval of the buyer. Similarly it includes a person who hires or avails of any service for consideration and also includes any beneficiary of such service, when the services are availed of with the approval of the hirer. It is crystal clear that this special legislation covers the transactions for supply of goods and to rendering of services. To understand the ambit of Consumer Protection Act, 1986 it is important to know the concept and meaning of the words i.e. goods and services. The definition can be displayed under two heads Consumer of goods and Consumer of service. In a case *M/s Narne Construction P. Ltd. v. Union of India (SC)*, the Hon'ble Apex Court held that a Company was selling plots to its members. Activities of the appellant-company inviting offer of plots for sale to its customers/members with an assurance of development of infrastructure/amenities, layout approvals etc. was a 'service' within the meaning of clause (2) of Section 2(1) of the Act and would, therefore, be amenable to the jurisdiction of the fora establishment under the statute.

A.10.2 Transport Service under the Consumer Protection Act, 1986

Innocent men, women and children are losing their lives because of hopeless condition of roads with no street lights for days, weeks and months devoid of suitable edges/ demarcations/signals and presence of real obstructions on the road like big stone pieces, dead animals, stray cattle moving in the heart of the cities. The question is why are the various public sector organization the Central public works Department, the public works Department, the state electricity Boards, the Municipal Authorities as parties to the above sufferings, not alive to the seriousness of the situation, the value of human life and human happiness? If service sector management has any meaning, the managers of these service organizations, should be made answerable for this grave

⁴⁵ *Humming Bird Automation Technologies Pvt. Ltd. v. D. Thanigaiyelen*, III(2002) CPJ 273 (NC)

loss. It is a tragedy that nobody feels the pinch. These services are so basic and ought to be performed in so normal a course that they do not require any extra budgetary allocations. For a while, one tends to be reminded of the British regime in India when the marketing of services by the public sector was done better in every field. The hard earned freedom should lead to an improvement in the quality of life, and not the deterioration, as one observes. The public service organizations should make themselves more useful to the society than ever before. The carriage of passengers or goods by railway, airlines, buses, taxis, trucks is a service within the meaning of the Act and therefore, any deficiency in this service is actionable under the Act. Railway Administration is providing transport facilities to the public for consideration paid by them by way of fare, levied for the ticket. It is one of the largest public utility undertakings in the country intended to render service to the public. Consumer forums have no jurisdiction to entertain complaints on account of deficiency in service arising from loss, destruction, damage, deterioration or non-delivery of the goods. This jurisdiction is exclusively vested in the Railway Claim Tribunal Act, 1987 in a case recovery of excess fare amounts to deficiency in service⁴⁶.

Refusal by the attendant of railways to provide AC-II Berth even after the confirmation of reservation was held to be a deficient service⁴⁷. Journey by railway train is becoming uncomfortable. Those with reservation tickets hardly get a seat or berth, and the ticket collector seldom comes to help the situation. The maintenance of the compartments is poor, they are dirty, devoid of water in the taps, mirrors not fitted and faulty window shutters. In the case of *General Manager, South Eastern Railway v. Shri Sinha*,¹⁰³ the facts were that the complainant was travelling in the first class compartment of the Railway Train where the fans were not working and though a complaint was made to the conductor, no action was taken to set right the said fan during the journey. Moreover, the shutters in the window were not in the working condition and even the shutters with glass panes could not be used since the glass was missing. The rexine of the berths was badly torn and nails were exposed which had caused some injuries to the wife of the complainant. The state Commission has held that the Railway Administration was liable to pay compensation to the complainant and his wife for the mental and physical suffering caused to them. The National Commission held that expression 'service' contained in section 2 (1) (O) of the Consumer Protection Act 1986 specifically includes within its scope the provision of facility

⁴⁶ D.S.Shipehandler v. The Manager, Central Railway, 1991 (1) CPR 121

⁴⁷ Anil Gupta v. General Manager, Northern Railway, II (1991) CPJ 308 (HPCDRC).

in connection with transport. The Railway Administration is providing transport facility to the public for consideration paid by them by way of the fare levied for the ticket. The Commission further held that the passengers travelling by train on payment of stipulated fare charged for the ticket are 'consumers' and the facility of transportation by rail provided by the Railway Administration is 'service' rendered for consideration as defined under the Act. As to the amount of compensation directed to be paid by the state Commission, the National Commission observed that it is an established principles of law that compensation awarded must have a rational to the nature and extent of the injuries, inconvenience or physical and mental suffering caused to the complainant by the action or Commission of the opposite party. The Commission considered it reasonable and fair to fix the compensation payable each to the complainant and to his wife at Rs. 1500/- only. In Southern Eastern Railway v. Bharathi Arora, is another case which relates to suitcase stolen from reserved compartment. District Court held that railway was guilty of deficiency in service.

A.10.3 Telephone Service under the Consumer Protection Act, 1986

CHAPTER -6

CONSUMER PROTECTION THROUGH MAINTENANCE OF PRODUCT SAFETY & STANDARDS IN INDIA

Over the years, an increasing number of defective and unsafe products are being marketed to make a quick buck. A product may become unsafe because it was manufactured without due regard to the user's safety. Sometimes even after taking due care, the product might be unsafe for reasons other than the manufacturer's carelessness, such as when it has a defective component. And at the other extreme, a product may be inherently dangerous⁴⁸.

A product's safety standard and quality are often the buyer's main considerations when making a purchase. They are also the most effective means of ensuring consumer satisfaction and loyalty. Besides these two, a product's functional features, design, colour, style, packaging, and the assurance of a trouble-free service during its expected lifespan are other considerations which affect consumer satisfaction.

Given the scourge of widespread consumer exploitation, it is no surprise that consumer protection has gained immense importance worldwide. In the age of globalization, consumer protection guidelines and legislation are necessary at the international and national level to ensure the safety of consumers.

It is with this in mind that the United Nations General Assembly adopted guidelines for consumer protection through a resolution passed on 9th April 1985. The guidelines provide a framework for governments, particularly those of developing countries, to use in elaborating and strengthening their consumer protection policies and legislation. These guidelines are also intended to encourage international co-operation in this field. The basic objectives of the guidelines are⁴⁹,

- (d) To assist countries in achieving or maintaining adequate protection for their population as consumers;

⁴⁸ D. N. Saraf, *The Law of Consumer Protection in India*, 2d ed. (Bombay: N.M. Tripathi Pvt. Ltd., 1995) at 1.

⁴⁹ Consumer Protection, GA Res. 39/248, UN GAOR, 39th Sess., Supp. No. 51, Annex, Agenda Item 1, UN Doc. A/248 (1985) 179.

- (e) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (f) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (g) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (h) To facilitate the development of independent consumer groups;
- (i) To further international co-operation in the field of consumer protection;
- (j) To encourage the development of market conditions which provide consumers with greater choice at lower prices.

The guidelines apply both to home-produced goods and services and to imports. “In applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations⁵⁰. The guidelines deal with the following matters – physical safety, promotion and protection of consumers’ economic interests, standards for the safety and quality of consumer goods and services, distribution facilities for essential consumer goods and services, measures enabling consumers to obtain redress, education and information programmes, measures relating to specific areas. The resolution also provides specific guidelines on prioritised “areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals⁵¹”.

The objective of this paper is to review and critique the various pieces of legislation passed thus far in India in relation to consumer protection.

In India, the need for consumer protection is paramount in view of the ever- increasing population and the consequent need for many goods and services of which is no matching supply. India’s increased consumer exploitation could be attributed to the lack of education, poverty, illiteracy, lack of information, traditional outlook of Indians to suffer in silence and

⁵⁰ *Ibid.* at 180, Agenda Items 7-8.

⁵¹ *Ibid.* at 181, Agenda Item 38

their ignorance of the available legal remedies in such cases.

Consumerism in India is as old as trade and commerce. In Kautilya's Arthashastra, there are references to the concept of consumer protection against exploitation such as through the manipulation of weights and measures, and adulteration. The same book also provides for the punishment for these offences. Chapter II, "The Removal of Thorns" in Book IV, of Kautilya's Arthashastra deals with consumer protection against merchants in depth⁵². When a trader sells or mortgages inferior commodities by misrepresenting them as superior ones, or adulterates grains, oils, salts, scents, and medical articles with similar articles of lower quality, the said trader is not only to be punished with a fine but also be compelled to make good the loss.

It is the State's duty to guarantee the right to live with human dignity, free from exploitation, of everyone living in it. This right to live with human dignity is enshrined in the Indian Constitution and derives its life's breath from the directive principles of state policy⁵³. According to article 38 of the Indian Constitution, the State shall secure a social order for the promotion of the people's welfare and shall effectively work to achieve a "social order in which justice, economic and political, shall inform all the institutions of the national life."⁸ In addition, the State has a duty to raise the level of nutrition and the standard of living to improve public health, and to prohibit consumption of intoxicating drinks or drugs which are injurious to health.⁹ This is considered a primary duty of the State.

A. Law of Torts and Product Safety Standards

It is to be noted that common law tortious remedies are still available to consumers in India in addition to the various legislation related to consumer protection. This is especially important in such a situation – An injured consumer of goods cannot claim damages under the law of contract even if he is harmed by them if he is not the buyer of the goods, but some subsequent user. Such a user might be an employee or member of the primary buyer's family, or someone else inadvertently coming into contact with the goods, such as a passer-by or a donee. In these cases, common law contractual remedies are not available as there is no privity of contract between the victim and the retailer or dealer. Tort remedies may

⁵² Ibid.

⁵³ The Constitution of India of 1950 (India), 1950, art. 21 [Indian Constitution].

nonetheless be available against parties who owe a tortious liability to such ultimate consumers. Such parties may include the manufacturer, supplier, importer, distributor or retailer, or two or more of them together.

A tort is a civil wrong that is not a breach of contract or a breach of trust. Intentional torts involve deliberate actions which may cause injury; the tort of negligence involves injuries following a failure to use reasonable care even if this is not deliberate; strict liability torts impose legal responsibility for injury even though the party liable had neither intentionally nor negligently caused the injury.

The foundation of such a tortious remedy can be traced back to the case of **Donoghue v. Stevenson**⁵⁴ which laid down the principle that a manufacturer owes a duty of care to every possible consumer of his product, and that such a consumer can bring an action against the manufacturer even if there is no contract between both parties. The plaintiff consumer here is entitled to damages for loss caused by any defective, unfit or dangerous product, and this liability may arise from the following situations – where the defendant is negligent; where the defendant has defrauded the plaintiff; or where he has committed a willful act. In cases of fraud, the tort of deceit enables the plaintiff consumer to recover damages for fraud practiced on him by the defendant. If the defendant is negligent, the tort of negligence would provide the consumer an avenue to seek redress for the damage suffered due to the defective and unsafe product. This tort of negligence is also available in the case of deficiency in service.

The rule of strict liability¹² used to play very significant role in tort cases, but this has changed along with the rapid industrialization, scientific and technological advancement in today's world. Such progress has led to increased industrial and environmental hazards. A few industrial accidents in the eighties has led to significant changes in the laws of no-fault liability.

The Supreme Court of India introduced the rule of absolute liability, supplanting the rule of strict liability laid down in the case of *Rylands v. Fletcher* which had some exceptions.¹³ The term 'absolute' in itself means total or without any exception. In this new formulation of absolute liability, there are no exceptions on which the defendant can rely upon to escape liability.

⁵⁴ [1932] AC 562 (H.L.).

B. Sale of Goods

The *Sale of Goods Act, 1930* provides certain safeguards for the buyer of goods⁵⁵. Where a buyer is injured by a product transferred to him under a contract of sale, subject to certain exceptions, he may rely on ‘implied conditions and warranties⁵⁶’ as well as express undertakings of the seller. Section 16 of this Act deals with implied conditions as to quality or fitness. Section 16(1) deals with the implied condition relating to “fitness for purpose” and section 16(2) deals with the implied condition regarding “merchantable quality”.

Merchantable quality has to satisfy four aspects

- i. genuine according to name, kind and description
- ii. saleable in the market under the designation;
- iii. fit for the ordinary use and purpose of such goods; and
- iv. free from defects interfering with sale or ordinary use.

Comparing both subsections of section 16, although merchantable quality overlaps with fitness for purpose, it is of much wider import. This means that the seller will be liable if the goods do not meet the standard required by the law even if he has taken all possible care. As regards to product liability, these standards are implied by the Sale of Goods Act. In cases of breach of contract, the consumers have many remedies under this Act. Due to these reasons, the doctrine of caveat emptor has now been replaced by the doctrine of caveat venditor. The enactment of the Consumer Protection Act, 1986 is a step in this direction. It protects the interests of consumers better.

C. Bureau of Indian Standards Act

The Indian Standards Institution (Certification Marks) Act, 1952 has been replaced by the Bureau of Indian Standards Act, 1986. Together with this replacement, the Indian Standards Institution has also been renamed as Bureau of Indian Standards (BIS).

⁵⁵ of Goods Act, 1930 (India), 1930

⁵⁶ *Ibid.*, ss. 12-17.

However, the symbol of 'ISI' on products continues. The BIS is a National Standards Body of India. It is a non-profit statutory organization under the BIS Act and has its headquarters at New Delhi, 5 regional offices, 19 branch offices, 5 inspection offices and 8 well-equipped laboratories located in different parts of India⁵⁷.

The Indian Standards were formulated in view of the national programmes prioritising industrial development, technical needs, export promotion, consumer welfare, health, safety, etc. There are currently over 18,000 licences in operation, covering 1,200 products. The following are some examples of products under the mandatory certification list – milk powder, condensed milk and infant milk food, food colours and additives, cement, LPG cylinders, oil pressure stoves, vanaspati, dry cell batteries, electric appliances & accessories, pumps, irons, immersion heaters, stoves, minors' safety boots and shoes, steel tubes, etc. Other products like bags and briefcases, slippers, bicycles, paints, inks, typewriter ribbons, cotton vests, razor blades, soaps and handloom cloths, biscuits, common salt, chewing gum etc. are covered under the voluntary certification scheme.

These standards emerged based on mutual consensus, having been developed by a network of technical committees comprising of different stakeholders like representatives from the industries, research and development organizations, consumers, testing and laboratory experts, government etc. The standards formulated fall within the following categories – basic standards, products specification, methods of tests, systems, codes of practices, and guidelines etc. The main emphasis of the organization is to –

- Formulate standards expeditiously,
- Review the standards regularly to keep them contemporary in the context of modern technological developments, and
- Harmonize the standards with international standards for facilitating international trade.

To ensure compliance with the standards, any person who contravenes the provisions of

⁵⁷ The numbers may be derived from this map of the various BIS machineries; BIS, BIS Location on Map, online: Bureau of Indian Standards

sections 11 to 15 shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to fifty thousand rupees, or with both⁵⁸.

D. Indian Penal Code

The first ever notable provisions for consumer protection adopted in India are found in the Indian Penal Code, 1860.²⁵ The IPC acts as a deterrent against any potential offenders and thus protects the consumer. Through this indirect process, consumers may not get any compensation, but may instead receive an indirect and remote benefit. Sections 272 and 273 of the IPC deal with the offences affecting public health by making the respective offences of the adulteration of food or drink intended for sale, and the sale of noxious food or drink, both punishable with up to six months imprisonment, or a fine up to one thousand rupees, or both. Sections 274 to 276 accordingly, makes the offences of adulteration of drugs intended for sale, the sale of adulterated drugs,⁵⁹ and the sale of a drug as a different drug or preparation punishable with similar sentences.

E. Agricultural Produce (Marking and Grading) Act, 1937

The regulatory measures for standardization and quality control of agricultural commodities are contained in the Agricultural Produce (Marking and Grading) Act, 1937, which is the pioneer legislation in the field of quality control and standardization in India.²⁹ These standards signify an agricultural seal ensuring purity and quality. Section 3 of the Act empowers the Central Government to make rules to carry out the functions of prescribing grade designations. These include

- (a) fixing grade designation to indicate the quality of any scheduled article,
- (b) defining the quality indicated by every grade designation,
- (c) specifying grade designation marks to represent particular grade designations

prescribing the manner in which articles could be packed, sealed and marked, authorizing a person or group to use the grade designation mark on prescribed articles and

⁵⁸ BIS Act, supra note 21, s. 33(1).

⁵⁹ Ibid., s. 275.

(g) providing for the confiscation and disposal of produce marked otherwise than in accordance with the prescribed conditions with a grade designation mark⁶⁰

Grading under this Act is ordinarily voluntary in nature. The standardization is carried out by the Directorate of Marking and Inspection established for the purpose of this Act. The Act stipulates the conditions which govern the use of standards and lays down the procedure for grading, marking and packing of agricultural produce. The quality mark, provided under the Act, is known as 'AGMARK', an acronym for Agricultural Marketing. The grade standards are based on physical as well as internal attributes of the commodity, such as the weight, colour and the commodity's material contents. The specifications for physical and internal attributes are worked out after analysing samples of each commodity. The views of the representative producers and dealers are also taken into consideration in determining the grade standards. The standards and grade specifications are subject to periodical revision in light of the changing needs and wants of buyers, and new production techniques.

The articles covered under the Act have been specified in the Schedule appended to it⁶¹. These include fruits, vegetables, eggs, dairy produce and poultry products, food grains, oilseeds, oils and cakes, spices condiments, forest produce, edible nuts, tobacco, tea, honey, wheat, flour, besan, etc. The consumers are directly benefited by the AGMARK scheme since the mark is considered a symbol of purity and quality, making it easier for the consumer to select a product bearing the mark for consumption.

F. Drugs and Cosmetics Act, 1940

Special measures are provided, under the Indian Drugs and Cosmetics Act, 1940, for the standardization and quality control for the import, manufacture, distribution, and sale of drugs and cosmetics.³⁴ Originally, the Act contained solely provisions for drugs. Cosmetics were only brought within the regulatory framework subsequently in 1964.³⁵ Special provisions have been made for the Ayurvedic, Siddha and Unani systems of

⁶⁰ Ibid., s. 3(2)(g).

⁶¹ Ibid., Schedule

medicines, and these were inserted collectively as Chapter IV-A of the Drugs and Cosmetics Act. The provisions are, in many ways, similar to those for other drugs.

The objective of the Act is to prevent the supply of sub-standard drugs and cosmetics so as to maintain high standards of medical and health care.

It lays down the standards of quality for drugs and cosmetics which can be imported, manufactured, sold, and distributed in India. For example, according to the Act, no person is allowed to manufacture, sell, stock or exhibit or offer for sale or distribute

- (k) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;
- (l) any cosmetic which is not of a standard quality or is misbranded or spurious;
- (m) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof the true formula or list of active ingredients contained in it together with the quantities thereof any drug claiming magical effect; and any unsafe or hazardous cosmetics.

Furthermore, drugs must comply with the standards set out in the Second Schedule of the Act, and cosmetics must comply with the standards prescribed by the Government⁶².

Severe penalties are imposed for offences under the Act. Failure to comply with the standards set out by the Act, such as through the manufacturing, sale or distribution of sub-standard, adulterated and spurious drugs and cosmetics, and the manufacture, sale or distribution of drugs and cosmetics without a licence, are punishable with imprisonment ranging from a minimum of one year to a maximum of a life term, besides a fine⁶³.

G. Prevention of Food Adulteration Act, 1954

Food is one of the essentials of life. One would expect it to be pure, nutritious and free from any type of adulteration for the proper maintenance of human health. It is thus the duty of every government, India included, to make pure food available to its countrymen in sufficient quantities.⁴⁰ However, adulteration of foodstuff in India was so rampant and persistent that a somewhat drastic remedy in the form of a comprehensive legislation became the need of the hour.

⁶² *Ibid.*, ss. 10-10A.

⁶³ *Ibid.*, ss. 27-31.

In response to this, the Government of India passed the Prevention of Food Adulteration Act, 1954.⁴¹ This piece of legislation came into force on June 1, 1955. To give effect to the provisions of the Act, the Prevention of Food Adulteration Rules, 1955 were introduced and came into force on December 1, 1956.⁴² Although the Act and Rules were enacted by the Central Legislature, the responsibility of implementation was entrusted to the State Governments and Union Territories. Each State Government and Union Territory has thus created its own organisation for implementation of the Act and Rules framed thereunder.

H. Food Safety and Standards Act, 2006 (FSSA)⁶⁴

To strengthen food safety and standards, the Parliament passed new legislation in 2006 called the Food Safety and Standards Act (FSSA).⁴⁴ The FSSA ameliorated the confusion caused among consumers by the enactment of too many food-related legislations. This was done by the FSSA's consolidation of the laws relating to food and its establishment of the Food Safety and Standards Authority of India. The Authority laid down scientific standards for food articles and regulated their manufacture, storage, distribution, sale and import, ensuring the availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. The Bill which culminated in the FSSA was drafted parallel to the Food Safety Act, 1990 and Food Standards Act, 1999 of the United Kingdom with changes made to suit Indian conditions.⁶⁵

Following the enactment of the FSSA, the following legislation and orders were repealed, namely the Prevention of Food Adulteration Act, 1954; Fruit Products Order, 1955; Meat Food Products Order, 1973; Vegetable Oil Products (Regulation) Order, 1947; Edible Oils Packaging (Regulation) Order, 1998; Solvent Extracted Oil, De- Oiled Meal, and Edible Flour (Control) Order, 1967; Milk and Milk Products Order, 1992; and all other orders issued under the Essential Commodities Act, 1955 relating to goods.

The responsibilities of the food business operator are discussed in section 26. This section states that

⁶⁴ Safety and Standards Act, 2006 (India), 2006 [FSSA].

⁶⁵ *Safety Act 1990* (U.K.), 1990, c. 16; *Food Standards Act 1999* (U.K.), 1999, c.28.

(1) Every food business operator shall ensure that the articles of food satisfy the requirements of the Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the business under his control.

(2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food which is unsafe or which is misbranded or sub-standard or contains extraneous matter or for which a licence is required, except in accordance with the conditions of the licence or which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health; or in contravention of any other provision of [the] Act or of any rule or regulation made thereunder.

(3) No food business operator shall employ any person who is suffering from infectious, contagious or loathsome disease.

(4) No food business operator shall sell or offer for sale any article of food to any vendor unless he also give a guarantee in writing in the form specified by regulations about the nature and quality of such article to the vendor;

Provided that a bill, cash memo, or invoice in respect of the sale of any article of food given by a food business operator to the vendor shall be deemed to be a guarantee under this section, even if a guarantee in the specified form is not included in the bill, cash memo or invoice.

(5) Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment within a specified time, it is found that there is no evidence that the rest of the batch, lot or consignment is unsafe;

Provided that any conformity of a food with specific provisions applicable to that food shall be without prejudice to the competent authorities taking appropriate measures to impose restrictions on that food being placed on the market or to require its withdrawal from the market for the

reasons to be recorded in writing where such authorities suspect that, despite the conformity, the food is unsafe⁶⁶.

I. Standards of Weights and Measures Act, 1976

The Standards of Weights and Measures Act, 1976 prescribes specifications for measuring instruments used in commercial transaction, industrial productions and measurements involving in public health and human safety, and basically regulates all businesses related to weights and measures.⁵⁸ Some examples include inter-state trade and commerce in weights and measures; commodities sold, distributed or supplied by weights and measures; pre-packed commodities sold or intended to be sold in the course of inter- state commerce; and controls and regulates the export and import of commodities in packaged form. It also governs the approval of weights and measures intended to be manufactured following the commencement of the Act. The Act further charges the Central Government to survey and collect statistics to ascertain the extent to which any standard of weight, measure or numeration established by or under [the] Act has been implemented in any area or in relation to any class of undertakings, users or goods to facilitate the planning and enforcement of it, and to serve as a standard for inspecting weights and measuring instruments during their use to prevent fraudulent practices and ensure consumer protection.

J. Consumer Protection Act, 1986 (CPA)

The main object of the Consumer Protection Act, 1986, Consumer Protection Rules, 1987, and the Consumer Protection Regulations, 2005 is the promotion of the basic rights of consumers, namely the right to safety, the right to be informed of quality, potency and purity of products, the right to have access to a variety of goods of competitive prices, the right to redress grievances and the right to consumer education. The essential feature of the Act is its provision of procedures and fora for the resolution of consumer disputes. The CPA has thus been amended three times in the years 1991, 1993 and 2002 to achieve this objective by plugging the gaps. The CPA is a marked improvement from the existing

⁶⁶ Ibid., s. 26.

laws for consumer protection as it is compensatory in nature, and its remedies are in addition to and not in derogation of the provisions of any other law for the time being in force. The remedies available to a consumer under the Act constitute an additional dispensation⁶⁷. This improves the previously existing laws system whereby remedies under them are basically punitive or preventive in nature and are designed to provide relief only in specific situations.

Since the CPA does not derogate from existing laws and is supplementary in nature, its provisions do not debar a consumer from going to a civil court to seek compensation for loss or damage caused to him by a defect in the goods purchased by him. Therefore, a consumer may initiate proceedings in a civil court under the law of contract, sale of goods, law of torts, or any other existing law depending on the circumstances. The CPA merely provides a separate enforcement machinery and redressal forum with the aim of giving consumers a simple and expeditious solution to consumer problems. The Act has established a hierarchy of special courts known as 'Consumer Redressal Forums' for deciding consumer disputes at three levels viz. 'District Forum' at the lower level⁶¹ (up to 20 lakhs)⁶², 'State Commission' at state level⁶³ (more than 20 lakhs to 1 crore)⁶⁴ and the 'National Commission' at national level⁶⁵ (more than 1 crore).⁶⁸

The CPA deals with the twin concepts of defect in goods and deficiency in services and provides for a comprehensive definition of consumer in section 2(1)(d) in relation to goods and services. The consumer is a person who buys any goods or hires or avails of any services for consideration. The user of such goods, with the approval of the buyer, and any beneficiary of such services with the approval of the hirer, have also been included within the ambit of the concept of consumer, enlarging its scope to a great extent. The consideration for goods or services can either be paid or promised or partly promised or covered under any system of deferred payment. However, a person who, in the case of goods, obtains the goods for resale or for any commercial purpose or who, in case of services, avails of such services, for any commercial purpose is excluded from the definition of consumer. The explanation further states that the expression 'commercial purpose' does not include use by a buyer of such goods or hirer of services, exclusively for the purpose of earning his livelihood by means of self employment.

⁶⁷ CPA, supra note 20, s. 2(1)(d).

⁶⁸ Ibid., s. 21(a)(i).

Under section 2(1) (f), 'defect' in goods 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.

The expression 'service' has been defined in the Act in section 2(1)(o). 'Service' refers to any service of any description which is made available to potential users and includes, but is not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or 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.⁸⁰ The deficiency in service is one of the grounds for filing a complaint under the Act. Presently, the majority of complaints before the adjudicatory bodies provided for in the Act relate to the deficiency in service of various service providers. The term 'deficiency' has also been defined in section 2(1)(g) of the Act. It 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.

Product safety standards play an important role in our daily lives. As standards are developed in response to our needs, it is difficult to imagine modern life without them. In one way or another, standards make life easier, safer and more comfortable.

It is a known fact that without the People's active participation, the Government, as a lone body, cannot protect consumers from defective products. There are plenty of laws to take care of consumers and their numbers are constantly increasing. However, it leaves much to be said that their effectiveness has to rely upon the alertness of consumers, and the sincerity of the authorities in their implementation.

(K) Public Interest Litigation and The Consumer Protection Act

Law is the emperor of emperors and mightier than sword, and with its help even the poor hawker may win a case against the king or the state. A judge, presiding over a court, must remember that he is occupying the chair to deliver justice, as a trustee of the 'Almighty'; because to deliver justice and decide disputes is not the work of a human being but is the work of the 'Almighty'; who has delegated the same to the judge, as a trustee, to administer the same on his behalf. The Preamble to the Constitution of India has incorporated that-"We, the People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justicesocial, economic and political." Access to justice is recognised as one of the most important basic human rights today and it is very difficult, if not impossible, to realise most of the human rights without access to justice.

Rule of law is the soul of every civilised society. Law is a command or an order and can be better described as the language of the State. Law has the same relationship to the State as the language has to the society. Rule of law is the common way of life in a civilised society. However, with the passage of time rule of law is being used not only to maintain order and to protect individual interests but is also used to protect the interests of the society and the public at large to fulfil the ideals of the modern welfare state. The interpretation of the law is the function of judiciary in a democracy like ours and the main concern of administration of justice is protection of the rights of the people for the well-being of its subjects. A judge is not an umpire or a referee to allow the case to develop into a contest between rival parties by becoming a spectator and mere recording machine, but he must become a participant in the same by showing active interest, in order to ascertain the truth. In a society where a consumer is generally made victim of the unfair trade practices by the well-organised sector of the traders and businessmen and as such the illiterate, ignorant and financially weak consumer is to fight against the powerful lobby of businessmen, the public interest litigation is the only answer to protect the interests of the consumers. 'Protecting Consumer Rights' published in the Times of India, New Delhi, dated 20th January, 1986 which reads as under: "A recent survey has estimated that the Indian consumer is cheated to the tune of Rs. 1600 crore annually on account of defective weights and measures alone. According to Mahila Dakshata Samiti, a women's welfare organisation in Delhi, 25% to 30% of the food sold in the Capital is adulterated. It also estimated that nearly 50% of

spices, 53% of garam masala, 50% of aniseed (saunf) and 15% of sugar sold in the country is adulterated. The Industrial Toxicology Research Centre, Lucknow, found that 70% of the coloured food samples examined by it in Uttar Pradesh contained non-permitted colours. Thus, the importance of providing protection to consumers to assure the right quantity and quality of the commodities purchased cannot be overemphasised.

(L) Consumer Protection Issues Decided by the Court

As mentioned earlier, ever since the enactment of the Act, various issues relating to, consumer protection have come before the Supreme Court. These include the issues relating to defect in goods, deficiency in services, especially the services rendered by banks, courier companies, gas companies, educational institutions, electricity boards, housing boards, insurance corporations and above all the services rendered by the medical professionals. There have also been issues relating to the allotment of shares and debentures; issues relating to powers, functions and jurisdiction of the CDRAs; issues having arisen due to the different interpretations of the terms like 'consumer', 'commercial purpose', 'contract of personal service', and 'contract for personal services'; and also the issues relating to the commencement of the period of limitation under the Act. In the following paragraphs, some of the above mentioned issues will be discussed.

The involvement of the court in the arena of consumer protection law dates back to the year 1988. Notwithstanding the enactment of the Act in 1986, many states in the country did not set up the redressal machinery envisaged under the Act for about one and a half years. Ultimately in 1988, a Delhi based consumer organisation 'Common Cause' filed a writ petition in the Supreme Court under Article 32 of the Indian Constitution challenging the non-implementation of the 1986 Act by the various states across the country⁶⁹. The petitioner organization contended that even after two and a half years of the enactment of the Act, CDRAs had been set up only in 100 out of the total 425 districts in India. The court accordingly directed the then president of the National Commission, Balakrishna Eradi, J, to go around the country and inspect the establishment of the redressal mechanisms. Eradi, J, indicated severe deficiencies which the Supreme Court took serious notice of and directed the erring state governments to set up the requisite machinery within two months of its orders. After the passing of that order, district

⁶⁹ Common Cause v. Union of India & Ors. 1991 (2) CPR 523.

forums and state commissions for consumer redressal were established in many states. But the extent of compliance of the court orders was not so significant. Ultimately in March 1992, the Supreme Court warned the state governments either to setup the consumer forums or to face contempt proceedings which were likely to be initiated in the event of their noncompliance of the apex court's orders. Thereafter, almost all states established these institutions. The writ was, once again, taken up before the Supreme Court in January 1993 and was accordingly disposed of.

(M) Consumer Fora and Writ Jurisdiction of the High Courts

Generally speaking there is adequate remedy by way of appeals to State Commissions, National Commission and ultimately to apex court to our country in the Consumer Protection Act 1986. Section 24 of the Act gives finality to the decisions of the foras if no appeal has been preferred against such order. Hence there is no need for the High Court to entertain the writ petition in this context. However, it has been held in *State of Haryana v. Haryana Cooperative Transport Ltd*⁷⁰. that to strike down usurpation of the office is the function and the duty of the high courts in the exercise of their constitution power under Articles 226, 227 of the Constitution and if the High Court finds that a person appointed to any of these offices is not eligible or qualified to hold that post, the appointment has to be declared invalid by issuing a writ of quo-warranto or any other appropriate writ or direction. It is also true that whenever the legislature creates a separate tribunal hierarchy of appeals, the jurisdiction of the High Court under Article 226 of the Constitution of India to deal with the orders passed by the said tribunals is not ousted. High Courts are also competent to deal with the questions of Jurisdiction. It has been held in **Smt. Taneja v. Calcutta**⁷¹ that where the order of the District Forum preferably without jurisdiction the same can be challenge by way of filing of the writ petition in the high court under Article 226 of the Constitution of Indian without availing the right of appeal under the Consumer Protection Act. *Ram and Shyam Company v. State of Haryana*⁷² has also held that such orders as are illegal or invalid are amenable to the writ jurisdiction of the high courts.

⁷⁰ AIR 1977 SC 237.

⁷¹ AIR 1992 CAL 95

⁷² AIR 1985 SC 1147

L. Chandra Kumar v. Union of Indian⁷³ is the leading case which has made it a settled principle of law that decisions of all tribunals will be subject to the High Court writ Jurisdiction under Article 226/227 before Division Bench of the High Court in whose territorial jurisdiction particular tribunal falls. It serve two purposes firstly it will serve the power of judicial review of legislative action vested in the High Court under Articles 226/227 of the Constitution. Secondly it will ensure that frivolous claims are filtered out through the process of adjudication in the tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

⁷³ AIR 1997 SC 1125.

CHAPTER - 7

CONCLUSION AND SUGGESTIONS

As is clear from the study, the consumer protection has social, ethical and economic dimensions. Each country has had a movement for providing consumer justice peculiar to their historical, social, economic and legal background. The United Nations has played a very important role in laying down the guidelines which serve as a consensus on minimum standards for all countries, where consumer protection is concerned. The countries all over the world are required to incorporate the same in their local consumer laws taking into consideration their specific needs and requirements. In India, the consumer protection can be traced to ancient India where the unscrupulous traders were required to keep restraint and if they failed, punishment was prescribed. In modern India the sacred documents, the Constitution envisaged social and economic justice, of which consumer justice is a part. To fulfill the pious objectives a large number of laws were enacted by the Parliament for the protection of consumers. However, many of them had become either out-dated or needed suitable amendments to make them more effective. These laws provided relief or inadequate relief to aggrieved consumers. In order to provide for the better protection of the rights of the consumers, the Consumer Protection Act, 1986 was passed.

The Act was effective and purposeful. But, in order to make it more effective, certain amendments were proposed. Thus it can be said that the Consumer Protection Act, too, had its teething problems and has had its crop of amendments in 1991 and 1993. It has been successful in providing relief to the consumers as it covers all types of consumer transactions. It protects the consumers from the burden of restrictive and unfair trade practice and services. It also protects the consumer from deficient services. The judiciary has played a very important role in balancing the interests of the providers and users of service. On one hand, it has come to the rescue of consumers in certain important cases and issues, where it has enlarged the scope of the definition of services, for providing relief. On the other hand, it has refused to intervene and has given restrictive decisions. It has clearly held in Vasantha P. Nair's case that patients are included in the definition of 'consumers' and the professional services such as those rendered by a doctor are

also covered within the term 'hiring of services'. Directions have also been issued in a number of cases to provide the minimum standard of services or maintain the given standards. Thus the judiciary has filled up the interstitial gaps in the Act by its innovations. At the same time it has treated on the path cautiously so as not to interfere in the policy decisions or to cause unwarranted burden on the providers of service. Thus it can be asserted from the detailed study that the fifth hypothesis that the judiciary tried and has been successful in establishing and maintaining a balance between the conflicting interests of the consumers on one hand and the producer, supplier of goods and services on the other is sustained. The need is also felt for better control and regulation of service sector.

An effective, efficient and fair implementation of the Consumer Protection Act is one of the conditions precedents for promoting the culture of good governance and thereby ensuring the better promotion and protection of the rights of the consumers. If the rights of the consumers in relation to the quality of goods and services are assured and taken care of then there will be no cause for complaints. This situation would certainly create an atmosphere wherein the clients, customers and consumers would feel satisfied with the things needed most to them. In this context, the concerns of the good governance need to be mentioned briefly with a view to establish linkage with the concern of the Consumer Protection law and institutions. Generally speaking, the thrusts of the good governance movement are efficiency, effectiveness, ethics, equality, economy, transparency, accountability, empowerment, rationality, impartiality and participation. In view of these requirements of the good governance one can easily and with success establish the co-relations with the concerns of the Consumer Protection law and policies. From the point of view of the concerns of the Consumer Protection Law, it may generally be emphasised that the concerns of consumers' rights protection are to ensure fair trade practices, quality goods and deficiency free services with information in regard to quality, quantity, potency, components and price with a view to provide opportunity to the consumers in regard to their choices. In view of the remedies available to the consumers under the Consumer Protection laws there is no doubt that at the end of the day, if efforts of the operators of law and agencies are genuine and there is a sense of commitment, the culture of good governance would pervade wherein the consumers would feel highly satisfied and there would be no real cause for making a complaint or showing their dissatisfaction in any way. Therefore, the proper and effective implementation of the laws, dealing with the protection of the Consumers' rights would promote

the cause and concern of the good governance. It would, finally, be better to highlight one or two areas with a view to focus the developments in regard to the protection of Consumers' rights as well as the concern of the good governance.

As stated earlier, one of the concerns of the good governance movement is to promote and ensure accountability of producers and providers in public domain. The judgement of the Supreme Court in Lucknow Development Authority Vs. M.K.Gupta³⁶⁹ may be cited as an illustration. In the instant case the Supreme Court while establishing the jurisdiction of the Consumer Disputes Redressal Agencies created under the Consumer Protection Act emphasised that the service provided by a private body or a statutory or public authority are within the jurisdiction of the Consumer Protection Act. In this context, the Supreme Court also laid down that any defect or deficiency in such service would be treated as unfair trade practice and would amount to denial of service. It would be instructive to highlight the observation of the Supreme Court in the above case in regard to the concept of public accountability. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression then it should, further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behavior ³⁷⁰ In view of the above law of personal accountability of the concerned public functionary as laid down by the Supreme Court while protecting the rights of Consumers under the Consumer Protection Act is in fact an appreciable contribution to the body of law on public accountability which is one of the major concerns of the good governance movement.

In view of the importance of the law on public accountability and the role of the Consumers' adjudicatory bodies, the above decision should be made a compulsory reading for all those having role to play in the promotion and protection of the consumers' rights and also with the process of administrative reforms for good governance. Similarly, the approach of the Supreme Court in ensuring qualitative change in the attitude of the medical service provided by the hospitals and the medical professionals followed in the Indian Medical Association Vs. V.P. Shantha and Ors³⁷¹, deserves high appreciation with a view to giving real meaning to the accountability of professionals. In Charan Singh's judgment³⁷² the observation of the Supreme Court to the effect that "the Consumer Forums while quantifying damages are required to make

an attempt to serve the ends of justice so that compensation is awarded, in an established case, which not only serve the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider". It may, in addition, be pointed out, in view of the number of complaints brought before the Consumer Forums and Commissions, that the number of complaints in regard to the quality of public services are more than complaints dealing with defects in goods. Keeping in view the changing economic scenario, the number of complaints in regard to the deficiencies in services would certainly increase in the future. Therefore, the Consumer Forums and Commissions established under the Consumer Protection Act, need to be given extra attention to ensure its efficient, effective, fair and inexpensive functioning.

The year 1986 has gone in the history as the golden period of consumer protection, particularly because the role of the voluntary consumer associations was recognized in the Act itself. It not only saw the birth of the historic Consumer Protection Act, but also far reaching amendments to a bunch of consumer legislations. These organizations, evolved through decades finally joined hands to form pressure groups in order to protect the interest of the consumers. Consumer protection can be better achieved with the holistic vision, peoples' participation, and political will, active co-operation of Governmental and Non-Governmental agencies. It is only through a concerted effort of all the above, that the rights of the consumers can be protected. Although consumer protection has proved to be a milestone in the establishment of consumer protection movement in the country there is scope for improvement. A few recommendations thus can be proposed on certain amendments which can be introduced in the Consumer Protection Act, 1986 to give more teeth to it.

- The scope of the word 'complaint' under Sec. 2(1) (c) has been enlarged by the 1993 Amendment Act, but it has not been extended to cover cases where there is a likelihood of any injury or loss to the consumers. It should be amended to encourage consumers to take action against likelihood of loss or injury to the consumer and not just actual injury.

The Act includes from the definition of 'service' under Sec. 2(1)(o), services which are rendered free for cost, as in that case the consumer has not hired the services for 'consideration'. This takes the Government hospitals, municipality and local bodies, out of the purview of the said Act. An

amendment should be introduced to include all services except those under a contract of personal services, where clearly a masterservant relationship is established. By including all other services a consumer may be able to sue the responsible persons for rendering negligent services under the garb of free services in the consumer counts. There are divergent views on this issue. One is that it will increase the cost of professional service for e.g. medical expenditure and the other; the State will have to bear the increased cost in cases of Government rendering free services. But since, there is no effective system of regulation or a grievance redressal machinery, to ensure accountability; the 'free' services have to be brought under the Consumer Protection Act. If however the complaint is found to be frivolous, vexatious there is already a provision for punishment under Sec. 26 of Consumer Protection Act, 1986.

The Consumer Protection Act, 1986 has been construed to be a general law and the National Commission has held that if a legislative provision provides for specific relief under the Act, then a consumer cannot avail the remedy under the Consumer Protection Act, for example, the claim under Railway Claims Tribunal Act, 1987. It was held that a consumer can file a complaint only in the Railway Claims Tribunal and not in the Consumer forums. The Act should be amended to add non-obstante clause to Sec. 3 to avoid such interpretations restricting the remedy of the consumers. It should be left to the consumer to exercise his choice for the forum in which he wishes to institute his complaint.

- The rights of the consumer have, for the first time, been enumerated in Sec. 6 of the Consumer Protection Act. However, the rights of the consumers may be included in a separate chapter to give more weight and importance. The Central Council and State Councils have been created with the object to promote and protect the rights of consumers but they have not been given powers except, the recommendatory powers. To make this body more effective it may be divided into three cells and given additional function as, (1) Grievance Cell; (2) Inspection Cell; and (3) Advisory Cell. The Grievance cell may enter consumer grievances of public nature and it may also be given suo motu powers to take cognizance of any grievance, concerning consumers at large. The Inspection cell may undertake various surprise checking's of industries, factories and public undertaking to ensure maintenance of minimum standard, and lastly, the Advisory Cell which may make recommendations regarding the price fixation etc. Thus the

Consumer Councils should be given more powers so that the rights which have been enumerated are implemented in a more effective manner.

- Just as the qualifications have been prescribed for the appointment of President of the District Forum, State Commissions and the National Commission, certain basic qualifications should also be prescribed for the appointments to the post of members of the Redressal Agencies. Although selection committees have been established to ensure that political appointments are not made, it is equally important to prescribe the essential qualifications for other members to ensure that only competent people occupy the posts of members of these redressal agencies including the post reserved for women members.
- Full time District Forum may be established in every District. As the Consumer Protection Act has awarded compensation for not only the amount lost in purchasing defective material or in hiring deficient services but also for mental pain and suffering and harassment. It has become a new instrument of social and economic justice. Consumers are resorting to the remedies provided under the Act, by which the workload pendency of cases is increasing. Hence, it is very essential to have full-time District Forum working in each district with all the infrastructural facilities that are required for their proper functioning.
- By the 1993 amendment, additional powers have been conferred to provide for better and adequate relief. Additional powers may be given to grant interim injunction or relief to the aggrieved consumer. The National Commission, State Commissions, District Forums may also be given powers to direct issue of corrective advertisements and pass cease and desist order. This may be made mandatory to ensure the right of health, safety and information of the consumer. The forum should also be empowered to initiate suo moto proceedings if a case of public importance comes to their notice. Also, powers should be given to strike down the unfair conditions of the contract as being opposed to public policy.

Since the National Commission, State Commissions and District Forums are not meant to follow elaborate legal procedures, the lawyers should not be permitted in the proceedings before the forum. At the same time it is well known that it is not possible to debar them completely from appearing before the three-tier redressal machinery in view of the Constitutional freedom given

to them to practice their profession. It is recommended that ordinarily they should not be permitted. Lawyers may be allowed only if it is certified by the President that the case involves legal technicalities and therefore, a lawyer, may be permitted to represent the client.

The concept of punitive damage should be introduced under the Act for non-settlement of claims especially by Insurance Companies and other utilities, within a reasonable time, to be decided by the Courts as to what is the appropriate time.

As the Non-Governmental organizations are playing a very important role in the consumer protection movement and also these organizations receive grants for carrying out educational programmes, Social Auditing and Monitoring of these organizations is a must. A large number of Non-Governmental organizations take up programmes but for some ulterior purpose rather than protecting the interest of the consumers. To ensure the proper utilization of funds it is essential to keep a watch on these organizations and to make them accountable to some authority or a body.

It is extremely imperative to encourage volunteers, who are gallant, audacious and forthright, concerned in consumer protection movements. Organizations, NGOs, institutions and agencies allied to consumer movements should hearten administrative advocacy in settling consumer disputes so the hitch of case pendency and delay in case disposal can be avoided.

SUGGESTIONS

The researcher after careful study made the following suggestions

Govt, should come up with varieties of plans to establish and manage laboratories, equipped with latest available international standard technologies, for testing samples of consumer goods with a view to determining their quality, purity and relative merit.

Government should enter into treaties with various countries in order to ensure extra territorial operation of the act.

Government should be pro active towards the cunning policies of MNCs to exploit the consumer

A heavy sum should be taken from the multinational companies in the form of security money at the time of their establishment and incorporation.

Most of the Indian consumers know only COPRA but they are not aware about other laws and statutes which protect their right so along with the dissemination of COPRA consumer should be made aware about the existence of other laws i.e. MRTP, Essential Commodities Act 1955, Bureau of Indian Standard Act 1986 etc.

Government should make efforts to create a consensus for 'global consumer policy.

Judicial activism should be increased in consumer related issues also and parental role should be played by the Supreme Court for consumer redressal agencies.

Administrative advocacy should be encouraged in order to reduce the burden of consumer redressal agencies.

According to APJ Kalam the concept of PURA which stands for "Providing Urban amenities in Rural Areas" — is about giving a cluster of villages physical, electronic and knowledge connectivity. The idea is to empower the villagers, so that economic connectivity can emerge. The core competence of the village will enable the production of competitive products for national and international markets. This will lead to rural enterprises which will create jobs in villages and lead to a vibrant economy in India's hinterland. Strictly implementing the policy of compulsory public service by medical graduates from public medical schools, as also make public service of a limited duration mandatory before seeking admission for post-graduate education. This will increase human resources with the public health system substantially and will have a dramatic impact on the improvement of the credibility of public health services. Essential drugs as per the WHO list should be brought back under price control (90% of them are off-patent) and/or volumes needed for domestic consumption must be compulsorily produced so that availability of such drugs is assured at affordable prices and within the public health system. Local Governments must adopt location policies for setting up of hospitals and clinics as per standard acceptable ratios, for instance one hospital bed per 500 populations and one general practitioner per 1000 persons. To restrict unnecessary concentration of such resources in areas fiscal measures to discourage such concentration should be instituted.

The medical councils must be made accountable to assure that only licensed doctors are practicing what they are trained for. Such monitoring is the core responsibility of the council by law which they are not fulfilling, and as a consequence failing to protect the patients who seek

care from unqualified and untrained doctors. Further continuing medical education must be implemented strictly by the various medical councils and licenses should not be renewed (as per existing law) if the required hours and certification is not accomplished. Integrate ESIS, CGHS and other such employee based health schemes with the general public health system so that discrimination based on employment status is removed and such integration will help more efficient use of resources. For instance, ESIS is a cash rich organization sitting on funds collected from employees (which are parked in debentures and shares of companies!), and their hospitals and dispensaries are grossly under-utilized. The latter could be made open to the general public. Strictly regulate the private health sector as per existing laws, but also an effort to make changes in these laws to make them more effective. This will contribute towards improvement of quality of care in the private sector as well as create some accountability. Strengthen the health information system and database to facilitate better planning as well as audit and accountability.

- The National Charter of Healthcare Rights should be recognized as part of the National Complaints arrangements
 - A 'plain English' guide to complaints processes in Australia is developed for consumers
 - A tracking system should be developed to provide consumers with information about the status of their complaint
 - The complaint liaison person identified within the NRAS should keep consumers informed of the process and any referrals to other complaints processes if agreed
 - Community members who are able to bring forward community values must be included on all boards, committees, panels and tribunals established to investigate.
- Thus the health education must impart to all sections of our society, so as to equip them with the knowledge good health environment. The Education System of our country to be revamped along with the development of technology and which would lead us to have a clean environment and better standard of living.

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