
ABSTRACT

THESIS
SUBMITTED FOR THE AWARD OF THE DEGREE OF
Doctor of Philosophy
IN
LAW

BY
ZAFAR EQBAL

Under the Supervision of
Prof. Mohd. Ishaque Qureshi

DEPARTMENT OF LAW
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The modern era is a harbinger of ultra modern highly complicated and sophisticated trade and industry. It is an age of industrial revolution, the philosophy of 19th century has been replaced by the technology of 21st century. The law relating to sale of goods and consumer's protection of late 19th century or early 20th century has become much outdated and cannot cope up with the problems experienced of well organised and modernised society of today.

The new scientific and technological advancement in hundreds of thousands varieties of consuming goods has now made the market more complex. The products are marked in a number of ways that it is often very difficult for the consumers to judge their quality adequately. When consumer has complaints about the products or services they are advised to wait and see by the dealers or they are left to purchase, the other better one. The consumer doesn't get remedy to his previous grievances.

Secondly, most of the consumers are ignorant of their legal rights against the remedies available in such cases. Sometimes they are either unwilling or unable to pursue them.

For the aforesaid reasons and sometimes due to fraud or negligence on the part of the manufacturers or dealers, consumer gets hazardous from the retailers and becomes an easy prey to a number of diseases which may prove fatal to his health or lives.

In many of such cases poor and even better off people of society hardly report the matter to the police and institute a suit in the court of law for the simple reasons that either they are afraid of the existing investigating and prosecuting agency or they don't know or know a very
little about their rights against those offences for what they are entitled to. Besides the legal actions to reform the said administrative and judicial agencies, the manufacturers, whole sellers and retailers need an instant fear of legal blow, while the majority of people in India are not in a position to meet the basic necessities of life, a large number of non-essential, sub-standard, adulterated, unsafe and less useful products are purchased through unscrupulous traders by means of unfair practices and deceptive methods competition in market is being reduced to competition in advertising as companies spend more and more money on exaggerated, misleading and deceptive advertising claims rather than improving the product quality and functional features, making the distribution system more effective and efficient or reducing price. This widespread deceptive advertising causes enormous loss to consumer.

Therefore, all over the world, there has been growing demand for the last few decades for greater recognition and protection of consumers. today a large number of developed and developing countries have legislations to protect the interest of the consumer. thus for the first time in the history of social, economic legislations of India a comprehensive legislation namely, the "consumer protection Act 1986" has been passed to provide, better protection to the interest of consumer and for that purpose to establish "consumer councils" and other authorities for the settlement of consumer disputes and for the matters connected there with it seeks, interalia, to promote and protect the right of consumer such as -
(a) The right to be protected against marketing of goods which are hazardous to the life and property;

(b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods and to protect the consumer against unfair trade practices.

Because if, the rights which are assured to the consumer by the consumer Protection Act 1986 are protected with full force then it will certainly help them to raise the concept of consumerism which is defined as social movement intended to safeguard the interest of buyer through various social control measure. This settlement of consumer dispute redressal agencies, creating a consciousness in the society which would surely guarantee a new force to reject the role of "caveat empter" (let the buyer beware) and pay the way for the acceptance of theory of "Caveat Venditor" (let the seller beware) in the larger interest of the coordinated economic growth. It is a truth that if the foundation stone of a building will not be laid down properly the building raised on it may collapse any time. In the same way if the grass root level machinery of consumer protection does not function properly, the result of production would be nil. The above study is designed to evaluate and assess the working of crucial link of three tier consumer redressal agencies in the country i.e. District consumer forum (Aligarh), State consumer commission (U.P.) and National commission. The object of study is to test the hypothesis as to how far the consumer movement has become a reality. It seeks to test as to whether people have really started going to consumer courts for the redressal of their grievances. The study seeks to examine the plus and minus points of the working of consumer dispute redressal agencies.
It is desired in this study to prove into the merits and demerits of substitution of formal legal machinery by an informal one, called consumer courts. It wishes to see as to how far the demerits of traditional legal courts delay, psychological trauma, catering of rich alone, emphasis on technicalities have started finding place in consumer courts as well.

PRESENTATION OF STUDY

The presentation of the research study is immensely an important aspect of an intellectual perigrination et al which provides an opportunity for a cohesive and complete understanding of the study. Therefore, present study has been synchronised, systemised and presented into five chapters and separate themes and focuses thereof have been culled as infra.

The chapter I has been captioned as "consumer Protection in India: A Historical Retrospect" which deals with the precepts and practices of consumer protection in India from historical and anthropological points of view and focuses on ancient, medieval, British, pre-Independence and post-independence development thereof.

The chapter II has been titled as "Laws of consumer protection in India, USA and U.K: An appraisal" discusses the laws of consumer protection in India and draws a comparative investigation of the anti-trust and competition laws of USA and UK respectively.

The chapter III has been devoted to as "consumer protection and Medical Negligence" whereunder entire institutional framework of
consumer protection viz-a-viz medical negligence has been examined and analysed and correctives have been arrived at.

The chapter IV has been visited upon as "Consumer Protection and Human Rights" and critically evaluates the conceptual and lego-institutional foundations of consumer protection in an age of human rights and collateral issues and concerns thereto. The entire philosophy of human rights and its conterminous relationship with consumer protection is of vital importance and no study is complete on consumer protection without understanding the human rights aspects and their impact thereon.

The chapter V has been conceived as "Working of Consumer Dispute Redressal Mechanism : An Empirical Study" wherein various consumer fora and their working at different stages under the existing legal regime has been examined, analysed and an empirical autopsy undertaken in teralia data collection and investigation thereof was discussed. Moreover, it was also identified to what extent an ordinary consumer is aware of his/her rights and what has been the role of various agencies under the law with regard to the dissemination of information on consumer rights, repinements and remedies.

At last, the entire presentation of study is followed by conclusion and suggestopedia.

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DEDICATED
TO
MY
BELOVED TEACHER
(Late) Mr. M. Moshir Alam
&
MY PARENTS
This gives me immense pleasure to certify that Mr. Zafar Eqbal, Department of Law, A.M.U. has completed his Ph.D. thesis entitled, "Working of Consumer Dispute Redressal Agencies: An Empirical Study of Aligarh District Consumer Forum, State Commission U.P. and National Commission" under my supervision. Mr. Eqbal has left no stone unturned in collecting data for this work. Mr. Eqbal has incorporated and analysed systematically the valuable material he has collected from various sources. The study is an original contribution in the field of Consumer Protection. It will go a long way in helping various agencies working in this field and will pave the way for further researches in the area of consumer protection.

I wish him success in life.

(Prof. Mohd. Ishaque Qureshi)
ACKNOWLEDGEMENT

Praise be to Allah (S.w.t.), the most exalted and heartiest appreciation to the Prophet (P.b.u.h.) whose mercy and blessings have enabled me to complete this study in its present form.

Before beginning my research work, the name "supervisor" awakened feelings of fear in me as I imagined my boss keeping my nose to the grind stone from dawn to dusk. But today, after completion of this work, the name 'supervisor' is synonymous with professionalism, efficiency, talent and also fun and frolic too.

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(ZAFAR EQBAL)
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INTRODUCTION
The supreme sacrifice and perennial pursuit of every constitutional order is directed to accomplish a Human order emanating from a confluence of justice - social, economic and political, rule of law backed by procedure established by law, equality with equity, liberty with limitations, fraternity with fraternisation, constitutionalism and constitutionalisation, social justice with social security, human rights with human duties and egalitarianism with egalitarianisation. The desiderata supra enunciates a canopy of judicial remedies for consumer repinements ranging from survival to sustenance, from avionics to genomics as a kernel of modern statecraft wedded to a utopia known as "consumer democracy" within the confines of a welfare state whereat globalisation, liberalisation, privatisation and disinvestment are pursued upon an anvil of cosmopolitan economy with a Human Face (emphasis is supplied).

The modern era is a harbinger of ultra-modern, highly complicated and sophisticated trade and industry. It is an age of industrial revolution, the philosophy of 19th century has been replaced by the technology of 20th century. The law relating to sale of goods and consumer's protection of late 19th century or early 20th century has become much outdated and cannot cope up with the problems experienced of well organized and modernized society of today.

Our law is primarily designed to meet the requirement of commercial transaction unlike American and German systems, where different sets of rules applied to transactions "between merchant buyers and sellers and private sale". Our present legal system envisages that in
order to recover damages arising out of faulty products one must be a buyer. This requirement covers a very limited class of persons who can claim relief as consumer. No member of the family of the buyer or his guest, sustaining injury or damage there from can claim relief. This is due to the rule of "Privity of contract".

India is an under developed country hopefully claiming to have developing economy. Centuries, of foreign domination have sapped the peoples energy and enterprise. A large part of the population is below the poverty line, of the remainder the vast majority is a long way from affluence. The pressure of population is high and still continues to increase at a tremendous space. The incidence of unemployment and under employment is very great. Persistant shortage of commodities has generally proved too strong a temptation for many businessmen to carry out unfair trade practices, and hoarding and cornering and profiteering have been common. The periodic boost in prices of such commodities also fuel the inflationary pressure on our economy.

Besides, many industries have only a few producers given the economies of scale of modern technology and the size of our market. Other mal-practices have also been widely practice. The attempts of Government by price control and other means to ease the situation have met with only partial and its content in large measure leads to the frustration of the hopes and espiration of the people. Ours is mixed economy where the state has to function - as provider, as regulator, as entrepreneur and as an umpire. All these aim in protecting the interest of the citizen - consumer in one way or the other. The state itself can work
as counter-vailing force to control monopolies and check concentration of economic power.

The state can intervene in two ways. First, it may undertake certain productive activities itself or create bodies such as nationalized industries for that purpose. here, we have public sector. Secondly, the government influences the working of the private sector. These two kinds of intervention have arisen either because the private enterprises system quite literally breaks down or because, although it works, it produces results that are socially unacceptable.6

The nationalized industries are example of public sector activity. The reasons for nationalization have indeed been diverse but one important reason has been the fact of natural monopoly. Major upheavels would occur whenever consumer switched from one supplier to another. There are two possible solution to this problem; one is to provide for private ownership with regulatory control over prices, profits etc. Alternatively the state can go the whole hog and take such utilities into public ownership - this is known as public sector.7 But the public sector monopolies charge the consumer for their inefficiency, and the private sectors do not care much for the consumer and their activities are governed by profit motive. Thus, the plight of the consumer is not that of a sovereign who can exercise his free choice but that of a hopeless non-entity ignored by the business and neglected by the state.

Two associated principles permeated the nineteenth century development of freedom of contract and, at ground level, caveat emptor*(let the buyer beware). The idea of freedom of contract was part
of the laissez faire doctrine of liberal classical economics. It was assumed that in a free enterprise system, goods and services would be produced under conditions of competition. But it would be false to assume that a competitive economy is a natural state of affair. In fact, if we adopt a policy of lessez faire, competition would not continue intact for long. It would insignificant measure disappear out of the window. For the plain truth is, and all experience points in this direction, that businessmen do not like to compete. Generally, they choose to callude rather than compete, or to acquire by amalgamation or whatever a control over specific market, with one aim in mind, namely, to fleece the consumer.

In viewing the antitrust policy as a device for protecting the consumer, we have to consider the nature of that protection. The consumer gains from the competition in terms of more and better goods and services, lower cost and prices and better use of resources. If efficiency in industry and commerce is to be further developed, we need the keen cutting edge of competition freely available to be used by entrepreneurs and competitors willing to do so. The role of competition is to allow competitive forces free play. Competition so encouraged is likely not only to improve efficiency in domestic production and services but also in the infra-structure serving exports or distributing imports. It should never be forgotten that competition is itself a prime consumer protection.

The caveat emptor (let the buyer beware) doctrine of the law, concerning the sale of goods, assumed that the consumer was responsible
for protecting himself and would do so by applying his intelligence and experience in negotiating the terms of any purchase. In early times, the consumer may have been able to protect himself since products were less sophisticated and could be inspected before purchase. But as the conditions have changed. Many modern goods are essentially technological mysteries. The consumer knows little or nothing about these highly sophisticated goods. In real life, product are complex and of great variety and consumer and retailers have imperfect knowledge. The principle of caveat emptor, thus, fails in these conditions. Equally caveat emptor is irrelevant when we consider the question of the safety of drugs and food additives. It is, therefore, necessary that the consumer should have some means of redress when goods fail to live up to their promises or indeed cause injury.¹⁰

Earlier Studies

Academicians, both from India and abroad, have expressed their views in the field of consumer protection but all these studies were of general nature conducted in the form of articles or books which are useful for law students and lawyers. However, these studies have not been conducted from a proper research point of view and in some specific areas. Therefore, the area chosen for this work is quite new and fertile because of its special application in the field of consumer protection. This work has also left ample scope for further intensive and independent investigation.
PRESENT STUDY

The prevailing corruption, specially in the distribution of large number of human consumable goods, essential for the growth and development of consumer health is mostly due to the imbalance of powers between the producers, manufacturers or vendors on one hand and the consumers on the other. This is obvious violation of consumer justice because consumer is the sole end and purpose of all productions, and interest of the producers ought to be attended to only so far as it may be necessary for promoting that of the consumer.\textsuperscript{11}

In order to prevent such practices and to maintain consumer justice, an important part of social justice which is a living concept of revolutionary import and gives sustenance to the rule of law and significance to the ideals of a welfare state.\textsuperscript{12} Individual rights should be reasonably restricted if ever they come in way of progress to the public in general. In this context consumerism that is the social force movement seeking to augment the rights of the buyer in relation to the seller, can be of much use in maintaining the business ideologies. Besides, the existing socio-economic conditions in the country and causes of corruption referred above are the chief factors to be taken into consideration prior to enactment of any law for protecting the life and health of our vast consumer society. We need a sound and comprehensive legislation cooping with baffling unfair trade practices and reflecting the social welfare policies of the Government which has been promising to root-out corruption and provide the clean administration for consumer protection in the country.
The new scientific and technological advancement in hundreds of thousand varieties of consuming goods has now made the market more complex. The products are marked in a number of ways that it is often very difficult for the consumers to judge their quality adequately. The advancement regarding the taste, flavour, style, quality and standard of the commodities and services of their products by manufacturers and dealers always allure the consumer to purchase and use. When consumers have complained about the products or service they are advised to wait and see by the dealers or they are left to purchase, the other better one. The consumer doesn't get remedy to his previous grievances. Consumer of course, are typically in a week bargaining position because of the disparity in knowledge and resources between the parties which narrow the consumer's access to a remedy. Secondly, most of the consumers are ignorant of their legal rights against the remedies available in such cases. Sometimes they are either unwilling or unable to pursue them. Thirdly, no doubt competition works to the benefit of the consumer, but simultaneously trader get a good margin of profit for competitive goods. Traders generally remain in touch and contact with legal and commercial expert advisers. Traders have their unions to back them on the other hand consumer purchases the goods what attracts him. He exert his own mind while to purchase the goods. he is not helped in this job by other fellow being.

Sometimes it is also seen that spending money is one aspect of most peoples living, jobs, children education, recreation may take more time and more interest. They don't have much time to investigate and
enquire about usability, utility suitability and durability of the items they purchase. For the aforesaid reasons and sometimes due to fraud or negligence on the part of the manufacturers or dealers, consumer gets hazardous from the retailer and become an easy prey to a number of diseases which may prove fatal to their health or lives in many of such cases poor and even better of people of society hardly report the matter to the police and institute a suit in the court of law for the simple reasons that either they are afraid of existing investigating and prosecuting agency or they don't know or know a very little about their sociological rights against those offence for what they are entitled to. In India in most of the criminal cases, suits are brought before the courts by the administrative machinery of the Government. The consumer as hinted above prefers to bear the loss rather to seek the mercy of administrative agencies or to knock the doors of the courts where he is further afraid of becoming a victim of legal monsters who not only require to suck him out of his money in form of the court fee and advocacy remuneration but also compel him to room round the court on scheduled and unscheduled dates. But it does not mean that there is no remedy to eliminate or mitigate the grievances of the consumers. Besides the legal actions to reform the said administrative and judicial agencies the manufacturers, whole-seller and retailers need and instant fear of legal blow. Especially in a country like India, where the large majority of consumer is illiterate, ill-informed and possessing limited purchasing power where there is a shortage of many goods and where growth with social justice is the guarding principle of economic planning, statutory measures play all the more significant role in safe-guarding the interest of consumer in
promoting a climate of competition and in influencing the business decision of what to produce, promote and sell and how best to perform all these functions. While the majority of people in India are not in a position to meet the basic necessities of life, a large number of non-essential sub-standard, adulterated, unsafe and less useful products are purchased through unscrupulous traders by unfair practices and deceptive methods. Competition in the market is being reduced to competition in advertising as companies spend more and more money on exaggerated, misleading and deceptive advertising claims and functional features, making the distribution system more effective and efficient or reducing price. This widespread deceptive advertising causes enormous loss to consumer.

Therefore, all over the world, there has been growing demand for the last few decades for greater recognition and protection of consumers. Today a large number of developed and developing countries have legislations to protect the interest of the consumer. In India, consumer justice as enunciated in the preamble of the constitution. The frame work has been provided by several pieces of legislations including MRTP Act 1969. The impact of the MRTP Act was relatively small. In 1984, the Act was amended to incorporate, interalia, new provisions for the regulation of unfair trade practices\(^\text{14}\) e.g., false representation, misleading advertisements, bargain sales, bait and switch selling etc. But despite these amendments, the MRTP Act failed to protect the ultimate consumers from defective goods or deficient services, over-charging of prices and unscrupulous exploitation. Further, there was ignorance of the consumer of his rights, lack of consumer movement and lack of due
recognition to consumer organizations. All these factors led to enactment of a potentially an important legislation. Thus, for the first time in the history of social, economic legislations of this country a comprehensive legislation, namely, the "Consumer Protection Act, 1986" has been passed to provide, better protection to the interest of consumer and for that purpose to establish "consumer councils" and other authorities for the settlement of consumer disputes and for the matters connected therewith. It seeks, interalia, to promote and protect the right of consumer, such as -

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

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods and to protect the consumer against unfair trade practices;

(c) the right to be assured, whenever possible assessed to variety of goods at competitive market;

(d) right to be heard and to be assured that consumers interest will receive due consideration at appropriate forum;

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

(f) the right to consumer education.

These objects are sought to be promoted and protected by the three tier adjudicatory machinery (District Consumer Forum, State Consumer Commission and National Consumer Commission). To provide speedy and simple redressal to consumer disputes, the aforesaid
adjudicatory bodies observes the principles of natural justice and empowered to give relief of a specific nature and to award whenever appropriate compensation to consumers. Penalities for non-compliance of the orders given by quasi-judicial bodies may also be imposed.

SELECTION OF THE AREA

It was in this conspectus the present study has purposely been designed to analyse and find out the out-put of the establishment of a giant chain of Consumer Dispute Redressal Agencies from district level upto the National level, and upto what extend these agencies are successful in achieving the goal, for which they have been established. Because if, the rights which are assured to the consumer by the consumer protection Act are imposed with full force of it then it will certainly help them to raise the concept of consumerism which is defined as social movement intended to safeguard the interest of buyer through various social control measures. Now this settlement of consumer dispute redressal agencies, creating a consciousness in the society which would surely guarantee a new force to reject the role of 'Caveat Empter' (let the buyer beware) and pay the way for the acceptance of theory of 'caveat vendetor' (let the seller beware) in the larger interest of the coordinated economic growth. It is a truth that if the foundation stone of a building will not be laid down properly, the building raised on it may collapse any time. In the same way if at grass-root level the machinery of consumer protection will not function properly then what will be the result, no doubt result will be nil.
The hypothesis, which this study desire to test is, whether, this alternative modes of dispute settlement is merely a paper tiger or does it really works from the grass-root level to higher level and upto what extend these agencies are successful in achieving the goal for which they were established.

The study is aimed to test whether people have really strated going to consumer courts for redressal of their grievances.

The study is aimed to test, whether the problems of traditional legal courts which have a formal justice system through a formal process have also started affecting the consumer courts as well, i.e., delay, psychological trauma, catering of rich alone, emphasis on technicalities.

The study wishes to test the consumer behaviour and awareness as to the defective goods and deficient services.

METHOD OF STUDY

Research studies require some methods for realising the objectives envisioned in the hypothesis. In the same vain, various methods were resorted to complete present research study wherein doctrinal and empirical coupled with the process of data analysis and investigation were adopted for desired results which really proved to be of immense importance provided, implemented and enforced by the agencies working under the existing legal regime which where hitherto oblivious therefrom.

All the data in this study is collected through using appropriate tools and techniques of research methodology.
This study is based on the data collected from the available records and files of the Aligarh District Consumer Forum, State Consumer Dispute Redressal Commission, U.P. and National Consumer Dispute Redressal Commission, Delhi. All the data used in this study are primary in nature. No, specific, mathematical or statistical, method is adopted for the analysis, except only plus and minus. Only mean (per year and per month) is calculated through simple formula -

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\text{Mean} = \frac{\text{Total No. of objects}}{\text{Total No. of years/months}}
\]

**PRESENTATION OF STUDY**

The presentation of the research study is immensely an important aspect of an intellectual perigrination et al which provides an opportunity for a cohesive and complete understanding of the study. Therefore, present study has been synchronised, systemised and presented into five chapters and separate themes and focuses thereof have been culled as infra.

The chapter I has been captioned as "consumer Protection in India: A Historical Retrospect" which deals with the precepts and practices of consumer protection in India from historical and anthropological points of view and focuses on ancient, medieval, British, pre-Independence and post-independence development thereof.

The chapter II has been titled as "Laws of consumer protection in India, USA and U.K: An appraisal" discusses the laws of consumer protection in India and draws a comparative investigation of the anti-trust and competition laws of USA and UK respectively.
The chapter III has been devoted to as "consumer protection and Medical Negligence" whereunder entire institutional framework of consumer protection viz-a-viz medical negligence has been examined and analysed and correctives have been arrived at.

The chapter IV has been visited upon as "Consumer Protection and Human Rights" and critically evaluates the conceptual and lego-institutional foundations of consumer protection in an age of human rights and collateral issues and concerns thereto. The entire philosophy of human rights and its conterminous relationship with consumer protection is of vital importance and no study is complete on consumer protection without understanding the human rights aspects and their impact thereon.

The chapter V has been conceived as "Working of Consumer Dispute Redressal Mechanism: An Empirical Study" wherein various consumer fora and their working at different stages under the existing legal regime has been examined, analysed and an empirical autopsy undertaken interalia data collection and investigation thereof was discussed. Moreover, it was also identified to what extent an ordinary consumer is aware of his/her rights and what has been the role of various agencies under the law with regard to the dissemination of information on consumer rights, repinements and remedies.

At last, the entire presentation of study is followed by conclusion and suggestopedia.
REFERENCES


2. Ibid.


4. Supra note 1.

5. W. Friedman, The State and the Rule of Law in a mixed economy, p. 3.


7. Ibid.

* Sec. 16 of the sale of goods Act - "Subject to the provisions of this Act and of any other law for the time being inforce, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale...

8. Supra note 6, pp. 9-12.


10. Supra note 6, pp. 8-9.


14. 1984, Amendment Act w.e.f. 1.8.84, Sec. 36-A to 36-E (inserted).
Chapter - I

CONSUMER PROTECTION IN INDIA:
A HISTORICAL RETROSPECT
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CONSUMER PROTECTION IN INDIA : A HISTORICAL RETROSPECT

Introduction

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An Overview

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Conclusion
Introduction:

The Monopolies and Restrictive trade practices have caused problems since the inception of commercial activities on earth. As such these problems affecting consumer protection paved the way to various measures to curb them. The monopolistic activities, affecting consumer protection are based on human nature, Man is by nature greedy and selfish. Therefore, these activities are traceable from the earliest times in trade and commerce and represent nothing more that the attempts of intelligent men to interfere, to their own advantage, or that of the industry in which they are engaged, with the free working of supply and demand and with the result of competition. At that time market was dominated by the sellers i.e. “sellers market” and the consumer the today’s “King of the market” was placed in a position that he was a subject of exploitation though at the time no such advanced activities were prevailing as the sellers and businessman of today are adopting to exploit the consumers. The consumers were exploited by trade and business in the ancient period mainly by the short weighment, measures and adulteration.

In improving the relation between buyer and the seller, the states were aware of the responsibility and has the interest that the relationship and conduct should be defined in such a manner that it must promote the interest of the consumer at the hands of sellers. In Kautily’s Arthshastra,¹ there are provisions for heavy penalties for excessive price, adulteration of food, short weighment and measure. According to it any type of cheating in trade with an intention to cheat the people were considered as “adhrma”. Under Veda’s, which are more ancient to Kautily’s Arthshastra, food adulteration of any trade activity injurious to public health and safety were
serious offence and it was the duty of the ruler to protect the public from all these activities.

No doubt, in ancient times monarch reserved for themselves valuable monopolistic rights to sustain their finance but on the other hands they were compelled to take stern action for the protection of the public from the above activities. History shows that in medieval period also in the different kingdoms, rulers always tried to protect the consumer's interest but in 1267 sultan Ghayasuddin Balban took some important measures to control the price and to make sure availability of essential commodities on reasonable price in rainy seasons.

But the regime of the Sultan Alauddin Khiliiji was the regime of consumers when steps were taken to protect the interest of the consumers. He thought not only for the welfare of the consumers but also for the prosperity of the merchants.

The Economic policies of his regime not only includes the price control but it also includes price fixation, devices to prevent the hoarding of essential commodities, incentives to merchants, check on the short weighment and measure etc. During Mughal dynasty some steps were taken to protect the consumers. During the Mughal period the arrival of the Britishers had started and with the passage of time they captured the whole India and the Queen's rule had started. In British India no remarkable steps were taken in the form of legislative measure to protect the consumers while on the other hand all the possible efforts were made in England to curb the monopolistic and restrictive trade Practices.
From the ancient time the consumer protection was always on the priority of the rulers in every age. The rulers always tried to improve the relationship between the buyers and the sellers and had the interest that the relationship and conduct should be defined in such a manner that it must promote the interest of the consumer at the hands of the sellers. But the level of measures varied from kingdom to kingdom and regime to regime. But the consumer protection was always there in one form or other.

An effort is being made to identify the ancient medieval and the pre-independence position in the field of Consumer Protection in India.

(A) CONSUMER PROTECTION: ANCIENT, MEDIEVAL & PRE-INDEPENDENCE POSITION

(1) Ancient Position

The ancient writings tend to show that monopolistic, restrictive and unfair trade practices were also operative in ancient India. In Kautilya’s Arthshastra which dates back to a period placed varying between 300 B.C. and 300 A.D., There were provisions for heavy penalties where artisans combined for production of goods to reduce the quality thereof or to charge profit in excess of labour involved or to depress prices to harm suppliers. There was also a percept to the ruler to be vigilant so that the traders do not buy and sell in concert on a large scales. In India exploitation of consumer is as old as trade and commerce. In Kautilya’s Arthshastra, there are references to concept of consumer protection against exploitation by the trade and industry, short weighment and measures, adulteration and punishment for these offences. The problem of consumer protection has been dealt with by eminent scholars like Kautilya, Manu and
Yajnavalikeya and the offence relating to unfair trade practices and adulteration were punishable in one form or other.

During the reign of Mauryas some time in 325 B.C. there was no short supply of food but emphasis was that food production must commensurate with the increase in population. Sale, production and distribution of pure food and supply of goods of a quality and standard were some of the objects of state policy. Any kind of adulteration, short weighment and measure was considered as an adharma in Shastra based on religious policy. In the view of Kautilya, dharma transmutes in truth (honesty in judicial precedents) vayavahara [behavior] in witness, charitra [character] and rajsashana [administration] in the decree of the kings. These sacred duties were to be performed by every person. In Kautilya’s Arthashastra8 reference for protecting the cause of consumers are found as follows:

“The Director of trade should be conversant with the differences in the prices of commodities of high value and of low and the popularity or unpopularity of goods of various kinds, whether produced on land or in water [and] whether they have arrived along land routes or water-routes, also [should know about] suitable times for resorting to dispersal or concentration, purchase or sale”.

Kautilya’s Arthashastra also deals with recession of sale and purchase, sale without ownership, relation of ownership and keeping watch over traders. It is to emphasize that any kind of deceit, cheating people by any method, adulteration, poisoning of articles of food all were considered to adhrma (unreligious) under the Vedas which are more ancient to
Kautilya’s Arthshastra. According to Vedas the state considered its main duty to protect the health and safety of its people. Trading in any injurious or unnatural food or goods was a serious offence. Using false balances, sale of adulterated commodities, no delivery of goods after payment of the price, cheating or fraud in transactions were considered as offences and penalties were provided during pre-Mauryan period. The ancient law of Manu dealt with weight of gold etc. sale without ownership, non performance of agreement rescission of sale and purchase declares it a moral crime and wrong in public interest. Besides this in the early times monarchs reserved for themselves valuable monopolistic rights in order to sustain their finance. But at the same time these very monarchs were compelled to take stern measures to suppress private monopolies, and penalties have from time to time been inflicted for breach of these measures. The ancient India is known to have introduced measures to curb monopolistic practices and there have been found regulations prohibiting under penalty of heavy fines the making of collective agreement to influence natural market price of goods by withholding them from trade. Boycotting was also a punishable offence. But it may be observed that the very multiplicity of such measures indicate their comparative ineffectiveness. However, in ancient India the position of consumer protection was realized by the rulers and various efforts were made for the protection of the interest of consumer at large.

(2) Medieval Position:

In Medieval India the main kingdoms were, Rajput, Chandellas, Kashmir, Kannauj, Chalukya, Pandya & Hoyasalas etc. But in these kingdoms no remarkable work can be pointed out for the consumer protection. In the year 1099 the attack of Mahmood Ghaznavi was the
foundation stone of the Delhi Sultanate. Later on, in 1175 after acquiring mastery over Ghaznavi Sultan Muizzuddin turned towards India. In 1175-76 he occupied Multan and step by step he conquered the main Indian kingdoms. But he could not concentrate his attention on India and had to be left in charge of military officials, whose duties were practically to the collection of revenue. After Muizzuddin Turkish Sultanate was established then Shamsi dynasty and then came the Sultan Balban in 1266. He achieved considerable success in restoration of law and order and thereby prepared the ground for the administrative and economic reforms of Alauddin Khalji. Balban’s view was that a government should promulgate protective laws and safeguard the interests of the weak against the high handedness of the strong. He always tried for the production of enough grain as per the requirement of the people. The two main principles of the Sultan Balban, which have the theme of consumer protection, was to put the half portion of the government revenue for the rainy season when the production and supply of the essential commodities were affected and prices started rising, then the govt. to help the common and poor people and control the market price use the govt. revenue. Another effort to protect to consumer by the Sultan Balban, was to keep the merchants prosperous and satisfied because in his opinion it helps to keep the market under control and also helps to protect the interest of the common man. For the smooth functioning of these principle he felt the need of an efficient and loyal spy system and his secret reporters kept him well posted with all that happened in every part of the kingdom. So, he was extremely kind and considerate towards the common man. He displayed ‘paternal concern’ for the welfare of the people.
The most effective and remarkable steps were taken in medieval India during Khalji dynasty by the Sultan Alauddin Khalji. When he acquired the Delhi Saltanat in 1301 to protect the interest of common people or the consumers through the Economic reforms. Alauddin made all the efforts to settle the price of commodities. He advocated price control as a measure of public welfare necessary at all times. For example, just as the army cannot be stable without payment similarly it can not be stabilized without the reasonable price of commodities. He further said that without the cheap price of the means of livelihood there can be no prosperity, splendor and stability among the people.

He adopted various effective measures to make the grains cheap. In his own words “if I reduce the price of grain, the benefit of it will accrue to all the people. I will order all the Nayaks who bring grain to Delhi to be summoned, give them robes and money from the treasury (for their business) and for the expenses of their families so that they may bring grain and sell it at the rate I fix.” So the Sultan ordered and grain began to come from all side. Next in order to make cheap livelihood of the masses, he lessened the tax burden of the artisans who used to sell their commodities at a high price. He appointed an honest rais (controller) over them so that he may talk to the lip tongued shopkeepers with the whip of justice.

Another step to protect the interest of the consumer was the appointment of investigators to inquire into the stone weights (kept by the shopkeepers) any one who gave less weight, severe penalty and punishment was there for short weighment.
Further, he has established the *Darul Adl* (palace of justice) for all manufactured goods on which the public was dependent. He ordered all cloth and other commodities brought from outside to be unpacked here and were provided on reasonable rates so that every one may justly buy what he considered to be the best and most suitable. "*Sarai adl*" where commodities were provided on reasonable rates, were established in the interest of the consumers. It was also required that all the merchants of the empire to be registered with the ministry of commerce (diwani riyasat) and their business was to be regulated in accordance with the royal orders. Another object behind the establishment of the *Saria Adl* was to prevent the monopolistic trade practices, each and every merchant and seller were bound to sell their productions and commodities in an open market on reasonable prices fixed by the royal authorities according to the production cost and labour. Not only the interest of the consumers were protected by the Sultan but also the welfare of the merchants, price were fixed with a margin of reasonable profit and even tax relaxation subsidy in other things were granted where ever required to protect the interest of the merchants also.

Thus, the Sultan took the remarkable steps to protect the interest of the consumers and successfully implemented all the regulations through the efficient governmental machinery.

After Sultan Alauddin, no other Sultan was successful even to keep his economic regulations alive to protect the consumers interest. They were interested only in the revenue for their own treasury. But in "Tughlaq" dynasty, Firoz Shah Tughlaq tried to implement the economic regulations of Sultan Alauddin for the welfare of the common people but he could not implement these regulations successfully. Even after Tughlaqs during
sayyids (1414-1451) and Lodi dynasty (1451-1526) no effective measure to protect the consumers interest and prevent the corrupt practices in the market though in the regime of Sultan Lodhi the price of essential commodities were generally cheap but this cheapness was caused by the dearth of bullion and the absence of movement of goods and exchange of commodities, for, no part of the kingdom touched the sea.\textsuperscript{24} Lodi dynasty came to an end with the battle of Panipat in 1526 which ended in Babur’s decisive victory. The mighty army of Delhi in the course of half a day was laid in the dust. This was the foundation of the Mughal dynasty in India. Babur, the founder of the Mughal dynasty was busy in wars during his kingship and could not found the time for any economic improvement. His successor Humayun was not a great administrator. During the period of 10 years when he was the king he did nothing to improve the administrative and Economic system of the country. He made absolutely no solid economic reforms which can stand to his credit.\textsuperscript{25} In the period of Akbar, the great Mughal emperor, no effectie step was taken specially to protect the interest of the consumer and control the market except some measure were taken by Akbar to reform the land revenue system. He, however, took a more modern view and prescribed the principle for units of weight, length and surface measure and these units were employed in the neighbourhood of his capital but they had not become established in the seaports up to the time of his death.\textsuperscript{26}

In Mughal dynasty, the lower classes comprised of the cultivators, artisans, small traders, shopkeepers etc. most of them were condemned to live a hard and unattractive life. But there was no scarcity of food except in times of famine. There were serious famine in 1573-74 and 1595, the
terrible famine in the reign of Shahjahan in 1630 and the condition was so serious that crowds of people shouted "Give us food or kill us. Prices went up, cultivation was neglected and industries suffered but Akbar was the first ruler who provided relief to those who suffered from famines. But even in his period no precautionary measures were taken to face the famines as it was made during the period of Alauddin Khalji for the protection of the common man.

Agriculture was the main industry at that time and the peasant took full advantage of the peace established by the Mughals in the country. They were willing to devote all their time and energy to produce more. The peace established by the Mughals may be said the remarkable achievement for the welfare of the common man, otherwise no other effective measure were taken by the Mughals to protect the common man or the consumers interest. Only due to the good condition of the agriculture industry the prices were low and the common masses could afford to live within less money and the condition of the labour class was quite good. But the emperors were interested only in the revenue. It is true that the Mughal dynasty was on the two pillars, Army and revenue.

It is worthy to note that to begin with the Sultan Nizamuddin to the Mughals, no attention was paid to the economic matters and no effective steps were taken to protect the interest of the common man in the open market as they were busy in the work of conquest. Balban was the first Sultan who took some steps to reform the economic conditions. The most energetic Sultan was Alauddin Khalji who took remarkable steps for consumer protection which was followed by Firoz Shah Tughlak. In Mughal period only land revenue system was reformed but in this period the peace
established by the Mughal emperors was the factor for the low cost and welfare of the people otherwise no effective step was taken for the protection of the interest of the consumer during this reign.

(3) Pre-Independence Position

Before discussing the pre Independence position it is tried to find out the position of consumer protection in England i.e the laws and regulations implemented for consumer protection in England by the Britishers, the then ruler of India, only to find out that whether the same efforts were made by the rulers in their own country and the ruled country in the field of consumer protection or there was any discrimination of laws or efforts in the area of consumer protection because the prime objective behind the arrival of Britishers in India was to do business not to rule and how a business community implemented the laws relating to consumer protection in a country which is basically a market of profit for them.

From the fifth until the tenth century trade tended to be inactive and consequently monopolies and restrictive trade practices were probably at a low level. But as peace and stability gradually returned, merchants established themselves and competition once again gave rise to private monopolies and restrictive trade practices. These activities can best be gauged by the volume of legislation in England laid down that all monopolies without exception, even those granted by the kings were considered contrary to the law, because they restricted the freedom of the individual. An Act of Henry III in 1266 set out prices of bread and butter in detail and laid stress that these prices should correspond with the price of corn (which was fixed before the assizes). Another statute of the same
year provided severe penalties for non-observance of the above-mentioned rates, such as *amercement*, pillory or tumbrel. This statutes was directed also against forestallers who were declared as "oppressors of the poor and the community at large and enemies of the country". In 1349, during the reign of Edward II, the statute of labourers were passed which not only provided for the regulation of the wages of artisans and workmen, but also laid down that actuals should be sold at reasonable prices, violators were subjected to the penalties. Yet a further statute of 1353 made it a felony to buy up and to engross goods before their unloading into storehouses in the port.

It was further enacted by Edward III in 1353 as follows:

"...............we have ordained and established that no merchant or other shall make confederacy, conspiracy, coin, imagination, or Murmur, or Evil Device in any point that may turn to the Impeachment, Disturbance, Defeating or Decay of the said staples or of anything that to them pertained, or may pertain".

This statute was clearly directed against organized trade combinations. The above Act was followed by subsequent legislation which laid down that "Merchants shall ingross merchandises to enhance prices of them, not use but one sort of Merchandises". This statute was directed to prevent the development of large stores of a multiple nature which could by commercial strength monopolies the market.

In sixteenth century, during the reign of Henry VIII, the conspiracy to monopolies was a crime and a proclamation in 1529 was issued against those "who do combine and conferred together in fairs and markets to set
unreasonable prices and monopolies the market”. In the mean time, however, grants of monopolies in the strict sense of the term continued to be made by the monarchs in England as at the beginning of the thirteenth century king John had granted monopolistic trading rights to the Cenque ports in return for ships and men which he needed in order to reconquer Normandy.

In the seventeenth century a vigorous protest was made by the House of commons in 1601 and a Bill was introduced to deal with the matter but the Queen with characteristic statesmanship induced the House to drop this Bill. By promising to have the legality of the grant tested in the courts. Accordingly in 1602 the case of Monopolies was determined under the name of Darcy vs Allin and was held illegal and void as against public policy and three inseparable incidents to every monopoly: increase of prices, deterioration of quality, and the tendency to reduce artificers to idleness and beggary. Eventually the statute of Monopolies was passed in 1623, the object of which was finally to dispose of the problem of the monopolies and restrictive trade practices. But the statutory exception to the Act rendered its effect virtually nugatory.

Laws regulating price and weight of commodities continued from time to time in the process of amendments in England for almost 600 years. The new statutes were enacted during the period 1285 dealing with the quality. Price and weight of the goods and foods provided punishment for the violation. Further in 1662, 1721 and 1749 some other statutes were passed to protect the consumers from the adulteration of different consumable goods and foods. The British parliament enacted a statute of National importance in 1860 for “preventing the adulteration of articles of
food drink”. It provided penalties for any person “who shall sell not pure or adulterated any article of food or drink”. In 1872 it was amended to provide penalties in adequate terms. Then another good measure came on the national scene and in 1875 the British Parliament enacted the Sale of Food and Drugs Act. The Act of 1875 for the first time defined the concept of “food” and every article used for food or drink by men other than drugs or water was included. The Act provided “No person shall sell to the prejudice of the purchaser any article of food....which is not of nature, substance, and quality of the article demanded by such purchaser.”

During the eighteenth and nineteenth centuries it was thought that monopolistic and restrictive trade practices were prevalent throughout the land. The Newcastle merchants had monopolized the London coal market since the end of the fifteenth century and there were consistent complaints about the high price of coal which resulted in form of new legislation in 1710. The Basic text was as follows:

“An Act to dissolve the present and prevent the future combination of coal owners, Lightermen, Masters of ships and Navigation Trade and Manufacturers of this kingdom and for further encouragement of coal trade”...Meanwhile competition from the new Sutherland coal field shook the original monopoly and lasted in 1845 when competition from many other coalfields broke it up, never to be reformed. But still it is observed that despite of the fact that state has tried its best through various legislature measures throughout the centuries but the monopolistic and restrictive trade practices could not be checked as necessary in the interest of the consumers. Some more effective measure is required. So, this was the development of English law related to monopolise and consumer
protection. Another practice which was started, restraint of trade in the direction of monopolistic trade practices. Monopoly is the ancestor of the law relating to restraint of trade. Before the enactment of law relating to restraint of trade a contract of restraint of trade was not void. People started to misuse it to obtain the sole exercise of any trade resulted in monopoly. Then attention was diverted toward this point. The common law principle on restrain of trade are of fundamental importance as they evolved and guided the law in relation to restrictive agreements, foundation of monopolies and trade combination. The doctrine of restraint of trade is based upon the doctrine of freedom of contract and its application has been peculiarly influenced by changing views of what is desirable in public interest and consumer protection. Throughout the law of restrictive trade practices there runs a basic conflict. On the one hand the right of every member of the community to carry on any trade or business he choses, and in such a manner as he thinks most desirable in his own interest, with a corresponding obligation not to interfere with another’s freedom and on the other hand, freedom of contract which implies the freedom to combine with some against others and the freedom to contract in restraint of his trade. The conflict was resolved by holding that while restraints of trade are generally contrary to the public policy and void but they may be justified in certain circumstances. In the words of Lord Macnaughten, in Nordenfelt case.

The public have an interest in every person’s carrying on his trade freely. So has the individual all interference with individual liberty of action in trading and all restraints of trade of themselves, if there is nothing more contrary to public policy and therefore void. That is general rule. But there
are exceptions restraints of trade and interference with individual liberty of actions may be justified by the special circumstances of particular case. ...Only justification if the restriction is reasonable, that is in reference to the interest of the parties concerned and in reference to the interest of public, so framed and guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is in no way injurious to the public.\[^{43}\]

The above test had not crystallized until the decision of the House of Lords in *Mason* case,\[^{44}\] where it was held that the proposition of Lord Machaughten was the correct statement of the law. Their Lordship affirmed the classic test laid down by Lord Machaughten that the contract in restrain of trade are contrary to public policy and, therefore, void unless the restriction is reasonable which is true position.

The trend shows the tendency of the businessmen who do not like to compete. Generally, the businessmen choose to collude rather than compete or to acquire by amalgamation or whatever a control over specific markets, with one aim in mind, namely to fleece the consumers.\[^{45}\]

In India common law doctrine of Restrain of trade has been recognized under Sec.27 of the Indian Contract Act, 1872. This section declares that every agreement by which any one is restrained from exercising a lawful profession trade or business of any kind is to that extend void.\[^{46}\] It is, however, subject to the statutory exceptions which have been provided to protect the agreement for the sale of goodwill.\[^{47}\] Agreement between partners of firm not to carry on any business other than that of the firm,\[^{48}\] during the continuance of the firm, agreement restaining an outgoing
partners from carrying on similar business to that of the firm. After independence this provision was also considered by the law commission of India in its thirteen report where it observed.

"The present section does not reproduce the English Common Law and invalidates many agreements which are followed by that law. The section was enacted at a time when trade was yet undeveloped and the object underlying the section was to protect the trade from restraints."

As Kindersley J. observed in Oakes & Co. v. Jackson. Trade in India is in its infancy and the legislature may have wished to make the smallest number of exceptions to the rules against contracts whereby trade may be restrained. In 1872 the law should not have been enacted under section 27 in such a rigid manner. With the rapid growth of industry and commerce, law should be made flexible to respond to diverse situations.

In Bhola Nath Shankar Das v. Lakshmi Narain, the Allahabad High Court laid down, the following propositions:

1. Every one is entitled to a free hand in his business and to conduct it upon his own lines, even though it may affect the business of another person to his detriment.

2. Where a person or combination of persons unlawfully procure a breach of contract and damages result therefrom an action will lie.

3. Malice in the sense of spite or ill feeling is not the first of the action.

4. Hence, an act which is lawful perse does not become illegal because it is prompted by an indirect sinister motive.

5. Even though the predominating motive in a certain cause of action may
be a desire to advance one's own interest or business one is not entitled to interfere with another man's business or mode of earning his livelihood by illegal if done by a single individual.

6. An unlawful interference with the business of another person with the object of causing damage to him is actionable provided the interference has actually resulted in loss. So is a lawful interference by unlawful means with the object causing damage.

Thus, the regulation of business for one's own benefit or the mutual benefit of the parties to a contract is not restraint within the meaning of sec.27 of the Indian contract Act. Similarly any agreement which would limit the competition for protection of parties and keep up prices cannot be void under this section 47. An agreement for re-bail price maintenance is also not void under this section. In Kuber Nath V. Mohali Ram the Allahabad High Court observed that it does not restrain any party to contract from selling; in other word, none of the parties is restrained from exercising his business of selling but only that in the exercise of business, certain terms shall be observed.

The difference of approach is that in England a restriction will be valid if it is reasonable, in India it will be valid if it falls within any of the statutory or judicially created exception. To a large extent these exceptions are an embodiment of the situation in which restraints have been found reasonable in England. The English law is a little more flexible as the word "reasonable" enables the courts to adopt it to changing conditions. As Lord Wilbeforce remarked in Esso Petroleum Co. Ltd. V. Harper's Garage Ltd.
“The classification (of agreement in restraint of trade) must remain fluid and the categories can never be closed”.

On the other hand Indian courts can only see whether the activity ‘restrained’ falls within the preview of sec.27 or not. Thus, in Rewashankar Smaji V. Vedji, the Kutch High Court regarded an agreement to monopolies the privilege of performing religious services in a village as being opposed to public policy and void under sec. 27.

Though it may be doubted whether the words “profession, trade or business” as used in the section were intended to cover the religious services of priest. While on the other hand in Pattipati Ramaligaiah V.N. Subbarami Madras High Court said, for an auction sale to misguide the authorities as to the real value of fishery colluded that only one of them shall bid, that the agreement between villagers valid. In this case the court laid special stress on decision in Md. Mira Rowther V.S.V. Roghunanda in which privy council laid down that a sale by public auction does not become void if a person had deterred others from bidding.

But it is submitted with due respect that privy council decision is not an authority while the collusion agreement is a violation of right to trade and commerce and against public policy. Trade combination which is provided as an exception to sec. 27. It is valid if combination is to regulate business and not to restrain it. But most of the trade combinations have the prime objective to create monopolists. But courts are not clear on it as in Bhola Nath Shankar V. Laxmi Narain where the rules of an association of trades and Weighmen provided that members shall not deal with outsiders, the penalty for breach being fine and expulsion. The legality of the
association was attacked on the ground that its object and methods were unlawful as it aimed at the creation of monopoly by shutting out all competition. This association was held valid. While the terms clearly show the monopolistic attitude of the association, a contract to deal with each other may be valid but restraining a person to deal with an outsider should not be held valid because if mutual benefit is not the purpose of the agreement and is sought to create a monopoly then sec.27 hits the agreement as void.

It is therefore, clear that the common law doctrine of restraint of trade or sec. 27 of the Indian Contract Act 1872, were not successful in promoting competition and Consumer Protection for the benefit of the community. The law could help only to a contracting party if the contract was challenged in the court. The court could not do anything significant except to declare such a contract void if it was in restraint of trade. The court not having any power to impose penalty except when the combination was an indictable conspiracy. Moreover, the attention of the judiciary was confined to the relationship of the restraint. The decided cases show that there had never been an over attempt to evaluate the wider implication of such restraint upon the interests of the various sections of the public. With the expansion of trade in the pre-independence era the necessity to protect the interest of the public was felt vigorously. In that period the main laws which were enacted to protect the interest of the consumers were, Indian Penal Code 1860, Sale of Goods Act, 1930, Agricultural production, Grading and Marketing Act 1937 Drugs and cosmetic Act, 1940. Even though the level of consumer protection was pretty low.
Indian Penal Code is the foremost penal law. It contains the substantive law of crime. It caters the needs of the consumer in some manner. However, section 264 to 267 of the code relate to fraudulent use of false instrument for weighing, making and selling of false weight and measure. Sec.272 to 276 deal with adulterated food or drink intended for sale, sale of noxious food or drink, adulteration of drugs and its sale and all these activities are declared as punishable crime and the aim was to protect the consumer’s interest. Some spirit of concept of consumerism was also evident in the Sale of Goods Act, 1930. Before this enactment the situation was uncertain with regard to sale of goods or movables, the law on the subject was not only uniform throughout British India but was also outside the limits of the original jurisdiction of the High Courts, extremely uncertain in its application. The Sale of Goods contains the spirit of the concept of consumer protection in several provisions which include contract of sale. Conditions and warranties in the sale, transfer of property between seller and buyers, duties of seller and buyers and suits for the breach of contract.

The above important central Acts which were in force in pre-independence India do enhance the spirit of consumerism in one way or other. These Acts specifically do not mention the concept of consumer interest but they do have provisions to defend the cause of consumers in some manner but these attempts of consumer protection were not as much effective as required rather negligible.

India has, no doubt, made rapid as well as enormous progress in trade, socio-economic and socio-legal sphere but it was unfortunate that the field of consumer protection which is so vital to the progress of country
was relatively neglected. But with the rapid expansion of trade, the necessity to protect the interest of the public in this regard has been felt more vigorously. The trends towards the achievements of the objective of consumer protection is clearly visible in the post independence developments.

(4) Consumer Awareness

No doubt, the concept of consumer protection is as old as trade and commerce. Ancient writings show that the concept of consumer protection was existing in ancient times and also in medieval period. It is written in different old authentic history that time to time rulers tried to protect the common man from monopolistic, restrictive and unfair trade practices. But it is nowhere mentioned that whether the people were aware of their rights or not. If we go through the social and administrative set-up of ancient and medieval period it seems that there was no awareness among the people as a consumer. The administrative set-up of that period upto a large extent was responsible.

The concept of kingship was based on the one man show theory and each word of the king was the law and no one was allowed to raise the voice against the orders of the king even if it is against the interest of the public. No doubt time to time rulers issued some policies for the welfare of the people but these were negligible. Only few rulers came who did a lot for the protection of the consumers against their exploitation but their efforts were not based on any consumer movement or demand by the consumers who were aware of their rights. In those period what to talk about consumer’s right, all the rights were vested in the king. It was the
duty only with which the common man was subjected. Another factor responsible for non awareness among consumers was illiteracy and suppression. The majority of the people of that time were illiterate and suppressed. Power was in few hands. The concept of 'welfare state' was not existing rather it was a police state.

In this atmosphere and set up how a consumer can think of his rights. Another major factor was that an average Indian consumer is knows for his patience and tolerance. Perhaps because of these two traditional traits and due to the influence of the Mahabharat, Ramayan, Geeta and Vedas and other religious books, he considers the receipt of defective goods and exploitation in the market as an act of fate or unfavourable planetary position in his horoscope or blame to the wrong committed in his previous birth. It is true that the people of that time were deeply rooted with their religion, traditions and followings they use to do their work according to the direction of the prophet, Punjaries and Jyotishi Maharaj according to the position of their stars. So in the ancient and Medieval period no consumer awareness was found but this was not felt because markets were not so complicated and business techniques and industrial technology was not so advanced and developed, also the economic condition of the people as well as the state and the wealth of the nation was relatively better. In the pre-independence, no remarkable awareness is found among the consumers. Britishers who were ruling India came here with the prime object of the business then how it is hoped from a businessman for consumer protection or to promote the consumer awareness. The consumers were suppressed, the complete market was in the hands of Britishers and some big Indian businessmen. The consumer was only the subject of exploitation not only
by the Britishers but also by the Indian businessmen. They were adopting all the means to earn more profit. So, in the ancient, medieval and pre-independence India no remarkable consumer awareness is seen.

(5) Judicial Attitude

From the ancient and medieval period attempts have, always, been made to curb the monopolistic and restrictive trade practice and to protect the interest of the common man, the ultimate sufferer of all these activities. The early legislative measures which appear continuously in later developments of the common law, monopoly, restrictive trade practices and restraint in trade and of combination leading to “conspiracy” against “public interest”. There originates the series of great decisions, starting, on the one hand, from the Dyer’s case. In fifteenth century continuing through Darcy V. Allin (1602) leading ultimately to the Nordernfeld case (1894) and on the other hand from Bareth V. Newby (1528) and ultimately to Sorrel V. Smith (1925) which established the basis for individual freedom to trade in the interest of the common man. In 1602 the case of monopolies was determined under the name of Darcy V. Allin. In this case plaintiff was an officer of the Queen’s household to whom a grant of the sole right of making playing cards had been made and he claimed damage for the infringement of his monopolistic rights. The court held that the grant was illegal and void being a monopoly and against the common law and against divers Acts of parliament. Court further observed that there were also found to be three inseparable incidents toe very monopoly:
1. The increase of prices.
2. The deterioration of quality.
3. The tendency to reduce artificers to idleness and beggary.

From the above observations it is abundantly clear that the monopolies are against the interest of the public.

Despite the result of decision of Darcy V. Allin, James-I continued to grant monopolies. Eventually the statute of Monopolies was passed in 1623, the object of which was finally to dispose of the problem of illegal grant of monopolies but the statutory exceptions to the Act rendered its effect virtually nugatory. Thus, the remedy provided by one hand was been withdrawn by the other. In 1684, the Great case against Monopolies was determined. In this case, known as East India Company V. Sandys, a distinction was drawn between trading within and without the realm. In that case it was held that a charter from the king giving the company the exclusive right to trade without the realm to the East Indies was good. In principle such a monopoly was defended on the ground that only a large and powerful concern could trade profitably in conditions then prevailing overseas and scope with foreign competition. Monopolistic conditions were, therefore, allowed to prevail.

It is interesting to note, however, that the monopoly enjoyed by the East India Company was later considerably limited by other monopoly grants by the crown to other corporations and which conflicted with the trading grant made to the East India Company. Further in Mogul Steamship Co. V. Mc Gregor, Gow &Co., certain owners of ships, in order to secure a carrying trade exclusively despite of these attempts by the courts to prevent
the monopolies and other restrictive trade practices which were against the interest of the common man, the monopolies were continued as the king of England continuously granting the monopolies rights to different organization and corporation in their own interest and due to the pressure build by the judicial attitude as well as the public demand the laws which were enacted to prevent the monopolistic and other restrictive trade practices i.e. badgering, forestalling, engrossing etc; were virtually ineffective as the exemption clause left a great scope for the persons interested in monopolies. In this regard in Fry LJ. Summarizes the position as ‘The ancient common law of this country and statutes with reference to the acts known as badgering, forestalling, and engrossing indicated the mind of the legislature and of the judges that certain large operations in goods which interfered with the ordinary course of trade were injurious to the public, they were held criminal accordingly. But from the reign of George III the mind of the legislature showed symptoms of change in this matter and the penal statues were repealed and the common law was left to its unaided operation…..”

Adam Smith summarized the position, why the monopolies were existing inspite of the preventing judicial attitude and why the legislature was not so effective in this direction, in these words.

“……..monopolistic activities not only the prejudices of the public but what is more unconquerable, the private interests of many individuals irresistibly support it. The Member of parliament who supports any proposal for strengthening this monopoly is seen to acquire not only the reputation for under standing trade, but great popularity and influence…”
Meanwhile, judicial attention was diverted towards the private monopoly because with the monopolies of the Monarch, traders started creating private monopolies through the contract in restraint of trade. Though, in fact, contract in restraint of trade were not monopolistic but the effects can be resulted in the form of monopoly. As in Attorney General of the common wealth of Australia V. Adeliade SS.Co. Privy council observed that

"Their Lordships are not aware of any case in which a restraint of trade though reasonable in the interest of the parties has been held enforceable because it involved some injury to the public. Lindley and Bowen L.JJ. had suggested in the court below that though a restraint might be reasonable as between the parties to the contract, it might be unenforceable because of the law which forbids monopolies or because it was calculated to create a pernicious monopoly..."

The following extract form the same judgement also to some extent illustrates the interrelation between monopolies as such and contracts in restraint of trade.

"The term Monopoly can not here be used in its proper legal signification of a right granted by the crown nor can the expression "the law which forbids monopolies" refer to any common law or statutory rule limiting the crown’s prerogative in this respect. The learned justices are contemplating a state of circumstances in which some trade or industry has passed or is likely to pass into the hands or under the control of a single individual or group of individuals and are indicating that if a restraint on trade is likely to produce this result, it may on grounds of public policy be
unenforceable howesover reasonable in the interests of the parties to the contract. Such a state of circumstances may, by eliminating competition, entail the evils though to be incidental to monopoly rights granted by the crown and may therefore, in a popular sense be called a monopoly.”

In the age of queen Elizabeth-I, all restraint of trade whether they were general or partial were thought to be contrary to the public policy and therefore, void. This was the observation of the court in *Colegate V Beacheler.* In time, however, it was found that a rule so rigid and farreaching. Other cases decided at the time of queen Elizebath I must be viewed against the background of the general resistance against illegal grants of monopolies by the crown. Thus the rule was gradually relaxed and Lord Macclesfield in his celebrated judgement in *Mitchel V Reynolds* said:

“... wherever a sufficient consideration appears to make it a proper and useful contract and such as can not be set aside without injury to a fair contractor, it ought to be maintained. But with this constant diversity, namely, where the restraint is general not to exercise a trade through out the kingdom and where it is limited to a particular place, for the former of these must be void being of no benefit to either party and only oppressive…”

He further explained why a contract not to trade in any part of England even for valuable consideration was considered void.

“It can never be useful to any man to restrain another from trading in all places, though it may be to restrain him form trading in some unless he intends a monopoly which is a crime.”
It seems abundantly clear from these words that Lord Macclesfield never intended to give rise to any hard and fast doctrine under which a contract in restraint of trade should be held invalid regardless of future development of transport and communications. On the contrary, it seems that underlying the whole of his judgement is that very test of reasonableness which was not ultimately accepted as the true test. In his opinion, to obtain the sole exercise of any trade through out England is a complete monopoly and against the policy of law otherwise not, if fairly and lawfully obtained but no proper test is propounded in this regard.

Further in – Master, etc. of Gunmakers V.Fell 82 willies, C.J. said the general rule was "that all restraints of trade which the law so much favour, if nothing more appear, are bad but to this general rule there are some exceptions, as first, if the restraint be only particular in respect of time, or place and there be a good consideration given to the party restrained.83

Another important and useful development of the law on restraint of trade was the judgment of Tindal, C.J. in Horner V.graves84 ...Whatever restraint is larger than the necessary protection of the party can be of no benefit to either, it can only be oppressive and, if oppressive it is in the eye of the law unreasonable whatever is injurious to the interest of the public is void on the ground of public policy.85

Again in Raussillon V. Raussillon86 Fry.J. observe that there was no absolute rule that an agreement in restraint of trade was void if it was unlimited in regard to space. The judicial attitude in India in that period was quite clear Madhub Chander V. Raj Coomar 87 was the first case which came before Calcutta High Court. The court held that the words 'restrained
from exercising a lawful profession, trade or business’ do not mean an absolute restriction and are intended to apply to a partial restriction, a restriction limited to some particular place.

The court concluded that it was intended to prevent not merely a total restraint but also a partial restraint. This interpretation of the sec.27 of Indian Contract Act, has been generally accepted. In *Sheikh Kalu V. Ram Saran Bhagat* it was observed that the section has abolished the distinction between partial and total restraints of trade. Whether the restraint is general or partial, unqualified or qualified if the agreement is in the nature of a restraint of trade, it is void.

In *Md. V ONA Md. Ehrahm*, an agreement to close a mill for 3 months in a year was declared void and against public policy. Thus, a review of the above cases reveals that the law as to restraint grew to more liberal pattern. But throughout the law of monopoly and restrictive trade practices there runs a basic conflict. On the one hand the right of every member of the community to carry on any trade or business he chooses and on the other hand, freedom of contract, which implies the freedom to continue with some one else against others and the freedom to contract in restraint of his trade. The conflict was resolved by holding the test of reasonableness.

In *Nordenfelt V. Maximum Nordenfelt Guns and Ammunition Co.* Lord Macnaughten said; “...restraint of trade and interference with individual liberty of actions may be justified by the special circumstances of a particular case. It is sufficient justification, and indeed, it is the only justification if the restriction is reasonable ...” In India, it is observe in
Sheikh Kalu V. Ram Saran Bhagat\textsuperscript{91} any agreement in restraint of trade is void further in Khemchand Manekchand V.D. Bassarmal\textsuperscript{92} an agreement to close a mill for 3 months in a year was held void and further said that any agreement in restraint of trade whether partial or general is void.

This strict observation was the reflection of observation of the court in Nur Ali Ruhash V. Abdul Ali \textsuperscript{93} in which an agreement not to carry on business only for three years was held void and against public policy.

From the above discussion, it may be concluded that though monopolistic and restrictive trade practices are prevalent in the society since the inception of the earth and always attempts were made to curb them. From the 15\textsuperscript{th} century the judicial attitude was always towards preventing these practices but the monopolistic rights of the monarch for the interest of the public, so framed and guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is no way injurious to the public.\textsuperscript{94}

Lord Macnaughten after examining the previous authorities expresses that the test to be “the fair result of all the authorities”. The test laid down by Lord Macnaughten was affirmed by the House of Lords in Mason V Provident Clothing & Supply Co. Ltd.\textsuperscript{95} where it was held that the proposition of Lord Macnaghten was the correct statement of the modern law. Again in Esso petroleum Ltd. V. Harper’s Garage (stourport) Ltd.\textsuperscript{96} all their Lordships affirmed, once more the classic test laid down by Lord Macnaughten that the contract in restraint of trade are contrary to public and, therefore, void unless the restriction is reasonable. Thus, the test laid down by Lord Macnaughten, is recognized as being true position of law.
But the court have only dealt with cases in which one party has complained of the oppressive practices of the other and the public as such has never been represented and its interest only considered as an incidental factor. Meanwhile judicial attention was diverted towards the agreements in restraint of trade, prevailing in the society to get the private monopoly. Courts in England as well as in India took it seriously and declared it against the public interest. But the judicial decisions in England show that the courts were having lenient view and not having any test to judge the agreement that whether it is against public policy or not. But the courts in India were more strict in comparison to the English courts as they declared all the agreements in restraint of trade, void whether partial or general, qualified or unqualified in nature. The judgement in *Mitchel V Raynolds*\(^97\) was the helpful authority to find out a test in this regard and finally in Nordenfelt \(^98\) case it was given by Lord Macnaghten which still exist as the test of agreement in restraint of trade in the modern law.

After Nordenfelt case the judgement of courts in England as well as in India (pre-Independence) shows that in England all agreements in restraint of trade are void unless there is some justification for the restraint making it reasonable. If the restraint is reasonable in the interest of the contracting parties as well as in the interest of public, the agreement is valid. Indian attitude is stricter. It recognizes only certain exceptions through statute and judicial decisions and any agreement which is not covered by any one of the recognized exceptions is void. But one thing is clear that both in England and India the judicial attitude was always towards the public interest and tried to protect the common man from monopolistic and restrictive trade practices.
(B) CONSUMER PROTECTION : POST INDEPENDENCE POSITION

An Overview

At the time of independence consumer action in India was little and seldom heard of. It consisted of some action by individuals usually addressing their own grievances. But there was little organized effort or attempts to take up wider issues that affected classed of consumer or the general public. Slowly consumer awareness started and there was a constant demand for effective steps for consumer protection. Even the government it-self realized the same.

Some efforts started with the enactment of Monopolies and Restrictive Trade Practices Act\textsuperscript{99} 1969, in late sixties, though there were some enactments i.e prevention of Food Adulteration Act\textsuperscript{100} Drugs and Magic Remedies (objectionable advertisements) Act\textsuperscript{101}, Essential Commodities Act\textsuperscript{102} etc containing provisions related to consumer protection\textsuperscript{103} But the provisions of these Acts and their effects were not remarkable in the field of consumer protection and they were confined to the specific field for which enacted. These acts as well as the Narcotic Drugs and psychotropic substances Act which passed in 1985 were not successful in protecting the consumers interest in general. Thus, general protection was not available it was only the specific protection with reference to the particular areas for which the legislation was enacted. Moreover no separate consumer redressal forums were available except the ordinary courts of law with their complicated, expensive and lengthy procedures. However, the remarkable efforts and demand for an exclusive legislation for the consumer protection started in the early eighties and
consequently in the history of the consumer protection a remarkable Act was passed i.e. the Consumer Protection Act, 1986 to do away with the infirmities of earlier legislative efforts.

It shifted the focus of law from merely regulating the private and public sectors to active protection or consumers interest. The Consumer Protection Act, 1986 is a remarkable piece of legislation for its focus and clear objective of consumer protection.

1. Consumer Protection Policy: Development

Before Independence the question to control concentration of economic power was never in the fore front, as the British regime was apparently not much concerned with the social and economic welfare of the people of this country and therefore, there was no legislative measure to check them. Soon after the Independence in 1947, the Government of India assumed an active role in the socio-economic development of the country. The Indian National Congress, the then ruling party in India, approved the recommendation of its Economic Programme Committee in 1948 and on the basis of its recommendations the Government of India then summoned an industrial conference to consider the problems relating to future industrial development.

The Government marked the first step in the direction of imposing social control on economic activities of the private enterprises and also of promoting to some extent the desired goal of prevention of concentration of economic power. In January 25, 1950, the constitution of India came into force, in which the philosophy of welfare state was spelled out contrary to the ideology of laissez-faire in more clear and definite terms. In its
preamble it was resolved to secure to all citizens not only political but also social and economic justice. The philosophy was further strengthened by Art.38 and 39 falling under part V ‘Directive principle of state policy’ of the constitution.

In 1954, the principles enunciated under the said provisions were given more precise direction when the Indian parliament adopted the socialistic pattern of society as the objective of social and economic policy. In 1955 the Indian National Congress adopted a resolution in its Avadi session to the same effect and declared its objectives as “the establishment of socialistic pattern of society where the means of production should be under social ownership or control production should progressively be speeded up and there should be equitable distribution of National wealth”.

These striking developments necessitated the reviewing of industrial policy. Accordingly in April 30, 1956, the Government of India adopted its second industrial policy resolution which replaced the 1948 resolution. It provided that “industrial undertaking in the private sector have necessarily to fit into framework of the social and economic policy of the state and will be subject to control and regulation in terms of the industries (Development and Regulation) Act and other relevant pieces legislation."

In second Five year plan (1956-61), however the sustainable development planning was introduced in India with the launching of the First Five year Plan in April 1951, which raised the specter of a possible concentration of economic power in the country and thus the main objectives were to ensure rapid industrialization and reduce inequalities in
income and wealth along with even distribution of economic power. Like wise, the third Five year plan stated “...Development along socialistic lines will secure rapid economic growth and expansion of employment reduction of disparities in income and wealth, prevention of concentration of economic power and creation of the values and attitude to a free and equal society....”

While moving the draft outline of the third plan in the Lok Sabha in Aug.22, 1960, Late Pt. Jawaharlal Nahru the then Prime Minister of India observed “...an advance in our national income, in our per capita income has taken place and I think it is desireable that we should enquire more deeply as to where this has gone.”

Accordingly, an expert committee, namely, committee on the distribution of income and levels of living, was appointed on October 13, 1960 under the chairmanship of Prof. P.C. Mahalanobis. The committee was to review the changes in the level of living during the First and Second Five year plans; to study the trends in the distribution of income and wealth; and in particular to ascertain the extent to which the operation of economic system had resulted in concentration of wealth and means of production.

The committee submitted its report, based on study made by Dr. R.K.Hazari, in February 25, 1964 and observed “...despite all countervailing measures taken, concentration of economic power in the private sector is more than what could be justified or necessary on functional grounds.”

The committee, thus, recommended for the creation of a full time organization to make comprehensive inquiry into the causes, implications,
anti-social consequences and economic justification. The committee was also of the view that ‘sooner the Government sets up the necessary machinery for collection, examination and analysis of all relevant data on the subject, the easier it would be for it eventually to formulate the necessary policy that will combine industrialisation with social justice and economic power.

In view of the aforesaid recommendations of Mahalanobis Committee, the Government of India in April 16, 1964 appointed a commission namely Monopolies Inquiry Commission.

The commission made a deep study of the various aspects of the concentration of economic power and monopolistic and restrictive trade practices. It also examined several foreign legislation on the subject. The commission however kept its eyes fixed on the special conditions prevailing in our country and submitted its report to the Government of India on October, 31, 1965. The commission observed:

...The dangers from concentrated economic power and monopolistic and restrictive trade practices are not imaginary but did exist in a large measure either at present or potentially.

The commission cited many instances to show that attempts by monopolists or near-monopolists to keep out or crush competitors in various ways were by no means rare. The commission pointed out that monopolists aim in all such actions was the charging of unfair price from the consumers. The commission further found that “...the existing powers of the Government have not been able to check the growth of concentration of economic power in private hands or to eliminate the evils of monopolistic
and restrictive trade practices" The commission, therefore, suggested that a permanent body independent of the Government should be set up with the duty and responsibility for exercising vigilance and for taking action to protect the country against such danger and evils.

In the light of above background, the commission suggest the following considerations for the formulation of legislative policy:

1. We need not strike at concentration of economic power as such, but should do so only when it becomes a menace to the best production (in quality and quantity) or to fair distributions;

2. To accomplish this a constant watch must be kept by a body independence of Government and parliament that big business does not misuse its power;

3. In Monopolistic conditions in any industrial sphere are to be discouraged, if this can be done without injury to the interest of the general public; and

4. Monopolistic and restrictive trade practices must be curbed except when they conduce to the common good.

The Government examined report of Monopolies Inquiry Commission contained in a resolution which was placed before both Houses of parliament in Sept. 5, 1966. In accordance with the resolution, the Monopolies and Restrictive Trade Practices Bill’ was introduced in the Rajya Sabha in Aug. 18.1967. The Bill, as amended by the ‘Joint Select Committee of Parliament', was passed in December 1969.
After few years it was noticed that success could not be achieved to the desired extent. The, realizing the need for an in depth review of the MRTP Act, to the anomalies and plug the loopholes, the Government in June 1977, constituted\textsuperscript{126} a High Power Expert Commission\textsuperscript{127} (popularly known as Sachar Committee) for reviewing the provisions of this Act and suggesting such changes and modifications as are necessary to simplify and make them more effective.

The committee observed that the Monopolistic and Restrictive Trade Practices Act did not provide for the important aspect of protection of consumer interests against unfair trade practices.\textsuperscript{129} Accordingly, the committee recommended suitable measure for public and private remedies against damage suffered by the consumers by indulging in such trade practices. The committee recommended and suggested several measures to make the working of the MRTP commission more effective and independent.\textsuperscript{130} The committee was also in favour of the prohibition of monopolistic trade practices perse.\textsuperscript{131} The Committee favoured for some independent powers to commission to inquire and pass final orders in the case relating to concentration of economic power.

In the light of the recommendations made by the Sachar Committee it was considered expedient to make certain quick amendments with a view to secure some more important socio-economic objectives during the productivity year 1982. Accordingly, the Monopolies and Restrictive Trade Practices (Amendment) Act, 1982 was adopted with effect from Aug. 18, 1982.
The MRTP Act was to protect the interest of the consumer and reflects the Government's consciousness of the widespread fear of the evils which flow from monopoly that is the concentration of economic power in the hands of few. The monopolistic trade opposes individual traders, injures the public, threatens competition, promote price control at the will of producers and manufacturers and dampens individual initiative. Therefore, the enactment to curb the monopolies and restrictive trade practices was a positive attempt to promote consumerism in an onward journey towards building consumer movement in India.

No doubt, enactment of the MRTP Act, 1969 was an effective step towards consumer protection but there was some other Acts already in existence which were directly or indirectly have theme and object of consumer protection.

2. Legislative Measure for consumer Protection Other than Consumer Protection Act 1986 :

Since independence, the Government is deeply involved to make all the possible efforts for the protection of the consumer from monopolies, restrictive and unfair trade practices and also from adulteration of food & Drugs etc.

In this regard various legislative measures were taken by the government, in the form of legislative enactments, which were meant for the protection of the interest of the consumer directly and indirectly. A brief account of them is as follows:

(i) The Drug (Control) Act, 1950

In 1950 the Drugs (Control) Act was passed which provides for the control of the sale, supply and distribution of drugs. The Act ensured
certain essential important drugs and medicines to be sold at reasonable prices in the chief commissioner provinces. The necessity for continuing price control of these essential drugs continues.\textsuperscript{132}

Statutory Framework

The drugs (control) Act, 1950 briefly provides for fixing of maximum quantities and maximum prices which may be sold or held, general limitation on quantity which may be possessed at any one time, duty to declare possession of excess stock, marking of prices and exhibiting list of prices and stacks, and obligation to state prices separately on composite offer.\textsuperscript{133}

Act impose restriction on sale and in this regard a dealer or producer can not sell or agree to sell or offer for sale to any person and drug for a price or at rate exceeding the maximum limit fixed by the notification. A seller also can not have any possession at any one time the quantity of any drug exceeding the maximum limit fixed time to time. Besides, a producer or a dealer can not also sell or agree to sell, offer to sell to any person in any one transaction a quantity of any drug exceeding the maximum limit fixed by the Government.

According to the Act impugned, it is the duty of any person to declare possession of excess stock. Besides, refusal to sell to any person any drug within the limits, cash memorandum to be given on certain sales and marking of prices and exhibiting list of prices and stocks are well spelled out in various provisions of the Act the chief commissioner can prohibit the disposal of any drugs to any dealer or direct the sale of any drug to any dealer or a class of dealers and can also fix the quantities of
sale. Penalties for the violation of the provisions of the Act with imprisonment for a term which may extend to three years or with fine or with both are also provided. The procedure and the authority to a police officer not below the rank of inspector of police may have power to search, seize and investigate the case or any other officer of police not below the rank of inspector authorized by the government is provided in the Act.

The objective behind the Act was to protect the consumer by preventing the seller and producer from charging prices of drugs at their own wish and from store the drugs in excess quantity. The provision of the Act may be considered to be adequate, upto some extent, to protect the interest of the consumer. However, it contains some shortcomings. The first and the most important is that the Act is silent as regard to the procedure of compliant by a consumer if he suffers any loss is cheated by any seller. In this connection the Act does not contain any clear provision and also does not provide any provision for the establishment of any forum or court for the grievances of the consumer where a consumer can go for the speedy redressal of his dispute with an informal and non-technical procedure. The other remarkable deficiency in the act which is apparent that the authority of the search, seizure and investigation is vested in a police officer not below the rank of Inspector i.e. he is preventer of the violation of the provisions of this Act, a friend of consumer. In order to meet the changing requirement of the function of the state and to meet the objectives of the drug industry vis-à-vis interests of the consumers the role of the police is very important in this Act, he has to perform the functions wide enough to prevent the violations of the Act and to help actively in carrying out the objective of the Act. The role of the police officer under this Act is to be
enlarged from a strictly government official to that of public man to serve the cause of vast consuming masses. But the question arises that whether a police officer will perform his responsibility and enforce the provisions of the Act in its true spirit when the credibility of the police in our country is already at the stake and is known for the corruption prevailing in the police department and he will not be influenced by the producer and whole seller who have all the means to influence the officer and create a hole of escape for them and one interesting point is, that there is no adequate check on the police officer and no controlling officer to supervise him under the Act and the police officer has a wide discretion in the investigation of cases. Though the procedure for the prosecution is not so lengthy and cumbersome. They penalty provided is not satisfactory only fine is imposed on the producer or seller the payment of fine will not be painful for the producer and the seller. So the penalty should be extended to imprisonment and fine both in place of imprisonment or fine, or both.\textsuperscript{134}

Beside these shortcomings, the provisions of the Act are effective enough to protect the interest of the consumer if the enforcement of the provisions of the Act is made, by the enforcement agent (police officer) with sincerity and keeping in view his position as a protector of the vast consuming masses and his duty towards the society, in its true sense and spirit of the Act.

(ii) The Prevention of food Adulteration Act, 1954:

Object and Reason:

Adulteration of food stuff is considered to be an age old problem. Historically speaking even second century B.C. the records will reveal, that
adulteration was in existence in many countries.\textsuperscript{135} In India in pre-independence and post independence period there was no short supply of food, as such, and govt. always tried that food production and distribution must commensurate with the increase in population. But the manufacturer producers and traders started to supply the sub standard food stuff to gain more profit. With the passage of time the food adulteration in India became wide and the adulteration started in the essential commodities which are of daily use i.e. used tea leaves are mixed in fresh tea leaves, spices, condiments and chilly powder are mixed with saw dust, sand and grid are to deadly chemicals which are used to disguise the true nature of food stuffs etc., Which were in every sense hazardous to the public health. A race to earn much profit in short cut route spread the practice of the adulteration among the businessmen and the degree of cheating of Indian consumers arose over the years. Important factor which played key role in increasing this practice was that the majority of the population are poor with no consciousness of the rights and they were compelled to buy adulteration stuff just out of sheer necessities and lack of knowledge.

Therefore, a comprehensive and effective law was the necessity of time to curb these activities consequently prevention of Food Adulteration act, 1954 was enacted which came into force in 1954. The statement of objects and Reasons of the Act provides\textsuperscript{136}

"Adulteration of food stuff is so rampant and the evil has become so widespread and persistent that nothing short of a some what drastic remedy provided for in the Bill can hope to change the situation. Only a concerted and determined onslaught on this most anti-social behaviour can
hope to bring relief to the nation. All remedies intended to be effective must be simple."

The Act, to make it more effective, was amended in 1964. The amendment provides that for the proper enforcement of the provisions of the Act that the central Government also should have power to appoint food inspector, under the Act. The power to appoint inspector vests in the state Governments except at major ports, airports, custom stations and railway stations. The Act provides for the prevention of adulteration food to ensure safety and health to the consuming public at large in the country.

Statutory Framework

The Act provides for the appointment of Food inspectors and establishment of a central committee for food standard, central food Labarotary and public analyst for the analysis of food samples collected by the food inspector. The Act further provides that even the purchaser may get the food analysed following the formalities for its. In reality the object of the Act is to see that the food or substance of article brought by the consumer is not mixed with any other thing which is not permitted by law.

The Act makes it clear that the person who can be punished for committing offence is not a person who actually deals and sells adulterated food to the consumer but also person on whose behalf adulterated food is sold. The Act provides that the manufacturer distributors and dealers should give warranty to the vendor in writing about the quality and nature of the good on prescribed form, even the cash memorandum or invoice shall be deemed to be a warranty.
In case of the offence of adulteration, the penalty is provided in the Act the person offender of the offence of adulteration may be punished by the imprisonment not less than three months which may be extended upto two years and with fine not less then Rs.500.147

In case of habitual adulterator, or the food adulterated and supplied or sold by him, when consumed by any person is likely to cause death or is likely to cause such harm or bodily injury as would amount to grievous hurt. Then he be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and with fine not less than five thousands Rupees.148 The Act also provides for the forfeiture of the property of the adulterator.149

The Act was enacted keeping in view the object of eradicating the anti social evil which is constantly playing with the health of the consuming masses and to ensure purity in food stuff. No doubt, the Act is an effective step to protect the interest of the consumer but at the same time the Act is subjected to some deficiencies. Sec. 2 of the Act provides standard of food stuff but it is not complete as many consumable goods/Food stuff has been left without standard i.e. Masala, Saccharin, buttermilk, baby food. Coffee, artificial sweetener etc. no doubt, it is very difficult to fix the standard of all the consumable goods but no other option is left. Even the public analyst is not authorized to fix the standard of food stuff 150 and also the courts are not authorized to fix any standard of the food stuff whose standard is not defined in the Act.151 Another confusion is that Appendix B of the Prevention of Food Adulteration Rules 1955 is limited to a few articles of food only.152 But it is not necessary that if an article is used in one part of
the country as food stuff it is also considered as a food stuff in another part of the country i.e. coconut oil is a food stuff in south India but it is not used as food stuff in northern India. It is therefore, necessary that all the species of food used in the whole of India be standardized in Appendix B notifying the business class as well as the public to be conscious of the term and their food.

Sec. 10(7) which describes the powers of the Food Inspector provides that at the time of search and seizure he is required to call one or more person to remain present at the time of his search and seizure. But this section created a confusion that whether the presence of witnesses is mandatory or discretionary. While it was held to be directory by the Allahabad and Calcutta High Courts, the High Courts of Andhra Pradesh, Kerala and Punjab held it to be mandatory, However the controversy was set at rest by the supreme court in Ram Labhanya V. Delhi Municipalities holding that in absence of any power vested with the food inspector to compel a person to assist him, the provision can not be held to be mandatory.

But it is respectfully submitted that the judgement of the honorable supreme court should not give an arbitrary power to the Food inspector to check and seizure without the presence of independent witnesses. The check against arbitrary action of the food inspector by such a provision is defeated without making any obligatory provision of the persons nor by to assist or witness the sampling, seizure and search. A mere statutory provision requiring the food inspector to “call” independent or impartial witness makes it an impediment in proceedings further with the investigation and may increase the arbitrariness of the food inspectors.
The total proceedings or implementation of the provisions depends on the food inspector he is the only person who is responsible for the implementation of the Act rather than the foundation of the consumer protection through this Act. But unfortunately there is no provision for the adequate check on the duties of the food inspector and no provision is made to prescribe maintenance of records by food inspectors to balance their existence showing this activities and duties.

There is no effective system to supervise his activities i.e. he is left unchecked and unsupervised with the total responsibility of consumer protection through this Act. The maxim "power corrupts and absolute power corrupts absolutely. Proves to be true." In this way, the food inspector has a discretion to 'pick and choose' any person for prosecution arbitrarily. Another thing about the food inspectors is, a food inspector is required to discharge the work of detection, prosecution and handling and conducting all cases. It adversely affect all the functions of food inspector because to expect a person to do all these work competently and effectively is too much expectation.

The punishment for the adulteration of food is provided in the Act, but the punishment is categorized according to the crime and in most of the cases, except some habitual adulterators or adulteration of severe nature, punishment of upto six months sentence and fine of rupees one thousand is provided in the section. The sentence prescribed under the Act has no effect as the offence is concerned and confined to businessmen for whom payment of fine is not painful in proportion to the profit they make by the adulteration. This provision of the Act is not fair because the gravity of
offence of adulteration is much more higher than any other offence as it affects the innocent consumers at large and require to be dealt at par with the principle propounded by Bacceria to the extent that “the pain shall be proportionate to the gravity of offence,” or as observed by the Allahabad High Court “undoubtedly the adulteration of food is a serious matter and may endanger the lives of innocent consumers. The offences shall be deterently punished.” So the punishment for the offence of adulteration should not be categorized and in any case of the adulteration the offender should be severely punished despite of the degree of offence even the preparation to commits crime should be severely punished. It is also provided in the Act that the person who actually sells the adulterated goods is not only punishable but also the person on whose behalf adulterated food is sold. This section covers the small vendors and sellers also with the big businessmen or manufacture and whole seller. This air tight provision has affected petty traders, hawkers and roadside traders as the victim of food inspectors as the soft and easy target and on the other hand the big bosses are left free because they have all the means to influence the bearcats enforcement agency of the Act. Though the Act provides the cases to be tried summarily but the procedure is lengthy and combulsive, which starts with the seizure of sample under sec. 12, and required a lot of time taking formality to be followed the food inspector. Then sec. 20 provide that before institution of the complaint by the food inspector the consent of the central or state government of the consent of a person authorized by the order of the government is necessary. This section is mandatory and non compliance would rendered the prosecution null and void. Then Sec. 13 empowers the accused that if he is not satisfied with the report of the public
analyst he may request to the court for the re analysis by the central food Labarotary which take at least one and a half month despite of all these lengthy and time taking process it provided by the act that cases to be tried in the court of judicial Magistrate/Metropolitan Magistrate Ist class which are already over crowed with the pending cases. How we can expect that a case, which already required time taking undesirable formalities, may be tried summarily and disposed of in short period. These lengthy the formal procedure creates a hole of escape for the offenders and delay in disposal prove it true that “Justice delayed, Justice denied”.

Besides all the above discussed shortcomings the main and remarkable point is that the Act was enacted for the consumer protection but the poor consumer has got nothing except he is at mercy and shoe-toes of the food inspector, beaurocracy and red tapism. In the Act there is no provision for the complaint of a consumer who has suffered any loss due to the adulterated food. No special courts are established for the grievances of the consumer and no provision of compensation for damages, suffered by the consumer, is made even if the consumer suffered any serious physical injury or lost his life, neither he nor his representative has any right to complaint nor to compensation for the loss suffered and no special court or forum is established where he can go for his grievances. Only one right is provided under section 11, a consumer may get the adulterated food stuff analysed but the formalities which are provided under this section are not only difficult but impossible to follow by a common man.

In the last, it may be concluded with the observation of the Delhi High Court in Tiloram V State\textsuperscript{162} that “... offences relating to food adulteration have far reaching consequences on the entire community. The
law relating to prevention of food adulteration is being defied with impunity and this evil has assumed an alarming magnitude. The health of the entire nation including children, women and old infirm persons is exposed to grave danger and it is a matter of vital importance which requires the attention of all those who are concerned with the enforcement of this law.

(iii) The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1955

(a) Object and Reason:

The area of objectionable advertisement is regulated by Act and the Statement of objects and Reasons very well spells out its purpose which reads.

"In recent years there has been a great increase in the number of objectionable advertisement published in newspapers or magazines otherwise relating to alleged cures for diseases and conditions peculiar to women. These advertisements tend to cause the ignorant and the unwary to resort to self medication with harmful drugs and appliances, or to resort to quack who indulge in such advertisement for treatments which cause great harm,\textsuperscript{163}

**STATUTORY FRAMEWORK**

This Act consist of 16 sections. The provisions of the Act the prohibited advertisement of certain drugs to be used in certain conditions. It further prohibits misleading advertisement relating to drugs, magic remedies for treatment of certain diseases and disorders and to import into and export certain advertisements. In case of contravention the Act provides penalty, inter alia.
The powers of entry, search etc. is given to a person or gazetted officer authorized by the state government as enforcement agent. The offences under this Act are declared cognizable. This Act was challenged in *Hamdard Dawakhana V. Union of India* on the ground that the provisions of this Act are violative of freedom of speech but the supreme court turned down the contention and observed that the advertisements affected by the Act do not fall within the words ‘freedom of speech’ in art.19(1)(a) of the constitution. The scope and object of the Act, its true nature and character is not interference with the right of freedom of speech but it deals with trade or business.

The Act protects the common man or the consumer from the effect of misleading advertisement relating to drugs and magic remedies but it does not provide any provision related to the complaint of the consumers i.e. in case of any damage or loss where he will go for complaint or grievances even whether he is entitled to make complaint or not. The Act provides the power of the enforcement agent to search and seizure but it does not provide the source of information it means that the whole responsibility is left on the shoulders of enforcement agent i.e any gazetted officer authorized by state government. It shows once again the protection of the consumer is left on the mercy of beaurocracy. Another deficiency is the jurisdiction to try the cases of this Act which is vested in the Metropolitan Magistrate/Judicial Magistrate 1st class; no provision of special court is provided for the speedy disposal of the cases, which are already overcrowded and taking much time to decide a single case. No other remarkable deficiency is found in the Act. The procedure of the search, seizure and prosecution is not lengthy, cumbersome and formal which could
effect negatively to the enforcement of the Act. But what is the reason that still the misleading advertisements are still existing and this has led to the dissatisfaction about implementation of the Act and the blame is put on the enforcement agents for not enforcing the law in its spirit. The provisions of this Act are preventive and if enforcement is made with true spirit there is no reason why these objectionable advertisement are injurious to public health.

It clearly shows that their enforcement to great extent has not been only haphazard but mostly unsatisfactory. The government must take it seriously that the enforcement of the provisions, not only of this Act but of all the other Acts related to consumer protection should be in true sense therefore the law breakers and enforcers of enforcement agents must not compromise against the interest of the general public or society.

(iv) The Essential Commodities Act, 1955:

The First World War and the Second World War had multiplied the economic scarcities. The demands for consumeable goods were for more than supply. In some cases even where the supply was adequate false, scarcity was created by those interested in benefit. Scarcity conditions were primarily created by the gearing of the entire production machinery for war efforts during the period of first and second world was, with the result that consumeable goods were in short supply. Even after independence this situation was further detoriated some times in the name of natural calamities i.e. floods, drought and rise in population and some times in the name of nationals crisis and economic crisis. As at that time India was trying to develop Industrial and economic system racketeering, profiteering,
blackmarketing and hoarding of essential commodities for their own benefit by the business class disrupted the entire economy and planning of the nation. They even affected the export of food grains, cloth and other essential commodities of human consumption and thereby created foreign exchange problems as well. This situation was against the interest of the common man or consuming masses as well as the nation. So inorder to maintain a regular supply line of essential goods the government steps in and prescribe rules regulations to regulate the production, manufacture and distribution of essential goods. So in the larger interest of the public/consumer the government enacted the Essential Commodities Act, 1995 which provides for the control of production, supply and distribution of certain commodities in the trade and commerce. Previously the Essential supplier (Temporary Power) Act, 1946 was existing but with the implementation of the constitution in which under Art. 369, Parliament had power during a period of five years from the commencement thereof to make laws with respect to trade and commerce in, and the production supply and distribution of, certain essential commodities. So the life of the Essential supplies (Temporary Powers) Act, 1946 was therefore limited to the 26th January 1955. The essential commodities to which that Act applied fell into broad categories, viz.

(a) Coal, Textile, Iron, Steel & Copper

(b) Food stuff, Cattle, Fodder etc.

As public interest required that centre should continue to have even after the 26th Jan. 1955 the same legislative power as it had under Art. 369 of the constitution. Therefore a central ordinance was passed to regulate the
trade and commerce and the production, supply and distribution of commodities within the category mentioned above. Pending the passing of central law providing for control in respect of all essential commodities, certain state Governments have promulgated ordinances or taken other legal action for continuing controls in respect of such commodities as could not be included in the central ordinance. So the Essential commodities Act, 1955 was enacted for the purpose as follows:

"The present Bill seeks to replace the central ordinance and at the same time includes within the definition of "essential commodities" those commodities which had to be left out by reason of lack of legislative power. To very large extent, the Bill follows to provisions contained in the Essential supplies (Temporary Powers) Act 1946, but the penalty clause has been simplified and a few other provisions have been omitted as unnecessary".

Statutory Framework

The Act provides for imposition of duties on the state govt. and power to direct them for the discharge of any duty or for the exercise of any powers contained in the Act. The Act provides that if the Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. The object of enacting the provisions of the Act to see that the essential commodities are made available to the citizen at reasonable rates and that the same may be
distributed equitably.\textsuperscript{168}

It further contemplates confiscation of food grains, others
cognizance of offence\textsuperscript{169} and power to try summarily.\textsuperscript{170} The Act provides for
the quick and effective trial of offence committed by traders and
middlemen, forfeiture of packages, vehicles, animals involved in the
contravention of orders issued under the Act.\textsuperscript{171} The 1967 amendment Act
provides for the confiscation of all essential commodities instead of food
grains, edible oils etc., in case of contravention of the Act. The 1967
amendment further deals with offences which have been made cognizable
and bailable, it also deals with the increase of maximum punishment from
three years to five years imprisonment.\textsuperscript{172} It also prohibits a person to carry
on any business in the commodity in which he has been convicted and that
period is not less than six months as may be specified by the court.\textsuperscript{173}

The Act of is effective step taken by the legislature for dealing with
persons indulge in hoarding and black-marketing of, and with the evil of
vicious inflationary prices and for matters connected there with or
incidental thereto. A wide power and jurisdiction is granted to the central
government under the provisions of the Act \textsuperscript{174} to make sure.

i. maintaining or increasing supplies of essential commodities;

ii. securing their equitable distribution and availability; and

iii. availability at fair prices.

The Provisions of the Act are not only preventive but also punitive
and if enforced with full force of law there is no reason that the holding
and black-marketing, price inflation should not be control. The Act
provides that if any essential commodity is seized in contravention of the
orders the same with animal, vehicle or other conveyance used in carrying such essential commodity will be confiscated by the order of the collector based on just and reasonable grounds.\textsuperscript{175} but the important thing is that this confiscation will not determine the liability of the owner. It is just a part of the process of the prosecution\textsuperscript{176} and shall not prevent the infliction of any punishment.\textsuperscript{177} It shows the intention of the legislature to curb the hoarding and black-marketing. The provisions of the Act are very effective and intend not only to curb the defined activities but also to curb the offender.

The Act has adequate provisions to protect the interest of the consumer it provides for the establishment of the special court to try the cases summarily and make the offences non bailable and power to grant bail is vested only in special courts or the High Courts which is a remarkable provision and intend to protect the interest of the consumer in true sense. But some deficiencies is also traceable in the Act as no provision is made for the complaint by a consumer if affected by any such activities prohibited under the Act. Punishments prescribed and categorisation i.e. different punishment for different activities prohibited under the Act which is not proper. Punishment should not be categorized. One and severe punishment should be provided for any activities related to the crimes defined under this Act as they are the crimes against society and effects the masses even the preparation to commit should be severely punishable. Further the government has not established the special courts to try the cases summarily. The cases are still subject to the lengthy, technical & cumbersome procedure of the traditional legal courts which is not in the interest of the consumer Because the cases related to the black-marketing and hoarding of the essential commodities are directly related to the interest
of the consumer and which can be protected only through the establishment of the special courts for the speedy disposal of the cases related to the essential commodities. The other remarkable deficiency is that there the Act does not provide any inexpensive and informal procedure to be adopted by the consumer himself if he directly suffers any loss in case of blackmarketing and hoarding by a manufacturer, dealer or stockfish of essential commodities. The total burden to initiate the prosecution is left on the shoulder of the enforcement agency i.e. the bearocracy which is known for the red tapism and may be influenced by the influential and big business who have all the means in comparison to a petty consumer to influence the enforcement agency and create a way of escape for them.

Finally it may be submitted that besides, one or two short comings this Act has more effective, preventive and punitive provisions, in comparison to the other Acts, which are adequate and sufficient to prevent the prohibited activities under this Act but the total effectiveness now lies on the shoulders of the enforcement agencies if they enforce the provisions with complete sincerity, keeping in view their liability and duty towards the society and with the true spirit of the Act no matter that the hoarding, black-marketing, price inflation etc. should not be prevented and the interest of the consumers should not be protected.


The Major task of the Government soon after independence from foreign rule was to set the country on firm and sound economic footing. For speedy transformation of the backward rural society of an underdeveloped country into a highly advanced industrialized society and to
develop economy, the state resorted to economic planning. The central Government which had committed itself to achieve a high degree of industrialisation had to rely mostly on the existing entrepreneurs who were already in the line to accelerate the process of industrialisation. But soon it became evident that cartels and giant industrial combines grew side by side and had a stronghold on the market, price structure, distribution and supply of goods. Thus the period after independence saw the concentration of economic power in a few individual or groups of business houses. Concentration of wealth and power flowing there from became a menace and threatened to destroy the basic concept of socio-economic justice on the foundation of which the constitution of India intended to build up an egalitarian society. Consequently after the report of Monopolies inquiry commission the government enacted the Monopolies and Restrictive Trade Practices Act 1967 to curb the concentration of economic power, to protect the interest of the consumer and to see that the operation of economic system does not result in the concentration of economic power to the common detriment.

"The object is to keep watch over the behavior of all monopolies and monopolistic and restrictive trade practices and interfere only when they are prejudicial to public interest". Monopolistic trade practice simply provides the possession economic power in order to control and determine prices of the commodities at the discretion of the manufacturer and exclude competition which is against the interest of consumers at large. The monopolistic trade includes possession of technological superiority, ownership of patent rights, absorption of competitors amalgamation or merger or take over or adoption of other dubious means to make the
The disadvantages of monopoly trade are well spelt out by the United State Supreme Court in the standard oil company case and they are;

1. The power which the monopoly gave to the one who enjoyed it, to fix the price and thereby injure the public.

2. The power which it engendered of enabling a limitation on production; and

3. The danger of deterioration in quality of the monopolized article which it was deemed, was the inevitable resultant of the monopolistic control over its production and sale.

To sum up the MRTP Act, 1969 was enacted to curb the concentration of economic power, monopolistic restrictive trade practices and to protect the consumers from their effects.

Statutory Framework

The Act provides for the establishment of a commission for the purposes of the Act known as Monopolies and Restrictive Trade Practices Commission. A Director General (Investigation and Registration) will be appointed by the central government to look after the cases inquiry and investigation) reported to the commission. The Act provides that the commission may inquire into a case upon receiving a complaint from any trade association or from any consumer or a registered consumers association, upon a reference made to it by the central/state Govt., upon application by Director General and suomoto. The commission have, for inquiry, all the power vested in a civil court under C.P.C. while trying a
The Act further provides that where as a result of monopolistic, restrictive or unfair trade practices the central/state Govt., traders class of traders or any consumer suffers loss, the commission may award compensation for the loss or damage. Every order of the commission may be enforced in the same manner as if it were a decree or order made by a civil court.

Keeping in view the dangers of monopoly and monopolistic tendencies and need for curb on unfair trade practices for safeguarding the interest of consuming masses, the Act of 1969 has been amended by MRTP (Amendment) Act 1984. The amended Act provides measure for unfair trade practices which are the new concepts inducted into the Act for the consumers.

The MRTP Act 1969, is an effort to regulate and control the monopoly in trade and business and business by the government. The provisions of the Act proceed on the assumption that if dealers, manufacturers or producer can be prevented from distorting competition the consumers will get fair deal. The Act deals with matters relating to prevention of concentration of economic power and the control of monopolistic, restrictive and unfair trade practices. The provisions relating to the control of these activities are based on the philosophy that free and healthy competition would be in the large interest of the consumer. Moreover, the concept of public interest which pervades the whole Act, seeks to take care of the consumer’s interest. As the MRTP commission agreed with it and observed, in Blessings Private Ltd. V J.K. Industries Ltd., that:
"...To afford maximum possible protection and relief to the consumers is one of the most important objectives of the MRTP Act." The MRTP Act aims at controlling the concentration of economic power of prohibiting monopolistic, restrictive and unfair trade practices only when the concentration of economic power or exercise of monopolistic, restrictive and unfair trade practices is prejudicial to the public interest. The Monopolies inquiry commission in its report stated;

"We need not strike at the concentration of economic power as such but should be so only when it becomes a menace to the best production (in quality and quantity) or to fair distribution. Monopolistic and restrictive trade practices must be curbed except when the conduce to common good."

The Public interest is protected under the provisions of the Act. It clearly shows that the protection of the public interests is one of the most important objective of the Act and various provisions are laid down to protect the public interest which is nothing but the protection of the consumer's interest. The consideration of the public interest permeates every proceeding under the MRTP Act. The MRTP commission have been laying emphasis on public interests or consumer's benefit while deciding whether a trade practice is restrictive/unfair or not. In RRTA V Parry and Co.Ltd., there was differential pricing in so far as the basic prices of the products, Horlicks and Boost, without the local sales tax which differed from state to state. The MRTP commission considered that the adoption of differential price would place additional burden on the consumer in state where there is no local sales tax or where there is less, sales tax. The commission held the trade practices restrictive and prejudice to public
interest and stated that the consumer in the stats where their sales tax was lower or there was no sales tax should get the benefit. Again in :Blessing Private Ltd. V. J.K. Industries Ltd." the commission held:

"The commission would be most reluctant to interfere with a trade practice which result in relief to consumer unless there are compelling considerations and conclusive evidence to show that the practice is motivated by predatory factors. ...Therefore, the trade practice of selling of tubes and flaps below the cost of production indulged by the J.K. Industries Ltd. is not predatory in nature and therefore not a restrictive trade practice."

In re, All India Film Producer's Council Bombay, 198 The MRTP commission declared the direction of the respondent council, prohibiting the film producers from selling, assigning the video rights, as a restrictive trade practice against public interest and observed.

"...Manufacturing and recording video cassettes represents a technological advancement and the general public in India are entitled to the benefit of this innovation...." The Commission was of the view that the film producers are entitled to sell/assign the input of their film. It would not amounts restricted trade practice. Similarly the MRTP commission in re All India Organisation of Chemist and Druggist,199 the respondent association boycotted some life saving drugs due to some dispute between manufacturers and distributors, needed by the sick persons stated that the dispute between manufacturers and distributors of goods particularly life saving drugs needed by sick person in the country should not be attempted to be solved by group boycotts of the drugs. It would be unfair on the part of the distributors to take law into their own hands and adopt means which
are objectionable and detrimental to the sick section of society. The MRTP commission has been consistently holding that contest and prize schemes as sales promotion techniques are detrimental to public interest. In such cases the expenditure incurred on contest etc, could be properly utilized by a general reduction in the prices extending the benefit of lower prices to all the consumers. The above discussion clearly show that the provisions of the Act are adequate to protect the interest of the public or the consumers and to curb the trade activities to the public interest.

The consumer is often subjected to a large number substandard goods or adulterated foods and spurious drugs or deficient service which are being sold and provided in the market. In a number of cases short weighment, deceptive, false and misleading labels are conspicuous. These are some of the unfair trade practices which dishonest manufacturers and traders adopt in serving their own economic interest without least caring for the consumers welfare. In order to curb these deceptive trade practice the MRTP Act has adequate provisions. These provisions mainly deal with to curb the unfair trade practices and to protect the interest of the consumers. These provisions have heralded a new era of relationship between the consumers and business community. Theft protect the interest of the consumers, against misleading advertisements related to quantity, quality and standard of goods and services, bargain sale and practices relating to offer prizes to promote the sale etc. very effectively and not only these sections are adequate but also the MRTP commission the enforcement against effective by enforcement various provisions of the Act to protect the consumer against the unfair and deceptive trade practices. The most important step taken by the MRTP commission to protect the consumers
interest, with the help of the provisions of the Act, against unfair and deceptive trade practices was that in a series of cases where private firms engaged in the business of finance the MRTP commission issued ex-parte temporary injunction against invitation of deposits offering high rate of interest. There is no authorized government agency to scrutinize such schemes which are launched to lure lay investors. The mushroom growth of private bodies particularly unincorporated concerns accepting deposits which constituted a parallel banking system was to the detriment of the gullible consumers as well as the public economy of the country. The MRTP commission steps in the public interest in such case by restraining the publication of such schemes with a view to ensuring that the public was not exploited through high sounding but misleading promises. Similarly, statement made in respect of wonder cures which are not substantiated by medical authorities are held unfair trade practices as being injurious to public or consumers. In *Avon Cycles (P) Ltd... Re*, it was observed that the prize scheme was not on a scale as to distort competition to a great extent. But the potential mischief of the scheme in preventing the emergence of an environment of healthy competition was great. On these broader considerations the conduct of the lottery was held to be an unfair trade practice. In *Re Mandhar Service Ltd.*, the MRTP commission by an interim injunction prohibited the respondent company from making a representation as to give an impression that the nationalized banks had given approval to the project and that the insurance company had covered all risks unless the respondent company obtained as specific approval of those institutions to that effect.
The provisions of the Act also protect the interest of the consumer effectively against fictitious bargain which is another form of deception. The sale of offer of discounts without mentioning the quality and quantity of goods, the period of sale and standard prize with reference to which bargain price was determined are unfair and deceptive trade practices and against the public interest.

The above discussion clearly shows that the provisions of the Act are effective and adequate to protect the interest of the consumers against unfair and deceptive trade practices it is good beginning in the area of consumer protection and with the help of these effective provisions, the MRTP commission is successfully trying to protect the interest of the consumers.

It may be submitted that the MRTP commission should be empowered to determine and prosecute any trade practice prejudice to public interest, as unfair or deceptive trade practice even if such trade practice is not covered by the Act. As in \textit{FTC V. Sperry and Hetchusionco} the U.S. Supreme court empowered the commission to define and prosecute an unfair trade practice even though the practice does not infringe either the letter or spirit of the anti-trust law. This power will make the MRTP commission more effective and much protective in nature for the purpose of consumer protection. The Act also provides special forum of redressal agency i.e. MRTP commission for the speedy redressal of the consumers dispute and provisions are also given that a consumer himself can approach to commission for the redressal of his dispute. Apart from the above dismissal it is necessary to point out here that the Act is subjected to certain infirmities. It provides that unless the central govt. by notification
otherwise directs, the MRTP Act shall not apply to:-

(a) any undertaking owned or controlled by a Govt. Company;
(b) any undertaking owned or controlled by the Government;
(c) any undertaking owned or controlled by a corporation (not being a company) established by or under any central provisions or state, Act;
(d) any trade union or other association or workmen or employees formed for their own reasonable protection as such workmen or employees;
(e) any undertaking engage in an industry, the management of which has been taken over by any person or body of persons in pursuance of any authorization made by the central Government under any law for the time being in force;
(i) any undertaking owned by a co-operative society formed and registered under any central, provincial or state Act relating to cooperative societies;
(g) any financial institution.

Through the above section the Government excluded all the corporations, companies and undertakings which are owned by the Govt. even under sec.3(g) all the national Banks including insurance corporation are brought out side the purview of the MRTP Act. It means only private sectors and undertakings are within the purview of MRTP Act. Which is not in the interest of the common consumer. Because if a consumer is exploited by any unfair trade practices of the public sector, Banks or the insurance corporations he can not approach for relief because they are outside the jurisdiction of the Act. But it is submitted here that if the government has granted exemption to the above discussed undertakings, companies or financial institutions it is the duty of the government to ensure
that the function of such institution should not be prejudice to public interest. As the MRTP commission has also directed to the government that it is the duty of the government to see that the companies controlled by them acted worthy of the exemption.209

Another shortcoming is of its accessibility that the MRTP commission is established in Delhi and no other branch is established in any state. It is very difficult for a common man residing in the remote areas as well as in other states to approach the commission for the redressal of his dispute. So it is beyond the reach of the common man not only in terms of distance but also in financial terms as the majority of the people is poor and also illiterate. In India the consumer protection law, require speedy, inexpensive and a short procedure for the redressal of the grievance of the case. It can be said that inspite of the short comings the MRTP Act is a landmark enactment in the field of consumer protection and successful upto a remarkable extent, though not completely, to protect the consumers interest and curb the monopolistic, restrictive and unfair trade practices which are prejudicial to public interest.

To Sum up, it is submitted that since independence the government always tried to protect the interest of the consumers through various enactments which are directly or indirectly related to the consumer protection. These Acts which were enacted to protect the consumers interest contain the various provisions in this connection but the impact of the Acts was not upto the expectations only because of some deficiencies. Provisions of these Acts left the responsibility of enforcement on the shoulders of the government officials i.e the bureaucracy keeping in view the bureaucratic setup in India and prevailing practices. It is humbly submitted that
credibility of the enforcement agencies is at stake and well to do people in industries and trade have all the means to influence the enforcement agencies and make a way to escape from the liability. Under these Acts the consumer was kept at the mercy of enforcement agencies as no direct right to go in the proper forum or courts is granted to the petty consumer in case of exploitation in the market he has to make a complaint to the enforcement agencies and prosecution proceedings will be initiated by him.

The procedure under these Acts are lengthy time consuming and cumbersome which has affected the true spirit of these Acts because all the cases are subject to the jurisdiction of traditional legal courts which are known for delayed disposal of the cases. For the first time, the need to establish the special courts for the speedy disposal of cases was felt in essential commodities Act 1955 but no special courts were established.

These attempts by the government to protect the consumer's interest were appreciable but only because of lack of sincerity in enforcement and lengthy and cumbersome procedure the force of effect was negatived and failed to protect the interest of the consumer in true sense.

So, in the larger interest of the consumers of the country it was, therefore, required to create a totally new law for the protection of consumer to have and enabling the consumer to have basic rights, like:

1. Right to adequate living standard;
2. Right to accept the products and services of assured quality, weight and measure;
3. Right to choice of goods and services at fair and reasonable price;
4. Right to be fully informed and educated about the goods and services;
5. Right to fair dealings and just agreements and
6. Right to be heard and get justice;

If these basic rights are assured to the people then it will certainly help them to raise the concept of consumerism as a social movement intended to safeguard the interests of buyer through various social control measures. It is necessary to evolve a comprehensive consumer code in order to suggest structural base and to rejuvenate the faith of common man in the efficiency of law and its instrumentalities.  

In recent time one of the most significant areas of economic regulation all-over the world has been the adoption of consumer protection legislation's in a big way and since the early 1960's, legislature in India have been active in recognizing the need to evolve effective measure designed to protect consumer in their transactions in the market place. The existence of law which although not necessary primarily designed for that purpose, have the effect of protecting interest of consumer is not, of course, new. What is a relatively new phenomenon is the development of institutional structure designed to deal with consumer problems and the enactment of substantive laws specifically aimed at improving the position of the consumer. Demand for the protection of the consumer was continued. Government of India also felt the need of consumer protection law. At last the month of December 1986 can legitimately be considered as parliaments session for consumer protection when marathon race of legislative activity was undertaken to protect the interest of the consumers. In just two days both the houses of parliament after going non stop through the way which goes to the object of the protection of interest of consumers, put a landmark in the history of growth of judicial institution in India and thus to provide
for the better protection to the interest of the consumer and for the establishment of consumer councils as the adjudicatory machinery and the authorities for the settlement of consumers disputes speedly and effectively, a new legislation, namely the Consumer Protection Act, 1986 has been passed by the Parliament. A three tier adjudication machinery of District Consumer Forum, State Consumer Commission and National Commission, each consisting of a judicial member as the presiding officer and two members for district forum and state commission and four members for National Commission, not necessarily with legal background have been created for the speedy and inexpensive redressal of the consumers disputes and provide them relief of specific nature and award compensation whenever appropriate. This Act has set in motion a revolution in the field of consumer protection and their rights.

(3) CONSUMER AWARENESS

Since the dawn of independence, India has been struggling to develop and strengthen its industrial base. However, during this period the Indian consumer has borne incredible hardship and has been subjected to exploitation of every kind. Passive by nature most Indian consumers have had to put-up with adulterated food, faulty weight under measures, spurious and hazardous drugs, exorbitant prices, endemic shortage leading to black-marketing and profiteering, substandard products, useless guarantees, callous and indifferent services from public utilities and a host of other ills. In the mid sixties however the struggle began to change the position and consequently the consumer began to organize themselves. They, started voicing their concerns and demanding better products and services and fighting for their rights.
The consumer awareness historically began in the early part of this century with the formation of the passenger and Traffic relief Association and women Graduate union Bombay, during 1915. But its real beginning in terms of sustained, visible and continuing expansion was during the sixties when by the efforts of some social workers and, voluntary consumer association were established with the increase in literacy rate and the mass media. The people started getting themselves aware of their rights and what is happening with them in the market place made them conscious up to some extent to protect themselves from the exploitation. Though the consumer awareness was very slow but getting momentum slowly.

Till the mid seventies, consumer organizations were largely engaged in actives of consumer awareness and protection by writing articles and holding exhibitions. To a marginal extent they were also engaged in making representations to the Government for changes in policies and laws. Another remarkable milestone of the consumer awareness was the “Akhil Bhartiya Grahak Panchayat” which cropped up in the national scene. It was sincere effort to organize scattered consumer during the seventies. Its thrust was collective wholesale buying goods of domestic needs and redistribution among consumer families thereby eliminating middleman and their margin.

In 1974 some activists in Tamilnadu, got together formed a consumer group and started working against malpractices in ration shops ... Prior to this R.R. Dalvai, a freedom fighter and a Gandhian, started working on consumer protection in and around Chennai through consumer cooperatives.
Another major step of consumer awareness was the emergence of the consumer education and Research Center (CERC) Ahmedabad it gave a new thrust and turn to the consumer awareness movement. The eighties witnessed an upsurge in the number of consumer groups coming up across the country. The consumer in India was waking up day by day and forming themselves in the consumer associations to protect themselves from the exploitation in the market. This was the result of the consumer awareness and growing demand of the consumer protection through an effective legislative measure exclusively for the consumer protection which leads to the enactment of consumer protection Act 1986. the consumer awareness increased during the early nineties by and among the voluntary consumer organizations by the formation of stat level and national level federations of consumer protection. It began with Tamilnadu in 1990 and was folled by states like Gujarat, Orissa, Andhra Pradesh and West Bengal. FEDCOT(Federation of consumer organizations Tamilnadu and Pondicherry) is note worthy among the state level Fedrations of voluntary consumer organizations. During the Janta party rule between 1977 and 1980, under Mohan Dharia and during the days of A.K. Antony as the minister of consumer affairs, the movement received a boost. It encouraged the consumers individually and collectively to assert their rights and pursue remedies to the logical ends.

The above discussion clearly shows that since the independence the consumer awareness is increasing day by day and getting the shape of a strong movement but still it needs much momentum. The main hurdle in the consumer awareness is illiteracy. But the Indian consumer after a 100 years of British rule and exploitation is remarkably aware of his legal and set a mile stone in the history of consumer movement.
4. JUDICIAL ATTITUDE:

In post Independence India there were many legislative measures taken by the government to protect the interest of the consumers. Though the provisions of these Acts were not so effective because they were not specifically enacted for consumer protection. Therefore, the effect was not remarkable. Inspite of this fact judiciary tried its best to protect the consumer with the help of the spirit contained in these Acts. The courts emphasized on the nature and quality of the goods and their fitness for the buyer’s purpose. In *Nicholson and Venn V. Smith Marriott*,\(^{216}\) It was an auction sale of set of linen napkin and table cloths, described as “dating from the seventeenth century”. The plaintiff, who were dealer in antiquities saw the set and bought it. He subsequently found it to be an eighteenth century set and sought to reject it. It was held that he could do so as he had relied on the description and discrepancy between the description and quality could not have been discovered by the casual examination.

In the early period of independence the rule of caveat emptor (let the buyer beware) was prevalent means the market was supposed to be the sellers market but with the exception to the caveat emptor the judicial attitude tends to protect the buyer and tried to establish the doctrine of caveat venditor (let the seller beware). Judiciary always come forward for the protection of the consumer in the sellers market and it was the prime objective that the goods should be fit for the buyer and he could not be exploited by the seller. In, *Harmaran V Radha Kishan*,\(^{218}\) where bidi tobacco leaves were purchased from a dealer, he implicitly knows that they are meant for manufacturing bidi’s and liable for breach of the condition if they are not fit for the purpose. In, *Dr. Baretto V. T.R. Prrice* \(^{219}\) in this case
buyer bought a set of false teeth which was not fit in his mouth, then he was allowed to reject the same. In *Butterworth V. Kingsway Motors Ltd.* where a second hand car was purchased from a dealer and within few months was seized by the police as a stolen one, the buyer was allowed to recover full price from the seller, although he had used the car for some months. Atkin L.J. said: There can be no sale of goods which the seller has no right to sell. Even in the case of deviation of goods from the description was considered against the buyer and the buyer was protected by the judiciary.

The principle was followed in *Beale V. Tavler* in this case also the buyer relied on the description which later on discovered to be false. But if there is not any deviation from the description buyer could not reject the goods it was laid down in *Reardon Smith Line Ltd. V. Honsen Tangon* in *Crowther V. Shamon Motor Co.* in this case a second hand car was purchased with the condition from the seller that if the engine will seized within 2000 Km. it will be replaced. The engine was seized within 2000 Km. The seller refused to replace the engine. It was held in this case that the seller is bound to replace the engine. Another area in which judicial attitude towards the protection of consumer was the concept of merchantable quality the opinion that the goods supplied to the consumer should be of merchantable quality. It should not be in any way hazardous to the safety of consumers and public.

In *Godfrey V Perry* a toy dealer displayed in his shop's window some plastic toy catapults. A child of six was attracted by them and bought one. While he was using it, it broke off and pieces of which entered his left eye which had to be removed. The seller was held liable for the damage. Again in *Wilson V. Rickett Cockerrel & Co. Ltd.* where coal supplied for
domestic use contained an explosive substance which exploded and caused injury to the plaintiff, supplier was held liable.

It is clear that the judiciary always tied to protect the interest of the consumer with the help of the then prevailing laws. But in the such laws the scope of the consumer protection was very limited rather negligible. Even the common law doctrine of restraint of trade of the Indian contract Act-1872 were not successful in promoting the competition between the seller for the benefit of the consumer. Meanwhile the prevention of Food Adulteration Act 1955 and Trade and Merchandise Mark Act 1958 were passed with more effective provisions related to the protection of consumers against adulterated food, black marketing, price hike and duplicate goods of below standard etc. judiciary with the help of the various provisions of these Acts took a serious view towards the protection of consumers interest as well as to clarity the provisions in the interest of the consumer. In Pyarelal V. N.D.M.C. the supreme court clearly said that the object of the prevention of Food Adulteration Act is to ensure that food which the public can buy is interalia prepared, packed and stored under sanitary conditions so as not to be injurious to the health of the people consuming it.

Even the apex court took a serious view about the interpretation of these Acts and the Rules framed therein and said that the purpose of law should not be defeated. Any interpretation which will result in defeating the purpose of the Act has to be avoided.

About the food offences the apex court was very serious and in Payarali. K. Tegani V. Mahadeo Ramchandra Dange said that in food
offences strict liability is the rule. In *Mithunlal V State* it was observed by the supreme court that under the prevention of Food Adulteration Act mens rea is not a constituent part of the crime. The purpose of adulterating an article is not a relevant fact. An act done in contravention of the Act, no matter how innocently, would be liable to be punishable with the penalty provided therefore. Absence of mensrea is no defence though it may be taken into consideration as a mitigating factor while awarding sentence with these observation the judiciary came forward for the protection of the consumers in the matter of food & Drug adulteration offence with a very attacking mood.

In *M.V. Joshi V.M.U. Shimp* the supreme court held that if the quality of purity of butter falls below the standard prescribed by the rules or its constituents are in excess of the prescribed limits of variability, it shall be deemed to be adulterated under Sec. 2 of the prevention of Food Adulteration Act 1954.

Again in *Mani Bai V. State of Maharashtra* the S.C. took a broader view and said that an article of food shall be deemed to be adulterated, if the quality of the article falls below the prescribed standard, it was not necessary for the prosecution to show that the article was injurious to health. Even the plea that the adulteration was not prejudicial to health and would not injure anybody but that it only had colour to the substance in order to make attractive to the buyer can not be sustained.

With the help of the anti adulteration law judiciary tried to protect the interest of the consumer in every possible manner. If ghee (fat) is adulterated with lard of pig or with bear suet, it may be that from the purely
physical and health point of view, the mixture may be more nutritious but
the offence is there because a substance not recognized or permitted under
the law has been used for mixing\textsuperscript{234}, in \textit{Bihari Lal V. State (Delhi Amn.)}\textsuperscript{235} it
was observed by the supreme court that the law does not differentiate
between cases of articles of food which are adulterated due to human
agency and articles of food which are spoil due to natural causes like flood,
rain etc. This observation of the supreme court intends to warn the
producers and sellers to take care about the adulteration of food in the
interest of the consumer as it is clear from the judgements of the court that
adulteration means adulteration whether injurious to public health or not.
Again it was observed by the supreme court in \textit{Abdul Hamed Khan V
Mohammed Haneef}\textsuperscript{236} if the tea in which gram husk or coffee is mixed falls
below the quality prescribed for it and is, therefore, deemed to be
adulterated from any consideration as to whether such extraneous mater is
injurious to health.

In the same way in \textit{Corporation of Calcutta V. Sankar Trading
Co.}\textsuperscript{237} where \textit{ajwain} was mixed with dirt and sandy material and the court
considered it to be adulterated and observed that in such an eventuality the
accused under that Act can not escape conviction by printing out that the
adulteration was not injurious to the consumer in any other way.

Regarding the liability, the judicial view is very clear as in \textit{Public
Prosecution V. Meenakshi Achi}\textsuperscript{238} supreme court observed that person
involved in selling adulterated food can not be acquitted on ground that he
is only technical owner, for example, selling adulterated ice cream in the
market can not make the manufacturer free from liability that the business
of ice-cream was not managed by him is irrelevant. The Judiciary make it more clear in *Municipal Board V. Shuam Bihari* and said under the prevention of Food Adulteration Act, the person who can be punished for committing the offence is not only the person who actually sells the adulterated food but also the persons on whose behalf adulterated food is sold.

Meanwhile the Drugs and Magic Remedies (objectionable) Advertisement) Act-1954, which was passed to impose curb on misleading advertisement relating to drugs magic remedies for treatment of certain diseases and disorder, was challenged in *Hamdard Dawakhana V. Union of India* the supreme court observed:

"Thus it is open to the court for the purpose of determining the constitutionality of the Act to take all the facts into consideration and we find that there was an evil of self-medication, which both in this country and in other countries, the medical profession and those who were conversant with its danger had brought to the notice of the people at large and the Government in particular. They had also warned against the danger of self medication and of the consequence of unethical advertisement relating to proprietary medicines particularizing these disease which were more likely to be affected by the evil. There is reason, therefore, for us to assume that the state of facts existed at the time of legislation which necessitated the Act."

This judgement of the supreme court was not the victory of legislature but it was one of the victory pillar of the consumer movement in India. Judicial attitude was also towards the distribution of the essential
commodities to the citizens on reasonable rate. Regarding the Essential commodities Act, 1955, Punjab and Haryana High Court in *Jai Bharat cold storage V. State* held that the object of enacting the provisions of Sec. 3 of essential commodities Act-1955 is to see that the essential commodities are made available to the citizens at reasonable rates and distributed equitably.

Supreme Court in *Delhi Municipality V. Shiv Shankar* said that the essential commodities Act has for its object the control of production, supply and distribution of and trade and commerce in, essential commodities.

Further Supreme Court in *Parag Ice and oil Mills V. Union of India* observed that the interest of the consumer has to be kept in the fore front and the prime consideration that an essential commodity ought to be made available to the common man at a fair price must rank in priority on every other consideration.

These observations of the apex court clearly show that upto what extent the judiciary is concerned to the protection of the consumers interest against all type of exploitation in the market place. Again, when the Government in the interest of the consumers put a duty, through the Drugs and cosmetics (Amendment)Act-1964, on the manufacturer to reveal on label or container, the basic ingredients or formula contained in the drug. It was challenged but again this time the judiciary came forward for the protection of the consumers interest in *K.L. Chaturvedi V. State of M.P.* the High Court of Madhya Pardesh held that the disclosure of ingredient is necessary to protect the health and ensure the safety of the consumer. The restriction imposed is not arbitrary but reasonable. The court said:
“Drugs are patent things. Modern Scientific discoveries of recent years have vastly added to their numbers. With the growing consciousness of the people in their efficiency, the need has arisen that the state should see to it that the drugs of standard purity and quality are put in the market, that there is no misbranding and that spurious drugs are not put into the heads of the unwary.”

In this way it is clear from the above discussed judgments that the attitude of the judiciary was always towards the protection of the consumer’s interest with the help of the prevailing laws. In 1969, Monopolies and Restrictive trade practices Act was enacted with an object of the consumer protection. Now see what was the judicial attitude with the help of the provisions of MRTP Act. With the enactment of MRTP Act the judicial attack on unfair and restrictive trade practices got new force.

In D(} (I&R) V. Bhargav Clinic\textsuperscript{245}, an Ayurvedic clinic issued an advertisement claiming to treat while patches on skin. The claim was found misleading and not medically sound. It was declared an unfair trade practice. In D G C (I & R) V. Burraughs Welcome (India)\textsuperscript{246} the respondent manufacturers of ‘Ridake Paracetomol Tablets’ emphasized in their statements the views of the British Medical Journal dealing with the side of Aspirin but extolled the quality of Ridake suppressing the view of the Medical Journal regarding its side effects. The MRTP commission held that the representation that Ridake does not have any side effect is a misrepresentation and is therefore an unfair trade practice. In, Voluntary Organisation Interest of Consumer Education V ITC Ltd\textsuperscript{247}, the complaint against the respondent was that as a manufacturer of cigarettes, it had
advertised contest known as “Made for each other contest”. The contest was open only to married couples provided one of the couple was smoker. There were other terms required to fulfil. It was held:

“The language of sub clause (b) of sec 36 (3)\(^{248}\) shows that parliament intended to prohibit the conduct of any contest lottery, game of chance or even a game of skill if it is intended for the purpose of promoting directly or indirectly the sale, use or supply of any product or for that matter any business interest.”

According, the practice resorted to by the respondent was found to be unfair trade practice. Again in, *Secretary cum Executive Director, Consumer Unity and Trust Society V. Bal Kirshan Khurana* \(^{249}\) the respondent was alleged to be publishing advertisements for promoting the sale of his hosiery goods in papers. The respondent was found to be advertising himself as being a very humble person devoted to the service of man. In the advertisements, the respondent offered to sell hosiery goods of export quality at ridiculously low rates. In order to tempt the intending buyers to flock to his business premises, the sales were said to remain in operation only for an unreasonable short period 2/3 days it was observed, that these are bargain prices which are not intended to be offered for sale or supply at the said bargain prices. Such a trade practice is prejudicial to public interest or at least to the interest of the consumer.

In, *Director General (I & R) V. Khaitan Electrical Ltd* \(^{250}\), a gift scheme was announced by the respondent that the customer was charged an extra amount of Rs. 13 per fan under a gift scheme. In this way the cost the gift was thus wholly or partly covered in the transaction and the customer
that the gift was offered free of cost. The MRTP commission held that the scheme was unfair in as much as the cost of the gifts was covered in the transaction.

The judiciary not only concentrated on unfair trade practices but also took into account the restrictive trade practice which are against the interest of the consumer. As in, *RRTAV Bata India Ltd.*\(^2\), the Bata India Ltd. had entered into several agreements with its whole sale dealers etc. for marketing its merchandise. The agreement contained clause:

1. Prohibiting the manufacturer from purchasing raw materials and other components from parties other than those approved by the respondents:

2. Preventing the manufacturers from enlarging their production capacity without the approval/consent of the respondent.

It was held in this case that these classed would attract the provisions of Sec. 2(o)\(^3\) and amount to restrictive trade practices and shall be discontinued and not repeated.

In *Re, Sarabhai M. Chemicals (P) Ltd.*\(^4\) the agreement between M/S Sarabhi M. Chemicals (P) Ltd. And the foreign Collaborator M/S E March A.G. for sale of know how provided that the foreign company was not to sell, package or manufacture any of the pharmaceutical products listed in the agreement for a period of twenty years.

The MRTP commission observed that “In the context of acute scarcity of some of these pharmaceuticals so vital for the health of the nation, in imposing a negative covenant of this type on the foreign collaborator, a covenant which effectively prevented the flow into India of
further and better know-how in the manufacture of these pharmaceuticals, the Indian company was actuated by purely private interest which conflicted with and was detrimental to the national interest."

So, the judiciary playing the role of protector of consumers interest as well as the public and national interest moved forward and declared, the attempt to drive out or to exclude rivals by severe price cuts to the extent of the price being below cost price or cost of sale constitute anti competition conduct obstructing the play or competitive force, illegal and as a restrictive trade practice as against the public interest. In *Re, Rallis India Ltd* it was observed that the practice of adopting predatory prices would be restrictive as such would tend to deter new entrants into market and thus obstruct the flow of capital into the stream of production which is prejudicial to the public interest.

Further, in *Nirlon Synthetic Fibres and Chemicals Ltd. V.R.D. Sexena* In this case, the agreement provided that 75% of the production of the parties named therein who are the major producers of nylon yarn in the country will be sold at concessional rate to the restricted class of users. The result of that agreement was that only 25% of the actual production of the country as a as the manufacturers mentioned in this agreement were concerned was available for sale in the open market. The MRTP commission observed that agreement operated to limit, restrict or withhold the output or supply of filament yarn within the meaning of sec.23 (1)(g) of the MRTP Act and tended to bring about manipulation of prices and affected the flow of supply in the market and imposed on the consumer unjustified cost or restriction. When the use of opium started in such a
manner against the interest of the public and injurious to public health. Then a demand was raised and stressed in international conventions that the cultivation of the poppy plant, it is to be considered that optimum is made from poppy plants, should be made only for the purpose of medicines and the state must see to it that advertisement in this regard should not be made. So the government of India imposed the restriction on the cultivation of poppy plant, through the Narcotic Drugs and psychotropic substances Act. 1985. Except for medicinal purposes on licenses. Which was in the interest of the common public. It was challenged, but the supreme court in the interest of the consumers adopted a rigid view and observed in, Bhadur Singh V Union of India the reasonable restriction can result into total prohibition. The Supreme Court held that the state should have power to control the cultivation of poppy so as to stop the production and manufacture of opium and its derivative which are harmful and injurious to public health and welfare of the people.

N Belly Singh V. State, the government prohibited the cultivation of poppy in certain hill area of Uttar Pradesh. This prohibition was challenged but the Allahabad High Court held that “as it is hill area and it is difficult to exercise, the proper supervision, the only way is to prohibit the cultivation of poppy it self.”

It is clear from the above discussion that since independence the judiciary was always at the parallel path with the legislature to protect the interest of the consumers. The judicial attitude always reflected an image of the protector of consumers interest with the help of the different legislative enactment’s designed for the same. The courts always came forward to
protect the consumers as well as the public from the adulterate food & Drugs, price hike, black marketing, short weightment and measure, misbranding, misleading advertisement, restrictive and unfair trade practice, monopolistic trade practices etc. Judicial attitude was always to check the quality and standard of goods supplied to the public and to protect the consumers health and from the exploitation in the market. It always came forward to protect the consumers and to curb the devices used by the sellers and producers to exploit the consumers in different ways for their own benefit. Though the judiciary was always tends to protect the consumer but it gained momentum with the enactment of various legislative measures for the consumer protection.

It may be concluded that judiciary inspite of limited source of action since there was no direct legislation in the area of Consumer Protection the courts endeavored to protect Consumer interest always kept pace with the legislature and executive for consumer protection and through its pronouncements tried to promote the fairplay of competitive forces in the open market and emphasized on the quality, standard and purity of goods and food articles. In case of adulteration the principle of strict liability was followed by the judiciary and adopted a view that the adulteration even if not injurious to public health will not affect the prosecution once it is proved that the food article is not in accordance with the prescribed standard. Adopting a more rigid view the judiciary not only the manufacturer but also the sellers liable for the adulteration by human agency as well as articles of food spoilt by natural.

It may be concluded that the judicial attitude was always to promote the healthy competition and healthy trade practices to safeguard the interest of the consumers.
CONCLUSION

It is clear from the above discussion that consumer protection is not a modern phenomenon but it exist since the inception of the society in different forms. Various attempts, to protect the interest of the consumers, were taken by the rulers from the ancient times. In the ancient time rulers as well as the leading personalities always tried to laydown rules for the consumer protection. Different ancient books are full of the principles of consumer protection and describe the duty of the king to protect the interest of the public in the market. Attempts have always been made to curb the monopolistic and restrictive trade practices adopted by the sellers in the market to earn the unreasonable profit. These attempts were continued in the Medieval period starting from the Sultan Moizuddin in 1175 to the Mughal dynasty in different regime consumer protection was always in the administrative setup. But Sultan Ghaysuddin Balban was the first ruler who gave some fruitful principles of the consumer protection i.e price fixation, consumer, King of the market, in real sense. He tried to adopt the concept of buyer's market or the principle of 'caveat vendetor'. He, at the same time also adopted the policies for the prosperity of the sellers so that they may be stopped to adopt the unfair means for profit. He tried to established a good market with his balanced trade policies.

After Mughals, the Britishers captured the rule of India. During British rule, Britishers, who came here for the business, monopolized the market and the poor consumer was not only exploited by the East India company but the Indian seller also followed the same suit. During British rule no effective measures were taken to protect the consumer from monopolistic and restrictive trade practice this was obvious because we can
not expect, any step for the consumer protection, by the ruler whose main aim was to do business and a businessman never talk about consumer protection. On the other hand in England all the possible efforts were made not only to curb the monopolistic and restrictive trade practices but also to protect the people from adulteration of foods, short weighment and measure. Though some indirect object of consumer protection were seen in some provisions of sale of Goods Act, Indian penal code, Indian contract Act etc. but these provisions were of limited rather negligible effects.

So at the time of independence consumer action in India was little and seldom heard of. But slowly some efforts started with the enactment of Monopolies and Restrictive Trade Practices Act, 1969 in late sixties which was directly related to the consumer protection and was the first Act which was enacted with an object to protect the consumer from monopolistic, restrictive and unfair trade practices though at the same time since 1954 some important legislative measures were taken, in the form of prevention of Food Adulteration Act, Essential Commodities Act, Drugs Control Act, Narcotic Drugs and Psychotropic Substances Act, weight and Measure Act etc. by the government to protect the consumers interest but the scope of these enactment's were limited to the specific field and these Acts besides, some other short comings, don’t have any special provisions to protect the consumers interest. These lengthy and cumbersive procedures negate their effects. Even after some times it was realized that even MRTP Act is also not successful to protect the consumers interest upto the desired extent.

So, demand for a legislative measure exclusively for the consumer protection and to provide speedy redressal was continued. Government also felt the need of an exclusive legislative measure for consumer protection
consequently a land mark step was taken by the government and the consumer protection Act 1986 was passed by the parliament which is a progressive, comprehensive and unique piece of legislation for the consumer protection. One remarkable point in the field of consumer protection is the role of judiciary which always came forward for the protection of the consumer’s interest even with the limited source of action i.e. the Acts prevailing before the consumer protection Act, 1986 and always played a role of protector of consumer interest.

Now it is hoped that in the next millennium, every consumer in his own interest will realize his role and importance in the right perspective and with the help of the weapon in his hands, i.e consumer protection Act 1986, will prove that “Customer is sovereign and consumer is the King.”
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4. Id at 120.
5. Id at 119.
6. Id at 119.
7. Supra note 1
8. See sec. 34, Book-2 Chapter I of Kautilya’s Arthshastra.
15. Ibid P. 291.
16. Id at P. 373.
17. Supra note 10 at pp. 374-375.
18. Ibid at p. 376.
19. Ibid.
20. Id. At p. 382.
21. Ibid.
22. Supra note 15.
24. V.D. Mahajan, History of Medieval India (Muslim Rule in India), 1999, p. 32-33.
27. Supra note 27, at p. 285.
30. 23 Edw. 3.
32. 27 Edw.3, C.5, in 1963.
33. Supra note 32 p. 139.
35. (1602) 11 Co. Rep.84 b.
36. The Statutes Known as assize statutes of 1285.
37. 38 & 39 Vict. C 63 (1875).
38. 9 Anne, C.30.
42. Id at p. 565.
43. Mason V Provident clothing & supply Co. Ltd. (1913) A.C. 724.
45. Indian Contract Act and Specific Relief Act 1872, p. 271.
46. Exception 1, Sec.27 of Indian Contract Act 1872.
47. Indian Partnership Act, 1932, Sec. 11(2).
48. Ibid Sec. 36(2).
53. A.I.R. 1912, All 587.
54. (1968) AC 269; (1967) 1 All ER 699; (197) 2 WLR 871
56. A.I.R. 1951, Mad. 390
57. I.L.R., Mad. 227.
58. Supra note 20.
60. Sec. 4,5,8,& 9, of Sale of Goods Act 1930.
61. Sec. 19 Id.
62. Sec. 14-17
63. Sec.14,15,16,&17 Id.
64. Sec. 46-58 Id.
65. Y.B. 2 Hen. 5, Fo. 5. pl.26.
66. 11 Co. Rep. 84 (b) Moore K.B. 617, Noy 173.
67. I.P. Wms. 181.
68. (1894) A.C. 535.
70. (1925) A.C. 700.
71. Supra note –30.
72. Supra note – 36.
73. (1685) 10 st. Tr. 371.
74. (1889) 23 Q.B.D. 598.
77. 1913 A.C. 781, 795.
78. 78 ER 1097.
79. (1711) I.P. Wms. 181:24 ER 347.
80. Id at P. 182.
82. Id at p. 388.
83. (1831) 7 bing 735 : 131 E.R. 284.
84. Id at p. 743.
85. (1880) 14 Ch.D. 351.
86. (1874) XIV Bengal Law Report 76.
87. (1909) 8 CWN 388 at p. 391.
89. (1894) A.C. 535.
90. Referred in Khemchand Manekchand V. D>Bassarmal.
91. A.I.R. 1942, Sind-114.
92. (1892), 19 Cal. 765.
93. Id at p. 565.
94. (1913) A.C. 724.
95. (1967)1 All E. 699.

100. Although the list of Acts related to consumer protection is very huge. It is not possible to analyse all the Acts in this work. So we have chosen only those which reflects maximum theme of consumer protection.


103. The preamble of the constitution runs as follows:

"We the people of Indian having solemnly resolved to constitute India into a sovereign socialist secular Democratic Republic and to secure to all its citizen:

Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all; Fraternity assuring the dignity of the individual and the unity and integrity of the nation.

In our constituent Assembly this twenty-Sixth day of November 1949 do Hereby Adopt, Enact and Give to ourselves this constitution."
104. Art. 38 stipulates:

“(a) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic, and political shall inform all the institution of the national life.

(b) The shall, in particular, strive to minimize in equalities in income, and endeavor to eliminate in equalities in status, facilities and opportunities, not only amongst to groups of people residing in different areas or engaged in different vocations”

105. Article 39 provides: “The state shall in particular, direct its policy towards securing:

(a) That the citizens, men and women equally, have the rights to an adequate means of livelihood

(b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) That the operation of economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) ........................................

(e) ........................................

(f) ........................................


109. Third Five Year Plan, PP. 9, 13-14.

110. As quoted in the report of the committee on distribution of income
and levels of living part I (1964), P-1.

111. Dr. R.K. Hazari made a detail study of the structure of corporate private sector. He found that there had been an increase in the concentration of economic power in the corporate private sector between 1951 & 1958, but it was through growth and not by means of mergers and other forms of corporate connibalism. See R.K. Hazarika, corporate private sector (1966).


113. Ibid. P. 43-44.

114. The commission was appointed under the chairmanship of Mr. Justice K.C. Das Gupta with G.R. Rajagopaul, K.R.P. Aiyangar, R.C. Dutt and I.G. Patel as member.


117. Ibid. P. 125-128.

118. Ibid. P. 159.

119. Id. P. 140.

120. Id. P. 139.

121. Id. P. 159.


123. The Bill as amended by the Joint Committee was discussed in Rajya Sabha on April 28,29, May 1, July 23 and 24, 1969, when it was passed by that House and in Lok Sabha on Dec. 10, 15, 17, and 18, 1969 when it was passed by it and received the assent of the president of India on Dec. 27, 1969.

125. The Committee First chairman was shri. K.S. Hegde, the then Member of Parliament and formerly a judge of the Supreme Court of India. He was however subsequently elected as speaker of the Lok Sabha and resigned from the chairmanship of the Committee. A new chairman, Shri Justice Rajender Sachar, a sitting judge of the Delhi High Court, was appointed in his place by the Government towards the end of August. 1977.


127. Ibid

128. Id. PP. 260-61.


130. See the provision of Sec. 4.


134. Sec. 9., The Prevention of Food Adulteration Act, 1954.

135. Sec. 9, Ibid.

136. Sec. 7, Ibid.

137. Sec 9, Ibid, Sec. 10 & 11 deals with the powers of food inspector and procedure to be followed by him.


139. Sec. 4, Ibid.

140. Sec. 8, Ibid.

141. Sec. 12 Ibid.

142. Sec. 7 & 16, Ibid.

143. Sec. 14, Ibid.
144. Sec. 16, Ibid.
145. Sec. 16, Ibid, read with sec. 320 of IPC.
146. Sec. 18, Ibid.
149. In Municipal Board Frizobad V Lalchand, AIR 1964, All. 189.
150. Gopalpur Tea Company V Corporation of Calcutta (70 CWN 1005)
152. In City Corp. Trivandram V A Reddiar, AIR 1960, Kerala - 357
155. Bacceria on crimes and punishment – The Library of Liberal Arts
157 Sec. 7, of the prevention of Food Adulteration Act-1954.
158 Sec. 16-A, Ibid.
160 AIR 1967, Delhi- 71.
163 Art. 10 (i)(a) of the Indian Constitutional.
166 Sec. 4 of the Essential Commodities Act – 1955.
167 Sec. 3 Ibid.
168 Jai Bahrat cold Storage V State, AIR 1980 P6 & Hr. 52.
169  Sec. 6-A, Essential Commodities Act – 1955.
170  Sec. 12-A, Ibid.
171  Sec. 7-b, Ibid.
172  Sec. 10-A, Ibid.
173  Sec. 7 & 4 Ibid.
174  Sec. 12 A.A. – Ibid.
175  Delhi municipality V Shri Shankar AIR 1971 S.C. 815.
176  Supra note 69.
178  Ibid.
179  Sc. 6-D, Essential Comodities Act-1955.
180  InRe, Kril Standard products (p) Ltd. (1976) 46 comp cas.
184  Standard Oil Company of New Jersey V United States, (1911) 221, U.S.1.
185  Sec. 3 of the MRTP Act 1965.
186  Sec. 5. Ibid.
187  Sec. 8 Ibid.
188  Sec. 11 Ibid.
189  Sec. 10 (a)(i) Ibid.
190  Sec. 10 (a)(ii) Ibid
191  Sec. 10 (a)(iii) Ibid
192. Sec. 10(a)(iv) Ibid.
193. Sec. 12 Ibid.
194. Sec. 12-B Ibid.
195. Sec. 12-C Ibid

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234. Ibid

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242. AIR 1971 S.C. 815
243. AIR 1978 S.C. 1296 at p.1314
244. AIR 1960, M.P. 389 at 391, 393
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246. UTP Enq. No : 55 of 1986
247. (1985) 1 comp. L.J. 235
248. MRTP Act 1969
249. (1985) 1 comp. L.J. 371
250. Injunction app. No: 20 of 1986
251. (1976) 46 comp. Cas. 441
252. MRTP Act 1969
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Chapter - II

LAWS OF CONSUMER PROTECTION IN INDIA, U.S.A. AND U.K. : AN APPRAISAL
Chapter-II

LAWS OF CONSUMER PROTECTION IN INDIA, U.S.A. AND U.K. : AN APPRAISAL

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A. LAWS OF CONSUMER PROTECTION IN INDIA

An Overview

In the previous chapter it has already been discussed that in what form the laws related to consumer protection were prevailing in ancient, medieval, pre-independence and post-independence era. What laws were implemented by the rulers in ancient and medieval period and by Britishers in pre-independence India. After independence how the government of India developed the laws related to consumer protection. Now the law of consumer protection has got a developed shape in India. So in this chapter - a comparative analysis of laws related to consumer protection in India, U.K. and U.S.A. is made because most of the enactments in India are based on common law and in this chapter it is tried to see where the law of consumer protection in India stands in comparison to the laws of consumer protection in U.K. and U.S.A., supposed to be the most developed countries of the world.

1. Introduction

As a developing country, Indias biggest problem is that of perennial shortage taking in various types of consumer goods and services. The pressure of population is high. A large part of the population is below the poverty line and of the remainder the vast majority is a long way form affluence. There is ignorance of the consumers of their rights. The consumers have not yet organised themselves into a powerful movement. Consequently, 'sellers market' or 'caveat emptor' situation, frequently arise in respect of various goods. All these have created a situation of a very safe heaven for the traders and a position of frustration and uncertainty for the consumer.
In India, consumer justice is a part of social and economic justice as enunciated in the constitution. Following the constitutional mandate, a number of legislations have been enacted in the field of consumer protection relating to standardization, grading, packing and branding, prevention of food adulteration, short weights and measures, hoarding, profiteering etc. But all these are scattered pieces of legislations. The litigation under these legislations are disproportionate and troublesome to the small consumer. The procedure 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.

In 1969, the Monopolies and Restrictive Trade Practices Act was passed with the object to prevent concentration of economic power and to control monopolistic and restrictive trade practices. The provisions of the Act, proceeded on the assumption that if dealers, manufacturers or producers could be prevented from distorting competition, the consumers would get a fair deal. The emphasis was on competitive market and it was thought that the competitive market would provide the required protection to the consumers. But that was only partly true. There is now greater recognition that consumers need to be protected not only from the effects of restrictive trade practices but also from the practices which are resorted to by the trade industry to mislead or dupe the customers. The effect is to shift the emphasis on detection and eradication of frauds against the consumers, particularly belonging to weaker sections of society. If a consumer is thus falsely induced to enter
into buying goods which do not possess, quality and do not have the care for ailment advertised, it is apparent that consumer is being made to pay for quality to things on false representation.\(^4\)

Obviously such situation cannot be accepted. The consumers must have a positive and active role. Thus, the Sachar committee suggested\(^5\) that the unfair trade practices like misleading advertisements and false representations, bargain sales, bait and switch selling, offering of gifts and prizes with intention of not providing them conducting promotional contests, supplying goods that do not comply safety standards and hoarding and destruction of goods should be prohibited. In the light of these recommendations the MRTP Act was amended in 1984 to incorporate interalia, new provisions for the regulation of unfair trade practices.\(^6\) Despite these new provisions the ultimate consumer could not be protected from defective goods or deficient services, overcharging of prices and unscrupulous exploitation. Because one of the most important negative point of the MRTP Act 1969 was that all the government/public sectors including Banking and financial institutions owned or governed by the central or state government or controlled by the government companies are excluded from the ambit of the MRTP Act 1969 which negatived the effect of the MRTP Act 1969.\(^7\) The parliament, therefore, passed a potentially very important legislation, viz. the consumer protection Act 1986 to provide better protection to the interests of the consumer. The Act is a comprehensive piece of legislation with its main thrust on providing simple, speedy and inexpensive redressal of consumer grievances. The Act came into force on April 15, 1987 except Chapter III
which came into force on July 1, 1987. The provisions of the Act are in addition to and not in derogation with the provisions of any other law for the time being in force. The provision are supplementary in nature and have no overriding effect.

The Act envisages the formation of the Consumer Protection Councils at the Central and state levels. The main objectives of the councils are 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/services, the right to the protected against marketing of goods and services which 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 unfairtrade practices or restrictive trade practices or unscrupulous exploitation, the right to be heard, and the right to consumer education. The Act provides a three tier quasi-judicial machinery at the national, state and district levels for redressing consumer grievances, it is significant to note that the Act recognises the role of the consumer organizations in assisting the consumer in seeking justice through this nation-wide network of consumer disputes redrassal agencies as envisaged under the Act. The Act applies to all goods and services in private, public or the cooperative sectors even to the government departments. Thus the consumer can initiate an action under the Act against the defective goods or deficient services rendered even by the public sectors or government companies/ departments.
2. Aims and Object

Undoubtedly the Act introduce a setup for speedy disposal of consumer disputes and an attempt has been made to remove the existing evil, i.e. formal and combursome one procedure and delayed disposal, of the ordinary court system. The Act being a beneficial legislation intended to confer some speedier remedy on a consumer from being exploited by unscrupulous traders. So, the main object of this Act is to provide better protection to the consumer who is a whole lot of the society and protect the rights of the consumer and establishment of three-tier quasi judicial machinery for speedy and inexpensive redressal of consumer dispute.

The study of the preamble of the Act gives a clear idea of legislative intention - the Act was enacted to provide better protection of the interests of consumers and different definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing form the settled view, a preamble can not control the otherwise plain meaning of a provision. Though the various legislations and regulations permitting the state to intervene and protect the interest of the consumer have become a heaven for unscrupulous ones as the enforcement machinery either does not move or moves ineffectively, inefficiently and for reasons which is not necessary to state. The importance of the Act lies in promoting welfare of the society in as much as 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'. So, the law of consumer protection has come to meet the long felt necessity of
protecting the common man from wrongs for which the remedy under the ordinary law for various reasons has become illusory.

The Supreme Court made a remarkable observation and adopted a practical approach and focussed on the spreading malady of unfair trade practices, exploitation of consumer in the market place and the position of law enforcement agencies which are unsuccessful to protect the interest of the consumers and said that: "the malady is becoming so rampant, wide spread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities, appears to be a silver lining which may in course of time succeed in checking the rot". So, the Act is dedicated to provide better and effective protection to the interests of consumers. In the statement of object and reason it is said that the Act seeks to protect the consumer in the following respects:

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

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

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

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

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

(f) the right to consumer education.

The Act spells out these objects and charges the central council with the responsibility of attaining these objects. The section provides that the objects of the central council shall be to promote and protect the rights of the consumer i.e. the object of the Act.

So, the object and aim of the Act is to safeguard the interest of consumers as against the well-organized trading segment of the society. The Act helps the fate of the consumer to provide speedy and cheap remedy and bring the justice to the doorstep of the consumer.

3. Statutory Framework

The Consumer Protection Act 1986 consists of four chapters and 31 sections. Chapter I consists of section 3 which deals with commencement, application and definition clause. The Act shall extend to the whole of India except the state of Jammu and Kashmir. Sec. 2 of the Act defines various terms used in the Act. It is also provided that 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.

Chapter II of the Act consists of sec. 4 to section 8 and provides the administrative set up for the consumer protection. The Act provides for the establishment of the consumer protection councils at the centre and state level. The main object of the councils are to promote and protect the rights of the consumer.
Chapter III of the Act consists of sec. 9 to sec. 27. The Act, to provide simple, speedy and inexpensive redressal of consumer disputes, envisages a three tier quasi-judicial machinery at the district, state and national level i.e. District Forum, State Commission and National Commission.

The Act further provides the composition, jurisdiction (original and appellate) and pecuniary as well as territorial jurisdiction of the District Forums, State Commissions and National Commissions.

4. Who is a Consumer

The Consumer Protection Act 1986, defines the term 'Consumer' in two parts, one in reference to a consumer who purchases goods and the second in reference to a person who hires services. Thus the Act covers transactions for supply of goods and rendering of services. The supreme court in its decision in Lucknow Development Authority V M.K. Gupta noted that the word "consumer" is a comprehensive expression. It extends from a person who buys any commodity to consume either as edible or otherwise from a shop, business house, corporation, store, fair price shop to use for private or public service. The Act aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services. So for as a buyer of goods is concerned the definition says that a consumer means a person who buys any goods for a consideration or avail any service for a consideration. This would have the effect of covering all kinds of transfer of goods for consideration whether in terms of money or other goods (exchange) or services. The
sale of Goods Act 1930 confines itself to sale for a money consideration and would not apply to a barter or exchange of goods unless the price is calculated in terms of money.\textsuperscript{24} It is not necessary that consideration should be paid at once. It may be paid at once thereby resulting in a cash sale. It may be partly paid and partly promised or may have to be paid under some deferred system of payment. The above statement has widened the scope of the term consumer is not limited only to the cash sale. Same provision is applicable to the hirer of service. The definition of 'consumer' given in the Act includes not only the person who buys the goods or hires services for consideration but also any user of such goods or service with the permission of the actual buyer or hirer.\textsuperscript{25} This has ended the limitation on general law that the only party to contract can sue (privity of contract) and the complaint may be made by any user of such goods or services with the permission of the actual buyer or hirer i.e. family members. As it is approved by the supreme court in Spring Meadows Hospital V. Harjol Ahluwalia\textsuperscript{26} that "The Act gives a comprehensive definition of consumer who is the principal beneficiary of the legislation but at the same time in view of the comprehensive definition of the term 'consumer' even a member of the family can not be denied the status of consumer under the Act and in an action by any such family member for any deficiency of service, it will not be open for a trade to take a stand that there is no privity of contract". Same court, in Lucknow Development Authority V M.K. Gupta emphasised the need for construing the provisions of the Act in favour of the consumer.

In connection with the definition of 'consumer' a question arises what will be the position of a person who gets a 'free gift' with the
purchase of a 'good' for consideration if the 'good' received as a free gift turned out hazardous to the life or health of the person and he received some injury or not of a promised standard. Whether the person, who got the 'free gift' on the purchase of a item, will be a consumer in relation to 'free gift' and the producer will have any liability, for his product which is given as a free gift, or not. This is an important situation in respect of the consumer protection, because it is common knowledge that in order to promote sale and obtain an extra margin of profit large companies and potential sellers offer 'free gift' items with 'goods' to be sold. The courts have been confronted in a number of cases with the question whether the offer of such an item forms part of the same transaction and hence is a consideration, is a collateral transaction, or is merely a gift. The right of buyer and the contractual liability of the seller depend upon the answer of this question.\(^{27}\) In sales promotion schemes, the inherent collateral contract seems to be an independent transaction. The courts have tried to link it with the main transaction to prevent the end of justice from being defeated. In *Chappell & Co. V. Nestle*\(^ {28}\), the House of Lords treated worthless chocolate bar wrappers as being of some value and the transaction as a part of the sales promotion scheme rather than of the sale of the recordings. The facts in Chappell were as follows:

Nestle Co. entered into a contract with Hardy Co., manufacturers of gramophone records to purchase a number of recording of a piece of music, *"Rockin Shoes"*, the copyright of which was vested in chappell & Co. The Hardy Co. supplied the records to Nestle Co. for 4 d. each. Nestle Co. advertised to the public that the records could be
obtained from Nestle Co. for Is. 6d. each together with three wrappar from Nestle for 6 d milk chocolate bars. The wrappers when received were thrown away.  

The main problem was wheather the consideration or price that the buyer paid was IS.6d. only or IS.6d. and three wappers. In order to understand the nature of the contract, one must see wheather there is an intention to create legal relations. The intention can be ascertained by looking into the facts of every individual case taken together. There is no doubt regarding the intention of Nestle - it did not set out to trade in gramophonne records. Rather, the company used these records to increase its sale of chocolates. The requirement that wrappers should be sent was of great importance to Nestle. There was no point in simply offering records for Is. 6 d each. The purchaser of records had to send three wrappers for each record, so he had first to acquire those wrappers, and the acquisition of the wrappers was a benefit of Nestle for the purchaser made an expenditure that might not otherwise have been made. So, the trasaction involving the sale records for 1s 6d. and three wrappers was rightly treated as part of the first transaction of sale of chocolates, which were contained in the wrappers to be used in the second transaction. Hence the second was not treated as an independent transaction of retail sale but an integral part of the first transaction of the sale of chocolates.

The second case in which the above observation was affirmed by the House of Lords in Esso Petroleum V. Commissioner of Customs Excise, in which Esso petroleum launched a sale promotion scheme,that on the purchase of every four gallons of petrol a 'coin' will be given.
The main issues involved in the case were, first, whether the delivery of the gift in the sale promotion scheme was in pursuance of contractual obligation and second, if the supply was by way of contract was the transaction a contract of sale?

Lord Simon, Wilberforce, and Fraser answered the first question in the affirmative, while vicount Dilhorne and Lord Russel held that there was no intention to create legal relations only on the ground that the trivality of a transaction or unwillingness to litigate can be taken as a test of the intention to create legal relations. The second question was decided by the majority, who (except for Lord Fraser) state that the consideration for the coin was not a cash price or any part of the price paid for the petrol but the entry into collateral contract to buy the petrol. Thus, the buyer, having paid for four gallons of petrol, was entitled by virtue of that payment to a coin. So, it is well established that in a collateral contract, the consideration exists in the form of entering into main contract. It is clear from the above discussion that in case of sale promotion scheme through offering gift and prizes with a commodity which is to be purchased by the consumer and the consumer or purchaser is entitled to get the free gift or prize because the purchase of main commodity/goods form a good consideration for the 'free gift' or 'prize' and the seller can not deny to give the free gift and can not escape from his liability pleading that offer of free gift is not binding on him as it does not form a good consideration. It is also provided under the consumer protection Act 1986, that where an offer of a free gift or prize is being made without the intention of performing it, it will amount
to unfair trade practice and where impression is given that it is offered free, when it is fully or partly covered by the amount charged in the main transaction.\(^{33}\)

It is also declared as unfair trade practice where impression is given that it is offered free, when it is fully or partly covered by the amount charged in the transaction as a whole under consumer protection Act as well as MRTP Act both\(^{34}\) It is provided under clause (3) of Sec. 2(1)(r), it is necessary to establish that the offer was made with the intention of not providing them as offered.\(^{35}\) Where a promise is made in reckless disregard of the likehood of the promisor's being able to perform it, it may be possible to draw an inference that he did not in fact intend to perform.\(^{36}\) In case of *Khaitan Electrical Ltd.*, the company advertised a scheme of 'Great Fans, Great Gifts' for limited period, in which the buyer of its fans in order to obtain their gift coupon carrying a wide range of gifts of value was expected to pay Rs.13 extra. This was clearly held to be a unfair trade practice under Sec. 36(A)(3)(a) of the MRTP Act. Similarly in *Achal Kumar Galhotra V. Byford Motors Ltd.*,\(^{37}\) The scheme offered premier padmini car at 28,000 less than the price of Maruti. That was found to be not really free because the cost was recovered by increasing registration charges.

In, many other cases\(^{39}\) it was held that the free gift under sale promotion scheme, with an intention not to perform it, or creating the impression that some thing is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction, unfair trade practice.
No doubt the exploitation of consumer/purchaser by the seller and distributors, through the misrepresentation of 'free gift' schemes for sale promotion to earn more profits, is always prevented through the law as well as by the judiciary. With the passage of time the false representation of 'free gift' scheme to cheat the consumer/purchases came within the purview of the consumer protection and these schemes were declared, if intended to cheat the consumer, unfair trade practice. To make it more effective it was again covered under Sec. 2(1) of the Consumer Protection Act 1986 to give the consumer more effective protection against these schemes.

The question arises that whether the purchaser/consumer who receives goods or services as the 'free gift' is a consumer or not in respect of the so-called gift item and what remedy is available to the person who receives any harm or injury due to any defect or deficiency in the goods/services received as 'free gift'.

No doubt emphasis is always given on the 'product liability' i.e. liability of the producer about the nature, quality and fitness of goods for the buyer's purpose. It is also established that the goods supplied to the consumer should be of a merchantable quality. It should not be in any way hazardous to the safety of consumer and public. In Godley V. Perry, a toy dealer displayed in his shop's window some plastic toy catapults. A child of six year was attracted by them and bought one while he was using it, it broke off and pieces entered his left eye which had to be removed. The seller was held liable for the damage.
Again in *Wilson V. Rickett Cockerell & Co. Ltd.*\(^{43}\) where coal supplied for domestic use contained an explosive substance which exploded and caused injury to the plaintiff, the supplier was held liable.

Liability of the producer/seller for their product or goods is given under the Consumer Protection Act 1986, sec. 2(1)(4) and sec. 36(A) of the MRTP Act 1969 which pertains to the unfair trade practices which permits the sale or supply of goods intended to be used, or are likely to be used by the consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging do not conform to certain standards which are necessary to prevent or reduce the risk of injury to the consumer by using the goods.

MRTP Act 1969 contemplates that in certain cases more rigid standards will, however, be necessary to provide adequate protection to the consumer. So, the law relating to consumer protection in India emphasise on the product liability of the producers and sellers that the goods or commodity produced or sold by them should be of such quality and standard as not to hazardous for the safety of the consumer and fulfills all the standard of the quality and safety provided by the law or competent authority and also claimed by the producers or sellers otherwise they will be liable for any damage or loss suffered by the consumer or purchaser. So from the above discussion two things are clear:
(i) In collateral contracts, the consideration exist, in form of entering into main contract (purchase of commodity carrying free gift), for the second contract i.e. to receive 'free gift' offered by the producer or seller and he is bound to provide as per his promise.

(ii) Producer and seller are liable for their product or goods if they are not of a standard or quality and hazardous to the safety of the buyer or consumer i.e. product liability.

Despite of all efforts and enactment for the protection of the consumer neither any law nor the judiciary has given an attention towards the protection of the person as a consumer who suffered any loss or injury because of a defect or deficiency in the goods or services received as 'free gift'. It is also not mentioned whether the person who receive goods/services as a 'free gift' with the purchase of main commodity falls within the definition of consumer or not and what remedy is available to that person in case of any defect/deficiency in the 'free gift'. When law talks about the consumer protection, it talks about the protection of consumers from the goods or services which are hazardous to the life, health and safety of the consumers, irrespective of fact whether it is purchased or received free. But the definition of the term 'consumer' provide that the consideration is must to make a person consumer. It means the person who received 'free gift' is not a consumer and have no remedy in case of any loss or damage suffered by him due to any defect or deficiency in the 'free gift' item but if we rely on judgements, the purchase of the goods/commodity which is carrying a free gift forms a good consideration in respect of second transaction i.e. to receive free gift.
These judgements established clearly that in collateral contracts, the consideration exist in the form of entering into main contract (purchase of commodity carrying free gift). The MRTP Act 1969 and consumer Protection Act 1986 the two major enactments for the consumer protection are merely a silent spectators on this point even the judiciary is also silent on this point. Though judiciary has declared\textsuperscript{46}, the family members as well as user of the goods/services with the permission of the actual buyer of goods or hirer of services as the consumer but no effort is made to bring the person within the definition of the consumer, who suffers any loss or injury due to any defect or deficiency in the goods/services received as a free gift under sale promotion scheme. So, it is respectfully submitted that the judiciary should take it into consideration and now it is open and left for the courts to take necessary steps, for the welfare of the consuming masses, to bring the receiver of free gift within the ambit of the definition of consumer by virtue of being a collateral contract. Amendment should also be made in the Consumer Protection Act to mention it specifically that the person who receives any goods/services as free gift under sale promotion scheme is also a consumer in case, when he receives any loss or injury by the use of such goods or services received by the user in the collateral contract.

The Act, provides if a person buys any goods for consideration and obtains such goods for 'resale' or any 'commercial purpose' then he is not a 'consumer' within the meaning of the Act. The expression 'for any commercial purpose' is intended to cover cases other than those of resale of goods.\textsuperscript{47} However commercial purpose does not include goods bought
and used by him exclusively for the purpose of earning his livelihood by means of self employment. The expression 'commercial purpose' has not been defined in the Act. In its common parlance 'commercial purpose' is that purpose the object of which is to make profit. 'Commercial encompasses all business activities. According to standard dictionaries the word 'commercial' means -

"connected with, or engaged in commerce and mercantile; having profit as the main aim".

'pertaining to commerce; mercantile'.

"exchange of merchandise especially on a large scale".

"interchange of merchandise on a large scale between nations or individuals' extended trade or tariff".

Going by the plain dictionary meaning of the word, it is obvious that the parliament intended to exclude from the scope of the definition of consumer not merely persons who obtain goods for resale but also those who purchase goods with a view to use such goods for carrying on an activity on a large scale for the purpose of earning profit. It would thus fallow those cases of purchase of goods for consumption or use in the manufacturer of goods or commodities on a large scale with a view to make profit will fall outside the scope of definition.

The National Commission held that the purchaser of a taxi car is not a consumer because plying of a taxi for hire is clearly a commercial purpose. Import of a photo-type setting machine for use in one's own printing press has been held to be a commercial purpose. A purchaser
of share or debentures for resale purposes has been held to be not a consumer.\textsuperscript{57} The purchase of a xerox machine for installation and use in the office of a large commercial organisation such as a bank has been held to be not a sale to a consumer.\textsuperscript{58} Purchase of ultrasound scanner for a nursing home was held to be for commercial purpose.\textsuperscript{59}

Explanation to the sec. 2(1)(d)\textsuperscript{60} exclude the person from the term 'commercial purpose' who use the goods bought to earn livelihood by means of self employment. Prior to the amendment many genuine difficulties were caused to the consumers who were purchasing goods for seeking out their livelihood like a taxi driver buying a car to run it as a taxi; or rickshaw puller buying rickshaw for self employment; or a widow purchasing a sewing machine for her livelihood. It was not desirable to exclude these and similar other categories of persons from the definition of consumer as they depend on the goods for earning their livelihood. At the same time, the intention behind the Act was to exclude big business and industrial houses carrying out business with profit motive from the perview of the Act. The insertion of the explanation has removed this difficulty and enables the consumers to file complaint before the Consumer Dispute Redressal Agencies under the Act, where goods bought by them exclusively for earning their livelihood by means of self employment, suffer from any defect.

It is submitted that insertion of aforesaid explanation is a step in the right direction. But the problem may arise as to interpretation of the expression "exclusively for the purpose of earning his livelihood" and "by means of self employment". It is hoped that the Consumer Dispute
Redressal Agencies will be able to find the solution to these problems. As observed, in *Regional Director, Employees' State Ins. Corp. V. Highland Coffee Works of P1'X Soldanha & Sons* and *CIT Taj Mahal Hotel, Secunderabad* by the Supreme Court that "the primary duty of the Court while construing the provisions of such an Act is to adopt a constructive approach without doing violence to the language of the provisions of the Act and without producing a result contrary to the attempted objectives of the enactment".

5. Complainant

The Act also explains as to who can make a complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with the District Forum, the State Commission or National Commission as the case may be by any of the following:

(i) The consumer to whom such goods are sold or delivered or agreed to be sold or delivered to such services provided or agreed to be provided,

(ii) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered service provided or agreed to be provided is a member of such association or not,

(iii) one or more consumer, where there are numerous consumers having the same interest with the permission of the District Forum the state Commission, or the National Commission as the case may be, on
behalf of or for the benefit of all, consumer so interested.

(iv) the Central or the State Government.

So, a complaint in reference to any goods or services may be field as pointed out earlier.

In case of complaint by a consumer association, where a consumer association brought an action on behalf of the consumer(s) the Act does not contemplate any relief to be granted to an unidentified number of consumers. The Act contemplates an identified consumer to make a specific application or a consumer organisation to represent him in accordance with the procedure prescribed by law.66

It is for the first time that the registered consumers association have been recognised and assigned an important and significant role of protecting the consumer. The consumer association can maintain complaint only for and on behalf of a consumer.67 The central or any state Government can file the complaint as the guardian of public interest. But this provision have not been utilised by the central or state government. The Consumer Protection Act, being a new legislation is still at the rudimentary stage and it is hoped that the government will make use of this legislation to the fullest extent in the coming day.

6. Subject Matter

A complaint can be made under the consumer protection Act 1986 mainly related to (a) Defective Goods, (b) Deficient Service.
I. Defective Goods:

(a) Goods: clause (i) of Sec. (1) of the Act say 'goods' means as defined in the sec. 2(7) of the Sale of Goods Act 1930.

The definition given under Sale of Goods Act 1930 is comprehensive one. In general the word 'goods' is used to mean any movable property as distinct from immovable property. It includes grass, crops and standing timbers which are agreed to be cut before sale or under the contract of sale. Thus, anything attached to the earth or forming part of land becomes goods, if they are agreed to be served under the contract of sale. A decree under sec. 3(34) of the General Clauses Act, is a movable property and therefore it is goods for the purpose of Act. Share of a company is movable property under the Companies Act, 1956 and goods under the Sale of Goods Act 1930. When the shares and stocks which represent the proprietary interests in the property of a company are considered to be movable properties, then there are no reasonable grounds to exclude the 'debentures', because the debenture is transferable and movable property like shares and stocks therefore it has been held to be 'goods' for the purpose of the Consumer Protection Act 1986. Whereas company issued debentures with a condition to buy it back, the complainant has a right to force the company to buy back the debentures as per conditions of sale and he is a consumer for any grievance against such company. The definition of 'goods' excludes money and actionable claims. Money being a legal tender, is an essential element of sale. Money consideration is the 'price' which is payable for the sale of 'goods'. Therefore money itself can not be a subject matter of sale. But if notes
or coins (which have ceased to be legal tender) are sold as collectors items, there seems no reason why they should not be regarded as goods for that purpose. The term 'actionable claim' has been defined under sec. 3 of Transfer of Property Act, 1882. According to that definition 'actionable claim' means a claim of any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession either actual or constructive, of the claimant which the civil courts, recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing conditional or contingent. In brief, an actionable claims means - (a) any unsecured debt, (b) any interest in movable property, not in possession of the claimant. Such claims are to be governed by the provisions contained in sec. 130 to 137 of the Transfer of Property Act and, therefore are outside the purview of the Sale of Goods Act 1930.

Even under MRTP Act 1969, the word 'Goods' is defined near about in the same way as defined under Consumer Protection Act 1986. Sec. 2(e) of the MRTP Act 1969 defines 'goods' as defined in the Sale of Goods Act 1930 and includes -

(i) Products manufactured, processed or mined in India;
(ii) Shares and stocks including issue of shares before allotment;
(iii) in relation to goods supplied, distributed or controlled in India, goods imported into India.

It means the term 'goods' is to be understood in the ordinary sense of word 'goods' defined under the Sale of Goods Act 1930, and in
addition also includes what is stated above. The intention of the expression including issue of shares before allotment has resolved the controversy as to whether a trade practice concerning public issue of shares by a company could be regarded as a restrictive or unfair trade practice. Now any misleading or false representation in the prospectus, advertisement, document, etc. for issue of shares may amount to an unfair trade practice under the MRTP Act. It is not understandable as to why the same definition of 'goods' has not been adopted for the purpose of the Consumer Protection Act. Since the MRTP Act as well as the Consumer Protection Act 1986 have to protect the public interest and the interest of the consumers, it would have been much appropriate to have the same definition of 'goods' under both the legislation it will be a breath of life for the persons purchasing shares and in case of any misrepresentation suffers a lot to get relief through the lengthy, formal and cumbrousome procedure or ordinary legal system.

(b) **Defect**: The term defect stands for

"defect' means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any good";

According to this clause a 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 applicable law^75 or as is claimed by any trader in any manner whatsoever in relation
to the goods.\textsuperscript{76} Thus, standards etc. may be either a legal prescription, or trader's claim or consumers expectation.

(i) Applicable legal requirement: A brief version of this would be that the goods are defective if they do not fulfil any applicable legal requirement or are not in accordance with the claims made by the traders in reference to them. The legal requirements are in the case of the whole manner of legislations affecting trading or marketing of goods. A complaint would lie if the goods do not meet the requirements of any of the whole range of marketing legislation.\textsuperscript{77} If, for example, the prevention of Food Adulteration Act 1954 provides the standard of cream that ought to be maintained in milk or ice cream made of milk, a failure on the part of the trader to maintain that standard would be a defect in the goods. Similarly, if the standards of weights and Measures Act, 1976 provides that a particular marketable item should not be packed less than 50 gms it would be a defect within the meaning of Sec. 2(f) of the Consumer Protection Act 1986, if the packing does not carry the prescribed weight. The former would be a quality related defect and later would be a quantity related defect.

Many drugs are marketed according to their power or potency. Some such requirements are prescribed by law and some are declared by the manufacturers. Either way, if the prescribed or promised standard is not maintained, it would be a potency related defect and adulterated edatable commodities suffer from defects or purity and standard in contravention of the provisions of the Prevention of Food Adultration Act 1954 and all the above defects are maintainable under the provisions of the Consumer Protection Act 1986.
(ii) Promised standard: In addition to what the law may require, the trader has to maintain his promised standards of quality, quantity etc. i.e. the standards, quality, etc. of the goods must correspond with the claim made by the trade in relation to those goods. Such claims may be made by advertisement by printing on the packet of the goods or otherwise. Where the standards, quality, quantity etc. of the goods are not in accordance with such claims, the goods will be considered as defective. The claim may be either express or implied. Thus the true import of the word 'defect' as defined in the sec. 2(1)(f) of the Act, is one of the widest amplitude and the standard prescribed may be either one specified by any law or as claimed by the trader himself either expressly or impliedly. For example if the trader says that the reels being marketed by him contained thread of a certain length, he must assure that quantity. Even the trader can not plead that the defect was not intentional defect. As observed by the National Commission in Abhoya Kumar Panda V. Bajaj Auto Ltd. "....... it is not relevant under the consumer protection Act whether the defect in the goods supplied or deficiency in service rendered is intentional or not. The Consumer Protection Act 1986 fixes liability in a species of torts in which intent is not relevant. This is necessary to emphasise because the gravity of defects in any goods or deficiency in any service should be minimised by considering whether or not the defect/deficiency are intentional".

In this area the Sale of Goods Act, 1930 comes into picture. This Act carries five fold programme of buyers protection. In the first place, the seller has to assure his buyer that he has a legal right to sell
the goods or is fully entitled to deal with them. If he fails in this respect and the buyer gets no right, he may become liable to refund the price with interest and compensate the buyer for his loss.\textsuperscript{83} Secondly, if goods are sold by description, it would be a legal requirement that the goods actually delivered must correspond with the description.\textsuperscript{84} If they do not do so, it would be a defect. Thirdly, if goods are sold by description as well as by sample, the requirement implied by law is that the goods must agree with the sample and also correspond with the description.\textsuperscript{85} Fourthly, where goods are sold under the faith\textsuperscript{86} that they are fit for the buyer's particular purpose, or that they shall be of merchantable quality or shall satisfy the customs and usages of the particular trade or other standards or requirements prescribed under the contract of sale, and if the goods actually delivered do not fulfil these requirements they are treated as defective.\textsuperscript{87} Fifthly, if the sale is by sample, the legal requirements are that the goods must correspond with the sample in their bulk, that the buyer must have a reasonable opportunity of comparing the bulk with the sample that the goods as a whole must be free from any defect which renders them unmerchantable and which is not observable on an apparent examination of the goods.\textsuperscript{88} In the last place, the time of delivery of goods may be considered as an essential requirement of the contract depending upon the intention of the parties and surrounding circumstances\textsuperscript{89}, so if the goods do not fulfil above requirements will be considered as a defective goods for the purpose of the Consumer Protection Act 1986. So the defect means any fault, imperfection or shortcoming in the quality, quanitity, 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.

One of the advantages of the Consumer Protection Act 1986 is that the liberty given by S. 62 of the Sale of Goods Act 1930 to the seller to exclude the conditions and warranties implied by law by expressly so stipulating in the contract of sale, can not be exercised in reference to a consumer/buyer. The Consumer Protection Act 1986 does not permit such an exclusion and categorised that a complaint lies where goods suffer from a defect even where the buyer himself select the goods, the obligation of the seller to deliver goods corresponding with the contract, description would still be applicable there is no other requirement than the goods is defective.

II Deficient Services

(a) Service: One of the laudable features of the Act is that it provides relief to consumers, if they suffer loss or injury due to a deficiency of 'service'. In all developed economies, the concept of 'services' of numerous kinds which have become indispensable for comfortable and orderly existence of human beings. The Act defines 'services' in the most comprehensive manner by stating that it mens "service of any description which is made available to potential users". Some of the well known services have been included in the definition i.e. banking, financing, insurance, transport, processing supply of electrical or other energy, boarding 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.
The term 'service' as defined in the Act means 'service of any description..' Thus the service may not be rendered free of charge. The definition is wide but not exhaustive. It includes the provision of facilities in connection with banking, financing, insurance, transport etc. These facilities are merely illustrative. In addition to these facilities there can be many more facilities which may be available to potential users and thus, they may fall within the meaning of 'service' for the purpose of the Act. The services rendered by hotels, cinemas, laundries etc. are also covered by the above definition, as the services like medicine, law accountancy, engineering, architect, estate agent etc. have not been specifically enumerated in the definition. But it seems that these services are also covered with in the scope of the definition because these are available to potential users even the contract for the construction of house should also fall within the meaning of 'service' under the Act. The party who takes work from the contractor is a consumer.

In many cases public sector undertakings, engaged in operations without consumers satisfaction, claimed that they are not amenable to the jurisdiction of the Act. The National Commission has enunciated principles in this regard. It has firmly turned down the claim of these undertakings that they are not amenable to the jurisdiction of the Consumer Dispute Redressal Agencies (CDRA). In *Union of India (GM Telephones) V. Nitesh Agrawal* the National commission disposed of the preliminary objections raised by the telecommunication deptt. that the facility provided by it was not 'service' as:

"We are in complete agreement with the view expressed by the State commission that respondent complainant which has been provided
with a telephone facility on payment of installation charges and call charges etc. is a 'consumer' and provision of such facility is 'service' as defined under the Act".

In another case it further laid down that remedy by way of arbitration under the Telegraph Act does not preclude an aggrieved consumer from seeking redress before CDRA under the Act. A similar objection raised by the railway administration in *GM, SE Railways V. Anand Prakash Sinha*, that railway administration was not providing 'service' for consideration was firmly turned down by the National commission. It held that expression 'service' contained in section 2(1)(0) of the Act specifically includes within its scope the provision of facility in connection with transport and said:

"The railway administration is providing transport facilities to the public for consideration paid by the way of fare, levied for the ticket. We have no hesitation to hold that passengers travelling by trains on payment of stipulated fare charged for are 'consumer' and the facility of transport by rail provided by railway administration is a 'service' rendered for consideration as defined in the Act."

Since then other modes of transportations operated by public sector undertakings such as airlines, road transport have been brought under the jurisdiction of CDRA as 'service'.

*In Koka Rajendra Prasad V. Union of India (Supdt. of Post Office)* the appellant claimed exemption from liability by reason of any loss caused due to misdelivery of any postal articles in course of transmission by post, under sec. 6 of the Indian Post Office Act 1898.
This argument was rejected by the Andhra Pradesh state commission by observing that there can be no dispute that postal department has undertaken to provide services to the people and every person has a right to avail its services by paying the requisite consideration in the form of postal charges under the Consumer Protection Act. Further in *Presidency PMG V. Dr. U. Shankar Rao*\(^{104}\), the defence of exemption clause\(^{105}\) was turned down by the national commission and held that this statutory immunity cannot by nullified by the provisions of the Consumer Protection Act 1986, its provision being additional to and not in derogation of other laws but the post office and its officer are not protected by sec. 6 of the Indian Post Office Act 1898 for deficient service.

In some other cases postal services were declared 'service' under the definition of the Consumer Protection Act 1986.\(^{106}\) Not only the postal service but also the courier service was brought within the jurisdiction of the CDRA.\(^{107}\) When the Act was passed the housing and Development Boards were not included in the definition of services i.e. housing activities. But in a landmark decision the National commission held that housing and development boards are rendering 'service' while allotting plots and house to the consumers. It is covered by the definition of 'service' under section 2(0) of the Consumer Protection Act 1986.

The commission found no merit in the objection of the board that being a statutory body it was outside the purview of the Act.\(^{108}\) The Amendment Act 1993 has inserted the word 'housing construction' in the definition of service in clause (0) of section 2(1) with a view to make
itself-explanatory. The literal meaning of the word 'service' is work done
to meet some general need, an act of helpful activity, the supply of
utilities as water, electricity, gas required by the public, supplying of
repair service, supply of public communication or public transport. So,
it is clear that from the above discussion the service which are
specifically included in the definition are only illustrative not exclusive
in addition to these many other facilities, which fall within the purview
of the definition, brought through various judicial and quasi-judicial
pronouncements and also by the amendment. The term service is of wide
implementation and covers nearly all the service available to the potential
user. The supreme court, in *Lucknow development Authority V M.K.
Gupta*, established the wide range of the term "service" in the context
of the consumer protection legislation. Justice Sahai proceeds as
follows:

"The main clause itself is very wide. It applies to any service
made available to potential users. The words 'any' and 'potential' are
significant. Both are of wide amplitude. The words 'any' dictionarily
means 'one of some or all'. In 'BLACK's LAW DICTIONARY' it is
explained thus, "word 'any' has a diversity of meaning and may be
employed to indicate 'all' or 'every' as well as 'some' or 'one' and its
meaning in a given statute", The use of the word 'any' in the context it has
been used in wider sense extending from one to all. The other word
'potential' is again very wide. In OXFORD DICTIONARY it is defined as
'capable of coming into being, possibility'. In BLACK'S LAW
DICTIONARY it is defined as "exisiting in possibility but not in act."
Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive future instalments or payments on a contract or engagement already made. "In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to any or all actual or potential users".\textsuperscript{112}

The court further observed that in absence of any indication, express or implied, there is no reason to hold that authorities created by the statute are beyond perview of the Act. The test, therefore, is not if a person against whom a complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility.

Further in \textit{Indian Medical Association V V.P. Shantha}\textsuperscript{113} the supreme court approved the analysis, made in Lucknow Development Authority V M.K. Gutpa (1994, I SCC 243), of the term service and its scope and said:

"The definition of 'servic' in sect. 2(1)(0) of the Act can be split up into three parts of main part, the inclusionary part and the exclusionary part. The main part is explanatory in nature. The inclusionary part expressly includes the provision of facilities in connection with banking, financing, insurance etc..... exclusionary part exclude the services rendered free of charge or under a contract of personal service...... The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in earlier part. So any service, except
when it is free of charge or under contract of personal service, is included in it.

The court further observed that:

"....... the entire purpose of widening the definition is to include in it not only day to day buying and selling activity undertaken by a common man but even such activities which are otherwise not commercial in nature yet they partake of a character in which some benefit is conferred on the consumer".

So, the definition of the term service is very wide and not confined only to the services specifically mentioned in the definition but covers all the service whether rendered by the private or statutory bodies except the services rendered free of charge or under any personal contract. This is very well established by the judiciary and also the CDRA's played an important and remarkable role through their pronouncement to explain the scope of the term service for the benefit of the consumer against the exploitation in the market.

However, the definition of 'service' exclude two types of services (a) rendering of any service free of charge (b) under a contract of personal service.

(i) Service Rendered Free of Charge

Any service rendered free of charge is outside the scope of the Consumer Protection Act. It means, for the purpose of this Act, the service must be rendered for payment. It is a payment for labour, facility to use goods. The medical service rendered free of charge in a
government hospital is not within the purview of Act. However, if the
govt. hospital realizing clinical charges like the charges of x-rays,
ultrasound should not be treated as par.\textsuperscript{114} The free services rendered by
the municipalities in the form of facilities like, sanitation, roads, street
lights etc. are also outside the ambit of the Act. In fact, these services
are managed by the municipalities or other government agencies out of
the taxes paid by the citizens. It has been held that these taxes do not
constitute 'consideration' for the services ostensibly rendered by the state
to its citizens.\textsuperscript{115} A claim of pension by an employee from his employer
is not covered under the Act because he is not hiring his employers
service for consideration.\textsuperscript{116} any dispute raised by a complainant against
the state legal advice board is not one that falls within the purview of the
Consumer Protection Act. There is absolutely no arrangement of hiring of
service for consideration between the complainant and State Legal Aid
and Advice Board.\textsuperscript{117} Where there is nothing on record to establish that
the services rendered by the opposite party were hired for consideration,
the complainant can not maintain claim for any deficiency in service
against opposite party.\textsuperscript{118}

We have seen that if a 'service has been rendered free of charge
CDRA will not entertain the case, if injury occurs, as services rendered
gratitously are deemed not to be 'service' at all. It is difficult to
understand the rationale of this exemption, particularly, in a country
where large segments of population are affected by poverty. A poor
person lacks resources for undergoing treatment in a private hospital or
receiving education in a private school levying exorbitant charges for the
services rendered. Under the compulsion of circumstances he has to avail of services offered free of charge by or on behalf of a philanthropic organisation or a public spirited individual. The basis of liability for rendering service should not be free or paid nature of service but intentional or negligent infliction of harm. If one gives a free lift to a passerby who is killed as a result of reckless driving on his part, why should not the legal representative of the deceased recover damages in CDRA. If one entertains poor and hungry and make them eat adulterated food as result of which they lose their life or are disabled why should CDRA be prevented from taking cognizance of the case. Such an exclusion operates harshly on persons who do not have adequate resource to pay charges for service rendered. It has to be remembered that remedies under the Consumer Protection Act are of civil nature. The complainant has not to incur any significant expenditure on litigation and the remedy is speedy. Does it not, therefore, follow that by depriving poor segments of population of access to CDRA in 'service' cases, these agencies by implication remain accessible for well to do sections of the society only.

(ii) Services rendered under a contract of personal service

Sec. 2(1)(0) excludes services rendered under a contract of personal service from the definition of 'service'. Sec. 2(r) of the MRTP Act 1969 provides a similar exception under both of these laws the expression "contract of personal service" has not as yet received authoritative interpretation and not been defined in the Act. The same expression finds a place in the Specific Relief Act 1963 in connection
with specific performance of such contracts. It has been stated that
services which depend upon the personal skill and will of an individual
cannot be specifically enforced though damages for the breach may be
claimed.\textsuperscript{120}

It is somewhat plain that the phrase 'contract of personal
service' in the definition would refer inter alia to the relationship of a
master and servant where the latter has entered into an agreement with the
former for employment.\textsuperscript{121} The supreme court also defined the term
'contract of personal service' as a relationship between master and servant
which carries a degree of mutual confidence and trust.\textsuperscript{122} In strouds
Judicial Dictionary\textsuperscript{123}, it is stated:

"A contract to render services is not the same thing as a
'contract of service'; semble the latter implies some relationship of
master and servant and involves an obligation to obey orders in the work
to be performed and as to its mode and manner of performance".

Fletcher Moulton, L.J. in Simmonds V. Health Laundry Co\textsuperscript{124}
observed:

"In my opinion it is impossible to lay down any rule of law
distinguishing the one from the other. It is a question of fact to be
decided by all the circumstances of the case. The greater the amount of
direct control exercised over the person rendering the services by the
person contracting for them the stronger the grounds for holding it to be
a contract of service, and similarly the greater the degree of
independence of such control the greater the probability that the services
rendered are of the nature of professional services and that the contract is not one of service”.

Further, the distinction is drawn between 'contract for service' and 'contract of service'. In one case the master can order or require what is to be done while in the later case he cannot only order or require what is to be done but how it shall be done.\textsuperscript{125} In Oxford companion to law 'contract for services' has been defined as : the contract whereby one party undertake to render services e.g. professional or technical services, to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion. There are two major groups of such services, professional services of lawyer, accountants, surgeons and the like and technical services of building and engineering contractors, builders, garages and many more.

The National commission in \textit{A.C. Modagi V. Cross Well Taillor}\textsuperscript{126} examined the above authorities and held that "from the authorities it is clear that personal service stems from a master-servent relationship which is totally different from a lawyer-clients relationship or other professional or technical relationship the reason for excluding the rendering of service under a contract of personal service from the definition of 'service' under the Act is obvious. Such an employee can be turned out of service by master at will and, therefore, no occasion can arise for the master to complain about the deficiency in the rendering of service by the employee. Applying this test to the present case (tailor) it is clear that the petitioner was not in a position to exercise any sort of
control or supervision over the work of the respondent (tailor). He was independent of any supervision or control of the petitioner in the rendering of his services as a tailor master while doing his work he was not bound to obey any direction of the petitioner. Thus the service rendered by him is in the course of his profession and not under any contract of personal service."

Similarly, in reference to medical service, it was held that the medical treatment rendered to a patient by a private doctor for consideration is clearly a service falling within the ambit of sec. 2(1)(0) of the Act. It is not a contract of personal service but a contract for service.\(^{127}\)

This was reiterated by the Kerala state commission in *Vasantha P.Nair V. Cosmopolitan Hospital*\(^{128}\), Where it was held that medical and legal service of practitioner are not in the nature of 'personal service' and therefore, these are within the perview of the Act. The National Commission observed\(^ {129}\) that:

"In the case of hospitals which provide treatment to patients for payment we are unable to see how there is any element of personal service involved in such an arrangement. When patient goes to such a hospital and avails of himself the facility of treatment on payment of consideration, he is dealing only with a institution carrying on the activity of providing medical service for payment and no element of 'personal service' does enter into the picture in such case. The hospitals may have its own doctors, consultants etc. for treating the patients admitted to its care but ordinarily it is not likely that there will be privity of relationship
between the persons who got admitted in the institution and the doctors who may be on the staff of the institution or may be visiting consultant there".

Further making a difference between 'contract of personal service' and 'contract for service' supreme court approved all the above observations, of National Commission and different state commissions, in the *Indian Medical Association V V.P. Santha* and held that -

"It is no doubt true that the relationship between a medical practitioner and a patient carries within it certain degree of mutual confidence and trust and, therefore the services rendered by the medical practitioner can be regarded as services of personal nature but since there is no relationship of master and servant between the doctor and the patient the contract between the medical practitioner and his patient can not be treated as a contract of personal service but is a contract for service and the services rendered by the medical practitioner to his patient under such a contract is not covered by the exclusionary part of the definition of 'service' contained in sec. 2(1)(0) of the Act".

While making a distinction between 'contract of personal service' and 'contract for services' the supreme court in the same case observed that -"A contract for services implies a contract whereby one party undertakes to render services e.g. professional or technical services, to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and use his own knowledge and discretion. A 'contract of service' implies relationship of master and servant and involves an obligation to
obey orders in the work to be performed and as to its mode and manner of performance".

So, it is clear from above discussion and judicial pronouncements that the contract of personal service is nothing but denotes the master-servant relationship where the person who hires service directs not only what is to be done but also how it is to be done and it comes within the exclusionary clause of the term service but it is different from the term 'contract for service' which is not in terms of master servant relationship because in a contract for service the person who hires service only direct to that what is to be done and does not direct the manner in which it is to be done because in contract for service the person rendering professional service, exercises his professional or technical skill and uses his own knowledge and discretion for the manner in which the work is to be done. It is covered by the term service under the Consumer Protection Act 1986.

As observed by the Supreme Court in Indian Medical Association V V.P. Santha132 "that the parliamentary draftsman was aware of the well accepted distinction between 'contract of service' and 'contract for service' and has deliberately chosen the expression 'contract of service' instead of the term 'contract for service in the exclusionary clause of the definition of service."

But despite of this no explanation is given in the Act. So it is submitted that to remove doubt as to interpretation of the expression 'contract of personal service', the legislature should insert an explanation clarifying the phrase in unambiguous terms.
(b) Deficiency in Various Services

The complaint under the Consumer Protection Act can be made in respect of only those services which suffer from any deficiency. The term 'deficiency' has been defined in section 2(1)(g) of the Act. '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 contract or otherwise in relation to any service.

The literal meaning of 'deficiency' is incomplete, defective, wanting in specified quality or insufficient in quality, force etc. The definition of deficiency given in the Act is wide enough to include any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in relation to any service. The deficiency may be in quality, nature and manner of performance in relation to any service. The deficiency may be in quality, nature and manner of performance: (i) which is required to be maintained by or under law for the time being in force; or (ii) which has been undertaken to be performed by a person in pursuance of contract or otherwise in relation to any service.

Thus the deficiency in service may occur due to the violation of any standards as to quality nature and manner of performance laid down in any of the existing laws. The deficiency may also be caused owing to non-performance of the promise made as to quality, nature etc. of the services under the contract. Some cases of negligence in rendering the services may also fall within the ambit of the Act. For example,
negligence by a doctor rendering medical services for consideration; an act of negligence by a repairer of goods; negligence by the telephone department in wrongful disconnection of telephone may amount to deficiency in service and are thus actionable within the perview of the Act.

(i) Insurance

Even before the passage of the Consumer Protection Act, 1986 the Insurance Corporations has been in the dock for their heartless attitude in rejecting the claims of the policy holder and dependent of the policy holders in case of life insurance for flimsiest reasons. But with the passage of the Act the consumers of the insurance service took a breath of relief and the insurance corporations are continuously attacked by the consumer for the deficiencies in the service and the Consumer Dispute Redressal Agencies are taking the matter seriously. Even in a case the Mahrashtra State Commission awarded the compensation to the complainant for rude behaviour and harassment by an officer of the corporation and considered it as a deficiency in service.

The services rendered by the insurer suffers from the 'deficiency as envisaged under the Act, if the insurer despite undertaking fails to indemnify the insured with regard to loss caused by fire. Whenever there is a default or negligence with regard to settlement of an insurance claim that will constitute a 'deficiency' in the service on the part of the insurance company and it will perfectly open to the concerned aggrieved consumer to approach the Redressal Forums/commission under the Act seeking appropriate relief.
When the Life Insurance Corporation has failed to make payment to the nominee, it has committed default in the performance of the undertaking in pursuance of the contract of insurance and thus there is deficiency in relation to service. When there is a delay in making the payment of claim under the insurance policy, it amounts to deficiency in service.\textsuperscript{136} Similarly, non-settlement of claim under insurance policy within a reasonable period is a deficiency in service.\textsuperscript{137} Where a person takes insurance to save himself from the damages on account of storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation, the insurance company cannot escape from the liability by alleging that the damage was caused by whirlwind which was not covered by the policy. \textit{In United India Insurance Co. Ltd. v M s Ishwardas Zabarwal Trust}\textsuperscript{138} the Gujarat State Commission held that in common parlance whenever a damage is caused due to strong wind the risk is always believed to be covered. In such a situation the burden is on the insurance company to prove that there was no storm cyclone, typhoon, tempest, hurricane or tornado when an extensive damage done.

The same commission in another case\textsuperscript{139} held that LIC had been negligent in disallowing the claim of the complainant on the ground that her deceased husband, the assured, had failed to disclose in the proposal form that he was suffering from chest pain, as there was nothing on record to sustain this objection. When there is no dispute as to who are heirs and legal representative of the policy holder, the Insurance Corporation cannot insist on the production of succession certificate\textsuperscript{140}

\textit{In Arumugam Chelliah Paul v. Life Insurance Corporation of India}\textsuperscript{141}, the Bombay High Court while considering this aspect of the
matter whether the production of succession certificate is necessary or not, has held:

".....It is only where there is a dispute amongst the heirs and legal representatives, the corporation would be justified in insisting on their or any of them, getting a suitable representation, and pay the amount to such a person. The claim is a statutory liability arising under the Act and if there is no dispute as to the heirs and legal representative of the policy-holder it is difficult to understand as to how the corporation can insist that the party must necessarily obtain a succession certificate".

The Karnataka State Commission following the above judgement in *Smt. Mahadevi V. Life Insurance Corporation of India*¹⁴² held that in view of the facts and circumstances of the case, the Insurance Company was not justified in asking the complainant to produce succession certificate for the payment of the assured amount and ordered the company to pay compensation for the delayed payment.

In most of the cases against the insurance service, the complaint was related to delayed payment or non-payment by putting various objections which harass the consumers. The consumer dispute redressal agencies took a serious attitude and held the delayed payment as deficiency in service and the national commission in *Umedil Agrawal V. United India Assurance Co. Ltd.*¹⁴³ rejected the plea of the respondent (Insurance Company) regarding jurisdiction and observed:

"We find no merit in the contention put forward by the insurance company that complaint relating to the failure on the part of the insurer to settle the claim of the insured within reasonable time will not fall within
the jurisdiction of a Redressal Forum. The provision of facilities in connection with insurance has been specifically included within the scope of the expression 'service' by the definition of the said word contained in Sec. 2(1)(e) of the Act).

Further, where the payment was postponed and denied under the pretence of carrying out an investigation into the possibilities of collusion and corruption, beyond reasonable time is deficiency in service and insurer is liable to pay compensation.\textsuperscript{144}

In cases of delayed settlements of the claims it was held by the National Commission that a delay of one year to four years arising out of motor accident and loss of insured consignment, is inordinate and negligent.\textsuperscript{145} Regarding the cases related to payment under life insurance policy the attitude of redressal agencies was in favour of the consumers and covered various aspect related to the payment of policy. Where a person, acting as Karta of his Hindu undivided Family(HUF), had taken out a policy of life insurance in the names of his three sons, payment on maturity by the insurer to one of his sons was held wrongful.\textsuperscript{146} For the purpose of reviving a lapsed policy all arrears were paid with interest accompanied with necessary forms and declaration of good health and thereafter the assured died. The insurer was not permitted to repudiate the claim.\textsuperscript{147} Even a life insurer was not permitted to deny liability by saying that the assured was suffering from chronic anaemia and that she concealed the fact.\textsuperscript{148}

So, as the insurance service is specifically mentioned in the definition of the term service and brought within the purview of the
Consumer Protection act, which has given a breath of relief to consumer of the insurance service and with the help of the consumer dispute redressal agencies a successful check is imposed on the activities of the insurance companies in the favour of the consumers, sufferer of the deficient services of these companies.

(ii) Postal

It is well established that the postal department has undertaken to provide postal service to the people and every person has a right to avail its service by paying the requisite consideration in the form of postal charges. If the service rendered by the postal Department suffers from deficiency in any respect, the consumer is entitled to file a complaint under the provisions of the consumer Protection Act 1986 and seek appropriate relief. It has been held that the post office is liable for delay caused by negligence of its employee in delivery of telegraphic money order in time. It can not claim immunity from liability under the provisions of post office Act. Similarly fourteen days delay in delivery of telegram was held to be inexcusable. The complainant missed his interview. A compensation was awarded. So, in this way the postal services which are not specifically mentioned in the definition of the term 'service' now brought within the purview of the Consumer protection Act to protect the interest of the consumers who suffered any loss due to the deficiency in postal service.

(iii) Banking

The relationship between the banker and the customer is complex one. Their relationship maybe governed both the contract and other
specific statutes dealing with the rights and obligations of the customer. After nationalisation banking business has come under severe criticism. Consequently, there has been a steady growth in the number of complaints filed against banks. In the consumer protection Act the banking service is specifically mentioned in the definition of the term service which was a good sign to give the relief to the consumers of banking services if he suffers any loss or exploited by the banking service. In the early days of the consumer protection Act the banks resisted as to the jurisdiction of the Consumer Protection Act and said that the banking services do not fall within the jurisdiction of the Act but the National commission, in *Umedal Agrawal V. United India Assurance Co. Ltd.*, set aside the objection and held that:

"The provision of facilities in connection with banking has been specifically included within the scope of the expression 'service' by the definition of the said word contained in Sec. 2(1)(o) of the Act. So it comes under the jurisdiction of the consumer dispute redressal agencies".

Various aspects of banking services are analysed by the redressal agencies in different cases and a clear vision is given by the redressal agencies which would be helpful to see the consumers interest. We will discuss some important aspects and cases to look into the deficient banking service.

**Draft dishonoured**: A deficient service where a bank wrongfully refuse to encash a draft, is liable for deficient service under the Act. In *N. Ravendran Nair V. State Bank of India*, the complainant had remitted a sum of Rs. 98,000 at the State Bank of India, Travancore, Venganoor
branch and procured a demand draft for the said amount payable at Surat. He presented the draft at the State Bank of India Surat only to be issued a dishonoured memo, as the signature number of the two official were missing. The Kerala State commission held that the draft was dishonoured due to the fault of the Bank and thus the services rendered by the Bank were deficient and awarded the compensation. The bank preferred an appeal against the order of the state commission. The National Commission\textsuperscript{156} while dismissing the appeal held that when the bank refused to honour the draft drawn on it on the ground that it did not comply with the guidelines of Reserve Bank of India about two signatures condition was a deficiency in service since the guidelines were directory not mandatory in nature.

In some other cases, where the draft was not honoured at the destination on account of inadequate signature was held deficient banking service and compensation awarded to the complainant.\textsuperscript{157}

Similarly dishonour of a cheque without any justification has been held to be wrongful. In one such case the customer was awarded compensation.\textsuperscript{158} In another case where draft was dishonoured the complainant residing abroad could not make a trip to India due to the dishonour of the draft. It was held deficient banking service and compensation awarded to the complainant.\textsuperscript{159} Even the freezing a customers' saving account on governments instruction was held wrongful and compensation was awarded by the National commission.\textsuperscript{160}

Further where the cheque collected but not credited held a deficient service. In Sovintorg (India) Pvt. Ltd. V State Bank of India\textsuperscript{161},
the appellant deposited a cheque of Rs. 1 lakh which was not deposited in the account for over seven years. It was held by the National Commission that the bank acted illegally in not crediting the cheque in the account without any justification which was a grave deficiency in the service on the part of the bank which caused serious damage to the appellant. The commission awarded the compensation to the appellant.

When the payment of the cheque was made by the bank despite the stop notice, it was held deficiency in service and a compensation was awarded to the consumer.\(^{162}\) Where the valuable goods were lost from the locker it was treated to be a fit case of deficiency in service. In K.S. Shetty \textit{v} Punjab National Bank\(^{163}\), the complainant alleged that the loss of jewellery from the locker was caused due to the negligence of the Bank employee. The state commission of Maharashtra opined that even if the locker was left open, how is that it went unnoticed by the bank employees for fifty days. It was therefore held that the loss of jewellery had occurred due to the negligence of the bank for which the bank is liable to pay the compensation. In appeal before the National commission\(^{164}\) the bank submitted that the case is under investigation by the police and the CID and as such the matter is subjudice and therefore the Consumer Redressal Forum cannot simultaneously adjudicate upon such a matter. The National Commission rejected the contention and held that the case was not subjudice, in as much as, the relief provided in sec. 14 of the Consumer Protection Act by the state commission, is entertainable. Finally the National Commission was fully agreed with the findings of the state commission and the appeal was dismissed.
On the other hand, the National commission has taken the view in quite a few cases\textsuperscript{165} that complaints by borrowers against bank for failure to provide adequate financing facility to an industry/business cannot form the subject matter or adjudication under the Act. Since, in the matter of granting or withholding of advances and insisting on margin money etc. they have to exercise their discretion and act in accordance with their best judgement after taking into account various factors. So mere failure to provide financial facility or assistance cannot constitute deficiency in service.

Where the bank has a statutory obligation to provide such facility and if neglects, the bank may be held liable for negligence. In, \textit{Krishna Conductors Pvt. Ltd. V Andhra Bank}\textsuperscript{166} the National commission held that in the presence of the guidelines by the Reserve Bank of India, which authorised the banks to take decision as to the type and volume of the credit facility, the denial to provide credit facility or assistance is not deficiency in service. This responsibility of the bank has also been dealt with at length in the order of the National Commission in \textit{Tropical Food and Pharmaceuticals Ltd. V State Bank of India}\textsuperscript{167}, wherein it was remarked.

"After the exposition of the nature of the guidelines issued by the Reserve Bank of India to the commercial banks with regard to grant of credit facilities and rehabilitation, finance cannot be assailed on the ground of violation of the credit norms laid down by the government of India and the guidelines prescribed by the Reserve Bank of India and that it cannot be maintained that there has been deficiency in service by the
bank towards its clients who are of the view that timely and adequate credit has not been provided by the Bank".

So, it is a fact that the jurisdiction of the consumer dispute redressal agencies on bank has been firmly established and a check is put on the deficient banking service and the redressal agencies has taken a serious view in protecting the consumers interest against the deficient banking services. It is hoped that in future the consumers, in case of loss and damage suffered due to the deficient banking services, will continue to get the justice and also hoped on the part of banks that the banks will perform their responsibilities, to render prompt and effective services to the consumers and give them relief, with dedication.

(iv) Telephone

The telecommunication services in the country inspite of miserable performance are not specifically included in the definition of the term service. But the judicial attitude was in favour of this class of consumers and felt their problems and tried to bring the telecommunication service within the jurisdiction of the consumer dispute redressal agencies. While on the other hand the telecommunication department always pleaded exemption from the jurisdiction of the consumer dispute redressal agencies. In, Union of India (GM Telephone) V Nitesh Agrawal\textsuperscript{168}, the National commission disposed of the preliminary objection, raised by the telecommunication department that the facility provided by it was not 'service', as under:

"We are in complete agreement with the view expressed by the state commission that respondent complainant who has been provided
bank towards its clients who are of the view that timely and adequate credit has not been provided by the Bank".

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"We are in complete agreement with the view expressed by the state commission that respondent complainant who has been provided
with a telephone facility on payment of installation charges and call charges etc. is a 'consumer' and provision of such facility is 'service' as defined under the Act”.

In another case it further laid down that remedy by way of arbitration under the telephone Act does not preclude an aggrieved consumer from seeking redress before CDRA under the Act.\textsuperscript{169}

The consumers who seek redressal for deficient telephone services mainly complaints related to excess billing, dead telephone, wrongful shifting, disconnection without notice etc. and the redressal agencies are trying to their best to provide relief to the consumers affected by the deficient telephone service. In \textit{Union of India V Nilesh Agarwal}\textsuperscript{170}, a complaint was made averring that there were excess charges in the telephone bill. The Rajasthan State Commission held that complainant who is a subscriber is a 'consumer' and the telephone service provided by the telecom deptt. is a 'service' for which he pays rent and over billing of telephone is 'deficiency' in service within the meaning of the Act. In \textit{Krishan Das Agrawal V Union of India}\textsuperscript{171} the telephone of the complainant 'remained out of order for a long period and it was not put in order inspite of written complaints. The National Commission declared it as a deficiency in service and awarded compensation.

Failure to provide telephone connection in accordance with the allotted priority has been held deficient service and actionable.\textsuperscript{172}

In \textit{Commercial Officer, Office of the Telecom Patna V Bihar State Warehousing Corp.}\textsuperscript{173} an appeal was made against the order of the Bihar State commission awarding compensation for wrongful shifting of
a telephone. The National commission without disturbing the finding arrived at by the state commission held that in effecting the wrongful shifting of the telephone there was negligence on the part of the appellant and it constituted a deficiency in the service rendered by the appellant department to the consumer.

Disconnection of telephone on the ground of nonpayment without intimation to the subscriber amount to deficiency.\(^{174}\) Disconnection of telephone without notice is violative of the principles of natural justice and is an arbitrary act.\(^{175}\)

So, the telephone service is not satisfactory and suffers from deficiencies in various aspects as in *Union of India V. Dr. (Mrs.) Satya Bhama Thakur*\(^{176}\) the commission found that meter showed reading of calls after the telephone had been disconnected and remained disconnected. The commission held that the meter reading of the telephone calls and their check was undependable and that there was no adequate system to protect the interest of the consumer.

In the above case while commenting on the performance of the telecom department the National Commission observed:

"The functioning of the telephone department is far from satisfactory, the service rendered to the subscriber are deficient. The subscriber is made to suffer inconvenience, harassment and frustration in pursuing the matters with telephone department".

So, it is clear that no doubt the service of the telecom department was not satisfactory and the consumers were always exploited
by the telecom department but this service was not specifically included in the definition of the service. But the consumer dispute redressal agencies came forward to protect the consumers interest against deficient telephone service and established the jurisdiction of redressal agencies over the telecom service and started protecting the interest of the consumers of telephone service.

(v) Education

The educational service of an institution though not included specifically in the definition of the term services but the redressal agencies settled through their judgements that the Educational Services of an institution which charges fee for its services are covered by the word 'service' in sec. 2(1)(0) of the Act.177

The university authorities can be made to account for their lapses and be made to pay compensation for any deficiency in services. In Manisha Samal V. Sambalpur University178, a student hired the service of the university on payment of fees for appearing at the examination and the university allotted the same roll number to three different students (including complainant) on the same subject. The National Commission held that it was a serious negligence on the part of the university and thus a deficiency in service.

In another case of V. Murugesani V. Madurai Kamraj University179, complainant passed the LL.B. examination and was issued a provisional certificate, he got himself enrolled with Bar council on the basis of this certificate and started practice after some time he was declared fail and the provisional certificate was withdrawn. He applied
for re-evaluation and passed. He brought action that due to negligence, recklessness and carelessness he was put to pain, financial and reputation loss and suffered mental agony. District forum declared the university service as deficient and awarded compensation. University preferred an appeal\textsuperscript{181} and contended that the declaration of wrong result was due to some mistake of computer. The commission rejected the plea that the person incharge of the computer has to take care of figures and the result given by the computer. This is a clear case of deficiency and amounts to negligence.

In \textit{Maharishi Dayanand University V. Shakuntla Chaudhary}\textsuperscript{181} the result of examination of the complainant declared by the university was found to be erroneous and incorrect. The university pleaded that it was due to oversight and the mistake had been promptly rectified. The Haryana State commission held that whenever the university defaults from its primal duty of care in this context, the examinees would clearly be entitled to compensation under the Act for deficiency in the services rendered. The commission observed\textsuperscript{182}:

"Nevertheless, the university having once undertaken the service of conducting the examination for prescribed fees is obviously under a duty of care to perform the said task efficiently. An incorrect, declaration and publication of a candidate's result would obviously be an imperfection or shortcoming in the performance of the duty which the university has undertaken. Whenever it thus fails or defaults in the said duty of care, it cannot escape the consequences thereof on the mere general plea of the large number of examinees and inevitable quantum of paper work involved".
In another case *V. Muragasan V Registrar, University of Madras*\(^{183}\), the Madras state commission held that where the university took 10 years to issue degree certificate to the complainant it was a case of gross deficiency in service on the part of the University. In this case complainant applied for degree in 1982 which was issued in 1992. The state commission while awarding compensation observed:

"There can be no worse deficiency of service on the part of the university. The university is a responsible body entrusted with education of students and if the university itself is lethargic and indifferent in the issue of certificate, it is indeed a bad day for degree holder".

In this way the redressal agencies came forward to protect the interest of the students and declared them as a consumer and put a check on the prevailing irregularities and directed to the universities to remain careful and vigilant in the interest of the students which is a remarkable development in the interest of the future of the students with the passage of the Consumer Protection Act, 1986.

As observed that some private educational institutions are making very tall claims and thereby creating big business and recover huge amounts by way of fees. It can not therefore, be denied that relationship between the students and institutes which are imparting/offering education is that of provider of service and recipient of service. They will squarely fall within the meaning of sec. 2(1)(d)(ii) of Act.\(^{184}\)

It is clear that though Education service is not specifically mentioned in the definition of the service but it brought within the jurisdiction of the redressal agencies without any exception which is a
good sign for the future of the young generation who are the future of the nation, specially in case of these private institutes who put the parents/students in the position to take it or leave it and the parents with anxiety to get their children admitted in these institutions have no bargaining power but to accept the conditions offered by the institutions.

(vi) Housing

The State Housing and development Boards engaged in serving the public in the matter of providing housing by acquisition of land, development of sites, construction of house thereon and allotment of plots/houses to the public. The Board is clearly engaged in rendering services for consideration to the public and thereof these allottee of/plots/house by the Board are clearly 'consumer' falling within the definition of sec. 2(1)(d)(ii) of the Act. Again under sec. 2(10)(0) of the Act the definition of the term 'service' is comprehensive one - it means 'service' of description', this leave no room for doubt that the type of service which the Board renders to the public for consideration is clearly covered by sec. 2(10)(0) of the Act. Therefore poor quality of material or construction, or non-provision of roads, schools, park etc. as promised under the scheme will amount to deficiency in service under the Act.

In Mrs. Senth Chadda V Delhi Development Authority the National commission held that the activity of DDA making allotment of land, flats, etc. is the activity of providing service and the complainant was entitled to pursue remedies under the Consumer Protection Act being a 'consumer' of such service. The Amendment Act 1993 has inserted the
word housing 'construction' in the definition of service in clause (0) of Sec. 2(1) of the Act. Thus by this amendment all doubts have been cleared and the 'housing construction' has been specifically brought within the perview of the consumer Protection Act 1986.

A builder who could not provide the flat in time was compelled to refund the deposit with interest and also to pay an equal amount of compensation for mental strain and suffering. An allotment of a site requiring the allottee to deposit the money within thirty days would have to give him thirty days from the date of the receipt of the letter. A building agency which first undertook the responsibility of providing a boundary wall and accepted a deposit for that purpose was allowed to refund the money with interest and costs and to leave that construction upon the allottee of the site. Floating a housing scheme without prior permissions, such as approval of the site for housing purpose, layout and house plans, ceiling loan etc., is an unfair trade practice.

A unique example of deficiency in service was the case where the flat delivered against full payment was found to be in the occupation of some one else. The National commission awarded the compensation and price to remove the defects of the user.

So, it was well established through the Amendment of 1993, which specifically mentioned the term 'housing construction' under the definition of service, and through judicial pronouncements that the housing construction is a service and fall within the jurisdiction of the redressal agencies despite of this fact it was challenged in the supreme court in *Lucknow Development Authority V. M.K. Gupta* that housing
service was not included even by way of example in the original definition of the term service and such services, specially provided by the statutory bodies, should better be remain outside the scope of the Act. The supreme court negatived this contention. R.N. Sahai J. analysed the definition as follows:

"As pointed out earlier the entire purpose of widening the definition is to include in it not only day to day buying and selling activity undertaken by a common man but even such activities which are otherwise not commercial in nature yet they partake of a character in which some benefit is conferred on the consumer. Construction of house or a flat is for the benefit of the person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is service as defined in the Act. Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of the common man it is as much service as by a builders service and other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to the consumer. When possession of property is not delivered within the stipulated time the delay so caused is denial of service. Such disputes or claims are not in respect of immovable property as argued but deficiency in rendering of service of a particular standard, quality or grade".

The supreme court further stressed that - "The entire approach of the learned counsel for the development authority in emphasising that
power exercised under a statute could not be stretched to mean service proceeded on misconception. It is incorrect understanding of the statutory functions under a social legislation. A development authority while developing the land or training a scheme for housing discharges statutory duty the purpose and objective of which is service to citizens. As pointed out earlier the entire purpose of widening the definitions is to include in it not only day to day buying of goods by a common man but even such activities which are otherwise not commercial but professional or service-oriented in nature. The provisions in the Acts, namely, Lucknow Development Act, Delhi Development Act or Bangalore Development Act, clearly provide for preparing plan, development of land, and framing scheme etc. Therefore if such authority undertakes to construct building or allot houses or building sites to citizens of the state either as amenity or as benefit then it amounts to rendering of service and will be covered in the expression 'service made available to potential users'.

Putting a final point the supreme court said: "So any service except when it is free of charge or under a contract of personal service included in it. Since housing activity is a service it was covered in the clause as it stood before 1993".

In this way, the Supreme court put an end to all the resistance, which the development authorities were continuously raising for the exemption from the jurisdiction of the redressal agencies on the ground of being a statutory body, and finally approved the establishment of jurisdiction of redressal agencies over housing services quoting that
since housing service is specifically included in the definition of the term service, it falls within the preview of the Consumer Protection Act irrespective of the fact that whether it is contractual or statutory service.

(vii) Provident Fund

With the passage of time various judicial pronouncements have widened the scope of the term 'service' and brought services which are not specifically mentioned in the definition of the term 'service' in this direction the most remarkable step taken by the supreme court is the inclusion of the provident Fund Scheme in the definition of the service. In a landmark judgment, in Regional P.F. Commissioner, Faridabad V Shiv Kumar196, favouring millions of employees, the supreme court has ruled that employees' provident fund scheme comes within the purview of Consumer Protection Act and said delayed payment of provident fund to a member employee amounts to deficiency of service.

After taking a detailed view of the scheme vis-a-vis the Act, a division bench comprising of justice S. Saghir Ahmad and justice R.P.Sethi said:

"A perusal of the scheme clearly and unambiguously indicate that it is a 'service' and the member a 'consumer' within the meaning of the provisions of the Act"

The bench gave this ruling while upholding the order of the National commission awarding Rs. 1000 cost against regional P.F. commissioner at Faridabad for a delay of merely one month in payment of the P.F. to an employee. Shiv Kumar applied to regional P.F.
commissioner for the payment of his PF on July 15, 1992 but the claim was settled on Aug. 24, 1992.

The bench rejected the argument that regional PF commissioner, being central government, could not be held to render 'service' within the meaning and scheme of the Act. "It can not legally claim that the facilities provided by the scheme were not 'service' or that the benefits under the scheme being provided free of charge", the court said.

The definition of "consumer" under the Act included not only the person who hired the 'service' for consideration but also the beneficiary, for whose benefit such service were hired. "Even if it is held that administrative charges are paid by central government and not part of it is paid by the employee, the services of the PF commissioner in running the scheme shall be deemed to have been availed of for consideration by the central government for the benefit of employees who would be treated as beneficiary within the meaning of that word used in the definition of consumer', bench said.

Regarding the above judgment, of the supreme court including the PF service within the ambit of the term 'service', only one sentence can be said that- "It is the starting of a new holcyon millennium of the consumer justice and consumerism.

(7) Summary of Indian Position

On April 9, 1985, the General Assembly of the United Nation, by Consumer Protection Resolution No 39/246, adopted the guidelines to provide a framework for Governments, particularly those of developing
countries, to use in elaborating and strengthening consumer protection policies and legislations. The objective of the said guidelines include assisting countries in achieving or maintaining adequate protection for their population as consumers and encouraging high level of ethical conduct for those engaged in production and distribution of goods and services to the consumers. Keeping in view the said guidelines, the Act was enacted by parliament, i.e. the Consumer Protection Act 1986, to provide for the better protection of the interests of consumers and for that purpose to make provisions for the establishment of consumer protection councils and other authorities for the settlement of consumer's dispute and for matter connected therewith.

The Act gives a comprehensive definition of consumer who is the principal beneficiary of the legislation but at the same time in view of the comprehensive definition of the term 'consumer' even a member of the family can not be denied the status of consumer under the Act and in an action by any such member of the family for any deficiency of service, it will not open for a trade to take a stand that there is no privity of contract.197

The Act also gives protection to the consumer in respect of service. The definition of the 'service' thought specifically mentioned only few services which comes within the ambit of the Act but the main clause of the definition is very wide. It applies to any service made available to the potential users. The services which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause thus very wide and extends to any or all actual or
potential user.\textsuperscript{198} Some important services i.e. medical, education, telecommunication, provident fund etc. which were not specifically mentioned in the definition of the term 'service' were brought within the ambit of the Act through various judicial pronouncements in the interest of the consumers.

So, the Act being a social welfare legislation intended to confer some speedier remedy on a consumer from being exploited by unscrupulous traders and provide them speedy, effective and cheap remedy to fight against these traders and exploitation in the market from hazards to their health and safety, through the setup of a three tier structure of the consumer dispute redressal agencies i.e. District Forum, state commission and National Commission.

To sum up it can be submitted that, the Act if properly implemented, is capable of instilling in the business community of sense of discipline and responsibility and able to create a new business motto: 'Give a fair deal to the consumer'.

B. LAWS OF CONSUMER PROTECTION IN UNITED STATES OF AMERICA

1. Introduction

In the United States, the rapid industrialisation after the end of civil war in 1865 led to mergers and amalgamations and to the formation of trusts and cartels; which were well advanced by 1880. The concentration of corporate power at such an early stage of economic development and awareness to check the economic power because of preoccupation of the American mind with the possible ill effects of
concentration and its partiality to the principles of check and balance prompted the passing of the first antitrust legislation as early as 1890 which came to be known as the 'Sherman Act'. The Act declared "every contract, combination in the form of trust or other wise or conspiracy in restraint of trade or commerce to be illegal".

Every party of any such contract, combination or conspiracy was made punishable with fine or imprisonment. While this Act was of great use in curbing the wave of mergers that had marked the industrial scene of the United States towards the end of the nineteenth century and the first decade of this century, experience showed that there were several monopolistic and restrictive trade practices to which the Act did not reach. To remove these infirmities two major legislations, were passed in 1914, namely, the Federal Trade Commission Act 1914 and Clayton Act 1914. The Federal Trade commission Act setup a new machinery. The Federal Trade Commission, which shares, with the Department of justice, the responsibility for enforcement of all antitrust legislations. The Act was amended in 1938 by the Wheeler Lea Act, Which further extended the scope of the Act to cover 'unfair or deceptive acts or practices' in commerce. The Clayton Act was designed to specially deal with the problems of merger and to prohibit certain types of individual conducts which were beyond the reach of Sherman Act.


The substantive provisions of the antitrust laws are few and brief; they are contained in seven sections taken from three statutes - the Sherman Act of 1890, Clayton Act 1914 and Federal Trade Commission Act 1914.
(i) The Sherman Act of 1980 contains two main prohibitions namely:

Firstly: "Every contract, combination in the form of trust of other wise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal."^{203}

Secondly: "Every person who shall monopolize, or attempt to monopolize, or combine with any other person or persons to monopolize any part of the trade or commerce among the several states or with foreign nations, shall be deemed guilty of misdemeanor."^{204}

The Clayton Act of 1914 declares illegal four specified types of restrictive or monopolistic practice. They are in brief^{205}:

(a) price discrimination^{206}
(b) exclusive dealing and tying contracts^{207}
(c) acquisitions of competing companies^{208}
(d) interlocking directorates^{209}

All these sections are qualified by provision (some elaborately defined than others) to the general effect that the practice concerned becomes unlawful only when its "effect may be to substantially lessen competition or tend to create a monopoly".

The Federal Trade Commission Act 1914 is concerned largely with the setting up of the commission and the mechanics of its operation. Sec 5 of the Act, however, contains one important substantive provision, which reads as: "Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are hereby declared illegal".
So, in the United States, the antitrust legislations, the Sherman Act even since 1890, the Clayton Act 1914 and Federal Trade Commission Act since 1914 are protecting the interest of the consumers in the country.

(i) Sherman Act 1890

Danger lies in restraint of trade because the result of suppressing or competition may be to build up a position of power in a market. People in a position of power in a market can make the terms of bargain more favourable to themselves and less favourable to others than they would otherwise be. There are two obvious ways of achieving market power. One way is for the sellers to band together and exert their joint power by agreement instead of competing one against the other. The other way is for a single firm to achieve by itself a dominant position in the market, in other words to monopolize it. One, of the important ways to gain the power in a market is to exclude competitors from the market and to influence price directly. Power over price and power to exclude competitors have always been regarded as the earmarks of monopoly and restraint of trade. The law has always attached predominant importance to restraints of trade which directly influence prices, even to the extent of dealing with other forms of restriction which seek directly to affect prices. All these type of agreements, which restraint others to commence their trade or carry on their trade or the agreements which are unreasonable and against the public interest and tends to minimize the competition in the market, to control the price of the market and to earn more and more profit at the cost of the exploitation of the consumers or
the public, violate sec. 1 of the Sherman Act. This was made clear in *United States V. Addyston Pipe and Steel Company*[^10], decided by the sixth circuit court of appeals in 1989, part of the charge was that six manufacturers of cast iron-pipe made an agreement whereby in many southern and western states the prices of pipe for all six were fixed by a certal agency. Evidence showed that these prices were set just low enough to keep eastern manufacturers out of the area, and that the public were deprived of the lower prices that might have resulted if the local factories had competed among themselves.

It was said in defence of the agreement that the fixed prices were reasonable. The defendants, however, lost the case. The court said - "we do not think the issue an important one, because, as already stated, we do not think that in common law there is any question of reasonableness open to the courts with reference to such a contract. Its tendency was certainly to give defendants the power to charge unreasonable prices had they chose to do so".

These words clearly foreshadow the opinion of Mr. (later chief) justice stone in Trenton Pottenries case[^11] in which it was established that agreements in restraint of trade or price fixing was illegal perse.

*United States V. Trenton Potteries Potteries Co.*[^12] is the leading case on the agreements in restraint of trade to fix the price and minimize the competition. In this case the price of vitreous pottery for bathrooms and lavatories, were fixed by the sanitary potter's Association, whose members were responsible for over 80% of the national output. The defence was the price fixed were reasonable and caused no injury to
the public. Mr. Justice Stone's rebuttal of this defence is a classic statement of anti-trust doctrine-

"That only those restraints upon interstate commerce which are unreasonable are prohibited by the Sherman Law was the rule laid down by the opinions of this court. But it does not follow that agreements to fix or maintain prices are reasonable restraints and therefore permitted by the statutes merely because the prices themselves are reasonable -- whether this type of restraint is reasonable or not must be judged, in part at least, in the light of its effect on competition, because it cannot be doubted that Sherman law and judicial decisions interpreting it are based upon the assumption that the public interest is best protected from the evils of monopoly and price control by the maintenance of competition". 213

Now it is well established that the aim and result of every price fixing agreements or agreements in restraint of trade, if effective, is the elimination of one form of competition. The power to fix prices, whether reasonably exercised or not, involves power to control the market and the fix arbitrary and unreasonable prices.

The court in Trenton Potteries case further observed that-".... the reasonable price fixed today may through economic and business changes become the unreasonable price of tomorrow. Once established, it may be maintained unchanged because of the absence of competition due to the agreement in restraint of trade...... Agreements which create such potential power may well be held in themselves unreasonable or unlawful restraints without the necessity of minute enquiry of reasonableness". 214
In other words, agreements in restraint of trade which tends to minimize the competition in the market and to control the fixation of price should be declared illegal without the test of reasonableness as they are violative of section 1 of the Sherman Act and against the public interest. So, section 1 of the Sherman Act clearly declares the agreements in restraint of trade which are against the public interest illegal to protect the interest of the consumer against the exploitation at market place against the arbitrary business policies of the sellers, who are only interested in their profit and least interested toward the consumers interest.

So, in restraint of trade proceeding out of agreement or combination between competitors, the position of power in the market which is achieved by combination is typically used to influence the level of prices or to exclude competitors from the market. Sometimes a position of power in the market is achieved by a single firm which thereby becomes capable of producing the same economic effects as a combination. Section 2 of the Sherman Act\textsuperscript{215} is designed to bring this type of situation within the scope of antitrust. When independent firms combine together to form a monopoly. This in itself is enough to establish that element of positive drive towards market power that constitutes monopolizing.

It is irrelevant in such a case that the power, once found, is not used to exploit the consumer nor even that it may serve a useful economic purpose. In *Northern Securities Company v. United States*\textsuperscript{216}, two competing railroads running across the north western states from the
Great Lakes to the pacific coast were brought under unified financial control by the formation of a holding company. Although both railways had other competitors along some parts of the route, the supreme court held that this was a case of monopolisation and ordered that the holding company dissolved and the two railroads returned to separate ownership. Mr. Justice Hardan sound in his opinion that - "The mere existence of such a combination and the power acquired by the holding company as its trustee constituted a menace to, and a restraint upon, that freedom of commerce which congress intended to recognize and protect and which the public is entitled to have protected". He noted that, if the merger were not dissolved, all the advantages that should accrue to the public from competition between the two lines would be lost. In, *United States V. Union Pacific Railroad Company*\(^\text{217}\), the acquisition by the union pacific of large stockholdings in competing railroad, especially in southern pacific, come under attack. Again the supreme court condemned the merger. Mr. Justice Day said that - "That consolidation of two great competing systems of railroad engaged in interstate commerce, by a transfer to one of a dominating stock interest in the other, create a combination which restrains interstate commerce within the meaning of the statute because, in destroying or greatly abridging the free operation of competition thereto existing, it tends to higher rates....".

The line of judgements which approved the provision of sec. 2 of the Sherman Act\(^\text{218}\) and held the monopolistic combinations and mergers illegal and against the public interest, which started from the Northern Securities case, proceeded towards the, *Standard Oil Company*
of New Jersey V. United States, Where evidence before the court told how the Rockefeller family and others, who had previously operated as separate partnerships, had organized the Standard Oil Company of Ohio and acquired nearly all the refineries in Cleveland controlling some 90% of trade in refined products and forced to smaller competitors either to join it or go out of business.

The Supreme Court was in effect making the serious attempt to give meaning to section 2 of the Sherman Act. Hence chief justice White outline a historical theory according to which certain activities of individual firms had the same harmful result as restraint of trade, particularly the raising of prices, had come to be equated with restraint of trade. He defined this class of individual activities as those - "of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public.....".

Whereas sec. 1 of the Sherman Act dealt generally with restraints of trade proceeding from contracts, combinations or conspiracies, sec. 2 was intended "to make sure that by no possible guise could the public policy embodied in the 1st section be frustrated or evaded".

The word 'monopolize' covered every individual activity bringing about 'restraint or trade' while then summed up the meaning of sec. 2 as ".... the second section seeks, if possible, to make the prohibitions of the more complete and perfect Act which embracing all attempts to reach the end prohibited by the 1st section : that is, restraint of trade, by any
attempt to monopolize, or monopolization thereof, even although the acts by which such results are attempted to be brought about or are brought about be not embraced within the general enumeration of the 1st section:, So it is clear that the main aim of the section 1 & 2 and leading judgement to prevent contracts in restraint of trade or combination or merger, which tends to monopolize the market and exclude other competitors to control the price fixation as per their own will, in the larger interest of the public as these are nothing but an instrument to exploit the consumers and earn more profit and to have the control of the market in a few hands.

(ii) Clayton Act, 1914

Now, turn to the clayton Act 1941, with the implementation of the section 1 & 2 of the Sherman Act. the passage of time had shown certain recurrent ways in which the monopoly power of the 'trusts' was built up. They had secretly gained control of ostensibly independent companies by acquiring stock and voting it through holding companies; they had 'tied up' important sources of supply or channel of distribution through various types of exclusive contract; they had brought to heel inconvenient competitors by local process cutting campaigns, often carried on possible to prohibit these trust building or monopolizing devices, through some legislation other than the sherman Act, which are not covered by the sherman Act and opposed to the public interest. So the Clayton Act 1914 was passed to protect the interest of the consumer more effectively with Sherman Act against the restrictive and monopolistic practices in the market. The Preamble of the Clayton Act
explain the purpose - 'to prohibit certain trade practices which ... singly and in themselves are not covered by the Sherman Act,... and thus to arrest the creation of trusts, conspiracies and monopolies in their incipiency and before consummation.

Section 7 of the Clayton Act 1914 is a development in more specific form of aspect of the law on monopolization under the Sherman Act; where the question was raised whether the acquisition of competing companies witnessed to a purposive drive for monopoly power.

Originally section 7, was referred to as the 'holding company' section, and was envisaged as a means of preventing important concerns in any industry from growing into 'trusts' by buying up stock in competing concerns and exercising industry wide control through a holding company.

Further provisions\textsuperscript{220} made it clear that the prohibition extended to the acquisition of stock in a number of companies such that competition between all those acquired might be substantially lessened, but that it did not apply to purchase of stock purely for investment nor to the formation of subsidiary companies intended to carry on the legitimate business of the parent company. It will be noted that the wording of the section did not cover the acquisition of the physical assets of a competing company.

Section 7 forbids those mergers where effect may be substantially to lessen competition or tend to create monopoly in any line of commerce in any section of the country.
One interesting question arises, whether section 7 applicable to joint venture prior to Clayton Act it had been possible to argue that, if two companies formed a joint subsidiary to carry on a business of any kind, this would not of itself constitute a violation of section 7, since the joint subsidiary would not be engaged also in commerce at the date of its formation. Sec. 1 & 2 of the Sherman Act alone would be available for an attack on the joint venture as a restraint of trade. In *United States v Pennolin*, however, seven members of the supreme court held that a corporation which is formed or acquired specifically to engage in interstate commerce is covered by the section 7 of the Clayton Act. So, if a joint venture is established, and the motive is to lessened the competition in the market and its practices tend to acquire monopoly and control and price fixation, is covered by the section 7 Clayton Act 1914.

The Clayton Act deals with the cases of interlocking directorates and impose restriction on it. The prohibition of interlocking directorates seems to have been aimed at restriction of competition which may come about if ostensibly competing companies are in reality, controlled by the same set of people. The very existence of such a statute no doubt cuts down the extent of interlocking directorates to some degree. Some acts, other than merger or acquisition of share, may be unreasonable restraint of trade or may constitute in attempt to monopolize if it is not 'an expansion to meet legitimate business needs in an effective competitive context, but is rather a calculated scheme to gain control over an appreciable segment of the market and to restrain or suppress competition' in the form of exclusive or tying contracts which are violative of section 3 of the Clayton Act 1914.
The Clayton Act clearly declares the tying contracts or exclusive dealing contracts, which tends to suppress the competition and acquire the monopoly in the market, against the public interest and impose restriction on these type of contracts.\textsuperscript{223} Through such agreements do not violate the Sherman Act, however they may well be declared unlawful.

The exclusive dealing contracts are restricted because if they are allowed to maintain and extend the system of exclusive contracts, the companies or the producer with a sound position in the market may well increase their hold on the industry and can monopolize the market, however, the exclusive dealing arrangements did not infringe the Clayton Act if the effect on competition is too remote. Exclusive dealings or tying contracts as prohibited by sec. 3 of the Clayton Act, may take another form. In the cases considered so far there has either been an express condition against handling or rival's product or a requirements contract tying the customer to single supplier for substantial periods. The tying involved in this type of exclusive dealing is a tying of customers to a particular supplier. It will be noted the wording of sec. 3 of the Clayton Act also covers situations in which one commodity is tied to another if the effect is to foreclose trade in the 'tied product'\textsuperscript{224}.

Further, the practice of price discrimination was made unlawful by sec. 2 of the Clayton Act; because the vigorous local price cutting adopted as a weapon by the big 'trusts' against inconvenient competitors, with its huge resources the trust could cheerfully face a period of selling well below cost in a selected area where of example, an obsinate 'independent' was refusing to sellout, or where an impudent new entrant
was making inroads into the local market. It was not uncommon for small concerns to be put out of business be predatory price setting of this kind. In short the competition as threatened by price discrimination was that between the discriminating supplier and his competitors; they were not much concerned with the effect of discrimination on the supplier's customer. In this regard keeping in view the adverse effect of the price discrimination on the consumer it is declared unlawful by the sec. 2 of the clayton Act.

It was realized that not every difference in price is discriminatory it is for the enforcing authority to establish that goods of like grade and quality have been sold to different purchasers at different prices and that the effect of this may be substantially injurious to competition otherwise would not come within the purview of the sec. 2 of Clayton Act. The wordings of the section makes it clear that the competition in question is not solely between the supplier and other suppliers: it may be competition between customers of the favoured customer (i.e. retailers who get supplies from a favoured whole seller) and their competitors (third line competition). The courts have to decide whether the price discrimination is likely to have a serious effect on competition at any of these levels.

A price discrimination that has the requisite effect on the competition, i.e. against the interest of the consumer and tends to monopolize the market, constitute a prima facie case the Act.
(iii) Federal Trade Commission Act, 1914

Broadly speaking the Department of Justice takes to itself the enforcement of the Sherman Act, in particular the prosecution of serious and significant infringements of that Act, and it also plays the major role in the enforcement of sec. 7 of the Clayton Act. It normally takes action under other sections of the Clayton Act only when charges under that Act are a factor in a broader picture of Sherman Act violation. It has the criminal jurisdiction also.

Before the prosecution the Anti-trust division of the Deptt. of Justice detect crime through the complaint of the public at large or from the business men who are injured or threatened by restraint of trade or monopoly. After the detection of the case a through investigation is made to collect the evidence. through demand of documents of company against which the complain is made inspection of the premises and if necessary investigation by the Federal Bureau of Investigation (FBI), to prove the case effectively in the courts. Once the Department of Justice is in possession of the information needed for making a case, it has to decide whether to proceed by criminal prosecution or by civil action both are having their own merits and demerits.

The criminal case can do no more and no less than punish offender for past offence merely imposing a fine (unless the fine were of impossible severity). After the punishment has been executed, the situation is exactly as it was before the case was brought. In civil proceeding the procedure is lengthy, cumbersome and expensive. Anyway the anti-trust division after choosing that whether to start criminal
proceeding or civil proceeding, starts the proceeding against the party in
dispute. Among the anti-trust legislations the Federal Trade Commission
Act 1914 deemed as the principal legislation to protect the consumer
against restrictive and monopolistic trade practices. The Act provide for
the establishment of an independent body, the Federal trade Commission
to enforce the anti-trust laws and its own provision to protect the
consumers against unfair trade practices or deceptive trade practices.

The Federal Trade Commission, with its prophylactic and
preventive role, enforces section 5 of the federal Trade Commission Act
and takes the main brunt of the work under the remaining sections of the
Clayton Act but the Federal Trade Commission as the anti trust division
of Deptt. of Justice the commission has no criminal jurisdiction.

The commission is organised into two principal bureau, the
bureau of consumer protection and the bureau of competition. The bureau
of consumer protection has principal responsibility of monitoring
advertising, labelling and deceptive practices, reviewing applications for
complaints, drafting proposed complaints concerning such practices and
prosecuting cases. The commission was initially intended to ensure
competition in the industries although consumer protection was also
provided for.

Like the Department of Justice, the commission in its antitrust
work is dependent in the first place on complaints from the public and
from the business world about infringements of the law. It also has a
division of its staff a bureau of Industrial Economics whose job is to
maintain a vigilant watch over the American economy from the point of
view of its competitiveness, its degree of concentration and so on. The investigations of this bureau, like those of the economists in the Department of Justice, lead the commission from time to time to concentrate as a matter of policy of particular aspects of the economic scene. Sec 6 of the Federal trade commission Act 1914, empowers the commission to obtain the information it needs to carry out its function. When as a result of complaint of after investigation it is believed that some breach of sec. 5 of the Federal Trade Commission Act or of the Clayton Act under the commissions jurisdiction has occurred, the commission may issue a formal complaint. After the complaint the lawyers of the enforcement bureaus have the task to prepare and present the case. There are three enforcement bureaus, the bureau of Restraint to Trade, the Bureau of Deceptive practices and the Bureau of Textile and Furs. For cases in its particular jurisdiction, each bureau has responsibility for the whole enforcement process from inception to completion.

The findings of the commission are final and binding on the appeal courts so long as they are supported by testimony. The job of the appeal courts, therefore, is to review the commissions' decisions as matters of law.

The commission has the power to impose fine upto 5000 dollars or imprisonment upto 1 year or both as the punishment in case of infringement of law.

So, the commission centre its attention in the direct protection of the consumer and indirect protection of consumers through the protection of the competition in the market.
3. Summary of U.S. Position

It was rather in the administration of law than in its content that the anti-trust laws were a revolutionary new departure. First, they put teeth into the law of restraint of trade. Most common law actions on the subject arose when one party to a restrictive contract sought to enforce it against another party. The most that a court could do in such a case was to declare the contract void and unenforceable; whereas the anti trust Acts made them a crime punishable by fines and even imprisonment, and thus brought against the trusts the threat of federal police action. Secondly, by bringing all complications and conspiracies in restraint of trade within the ban and prohibiting monopolization, the antitrust laws made it clear that the means by which restraint of trade was brought about was a matter of indifference to the law. Whether trick was done by a legal contract or some looser form of agreement, by the formation of a trust or a holding company or simply by sheer aggregation of market power, the Acts still to apply. This is important because, at common law, private litigation is much less likely to be effective, or indeed to arise at all, when the restraint is caused by concentration of business power than when it arose directly from the terms of contract.

These two points tend to confirm the impression that the paramount aim of the anti-trust laws at the start was to meet the public demand and came as a positive instrument of economic policy. The antitrust laws are taken to embody the assumption "that the public interest is best protected from the evils of monopoly and price control by the
maintenance of competition. The antitrust laws of the U.S.A. were enacted to protect the interest of the general public or the consumer through maintenance of the competition in the market and declared all the agreements, contracts, mergers or combinations which tends to monopolize the trade and control the price fixation or made to restraint the others to continue his own trade void. The aim and object of all those Acts were, no doubt, remarkable but it is embracing to note that a wide range of exemption is provided under these Acts which surely negatived the effects of these Acts.^^^'

There is first a broad exemption for labour cases against restrictive behaviour by labour unions were successfully prosecuted under the sherman Act before 1914, but sec. 6 of the Clayton Act 1914 declared 'that the labour of a human being is not a commodity or article of commerce and declared that antitrust laws do not apply to the activities of trade unions. This rule holds even when the union action is bound to impair business competition, so long as the union is pursuing its own rightful objectives and is not acting collusion with employers. For example, a union may be able to prevent the products of a non-union factory from reaching the market or to keep goods from low wage area out of high wage areas. The economic effects of such action may be much the same as those of a trade boycott or price fixing agreement but no antitrust action will lie against the union.^^^'

Public utilities are largely exempted in practice from the laws. The power, transport and communication industries, though mostly carried on by private business are subject to supervision by special regulatory
commission, which are given prior jurisdiction to take the administrative action in case of any restrictive or monopolistic behaviour on the part of the concern service. Moreover rate fixing agreements between steamship lines, airlines and railroads have been relieved by statute from antitrust action where the agreements are approved by the appropriate commission so, the effect of the anti-trust laws on these public utilities are lessened through this arrangement and controlling power is vested in the hands of these commissions. Most important thing is that any agreement, even though restrictive or monopolistic in nature and against the public interest, once approved by the concern commission do not fall within the jurisdiction of the antitrust laws.\textsuperscript{228}

Again insurance and banking services are in part immune from the anti trust laws. It is provided that the antitrust laws should apply only to the extent that the business of insurance was not regulated by state law. Since all the states have infact introduced regulatory statues, the scope for anti trust laws and its action is now limited to situation not covered by the state statutes.

Finally, antitrust is a federal policy and can apply only to the extent that federal authority will carry. The constitution of the United States enumerates the powers surrendered by the several state to the federal Government and the so-called 'commerce clause' applies only to trade between the state and with foreign nations; commerce of a purely local nature must be regulated, if at all, by the government of the state concerned unless they have any direct effect on interstate commerce or trade.\textsuperscript{229}
So, it is clear that the paramount aim of the antitrust laws was to protect the public interest and bring the consumer protection within the domain of the executive responsibility. But the exemption clause and dominance of the local laws over the anti-trust laws negatived the effect of the anti trust laws and lessened and implementation effects. This fact has limited the scope of these laws as a rough guide to the case law and an instrument which can measure that whether a particular contract of restrain, merger, combination or monopoly is against the public interest or not and may declare it unlawful only and can stand as a silent spectator if this is the scope of the antitrust laws then what is the use of those laws as the common law relating to restraint of trade and monopolistic trade practice would have development along on line or another had there been no antitrust lows.

Another aim of these laws were to develop the competition in the market on this point it is submitted that businessmen can not be made to compete, but only restrained from impairing competition.

The Punishment which is provided in these Acts is not of a deterrent nature as they provide the punishment of fine upto 5000 dollar or imprisonment of upto one year. These punishment are of no severe nature because the punishment of fine for a businessman, is of no effect even the imprisonment of one year makes, in most of the cases, no effect, who is earning a lot of profit through restrictive or monopolistic trade practice and it would leave the situation exactly where it was. So the provision of punishment also played a vital role to negative the effect of the anti-trust laws.
To conclude, it is submitted that no doubt the antitrust laws were enacted with an object to protect the interest of the general public/consumer against the trade practices which are restrictive and monopolistic in nature and adopted by the businessmen to control the market and price fixation in their own interest. But the exemption clause and dominance of the local laws over the federal law (anti trust laws) lessened the effect of these laws and put it at the place of a silent spectator, rough guide to the cases and a parameter to measure the lawfulness of a specific contract or agreement.

C. LAWS OF CONSUMERS PROTECTION IN THE UNITED KINGDOM (U.K.)

1. Introduction

The much-talked about concept of consumer protection centres around the problems of buyers in a world of seller. The technological developments have multiplied the need of consumer and have changed the tradition, that guided the living of people in the past. The rapid industrial development has not only brought new innovations and products into common use but have also affected the very mode and outlook of our living. The simple kind of goods which were catering the needs of people have been replaced by complex and complicated products. In view of the socio-economic changes which have taken place in the lives of the people, it was thought to build up a strong and broad based consumer movement which may give impetus and bring about socio-legal measures necessary for consumer protection. This was not the necessity of any single country but the various steps to protect the interest of consumer
were taken in various countries. In the same way in United Kingdom various acts were enacted, to curb the monopolistic and restrictive trade practices\textsuperscript{233}, after world war II between 1948 and 1973. At that time the emphasis was given, to curb the monopolistic and restrictive trade practices in the interest of the public at large. But these acts were not sufficient to protect the interest of the consumers as they provide indirect protection to the consumers. Through at that time some direct protection was available to the consumers under Sale of Goods Act 1893, against 'Manufacturers' guarantee'.

In, 1961 the consumer Protection Act was enacted to lay down some guidelines for the products to protect the health and life of the consumers. In 1973 the Fair trading Act 1973 was passed which introduced new and comprehensive measure for consumer protection.

2. Statutory Provisions Related to Consumer Protection

In England provisions related to consumer Protection, available in the consumer Protection Act - 1961, Fair Trading Act - 1973 and few sections of the sale of Goods Act 1893\textsuperscript{234} which have the tendency of consumer protection are being discussed as follows\textsuperscript{235}.

(i) Sale of Goods Act, 1893

When the sale of Goods Act was passed at that time the rule of 'caveat Emptor' was prevailing i.e. the market was supposed to be the sellers market and the buyer was not having any effective measure for the protection against the exploitation in the market. But with the enactment of Sale of Goods Act 1893 the concept of caveat venditor was started
taking place. The sale of Goods Act - 1893 having some indirect protection for the buyers right.

The three primary conditions laid down in the Act\(^{236}\) and their combined effect is to give buyers a substantial degree of protection against the risk of the goods proving to have defects of quality or fitness for purpose indeed, it is now unrealistic to treat the basic principle of the law as caveat emptor rather than caveat venditor.

In one sense the three main implied conditions in sec. 13, 14 (2) & (3), taken in that order, lay down a series of graduated duties upon the seller. In the first place,\(^{237}\) there is the implied condition that where goods are sold by description the goods must correspond with their description. This applies in far wider circumstances than those in which the two other conditions apply but, on the other hand it does not afford a great deal of protection to the buyer, especially where the description of the goods is not a detailed one.

The next implied condition\(^{238}\) is that the goods must be of merchantable quality. No attempt to define the concept of 'merchantable quality' was made and the matter was left entirely to the courts. But the obvious and primary meaning of the word 'merchantable' was 'commercially saleable'. This condition provides a greater degree of protection to the buyer because goods that correspond with their description may not be of merchantable quality. Even this, however, may not suffice to protect the buyer, since goods may correspond with their description and may be merchantable and yet they may still be unsuitable for the buyers purpose. Hence, in still more limited circumstances, the
buyer may be able to rely on the third implied condition, namely that the goods must be fit for the purpose for which they were sold. These provisions provide an indirect protection to the buyer / consumer, against the exploitation in the market. Further the act contains the provisions related to certain conditions of sale in case of its breach the buyer has a right to repudiate the obligations. The importance of a condition in contract for the sale of goods is that its breach, if committed by the seller, may give the buyer the right to reject the goods completely and to decline to pay the price, or if he has already paid it, to recover it. On the other hand, it also came to be said that there was a category of terms mid-way between the condition and the warranty known as innominate or intermediate terms. The consequences of the innominate terms depended on the actual outcome of breach before it becomes possible to say whether the innocent party is entitled to repudiate a contract for breach of a term of this character. Breach of innominate terms may discharge the other party, but only if the nature and consequences are sufficiently serious to justify this result. Further, the sale of Goods Act provide certain protection to the buyer in case of guarantee given by the manufacturer. Manufacturers, especially in the case of commodities where they undertake servicing, such as motor vehicles and electrical equipments, frequently purport to 'guarantee' or warrantee', their goods in certain respect. Such guarantee may be contained in the main contract with the retailer or may be set out on a separate document, some times attached to the goods. Such guarantee can take effect only as contracts and are therefore only effective if offer, acceptance and consideration can be found in accordance with normal principle. Thus even the signature
of a buyer to a 'guarantee' will not entitle him to sue unless he provides consideration in return, nor will it bind him unless he himself receive consideration in return. Again there can not be acceptance of a guarantee which has not been offered, or is not known of, when the act said to constitute the acceptance occurs.\textsuperscript{243}

Where the buyer seeks to sue on such a guarantee, the offer can normally be construed as one of a unilateral contract accepted by the purchase of the article from the retailer.\textsuperscript{244} The buyer can therefore enforce it provided that the offer was make and he know of it, when he bought the article. The main remedy of a buyer against a seller in rejection and / or an action for damages for breach of the contract of sale under the relevant sections of sale of Goods Act - 1893\textsuperscript{245} and thus contribute materially to consumer protection. These provisions of the sale of Goods Act - 1893 were not effective as they provide indirect protection to the consumers and the remedy available is lenghty, time consuming and cumbersome. Which leads the enactment of consumer protection Act 1961 for the better protection of consumers.

(ii) Consumer Protection Act, 1961

The prospect of obtaining redress by a civil action is often an unsatisfactory one. The cost of preparing the case and producing the evidence deters most private persons with small claims, who tends to think that their protection should come from public body. This has long been recognised and a measure of consumer protection is provided by various statutes. Some times a statute directly provides that civil rights arise in favour of the consumer. Potentially the most far-reaching piece
of legislation in this respect is the consumer protection Act-1961\textsuperscript{246}, Which empowers the secretary of state to make regulations as to the safety of, and provisions of adequate instructions with, classes of goods, and provides by section 3\textsuperscript{247} that breach of any obligation imposed by such regulations not sell goods is actionable as a breach of statutory duty.

The Act provides that the Secretary of state\textsuperscript{248}, may impose through regulation any such requirement as to composition, contents, design, construction, finish or packing for any good or class of goods or any component part of the good to reduce the risk of death of the consumer and personal injury to the consumer.\textsuperscript{249} This Act also provides and make it compulsory on the part of the producer or seller of the goods to mark the warning or instruction relating to the component, design, packing etc. of the goods if these have any injurious effect to the health of the consumers.\textsuperscript{250}

The consumers are protected under the Act not only from the goods or class of goods but even from any component part if such part is injurious to the consumers health or safety.\textsuperscript{251} But these regulations if regulated by the secretary of state are subject to the annulment in pursuance of a resolution of either House of Parliament.\textsuperscript{252} If any person sells or having in possession for sale any goods or any component part of the goods do not fulfil all the requirements of the regulation related to such goods or any component part of such goods, will be subject to the legal action.\textsuperscript{253} If any component part of a particular good, do not fulfil the legal requirement, not embodied in the goods but may make it injurious to consumers safety if embodied the goods are prohibited to sale or have in possession for sale.\textsuperscript{254}
Further the consumer Protection Act 1961 exempts few persons from the purview of these sections of the Act. If the person having the goods or component part of the goods as an agent of the person not acting in the course of business exempt from the application of the Act. The most noteable point is that if the goods or any component part of the goods which do not fulfil legal requirement not made for the sale within the Great Britain the person in possession is out of the purview of the Act. If the person having the scrap of the said goods or component part of the goods in his possession and not for use in the finished goods the person in possession is not within the purview of the Act and even under credit sale agreement. The person entering into agreement as buyer is exempted from the application of the Act. The Secretary of state may provide some other exemption if he thinks necessary. Further sec. 2(6) provide few more exemption where sale is made under hire purchase agreement or credit sale agreement.

Section 3 of the Act says about the enforcement of the provisions of the Act. The contravention of the obligations imposed is made actionable as breach of duty. In other words it is a duty of all the related persons to obey the obligations imposed by the Act. In case of contravention of person found guilty shall be punished to a fine not exceeding one hundred pounds in case of subsequent offence the fine will be increased to two hundred and fifty pounds or imprisonment of three months or both.

The Act has no retrospective effect and is applicable to all the England except to Northern Ireland. Further a schedule attached
with the Act which provides provisions related to the inspection, testing and enforcement by the local authorities. Schedule provides that any officer of the local authority who is authorised in writing to collect or purchase the goods as sample, for testing, to find out whether the goods are according to the legal requirements or not and whether injurious to the consumer health or not. If any one who creates hurdle in this collection or testing may be convicted with the fine of twenty five pounds. It is also notable that the consumer protection Act 1961 shall not prevail over any Act if passed for the consumer protection by the local authority.

(iii) Fair Trading Act, 1937

Much wider protection is contained in the Fair Trading Act 1973. This Act introduced new and comprehensive measures for consumer protection and extended the scope of the existing laws on monopolies and mergers and restrictive trade practices. The Act is wide enough to cover even professions, business, nationalised industries and public undertakings. It envisages twin machinery for its enforcement Director General of Fair Trading and consumer Protection Advisory Committee. Act confers duty on the holder of the office of Director General Fair Trading in connection with the consumer protection. His main duties in this connection are to keep under review, subjects to general directions which may be given by the secretary of State, and to collect information and evidences as to, commercial activities in the United Kingdom which relate to goods supplied to consumers in the United Kingdom or produced with a view to their being so supplied, with a view to becoming aware of
practices which may adversely affect the economic interests of consumer\textsuperscript{268}, and also commercial activities in general with a view to becoming aware of monopoly situations uncompetitive practices.\textsuperscript{269}

He is assisted by a consumer protection Advisory Committee, which he or Ministers may ask to report whether particular consumer trade practices adversely affect the economic interest of consumers thought this can not be done as to practice in connection with certain nationalised industries, such as gas, electricity and telephone services without the consent of the appropriate Minister.\textsuperscript{270}

There are two main procedures prescribed by the Act for protecting consumers against unfair trade practices.\textsuperscript{271} First, the Act confers on the secretary of state the power to make orders by way of statutory instrument to deal with certain specified forms of trade practices regarded as unfair to consumers but this may only be exercised where the Director General has referred to the Advisory Committee proposals that the secretary of state be asked to exercise these powers and the committee has reported that it is in agreement with the proposals.\textsuperscript{272} Consequently on such reference the practice may in appropriate case be controlled by statutory instrument.\textsuperscript{273} Any order must be approved by affirmative resolution of each House of parliament.\textsuperscript{274} The contravention of any such order is a criminal offence.\textsuperscript{275} Secondly, the Director General is empowered to take action against any person who persistently maintain in the course of his business, a course of conduct which is detrimental to the interests of consumers, and unfair to consumers. The main aim of the Act was to "encourage competition which
is fair as between one business and other, and fair towards the consumer, by ensuring the trading standards are improved wherever to protect the consumers from consumer trade practices$^{276}$, and unfair practices.$^{277}$ It also lays down the provisions in respects of pyramid selling and similar trading schemes. It has enlarged the powers and functions of the Restrictive Trade Practices court, and the powers and functions of the office of Registrar of Restrictive Trading Agreements which is now merged in the office of the Director General of Fair Trading. The main aim of the Act was to "encourage competition which is fair as between one business and another, and fair towards the consumer, by ensuring the trading standards and improved wherever possible and that unfair trading practices are stopped or practices which are, for example, oppressive of an inequitable to consumers". The Director General has a broad duty to keep under review the carrying on of commercial activities in the U.K. that relate to the supply to consumers of goods and services. He does so in order to become aware of practices that may adversely affect the economic interests of the consumers.$^{278}$ The Consumer Protection Advisory Committee, is an independent and advisory body, whose activities entirely dependent on the references made by Director General, Secretary of the state or another minister. References may relate to question whether a consumer trade practice specified in the reference adversely affects the economic interests of consumers.

Part III of the Fair Trading Act, 1973 provides for a separate procedure for dealing with unfair practices. An unfair practice involves a course of conduct which is detrimental to the interests of consumers in
the United Kingdom, whether interest in respect of health, safety or other matters. The area to which part-III of the Act can apply is extremely wide. There are no specific inclusions, so that all the professions and all businesses including nationalised industries and public undertakings are within its scope. Thus part-III of the Fair trading Act, 1973 is a very effective against the unscrupulous trader. It can be used against the largest and the smallest concerns. If a satisfactory assurance is not forthcoming, the Director General may institute proceedings before the Restrictive Practices Court which is empowered to make orders.

The main effects of the Act in the sphere of consumer protection are two. First, wider powers are conferred on the secretary of state to intervene by way of statutory instrument in the field of consumer protection than have either to existed. Secondly, the Director General is empowered to take steps towards the enforcement of civil law duties which the consumer might not feel it practical to enforce, and criminal law duties where there is no civil law duty and/or prosecutions are regarded as inefficacious.

3. Summary of U.K. Position

The efforts to protect the interest of the consumer has always been made through the enactments of various legislative measures. In the initial steps, which were taken to protect the consumers interests to curb the monopolistic and restrictive trade practice because these practices were adopted to minimise the competition in the market to control especially the price fixation in the interest of the businessmen having monopoly in the market these practices were against the interest of the
consumer. Another trade practice which was prevalent in the market to minimize the competition in the market was the merger of small industries in the big industries. So to protect the consumer from monopolistic, and restrictive trade practices various Acts were enacted. But these acts were the indirect measure to protect the consumer. So the consumer protection Act 1961 was passed to regulate some standards to be followed by the producer and sellers of goods to protect the consumers health from the hazardous and injurious effects of the goods placed in the market for the sale. The Act, however, appears to have been of little use because regulations have only been made about gas and electric fires, oil heaters, night dresses, stands for carrycots, toys electric blankets and certain other costly electric appliances. The Consumer Protection Act 1961 indeed is only a framework for the making of regulations offences under this statute are normally offences of strict liability but the Act provide for a defendant to escape in two principal ways. The first is by providing a 'warranty defence' that he sold the offending goods under a warranty that they complied with the law reasonably relied upon some reasonable grounds. The second is by a 'due diligence' defence, that he used all due diligence to secure compliance with the law. A variant of this is the third party defence whereby, a person charged may produce a third party of whose act or default the commission of the offence was due. In case of contravention of the regulations the act imposes penalties only which are of no importance for a businessman. So, the consumer protection Act was not as much effective as the object. Then Fair Trading Act 1973 was passed which has a wide scope of consumer protection and provide a two
tier setup for the protection of the consumer. The Act not only covers the goods which are hazardous to the life and health of the consumers but also covers the unfair trade practices, restrictive and monopolistic trade practices which are unfair for the interest of the consumers and against the economic and other interest of the consumer. This Act covers the professions and nationalised industries under the category of unfair trade practices. It declares all the trade practices unfair which are against the interest of the consumer. But at the same place it exempts certain important nationalised industries i.e. gas, electricity and telephone service. An action can be taken against these industries only with the approval of the minister concern. The Act empowers the Director General, Fair Trading to keep watch on the trade practices and goods marketed for sale whether against the interest of the consumer or not. So, the scope of the Fair trading Act is wide enough to protect the interest of the consumer as it covers unfair trade practices, monopolistic and restrictive trade practices including professions and nationalised industries. But both the Acts have no formal adjudicatory machinery to deal with the case related to consumers dispute neither any specific provision is made that a consumer himself can go to the court of law. The authorities concern only authorise to keep watch on all the trade activities and brought an action against a person who is involved in any trade practice against the interest of the consumer. The ordinary county courts have the jurisdiction to try, though summarily, the cases related to consumer dispute. The remarkable point which has negatived the effect of these Acts, the prevailing nature of the local Acts. If any Act is passed by the local authority (county districts) in the same area the local Act will
prevail over these Acts. As in one of the most far reaching defeats for consumer rights, the new Hampshire courts have held that their consumer protection Act does not apply to any attorney conduct (Rousseau V. Eshleman). Regardless of whether attorney conduct falls within the traditional practice of law. Lawyers in new Hampshire enjoy a complete exemption from the states consumer protection law. While on the other hand the Massachusetts supreme judicial court has twice ruled that the practice law is trade and commerce and lawyers are liable for damages under the Massachusetts Consumer Protection Act (Guenard V. Burke and Brown V. Gerstien).

So, this dual set up of the laws are not in the interest of the consumers. Because if the state's law covers various professions and trade practices for the consumer protection these profession and trade practices may be exempted by the local law which surely minimize the effect of the state lows of consumer protection.

So, the laws of consumer protection in England mainly rotate around unfair, monopolistic and restrictive trade practices. The consumer protection Act 1961 is just a frame work for the safety regulation and of least importance. No doubt Fair Trading Act 1973 has some effective provisions for consumer protection but emphasis is given on unfair, monopolistic and restrictive trade practice which include professions and nationalised industries with a lengthy process of adjudication through ordinary court of law. The main objective to keep up the competition in the market in the consumers interest. But the effect of all these Acts are negativised as they do not have overriding effect over the local laws of
consumer protection in case of any conflict the provisions of local law shall prevail.  

**D. COMPARATIVE ANALYSIS OF CONSUMER PROTECTION IN INDIA, U.S.A. AND U.K.**

It is axiomatic from the previous discussion that the measures related to the consumer protection has always been on the priority list of the governments in every country. Consumer has always been a subject of exploitation in the market place and producers and sellers have always treated them as a mode of profit earning though with the passage of time awareness regarding consumers rights has began to taken a definite shape. Consequently, demand started to protect the consumer from the monotonous and tedious mangles of sellers and businessmen. All over the world it was taken up seriously and steps were taken to protect the interest of the consumers. On the same line different legislations were enacted in the United States of America, United Kingdom and India. The early legislations which were in operation in these countries were having an echo of consumer protection but provided only indirect protection to the consumers resulting in inadequacy and legal gaps.

Initially in all these countries the enactments which were to protect the interest of the consumer, were intended to curb the monopolistic and restrictive trade practices. But now in all these countries different legislations were enacted and still in operation which were intended specifically to protect the consumers. In the United States of America (U.S.A.) Sherman Act 1890, Clayton Act 1914 and Federal Trade Commission. Act 1914 and in England Consumer Protection Act
1961 and Fair Trading Act 1973 and in India M.R.T.P. Act 1969 Consumer Protection Act 1986 are applicable to the protection of the interest of the consumers. Now we have a comparative view over these Acts -

Scope and Object

In United States of America (U.S.A.) the antitrust laws were enacted with the assumption "that the public interest is best protected from the evils of monopoly and price control by the maintenance of competition in the market".

The main object of the antitrust laws was to protect the interest of the consumer and the general public through maintenance of competition in the market and declare, all the agreements, contracts, mergers or combinations, which tend to monopolize the trade and control the price fixation or design to restrain the others to continue his own trade, void. The emphasis on the anti-trust laws were on the monopolistic, unfair and restrictive trade practices. Inspite of providing direct protection to the consumers the anti-trust laws have an object to curb the monopolistic, unfair and restrictive trade practices and to keep up the healthy competition in the market. No doubt the object of the antitrust laws are remarkable but the scope of these laws was limited to maintain the healthy competition in the market.

In England the Consumer Protection Act 1961 was Passed with an object to regulate some safety standard to be followed in manufacturing of various goods/articles made for the general use and consumption. Another Act, with the object to protect the interest of the consumers, was the Fair Trading Act 1973. The object of this Act was to
create a new Office of Director General, Fair Trading and confers upon the holder's duties in connection with the protection of consumers. This Act aims to keep under review, subject to general direction which may be given by the secretary of state, and to collect information and evidence as to, commercial activities in the United Kingdom which relate to goods supplied to consumers or produced with a view to their being so supplied, with a view to becoming aware of practices which may adversely affect the interest of the consumers, and also commercial activities in general with a view to curb the monopolistic situation and uncompetitive practices.

In India the M.R.T.P. Act was passed in 1969 with an object to protect the consumer against the monopolistic and restrictive trade practices. The scope of the Act was enlarged by the 1983 Amendment Act when unfair trade practices included in the Act. But the Act was not successfully achieved the objects for which it was passed. So in 1986 the consumer protection Act 1986 was passed with an object to provide better protection to the interest of the consumers. The object of the Act was to protect the consumer against the marketing of such goods and services which are hazardous to life and health of the consumers. It also provides that the consumer should be informed about the quality, quantity potency, purity, standard and price of goods and services to protect the consumers against unfair trade practices. The Act also covers the monopolistic and restrictive trade practices which are against the public interest. So, the object of the legislations which were enacted in these countries, no doubt remarkable, i.e. to protect the interest of the
consumers. But the scope of these acts are different. The object of the
anti-trust laws were no doubt remarkable but the scope is limited to the
monopolistic and restrictive trade practices and other commercial
activities which tend to monopolize the market and impairing the
competition in the market. The scope of Consumer Protection Act 1961
of England is also limited, though the object is to protect the consumer,
to passing of regulation. to maintain quality and standard of goods i.e. a
frame work for the passing of regulations. It does not provide any
provision which directly affect the interest of the consumers. The Fair
Trading Act 1973 which was passed to enlarge the area of consumer
protection also revolves around the monopolistic and restrictive trade
practices. Both of these Acts do not talk of the services rendered to the
consumers. While on the other hand the Consumer Protection Act 1986
in India is a potential enactment with a wide scope which covers not only
the monopolistic, restrictive and unfair trade practices but also all the
goods and services which are hazardous to life and health of the
consumers. So it can aptly be said that the object of the consumer
Protection Act 1986 in India is not only remarkable but also its scope is
very wide which covers almost all the areas in which the interest of the
consumers requires to be protected.\textsuperscript{293}

Applicability

The anti-trust laws of the United States of America (U.S.A.) are
applicable to monopolistic, restrictive and unfair trade practices. These
Acts are applicable to all those activities or contracts, mergers,
combinations, agreements which tend to create the monopoly in the
market with an intention of impairing the competition in the market because a healthy competition might have created a scope for the goods of standards quality at a fair price but a long list of exemption clause, like the MRTP Act 1969 of India, negatived the effect of the anti-trust laws. On the other hand the dominance of state laws over the federal laws negatived the effect of anti-trust laws.

Similarly, the Consumer Protection Act 1961 of England does not provide any legal dichotomy as to the applicability but it only covers those goods whereon the regulation with regard to the standard are passed by the secretary of state. It is not applicable to any kind of services available to the potential user even if it is hazardous to the life and health of the consumer. Moreover, state laws are subordinated by county laws there on which have the adverse effect on the applicability of the Consumer Protection Act 1961 and Fair Trading Act 1973. The applicability of Fair Trading Act is limited to the monopolistic and restrictive trade practices only. In comparison to these two countries the consumer Protection Act 1986 of India has envisaged a wide spectrum of application. It is not only applicable to all monopolistic restrictive and unfair trade practices and goods, which are hazardous to the life and health of the consumer but also to the services which are deficient even if are rendered by the government departments or companies except services provided under the contract of personal services or services rendered free of charge. So, in comparison to the anti-trust laws of U.S.A. and Consumer Protection Act 1961 of U.K. which are applicable only to the monopolistic, restrictive or unfair trade practices, the consumer
protection Act 1986 of India has a wide range of application and applied almost to all the areas where the interest of the consumers need to be protected. Furthermore, judicial interpretations and adjudications has widened the scope and horizon of the Consumer Protection Act 1986 while encompassing any activity which may have a bearing on human existence, contributed to the functional human rights jurisprudence thereon in a welfare state.

Enforcement

In the United States of America the responsibility to enforce the provisions of the anti-trust laws in case of violations lies on the government. A commission, Federal Trade Commission, is established with all the requisites coupled with legal mechanism to take into the matters which came before it. The Federal Trade Commission is responsible to enquire into the matter of complaint, received from the public or the business world, and prepare the case for the trial in the court of competent jurisdiction. The consumer has no right to enforce the provisions of the anti-trust laws.

In England the Director General of Fair Trading with the help of the Advisory Committee for consumer protection is responsible for the enforcement of the different provisions of the legislations related to the consumer protection. The ordinary Consumer can lodge a complaint with the Director General while the later shall initiate the legal proceedings for the redressal of the consumers dispute but to start a proceeding against the government department or company the approval of the concern minister is necessary. This condition has a negative effect on the
enforcement process of consumer protection against the Govt., departments and companies. The punishment, which is an important factor of the enforcement process; provided under the laws of Consumer protection, simply limited to the fine or imprisonment of a short period\(^2\) which do not have any deterrent effect on the businessmen who do not hesitate to earn profit even at the cost of human life. In the U.S.A. and U.K. the enforcement proceeding starts in the ordinary courts and include all the formal, lengthy and cumbersome steps. While in India an ordinary consumer himself can bring an action in the consumer courts which are established to deal specifically with the cases related to consumer dispute for the cheap and speedy redressal of the consumer disputes. The proceedings of these courts are informal and time bound. Though the enforcement process in India is much better than the process provided under the legislations of consumer protection in U.S.A. and U.K. as it authorise the common man to enforce the provisions of the Consumer Protection Act 1986 himself but in India the major negative point is that the Act does not provide any punishment, neither simple nor deterrent, for a seller who is involve in any activity which is against the interest of the consumer. Only in case of non compliance of order of the consumer dispute redressal agencies fine or imprisonment upto three years or both may be imposed.

So, it may be submitted while concluding that the scope of the anti-trust laws of the U.S.A. and the Consumer Protection Act 1961, which was passed to enlarge the scope of the consumer protection, are limited as these Acts rotate around the monopolistic and restrictive trade
practices. The dominance of state laws on federal laws and county laws on state laws in England further negatived the scope and applicability of the laws of consumer protection in these countries. The anti-trust laws are merely a rough guide for courts and parameter to measure that a particular contract, merger or combination tend to monopolize the market or not. Because it is true that businessmen can not be persuaded to compete, but only restrained from impairing competition. On the same line the consumer Protection Act 1961 of England is proved only a framework for regulations. But in comparison to the laws of consumer protection of these countries the Consumer Protection Act 1986 of India is a unique and potential piece of legislation in the world with a wide scope of consumer protection which covers almost all the possible areas were the protection of the consumer is needed. The judicial pronouncements have further widened the scope and applicability of the Act. No doubt, this Act also has some negative points but these points do not have an effective importance and does not make any effect on the importance of the Act. The future of the Consumer Protection Act 1986 of India in no doubt bright and it will emerge as an example for the whole world in the field of consumer protection provided consumers are aware of their rights.

CONCLUSION

In U.S.A. the anti-trust laws were enacted with the assumption that the public interest is best protected form the evils of monopoly, restrictive trade practices and price fixation by maintenance of competition in the market. The anti-trust taws declare all agreements,
contracts merger or combinations which tend to monopolize the trade and control the price fixation are void. This was an effective step for healthy competition in the market against monopolistic, restrictive and unfair trade practices. The anti-trust laws do not provide any direct protection to the consumers and emphasized on the healthy competition. On the other hand the laws enacted to protect the interest of the consumers in England provide to regulate some standards for goods placed in the market for sale to make them safe and sound for consumer's consumption and use. The consumer protection Act 1961 is limited to the goods only and no place is given to the services. The scope of consumer protection was widened by passing the Fair Trading Act 1973 in England but it again concentrated around the monopolistic and restrictive trade practices.

In India the consumer protection Act 1986 was passed to protect the interest of the consumers. The Act not only protect the consumer from the substandard and defective goods but also from the deficient services even if it is provided by the government department. The Act has a wide scope with no exemption to protect the consumer. It also cover the monopolistic and restrictive trade practices.

It can be said that with a wide scope of consumer protection, the consumer protection Act 1986, in comparison to the laws related to consumer protection of U.S.A. and U.K., has emerged as a unique and exemplary piece of legislation in this area and has started a new and effective area of consumerism in this millennium.
REFERENCES


2. Art. 38, 39, 42, 43, 46 & 47 of the Indian Constitution for detail see Supra Chapter I.

3. Prevention of Food Adulteration Act, 1954; Essential commodity Act, 1955; Drugs (Control) Act, 1950, etc.

4. Ibid, pp. 262-263.


7. For detail see Supra Chapter I, p.


9. The Preamble of the Act runs as: An act to provide for better protection of the interest of consumers and for that purpose to make provision for establishment of consumer councils and other authorities for the settlement of consumer's disputes and for matters connected there with.


11. Ibid.


16. i.e. appropriate laboratory, consumer, complainant, complaint consumer dispute, defect, deficiency, goods, restrictive and unfair trade practices, trader etc.


18. Sec. 4, Ibid.

19. Sec. 7, Ibid.

20. Sec. 6 & 8, Ibid.

21. Sec. 9, Ibid.


23. 1994, 1 SCC 243 at 255.

24. A person, who registered himself for an LPG connection the registration being without consideration, was held to be not a consumer, Vinayaka Agencies V. D.N. Sridhar (1991) 11 CPJ 295 Karnataka; A person, who booked a car by depositing Rs. 20,000 cancelled the order on finding that the vehicle was not of expected standard, was allowed refund with interest. He was in the category of consumer wheel world of Ambala Cantt. V. S.D. Verma, 1993, CCJ 105 Haryana. A deficient surgical operation by a Government employed surgeon has been held to be not for consideration and therefore not amenable to the jurisdiction of consumer forums, consumer utility and Trust Soviet V. State of Rajasthan 1991 CPR 30 Raj affirmed by National Commission in Appeal No.2 of 1889/15-12-1989: (1991) 1 CPR 241 NC.

25. For example, Aldridge V. Johnson (1857) 7 E & B 885: 26 L JQB 296, where payment was in kind but the price was calculated in terms of money and it was held to be a sale.


32. Ibid., p. 78.


35. Subclause (a) of Clause (3) of Sec. 2(1)(r) of the Consumer Protection Act 1986, Sec. 36(A)(3)(a) of MRTP Act 1969.

36. Ibid.

37. Same requirement is provided under sec. 36(A)(3)(a) of MRTP Act 1969.

38. R.V Harrison (1957) WLR 117.


40. (1991) 72 Com Cas. 702 MRTPC.


43. Definition of Unfair trade practice given under MRTP Act 1969 was as it is adopted in CPA 1986.

44. (1960) 1 All ER-36.

45. See 36(A)(u)


47. Sec. 2(b) of the Consumer Protection Act 1986.

48. Chappell & Co. V Nestle (1960) A.C 87, where purchase of chocolate and its wrapper to get a music record was held good consideration, and purchase of four gallon petrol was held good consideration to obtain a free coin, Esso petroleum V Commissioner of Customs & Excise (1976) 1 All ER 117.


51. Inserted by the Consumer protection (Amendment) Act 1993.

52. Collins English Dictionary.

53. Chambers Twentieth century Dictionary


55. Supra note 63.

56. Supra note 60.

57. Ibid.
58. Western India State Motors V Sobhag Mal (1991) 1 CPJ 44 (NCDRC).

59. Sterocraft V Motype India Ltd. (1991) 1 CPJ 111 (NCDRC); Monorach Photocomp & Printers V Super Engg. Corp (1992) 2 CPR 415 NC, Purchase of a computer for office use by a large business house was held not to be a consumer transaction.

60. Ram Narayan Parmeshvaraiyer V L & T Ltd. (1993) CCJ 215 NCDRC.

61. 1 DC Electronics V Ajara Urban Cooperative Bank Ltd. (1993), 1 CPR 225 NCDRC. Booking of a minibus and on failure of delivery action for refund of draft was held not actionable under the consumer protection Act as the whole arrangement was for commercial purpose, Swaraj mazda Ltd. V M.K. Bhandarad (1992) 2 CPR 713 (NCDRC).


63. Supra note 61.

64. (1991) 3 SCC 617.


66. Sec.2(1)(b) & 12 Consumer Protection Act, 1986.

67. The term 'consumer' is defined in sec. 2(1)(d) in terms of a person under consumer protection Act 1986 and the term 'person' is defined in clause (m) of the same sec. as including (i) a firm whether registered or not; (ii) a Hindu undivided family; (iii) a cooperative society, (iv) every other association of persons whether registered under societies Registration Act 1860 or not. Thus an unregistered firm can also sue as consumer.
68. Explanation to sec. 12 runs as: "For the purpose of this section, "recognised consumer association" means any voluntary consumer association registered under the Companies Act 1956 (1 of 1956), or any other law for the time being in force".

69. Upbhokta Sanrakshe Munch V Winds or Food Ltd. (1993) 2 CPR 608 Raj. Voluntary consumer associations should be permitted to file one complaint covering persons similarly situated, when the cause of action arises out of the same act or transaction against the same opponents. Consumer Protection Council V Lohia Machines Ltd. (1992) 1 CPR 127 (Guj). In Mumbai Grahak Panchayat V Lohia Machines Ltd. (1991) 1 (PR) 184, the National Commission not only granted the relief of 934 consumers represented by the voluntary consumer association, but directed the company to submit list of all other unascertained persons who are similarly situated by treating that application as a public interest litigation.


71. Sec. 2(7) of the Sale of Goods Act 1930 reads as 'goods' to mean every kind of movable property other than actionable claims and money, and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.


74. Ibid.
75. Miss V Hancock (1899) 2 Q.B. 111.
76. Supra note 40.
77. Inserted by MRTP (Amendment) Act 1991, w.e.f. 27.9.91.
78. There are many legislations i.e., Drugs and Cosmetics Act, 1940 Drugs (control) Act 1950, Prevention of Food Adulteration Act 1954, Essential Commodities Act 1955 etc. of several goods.
79. Where farmers purchasing cotton seeds were told that a particular seed had a better yield performance, but it turned out to be of low resistance and poor germination capacity, compensation was awarded. Malaprabha Neerwari etc. Coop. Sangh Ltd. v State of Karnataka (1994) 1 CPJ 80 NCDRC.
80. J.D. Sharma v Maruti Udyog Ltd. (1991) 1 CPR 436 (Hr. CDRC).
84. Niblett v Confectioners Materials Co. (1921) 3 K.B 387 CA Sale of material violating another's trade mark who retrained delivery until labels removed, seller liable for buyer's loss.
86. Sec. 15, Ibid, Azemar v Cosello (1867) 2 CP 431.
87. Sec. 16, ibid, Grant v Australian Knitting Mills (1936) AC 85: 105 LJPC 6: 154 LT 18: 52 TLR 38, AIR 1936 PC 34.
88. Ibid.
89. Sec. 17, Sale of Goods Act 1930, Godley V Perry (1960) 1 All ER 36.

90. Sec. 10, Ibid.

91. Sec. 62 of the Sale of Goods Act 1930, provides: "Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract". Thus the section recognises three modes by which liability for implied terms may be negatived - (i) by express contract, (2) by course of dealing; and (3) by usage.

92. Sec. 2(1)(0) of the Consumer Protection Act 1986.


96. Circuit No. 2-1/89 PHA dated 12.1.89 issued by the department of telecommunications that the officers should not associate with consumer councils. It stressed that service rendered by it would not fall under the perview of 'service' under the Act.


100. Ibid.


104. Sec. 6 confers immunity on the central govt. against any liability by reason of loss, misdelivery or delay of, or damage to any postal article in the course of transmission by post, except to the extent such liability is expressly undertaken. Officers are also exempted from liability unless they caused the loss fraudulently, or by willful act or default.

105. (1993) II CLA 168 NCDRC.

106. Supra note 72-a.


110. Girickands Travels P. Ltd. v Dr. Arun N Pujari (1993) CCJ 55 Mah. travel agencies are under the purview of the definition of 'Service'. Dry cleaner is bound to pay compensation as dry cleaning service is a service within the definition of 'service', Bhushan v Rakesh Agrawal (1991) 1 CPR 484; The dealers or distributors of PLG cylinder are required to attend the complaints of consumers and liable for any loss suffered by the consumer, A.K. Bansal v Finance Gas Service & Others (1993) 1 CPR 434 (Raj CDRC), See also Dayanand A. Avasare v Bharat Petroleum Corp. Ltd. (1993) 1 CPR 278 (Bom CDRC).

111. 1994, 1 SCC 243 at 255.


113. Supra note 121.


120. Sec. 2(r) of MRTP Act runs as: 'service' means service of any description which is made available to potential users and includes
the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, 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'.

121. Specific Relief Act 1963, Sec. 14(b).

122. Life Insurance Corp. of India V Sheila Devi (1992) 1 ICPR (Har. CDRC).


124. 5th ed. p. 540.

125. (1910) 1 KB 543 at 549-50.


133. Supra note 131.


136. Ibid.


139. (1993) 2 CPR 145 (Guj CDRC).


142. AIR 1990 Bom 255.


147. P.P. Lodia V LIC 1993, CCJ, 35 (Guj CDRC).


149. LIC V Varkha Singh 1993, 2 CPR 579 (Har. CDRC); Debasis Basu V. national Ins. Co. Ltd. 1993, 2 CPR 505; Maina Devi V LIC 1993, 2 CPR 399 NCDRC; LIC V A Narasamma, 1992 7 CLA 157 NCDRC.


151. Surinder Singh V PMG Panaji (1991) 1 CPR 430 (Goa CDRC); Presidency PMG V Dr. U Shankar Rao 1993 II CLA 168 (NCDRC).


153. e.g. Negotiable Instruments Act, 1882, Banking Regulation Act, 1949.

155. 1991 I CPR 219 (NCDRC).

156. (1991) II CPJ 258 (Ker. CDRC).


158. B.N. Rajguru V SBI (1993) CCJ 28 (Guj); Another case of same kind Malati Bhat V SBI (1993) CCJ 530 NCDRC; A delay of 125 days in collecting an out station bank draft was held not to be unusual, M.A.A. Beg V SBI, 1991 ICPR, 95 (Ori. CDRC); V.S. Hubli V UBI (1993) 2 CPR, 659 (Kar. CDRC), bank liable for one day delay in paying draft, compensation awarded.


161. Purshottam Nagar (Dr.) V VCO Bank (1994) ICPJ 107 (NCDRC).

162. (1992) 1 Comp. LJ 102 (NCDRC)


164. (1991) ICPR 125 (Mah. (DRC)


167. (1992) ICPR 434 (NCDRC)


176. J.C. Mohapatra V Telecom. (1993) 1 CPR 84 (Ori CDRC); Niranjansen V. Telecom (1993) 1 CPR 55 (Ori CDRC), disconnection without notice, held wrongful; prayash papers (P) Ltds. V DE Telephones (1993) 2 CPR 277(W.B. CDRC), delay in restoration order is deficiency.


178. Raislash C. Singhal V Educational Society of Sophia (1989) Complaint no. 14 under the MRTP Act 1969, where the word 'Service' is similarly defined as under the Consumer Protection Act educational services have been included in the definition, DG (I & R) V NIIT (1989) 63 Comp. Cas. 767 MRTPC. The Maharashtra State Commission has included 'students' in the category of consumers, Abel Pacheco Gracias V Bhartiya Vidyapeeth (1992) 1 CPJ 105 (Mah. CDRC), Akhil Bhartiya Grahak Panchayat V JUNFS' AGPM Medical College, (1993) 1 CTJ 55 (Mah. CDRC); Sekhar Bhattachariya V GR Chawdhury (1994) 1 CPJ 120 (NCDRC).

181. Appeal no. 92 & 122 of 91, order on 30.9.91 (Tamilnadu CDRC).
182. (1993) 1 CPR 274 (Haryana CDRC).
183. Id at P. 276.
184. (1993) 1 CPR 190 (Mad. CDRC).
187. Ibid.
188. The Chandrasekharpur Housing Board Colony V State of Orissa (1992) 1 CPR 58 (Ori CDRC).
193. Manju Goel V Ghaziabad Development Authority (1994) 1 CPJ 41 (NCDRC). Same relief was granted as the facts were the same in
Harban's Singh V Lucknow Development Authority (1994) 1 CPR 98 (NCDRC).

195. Id at pp. 256-257.
196. Ibid.
197. Ibid.
201. Sec. 1. Sherman Act 1890.
202. Sec. 2. Id.
204. Sec. 2, Id.
205. Sec the provision of Sec. 1 of Sherman Act, 1890.
206. See provision of Sec.2 of Sherman Act 1890.
207. Clayton Act 1914, Sec. 2.
208. Id, Sec. 3
209. Id, Sec. 7.
210. Id. Sec. 8.
211. 258-(SC-1927); 33-5, 37, 51-2.
213. 6(Cir 1898); 164; 23-4, 33, 76, 72.
214. Supra note 258.
215. Ibid.


217. Supra note 13.

218. Sec. 2 of Sherman Act runs as follows: 'Every person who shall monopolize, or attempt to monopolize or combine or conspire with any other person or persons, to monopolise any part of the trade or commerce among the several states; or with foreign nations, shall be deemed guilty of a misdemeanor'.

219. (S.C 1903); 15 n., 16, 244. 254. 34, 96-7.

220. (S.C. 193); 97.

221. Id.

222. (S.C. 1911); 16, 24-5, 264, 97-100.

223. Sec. 7 of the Clayton Act runs as: "That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, wherein any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend create monopoly".


225. Sec. 8 of the Clayton Act runs as - "No private banker or director officer, or employee of any member bank of the Federal Reserve system or any branch thereof shall be at the same time a director officer, or employee of any other bank, banking association, saving bank, or trust company organised under the National Bank Act or
organised... permit such service as a director, officer or employee of not more than one other such institution or branch thereof; but foreign prohibition shall not apply..."

226. Sec. 3 of Clayton Act runs as "to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented... or to fix a price charged therefore or discount from or rebate upon such price on the condition, agreement or understanding the lease or purchase thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented... or to fix a price charged therefore or discount from or rebate upon such price on the condition, agreement or understanding the lease or purchase thereof shall not use or deal in the goods, wares, mechanism machinery, supplies or other commodities of a competitor or competitors of the lessor or seller where the effect of (so doing) may be to substantially lessen competition or tend to create a monopoly in any line of commerce".


230. Id at p. 5.

231. Id at p. 6.

232. Id at p. 7.

233. Id at p. 8-9.
234. Sec. 10 to 14 of Sale of Goods Act 1893.

235. Though there are various acts which are indirectly related to the consumer protection but we will confined to the major enactments related to the direct protection of the consumers.

236. Sec. 13, 14(2) & 14(3).


238. Sec. 14(2) Id.

239. Sec. 14(3) Id.

240. Sec. 11(3) Id.


244. Ibid.


248. Ibid.

249. As amended by the Consumer Protection Act 1972.


251. One of Her Majesty's Principal Secretaries of State for the time being. This Act is in practice administered by the Home Secretary.


253. Sec. (1)(i)(b) Ibid.

254. Sec. (1)(2) & (1)(3), Ibid.
255. Sec. (1)(6) ibid.
256. Sec. 2(2) Ibid.
257. 'Person' includes the corporation also.
258. Sec. (2)(3)(a) ibid.
259. Sec. 2(3)(b) Ibid.
260. Sec. 2(3)(c) ibid.
261. "Creditsale agreements' means an agreement for the sale of goods under which the price is payable by five or more instalments, not being a conditional sale agreement.
263. Sec. 2(5) Ibid.
264. Sec. 3(2) Ibid.,
265. Sec. 2(4) & Sec. 7(2) Ibid.
266. Sec. 7(3) Ibid.
270. Sec. 3 Id
271. Sec. 13(2) Id.
272. Sec. 12 Id.
273. Sec. 2(1) Id. He may also receive and collate evidences of practices which may affect other interests of consumer.
274. SS. 13, 14, 15, 16, 17 & 19, Id.
276. SS 18 & 22, Ibid.
277. Sec. 22(4), Ibid.
278. SS. 23, 24 & 25, Ibid.
279. Sec. 34, Ibid.
280. Id, Sec. 13.
281. Id, Sec. 34.
282. Id. Sec. 2(1)(a).
283. Id. Sec. 34(1)(a).
285. Or Sometimes other courts. Sec. 41, Ibid.
286. SS 35 to 40 Ibid, Provision of appeal is contained in sec. 42.
287. Supra note.
288. Heating Appliances (Fireguards) Regulations 1953 (Preserved by sec. 6 of the 1961 Act); Oil Heaters Regulations 12962; Stands for carry coats (Safety) Regulations 1966; Night Dresses (Safety) Regulations 1967; Toys Safety Regulations 1967; Electrical Appliances (Colour code) Regulations 1969; Electric Blanket (Safety) regulations 1971; Cooking Utensil (Safety) Regulations 1972.
289. Sec. 3(2) of the Consumer Protection Act 1961.
290. Sec. 3(3) Ibid.
291. Sec. 3(1) Ibid.
292. 519 A. Id 243 (1986).

293. Lawyers and New England Consumer Protection Laws. (halt logo.gif
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294. Supra note 52.

295. 443 N.E. Id 892 (1982).
Chapter - III

CONSUMER PROTECTION AND MEDICAL NEGLIGENCE
Chapter-III

CONSUMER PROTECTION AND MEDICAL NEGLIGENCE

An Overview

Introduction

(A) Medical Negligence: Regulatory Mechanism other than Consumer Protection Act, 1986

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An Overview

The traditional wisdom that 'Heath is wealth' has been emphatically reiterated time and again. It is the primary duty of state, being a welfare state, to raise level of nutrition and standard of living of its people and the improvement of public health. The right to medical aid is integral part of right to life. It is an obligation on the state to preserve life by extending required medical assistance. No doubt, the medical science has attained greater sophistication and proved to be a boon for humanity. But certain unfortunate and bitter realities prevailing in the medical profession can not be ignored at any cost. The classical concept of doctor-patient relationship has undergone drastic change. The mushrooming of private hospitals, without sufficient infrastructure and facilities for medical care commercialized the medical profession and ill equipped Government hospitals made the problem of medical care more acute. The existing laws pertaining to professional’s liability for negligence was for from satisfaction.

With the enactment of consumer protection Act 1986 a new era of consumer protection jurisprudence finally dawning in India and the attempt by consumer courts to bring the medical services within the ambit of the Act. With an object to provide better and effective protection against the medical negligence, have met with stiff resistance and have generated a lot of controversy regarding the ambit and jurisdiction of the Act over medical professionals. Inspite of the other enactments to regulate the medical profession in the interest of the consumer protection the consumer protection Act is a more effective weapon in the hands of the consumers to protect their interest against the loss or damage suffered because of medical
negligence. Only because of the direct accountability of the doctors the jurisdiction of the Act was resisted by the medical professionals and professional immunity was claimed. But all these controversies were set aside by the Supreme Court in Indian Medical Association V V.P. Santha and said, regarding the applicability of Consumer Protection Act, 1986 to the medical profession, that when other professions are covered by the Act there is no reason why the medical profession should be outside its ambit.

Introduction:

A New era of consumer protection jurisprudence has finally set in this subcontinent with the enactment of the consumer protection Act 1986, a milestone in the history of socio-economic legislation. The Act categorizes certain specific type of services. The definition of service under the Act has indeed been kept very wide and only two type of services have been kept out of the ambit of this Act. They are, (i) Services rendered free of charge; and (ii) Services rendered under a contract of personal service. The service like education, Medical, housing etc. are not specifically mentioned under the definition of services in the Act: Thus non-mentioning of services presumably gave these services and impression of their exclusion from the ambit of this legislation. At the initial stage these service specifically Medical contested the jurisdiction of the Act by claiming complete immunity from the governance by it. The Consumer Forums, however, have appreciably stood the test of time and have brought all these services like housing, post and telegraph and telecommunication have been brought within the ambit of the Act and controversy is settled more or less forever.

The attempts by consumer dispute redressal agencies to bring two types of services within the fold of the 1986 Act have, however met with
stiff resistance and have generated a lot of controversy regarding the ambit and jurisdiction of this legislation. These services were, first, those rendered by private medical practitioners, hospitals and nursing homes and secondly, services of the education profession. Broadly speaking the issue, concerning educational service appears to have been finally settled at the national level. Thus primarily, it was only the medical profession which was protesting and resisting against its governance by the 1986 Act.

The controversy concerning the inclusion or exclusion of services rendered by medical practitioner and hospitals in general appears to have started from the decision of the *Rajasthan State Commission in Consumer Unity and Trust Society Jaipur V. State of Rajasthan*, wherein the commission held that complaints against the services provided by government hospitals were not maintainable under the Consumer Protection Act 1986.

The Judgment was challenged in the national commission in appeal. In view of the great general importance of the question raised in the appeal the national commission requested a Supreme Court advocates, to assist the commission amicus curiae.

The advocate emphatically argued before the National Commission that the hospital established by the government, central or state, are funded from the consolidated funds of the government of India/State government concerned and that under the Indian constitution, these consolidated funds comprised the revenues which were raised in the form of direct as well as indirect taxes. It was submitted by him that tax being a burden or charge imposed by the legislative power on persons or property to raise money for
public purpose, was to be regarded as "the enforced proportional contribution of persons and property levied by authority of the state for the support of Government and for all public needs." The National Commission relying on, *Srinivasa General Traders V Andhra Pradesh* in which Supreme Court observed "the distinction between a tax and a fee lie primarily in the fact that a tax is levied as part of a common burden, while a fee is for specific benefit or privilege."

The national commission in the light of pronouncements of the Supreme Court, concluded, that the legal position must now be taken to be well settled that unlike a 'fee' a 'tax' in its true nature was a levy made by the state for the general purpose of the government and it could not be regarded as payment for any particular or special service, and upheld the decision of the state commission and observed:

"...That persons who avail themselves of the facility of medical treatment in government hospital are not 'consumer' and said facility offered in government hospitals can not be regarded as service 'hired' for 'consideration'. Hence no complaint under the Act can be preferred either by any such person or by a consumer association on his behalf.

Though the implication of the above case is that services rendered to the patients in state run hospitals are not governed by the provisions of the Consumer Protection Act, 1986 consumer organizations through out the country protested against it and demanded accountability also on part of the government hospitals and doctors. According to the consumer organizations/activists, the distinction drawn by the National Commission between the two words 'tax' and 'fee' is totally wrong and against the
democratic principles. Accordingly they forcefully pleaded for the inclusion of government health service within the ambit of the Consumer Protection Act 1986.

(A) MEDICAL NEGLIGENCE: REGULATORY MECHANISM OTHER THAN CONSUMER PROTECTION ACT, 1986

Medical negligence is the main area of professional negligence in which the patient is always at the mercy of doctors and quite often victims of their negligence. The patients' position is such that he may not know and not be able to establish what treatment he received and how injuries are caused? Some time doctors offer such service which requires a specific professional skill as well as infrastructure and equipment facilities and they provide without having these, facilities consequently patient suffer the damage. With the passage of time not only the businessmen but the doctors also adopted a materialistic approach with an object to earn more and more money and to fulfill this object they started providing such facilities which are declared prohibited and punishable by law, i.e. abortion and sex-determination, except in exceptional conditions which creates a risk causing damages. A person engaged in the medical profession require some requisite knowledge and skill need for the purpose and he is under a duty to exercise reasonable degree of care otherwise he will be responsible for professional negligence. In India various enactments other than the consumer protection Act, 1986, enforced to cover the qualifications and conduct of doctors and contain a spirit to protect the patients against medical negligence and prohibits certain act as unlawful and in case of violation made it punishable by law are as follows:
1. **Indian Penal Code**: The Indian penal code (herein after called is code) contain certain spirit of protection of patients against medical negligence. A medical practitioner has to understand the implication and relevancy of these sections so as to protect himself from such act which are punishable, cognizable and non-bailable and under these sections the consent of the patient has no relevance. The Code provides that one who voluntarily cause a woman with child to miscarry, shall be liable if such miscarriage is not caused in good faith for the purpose of saving the life of woman concern. So, the person directly responsible for causing miscarriage as well as the woman who caused herself to miscarry are liable for the offence. Further the code deals with causing miscarriage without consent of the women and any one who causes the miscarriage shall be punishable even with imprisonment for life.

The code emphasized that the premature expulsion of the child or foetus from the mother’s womb at any period of pregnancy is punishable. The difference between these two clauses is that in case of, with the consent of woman the woman and the person who voluntarily causes miscarriage are punishable and in second situation where it was caused without consent of the woman the person who causes miscarriage shall be punishable. In *Md.Sharif V State*¹², where a woman had pregnancy of 24 weeks out of illicit relation and a doctor administered an injection with the consent of the woman for determination of the pregnancy but the woman died. It was held that the act of the doctor amounted to voluntarily causing miscarriage as the doctor was presumed to know the possible effect of the medicine. In other case of *Tulsi Devi V State of U.P.*¹³ where the accused woman kicked
a pregnant woman in her abdomen resulting in miscarriage. She was held liable for causing miscarriage without consent. In this way these sections of the Code relate to miscarriage, injuries to unborn child, exposure of infants and concealment of birth; Abortion, except for the purpose of saving the life of the woman\textsuperscript{14} causing death of woman in an attempt to abort;\textsuperscript{15} preventing a live birth or causing death of child after birth\textsuperscript{16} causing death of quick unborn child\textsuperscript{17} are all offences under the Code and severely punishable even by life imprisonment.

The basic philosophy behind these provisions was laid down in \textit{Jacob George V State of Kerala}\textsuperscript{18} the Supreme Court said that:

"Life is said to be the most sublime creation of God. It is this belief and conception which lies at the root of the argument, and forceful at that, by many religious denominations that human beings can not take away life as they can not give life."

The court further said that life is beyond price and it is not only a legal wrong, but a moral sin as well as, to take away life illegally.

No, doubt these provisions of the Code are making woman equally liable for abortion or injury to foetus and infants ignore that woman in India are socialized in the religious and cultural environment of son preference’. Woman suffers numerous pregnancies and abortions injurious to their health under the tremendous social and psychological pressure generated by different religious beliefs but the law on the other hand made the person who causes miscarriage liable for abortion or any injury made to the woman or foetus/ infants during abortion unless it is done to save the life. The term which is used in the IPC is ‘any person’ had a wide spectrum it not only
include the doctors but also any other person whether qualified or not indulge in these type of prohibited activities but it mainly attacks on the doctors involved in these type of activities with an object to earn more and more money with a materialistic approach. These provisions not only intended to protect the woman against the social and moral crimes based on religious myths but also in a genuine case against the medical negligence. If a doctor who has ignored his professional ethics and basic philosophy of his holy profession becomes the life taker instead of life saver or performed the abortion on logical ground but without having proper professional skills, equipments or facilities shall be severely punishable under these provision for his negligence as well as professional negligence.

The term ‘whoever’ not only include doctors or any other person but the woman also as in Emperor V Musammat Mullia\(^9\) where a pregnant woman throw herself in a well resulting in delivery of dead child. In this case the court said that “if any further offence was in fact committed by the woman, beyond that attempting to take her own life, it would apparently be one falling within the purview of sec.315 of the Indian penal code.

So, not only the doctor but with any other person the woman herself may be made liable for voluntary causing miscarriage or for an act done with intent to prevent child being born alive. These provisions are attempting to prevent the illegal abortion done by the unqualified persons and quacks often resulting into death of woman and indirectly enforces that only qualified persons/doctors should on the grounds permitted by law made abortions with professional skill and care otherwise severely punished by law for negligence.
In this way the IPC has some indirect relation to the protection of consumer (woman) against the medical negligence. The notable point is that it does not provide any classification on the basis of govt. or private hospitals but put not only the doctors but any person whether qualified or not involved in these activities within a single bracket. But the practice shows that due to the lack of enforcement or redtapism in enforcement agencies has negatived the effect of these effective provisions.

The provision regarding the termination of pregnancy in the Indian Penal Code which were enacted about a century ago were drawn up in keeping in view with the then British law on the subject. Abortion was made a crime for which the mother as well as the abortionist could be punished except where it had to be induced in order to save the life of the mother. In recent years when health services have expanded and hospitals are availed of to the fullest extent by all classes of society doctors have often been confronted with gravely ill or dying pregnant woman whose pregnant uterus have been tampered with, a view to causing an abortion and consequently suffered very severely. There is thus, avoidable wastage of the mother’s health, strength, and sometimes life. It was felt that there should be some liberalized provisions relating to termination of pregnancy. That is way the Medical Termination of pregnancy Act, 1971 was passed.

2. Medical Termination of Pregnancy Act,1971 : After the enactment of this Act the provisions of the penal code relating to miscarriage and medical negligence have become subservient to this Act because of the non-obstante clause in sec.3, which permits abortion/miscarriage by a registered practitioner under certain circumstances. This permission can be granted on
three grounds:

a. **Health:** When there is danger to the life or risk to the physical or mental health of the woman;

b. **Humanitarian:** Such as, when pregnancy arises from a sex crime like rape or intercourse with a lunatic woman;

c. **Eugenic:** Where there is substantial risk that the child, if born, would suffer from deformities and diseases.

The above shows that concern for even unborn child was evinced by legislature, not to speak of hazard to the life of the concerned woman.21

The Act further provides that even on these grounds the termination of pregnancy can be done only with the consent of the pregnant woman22 and in case of a girl less than 18 years of age or a lunatic who has attained the age of 18 years with the written consent of the guardian of the girl.23

The Act further provides that the termination of pregnancy shall only be made in a hospital established or maintained by Government or a place approved for the purpose of the Act by the Government.24

The termination of pregnancy by this Act legalized on certain grounds but the Act provided certain restriction on basis of duration of pregnancy the Act says that if the pregnancy is of more than twelve weeks it can not be terminated unless at least two registered medical practitioners are of the view that this may cause grave injury to physical or mental health of the woman or substantial risk of physical or mental abnormalities to the baby to be born.25
It is clear from the above discussion that the Act has legalized the abortion on the few grounds provided in the Act and emphasized that the abortion can be made by a registered medical practitioner possessing any recognized medical qualification and has experience or training in gynaecology. It means that the medical practitioner who possess adequate professional skill can made the termination of pregnancy. The emphasis laid down on professional skill also impliedly emphasis on the appropriate facilities & equipments to perform the termination of pregnancy even the facilities to meet out any emergency situation if occurs during the termination process because from the medical point of view the process possess danger to the health and even to life of woman. The termination of pregnancy process may create excessive bleeding, it may cause puncture in the womb, infections, respiratory problems and can cause sepsis in the reproductive tract. These unforeseen consequences were surely in the eyes of the law makers so that they prescribed in the Act that pregnancy should be terminated by the registered medical practitioner and prescribed possessing of experience and training. For this purpose the Government of India laid down, other than that he should be a registered medical practitioner, the following experience or training, namely:

a. In the case of medical practitioner who was registered in a state Medical Register immediately before the commencement of the Act, experience in the practice of gynaecology and obstetrics for a period of not less than three years;

b. In the case of medical practitioner who was registered in a state Medical Register on or after the date of the commencement of the Act,
i. If he has completed six months of house surgery in gynaecology and obstetrics; or

ii. Where he has not done any such house surgery if he had experience at any hospital for a period of not less than one years in the practice of obstetrics and gynaecology; or

iii. If he had assisted a registered medical practitioner in the performance of twenty five cases of medical termination of pregnancy in the hospital established or maintained or a training institute approved for this purpose, by the government;

c. In the case of medical practitioner who has been registered in a state Medical register and who holds a post-graduate degree or diploma in gynaecology and obstetrics, the experience or training gained during the course of such degree or diploma.

In this way where on one hand the provision of Indian Penal Code lays no qualification for any one who was to cause miscarriage in such cases and even in case of miscarriage undertaken for saving the life of pregnant woman. This resulted in large number of illegal abortions done by unqualified persons resulting into death of a large number of women. On the other hand the Medical Termination of pregnancy Act, 1971 provide qualification and experience for a person who made termination of pregnancy and in this way laid down a level of professional skill for causing termination with a degree of care presumed to be adopted by the medical practitioner while terminating the pregnancy. In Dr. Laxman Balkrishna V. Dr. Timbuk Bapu Godbole the Supreme Court observed that:
“the duties which a doctor owes to his patient are clear. A person who holds himself acts ready to give medical service and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose.”

Similarly in *Philips India Ltd V. Kunju Punnu* vaidya, J. held “the duty of a medical practitioner arises from the fact that he does something to human being which is likely to cause physical damage unless it is done with proper care and skill”. The Act provides that the termination of pregnancy shall be made by the medical practitioner possessing required experience in this way the Act intends to prevent the abortions by the unqualified persons and medical practitioners not possessing the required professional experience and skill and protect the interest of the woman/consumer of medical services against the provider of medical service not properly qualified and skillful and whose primary objective is to earn money only. The Act made it punishable, even if a medical practitioner provide the service with proper experience, and not adopted the proper care which is required for the termination of pregnancy. So in this way the Act provides that the termination of pregnancy should be made by a medical practitioner with required experience other wise he will be punishable for medical as well as professional negligence even if he has adopted all the means of care and done it in good faith as if a registered medical practitioner (Homeopath) did a termination, in good faith, not possessing required experience, resulting in perforation of uterus of woman was punished by the court and the court in Jacob *George V State of Kerala* said that “If a homeopath takes to his head to operate a pregnant lady and perforate her uterus by trying to abort, he does not deserve to the benefit of good faith
and probation. It would have been a different matter if a trained surgeon while carrying out the operation with the consent of the lady, as in the present case, would have committed some mistake of judgment…”

The Act not only liberalized the provision of the Indian Penal Code to expand the grounds on which the termination of pregnancy can be made but intend to protect the interest of the consumer who avails the medical service in this connection against the injuries or damage suffered by the medical/professional negligence even if termination is made by the registered medical practitioner with required experience. The provision of qualification and experience intends to prevent the termination of pregnancies by the unqualified persons or by a registered medical practitioner not possessing required experience and protects the interest of consumer by providing sever punishments (upto life imprisonment) in case of violation of these provision resulting to cause injury or damage to the consumers of medical service.

Apart from these regulatory mechanism to regulate the medical professional in a manner to protect the interest of the consumers as well as the society and keep up the status of this holy profession and to provide the medical service with professional skill and care keeping in mind the monetary aspect at secondary level, the Indian Medical Council Act 1956 also provide for the establishment of Medical Council which provides a certain regulatory standards of Medical Ethics which intend to regulate the medical professionals with proper care keeping in view their duties towards the society and humanity.
3. **Code of Medical Ethics (Medical Council of India)**: The Prime object of the medical profession is to render service to humanity: reward of financial gain is a subordinate consideration. Who-so-ever chooses this profession, assumes the obligation to conduct himself in accord with its ideals. A physician should be an upright man, instructed in the art of healings. He must keep himself pure in character and be diligent in caring for the sick. The code provides that the principal objective of the medical profession is to render service to humanity with full respect for the dignity of man and physician should practice methods of healing founded on scientific basis and should not associate professionally with anyone who violates this principle. The honoured ideals of the medical professional imply that the responsibilities of the physician extend not only to individuals but also to society. The Act further moves to impose restriction on rebate and commission and provides that a physician shall not give, solicit, or receive nor shall he offer to give, solicit or receive, any gift, gratuity, commission or bonus in consideration of or return for the referring, recommending or procuring of any patient for medical, surgical or other treatment and it emphasis on morality of a doctor as not to indulge in any activity which is against the morality. Moreover, other than providing the scale to be observed by the physicians in their profession regarding character and responsibilities the code specifically emphasize of the part on the physicians to follow the laws prevailing in India as a regulatory mechanism to protect the consumers against medical negligence. The physician will observe the practice of medicine and will not assist others to evade such laws. The code moves further with emphasis on the duties of physician to their patients and in total puts a duty on physicians to use
proper professional skill and care while giving treatment clinical or surgical to the patients and indirectly preventing the consumers against injury & damage caused due to the medical negligence and professional negligence. The code while giving the this philosophy provides that though a physician is not bound to treat each and every one asking his service except emergencies for the sake of humanity and the noble traditions of the profession. He should never forget that the health and the lives of those entrusted to his care depend on his skill and attention. It has seen in practice that in many cases the doctors with a materialistic approach exaggerate the condition of patients with an object to earn more money. The code declared it an unethical practice and provide that physician should neither exaggerate nor minimize the gravity of patients condition. He should assure himself that the patient, his relatives or his responsible friends have such knowledge of the patients condition as will serve the best interest of the patient. The code further provides that a physician is free to choose to whom he will serve. He should however respond to any request for his assistance in an emergency. He once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving notice to the patient, his relative or his responsible friends sufficiently long in advance of his withdrawal to allow them to secure another medical attendance. The code emphasize that no provisionally or fully registered medical practitioner shall willfully commit an act of negligence that may deprive his patient or patients from necessary medical care. The code not only provide ethics to protect the interest of the consumers of medical service but also provide an obligation and expect the protection of profession by a physician. The code provides that every
physician should aid in safeguarding the profession against admission to it of those who are deficient in moral character or education. It further restricts to join or to employ any person who is neither registered nor enlisted in the medical register and should not permit such persons to attend, treat or perform operations upon patient in respect of matters regarding professional discretion or skills as it is dangerous to public health.

To sum up, it is submitted that the code of Medical Ethics (Medical Council of India) by providing various codes of professional ethics for the regulation of physician's conduct, duties and professional skills not only protects the interest of the consumers of medical service in case of injury or damage suffered due to medical/professional negligence and directly emphasize to adopt the required professional skill and care while providing treatment to the patient. The most important aspect of the code is its emphasis on morality and humanity and direction to the physician to adopt the proper skill and care himself and not allow to any physician or surgeon to attend his patient who does not properly qualified and not registered. In this way a heavy responsibility is imposed to save the patients not only from his negligence but also from others who are not of proper professional skill and whose care is dangerous to public health. The code directs to the physician to follow and abide the laws of the country in regulating the practice of medicine.

In this way the code contains the basic philosophy of humanity and humandignity and intend to protect the consumers of medical services against negligence and provide a regulatory mechanism of morality, proper professional skill, care and duties of doctors towards patients and society.
A effective notion of consumer protection is enshrined in the code. In case of violation the doctor may be removed from the rolls of the medical council and will be barred to do practice in medicine.

Instead of the above discussed regulatory mechanism the complaints related to medical negligence not minimized and despite of even severe penal provisions these mechanism are proved to be a ‘paper tiger’. This may be because of lack of force in the enforcement of these mechanism and there was a constant demand for more powerful and effective enactment to act against the erring members of medical profession more effectively. In this way the consumer protection Act, 1986 is an effective weapon in the hands of the consumers as well as the courts and it is hoped that now in the field of deficient medical service a new sun of ‘consumerism’ will arise.

(B) CONSUMER PROTECTION AND MEDICAL PROFESSION

We have already discussed few regulatory mechanism to regulate the medical professional in a reasonable manner with required care and skill towards the patients and in case of violation penal provisions are there to punish the violaters. In this way these mechanism have a spirit of consumer protection but there are few area’s which needs special attention and protection. As it is clear that in modern materialistic world the materialistic approach, of the businessminded doctors, is prevalent consequently two social evils are the burning topic of the news papers i.e. sale of human organs and female infanticide. For sale of human organ and female infanticide other then the social and religious setup and poverty and illiteracy the doctors as well as the para-medical professional with business
mind are responsible. So, this portion it is tried to find out the problems of the consumers and effect of the legislative enactments that upto what extend these enactments are successful to achieve their objectives for which they have passed and upto what extend the consumers are protected under the shed of these legal umbrella.

(i) Human Organ Transplantation

Business of the human organ is not a new concept but from the ancient time it is prevailing in the society in one form or the other whether it be in a form of selling the hairs or selling the blood. In the ancient times the selling of hairs by the women was prevailing as it was used in different field of social life i.e., art, theater, beautification etc. and was used to manufacture the different items of hair beautification. The selling of hairs is still prevailing in the society with the same object as it was in old ages it has not acquired an ugly shape. As far as the selling of human blood is concern the commercialization of sale of human blood is a recent development. Previously peoples were used to donate the blood to the needy person as a social service but as the materialistic approach is developed they started selling their blood to the needy person at their own rates. The poverty has also played a vital role in commercialization of blood sale. The researcher himself witnessed an incident at Mariampur Hospital, Fazalganj, Kanpur where his sister was admitted. He was standing at the gate of the Hospital nearby a man was talking with a rickshaw puller and they were arguing to settle the rate of blood the rickshaw puller was ready to sale the blood but not below the rate of Rs. 200/- per unit ultimately Rs. 175/- was settled and rickshaw puller went inside to sell the blood. This is
not an unusual scence. These day you may get so many people who have
applied this as a profession and selling their blood so oftenly but due to
regular selling of blood they are forced to start taking tranquilizers and
other drugs and because of this addiction according to the reports, their
blood got infected which is a continuous threat to the life and safety of the
donee. But inspite of these dangers to the patients the selling of blood by
the professional donors are still continued though few restrictions have
been imposed by some hospitals and doctors as they are refusing to take the
blood from professional donors even they take the blood by a reasonable
donor after proper testings. But these are the self imposed restriction which
the doctors has imposed and is a giant leap to protect the humanity. Still
there are hospitals and doctors who do not care about the donors and
accepting the blood from any donor without any proper testing which is not
in the interest of the patients as well as the humanity. The trade of human
organ started with the selling of hairs and later on selling of blood is proved
to be a never ending process as the hands of commercialized human being
has now reached to the internal parts of the human body. On of the
important factor, other than the commercialization of society, is the
miraculous technological developments of medical science. With the
increasing poverty, profit making tendency of doctors & availability of the
high rate rich buyers are collectively gave a boost to the trading of human
organs. Consequently a heading appeared in the daily national news papers
as :

"chargesheets filed in kidney racket case." Where a kidney
transplant racket was busted by the police on January 29 and the chargsheet
was filed by the police before the 11th additional chief metropolitan
magistrate A.M. Pathar. The accused in the case were Dr. K.S. Siddaraju, former head of the department of nephrology at the Victoria Hospital, Dr. Dilip Dhanpal and Dr. Dilip Patil, both practicing nephrologists, Mahammad Yousuf, Mohammad Haneef and Dr. Syed Adil Ahmad, who acted as middle-men and Shivanna and sarojamma a couple who enticed people into donating kidney. In this case Velu, Palani, Swamy, Challappan and Ananda the unsuspecting donor were cited as evidence. The accused had not obtained any consent forms from the complainants for having agreed to donate one of their kidneys and there were no legal affidavit and even the hospital records were fabricated. The victims were threatened of dire consequences by the accused all of whom conspired to make a huge amount of profit. In other case of Devarappa, a native of Chitradurga district of Karnataka, the chargesheet said that the victims right kidney was removed without his knowledge while ‘operating him for ulcer.' In another case the victim of the racket pallipalyam who was brought to the city by the accused (agent of the racket) after promising him a job in the city and it was told to him that he would have to wait for sometime in the city and was asked to donate some blood to get money for his expenses. He was admitted to the Yellamma Dasappa hospital where his kidney was removed by the accused doctors without his consent. When he gained consciousness he asked the doctors about the bandage on the right side of his waist. He was told that a lot of blood was needed and the blood had to be removed from the waist. He went to another hospital where he came to know that his kidney had been removed. This is not the end of the story rather this is a small part of the ugly face of the holy medical profession and humanity which is only because of the demand of the
kidneys abroad on high rates and the profit earning mentality of those
doctors who forget their duty towards the humanity and became a
businessman whose main aim is only to earn profit and the factor of poverty
is also one of the most important factors which boosted it.

It sounds pretty ghoulish and devilish. Aided, abetted and run by
doctors in cahoots with Mafiosi, the business of live human organs has
reached terrifying proportions. People are deliberately selling off their
kidneys to make ends meet. There are areas in Tamil Nadu where extreme
poverty leads people to selling their kidney. The pallipalayam has attracted
public attention for quite another-trade-in human organs and is known as
‘kidney palayama’. Every second abled bodied worker in the age group of
30-45 is regarded as the potential kidney donor and including three
surrounding villages over 50% of kidney donation cases are reported.

Every resident here knows someone who has sold a kidney. The supply of
kidneys from pallipalayam has been quite regular for years and brokers have
been able to bring down the price from 80,000/- to 30,000/- per kidney. A
medical practitioner said many of my patients keep asking me how to go
about it. At time supply exceeds demand. Thirty two years old S. Mani of
Komarapalayam said he had to spend over three weeks in Bangalore before
his agent could arrange a recipient for his kidney. Mani’s wife Lakshmi who
donated a kidney returned from Bangalore in 10 days and said “There was
some delay in my case in getting the right party.” The above discussion
make it clear that the donation of kidneys has acquired the shape of a well
organized business activity where not only the seller (donor) and buyer
(recipient) but the brokers or agents are playing an important role to find
out the right party for a potential donor and it is surprising that the rate of
a kidney depend on the demand and supply principle. Now it has acquired
the shape of easy and big profit earning business and the middlemen are
going the benefit of the poor economical conditions of the donors and
making with the alliance of the materialistic doctors, the huge amount as
profit. The voluntary donation of kidney may upto some extent be
excuseable but what is unnerving is not the sale of kidneys but gangster
duping innocent people into getting admitted to clinics/hospitals for some
other diseases and in the clinic they are sedated and on regaining
consciousness the victims find an unexplained, fresh scar below their ribs.
The tell-tale would shows one of their kidneys has been removed and soled
to rich buyers from abroad. But this is only the tip of the criminal iceberg.
Not only the general people are responsible for this business of kidney but
the doctors who have forgotten the sanctity of their profession and duties
towards the society and humanity are more responsible and committing the
breach of professional ethics. The only thing can be said that “what happens
to the Hippocratic Oath?” well, ask to the doctors involved.

This is a matter of grave concern keeping in view the interest of the
consumers of medical service which is needed the protection against such
type of gross medical negligence and prevention of the violation of
professional ethics. What effective remedy is available to a consumer if lost
his kidney only because of intentional misconduct of a doctor who has
hunger of money only and forgotten his duties towards the human being and
humanity. I think, nothing ! because if we see that the first organized racket
of traders of kidney was busted in January 1995 but till date not a single
case is decided and no remedy is provided after passing a long period of 7
years. If the consumer who has sustained uncompensatable loss i.e losing a
very important organ of his body the only remedy is available to go through 
the technical, cumbersome & time consuming legal process and still there 
is no hope for a reasonable remedy. The researcher feel sorry to say that the 
credibility of the executing machinery is at stacke and under the control of 
red – tapism containing many holes of escape for a powerful and rich 
accused including doctors. There is no deterrent punishment is available to 
prevent the doctor, who are inhuman, to play with the life of the consumer 
for their own profit, where the professional ethics, professional duty, and 
duty toward humanity including duty towards their profession has gone and 
then the doctors are claiming the professional immunity against their 
inclusion in the consumer protection Act-1986 an effective weapon in the 
hands of consumers to protect themselves against these type of inhuman 
doctors. The continuous reporting of trading of human organs attracted the 
attention of the government and with an intention to provide a regulation 
for removal, storage and transplantation of human organs for therapeutic 
purposes (Research work at experimental stage for the technological 
advancement of medical science) and for the prevention of commercial 
dealing in human organs the government enacted the “Transplantation of 
Human organs Act, 1994”. The Act intended to prevent the unauthorized 
removal of the organ of the body and provide provision.47 regarding the 
authorization for removal of human organ and provides basically any donor 
may authorize, according to the procedure of the Act, for the removal of his 
organ after his death for therapeutic purposes and this removal can not be 
made other than the registered medical practitioner.48 The Act further allows 
the removal of human organ after certification of brain-stem death or that 
life is stinct in such body on the requirement and upto the satisfaction of 
the Board of Medical Experts consist of the followings.49
(i). registered medical practitioner incharge of the hospital (ii). An independent registered medical practitioner (iii). A neurologist or a neurosurgeon (iv). The registered medical practitioner treating the person.

No authority is required for the removal of human organ if a deceased person shall be given by a person to whom such body has been entrusted solely for the purpose of interment, cremation or other disposal. Further it is also provided that in case of body lying in hospital or prison and not claimed by any of the near relatives of the deceased within forty-eight hours from the time of the death the authority may be given, to remove the human organ, by the person incharge for the time being of hospital or prison but he is not bound to give the authority if he has the reason that claim can be made even after specified time. The human organ may also be removed from a body which is sent for post-mortem for medico-legal purpose and removal of the organ will not affect the examination for which it is sent, if death is caused by accident or any other unnatural cause, with the authority of the competent person according to the provisions of this Act. After removal these organs will be preserved according to the necessary steps. The Act goes forward with an intention to prevent the commercialization of the organ transplantation by providing few restriction as the organ removed after the death of the donor with his authority shall be transplanted in the body of the recipient if he is a near relative to the donor and if not the near relative then if there is any reason for special affection and attachment of donor to the recipient but with the approval of the authorization committee or to any person who is in actual need of that organ. Further the Act provides for the registration of the hospitals conducting the removal, storage or transplantation of human
organ.\textsuperscript{55} The Act strictly prohibits the removal or transplantation of human organ for any purpose other than therapeutic purposes and made it obligatory on the part of the medical practitioners to explain the all possible effects, complications and hazards connected with the removal and transplantation.\textsuperscript{56} In case of violation of any provision of the Act the provision of penalty and punishment is given. The violator may be punished with an imprisonment for a term which shall not be less than two years and may be extended upto seven years and shall be liable to fine which shall not be less than ten thousand may be extended upto twenty thousands.\textsuperscript{57} So, in this way the law bans the removal of human organ except for therapeutic purpose and impliedly permits in case of necessity for curative purpose and provides that an organ can not be removed from the body of a live donor unless he is a near relative or emotionally attached to the recipient. If he is not a near relative to the donor then he will have to appear before an authorization committee setup by the state. The committee will decide whether the organ can be removed or not. For the medical scientists, Policy-makers and NGO's involved in the passage of the legislation, it is a major achievement.\textsuperscript{58} No doubt, the Act may be said a major achievement in the field of trading of human organs and it intends to protect the consumer from the gross misconduct and negligence of doctors and provide the punishment for the violation. But the question arises that whether giving punishment to the accused is sufficient to protect the interest of consumer or not because the Act simply provide punishment for the accused but does not provide any provisions for the remedy to the consumer. Consumers are at the mercy of the courts for the remedies and no appropriate body is created for the speedier and effective disposal of the
cases related to trading of human organ the consumer is left at the mercy of executary body i.e. bureaucracy he can not go direct to the courts. The speed of disposal of the cases in traditional legal system is proved from the fact that the chargesheet in the first busted case was filed in 1995 and till date the case is not disposed off. So, unless there are some provisions regarding the remedies available to the consumer the Act can not be said to be a legislation which has the philosophy of consumer protection. Simply providing the punishment to an accused who has tried to play with the entire life of a patient is not a protection available to the consumer. Not only in case of theft of organ from the body but also in case where the organ is removed from the human body on the ground of necessity and with an intention for the transplantation in the body of a needy person for curative purposes, according to the provisions of the Act, there must be some remedial provision for the protection of the consumer against the loss or damage suffered due to the negligence on the part of the doctor because the transplantation being a sensitive area of cure so it requires a professional skill and care of certain level even a minute negligence may affect the life of the patient as it was seen in a case where the recipient Mr. P.K. Jain died after the kidney transplantation. The case records were sent to the experts to get their opinion on the matter. It was opined that the kidney transplantation team of the hospital had not followed all formalities and had not conducted requisite medical tests. Mr. Jain might have survived if proper care was taken including the pre-operative care. In this case the police filed the chargesheet in court but the case is still waiting for the disposal. In another case where the police have registered a case against four doctors of a private nursing home where the kidney of an HIV infected
donor was transplanted, to the recipient Balwinder Kumar an youth of 25 years, without any proper test. Consequently youth died lateron. This case was referred for the CBI inquiry and chargesheet was filed in the court to become a victim of time consuming, cumbersome and technical process of the court. In the absence of any speedy redressal body and non-availability of any direct remedy to the consumer in case of any loss or damage suffered due to the negligence of the doctors the interest of the consumers can not be effectively protected against the exploitation. On the other hand in case of donation of kidney or any other human organ to a needy person who is not related to the donor the authorization of the Authorisation committee is needed but the slow working of these committee are also effecting the interest of the consumers. As it was reported that the slow process of disposal of applications and delayed tactics of the committee are directly effecting not only the physical health of the consumers but also adversely effecting severely to the poor consumer who collects the money for transplantation from here and there. It was reported that Beera Moinuddin, a retired IPS officer, now in his eighties, has been frantically seeking permission of his son, Moosa, to be given a kidney from a donor who is not a relative. Another sufferer of delayed tactics of the authorization committee was reported one Mr. P.B. Mandanat a native of Hospet (A.P.) who has no option but to go in for kidney from a donor who is not a relative. His wife is a diabetic and none ‘near relative can donate a kidney with no dialysis facility available in his hometown Mandanat was staying at a relatives place in Bangalore for the last six month to enable him to undergo dialysis twice a week and also followup his application pending before committee and the money he collected for transplantation operation
used up for dialysis. In another case an application, to receive a kidney from a donor not related to the recipient, for authorization before the committee in Feb. 1994 and till June 1996 the application was pending. Dr. Sunder of Manipal Hospital said that he had asked most of his patients with unrelated donors to go to Madras for kidney transplantation as Authorisation Committee there was reportedly taking quick decisions.

Consequently, under these circumstances the consumers of medical services are the ultimate sufferer and suffering losses of health as well as monetary as waiting for transplantation from donors who are not relative are dependent on dialysis and increase in the number of such patients are reported. It was rightly said by the Dr. S.S. Sunder, Director of the Karnataka Nephrology and Transplant Institute, that the doctors would be happy under these circumstances as each dialysis costs approximately Rs. 800/- and the patient had to undergo the process at least thrice a week.

The authorization committee in Karnataka has a defence for not seemingly to move quickly enough as “The committee does not want to encourage any kidney transplantation by unrelated donors and wants to cajole and convince the near relatives of the patients to donate the kidney.”

This logic of the authorization committee does not seem to be a sound one because they are delaying the process even in those cases where no near relative is in a position to donate the kidney as in case of Moosa who gave the application for authorization of kidney transplant from a person not related to him and was waiting for last 8 months for approval till the date of reporting because he can not depend on his wife to donate a kidney as her blood group is different and his son is too small and parents are too old in their late eighties.
Though, as it was reported that rackets in kidneys flourished have gone by since the law of transplant was adopted but the technicalities of the Act has created the new problems for the genuine recipients specially the delayed tactic of committees. It is necessary that the committees has to look at the issue in a humanitarian way. This calls for the authorization committees to clear the applications quickly. Other wise this delay may compel the recipients to adopt the other way which may create a way for the traders of human organ once again to start their rackets. In this way no doubt the aim of the enactment was very good and intended to protect the interest of the consumer’s interest but non-availability any quick redressal body, technicalities in the process, delayed tactic of the authorization committees and responsibility of execution on beaurocracy may negatived the effect of the Act. There is specific provision of punishment in case of medical negligence.

In this way it is submitted that the Transplantation of Human Organ Act –1994 is intended to protected the interest of the consumers but the shortcomings in the Act has negatived the effect of the Act. So, it is undisputed that the consumer protection Act, 1986, with quick redressal process, separate redressal setup, non-technicalities of process, remedial provisions with punishments and direct involvement of the consumers, is the most effective weapon in the hands of the consumers to protect their interest against the loss and damage suffered due to the medical negligence and to prevent the doctors from adopting unethical practices, to have the profit earning approach and negligence. In this way all the fields related to the medical service should be brought within the ambit of the consumer protection Act-1986 without any if and buts and let the philosophy of
‘consumerism’ flourish. Otherwise the day are not far when we will read the heading “organ trade continue despite ban” in newspapers only because of the negative aspects and other discussed problems of Transplantation of Human Organs Act 1994 and may once again create a heaven for the traders of human organ and like minded doctors.

(ii) Para-Medical Services

There is no doubt that the enactment of the consumer protection Act, 1986 is a mile stone in the history of socio-economic legislation and is directed towards achieving public benefit against exploitation by the traders or the persons rendering services. The enactment of the Act developed awareness in the public at large, regarding their legal rights to claim damages in case of unfair trade practices, restrictive trade practices, supply of defective goods, excessive charges than fixed under law or displayed on the pack of goods, sale of such goods which are hazardous to life and safety or in case of deficiency of service.

Since the enactment of the Act there was a controversy whether the provisions of the Act are applicable to the persons who are rendering medical services to a patient or not. In this regard, the controversy was further deepened when the views of the state commissions, National Commission and various High Courts were contradictory. But this controversy was finally settled down by the Supreme court’s judgment in Indian Medical Association V. V.P. Snatha when the medical services were finally brought within the ambit of the consumer protection Act 1986. With the exclusion of services provided by Govt. Hospitals and service rendered in view of the ‘contract of services’.
Para-medical service, i.e. Radiology & pathology Labs, Diagnostic centres, Nursing etc. are the integral part of medical service and in case of any complication the decision of the physician or surgeon are based on the report or advice forwarded by the labs and diagnostic centres. They play a vital role in the medical services. The medical services include the para-medical service also. No doubt, the inclusion of medical service in the consumer protection Act was disputed but there was no dispute regarding the para-medical services. Before V. P. Santha case the judgement of the Madras High Court in *Dr. S.C. Subramanium V. Kumar Sawamy*,71 which excluded the medical services from the ambit of the consumer protection Act said that the medical practitioners or hospitals undertaking or providing para-medical services of all kinds and categories can not claim the same immunity from the Act and that they would fall, to the extent of such para-medical services rendered by them, within the definition of ‘services’ and a person availing of such service would be a consumer within the meaning of the Act.

In this way the para-medical services were not disputed but with the judgement of Supreme Court72 and inclusion of the medical services in the consumer protection Act the position is that the medical service include herein Medical practitioner (Physician, Surgeons and those practicing in other pathies), chemist, Druggist and para-medical services.

The importance of the para-medical services in medical profession can easily be judged through the decision of National Commission in *Prasant S. Dhananka V Nizam’s Institute of Medical Sciences*,73 in which the surgeon conducted the operation of benign tumour of a patient without going through the pre-operative diagnostic procedure to know the actual
position and stage of the tumour, as it was a very complicated operation and a single mistake may amount a high injury to the patient, consequently the patient became paraplegic and was confined to wheel chair. In this case keeping in view the complexity of the operation the National Commission declared that not adopting the pre-operative diagnostic procedure is a grave negligence on the part of the surgeon and awarded a compensation of Rs. 14 lacs to the patient and 1.5 lacks to the parents.

The para-medical facilities specially the labs and diagnostic centres formed a very important aspect of the medical services. The consumer of medical services is also protected against the negligence of he para-medical services. Though there are few other enactment which intend to protect the consumer of para-medical services but the consumer protection Act-1986 provide them a direct protection against the deficient para-medical services and made the hospital and nursing homes with whom the para-medical service is attached or in case of nursing the doctor who employ the nurse vicariously liable for their negligence as there is a master servant relationship between the employer and the employee. The consumer courts as well as the other courts of law are taking a protector’s approach while protecting the interest of the consumer of para-medical services. As in Dr. (Mrs.) Rashmi B Fadnavis and other V. Mumbai Grahak Ranchyat and others, where the patient was died on the operation table due to the non-availability of the required quantity of the blood and not providing the mechanically operated artificial respirator and adequately long needle for an inter-cardiac injection in case of emergency. The National Commission said that there are certain essential steps which should be taken and completed before the major operation and this is the responsibility of the
para-medical staff i.e. attached with the operation theatre particularly in the instant case of potential risk. The commission held the doctor and para-medical staff responsible for negligence and awarded the compensation of 3 lacs Not only in case of pre-operative diagnostic reports or negligence in pre-operative preparation the para-medical staff is held liable but also in case of’ Nursing’ which is one of the most important area of the para-medical services and play a vital role in the reasonable professional skill and care. In this way there is a specific qualification for a nurse and process of registration in the nursing council of India to become a qualified nurse and to adopt the nursing as a profession. So if a nurse do not adopt a reasonable professional skill and care while attending the patient even on the instruction of doctor any of her/his act made any injury to the patient shall be liable for negligence.

As in *Spring Meadows Hospital & Other v Harjol Ahluwalia*\(^7\) where a minor was brought to the appellant Hospital where he was examined by the senior consultant and the doctor made the diagnosis that the patient was suffering from typhoid and prescribed certain injection and directed to nurse to inject at time. The nurse of the hospital wrote out a prescription and gave to the father not acquainted with either of the medicines he brought the injection. It was subsequently found that instead of writing the name of the injection ‘chloramphenecol’ wrote ‘injection lariago’ a brand name of ‘chloroquine’. When the nurse injected the medicine intravenously the child immediately collapsed and went into cardiac arrest. The court observed that the child had suffered from cardiac arrest and cause of such cardiac arrest was intravenous injection of lariago and said that-
“There was a clear dereliction of duty on the post of the nurse who was not even a qualified nurse and hospital is negligent having employed such unqualified people as nurse and having entrusted a minor child to her care”.

The court ultimately came to the conclusion that the minor patient had suffered on account of negligence, error and omission on the part of the nurse and making the hospital vacariously liable awarded a compensation of 12.5 to the minor child and 5 lacs to the parents. This was the case of grave negligence but the courts are not ready to see even a minute negligence on the part of the nursing staff as in Sri M.L. Singhal V. Dr. Pradeep Mathus & others the Delhi High Court said that the nursing staff of the hospital had no right to be negligent and allow the urine to spread on the bed or to allow the catheter to leak is a negligence on the part of the nurse.

In this way the courts are always protecting the consumers against the negligence on the part of the para-medical staff/services especially in case of nursing staff, a vital part of the medical services, and insisted on the qualification of the nursing staff and in case of unqualified nursing staff the hospital or the employer will be vacariously liable on the ground of negligence in case of any injury or damage caused to the patient.

But a weak point is that the para-medical staff attached with labs or test are getting some benefits of doubts on some grounds of medical jurisprudence other than the qualification and professional skills. As in A.K. Hazarika V Saraighat X-Ray and Clinical Laboratory where Mr. Hazarika was examined by an ENT specialist who advised an ultrasonography test.
The test report observed ‘a low echoic mass measuring around 23x4 mm in size anterior to the IVC could be an enlarged mode.’ He immediately rushed to Madras cancer Institute where no abnormality was detected he claimed the compensation. The Assam State Commission observed ‘that the report of the Radiologist is only an opinion based on impression recorded by the machine or findings of the lab test. It is true that X-Ray and clinical laboratory tests are supposed to be done carefully but a chance of mistake is there’.

Once again in Mayo Hospital V S. Tiwari it was concluded that even if the test is done by adopting a reasonable professional skill by a qualified person there is a chance of mistake i.e. due to the defect in machine unless negligence of professional skill is proved. So, to conclude it is clear that the courts consider the para-medical services/staff an integral part of the medical profession and protects the interest of the consumer in case of any injury or damage suffered by the consumer due to the negligence of the para-medical staff and insisted on the vicarious liability of the hospital or employer doctor for not only their negligence but also in case if they are not properly qualified. This insistment of the courts on qualification and vicarious liability surely prevent the unqualified person or who are not properly qualified and not having reasonable professional skill, to play with the life of the patients and also prevent the doctors of materialistic approach who oftenly appoint such persons on low salaries to save the money. The approach of the courts in lab staff and their acquittal is not of much worry as they are not exempted on the basis of that they forward the reports on the impression given by the machines if the professional incapacity or lack of qualification is proved.
In total the courts as well as the consumer protection Act is upto a remarkable stage successful to protect the interest of the consumers of para-medical services or the sufferer of negligent para-medical staff and giving a right approach to the consumerism in the field of medical services.

(iii) Sex-determination

Wars had been fought for them and at many times they were the sole cause for the downfall of the empires. They have remained attractive objects of poetry, art and cultural science and in all religion particularly Hindu religion their dignity is defined in Smritas, Vedas and Upnishada. They are regarded as ‘Grah Lakshmi’, ‘Grah Devi’ and ‘Grah Swamni’. Even the pious deeds and rites like ‘yajha’ were not regarded complete without their participation in the code of ethics and mortality, much has been written to preserve their sanctity and honour, and yet their problems have permanently bothered the social reformists and legislators. We are talking about none but the woman and problem of women race in reference to sex-determination.

So for as the question of sex-determination in the light of history is concerned, it is obvious that a male child has always been a desire of the maximum number of parents throughout the world. But so far as India, is concerned, in ‘Rigveda’ there is no reference to an instance where the birth of a girt child was considered inauspicious. Not only that we find reference in Vedic literature, of a ritual recommendation for ensuring the birth of a scholarship daughter. It syas, “If it is a girl, let it be born with wisdon, inner joy and beauty.” But the condition of women in post-vedic age became appealing in the latter Hindu society and during the time of
Bhartrhari, women had come to be spoken of “as incapable of being chaste”, when the adolescent daughters came to be compared to a basket of snakes which the father has to carry. So, no doubt, many religious writings intends to stabilize the status and dignity of women but in fact the concept of fair sex is not stabilized yet. The women always discriminated and even after birth the female childs were killed brutally by the parents as they are supposed to be parayadhan and a liability on the shoulders of the father. In comparison to the daughter the son was considered to be the way of ‘Moksha’. Dr. Radha Krishnan, late president of India, wrote that a woman has no place in Hindu religion and Hinduism was a way of life rather than a form of thought for it is primarily concerned with code of practice than with beliefs: ‘Dharma’ or right action, regulates the most intimate details of daily life and ‘Moksha’ is the ultimate satisfaction. The four fold system of the ‘purushartha’ which outline an ideal life cycle are directed towards the goal of attaining ‘moksha’. This form of salvation or perfection could be finally achieved through sons. Who after lighting the funeral pyre, can offer ancestor-worship Women are not suited to performing religious training and knowledge. They are therefore expected to lead a life of dutiful subjugation so that they may be reborn as man in the next life and thus be gifted with religious privileges. These religious concepts encouraged the female infanticide. Historically, female infanticide was common among certain castes and tribes such as Rajputs, Jat, Gujars, Ahirs and Sikhs. It was a custom widely accepted among these warrior tribes. Where sons were needed to defend the honour and more important, the territories of the tribe. In Punjab, because of martial and agricultural traditions there has always been a demand for sons to go into battle or who would plough fields during peace time.
“Chhore pe Baje Thali, Chhori pe Thekere Phoren” is an old sentiment in the Indian state of Haryana which means “announces the birth of a son by beating of brass plates but at the birth of a daughter break earthen pots.” Marriage in the Hindu fold of life is still traditionally considered essential for procreation and continuation of the vansh (lineage). Blessings showered on the bride during a wedding consist of the line “Ashta Putra sobhagyawati Bhava” meaning “May you be blessed with eight sons”. Thereafter on conception mantras from all Atharva veda, one of four most sacred books of Hinduism, are prescribed for chanting so that if the foetus is female it will be transformed into a male.  

So, in most parts of the country son is a major obsession. One son is a cause of joy while two are seen as a lifetime celebration, the traditional thinking being that if one dies, at least the other will live to take care of the parents. In the bargain, pressure on the woman to produce a son are unending. The girl child is seen as an economic crushes her family under huge burden of debts.

Consequently with the march of time the female race was always attacked by female infanticide or killing of girl child and with the passage of time the results started to come in the scene.

A 1997 UNFPA report, “India Towards population and Development Goals,” estimates that 48 million women are missing from India’s population. The report states that “If the sex ratio of 1036 females per 1000 males observed in the state of Kerala in 1991 had prevailed in the whole country the number of females would be 455 million instead of 407 million (in the 1991 census), thus, there is a case between 32 to 48 million
missing females in the Indian society as of 1991 that needs to be explained”.

This deficit of women has been known to exist even in British India from the time the first census was done in 1881 and has only worsened in every subsequent census with exception in 1981 when it rose in favour of females.84

The 1991 census is only indicative of this disturbing trend. Almost a quarter of India’s population consist of girls below 20 years age. The adolescent girl who is an embodiment of childhood and womanhood is barely a shadow in our national policy and is neglected in the fields of health, education and development programmes. Thousands of female infants are murdered in their mothers womb or are born to die.

According to the UNICEF, 40 to 50 million girls have gone ‘missing’ in India since 1901 missing because they were not allowed to be born or if born murdered immediately thereafter. Today, India tops the list as far as illegal abortions and female infanticide are concerned. Of the 15 million illegal abortions carried out in the world in 1997, India accounted for four million, 90% of which were intended to eliminate the girl child.85 ‘Saheli’ a Delhi based NGO, has reported that between 1978-82 nearly 78,000 female fectuses were aborted. The number of sex-determination clinics multiplied manifold and nearly 13,000 sex-determination tests were estimated to have been done.86

Though earliest efforts to eradicate female infanticide in India were made in nineteenth century during the British rule the problem of foeticide is a new phenomenon. Although there exist a very comprehensive law on abortion. Which is also applicable to the abortion of female fectuses.87
But under these Acts abortion before 20 weeks of pregnancy were legal, female foeticide could not be banned perse. The requirement of a new law was therefore felt to prevent the misuse of exemption clause of prevailing law. 88

In the absence of any law, the central government could do was to issue circular prior to 1985 banning the misuse of medical technology for sex-determination in all government Institutions. This however, led to the mushrooming of private clinics all over the country. The Maharashtra Government first time enacted the Maharashtra Regulation of Pre-Natal Diagnostic Techniques Act-1988 as the first anti sex-determination drive in the country.

This was followed by a similar Act being introduced in Punjab in May 1994. Both these were, however, repealed by the enactment of a central legislation, that is, The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994. Which banned sex-determination tests all over the country. This Act carries a three year imprisonment and Rs. 10,000/- fine for offenders. 89

The Act further provides that no Genetic counseling centre, Laboratory or clinic shall conduct or associate to conduct in carrying pre-natal diagnostic technique unless it is registered and will not employ or associate any person who does not fulfill the prescribed qualifications. The Act prevents a qualified person to conduct these technique in an unregistered clinic or lab. 90 No doubt, the Act allowed the Genetic counseling centers, clinics or Laboratory to carry on pre-natal diagnostic techniques with the registration. It does not mean that sex-determination is
legalized. The Act strictly prohibits the sex-determination and allowed to use the technique only for the following abnormalities:

i. Chromosomal abnormalities;
ii. Genetic metabolic diseases;
iii. Haemoglobinopathies;
iv. Sex-linked genetics diseases;
v. Congenital anomalies
vi. Any other abnormalities or diseases as may be specified by the central supervisory board.91

Further the Act provides that this technique shall not be used unless the person who is qualified to conduct the test is satisfied that the age of woman is above 35 years and has undergone to two abortions and exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals and having a family history of mental retardation or physical deformities.92 This is clear that only on the grounds specified in the Act and unless any of the above condition is satisfied no prenatal diagnostic test will be conducted and if after fulfillment of the requirements of the Act, the test is done it should be done by a qualified person. The Act further restricted that the women should explained all the side effects of the test by the person conducting the test and written consent should be obtained.93 The Act clearly prohibits the use of test for sex-determination.94 So, the Act prevents strictly sex-determination and provides few grounds to conduct the pre-natal diagnostic test, other than the sex-determination, by a qualified person after explaining all the side effects to the woman and take her written consent. In case of violation penal penalties are provided.
So, the Act intend to protect the women race and cruelty on women & female foetus in form of abortions in the hope of son. The Act not only made the doctor liable for conducting the sex-determination test but also provides the same punishment to the person who seeks the aid of test including the pregnant woman, unless she was forced to undergo the test, with the same punishment.95

It is clear that in case of voluntarily sex-determination test no protection to the consumer is available who availed the test service even in case of any medical negligence as the test is strictly prohibited and declared illegal and no remedy can be granted in case of injury or damage of any amount is received during an illegal act.

But it does not mean that the Act do not have any reflection of consumer protection. The Act like any other laws relating to the regulatory mechanism of the medical profession provides that pre-natal diagnostic techniques are allowed only in few conditions and this technique shall be carried on by only properly qualified person having all the prescribed facilities and maintained prescribed equipments and standard. It means a genuine consumer, who avails the pre-natal diagnostic test, if suffers any injury or damage during or after the test the person who conduct the test shall be punishable according to the provisions of the Act on the ground of medical/professional negligence. So, the consumer is protected against the medical/professional negligence. The Act intend to prevent the medical professional to conduct the test without proper qualification, experience, equipment and standard and he is presumed to adopt reasonable professional skill and care while conducting the test otherwise will be penalized severely according to the penal provisions of the Act. In this way
the Act reflects the principles of consumer protection as protects the consumers against the medical/professional negligence.

But to protect the women against cruelty the enactment of law is not sufficient and prevention can not be made unless there is a social consciousness specially keeping in view the materialistic approach of the doctors in present day. We should think that what dictates the priority of our society attaches to the male child? Does an ancient and primitive mindset have the right to decide the fate of the girl child? Shouldn’t concrete and viable steps be taken at the government level to ensure she gets a better deal? while infanticide has a cultural history but foeticide is a relatively new phenomenon permeating societies which had no previous record of infanticide. Abortion of female foetuses has resulted in a skewed sex ratio. Happens to the next generation? This need the careful attention monitoring and steps in its correct perspective.

To conclude it is submitted that though the Act protects the consumers interest against any injury or damage suffered by medical/professional negligence and strictly prohibits the sex-determination and provide severe punishment in case of violation. But the philosophy of consumer protection and penal provisions are not sufficient to protect the female foeticide as well as the female race unless there will be a social consciousness. The liability of the social consciousness lies not only on the shoulder of government but also on the media, social activist and intellectual class of the country and they are answerable to their inner conscious as well as to the female race for negligence in their responsibilities.
(iv) Sterilization

The Directive Principle of the state policy enshrined in the constitution of India contain the country’s basic social goals. All the energies and resources of the nation are being devoted to achieve these social ends. Ultimate aim of the constitution is to establish a just and abundant society in which its people can enjoy a life of peace and dignity. It is further to promote peoples welfare by securing and protecting a social order in which justice-social, economic and political shall reach to all institutions of national life. It is, however very pinching that after more than five decades of planning and other national efforts, we still languish in the grave shadows of unfulfilled expectations. Majority of people in India do not get even the bare necessities of life like adequate food, clothing, shelter, education and health services.

Nation’s prospects have considerably improved since the advent of freedom but our nationals has not considerably improved. Lagging economic development and excessive population growth are the two main reasons assigned for this poverty. The growth of Indian population from the earliest times to the present is not unlike the growth of world population over long stitches of time. India’s population earlier grew very slowly or remained stationary and began to increase rapidly only during the last half century.

Keeping in view the economic growth and population growth the Government of India was one of the first in the world to recognize the long range implications of unchecked population growth for socio-economic development and adopt the population control programmes soon after
independence. In 1951, the Government of India conceived the First Five year plan (1951-56) as an instrument with which to realize the basic socio-economic objectives enshrined in the Indian constitution. The plan document recognized that family limitations and population control should be one of the essential components of socio-economic planning in the following words.

"The recent increase in the population of India and pressure exercised on the limited resources of the country have brought to the forefront the urgency of the problem of family planning and population control. It is, therefore, apparent that population control can be achieved by the reduction of birth rate to the extent necessary to stabilize the population at a level consistent with the requirements of national economy. This can be secured only by the realization of the need for family limitation on a wide scale by the people. The main appeal for family planning is based on consideration of the health and welfare of the family."

To provide facilities for contraceptive services in the government hospitals and other health agencies was one of the main objectives of the First Five year plan.

The population control and family planning programmes gained momentum in 1966 when a full fledged government department of family planning in the ministry of health and family planning was established to administer the programme. During the inter-plan period (1966-69), the family planning was fully integrated with the public health programme in the country, especially with the maternal and child health programme operated through primary health centers in the rural areas and the urban
family planning centers in towns and cities. During the fourth Five year plan (1969-74), the tempo generated by the programme in the third plan accelerated. In this plan it was proposed to aim at the reduction of birth rate from 39 per thousand to 25 per thousand within the next 10-12 years. Maternal and child health scheme were formally and more intimately linked with family planning. During this plan stress was laid on mass education and use of all contraceptive methods and put high priority on the construction of buildings for working and living accommodation for medical and para-medical personnel in rural areas in the earlier years of the plan. Ministry of family planning and health adopted the cafeteria approach (providing a variety of contraceptive methods for free individual choice). The cafeteria approach provides, as per the approved list, a variety of contraceptive methods like male and female sterilization, intra-uterine device, conventional contraceptives such as condoms, diaphragm, Jelly, foam tablets etc. from which an acceptor can freely choose the one that suit best but gradually shifted its emphasis towards sterilization.

The Fifth Five year plan 1974-78) actually operated for four years and which underwent drastic changes because of change of Government at the centre, witnessed the dramatic rise and fall in the family planning acceptance in the country. The policy document aimed at making a "frontal attack on the problem of population". The incentive money to the acceptors was substantially increased and was related to a sliding scale to the number of living children after which a couple came forward to accept sterilization. Thus, the performance in the family planning programme in the year 1976-77 was the best to be realized ever with a total number of sterilization carried out touching 8.26 million. However, it is reported that during this
period, sterilization were performed often on unwilling, and unmarried persons of unproductive age and the scheme was misused and put to dispute by unscrupulous workers. This misuse created a wave of resistance in the country consequently the government at the centre due to the general elections in 1977 changed and the whole programme of population control and family planning became a victim of political controversies. The new government changed the ‘family planning’ to ‘family welfare’. There was some departures from the 1976 policy as to the approach of the government in achieving the targets. While the earliest policy did not consider it a practical solution to wait for education and economic development to bring out a drop in ‘fertility’ and desired to achieve the goal through a “direct assault” on population problem, the 1977 policy desired to achieve the same goal through the programme of education and motivation. The 1976 policy allowed the state governments, if they deem it necessary to enact legislation for compulsory sterilization but the 1977 policy was totally against the legislation but insisted on education, social consciousness and motivation and emphasized on all methods of family planning not only on sterilization.

The performance in the field of family planning programmes, as in other fields during 1980-83 has shown steady improvement with a restoration of the tempo of the programme on the firm basis. But still inspite of all these efforts and programmes of the government to control the population growth it is revealed that we are no where near the target. The government continued extending the time limit of achieving the desired optimum birth rate. But still the government is continuously making efforts to control the population growth which is the foundation of socio-economic development of the country. Not to go much detail in the causes of failure
to achieve the aimed target through the various programmes of family planning the important point is that ‘sterilization’ as a means of fertility control has been gaining wider acceptance in India. It has been described as the action of depriving of virility. Sterilization is a process by which the conveyance of male sperm or the female ovum is prevented by a permanent barrier to their passage through the restrictive ducts. This is an effective, safe and acceptable means of fertility control. Sterilization can be performed on both men and women. It is ligation of Vas in male (vasectomy) or the tube in female (Tubectomy).

Vasectomy is a minor surgical process carried out under a local anesthetic taking about a quarter of an hour to perform, whereas, tubectomy operation is performed under general anesthesia; the woman is allowed out of bed after 24-28 hours but remains in hospital for 6-8 days and discharged after removal of the suture. Sterilization does not affect sexual desire or performance. There are, of course, instances where sexual incompatibilities have been reported to have developed due to increased libido either in the husband or wife. This does not have any physiological bearing but is mostly psychological due to release from fear of pregnancy. However, in the vast majority of cases this very psychological factor results in establishment of more harmonious fulfilled and balanced conjugal life leading to a very large measure of marital happiness.

Regarding the regulatory mechanism the only notable thing that in early stages, the government issued directions requiring the doctors to obtain written consent of both husband and wife for sterilization of either. The government further decided that for vasectomy it would be sufficient to get a statement from the person concerned to the effect that he has
obtained the consent of his wife. In case of tubectomy, the instructions required that written consent of both husband and wife be obtained. The operating doctor is further obliged to explain the nature of this operation to the patient and preferably if possible, to both the marriage partners. The guidelines further provides that only the gynaecologists and surgeons are competent to perform such operations. Generally, male sterilization are to be done by male doctors and they can not perform sterilization operation upon female patients except under special circumstances. It also provides that they had to maintain the clinical and other facilities required for the sterilization operations. However, no penal sanction in guidelines exist in case of violation of these official directives and administrative instruction in case of any harm or injury suffered by the patient what remedy would be available to the patient against the doctors. The guidelines do not provide any clear qualification or experience or standard of professional skill and care. So the remedy available to the patient in case of injury or damage to go to the Court on the ground of medical professional negligence because in absence of any legislative measure to deal with the cases of sterilization and in absence of mentioning the specific qualification and experience it is true at its place that the doctor while performing the sterilization operation should possess the professional skill and should adopt all possible care which is a basic requirement of medical ethics in case of violation he will be liable to the patient/consumer for medical/professional negligence. There is a remarkable judgement of Mahya pradesh High Court in Juggan Khan Jamshan Khan V. State\(^{105}\) in which the court held that “certainly a patient who puts himself under the treatment of medical practitioner, qualified or otherwise, gives an implied consent to suffer the harm and to take the risk.
There is no doubt about it, but where the so-called medical practitioner is not qualified or beings to apply a medicine which no man in his senses would dare to apply, such consent is not a free consent. If a person sets out to be a doctor without knowing anything of the job and tries to do the best he could under the circumstances he would still be not acting in good faith because he has set himself up as a doctor without the appropriate education training and experience.”

In this way no doubt there is no specific regulatory mechanism to deal with the qualification, experience and standard of care while performing sterilization operation but it is clear that if a person who do not possess proper qualification, experience and not adopted the reasonable professional skill of care will be liable for any injury or damage suffered by the consumer of service on the ground of medical/professional negligence and in this situation he can not take the plea of good faith and he will be exposed to civil liabilities.

So it is clear that the medical practitioner before providing a sterilization operation to the consumer make it sure that he is possessing qualification experience and professional skills and have appropriate facilities other wise he will be liable to the consumer for medical negligence. In this way the protection to the consumers in case of deficient sterilization operation resulting in injury or damage is available but it is not a direct protection or no direct remedy is available to the consumer in absence of any specific regulatory mechanism in the field of sterilization the consumer can envoke the remedy against the negligent doctor on the ground of medical negligence under sec. 320 of IPC and he will be subjected to the lengthy, technical and cumbersome procedure of the
traditional legal system. In this way it was required that there must be some specific legislation to deal with sterilization cases and to provide the direct protection to the consumer’s of medical services in sterilization operations.

Though no specific legislation was passed to deal with the cases related to sterilization operations. In 1986 the consumer protection Act 1986 was passed which intend to provide the protection to the consumers in case of deficient medical services but here also the decision in case related to ‘sterilization failure’ are not giving a good sign as in *shmt. Jaiwati V Parivar Sewa Sanstha and Another.* In this case the complainant undergone sterilization but she conceived after sterilization. The complainant claimed the damages for sterilization failure. The point for consideration before the Delhi State Commission was that whether it can be stated that the opposite parties were guilty of such an error which no doctor of reasonable competence would commit. It was found that there are numerous medical studies which testify the fact that all methods of sterilization specially in case of female have a certain failure rate since the risk of failure is inherent in the procedure.

In the ‘Principles of Gynaecology’ by Sir Norman Jeffcoat, it has been observed:

“No method, however, is absolutely reliable and pregnancy is reported after sub-total and total hysterectomy, and even after the hysterectomy with bilateral saplingectomy. The explanation of these extremely rare case is a persisting communication between the ovary or tube and vaginal vault. Even when tubal occlusion operations are competently performed and all technical precautions taken, intra-uterine pregnancy
occurs subsequently in 0.3% cases. This is because an ovum gains access to spermatozoa through a recanalized inner segment of the tube;

The Test Book of ‘Obstetrics’ by Dr. D.C. Dutta provides the chances of failure in sterilization operations.\(^{107}\)

In the Training Manual’ issued by the Department of Health and Family welfare, Government of Himachal Pradesh, the procedure of sterilization is stated wherein a mention has been made of failure rate.\(^{108}\)

The state commission after going through the aforesaid extracts from the reputed medical texts, held that—

“The risk of failure is inherent in sterilization specially in female. The risk can not be obviated despite due care and caution. Risk of failure, being a risk inherent in the procedure and therefore it cannot be said that the opposite party was in any way guilty of negligence merely because the procedure has failed.”

In A.P. Joseph V Khurijanamma Mathai\(^{109}\) the Kerala state commission held, on complaint related to failure of sterilization, that the medical profession testified that 100% success could not be assured in these cases, so failure of sterilization is not a negligence.

In a case of pregnancy after tubectomy operation, it was found that the doctor who conducted the operation was experienced in this kind of work. The A.P. State commission proceeds further in N. Sandhya Rani (Dr.) V. M. Kalpana\(^{110}\) and said that no complication or disorder developed after the operation. The average failure of such operations was 02.%. The complainant conceived 2\(^{1/2}\) years after the operation. There might have been a reunion of the tubes in the natural course of things during the 2\(^{1/2}\) years.
period. Doctors can not be held negligent. In parallel circumstances, an English court in *Eyre V. Measday* held surgeon liable because he had failed to warn the patient that there was minute risk (less than 1%) of failure and of pregnancy and compensation granted for pain of unwanted pregnancy. Though it was not insisted by law not it is mentioned on the application form but there has been a directive of Royal College of obstetricians and Gynaecologists that chamberlain not only mention the small failure rate but also adds that he would be prepared to such a patient and consider termination of any such pregnancy. Mr. Justice Hirst held in the Queens Bench Division that a surgeon advising a patient on risk of undergoing a major operation was under a duty to inform the patient according to the practice adopted about the side effects but not under a duty of full disclosure. This left a point in favour of the failure sterilization and professional standard is still to be decided by the courts. Mr. Justice Hirst said, “In every case the courts be satisfied that the standard contended for on the doctor’s behalf accords with the substantial body of medical opinion”. The English courts had taken the view that in diagnosis, treatment and surgery a physician/surgeon had to exercise such care as accorded with the standards of reasonably competent medical men at that time. In this way the English courts also presumed that the average woman will understand the risk of failure without specific mention of such failure. In this way the English courts, like the Indian courts and consumer courts, started giving the benefit of doubt i.e basis of the chance of failure in sterilization operation specially in female sterilization and repealed the principle that the patient specially in case of female should be informed about the minute failure risk in the sterilization operation and left the
English consumers only to take the compensation on medical/professional negligence in case of any loss or injury if the surgeon who performed the operation is not a properly qualified, experienced not possessed the required professional skill and care. In this way it is clear that in cases related to failure of sterilization doctors are getting the benefit of doubt regarding the established principle of medical education which provide a very low rate for the failure of sterilization. This principle is accepted by consumers court also and the consumer of sterilization operation services had only remedy in case of medical negligence resulting in any injury to the physical or mental status or developed any disorder. So, the consumer courts no doubt protects the consumer of deficient medical services but do not protects the cases of failure of sterilization and provide the remedy in case of medical negligence resulting in any injury to the physical health or disorder in the body of the consumer.

As in *Joseph Alias Animon V. Dr. Elizabeth* In this case Mary aged 24 years undergone a sterilization operation and discharged on the same day and after 20 days she was admitted again having complain of pus and faecal matter and died due to perforation caused to her small intenstine. It was alleged by the husband of Mary that the sterilization caused in a very brutal manner after tying her hands and legs without giving anaesthesia and in an unhygienic operation theatre that causes infection which resulted in her death. The brutality was recorded in the dying declaration. In this case the court found the allegation true and considered it as serious negligence of doctor and the court said that the defendants are negligent in conduct and consequently she died and no compensation can meet the end of justice. The grave and substantial injury of the nature suffered by the plaintiff, no
amount of money would be a ‘perfect compensation.’ Compensation of 15 lacs was awarded in this case.

In *Rajider Lal V. Dr. Rulda Singh* In this case Lalita Bai expired during tubectomy operation. Husband claimed compensation. The enquiry committee said that “Death was caused by neurogenic shock resulting in cardiac arrest caused by the insertion of pneumoperitoneum.” The doctor who did the operation besides being M.S. in Gynaecology has performed 10 to 12 thousand sterilization in the past. But the notable point was that in operation theatre there was no arrangement to meet the emergency in case of cardiac arrest.

The High court of Rajsthan in this case considered it a negligence and said that we feel that the life of the patient could have been saved if adequate resuscitative facilities had been available. Considering it a case of medical negligence the High Court awarded a compensation of 1 lac.

So, it is clear from the above discussion that the consumer who avail medical services for sterilization operation can not get any relief in case of sterilization failure as it is a well established principle of medical science that every sterilization operation had a minute chance of failure and doctors are getting the benefit of doubt. The only remedy available to the consumers in the law is to get to compensation if he suffers any injury, damage or any bodily disorder caused by the negligence of the doctor. So the professional/Medical negligence is only ground available to the consumer but not in case of sterilization failure. But the absence of any penal provision the courts are simply awarding compensation which is not a perfect remedy and not meet the end of justice in case of brutality and grave
and serious injury suffered by the consumer even lost their lives only because of the negligence of the doctor as observed by the Orissa High Court in *Joseph Alias Animon V. Dr. Elizabeth*. So it is necessary to have a specific legislation to deal with the cases of sterilization operation with severe penal punishment or like provision should be made in existing laws so that the interest of the consumer could be saved against medical negligence and prevent the doctors to make the sterilization operation without proper qualification, experience, reasonable professional skill and proper arrangement of care and systems to meet out any emergency. Then the philosophy of consumerism will be established in its true sense.
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(C) CONSUMER PROTECTION AND PRIVATE PRACTITIONERS/HOSPITALS

No doubt these regulatory mechanisms have some echo of consumer protection but not effectively. With the passage of the Consumer Protection Act, 1986 it was tried to bring the medical services within the ambit of this Act which was resisted by the medical professionals and a controversy was started as to the inclusion of medical services in the Act and discussed in the judicial pronouncements before setting the controversy to an end. The discussion on this issue can be conveniently divided into two parts for, cases involving medical negligence have been filed both against the state-run hospitals and doctors working in these hospitals as well as against private medical practitioners and nursing homes. Further, as already mentioned above, whereas on the one hand the National Commission has held that the services rendered by state-run hospitals are rendered without any consideration and has thereby declared them out of the ambit of the 1986 Act, it has, on the other hand, declared the services rendered by private medical men to be within the ambit of the Consumer Protection Act. The private medical practitioners and consumer activists are thus holding totally opposite and contrary points of view on the issue. Therefore, it may be interesting here to discuss some of the prominent cases which have come up before the Consumer Forums - both against the government hospitals as well as against private practitioners and nursing homes.

The First controversy concerns applicability of the Consumer Protection Act 1986 to private doctors, hospitals and nursing homes which, too, has started primarily due to the conflicting decisions
pronounced by some of the State Commissions. *Gulamabdul Hussain v. Katta Pullaiah Choudary*\(^1\) was perhaps the first reported case on the subject. In this case the complainant was the father of the deceased Gulam Abdul Roshan, himself a registered medical practitioner. The deceased had developed an abscess in the private part of his body. On 22 September 1986, he consulted K.P. Choudary, a medical practitioner and a surgeon. The complainant alleged that it was on the advice of Dr. Choudary that the deceased joined the clinic on the same day. He was operated upon and was discharged from the hospital. The deceased developed high fever and pain in his right leg and after two days he was unable to move due to heavy swelling and severe pain. In that condition, he was taken by his friends to Dr. Choudary. He was treated at this clinic for 3 days till 26 September, when the complainant was asked to take his son to the Osmania General Hospital at Hyderabad for treatment. At about 6 a.m. on 27 September, the complainant got his son admitted in the emergency ward of that hospital. The doctors of this hospital opined that Choudary should have advised the patient to go to this hospital in the first instance instead of opening the abscess by himself. The doctors further declared that the kidneys of the patient had failed due to the opening of the abscess by the opposite party. The patient was kept on dialysis till 3 p.m. The doctors then advised the complainant to take his son to another hospital for treatment. While the complainant was taking his son to that hospital, he died. The complainant, father of the deceased, filed a petition claiming compensation of Rs. 5 *lakhs* alleging that his son had died due to the negligence of the opposite party.

A preliminary objection was raised on behalf of the opposite party that the complaint was not maintainable under the provisions of the
Consumer Protection Act 1986 as the services rendered by a doctor to a patient, which were in the nature of personal and professional services, did not come within the definition of 'service' under the Act and that the complainant did not answer the description of a consumer. It was further contended that the services referred to in the 1986 Act covered only such services which were provided in connection with goods and they did not cover services rendered independently and having no connection with any goods.2

Thus the main issue involved was whether the services made available by doctor for a consideration to a potential user could come under the definition of the term 'service' under the Act. The Andhra Pradesh State Commission answered the question in the affirmative and elaborated the term 'service'.3

The general rule of construction is not only to look at the words, but to look at the context of the collection and the object of such worlds relating to such matter and interpret the meaning according to what would appear to be meaning intended to be conveyed by the use of the words under the circumstances.4

The State Commission accordingly observed, that "if a doctor makes available his services to potential users for a consideration, there is no reason why such services shall be excluded from the definition of 'service' under the Act."5

The above decision by the Andhra Pradesh State Commission was followed by two similar decisions by the Maharashtra State Commission in Motibai Dalve Hospital v M.I. Govikar6 and Kerala State
Commission in *Vasantha P. Nair v. Messra Cosmopolitan Hospitals (P) Ltd.*\(^7\) In the latter case, for instance, the Kerala state commission made the significant observation on the doctor-patient relationship that "where a patient is admitted in a hospital and put in charge of a doctor, what really takes place is hiring of the services of the doctor by the patient."\(^8\)

The Commission concluded that, "there is, in a general sense, a personal element in the medical officer's service to their client but we do not think they can be called personal service".\(^9\)

The decision of the Kerala State Commission was followed further by similar decisions of the Tamil Nadu State Commission in two consecutive cases\(^10\) and also by two opposite and contrary decisions - one each by the Karnataka\(^11\) and Gujarat State Commissions.\(^12\)

On the other hand in *Mappooyan v. Permavathy Elango*,\(^13\) where the wife of the complainant was examined by the respondent, a government doctor also have private practice who prescribed some medicines. In the second visit, the respondent administered some test injection to her. She fell unconscious and collapsed. On being removed to the government hospital, she was attended to by other doctors but she could not revive. It was alleged by the complainant that the death of his wife was due to the negligent and careless treatment administered to her and claimed a compensation of Rs. 1,00,000. The opposite party resisted that complaint. She contended that the complainant's family was on friendly terms with her and that she had treated the complainant's wife free of charge. It was contended that the relationship between the doctor and the patient was a 'contract of personal service' and was therefore
outside the scope of the Consumer Protection Act 1986.

The District Forum, however, found that the petitioner's wife was treated by the respondent for charges paid by her and that it was not a free treatment by it held that the relationship between doctor and patient was a 'contract of personal service', not falling within the ambit of section 2 (1) (O) of the Act and that petition was, there fore, not maintainable. The Tamil Nadu State Commission, however, expressed disagreement over the division of the District Forum. The State Commission held that the relationship between a medical officer and a patient was "not a contract of personal service", but a "contract of professional service" falling within the ambit of the 1986 Act. The commission also found that the petitioner's wife was treated by the respondent doctor free of charge as "it was not unusual for a doctor to treat family friends free of charge." the Tamil Nadu State Commission held that the relationship between a doctor and patient was not a contract of personal service.

In the second case, Navaneethan v. Dr. Rathinasamy the State Commission made the following similar observations that:

The medical treatment rendered to a patient by the doctor is clearly a service falling within the ambit of section 2 (1)(o) of the Act. It is not a contract of personal service.

On the other hand, the Karnataka State Commission in Y. Meenakshi v. H. Nandeesh expressed a totally opposite view to the one expressed by the Kerala and Tamil Nadu State Commissions respectively. In this case the complainant was admitted to the respondent's nursing
home for her second delivery in August 1980. Her first delivery had been a normal one. Her family doctor, her brother-in-law and her grandmother had accompanied her to the nursing home. After assuring her family doctor and brother-in-law that the companion could have a normal delivery, the respondent suddenly changed his decision after their departure, and decided to perform caesarian operation taking a thumb impression of the grandmother to give consent to the operation. According to the complainant, the respondent performed the operation in a grossly negligent and utterly careless manner which led to complications and her re-admission to the nursing home in 1987 which ultimately led to damage in one kidney. The complainant claimed compensation of Rs. 9,61,511. The respondent restated the complaint, *inter alia*, on the ground that he had rendered his services to the complainant under a contract of personal service. The Karnataka State Commission accepted the argument of the respondent and accordingly dismissed the complaint petition.\(^1\)

The Gujarat State Commission in *Subash Chandra N. Pandya, Secretary, Vadodra Sahar Grahak Mandal v. Shailesh J. Shah*\(^2\) also expressed a view similar to that of the Karnataka State Commission.\(^3\)

The decisions of the Andhra Pradesh, Kerala and Tamil Nadu State commission ultimately found favour with the National Commission in *Cosmopolitan Hospitals v. Vasantha P. Nair*.\(^4\) The National Commission expressed complete agreement with the observations of the Andhra State Commission and especially the Kerala State Commission that, while a medical officer's service may loosely be called personal, it
will be incorrect, infelicitous and crude to describes it as 'personal service.'

Thus the National Commission, by its decision in the above case, had endeavoured to set at rest, at least for the time being, the controversy concerning the governance of the private medical practitioners, hospitals and nursing homes by the Consumer Protection Act 1986.

Whereas the above decision by the National commission evoked strong criticism by the whole medical profession, it was also followed by a large number of similar decisions by various State commission where medical professionals have been held guilty of professional misconduct and negligence. In addition, in certain cases, some of the State Commissions have even awarded handsome compensation to the aggrieved patients and their representatives. For instance, the Maharashtra State Commission took the lead by awarding a compensation to the tune of 2 lakhs and 7 Lakhs respectively to the patients in the following two cases. In B. Shekhar Hedge v. Sudhanshu Bhattacharya the complainant, a government employee, was admitted in a private hospital for Coronary Artery By-pass 'Graft Surgery' under a package admission for 21 days which included all medical charges, operational charges, service charges, etc., which are reimbursed to the government employees under the Central Government Health Scheme. He paid Rs. 40,000 for which a receipt was given to him saying 'Post-operative care stretched for three months.' The patient alleged that after the operation he developed certain complications but despite his repeated visits to the doctor concerned, he was not rendered any post-operative care, thus putting his life into danger.
and causing him immense mental and bodily suffering. The opposite party took the usual plea that the services of a doctor were under a 'contract of personal service'. The Maharashtra State Commission, however, did not accept this contention. The state Commission observed:

Section 2(1)(o) of the Act defines 'service', which is an inclusive definition. such inclusive definitions are very generally used to enlarge the meaning of words or a phrase/s occurring in the body of the Statute, and when it is so used these words or must be construed as comprehending not only such things as they signify according to their natural import but also those things which the interpretation clause declares they shall include.26

The state Commission, while referring to the observations of the Supreme Court that the beneficial legislation should be construed liberally, further observed:

In our view, the aforesaid decision...... clearly show that the contract of service to render post operational care in the instant complaint falls within the scope of Consumer Protection Act.27

To the question whether the fee paid to a medical practitioner for operation included post-operative care also, the Commission categorically stated that, "in fact, fees paid to a medical practitioner for operation included, post operative care".28

Accordingly, the doctor was asked to pay to the complainant, a sum of Rs 2,00,000 by way to compensation for causing "mental distress and physical sufferings."29
Similarly, in *Heirs and LRs of the Deceased Arvind Kumar Himmattat Shah v. Bombay Hospital Trust*, a complaint was made against the Bombay Hospital Trust, Bombay regarding carelessness and negligence while treating a patient, as a result of which the patient had died. The husband of complainant No. 1 and father of complainants No. 2 to 4 was admitted in the Bombay Hospital for an operation on his left hip. The patient died on the very next day of the operation allegedly due to negligence of the opposite party. It was alleged that after the operation, the wound was continually bleeding till the death of the patient and that no proper blood was administered to him. It was further alleged that no senior doctor attended upon him and that as a result of continuous bleeding the patient had died. It was complained that the attendants of the deceased were not forewarned to keep ready a sufficient stock of blood in the event of emergency and that no outside doctor of their choice was permitted to treat the patient. According to the complainants, the patient had died on account of the serious deficiency in the service rendered by the opposite party. The complainants further alleged that due to the death of the patient, complainant No. 1 lost her husband and complainants Nos. 2 to 4 lost their parent who was the sole bread earning member in the family. They accordingly claimed a compensation of Rs. 7,00,000. The Maharashtra State commission accepted the complaint. The State Commission observed that the life expectancy of a person due to the modern facilities had been held to be up to 75 years and in view of the earning capacity of the deceased, the said compensation was justified. Accordingly the opposite party, the Bombay Hospital Trust, Bombay was directed to pay this amount of compensation together with interest at 12 per cent per annum to the complainants.
The Orissa, Haryana, and Tamil Nadu State Commissions also followed the decision of the National Commission. In *Anuradha Sahoo v. Orissa Nursing Home*\(^{31}\) the Orissa State Commission specifically held that the treatment in a nursing home for payment was service rendered within the meaning of the Consumer Protection Act 1986 and accordingly the complainant in this case was held entitled to Rs. 1,00,000 as compensation an account of deficiency in service by the opposite party.

The decision of the National Commission in *Cosmopolitan Hospitals* case was also followed and further fortified by the decision by the Haryana State commission in *Sachin Aggarwal v. Dr. Ashok Arora*.\(^{32}\) Though negligence of the opposite party could not be proved in this case, the State Commission observed that "it is the duty of the redressal agencies to safeguard them (consumers) against malpractices by medical professional".

Similarly, the Goa State Commission in *Ramanand B.Raikar v. Salgaonkar Medical Research Centre*\(^{33}\) has held that the hospital who renders services to a patient for consideration is liable for payment of compensation if its services are found deficient.

From the above discussion, it is crystal clear that according to the consumer courts, the services provided by the private medical practitioners, hospitals and nursing homes are within the purview of the consumer protection Act 1986 as they are not services rendered under contract of personal service but are services of a professional nature.

But the notion of contract of professional service is a controversial one as the private medical practitioners claims the
professional immunity on this ground and contends the exclusion from the ambit of the jurisdiction of the consumer protection Act 1986. But the landmark judgement, and the final words till date in this connection given by the Supreme Court in *Indian Medical Association v. V.P. Santha*[^1] has set at rest all these controversies related to the governance of medical professionals by the consumer protection Act and not only rejected the principle of contract of personal service the main contention of medical practitioner but also the principle of professional immunity of doctors and and gave a new principle to establish the doctor-patient relationship as 'contract for service' and brought the private medical practitioner within the ambit of Act without any if and but. The Supreme Court while rejecting the notion of 'contract of personal service' and 'contract of professional service' held that -

"the relationship between a medical practitioner and a patient carries within it certain degree of mutual confidence and trust and, therefore, the services rendered by the medical practitioner can be regarded as service of personal nature but since there is no relationship of master and servant between the doctor and the patient the contract between the medical practitioner and his patient can not be treated as a contract of personal service but is a contract for services and services rendered by the medical practitioner to his patient under such a contract is not covered by the exclusionary part of the definition of service contained in sec. 2(1)(0) of the Consumer Protection Act".

In connection of 'contract of professional service' if we go through the concept of profession and professional liability it is clear
that the profession differs from occupation. According to Rupert M. Jackson and John L. Powell, the occupations which are regarded as professions have four characteristics, viz.

(i) the nature of work which is skilled and specialized and a substantial part is mental rather than manual;

(ii) commitment to moral principles which go beyond the general duty of honesty and a wider duty to community which may transcend the duty to a particular client or patient;

(iii) professional association which regulates admission and seeks to uphold the standards of profession through professional codes on matters of conduct and ethics; and

(iv) high status in the community.

In this context the medical occupation has been accorded the professional status. As far as the professional liability is concern it differs from other occupations for the reason that professions operate in spheres where success can not be achieved in every case and very often success or failure depends upon factors beyond the professional man's control. Immunity from suit was enjoyed by certain professionals on the grounds of public interest. The trend is towards the narrowing of such immunity and it is no longer available to few professions. But medical practitioners do not enjoy any immunity and they can be sued in contract or tort on the ground that they have failed to exercise reasonable skill and care. but the medical practitioners contended that they are governed by the Indian medical Council Act and are subject to the disciplinary
control of Medical Council of India and/or state Medical councils so they can not be governed by the consumer protection Act or any other law. In this way the principle for liability of private medical practitioners for negligence laid down by the consumer courts was continuously a controversial one and a conflict between the 'contract of personal service' and 'contract of professional' service in my opinion would have been remain continued if the supreme court would have not cornered all these things and specifically emphasised on 'contract for service' and made the private medical practitioner specifically on this ground.

So it is clear that the services rendered by the private medical practitioner are with in the ambit of consumer protection Act and liable for negligence.

So, the services rendered by the private medical practitioner on payment basis to a patient by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in sec. 2(1)(0) of the Act. In this way this is clear that the service provided by the private medical practitioner on payment are within the ambit or the consumer protection Act 1986 and this relationship is a contract for service and nothing else.

(D) CONSUMER PROTECTION AND GOVERNMENT HOSPITALS

The controversy concerning the inclusion or exclusion of services rendered by medical practitioners and hospitals in general appears to have started from the decision of the Rajasthan State Commission in *Consumer Unity and Trust Society, Jaipur v. State of Rajasthan*\(^35\) wherein the Rajasthan State Commission had held that
complaints against the services provided by government hospitals were not maintained under the Consumer Protection Act 1986. Here the complaint was filed by a Jaipur-based voluntary consumer organisation on behalf of a lady who underwent an abdominal tubectomy operation at the government hospital, Kota (Rajasthan) as part of the Family Planning Programme. She developed serious complications after the surgical operation, reducing her to the condition of a physically invalid person, suffering continuous physical pain as well as great mental agony. It was alleged in the complaint that what was a simple surgery had resulted in such serious complications to the patient on account of negligence on the part of the civil surgeon who had performed the operation as well as due to the lack of proper post-operative care and attention. The complainant demanded compensation for the loss and injury suffered by the patient.

The Rajasthan State Commission dismissed the petition on the ground that, neither the lady nor her husband, had 'hired' any service for consideration for the purpose of performing the operation for sterilisation and thus, neither of them could be considered as a 'consumer'. The correctness of the conclusion was challenged before the National Commission in appeal.

In view of the great general importance of the question raised in the appeal, and seriousness of the consequences that would follow from a decision thereon, the National Commission gave careful consideration to it. Since the determination of the question involved was essentially to be based on interpretation of the words used in the definition section of the
statute in the light of well-recognised legal principles, it requested a Supreme Court advocate, to assist the Commission as *amicus curiae*.

The advocate emphatically argued before the National Commission that the hospitals established by the government - central or state - are funded from the consolidated funds of the Government of India/state governments concerned and revenues which were raised in the form of direct as well as indirect taxes. Accordingly, it was pointed out by him that every person who was a residence of India paid taxes, if not directly at least indirectly, since excise duty, custom duty, sales-tax, etc., are levied on almost each and every single item that a person has necessarily to purchase for his day-to-day requirements. Dealing with the question whether payment of tax could be regarded as payment of consideration for service, it was submitted by him that tax being a burden or charge imposed by the legislative power on persons or property to raise money for public purpose, was to be regarded as "the enforced proportional contribution of persons and property levied by the authority of the state for the support of Government and for all public needs." He relied on the observations of the Supreme Court of India in *Jagannath Ramanuj Das V. The State of Orissa* that tax-payer gets is the participation in the common benefits of the state.

He laid stress on the fact that in the relatively recent decision of the Supreme Court in *Sreenivasa General Traders V. State of Andhra Pradesh* the court had deviated perceptibly from the dictum that had earlier been laid down in the *Commissioner, Hindu Religious Endowments, Madras V. Lakshmindra Thirtha Swamiar of Sri Shirur*
and had categorically observed that the element of quid pro quo was not necessarily absent in every tax. According to the counsel, the legal consequence that followed from the aforesaid dicta of the Supreme Court was that tax had to be regarded as a compulsory extraction in return for which the tax-payer gets the opportunity to avail of the common benefits, including such benefits as medical services provided in government hospitals. Thus according to him, the position that emerged was that the medical services provided by the government hospitals were paid for by the tax-payers and hence it would be incorrect to say that such services provided by the government hospitals were not services rendered for consideration.

Another line of argument advanced by him was that India being a welfare state as envisaged in the Preamble to the Constitution and especially in view of the provisions of articles 14, 21, 23, 24, 38, 39, 41, 43, 45 and 47 of the Indian Constitution, the state was expected to play a key role in the protection and promotion of the economic and social well-being of its citizens and its duties included the provision of basic education and health services. Reliance was placed on the observations of the Supreme Court in *D.S. Nakara V. Union of India*\(^40\) that the basic framework of socialism was to provide a decent standard of life to working people and provide them the security from cradle to grave. Reliance was also placed by the counsel on the observations contained in *Bandhawa Mukti Morcha v. Union of India*\(^41\) that the right to life guaranteed under article 21 includes also the right to live with human dignity and protection of health and strength of the residents in India. The
attention of the court was also invited to the Directive Principles of State Policy incorporated in articles 41, 42 and 47 of the Constitution wherein the state is directed to make effective provisions for securing their right to procure public assistance in case of sickness and disablement, provision of maternity relief and for improvement of public health. On the basis of these constitutional provisions it was forcefully urged before the National Commission that the state, which expression included the government at the central and the state level, was under a constitutional obligation to provide proper health care to all residents of this land.42

Dealing with the words 'hires any services' occurring in section 2(1)(d)(ii), the counsel urged that the expression 'hire', has been used therein in the sense of 'avail' or 'use'. According to him, the definition should be understood as stating that consumer, means "any person who avails or uses any services...".43 The counsel reiterated his earlier submission that payment of taxes constituted valid consideration to satisfy the requirement of the definition that the service must have been hired for 'consideration'. It was also urged that even assuming that the person who actually availed himself of the service in the government hospital had not paid any taxes, he was in the position of a beneficiary of the services which had been paid for by other tax-payers. In making this submission, the counsel was obviously seeking to rely on the last part of the definition of 'consumer' contained in section 2(1)(d)(ii), which states that the said expression includes any beneficiary of such services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.
With regard to the exclusion clause contained in section 2(1)(o) which defines 'services', it was contended by the counsel that the expression 'services free of charge' was not necessarily to be construed as meaning only 'service free of remuneration or mandatory reward'. It was submitted by him that the expression 'charge' had several meanings including duty, burden or obligation. He urged that the government in a welfare state was charged or burdened with a duty or obligation to provide medical/health service to the people and hence the service rendered by the government hospitals could not be regarded as 'service free of charge' so as to fall within the exclusion clause contained in section 2(1)(o). He laid stress on the fact that while the word used in section 2(1)(o) was 'charge', the expression used in section 2(1)(d) was 'consideration' and that when Parliament had used two different expressions in the statute, it should be deemed to have used them to convey different meanings. Hence according to him, it would not be right to equate the expression 'charge' with 'consideration'.

Lastly, it was submitted by the counsel that having regard to the fact that the Consumer Protection Act 1986 was a measure of social welfare intended to confer the benefit of expeditious and effective redressal of grievances of consumers, its provisions should be liberally construed in such a manner as will advance the object and purpose of the statute and suppress the mischief sought to be remedied.

On the issue of interpretation of statute, the National Commission made the following interesting observations:

It is, of course, true.... that while construing the provisions of a legislative enactment, the general rule of interpretation is that the
language used in the statute should be so interpreted as to promote the object and purpose of the act provided that the words used are legally susceptible of conveying such a meaning.46

The Commission further observed:

In considering any economic or social legislation, we need to attach primary importance not to the letter of the law but to the spirit behind it, to attempt to interpret the intention of the legislature. It is in this wider context that we are inclined to accept the stricter and legal definition of the terms "consumer" and "hiring for consideration" in the Consumer Protection Act.47

According to the National Commission, on a strict reading of the provisions of the 1986 Act as a whole, it was clear that in enacting the statute the intention of Parliament was to provide protection and relief to the four categories of consumers and it was in the context of the general scheme of the Act that the definition of the expression 'consumer' contained in section 2(1)(d)(i) and to be interpreted. The Commission held that in order to satisfy the said definition, a person should have "hired any services for a consideration".48 It was of the view that this was the ordinary, plain, grammatical meaning of the expression 'hire', as popularly understood and it would appear reasonable to assume that it was only in this sense that the word had been used in section 2(1)(d)(ii) of the Act. If Parliament had intended to treat any person who availed himself of any services as a consumer, one should have expected the opening words of sub-clause (ii) to be 'avails himself of any services'. According to the National Commission Parliament had instead used the
expression 'hire', in contra-distinction with the expression 'avail of' occurring in the subsequent part of the same sub-clause. The use of two distinct expressions in different parts of the same sub-clause was an indication that they were not meant to convey the same meaning.49

On the issue whether the direct and indirect taxes paid to the state by a citizen did constitute 'consideration' for the services and facility provided to a citizen by the state, the Commission referred to the decision of the Supreme Court in Commissioner, Hindu Religious Endowments, Madras v. Lakshminda Thirtha Swamiar of Sri Shirur Mutti50 that a tax is the compulsory extraction of money by public authority for public purposes enforceable by law and was not payment for service rendered.

Similarly, in Southern Pharmaceuticals and Chemicals, Trichur v. State of Kerala51 the Supreme Court after considering various decisions including the one cited above distinguished 'fee' from 'tax' in these words, "fees are the amounts paid for a privilege, and are not an obligation, but the payment is voluntary".52

According to the National Commission, the same principle had again been restated by the Supreme Court in its decision in Municipal Corporation of the City of Baroda v. Babubhai Himatlal.53 The identical view was again reiterated by the Supreme Court in Sreenivasa General Traders v. Andhra Pradesh54, where the court had observed:

The distinction between a tax and a fee lie primarily in the fact that a tax is levied as part of a common burden, while a fee is for a specific benefit or privilege although the special advantage is secondary
to the primary motive of regulation in public interest. If the element of revenue for general purpose of the state predominates, the levy becomes a tax.55

The National Commission, therefore held that, in the light of pronouncements of the Supreme Court, the legal position must now be taken to be well settled that unlike a 'fee', a 'tax' in its true nature was a levy made by the state for the general purposes of the government and it could not be regarded as payment for any particular or special service. The Commission observed that, while it was undoubtedly true that the government in a welfare state was under a duty to provide various forms of facilities to citizens and the expenditure incurred thereon was to be met from out of the consolidated funds of the state, it could not be said that a tax levied for the general purposes of the state constituted 'consideration' for any specific facility, benefit or service provided by the state. Thus according to the Commission, the contention advanced by the counsel that the payment of direct or indirect taxes by the public constituted 'consideration' paid for hiring service rendered in the government hospitals could not be accepted as correct.56

The National Commission, therefore upheld the decision of the Rajasthan State Commission and observed:

The conclusion is inevitable that persons who avail themselves of the facility of medical treatment in government hospitals are not 'consumers' and the said facility offered in government hospitals cannot be regarded as service "hired" for "consideration". Hence no complaint under the Act can be preferred either by any such person or by a consumer association on his behalf.57
The Commission gave the following justification for its decision and for the stricter interpretation of the statute:

It is possible, indeed it is likely, that by opening up the definition of the term "consumer" to all users of the Government Hospitals, we may invite a flood of irresponsible litigation, especially since the forum is available free of cost to all complaints.\(^{58}\)

The Commission, however, made a suggestion that an amendment should be made in the statute to remove the ambiguity. The Commission observed:

We feel that while we continue to be governed by the interpretation we have accepted, this is a matter where the Parliament, if it so wishes, can review the matter and amend the Act suitably so that there is no ambiguity between the intent of the law and its interpretation. It is, therefore, open to the government to enact any clarificatory amendments to extent legislation. In the absence of any such legislation, the only possible interpretation would be the one finally adopted by us, in the light of the varied consideration outlined earlier.\(^{59}\)

The decision of the National Commission in the above case was followed by its decision in *Mable Roosevelt v. State of Kerala*\(^{60}\). In this case, the complainant's husband had suffered a cardiac arrest while he was under anaesthesia for undergoing surgery in the Medical College Hospital, Trivandrum and had sustained severe cerebral damage on account of blood circulation to the brain during the period that elapsed before he could be revived. As a result, for about two years, he had been lying in the pay ward of the hospital in a semi-conscious state. A claim for
compensation from the respondent had been put forward on his behalf by his wife.

The National Commission accepted the opposite party's contention that the treatment given to the petitioner's husband had been free of charge and stated the case was governed by Consumer Unity and Trust Society, Jaipur v. State of Rajasthan. According to the National Commission, therefore, the claim for compensation brought against the state government could not be maintained. In this connection, it may be mentioned that although the petition was dismissed by the National Commission, it gave certain directions to the state government, including provision of free treatment to the petitioner's husband till he recovered from the state of total disability. According to the National Commission, this was a most unfortunate case and deserved to be approached as an "intensely human problem rather than from a purely legalistic angle". The Commission also suggested that the state government provide some suitable employment either to his wife or to any one of his two children since the petitioner was the sole earning member of his family.

The decision of the National Commission in Consumer Unity and Trust Society, Jaipur v. State of Rajasthan was also followed by the pronouncement of similar decisions by Delhi, Haryana, Karnataka, Maharashtra and Punjab State Commissions. For instance, in Ram Kali v. Delhi Administration, a case before the Delhi State Commission, in which Babu Ram, the complainant No. 2 and the husband of Ram Kali complainant N. I got himself operated for sterilisation in January 1986 in the Employees State Insurance Hospital (ESI Hospital) being run by the
Delhi Administration. The operation was performed by one V. Bhandari, defendant No. 2. The complainant was assured that the operation was successful and after one week the stitches were removed by the doctor.

In December 1988, Ram Kali was not feeling well. Her husband got her examined at Guru Teg Bahadur Hospital and was informed by the doctor that she was four months pregnant at the time. When Babu Ram got himself examined, it was found that his sterilisation operation had not been successful. The complainants alleged that it was due to the negligence of Bhandari that the operation was unsuccessful and accordingly demanded a compensation of Rs. 5,00,000 from the defendants.

The defendants denied the allegations and, *inter alia*, pleaded that the State Commission had no jurisdiction to try the complaint as the complainant was not 'consumer' within the definition of the word given in section 2(1)(d) of the Consumer Protection Act 1986:

Thus the main issue for determination was maintainability of the complaint under the 1986 Act. The hospital in question was being run by the State Insurance Corporation constituted under the Employees State Insurance Act of 1948. Normally such hospitals are meant for industrial workers. However, in view of the enormous growth of population, the Indian Government realised that its control was necessary to improve economic conditions of the population. Therefore, various hospitals were designated to perform family planning activities as per the All India Post Partum Programme of Hospitals (AIPPH). The AIPPH was a central government sponsored scheme and hundred per cent help was being given
to the state governments for implementing the programme. Now the obvious question was whether complaint could be filed against a government funded hospital. The Delhi State Commission followed the decision of the National Commission in *Consumer Unity and Trust Society, Jaipur v. State of Rajasthan*69 where the Commission had come to the conclusion that the persons who availed themselves of the facility offered in government hospitals were not 'consumers' and that the facility offered in government hospitals could not be regarded as service hired for consideration. The complaint was accordingly dismissed.70

Though the implication of the above cases is that services rendered to the patients in state run hospitals are not governed by the provisions of the Consumer Protection Act 1986, consumer organisations throughout the country are protesting against it and demanding accountability also on the part of the government hospitals and doctors. They are of the view that even though a consumer does not pay directly for the medical services in the government hospitals, the hospitals are run by the tax-payers' money and that doctors are paid salaries out of the money paid by the citizens in the form of tax. According to consumer organisation and consumer activists, the distinction drawn by the National Commission between the two words "tax" and "fee" is totally wrong and against the democratic principles. Accordingly, they have been forcefully pleading for the inclusion of government health services within the ambit of the 1986 Act.

Thus whereas the whole medical profession under the leadership of their governing body, the Indian Medical Association (IMA), was
unanimous in claiming immunity from the 1986 Act and threatened nationwide strikes and agitation against their governance by this law. Consumer activists and associations on the other hand was lobbying strongly and unequivocally with the government to bring even the services rendered by the government hospitals within the ambit of this beneficial legislation. But all these controversies came to an end with the judgement of the Supreme Court in Indian Medical Association v. V.P. Shantha. The Supreme Court in this case upheld the decision of the national commission in the Cosmopolitan Hospital v. V.P. Shantha and set all the controversies to an end. The supreme court while making a distinction between 'contract of personal service' and 'contract for service' in the context of Medical service the court said that no doubt the relationship between a medical practitioner and patient carries certain degree of mutual confidence but don't have a relationship of master and servant. So it is a contract for service, not the contract of personal service, which is covered by the definition of the term service in sec. 2(1)(0) of the 1986 Act.

The apex court while excluding the doctors/hospitals from the ambit of the jurisdiction of the Consumer protection Act, who are rendering service free of charge, held that:

"Hospitals and nursing homes whether non-Govt. or Govt. rendering free of charge service to every body availing the service would not fall within the ambit of service under sec. 2(1)(0) because of mere fact that the medical officer receives emoluments by way of salary for employment in the hospital. There is no direct nexus between the payment
of the salary to the medical officer by the hospital administration and the
person to whom service is rendered. The salary that is paid by the hospital
administration to the employee medical officer can not be regarded as
payment made on behalf of the person availing the service or for his
benefit so as to make the person availing the service a 'consumer' under
sec. 2(1)(d) in respect of the service rendered to him".73

Regarding question raised about the considering the taxes paid
by the public to the govt. as a 'consideration' for the 'services' provided
by the government hospitals the court said that:

"It can not also be said that to the services rendered free of
charge to all the patients in the Government Hospitals/health centers/
Dispensaries, the provisions of the Act would apply since the expenses of
running the said hospitals are met by appropriation from the consolidated
Fund which is raised from the taxes, paid by the tax payers. The tax paid
by the person availing the service at a Government Hospital can not be
treated as a consideration or charge for the service rendered at the said
hospital or charge for the service rendered at the said hospital on such
service though rendered free of charge does not cease to be so because
the person availing the service happen to be a tax payer".74

Regarding the Doctor/Hospitals rendering free of charge
services to some patient and services on payment to others the court
stated that:

"The services rendered free of charge to patients by doctors/
hospitals whether non-Govt. or Govt. who render free service to poor
patients but charge fee for services rendered to other patients would even
though it is free, not be excluded from definition of service in sec. 2(1)(0)".75

The court, stating the reason for the above conclusion the said that:

"The Act seeks to protect the interests of consumers as a class. To hold otherwise would mean that the protection of the Act would be available to only those who can afford to pay and such protection would be denied to who can not so accord, though they are the people who need the protection most. All the persons who avail the services by doctors and hospitals who give free service to poor patient but charge fee for others are required to be treated on the same footing irrespective of the fact that some of them pay for the service and others avail the same free of charge".76

The Supreme court after going through every aspect of medical profession concluded, regarding the inclusion of medical services within the ambit of consumer protection Act, as follows77 -

(1) Services rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medical and surgical, would fall within the ambit of 'service' as defined in sec. 2(1)(0) of the Act.

(2) The fact that medical practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or state Medical councils constituted under the
provisions of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Act.

(3) A 'contract of personal service' has to be distinguished from a 'contract for personal service'. In the absence of the relationship of master and servant between the patient and medical practitioner the service rendered by a medical practitioner to the patient can not be regarded as service rendered under a 'contract of personal service'. Such service is service rendered under a 'contract for personal services' and is not covered by exclusionary clause of the definition of 'service' contained in the sec. 2(1)(0) of the Act.

(4) The expression 'contract of personal service' in sec. 2(1)(0) of the Act can not be confined to contracts for employment of domestic servants only and the said expression would include the employment of medical officer for the purpose of rendering medical service to the employer. The service rendered by a medical officer to his employer under the contract of employment would be outside the purview of 'service' as defined in sec. 2(1)(0) of the Act.

(5) Service rendered free of charge by a medical practitioner attached to a hospital/nursing home or a medical officer employed in a hospital/Nursing home where such services are rendered free of charge to everybody, would not be 'service' as defined in sec. 2(1)(0) of the Act. The payment of a token amount for registration purpose only at the hospital/Nursing home would not alter the position.

(6) Service rendered at a non-Government hospital/Nursing home where no charge whatsoever is made from any person availing the service
and all patients (rich and poor) are given free service is outside the
perview of the expression 'service' as defined in sec. 2(1)(0) of the Act.

(7) Service rendered at a non-Government hospital/Nursing home
where charges are required to be paid by the person availing such services
falls within the perview of the expression 'service' as defined in sec.
2(1)(0) of the Act.

(8) Service rendered at a non-Government hospital/Nursing home where
charges are required to be paid by persons who are in a position to pay and
persons who can not afford to pay are rendered service free of charge would fall
within the ambit of the expression 'service' as defined in sec. 2(1)(0) of the Act
irrespective of the fact that the service is rendered free of charge to persons
who are not in a position to pay for such services. Free service, would also be
'service' and recipient a 'consumer' under the Act.

(9) Service rendered at a Government hospital/health centre/
dispensary where no charge whatsoever is made from any person availing
the services and all patients (rich and poor) are given free service is
outside the perview of the expression 'service' as defined in sec. 2(1)(0) of
the Act. The payment of a token amount for registration purpose only at the
hospital/Nursing home would not alter the position.

(10) Service rendered at a Government hospital/health centre/
dispensary where services are rendered on payment of charges and also
rendered free of charge to other persons availing such services would fall
within the ambit of the expression 'service' as defined in sec. 2(1)(0) of
the Act.
(11) Service rendered by a medical practitioner or hospital/Nursing home can not be regarded as service rendered free of charge, if the person availing the service has taken an insurance policy for medical care.

(12) Similarly, where, as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, the service rendered to such an employee and his family members by a medical practitioner or a hospital/nursing home would not be free of charge and would constitute 'service' under sec. 2(1)(0) of the Act.

The medical profession in India is claiming complete immunity from its governance by the Consumer Protection 1986 on various grounds. However, the main arguments advanced by the doctors against their governance by the 1986 Act are as follows: In the first place, the doctors argue that the service rendered by them is in the nature of 'personal service' the is therefore not covered by the provisions of the 1986 Act. In this connection it may be mentioned that the term 'contract of personal service' has been debated in a number of cases which have come up before the Consumer Forums.

The above issue again come up for adjudication before the National Commission, in Cosmopolitan Hospitals v. Vasantha P. Nair. The Commission, however, found no reason to deviate from the propositions laid down in the case of A.C. Modagi v. Cross Well Tailors. The National Commission concluded:
We have no hesitation to uphold the finding of the State Commission that the activity of providing medical assistance for payment carried on by hospitals and members of the medical profession falls within the scope of the expression 'service' as defined in Section 2(1) of the Act.\(^{81}\)

Thus so far as the term 'contract of personal service' is concerned, it has been decided by the National Commission. The position shall remain unaltered unless any final word comes from the supreme court of India. Accordingly the plea of the doctors that they are rending personal services does not any more hold good.\(^{82}\)

The second argument advanced by the doctors against the inclusion of their services under this Act is that they deal with the human beings and not with the material objects. According to them, and rightly so, the aim of medical profession is to save life and to remove problems not to create them. Thus they argue that they should not be treated like the ordinary traders and businessmen as their profession is more a service towards humanity than a profit making business.

It is submitted that above argument did hold good about three or four decades ago when the morale and social values had not deteriorated as such as they have today. Nevertheless, even now it does hold the ground in case of a few dedicated and humanitarian professionals irrespective of whether they are working in the government hospitals or are running their own private practices. However in recent years, the medical profession, which was once considered to be one of the noblest professions in the society, has been characterised by a vast amount of
commercialisation. The increased amount of materialisation coupled with the demonstration effects, which are conspicuous in a society like India, has diverted the attention of even the most selfless people towards raising their standard of living. Very obviously, the attention of such professionals has been diverted from rendering dedicated service to a few patients towards making quick profits by entertaining a vast number of patients and even charging exorbitant fees. Of late, a new trend has also been witnessed and that a concerning dubious liaison between the doctors and the laboratories as well as the scanning centres. Whether a patient has any symptoms of a particular disease or not she is advised to undergo various scans and tests and those to from a particular scanning centre and laboratory. The reason is obvious: doctors have a percentage of shares in the earning by the testing centres from the patients directed by them. R.Kumar has aptly summed up the process of commercialisation of the medical profession in the modern times. She has equally beautifully summed up the reason for this commercialisation as due to the fact that today medical education makes a huge dent in the family resources and the natural outcome of this is that doctors strive hard to mend up this dent in as quick a time as possible.  

Therefore, the argument that doctors are not traders or businessmen does not hold ground for every member of the medical profession. Accordingly, those medical professionals who indulge in unethical malpractices irrespective of the patient's ability to pay should necessarily be governed by the provisions of the 1986 Act so that they may be made to pay huge compensation in the event of their professional negligence.
The third argument advance by the doctors is that in case their services are not kept out of the Consumer Protection Act 1986, they "may begin to look upon every patient as a potential litigant" and "instead of trust-based, the relationship would turn adversarial" and that it "will be disastrous for both doctors and patients." In addition, they apprehend that the costs, even of a minor treatment, could rise manifold as no doctor would like to take the risk of treating any patient on mere symptoms and without a complete clinical diagnosis. This will press very heavily on the poor patients.84

The consumer activists, however, dismiss this argument by suggesting that "if a doctor outprices himself, he will only end up putting himself out of practice,"85 They further argue that the costs will certainly not rise abnormally and that the "market forces would take care of the problem" Thus even this argument of the doctors seems no more valid because those members of the profession who are not involved in making quick money out of patients will not necessarily raise their fees.

The fourth argument advanced by the doctors is that during the course of their professional dealings with their patients, they have to take certain risks and that in this process a decision taken by a doctor in good faith could result into an error of judgment which could always be proved against them in the courts of law. For instance, when an obstetrician conducts a delivery in a labour room, she has to take many instant decisions, such as in foetus distress. At this time her prime duty is to save the mother as well as the foetus. But sometimes she is to follow the principle of 'bird in hand is worth two in the bush.' Therefore, she alters
her decisions and devotes her entire energy in saving either the mother or the foetus, whichever is more viable. Similarly, she is to decide instantly whether to conduct normal delivery, forceps delivery or caesarian keeping in view the condition of the mother as well as of the child.

Further according to doctors, every surgical operation involves risk and it would be wrong and indeed a bad law to say, simply because a mishap occurred, the hospital and the doctors are thereby liable. In most cases, patients and their family members misunderstand the whole issue due to lack of medical knowledge. The doctors argue that the medical science is a complicated science which cannot be easily understood. Not to talk of the patient and his family members, if the decision taken by the obstetrician is discussed with a doctor of any speciality other than the obstetrician who conducted the delivery, there is likely to be a difference of opinion. According to them, if would, therefore, be disastrous for the society if doctors are held liable for negligence even in cases of decisions taken by them in good faith. It would obviously mean that a doctor examining a patient or a surgeon operating at a table instead of getting on with his work, would be over looking over his shoulder to see if someone was coming up with a dagger; for an action for negligence against a doctor is for him like a dagger. It has been argued that, to a doctor, his professional reputation is as dear as his body, perhaps more so, an action for negligence can wound his reputation as severely as a dagger can his body. Thus he must not be held negligent simply because something happens to go wrong and if, for instance, one of the risks inherent in an operation actually takes place or some complication ensues which lessens or takes away the benefits that were hoped for, or if in a
matter of opinion, he makes an error of judgment. He should, therefore, be found guilty of negligence only when he falls short of the standard of a reasonably skilful medical man.\textsuperscript{87}

The above argument indeed carries a lot of weight. The medical profession in one of those where a significant number of decisions are taken on the spot and if for any such decision make in good faith by an honest and dedicated surgeon, he is to be punished, it is not only likely to demoralise him, but his fellow practitioners too. On this front, the consumer advocates argue that the expert medical evidence shall definitely go in favour of the practitioners who had made the timely decision notwithstanding that it proved fatal. On the other hand they suggest that the 1986 Act should only bring those doctors to book who act negligently without showing any regard to the patient's deteriorating conditions.

To substantiate the above view, one could cite a large number of cases where doctors have been patently negligent towards their patients. Obviously such negligent professionals deserve censure. For instance, in a very recent unreported case of \textit{Shalini Nath}\textsuperscript{88} the complainant met with a serious road accident and was hospitalised in a reputed hospital. The doctor on duty on examination found that a lot of blood had been lost and therefore put him on blood transfusion. However, within half an hour of the transfusion, the condition of the patient started deteriorating and she immediately called the doctor but was tersely informed that as he was off duty he could both come to her father, her father become serious and died. Investigations later revealed that the blood supplied for transfusion did not match with the blood group of the patient. Such callous and
indifferent behaviour on the part of the doctor, who did not even bother to see whether the blood group matched, be termed as gross negligence, Shalini now has moved the Consumer Forum for justice. In such Cases, Negligence definitely deserves to be condemned and the negligent punished. Consumer activists have been expressing similar views in connection with the government hospitals and are lobbying for their inclusion within the ambit of the 1986 Act. The following passage from an editorial in a leading consumer protection reporter explains the state of doctors and hospitals run by the government:

Doctors are not above the law and have, therefore, to be answerable for their negligence and if found guilty should not escape punishment. The conditions in the hospitals and more particularly in the government run hospitals are pathetic.

The doctors have been found sleeping though on duty, send away the patients irrespective of the fact that emergent attention is called for. The diagnostic apparatus is either not available and if it is there it is found to be not working. Quite a large number of cases are reported in the newspapers about the malpractices indulged in by the doctors and the hospitals. The Indian Medical Association has not come to the expectations of the suffering patients and has not shown any inclination to take the doctors to task.

Thus there is no reason for keeping negligent medical practitioners and hospitals out of the ambit of the 1986 Act. Justice Partap Singh of the Madras High Court, by virtue of his pathbreaking judgement delivered on 25 May 1993, had lent further credence to the
views being expressed in the favour of bringing the medical profession within the ambit of the consumer protection law. The Madras High Court has directed the Appolo Hospitals, Madras to pay Rs. 17 lakh as damages to three times national Table tennis Champion V. Chadrasekar for disabilities caused to him after he underwent surgery at the hospital in 1984. Chadrasekar in his suit had averred that in 1984 he had experienced a slight pain in his right knee while playing table tennis. He underwent a health check up in the Appolo Hospital and was informed that his knee could be corrected through arthoscopy which, according to the doctors, was a simple operation and therefore he would be completely cured. He went in for the operation on 14 September 1984. Several complications developed during and after the surgery and he recovered therefrom only on 10 October 1984 but was reduced virtually to cripple. His vision, speech and other faculties were severely damaged. He underwent treatment at other places in Canada, India and USA but still suffers from vision and speech impairment. The Madras High Court accordingly held that "if a patient suffered injury due to negligence of doctors employed by a hospital or by doctors who worked there on some arrangement, the hospital is also equally liable for damages on the principle of vicarious liability." Awarding the compensation, the judge has observed that "the tragic impairment, which had totally shattered the player the thousands of his fans cannot be correctly assessed in terms of money."

Finally, the most important argument of bringing the medical profession within the ambit of the 1986 Act is connected with the cultural, ethical and religious beliefs of the Indian Society.
Notwithstanding considerable advancement of Civilisation and increased industrialisation, the cultural, ethical and religious beliefs of a vast majority of people in India have remained substantially unaltered and continue to remain so. The dead are still worshipped in India and religious ceremonies are performed in their memories. Therefore, it appears to be little beyond thinking that a family would like to encash the dead or even the injured. For instance, if a member of a particular family meets as accident and is hospitalised where, despite the best efforts of doctors, he succumbs to his injuries, it seems a little unbelievable that the family shall sue the doctors for any negligence. This is also likely to be true even in those cases where an error of judgment on the part of an operating surgeon might have resulted in the death of the injured and for that matter any patient. In view of this, the medical professionals should not worry on account of the increased ambit of the 1986 Act over the medical profession.

(E) NEGLIGENCE

No human being is infallible, and in the present state of science even the most eminent specialist may be at fault in detecting the true nature of a diseased condition. Every person who enters into the profession, undertakes to bring to the exercise of it, a reasonable degree of care and skill. It is true that a doctor or a surgeon does not undertake that he will positively cure a patient nor does he undertake to use the highest possible degree of skill, as there may be persons more learned and skilled than himself, but he definitely undertakes to use a fair, reasonable and competent degree of skill. So that a patient who is a
'consumer' within the meaning of Act has to be awarded compensation for loss or injury suffered by him due to negligence of the doctor by applying the same test.

A medical practitioner can only be liable in this respect if his diagnosis is so palpably wrong as to prove negligence, that is to say, if his mistake is of such a nature as to simply absence of reasonable skill and care on his part, regard being had to the ordinary level of skill in the practitioner.

In *Hatcher V Black*, Lord Danial opined that the jury must not find a doctor negligent simply because one of the risks inherent in the operation actually took place or because in a matter of opinion he made an error of judgement, and that they should find him guilty, only when he had fallen short of the standard of reasonable medical care.

In *Bolam V Friern Hospital management Committee*, McNair J. observed that:

man did not need to possess the highest expert skill and that it was well established law that it was sufficient if he exercised the ordinary skill of an ordinary competent man exercising that particular act.

According to Lord Clyde in *Hunter V Hanter* had similarly observed that the true test of establishing negligence in diagnosis or treatment on the part of a doctor was whether he had been proved guilty of such failure as no doctor of ordinary skill would be guilty of, if acting with ordinary care. Thus, the test of negligence is the standard of the ordinary skilled man exercising and professing to have that special skill.
A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular act. A doctor can be held guilty of medical negligence only when he falls short of the standard of reasonable care. A doctor can not be found negligent merely because in matter of opinion he made an error of judgement. So, in determining whether a doctor had exercised reasonable skill and care, due regard must be given to the general and approved practice of the profession, may be tested on the following principles -

(a) if a medical practitioner acts in accordance with the general and approved practice of the profession, he can not be held to be negligent unless the exceptional circumstances of the cases warrant such a finding.

(b) Equally important is the fact if a doctor departs from the general and approved practice for no good reason resulting in damage and injury to the patient, he is likely to be held negligent.

In this way the approach of the judiciary is to require that professional men should possess a certain minimum degree of competence and that they should discharge their duties with reasonable skill and care. But this reasonable skill and care should be measured as a class there must be reasonable classification i.e. due regard must be given to the reasonable skill followed by the medical practitioners of similar status. It means there must be reasonable classification of doctors on the basis of their qualification, experience and expertise. It will be very unreasonable to test the reasonable skill of an ordinary doctor who is
holding simply a MBBS degree at same footing on which the skills of a doctor who is more learned and skilled to him. It is hoped and suggested that the courts will give it a considerate view and will lay down the reasonable classification of doctors to test the reasonableness of skill and care in future. But the reasonable classification does not mean that the person who does not have knowledge of a particular system of medicine may also be tested on the same scale as of other system because a practitioner's duty to use reasonable skill and competence in his profession is ex-facie not satisfied when he is practicing in one profession but is qualified in some other. So, if a person who is a qualified homoeopathic physician practicing in allopathy will be responsible for any loss or injury suffered by the patient even if he adopted all the reasonable skill and care.

One important point which is notable is that the burden to prove that the doctor was negligent in his treatment or that treatment given was not proper is on the complainant. This is literally borrowed from judgements of the British legal system should be applied with caution, taking special realities of India into account. In developed countries, the medical profession is highly regulated. All facilities providing medical services are required to maintain correct records which are periodically checked. In the United States, the regulatory system has proceeded so far as compilation of the National Data Bank containing full details of the medical practitioner including information on medical negligence cases registered against it and punishment given. But the problem arises in a country like India where near about 70% population is still illiterate and not in a position to prove the medical negligence which contains various
The unsatisfactory state of law in India may be illustrated with some recent cases decided by CDRA's. In *Orissa Nursing Home v. Anurekha Salis*. The pregnant complainant was injected the wrong medicines in the nursing home to induce labour pains. Inspite of several attempts, the child could not be delivered. The complainant was shifted to the medical college where the doctors found that the uterus was ruptured and the foetus perforated. In this case the National commission dismissed the case as the complainant fail to prove the medical negligence and considered the out of court settlement between the parties. In another case of *Neenu Sharma v. Paul B. Singh* where a pregnant lady was operated twice by doctor under circumstances which clearly indicated that the need for the second operation arose because of negligence exhibited by the doctor during the first operation. The victim of negligence could not lead expert evidence to show that the first operation had been performed negligently. The commission dismissed the complaint.

The desperation of a patient to lead expert evidence to establish negligence of doctor may be gauged from *B.B. Jadeja v Dr. N.N. Pariskh* in which the complainant lost the case as no evidence was placed before the commission to show that the opponent was negligent in giving treatment. In yet another case the state commission dismissed the complaint of a consumer on the ground that he had failed to lead evidence on the negligence of the doctor.

So keeping in view this situation it is submitted that the onus of proving that there was no negligence should be on the medical practitioner rather than the patient who being a layman in the field of
medical profession faces so much technical problems to prove the medical negligence and consequently he has been denied a proper remedy for the injury or damages caused because of medical negligence. Not only the burden of proof is to be shifted but the consumer fora also take the help of the experts of the medical and para-medical field to judge the medical negligence on the part of the doctor.

To sum up it is clear that the negligence of a doctor is tested on the parameter of reasonable skill and care which is expected from a practitioner of ordinary prudence and due regard must be given to the general and approved practice of the professionals or the accepted practice followed by other practitioners of similar status. The role of the courts in this regard is very important as they will be supposed to be doing a disservice to the community at large if they impose liability on doctors and hospitals for everything that happens to go wrong: They must insist on due care for the patient at every point but not condemn an act as negligence which is only a misadventure. But one thing which should be mentioned here that the consumer protection Act, 1986 brings relief to the patients by introducing the concept of deficiency in service. It is defined in the Act under section 2(1)(g) as follows:

"'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".

So far only one word namely negligence was used while dealing with failures or misdeeds of the doctors. Now a new word, namely
deficiency, has been introduced and defined by the Act. The word negligence also used in the Act in Sec. 14(d) which provides that the compensation may be provided to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party. So a complainant can get compensation both for the negligence and deficiency. But the question is - is there any difference between deficiency and negligence? because if we go through the cases discussed in this chapter the courts while deciding the cases related to medical services sometimes used the term negligence and sometimes the term deficiency. How to differentiate negligence from deficiency? Negligence is not defined in the Act. The Haryana High Court has observed that the deficiency under consumer jurisdiction undoubtedly includes what is negligent in the law of torts, but it is somewhat wider. Distinction between deficiency of service and negligence is also brought about in an unreported decision of the Pondichery state commission in V. Vassandacoumery v Dr. T. Ramachandrudu and said that in all cases of negligence there will be deficiency, but in all cases of deficiency, negligence will not be present. The line of demarcation between the two notion will get evolved when the agencies start working on the difference. Pending that process or an authoritative pronouncement by the supreme court on the difference between the two notion it can only be submitted that the deficiency may be the result of inability, lack of competence, inadvertence, whereas negligence would caused by carelessness and indifference. Deficiency may occur inspite of the doctor's negligence but negligence does not happen that way i.e. if there is no negligence on the part of the doctors but still there may be deficiency in the services. This
view of the researcher may be supported by the judgement of the supreme court where the supreme court declared the carelessness of the nurse as negligence on her part and on the other hand the appointment of an unqualified person as the nurse a deficiency in service on the part of the hospital even if there would have not been any negligence on the part of the doctors of the hospital. So, we can say that the deficiency may occur inspite of the doctors competence and it may be gathered early from the result and negligence have to be gathered from the action or omission of the doctor.

To conclude, it is submitted that, in absence of any authority, the deficiency is a wider term which not only includes the negligence of the doctors but also includes all other things i.e. qualification of para-medical staff, infrastructure facilities, essential equipments etc. and can not be restricted only upto the act or omission of the doctors because the definition of deficiency clearly says that it means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance.... so the negligence on the part of the doctors or any other imperfection or shortcoming in the service comes within the purview of the term deficiency. In this way it is an advise to the consumers of medical services to plead deficiency in respect of deficiency of service and negligence both so that if negligence is not made out they will get at least relief for deficiency in service. Further it is also submitted that the courts should insist on deficiency in medical services in place of negligence as the deficiency has a wider scope for the consumer protection and also a less technical term to prove in the court because in case of 'Negligence" there are not only practical deficiencies in linking
the injury sustained with the medical treatment but also it is still more
difficult to establish the standard of care in medical negligence on which
a complaint can be made.

It is further submitted that the onus of proving that there was no
negligence on part of the doctors should be on the doctors not on the
consumers and medical fora are advised to take the help of experts in the
field of medical\para-medical profession while deciding the complaint of
medical negligence. All these factors together will operate to limit the
medical litigation in the country and to provide a better protection to the
consumers of medical service.

(F) PREVENTION OF FRIVOLOUS COMPLAINTS

The previous discussion broadly examined the nature of issues
and the development of Indian law of consumer protection vis-a-vis the
medical profession. Notwithstanding the fact that the consumer tribunal
have taken a stand against false and frivolous complaints filed against the
medical professionals and nursing homes and have dismissed them at the
threshold.

Notwithstanding the pronouncement of the above mentioned
large number of decisions holding doctors and hospital liable for their
professional negligence, there are almost double the number of cases,
where in the absence of satisfactory proof against the negligence of
doctors, the Consumer Forums, right from the very beginning of the
working of the 1986 Act, have not given any relief to the consumers.
Furthermore, National Commission has also accepted against the
decision of the State Commission wherein it was not satisfied with such
decisions. In addition, some of the state Commissions have even passed strictures against the patients bringing frivolous complaints and have also cautioned against the misuse of the redressal mechanism established under the Consumer Protection Act 1986.

In a recent case, National Commission has gone a step ahead by taking a tough stand against the patient by imposing costs for bringing false and frivolous complaint against a doctor and a blood bank. In a *Narain Rao v. Dr. G. Ramakrishna Reddy*, the case of the complainant was that he had got himself admitted in the nursing home run by the opposite party for prostrate surgery. On the day of the surgery, his blood sample was collected and money was taken from him towards the cost of the blood to be obtained for transfusion. The complainant alleged that while paying the amount, he had insisted that the blood he obtained from a particular blood bank where donors' blood was most scrupulously subjected to all mandatory pathological tests to ensure that it was free from infection and contamination. However, the nursing home obtained the blood from another blood bank-the respondent No.2.

It was further alleged by the complainant that with the commencement of the surgery, the blood transfusion simultaneously started. It was the appellant's case that towards the end of the surgery, as the influence of anaesthesia almost waned, he heard the anaesthetist remarking that the tongue of the complainant had turned black and thereupon the transfusion was stopped by the doctors to avoid any adverse reaction. The complainant alleged that after four months of surgery, he had started becoming progressively weak. On consulting another doctor,
the complainant was informed that he was suffering from the disease called 'postranfusion-hepatities' which was allegedly caused by transfusion of contaminated blood. The Andhra Pradesh State Commission, However, dismissed the complaint on the basis that the complainant had failed to prove that the blood transfusion was infected. In addition, it was found that the complainant was suffering from jaundice even before the date of the blood transfusion.

On appeal before the National Commission, the decision of the State Commission was upheld. The National Commission further held that since the appellant had made unfounded allegations against the doctors, the hospital and the blood bank, he was directed to pay Rs. 5,000 to the respondents as costs.

As already mentioned, right from the very beginning of the working of Consumer Protection Act, the National Commission as well as the various State Commissions including Andhra Pradesh Delhi Gujrat, Haryana, Karnataka, Kerala, Maharashtra, Orissa, Punjab and Tamil Nadu have dismissed a large number of complaint petitions on the ground of absence of satisfactory proof of deficiency in service of negligence on the part of private hospitals and doctors respectively.

For instance, in Gurapreet Kaur v. R.K. Bhutani, the complaint was filed by a mother on behalf of the clinic of the respondent for treatment of her eye disease. On preliminary examination, the respondent informed the complainant that the left eye of her child required immediate operation and advised her to admit the child in his clinic on
the same day. It was alleged by the petitioner that without performing preliminary and proper tests and without due and proper caution, the respondent operated the left eye of the child. It was further alleged that although no relief was felt by the patient after the operation, the respondent negligently and without professional examination discharged the patient immediately on the same day. The petitioner stated that on further investigation and consulting with other experts it came to her notice that the respondent had not performed the operation properly and that he had used dangerous medicines which resulted in permanent damage to the left eye of the patient. After some check-ups, the respondent advised the petitioner to consult another eye surgeon, who in turn, advised a second operation of the child pointing out the incompetent handling of the patient earlier and absolving his responsibility in the next operation. The petitioner ultimately took the child to St. Stephen Hospital, where the doctors advised her that the child's life was in danger in case it was not operated upon. The doctors ultimately removed the eye of the patient. The petitioner preferred a complaint under the Consumer Protection Act 1986 claiming Rs.5,00,000 as damages for the permanent damage of the left eye of the child and the physical mental and social repercussion.

The respondent denied all the allegations levelled against him. He alleged that the mother of child was informed that the left eye was already damaged extensively due to a previous surgery which was conducted when she was only ten months old. In fact, which the petitioner had not mentioned before the Commission. It was further stated though he had explained the risks involved in the operation, the mother was ready
to bear the risk. It was thus proved that the operation conducted by the respondent was done with the honest intention to venture for the improvement of the eye condition of the child. Thus the petitioner was unable to establish negligence on the part of the respondent and the complaint was accordingly dismissed.

The above discussion broadly examined the position related to the frivolous complaints and judicial attitude in this regard and may be summed up only in one sentence that no doubt that the courts has adopted a serious attitude to protect the interest of consumers in case of deficient medical services but on the other hand the courts are always in forefront to protect the innocent doctors from frivolous complaints and dismissed them at the threshold.

No, doubt the judicial attitude also favours the medical practitioners in the same way as protects the interest of the consumers against the frivolous complaints. But with this also expected from a doctor to adopt a reasonable skill and care while providing his services to the patients because the area of medical services is a very sensitive area where a problem connected with physical and mental health and life of living human beings are handled. So it is required on the part of the doctors to have a fair and reasonable standard of care and competence. In a number of cases came before the consumer courts the emphasis laid down on the reasonable degree of care to be adopted by the medical practitioner while practicing his profession.

CONCLUSION

So, with the judgement of the Supreme Court in *Indian Medical Association V. V.P. Shantha* the controversies said to be set at the end
and the services rendered by the government hospitals\dispensaries were put out of the ambit of the Act while the services rendered by the private doctors\hospital are brought within the ambit of the Act. The plea that the tax paid by the peoples and emoluments received by the doctors are consideration for the services rendered is rejected by the supreme court.

But it is humbly submitted that keeping the government hospitals out of the ambit of the Act is a step to defeat the object of a social welfare legislation and injustice on the part of the poor consumers who can not avail the expensive services of the private doctors\hospitals.

Hence, it is a traverty of consumer protection regime in the country that govt. hospitals have been exempted from the legal and social mandate envisaged therein while private medical outlets have been made to incur accountability in the form of monetary compensation though nature of service is same. Even ailment and diseases can not have any distinction based on public or private treatment. Moreover, in an age of welfare state and human rights where state is operating and influencing every aspect of human behaviour inter-alia health and its protection and presentation, it can not shring-off its responsibilities which are socio-economic in nature and mandated under international human rights instruments. So, keeping in view the social welfare nature of the Act and interest of the poor citizens of the nation, the government hospitals\dispensaries should also be brought within the ambit of the Act.

Because the exclusion of free services from the ambit of the Act is not in the interest of the society as it also exclude the medical practitioner who are practising as the time pass and giving the treatment
free of charge in the name of social service without having any proper degree or knowledge or having a certificate as the medical practitioner which is obtained by unproper means or got them registered as RMP (Registered medical practitioner) which not a relaible way to be a medical practitioner. It is submitted that there should be no exclusionary class in case of medical profession as it is a very sensitive field and directly related to the social welfare. All the medical practioners whether govt hospitals or practitoners providing treatment free of charge should also be brought within the ambit of the Act.

To wind up the discussion it is submitted that medical profession in India need not worry on this account. India is not America from the angle of medical profession, the consumer protection Act 1986, aims at bringing only the careless, in corrigible, negligent and unethical - professionals to the book. The genuine and selfless professional engaged in rendering dedicated services to a vast number of ailing people should not bother about it. A large number of frivolous complaints filed against the doctors and dismissed at the district, state and national level bear ample testimony to the above argument. In addition, the consumer Forums have also been expressing their concern for the genuine professionals and are assuring justice to them. Sandhawalia J., President of the Haryana State Commission in the case of Sachin Aggarwal V. Dr. Ashok Arora107, deserves, that one must keep as even keel, and maintain the nice balance between the consumer needs and the rights of medical professionals.

Similarly, V.Balakrishna Eradij., President of the National Commission, has recently made the following observation:
We are not trigger-happy judges. The notion that our trials are summary is wrong. In fact, doctors interests are safer with us than with civil courts.

According to Justice Eradi\(^{108}\), clear instructions have gone to all consumer Forums to call for an expert medical opinion while deciding medical cases. Thus doctors are assured fair judicial treatment.

Above all, the Consumer Protection Act 1986 has been amended by the Consumer Protection Amendment Act 1993. According to this amendment, Consumer Forums have been authorised to order a party to pay upto Rs. 10,000 for filing false and frivolous complaints against the opposite party or parties. In addition, the forums shall have the authority to impose costs on such litigants. In this way the consumer protection Act not only intend to protect the consumers against medical negligence but with the true spirit of consumerism it also protects the doctors against the frivolous complaints in the same way as the Sultan Alauddin Khilji, the great admirer of consumerism who emphasised on consumerism, who not only implemented the policies to protect the interest of the consumers but also taken various steps for the prosperity and protection of interest of the sellers also.

Thus above endeavours on the part of law makers should easily dispel the unfounded fear of genuine professionals. Nevertheless, it must be mentioned that whether it is a dedicated professional or an unscrupulous practitioner, the enactment of the Consumer Protection Act has definitely provided to the consumers another platform for highlighting their grievances and seeking justice. The society now
demands accountability on the part of professionals, too, as of traders and businessmen. Therefore, those who make use of the societal resources must be accountable to the society at large. Only then can our ancient values be saved from further erosion.

It is further suggested that instead of being dominated by doctors, its ethics committees need to have representatives from consumer organisations and the legal profession to avoid the criticism of being biased. Finally it has been argued that whatever be the outcome, changes would have to be made to bring about a just and harmonious system of accountability. In this connection, the following observations would aptly sum up the whole discussion.

In either case, doctors need to simultaneously do some self introspection on how they could reduce mal practices. All the factors—quality of education in medical schools, state or government health services, strictness of regulatory bodies and speedy justice—have a direct bearing on how conscientious doctors would be while carrying out their noble work. Physicians, as the New testament says, heal thyself. Thus it is submitted that the medical profession by all means, should be brought within the ambit of the consumer protection Act-1986 because doctors are not above the law.
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85. Ibid.
87. Ibid.
88. Supra not 82 at 359.
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92. Ibid.
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Chapter - IV

CONSUMER PROTECTION ACT
1986: A HUMAN RIGHTS APPROACH
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CONSUMER PROTECTION ACT 1986 : A HUMAN RIGHTS APPROACH

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It was a great day for the human race.... when the idea dawned that every man is a human being, an end himself, with a claim for development of his own personality, and that human beings had a dignity and a worth, respect for which is the firm basis of human association:.

Merriam, Systematic

An Overview

The concept of human rights is as old as human civilization. It is a concept which is comprehensive and inclusive in nature. It is a philosophy which has shaped the destiny of modern states. The human rights were addressed by different names at every stage of human development and human history. These rights were known as 'natural rights' in ancient period, 'immemorial rights' or 'inherent rights' in medieval period and in the contemporary world, these rights are known as 'basic rights' or 'fundamental rights' or we may call them as 'human rights' which contain the basic ideology of protection of human beings against exploitation in every field of life and establish the human dignity. Human rights can not be cribbed, crabbed and cabined in a particular geo-political identity rather it is a notion of human survival which is transcending all the man-made barriers across the globe.

At International level particularly after the second world war there are conventions, covenants, declarations for the protection of human rights and through these measures there was always an attempt to protect the human rights and establish the human dignity. Thereafter, under a new world organisation i.e. UNO a complete Bill of human rights was evolved which contains various declarations and covenants for the
protection of human rights. On the other hand, in national perspective, India is much ahead with its counterparts in the western world in having a specific legislation dealing with human rights and enacted in 1993 the Protection of Human Rights Act. On the other hand prior to the efforts to protect the human rights some effective and remarkable efforts were made in India to protect the consumers against the exploitation in the commercial market. The efforts to protect the consumers is nothing but reflects the basic philosophy of human rights i.e. to establish the human dignity and prevent the exploitation of human being or consumers against the trade practices which are injurious and hazardous to their lives and establish the right to adequate standard of life with dignity. There is an inseparable relationship between human rights and the consumer protection as both are directed to preserve the human dignity, life and security of human beings or consumers from the ill-effects of modern day productions in various modes such as eatable of parishable nature, medicines which are of limited insurability and other objects of vital importance of to human existence, are protected therefrom.

The common object of both the philosophies i.e. human rights and consumer protection is to preserve, protect and promote the concept of human dignity, human welfare, betterment and advance peaceful survival of humanity in eco-friendly atmosphere.

Introduction

Human Rights cut across all national boundaries and political frontiers and make an appeal to every man as a citizen of the world irrespective of religion, caste and creed. They emphasize the unity of man
discouraging parochialism, fostered by nationalism of the nineteenth century. Hence, emphasis on human rights is a step in the right direction leading to the evolution of world public order. As a legal topic the subject of human rights has no parallel today. Since its inception the U.N. General Assembly has passed numerous resolutions on human rights. A large number of conventions have been adopted through the instrumentality of the United Nations. The Universal Declaration of Human Rights, the two International Covenants on Human Rights and the Optional Protocol to the civil covenant constitute the main thrust of United Nations from the promotion and observance of human rights. The notion of consumer protection has a direct bearing on the human dignity which can be accomplished only through human rights. The word human dignity is a very broad conception in a socio-economic condition of a welfare state. It gives an idea of constitutionalism, rule of law, equality, liberty, fraternity, social justice, humanitarianism, democracy and human rights. The enumeration of human rights in the Universal Declaration 1948, the European Convention 1950, International Covenant on Civil, Political, Economic and Social rights 1966. Taking all these International documents together of which India is one of the signatories. The human rights may be enumerated for ascertaining the relationship of human rights with consumer rights which are inextricably intrawoven and are essential for the development of human being.

The United Nation's Charter on Human Rights and International covenant's has an emphasis on human dignity and laid down the foundation of freedom, justice and peace in the world.
The other area, i.e. trade and commerce where the common man has always been exploited by the traders. They always adopted various unfair means to exploit the consumers and earn more profit without keeping in view the consequences their trade practice. With the passage of time as the world become complex that everywhere we find competition in which man is used as an instrument to achieve objects in the present competitive materialistic world. The era of *laissez faire* which restricted any sort of interference on the freedom of trade and commerce by the state, was nothing but a blessing to capitalist, producers and sellers of goods, who become exploiters of consumers. However, with the passage of time and with the advent of the concept of welfare state tremendous changes emerged. With the democratic setup of welfare state, and continuous demand to protect the consumers from the exploiting trade practices of the sellers, consumer democracy emerged in the form of different legislation for the consumer protection and finally in the form of Consumer Protection Act 1986 with an object to protect the consumers from exploitation in the market and to establish the dignity of the consumer.

**(A) GENESIS OF HUMAN RIGHTS**

Human rights are those minimal rights that individuals need to have against the State or other public authority by virtue of their being members of the human family, irrespective of any other consideration. The concept of human rights is founded on the ancient doctrine of natural rights based on natural law. Ever since the beginning of civilized life in a political society, the shortcomings and tyranny of ruling powers have led
people to seek higher laws. The concept of a higher law binding human authorities was evolved, and it came to be asserted that there were certain rights anterior to society. These were superior to rights created by human authorities, were universally applicable to people of all ages in all regions, and are believed to have existed prior to the development of political societies. These rights were mere ideologies and there was no agreed catalogue of them and no machinery for their enforcement until they were codified into national constitutions, as a judicially enforceable Bill of Rights.¹

From the very beginning of human history, man struggled for his existence against nature and his fellow men. The concept of the survival of the 'highest' caused conflicts among human beings that paved the way for the framing of rules and regulations for the safeguard of the weaker sections. The formation of states and empires was not always based on the principles of establishing human rights. When the rights of one state were violated by another, a solution was forcibly arrived at through war or treaties. Hence, during the ancient and medieval period, war was a determinant factor of rights.

In almost all western countries ancient legal codes failed to recognize any area of individual freedom from State interference, and the first codification of something akin to a catalogue of rights, if not available to all men, then at least to the nobles of the land, began to emerge in contracts between princes and the feudal assemblies. One of the earliest of these came in AD 1188, when the Cortor, the feudal assembly of the kingdom of Leon on the Iberian Peninsula, received from
King Alfonso IX his confirmation of rights, including the rights of the accused to a regular trial and the right of inviolability of life, honour, home and property. In the Golden Bull of King Andrew II of Hungary (1222), the king guaranteed, among other things that no noble would be arrested or ruined without first being convicted in conformity with judicial procedure. The most influential commitment of this kind was in the English *Magna Carta* accepted by King John at Runnymede in 1215, though it was exacted by his feudal barons in their selfish interest: it was by no means intended to assert rights and liberties for all. Several of its provisions among them the famous clause 39 stating that 'no freeman shall be taken and imprisoned or exiled or in any way destroyed except by the lawful judgement of his peers and the law of the land', was interpreted retrospectively, so as to give expression to the idea of individual freedom.\(^2\)

Human rights during the medieval period were marred by the outbreak of a series of wars for upholding traditional religious principles. Anyone who violated the principles of Christianity and the order of the Church was severely dealt with, as the Church dominated the political affairs of the country. By marriage, husbands had the responsibility of safeguarding their wives. By the introduction of child marriage, female children lost their right to education by becoming early wives, and early mothers, and they risked being early widows. Their rights were tampered with by their fathers and brothers before marriage, and after that by their husbands and in-laws. For most women their indemnity and rights were eroded during the medieval period.\(^3\) Medieval Europe witnessed immense
devaluation of common people due to the prevalence of feudalism. The feudal lords spared no opportunity to exploit these people's social, political and economic rights and treated them inhumanly. Slavery and bonded labour were accepted.

The violation of human rights during the medieval period in France and other European countries paved the way for a series of revolutions. The idea of human rights developed in the process of revolutions. Rousseau, who said 'Man is born free and is everywhere in chains' and other philosophers, provided a rationale retrospective for the revolution in 1789. People were awakened to the reality of revolution as a happening through which the definition of rights in defiance of the State was articulated.

In seventeenth-century England, the 'immemorial rights of English men' were successfully defended in the Petition of Rights (1628) and the Bill of Rights (1689). The rights set forth in these documents found their way to the New World colonies. The American Declaration of Independence (1776), the Virginia Declaration of Rights (1776) and the American Bill of Rights (1791) carried not only the ideas of the earlier English documents but in some cases their very text as well. The powerful influence of the French Enlightenment was also visible among the American revolutionaries. In turn the colonies gave the French an example to follow. The outbreak of the French Revolution in 1789 not only spread the principle of liberty, equality and fraternity but also paved the way for two later revolutions in France. The examples of the French Revolution were examined and experimented with in other countries for
obtaining the rights of the people. The French Declaration of the Rights of Man and of the Citizen (1789) became a source of documentation and example to codify human rights in newly framed constitutions of the emerging nation-states. The Russian Revolution of 1917 concentrated much on economic and social rights. The Mexican Constitution of the Republic of 1917, the constitution of Germany of 1919 and the constitution of Republic of Spain of 1931 covered the area of civil rights in which human rights at least were noted on paper, though they remained 'abstract'.

Slavery in Europe and the slave trade in Africa and Asia became a big issue at the beginning of the nineteenth century. Throughout the century, beginning with the Peace Treaty of Paris (1814), the universal prohibition of slave trade had been an object of international concern. Various treaty agreements to this end were undertaken in 1814, 1815, 1832 and again in 1862, 1885 and 1890. Gradually, the movement undertook to combat and suppress slavery as well as slave trade. In 1926, the Assembly of the League of Nations approved and opened for signature the International Slave Convention, by which the contracting parties agreed to prevent and suppress slave trade. Abolition of slavery in all its forms since then led the United Nations to continue its crusade as a part of human rights.

The human rights of labourers were given new laws since the Industrial Revolution. The early management theories framed by Henry Fayol Gullick, Frederick Winslow Tayor and Lillian Gillbreadth concentrated on maximum output without caring about the well-being of
labourers. But towards the end of the nineteenth century a number of philanthropists, social reformers and economists succeeded in arousing interest in and enlisting the support of some governments for the idea of international social legislation. To this end, conferences with a large and ambitious programme at the international level were convened at Berlin in 1890, 1905 and 1906. The first two multilateral labour conventions, which were also the first international conventions for the protection of human beings, were concluded. One of these conventions prohibited night work for women in industrial employment, and the other prohibited the use of highly poisonous chemicals in the manufacture of matches.

For the upliftment of the working class the International Labour Organization was constituted in the League of Nations. The Treaty of Versailles (1919) and other peace treaties established the ILO as part XIII of the Treaty, in its constitution. Unlike other organizations, the ILO consists of representatives not only of government organizations but also of employers and workers. It has made a significant contribution to the promotion of human rights through international agreement not only in fields traditionally associated with labour law and labour relations, but in the industrial environment. After World War II, it became a specialized agency of the United Nations. As a guardian of labourers' rights, the ILO guaranteed human rights such as the abolition of forced labour, the elimination of discrimination in employment and occupation, and freedom of association for work of equal value. One of its major achievements was the formation of the Royal Commission of Labour in 1927-8, in which India became an active participant. A series of labour legislations
were enacted in India for the rights of the working class. Among these were the Trade Union Act 1926, Minimum Wages Act 1948, Workman's Compensation Act 1923, Industrial Disputes Act 1947, and the Indian Factories Act 1948.

The Covenant of the League of Nations did not deal with or formally recognize the fundamental rights of man and did not lay down any principle of non-discrimination. An obligation was agreed on to secure and maintain fair and humane conditions of labour for men, women and children, to secure the just treatment of the native inhabitants of the colonies, and supervise the execution of agreements regarding traffic in women and children. Prevention and control of diseases was given priority. The mandatory countries that took the trusteeship of certain colonies of the defeated powers (Germany and Italy) accepted as 'a sacred trust of civilization' responsibilities for the well-being and development of their inhabitants. But all the principles of human rights and humanitarian ideas and policy were still very much in the abstract at the outbreak of World War II. During the course of the war the Atlantic Charter of 14 August 1941, and the Declaration by the United Nations signed by all the Allied powers on 1 January 1942, made provisions for the preservation of human rights. Justice was made one of the aims of the victorious grand alliance. Yet in war such declarations were not unusual.

The formation of the United Nations Organization in 1945 suggested that some of its principles of human rights be accepted in the framing of new constitutions of various countries. At the United Nations Conference on International Organization held at San Francisco in 1945,
the representative of Cuba, Mexico and Panama proposed that the conference should adopt a declaration of the essential rights of man. The conference was unable to deal with the proposal because it required detailed consideration for which there was no time available. In 1946, the representatives of Panama submitted a draft declaration of Fundamental Human Rights and Freedom and requested that it should be placed on the agenda for the second part of the Assembly's first session. But it crossed different stages in the drafting work. Finally the Drafting Committee at its second session from 3 to 21 May 1948, verified the declaration and the Covenant, and taking into consideration the comments and proposals of governments finalized the draft declaration for the agenda of the third session of the General Assembly, held in Paris from 21 September to 12 December 1948. It was discussed first in the Third Committee and then in the plenary meeting. On 10 December 1948, the General Assembly adopted and proclaimed the Universal Declaration of Human Rights as a common goal, realizing them for all people, all nations and every individual and every group in society. This declaration was constantly kept in mind to strive and provide for these rights and freedoms by teaching and education, and by progressive measures, national and international. Forty-eight states voted in favour of the Declaration. None voted against, while eight abstained.  

For implementing the provisions of the Declaration of Human Rights, the Charter of the United Nations vests responsibility for the guarantee of human rights in the General Assembly, and under the General Assembly's authority in the Economic and Social Council. The
Trusteeship Council is concerned with human rights in Trust territories and the Security Council can take jurisdiction over human rights issues when it feels that international peace and security are endangered. After 1950 a number of organizations emerged for the protection of human rights and promotion of human welfare. The Commission of Human Rights and its sister organ, the Commission on the Status of Women, are subsidiary bodies of the Economic and Social Council. Both commissions consist of government representatives.

Social and economic rights are an essential part of human rights. These include the right of work, the right to form free trade unions, the right to social security, the right to an adequate standard of living, including food, clothing and shelter, the right to health, and the right to education. In 1974, the UN General Assembly adopted the declaration and programme of action of a new International Economic Order. But the achievements made in these fields are not very much. When the Secretary-General reviewed a range of international situations in 1981, he found that patterns of inequality such as racism, racial discrimination and apartheid, the pattern of alien subjugation, domination and exploitation, the arms race, the existence of unjust international economic relations, and the refusal to recognize the rights of people self-determination obstructed their economic and social rights. A conference of plenipotentiaries convened by the Economic and Social Council in 1956 prepared and opened for signature a convention supplementing the earlier ones on slavery, outlawing certain practices similar to slavery such as debt bondage, serfdom, purchase of brides and exploitation of
child labour. It emphasized the criminality of slave trade and provided for penal sanction against practices as multilating, branding or otherwise marking a person as a slave.7

The UN Charter reinforced the principles of the dignity and equality of all human beings. In the second paragraph of the preamble, the people of the United Nations express their determination to reaffirm faith in fundamental human rights, in the equal rights of men and women and of nations large and small. Between 1949 and 1962, attention was focused, in the UN bodies concerned, on the question of racial discrimination in non-self-governing territories, with the result that the General Assembly adopted a number of resolutions and divisions on the subject. In 1965, the General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination. The scope of the convention, which came into force in 1969, was limited to discrimination based on race, colour, descent or national or ethnic origin and thereby differed from the two conventions of 1959 and 1960 that also prohibit discrimination on other grounds such as sex, religion, or political or other opinion. The convention's provisions are far-reaching. States undertake not to engage in any act or practice of racial discrimination, to take effective measures to review governmental, national and local policies, and to amend or repeal laws and regulations that have the effect of creating or perpetuating racial discrimination, wherever it exists. Organizations and propaganda activities that promote racial discrimination are declared illegal and participation in them made illegal and punishable. Any dispute between two or more parties with respect to the
interpretation or application of the convention is to be settled by negotiation or referred to the International Court of Justice for decision.

When the Commission on Human Rights was established, it was decided that the preparation of an International Bill of Rights should be its first preoccupation. The plan that was adopted called for the Bill to consist of the following documents: a declaration, a covenant and measures of implementation. Though the first part, known as the Universal Declaration of Human Rights, was proclaimed by the General Assembly in 1948, it was not until 1966 that the rest of the International Bill of Rights, consisting of three international treaties, was ready for signature and ratification. The three additional treaties are the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the optional protocol to the latter, creating the important rights of communication or petition.⁸

Yet another milestone was the declaration, in 1975, on the use of scientific and technological progress in the interests of peace and for the benefit of mankind. The growth of science and technology after World War II created great awareness among the nation-states, on the opportunities offered by science and technology, because it opened vast prospects for economic, social and cultural progress. Although both the International Covenant to Human Rights and the Universal Declaration of Human Rights contain provisions relating to the effect of scientific and technological developments upon the enjoyment of human rights and fundamental freedoms, this question was not considered in detail until 1968, when it was the subject of debate at the International Conference
on Human Rights. In the Teheran Conference on 13 May 1968, it was recommended that the UN organizations should undertake a study of the problems with respect to human rights arising from developments in science and technology.

The European Commission also established the European Court of Human Rights. Eleven states agreed to accept its compulsory jurisdiction. Either the Commission or a state party whose national is alleged to be a victim of a violation, the state party that referred the case to the Commission, or the state party against which the complaint has been alleged can refer a case to the Court. The judgement of the Court is final. If a question is not, or cannot be, referred to the Court, then a political organ, the Committee of Ministers of the Council of Europe, makes the final decision on human rights complaints. The European Commission on Human Rights has, over the years, developed a considerable body of case law on questions regulated in the convention, and the provisions of the convention, in some European states, have automatically become part of the constitutional or statutory law. Where this is not the case, the West European states have taken other measures to bring their internal law in line with their obligations under the convention. The 'hidden effect' of it on human rights outside its territorial scope is well illustrated in its impact on the United Kingdom.

In the western hemisphere, the Organization of American States has, for many years, taken comprehensive action in the human rights field on a regional basis. Within the framework of the OAS, a special organ, the Inter-American Commission on Human Rights, was established in 1959.
The Commission has undertaken important activities in regard to human rights situations that have arisen in some of the American states. In November 1969, the Inter-American Specialized Conference on Human Right meeting at San Jose, Costa Rica, adopted an instrument entitled the American Convention on Human Rights (also called the Pact of San Jose, Costa Rica).

A new spirit emerged in the minds of the framers of the Indian Constitution in the sphere of human rights and human welfare. While framing the Constitution, its authors referred not only to the constitutions of various countries but also to the UN Charter on various political, economic and social matters. The fundamental rights and the Directive Principles of State Policy are based on the principle of humanitarianism and human rights. Jawaharlal Nehru declared that the objective of the Constitution was to realize the dream of Mahatma Gandhi and bring about Ram Rajya, i.e. social and economic justice for all. The concept of Ram Rajya was propagated to ensure the dignity of man and freedom from social, economic and political oppression. The preamble to the Constitution express the resolution of the people of India to secure to all Indian citizens "justice, liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and to promote, among them all, fraternity, assuring the dignity of the individual and the unity and integrity of the nation”.

On the basis of the directive principles of State policy the union government enacted a number of Acts related to human rights, such as the Abolition of Untouchability Act, Suppression of Immoral Traffic Act,
1956 and Dowry Prohibition Act, 1961 (Amendment 1984, 1986). To ensure human rights and safeguard the interests of minorities and weaker sections of the community the Constitution has created several independent bodies such as the Minorities Commission, the Language Commission and the Scheduled Caste and Scheduled Tribe Commission. A commission on the status of women in India was set up in 1973.¹⁰


It is the fiftieth year of our independence and the fiftieth anniversary of the Declaration of Human Rights, and our world has become more dehumanized than ever before. In affirming human rights for our people, we need to be sensitive ourselves, and not simply stand by when violations occur. Education in the home, in the classroom, and in the field will constitute a new awakening. Fear of a financial burden and the temptation to protect oneself at the cost of the other in our society is one explanation of our reluctance to act. The affluent North has no difficulty in washing its hands of the problems and issues of human rights in the third world. The question, 'Am I my brother's keeper' is still valid, and will be in the future. The answer is to be found in the locality, the region and the state in relation to its neighbourhood and the world.
Thus, the philosophy of consumer protection is directed to achieve an egalitarian society where fruits of production, development and progress are enjoyed by all devoid of any consideration in whatsoever nature. Moreover, this is most near to the philosophy of welfare and human rights as it contemplates a mechanism of protection of consumer's rights from exploitation in the commercial world and development of the people at large and human dignity, the basic philosophy of human rights.

With the passage of time, different legislative measure both at International level and in different countries were taken from time to time to protect the human rights and establish the human dignity against all type of exploitations.

(B) INTERNATIONAL PROTECTION REGIME ON HUMAN RIGHTS

The main concern before the International community was the protection of human dignity and to prevent the exploitation of the human being, the consumers from being exploited by unscrupulous traders particularly in the era of liberalisation, globalisation and Internationalisation of trade with a view of protecting the consumers from the aforesaid complicated immediate problems the following legislative and remedial steps were taken by the world community at global level. A brief discussion is given as under:

(i) United Nations Charter
(ii) Universal Declaration of Human Rights - 1948
(iii) International Covenant of Civil and Political Rights 1966

(i) United Nations Charter

The provisions concerning human rights run throughout the U.N. charter "like a golden thread". The charter of the United Nations
represents a significant advancement so far as faith in and respect for human rights is concerned. The human rights are as follows -

Article 1 puts the promotion of respect for human rights on the same level as the maintenance of international peace and security as a purpose of the United Nations i.e. respect for human rights and for fundamental freedom for all without distinction as to race, sex, language, or religion. It is one of the responsibilities of the General Assembly to initiate studies and make recommendations for the purpose of "promoting international co-operation in the economic, social, cultural, education and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.".

It further provides to promote universal respect for, and observance of, human rights and fundamental freedom for all. The charter binds the member states to observe and respect human rights. The charter empowered the economic and social council to make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedom for all. The responsibility to set up commission, in economic and social field for the promotion of human right, is imposed upon the economic council. And lastly, one of the basic objectives of the trusteeship in accordance with the purposes of the UN. laid down in Art. 1 of the charter, shall be, "to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion to encourage recognition of the interdependence of the peoples of the world.".
(ii) **Universal Declaration of Human Rights 1948:**

The Declaration of Human Rights was adopted by the General Assembly in 1948 and has been hailed "as a historic event of the profound significance and as one of the greatest achievements of United Nations".\(^\text{17}\)

The Universal Declaration consists of a preamble and 30 Articles covering both civil and political rights and economic, social and cultural rights. The preamble refers to the "faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women".

Provisions of the Universal Declaration may be classified into four categories as follows:

(i) General
(ii) Civil and Political Rights
(iii) Economic, Social and Cultural Rights
(iv) Miscellaneous

Art. 1 of the Declaration provides that all human beings are born free and equal in dignity and rights, they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

The Declaration further provides that every one is entitled to all the rights and freedom set forth in Declaration without any distinction. No distinction shall be made on the basis of the political jurisdiction or international status of the country to which a person belongs.\(^\text{18}\) Civil and political rights include rights such as right to life and liberty\(^\text{19}\),
prohibition of slavery and slavery trade\textsuperscript{20}; prohibition of torture and inhuman treatment\textsuperscript{21}; right to equality before law and legal remedies\textsuperscript{22}; right to freedom of movement to leave any country and return to his country\textsuperscript{23}; right to seek asylum\textsuperscript{24}; Right to Nationality\textsuperscript{25}; Right to own property\textsuperscript{26}; Right to freedom of thought conscience and religion\textsuperscript{27}; Right to Freedom of opinion and expression\textsuperscript{28}; and Right to freedom of peaceful assembly and association.\textsuperscript{29}

Economic, social and cultural rights include the right to social security, right to work, free choice of employment etc.; right to education; right to enjoy arts and to share in scientific advertisement.\textsuperscript{30} The concluding articles recognize that everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized\textsuperscript{31} and they stress the duties and responsibilities which the individual owes to the community.\textsuperscript{32} Finally it is provided in the Declaration that nothing in the Declaration may be interpreted as implying for any state, group, or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth in the Declaration.\textsuperscript{33}

\textbf{(iii) International Covenant on Civil and Political Rights 1966 :}

The covenant on civil and political rights 1966 consists of VI parts and 53 Articles. Part I (Art. 1 to 3) emphasize on the establishment of the human dignity. Part II (Art. 2 to 5) makes it obligatory, on the each state party to the covenant, to respect the covenant and to ensure to all individual within its territory and subject to its jurisdiction the rights to recognized in the covenant without distinction of any kind.
Part III (Art. 6 to 27) consists of the rights available to the individual recognized by the covenant. The bulk of the substantive provisions of the covenant on civil and political rights is devoted to the traditional civil and political rights setforth in the Universal Declaration of Human Rights. the covenant thus protects the right to life; prohibits torture or cruel, inhuman or degrading treatment or punishment; prohibits slavery, the slave trade and forced labour; prohibits arbitrary arrest or detention; provides that all persons deprived of their liberty shall be treated with humanity; and that no one shall be imprisoned merely for inability to fulfil a contractual obligation. the covenant also asserts the rights to liberty of movement and freedom to leave any country, including one's own state that no one shall be deprived of the right to enter his own country, sets limitation on the expulsion of aliens lawfully, in the territory of a state party. It further provides for equality before the courts and tribunals and for guarantees in civil and criminal procedures; stipulates the right of every one to recognition every where as a person before law; and prohibits arbitrary and unlawful interference with privacy, family home or correspondence and unlawful attack on honour and reputation. It also states that all persons are equal before the law and are entitled to the equal protection.

The covenant on civil and political rights provides for the establishment of a Human Rights Committee consisting of 18 nationals of the state parties serving in their individual capacity and elected by the state parties. In the election of the committee, consideration is to be given to ensure equitable geographical distribution of membership and to
the representation of different forms of civilization and of the principal legal system.\textsuperscript{42} It further make it obligatory on the state parties to submit reports on the measures they have adopted which give effect to the rights recognised in the covenant.\textsuperscript{43} The Committee shall submit the report with proper remarks to the secretary-General of the United Nations.\textsuperscript{44} Finally it is provided that nothing in the covenant shall be interpreted as impairing the provisions of the charter of the United Nations and of the constitutions of the specialized agencies, and impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.\textsuperscript{45}

The rights setforth in the covenant are not absolute and are subject to limitations. While the formulation of the limitations differs as far as details are concerned from article to article, the covenant, by and large, provides that those which are necessary to protect national security, public order, public health or morals, or the rights and freedom of others. On the other hand, some of the rights are considered even in time of public emergency. those rights are the right to life, the right not to be subjected to torture or to cruel, inhuman or degradating treatment or punishment, the prohibition of slavery etc. The above discussed international instruments for the protection and recognition of human rights are regarded best and sacred documents on the protection of human rights in the post world war-II era. Although these instruments does not have a binding character but these have inspired a process of universalisation of human rights. Art. 3 of UDHR\textsuperscript{46} incorporates right to life with all its ancillaries and corallaries. Right to life does not mean
more animal existence rather it pervades the entire human dignity and humanity devoid of deplorable degradation and despicable depravity. Further right to life is ensured in the International covenant on civil and political Rights\(^47\) which provide that every human being has the inherent right to life and, this right shall be protected by law. No one shall be arbitrarily deprived of his life. Every action taken by the state and non-state actors must conform the minimum standard of human dignity. The International instrument for the protection of human rights rightly envisages the preservation of human dignity against all odds. Moreover, all the major and compassionate international human rights instruments holds the key to the protection and promotion of human rights in an age of economic imperialism which popularly known as economic globalisation and privatisation. Further these instruments comes with an effective enforcement and pragmatic preservation of lively living and healthy health.\(^48\) State are under a duty to provide adequate standard of living including food, clothing, housing, and medical care. Emphasis on the elementary, technical, professional education is laid down\(^49\) with an object to personality development and strengthening of respect for human rights and fundamental freedom.

This process, declarations and covenants, has paved the way for the establishment of human dignity and promote the agenda of human values, ethics, dignity, health, morality, decency. Any thing whatsoever which may undermine the human life should never be allowed to go unpunished. Taking all these international documents together following human rights may be established about which we are primarily concern:
i) Right to human dignity

ii) Right to life

iii) Right to health

iv) Right to adequate standard of living

v) Right to Education

Moreover, India has also endowed the majority of the covenants while keeping pace with its international obligations and commitments. But a lot more still remains to be done in for the protection and promotion of human rights. In that way in India the protection of Human Rights Act 1993 was enacted.

(iv) Protection of Human Rights Act, 1993:

The Act consist of eight chapters and 43 sections. Chapter I (from Sec. 1 to 2) deals with the extent, commencement and definition clause chapter II provide for the establishment of the National Human Right commission and provide that the National commission shall consist of a chairman who has been a chief justice of India, one member who is or has been a judge of supreme court, one member who is or has been a chief justice of High Court, rest two members who are the persons having knowledge of, or practical experience of human rights. The members and chairman of the commission shall be appointed by the president of India on the recommendation of the committee consisting of the Prime Minister, speaker of the House of people a minister Incharge of Home affairs. Leader of the Opposition, Deputy chairman of the council of states & leader of the opposition in council of states. Chairpersons and the members shall held the office for a period of five years or upto the age of 70 years.
Chapter III deals with the functions and powers of the commission. The function of the National commission is, to inquire in any case of violation of human rights suomoto or on complain by the victim or public servant, review the safeguards provided by or under constitution, undertake and promote research in the field of human rights, spread human right literacy, encourage efforts of non-governmental organisations. The commission, under limitation to the state government, may visit any jail or any other institution under the control of the state government. The Act further says that the commission shall, while inquiring, have all the powers of a civil court trying suit under code of civil procedure 1908. The commission may, for the purpose of conducting any investigation, utilise the services of any officer or investigating agency of the central government or of any state government with the concurrence of the government concerned.

Chapter IV deals with the procedures of the commission. The commission while inquiring into the complaints call for information or report from the central or any state government or any other authority or organisation. The commission may approach to the supreme court or High court for directives and recommend the report of the inquiry to the concern government with the recommended action to be taken. The establishment of the State Human Rights Commission is provided in chapter V. Which consist of a chairperson who has been a chief justice of a High Court and four members. Among these, one member is or has been a judge of the High Court, one member is or has been a district judge in that state, two members are from amongst persons having knowledge or
practical experience of human rights. The chairperson and members shall be appointed by the governor and shall hold office for a period of five years or till the age of 70 years.

For the purpose of providing speedy trial of offences arising out of violation of human rights the state government, with the concurrence of Chief Justice of the High Court, by notification may specify for each district a court of session to be a Human Rights court and appoint a prosecutor or advocate for the purpose of conducting cases in these courts.

(C) CONSUMER PROTECTION ACT 1986: A HUMAN RIGHTS APPROACH

International concern with human rights as enshrined in the United nation's charter is not a modern innovation. It is in fact, "heir to all the great historic movements for man's freedom to the enduring elements in the tradition of natural law and natural rights and in the most of the worlds great religions and philosophies, and the findings contemporary science about inter-relations of simple respect for human dignity and other individual and community value".

Today the world has become so complex that every where we find competitions in which man is used as an instrument to achieve objects in the present competitive materialistic world. Spiritual values have almost vanished. The era of laissezfaire, which restricted any sort of interference on the freedom of trade and commerce by the state, was nothing but a blessing to capitalist, producers and sellers of goods, who become exploiters of consumers. However, with the passage of time and
with the advent of the concept of welfare state the whole situation has undergone a tremendous change. With the democratic setup of welfare states consumers democracy emerged in the form of various legislation for the consumer protection and finally in the form of 'Consumer Protection Act 1986' in India.

The law of consumer protection has come to meet the long felt necessity of protecting the common consumer from wrongs for which the remedy under the ordinary law for various reasons has become illusory. Its importance, was stressed by the supreme court in -

_Lucknow Development Authority V M.K. Gupta_⁶⁵ explaining the importance of consumer protection Act, R.M. Sahai J observed⁶⁶ -

".... The importance of the Act lies in promoting welfare of the society in as much as it attempts to remove the helplessness of a consumer which he faces against powerful business, described as a network of racket's or a society in which "producers have secured power" to "rob the rest" and might of public bodies which are degenerating into store houses of in action where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewuillered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities, appears to be a silver lining, which may in course of time succeed in checking the rot".
The provisions of the consumer protection Act-1986, reflects the spirit of the protection of human rights. A number of rights and in case of their violation, available, effective remedy, are similar to the human rights provided in the universal Declaration of Human Rights and International covenants. The consumer protection Act-1986 is an attempt not only to protect the consumers but reflects the protection of human rights as well.

It seeks to promote and protect the rights of consumer such as:

(i) The right to be protected against marketing of goods & services which are hazardous to life and property.

(ii) The right to be informed about the quality, quantity, potency, standard and price of goods and services to protect the consumer against unfair trade practice (Right to adequate standard of living).67

(iii) The right to be heard and to be assured that consumers interest will receive due consideration at appropriate forums and to seek redressal (Right to effective remedy).68

(iv) Right to consumer education (Right to Education).69

(v) Right to be protected against deficient services i.e. transport, banking, insurance, electrical etc. This right is available against deficient medical service also (Right to health protection).70

The consumer protection has considerably emerged as a new human right in a world of competition and globalisation and buyer have got a kernel place in the priorities of industrial and human development. The concept of 'caveat-venditor' has become a 'sina qua non' of the
consumer protection movement devoid of any geo-political considerations. The sale of Goods Act 1930 which provides the concept of 'Caveat Emptor'\(^7\) (let the buyer beware) represented an important step in the abandonment of the original rule of Caveat Emptor". The sale of Goods Act 1930, which has an echo of consumer protection, in which the rule of caveat emptor was propounded provide a list of exception to this rule as to protect the interest of consumer protection and now a journey is complete from the Caveat Emptor to the rule of Caveat venditor.

In this connection a series of exceptions to the doctrine of Caveat emptor are laid down which graduated duties upon the seller. In the first place, there is the implied condition that where goods are sold by description the goods must correspond with their description.\(^7\) The express terms relating to the description, quality and fitness of goods sold are, of course, relatively common in commercial transaction. No doubt they are less common in consumer sales though by no means unknown. There is no doubt that, apart from the deminimis rule, it is still the law that any deviation from an express term, however trifling, is a breach of contract for which the buyer is entitled to some remedy. There is no doubt of his right to damages when the goods are sold by description there is an implied condition that the goods supplied shall correspond with the description.

In case the goods are not in accordance with the description there is a breach of implied condition and the buyer has a right to reject. But this section does not protect the consumer much effectively because goods that correspond with their description may not be of merchantable...
quality. Another condition which protect the consumer in more effective way and played an important role in making the rule of caveat venditor an indespensible part of the consumer protection movement i.e. Goods should be of merchantable quality. The goods which are supplied must not only correspond with description but it should be of merchantable quality. It means that the goods is of such quality and in such condition that a reasonable man acting reasonably would after a full examination accept it whether for his own use and to sell it again. As underwears contained certain chemicals which could cause skin disease to a person wearing them next to skin, was held not of merchantable quality. In another case the defendants ordered for some horns of motor. Some of the horns were dented and badly polished. It was held that defects in the horns had rendered them unmerchantable. These conditions are now turned the position from caveat emptor to caveat venditor and place the consumer in a better position in the market of the seller. The third condition that goods must be fit for the purpose for which they are sold and it becomes the seller's duty to supply the goods suitable for the purpose mentioned by the buyer. Thus in the case of Andrew Yule & Co, the buyer had informed the seller that he needed the hessian cloth for packing purposes he could reject the cloth if he found that the same was unsuitable for that purpose.

These conditions provide a better protection to the consumer and put them in a better position against the exploitation by the sellers in the era of caveat emptor and started the era of caveat venditor and gave to the buyer a dignity and a right to get the goods which are suitable for his
purpose and also merchantable complying with the description of sample or description made by the seller which is developed by the further legislation enacted for the protection of the consumer in the market place and finally the concept of caveat venditor has become an indespensible part of the consumer protection movement and established the dignity not only of the consumer but the human dignity. It is singularly being guided by an agenda of human rights. Moreover, consumer protection vis-a-vis human rights is destined to be a shibboleth in the new millannium. Today consumerism has eclipsed the entire gamut of our "modus vivendi". Consequently, consumers protection gyrates around three "Ps" protection, Preservation and Permutation of human right as prequal and sequel of human rights movement through out the whole world.

The notion of consumer protection has a direct bearing on human dignity which can only be accomplished and cherished through human rights and their realisation under national and International jurisdictions. Hence human dignity is defined by socio-economic condition in a welfare state which is committed to constitutionalism, rule of law, equality, liberty, fraternity, social justice, humanitarianism, democracy and human rights. The holistic norms operate in the life of human beings and shape their character, intellectual horizons and standard of living. The concept of welfare state is susceptible to more than one interpretation and requires to be understood and interpreted by the rule of ejusdem generis so as to eschow any inconsistancy, ambiguity and repugnancy which may creep in, at the pedestal of realisation of human rights of consumers. The contemporary manifestation of state is
operating in every human activity and human behaviour is regulated and influenced by the state actors in various garbs. Infrastructure, road, safe drinking water and food, transport, health care, public safety, economic development. Consumer protection are taken care of by the state at one hand. On the other hand foreign relation, national security, science and technological advancement, trade etc. are also preserved by the state. Similarly human rights are essential for all the individuals as they are consonant with their freedom and dignity, and conducive to physical, moral, social and spiritual welfare. They are also necessary as they provide suitable conditions for the material and moral uplift of the people. Because of their immense significance to human being, human rights are also sometimes referred to as 'fundamental rights', basic rights and natural rights'. Idea of human right is bound up with the idea of human dignity. All those rights which are essential for the maintenance of human dignity may be called human right. Thus human rights are based on elementary human needs as imperatives. Some of these human needs are elemental for sheer physical survival and health, others are elemental for physical survival and health. In this conspectus state has enacted various laws on social security, human development and on all aspects of human welfare designed to accord consumer protection against state and non-state actors as consumer in different capacities. It is to be noted that the enumeration of justiciable civil rights (Human rights) in the Universal Declaration 1948, the European Convention 1950, International Covenants 1966 on civil, political, economic, social and political rights, are not identical in all respect. The reason is that the list has become larger in course of time and in the light of judicial decisions and, in some
cases, a different shape had to be given in order to meet the conditions existing in some of the contracting parties. Taking all these international documents together following list of human rights about which we are primarily concern may be put as under:

(i) Right to life
(ii) Right to human dignity
(iii) Right to Equality
(iv) Right to Education
(v) Right to effective remedy for the enforcement of rights and freedom
(vi) Right to an adequate standard of living
(vii) Right to health protection

With the growing conciousness of their rights to a way of life constant with human dignity, and their growing desire for conditions that would secure them such a life, the peoples in the world are coming to attach greater importance to human rights.

It must be central aim of national policy to achieve such conditions as would enable all human beings to pursue their material well-being and their spiritual devleopment in condition of freedom and dignity of economic security and protection and all efforts should be judged in the light of this aim.

In this regard legislations related to consumer protection affirmed that "consumer is not a commodity" and can't be subject to exploitaiton by the sellers and big business houses. However, as compared to other functions, the laws of consumer protection especially
Consumer protection Act 1986 has primarily relied on standard setting which has been its "core activity" it has different provisions to protect the consumer, which covers basic human rights. Economic and social rights, can not be achieved without promoting fundamental rights and freedoms. The essential justification for these freedoms is the defence of the economic and social rights of those concerned. The aim of freedom and rights is to enable the consumer to change the goods and services with satisfactory conditions and economic security, while at the same time affording them real opportunities of improving their living standards. The promotions of these rights and freedoms are fully effective only if it creates opportunities compatible with the requirements of human dignity in every day life.

Art. 26 of the Universal Declaration provides "Right to Education" which not only provide that "the education shall be free, at least in the elementary and fundamental stages but also provides "that education shall be directed to the full development of the human personality and to strengthening of respect for human rights and fundamental freedom". Since independence, India has been struggling to develop and strengthen its industrial base. However during this period the Indian consumer has borne incredible hardships and has been subjected to exploitation of every kind in the name of self sufficiency. Consumer was not more than a commodity, to be used for the benefit, in the eyes of the sellers and businessmen at that time. Only reason was that the consumers were not having any effective right or remedy for their protection, and ignorance of available rights.
Now with the march of time many rights are available to a consumer. It is a an experienced truth that where the people do not exercise their legal remedies, the system as well as the dignity of the man tends to become rusted. Hence for the proper functioning of the legal system and maintenance of human dignity, it is necessary that knowledge of the availability of a legal remedy should be so widely disseminated that people as a whole become conscious of their rights. This has been made one of missions of the consumer protection Act, to provide to the people proper education in terms of their rights and remedies under the Act. Once the people are rendered conscious of their power, they may, perhaps, feel energised to struggle against exploitation by manufacture and traders and may develop their personality and maintain their dignity. So, the Act emphasise on the education of the consumers about their rights i.e. Right to education, Right to education includes, education about the fundamental rights and freedom to develop the human personality. This right is reflected under sec. 6(f) of the consumer Protection Act 1986, which guaranteed "Right to consumer education". This is an important right available to the consumers. The United Nation's Guidelines for consumer protection are very useful, particularly, with regard to consumer education and information programmes.

It provides, Government (central as well as state) should develop or encourage the development of general consumer education and information programmes bearing in mind the cultural tradition of the people of this country. The aim of such programmes should be to enable
people to act as discriminating consumers, capable of making an informed choice of goods services, and conscious of their rights and responsibilities even consumer education should become an integral part of the basic curriculum of the educational system. Bearing in mind the need to reach rural consumers and illiterate consumers, Govt. should develop and encourage the development of consumer information programmes in the mass media. Emergence of T.V. and Radio as powerful mass media are welcome features which can accelerate the consumer movement and can play crucial role by educating the consuming masses about their basic rights as laid down under sec. 6 of the Consumer Protection Act 1986. It clearly shows that right to consumer education given under consumer protection Act is nothing but a shadow of right to education given under Universal Declaration of Human rights. To provide simple, speedy inexpensive and effective redressal of consumer grievances, the Consumer Protection Act envisages a three-tier quasi-judicial machinery at the district, state and national level. It is provided that these quasi-judicial bodies (District forums, state commissions and National Commission) will observe the principle of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumer. Penalties for non compliance of the orders given by the quasi-judicial bodies have also been provided. It is also provided that a complaint and appeal should be decided within 90 days from the date of notice received by the opposite party and first hearing respectively. One of the most important purpose of the consumer protection law is to provide speedy, effective and inexpensive remedy to the consumer because our traditional legal courts
which are over crowded does not give more than dates and adjournments. On the other hand "Right to effective remedy"^{91} given under Universal Declaration of Human Rights which provides - 'Every one has the right to an effective remedy by the competent national tribunals for acts violating fundamental rights granted him by the constitution or law" under the Consumer Protection Act, the consumer has a right to effective and speedy remedy through quasi judicial bodies, whenever his right is violated.

Cockroaches in soft drink bottles; Bacteria in packaged butter and cheese spreads; food poisoning in mid day meal scheme centres; death due to illicit liquor. We read many of these news items in the press, we buy products which cut out fingers because of sharp edges. Toys often have sharp edges which hurt children, they are often packed in material which can choke children. Whether we accept injuries caused by these as normal or not; should not be. As we enter the next millenium we should strive hard to make sure that only safe products are sold and produced and not accept injuries and death due to an unsafe product as a fact of life and silently forgive the producers.

Art. 25(1) of Universal Declaration of Human Rights provides that "Every one has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing housing.." i.e. Right to adequate standarde of living.^{92} The health and adequate standard of living of its citizens ought to be the primary concern of any state. In order to secure better health and living standard to its citizens state has to ensure that there is no adulteration in food stuff,
drugs or cosmetics. Adulteration makes articles not merely unfit for human consumption but sometimes positively injurious and harmful to the consumer's health and life. In fact the consumer protection Act 1986, has taken seriously the task, to improve the quality of life of millions of consumers.

The Consumer Protection Act says in the first place that the consumer has a right to be protected against the marketing of goods and services which are hazardous to life and property. While it is the concern of the Government and its authorities to prevent dangerous goods from finding their way into market, the consumer is assured by this Act that if he has been victimised into purchasing goods or avail services which have injured his person or property, he will have a speedy and effective remedy under the redressal hierarchy constituted under the Act. In Achla C. Dalvi v Lipton India Ltd. It was observed that the adulterated food is dangerous to life and the consumer must be protected against adulteration.

Again in, -

Consumer Unity & Trust Society v Union of India Even the weak cement was declared to be dangerous to life as well as to property.

The subject matter of dangerous good is generally taken care of under the law of tort. Since the time of Donoghue v Stevenson, where a bottle of drink sprang the remains of a dead snail to the fright of the customer at a restaurant who had already taken a part of the contents aggravating her illness and the manufacturer was held liable to the distant user and it has become an established principle that a producer sending
goods into the market would be liable to the ultimate user if his person or property is injured in the normal use of the goods.

The above principle, with the passage of time, strengthened and reached to a final shape under the Consumer Protection Act 1986. Now the general principle of liability is the duty not to supply any consumable goods which fail to comply with the general safety requirements by not being reasonably safe having regard to circumstances.

On the other hand under sec. 6(b) the consumer has been given the right to be informed by the producer about the quality, quantity, potency, purity, standard and prices of goods and services, he buys or avails. This is intended to save the consumer from unfair trade practices like false and misleading descriptions about the nature and quality of the goods, exaggerated statements about their power or potency, for example, that the hair oil is capable of promoting hair growth or preventing hair loss, where there is no such power.

The case of Consumer Protection Council V National Dairy Development Board, demonstrate another kind of right to information. The complainant wanted to know in what way the Dairy Board was using the imported palmolein oil and the Board was refusing to furnish the information on the ground that the figures were privileged from disclosure in public interest. It was held that the consumer had the right to the requisite information. The provision for increased information about goods and services has the potential to empower the consumers. Information is of fundamental importance to public services and is linked to consumers' rights and remedies. The fundamental advantage of this to a
consumer is, health care, nutritious food, clean water, environmental protection and protection against unfair trade practices and deficient services i.e. housing, postal - Banking etc. or in other words provision of right to adequate standard of life\textsuperscript{99} and as also provided, under Art. 12(2)(b) of International Covenant of Economic, Social and Cultural Rights, for the improvement of all aspects of environmental and industrial hygiene…..

The interest of the consumer, in terms of adequate standards of life, as well as the human rights in this regard very much protected under the Consumer Protection Act 1986 which has started a war against the exploitation of consumers against the adulteration, underweighment, poor quality, quantity and deficiency in goods and services. In - Indian Airlines \textit{V S.N. Sinha}\textsuperscript{100}, a complaint was filed before the National Commission alleging that a piece of metallic wire got mixed up in the food served by the Airline and it pierced his gum while consuming the food. The commission held that Airline is liable for the defect in food and awarded the compensation. Major trend of the consumer movement in India is now on the purity, quality, quantity and pricing of the essential commodities, services and goods and consciousness about the hazardous goods and services which may become an easy prey to a number of diseases which may prove fatal to the health and lives of consumer. The attention has been focussed on the poor quality of the goods and services, adultration, unfair trade practices, failure to provide adequate information with regard to the quality, quantity and performance of many consumer goods. The govt. has, no doubt, perceived of a major role in protecting the interest of the consumers with regard to adulteration which is a very important area
of consumers health and standard of life. Now the emphasis is started, with regard to the biological effects of the threats to health created by the new emerging pattern of life. Congestion, ecological imbalance, pollution indirect and long term effects of drugs, food adulteration which decisively affect the present generation of consumers and may also affect the health and life of the future generation of the consumer. The performance of the consumer protection law is emerging in fulfilling the responsibilities towards the consumer's health and safety. The safety involves human lives and human health. Right to health care is further strengthened by the sec. 2(1)(g) which protects the consumer of services against deficient services which includes any fault, imperfection, short coming or inadequacy in the quality, nature and manner of performance required to be maintained. Sec. 2(1)(0), categorise certain specific types of services, interalia, banking, financing, insurance, transport, amusement and entertainment. Only two types of services have been kept out of the ambit of the Act.

(i) Services rendered free of charge,
(ii) Services rendered under a contract of personal service.

Thus non mentioning the health service, presumably gave this service an impression of its exclusion from the ambit of consumer law. The attempts by consumer Forums to bring health service, rendered by private practitioners, hospitals and nursing homes, within the fold of the consumer protection Act 1986 have however, met with stiff resistance and have generated a lot of controversy regarding the ambit and jurisdiction of this legislation. But the National commission, by its
judgement in *Cosmopolitan Hospital V. Vasantha P. Nair* has brought the services rendered by private medical professionals, hospitals and nursing homes within the ambit of the consumer Protection Act 1986. Further this judgement was confirmed by the Supreme Court in an appeal against the judgement of the National Commission, thereby setting at rest the controversy regarding the jurisdiction of the Act over the medical service of private medical practitioners. Now the consumer of health service provided by the private hospitals may seek redressal in case of any deficiency in the service. This provision of the consumer Protection Act is helpful partially to protect the right to health care and adequate service for health care. But, this do not protect fully the consumer's human right (right to health care) because the health services rendered by Govt. hospitals are exempted from this provision of consumer protection law, no redressal can be sought by a consumer, in case of any deficiency, who avails the services of Govt. hospitals. No doubt the private practitioners today are working on commercial line and their aim is not to provide the perfect health service but to earn the money but on the other hand the position of Govt. hospitals is worst, the inhuman treatment conditions and facilities to the human being, negligent attitude of the doctors are not a hidden fact. All these things are the clear violation of not only the right to health care but also the violation of right to human dignity. It is surprising as well as distressing to note that the Govt. hospitals have been put out of the jurisdiction of the consumer protection Act. Especially in a country like India where a sizeable majority of the people is below the poverty line and basking under inhuman, degrading conditions and not able to avail the expensive private
health services and have no other option but to go to govt. hospitals. Consequently, if they suffer any loss due to the deficient services rendered by the hospitals, they don't have any remedy. On the other hand the persons who can afford the exorbitant and costly private health services are at advantage as they are entitled to seek the redressal envisaged under the law in case of any deficiency in the services rendered. This is clear and axiomatic that discrimination is meted out to the poor and rich consumers on the basis of economic disparity resulting in the violation of right to Equality protected under National and International laws. Therefore, Govt. hospitals and its health care facilities must also be brought within the perview of the consumer protection law so as to enrich the concept of transparency and accountability and their subsequent institutionalisation for pragmatic results in a welfare state. The preamble of the Universal Declaration of Human Rights recognises the dignity as inherent in the human family and as foundation of freedom, justice and peace in the world. A man can't lead human life unless he is treated as a human being and not as a commodity. Thus, human dignity is the basic factor amongst human rights without which all human rights are useless. The Consumer Protection laws (including Consumer protection Act 1986) since they emerged, striving for the improvement in the condition and position of consumers and their families in order to attain a level as close a possible to that consistent with human dignity.

The right to human dignity includes the -

(i) right to adequate conditions of life
(ii) right to preservation of physical integrity including safety and health
(iii) measure for prevention atmosphere pollution
(iv) right against exploitation

above rights are essential to the realisation of the right to living condition compatible with human dignity. The above rights as discussed earlier in this chapter are protected through various provisions of consumer protection Act. 1986.

CONCLUSION

Today the inclination of man, in general, is towards materialism, which is the main danger to human rights today, which ultimately results in exploitation of the man by man, man has been simply reduced to a means to an end of production and profits as the consumer. This is quite contrary to the spirit of humanity. But the position is ratified with the consumer protection laws specially with the consumer protection Act 1986 and an attempt is made to safeguard all those rights and freedom of the consumer which are essential for the human dignity, protection against exploitation extends, some of the provisions of the consumer protection Act are identical to the human rights and reflect the main theme of these rights. In this way we can say that the different provisions of the Consumer Protection Act 1986 are identical to human rights and aim to protect the interest of the consumers as well as their human rights and the Consumer protection Act as a whole protects the human dignity, the foundation of all human rights.
The promotion of human rights is indeed of basic importance for the fulfilment of objectives of consumer protection. Unless activities for consumer protection are pursued with respect to human personality they will not provide a sound foundation for social and economic progress. However, it has been rightly said that the promotion of human rights cannot be left to itself and is not brought about automatically by development or economic growth, there must be a conscious and well thought policy, which, while giving due weightage to the absolute need to raise standards of material wealth all round, will ensure that this wealth is devoted to ends that serve the freedom and dignity of man. Constant alertness to human right is all the more important because full scale programmes of economic, above all, social policy will increasingly be needed to secure these rights. Thus in best calculated society effective legal system and sincere implementation of various essential programmes are the main factors responsible for protection and promotion of human rights. In this sphere the work of consumer protection covers principally safeguarding the right to be protected against marketing of goods and services which are hazardous to life and property, the right to be informed about the quality, quantity, potency, purity, standard and price of goods and services, right to seek approachable, free from all kinds of complicated procedural ....... redressal against unfair trade practices or unscrupulous exploitation of consumers and right to consumer education fall within the broad framework of the human rights. The Philosophy of Consumer Protection is a positive effort towards establishing consumer democracy through the consumer sovereignty.
These two philosophies i.e. human rights and consumer protection has the basic ideology for the protection of human beings against the exploitation in every field of life with an objective to establish the human dignity. The first fold, relates to the protection of human dignity and the second, is the protection of consumers against exploitation by commercial activities of traders but the basic object of both is nothing but to protect the human dignity and the leading enactment in the field of consumer protection. The consumer protection Act 1986 as a whole reflects the philosophy of preservation of human dignity and prevent the traders and sellers to use the human beings as an object of earning the profit through exploitation in the commercial field by adopting unfair trade practices which may be injurious to the life and health of consumers and detrimental to the interest of the nation. It may be noted here that the prosperity of a country does not depend on its lofty buildings but on the sound health of its citizens. This basic philosophy of the consumer protection which enshrined in the Act is nothing but the reflection of the foundation of all the human rights i.e. preservation of human dignity and right to adequate standard of living.

To sumup, it is submitted that the consumer movement as a new social movement in the country has started growing and making the consumers conscious about their rights to a way of life consonant with human dignity and their growing desire for conditions that would secure them from exploitation by the sellers and producers of goods and services in the market, the consumer movement is coming to attach greater importance to human rights.
REFERENCES


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4. Ibid at p. 3.

5. Ibid. at p. 6.


7. Supra note-2 at pp. 1184-5.


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13. Art. 56, Id.


15. Art. 68, Id.

16. Art. 73, Id.


19. Art. 3, Id.
20. Art. 4, Id.
21. Art. 5, Id.
22. Art. 6, 7, 8, 9, 10, 11, Id.
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24. Art. 14, Id.
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27. Art. 18, Id.
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29. Art. 20 & 21, Id.
30. Art. 22 to 27, Id.
31. Art. 28, Id.
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33. Art. 30, Id.
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36. Art. 9, Id.
37. Art. 10, Id.
38. Art. 11, Id.
39. Art. 12 & 13, Id.
40. Art. 14, 125, 16 & 17, Id.
41. Art. 26, Id.
42. Art. 28 to 35, Id.
43. Art. 40, Id.
44. Art. 40(2), Id.
45. Art. 44 & 47, Id.
46. Universal Declaration of Human Rights.
47. Art. 6.
48. Art. 25(1), UDHR.
49. Art. 216 UDHR.
50. Sec. 3 of the Protection of Human Rights Act 1993.
51. Sec. 4, Id.
52. Sec. 6, Id.
53. Sec. 12(a) & (b), Id.
54. Sec. 12(d), Id.
55. Sec. 12(g), Id.
56. Sec. 12(c) & (i) Id.
57. Sec. 13, Id.
58. Sec. 14, Id.
59. Sec. 17, Id.
60. Sec. 18(2) & (5), Id.
61. Sec. 21, Id.
62. Sec. 22 & 25, Id; Provisions relating procedure & power are same as for National Human Rights Commission.
63. Sec. 30 & 31, Id.
66. Id at p. 251.
70. Art. 25(1), Universal Declaration of Human Rights 1948.
73. Sec. 16(2), Ibid.
74. The term 'merchantable quality' has not been defined in the Sale of Goods Act 1930.
75. Bristol Tramways V Fiat Motors Ltd. (1910) 2 K.B. 831.
76. Grant V Australian Knitting Mills Ltd. (1936) A.C. 85.
78. Sec. 16(1), Sale of Goods Act 1930.
79. AIR 1932, Cal. 879.
80. Art. 3, UDHR 1948, Art. 2 E.C., Art. 6(1) I.C.
81. Art. 1, UDHR, preamble, Art. 10(1), 16, I.C.
82. Art. 26, I.C.
83. Art. 23(1), 2 of Protocol E.C., Art. 26(2), UDHR.
84. Art. 2(2), 3 of I.C.
85. Art. 25(1), UDHR, 1948.
86. Ibid.
90. Art. 26(2), UDHR 1948.
91. Art. 7, UDHR 1948.
92. Art. 25(1) UDHR 1948.
93. Sec. 6(a), Consumer Protection Act, 1986.
94. 1992 1 CPJ 90 (NC).
95. 1992 1 CPJ 56 (NC).
96. 1932 AC 562.
98. (1991) II CPJ, 617 (Guj).
100. 1991, 1 comp. L.J. 224 (NCDRC).
103. Ibid.
104. Ibid.
107. Art. 25(1) UDHR 1948.
Chapter - V

WORKING OF CONSUMER DISPUTE REDRESSAL MECHANISM: AN EMPIRICAL STUDY
Chapter - V

WORKING OF CONSUMER DISPUTE REDRESSAL MECHANISM : AN EMPIRICAL STUDY

Introduction

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Introduction

All over the world, there has been growing demand for the last few decades for greater recognition and protection of consumers. Today a large number of developed and developing countries have legislations to protect the interest of the consumer. Thus for the first time in the history of social economic legislation of India a comprehensive legislation namely the Consumer Protection Act, 1986 has been passed to provide better protection to the interest of consumer and for that purpose to establish Consumer Dispute Redressal Agencies for the settlement of consumer disputes and for the matters connected there with it seeks interalia, to promote and protect the rights of consumer because if, the rights which are assured to the consumer by the consumer protection Act, 1986 are protected with full force then it will certainly help them to raise the concept of consumerism which is defined as social movement intended to safeguard the interest of buyer through various social control measure. So, in the larger interest of the society a 3 tier set up of Consumer Dispute Redressal agencies has been established and it is true that if the foundation stone of a building will not be laid down properly the building raised on it may collapse any time. In the same way if the gross root level machinery of consumer protection does not function properly, the result of production would be nil. This chapter is designed to evaluate and assess the working of crucial link of the three-tier consumer Dispute Redressal Agencies in the country and object of consumer protection. The object of study is to test the hypothesis as to how far the consumer movement has become a reality in India. It seeks to
test as to whether people have really started going to consumer courts for the redressal of their grievances. The study intend to examine the plus and minus points of the working of consumer Dispute Redressal Agencies and to see as to how far the demerits of traditional legal courts i.e. delay, psychological trauma, catering of rich alone, emphasic on technicalities have started finding place in consumer courts.

(A) WORKING OF CONSUMER DISPUTE REDRESSAL AGENCIES : AN EMPIRICAL STUDY

With the passage of consumer Protection Act, 1986 a new era of 'consumerism' has started and to provide the effective protection to the consumers against the exploitation by the sellers, producers and provider of services, who only concentrate their activities on the earning of more and more profit and never think about the quality, potency and standard of Goods and services. To provide a speedy and inexpensive redressal to the grievances of the consumers a 3 tier set up of consumers courts was established. But the question arises that upto what extend these dispute redressal agencies are successful to achieve their object for which they have been established. If they are not achieving their objects which are settled through the various provisions of the consumer Protection Act, 1986 then what are those reasons which are affecting the working of Consumer Dispute Redressal Agencies. In this way in this part of the chapter it is tried to analyse the working of the following agencies.

(i) Aligarh District Consumer Forum
(ii) State Consumer Dispute Redressal Commission, U.P.
(iii) National Consumer Dispute Redressal Commission, Delhi
'Consumer sovereignty' like share holders democracy is a time-born shibboleth. More than a hundred years ago "Adam Smith" observed that consumption is the sole purpose of all production activities and the interest of the producer ought to be attended only so far as it may be necessary for promoting that of the consumer. That is a theory on which consumerism should be based, but in reality this does not happen, as large corporations and enterpreneurs controlling the economy do not let this happen, which necessitates enactment of consumer protection laws. In India enactment of consumer protection Act 1986 was a milestone in this regard which was aimed to protect the interest of the consumers.

(1) Setup and Working of Aligarh District Consumer Forum

The Act provides for the establishment of adjudicatory bodies at three different levels - District, State and National. At the bottom, there is the consumer dispute redressal forum (district forum) in every district to be established by the state government. It shall consist of a president and two members. This chain has been made with an object to bring the justice near the homes of consumer. The Act provides for setting up of a district consumer forum in each district irrespective of its size.

(i) Establishment and Composition of Aligarh District Consumer Forum

It was in this background, that a district consumer forum was set up in Aligarh district in Oct. 1990 in a 'Varandah' of civil court, Aligarh. The cases were heard merely once a week. The Forum was headed by the then district Judge Mr. B.K. Srivastava and two other members were Mrs. Manju, K.C. Dixit, a social worker and Dr. Harish Gupta, Lecturer, D.S. College, Aligarh.
As said above the forum worked only once a week i.e. Saturday from 3.00 P.M. to 5.00 P.M. The files of the forum were kept in a small room adjacent to the varandah. About a year later, in Dec. 1991, the forum shifted to the present office, a tin shaded room having no proper electric wiring, live wires are hanging here and there and a fan with its deadly speed tries to sweep out the heat\(^1\), as there is a heavy rush of clients and lawyers pulling each other and quarelling with each other in the presence of president and members of forum. They snatch files from the hand of "Peshkar" and from the bundles of files lying here and there with an object to put it on their own before the forum. No decorum of court is seen in the room. President and members sit on broken chairs this is the scene of Aligarh Districts' Consumer Forum's office where it shifted in Dec. 1991. In this room two Almirahs, three tables, including that of presidents and about ten broken chairs are provided. Slowly and gradually the forum started receiving good response from the consumers and as a result the work load took a giant jump in the succeeding years. The mass media has been mainly responsible for invoking consumer awareness amongst the Indian consumer. To meet the increasing number of complaints, the Aligarh District's consumer forum started working thrice a week. But as the consumer movement gained further momentum even this was not sufficient and therefore the forum now sits daily from 3.00 P.M. to 5.00 P.M. The present study has been designed to evaluate the working of this forum since its inception in Oct. 1990 to Aug. 1999.

Dealing a great flood of application it is really amazing that the such a vital forum has not been provided with any permanent staff. The
present staff of Aligarh District Consumer Forum is on deputation from the office of District Supply officer, a temporary arrangement.


As has been seen in the aforesaid pages that a district consumer forum has been working in Aligarh since Oct. 1990.

The purpose of such a forum is to bring justice near the homes of consumer. But as mentioned above the U.P. state government has ordered the setting up of district forums under pressures from the central government, consumer groups and directive of the supreme court. Under the consumer protection Act. It is the responsibilities of state government to provide the necessary infrastructure for such a forum i.e. building, ministerial staff, contingent expenditure including expenditure to be incurred on furniture, transport, books, reports, journals, office equipments and the rest.

If anybody pays a visit to Aligarh District forum, knowing well the above responsibilities of the government under the most important consumer legislation of this country, he will immediately realise the wide gap which we have in India between the legal provisions and its implementation. It is indeed a sorry state of affairs if the government itself doesn't comply with legal provisions. The Aligarh forum is a classical example of an ill equipped consumer adjudicating body in terms of space, staff, office equipment, reports, journals and books and facilities for advocates and litigants.
It is the cardinal principle of any legal system worth naming that the adjudicators, judicial officers, arbiters etc. must be handsomely paid so that their independence is insured and they are not tempted to go for illegal gratification, bribery and corruption. It is indeed a matter of concern for those who are interested in the consumer movement that the consumer law of this country promises only pittance remuneration for the president and members of district consumer forum.

Sec. 3 of U.P. Consumer Protection Rules, 1987\(^3\), provides that the president of district forum shall receive the salary of the Judges of a District court if appointed on whole time basis or an honorarium of Rs. 150 per day if appointed on part time basis. Other members if sitting on whole time basis, shall receive a consolidated honorarium of Rs. 2000/- per month and if sitting on part time basis, a consolidated honorarium of Rs. 100/- per day for the sitting.

Under the amended\(^4\) consumer protection Act the district forum shall consist of a person who is or has been or is qualified to be, a district judge, who shall be its president. Two other members, shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.

It is a matter of great satisfaction that Aligarh forum has been fortunate to have been manned by highly educated people. Its presidents have been either retired district judges or district judge in office. It has been noticed in some of the states by the studies conducted by the
consumer organisations that the socio-economic and educational background of members of the forums is highly insatisfactory. It was found in one such study that the vast majority of members had been selected for appointment on the basis of there been active members of a political party. It is reported from some of the states that some members of the forums don't fulfill prescribed qualification. Interestingly, some of the members are not graduate in any discipline.

The present study has noted with great satisfaction that the members of Aligarh district forum fulfill the qualification prescribed by the sec. 10 of the consumer protection Act as Dr. (Smt.) Maya Verma hold a Ph.D. degree and teacher in one of the oldest and reputed colleges of U.P. she is a lady, similarly Capt. I.K. Ahuja is a known social worker of the city with tremendous experience and integrity. It goes without saying that as contemplated by sec. 10.

But reading of the decisions rendered by the Aligarh forum leaves a grate scope for improvement. Probably they don't do enough reading of consumer law and required, home work while writing their judgements. Many a times it is difficult to make, any sense of their orders. What is more disturbing is the kind of politics which is reflected, in their judgements. The members don't see eye to eye with the president and their difference of opinion has an unfortunate bearing on the orders passed by them. It was found in this study that in most cases the two local members take one view while the president takes another. Many a times they don't cooperate with the president by making themselves absent from the proceeding of the forum and render their judgement without hearing the parties, a clear violation of principles of natural justice indeed.
Apart from the serious objections as to the manner of appointments of members of district forums in various states, there is much to be said against terms and condition of appointment and the infrastructural arrangements. Most of the states have set up such forums on a part time basis; the district judge takes of one day in a week from his other busy schedule and sits in the forum to hear consumer cases. There are hardly any facilities available to these bodies in respect of accommodation, secretarial assistance, reports, office equipments, journals and books in several states.  

These observations of Prof. D.N. Saraf are true in respect of Aligarh District forum as well. As seen in the first part of this chapter that the Aligarh district forum also started working once in a week. Subsequently it worked thrice a week and fortunately it now sits daily with a fulfledge president who is him self a retired district judge. But the working hours of the forum are still two in a day. To meet the increasing pressure on the district forum, this study suggests that the forum should sit from 11.00 A.M. to 5.00 P.M. The study notes with great admiration that due to the efforts of president the forum is not affected by the strikes in the civil court which have almost become an order of the day and have brought the noble legal profession into great disrepute.

In order to generate congenial conditions, sufficient funds are to be imbarred and placed at the disposal of district consumer forum for the purchase of books and journals, furniture and other basic facilities. The study notes with great pain that only Rs. 500/- per year have been marked for Aligarh district consumer forum by the state government. Due
to this meagre amount at the disposal of the forum the forum is finding it
difficult to survive. The study shockingly notes that even those broken
chairs and tables etc. are the courtsey of District supply office. The
forum has no staff of its own and the staff has also been temporarily
provided by the supply office. Due to this great scarcity of funds the files
of the forum are not properly kept. Many files are missing and therefore
during this study it was realised that unless proper records are kept, no
definite conclusion can be drawn.

Coming to the working of Aligarh District Consumer forum, it
can safely be said that inspite of great constrains the forum has been
doing a commendable job and has a bright future for itself. The study has
found that consumer awareness in Aligarh district is increasing every day.
As it is evident from the number of applications which the forum receives
now. In 1999 (upto Aug. 1999) the forum has already received 584
applications while in 1990 only 40 cases were filed. The number went
upto 340 in 1991. It went up further in 1992 when 610 cases were filed
and in 1993 a further increase as during that year 890 cases were filed.
The consumer awareness has reached its maxima as the cases which have
come to the forum relates not only to goods but also to services i.e.
electricity, postal, insurance, telecommunication, gas, banking and much
debated medical services. Consumer awareness reached to the highest
point in 1998 as 1402 cases filed in this year. As it is clear from table
no. 1 that since the inception of the forum 1990 upto 1998 the consumer
awareness is increasing in the Aligarh district day by day. The study has
also found that the consumer awareness in Aligarh district is not confined
Consumer Awareness in Aligarh

<table>
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</tr>
<tr>
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</tr>
<tr>
<td>1998</td>
<td>402</td>
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Aaligarh District Consumer Forum:
At a Glance

No. of Cases

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<td>71</td>
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<td>50</td>
<td>97</td>
<td>34</td>
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<td>21</td>
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<td>YEAR</td>
<td>Total no. of cases filed</td>
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</tr>
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<td>------</td>
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<td>1314</td>
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<td>1998</td>
<td>1402</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

**Source of Data** --- Available records and files of Aligarh District Consumer Forum
to men alone and has started reaching the better half of the world as well. Table no. 2, shows that while in 1990 only 6 females filed their cases in 1993 the number has increased exact 16 times, as during this year 96 women came to the consumer forum with their grievances. But the percentage wise representation of females in comparison to men is still unsatisfactory. As women are the real consumers of household goods, it is expected that in years to come their representation will certainly increase.

One of the most important purposes of the consumer protection law is to provide speedy justice. Sec. 14(3)(8) provides that the District forum will not normally give more than one adjournment and the complain should be decided within 90 days from the date of the notice received by the opposite party, where complain does not require analysis or testing of goods, and within 150 days if it requires analysis or testing of goods.

The study has found (Table No. 3) that in the beginning, the district forum was able to render speedy justice but now the problem of delay which has almost eroded the credibility of traditional courts has penetrated into the consumer courts as well. As shown in table No. 3, in 1990 on average the forum disposed off the cases in 72 days in 1991 it took only 54 days. But from 1992 it started taking more time than previous years as the average time taken almost tripled as it took 148 days. In 1993 the study noticed a further increase in the average time taken by the forum as it took 179 days and this increase was continue upto 1998 when forum took 343 days to decide a case. It is therefore clear that from 72 days in 1990 to 343 days in 1998 the forum is now
# Table No. -- 2

<table>
<thead>
<tr>
<th>YEAR</th>
<th>No. of male applicants</th>
<th>No. of female applicants</th>
</tr>
</thead>
<tbody>
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<td>1990</td>
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<td>1991</td>
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<td>1218</td>
<td>96</td>
</tr>
<tr>
<td>1998</td>
<td>1331</td>
<td>81</td>
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</table>

Source of Data --- Available records and files of Aligarh District Consumer Forum.
### TABLE NO. --- 3

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Average time taken to decide single Case.</th>
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<tbody>
<tr>
<td>1990</td>
<td>72 days</td>
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<tr>
<td>1991</td>
<td>54 days</td>
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<td>1992</td>
<td>148 days</td>
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<td>1993</td>
<td>179 days</td>
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<td>1994</td>
<td>210 days</td>
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<td>1995</td>
<td>264 days</td>
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<td>1996</td>
<td>281 days</td>
</tr>
<tr>
<td>1997</td>
<td>364 days</td>
</tr>
<tr>
<td>1998</td>
<td>343 days</td>
</tr>
</tbody>
</table>

**Source of Data** --- Available records and files of Aligarh District Consumer Forum
moving towards delayed justice as opposed to its objective of speedy redressal of the consumer disputes.

One of the major difference between the traditional legal remedies and that of remedies under the consumer protection Act is that for filing a complaint under the consumer protection Act neither stamp duty nor court fees to be paid. It is also not necessary to engage the services of a lawyer. A party may appear in person, engage lawyers or authorise any other person to represent him in the proceedings. It has been observed during the present study that the applicant has to pay at various stages such as at the time of filing complaint he is asked to pay Rs. 5 to 20 to the peshkar. For even obtaining a copy of the judgement he has to pay something. It was the major objective of consumer protection Act to have lay-justice through a quasi judicial body where clients are not exploited by the lawyer, but the present study shockingly noticed that despite the provision in law in more than 98% cases lawyers appeared before the forum. Most clients in their oral talks, talk of huge amount of money which the lawyers engage by them are making in the consumer cases. The consumer protection Act has given jurisdiction to District forums to entertain complaints in respect of defects in goods, deficiency of services, unfair trade practices, charging of excessive price of goods etc. The Aligarh District forum has been receiving cases mainly as to defects of goods and deficient services (Table No. 13). As to goods the forum is now receiving lot of complains. As it is clear from table No. 5, which shows that in 1990 18 cases as to defective goods were filed the number went up to 178 in 1991 and 209 in 1992. In 1993, 311 case were
filed and the number having the increasing tendency and reached upto 381 in 1997. In most of the cases relief was granted except in 1991 in which year majority of the cases i.e. 145 out of 178 were dismissed. If 1991 and 1992 were years of emphasis on defective goods in the consumer movement, 1993 marked the beginning of emphasis on deficient services (Table No. 5-A). This is indeed the most commendable development of the consumer behaviour in Aligarh. Today the consumer is fully aware of his rights as in respect of services which he hires for a consideration or which he is availed of with the approval of the first mentioned person i.e. consumer. The increasing number of complaints in respect of defective goods and deficient services (Table No. 5 & 5-A) clearly shows the awareness of consumers in Aligarh and this also certify the satisfaction of the consumers with the working of the Aligarh District consumer forum despite of the delayed disposal of the cases.

The study has noticed with great satisfaction the awareness of people in Aligarh in respect of the rights available to them against the deficient services. It has been observed that lot of cases now filed against electricity department, post office, gas agencies, telecommunication department, medical services, insurance services, financial services etc. For example as to electricity department (Table No. 6) in 1990 only 3 cases were filed but in 1991, 39 cases were filed out of which in 27 cases relief was granted and 12 cases were dismissed.

As to telephone services (Table No. 7) in 1990, not a single case was filed but in 1991, 24 cases were filed out of which 8 cases were dismissed but in 1992 out of 61 cases relief was granted in 26 cases, and
<table>
<thead>
<tr>
<th>YEAR</th>
<th>No. of cases pending</th>
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<td>1997</td>
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<tr>
<td>1998</td>
<td>800</td>
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</table>

Source of Data — Available records and files of Aligarh District Consumer Forum
**TABLE NO.--- 5:---** Cases filed in Aligarh District Consumer Forum related to DEFECTIVE GOODS.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>No. of cases filed</th>
<th>No. of cases in which relief granted</th>
<th>No. of cases amicably settled</th>
<th>No. of cases dismissed</th>
<th>No. of cases pending</th>
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<td>1990</td>
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</table>

*Source of Data* --- Available records and files of Aligarh District Consumer Forum
TABLE NO.—5- A

<table>
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<th>No. of cases related to deficient services</th>
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Source of Data --- Available records and files of Aligarh District Consumer Forum
### TABLE NO.--- 13

<table>
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<th>Year</th>
<th>Defective Goods</th>
<th>Electricity Dept.</th>
<th>Telephone Service</th>
<th>Gas Agencies</th>
<th>Postal Service</th>
<th>Banking Service</th>
<th>Ins./Fin Service</th>
<th>Avasvikas/ADA</th>
<th>Misc</th>
</tr>
</thead>
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<td>168</td>
<td>51</td>
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<td>381</td>
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<td>106</td>
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<td>394</td>
<td>184</td>
<td>277</td>
<td>181</td>
<td>101</td>
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<td>81</td>
<td>77</td>
<td>-</td>
</tr>
</tbody>
</table>

**Source of Data** --- Available records and files of Aligarh District Consumer Forum
TABLE NO - 6: -- Cases filed in Aligarh District Consumer Forum related to ELECTRICITY DEPARTMENT.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>No. of cases filed</th>
<th>No. of cases in which relief granted</th>
<th>No. of cases Amicably settled</th>
<th>No. of cases dismissed</th>
<th>No. of cases pending</th>
</tr>
</thead>
<tbody>
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<tr>
<td>1998</td>
<td>184</td>
<td>61</td>
<td>12</td>
<td>28</td>
<td>73</td>
</tr>
</tbody>
</table>

Source of Data --- Available records and files of Aligarh District Consumer Forum
TABLE NO. --- 7: -- Cases filed in Aligarh District Consumer Forum related to TELEPHONE SERVICE.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>No. of cases filed</th>
<th>No. of cases in which relief granted</th>
<th>No. of cases amicably settled</th>
<th>No. of cases dismissed</th>
<th>No. of cases pending</th>
</tr>
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<td>1997</td>
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<td>13</td>
<td>36</td>
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<tr>
<td>1998</td>
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<td>6</td>
<td>11</td>
<td>156</td>
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</tbody>
</table>

Source of Data --- Available records and files of Aligarh District Consumer Forum.
14 cases were amicably settle. The number of cases against these two services increasing each year and relate to excessive billing and deficient services.

Few years back the exploitation of the consumer by the owners of the gas agencies was at the highest point and the consumers were not having any remedy, against the dictatorship of the owner of this service; except moving from pillar to pole with their complains. But with the enactment of the consumer protection Act the consumers as become aware of their rights available and took a breath of relief. The study noticed with great interest that the consumer awareness as to gas agencies. Table No. 8 shows the year by year increase in number of cases against gas agencies from 1990 to 1994 and in most of the cases relief was granted which is a definite proof of exploitation of consumers by the gas agencies. But from 1995 the number of cases in respect of gas agencies started decreasing and was continue upto 1997 it prove that with the help of the consumer forum and available rights under consumer protection Act, consumers of Aligarh are successful to put a check on the service of gas agencies. The study has noted that the cases have now started coming against post office services as well (Table No. 10). the cases mainly relate to discrepancies and poor account services and irregularities in issuance of NSC's etc.

One of the major finding of present study is the consumer awareness as to deficient banking, private financing and insurance services. Table No. 9 & 12 gives an idea of the cases filed and decided in respect of these services. Here also the trend is upward and in most cases relief has been granted or cases were amicably settled.
**TABLE NO.--- 8**: Cases filed in Aligarh District Consumer Forum related to GAS AGENCIES.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>No. of cases filed</th>
<th>No. of cases in which relief granted</th>
<th>No. of cases amicably settled</th>
<th>No. of cases dismissed</th>
<th>No. of cases pending</th>
</tr>
</thead>
<tbody>
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<tr>
<td>1998</td>
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<td>84</td>
<td>11</td>
<td>11</td>
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</tr>
</tbody>
</table>

*Source of Data* --- Available records and files of Aligarh District Consumer Forum.
**TABLE NO.--- 9:** Cases filed in Aligarh District Consumer Forum related to INSURANCE & FINANCE SERVICES.

<table>
<thead>
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<th>YEAR</th>
<th>No. of cases filed</th>
<th>No. of cases in which relief granted</th>
<th>No. of cases amicably settled</th>
<th>No. of cases dismissed</th>
<th>No. of cases pending</th>
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<tr>
<td>1998</td>
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<td>9</td>
<td>4</td>
<td>34</td>
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</table>

*Source of Data* --- Available records and files of Aligarh District Consumer Forum
TABLE NO.— 12: --- Cases filed in Aligarh District Consumer Forum related to BANKING SERVICES.

<table>
<thead>
<tr>
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<th>No. of cases filed</th>
<th>No. of cases in which relief granted</th>
<th>No. of cases amicably settled</th>
<th>No. of cases dismissed</th>
<th>No. of cases pending</th>
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</table>

Source of Data --- Available records and files of Aligarh District Consumer Forum.
Cases are also coming up as to services offered by municipal corporation, ADA, Avas Vikas Parishad etc. As is evident from Table No. 11 here also in most of the cases consumer have won the case and relief was granted by the forum. After analysing Table No. 14 which gives an idea about the cases filed and decided related to deficient services from 1990 to 1998, this study with great satisfaction noticed that the attitude of District Consumer Forum is totally in favour of the consumers and in cases related to different deficient service of various departments/services the Forum in near about in 90% of cases (in comparison to the cases decided in favour of the services) relief is granted to the consumers. It shows up to what extend these services are deficient they should improve their standard of services and the Aligarh District Forum has established a fact that if these services will not improve their standard they will be at loss because now the consumers are aware of their rights, as the increase in number of cases against these services shows, and the District Forum Aligarh has developed a sense of confidence in the consumers which is a remarkable achievement of the Forum. The Forum now established its image as the protector of the exploited consumers and their rights in the every field of the market. This is a great achievement of the forum in Aligarh. To conclude it may be said, that keeping in view the above analysis of data, that the District Consumer Forum Aligarh is doing a commendable job and successful to establish its credibility among the consumers of the District and consumers are satisfied with the working of the forum because the increasing number of consumers coming with their grievances directly proportionate to the satisfaction of the consumers with the working of
**TABLE NO.--- 10:** Cases filed in Aligarh District Consumer Forum related to POSTAL SERVICES.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>No. of cases filed</th>
<th>No. of cases in which relief granted</th>
<th>No. of cases amicably Settled</th>
<th>No. of cases dismissed</th>
<th>No. of cases pending</th>
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**Source of Data** --- Available records and files of Aligarh District Consumer Forum.
### TABLE NO.--- 11
Cases filed in Aligarh District Consumer Forum related to A.D.A./ AVAS VIKAS PARISHAD / MUNICIPAL CORPORATION.

<table>
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<th>YEAR</th>
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<th>No. of cases amicably Settled</th>
<th>No. of cases dismissed</th>
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</table>

**Source of Data** --- Available records and files of Aligarh District Consumer Forum.
**TABLE NO. --- 14**

<table>
<thead>
<tr>
<th>Services</th>
<th>Total no. of cases (1990 --- 1998)</th>
<th>Decided in favour of consumer</th>
<th>Decided against the consumer</th>
<th>Pending</th>
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<td>342</td>
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<td>254</td>
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<tr>
<td>Banking</td>
<td>327</td>
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<td>57</td>
<td>173</td>
</tr>
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<td>Telephone</td>
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<td>433</td>
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<td>294</td>
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<td>246</td>
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<tr>
<td>Gas agencies</td>
<td>828</td>
<td>508</td>
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<td>228</td>
</tr>
</tbody>
</table>

*Source of Data* --- Available records and files of Aligarh District Consumer Forum
the forum. Aligarh District forum on its part trying to its best to protect
the consumer against the exploitation with limited resources and
facilities. Though the forum is taking excess time to dispose off a case
but the working is not responsible for this upto that extent as other
factors are responsible i.e. poor infrastructure facilities, shortage of
staff, shortage of fund, part-time nature of the forum etc. So, in one
sentence, the Aligarh District consumer forum, with all the problems,
doing a remarkable job and successful in developing the confidence in
the consumers of the district about their rights against the exploitation in
the market.

All the figures of this study are based only as to the files which
are available in record, but it in no way undermines the significance of
present study which clearly points out the working of the forum and trends
as to consumer behaviour in the district.
REFERENCES

1. Now the District Forum is shifted to the Tahseel premises with much better facilities even a small library is established.


3. Vide Notification No. CP-72/XXIX-10-CP (8)-87, dated August 31, 1987, published in the U.P. Gazette Extra part 4, see (Kha), dated 31st August, 1987, pp. 6-11, also see Sec. 10(3) of Consumer Protection Act 1986, which provides that salary or honorarium etc. of the members of districts forum shall be such as may be prescribed by the state government.


7. When the data was collected i.e. in May 2000.

8. Ibid., at p. 30.

(2) SETUP AND WORKING OF STATE CONSUMER DISPUTE REDRESSAL COMMISSION, U.P.

The passage of Consumer Protection Act 1986 was a landmark in the history of consumer movement in India. The quasi-judicial bodies contemplated to be set-up to resolve consumer disputes have unique features both in respect of their constitution as well as methods of operation. A three tier adjudicatory machinery of District Forum, State Commission and National Commission, each consist of a judicial member as the presiding officer and two members for the District Forum and State Commission and four members for National Commission not necessarily with legal qualifications and experience have been created for resolution of consumer disputes. It is provided that at least one of these non-judicial members would be a woman.

Establishment of the State Consumer Dispute Redressal Commission - the second in the hierarchy of consumer dispute redressal agencies. The State Commission is required to be established in each state by the State government.

The evaluation of the state Consumer Dispute Redressal commission U.P. is based on the data collected through conducting survey and from the available records and files (which was available from 1992 to 1998) of the state commission U.P. and the Consumer Protection Directorate Lucknow U.P. The data used in this study is primary except the total number of complains and appeals filed which are secondary in nature. No specific formula is used to analyse the data except mean is calculated by
\[
\Sigma N \\
M = \frac{\Sigma N}{\Sigma I}
\]

where

\[\Sigma N = \text{Total frequency}\]

\[\Sigma I = \text{Total time intervals}\]

(i) **Establishment and Composition of State Consumer Dispute Redressal Commission, U.P.**

After the implementation of Consumer Protection Act 1986, no effective steps were taken by the Govt. of U.P. But after a long demand by the different consumer organizations and interference of the Supreme Court.\(^1\) In 1998 through the official notification No. C.P-72/29-10-C.P.(8)-87 dated 31.8.87 Consumer Protection Rules - 1987 were framed and on 5.2.1988 State Consumer Dispute Redressal Commission U.P. was established in Lucknow and retired judge of U.P. High Court Justice K.S. Verma was appointed as the President and Shri Prakash Goyal & Ms. Vidya Sonkar were appointed as the members of the State Commission.\(^2\) In the beginning the Commission started working thrice a week from 3.00 P.M. to 5.00 P.M. But slowly as the number of complaints and appeals started increasing day by day, the number of sittings of the State Commission was extended in the same proportion. At present State Commission of U.P. sits daily to hear the complaints and appeals.

If any one visits the State Consumer Commission, on entering in the main building of the Commission he will feel as if entering into a discarded palace. There is no proper arrangement of light in the main hall where small partitions like a "Murgi Darba (pigeon holes), are made by
ply-wood for the ministerial staff but the cabins of the President and members are relatively better. The space of court room, adjacent to main hall is not sufficient, at the time of hearing the rush of the litigants and lawyers creates a seen of 'fish market'. The space where records are kept is full of darkness, a bulb inside tries to sweepout the darkness, creates a seen of horror films, the files are there kept underdust, to take out files from the record room is just like to conquer the Everest.

As provided, that the State Government is saddled with all responsibilities for providing infrastructure i.e. building, ministerial staff, contingent expenditure including expenditure to be incurred on furniture, transport, books, reports and journals, office equipments and the rest. For a long time State Government was reluctant to setup these quasi-judicial foram and commission. Under the pressure from Central Government, consumer groups and direction issued by the Supreme Court\(^3\), State Govt. has taken steps to comply with the letter but not with the spirit of the law. But if any body pays a visit to State Commission, U.P. knowing well the responsibilities of the government under the most important consumer legislation of the country, he will immediately realise the wide gap between the legal provisions and its implementation. The State Commission is an exact example of an ill equipped consumer adjudicating body in terms of space, staff, office equipments, reports, journals and books, and facilities for advocates and litigants. It is indeed a sorry state of affairs if the Government itself does not comply with the legal provisions of a legislation.
In order to generate congenial conditions, sufficient funds are to be imibursed and placed at the disposal of the State Commission for the purchase of books and journals, furniture and other basic facilities. The study notes with shock that only 20,000 per year have been marked for the State Commission by the State Government. Due to this meagre amount at the disposal of the commission, the commission is finding it difficult to survive, which is directly affecting the working of the State Commission. The approved staff (though not sufficient) including typist, clerk, Reader, Ardali, peon and watchman in the state are 363, but at present the working staff in State commission and District Foram of the state are only 255. Inspite of the insufficient staff, the notable point is, that the State Commission doesn't have its own permanent staff, the present staff has been temporarily provided by Supply Office and not only staff the available furniture in the Commission is also the courtesy of supply office. This factor surely affecting the working of the Commission - adversely. The scarcity of funds created a problem for keeping the records and files in a proper place. Many files and records were found missing during the data collection.

At present the State Commission, U.P. is headed by Mr. (Justice) K.C. Bhagawa a retired judge of High Court and the other two members are Mr. Banarsidas (a retired I.A.S. Officer) and Ms. Radha Rastogi, a well known social worker. Consumer Protection Act provides that the State Commission shall consist of a person who is or has been a judge of a High Court, appointed by the State Government, who shall be its president. Two other members, shall be person of ability, integrity and
standing and have adequate knowledge, experiences of, or have shown
capacity in dealing with problems relating to economic, commerce,
accountancy, industry, public affairs or administration, one of whom shall
be a woman.

It is a matter of great satisfaction that State Commission U.P.
has been fortunate to have been manned by highly educated people. Its
presidents have been retired judges of High Court, and the present
president of the State Commission, is a retired High Court Judge. As far
as the members of the Commission are concerned they are also, leading
personalities of their fields while in some other states, where studies
were conducted by the consumer organizations, it was found that the
socio-economic and educational background of the members of forums
and commissions are highly unsatisfactory. It was found in another study
that a vast majority of members of forum and commissions were selected
for appointment on the basis of their being active member of a political
party, fortunately none of them was illiterate. In several states, however,
some members do not fulfill prescribed qualification. Interestingly, some
of the members are not graduate.

But as far as the State Commission U.P. is concerned, the
present study has noted with great satisfaction that the members and
president of the Commission fulfils the qualification prescribed by the
Sec. 16 of the Consumer Protection Act.

It is the cardinal principle of any legal system worth naming that
the adjudicators, judicial officers etc. must be handsomely paid. So, that
their independence is ensured and they are not tempted to go for illegal
gratification, bribery and corruption. It is provided in the Act that before the appointment, the president and members of the state commission shall have to take an individual undertaking that he does not and will not have any financial or other interest as are likely to affect prejudicially his functions as such president or member. It is indeed a matter of concern for those who are interested in the consumer movement that the consumer law of this country promises only paltry remunerations for the President and members of the State Commission. Sec. 6 of the U.P. Consumer Protection Rules - 1987, provides that the president of the State Commission shall receive the salary of the judge of a High Court if appointed on whole time basis, a consolidated honorarium of Rs. 200/- per day for the sitting if appointed on part-time basis. Other members, if sitting on whole time basis, shall receive a consolidated honorarium of Rs. 3000/- per month and if sitting on part time basis a consolidated honorarium of Rs. 150/- per day for the sitting. Apart from other things, most of the states have set up forums and commission on part time basis.

(ii) Working of State Consumer Dispute Redressal Commission: A Critical Evaluation

State Consumer Dispute Redressal Commission U.P., was set up in February, 1988. Slowly and gradually the state Commission started receiving good response from the consumers and as a result the work load started increasing in the succeeding years. The mass media and voluntary consumer organizations have been mainly responsible for creating consumer awareness amongst the Indian Consumer.

The consumers of today is very much aware about his rights and remedies available to him and consumer awareness is increasing day by
day in the Uttar Pradesh. Table No. 3 and 3(a) shows that total number of cases (complains and appeals) filed from 1992 to 1997. It is clear from both the table that the number of cases filed is increasing day by day, i.e. consumers in the state are fast becoming aware. Table 1 shows the monthwise complaints filed in the State Commission (from 1992 to 1997) in its original jurisdiction. In 1992, 266 complaints were filed which increased in 1993 to 372 but in next year, i.e., 1994 it decreased by more than 50% (149) which is really shocking. In succeeding years the number of complaints remained below 50 percent as compared to the year 1993 when the highest number of complains were filed.

Table No.2 shows the date about the appellate jurisdiction of the State Commission. It shows the monthwise appeals filed in the State Commission. Table No. 2 read with Table No. 3 (a) shows that the number of appeals filed in the commission are increasing every year. In 1992, 957 appeals were filed which took a giant jump in the year 1993 and reached to the number of 2513. It further increased in 1994 as it reached to the 3179. But in 1995 number of appeals decreased but in succeeding years it again started increasing and reached to the 2820 in 1997. So, if Table No. 1, 2, 3 and 3(a) analysed together it may be concluded easily that the numbers of consumers approaching to the State Commission U.P., both in original as well as in appellate jurisdiction are increasing day by day. Decreasing number of complaints (original jurisdiction) doesn't mean that credibility of the commission is decreasing, if this is so, the number of appeals should also be decreased. Decrease in the number of complaints started in 1994 and in 1993, through the Consumer
State Commission, U.P.: At a Glance

Year

No. of Cases in (000)

1994

10

29

20

12

9

10

9

11

12

29

26

12

10

36

9

21

12

24

50

2

1

0

0

4

12
Consumer Awareness in U.P.

Year

No. of Cases in (ooo)


8 35 70 97 109 160 175

Diagram showing the number of cases in U.P. for each year from 1992 to 1998.
<table>
<thead>
<tr>
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<td>41</td>
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<td>32</td>
<td>13</td>
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<td>7</td>
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</tr>
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<td>5</td>
<td>6</td>
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<td>No. of Appeals</td>
<td>No. of Appeals</td>
<td>No. of Appeals</td>
<td>No. of Appeals</td>
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<td>181</td>
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<tr>
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<td>167</td>
<td>190</td>
<td>225</td>
<td>150</td>
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<td>213</td>
<td>374</td>
<td>211</td>
<td>120</td>
<td>188</td>
<td>201</td>
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<td>285</td>
<td>170</td>
<td>91</td>
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**Source of Data:** Available record & files of Consumer Dispute Redressal Commission, U.P, Lucknow.
<table>
<thead>
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<th>YEAR</th>
<th>Total No. Of complaints filed (Excluding backlogs)</th>
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<td>142</td>
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<td>1997</td>
<td>126</td>
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<td>1998</td>
<td>127</td>
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Source of data – Available records and files of Consumer Dispute Redressal Commission, U.P.
TABLE NO.--- 3(a)

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Total No. of appeals filed (Excluding backlogs)</th>
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<tr>
<td>1992</td>
<td>957</td>
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<tr>
<td>1997</td>
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<td>1998</td>
<td>2670</td>
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Source of data – Available records and files of Consumer Dispute Redressal Commission, U.P.
### TABLE NO.— 4

Total complains (Including backlog)

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<th>YEAR</th>
<th>Total Complains</th>
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<th>Rejected</th>
<th>Decided Exparte</th>
<th>Total of 1,2, &amp; 3</th>
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**Source of data** – Available records and files of Consumer Dispute Redressal Commission, U.P.
## TABLE NO. --- 5

Total appeals (Including backlog)

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<thead>
<tr>
<th>YEAR</th>
<th>Total Appeals</th>
<th>Decided in favour of Appellant</th>
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<th>Decided Exparte</th>
<th>Total of 1,2, &amp; 3</th>
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Source of data – Available records and files of Consumer Dispute Redressal Commission, U.P.
Protection (Amendment) Act, 1993, the pecuniary jurisdiction of the District Foram was increased up to 5 lakhs, while before extended scope in the jurisdiction of District Consumer Foram is one of main factor which affected the number of complaints, not the working of the State Commission.

One of the most important purpose of the consumer protection Act is to provide cheap and speedy justice to the consumers Sec.4(a), provides, that the Commission should decide the complaint within 90 days from the date of the notice received by the opposite party, where complaint does't require analysis or testing of goods, and within 150 days if it requires analysis or testing of goods. But, interestingly, same time limit is given in, for the disposal of appeals under Sec 15 (B) of the U.P. Consumer Protection Rules 1987. The study has found that even in the beginning the State Commission was not able to render speedy justice. The problem of delay in disposal of cases, which has almost eroded the credibility of traditional courts has penetrated into the consumer courts as well. For instance, as shown in the Table No. 11. This table shows that in 1992 only 168 cases were disposed of within 90 days. It decreased to 149 in 1993. But in succeeding years this number went towards the lower point within an unbelievable speed and reached to less than 25 percent of the preceding year (29). It further decreased in 1995 to 7 a negligible increasing tendency is found as number increased to 11 in 1996 but in 1997 it again reached near about to the lowest number of 2.
TABLE NO. --- 11

Cases disposed of in 90 days

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Cases disposed of in 90 days</th>
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<tbody>
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<td>168</td>
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<tr>
<td>1993</td>
<td>149</td>
</tr>
<tr>
<td>1994</td>
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<td>11</td>
</tr>
<tr>
<td>1997</td>
<td>2</td>
</tr>
<tr>
<td>1998</td>
<td>3</td>
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Source of data – Available records and files of Consumer Dispute Redressal Commission, U.P.
<table>
<thead>
<tr>
<th>YEAR</th>
<th>Total original Complaint &amp; appeals</th>
<th>Decided in Favour (3)</th>
<th>Rejected (4)</th>
<th>Exparte (5)</th>
<th>Total of 3, 4 &amp; 5</th>
<th>Pending</th>
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Source of data – Available records and files of Consumer Dispute Redressal Commission, U.P.
### TABLE NO. --- 12

**AVERAGES (Per month)**

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<tr>
<th>YEAR</th>
<th>No. of complain filed</th>
<th>No. of appeals filed</th>
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<th>Disposed of appeals</th>
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**Relevant informations: --**

1. Increase in pending complains (per year): ~ 2346
2. Increase in pending appeals (per year): ~ 28327
3. Per year disposed complains: -- 76
4. Per year disposed appeals: -- 335

**Source of data** — Available records and files of Consumer Dispute Redressal Commission, U.P.
TABLE NO. --- 15

State Commission, U.P, towards the cases related to MEDICAL SERVICES.

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</table>

Source of data – Available records and files of Consumer Dispute Redressal Commission, U.P.
Table No. 10, shows the number of cases pending in different category of time period. It is very much clear that the majority of cases are pending for more than a year or two. These figures are really horrible. Further Table No. 13 shows the average time taken by the Commission to dispose of one case. The result which came out from this table is also depressing. In 1992, commission took 519 days to dispose of one case. The duration decreased in 1993 and 290 days were taken by the commission to dispose of one case. It again increased in 1994 to 394 days and reached to 607 days. The average time is 496 days for deciding a case per year, which is much greater than the time limit, given in the Consumer Protection Act.

But practically speaking for several reasons it has not been possible for the commission to adhere strictly to the time limits given under Consumer Protection Act, because there are several other factors which affect the working of the Commission.

If we see Table No. 6, 6(a), 7(a), it is clear from these tables that in several months not a single case was disposed of. In 1993, two months passed when no case, either complaint or appeal was disposed of, same way in 1994 one month had passed without any result. But the 1995 was the year of great achievement when 8 months had passed in which neither a single complaint, nor an appeal was disposed of. This is a shocking point which is noticed during the study. But even after a deep enquiry no reason could be found out why in different months not a single case was disposed off even for two to eight months and this may put a question mark not only on the credibility of the commission but on the
**TABLE NO: 6-** Month-wise filed, disposed and pending complains (Including Backlog)

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**Source of Data:** Available record & files of Consumer Dispute Redressal Commission, U.P, Lucknow.
**TABLE NO: 6(a)-** Month-wise filed, disposed and pending complains (Including Backlog)

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**Source of Data:** Available record & files of Consumer Dispute Redressal Commission, U.P, Lucknow.
Table No: 7- Month-wise filed, disposed and pending Appeals (Including Backlog)

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**TABLE NO: 7(a)-** Month-wise filed, disposed and pending Appeals (Including Backlog)

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**Source of Data:** Available record & files of Consumer Dispute Redressal Commission, U.P, Lucknow.
### TABLE NO. --- 10

**Number & time of pending cases**

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**Source of data** — Available records and files of Consumer Dispute Redressal Commission, U.P.
# TABLE NO. --- 13

Average time taken to decide a single case

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</tr>
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<td>593 days</td>
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<tr>
<td>1998</td>
<td>741 days</td>
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</table>

*Source of data* – Available records and files of Consumer Dispute Redressal Commission, U.P.
president and members also. Government should look into the matter to find out the reasons and take necessary steps to improve this negative point so that the consumer may get the speedy redressal of their disputes. The another fact which is clear from the table No. 8 and reflects the reasons up to some extent that why in many months no work is done is that a decrease is noticed in the number of sittings of the commission in 1992, commission worked for 228 days which was decreased to 149 in 1993 though it increased to 239 in 1994 but further reduced to 102 only in 1996 in 1997 & 1998 some good signs are indicated but this deviation in number of settings seems to be one of the reasons for no work in few months in different years. It is requested to the president & members of the commission to look themselves in the matter and try to improve the negative points. No work in few months seems to be one of the major factor behind the delayed redressal of the disputes. Because where average number of disposed cases per year is 411 and average filing of cases per year is- 2456, if a single day will go unworked or without any results, the work-load will shoot up day by day. Because of gap between the numbers of disposed cases - upto 1997, the average increase, per year, in the pending complaints were 2346 and appeals were 28,327. It shows that not a single day should go unworked. On the other hand president and members are working on part-time basis while the load is demanding a full-time State Commission, but government of the state is neither taking any step to improve the condition of the commission nor making it full time. But the credit goes to the Commission that inspite of these problems, no doubt some shortcomings are also on the part of the members, president and staff, it is doing a commendable job and is
<table>
<thead>
<tr>
<th>YEAR</th>
<th>Total no. of sittings</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>228</td>
</tr>
<tr>
<td>1993</td>
<td>149</td>
</tr>
<tr>
<td>1994</td>
<td>239</td>
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<tr>
<td>1995</td>
<td>102</td>
</tr>
<tr>
<td>1996</td>
<td>178</td>
</tr>
<tr>
<td>1997</td>
<td>211</td>
</tr>
<tr>
<td>1998</td>
<td>239</td>
</tr>
</tbody>
</table>

**Source of data** — Available records and files of Consumer Dispute Redressal Commission, U.P.
successful to develop the confidence in the consumers about their rights and faith which is evident from the increasing number of complaints and appeals day by day.

One of the major difference between the traditional legal remedies and that of remedies under the Consumer Protection Act is that for filing a complaint under the Consumer protection Act neither stamp duty nor court fees is paid. It is also not necessary to engage the services of an advocate. A party may appear in person. It has been observed during the present study that the applicant has to pay at various stages such as at the time of filing complaint he is asked to pay Rs.10-13, otherwise the ministerial staff starts creating hurdles by giving objection notes on the complaint and a race of pillar to post starts. Even for obtaining a copy of the judgement he has to grease the palms of ministerial staff.

It was the major objective of Consumer Protection Act to have lay-justice through a quasi-judicial body where clients are not exploited by the lawyers, but the present study shockingly noticed that despite the provision in law, in more than 98 percent cases, lawyers appeared having been paid huge amount of money by the consumers. Inspite of these provisions for flexibility of procedure and non-technicality of proceedings it is not followed in CDRA. As in cases involving public sector undertakings and private sectors, leading advocates appear and take unfair advantage of the opposite party not being represented by a lawyer. The presiding officer being a person with legal qualifications is in a better position to understand the technicalities of legal process than any lay members who out of difference to the President and of their own
lack of expertise remain mute spectators of the adjudicatory process.

The Consumer Protection Act has given jurisdiction to the State Commission to entertain complaints in respect of defective goods, deficiency of services unfair trade practices, charging of excessive price of goods. The State Commission has been receiving cases mainly as to defects of goods and deficient services.

**Defective Goods** - As to defective goods the Commission is receiving complaints and appeals, for any defect in goods a consumer can hold a trader or manufacturer liable. In order to fix liability it is essential that the defect must be of the description as stated in Sec. 2(1)(f) of the Act. In [*M.D. Sharma V. Maruti Udyog Ltd.*] the U.P. State Commission held that the true import of the word defect as defined in the Statute is one of the widest amplitude. The standard prescribed may be either one specified by law or in the alternative claimed by the traders himself either expressly or impliedly which the goods do not satisfy. It is worthy to note that State Commission U.P. has made the area defective goods wide by defining as 'claim made by the trader which the goods do not satisfy'. It is essentialy an unfair trade practice. Consequently, most of the cases of unfair trade practice could be instituted as cases of defect in goods.

Cases related to defective goods are coming before the State Commission, U.P.with full force. It is evident from table No. 14. In 1992, 1349 cases were filed which reached to 6503 in 1993. In succeeding years the increase in the number of cases related to defective goods remained continue. In 1997 it reached upto 35104. In most of the cases relief was granted to the consumer. The cases not only relates to the small
### TABLE NO: -14

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Total Comp. &amp; App.</th>
<th>Medical Service</th>
<th>Telephone Service</th>
<th>Defective Goods</th>
<th>Insurance Services</th>
<th>Banking Services</th>
<th>Financial Services</th>
<th>Development Authorities</th>
<th>Misc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>7918</td>
<td>102</td>
<td>1319</td>
<td>1349</td>
<td>1523</td>
<td>1003</td>
<td>1024</td>
<td>700</td>
<td>998</td>
</tr>
<tr>
<td>1993</td>
<td>34611</td>
<td>110</td>
<td>3009</td>
<td>6503</td>
<td>10700</td>
<td>7109</td>
<td>3110</td>
<td>3170</td>
<td>900</td>
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<td>12511</td>
<td>14010</td>
<td>16309</td>
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<td>8920</td>
<td>8096</td>
<td>720</td>
</tr>
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<td>1995</td>
<td>97788</td>
<td>204</td>
<td>15298</td>
<td>20405</td>
<td>23210</td>
<td>20011</td>
<td>8180</td>
<td>9184</td>
<td>1300</td>
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<tr>
<td>1996</td>
<td>107580</td>
<td>103</td>
<td>12890</td>
<td>24610</td>
<td>28911</td>
<td>18009</td>
<td>10009</td>
<td>11748</td>
<td>1300</td>
</tr>
<tr>
<td>1997</td>
<td>158943</td>
<td>210</td>
<td>25305</td>
<td>35104</td>
<td>36111</td>
<td>28104</td>
<td>16103</td>
<td>16206</td>
<td>1800</td>
</tr>
<tr>
<td>1998</td>
<td>161408</td>
<td>296</td>
<td>27211</td>
<td>31403</td>
<td>38589</td>
<td>30001</td>
<td>16589</td>
<td>15101</td>
<td>2218</td>
</tr>
</tbody>
</table>

**Source of Data:** Available records and files of State Consumer Dispute Redressal Commission, Lucknow, U.P.
traders or distributors but even the large business houses, are at the aim of tiny but aware consumers of today. In Bhupinder Kumar V. Tata Engineering & Locomotive Co. Ltd. & Others, complainant purchased "1210D" model vehicle, which was defective. Inspite of several complains O.P. neither removed the defect nor replaced the vehicle. State Commission granted the compensation to the complainant and ordered for the replacement of defective vehicle. Consumer is fighting not only against the large business houses, but claiming his right up to the State Commision. It clearly shows the consumer awareness about their right, it also shows the grand success of consumer dispute redressal agencies that consumers are going to the redressal agencies not only against the small traders/retailers but also against the large business houses Government undertakings etc. without considering their cost of goods only keeping in view their rights and to utilize it.

Deficient Services

This is also found in this study that the emphasis on deficient services has started. This is indeed the most commendable development of the consumer behaviour in the State. Today the consumer is fully aware of the right in respect of services which he hires for a consideration or which he availed of with consent. The study has noticed with great satisfaction that the awareness of people in the state as to the deficient services are increasing day by day against Electricity Department, Insurance Companies, Banks, Development Authorities/Housing Boards and Medical Services etc. These services are at aim and attack of the consumer.
### TABLE NO. --- 20
State Commission, U.P, towards the cases related to DEFICIENT SERVICES(From 1992 to 1998)

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>Total cases decided</th>
<th>Decided in favour of consumer</th>
<th>Decided against the consumer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical</td>
<td>99</td>
<td>66</td>
<td>33</td>
</tr>
<tr>
<td>Banking</td>
<td>195</td>
<td>137</td>
<td>58</td>
</tr>
<tr>
<td>Telephone</td>
<td>160</td>
<td>114</td>
<td>46</td>
</tr>
<tr>
<td>Insurance</td>
<td>208</td>
<td>152</td>
<td>56</td>
</tr>
<tr>
<td>Electricity</td>
<td>165</td>
<td>120</td>
<td>45</td>
</tr>
</tbody>
</table>

Source of data – Available records and files of Consumer Dispute Redressal Commission, U.P.
Electricity Department

The Electricity Department with other services, is under continuous attack of the consumer for deficient services. Table no. 19 shows that in most of the cases relief were granted to the consumer against the irresponsible behaviour and working of the Electricity Department and came forward as the protector of consumers against the exploitation due to the deficient services. This attitude of the commission has developed a confidence among the consumers and they started to have a face to face fight against the deficient electricity service. As it is clear from table no. 14 how the electricity department is facing the attack of the consumers as in 1992, 998 cases were filed against Electricity Deptt., which decreased to 900 in 1993. 1994 was the year and relax to some extent when only 720 cases were filed. But in 1994 it took a giant jump and reached up to 1300, which remained on 1300 in 1996 but agan shoot up to 1800 in 1997. It means that consumers are utilizing their rights through U.P. State Commission for deficient services. The State Commission, U.P. have been more responsive to the grievances of the consumer. In *U.P.S.E.B. V. R.P. Singh* in which R.P. Singh was running a polethene bag small scale industry under the self-employment scheme. For which, to operate the heater, high voltage is required and he got the 10 K.V. connection installed, but due to the continuous low voltage (upto 200 and 210 volts) he suffered loss in his work, he made several complaints to the Department but no response was given. Then he filed a complaint in District Forum, Faizabad, for the compensation. District Forum after considering all the facts, awarded the
**TABLE NO. --- 19**

State Commission, U.P, towards the cases related to ELECTRICITY SERVICES.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Total cases decided</th>
<th>Decided in favour of consumer</th>
<th>Decided against the consumer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>23</td>
<td>16</td>
<td>7</td>
</tr>
<tr>
<td>1993</td>
<td>21</td>
<td>18</td>
<td>3</td>
</tr>
<tr>
<td>1994</td>
<td>16</td>
<td>11</td>
<td>5</td>
</tr>
<tr>
<td>1995</td>
<td>9</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>1996</td>
<td>41</td>
<td>30</td>
<td>11</td>
</tr>
<tr>
<td>1997</td>
<td>28</td>
<td>20</td>
<td>8</td>
</tr>
<tr>
<td>1998</td>
<td>27</td>
<td>19</td>
<td>8</td>
</tr>
</tbody>
</table>

**Source of data** – Available records and files of Consumer Dispute Redressal Commission, U.P.
compensation of 5000/- and directed the Electricity Department to supply required voltage.

Against this order U.P.S.E.B. appealed in the State Commission U.P. and contended that supply of low voltage does not come under deficient service. The State Commission held that if the Electricity Board fails to maintain the minimum voltage required for a particular kind of supply, it would amount to deficiency of services. In another case the *U.P.S.E.B. V. Ram Prakash*, where Ram Prakash with his family living in his house, in Rampur, one day due to the supply of high voltage two T.V. sets and other electric appliances badly damaged. He filed a complaint in District Forum, Rampur, for the compensation, which was awarded by the forum. The U.P.S.E.B. appealed in the State Commission U.P. against the order of the forum. But the State Commission, confirmed the order of District Forum Rampur and held that supply of high voltage than the required is deficiency of service. Again State Commission U.P. came for the rescue of the consumer, when it was proved that the board was sending electricity bills irregularly without taking meter reading. In this case the Commission had no hesitation in holding the U.P.S.E.B. negligent and awarded Rs. 5000/- as compensation. In another case U.P.S.E.B. bowed on knees in front of a consumer, and gave the assurance, that it would take every step regarding testing of meter, to prevent excessive and irregular billing.

This was the winning point of a small consumer against a large Government Department and it shows the efficiency of the State Commission U.P. and its success in protecting the interest of the consumer against the deficient services of large Departments.
Banking Services

Table no. 16 shows that in most of the cases the commission is playing an important role to protect the interest of the consumers who are exploited by the deficient banking services as in most of the cases related to banking services, it is evident from the table no. 16, relief were granted to the consumers against the banking services. The commission, while dealing with the cases of banking services, tried to protect the interest of the consumers and to teach a lesson to the banks to improve their services and attitude with the consumers. The State Commission, U.P. always favoured to an expected standard of service from this important service. The commission has taken compassionate views of the plight of consumers who are unable to assert their rights in civil courts for well known reasons, i.e. delayed justice and legal technicalities etc.

In *Haji M. Usman V. Citi Bank*¹⁹ a draft for Rs. 2 lakhs was issued by the Citi Bank, which was not honoured by the Vijaya Bank, Kanpur due to some technical mistakes committed by the Citi Bank. The complainant had to rush to Delhi to get the bank draft properly authenticated and cash it in Kanpur.

In this case State Commission U.P. passed an order for the compensation of Rs. 5000/- in favour of the consumer. The duties of the bank in relation to its services for providing better facilities were laid down by the State Commission U.P. in *S.B. Singh and Others V. P.N. Bank, Mahanagar, Lucknow*²⁰. The commission stated that a customer placed implicit faith in the bank as regards his money deposits or locker
TABLE NO. --- 16

State Commission, U.P, towards the cases related to BANKING SERVICES.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Total cases decided</th>
<th>Decided in favour of consumer</th>
<th>Decided against the consumer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>42</td>
<td>30</td>
<td>12</td>
</tr>
<tr>
<td>1993</td>
<td>29</td>
<td>17</td>
<td>12</td>
</tr>
<tr>
<td>1994</td>
<td>23</td>
<td>17</td>
<td>6</td>
</tr>
<tr>
<td>1995</td>
<td>12</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>1996</td>
<td>33</td>
<td>24</td>
<td>9</td>
</tr>
<tr>
<td>1997</td>
<td>26</td>
<td>18</td>
<td>8</td>
</tr>
<tr>
<td>1998</td>
<td>30</td>
<td>22</td>
<td>8</td>
</tr>
</tbody>
</table>

Source of data – Available records and files of Consumer Dispute Redressal Commission, U.P.
facilities. If due to the negligence of a bank the precious ornaments of a customer in a locker lost due to breaking open of the locker, the very faith of consumer is shaken. The jewellery deposited by the complainant was lost in the bank as the locker in which it was kept was found open. The complainant was held entitled to a compensation of Rs. 1,26,017 because it was due to negligence of the bank to render necessary service to safeguard the ornaments that the loss occurred.

In *Prabhat Tandon V. State Bank of India* the complainant deposited the certificate of Rs. 50,000 which was issued in the name of complainant on its premature encashment took more than a year for the complainant to encash the certificate. Rendering a landmark decision, the State Commission U.P. held that delay on the part of the bank in payment of the amount of deposited certificates, entitled a customer of the bank to claim compensation. It took more than a year for encashment, it was clearly a case of deficiency of service. The respondent was ordered to pay 25000/- as damages and compensation. The same commission in other cases held failure of bank to provide credit to the weavers in violation of its agreement constituted deficiency of service.

There is a series of cases in which banks were held liable for negligence and deficient service and relief was granted to the consumer. So, the State Commission U.P. seem to be fully aware of the responsibilities of the banks in rendering prompt and efficient services to the consumer, and giving them substantial relief. In this way the State Commission has developed a sense of security amongst the consumers against the deficient banking service if loss is incurred.
Insurance Services

Insurance companies were always under attack for their heartless behaviour with the policy holders and rejecting the claims. The number of cases against Insurance companies had a great increase every year. Table NO. 14 shows that in 1992 only 1523 cases were filed which took a giant jump and reached to 10700 in 1993, in succeeding years it further increased and finally reached to 36111 in 1997. The State Commission U.P. has taken serious note of mistakes committed by the Insurance Corporations relating to payment of premium by the policy holders as these could lead to disastrous consequences in case of demise of policy holder. It held that the members of the staff should be meticulous and prompt in such matters and CDRA will intervene in such matters. Commission is continuously playing an important role for the protection of the consumers against deficient Insurance services and its attitude is tilted towards consumers which is a good sign for consumer movement.

It has also been held that a nominee mentioned in the policy has the right to receive the insurance claim. In the case of General Insurance Corporation, the attitude of public sector corporation is not encouraging. The State Commission U.P. is playing an important role for the grievances of the consumer related to Insurance services. A pressure is developed on the Insurance companies for the reasonable behaviour with the policy holders. Policy holders are feeling much relaxed as they are getting their rights honoured by the Insurance companies through Consumer Dispute Redressal Agency.
TABLE NO. --- 18

State Commission, U.P, towards the cases related to INSURANCE SERVICES.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Total cases decided</th>
<th>Decided in favour of consumer</th>
<th>Decided against the consumer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>40</td>
<td>29</td>
<td>11</td>
</tr>
<tr>
<td>1993</td>
<td>31</td>
<td>24</td>
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<tr>
<td>1994</td>
<td>26</td>
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<td>1995</td>
<td>14</td>
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<td>5</td>
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<tr>
<td>1996</td>
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<td>18</td>
<td>12</td>
</tr>
<tr>
<td>1998</td>
<td>29</td>
<td>20</td>
<td>9</td>
</tr>
</tbody>
</table>

Source of data – Available records and files of Consumer Dispute Redressal Commission, U.P
Telephone Service

In connection of Telephone Department cases are increasing day by day and the State Commission U.P. have taken a realistic view of the problems of this class of consumer.

Table No. 17 shows that the commission has no hesitation in granting the relief to the aggrieved consumer and to put a check on the deficient service of the telephone Deptt. The commission has granted relief to the consumers in most of the cases and has a clear attitude as the protector of the consumers' interest. This is a commendable and remarkable achievement of the commission. The case mainly relates to excessive billing, delay in telephone connection and poor service of exchange. In most of the cases relief were granted to the consumer. Similarly, in case of the Housing, Development authorities, Finance services and much debated medical services, State Commission is doing a remarkable job and granting relief to the consumer as is evident from table No. 14.

So, in this way all the above discussed services are under severe attack of consumers and with the awareness of consumer and significant role of State Commission U.P. their days has gone. Increase in the number of cases against these services (Table No. 14) clearly shows that consumers are fully aware about their rights and moving towards the consumer dispute redressal agencies with an assurance of justice in their minds. This trend is upward.

To conclude, it is very important to note that dealing with a great flood of complaints and appeals it is really amazing that the State
TABLE NO. --- 17

State Commission, U.P, towards the cases related to TELEPHONE SERVICES.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Total cases decided</th>
<th>Decided in favour of consumer</th>
<th>Decided against the consumer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>31</td>
<td>20</td>
<td>11</td>
</tr>
<tr>
<td>1993</td>
<td>26</td>
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<td>1994</td>
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<td>1995</td>
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<tr>
<td>1996</td>
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</tr>
<tr>
<td>1998</td>
<td>20</td>
<td>13</td>
<td>7</td>
</tr>
</tbody>
</table>

**Source of data** – Available records and files of Consumer Dispute Redressal Commission, U.P.
Commission U.P. has not been provided sufficient staff and infrastructure facilities, another problem is of time as Commission is working on part time basis so the working hour of the Commission is still two hours (from 3.00 p.m. to 5.00 p.m.) daily, though the Commission sits daily which taking into consideration the huge number of cases is just like a drop of water on red hot iron surface. Inspite of constraints of several kinds, State Commission has taken firm roots in the short span of years. Cases of consumers have been disposed of by the State Commission though not expeditiously but to the satisfaction of the complainant which is evident from the increasing number of complaints and appeals it proves the satisfaction of the consumer with the working of the Commission and faith in the Consumer Protection Act. The only point which this study has distressingly noticed why every year in few months no work is done and the number of sittings of the commission in few years were below satisfaction. But as no appropriate reason could be ascertained it is the duty of the Government as well as the president and the members of the commission to look into the matter and improve and arrest this deterioration otherwise the commission, with all other odd situations, is doing a commendable work. It is successful in developing a sense of confidence among the consumers against the exploitation in the market place and created its image before the business men and provider of services as the patron and protector of the consumers' interest. It is expected in the course of next few years more and more consumers will have awareness of their rights, so the inflow of the cases is likely to grow from drop to deluge which will generate more pressure on the commission. So the state government should take proper steps to
strengthen the commission in the interest of the consumers.

In one sentence it can be said that the job which the commission is performing, inspite of limited resources, load of work and few incidental problems, deserves great admiration.

All the figures of this study are based only on the files and records which are available with the State Commission U.P. and Consumer Directorate, Lucknow but it in no way undermine the significance of present study. It clearly points out the working and performance of state commission U.P. and trend and traversty of consumer behaviour in U.P.
REFERENCES

1. Common Cause V. Union of India, Civil Petition 224/88 Also see CERS v. Union of India, Writ Petition No. 742/90.


3. Supra note 1.

4. Supra note 2.

* Based on the personal interview of ministerial staff.

5. When data was collected in April 2000.


12. Consumer Dispute Redressal Agency.


19. Complaint No. 16/92, order dated 14.11.92, CDRCUP.


24. Table No. 18.

(3) SETUP AND WORKING OF NATIONAL CONSUMER DISPUTE REDRESSAL COMMISSION

As a developing country, India's biggest problem is that of perennial shortage taking place in various types of consumer goods and services. The pressure of population is high. A large part of the population is below the poverty line and of the remainder the vast majority is a long way from affluence. There is ignorance of the consumers of their rights. The consumers have not yet organized themselves into a powerful movement. Consequently, sellers market situations frequently arise in respect of various goods. There has been a lack of due recognition to consumer organization. All these have created a situation of a very safe heaven for the traders and a position of frustration and uncertainty for the consumers.

In India, consumer justice is a part of social and economic justice as enunciated in the constitution. Following the constitutional mandate a number of legislation, have been enacted in the field of consumer protection relating to standardization, grading, packaging and branding, prevention of food adulteration, short-weights and measures hording, profiteering, etc. But all these are scattered pieces of legislations. The litigation 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.

In 1969, the Monopolies and Restrictive Trade Practices Act was passed with the object to prevent concentration of economic power
and to control monopolistic and restrictive trade practices, the provisions of the Act, proceeded on the assumption that if dealers, manufacturers or producers could be prevented from distorting competition, the consumers would get a fair deal. The emphasis was on competitive market and it was thought that the competitive market would provide the required protection to the consumers. But that was only partly true. There is now greater recognition that consumers need to be protected not only from the effects of restrictive trade practices but also from the practices which are resorted to by the trade industry to mislead or dupe the customers. The effect is to shift the emphasis on detection and eradication of frauds against the consumers, particularly belonging to weaker sections of society. If a consumer is thus falsely induced to enter into buying goods which do not possess; quality and do not have the care for ailment advertised, it is apparent that consumer is being made to pay for quality to things on false representation.

Obviously, such situation can not be accepted. The consumers must have a positive and active role. Thus, the Sachar Committee suggested that the unfair trade practices like misleading advertisements and misrepresentations, bargain sales, bait and switch selling, offering of gifts and prizes with intention of not providing them conducting promotional contests, supplying goods that do not comply with safety standards and hoarding and destruction of goods should be prohibited. In the light of these recommendations, the MRTP Act was amended in 1984 to incorporate inter-alia, new provisions for the regulation of unfair trade practices e.g. false representation, misleading advertisements, bargain
sales, bait and switch selling etc. Despite these new provisions the ultimate consumers could not be protected from defective goods or deficient services, overchanging of prices and inscrupulous exploitation. The Parliament, therefore passed a potentially very important legislation, viz. The Consumer Protection Act, 1986 (hereinafter referred to as the Act) to provide better protection to the interests of the consumer. The Act is a comprehensive legislation with its main thrust on providing simple, speedy and inexpensive redressal of consumer grievances. The Act 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 provides a three-tier quasi-judicial machinery at the National, State and District levels for redressing consumer grievances. It is significant to note that the Act recognises the role of the consumer organisations in assisting the consumer in seeking justice through this nation-wide network of consumer disputes redressal agencies as envisaged under the Act.

(i) Establishment and Composition of National Consumer Dispute Redressal Commission

The Consumer Protection Act provides for the establishment of the National Commission by the Central Government by notification. The National Commission is the apex body at the centre to settle the consumer disputes under the Act. The Commission is to consist of a president and four members. The President should be a person who is or
has been a judge of the Supreme Court.\textsuperscript{5} thus, the President of the National Commission can be a sitting judge or a retired judge of the Supreme Court. However, no appointment of the President shall be made except after consultation with the Chief Justice of India. Four other members, who shall be persons of ability, integrity and standing and have adequate knowledge or experience, have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of who should be a woman. The appointment of the President and Members are to be made by the Central Government.

The reason for having the President from the legal profession and members from other fields seems to be that the work of the commission shall be not only judicial in nature but also involving economic, social and other factors. The inclusion of woman member in the National Commission is of considerable importance and she may play a significant role in decision making process of the commission. The experience of the President, who is a justice has been supplemented by the knowledge and experience of the persons drawn from different fields. There is thus compounding of legal mind with the lay.

The Central Government in exercise of its power conferred by clause (c) of Sec. 9 read with sub-section (1) of Sec. 20 of the Act, has notified the establishment of a National Commission on 17 August 1988. Hon'ble Mr. Justice V. Balakrishna Eradi was appointed the President of National Commission. Four other members of the National Commission were - (1) Smt. S. Vijaykar (2) Dr. A.K. Ghose, (3) Shri Y. Krishnan and
(4) Dr. Rais Ahmad. As the National Commission was set up in August 1988, after a two years gap, from implementation of consumer protection Act 1986. It seems that, like in the case of some state commissions, where the state Governments notified the establishment of the state commission (as in U.P.) after the great pressure of the Central Government, voluntary consumer organisations and directive of the Supreme Court, the Central Government itself reluctant to establish the National Commission under pressure after a two years gap, notified for the establishment of the National Commission.

This is the responsibility of the Central Government to provide sufficient staff, as may be necessary to assist the National Commission in its day to day work, and to provide necessary infrastructure i.e. building, ministerial staff, contingent expenditure including expenditure to be incurred on furniture, transport, books, reports and journals, office equipments etc. As far as the National Commission is concern, in comparison to the state commission U.P., the Central Government had tried to provide the facilities to the National commission. National Commission is not as much ill equipped as the state commission of U.P. satisfactory ministerial staff is provided and other necessary infrastructure are also provided by the central Government upto the satisfactory level, though not sufficient. These facilities are directly affecting the working and performance of the National Commission. The Central Government should be appreciated for the compliance with the legal provisions of the Consumer Protection Act 1986. In order to generate coginial conditions, sufficient funds are provided and placed at
the disposal of the National Commission. At present Mr. Justice S.C. Sen is the President of National Commission and four other members are Mr. Justice J.K. Mehra, Mr. Justice C.L. Chaudhary, Mr. S.P. Bagla and Dr. (Mrs.) R. thamarajakshi. It is a matter of great satisfaction that the National Commission is fortunate enough, that its president and members fulfills the requirements and bears required qualification for the appointment. In terms of socio-economic background and qualification of the members and president, the National Commission is rich enough.

It is the cardinal principle of any legal system worth naming that the adjudicators, judicial officers etc. must be handsomely paid. So that their independence is insured and they are not tempted to go for illegal gratification, bribery and corruption. As provided, that before the appointment, the president and members of the National Commission shall have to take an individual undertaking that he does not and will not have any financial or other interest as are likely to affect prejudicially his functions as such president or member. It is indeed a matter of concern that, the remuneration of the president of National Commission is satisfactory as he is entitle to salary, allowances and other prerequisites as are available to a sitting judge of the Supreme Court. But the consumer law of the country promises only poltry remuneration for the members. Members are entitled for a consolidated honorarium of six thousand rupees per month on whole time basis or 300/- per day for sitting if sitting on part-time basis. This remuneration is not sufficient and not up to the dignity of a member of highest consumer Dispute Redressal agency. This poltry payment may adversely affect the working and performance.

The evaluation of the National Consumer Dispute Redressal Commission is based on the data collected through conducting survey by using appropriate technique and tools and from the records and files of the commission made available by its office staff with the permission of the President and Registrar of the Commission. Data used in this study is primary data except the total number of appeals and complains filed each year, which is secondary data.

The records and files were available to access only from 1990 upto 1998. So this study is based on the data from 1990 to 1998. For the analysis of data no specific Statistical/Mathematical method is used, except average is calculated by

\[
M = \frac{\Sigma N}{\Sigma I}
\]

where \( \Sigma N = \) Total frequency

\( \Sigma I = \) Total No. of time Intervals

The National consumer dispute Redressal commission was setup in Aug. 1988, with the passage of time the National consumer Dispute Redressal commission started receiving good response from the consumers and as a result the work load started increasing year by year.

At present the consumers in India are very much aware of his rights and remedies available to him under consumer protection Act. Table No. 1 & 3 shows the increasing number of complains as well as
appeals every year. In 1990 only 49 complains were filed, it exceed in 1991 when 210 complains were filed, it exceed in 1991 when 210 complains were filed. Further increased upto 312 in 1992. But in 1993 the number of complains filed went down but once again in 1994 and 1995 it increased upto 301 and 312. In 1996, 267 complains were filed and in 1997 the number went upto 371. If we see table no. 2, table showing the total number of complains including backlogs, it shows a continuous increase from 209 in 1990 to 1544 in 1998.

Appeals are also on the same trend. Table No. 3 proves that the number of appeals are increasing every year as it increased from 957 in 1990 to 1991 in 1996, this is a continuous increase but in 1997 a slight decrease is found and number of appeals, filed, went down to the 1941 and it further decreased to the 1876 in 1998. But if an analysis of table no. 4 is made, which indicate the total number of appeals including backlogs, it is clear that the number of appeals are continuously increasing from 1990 to 1998. So, the general trend is that the number of complains and appeals are increasing every year. These increasing number of cases prove that the consumers are approaching to the National commission for the redressal i.e. working of the National Commission has developed the confidence in the consumers about their rights. But one important point which is noticeable from Table No. 1 & 2, that the consumers are approaching to the National Commission specially under appellate jurisdiction. Because every year the number of appeals are much greater than the number of complains filed. But it does not put any question mark on the credibility of the National commission. One of the
National commissio: At A Galnce
Table No: - 1

Total Complains (Excluding Backlog)

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No. Of complains filed</th>
<th>Decided</th>
<th>Rejected</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>149</td>
<td>87</td>
<td>12</td>
<td>50</td>
</tr>
<tr>
<td>1991</td>
<td>210</td>
<td>92</td>
<td>18</td>
<td>100</td>
</tr>
<tr>
<td>1992</td>
<td>312</td>
<td>86</td>
<td>14</td>
<td>212</td>
</tr>
<tr>
<td>1993</td>
<td>280</td>
<td>103</td>
<td>21</td>
<td>156</td>
</tr>
<tr>
<td>1994</td>
<td>301</td>
<td>114</td>
<td>26</td>
<td>161</td>
</tr>
<tr>
<td>1995</td>
<td>312</td>
<td>102</td>
<td>30</td>
<td>180</td>
</tr>
<tr>
<td>1996</td>
<td>267</td>
<td>93</td>
<td>67</td>
<td>107</td>
</tr>
<tr>
<td>1997</td>
<td>371</td>
<td>98</td>
<td>45</td>
<td>228</td>
</tr>
<tr>
<td>1998</td>
<td>290</td>
<td>90</td>
<td>32</td>
<td>168</td>
</tr>
<tr>
<td>1999</td>
<td>340</td>
<td>-</td>
<td>68</td>
<td>272</td>
</tr>
</tbody>
</table>

Source of Data: - Available records and files of the National Consumer Dispute Redressal Commission, New Delhi.
Table No: - 2

**Total Complain (Including Backlog)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No. Of complains filed</th>
<th>Decided</th>
<th>Rejected</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>209</td>
<td>87</td>
<td>12</td>
<td>110</td>
</tr>
<tr>
<td>1991</td>
<td>320</td>
<td>92</td>
<td>18</td>
<td>210</td>
</tr>
<tr>
<td>1992</td>
<td>522</td>
<td>86</td>
<td>14</td>
<td>422</td>
</tr>
<tr>
<td>1993</td>
<td>702</td>
<td>103</td>
<td>21</td>
<td>578</td>
</tr>
<tr>
<td>1994</td>
<td>879</td>
<td>114</td>
<td>26</td>
<td>739</td>
</tr>
<tr>
<td>1995</td>
<td>1051</td>
<td>102</td>
<td>30</td>
<td>919</td>
</tr>
<tr>
<td>1996</td>
<td>1186</td>
<td>93</td>
<td>67</td>
<td>1026</td>
</tr>
<tr>
<td>1997</td>
<td>1397</td>
<td>98</td>
<td>45</td>
<td>1254</td>
</tr>
<tr>
<td>1998</td>
<td>1544</td>
<td>90</td>
<td>32</td>
<td>1422</td>
</tr>
<tr>
<td>1999</td>
<td>1762</td>
<td>101</td>
<td>68</td>
<td>1593</td>
</tr>
</tbody>
</table>

**Source of Data:** - Available records and files of the National Consumer Dispute Redressal Commission, New Delhi.
Table No: - 3

Appeals (Excluding Backlog)

<table>
<thead>
<tr>
<th>Year</th>
<th>Appeals filed</th>
<th>Decided</th>
<th>Rejected</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>957</td>
<td>175</td>
<td>301</td>
<td>481</td>
</tr>
<tr>
<td>1991</td>
<td>1063</td>
<td>214</td>
<td>290</td>
<td>559</td>
</tr>
<tr>
<td>1992</td>
<td>1010</td>
<td>110</td>
<td>323</td>
<td>577</td>
</tr>
<tr>
<td>1993</td>
<td>1214</td>
<td>180</td>
<td>200</td>
<td>834</td>
</tr>
<tr>
<td>1994</td>
<td>1405</td>
<td>147</td>
<td>109</td>
<td>1149</td>
</tr>
<tr>
<td>1995</td>
<td>1864</td>
<td>119</td>
<td>241</td>
<td>1104</td>
</tr>
<tr>
<td>1996</td>
<td>1991</td>
<td>199</td>
<td>181</td>
<td>1611</td>
</tr>
<tr>
<td>1997</td>
<td>1941</td>
<td>184</td>
<td>180</td>
<td>1577</td>
</tr>
<tr>
<td>1998</td>
<td>1876</td>
<td>176</td>
<td>167</td>
<td>1535</td>
</tr>
<tr>
<td>1999</td>
<td>1662</td>
<td>-</td>
<td>180</td>
<td>1482</td>
</tr>
</tbody>
</table>

Source of Data: - Available records and files of the National Consumer Dispute Redressal Commission, New Delhi.
most important objective of the consumer protection Act is to provide cheap and speedy justice to the consumers. Sec. 14(4) says that the complain shall be decided, as far as possible, within a period of 90 days from the date of notice received by opposite party where complain does not require analysis or testing of commodities and within 150 days if it requires analysis or testing of goods. As far as the disposal of appeal is concerned, Sec. 15(8)\textsuperscript{12} say that the appeal should be decided, as far as possible, within 90 days from the date of first hearing. But this study has noticed that even in the beginning the National Commission was not able to render speedy justice. The problem of delay in disposal of the cases, which has almost eroded the credibility of traditional courts has penetrated into the consumer courts as well. Table No.7 indicates the average time taken to dispose of one case, which is a clear violation of legislative requirement as in 1990, 190 days were taken for the disposal of one case, which increased in 1991 when one case was decided in 311 days. The average time taken to dispose off one case is increasing every year from 1980 days in 1990 to 617 days in 1998. At present (upto May 1999) National Commission is taking an average 395 days to dispose of one case (Table No.6). Table No.8 indicate few cases which are decided within 90 days from 1990 to 1998 but the number of cases are negligible and even the increasing numbers are not noticeable. But the working of commission can not be held soley responsible for the delay. No. doubt for several reasons it is not possible for the commission to adhere strictly to the limit given under consumer protection Act, because this study has noticed that there are some other factors which are playing an important role in delayed disposal. Working hours (3 to 4 hour daily) are
not sufficient to deal the great flood of cases and also the insufficient staff is one of the most important factor, responsible for delayed disposal. No other important factor could be ascertained, by this study, playing important role for such a long deviation from prescribed time limit. This should be controlled other wise it may have adverse effect on working and performance of the commission.

Table No. 2 & 4 reflects the effect of delayed disposal of the cases. Where the number of pending cases are increasing every year. Table No. 2 show that the number of pending complains are increased from 110 in 1990 to 1422 in 1998 and Table No. 4 show that the appeals which are pending, increased from 602 in 1990 to 9548 in 1998. Average increase (per year) in pending cases are 1198. If take complains and appeals together 531 cases were pending in 1990 which increased upto 659 in 1991 and reached to the 1703 in 1998 (Table No. 5) when the number of backlog complains and appeals are not included. Reason of increase in the number of pending cases are, the rate of filing the complains and appeals (per year) is much higher than the rate of disposal of cases per year. Table No. 6 show that an average 1757 cases were filed per year, while only on average only 514 cases were disposed of per year.

It was another major objective of the consumer Protection Act to have lay justice through quasi judicial bodies where consumers are not exploited by the lawyer, so that the proceedings in these courts are made so flexible and non technical in comparison to the traditional courts but this study shockingly noticed that like District forums and state commission, lawyers appeared before the National Commission, Inspite
Table No: - 4

<table>
<thead>
<tr>
<th>Year</th>
<th>Appeals</th>
<th>Decided</th>
<th>Rejected</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>1210</td>
<td>175</td>
<td>301</td>
<td>602</td>
</tr>
<tr>
<td>1991</td>
<td>1665</td>
<td>214</td>
<td>290</td>
<td>1161</td>
</tr>
<tr>
<td>1992</td>
<td>2171</td>
<td>110</td>
<td>323</td>
<td>1738</td>
</tr>
<tr>
<td>1993</td>
<td>2952</td>
<td>180</td>
<td>200</td>
<td>2572</td>
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<td>1994</td>
<td>3977</td>
<td>147</td>
<td>109</td>
<td>3721</td>
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<tr>
<td>1995</td>
<td>5585</td>
<td>119</td>
<td>241</td>
<td>4825</td>
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<tr>
<td>1996</td>
<td>6816</td>
<td>199</td>
<td>181</td>
<td>6436</td>
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<tr>
<td>1997</td>
<td>8343</td>
<td>184</td>
<td>180</td>
<td>8013</td>
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<tr>
<td>1998</td>
<td>9889</td>
<td>176</td>
<td>167</td>
<td>9548</td>
</tr>
<tr>
<td>1999</td>
<td>11210</td>
<td>144</td>
<td>180</td>
<td>10886</td>
</tr>
</tbody>
</table>

Source of Data: - Available records and files of the National Consumer Dispute Redressal Commission, New Delhi
**Table No: - 5**

**Total Cases (Complaint + Appeals)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Cases</th>
<th>Decided</th>
<th>Rejected</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>1106</td>
<td>262</td>
<td>313</td>
<td>531</td>
</tr>
<tr>
<td>1991</td>
<td>1273</td>
<td>306</td>
<td>308</td>
<td>659</td>
</tr>
<tr>
<td>1992</td>
<td>1322</td>
<td>196</td>
<td>337</td>
<td>789</td>
</tr>
<tr>
<td>1993</td>
<td>1494</td>
<td>283</td>
<td>221</td>
<td>990</td>
</tr>
<tr>
<td>1994</td>
<td>1706</td>
<td>261</td>
<td>135</td>
<td>1310</td>
</tr>
<tr>
<td>1995</td>
<td>2176</td>
<td>221</td>
<td>271</td>
<td>1284</td>
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<tr>
<td>1996</td>
<td>2258</td>
<td>292</td>
<td>248</td>
<td>1718</td>
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<tr>
<td>1997</td>
<td>2312</td>
<td>282</td>
<td>225</td>
<td>1805</td>
</tr>
<tr>
<td>1998</td>
<td>2166</td>
<td>266</td>
<td>199</td>
<td>1703</td>
</tr>
<tr>
<td>1999</td>
<td>2002</td>
<td>-</td>
<td>248</td>
<td>1754</td>
</tr>
</tbody>
</table>

**Source of Data:** - Available records and files of the National Consumer Dispute Redressal Commission, New Delhi.
## Table No: - 6

<table>
<thead>
<tr>
<th>Year</th>
<th>Average time taken (in days) to dispose of one case *</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>190</td>
</tr>
<tr>
<td>1991</td>
<td>311</td>
</tr>
<tr>
<td>1992</td>
<td>478</td>
</tr>
<tr>
<td>1993</td>
<td>498</td>
</tr>
<tr>
<td>1994</td>
<td>502</td>
</tr>
<tr>
<td>1995</td>
<td>416</td>
</tr>
<tr>
<td>1996</td>
<td>546</td>
</tr>
<tr>
<td>1997</td>
<td>609</td>
</tr>
<tr>
<td>1998</td>
<td>617</td>
</tr>
</tbody>
</table>

* Based on the data collected.
Table No: - 7

Average (Per Year)

<table>
<thead>
<tr>
<th>Item</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filed Cases (Complains + Appeals)</td>
<td>1757</td>
</tr>
<tr>
<td>Disposed of Cases (Decided + Rejected)</td>
<td>514</td>
</tr>
<tr>
<td>Increase in Pending Cases (Complain + Appeals)</td>
<td>1198</td>
</tr>
<tr>
<td>Time Taken to dispose of one case</td>
<td>395 days</td>
</tr>
</tbody>
</table>

Source of Data: - Based on the data collected from the available records and files of the National Consumer Dispute Redressal Commission, New Delhi.
Table No: -8

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases decided in 90 days</th>
<th>Cases decided within six months</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>10</td>
<td>30</td>
</tr>
<tr>
<td>1991</td>
<td>15</td>
<td>28</td>
</tr>
<tr>
<td>1992</td>
<td>20</td>
<td>67</td>
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<tr>
<td>1993</td>
<td>25</td>
<td>81</td>
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<tr>
<td>1994</td>
<td>28</td>
<td>58</td>
</tr>
<tr>
<td>1995</td>
<td>22</td>
<td>72</td>
</tr>
<tr>
<td>1996</td>
<td>32</td>
<td>101</td>
</tr>
<tr>
<td>1997</td>
<td>12</td>
<td>54</td>
</tr>
<tr>
<td>1998</td>
<td>21</td>
<td>43</td>
</tr>
</tbody>
</table>

Source of Data: - Based on the data collected from the available records and files of the National Consumer Dispute Redressal Commission, New Delhi.
of the provisions for flexibility of procedure and non-technicality of proceedings, it does not follow that CDRA, in practice, give effect to the legislative objective. In case involving public sector undertakings and private sectors, leading advocates appear and take unfair advantage of the opposite party not being represented by a lawyer. So, the ordinary consumer is also bound to hire the services of a lawyer and to pay high fees them. Most clients in their oral talks, talk of huge amount of money which the lawyers engage by them are making in the consumer cases. So, in practice, lawyers are appearing in the national commission and charging high fees for that which is killing the object to provide cheap justice and non exploitation by the lawyers. One of the laudable features of the Act is that it provides relief to consumer, if they suffer loss or injury due to a deficiency of Service'. In all developed economies, the concept of 'Service' has assumed great importance. A modern society lives and thrives upon 'Services' of numerous kinds have become indispensable for comfortable and orderly existence of human beings. Some of the well known services have been included in the definition i.e. banking, financing, insurance, transport, processing, supply of electricity or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information.

Consumers awareness reached to its maxima when the consumer behaviour changed and emphasis started on deficient services. Today the consumer is fully aware of his rights in respect of services which he hires for a consideration or of which he availed of with the approval.
Table No. 9, shows that the different services has been under severe attack of the consumer. It is clear from the table that cases against different services are increasing every year. But the important thing is that whether the consumer are getting relief against these giant services or not. What is the attitude of national commission towards consumer in deciing the cases of deficient services. First take Banking Service: Banking is specifically mentioned as 'Service' in Sec. 2(1)(e) of the consumer Protection Act. After nationalisation, banking business has come under severe criticism consequently, there has been a steady growth in the number of complaints filed against banks. But due to certain controversial judgements given by the national commission, consumers are finding it difficult to obtain adequate relief. Yet the fact remains that the jurisdiction of these agencies (CDRA) on banks has been firmly established.\textsuperscript{13} Inspite of this the National commission has a linient view for the banking services and the national commission has generally given greater appreciation of the problems of these institutions.\textsuperscript{14} In \textit{CUTS V. Bank of Baroda}\textsuperscript{15} where loss suffered by the consumers, due to the long strike of Bank employees, but the national commission held that since loss to the consumer did not take place due to the negligence of the bank but due to the reasons beyond its control 'force majeure'. In another case, \textit{A.R.Narayana V. UCO Bank}\textsuperscript{16} on the same facts national commission hold that failure to render services was occasional by reasons wholly beyond the control of the Bank (strike) and was not attributable to any negligence on the part of the Bank. Interestingly in another case where the state commission has granted the like relief of treating amounts credit of dipositors as long term deposits for the duration of the strikes
Table No: -15
National Commission (at a glance) towards the cases related to “Deficient Services”

<table>
<thead>
<tr>
<th>Services</th>
<th>Total No of cases</th>
<th>Decided in favour of consumers</th>
<th>Decided against the consumers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banking</td>
<td>398</td>
<td>190</td>
<td>208</td>
</tr>
<tr>
<td>Insurance</td>
<td>377</td>
<td>203</td>
<td>174</td>
</tr>
<tr>
<td>Electricity</td>
<td>271</td>
<td>165</td>
<td>106</td>
</tr>
<tr>
<td>Telephone</td>
<td>384</td>
<td>255</td>
<td>129</td>
</tr>
<tr>
<td>Medical</td>
<td>136</td>
<td>91</td>
<td>45</td>
</tr>
</tbody>
</table>

Source of Data: - Available records and files of the National Consumer Dispute Redressal Commission, New Delhi.
Table No: - 9

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Case</th>
<th>Telephone</th>
<th>Housing</th>
<th>Bank</th>
<th>Medical</th>
<th>Insurance</th>
<th>Electricity</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>1106</td>
<td>143</td>
<td>31</td>
<td>219</td>
<td>33</td>
<td>383</td>
<td>173</td>
<td>128</td>
</tr>
<tr>
<td>1991</td>
<td>1273</td>
<td>165</td>
<td>75</td>
<td>215</td>
<td>60</td>
<td>403</td>
<td>174</td>
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<tr>
<td>1992</td>
<td>1322</td>
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<td>110</td>
<td>180</td>
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<tr>
<td>1993</td>
<td>1494</td>
<td>195</td>
<td>202</td>
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<td>109</td>
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<td>275</td>
</tr>
<tr>
<td>1994</td>
<td>1706</td>
<td>281</td>
<td>234</td>
<td>347</td>
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<td>342</td>
<td>191</td>
<td>194</td>
</tr>
<tr>
<td>1995</td>
<td>2176</td>
<td>311</td>
<td>310</td>
<td>414</td>
<td>196</td>
<td>512</td>
<td>201</td>
<td>232</td>
</tr>
<tr>
<td>1996</td>
<td>2258</td>
<td>172</td>
<td>302</td>
<td>504</td>
<td>96</td>
<td>642</td>
<td>302</td>
<td>240</td>
</tr>
<tr>
<td>1997</td>
<td>2312</td>
<td>280</td>
<td>402</td>
<td>492</td>
<td>112</td>
<td>502</td>
<td>284</td>
<td>240</td>
</tr>
<tr>
<td>1998</td>
<td>2166</td>
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<td>367</td>
<td>470</td>
<td>77</td>
<td>484</td>
<td>204</td>
<td>278</td>
</tr>
<tr>
<td>1999</td>
<td>2002</td>
<td>194</td>
<td>381</td>
<td>367</td>
<td>102</td>
<td>540</td>
<td>197</td>
<td>221</td>
</tr>
</tbody>
</table>

Source of Data: - Available records and files of the National Consumer Dispute Redressal Commission, New Delhi.
Table No: -10
National Commission towards the cases related to “Banking Services”

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No of cases</th>
<th>Decided in favour of consumers</th>
<th>Decided against the consumers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>67</td>
<td>30</td>
<td>37</td>
</tr>
<tr>
<td>1992</td>
<td>34</td>
<td>16</td>
<td>18</td>
</tr>
<tr>
<td>1993</td>
<td>55</td>
<td>30</td>
<td>25</td>
</tr>
<tr>
<td>1994</td>
<td>51</td>
<td>27</td>
<td>24</td>
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<tr>
<td>1995</td>
<td>46</td>
<td>21</td>
<td>25</td>
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<tr>
<td>1996</td>
<td>50</td>
<td>28</td>
<td>22</td>
</tr>
<tr>
<td>1997</td>
<td>48</td>
<td>21</td>
<td>27</td>
</tr>
<tr>
<td>1998</td>
<td>47</td>
<td>17</td>
<td>30</td>
</tr>
</tbody>
</table>

Source of Data: - Available records and files of the National Consumer Dispute Redressal Commission, New Delhi.
and allowing 10% interest, the national commission set aside this relief.\(^\text{17}\)

In few other cases\(^\text{18}\) where banks refused to grant advance facility, refusal to sanction loan under Rural Industrialisation scheme of Government of India, in spite of the guidelines of Government of India and Reserve Bank of India. The national commission held that "It is entirely within the discretion of the bank to decide whether a particular project deserves financial assistance or not, keeping in view the technical, commercial and financial viability of the project, the expertise and financial soundness of the managers of the project".

But on the other hand in *Ashok Prabhakar V. State Bank of India\(^\text{19}\)*, where the project of complainant was declared viable and technically feasible by HPFC (Himachal Pradesh Financial Corp.) and small Industries Development Bank of India (SIDBI) but State Bank of India (SBI) refused to grant loan. The national commission not declared the Bank negligent for its arbitrary act.

The Banks are refusing loan or advance credit facilities arbitrarily specially in the case of small scale industries and national commission is remain a mute spectator. But in some cases some relief is granted. In *M s Sovintarg (India) Pvt. Ltd. V. State Bank of India\(^\text{20}\)* where a cheque of Rs. 1 lakh was not credited for seven long years. In this case consumer was fortunate enough as the bank was declared negligent and compensation awarded to the consumer by the national commission.

Another Lucky consumer was a student, Malati Bhat, who was appearing in A.M.I.E. exam and send the fees through Bank draft issued
by the respondent Bank, Draft was back as it was not signed by the Branch Manager of the respondent Bank. Meanwhile last date was over. She was not permitted to appear in the exam though she sent back the draft after correction. In this case bank was declared negligent and compensation awarded to the complainant. It will thus be seen that in most of the cases the national commission has not gone beyond asserting jurisdiction over banks and failed to lay down mandatory standard of services.

**Insurance Service**

Cases against insurance service are increasing day by day as it is clear from table No. 9. Even before the passage of the consumer protection, 1986, the insurance companies specially Life Insurance Corporation has been in the docks for its heartless attitude in rejecting the claims of dependents of policy holders for flimsiest reasons. In some insurance cases, the national commission seems to have given benefit of doubt to life insurance and General Insurance Corporations and placed the burden of proving deficiency of service, negligence or misconduct on the consumer.

But in general, in most of the cases against insurance services, relief was granted to the consumer though the insurance companies took different plea to save itself. In *Hanuman Prasad V. The New India Assurance Co., Ltd.* Tractor was insured in Rewa, damaged in accident at Satna, District forum, Rewa, passed compensation, insurance Co. challenged on the ground that accident took place in Satna, so District forum Rewa don't have jurisdiction. National commission, confirmed the jurisdiction as well as the order of the District forum Rewa. In another
Table No: -11

National Commission towards the cases related to “Insurance Services”

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No of cases</th>
<th>Decided in favour of consumers</th>
<th>Decided against the consumers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>51</td>
<td>30</td>
<td>21</td>
</tr>
<tr>
<td>1992</td>
<td>41</td>
<td>21</td>
<td>20</td>
</tr>
<tr>
<td>1993</td>
<td>58</td>
<td>38</td>
<td>20</td>
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<tr>
<td>1994</td>
<td>53</td>
<td>30</td>
<td>23</td>
</tr>
<tr>
<td>1995</td>
<td>30</td>
<td>12</td>
<td>18</td>
</tr>
<tr>
<td>1996</td>
<td>49</td>
<td>20</td>
<td>29</td>
</tr>
<tr>
<td>1997</td>
<td>47</td>
<td>24</td>
<td>23</td>
</tr>
<tr>
<td>1998</td>
<td>48</td>
<td>28</td>
<td>20</td>
</tr>
</tbody>
</table>

Source of Data: - Available records and files of the National Consumer Dispute Redressal Commission, New Delhi.
case the *New India Assurance Co. Ltd. V. M/s Annapurna Krishikendra* the respondent got his fertilizer stock insured, damaged by flood, insurance Co. refused the claim on the ground that the stock was not within the premises of shop. But National commission awarded the compensation and held that address of the place of stock written - Hasanpur Bazar, Samastipur, so it may be located any where in Hasanpur Bazar not necessarily in shops premises. In another case - */s Asa Singh Cotton Factory V. United Indian Insurance Co. & Ors.* complainant a firm, running a mill of cotton, got it insured covering risk of loss due to fire - Fire occured, claim amount given after lapse of one year from the date of incident. It was declared as deficiency in service by the national commission and compensation awarded. In some other cases, where insurance companies committed unnecessary delay in claim, national commission declared it deficiency in services and awarded compensation. Increasing no. of cases against Insurance companies and supporting attitude of the National commission shows that now the consumers of this services has open a front against the deficiency and consumers are getting their rights from the insurance companies through national commission and the National commission is successful to generate a sense of confidence in the consumers that they can fight against these giant public sectors in case of exploitation this is a remarkable achievement for the National commission.

**Electricity Service**

The performance of electricity boards and electricity supply undertakings and companies has also been under severe attack. The
complaints are not restricted to escalating and unrealistic charges for consumption of energy, consumers suffer in hot or humid weather due to erratic power supply and arbitrary methods used by the officials of the provider of the services, for disconnecting the supply on flimsy grounds and delays encountered in getting electricity connections. Table No. 9 shows the increasing cases against this sector of service. The national commission is more responsive to the grievances of the consumer in In Consumer Protection Council V. The Ahmedabad Electricity Co.Ltd. Deffective meter installed at complainant's premises, on complain it was assured that it will be replaced, but not replaced by the Co. Excessive billing, started. National Commission held that this is deficiency in service and directed to replace the meter and awarded compensation, and also took an undertaking from the company with an assurance to take necessary steps to check the defective meters and replace it and excessive billing should be controlled. The National commission is playing a significant role to protect the consumers interest against the exploitation by the deficient electricity service. In most of the cases, consumers are getting relief against the Electricity Departments and Companies as the commission came forward for the protection of the consumers.

**Telephone Services**

A public utility service, national commission has taken a serious view of deficiency of Telecommunication service. in Union of India V. Dr. (Mrs) Satya Bhama Tahkur national commission observed -

The functioning of the telephone department is far from satisfactory, the service rendered to subscribers are deficient. The
subscriber is made to suffer inconvenience, harassment and frustration in pursuing the matters with the telephone department,

In *Union of India (G.M. Telephone) V. Nitesh Agarwal* the national commission disposed of the preliminary objection raised by the telecommunication department that the facility provided by it was not 'service' and declared it as service under consumer protection Act.

The extreme of negligence showed by the telephone department in - *Mahanagar Telephone Nigam Ltd. & Ors. V. M.R. Chheda & Aur.* Complainant received abnormal and exorbitant bills, on complain, told by D.M. (phones) that STD facility frequently used, since he had requested for disconnection of STD facility in 1978, it was not clear how and why STD facility continued. National Commission took it seriously and quashed all the bills should be prepared a fresh. Compensation awarded in this case.

In *K.D. Agarwal V. Union of India & Ors.* the telephone of the complainant remained out of order for a long period and it was not put in order inspite of written complainants. The complainant was a 'convassing agent' and he suffered huge damages on account of the non functioning of the phone. The national commission allowed the claim of the complainant and awarded compensation.

Services, adopted a realistic view and trying to grant maximum relief to the consumer aggrieved of deficient services of telephone department which is clear from table No. 13 which shows that in most of the cases consumers are getting relief. Not only in the field of these discussed services but the much debated and controversial field of
Table No: -12

National Commission towards the cases related to "Electricity Services"

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No of cases</th>
<th>Decided in favour of consumers</th>
<th>Decided against the consumers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>39</td>
<td>24</td>
<td>15</td>
</tr>
<tr>
<td>1992</td>
<td>31</td>
<td>20</td>
<td>11</td>
</tr>
<tr>
<td>1993</td>
<td>41</td>
<td>20</td>
<td>21</td>
</tr>
<tr>
<td>1994</td>
<td>30</td>
<td>21</td>
<td>9</td>
</tr>
<tr>
<td>1995</td>
<td>29</td>
<td>19</td>
<td>10</td>
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<tr>
<td>1996</td>
<td>34</td>
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<td>1997</td>
<td>36</td>
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<tr>
<td>1998</td>
<td>31</td>
<td>23</td>
<td>8</td>
</tr>
</tbody>
</table>

Source of Data: - Available records and files of the National Consumer Dispute Redressal Commission, New Delhi.
### Table No: -13

**National Commission towards the cases related to “Telephone Services”**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No of cases</th>
<th>Decided in favour of consumers</th>
<th>Decided against the consumers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>58</td>
<td>37</td>
<td>21</td>
</tr>
<tr>
<td>1992</td>
<td>31</td>
<td>19</td>
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<td>1993</td>
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<td>1994</td>
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</tr>
<tr>
<td>1995</td>
<td>40</td>
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<tr>
<td>1996</td>
<td>54</td>
<td>38</td>
<td>16</td>
</tr>
<tr>
<td>1997</td>
<td>53</td>
<td>40</td>
<td>13</td>
</tr>
<tr>
<td>1998</td>
<td>49</td>
<td>37</td>
<td>12</td>
</tr>
</tbody>
</table>

**Source of Data:** Available records and files of the National Consumer Dispute Redressal Commission, New Delhi.
Medical services' is also under severe attack of the consumers. Table No. 14 indicate that the consumers are approaching to the apex body of consumer justice for the relief against the deficient medical service and the National commission as the protector and preserver of the consumers rights has no hesitation in granting the relief to the consumers. Though the medical practitioners still under the leadership of Indian Medical Association (IMA), claiming immunity from the consumer protection Act 1986, But till date the view of the National commission, which was given in *Cosmopolitan Hospital V. V.P. Nair* is that the services rendered by the private medical practitioners, hospitals and nursings homes are within the ambit of the consumer protection Act and Govt. hospitals and services are excluded. This view of the National Commission is supported by the Supreme Court in *Indian Medical Association V. V.P. Santha* in this case Supreme Court held that the Doctor/hospitals rendering free of charge service to all patients. Not covered by the consumer protection Act. Table No. 9 show that on average there is continuous growth in the number of cases against all the above mentioned services. The noticeable point that increase in the number of cases against the medical service and this is a good sign for the consumer movement in India. So it can be said that as concern to the services the consumer are satisfied with the working and performance of the National Commission.

But one thing should be noticed that the National Commission should change its conservative and backward looking approach in according justice to the consumers of banking services and adopt more realistic view. So that more confidence and faith may be developed in the
Table No: -14  
National Commission towards the cases related to “Medical Services”

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No of cases</th>
<th>Decided in favour of consumers</th>
<th>Decided against the consumers</th>
</tr>
</thead>
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<tr>
<td>1991</td>
<td>9</td>
<td>6</td>
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</tr>
<tr>
<td>1998</td>
<td>22</td>
<td>16</td>
<td>6</td>
</tr>
</tbody>
</table>

**Source of Data:** - Available records and files of the National Consumer Dispute Redressal Commission, New Delhi.
consumer. No doubt working of National commission is satisfactory but it should by to render as much speedy remedy as possible. Overall National commission with its limited resources doing a commendable job and has a bright future. All the figures and information of this study is based on the available records and files and information rendered by the staff and clients in the National commission and in no way undermine the significance of present study which clearly points out the working and performance of the National commission and trend of consumer behaviour.
REFERENCES

* When Data collected in May 2000.


2. Id. pp. 262-63.


4. State involves Union Territories also.


7. Statement based on the personal interview of ministerial staff. When data was collected in May 2000.


12. Ibid.


14. Based Table No. 10.

15. Supra note 13.


17. Supra note 13.

D.N. Syndicate Bank, first appeal No. 107/1991, decided on 7.1.92
19. O.P. No. 44/1992 decided on 2.11.92.
23. Table No. 11.
28. Table No. 9 & 11.
29. O.P. No. 31/1989, Decided on 8.12.89.
30. Table NO. 12, shows it clearly.
31. (1991) ICPR 43, NCDRC.
32. 1991 CPR -348.
35. 1992 ICPJ 302 NCDRC.
(B) WORKING OF CONSUMER PROTECTION ACT, 1986: AN ANALYSIS

In the previous parts of this chapter we have discussed the working of Consumer Dispute Redressal Agencies as a whole and analysed on the basis of available data that how, in the absence of proper infrastructure facilities, staff, funds and timings, these agencies are doing a commendable job and protecting the interest of the consumers against the exploitation in the market. But this has not covered specifically the thrust area of consumer protection i.e. protection in case of Deficient services & Defective Goods. So, in this part the researcher has tried to analyse the role and attitude of these agencies for the protection of the consumers if he suffers any loss or damage because of Deficient Services and Defective Goods.

(1) Deficient Services: Role and Attitude of Consumer Dispute Redressal Agencies

In the cases related to deficient services the remedies which are available for the consumers against the person who is providing deficient services. The remedies available are compensation for the loss or injury suffered due to the deficiency in service, removal of the deficiency in the service and to return the charges paid by the consumer for availing the services. A wide range of remedies are provided for the consumer of service. If the deficiency is proved and the redressal agency is satisfied that the service is suffering from one or more deficiency the redressal agency may provide one or more remedies to the consumers. Though the Act provides a list of remedies in case of deficiency in service but the question arises that whether the consumers are getting the benefit of the remedies or not and what are the attitude of the redressal agencies while
granting the remedies to the consumers. Tabulated data\(^2\) shows that not only the consumers are aware of the remedies available to them but the redressal agencies has adopted a favourable attitude towards the consumers. Table No. 1 shows that the consumers are emphasising not only on compensation but also demanding cost of suit and the Aligarh district consumer forum in most of the cases providing the relief demanded by the consumers. Approximately in 20% of cases the consumers are demanding all the three remedies i.e. compensation, removal of deficiency and cost of the suit and successfully getting in majority of the case (approximate 19\%).\(^3\) If we see table no. 4, the result is same as an average in 77.2% cases the consumers demanded the compensation as well as the cost of suit and in 18.8% of the cases, compensation, removal of defect and cost of the suit in most of the cases.\(^4\) The District forum awarded the demanded relief to the consumers. State Consumer dispute redressal commission has also settled same precedent and adopted the approach in favour of the consumer. In most of the cases (table no. 2) consumer are not satisfied only in getting the compensation but they adopted an attacking approach as adopted in case of defective goods\(^5\) against the supplier of deficient services and in most of the cases they are demanding all the possible remedies available to them within the domain of the Act. In most of the cases they are successful in getting the remedies which they demanded. Table no. 4 shows that at state level in 71.6% of cases the compensation and cost of suit were sought and in 26% of the cases removal of the deficiency is also included with the above mentioned remedies and in 2.4% of the cases only compensation is demanded. The notable point is that they are not
only demanding the remedies but they are getting it in most of the cases. In 62.4% of the cases the state commission has granted the compensation with cost of suit out of 71.6% of cases and in 22.6% of cases the state commission has granted the compensation and cost of suit with the order to remove the deficiency of the service, out of 26% of the cases. The National Commission has granted the compensation and cost of suit in 51.6% of cases out of 71.6% of cases and compensation, cost of suit with the order to remove the deficiency of service in 18% of cases out of 24.4% of cases.

So, in this way it is concluded that the consumers of service are well aware about the remedy available to them, in case of deficient services, within the purview of the Act and they are utilizing it up to maximum extent the maximum remedies available to teach a lesson to the provider of deficient services. The most remarkable point and evidence of the awareness of the consumers about their rights and remedies that in cases related to deficient services even a common man as a consumer is standing with confidence before the giant business houses government sectors and public sectors those are providing services i.e. Electricity Department, Telephone Department, Postal Department, Banking and Financial institutions, Insurance companies etc. and he is successful in teaching a lesson if any deficiency occurs in their services. On the same way the attitude of the redressal agencies should also be appreciated as they have adopted an approach against the persons or corporations providing deficient services and successfully boosting up the confidence of the consumers. Their favourable attitude towards the consumers is one
Attitude of District Consumer Forum Aligarh in the Cases related to 'Deficient Services'

- **Insurance**: 909 cases, Decided 501, Relief 66, No Relief 282
- **Electricity**: 757 cases, Decided 397, Relief 105, No Relief 255
- **Banking**: 327 cases, Decided 98, Relief 57, No Relief 112
- **Telephone**: 811 cases, Decided 433, Relief 73, No Relief 205
- **Postal**: 474 cases, Decided 286, Relief 58, No Relief 25
- **Gas**: 828 cases, Decided 508, Relief 92, No Relief 228
Attitude of State Consumer Dispute Redressal Commission, U.P. in Cases related to 'Deficient Services'

<table>
<thead>
<tr>
<th>Services</th>
<th>No. of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical</td>
<td>99</td>
</tr>
<tr>
<td></td>
<td>66</td>
</tr>
<tr>
<td>Banking</td>
<td>195</td>
</tr>
<tr>
<td></td>
<td>137</td>
</tr>
<tr>
<td>Telephone</td>
<td>160</td>
</tr>
<tr>
<td></td>
<td>114</td>
</tr>
<tr>
<td>Insurance</td>
<td>208</td>
</tr>
<tr>
<td></td>
<td>152</td>
</tr>
<tr>
<td>Electricity</td>
<td>165</td>
</tr>
<tr>
<td></td>
<td>120</td>
</tr>
</tbody>
</table>

- Decided
- Relief
- No Relief
Attitude of National Consumer Dispute Redressal Commission New Delhi, in cases related to 'Deficient Services'
**Table No: 4**

Average (cases related to deficient services)
(From – 1994 to 1998)

<table>
<thead>
<tr>
<th>Consumer dispute Redressal Agency</th>
<th>Remedies sought</th>
<th>Remedies granted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>C.Cs</td>
<td>C.Rs.Cs</td>
</tr>
<tr>
<td>District Forum, Aligarh</td>
<td>77.2%</td>
<td>18.8%</td>
</tr>
<tr>
<td>State Commission, U.P.</td>
<td>71.6%</td>
<td>26%</td>
</tr>
<tr>
<td>National Commission</td>
<td>71.6%</td>
<td>24.4%</td>
</tr>
</tbody>
</table>

(i)  C.Cs  = Compensation and Cost of suit.  
(ii) C.Rs.Cs. = Compensation, removal of deficiency and cost of suit  
(iii) C = Compensation only
Table No. 3

Variable: Attitude of the consumers as well as the National Commission, while demanding the relief and granting the relief in the cases related to deficient services.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases (N)</th>
<th>Remedies Sought</th>
<th>Remedies granted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>C.Cs</td>
<td>C.Rs.Cs</td>
</tr>
<tr>
<td></td>
<td>f</td>
<td>%</td>
<td>f</td>
</tr>
<tr>
<td>1994</td>
<td>50</td>
<td>42</td>
<td>84%</td>
</tr>
<tr>
<td>1995</td>
<td>50</td>
<td>33</td>
<td>66%</td>
</tr>
<tr>
<td>1996</td>
<td>50</td>
<td>38</td>
<td>76%</td>
</tr>
<tr>
<td>1997</td>
<td>50</td>
<td>35</td>
<td>70%</td>
</tr>
<tr>
<td>1998</td>
<td>50</td>
<td>31</td>
<td>62%</td>
</tr>
</tbody>
</table>

(i) C.Cs = Compensation and Cost of suit.
(ii) C.Rs.Cs. = Compensation, removal of deficiency and cost of suit
(iii) C = Compensation only
(iv) f = Frequency.
(v) N = Total number of subjects choosen for study
(vi) % = Percentage.
Table No. 2

**Variable:** Attitude of the consumers as well as the State Consumer Dispute Redressal Commission U.P., While demanding the relief and granting the relief in the cases related to deficient services.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases (N)</th>
<th>Remedies Sought</th>
<th>Remedies granted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>C.Cs</td>
<td>C.Rs.Cs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>f   %</td>
<td>f   %</td>
</tr>
<tr>
<td>1994</td>
<td>50</td>
<td>34  68%</td>
<td>16  32%</td>
</tr>
<tr>
<td>1995</td>
<td>50</td>
<td>28  56%</td>
<td>17  34%</td>
</tr>
<tr>
<td>1996</td>
<td>50</td>
<td>32  64%</td>
<td>18  36%</td>
</tr>
<tr>
<td>1997</td>
<td>50</td>
<td>41  82%</td>
<td>8   16%</td>
</tr>
<tr>
<td>1998</td>
<td>50</td>
<td>44  88%</td>
<td>6   12%</td>
</tr>
</tbody>
</table>

(i) C.Cs  = Compensation and Cost of suit.
(ii) C.Rs.Cs. = Compensation, removal of deficiency and cost of suit
(iii) C = Compensation only
(iv) f = Frequency.
(v) N = Total number of subjects choosen for study
(vi) % = Percentage.
Table No. 1

Variable: Attitude of the consumers as well as the District Consumer Forum, Aligarh, while demanding the relief and granting the relief in the cases related to deficient services.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases (N)</th>
<th>Remedies Sought</th>
<th>Remedies granted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>C.Cs.</td>
<td>C.Rs.Cs.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>f</td>
<td>%</td>
</tr>
<tr>
<td>1994</td>
<td>50</td>
<td>30</td>
<td>60%</td>
</tr>
<tr>
<td>1995</td>
<td>50</td>
<td>42</td>
<td>84%</td>
</tr>
<tr>
<td>1996</td>
<td>50</td>
<td>40</td>
<td>80%</td>
</tr>
<tr>
<td>1997</td>
<td>50</td>
<td>37</td>
<td>74%</td>
</tr>
<tr>
<td>1998</td>
<td>50</td>
<td>44</td>
<td>88%</td>
</tr>
</tbody>
</table>

(i) C.Cs = Compensation and Cost of suit.  
(ii) C.Rs.Cs. = Compensation, removal of deficiency and cost of suit.  
(iii) C = Compensation only.  
(iv) f = Frequency.  
(v) N = Total number of subjects choosen for study.  
(vi) % = Percentage.
of the most important factor which played a major role to make the consumers aware of their rights and confident to come forward even against the giant business houses for their rights and remedies. If the same attitude of the consumers as well as the redressal agencies shall continue there is no doubt that the businessmen, private sectors, public sectors and government departments will always think about the safety and welfare of the consumers with their business.

(2) **Defective Goods: Role and Attitude of Consumer Dispute Redressal Agencies**

The Consumer Protection Act, 1986 provides that if the consumer Dispute Redressal Agency (CDRA) is convinced that the goods were really defective or that the complaint about the goods is proved, the redressal agencies, i.e. District Forum, State commission or the National Commission, shall have to order any of the following things to be done by the opposite party:

(a) to remove the defect which has been pointed out by the laboratory;

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

(c) to return to the complainant the price of the goods or the charges for the services;

(d) to pay to the complainant a sum of money by way of compensation for any loss or injury suffered by the consumer due to the negligence of the opposite party;

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

(f) -------
The consumer protection Act 1986 provides a wide range of remedies for a consumer if he suffers any loss or injury due to any defect in the goods which he purchase for consumption or use. The aim of these remedies are to provide relief to the consumer who has always been exploited in the market place and teach a lesson to the sellers who launch defective or substandard goods in the market. But only giving the provisions for remedies in the Act is not important, the benefit, which the public is getting through these remedies for whom the provision are made, is more improtant. So, the question arises whether the consumers are getting any benefit from the remedial provisions of the Act or not and what is the attitude of the consumer dispute redressal agencies while granting the remedies to the consumer. Data, which are collected from the available files and records of the redressal agencies and tabulated by the researcher himself show that the redressal agencies are adopting a favourable attitude towards the consumers.

Table no. 5 to 8 are based on the data collected through simple sampling for a time period of five years (from 1994 to 1998) and tabulated using appropriate technique and tools.

These tables are a concrete evidence that an era of consumerism has started. The redressal agencies has adopted a favourable attitude towards the consumers as in majority of the cases consumers are getting
the demanded relief which is a good sign in the interest of the consumers. The analysis of data also show that the judiciary is coming forward to protect the interest of the consumers. Table no. 5 and 8 shows that majority of the consumers in the cases related to defective goods at district level (in Aligarh district) are emphasising not only to get the compensation but also claiming the cost of suit. In Aligarh district an average in 72% of the cases the consumers claim compensation as well as the cost of the suit, in 23.6% of the cases the consumers claimed the compensation, replacement of goods and cost of the suit and in 4.4% of cases only compensation is claimed. It reflects the tendency of the consumers that they are not ready to compromise only on the compensation they need the cost of suit from the pocket of the seller and also the replacement of goods this conclusion also points towards the awareness of the consumers about the remedies available to them under the Act. The attitude of the redressal agency is also a supporting force for the consumers because in most of the case the consumers are getting the demanded relief. It means the redressal agency is supporting the consumers and through their judgements trying to depress the sellers and producers involve in the marketing of defective and substandard goods.

Same attitude is adopted by the state consumer dispute redressal commission, U.P., i.e. to grant the adequate relief to the consumer and protect them against the goods which are defective or substandard in nature. Table No. 6 shows that the consumers at the state level not only emphasising on getting compensation and cost of the suit but also the replacement of goods. Table No. 6 & 8 shows that the number of cases
are increased in which the consumers has sought the three remedies i.e. compensation, cost of suit and replacement of defective goods and the notable point is that in most of the cases all the three remedies are granted to the consumers. The data show that an average in 40.4% of cases all the three remedies are demanded and in 32.4% cases the remedies are awarded. The increase in number of cases in which all the three remedies are demanded proves that the consumers has now started more deterrent view against the sellers of defective or substandard goods. It also point out that not only the consumers has adopted a deterrent view but it is also supported by the more deterrent and attacking approach of the redressal agencies as the redressal agencies not hesitating to award the remedies sought by the consumers. At the national level, table no. 7 & 8 shows that approximately 60-60% cases, related to defective goods, the remedies are demanded.

(i) compensation and cost of suit
(ii) compensation, replacement of defective goods and cost of the suit

and in most of the cases the National commission had adopted a supporting and favourable attitude towards the consumers while awarding the remedies. Table no. 8 shows that an average in 48.8% of cases, compensation and cost of suit were claimed and in 33.2% of case it is awarded and in 47.6% of the cases compensation, replacement of defective goods and cost of the suit were claimed and in 29.6% of case all these three remedies were granted by the national commission.

To conclude it may be submitted, on the basis of the analysis of the above discussed data, that the consumers of the goods are now well
Table No. 5

Variable: Attitude of consumers as well as the Aligarh District Forum, while demanding and granting the relief in cases related to defective goods.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases (N)</th>
<th>Remedies Sought</th>
<th>Remedies granted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>C.Cs</td>
<td>C.Rs.Cs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>f</td>
<td>%</td>
</tr>
<tr>
<td>1994</td>
<td>50</td>
<td>40</td>
<td>80%</td>
</tr>
<tr>
<td>1995</td>
<td>50</td>
<td>35</td>
<td>70%</td>
</tr>
<tr>
<td>1996</td>
<td>50</td>
<td>36</td>
<td>72%</td>
</tr>
<tr>
<td>1997</td>
<td>50</td>
<td>41</td>
<td>82%</td>
</tr>
<tr>
<td>1998</td>
<td>50</td>
<td>28</td>
<td>56%</td>
</tr>
</tbody>
</table>

(i) C.Cs = Compensation and Cost of suit.  
(ii) C.Rs.Cs = Compensation, removal of deficiency and cost of suit  
(iii) C = Compensation only  
(iv) f = Frequency.  
(v) N = Total number of subjects choosen for study  
(vi) % = Percentage.
Table No. 6

Variable: Attitude of the consumers as well as the Consumer Dispute Redressal Commission on U.P., While demanding and granting the relief in the cases related to defective goods.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases (N)</th>
<th>Remedies Sought</th>
<th>Remedies granted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>C.Cs.</td>
<td>C.Rs.Cs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>F</td>
<td>%</td>
</tr>
<tr>
<td>1994</td>
<td>50</td>
<td>41</td>
<td>82%</td>
</tr>
<tr>
<td>1995</td>
<td>50</td>
<td>20</td>
<td>40%</td>
</tr>
<tr>
<td>1996</td>
<td>50</td>
<td>22</td>
<td>44%</td>
</tr>
<tr>
<td>1997</td>
<td>50</td>
<td>26</td>
<td>52%</td>
</tr>
<tr>
<td>1998</td>
<td>50</td>
<td>28</td>
<td>56%</td>
</tr>
</tbody>
</table>

(i) C.Cs = Compensation and Cost of suit.
(ii) C.Rs.Cs. = Compensation, removal of deficiency and cost of suit
(iii) C = Compensation only
(iv) f = Frequency.
(v) N = Total number of subjects chosen for study
(vi) % = Percentage.
Table No. 7

Variable: Attitude of the consumers as well as the National Consumers Dispute Redressal Commission, While demanding the relief and granting the relief in the cases related to defective goods.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases (N)</th>
<th>Remedies Sought</th>
<th>Remedies granted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>C.Cs</td>
<td>C.Rs.Cs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>f</td>
<td>%</td>
</tr>
<tr>
<td>1994</td>
<td>50</td>
<td>20</td>
<td>40%</td>
</tr>
<tr>
<td>1995</td>
<td>50</td>
<td>28</td>
<td>56%</td>
</tr>
<tr>
<td>1996</td>
<td>50</td>
<td>21</td>
<td>42%</td>
</tr>
<tr>
<td>1997</td>
<td>50</td>
<td>29</td>
<td>58%</td>
</tr>
<tr>
<td>1998</td>
<td>50</td>
<td>24</td>
<td>48%</td>
</tr>
</tbody>
</table>

(i) C.Cs = Compensation and Cost of suit.  
(ii) C.Rs.Cs. = Compensation, removal of deficiency and cost of suit  
(iii) C = Compensation only  
(iv) f = Frequency.  
(v) N = Total number of subjects choosen for study  
(vi) % = Percentage.
Table No: 8
Average (cases related to defective Goods)
(From – 1994 to 1998)

<table>
<thead>
<tr>
<th>Consumer dispute Redressal Agency</th>
<th>Remedies sought</th>
<th>Remedies granted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>C.Cs</td>
<td>C.Rs.Cs</td>
</tr>
<tr>
<td>District Forum, Aligarh</td>
<td>72%</td>
<td>23.6%</td>
</tr>
<tr>
<td>State Commission, U.P.</td>
<td>54.8%</td>
<td>40.4%</td>
</tr>
<tr>
<td>National Commission</td>
<td>48.8%</td>
<td>47.6%</td>
</tr>
</tbody>
</table>

(iv) C.Cs = Compensation and Cost of suit.
(v) C.Rs.Cs = Compensation, removal of deficiency and cost of suit
(vi) C = Compensation only
aware of the remedies available to them under the consumer protection Act 1986 and this awareness has now turned into a movement against the sellers of defective and substandard goods. The consumers has now adopted the deterrent as well as the attacking approach against the sellers of the defective and substandard goods and not ready to compromise simply on the compensation for the loss or injury suffered because of the use or consumption of the defective goods. The consumer is emphasising not only on the compensation also for the replacement of the defective goods and need the cost of the suit from the pocket of the sellers. This approach of the consumer is supported by the consumer dispute redressal agencies.

To conclude it can be said that the consumer protection Act 1986 has now developed a sense of security amongst the consumers and they are now resisting against the deficient services and defective goods even the consumer of today after the passing of consumer protection Act 1986 has courage to stand before the giant business houses and govt. department for their rights. The consumer protection Act 1986 is successful to make the consumers aware their rights against the exploitation in the open market and the consumer awareness is increasing day by day but still this is the need of the time to make the consumers aware of their rights as data shows that most of the consumers are not aware about some important and beneficial provisions of the Act.

In this direction the government should start some programmes on consumer education specially at the grass root level. The media can play an important role in consumer education. Though the consumers are
having a complaint about the delayed disposal of the cases but overall analysis proves that the consumers awareness is increasing day by day and consumer are satisfied with the consumer protection Act, 1986.

The consumer awareness is now taking the shape of consumer movement. In this movement the dispute redressal agencies, while awarding the relief in the cases against the deficient services and defective goods, has now established as the driving force of this movement as the consumer dispute redressal agencies has no hesitation to award as much relief as possible to the consumers against the sellers and producer of defective goods and suppliers of deficient services. All the fact, discussed in this chapter with the help of collected data, collectively recognised that the consumer protection Act 1986 has achieved the remarkable success in its aim and objective and establish a hope for the consumers market and consumers era.

But besides the efforts of consumer protection Act 1986 and the supporting attitude of the consumer dispute redressal agencies the consumer's are also supposed to keep their standard constant in future. He should realise his importance and prepare himself to exercise his rights with responsibility. It is very often stated "Consumer is sovereign and consumer is king". If that is really so, why do we have the consumer protection Act/ Why is there a need for protecting the King? Should it not be called the "consumer sovereignty Act"? It is for the consumer to decide and also the serious consideration of the government is required regarding the consumer education, infrastructure facilities of the
consumer courts and the working hours of the consumer courts to make the consumer justice system more effective and to effectively achieve the object for which the consumer protection Act 1986 has been passed. After all the dictum in democracy, the citizens get a government they deserve. Similarly the consumers in society get a position in the market depending upon with the serious efforts of the government, what they do or do not do.

Keeping in view, the findings of this study consumer awareness and attitude of the consumer dispute redressal agencies, the efforts made by the government which is still continue to make the consumer protection legislation more effective it is agreed on all hands that "consumer empowerment" in India has a long way to go. This is the right time to act.

So, with the consumer protection Act 1986 an era of consumerism has started and in future the so called "King of market" i.e. consumer will acquire the position of "King" in actual sense.

Let us prepare for the next millennium and hope for the best in future.

(3) Consumers : Awareness & Attitude

After going through the detailed analysis of working of Consumer Dispute Redressal agencies and their role and attitude in case of Deficient Services and Defective Goods it is tried by the researcher to find out that up to what extend the consumers are aware of their rights and
their attitude towards these agencies. Because the complete efforts of the Government to improve the philosophy of consumerism and provide the effective protection to the consumers against all type of exploitation in the market shall remain only a 'white elephant' unless there will be awareness amongst the consumers regarding their rights and remedies available to them and upto what extend the Government is successful to make the consumers aware through various modes of awareness.

"Consumerism" is likely to dominate the Indian market in the next Millennium, thanks to the economic reforms ushered in and several agreements signed under the World Trade Organisation. The tradition will be from a predominantly "sellers market" to a "buyers market" where the choice exercised by the consumer will be influenced by the level of consumer awareness achieved. By "consumerism" we mean the process of realising the rights of the consumer as envisaged in the Consumer Protection Act 1986 and ensuring right standards for the goods and services for which one makes a payment. This objective can be achieved in a reasonable time frame only when all concerned act together and play their role. The players are the consumers represented by different voluntary non-government consumer organisations, the government, the regulatory authorities for goods and services in a competitive economy, the consumer courts, organisation representing trade industry and service providers, law makers and those incharge of implementation of the laws and rules.

The issue relating to consumer welfare affects the entire 986 million people of the country since everyone is a consumer in one way or
the other. Ensuring consumer welfare is the responsibility of the government. Accepting this, policies have been framed and the consumer protection Act 1986 was introduced. A separate Department of Consumer Affairs was also created in the central and state governments to exclusively focus on ensuring the rights of consumers as enshrined in the Act. This Act has been regarded as the most progressive, comprehensive and unique piece of legislation. In the last International Conference on Consumer Protection held in Malaysia in 1997, the Indian Consumer Protection Act was described as one "which has set in motion a revolution in the fields of consumer rights, the parallel of which has not been seen anywhere else in the world".

The special feature, in short, of this Act is to provide speedy and inexpensive redressal to the grievance of the consumer and provide him relief of a specific nature and award compensation wherever appropriate. The aim of the Act is also to ensure the rights of the consumer, viz. the right of choice, safety, information, redressal public hearing and consumer education.

The Act has laudable objectives. The implementation of these objectives are in progress and their implementations are opening a new era of consumerism and hopefully will result in establishing and developing consumer rule of law rather than rule of law of producers and sellers. The Act is a source of regulatory agencies which have the obvious responsibility to play an effective role in protecting consumers interest in various ways.
But up to what extent this Act is successful to achieve the objectives for which it was enacted and whether the consumers are aware of their rights? whether the consumers are benefited with the informal, inexpensive and speedy redressal? if the redressal is not speedy what are the factors for delay in the opinion of the consumer? All these questions don't have any clear answer. In this chapter an attempt is made to find out the answers of these questions. This chapter deals with the analysis and interpretation of data which the researcher has collected himself applying suitable tools and techniques and tabulated all the data after computing it minutely.

**ANALYSIS**

(a) **Consumer Protection Act 1986 & Consumers Awareness and Attitude**

<table>
<thead>
<tr>
<th>Variable: Source of awareness about the consumer protection law</th>
<th>Frequency</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Magazines/Newspapers</td>
<td>178</td>
<td>44.5%</td>
</tr>
<tr>
<td>Radio</td>
<td>36</td>
<td>9%</td>
</tr>
<tr>
<td>T.V.</td>
<td>22</td>
<td>5.5%</td>
</tr>
<tr>
<td>Family members/Friends</td>
<td>46</td>
<td>11.5%</td>
</tr>
<tr>
<td>Legal advice</td>
<td>90</td>
<td>22.5%</td>
</tr>
<tr>
<td>Voluntary Consumer Association</td>
<td>28</td>
<td>7%</td>
</tr>
</tbody>
</table>

\[N = 400\] 100%

Table No. 1.1 shows that 178 people becomes aware of the consumer protection law through magazines and newspapers i.e. 44.5% of
the people become aware through magazine/newspapers. 36 people (9%) got the information through radio and 22 (5.5%) through television. Family members and friends also played a role in consumer education as 46 (11.5%) people came to know about the consumer protection law through them. 90 (22.5%) peoples took legal advice for their grievances it shows they were not aware of the law. The least role appears of the voluntary consumer Associations, supposed to be most important player, as 28 people (7%) become aware through the voluntary consumer association. The interpretation of the table No. 1.1 shows that the magazines and news papers are playing an important role in consumer education but the role of electronic media (T.V. and Radio)and voluntary consumer associations are dopressing as only 7 to 9% of people are benefited through then But it looks that General public (Family members & friends) are playing a good role for the consumer education.22.5% People benefited through legal advice but it is important that if 22.5% people took legal advice it may be concluded that 22.5% people were not aware of the consumer protection law. It is necessary that government should take a proactive role in increasing consumer awareness, encourage consumer education and fraining. Because inspite of the enactment of the Act, role of govt and volunatry consumer association are not noteworthy> Interpretation of data shows that the consumer in India still does not get his due. It is time that the wakes up and realise his rights.
Table No. 1.2

Variable: Awareness of some terms of the C.P.A.

<table>
<thead>
<tr>
<th>Item</th>
<th>Frequency</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who is a consumer -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aware</td>
<td>63</td>
<td>15.75%</td>
</tr>
<tr>
<td>not aware</td>
<td>337</td>
<td>84.25%</td>
</tr>
<tr>
<td>'Services' which falls within the perview of C.P.A.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aware</td>
<td>56</td>
<td>14%</td>
</tr>
<tr>
<td>not aware</td>
<td>344</td>
<td>86%</td>
</tr>
</tbody>
</table>

Table No. 1.3

Variable: Awareness of some provisions of C.P.A.

<table>
<thead>
<tr>
<th>Item</th>
<th>Frequency</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rights available under C.P.A.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aware</td>
<td>74</td>
<td>18.5%</td>
</tr>
<tr>
<td>Not aware</td>
<td>326</td>
<td>81.5%</td>
</tr>
<tr>
<td>Services of lawyer not necessary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aware</td>
<td>48</td>
<td>12%</td>
</tr>
<tr>
<td>Not aware</td>
<td>352</td>
<td>88%</td>
</tr>
<tr>
<td>Time limit for disposal of cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aware</td>
<td>90</td>
<td>22.5%</td>
</tr>
<tr>
<td>Not aware</td>
<td>310</td>
<td>77.5%</td>
</tr>
<tr>
<td>Limitation period to file a case</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aware</td>
<td>12</td>
<td>3%</td>
</tr>
<tr>
<td>Not aware</td>
<td>388</td>
<td>97%</td>
</tr>
</tbody>
</table>
Table No. 1.2 indicates that only 63 (15.75%) consumers are aware of the term consumer used in the consumer protection Act while the majority 84.25% consumer are not aware. Same position is with the term services only 56 (14%) consumers are aware of the services which are included under consumer Protection Act and 86% are not aware of the fact. If we see table no. 1.3 same position is reflected in it as 74 i.e. only 18.5% consumers are aware of their rights available under Consumer Protection Act and 81.5% are not aware. Consumer Protection Act provides an informal form of redressal in which a consumer may appear in person to plead his case and no need to hire the services of a lawyer but only 12% consumers are aware of this fact and 88% don't know about this provision and engage the services of a lawyer. This is the main reason, which appears, behind the appearance of lawyers in majority of cases and once again a consumer who come in the court against the exploitaiton at market place becomes a thing to be exploited by the lawyers.

Table No. 1.3 further shows that only 22.5% consumer are aware of the time limit, prescribed by the Act, to dispose of a cases and only 3% consumers are aware of the limitation period to file a case. All these facts show only one thing, the failure of right to consumer education,though this has been made one of the missions of the Act, to provide proper education in terms of their rights and remedies because it is a fact that people's awareness is likely to provide a better tool for putting the trade on some level of discipline. The consciousness of the people as a whole, for every one is a consumer one way or the other, when aroused by proper consumer education, is likely to be above petty
temptations and, therefore, more effective in its mission. If the effective action has been initiated in this direction, there is every reason to hope that the future will be better because the success of "consumerism" is a strong function of consumer awareness, and the assistance the movement gets from the govtr.

On the other hand table No. 1.4, give another reason, why the consumers are not aware of their rights up to the projected limits.

### Table No. 1.4

**Variable : Educational Standard of Consumers**

<table>
<thead>
<tr>
<th>Item</th>
<th>Frequency</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Educated</td>
<td>183</td>
<td>45.75%</td>
</tr>
<tr>
<td>Matric/Intermediate</td>
<td>122</td>
<td>30.5%</td>
</tr>
<tr>
<td>Graduate</td>
<td>48</td>
<td>12.0%</td>
</tr>
<tr>
<td>Post-Graduate</td>
<td>27</td>
<td>6.75%</td>
</tr>
</tbody>
</table>

It is clear from table No. 1.4 that the majority of consumer, coming to the consumer courts are illiterate. 45.75% consumers are not educated and 30.5% consumers are simply matric or Intermediate while only 12% consumers or graduate and 6.75% consumers are post-graduate. The consumers who are not educated mainly belongs to rural areas and come with the problem of services and goods related to farming and its necessaries and probably they are the most deserving sect of the consumers needs special attention.

A comparative analysis of table No. 1.2, 1.3 and 1.4, shows that there is direct relationship between literacy and consumer awareness.
Because the majority of the consumer who are not aware of their rights, belongs to rural areas and majority of them are not educated as evident from table No. 1.5 that only 32% consumer belongs to urban area and rest from the rural area.

**Table No. 1.5**  
**Variable : From which area consumer belongs**

<table>
<thead>
<tr>
<th>Item</th>
<th>Frequency</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban area</td>
<td>128</td>
<td>32%</td>
</tr>
<tr>
<td>Rural area</td>
<td>272</td>
<td>68%</td>
</tr>
<tr>
<td><strong>N = 400</strong></td>
<td><strong>100%</strong></td>
<td></td>
</tr>
</tbody>
</table>

Now from the above interpretation of the data, the question to be considered is what the government do to improve the position? And the high level of consumer awareness of the next millennium is depend on the answer of this question.

**Table No. 1.6**  
**Variable : Hired the Services of a lawyer or not**

<table>
<thead>
<tr>
<th>Item</th>
<th>Frequency</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hired the services</td>
<td>467</td>
<td>91.75%</td>
</tr>
<tr>
<td>Not hired</td>
<td>33</td>
<td>8.25%</td>
</tr>
<tr>
<td><strong>N = 400</strong></td>
<td><strong>100.00%</strong></td>
<td></td>
</tr>
</tbody>
</table>

Table No. 1.6 shows that the majority of consumers (91.75%) used to hire the services of a lawyer to plead their case in spite of appearing in person only 8.25% consumers do not hire the services of a lawyer. This is not a good sign because this is the only reason when the consumer coming to the consumer court against exploitation becomes the subject
to be exploited. It was noticed during this study that lawyers even in simple cases try to get the date and the consumers are not satisfied with the performance of lawyers as table No. 1.7 indicates.

**Table No. 1.7**

<table>
<thead>
<tr>
<th>Variable: Satisfaction of consumer with the performance of his lawyer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
</tr>
<tr>
<td>Satisfied</td>
</tr>
<tr>
<td>Not satisfied</td>
</tr>
<tr>
<td>Can't say</td>
</tr>
<tr>
<td><strong>N = 400</strong></td>
</tr>
</tbody>
</table>

Table No. 1.7 reflects the result drawn from the table no. 1.6, as it shows that majority of the consumers (44.25%) are not satisfied with the performance of the lawyers only 25.75% consumer are satisfied on the other hand 30% consumer are not in a position to say anything only to say- "Vakil Sahhab jo kar rahe hai kar rahe honge", but this sentence shows their hopelessness. Some consumers told in oral talk about the big amount taken by the lawyers and said "Fees Ke liye lamba kheench rahe hain". The position is really humiliating. This study concluded that the entry of lawyers should be banned in consumer cases to stop the legal exploitation of consumers and to keep up the welfare of the consumers.

**Table No. 1.8**

<table>
<thead>
<tr>
<th>Variable: Whether the case was disposed of within time limit or not</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
</tr>
<tr>
<td>Within time limit</td>
</tr>
<tr>
<td>Not within time limit</td>
</tr>
<tr>
<td><strong>N = 400</strong></td>
</tr>
</tbody>
</table>
Table No. 1.8 shows that only cases of 20.5% consumers were disposed of within time limit and 79.5% consumers were the sufferer of delayed disposal, which has now become a routine matter of the consumer courts which are taking much long time from the prescribed time limit. This fact really causes concern for the Government and the consumer in general. The reasons should be identified and proper steps are required to improve the disposal rate otherwise the objective of speedy and effective redressal to the consumer will be defeated and right to speedy and effective redressal will become rusted.

There may be many factors which are responsible for the delayed disposal but this study tried to find out the reasons in the opinion of the consumers.

Table No. 1.9

<table>
<thead>
<tr>
<th>Variable: Causes of delayed disposal in the opinion of the consumer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Item</strong></td>
</tr>
<tr>
<td>Work load</td>
</tr>
<tr>
<td>Shortage of infrastructure facilities</td>
</tr>
<tr>
<td>Shortage of staff</td>
</tr>
<tr>
<td>Lawyers</td>
</tr>
<tr>
<td>Irregular sitting of consumer court</td>
</tr>
<tr>
<td>Part-time nature of consumer court</td>
</tr>
</tbody>
</table>

| **N = 400** | **100.0** |

According to table No. 1.9, 28% consumers thinks that work load is responsible for delay in disposal but 9.5% consumers finds that shortage of infrastructure facilities are responsible for delay. Shortage of staff is one of the reason for the delay according to 8% consumers
while the lawyers are pointed out by 10.75% consumer as one of the factor for delay. Irregular sitting is one of the important reason for delay says 25.75% consumer and 18% said that part time nature of the consumer courts is one of the most important reasons.

To conclude, after a detailed analysis of the working of Consumer Dispute Redressal Agencies (hereinafter called a s CDRA) it can confidently be said that these agencies has now established their image as the protector of exloited consumer and their rights in e very field of the market. This is a great achievement of these agencies and a giant leap towards the establishment of the consumer movement. The CDRA has successfully developed a sense of confidence in the consumers and created an image of patron and protector of the consumers rights. This is only the role and attitude of the CDRA's only because of which even a petty consumer is standing with courage and making an eye to eye contact with the giant business houses for their rights with the weapon of his rights. Whenever the consumer has suffered any loss or damage either by the defective goods or deficient service the CDRA's always came forward for the protection of the consumer even the govt. departments are at the direct attack of the consumers through the CDRA's in case of deficient services or goods. Now the business houses which were known for their heartless attitude towards their consumers and for the harrassment of their clients i.e. the insurance corporations, banks, telephone department etc. has now ecome very cautious as the consumers are directly attacking on these services for their rights under the patronage of the CDRA's.

In this way the CDRA's are doing a commendable job and created an awareness amongst the consumers and this is only because of the right
direction role and working of CDRA's that the consumer awareness is now turning into a consumer movement and it has been taught to the businessmen that don't think only for your profit think also for the consumers benefit. The increasing number of the cases and appeals clearly shows that the consumers are satisfied with the working and attitude of the CDRA's because the increasing number of the cases are directly proportionate to the consumers satisfaction.

The CDRA's on their part are trying to their best to protect the consumers against exploitation with limited resources and facilities. Though the CDRA's are taking excess time to dispose off a case but the working and attitude of the CDRA's are not responsible for this delay there are many other factors which are directly or indirectly effecting the working and are responsible for delay i.e. insufficient infrastructure facilities, insufficient staff, insufficient fund part-time nature of the agency etc. so in one sentence it is submitted that inspite of these odd situation the CDRA's are doing a commendable job and are successful upto a remarkable point to achieve the objectives of the consumer protection Act, 1986. This is only because of the positive attitude and good working of the CDRA's which has created an awareness amongst the consumers which is increasing day by day but still this the need of the time to make the consumers more aware of their rights as their are much consumers who are not aware about some important and beneficial provisions of the Act and this is the responsibility of the government and specially the media to play a positive role with the CDRA's.

Now it is true that CDRA's has now established them as a driving force of the consumer movement as they don't have any hesitation to go
upto any extent for the protection of the consumers and it is hoped that it shall remain constant in future. It is also suggested that government should look into the matter and try to remove the deficiency regarding the infrastructure, staff, funds and timings so as to make the CDRA's more efficient and effective as the protector of the consumers interest.

Keeping in view, the findings of this study subject to condition that the government should do more to make consumer movement more effective, it is agreed that 'consumer movement'in India has a long way to go and this is the right time to act. So, with the consumer protection Act and role and attitude of the CDRA's an era of consumerism has started and in future the so called 'king of the market' i.e. consumer will acquire the position of 'King' in actual sense. Let us hope for the best.

CONCLUSION

To conclude it can be said that the Consumer Protection Act 1986 has now developed a sense of security amongst the consumer and they are now resisting against the deficient services and defective goods even the consumer of today after the passing of consumer protection Act 1986 has courage to stand before the giant business houses and govt. department for their rights. The Consumer Protection Act-1986 is successful to make the consumers aware about their rights against the exploitation in the open market and the consumer awareness is increasing day by day but still this is need of the time to make the consumers aware of their rights as data shows that most of the consumers are not aware about some important and beneficial provisions of the Act.
In this direction the government should start some programmes on consumer education specially at the grass root level. The Media can play and important role in consumer education.

Though the consumers are having a complain about the delayed disposal of the cases but overall analysis proves that the consumers awareness is increasing day by day and consumer are satisfied with the Consumer Protection Act-1986.

The consumer awareness is now taking the shape of consumer movement. In this movement the dispute redressal agencies while awarding the relief in the cases against the deficient services and defective goods, has now established as the driving force of this movement as the consumer dispute redressal agencies has no hesitation to award as much relief as possible to the consumers against the sellers and producer of defective goods and supplier of deficient services. All the fact, discussed in this chapter with the help of collected data, collectively recognized that the Consumer Protection Act-1986 has achieved the remarkable success in its aim and objective and established a hope for the consumers market and consumers era.

But besides the efforts of Consumer Protection Act and the supporting attitude of the consumer dispute redressal agencies the consumer’s are also supposed to keep their stand constant in future. He should realize his importance and prepare himself to exercise his rights with responsibility. It is very often stated “customer is sovereign and consumer is king.” If that is really so, why do we have the Consumer Protection Act ? why is there a need for protecting the king ? should it not be called the “Consumer
sovereignty Act"? It is for the consumer to decide and also the serious consideration of the government is required regarding the consumer education, infrastructure facilities of the consumer courts and the working hours of the consumer courts to make the consumer justice system more effective and to effectively achieve the object for which the Consumer Protection Act 1986 has been passed. After all the dictum in democracy, the citizens get a government they deserve. Similarly the consumers in society get a position in the market depending upon with the serious efforts of the government, what they do or do not.

Keeping in view, the findings of this study consumer awareness and attitude of the consumer dispute redressal agencies, the efforts made by the government which is still continue to make the consumer protection legislation more effective, it is agreed on all hands that “consumer empowerment” in India has a long way to go. This is the right time to act.

So, with the Consumer Protection Act – 1986 an era of consumerism has started and in future the so called “king of market” i.e. consumer will acquire the position of “king” in actual sense.

Let us prepare for the next millennium and hope for the best in future.
REFERENCES


2. The data is collected from the available records and files of the concerned redressal agencies and tabulated using appropriate techniques and tools by the researcher or himself.

3. Table No: 1

4. See table No: 4

5. For detail see chapter No:

6. Table No: 1, 2 & 3.


8. Sec. 14 (1) (c) Id.

9. Sec. 14 (1) (d) Id.

10. Sec. 14 (1) (e) Id.

11. Sec. 14 (1) (i) Id.

12. See Table No: 6 & 8.

13. See Table No: 7 & 8.
CONCLUSION

AND

SUGGESTOPEDIA
The progressive move towards the globalization of commerce and finance has resulted in a much greater awareness of the need to go beyond contractual relationships and to harmonize the entire philosophy of human concern and state imperatives. One of the most important human concerns pertains to commodities consumable and protection thereof under various legal regimes since the inception of civilization on this planet. Every oligarchical order, monarchical mandate, dictatorial dicta and constitutional commitment was directed at the betterment, welfare and advancement of consumers who were subjects and citizens under different edicts and fiats in the trichotomical phases of human development.

The consumer protection has always been a trademark of governance and rule of law in India since time immemorial. It has firmly established and proved by the instant research study that even during the ancient period minimum amount of protection to the consumers was available under various decrees and fiats. However, it was prominently attended by the Alauddin Khilji administration during medieval period where at maximum protection was enjoyed by the consumers. At the same time, Khilji administration also protected the commercial interests of the trading community. It is further axiomatic that it was the period which could draw legislative parallalism with that of the post-modernism concept of "consumer democracy" which has stemmed from a gradual graduation of consumer technology effected by the modern legislative journey known as the Consumer Protection Act, 1986.

Consumer rights are human rights and vehemently revendicated by the worlds of occidentalism and Pan-Americana wherein social support
laws are extensively propelled by an agenda of health care under a benevolent brolly of "anti-trust and competition laws" whereunder there is no place whatsoever for menaces like medical negligence and even unprecedented consumer jurisprudence visits to every nook and corner of circumvention and violation. In the same view, in India philosophy of consumer protection is institutionalised and a "corpus juris" is being produced by the consumer jurisprudence in the face of the furious offensive of the terrible trinity - Globalization, Liberalization and Privatization which has founded a new World Consumer Order sans human face. But apex court of the land is hunting the horrendous habilitation of the humble human and readily rectifying the pitiable plight of the consumers through social action litigation at one hand and by an hierarchy of consumer fora envisaged under the Consumer Protection Act, 1986 on the other.

For the first time in the history of socio-economic legislations of India a comprehensive legislation, namely, 'The Consumer Protection Act, 1986' has been passed to provide better protection to the interest of the consumer and for the purpose of establishing 'Consumer Councils' and other authorities for the settlement of consumer disputes and for the matter connected there with. It seeks, inter alia, to promote and protect the rights of the consumer. These objects are sought to be protected by the three-tier adjudicatory machinery (District Consumer Forum, State Commission and National Commission). To provide speedy and simple redressal to consumer disputes, the aforesaid adjudicatory bodies observe the principle of natural justice and are empowered to give relief of a specific nature and to award, whenever appropriate, compensation to
consumer. Penalties for non-compliance of the order, given by these quasi-judicial bodies, may also be imposed. The consumer justice system is an attempt to create an alternative dispute settlement machinery which is different from the traditional courts. The hypothesis, which this study desire to test was, whether, this alternative model of dispute settlement is merely a paper tiger or does it really work from the grass-root level to the highest level and upto what extent these agencies are successful in achieving the goal for which they were established. The study is aimed to test whether people have really started going to consumer courts for redressal of their grievances and also whether, the problems of traditional legal courts which have a formal justice system through a formal process have also started affecting the consumer courts as well, i.e., delay, psychological trauma, catering for rich alone, emphasis on technicalities, etc.

The first hypothesis that upto what extent these agencies are successful in achieving the goal for which they were established, i.e. to provide speedy and cheap justice, stands proved only at the time of commencement of the Act, when these adjudicatory bodies were established and started working (in 1988). Data shows that upto 1991 Aligarh District Consumer Forum was able to render speedy justice but in succeeding years it started taking much time. State Commission U.P., was able to render speedy justice to some extent upto 1992, but from 1993 in succeeding years delay started. The National Commission was not able to provide speedy justice even from the beginning. At present all these adjudicatory bodies are not able to render speedy justice. The problem of
the delay in disposal of cases, which has almost eroded the credibility of the traditional courts has penetrated into the consumer courts as well. Now at present a huge number of cases are pending in these adjudicatory bodies. There are so many factors which are responsible for delayed justice. One of the most important factors is that the state and central governments have appointed the president and the members of these bodies on the part time basis. So they are not able to give much time, and the time which they are giving is not sufficient to deal with such a huge number of cases coming to these courts. Another factor is, that specially Aligarh District Forum and State Commission, U.P. are exact example of ill-equipped consumer courts in real sense and also have shortage of staff, which is affecting their working.

As far as the question of cheap justice is concerned, inspite of flexibility of procedure and non-technicality of proceeding, this study has noticed that in these quasi-judicial bodies also, the consumers are exploited by the lawyers because in more than 98 percent cases, lawyers appeared before the consumer courts. Most of the clients in their oral talks of huge amount of money which the lawyers engaged by them are making. This exploitation is only because in case involving public sector under-takings and private trading organizations, leading advocates appear and take unfair advantage of the opposite party not being represented by a lawyer. So the ordinary consumer is also bound to hire the services of a lawyer. This appearance of lawyers should be strictly prohibited.

The second hypothesis that whether the people have really started going to consumer courts or not for the redressal of their
grievances. The data analysis clearly demonstrates that people are really going to these courts as is evident from the huge increase in the number of cases each year. The collected data shows that awareness in the consumers of the country at each level is increasing day by day. It is expected that in the course of next few years more and more consumers will have awareness about their rights and availability of cheap and expeditious quasi-judicial remedies for redressal of their grievances through these consumer courts.

The inflow of the cases is likely to grow from a trickle to flood which will generate pressure on State Government and Central Governments to strengthen these adjudicatory bodies. The consumer awareness and each year increasing number of cases has proved that this alternative model (from District level to national level) is not merely a paper tiger but it really works and has achieved a great success in developing the confidence in the consumers about their rights and faith in these adjudicatory bodies. The awareness in the consumer is only due to efficient working of these bodies, though problem of delayed justice is there. But inspite of this, the consumers have faith in these bodies. The awareness of the consumer is not limited to the defective goods but has reached to the deficient services, specially Insurance, Banking, Telephone, Postal and much controversial Medical services under severe attack of the consumers.\(^5\)

The study reveals that in case of deficient banking services, the National Commission has generally given greater appreciation of the problems of these institutions and failed to lay down mandatory standards for them. While on the other hand the State Commission, U.P. seems to
be fully aware of the responsibilities of the bank in rendering prompt and efficient services to the consumer and giving them substantial relief. It is hoped that the National Commission will leave this conservative and backward looking approach in according justice to consumer of banking services.:

In case of Insurance and Air services, the National Commission seems to have given benefit of doubt to them and placed the burden of providing deficiency of service, negligence or misconduct on the consumer, which is very difficult for an ordinary man as a consumer to prove anything against these powerful services by adequate evidence. It is suggested that the onus of proof should lie on these services.

The consumers have proved that they know their rights and can protect themselves through these adjudicatory bodies. But the government must provide basic necessities to these consumer courts so that they can work more efficiently and effectively. Due to the consumer awareness and effective role of the consumer courts, most of the manufacturers, dealers and departments are today under pressure to look into their methods of operation and revise them. Due to the awareness of consumers about their rights.

In short we may conclude that inspite of some shortcomings these adjudicatory bodies (Aligarh District Consumer Forum, State Consumer Commission U.P. and National Consumer Commission) are doing a commendable and remarkable job for the consumer protection and have a bright future.
SUGGESTOPAEDIA

As discussed above, that inste of constraints of several kinds, consumer Dispute Redressal Agencies (CDRA) have taken firm roots in the short span of time. Numerous cases of consumers have been disposed of by these agencies expeditiously and to the satisfaction of the complainants. It is expected, keeping in view the growing consumer awareness, that in the course of next few years the inflow of cases will generate more pressure and work load on these adjudicatory bodies. In this connection study has drawn some suggestions to strengthen these agencies.

In order to achieve the objectives of the legislation it is necessary to have whole time president and members. The part-time character of these agencies has brought about evils of its own and should be put to an end as early as possible.

All efforts must be made to ensure that persons with requisite statutory qualifications and dedication to consumer cause are selected for appointment. Apart from it, this is an accepted norm that decision makers in the courts, tribunals and the quasi-judicial bodies should be unbiased and impartial. To achieve this objective screening of person to be appointed, as president and members should rigorously be done.

There are hardly any facilities available to these bodies, especially to the Aligarh District Consumer Forum and State Consumer Commission, U.P., in respect of accommodation, secretarial assistance, office equipments, reports and journals and books, which is adversely affecting the working of these bodies and making it difficult to survive.
In order to generate congenial conditions in this regard, sufficient funds need to be earmarked and placed at the disposal of the agencies. As the matter stands at present, these quasi-judicial bodies have been kept in a state of perpetual dependence on administrative departments with a view to impair their independence. The independence of these quasi-judicial bodies should be ensured and secured from the executive branch of the government.

The National Commission has also held that a complaint against a corporation may be filed at its principal office at a place where cause of action arose provided it was carrying on business there. This opinion has been given inspite of the fact that the explanation appended to Sec. 20 of Civil Procedure Code has not been incorporated at the end of section 11 of the Act (COPRA), which has provisions identical with Sec. 20 of the C.P.C. This is bound to create difficult problems for the consumers. How can a poor consumer chase a powerful corporation at its principal office or at a place where cause of action arose which may be hundreds of kilometers away from the place of his residence? Necessary steps are required to solve this problem with the power to the consumer to file the complain in the court under whose jurisdiction he resides.

To give an impetus to the consumer movement in the country, it is necessary to have efficient committed and dedicated voluntary consumer organizations in all the cities and towns, who can spread the message of consumer movement in the entire country. The State and Central Governments should take effective steps for the promotion of voluntary consumer organizations.
The Act provides for setting up of consumer forum in each district irrespective of its size. Forum has to consist of three peoples whether it be for a small district with a population of 10,00000 or a district a population of 10,000000. Obviously the implication of this seems not to have been envisaged by the framers of legislation. To overcome this constraint, it would be desirable to empower state government to constitute benches of District Forums, in big or metropolitan cities which will hear complaints in different locations and should also be applied in the case of state commission U.P., like the High Court at least one bench of State Commission is badly needed, to enable the forums and commission to provide speedy justice.

As it is clear from table No. 1 that cases are coming in the National Commission even from Lakshdeep, Pondicherry and Goa but not in remarkable number, this may be because of such a long distance. This study concludes that a bench of National Commission should be established in South, to make this long distance short. The number of consumers, will surely increase.

One important point about the State Commission U.P. which this study has noticed that on average every year few months have gone without work. So, the state government of Uttar Pradesh should take serious note of it and make it sure that one very working day work should be done. Because if a single day will go unworked it will create problems and affect the working of the commission like an overloaded state commission of U.P.
<table>
<thead>
<tr>
<th>Year/State</th>
<th>1989</th>
<th>1990</th>
<th>1991</th>
<th>1992</th>
<th>1993</th>
<th>Average per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>52</td>
<td>60</td>
<td>142</td>
<td>138</td>
<td>120</td>
<td>102</td>
</tr>
<tr>
<td>Bihar</td>
<td>90</td>
<td>121</td>
<td>143</td>
<td>138</td>
<td>150</td>
<td>128</td>
</tr>
<tr>
<td>Chandigarh &amp; Haryana</td>
<td>156</td>
<td>198</td>
<td>200</td>
<td>240</td>
<td>264</td>
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Source: Available Records and files of National Consumer Dispute Redressal Commission, Delhi.
As discussed in this chapter that in more than 98% cases lawyers appeared before the consumer courts, which leads to the exploitation of the clients and delay in justice, while on the other hand the Consumer Protection Act provides speedy and cheap justice and a flexible and non-technical procedure is provided for simple redressal. It is suggested that the appearance of lawyers should strictly be banned to provide cheap and speedy redressal for the consumers.

In an age of consumerism, it is suggested that if any item is being or is marketed by the producer/manufacturer maker with free gifts, these accompanying free gifts which are of parishable/consumable/usable nature must also be brought within the ambit of the Consumer Protection Act, 1986 in case of any latent or patent defect in the assident free gift and impugned Act must accordingly be amended.

Government hospital should be brought within the purview of the Consumer Protection Act so as the notion of transparency, accountability and probity could be institutionalised in a democratic and welfare state.

Moreover, government is the guardian and protector in a welfare state, therefore, provision relating to complaint be invoked and activated in the public interest.

It is also incumbent upon the state government that the concept of "services free of charge" should be re-formulated and re-defined so as to protect the interests of the indigent and poor people who visit govt. hospital owing to the reasons of poverty and scarcity because poor people should not be subjected to any kind of human organ stealing/transplantation or any kind of biological experiments.
It is also cogently suggested that to arrest the deteriorating network of probity and protection and disregard to the various provisions of the Consumer Protection Act 1986, amount of punishment should be severe and examplery rather life imprisonment should be prescribed in case of sub-standard goods sold to the consumer which is hazardous to the life of the consumer and exorbitant amount of monetary penalty should be imposed in case of any unfair trade practice.

If the above suggestions are taken into consideration and necessary steps are taken in this regard, the credibility and performance of these consumer dispute redressal agencies will be increased.
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1. Fig. No. XXV.

2. Fig. No. X to XV & XIX to XXIV (Graphical Analysis).

3. For detail see Chapter No. VI.

4. Consumer Protection Act, 1986, provides that for filing complaints, appeals, etc. neither stamp duty nor court fee is required. It is also not necessary to engage the services of lawyer.

5. Table No. 14,9 of Chapter No. VI and VII.

6. For detail see Chapter No. VII.

7. See Chapter No. VI, Table No. 1, 2, 6, 6(a), 7 & 7(a).
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<td>92. UPSEB V. K.O. Jha</td>
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A research is being conducted to investigate the various aspect of consumer protection Act, 1986, your response will be treated in strict confidence and your identity will not be revealed. You are requested to carefully read each and every question and give your frank response.

Your honest responses will help me in suggesting useful amendments in the Act.

(ZAFAR EQBAL)
Deptt, of Law
A.M.U., Aligarh
Please go through each question carefully as there is no right or wrong answer. You have to give your responses in 'yes' or 'No'.

Against each question two brackets under yes or No are provided put a (✓) against each question either under 'yes' or 'No'.

Please see that you have given your response against each question.

Please furnish the following informations:

1. Your educational status-
   a. Not educated ( )
   b. High school ( )
   c. Intermediate ( )
   d. Graduate ( )
   e. Post-graduate ( )

2. You are resident of -
   a. Rural area ( )
   b. Urban area ( )

3. Your occupation -
   a. Farming ( )
   b. Govt. Service ( )
   c. Private service ( )
   d. Business ( )

4. Your approximate monthly income group
   a. High ( )
   b. Average ( )
   c. Low ( )

5. Number of dependents - - - - - - - - -

6. How many times you had to seek the help of consumer courts - - -
1. Were you aware of the Consumer protection Act before the dispute?  
   Yes  No  

2. You got the information about CPA through Magazines:  
   ( ) ( )  

3. You got the information about CPA through Radio:  
   ( ) ( )  

4. Any voluntary consumer association gave the information about CPA: 
   ( ) ( )  

5. You got the information about CPA through T.V. :  
   ( ) ( )  

6. Any family member told you about the CPA:  
   ( ) ( )  

7. Your friends told you about the CPA :  
   ( ) ( )  

8. You came to know about CPA through legal advice:  
   ( ) ( )  

9. You know that a consumer can himself plead his case:  
   ( ) ( )  

10. Do you know that a time limit is prescribed under CPA for the disposal of the case:  
    ( ) ( )  

11. Do you know that the CPA prescribes punishment for non-compliance of the order of the consumer court:  
    ( ) ( )  

12. Do you know that CPA provides for the penalty if a frivolous or vexatious complaint is made:  
    ( ) ( )  

13. Do your know that CPA provides a limitation period of a years for filing a complain in consumer courts:  
    ( ) ( )  

14. Do you know that a case may be filed in the consumer courts simply on an application:  
    ( ) ( )  

15. You hired the services of a lawyer to plead your case:  
    ( ) ( )  

16. Are you satisfied with the performance of your lawyer:  
    ( ) ( )  

17. Your case was disposed of within prescribed time limit:  
    ( ) ( )
18. In your opinion, time taken by the consumer court to dispose off the case was reasonable: 

19. Lawyers are responsible for the delay in disposal: 

20. do you think that the delay in disposal is due to the large number of cases: 

21. Part time nature of the consumer courts is the main reason for the delay in disposal: 

22. It would be better that benches of consumer court in a distt. should be established: 

23. Do you think that forums should be on full time basis: 

24. In my opinion increasing the number of forums would make no difference, in the speedy disposal: 

25. Do you think that president and members of the consumer court give full time to their work: 

26. Often delay is caused due to the irregular sitting of the consumer courts: 

27. Are you satisfied with the performance of the president and members of the consumer court: 

28. Govt. does not provide adequate infrastructure facilities for the consumer courts: 

29. In my opinion inspite of adequate infrastructure facilities, the court takes much time in deciding cases: 

Yes No