Consumer Protection in India
—Issues and Concerns
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Consumer Protection in India
—Issues and Concerns

(Silver Jubilee Volume brought out to commemorate the 25th Year of the enactment of the Consumer Protection Act, 1986)

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MESSAGE

As a legislation to serve social welfare, the Consumer Protection Act enacted in 1986, provides for better protection of the interests of the consumers. It acts as a potent tool to the consumers to take up complaints against deficiencies in services provided in the market thereby providing them relief in getting their grievances redressed. I am happy to know that in the 25th year of the enactment of the Consumer Protection Act, the Indian Institute of Public Administration, New Delhi is organizing a National Seminar on “Consumer Protection in India: The Way Forward”.

The liberalization and globalization of the economy has led to an influx of new products and services in the Indian markets making consumers vulnerable to inefficient and unlawful trade practices. So, there is a growing need to create greater awareness among consumers about their rights. Organizing such seminars on a theme of contemporary relevance will go a long way in meeting the needs of the consumers who need a protective shield. I am glad that the Indian Institute of Public Administration with this in view has been taking effective steps on consumer protection.

I am sure the Silver Jubilee volume which is being brought out on this occasion, on “Consumer Protection in India - Issues and Concerns” will address all the relevant issues on consumer protection. I congratulate all those who are associated with the event for their worthwhile effort and convey my best wishes for the success and fruitfulness of the seminar and the publication.

(Prof. K. V. Thomas)
FOREWORD

Satisfaction of consumers, clients and customers with regard to the quality, quantity and prices of goods and services is a precondition for the success and proper functioning of any economic system. In view of the emerging global markets and concern for good governance there is universal emphasis on the protection of the consumers and promotion of consumers’ rights. There is a rising expectation among the consumers and they want value for money. Consumer law and policy is a crucial issue both for modernizing the economy and ensuring a better quality of life for citizens.

We all are consumers. However, we do not all act as one, or speak with a single voice. That makes it important for consumer interests to be taken into account and given effect in concrete terms through appropriate support and structures.

Year 1986 was the ‘magna carta’ in the history of consumerism in India as it was this year when Consumer Protection Act was enacted, which gave a new direction to consumer movement. The Consumer Protection Act is a benevolent, unique and highly progressive piece of social welfare legislation providing for simple, speedy and less expensive remedy for the redressal of consumer grievances in relation to defective goods and deficient services. Consumer Protection Act is a weapon in the hands of consumers to fight against exploitation by traders, manufacturers and sellers on one hand and providers of services on the other. The Act has been quite successful since its enactment 25 years ago. Since inception 3627202 cases have been filed for defective goods and deficient services out of which 89.97% cases have been disposed off. This is no doubt a great achievement.
However, it is also clear that a lot more needs to be done in the future.

The advancement in technology and developments in Information Technology has resulted in creation of new services which have made the life of the consumers much easier. Now many goods and services are only a click away from the consumer. However, at the same time the quality of goods and services being made available has become a major area of concern for the consumers as it is not possible for the consumers to garner all the necessary information about these goods and services. Consumer is being subjected to all sort of deceptive, unfair and unscrupulous practices by the traders and service providers. Consumer protection entails a comprehensive policy, involving the various players. We have to be ready to constantly meet new challenges - part of our strategy must include ways to respond to these new issues as they arise. This requires us not just to look at what we regulate, but how we do it. This requires action not only on the part of the government but also on part of other stakeholders which include consumer and business.

The Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution is the nodal agency for policy formulation and protection of consumer rights. The Department has taken up several initiatives not only to protect the consumers but build up an environment of fair trade and practices. The NGO sector has also played an important role in taking the consumer movement to the local level. The rural consumers and other vulnerable sections of the society need to be protected. For this consumer education and awareness is of prime importance. I am sure the XII Plan will give a major boost to consumer welfare in the country.

I congratulate the editors Prof. Suresh Mishra and Dr. Sapna Chadah and Indian Institute of Public Administration, New Delhi for bringing out this silver jubilee volume on “Consumer Protection in India - Issues and Concerns” and thank all the contributors of this edition. I am sure this volume will help academicians, policy makers, consumer experts and other stakeholders in evaluating the impact of the Consumer Protection Act since its enactment and redefining strategies to strengthen the consumer movement in the country.

Place : New Delhi
Date : 25th November, 2011

(Rajiv Agarwal)
PREFACE

The forces of globalization and liberalization and the wide dissemination of new communication and information processing technologies have brought in significant economic and social changes. They have revolutionised the way markets serve consumers. Changes in markets and expectations can be seen in products, services and in marketing. It is also true that due to globalization and technological innovations the problems faced by the consumers have also diversified; they have shifted from simple problems such as price, quality, and quantity of products to complicated problems such as dissolution and cancellation of services and contracts. There are often multiple reasons why the consumer and the supplier are not in an equal bargaining position. Perhaps the very structure of the market may be a cause. Moreover it may also be due to low levels of consumer literacy or knowledge specific to certain sectors. Thus it is clear that the seller has an inherent knowledge of goods and services and therefore, a significant advantage over the consumer regarding his/her own product/service.

Consumer protection laws are designed to ensure fair trade, fair business practices and the free flow of correct information in the marketplace. The laws are designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage in the market place. They also provide additional protection to vulnerable consumers and those who are unable to take care of themselves. Consumer protection laws are basically a form of government instruments which aim to protect the rights of consumers through a sound institutional framework which needs to be developed simultaneously. Appropriate systems and structures should be established for the control and enforcement of an effective legislation, as well as to raise public awareness of their rights.

Consumer protection is not a one-way process and requires consumers to act responsibly as no quantum of protection can secure irresponsible consumers. Consumer protection is a process that involves consumers, service providers, producers, VCOs and the government in a blend of roles and responsibilities. Thus, a broad definition of consumer protection should also include the responsible ethical behaviour of consumers, producers or service providers in the respective buying and selling of products or services and the effective control of the marketplace by the government through the enforcement of laws and regulations, the promotion of standards and the dissemination of consumer education. One way to analyze consumer protection objectives is to examine the various stages of the contractual
relationship between the consumer and the supplier, and to identify possible areas where the government can and should be intervening to protect the consumers.

While consumers have a responsibility to promote their own interests, they heavily depend on public authorities to promote their health and safety on their behalf, by ensuring that products and services in the market meet high standards. In recent years, consumer related problems have rapidly increased, and frequent business malpractices have greatly damaged consumer trust in business. The globalisation of markets and technological developments has had a profound effect on products. There has been an explosion in the number and complexity of products that are available in the market. The growing complexity of services also has substantial implications for consumer policy. Technological changes are revolutionizing marketing and selling methods leading to significant impact on the marketing and selling of services. Under these circumstances, to effectively respond to these transformations in the economy and society, any consumer welfare policy has to adapt to these new developments.

However, in a large country like India, of critical importance is the essence of consumer education and empowerment as a government responsibility even though a consumer protection law has been enacted. The Consumer Protection Act, 1986 recognizes the right to consumer education as one of the six consumer rights. But the lead role of an educator has to be played by the government. Consumers need consumer education to build their capacity to act as rational and responsible consumers in the market place. Similarly the business too needs consumer education to build their capacity to become ethical business persons, to serve consumer interest, satisfaction and well being for a profit, rather than to profiteer from them. The actions of educated consumers and responsible businesses are often highly effective in minimising the harm caused by poor services and unsafe products. More importantly, they do so in a way that poses the least obstacles to business activity and to the ability of consumers to choose the goods and services that they prefer. It also needs to be emphasized that consumer education is a life long learning process.

Today trade liberalisation and rapid developments in technology have meant traditional methods of dealing with consumer protection are not effective to protect the consumers. Existing national and international institutional frameworks for consumer protection needs to be reassessed to ensure that consumer protection agencies are effective in delivering consumer welfare. Moreover the consumers need to be aware that there are appropriate and effective institutional mechanisms to protect their
interests. The delay in disposal of complaints by the three tier redressal mechanism under the Consumer Protection Act has lowered consumer confidence in these bodies. The process was intended to be quick and simple but it has become more technical and cumbersome. Another major development affecting consumer protection is that the market for consumer goods is rapidly becoming borderless. Already consumers are purchasing easily transported consumer goods in the global market, due to changes in market structures resulting from government action and/or continuous technological changes as new technologies are driving the process of globalisation to a great extent.

One of the major challenges flowing from this changing environment is to assess how consumer welfare can be maintained and enhanced. The Consumer Protection Act, 1986 has to be seen in this context. The fourth amendment is overdue so as to plug the existing loopholes in the effectiveness of the law. The amendment has to address to consumer concerns in a holistic way. The market failure problem leading to consumer exploitation needs to be identified. Additionally, enforcement of consumer protection laws may only be needed to ensure that market failures which have a serious detriment on consumers are dealt with so as to demonstrate to the market that the regulatory authorities will act against any unacceptable market behaviour. A number of regulatory authorities are functioning in the country but still the consumers continue to be exploited even in such sectors.

Many governments are now turning to more flexible and market sensitive means of regulation to deal with consumer issues/ market failure. One of the major problems with consumer protection legislation is that, it is often seen as being not flexible enough to meet rapidly changing market situations. By and large the business is opposed to any detailed prescriptive laws on the ground that they will unduly stifle innovation and competition in the market. Therefore, there is a move to encourage companies and service providers to set up their own complaints handling systems to redress grievances of the consumers thereby lessening the burden on the formal redress mechanism under the Consumer Protection Act. It is also being seen as essential that citizen’s charters and other innovative tools to address consumer complaints are also put in place. As markets become increasingly more competitive, the process of a convergence between the interests of business and the interests of consumers will begin. Business will have to look at matters which are of concern to consumers so as to gain a competitive edge over their rivals in the marketplace as consumer satisfaction is the foundation of good business as consumer satisfaction remains of paramount importance.
The present volume is a commemorative volume of silver jubilee celebrations of the Consumer Protection Act, 1986. The Act has been in operation for the last twenty-five years. There is no doubt that Consumer Protection Act, 1986 gave a boost to the Consumer movement in the country, set up an institutional mechanism to redress the consumer complaints and provided for a structural mechanism to promote consumer welfare. But legislation in itself does not bring about reforms, it has to be an effective instrument to address the needs of the consumers. It is now time to look at the various dimensions of consumer protection in India, reframe policies and redraw strategies. This volume essentially tries to address these issues. Papers have been contributed by well known experts.

We are thankful to the Department of Consumer Affairs, Government of India particularly, Shri Rajiv Agarwal, Secretary; Shri Pankaj Agrawala, Additional Secretary; Shri Manoj Kumar Parida, Joint Secretary, and Shri G.N. Sreekumaran, Former Joint Secretary, for all the support in bringing out this volume. Our special thanks are to Shri Rakesh Kakkar, Secretary, Ministry of Food Processing Industries, GoI for initiating the idea of bringing out this volume. We are grateful to the paper contributors for accepting our invitation and contributing thought provoking papers. But for their timely support it would have been difficult to bring out this volume.

We would also like to thank Shri Rakesh Hooja, Director, IIPA, New Delhi and Shri Sunil Dutt, Assistant Editor, IIPA for their support in bringing out this volume. Our thanks are also due to Ms. Deepa Bisht for her Secretarial assistance.

We are confident that this volume will be useful to academicians, policy makers, practitioners and all those who are interested in consumer welfare.

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Suresh Misra
Sapna Chadah
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INTRODUCTION: THE CONSUMER MOVEMENT AND CONSUMER PROTECTION IN INDIA

SURESH MISRA AND SAPNA CHADAH

Consumers play a vital role in the economic system of any nation and in business and economic planning. Consumers are the key players in the market place and their consumption patterns greatly influence the society and the economy. In the modern philosophy of marketing, consumer is supposed to be the king and business is expected to provide maximum possible satisfaction to consumers. However, in the present scenario ‘Consumer is sovereign’ and ‘customer is the king’ are nothing more than myths particularly in the developing societies. Modern technological developments have no doubt made a great impact on the quality, availability and safety of goods and services. However, at the same time the consumers have become victims of exploitation at different fronts such as defective goods, deficient services, dubious hire purchase plans, high cost of products, spurious drugs, poor after sale services, high pressure selling, deceptive advertising, adulterated and substandard products etc. Second hand goods are passed on to consumers as new. Clever businessmen, through glossy salesmanship, misleading advertisements and tall claims about their products, rob the consumer of his hard-earned money. The consumer has thus become a victim of many unfair and unethical practices adopted by the industry and the business. The consumers are being cheated on the aspects of quality, quantity and prices of goods and services.

Technology has made available a variety of goods and services to the consumers from all over the world which are now only a click away. New products and services throng the market everyday, many of which disappear very soon. Coupled, with the revolution in information technology the
consumers are facing new challenges, such as cyber crimes, plastic money, unsustainable consumption, global warming etc., which affects them in a number of ways. The consumer who is referred to as ‘king’ is in actuality a ‘victim’ of the market malpractices. Producers and sellers have only one motto; to maximize profit by engaging in all sort of deleterious practices and producing products that do not meet acceptable quality standards.

Liberalisation, Globalization and Privatisation, have promoted competition in the markets and have widened consumer choice in terms of quality and service. Globalization and boom in the international trade and commerce has resulted in availability of large variety of goods and services to cater to the needs of the consumers. While in many countries the circumstances of consumers may have improved, but the emergence of market economies and the process of economic liberalization have also generated unexpected social problems. The economic reforms implemented from the 1980s onwards in many countries have paid little attention to the consequences of such reforms for consumers. Until recently, the main emphasis was on the removal of obstacles to market forces, and relatively little attention was paid to consumer welfare. It is now becoming increasingly accepted that to secure the benefits of global integration while reducing or eliminating its negative impacts, developing countries need both efficient markets and effective governance of commerce so as to protect the consumers.

The consumers know what is happening in the market. But since they are not organised there is very little that they can do to check their systematic exploitation. Since a majority of consumers, particularly in the rural areas, are ignorant and illiterate, they are not able to distinguish between the genuine and the spurious goods that have flooded the market. It is mainly these consumers who suffer at the hands of unscrupulous businessmen. Consumers also suffer from a total absence of awareness about consumer rights and obligations. Government penalties for providing misleading information or perpetuating consumer fraud, although may be high, but are imposed tardily or not imposed at all. A lop-sided and totally unfair arrangement which seeks to take advantage of the plight of the consumer exists but the consumer is totally helpless to do anything about it. Fortunately, the realization has dawned on the authorities at various levels that something needs to be done to protect the interests of the consumer, to save him from exploitation and to ensure that he gets the worth of his money in respect of both quality and quantity.

Consumer sovereignty in choice of goods and services has been greatly eroded by various forms of unfair, monopolistic and deceptive trade practices. Therefore, the importance and utility of consumerism and the concern for consumer care has considerably increased, perhaps, due to the change in role of state as ‘service state’. This demands that state and its sub-system must serve the people and that too with the best satisfaction. Satisfaction of the consumers generates confidence and in the confidence lays the credibility
INTRODUCTION

and respectability of the system. Though people are consumers from time immemorial, it is only in the latter half of the twentieth century that consumer protection gained importance and the contemporary era is marked as the era of consumers. Today the business is totally dependent on the consumers and hence no society can knowingly or unknowingly disregard the interest of the consumers. The doctrine of caveat emptor “let the buyer beware” has now been replaced by “let the seller beware”. There is no doubt that consumer protection, though as old as consumer exploitation, has assumed greater importance and relevance today.

**Consumerism- The Concept**

The word consumerism has become so commonplace that those associated with the consumer movement probably take the term for granted. However, the word is relatively new and its meaning has been the subject of differing opinions and periodic reinterpretations. The *Oxford English Dictionary* defines consumerism as having to do with “the protection of the consumer’s interests” (1989, 802), but shades of emphasis and contending definitions may well cloud the issue in the public’s mind. The word consumerism was coined with reference to the early years of the consumer movement; consumerism became an epithet used to suppress the movement’s reemergence. The term consumerism was apparently first used in a manner which is only tangentially related to contemporary usage. That original usage reflects the important role of cooperatives in the consumer movement through the 1930s. The immediate impact of the term, however, was nil. It went unnoticed and no evidence that it was used in reference to the consumer movement could be found for nearly a quarter century. The movement revived with President Kennedy’s 1962 call for a “Bill of Consumer Rights” and Esther Peterson’s appointment to the new position of Special Assistant to the President for Consumer Affairs two years later. Still, there were no references to consumerism. Though it is impossible to say precisely when consumerism was first used in reference to the consumer movement, but it seems the term was in use conversationally by 1965 or 1966.

Consumerism is a recent and universal phenomenon and has been defined differently by different authors. As consumerism came to be used more widely, definitions proliferated. Some authors have defined consumerism quite narrowly as an effort to increase the rights and powers of buyers to those of sellers. ¹


³*Ibid* at p 349.

While other definitions of consumerism allow one to view the consumer movement more broadly. Buskirk and Rothe⁵ have defined consumerism as seeking of “redress, restitution, and remedy of dissatisfaction in acquiring the means to maintain their standard of living. McGowan defines consumerism as “a movement to inform consumers so that they can make knowledgeable judgments regarding purchases of private and public goods. It is a movement to further corrective action against misuse of both market and political power held by the suppliers of these goods. It is also a movement to make consumers aware of their responsibilities to deal openly and honorably with those from whom they purchase goods and services.”⁶ Day and Aaker write that the consumerism is “the widening range of activities of government, business and independent organizations that are designed to protect individuals from practices (of both business and government) that infringe upon their rights as consumers”.⁷

Magnuson argued that consumerism is “…the phenomenon whereby purchasers of goods and services are trying to attain a marketing system which makes the consumer sovereign…”⁸ Bishop maintained that consumerism “…seeks nothing less for every American than a secure physical environment and a just economic one”,⁹ which takes the issue well beyond fairness in the marketplace. That same year Cravens and Hills offered a more operational definition. To them, consumerism “encompasses a multitude of group actions concerned with such issues as consumer protection laws, the availability of product and price information, fraudulent and deceptive business practices, and product safety”.¹⁰

Variations in both precision and level of specificity continued to characterize definitions of consumerism. Maynes defines consumerism as “the articulation of consumer discontent and the furtherance of corrective measures”. He identified consumerism as the source of criticisms of consumer sovereignty. Swagler in a discussion of consumer organizations, implicitly equated consumerism with the consumer movement.

Garman provided an operational definition of consumerism in the context of the evolution of the consumer movement in the 1960s: “...consumerism was a label put on the efforts of a growing number of consumer advocates who questioned the inadequacies of the marketplace and the unwillingness of business and government to deal with important consumer needs and demands”. Consumers, he maintained, were demanding “more of a balance between them and sellers in the marketplace”. Brobeck made a distinction between consumerism and the consumer movement. In the former, he included all those working on behalf of the consumer interest. He limited his definition of the consumer movement to “nonprofit advocacy groups and individual advocates who seek to advance the consumer interest by ‘reforming’ governmental and/or corporate policies and practices”. His is a distinct perspective, but Maynes noted that activists tend to identify consumerism with promoting governmental intervention on consumers’ behalf. The definition of consumerism has broadened over the years, although it is difficult to imagine a broader definition than Bishop’s (1973) with its goal of a just economic environment. The biggest change has likely been with operationalizing the definitions. Various individuals may agree on the need to protect the consumer’s interests, but disagree on how best to do so. Disagreements now are likely to be found not in the “what?” of consumerism but in the “how?” of it.
Consumerism is a process through which the consumers seek redress, restitution and remedy for their dissatisfaction and frustration with the help of their all organized or unorganized efforts and activities.\textsuperscript{17} It is, in fact, a social movement seeking to protect the rights of the consumers in relation to the producers of goods and providers of services. In its wider perspective, it seems as an item on the agenda of administrative reforms for accountability and responsiveness through the technique of decentralization, debureaucratization and devolved planning process. In fact, consumerism is today an all pervasive term with meaning ranging from nothing more than people’s search for getting better values for their money to challenging that goal of society that calls for an ever increasing amount of material goods through time. Consumerism has over the time developed into a sound force designed to aid and protect the consumer by exerting legal, moral and economic pressure on producers and providers in some of the developed countries. Today, protecting the interest of the consumers from unfair and deceptive trade practices is one of paramount concern to the society. David Swankin of Consumers’ Union of United States has rightly stated, “The Consumer interest is not the interest of individuals as such, but of all citizens viewed from the point of view of consumption...it concerns itself with the question of both, the best use of productive resources from the point of view of consumers and also the matters of distribution of these resources”.\textsuperscript{18}

\textbf{Various Facets of Consumerism}

The most common understanding of consumerism is in reference to the widening range of activities of government, business, and independent organizations that are designed to protect individuals from practices (of both business and government) that infringe upon their rights as consumers. This view of consumerism emphasizes the direct relationship between the individual consumer and the business firm. Because it is an evolving concept, there is no accepted list of the various facets of this relationship, however, Day and Aaker recognize following representative components:\textsuperscript{19}

\begin{enumerate}
\item \textbf{Protection against clear-cut abuses-} This encompasses outright fraud and deceit that are a part of the “dark side of the marketplace,” as well as dangers to health and safety from voluntary use of a product. There is substantial agreement in principle between business and consumer spokesmen that such abuses must be prevented, but there is often a wide divergence of opinion on the extent of the problem. As a result the government has taken the initiative in this area, usually after the divulgence of a sensational abuse. This
\end{enumerate}

\textsuperscript{17} N. C. Joshi, “\textit{Consolidating Consumerism in India}”, \textit{Yojana}, April 16, 1980, p.10.
has been the case with much of the legislations on the issues affecting consumers.

2. **Provision of adequate information**- The concern here is with the economic interests of the consumer. The question is whether the right to information goes beyond the right not to be deceived, to include the provision of performance information that will ensure a wise purchase. Much of the controversy and confusion over consumerism revolves around this basic issue. The business view is that the buyer should be guided by his judgment of the manufacturer’s reputation and the quality of the brand whereas the view of the consumer spokesmen is that information should be provided by impartial sources and reveal performance characteristics.

3. **The protection of consumers against themselves and other consumers**- Some of the thrust behind consumerism comes from the growing acceptance of the position that paternalism is a legitimate policy. There is a sound basis for intervention from the government in the form of rules and regulations whenever the action of a buyer serves only his own best interest and fails to take into account the effects on others. However, this principle is being extended to situations of “implied consumer interest” where the individual is deemed unable even to identify his own best interest (e.g., the mandatory installation of seat belts and the provision of a “cooling off” period after a door-to-door sale). This is a strong justification for the protection of inexperienced, poorly educated, and generally disadvantaged consumers. More controversial by far is the extension of this notion to all consumers on the grounds that manipulated preferences may be disregarded when the consumer is not acting in his best interest.

These three facets of consumerism suggest the current thrust of the movement. Yet, it would be naive to portray consumerism as a static entity. It has had a dynamic past and continues to evolve and change at an increasingly rapid rate. For example, the emphasis of the consumer movement of the thirties and later was on dangerous and unhealthy products and “dishonest or questionable practices which are believed to hamper the consumer in making wise decisions...and obtaining useful information.” The emphasis today is clearly much broader. There is a high probability that the scope of consumerism will eventually subsume, or be subsumed by two other areas of social concern: distortions and inequities in the economic environment and the declining quality of the physical environment. The forecast of a greater identity between these social problems and consumerism rests on the fact that they are associated with many of the same basic causes, have common spokesmen, and seem to be moving in the same direction in many respects. More recently, consumerism has become identified with the widespread concern over the quality of the physical environment. The problems of air, water, and noise pollution have become increasingly salient as the tolerance of the public for these abuses has decreased. In effect, a “critical mass” of
explosive concern has suddenly been created. The consumer movement has rapidly rearranged its priorities to become a part of this critical mass. This shift is not surprising in view of the desire to broaden consumerism to include problems arising from indirect influences on the consumer interest. It also follows naturally from the long standing concern with built-in obsolescence and poor quality and repairability, for these problems contribute to pollution in a “disposable” society.20

**Underlying Causes of Upsurge in Consumerism**

Day and Aaker also enlist certain factors underlying the recent upsurge of interest in consumerism which are as follow:21

**Problems in the Marketplace** - The leading problem is imperfections in the state of information in consumer markets. It is believed that consumers would be adequately cared for by competition if they could learn quickly about available brands and their prices and characteristics. However, as products and ingredients proliferate, each consumer is less and less able to make useful price and quality comparisons. This inability leads to increasing shopper confusion, consequent irritation and consequent resentment. The problem is most severe for products that are purchased infrequently, exhibit a rapid rate of technological change, and whose performance characteristics are not readily apparent. Advertising has also been under continuing attack as it has not been notable as a source of adequate, or even accurate information that could alleviate the problem. To the extent that retailing is becoming more and more impersonal, the whole situation may become worse.

The proliferation and improvement of products, resulting from attempts to better satisfy specific needs and/or reduce direct competition, has also had other consequences. Customers today expect products to perform satisfactorily, to provide dependable functional performance and to be safe. This threshold of acceptable performance is steadily rising...” Unfortunately, the complexity and malfunction potential of many products has also been rising. The result is an uncomfortable level of dissatisfaction with quality, compounded by inadequate service facilities.

**Problems in the Social Fabric** - Several changes deep in society have also served as catalysts to magnify and aggravate the seriousness of the imperfections of the marketplace. The first catalyst has been the new visibility of the low-income consumer. These consumers suffer the most from fraud, excessive prices, exorbitant credit charges, or poor quality merchandise and service. Unfortunately, solutions oriented toward improving the amount and quality of product information have little relevance to low-income buyers who lack most of the characteristics of the prototype middle-income consumer.

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20 *Ibid* at p. 45
21 *Ibid* at pp. 45-47
Low-income consumers are often unaware of the benefits of comparative shopping. They lack the education and knowledge necessary to choose the best buy, even if it were available. Because of their low income they have fewer opportunities to learn through experience. They often lack the freedom to go outside their local community to engage in comparative shopping. They lack even a superficial appreciation of their rights and liabilities in post sale legal conflicts. Nothing in their experience has reinforced the benefits of seeking better value for their money; consequently, the low income buyer lacks the motivation to make improvements in his situation.

The second catalyst is best described as a basic dissatisfaction with the impersonalization of society in general, and the market system in particular. The need is now being felt for social organizations that are responsive and perhaps the impression of responsiveness is as important as the specific responses that are made. There is little doubt that large corporations are not regarded as responsive by their customers. Both manufacturers and retailers are turning a deaf ear while increasingly sophisticated consumers are demanding more personal relationships and security in their purchases. This situation stems from a series of changes in the marketing environment—the rise of self-service and discounting, the high cost of trained service personnel, and the intervention of the computer into the relationship with consequent rigidifying of customer policies and practices. The prospects for improvement are dim, because the benefits of good service and prompt personal attention to complaints are difficult to quantify and consequently are given low priority when investment decisions are made.

The final and most enduring catalyst is the consequence of an increasingly better educated consumer. The consumer today expects more information about the products and services he buys. He places greater emphasis on product performance, quality and safety. He is more aware of his ‘rights’ as a consumer and is more responsive than ever before to political initiatives to protect these rights.

**Consumerism as Excessive Materialism**

In what appears to have been a seamless transition, however, the term was appropriated to describe the various reforms associated with the consumer movement. Although this usage became well-established, an unrelated and somewhat older meaning persisted. It is this latter consumerism that is used to mean self-indulgence. Consumerism is also being used to mean excessive materialism. The *Oxford English Dictionary's* second definition of consumerism is: “Name given to a doctrine advocating a continual increase in the consumption of goods as the basis of a sound economy” (1989, 802). This places the meaning of the term close to the idea of the consumer society. Herein “high levels of consumption” is
substituted for “consumerism.” 22 Vance Packard, one of the earliest adopters of the term, linked consumerism with strategies for persuading consumers to quickly expand their needs and wants by making them “voracious, compulsive and wasteful.” His usage clearly reflected the concerns of the 50s, with planned obsolescence, declining quality, and poor service in saturated consumer goods markets. 23 More recent usage, however, has been more extreme. In a 1988 publication on consumer policy in the European Community, Lawlor complained “Consumer policy is too often dismissed as the concern of an affluent society preoccupied with material things. It is too often identified with “consumerism—the frivolous accumulation of goods for their own sake”. 24

For many consumerism conjures up images of mindless shoppers being duped into unwanted purchases by heartless corporations. There are hundreds of organisations around the world dedicated to extolling the virtues of a simpler, less materialistic life. In the eyes of many anti-consumerist activists 25 we are all consuming too much, too quickly, in an attempt to seek happiness, which can’t be found. Consumerism, it seems, is the root cause of much of the world’s problems. According to Humphrey the breakdown of family and community life, the undermining of moral values, the unsustainable plundering of the earth’s resources and (of course) global warming can all be traced back to consumerism. Mankind undeniably has a desire for continual development- to constantly seek a better, more comfortable life. It is our wants and needs which drive the market to create new technologies and to improve old ones. Consumerism is what drives demand for these innovations. It is unfathomable to think that after thousands of years of technological advancement, our generation is the one that will collectively say ‘yep, we’ve come far enough’. Consumerism and the over consumption of the affluent world is to be opposed, first and foremost, because of its effects and impacts. In environmental terms, there is no question that world production and consumption has reached levels that tax the Earth way beyond its capacity. Not surprisingly Humphrey resorts to the age old argument of resource sustainability as a reason to cease economic production as we know it. Humphrey still calls for us to opt-out, downsize and localize in the name of ‘global justice’.

Consumer Protection- International Development

The global Consumer Movement received an impetus on April 9, 1985 when the General Assembly of United Nations by consensus adopted a set of General Guidelines for Consumer Protection.26 The Guidelines represent an internationally recognized set of minimum objectives, potentially being of particular assistance to developing countries. The adoption of the Guidelines reinforced the increasing recognition that consumer policy issues can no longer be seen as being of purely local concern but must be seen in an international context.27

Taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection, these guidelines for consumer protection (as expanded in 1999) have the following objectives:

(a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
(b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
(c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
(d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
(e) To facilitate the development of independent consumer groups;
(f) To further international cooperation in the field of consumer protection;
(g) To encourage the development of market conditions which provide consumers with greater choice at lower prices;
(h) To promote sustainable consumption.

Consumer Protection in India

Consumer Protection in Ancient India

Consumer protection is as old as consumer exploitation. Consumer Protection has its deep roots in the Indian civilization. Since Vedic age there were rules to regulate not only the social conditions but also the economic life

26Resolution No. 39/248, April 9, 1985
of the people, establishing many trade restrictions to protect the interests of buyers. In *Manu Smriti*, *Manu* has prescribed a code of conduct to traders and specified punishments to those who committed certain crimes against buyers. For example, he referred to the problem of adulteration and said “one commodity mixed with another must not be sold (as pure), nor a bad one (as good) not less (than the property quantity or weight) nor anything that is at hand or that is concealed.” The punishment “for adulterating unadulterated commodities and for breaking gems or for improperly boring (them)” was the least harsh. Severe punishment was prescribed for fraud in selling seed corn: “he who sells (for seed-corn that which is) not seed-corn, he who takes up seed (already sown) and he who destroys a boundary (mark) shall be punished by mutilation”. *Manu* also specified the rules of competency for parties to enter into a contract. He said “a contract made by a person intoxicated or insane or grievously disordered (by disease and so forth) or wholly dependent, by an infant or very aged man, or by an unauthorized (party) is invalid.”

During the ancient period, the king had the power to confiscate the entire property of a trader in two instances: (1) when the king had a monopoly over the exported goods; and (2) when the export of the goods was forbidden. There was also a mechanism to control prices and punish wrongdoers. The king fixed the rates for the purchase and sale of all marketable goods. *Manu* said “man who behaves dishonestly to honest customers or cheats in his prices shall be fined in the first or in the middle most amercement”. There was a process to inspect all weights and measures every six months, and the results of these inspections were duly noted. All these measures indicate that effective means existed in ancient society for regulating the many wrongs of the market place.

**Kautilya’s *Arthasastra***

Though its primary concern in Kautilya’s *Arthasastra* is with matters of practical administration, consumer protection occupies a prominent place in *Arthasastra*. It describes the role of the State in regulating trade and its duty to prevent crimes against consumers. According to *Arthasastra* between 400 and 300 B.C., there was a director of trade whose primary responsibility was to monitor the market situations. Additionally, the director of trade was made responsible for fair trade practices. During this period, several measures were taken to maintain official standards of weights and measures. The superintendent of standardization should cause factories to be established for

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29 Ibid
the manufacture of standard weights and measures. The superintendent should cause a stamping of the weights and measures to be made every four months. The penalty for unstamped weights was twenty seven *panas* and a quarter. Traders shall pay a stamping fee amounting to one *kakani* every day to the superintendent of standardization”.

The trade guilds were prohibited from taking recourse to black marketing and unfair trade practice. Severe punishments were prescribed for different types of cheating. The rights of the traders were also well protected. Kautilya said, “On the subject of the return of an article purchased or payment of price thereof, there was fixed rule of time, after which an article could not be returned. During Chandragupta’s period good trade practices were prevalent. For example goods could not be sold at the place of their origin, field or factory. They were to be carried to the appointed markets (*panya sala*) where the dealer had to declare particulars as to the quantity, quality and the prices of his goods which were examined and registered in the books. Every trader was required to take a license to sell. A trader from outside had to obtain permission. The superintendent of commerce fixed the wholesale prices of goods as they entered the Customs House. He allowed a margin of profit to fix retail prices. Speculation and cornering to influence prices were prohibited. Thus, the State bore a heavy responsibility for protecting the public against unfair prices and fraudulent transactions. There were severe punishments for smuggling and adulteration of goods. For example, public health was guarded by punishing adulteration of food products of all kinds, including grains, oils, alkalies, salts, scents and medicines. During that period, easy access to justice for all, including consumers, was considered of great importance. The king was the central power to render justice. According to Kautilya, “The king should look to the complaints of the people [of the town and village] in the second part of the day. The mobile and circuit courts worked at night, when necessity arose. They also must have worked on holidays in urgent matters”. The king was required to pay full attention to the truth and he was primarily responsible for administering justice. Everyone could approach the king’s court for justice. However, standing was strictly followed. The king only entertained cases if the aggrieved presented a valid complaint.

**Consumer Protection in Medieval Periods**

In the medieval period, consumer protection continued to be of prime concern of the rulers. During Muslim rule, a large number of units of weights were used in India. During the Sultanate period, the prices used were determined by local conditions. During the rule of Alauddin Khalji, strict controls were established in the market place. In those days, there was unending

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30 *Ibid*

31 *Ibid*
supply of grain to the city and grain-carriers sold at prices fixed by the Sultan. There was a mechanism for price-enforcement in the market. Similarly, shopkeepers were punished for under weighing their goods.\textsuperscript{32}

**Consumer Protection after Independence**

In India before independence government did not provide much for consumer welfare, its activities were mostly pro producer though under the British regime some of the legislations enacted directly or indirectly protected the interests of consumers.\textsuperscript{33} A few legislations were enacted which provided very specific but limited protection to the consumers. However, to protect the interests of the consumers a few consumer organizations came into being, but their activities were very limited and confined to specific goods, services and geographical area. It was only after independence that the Indian Constitution laid responsibility on government for turning India into an egalitarian, secular and socialistic society. The fundamental law of the country is related directly or indirectly with the philosophy and mechanism for the protection of the interest, health and happiness of its citizens. The Constitution includes different provisions in the Fundamental Rights and Directive Principles of State Policy which lay emphasis on expansion of public enterprise to avoid undue concentration of economic power in few hands and restriction of private monopolies, safeguarding the interests of the consumers of manufactured goods and producers of raw materials etc. to further the concept of welfare state.\textsuperscript{34} Thus consumer justice is a part of social and economic justice enshrined in the Constitution. Following the Constitutional mandate, a number of laws were enacted and amended from time to time to deal comprehensively with consumer protection which related to food adulteration, standardisation, weights and measure, grading, packaging, branding etc.\textsuperscript{35} But under these legislations the procedure is complex, cumbersome, time

\textsuperscript{32}Ibid

\textsuperscript{33}Some of these legislations were the Indian Penal Code, 1860; the Indian Contract Act, 1872; the Sale of Goods Act, 1930; the Agricultural Produce (Grading and Marking) Act, 1937 and the Drug and Cosmetic Act, 1940.

\textsuperscript{34}Some of these provisions are Articles 14, 19 (1) & (6), 21, 38, 39, 42, 43, 46 and 47. Further there are some entries in the concurrent list that are relevant to consumer protection. These entries are Entry 7-contracts, Entry 11A-Administration of justice, Entry 18-Adulteration of foodstuffs and other goods, Entry 33-Trade and commerce and production, supply and distribution of products of industry (where control is by Union), foodstuffs including oilseeds and oils etc., Entry 33A- weights and measures, Entry 34-Price control.

consuming and costly and the scope of remedies is limited. Except for the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, all the other Acts were mainly punitive and preventive in nature. Therefore, the effect of these legislations in protecting consumers’ rights was very limited.

In spite of these Acts the consumers did not have any effective mechanism or institutional arrangements for the speedy redressal of their grievances and also the lack of effective popular movement isolated the consumer and his plight only increased. In 1986 the Government accorded high priority to the programme of consumer protection. Concern for Consumer Protection was included in Item 18 of the Twenty-Point Programme in 1986. Seeing the pressure mounting from various consumer protection groups and the consumers themselves and to implement the UN Guidelines on Consumer Protection, the Parliament enacted the Consumer Protection Act in 1986. The enactment of Consumer Protection Act was a milestone in the history of social welfare legislations. The Act received the assent of the President on December 24, 1986. Thanks to the Consumer Protection Act, 1986 our country moved towards a vibrant consumer movement mainly due to the efforts of the government, consumer organisations and the establishments of the consumer courts.

Consumer Protection Act- Milestone in Consumer Movement

The Consumer Protection Act is a milestone in the history of socio-economic legislation and is directed towards achieving public welfare. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market. It attempts to remove the helplessness of the consumers who face against powerful businessman. The Consumer Protection Act is a weapon in the hands of consumers to fight against exploitation by traders, manufacturers and sellers on one hand and providers of services on the other. The Act provides effective, people oriented, broad based and efficient remedy to consumers against unfair dealings and exploitation. It was enacted with an objective to provide better protection of the interests of the consumers. The Supreme Court in Lucknow Development Authority v M.K.Gupta highlighting the importance of the Consumer Protection Act, 1986 observed that “In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory.”

To provide redress to the grievances of the consumers the Act makes provision for the establishment of Consumer Councils and other quasi-judicial authorities for the settlement of consumer disputes. Now we can legitimately


37III (1993) CPJ 7 (SC) 7
boast that we have in our country a statute, which provides more effective protection to the consumers than any corresponding legislation in force in countries, which are considered to be much more advanced and industrialised. The Act has been amended thrice to keep pace with time and to provide more teeth. The Act was amended in 1991, 1993 and 2002. The third amendment has brought drastic changes in the Act. Some of the important provisions introduced are:

- In case of death of a consumer, his legal heir or representative – a new sub-clause (v) under Section 2 (1) (b) of the Principal Act dealing with definition of complainant.
- Exclusion of a person who avails of such service for any commercial purpose from the category of the consumer. However, the “Commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood by means of self-employment.
- “Spurious goods and services” in the form of new clause (oo) after clause (o) under Section 2 (1) of the Principal Act.
- With a view to promote and protect within the district the rights of the consumer “establishment of the District Consumer Protection Council” under the Chairmanship of the District Collector’, insertion of new Sections 8A and 8B.
- Insertion of Qualifications including academic and also disqualifications for members.
- Re-appointment of a member for another term of five years or up to the age of sixty-five years, whichever is earlier.
- Substitution of new Section for Section 12 dealing with the manner in which complaint shall be made.
- Provisions dealing with adjournment – “no adjournment shall be ordinarily granted”. Proviso to the new sub-section (3A) under Section 13 of the Principal Act.
- Power to make “interim order” new sub-section (3B) of Section 13.
- Power to grant “punitive damages” new proviso to clause (d) of Sub-Section (1) of Section 14.
- Power to issue “corrective advertisement” to neutralize the effect of misleading advertisement at the cost of the opposite party, new clause (he) under Sub-Section (1) of Section 14.
- Benches of the State Commission may be constituted by the President of the State Commission with one or more members.
- Insertion of new Section 17A authorising the State Commission, on
the application of the complainant or of its own motion, to transfer any complaint pending before the District Forum to another District Forum within the State in the interest of justice.

- Creation of benches of the National Commission.
- Power of the National Commission to review its own order, when there is an error apparent on the face of record.
- Provision in regard to the execution of orders of the District Forum, the State Commission or the National Commission.
- All offences under the Consumer Protection Act may be tried summarily, notwithstanding anything contained in the Code of Criminal Procedure, 1973. The District Forum, the State Commission or the National Commission shall have the power of a Judicial Magistrate of the first class for the trial of offences.
- New Section 28 A dealing with the procedure for service of notice.38

The Act applies to all goods and services whether by private, public or co-operative body. The remedy under CPA is in addition to and not in derogation of provisions of any other law for the time being in force. The Act guarantees six rights to the consumers which are right to safety, right to be informed, right to choose, right to be heard, right to seek redressal and right to consumer education. The consumer can file a complaint before the three tier redressal agencies for grievance relating to defect in product, deficiency in service, unfair trade practices and for excess price charged. Under the Act the Forums and Commissions can award suitable compensation besides other reliefs which is a distinct feature of the Act. The Act postulates establishment of advisory and adjudicatory bodies to safeguard the interests of consumers.

To provide for inexpensive, speedy and simple redressal to consumer disputes, three tier quasi-judicial machinery has been set up at each District, State and National levels called District Forums, State Consumer Disputes Redressal Commission and National Consumer Disputes Redressal Commission respectively. At present, there are 629 District Forums, 35 State Commissions with apex body as a National Consumer Disputes Redressal Commission (NCDRC). These quasi-judicial bodies are required to follow summary procedure and principles of natural justice to provide quick and speedy justice to the consumers. As on 05.08.2011, 3627202 cases have been filed in the consumer courts of which 3263342 have been decided and 363860 are pending. The disposal rate for the quasi-judicial bodies is 89.97 percent, much higher than that of the civil courts.39

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The development of organizations involved in the consumer movement had its beginning in the early 20th Century. The first known collective body of consumers in India known as ‘Passengers and Traffic Relief Association (PATRA) was set up in 1915 in Bombay with a view to ameliorate the hardship and trouble faced by the passengers travelling by railways and streamers and to redress the grievances of the Indian trading community. Though this organization planned to be a social organization with national outlook and character, however, it represented only the problems faced by Bombay commuters and not the rest of the country. Another organization which started in 1915 was Women Graduate Union (WGU) based in Bombay. The principal objects of the organization were to provide opportunities and facilities for the expression of united opinion and concerted action by University women for the benefit and welfare of the members of all or any class or community of women. In 1917 pioneer women’s organization known as ‘Women Indian Association’ was started by Dr. Anne Besant and Mrs. Margaret Cousins in Madras. The primary objective was to bring together the women and girls of the middle class families who were spending time without any purpose and were involved in some cottage industry. In the post independent India the association concentrated on welfare programmes for women and children broadening the scope of their activities. The earlier consumer associations were mainly localized with restricted aims. The ‘Indian Association of Consumer’ (IAC), an all India association, was set up in Delhi with government support to forward consumer interest.

The sixties was a unique period in the history of consumer movement when the old systems were being questioned and foundation for new, better and efficient order was being laid. During the period a number of voluntary consumer organizations were founded. These included organizations like Gayatri Charitable Trust in Gujarat, Jyoti Sangh Grahak Suraksha Vibhag (1962) in Ahmedabad, Bombay Civil Trust (1963) in Bombay, etc. The problem with the early consumer organizations were that they only offered advice, voiced feeble protests, held discussions, seminars, conferences or asked questions for which no answers were forthcoming. This resulted in status quo or at times the situation worsened. The first organization to really make an impact was Consumer Guidance Society which was started in 1966 by nine housewives to fight the black marketing and food adulteration which was rampant due to the scarcity of the essential commodities and goods during that time. They made an impact by testing the quality of items of daily use of food stuff such as milk, oil, tea condiments etc. The test reports created a stir among traders as well as civic and government quarters. The

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40 For details see P.D. Mukherjee and Pritee Shah, *Emergence and Formation of Consumer Groups- A Perspective*, CERC, 1992
next move CGSI made was to handle complaints from consumers on individual basis. CGSI has various wings to look into complaints, publicity and exhibitions, education and testing, etc.

A number of specific associations were also formed during the period to deal particular problems which consumers experience vis-à-vis a particular service. Baroda Citizen Council was formed in 1966 to cooperate with the local body, voluntary and government agencies in tackling city level problems especially of economically and socially weaker sections of society. Another organization which evolved because of similar circumstances was ‘All-India Bank Depositors Association’ (AIBDA) in 1968 first in Calcutta and then in Bombay. AIBDA continuously worked with the bank’s management, the RBI and the Finance Ministry and also worked towards educating depositors. In 1969, the ‘Surat Consumer Association’ was formed to work in the areas of consumer advocacy, environment, food adulteration, health, legal redress, misleading advertisements, share market/investment counseling and handling complaints before MRTP Commission. In this decade only one organization made an impact nationally and internationally that is CGSI. However, in certain pockets of society the consumers were starting to become aware and would not accept things lying down.

The consumer movement was spreading its roots during the 70s and early 80s and so were consumer organizations. The second consumer organization which made an impact in making the cause of the consumers known throughout the country was Karnataka Consumer Service Society (KCSS) which was started by ten housewives in 1970 and based in Bangalore. Unlike most organizations which were started because the founders were dissatisfied with the a particular situation, product or service; the KCSS was started to spread the word of movement throughout the country especially among the government circles at the time when the word ‘consumer’ was not very familiar to many. Another pioneering organization Visaka Consumers Council (VCC) was started in 1973, in Vishakapatnam in Andhra Pradesh. It started not only to fight against the unscrupulous trader and manufacturers but also to represent the plight of the poor ration card holders and the LPG gas users. VCC’s approach was unique and effective. To deal with the problem of ration card holders, they conducted public meetings to voice their grievances, followed by press releases and survey of card holders. They also used selected elected representatives to pose questions to the government and to accept the stand of consumers.

The Akhil Bhartiya Grahak Panchayat was started in 1974 in Poona to wage war against exploitation by the traders. Their system of functioning was unique as the members of ABGP decided to use the same quality and type of product. Another innovative scheme that ABGP started was a ‘Grahak Sangh’ which has been quite successful in Bombay. Here the Mumbai Grahak Panchayat branched off from ABGP in 1979. The MGP while continuing
grahak sanghs has broadened its scope of activities related to consumer welfare and has started the consumer guidance cells. Trichy District Consumer Council registered in 1976 has large network of branches in rural areas. Another significant organization fighting for the rights of the consumers is Consumer Education and Research Centre (CERC) started in Ahmedabad in 1978 by Prof. Manubhai Shah and Prof. Ramesh Bhatt. CERC took the matters of many unprotected and vulnerable consumers to courts and took up the public interest causes to vindicate the rights of consumers. CERC moved on to the methods of intervention, representation and administrative advocacy by associating itself with the special committees. The organization took up the cause of consumers with manufactures associations, FICCI, Council for Fair Business Practice etc. to curb consumer exploitation and help lay down standards in business. Finding that the consumer movement is handicapped without comparative testing of products, CERC also set up a product testing laboratory at Ahmedabad.

The eighties saw all sorts of people starting consumer organization, but still there were activists and organizations with sincere interest in consumer cause and had done a lot of work to ameliorate the plight of gullible consumers. Jagrut Grahak one such association based in Baroda, Gujarat was started in 1980 by ten retired professionals to concertedly work in “the gigantic task of consumer protection and enlightenment under difficult conditions and circumstances”. They help consumers with their problems mostly through “negotiations, persuasion and compromise”. However, if consumers interests demands confrontation, Jagrut Grahak would not falter or shy away from a challenge.

Another important organization Consumers Forum started in 1980 in a small town Udupi in South Karnataka. In the first few years most of the complaints were against government offices, not against the erring traders and the public utilities. Only after the Consumer Protection Act, 1986 was enacted consumers complained against traders. During the same period the Voluntary Organisation in the Interest of Consumer Education (VOICE) was founded when angry young students and teachers of the Delhi University could no longer stand the way consumers were being cheated and fooled by, not merely small companies but also by corporate giants. They, therefore, “took on” companies individually in protest against unfair trade practice. They also went about giving consumers information about the benefits or shortcomings of various products and brands which would give the consumer the edge over the seller, so that he could make an informed choice. VOICE is also conducting comparative testing of products. It systematically buys consumer products from the market and tests them in laboratories. The results of such technical testing are then published in its magazine in a form easily understood by consumers.

The Consumer Unity and Trust Society (CUTS), which started in Jaipur,
Rajasthan, in March 1984, made its impact, by effectively making use of the media and through publicity. It also engages itself in consumer education, complaints handling and litigation. The strategy adopted is to make aware the reading/viewing public about the plight of the hapless consumer, especially when bodies such as the municipal corporations, do nothing to remedy the situation. Consumer Guidance Society of Jamshedpur was founded in 1984. The activities of the organization are to inform, educate and organize consumers so as to enable them to protect their interests and assert their rights as consumers. It also includes visits to the weekly ‘Village Bazaar’ to educate the consumers about short-weight, adulteration and over pricing. CGSJ has been distributing literature in Hindi, educating consumers about their rights from time to time. The Consumer Action Group (CAG) based at Madras was founded in 1985. Most of the issues that the CAG tackled since its formation were concerning civic amenities, health and environment.

While there have been groups of consumer activists who have banded together to be able to address the issues and problems that consumers face, there are a few who felt that they can work for the consumer cause on their own. While there are many who in their own capacity have shown that not all consumers are docile, meekly accepting their lot, that there are some who continue to push forward the cause and, though working individually, are considered forces to be reckoned where consumer issues are concerned. Mr. H.D. Shourie, who was the Director of Common Cause, based at Delhi, was well-known in consumer circles as an incorrigible litigant. He did it primarily through his pen as well as taking up most of the problems and issues to the courts. Among other things, he persistently brought up the fact that the governments of the various States in the country had not followed the provisions of the Consumer Protection Act, 1986, even three years after its passing. It was the writ petition submitted by the Common Cause which made the Supreme Court in September 1989, take serious note of the omission on the part of the States and the Union Territories and directed that the quasi-judicial machinery provided for in the Act should be forthwith established and report submitted within a period of six weeks.

Since the movement in India started picking up in the seventies, consumer organizations, have always felt that there were benefits in numbers. In 1974 at the Second All India Consumer Conference it was stated that “A time has come for the consumer organizations in India, not only to work in small groups but to work with the help and guidance of a ‘Central Agency’ so that Indian Consumers can organize and voice their opinion to the government.” However, the central agency could not take off for quite long time because of the technicalities involved in it. It was only in March 1990 Federation of Consumer Organisations, Tamil Nadu (FEDCOT) was established. The idea to form a federation was basically to bring together as many consumer groups as possible in Tamil Nadu under one umbrella. The Confederation of Indian
Consumer Organisations (CICO) was formed in February, 1991 in the Second National Convention of Consumer Activists held in Delhi. Consumer groups of Gujarat joined hands to form a federation known as Gujarat State Federation of Consumer Organisation (GUSFECO). Many NGOs in India are also part of International Organisation of Consumer Union (IOCU), a federation of consumer organizations dedicated to the protection and promotion of consumer rights worldwide.

**Consumer Co-operative Movement in India**

A consumers’ cooperative is a business owned by its customers for their mutual gain. It is a form of free enterprise that is oriented toward service rather than pecuniary profit. In Consumer Cooperatives the consumers of the goods and/or services are also the individuals who have provided the capital required to launch or purchase that enterprise. A consumers’ cooperative may comprise supermarkets, convenience stores, and other businesses owned by independently-owned, and run co-operative societies, which benefit from joint co-ordination and co-operation in managing their businesses. As mutually-owned businesses, each member of a society has a shareholding equal to the sum they paid in when they joined. Consumers Co-operatives may, in turn, form Co-operative Federations. These may come in the form of co-operative wholesale societies, through which Consumers’ Co-operatives collectively purchase goods at wholesale prices and, in some cases, own factories. Alternatively, they may be members of Co-operative Unions.

The basic aims of consumers’ cooperatives are: to arrange to give the consumer an assurance that the goods on offer are safe, sound and dependable; to provide accurate information about the goods so that the consumer could judge for himself whether they would satisfy his particular requirement; to ensure correct weighment of goods; to make available quality goods at reasonable prices; to protect the interest of consumer members by every possible means, and to tone down the monopoly of private trade, to check the growing menace to the people’s health by ensuring purity of products, and to regulate prices.

The Cooperative movement in India started as a credit movement. Due to the misuse and abuse of agency system for rural credit by landlords, money lenders, zamindars during British Rule in India, there were great consternation and revolt by farmers in some parts of India. This led to search for some reform models. The first Cooperative Society Act of 1904 was enacted to enable formation of “agricultural credit cooperatives”. The first consumer cooperative society by the name the Triplicane Urban Cooperative Society was established in the city of Madras during 1904. The consumer movement that started on such a small scale, has developed into a formidable force to be reckoned with in the economic panorama of the country. Today, in terms of number and membership of cooperative societies, the Indian Cooperative
Movement is one of the largest in the world. Of all the different segments of cooperatives, it was the consumers’ cooperatives which made a real impact on the economy.

Since the All India Cooperative Credit Societies Act, 1904 did not provide for the registration of consumers’ societies, the Triplicane Urban Cooperative Society had to open a credit department to be eligible for registration under this Act and was registered as an Urban Credit Society in 1905. This lacuna was finally rectified with the passage of the Cooperative Societies Act in 1912. The 1904 Cooperative Societies Act was later repealed by 1912 Cooperative Societies Act which provided for formation of Cooperative societies other than credit. In 1919 `Cooperatives' was made a provincial subject making each province responsible for Cooperative movement and development. In 1942, the Multi-Unit Cooperative Societies Act, 1942 was enacted by the Government of India with an object to cover societies whose operations are extended to more than one state. Later, in 1984, the Government of India enacted a comprehensive Act known as Multi State Cooperative Societies Act, 1984, which also repealed the Act of 1942. On the recommendation of the Mirdha Committee and the “Model Cooperative Societies Act” the Government of India enacted the Multi State Cooperative Societies Act, 2002 which provided for democratic and autonomous working of the Cooperatives. The Multi State Cooperative Societies Act, 2002 came into force with effect from August 19, 2002.

The passage of the 1912 Act did not result in the growth of consumer cooperatives. There is no consumer cooperative movement in India, in the sense in which movements are understood. Whatever, growth occurs in this field is seen during periods of scarcities followed by controls or rationing. When scarcities diminish, consumer cooperatives languish unless they satisfy certain needs or urges or are sustained by capable leaders. The scarcity of essential commodities and the resultant rationing of foodgrains during the Second World War period and immediately after gave an impetus to the consumers’ societies’ movement in many of the states. The Second World War indirectly created conditions favourable for the accelerated growth of the consumers’ stores, scarcity prevailed all over the county and the prices shot up for most of the essential commodities. To improve this alarming situation and save the average consumer, the government announced continuous supply of essential commodities if the consumers came forward to organize their own stores on a cooperative basis. As was expected, large number of consumers’ stores sprang up all over the county. In fact these stores were called ‘war babies’. The primary consumers’ stores were utilized by the government as agencies for distribution of various controlled commodities. Under government patronage and in the absence of competition in the market their numbers increased considerably. During 1951-52, following the policy of de-rationing and decontrol of a number of commodities, their
business suffered and the financial position deteriorated, resulting in a majority of the stores being closed down. Those which managed to survive continued their tenuous existence with the private trade.

The government was unhappy about this trend and asked the National Cooperative Development and Warehousing Board to appoint an expert committee. Accordingly, the Committee on Consumers’ Cooperatives was appointed in 1960 under the chairmanship of Dr. P. Natesan to make recommendations to revive the consumers’ cooperative stores in India. The Chinese aggression of 1962 worsened the economy. It almost created an emergency. The country was in the grip of inflation and the prices went sky rocketing. There was positive pressure from the consuming public to curb inflation and check the prices of consumer articles. The circumstances existing then called for immediate implementation of the specific recommendations of the Natesan Committee. According to the Committee, the following factors had attributed to the slow progress of the consumers’ stores in our county: weak organisational structure; small and uneconomic size; dependence, to a large extent, on the business of controlled commodities only; inadequacy of funds and heavy overhead expense; lack of business knowledge and acumen, in the members of the managing committee; lack of loyalty on the part of members towards their stores; dependence on honorary services and lack of interest in management; shortage of properly trained and experienced staff; inadequate supervision over the paid personnel and accounts; keen competition from private trade; and very low margin of profit.

Following the Indo-China War in 1962, the Government of India felt that the prices of essential commodities would escalate and scarcity conditions would operate and hence took prompt steps for the establishment of a network of consumers’ cooperatives. The Government of India, on 15 November 1962, drafted the Centrally Sponsored Scheme with the object of equitable distribution of consumer goods at their prices to consumers especially in the urban areas. The 1962 centrally sponsored scheme was based on the recommendations of the Natesan Committee Report. One of the essential features of the scheme was a four tier structure – National Federation at the national level, State Federations at the state level and wholesale stores at the city and town level supported by a number of stores. A policy of having wholesale stores in all cities and towns having a population of 5000 and more and that the cooperatives in these towns should capture at least twenty percent of the retail food trade was envisaged.

In the light of the experience and progress made, the scheme was modified in 1981 to ensure better services to members for improving weak stores. It was as a result of the effective implementation of the centrally sponsored scheme and the timely corrective steps taken by the government, the Consumer Cooperative Movement has been able to register headway. The new 20-Point Economic Programme announced by the then Prime Minister, Mrs. Indira
Gandhi in 1980 laid special emphasis on consumers cooperatives. The New 20-Point Programme offered an opportunity to Consumers’ Cooperatives to strengthen the position of consumers in general and to serve the vulnerable and weaker sections of the community in particular. It also demanded that essential commodities be made available to the public at reasonable prices.

At present the consumer cooperatives have a four tier structure comprising primary consumer stores with branches functioning at the grass root level, the wholesale / central consumer stores with their branches at district / taluka level, the State Consumer Cooperative Federations at the State level, and the NCCF of India Ltd., at the national level. However, in the States located in the North East and in the smaller States/UTs., composite state level consumer-cum-marketing federations, dealing also with consumer articles, are functioning. As per the latest available information the total number of primary stores in the country is 25759 as on 31.3.2003. Of these, 9761 primary stores were in profit, 10011 stores in loss, 3617 primary stores were either defunct or under liquidation while 2370 stores were working on no profit / loss. The total paid-up share capital of the primary stores at the end of March 2003 was ₹ 16136.01 lakhs of which State Government’s contribution was ₹ 1758.40 lakhs. The sales turnover of these primary stores was ₹ 1617.84 crores, of which sales worth ₹ 764.51 crores were of controlled items. As on 31.3.2003, the total membership of these primary stores was 107.09 lakhs. There were 800 wholesale stores with 450 Department stores and 5302 other type of branches. The total membership of such stores was 24.77 lakhs, comprising 21.72 lakhs individuals, 49344 consumer cooperatives and 2.56 lakhs other institutions and Government. The State Consumers’ Federation/ State Cooperative Marketing-cum-Consumer Federation is the State level apex organizations in so far as the consumer cooperative structure in the States is concerned. These State Federations provide supply support to the wholesale/ central consumer stores. Some of the State Cooperative Consumer Federations have entered into the retail trade and have set up Department Stores.41

The National Cooperative Consumers' Federation of India Limited (NCCF) is the National level Consumer Cooperative Organization in the country. The NCCF was set up on 16th October 1965 and is administered under the Multi State Cooperative Societies Act. The affairs of NCCF are managed by a Board of Directors, comprising both elected and nominated members as per the provisions of the Bye-laws of the NCCF. The commercial operations of the NCCF are handled at the headquarter level at New Delhi and its 35 Branches/ sub-branches located in the State Capitals and other important centers in the country. The NCCF runs three Industrial Units at Bhiwani (Haryana), Mohali,

41Annual Report 2002-2003, Department of Consumer Affairs, GoI http://fcamin.nic.in/Events/EventDetails.asp?EventId=1220&Section=Annual%20Report&ParentID=0&child_continue=1&child_check=0
(Punjab) and Noida (U.P). The total paid up share capital of the NCCF as on 31.03.2010 is ₹ 13.79 crores. This amount has been contributed by the members, out of which the contribution of the Government of India is ₹ 10.74 crores only. The Government of India now holds about 78 percent of the total paid up share capital in the NCCF. The NCCF provides linkage between the producers/manufacturers and the wholesalers/retailers and the consumers. It is primarily engaged in the wholesale distributive trade. The NCCF is involved in procurement and marketing of various consumer goods like pulses of different varieties, food grains, textiles, tea and other manufactured items in bulk. It has also made arrangements for supply of items like different varieties of pulses, iodized salt, tea in consumer packs, toilet soap, detergent powder etc. all over the country.

The turnover of the NCCF has been profitable during the last three years. The sales turnover achieved by the NCCF during the year 2009-10 was ₹ 1322.39 crores as against ₹ 855.28 crores achieved during the year 2008-09. The bulk of the sales related to supply of grocery, general merchandise items and import/export. The NCCF has earned a net profit of ₹ 8.33 crores during the year 2009-2010. The Federation during the year expanded its services to more areas and attempted diversification in new lines of business such as Sale of Medicines and Renovation & Designing Work of Hospitals etc., Supply of agricultural-inputs like Seeds, Pesticides, Bio-fertilizers and Bio-pesticides.42

**Initiatives by the Department of Consumer Affairs**

The Consumer Movement in India got an impetus when a separate Department of Consumer Affairs was established in 1991 as part of the Ministry of Civil Supplies, Consumer Affairs and Public Distribution. The Department was set up in response to the persistent demand of consumer activists and organizations. The Ministry has since been renamed as Consumer Affairs, Food and Public Distribution. In 1991 the Central Government also set up a Consumer Welfare Fund in pursuance of the Customs and Central Excise Laws (Amendment) Act, 1991 that is not a part of the Consolidated Fund of India but is held in public account in trust by the Government. The Consumer Welfare Rules, 1992 provided for the utilization of the amount credited to the fund. The amount is being used for providing financial assistance to the voluntary consumer organizations and for the overall development of consumer movement.43

The Department of Consumer Affairs over the period has taken a number of initiatives to promote a responsible and responsive consumer movement in

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the country. These measures include strengthening the Consumer Forums and Commissions, the use of multi-media campaign for promoting consumer awareness and encouraging consumers’ involvement through efforts of Government and Non-Governmental Organizations and others. The Department through its various programmes tries to involve and motivate various sections of the society viz. women, youth, rural folk, and civil society organizations.

Though it is the responsibility of the state government to establish and maintain consumer forums at the District levels, the Central Government has been implementing a number of schemes for improving the functioning of Consumer Forums/Commissions. The Central Government has been extending financial assistance to States/UTs for strengthening the infrastructure of the District Forums and State Commissions to enable them to function more effectively and efficiently. Under the CONFONET scheme all Consumer Forums and Commissions in the country are being computerized to allow consumers to access the status of their cases and information. This will also give a boost to the management of records and record keeping.

One of the major hindrances in the consumer movement in the country is the lack of awareness among the consumers. The consumers apart from being largely unorganized do not have the mechanism to understand their rights and responsibilities. To generate awareness among the masses a number of schemes have been undertaken by the Department from the Consumer Welfare Fund. The Department is annually celebrating 24th December as ‘National Consumer Day’ and 15th March as ‘World Consumer Rights Day’ in which a number of awareness programmes are being organized in collaboration with other stakeholders.

Under one of the schemes consumer clubs have been set up in Schools and Colleges with an objective to involve the students in the consumer movement and also generate awareness among them, who are compulsive buyers and are often mislead by the advertisements. Structured study on consumer affairs has been introduced as a part of syllabus in high schools in a number of states. Besides this there is a separate paper on the subject in the universities and colleges especially in the faculties of commerce, management, law, public administration, engineering, journalism etc. with a view to provide an insight into the subject to students who are the future of the country.

The Department has also launched the National Consumer Helpline in coordination with Delhi University and is also setting up State Consumer Helplines in the states where the consumers can seek telephonic counseling for problems they face relating to goods bought or services hired. Consumer Online Research and Empowerment (CORE) Centre set up by the Department is intended to provide the most scientific and effective system of collection and dissemination of consumer related information to generate consumer awareness and empowerment of all section of the society.
With the objective of providing consumers with informed choice while making purchase of products and services, the Department has started Comparative Testing of the products and services through some VCOs. A number of products and services are tested every year and on the basis of the testing, the products/services are ranked and evaluated. The test reports are published in consumer magazine and newspaper to educate consumers and help them take appropriate purchase decision.

The Department has set up a dedicated Centre for Consumer Studies at Indian Institute of Public Administration, New Delhi and has sponsored dedicated Chairs in Consumer law and Practice in a number of Law Universities to promote research and documentation in consumer welfare and conduct awareness activities at various levels. IIPA is also implementing Scheme on “Promoting Involvement of Research Institutions/Universities/Colleges in Consumer Protection and Consumer Welfare” under which research and evaluation studies in the field of consumer welfare are being sponsored to provide solution to the practical problems being faced by the consumers. Federation of Indian Chamber of Commerce and Industry (FICCI) has been sanctioned FICCI Alliance for Consumer Care (FACC) for setting up of a mechanism and providing platform for facilitating prompt redressal of consumer complaint through voluntary self-regulation and consumer education.

As empowering consumers through consumer education and awareness is the key for the success of consumer movement in the country the Department has taken up a multi-media publicity campaign ‘Jago Garhak Jago’ in order to ensure that the message of consumer protection reaches every citizen of the country. Under the campaign the Department has been releasing advertisements in National dailies/regional newspapers in local languages to educate the consumers about their rights and responsibilities. Video and audio spots of 30 seconds duration on various consumer related issues are being telecast through Doordarshan and Satellite channels and All India Radio and Private FM stations respectively. The Department in consultation with Department of Post has started disseminating consumer awareness messages through Meghdoot Post cards, posters and other postal stationary items to reach far-flung rural areas including North East States.

Consumer Protection – Future Challenges

An effective, efficient and fair implementation of the Consumer Protection Act is one of the conditions precedent for promoting the culture of good governance and thereby ensuring the better promotion and protection of the rights of consumers. The Consumer Protection Act has succeeded to some extent in bringing about fair play in the supply of goods and services and the consumer courts have played an important role in this. Certain degree of success has been achieved in the last twenty five years of the implementation of the Consumer Protection Act and lakhs of people have benefited from it.
But with the opening of the economy in 1991, rapid changes in the consumption pattern of the modern day consumer have brought about new challenges to the consumer movement of the country, which calls for new approaches and strategies.

In an article way back in 1970, Day and Aaker\textsuperscript{44} predicted that consumerism would eventually “subsume, or be subsumed by two other areas of social concern: distortion and inequalities in economic environment and the declining quality of the physical environment”. The authors have cited Yohalem’s view that the ultimate goal of consumerism is to end hunger and malnutrition, educate and train disadvantaged, alleviate pollution, in short to solve social problems.\textsuperscript{45} The thing which was predicted by the authors in 70s is an area of grave concern today as now sustainable consumption has become a burning issue of consumerism in the world we are live in. It is being fast realized that consumption cannot act as the engine that drives the economy but as a tool that delivers an improved quality of life. Over consumption now takes away large quantities of resources, many of which are being used far beyond their carrying capacity having adverse effect on the climate leading to global warming and environmental risks.

Technological changes have no doubt made our life easier and comfortable but at the same time have thrown new challenge for the consumers to deal with like e-commerce, plastic money, internet banking and related cyber crimes. Consumers everywhere enjoy greater choice in a global marketplace, especially online. However, there are issues like lack of assurances about quality of goods and services, non-application of the guarantee or warranty rules, absence of protection from hazardous goods and services, unfair trade practices etc. which are posing serious concerns for the governments world over. These and many such issues are there which are posing problems for the consumers today and they are getting deceived. There is thus a need to provide more teeth to the adjudicatory structure under CPA to make them capable to deal with these new age problems being faced by the consumers. There is also a need for the government to adopt appropriate policies and strategies to handle such problems in a more effective and efficient manner.

The issues in 21\textsuperscript{st} century are quite different as compared with earlier centuries. We are faced now with revolutions in technology and globalization which have led to complexity and information asymmetry. With the technological advancement the products and services provided in the market


are becoming more sophisticated and complicated. The new century is the information and knowledge century and many national and global issues are coming ahead calling for bold initiatives in the policy and planning realms relating to consumer protection. As a result the Consumer Protection Act and the machinery under it are facing new issues and problems.

The changes in technology and their impact on the marketplace have posed challenges and opportunities for the consumers, government, and businesses. The corporate world has effectively employed Information Technology to have a virtual control over the entire globe by e-money, e-banking and e-commerce and has spread the corporate culture of greed and fraud. The technologies have no doubt changed the marketplace significantly for consumers, giving them access to potentially unlimited amounts of information, a global marketplace, and more shopping convenience. The Internet now enables consumers to pick and choose the information they want from sources around the world, and to receive it at the click of a mouse. However, at the same time these new internet based technologies are providing fertile ground for old-fashioned scams. These technologies have pushed some consumer issues such as privacy, security, and marketing to children to the forefront of public debate.

Apart from the domestic needs, the globalization of production and of markets has also established the need for states to adopt policies and policy stances that not only protect their citizens but also increase their competitiveness over the years and decades ahead. Even as the wave of programs for the deregulation of public utilities is being undertaken, governments have also begun to explore the need to make utilities more accountable to the consumers. Though the initial focus of economic reforms was dominated by the need to establish competitive markets and appropriate regulatory systems, but very soon the Government realized the need for adequate consumer protection and effective process for consultation with and involvement of consumers in the regulatory system so as to minimize their exploitation by the service providers. It was felt that the consumers would benefit because ‘opening up regulated markets to competition and eliminating restrictive practices, means more choice, more products and competitive prices’. But this move has not resulted in the empowerment of the consumers which is a matter of serious concern as in the deregulated market there is no effective mechanism to protect the consumers. Inspite of privatization and deregulation the move must be towards a larger participatory role as far as the issues relating to the consumers is concerned.

Having moved beyond basic needs, today we consume a variety of products and services to include luxury items. Such consumption beyond minimal and basic needs is not necessarily a bad thing in and of itself, as throughout history we have always sought to find ways to make our lives a bit easier to live. But the problem has arisen because today’s consumption is
undermining the environmental resource base. It is exacerbating inequalities. And the dynamics of the consumption-poverty-inequality-environment nexus are accelerating. If the trends continue without change, not redistributing from high-income to low-income consumers, not shifting from polluting to cleaner goods and production technologies, not promoting goods that empower poor producers, not shifting priority from consumption for conspicuous display to meeting basic needs — today’s problems of consumption and human development will worsen.

Consumerism depended on a radical notion of individualism. We become indebted in order to consume because we are convinced that our utility schedule is more important than someone else’s. Greed basically feeds on a kind of pride or self-regard. The present global crisis has taught the basic lesson that humanity and its various socio-economic systems or organizations could not survive without the basic moral and ethical values and some element of spirituality and upsetting the balance of the Nature. It is high time in burying down Consumerism and Corporate Culture besides adopting slow and simple life styles and turning towards spirituality and setting right the imbalances between urban and rural sectors and also between agriculture, industry and service sectors and the different regions of the world for the very survival of humanity. The empirical study of happiness has produced evidence that the satisfaction from buying objects is short-lived and depends on continued repetition. That is socially, morally, and environmentally wasteful. On the other hand, the consumption of experiences (rather than objects) produces a more sustained satisfaction. The new service economy emphasizes human interaction more than individualistic consumption. This service economy may generate higher levels of overall well-being if it emphasizes that humans do not exist as separate islands, but existentially depend on their relations with others.46

Providing consumer information is an integral part of consumer protection. But with erroneous and insufficient information consumers cannot make optimal choices reflecting their preferences and cast their dollar votes so as to guide the allocation of resources in such a manner as to maximize utility. Markets frequently fail to provide consumers with what they would buy if they were fully or well informed. There is much evidence that consumers, lacking information, do not make purchases that maximize utility. Unfortunately, information endowments are asymmetric. Sellers have more information than consumers in virtually all segments of the economy. One consequence is that sellers can use information to influence consumer wants dispelling the myth of consumer sovereignty.

Sellers often limit information provided to consumers (the expected life

of the product is rarely disclosed) or provide only that information that will persuade consumers to buy products. They often provide little or no information, as in the case of potentially harmful products, or they can provide misleading or erroneous information as in cases where consumers are defrauded. Consumers cannot protect themselves without sufficient information to know if a product is a “good” or a “bad” one. Thus, providing consumer protection in the form of information which consumers find useful increases consumer utility and enables the economy to produce more rather than less wanted “goods” as opposed to “bad”.

With growing competition and the changes in the technological, legal and the social environment the consumer is becoming more demanding and assertive. The task of the redressal agencies, in near future, is going to became much more challenging. They need to be strengthened not only in terms of physical and financial facilities, but also by upgrading the knowledge and skills of the members of the redressal agencies particularly the district forums, which are the first point of contact for the consumers to meet the challenges and redress their grievances.

On the part of the consumers, education and awareness is the best way towards empowerment. The challenge is to protect the ignorant rural consumers who constitute the bulk of our population and are exposed to various forms of exploitation by the manufactures and the service providers aided by the advertisers. The need is for various stakeholders to come together in an organized manner to take the consumer movement forward. There is no doubt that such opportunities help us to ponder over various issues confronting the consumers and help decide appropriate strategies to protect the consumers. All we need is to take a few steps to restore the consumer’s power to influence the market. The silver jubilee year of the enactment of the Consumer Protection Act should help us in this endeavour.
CONSUMER MOVEMENT IN INDIA: NEED AND IMPORTANCE

ASHOK BHAN

Introduction

Consumer protection was part of our ancient culture and formed the core of its administration. But the introduction of boundless commercialization of activities eclipsed the old rich heritage. As in Europe, in India also the origin of the Consumer Movement was in the form of Consumer Co-operatives.

Kautilya’s ‘Arthasastra’ was the basic law of ancient India and the same was strengthened with provisions to protect consumers. Sale of commodities was organized in such a way that general public was not put to any trouble. If high profits (for the ruler) put general public in trouble, then that trade activity was stopped immediately. For traders, profit limit was to be fixed. Even for services timely response was prescribed; e.g. for sculpturist, carpenter, tailor, washerman, rules for the protection of consumer interest were given. Thus, for a washerman, it was said that he should return washed clothes in a given time period, i.e., light coloured ones in five days, blue dark coloured in six days and silken, woollen or embroidered in seven days. Failing this they had to pay fine. The Superintendent of Commerce was to supervise weights and measures. For shortfall in weighing/measuring, sellers were fined heavily. Weights and measures used in trade were manufactured only by the official agency responsible for standardization and inspected every four months. Sellers passing off inferior products as superior were fined eight times the value of articles thus sold. For adulterated things, the seller was not only fined but also compelled to make good the loss. Indeed, the people in different parts of the country today celebrate in different ways the dates dedicated to the remembrance of ancient periods during which, it is believed, people’s welfare
was the first concern of the rulers. ‘Onam’ in Kerala is one such example. The folk songs relating to Onam celebrate the fact that during the rule of King Mahaballli, people were not at all exploited in any manner. It is believed that there were neither shortages or malpractices in weights or measures nor excessive advertisements.

**Development of Co-operatives**

Consumer Co-operatives are sometimes mentioned as the starting point of the Consumer Movement. In general, consumer co-operatives have been successful in halting some of the abuses of the monopolies and in improving conditions of the lower-income classes. They have undertaken consumer education, elementary product improvement and other projects of interests to members as well as to other low income consumers. However, in contrast to activities to which the term ‘Consumer Movement’ has been applied, co-operatives have sought to perform certain services for themselves, thus replacing private enterprises. On the other hand, consumer movement activities have been directed towards modification of business practices, either with or without the aid of government. Role of consumer co-operatives in consumer oriented marketing system is important as it has achieved great success in Scandinavian and other European countries, as a countervailing force against the traditional marketing mechanism and promote the consumer interests. Encouraged by this, governments of many countries and India as well emphasized on consumer co-operatives. While the first consumer co-operatives in Great Britain and the U.S.A. came up in 1844, in India there was not much development till 1962. The first consumer co-operative store in India came up in Chennai in 1904. However, the proper appearance of consumer co-operatives in India could be seen only in 1918, increasing their number to 88 in 1920-21 and 323 in 1928-29. But in 1936-37, their number reduced to 25 as they were still not organisations of consumers on felt needs. The Second World War and the accompanying scarcity situation increased their numbers again to 396. But lack of suitable leadership, corruption, ill paid staff and lack of storage facilities kept them in a state of malfunction. In 1950-51, the number of consumer co-operatives reached to 9674 with a membership of 19 million members and an annual sale turnover of ₹ 76 million.

**Consumer Movement in India**

Decontrol and de-rationing in 1951-52 meant a setback to the co-operative movement. Their revival came in 1962. In 1960 an all India seminar on consumer co-operatives was held in Mumbai for a critical appraisal of the entire consumer scenario. From the Third Five Year plan onwards, there has been much emphasis on the development of consumer co-operatives by the governments to make them viable. In 1975-76, ₹ 5.5 crores were invested for consumer co-operatives in accordance with the 20-point programme.
Consumer co-operatives are very important for improving the distribution of essential goods through Public Distribution System (PDS) and combating inflation. It has been announced that 10 to 20% of the supplies of baby foods, bicycles, blades, cloth and students needs etc. would be through co-operatives. At present, in the distribution of consumer goods the co-operatives under P.D.S. account for about 28% of retail outlets (fair price shops) in rural areas. Nearly 51,000 village societies and their various branches distributed ₹ 2500 crores worth of consumer articles in rural areas in 1989-90. However, the co-operative movement treaded its path among the consumers and as was the case in the West, in India too the co-operative movement was not organised as a measure for consumer protection of the modern type. Consumer movement did not make its presence felt in India till the 1960’s when organised consumer groups came up.

Consumer Movement in the Modern Period

Consumer movement in the present form came into being only in the 1930’s in the West and only in the 60’s in India. The basic objectives of consumer movement worldwide are as follows:

1. To provide opportunity to the consumers to buy intelligently;
2. Recognition of reasonable consumer requests;
3. Protection against fraud, misrepresentation, insanitary and unjust products;
4. Participation of consumer representatives in management of aspects affecting consumer;
5. Promoting consumers interests.

Development of Consumer Movement

The basic reason for the development of consumer movement in India is different from those in the West. In western countries, consumer movement was the result of post-industrialization affluence for more information about the merits of competing products and to influence producers especially for new and more sophisticated products. In India, the basic reasons for the consumer movement have been:

a. Shortage of consumer products;
b. Inflation of early 1970s;
c. Adulteration and the Black Marketing;
d. Lack of product choices due to lack of development in technology;

The thrust of consumer movement in India has been on availability, purity and prices. The factors which stimulated the consumer movement in recent years are:-

i. Increasing consumer awareness;
ii. Declining quality of goods and services;
iii. Increasing consumer expectations because of consumer education;
iv. Influence of the pioneers and leaders of the consumer movement;
v. Organised effort through consumer societies.

The Consumer Movement today is undergoing a silent revolution. The movement is bringing qualitative and quantitative changes in the lives of people enabling them to organize themselves as an effective force to reckon with. But the path to reach this stage has not been easy. It has been a struggle against bad business which always puts profit before fairness in transactions. The first stage of movement was more representational in nature, i.e., to make consumers aware of their rights through speeches and articles in newspapers and magazines and holding exhibitions. The second stage was direct action based on boycotting of goods, picketing and demonstration. However, direct action had its own limitations that led to the third stage of professionally managed consumer organizations. From educational activities and handling complaints, it ventured into areas involving lobbying, litigation and laboratory testing. This gave good results. Thus, for instance business sector has started taking notice and co-operating with the movement. It has played a role in hastening the process of passing the Consumer Protection Act, 1986 which has led to the fourth stage. The Act enshrines the consumer rights and provides for setting-up of quasi-judicial authorities for redressal of consumer disputes. This Act takes justice in the socio-economic sphere a step closer to the common man. Statement of objects and reasons of the Consumer Protection Bill are as under:

(i) The right to be protected against the marketing of goods, which are hazardous to life and property.
(ii) The right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices;
(iii) The right to be assured, wherever possible, access to a variety of goods at competitive prices;
(iv) The right to be heard and to be assured that consumers interests will receive due consideration at appropriate fora.
(v) The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
(vi) The right to consumer education.

The unique feature of the Act is that consumer alone can approach the Fora constituted under the Act. It is also to be understood that consumer – consumer of goods or hirer of the service, has two alternative remedies: either to approach the civil court or to proceed under the Consumer Protection Act, 1986. If the goods are defective or there is deficiency in service, one can approach the consumer fora for redressal of his/her grievances. The Act envisages that such grievance should be redressed within 90/150 days from the date of receipt of the notice by the Opposite Party.
Achievements of the Consumer Movement

Some interesting developments which are helping the consumer movement include, developments taking place in the field of consumer education and some noticeable changes that have taken place among business organisations and their associations or federations. Consumer Protection is being incorporated in the courses at different levels in schools and colleges. Full-fledged courses have been introduced in management and law courses. A number of large organizations have set up Consumer Grievance Cells as an in-house redressal mechanism. Life Insurance Corporation of India (LIC) has set up claims review committees at the zonal and central levels. Petroleum Companies, Railways, Banks, Income Tax Departments, have also initiated setting up of public grievance cells. The Government of India has set up a separate Directorate called Directorate of Public Grievances at Sardar Patel Bhavan, Marg, New Delhi. They deal with complaints relating to railways, insurance, pensions and related matters. In the long run, they will cover all the ministries. Federation of Indian Chambers of Commerce and Industry (FICCI) has set up a Consumer Business Forum which meets once a quarter in different cities of the country. All stock exchanges in the country have also set up similar cells. The Advertisement Standard Council of India (ASCI), Confederation of Indian Industry (CII) and FICCI have evolved a code of ethics for their activities.

Another significant achievement of the consumer movement has been the representation given to consumer organizations on the policy-making bodies (regulator machinery) of governments and Advisory Welfare Committees of big business organizations and the service sector. Central and State Consumer Protection Councils, regulatory departments of Prevention of Food Adulteration, Supplies of Food and Drugs, Weights and Measures Department, Quality Control Institutions like Bureau of Indian Standards (BIS) and AGMARK, Petroleum Product Department, Railway Commuters Welfare Committees, Regional Advisory Committees for Indian Airlines Services all have representatives of the various consumer organizations. Thus, consumers get full opportunity to participate in policy-making aspects.

It appears that the time has come when consumers in India can hope to be ‘The King’ in the market place very soon. The labour of dedicated individuals and groups who have fought relentlessly for consumer’s rights through the decades has not been in vain after all.
SCOPE OF THE CONSUMER PROTECTION ACT, 1986

M. B. SHAH

Introduction

The Consumer Protection Act enacted in 1986 provides for better protection of the interests of consumers and to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and matters connected with it. This became necessary as a well organised sector of manufacturers, traders and service providers came into existence, thereby affecting the relationship between the traders and the consumers, making the principle of consumer sovereignty almost inapplicable. It can be stated that the scope of the Consumer Protection Act is very wide and it tries to achieve equitable redress of the grievances of the consumers. However, before discussing the scope of the Act it would be appropriate to trace its origin.

Thanks to the historic declaration of the basic consumer rights in the year 1962 by the President of USA, John. F. Kennedy, who while addressing the US Congress said that “Consumers, by definition, includes us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. But they are the only important group whose views are often not heard.” He introduced four basic consumer rights: the right to safety, the right to information, the right to choice and the right to representation. In the year 1983 the United Nations formally declared 15th March as ‘World Consumer Rights Day’. Thereafter, the United Nations passed a resolution in the year 1985 laying down the guidelines to be adopted by developed and developing nations for protection
of consumer rights. Since then, recognition of consumer rights has taken off around the world. Since there is every possibility of the Consumer rights being ignored or trivialised by the governments, producers and powerful interests, the World Consumer Rights Day on 15 March each year is celebrated in order to draw attention to such violations and to enable the consumer protection organisations to take appropriate steps in this regard.

After a good amount of consultations with Governments and international organisations, the Secretary-General of United Nations submitted draft guidelines for consumer protection to the Economic and Social Council (UNESCO) in 1983. After extensive discussions and negotiations among Governments on the scope and content of the guidelines, the General Assembly of the United Nations adopted the guidelines for consumer protection by consensus on 9.4.1985. The guidelines issued are placed under four heads, viz., objectives, general principles, guidelines and international cooperation. Para 1 under the head ‘objectives’ bears reproduction. It reads:

“Taking into account the interests and needs of consumers in all countries, particularly those in developing countries, recognizing that consumers often face imbalances in economic terms, educational level, and bargaining power, and bearing in mind that consumer should have the right of access to non-hazardous products, as well as the importance of promoting just, equitable and sustainable economic and social development. … …”

The Preamble to the Consumer Protection Act is practically on the same lines. It reads: “An Act to provide for the better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers’ disputes and for matters connected therewith.”

**Objects and Reasons of the Act**

The statement of objects and reasons as per the Consumer Protection Amendment Bill, 1986 are as under:

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

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

(iii) The right to be assured, wherever possible, access to a variety goods at competitive prices;

(iv) The right to be heard and to be assured that consumers interests will receive due consideration at appropriate fora;

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

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1General Assembly Resolution No. 39/248.
(vi) The right to consumer education.

Today, the question is whether the aforesaid objects are achieved or, the consumer is the subject/object of exploitation? We need to find out as to what extent aggressive marketing by different means of advertisements give scope for exploitation of the consumer. Tempting advertisements are published in the newspapers and are shown on the T.V. and the consumer remains unprotected because he does not get full information or education on the subject. The Consumer Protection Act, 1986 provides the answers. It would be appropriate at this juncture, to refer to what the Apex Court has held in this regard in Spring Meadows Hospital & Anr. It observed that; “Consumerism has been a movement in which the trader and the consumer find each other as adversaries. Till last two decades in many developed and developing countries powerful consumer organisations have come into existence and such organisations have been instrumental in dealing with the consumer protection laws and in expansion of the horizon of such laws. In our country the legislation is of recent origin and its efficacy has not been critically evaluated which has to be done on the basis of experience. Undoubtedly the Act creates a framework for speedy disposal of consumer disputes and an attempt has been made to remove the existing evils of the ordinary court system.”

Further, in Dr. J.J. Merchant case, the Apex Court held that delay in disposal of the complaint or complicated question of law and facts involved in the case depending upon medical experts’ opinion, are no grounds for dismissing the complaint or directing the parties to approach the Civil Court. The C.P. Act provides simple, inexpensive and speedy remedy to the consumer and that should not be curtailed on such grounds; and, it would be a wrong assumption that because summary trial is provided justice cannot be done when some questions of law and facts are required to be dealt with or decided. The Act provides sufficient safeguards.

While upholding the constitutionality of the Consumer Protection Act, 1986 in State of Karnataka Vs. Vishwabharathi House Building Coop. Society & Ors. (2003) 2 SCC 412, the Apex Court held that “Consumer Protection Act, 1986 is path breaking benevolent legislation in India to protect the consumer from exploitation by unscrupulous manufacturers and traders of consumer goods or service providers. It was a long felt necessity of protecting the common man from wrong where for the ordinary law for all intent and purport had become illusory. Under the Act, the consumer is entitled to participate in the proceedings directly as a result whereof his helplessness against a powerful business house may be taken care of and that its ambit and scope is much more wider.”

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3 Dr. J.J. Merchant & Ors. Vs. Shrinath Chaturvedi (2002) 6 SCC 635
Unique Features of the Act:

(i) The unique feature of the Act is that consumer alone can approach the Fora constituted under the Act. It is also to be understood that consumer – consumer of goods or hirer of the service – has two alternative remedies: either to approach the civil court or to proceed under the Consumer Protection Act, 1986. If the goods are defective or there is deficiency in service, he can approach the consumer fora for redressal of his grievances.

(ii) The Preamble of the Act states that this Act is passed to provide better protection to the consumers. Better protection signifies what the other legislations could not achieve or failed to achieve so far, for the protection of the consumers.

(iii) The procedure followed in the proceedings is free from shackles of tardy judicial procedures, and the proceedings are summary in nature.

(iv) The disputes are to be decided in the time frame of 90 to 150 days.

Further, the Act makes the provision that for protecting the rights of consumers, complaints could also be filed by Consumer organizations or the Government. Section 2(1)(b) defines “complainant” to mean —

(i) a consumer; or

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

(iii) the Central Government or any State Government; or

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

(v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint.

The redressal agencies provided under the Act are divided into 3 parts – (i) at the Apex level - National Consumer Disputes Redressal Commission - to be headed by a sitting or retired judge of the Supreme Court; (ii) at State level - State Consumer Disputes Redressal Commission - to be headed by a sitting or retired judge of the High Court; and (iii) at District level - District Consumer Disputes Redressal Forum - to be headed by a sitting or a retired judge of the District Court or a person who qualifies to be a District Judge.

Who is a Consumer?

Section 2(1)(d) of the Act, defines the word ‘consumer’ and gives wide meaning by providing that a person is a consumer (a) who buys any goods for consideration and also includes user of such goods, and (b) who hires any services for consideration and includes beneficiary of such services.
Services include banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information. To this wide definition exclusions are: a consumer who obtains such goods for resale or for any commercial purpose; and a person who avails of services of any description free of charge, or under a contract of personal service, and for any commercial purposes. But, ‘commercial purpose’ does not include use of goods bought or availing of services by a person exclusively for the purpose of earning his livelihood by means of self-employment. Section 3 of the Consumer Protection Act makes it abundantly clear that the remedy provided under the Act is ‘in addition to and not in derogation of any other law for the time being in force’. The law on this aspect is settled.

What is Service?

The word ‘service’ is widely interpreted in V.P. Shantha’s case\(^4\). The Apex Court interpreted Sec.2(1)(b)(ii) and held that medical services are covered under the Act. The Court held, *inter alia*, that even if some patients are given medical treatment freely, but if some patients are charged, then it would be covered under the C.P. Act. In the said case the Court has specified ‘in which set of circumstances services rendered by the medical practitioner would not be considered to be covered by the provisions of Section 2(1)(o) of the Act’, and ‘in which cases services rendered by the Government Hospitals would be or would not be covered by the provisions of the Act.’

Thereafter, in the case of Savita Garg\(^5\), the Apex Court held that the consumer forum is primarily meant to provide better protection in the interest of the consumers and not to short-circuit the matter or to defeat the claim on technical grounds and held that non-joinder of a treating doctor and nursing staff shall not result in dismissal of the claim petition. The burden cannot be placed on the patient to implead all those treating doctors or the attending staff of the hospital as party so as to substantiate his claim. Once the patient is admitted in a hospital, it is the responsibility of the hospital to provide the best service and if it does not, then the hospital cannot take shelter under the technical ground that the surgeon concerned or the nursing staff, as the case may be, was not impleaded as necessary parties.

To understand the scope of the Consumer Protection Act one has to understand the interpretation of the provisions of the CP Act in matters relating to services. A few issues relating to service sectors have been dealt in brief in the following paras.

\(^4\)Indian Medical Association Vs. V.P. Shantha & Ors. (1995) 6 SCC 651

\(^5\)Savita Garg (Smt.) vs. Director, National Heart Institute, (2004) 8 SCC 56
Medical Negligence

What is Medical Negligence?

Medical negligence is a complicated subject and the liability of a doctor depends upon the facts and circumstances brought on record. There may be cases of apparent deficiency/negligence in service by the doctors. Such cases can be:

(a) the doctor does not give immediate treatment when required (may be that the doctor may be ‘over busy’);
(b) the doctor does not take precaution as per the medical jurisprudence of giving the test dose of medicines which are likely to be fatal in some cases or may cause allergy;
(c) the post-operative treatment is not given properly; and/or septicaemia or gangrene takes place;
(d) the surgical wound is caused at a different place than required;
(e) improper prescription of drugs;
(f) medical instruments are left in the body;
(g) apparent lack of care in surgery and anaesthesia.

In such cases, medical negligence being apparent medical practitioners would be liable to pay compensation or damages to the victim.

Finally, what is expected from the medical practitioner is to take due care and caution while giving treatment as per the established medical jurisprudence. In other words, if he has acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art, no question of deficiency would arise.

Housing

The pivotal and important decision, in respect of housing service, is Lucknow Development Authority. The Apex Court interpreted the word service as defined in Section (2)(1)(o) of the Act and observed that the main clause itself is very wide. It applies to any service made available to potential users. When banks advance loans or accept deposit or provide facility for locker they undoubtedly render service. A State Bank or a nationalised bank renders as much service as private bank. No distinction can be drawn in private and public transport or insurance companies. Even the supply of electricity or gas, mainly, by statutory authorities is included in it. The legislative intention is thus clear to protect a consumer in respect of services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility. The Court considered the reality of our social life prevailing in the country and observed that various legislations

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6Lucknow Development Authority Vs. M.K. Gupta (1994) 1 SCC 243
and regulations permitting the State to intervene and protect interest of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated.

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

Insurance

Protection of Policyholders’ Interest

To avoid harsh operation of the contract of insurance and to safeguard the interests of the insured, in exercise of powers conferred by Clause (zc) of sub-section (2) of Section 114A of the Insurance Act, 1938 read with Sections 14 and 26 of the Insurance Regulatory and Development Authority Act, 1999, the Authority has framed Insurance Regulatory and Development Authority (Protection of Policy-Holders’ Interest) Regulations, 2002. If these regulations are implemented properly, number of insurance issues will be settled. The most important aspect of the regulations is that the proposal should be processed with speed and efficiency and all decisions taken shall be communicated in writing within a reasonable time not exceeding 15 days from the date of receipt of the proposal by the insurer. In most of the cases, above stated procedure is not followed.

Procedures to Follow

(a) Today, delay in justice delivery system, complicated procedures which are not easily understood by a common man and the prohibitive cost of litigation are the reasons why consumers approach the Consumer Fora with high hopes and that high hopes should not be frustrated. Hence, Consumer Fora is required to be strengthen.

(b) It should be noted that under Section 13 of the Act, Consumer Fora are required to follow only principles of natural justice i.e. issuance of notice before deciding the matter. There is no other procedural hindrance in rendering justice and the provisions of
the Civil Procedure Code, 1908 or the Evidence Act are not required to be followed.

Procedure before the Consumer Fora is:–

(i) **Inquisitorial and not as in adversary system:** Consumer Fora should find out the truth on the basis of evidence brought on record and should not decide the matter solely on averments made in the complaint or written version.

(ii) **The Consumer Fora are not bound by Rules of Pleadings and it shall be incumbent upon the Fora to do justice between the parties on the basis of the material and documents before it.**

(c) **Further, for interpreting the terms of the contract, Consumer Forum is required to decide whether the term of the contract, which is sought to be relied upon, is unjustifiable on various grounds, such as :**

(i) Whether the in-equality of bargaining power is the result of the great disparity in the economic strength of the contracting parties, or

(ii) where the inequality is the result of circumstances, or

(iii) whether of the creation of the parties or not, or

(iv) where the weaker party is in a position in which he could obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them, or

(v) where a man had no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in prescribed or standard form or to accept a set of rules as part of the contract, however, unfair, unreasonable and unconscionable a clause in that contract or form or rules might be.

Lastly, if aforesaid guidelines are kept in mind, Consumer Protection Act would be a Silver Line in dark cloudy sky where free market forces try to take undue–unfair advantage of the needs of the consumer by aggressive, tempting marketing.
REFLECTIONS ON CONSUMER PROTECTION LAW AND POLICY IN INDIA

S.S. SINGH

Introduction

The growing interdependence of the world economy and international character of many business practices have contributed to the development of universal emphasis on consumer rights protection and promotion. Consumers, clients and customers world over, are on move and demanding value for money in the form of quality goods and better services on reasonable price. Modern technological developments have no doubt made a great impact on the quality, availability and safety of goods and services. But the fact of life is that the consumers are still victims of unscrupulous and exploitative practices. Exploitation of consumers assumes numerous forms such as adulteration of food, spurious drugs, dubious hire purchase plans, high prices, poor quality, deficient services, deceptive advertisements, hazardous products, black marketing and many more. In addition, with revolution in information technology newer kinds of challenges are thrown on the consumer like cyber crimes, plastic money etc., which affect the consumer in even bigger way. ‘Consumer is sovereign’ and ‘customer is the king’ are nothing more than myths in the present scenario particularly in the developing societies. However, it has been realised and rightly so that the Consumer protection is a socio-economic programme to be pursued by the government as well as the business as the satisfaction of the consumers is in the interest of both. In this context, the government, however, has a primary responsibility to protect the consumers’ interests and rights through appropriate policy measures, legal structure and administrative framework.
Consumerism: Conceptual Consideration

In present situation, consumer protection, though as old as consumer exploitation, has assumed greater importance and relevance. Consumerism is a recent and universal phenomenon. It is a social movement. Consumerism is all about protection of the interests of the consumers. According to McMillan Dictionary (1985) “Consumerism is concerned with protecting consumers from all organisations with which there is exchanged relationship. It encompasses the set of activities of Government, business, independent organisations and concerned consumers that are designed to protect the rights of consumers”. The Chamber’s Dictionary (1993) defines Consumerism as the protection of the interests of the buyers of goods and services against defective or dangerous goods etc. “Consumerism is a movement or policies aimed at regulating the products or services, methods or standards of manufacturers, sellers and advertisers in the interest of buyers, such regulation may be institutional, statutory or embodied in a voluntary code occupied by a particular industry or it may result more indirectly from the influence of consumer organisations”.

As commonly understood consumerism refers to wide range of activities of government, business and independent organisations designed to protect rights of the consumers. Consumerism is a process through which the consumers seek redress, restitution and remedy for their dissatisfaction and frustration with the help of their all organised or unorganised efforts and activities. It is, in-fact, a social movement seeking to protect the rights of the consumers in relation to the producers of goods and providers of services. Consumerism is an all-pervasive term meaning nothing more than people’s search for getting better value for their money. Consumer is the focal point of any business. Consumers’ satisfaction benefits not only business but government and society as well. Consumerism, therefore, should not be considered as consumers’ war against business. It is a collective consciousness on the part of consumers, business, government and civil society to enhance consumers’ satisfaction and social welfare which will in turn benefit all of them and finally make the society a better place to live.

Consumerism depended on a radical notion of individualism. We become indebted in order to consume, because we are convinced that our utility schedule is more important than someone else’s. In that way, greed feeds on a kind of pride or self regard. It may be instructive to mention that the empirical study of happiness has produced evidence that satisfaction from buying objects is short-lived and depends on continued repetition. That is socially, morally and environmentally wasteful. On the other hand, the consumption of experience (rather than objects) produces more satisfaction. The new service economy emphasises human interaction more than individualistic consumption. It may be underlined in this context that humans do not exist as separate identity, but existentially depends on their relations with others. Therefore,
consumerism and its utility depends on not in individualism pejoratively but in the collectivism and otherness.¹

There are various components of consumerism. First and foremost is self-protection by consumers. Consumer must be aware of his rights, raise voice against exploitation and seek redressal of his grievances. Consumers’ consciousness determines the effectiveness of consumerism. It is the duty of the consumer to identify his rights and to protect them. Voluntary Consumer Organisations engaged in organising consumers and encouraging them to safeguard their interests is another important element of consumer movement. The success of consumerism lies in the realisation of the business, that there is no substitute for voluntary self regulations. Little attention from the business will not only serves consumers’ interest but will also benefit them. Some businesses in India have come together to adopt a code of conduct for regulating their own activities. Regulation of business through legislation is one of the important means of protecting the consumers.

**Consumer Protection: International Scenario**

One could be forgiven for thinking that consumerism was largely invented by Mr. Ralph Nader, the well-known American Advocate. History of protection of Consumer’s rights by law program has long been recognised dating back to 1824. 15th of March every year is observed as the World Consumer Rights Day. On that day in 1962 President John F. Kennedy of U.S. called upon the U.S. Congress to accord its approval to the Consumer Bill of Rights. They are (i) right to choice; (ii) right to information; (iii) right to safety; and (iv) right to be heard. President Gerald R. Ford added one more right i.e. right to consumer education. Further other rights such as right to healthy environment and right to basic needs (Food, Clothing and Shelter) were added. In India we have started celebrating 24th December every year as the National Consumer Day.

In the history of the development of consumer policy, April 9, 1985 is a very significant date for it was on that day that the General Assembly of the United Nations adopted a set of general guidelines for consumer protection and the Secretary General of the United Nations was authorised to persuade member countries to adopt these guidelines through policy changes or law. These guidelines constitute a comprehensive policy framework outlining what governments need to do to promote consumer protection in following seven areas:

I. Physical safety;
II. Protection and promotion of the consumer economic interest;
III. Standards for the safety and quality of consumer goods and services;

IV. Distribution facilities for consumer goods and services;  
V. Measures enabling consumers to obtain redress;  
VI. Measures relating to specific areas (food, water and pharmaceuticals); and  
VII. Consumer education and information programme.

Though not legally binding, the guidelines provide an internationally recognised set of basic objectives, particularly for governments of developing and newly independent countries for structuring and strengthening their consumer protection policies and legislations. These guidelines were adopted recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power and bearing in mind that consumers should have the right of access to non hazardous products as well as the importance of promoting just, equitable and sustainable economic and social development. These U.N. guidelines for Consumer Protection can assist in identification of priorities particularly in the light of emerging trends in a globalised and liberalised world economy.

The U.N. guidelines were never intended to be a static document and required to be revisited in the changed social, political and economic circumstances. On reexamination of U.N. guidelines in 1999 “sustainable consumption” was also included in the list which is certainly an important step in this direction. Sustainable consumption can be defined in the following way. “It integrates a range of social, economic and political practices at the individual, household, community, business and government levels that support and encourage:

- Reducing the direct environmental burden of producing, using and disposing goods and services;
- Meeting basic needs for key consumption goods and services, such as food, water, health, education and shelter;
- Maximizing opportunities for sustainable livelihood;
- Consuming goods and services that contribute positively to the health and well-being of women and children;
- Increasing the development and adoption of energy and water efficient appliances, public transport and others demand side measures;
- Production and sale of new goods and services adopted to global environmental constraints; and
- Life style that place greater value on social cohesion, local traditions and non-material values.2

It may not be out of place to mention that the increased internationalisation

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of cooperation is also a part of the globalization process. Rules adopted for corporations trading in OECD Countries for the protection of the interests of consumers can now also be applied to their conduct for the protection of the interests of the consumers in non-OECD countries. A new investment guideline in the OECD spells out principles to be applied by multinational corporations dealing with consumers. The Guidelines, which deal with fair business, marketing and advertising practices as well as safety and quality of goods and services lend themselves to consumer monitoring and campaigning. Possibilities for action include twinning arrangements in which groups from non-OECD countries work with groups from the home countries of multinational corporations to hold them accountable for failure to adhere to the Guidelines.

**Constitutionalism and Consumerism**

Constitutionalism and consumerism both seem to be twin sisters with similar objectives. Constitutionalism, in a politically organized society, is concerned with the protection and promotion of an individual’s rights, dignity and welfare as a citizen. Similarly, consumerism is concerned with the protection, promotion and welfare of the rights of the individual as a consumer, a client or a customer. In the final analysis, concern of both is the individual; whether as a citizen, a consumer, a customer or as a client. Constitutionalism provides policy framework, institutional mechanism, finances and functionaries for better service and empowerment of the citizen. On the other hand consumerism provides ways and means to demand quality goods, better services, better protection, empowerment, welfare and value for money. In a way, both are supplementary and complementary to each other. Constitutionalism promotes by way of constitutionally directed fundamental duties of a citizen, development of a scientific temper and spirit of inquiry and consumerism facilitates consumers to know about the products and services in detail in all its aspects. Finally, one may like to mention that constitutionalism as well as consumerism is an art and science for ensuring quality of life. Therefore, promoting consumerism is directly related with the promotion of constitutionalism, In a more practical perspective, the focus of both is good governance in all its dimensions viz; transparency, accountability, responsiveness, efficiency, effectiveness, economy etc. and at all levels - sectoral, local, regional and national with the vision to develop better society and thereby to guarantee better life.

**Consumer Protection - Implications for Good Governance**

An effective, efficient and fair implementation of the Consumer Protection Act is one of the conditions precedent for promoting the culture of good governance and thereby ensuring better promotion and protection of the rights of the consumers. If the rights of the consumers in relation to the quality of goods and services are assured and taken care of, then there will be no cause,
for complaints. This situation would certainly create an atmosphere wherein the clients, customers and consumers would feel satisfied with the things needed most to them. In this context, the concerns of the good governance need to be mentioned briefly with a view to establish linkage with the concern of the consumer protection law and institutions. Generally speaking, the thrust of good governance movement is - efficiency, effectiveness, ethics, equality, economy, transparency, accountability, empowerment, rationality, impartiality and participation. In view of these requirements of good governance one can easily and with success establish the co-relations with the concerns of the consumer protection law and policies. From the point of view of the concerns of the Consumer Protection Law, it may generally be emphasized that the concerns of consumers’ rights protection are to ensure fair trade practices, quality goods and deficiency free services with information in regard to quality, quantity, potency, components and price with a view to provide opportunity to the consumers in regard to their choices.

In view of the remedies available to the consumers under the Consumer Protection laws there is no doubt that at the end of the day, if efforts of the operators of law and agencies are genuine and there is a sense of commitment, the culture of good governance would pervade wherein the consumers would feel highly satisfied and there would be no real cause for a complaint or showing their dissatisfaction in any way. Therefore, the proper and effective implementation of the laws, dealing with the protection of the consumers’ rights would promote good governance values at the operational level.

It would, finally, be better to highlight one or two areas with a view to focus the developments in regard to the protection of consumers’ rights as well as the concern of the good governance. As stated earlier, one of the concerns of the good governance movement is to promote and ensure accountability of producers and providers of services in public domain. The judgment of the Supreme Court in *Lucknow Development Authority Vs. M. K. Gupta* may be cited as an illustration. In the instant case the Supreme Court while establishing the jurisdiction of the Consumer Disputes Redressal Agencies created under the Consumer Protection Act emphasised that the service provided by a private body or a statutory or public authority are within the jurisdiction of the Consumer Protection Act. In this context, the Supreme Court also laid down that any defect or deficiency in such service would be treated as unfair trade practice and would amount to denial of service.

It would be instructive to highlight the observation of the Supreme Court in the above case in regard to the concept of public accountability. The Supreme Court observed that: “The administrative law of accountability of public authorities for their arbitrary and even ultra-vires actions has taken many strides. It is now accepted that the state is liable to compensate for loss

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or injury suffered by a citizen due to arbitrary actions of its employees... No functionary in exercise of statutory power can claim immunity... Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour... Each hierarchy in the Act is empowered to entertain a complaint by the Consumer for value of the goods or services and compensation... The Commission or the Forum in the Act is thus entitled to award not only value of the good or services but also to compensate a consumer for injustice suffered by him.”

In continuation, it was further observed that the award of compensation is not the only issue today. The concept of public functionary has undergone tremendous change with passage of time and change in socio-economic outlook... In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary... It is now imperative and implicit in the exercise of power that it should be for the sake of society. “It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression... then it should, further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour…” In view of the above law of personal accountability, of the concerned public functionary as laid down by the Supreme Court while protecting the rights of Consumers under the Consumer Protection Act is in fact an appreciable contribution to the body of law on public accountability which is one of the major concerns of the good governance movement. In view of the importance of the law on public accountability and the role of the Consumers’ adjudicatory bodies, the above decision should be made a compulsory reading for all those having role to play in the promotion and protection of the consumer’s rights and also with the process of administrative reforms for good governance.

Similarly, the approach of the Supreme Court in ensuring qualitative change in the attitude of the medical service provided by the hospitals and the medical professionals followed in the Indian Medical Association Vs. V.P. Shantha and Ors, deserves high appreciation with a view to giving real meaning to the accountability of professionals. In Charan Singh’s judgment the observation of the Supreme Court to the effect that “the Consumer Forums while quantifying damages are required to make an attempt to serve the ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual, but which also at the same time, aims to bring about qualitative change in the attitude of the service provider”. Denial of pension under Employees Pension Scheme, 1995 to a worker of a company by Regional Provident Fund Commissioner was held,

5Charan Singh Vs Healing Touch Hospital and ors. (2000) 7 SCC 668
to attract the provisions of the Consumer Protection Act. It was further held
that the commissioner is a “service giver” within the meaning of S.2(1)(o) of
the C.P.A.\(^6\) It may, in addition, be pointed out, that the number of complaints
in regard to the quality of public services is more than complaints dealing
with defects in goods. Keeping in view the changing economic scenario, the
number of complaints in regard to the deficiencies in services would certainly
increase in the future. Therefore, the Consumer Forums and Commissions
established under the Consumer Protection Act, need to be given extra attention
to ensure it’s efficient, effective, fair and less-expensive functioning.

Consumer Protection Act, 1986

It may be mentioned at the outset that anyone interested in the task of
consumer protection movement has to be well versed in various laws and not
merely with the Consumer Protection Act, 1986. They should have knowledge
of laws relating to Contract, Tort, Railways, Telegraphs, Telephones, Post,
Air Travel, Insurance, Electricity, Water, Housing, Medicine, Banking, Finance,
Engineering, Motor Vehicles, Hotel Industry, Entertainment, Cooperative
Societies, Tourism Agencies, Sales Tax, Central Excise, Limitation, Transport
etc. There is no limit to subjects, which may come before a Consumer Forum
for decision. In addition one should also be well versed with the laws relating
to unfair trade practice and restrictive trade practices.

The Consumer Protection Act of 1986 was enacted with an objective to
provide better protection of the interests of the Consumers, to make provision
for the establishment of Consumer Councils and other authorities for the
settlement of consumer disputes. This is indeed a very unique and highly
progressive piece of Social Welfare Legislation. The provisions of this Act are
intended to provide effective and efficient safeguards to the consumers against
various types of exploitations and unfair dealings. Unlike other laws, which
are basically punitive or preventive in nature, the provisions of the Act are
compensatory. It is a matter of great satisfaction that we can legitimately
boast that we now have in our country a statute which provides more effective
protection to the consumers than any corresponding legislation in force in
countries which are considered to be much more advanced and industrialised.
CPA has been in operation for about 25 years. A number of deficiencies and
shortcoming in respect of its operation have come to light thereby requiring
amendments thrice, still leaving scope for further improvements. Despite all
this it is a handy weapon for consumers to ensure accountability of producers
of goods and providers of services. In the 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 field of

\(^6\)See (2008) 7 SCC III
consumer rights, the parallel of which has not been seen anywhere else in the world”.

The Act provides for the establishment of the Consumer Protection Councils at the National, State and District levels. The objectives of these councils are to help the respective governments in adopting and reviewing policies for promoting and protecting the rights of the consumers. The composition of these consumer councils are broad based. The citizens and organisations representing different interest groups having implications for consumer’s rights protection are members of these councils. One may like to add, that the Consumer Councils are required to be constituted on public private partnership basis for better feedback and thereby review of the policy in the area of consumer’s rights protection. The main objective of these councils is to promote and protect rights and interests of consumers in the society. It also provides for Consumer Disputes Redressal Adjudicatory bodies established at three levels i.e. District, State and National known as District Forums, State Commissions and National Commission. District Forum is composed of President and two members (one member is woman). Every member of the District Forum shall hold office for a term of five years or upto the age of 65 years, whichever is earlier and shall be eligible for reappointment.

The State Commission is presided over by retired High Court Judge. The National Commission is presided over by the retired Supreme Court Judge. The District Forum can adjudicate on the matter upto ₹ 20 lakh, State Commission upto one crore and National Commission above one crore. The proceedings before these adjudicatory bodies are regulated in accordance with the principles of natural justice. At present 629 District Forums and 35 State Commissions are functioning all over the country besides the National Commission. Now complaints are required to be accompanied with such amount of fee and payable in such manner as may be prescribed. Fee structure for the cases filed in the District Forums has been prescribed by the Ministry of Consumer Affairs, Food and Public Distribution by Rule 9A of the Consumer Protection (Amendment) Rules, 2004, as shown in Table 1.

The total number of cases filed and disposed of in the National Commission, State Commissions and District Forums are as in Table 2.

The National Commission, State Commissions and District Forums are required to decide complaints as far as possible, within a period of three months from the date of notice received by the opposite party where complaint does not requires analysis or testing of commodities and within five months if it requires analysis or testing of commodities. The Appeals are allowed within 90 days against the order of the District Forum to the State Commission and against the order of the State Commission, to the National Commission. Appeal can also be preferred to the Supreme Court against the order of the National Commission within a period of 30 days. No appeal by a person who is required
to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty percent of that amount or rupees fifty thousand, whichever is less. Similarly there is a requirement for depositing ₹ 35,000/-, ₹ 25,000/- and ₹ 50,000/- in case of appeals to National Commission and State Commission and the Supreme Court. It may, however, be pointed out that such provisions may not be considered beneficial in the interest of Consumers.

<table>
<thead>
<tr>
<th>S.N.</th>
<th>Value of goods or services and compensation claimed</th>
<th>Amount of fee payable</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>District Forum</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Upto one lakh rupees - For complainants who are under the below poverty line holding Antyodaya Anna Yojana cards.</td>
<td>Nil</td>
</tr>
<tr>
<td>2</td>
<td>Upto one lakh rupee</td>
<td>₹ 100</td>
</tr>
<tr>
<td>3</td>
<td>One lakh and above but less than five lakh rupees</td>
<td>₹ 200</td>
</tr>
<tr>
<td>4</td>
<td>Five lakh rupees and above but less than Rs.10 lakh</td>
<td>₹ 400</td>
</tr>
<tr>
<td>5</td>
<td>Ten lakh rupees and above but not exceeding Rs.20 lakh</td>
<td>₹ 500</td>
</tr>
<tr>
<td><strong>State Commission</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Above 20 lakh and upto 50 lakh rupees</td>
<td>₹ 2000</td>
</tr>
<tr>
<td>7</td>
<td>Above 50 lakh and upto one crore rupees</td>
<td>₹ 4000</td>
</tr>
<tr>
<td><strong>National Commission</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Above one crore rupees.</td>
<td>₹ 5000</td>
</tr>
</tbody>
</table>

**TABLE 2**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Agency</th>
<th>Cases filed since inception</th>
<th>Cases disposed since inception</th>
<th>Cases Pending</th>
<th>Cases Disposal</th>
<th>% of total Disposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>National Commission</td>
<td>70787</td>
<td>61484</td>
<td>9303</td>
<td>86.86%</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>State Commissions</td>
<td>546134</td>
<td>446440</td>
<td>99694</td>
<td>81.75%</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>District Forums</td>
<td>3010281</td>
<td>2755418</td>
<td>254863</td>
<td>91.53%</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td>3627202</td>
<td>3263342</td>
<td>363860</td>
<td>89.97%</td>
<td></td>
</tr>
</tbody>
</table>

(Update on 05.08.2011)
Consumer Protection: Policy Paradigm

**Vision:** The vision of the Department in the area of Consumer Protection and welfare is to raise the level of consumer awareness to a level achieved by developed countries and make all providers of services and producers of goods fully responsive to the needs of consumers. The vision also includes an aspiration for our country to play a lead role in area of consumer awareness and protection not only in the developing world but also in the international scene, on equal terms.

**Policy Aim:** Aim of the Policy is continuity with comprehensive change in paradigm so as to usher in an enabling consumer protection environment for boosting the confidence of the consumer in governance process as well as in markets in partnership with central and state government institutions, business and trade organisations, VCOs and *pro bono publico* with emphasis on PPP. In view of the above stated policy paradigm, the objectives of the consumer protection policy are:

- To launch comprehensive, pro-active and aggressive implementation of existing laws, programmes, schemes etc. to achieve their objectives and purpose;
- To review and modify existing laws, programmes and schemes to make them socially relevant and purposeful;
- To extend and expand the existing programmes, schemes and activities to reach out to every nook and corner of the nation;
- To evolve new initiatives, *inter alia*, new legislations, schemes, programmes and activities to further boost consumer movement as a national mission;
- To develop cooperation, coordination and partnership amongst all stakeholders including central and state government institutions, business and trade organisations, VCOs and *pro bono publico* for effective implementation of consumer protection programmes, schemes and activities with emphasis on PPP;
- To give thrust on promoting and facilitating consumer awareness and education to empower consumers so that they can protect their rights;
- To promote internal complaint redressal mechanism as an Alternate Disputes Redressal (ADR) system and strengthen the existing consumer grievance redressal commissions and fora for effective consumer justice administration;
- To lay strong emphasis on systems improvement for enhancing the accountability of producers of goods and providers of services through strengthening of quality infrastructure and standardisation including legal metrology;
To develop and promote, finally, the culture of respect for consumers’ rights, interests and welfare.  

**Consumer Protection Movement - New Initiatives**

Consumer Protection movement in India to be effective and meaningful needs the proactive support of the government, business, organisations of civil society, educational institutions - schools, colleges, universities and research institutions. Over and above the support of *pro bono publico* and of every individual is a *sine qua non* for the consumer movement to be purposeful. The policies, schemes and programmes of the Government of India through the Department of Consumer Affairs are no doubt useful but their effectiveness finally depends on the involvement of the institutions and the people at large. A number of schemes have already been in operation such as, Jagriti Shivir Yojna, Consumer Clubs in Schools and Colleges, Consumer Information Centre in each District, Jago Grahak National Media Campaign, National Consumer Helpline (NCH), Consumer Online Resource and Empowerment Centre (CORE Centre) and Project on Promoting Involvement of Research Institutions, Universities, Colleges, etc. in Consumer Protection and Consumer Welfare etc. Similar schemes and programmes are needed at the State Government level also to provide further impetus to the consumer movement in the country. Organisations of the Civil Societies are having special responsibility in this regard and so is the case of the educational institutions. Keeping in view the importance of consumer protection, the Planning Commission of India constituted a working group to suggest measures to strengthen consumer protection movement in the country to promote consumer satisfaction in a big way.

**New Initiatives on ADR and Counseling**

Under the XII Plan period 2012-17 there is a need to create, *inter-alia*, an administrative and legal mechanism including ADR which would be efficient and economical from consumer’s perspective. With this in view the DCA will facilitate the setting up of State Consumer Helplines and Consumer Advice Centers and linking them to a Mediation Centre in all state / UTs and networking across the country as a major counseling cum mediation mechanism at pre-litigation stage with a view to reduce the burden of the consumer courts and resolve disputes through out of court settlements. Mediation can be defined as a process to resolve a dispute between two or more parties in the presence of a mutually agreed third party who through confidential discussion attempts to help the parties in reaching a commonly agreed solution to their problems. The biggest advantage of mediation is that the entire process is strictly

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7Consumer Protection Policy Paradigm is based on the Policy of the DCA under the XI Five year Plan Document.
confidential. Mediation saves time, financial and emotional cost of resolving disputes.

**Concluding Remarks**

An efficient and effective programme of consumer protection is of special significance to all of us because we all are consumers. Even a manufacturer or provider of a service is a consumer of some other goods or services. If both the producers/providers of services and consumers realize the need for co-existence, adulterated products, spurious goods and other deficiencies in services would become a thing of the past. The active involvement and participation from all quarters i.e. the central and state governments, the educational Institutions, the NGOs, the print and electronic media and the adoption and observance of a voluntary code of conduct by the trade and industry and the citizen’s charter by the service providers is not only necessary but a *sine qua non* for the success of the consumer movement. The need of the hour is for total commitment to the consumer cause and social responsiveness to consumer needs. This should, however, proceed in a harmonious manner so that our society becomes a better place for all of us to live in. The present consumer movement needs to be revolutionized. History is a proof that no movement will ever succeed without the active involvement of the young and energetic class of the society. ADR mechanism for resolving consumer disputes needs to be promoted with full vigor and force in the interest of justice and fair play.
GLOBALIZATION AND PROTECTION OF CONSUMER RIGHTS IN INDIA - CHALLENGES AND OPPORTUNITIES

M.C. PAUL

Introduction

As we all know institutions evolve over a period of time; develop working ethos, practices and traditions based on needs and environment. Over centuries human societies across the globe have been progressively establishing closer contacts for trades and commerce and of late, the pace has dramatically increased with the movement of capital, manpower, science and technology, raw materials etc. across national boundaries. In the present globalized business-driven world, the role of welfare state and its governance system has to gear to address several fundamental challenges when the economic liberalization policy in 1991 has been consciously embraced to bring much-desired growth and development as in developed economies. In other words, market-driven privatization and liberalization policy was adopted to achieve growth path, ensure development and justice with equity in the economy and society.

To tap this huge potential market all types of national and multi-national companies, as a part of economic package under the World Trade Organization, are entering into all the available sectors of our economy: production or manufacturing, mass consumer and durables goods and services, information and communication, financial, insurance and banking sectors, airlines, travel and tourism sectors, etc. Most of these national and/ or trans-national companies, highly successful in terms of profitability, sales-revenue line and even market share and growth rate, are trying to dominate India’s economic scene; for sure changing the socio-cultural scenarios of our vast multi-cultural,
multi-linguistic and multi-ethnic country over time; a new consumerist culture is gradually emerging whether we like it or not. Ultimately, whether it helps us all irrespective of socio-economic and cultural backgrounds without strong comprehensive consumer protection mechanisms and sound regulatory authorities is a question that cannot possibly be answered now but its consequences on health, environment, political economy and on the overall life and livelihood of our people, particularly on the non-affording sections of society, can be seen and/ or discerned.

However, as a result of economic reforms a large capital flow helped making varieties of quality goods and services, cheap telephone services, internet and computers, airline services, etc. available offering choices in the free markets including 24X7 E-commerce to consumers making their life better and living comfortable for sections of consumers, not seen hitherto. Along with this profit-driven market growth new ideas, consumption culture shaping lifestyle changes are also increasingly seen like in developed economies as a result of development of multi-storied well-stored malls, super markets and other refurbishing markets with varieties of goods and high-end products and services. The tastes and penchant for newer goods and services as well as consumption of these are an integral part of the profit-driven market; whetting the appetite for consumer products alluring through advertising machinery (often by deceptive, unethical and misleading advertisements and sometimes even before the actual products are seen/ marketed), is certainly a new development in this country creating asymmetry of information between consumers and the producers. It is a fact that profit-driven global market forces of all hues are in continuous search of consumer markets in every nook and corner because nation’s growing consumer markets are very lucrative and profitable as India’s affluent and vast middle class consumers are becoming ‘lifestyle-change-agents’. This asymmetric information through eyeball-catching advertisements and publicity definitely act to the disadvantage of aam consumers as they do not help in making informed-choice /decision. Rather they mislead.

This rising menace of unethical and misleading advertisements by the producers of goods and services from cars to electronics to daily necessities of life goading the aam consumers to buy them or spur a demand is certainly a violation of consumer rights as enshrined in Consumer Protection Act, 1986. It is in this developing scenario that the role of welfare state is considerable. The various intervention measures by the state setting proper consumer protection mechanisms are sine qua non to ensure the safety, security and overall wellbeing of its citizens since they rely increasingly on the free-market for purchases of goods and services. Moreover, there is a growing dissatisfaction and serious concern raised by consumers as to how to stem many other rising phenomena of consumer rights violations by the profit-driven market forces affecting the health, wellbeing and environment. For
example, the marketing of adulterated and spurious goods and unsafe services, and their consequences on millions of *aam* consumers, particularly belonging to poorer sections, cannot be easily imagined as the sufferers only know where the shoes pinch. These are not aberrations but certainly a very disturbing scenario; phenomenon of serious concern that urgently demands comprehensive state intervention since it relates to larger socio-economic and political questions of policy-making. Only the naïve can believe that the free-market economies would truly make the *aam* consumers free by allowing free-market forces. Unfortunately, the patterns of growth and trends of profit-driven market forces with exceptions are found to be oblivious to consumer right protection issues resulting in immense consumer distress as they fail to get value-for-money in the market.

The prevailing challenges of disgruntled free-market forces are immense; only periodical advertisement or publicity of ‘*Jago Grahak Jago*’ and National Consumer Helpline incurring crores of rupees would not make much difference on the ground unless, as said, comprehensive consumer protection mechanisms are designed and effectively placed in true spirit to check the rising menace to consumers’ satisfaction. Unfortunately, this is despite India having, at the behest of UN, the best Consumer Protection Act in 1986 ever legislated in Indian Parliament, much before the adoption of liberalization and privatization policy in 1991. In fact, India became one of the first few countries in the world to have passed such a revolutionary legislation exclusively for the consumer protection; but the ‘*Vyapaaris*’ are not seriously made aware of it with a similar tonal slogan like ‘*Jago Vyapaari Jago, Grahak Adhikaar Ko Sanman Karo*’. Thus, as said, the mere ‘*Jago Grahak Jago*’ periodically forced upon the *aam* consumers barely help changing the scenario of market wrongdoings seminally. On the other hand, many are having a last laugh on it costing the consumers dearly. I suggest, the Corporate Social Responsibility (CSR) has to be broadened to make consumer rights protection as primary objective. In other words, The pricing policies of goods and services by the business and traders has also to be formulated to check the prevailing slide helping profit-makers earn easy profits at the cost of *aam* consumers. It is a serious cause of concern and needs urgent attention. It seems the Government is yet to develop the adequate sensitivities and proclivities in regards to protection of consumer interests with appropriate regulatory mechanisms to deal with the profit-makers.

**Globalization, Market Growth and Consumer Rights Violations**

It is a fact that India is the second fastest growing economy of the world, after China, with 8% plus average GDP growth rate for the last few years is an attractive destination. The rate of growth is expected to hit double digits in near future but whether free-market activities without comprehensive regulatory regime under globalization are pure manna from heaven or a fiendish
attempt to exploit consumers is a question that will be definitely debated for a long time. As said, the Corporate Social Responsibility is narrowly defined and unless issues of consumer rights protection enter into the lexicon of business and take a firm place the violations cannot be defeated to the satisfaction of aam consumers. Some of the problems among others the consumers face in the markets are:

**Unfair and Deceptive Trade Practices:** usually with regard to quality, quantity, pricing policy, deceptive and innovative packaging, and sales promotion schemes etc.

**High and Unfair Prices:** charging high prices leads to undue profiteering and exploitation of consumer. This is due to publicity, advertisements and other promotion costs of goods and services and excessive mark-ups.

**High Cost of Distribution:** Consumers pay for excessive distribution costs as there are too many intermediaries, inefficiency and duplication of services.

**Under-weight and Unsafe Products and Services:** Many times the product offered lacks the requisite quality and performs less than the promise weights and measures, and poor services as well.

**Product Safety and Security:** This concerns the production of flawed products due to company indifference, increased product complexity, and poor quality control. Most companies are wary of producing poor quality products in the backdrop of rising consumerism and market expansion.

**Harmful, Spurious and Low-benefit Products:** Producing harmful and low-benefit products affecting health and wellbeing of consumers in the short and long run like tobacco based Baby food, Gutka, cigarettes, alcoholic beverages/ health drinks, skin creams and genetically-modified products, spurious pharmaceuticals and healthcare products etc. are causes of concern and many of these promotional products often lack nutritional value without much scientific validity but health-hazard junk foods/fast foods.

**Excessive/ Aggressive Use of Media, Deceptive, Misleading Surrogate Advertisements and Marketing Strategies:** these are very often used to skillfully manipulate, allure or influence consumers and without informed-choice many do use these goods and services and suffer loss financially, psychologically, physically in health and wellbeing.

**Planned Obsolescence and Sales Policy:** Some producers follow a policy or program of planned obsolescence, causing products to become obsolete before they actually need a replacement.

**Poor Service to Disadvantage:** It is observed that the consumers often feel disadvantaged as they become victims of poor service in many emerging areas like banking, insurance, real estate, health, hospitality, travel, tourism, airlines, hotel and education sectors etc. Often consumers end up buying inferior, unsafe, spurious, low quality, impure goods at higher prices from many retail outlets etc. In rural areas marketers sell spurious, unsafe products
which often pass off as originals by the dealers/retailers, particularly in or in weekly *Haats* and *Bazars* to illiterates, uninformed and uneducated. These are not rare. Moreover, they are also often over-charged on many goods and services beyond the fixed or MRP.

**Broader Issues of Environmental Pollution, Global Warming, Climate Change:** The issues of global warming, climate change etc. are also causing tremendous concern as the over-consumption and consumption-stimulated economic growth and development may be a boon to the business, but it will be a curse for whole humanity in the long run.

**Monopolistic Trade Practices** are resorted to by many companies together, and/or joining with other agglomerates to have hold over the consumers etc.

**Consumers are the King and Sovereign?**

It is often said that in a free-market environment consumers are the kings and/or sovereign since they have the options of when, where, how and what to buy from the market. But in reality it may not always happen that way, as said above, and most find themselves at the mercy of powerful manufacturers and traders. The renowned US economist, John K. Galbraith once said truly that “It is not the consumer who is the king, but it is the large corporation who is the king in the economy. Whatever happens is not because the consumer wants it but because large and powerful corporations prefer it that way.” In another place he said that “The notion that consumer has sovereign influence in the market economy will serve only those who believe in fairly tales.” Thus whether consumer is a king or sovereign in free-market economy is a million dollar question if not a misnomer. Dynamic economy and society require constant updating of existing laws and regulations to meet the emergent needs and challenges of free-market forces so that the welfare and development needs of the citizens are fully met. Even though the Consumer Protection Act, 1986 has been amended thrice to meet the needs of the times but due to one reason or the other the consumer protection mechanisms are yet to make a difference to consumer rights violations in 24X7 market scenario in our country.

**Growth, Sustainability and Consumerist Culture**

Thus the need of the hour is to pro-actively take measures to strengthen good governance system with strong regulatory mechanisms applying stringent rules and laws against wrongdoers to meet the growing challenges thrown up by profit-driven free-market forces under the privatization and liberalization agenda if the fruits of growth are to reach the *aam* people. In other words, the relevance and centrality of consumer protection mechanisms must be realized if we want to sustain the balanced growth of economy and society with equity. The free-market cannot be allowed to be dominant and irresponsible at the cost of consumers. Probably, time has come to make the business
CONSUMER PROTECTION IN INDIA-ISSUES AND CONCERNS

aware that consumers are the backbone of business sustenance and it is in this context that the relationship between the two cannot be exploitative but symbiotic. It is here that the Father of the Nation, Mohandas Karamchand Gandhi’s pragmatic talismanic message that “A customer is most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an outsider on our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us an opportunity to do so”. Thus both the consumers and producers are partners of growth and development and, the adoption of Gandhiji’s message by the business of all hues can bring a sea change to consumer rights violations. The welfare government has tremendous responsibility to bring this universal message into the senses of all business activities to create a healthy society and economy, if necessary by government intervention. In other words, thus tuning to fair trade and ethical business practices is the best business policy because it unquestionably serves both the stakeholders. It will only be then that the market-driven economy will be a boon or manna for everyone irrespective of caste, class, ethnicity and creed otherwise it will be a curse for billions of India’s multi-ethnic, multi-cultural and multi-linguistic consumer populace.

Gandhiji’s second message that ‘The planet has everything to fulfill the needs of the people and not the greed’ is equally revolutionary to make our planet safer and secure so the excessive consumerist culture as adopted by the west cannot be the solution as we have stakes in it. The best panacea for all the man-made ills that we all confront today is to limit our greed. Already the developed free market economies have been caught badly in several serious crises leading to series of socio-economic, moral and cultural turmoil with unsustainable culture of greed and excessive consumption. We cannot suffer the same follies, and it is here that Gandhiji’s central concern to limit one’s greed can help us save the planet, its environment and sustainability of ‘being and becoming’ of everyone by developing a new paradigm for development, growth with equity and culture of sustainable consumption. The emergent issues like consequences of unsustainable excessive consumerist culture, environment degradation, climate change etc. are real challenges.

However, as said the consequences of high-consumption-based culture ultimately affect the whole planet; the broader issues of global warming and climate change, rising carbon emissions from factories and industries while increasing production to sustain economic growth, is a great cause of concern and these consequences cannot be wished away without limiting the extravagant lifestyle-oriented consumerist culture. Recently, the UN has also warned the member nations to seriously enact laws considering the serious implications of global warming and climate change which are affecting the health and well being of the vast majority people. The UN also fears that it will heighten the tensions and trigger conflicts worldwide by worsening water and food shortages, and creating new flows of environmental refugees unless
carbon emissions from the ever-expanding factories and industries are cut. However, already intense policy debates and discussions have started about the negative consequences of this free-market economic policies in the light of rising unrest in some parts of the world among the masses who have been facing the brunt of this costly consumerist lifestyle culture perpetrated by the global unmindful market-driven activities. Thus Gandhiji’s noble message, if followed by limiting our greed can be the ultimate panacea to save the planet earth.

It is a fact that consumer rights protection is certainly a precondition for the success of our system of public governance to attain legitimacy, credibility and accountability as free market forces are becoming dominant and powerful. The culture of corruption and trends of inflation have already created tremendous discontent, distress and sense of anxiety among the people. The democratic government cannot but help to develop appropriate protection mechanisms to build a new relationship between the buyers and the sellers; it cannot be allowed to exploit creating a great divide between the two. The emerging challenges and discontentment aggravating the life and living of people is the result of insensitive free-market forces oblivious to consumer rights protection. It is here that the role of government is critical to evolve and strengthen consumer protection mechanisms to save billions of consumers who are increasingly thrown into the vortex of wrongdoings 24X7 by the unbridled profit-hungry free-market forces often adopting ingenious methods. No consumer can possibly vouch that s/he has not been cheated or exploited at any time in her/his life in the market. So the vulnerability of unsuspecting aam consumers in market situations can be easily discerned. As said, the increasing use of deceptive, unethical, misleading advertisements and promotional methods in various ways used by sellers of goods and services aiming to misinform, deceive and forcing the vulnerable consumers to buy is a fact of life; thousands of distressing narratives of affected people are available in mass media, internet websites, books etc. For example, many spurious, doubtful or low quality, harmful goods and services are sold without much authorization, standardization, scientific validation and/or authentication. Moreover, in a revolutionized world of information technology and with the emergence of e-commerce related innovations the consumers are further cheated and deprived to a great extent pushing them 24X7 to buy goods and services. As a result unsuspecting buyers are misled, duped and deceived as most of the time choices exercised by Indian uninformed consumers are often being influenced by the pricing, promotion tactics, packaging and level of consumer awareness education as well as the spread and depth of consumer movements.

**Consumer Education and Awareness Movement**

In India, the consumer rights movement is certainly not a new idea; it as
old as trade and commerce. In fact, Kautilya’s *Arthashastra* detailed many consumer protection rules and regulations to check exploitation by the trade and industry, particularly related to under-weights and measures, adulteration etc. with highlighting clauses for punishment for many offences in clear terms. There is no doubt that ensuring consumer welfare is certainly the responsibility of the government. For example, we often see or buy goods with a label or clause even printed in the cash memo: “Items once sold will not be returned under any circumstances” or “goods once sold cannot be taken back”. This is just direct opposite to what the sellers of free-market developed societies prominently declare: “In case you are not fully satisfied with our product, you can bring the same to us within a month for either replacement or return of your money.” This specific example shows all the difference between Indian and the Western business approach to consumers.

The recent data from the consumer courts in different States show that there is a direct relationship between literacy and consumer awareness. A person’s choice to approach Consumer Forums for redressal of grievances against marketers depends on levels of consumer awareness and confidence generated by the former. However, things are not happening in India the way it was expected under the C.P. Act. Thus to check the rising malaise of market wrongdoings, deceptive trade practices related to unfair pricing, promotion of harmful products and/or unsafe goods and services, counterfeits etc. the role of regulatory authority with specific powers to check and punish the guilty can go a long way. A public-private participation scheme, as said earlier can check the menace. Of course, the consumer education and awareness is a critical component. According to Consumers International, an organization that links, supports and represents consumer groups around the world, consumers have to be educated to responsibly use their power in the marketplace to “drive out abuses, encourage ethical practices and support sustainable consumption and production”. This will help achieve good governance, fair and effective markets and protection for the environment. Aware, active and concerned consumers are an important part of civil society; it will pave the way for creating ethical marketing of products and consumer-oriented services. Though consumers cannot vote but their decisions about what to buy, when to buy and what not to buy are a way of expressing their views on a range of consumer issues, including global and ethical ones. But with regard to the poverty-ridden illiterate sections of the society living in the peripheral backward land-locked societies and scarcity-ridden economies they can’t possibly know what to do about rampant use of unfair practices in the market. For example, people living in Himalayan mountainous regions of interior Ladakh or North-eastern regions cannot deal with consumer problems by just being bombarded with mere slogan “*Jago Grahak Jago*”. It is in this context that the spread of consumer rights education and awareness movements find their relevance and centrality.
As we know, for billions of people, the profit-driven globalization of business means uprooting their eco-friendly livelihood and sustainable existence, shrinking and threatening their economic power, their ideals, and lifestyle cultures. It is a fact that the market-driven globalization believes in the creation and expansion of wealth by spreading lifestyle-oriented consumerist culture. It may not ultimately help the aam admi who barely affords to keep their souls together living Below Poverty Line (BPL). Thus millions of consumers belonging to different socio-economic strata are facing different types of distress, anxieties and challenges of rampant corruption and market exploitations. Increasingly the society is getting polarized; sharpening the divide between the ‘haves’ and the ‘have-nots’ as free-market embraces and practices deeper ideological principles of profit-driven growth mantra. For millions of ‘have-nots’ this global market-driven growth model without in-built consumer rights protection in this inflationary period is quite distressing as it failed to make their life easy and comfortable as to buy basic necessities of life like roti, kapda aur makan from different Haats and Bazars including the Public Distribution System. The aam BPL consumers had to suffer exploitation, unfair treatment, cheating in weight, unfair price, spurious, unsafe products and counterfeits, etc. in the markets. Surely all these unequal terms are more acute when the regulatory regimes fail to act on the ground aggravating the whole scenario; putting the aam consumers at the mercy of the dubious business and trades. Due to several known and unknown reasons most of these violations either go unchecked and/or wrongdoers unpunished. As a result marginalization of consumers in the market arena is glaringly visible. As said, already doubt has arisen in the minds of aam consumers whether the profit-driven consumption-led stimulus of global market is a pure manna or fiendish attempts to exploit the billions of unsuspecting aam consumers. This is a serious question that needs soul-searching answer since it is paradoxical. The welfare government cannot possibly shy away from the responsibility of protecting the rights of aam consumers. We need to regulate or modulate regulatory systems to protect and serve the billions of consumers as just by giving free-hand to free-market forces can serve only a few at the cost of millions, and ultimately the nation becomes the losers in the long run in many ways. In fact, making stringent laws and enforcing them to the business and traders to respect and protect the consumer rights as a ‘duty’ would go a long way in making the market saner, aam consumers happier and the nation prosper. As said, the consumer vulnerability has increased manifolds as the disgruntled traders and business are increasingly resorting to various ingenious methods to dupe, mislead and/or deceive the consumers in quality, purity, safety/ security of goods and services, weight and measures etc.

**Media, Awareness and Consumer Protection**

Media plays significant role in bringing objective news and views to public
at large. Their expansion, reach and coverage are assets in spreading consumer awareness and protection education; it helps in maintaining the vitality of democracy and its vital organs of governance. Audio-visual and print media, internet and daily Newspapers are exposing regularly the free-market wrongdoings; how the consumers are being exploited and not getting value-for-money as they frequently suffer underweight, under-measurement; sub-standard quality of products and materials; higher pricing than fair price; you pay for original but get the duplicate or fake one; impure or adulterated items in the name of pure; false advertisements—not providing full information, hiding information, poor after-sales service; shop-keepers behave strangely and rudely, after products are sold; consumers are harassed by sellers and service providers for demanding full satisfaction for the value of money for the products and services; etc. The web sites are full of heart-breaking stories of consumers who have been cheated 24X7 in our country by the unscrupulous companies whether these are travel and tourism sector, airlines, coaching and education sector, banking, insurance, hospital, pharmaceutical sector, real estate and housing sectors, telecommunication or mobile telephone companies. These every day kahanis (narratives) are the best index of what is happening in reality all over the country. It is true that health of consumers is synonymous to health of the nation. To build Brand India image and to put the country on the road to progress cannot be left at the mercy of unscrupulous business and traders. The Traders' bodies and associations both national, states and local levels can be roped in by taking into confidence that the consumer right protection is for the benefit of all stakeholders. Learning from international experiences and suitably adopting them can be of some help. Thus no amount of rhetoric and/or lip service can bring any difference or impact in violations of consumer rights in our vast country. The intention in this paper is not to construe that the entire business sector is exploiting the vulnerable consumers. There, in our many exceptions as many established business firms do really care for consumer rights; it has helped them enhance their reputation, goodwill and consumer loyalty since they believe and practice fair and ethical business practices. If this type of policy is adopted by all as mandatory requirement, then the menace of consumer rights violation will be a thing of the past.

We may be aware that the consumer movement in the USA got a boost when the late U.S. President, John F. Kennedy extended wholehearted support and legislative cover to consumers. In his historic declaration in Congress on March 15, 1962 he had given American consumers four basic consumer rights (choice, information, safety and the right to be heard). Now every year 15 March is celebrated as World Consumer Rights Day. In India also the governments both in the Centre and States do celebrate this annual ritual but unfortunately its observance failed to cut much ice in the market. The sub-continent India with vast regional inequality and with diversity of culture and languages requires several activists like Ralph Nadar of US to protect the
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rights of our 1.2 billion consumers. In fact, millions of our consumers both in the urban and rural areas are not very aware of consumer rights and movements. Unfortunately due to the prevailing socio-economic inequality, acute poverty of millions, low level of literacy and ignorance of the people, particularly among the women and other disadvantaged sections of society, the consumer protection per se has no meaning. Their existential situations fail to empower them to assert their rights to protect; this is despite such a progressive and comprehensive benevolent piece of legislation namely the Consumer Protection Act, 1986 covering goods and services from all sectors of economy.

Consumer Disputes Redressal System: Its Challenges

Fortunately, at the behest of UN, the Government of India recognizing the consumer rights protection, took a historic step to enact the Consumer Protection Act, 1986. This Act is undoubtedly a milestone in the history of socio-economic legislation in the country to safeguard the consumer interests. The Act is also considered as one of the most progressive, comprehensive and unique piece of legislation ever enacted by the Indian Parliament exclusively for consumer protection. The Act defines the consumer as one who purchases goods and services for his/her use. The user of such goods and service with the permission of the buyer is also a consumer unless these are purchased for resale purposes. Under this Consumer Protection Act, 1986, a separate Department of Consumer Affairs was also created in the Central and State Governments focusing on ensuring the rights of consumers as enshrined in the Act. In fact, the Consumer Protection Act, 1986 has set in motion a revolution in the field of consumer rights, the parallel of which is not seen anywhere in the world.

The special feature of this Act is to provide speedy and inexpensive redressal to grievance of the consumer and provide relief of a specific nature and award appropriate compensation. As per the Act the government has set up three-tier quasi-judicial redressal machinery popularly known as “Consumer courts” at national, state and district levels. The apex National Consumer Commission functions from Upabhokta Nyay Bhavan, ‘F’ Block, General Pool Office Complex, INA, New Delhi-110023. As of now there are 35 State Commissions and 629 District Consumer Fora in India. As per the Act these quasi-judicial bodies must be consumer-friendly disposing the complaints within 90-150 days without giving the fear of usual civil court suits, the decision prompt, simple and pro-consumer. Thus the Act was passed with high hopes that these quasi-judicial bodies will deliver quick justice to affected consumers whose rights are so rampanty violated in the market but today it is a far cry as Justice D. P. Wadhwa has truly highlighted the ills of these quasi-judicial consumer redressal bodies. He said, “There are many factors for delay. The statistics show the disposal rates are very good but the consumers are not happy. The Consumer Forums are not getting accolades from the
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consumers. Consumer Forums must be regular and punctual. The orders should be short and promptly delivered. Adjournments should not be granted as a matter of course. The Presidents and members of the Consumer Forums have to show compassion towards the consumers. A Consumer Forum should not give impression of being another set of civil court. There is a need to develop separate consumer jurisprudence, different from existing civil jurisprudence. It is possible only when the courts adopt fresh and unconventional approach while interpreting the provisions of law providing consumer justice.”

It is in this context a revolutionary and historic Judgment in the year 1994 pronounced by the Hon’ble Supreme Court of India can be cited. While protecting a ‘helpless consumer’ whose rights under the Act were violated by the service provider should be an eye opener. It says: “The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer who faces powerful business, described as, ‘network of rackets’ or a society in which, ‘producers have secured power’ to ‘rob the rest’ and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting 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”.

It is unfortunate that even after about 25 years of passing of the Consumer Protection Act of 1986, and after more than 16 years of passing of the said Ruling the similar ‘rot’ as highlighted above, is still prevailing in the market arena costing the consumers heavily. It is in this regard that the role of specially institutionalized quasi-judicial machinery is highly important to protect and build consumer confidence since increasingly the unsuspecting consumers are falling victims to wrongdoings of the business and commerce that now operate in an international environment with new varieties of goods and services, and they are also growing fast, getting integrated and powerful. The legal systems have to cope with the impact of 21st century technologies and methods of working which demand better and timely updating of knowledge to meet the growing challenges. It is sine quo non for the core functionaries of these quasi-judicial redressal bodies to develop consumer jurisprudence. Thus pragmatic training modules have to be developed to effectively train the functionaries of these quasi-judicial dispute redressal bodies since at present most of the core functionaries are appointed on retirement from the civil

1Lucknow Development Authority Vs. M.K. Gupta, AIR 1994 SC 787
courts without having clear concept about different provisions of consumer protection laws. That’s why it is found that they invariably habitually fall back upon the civil court formats and procedures while adjudicating consumer complaints as they have had long training and experiences in the civil court procedures and techniques. Thus the inadequate knowledge bank in various provisions of revolutionary Consumer Protection Act, 1986 and its true spirit in regards to majority of the core functionaries who have been appointed to man the quasi-judicial consumer dispute redressal Fora have failed to appreciate and perform to the best satisfaction of the aggrieved consumers and enhancing their confidence. Many a times the aggrieved consumers whose rights have been glaringly violated fail to get proper justice as enshrined in Consumer Protection Act, 1986. Thus the inadequacy and/or asymmetry of knowledge bank in consumer laws and its true purpose by majority of core functionaries who are entrusted to deliver justice as per the benevolent Act is a serious cause of concern; needs appropriate attention and remedial measures as it cannot be shied away. It is in this situation that the aggrieved consumers suffer from ‘double-victimization syndrome’, i.e., once in the hands of market and second in the hands of consumer redressal fora.

Thus what is required is the urgent training and appropriate orientation for the core functionaries to understand and appreciate the purpose of the special Act and its different provisions to deliver justice. It will only then, they can truly protect and uphold the dignity of aggrieved consumers. Rising number of aggrieved consumers are feeling distressed and losing confidence in the consumer dispute redressal machinery as the latter fail to appreciate their problems and force them to accept miscarriage of justice. In fact, Justice M.B. Shah, Former President, NCDRC, rightly advised that the “proceedings in a consumer Forum are not of adversarial nature. For breach of certain obligations, there has to be consumer factor or consumer surplus, as one may like to call, to which a consumer should be entitled”. Thus the profound statement of Justice Shah and the appropriate measures as highlighted above show that the quasi-judicial consumer redressal system has to go a long way in ensuring proper justice to the aggrieved consumers. The other ills that have been found prevailing in quasi-judicial consumer redressal system are that they are not punctual and regular, delivery of justice is unusually delayed, presence of lawyers is scary and they frequently rely on technical points than on the substance of the case, lawyers make the litigation very costly affairs in many ways like seeking adjournments as a matter of course, increasing reliance on lawyers by the core functionaries, etc. As Justice Wadhwa said the justice delivery instead of being inexpensive and speedy the people are getting the impression that these are being another set of civil court. Under this circumstance, in many cases the aggrieved consumers daring to approach consumer courts often decide not to do so as they don’t have time, energy and money to invest in it.
The consumer redressal Fora have to be strengthened by several other timely measures like funding from the Central and State governments, punctuality and regularity of these courts have to be enforced, proper methods have to be identified to reduce the delay in justice delivery, improvement of infrastructural facilities, adjournments cannot be allowed as a matter of course, lawyers presence must be banned and/or discouraged, adoption of complex and long procedures like in civil courts have to be avoided, etc. Law colleges and universities must start core courses on Consumer laws and jurisprudence to produce right manpower to man these special quasi-judicial redressal bodies and/or experienced lawyers well-versed with the Consumer laws and jurisprudence have to be appointed unlike the present system of appointing retired Judges to do justice with aggrieved consumers as well as to justify their position as certainly these quasi-judicial bodies are not a civil court structure. Moreover, the unscrupulous powerful businessmen with moneybag can hire seasoned lawyers with hefty fee to contest against the aggrieved complainant to win the case, make the scenarios worse for the latter who can hardly afford to confront the mighty businessmen. This certainly is another factor that does not encourage aggrieved consumers to approach the quasi-judicial consumer fora even if they wish to; and suffer the market misdemeanor silently.

Many of the above situations also resulted in piling up of cases without disposal in different consumer courts all over the country. Thus appropriate amendments of the Act by appreciating the present challenges of the market and proper understanding of the same can help in rectifying the drawbacks of the system to ensure consumer protection otherwise the noble purpose of the Act will fail to serve the consumers’ interests. The purpose for which these quasi-judicial bodies have been set up under the law cannot be defeated in any manner by anyone. Only then it can enhance consumer confidence by delivering quick justice to the aggrieved consumers as has been laid down in the Act which at present seems to be a rare phenomenon.

The conditions of millions of poor consumers belonging to lower socioeconomic and cultural background are more serious as they are more vulnerable than the affluent and affording sections of society. Most of them cannot usually make informed choices while buying goods and services and/or take decisive actions in protecting their rights as they are either uninformed or illiterate and un-empowered socio-economically to protect them from market injustices by ever-growing dominant dubious market forces. Moreover, the aam aadmi can be easily misled by the unscrupulous business who are often supported and protected by the 'higher-ups' in our governance-deficit system where enforcement and regulatory authorities are also found to be deficient in enforcing existing laws seriously that work on the ground, and not paper. As said, even the quasi-judicial Consumer Redressal Fora throughout the country seem to be failing to alter this distressful scenario. Millions of
poor cannot imagine treading the path of consumer courts due to several factors like illiteracy, unaware of laws, cannot afford to invest time, energy and money etc. in pursuing the long battle against the powerful dubious business and trades. The research studies and surveys show that consumers of urban and rural areas are not much aware of consumer rights and awareness movements. As said, it is also important that the Vyapaaris too be made aware of consumers’ rights to play a key role in balancing the rights and duties. As we know that the success of “consumerism” is a strong function of consumer awareness and the assistance the movement gets from the government and other stakeholders as well as the business.

Comprehensive Consumer Protection Mechanisms: Go a Long Way

Last but not the least, the following innovative ideas and pragmatic suggestions may effectively protect the consumer rights and interests keeping in view the challenges at present confronted by aam consumers. It is definitely the strong will of the government and the interests that will be critical. Only showing concern without responsibility to intervene in the evolving scenarios as highlighted above cannot solve the present problems to the satisfaction of all as enshrined in the Consumer Protection Act, 1986. The innovative suggestive approach as follows will go a long way in tackling the rising menace of consumer rights violations:

1. All producers and dealers of goods and services must be forced to follow the fair trade and ethical practices in all business activities as a part of duty to the people and the nation as well.
2. The national business associations like CII, FICCI, ASSOCHAM, etc. as well as other small business association all over the country, producing goods and services, must take pro-active roles in adopting this ideal by members of these bodies without fail.
3. Business of all hues, the producers and dealers of goods and services must have live ‘Consumer Complaint Redressal Cell’ to deal with consumer complaints with a specified time-schedule.
4. The Corporate Social Responsibility (CSR) cannot be narrowly defined but broadened to cover the consumer protection as primary objective.
5. The PSUs, the Ministries both in the Centre and States producing and marketing goods and services are also responsible for protection of consumers, the way the private sector producers and marketers.

In regards to redressal of consumer complaints, we may think of following innovative scheme of things at different levels. There will be a need of enactment of laws including amendments of CP Act. These are as follows:

1. Once the complainants fail to find justified and reasonable solution
to their problem, they can immediately contact any of the well-designated Voluntary Consumer Organizations (VCOs) in their area to mediate. The registered and genuine interested VCOs having trained Mediators can be authorized by the National Consumer Commission on application to perform these special tasks in the Mediation and Reconciliation Centre. That means they will have legal sanction and authority to mediate with unique case number allotted by the NCDRC based on the area of jurisdiction. Once the mediation fails the case automatically moves to the quasi-judicial redressal fora for final adjudication as per Consumer Protection Act, 1986. The deliberations and statements reported in the mediation centre as outcome become the legal points for final adjudication by the quasi-judicial redressal fora. This will certainly reduce the costs of the consumer fora in many ways like maintaining time schedule, financial, physical, infrastructural, manpower, etc. The Mediation activity can also be authorised to any convenient time till the evening based on the demand of the situation. However, all the modalities can be formulated later. These have to function under the NCDRC jurisdiction. Initially, we may start this programme on pilot basis.

2. The government may either dismantle the existing Mediation Centre run by government funding or they may be re-designed and rejuvenated as above to serve the interests of aggrieved consumers.

3. It may require suitable amendments to the existing Consumer Protection Act, 1986 to be more pro-active to ensure and serve the interests of the consumers.

4. Regular movement of Mobile Consumer Protection Van stationed at specific locations in the market places with a Magistrate to mediate and solve the consumer complaints then and there can usher a new era of consumer protection. This may be operated under the PPP scheme with local concerned sections of people and/or organizations like RWAs, Schools, Colleges, Universities, NGOs, VCOs, etc.

5. Any other associations, organizations, law colleges and universities including many others who wish to impart consumer awareness and education, advocacy etc. can be encouraged with seed fund provided by the government. Part of the revenues collected from the buyers as sales tax and service tax may be employed to finance these protection programmes. Special care has to be taken to outreach the poorer sections of society.

6. There should be an Apex Body called National Consumer Protection Authority to take care of all the activities highlighted
above. They will oversee the functioning of these formal, informal and non-formal actions of different bodies and sub-bodies as Lokpal with a strong committee to guide and recommend punishment for any misdemeanour. It should be made as another arm of bureaucracy but under an experienced and active legal or civil activist with unblemished integrity to Chair the committee. Other modalities may be formulated suitably later.

The above three-tier structure along with other suggestions highlighted in this paper, if accepted and made operational can certainly reduce, if not abolish the violations of consumer rights by the business of all hues providing not only relief but also making a difference to the existing scenario of wrongdoings. The institutionalization of three-tier system, as suggested, starting with court directed Mediation and Reconciliation will help screening and filtering the complaints for final disposal for the quasi-judicial system will help the latter to timely adjudicate the matter. Thus synergizing all the pro-consumer action programmes and strategies together can deliver the goods. Moreover, the legislature, the executive and the judiciary must come together and pro-actively work in tandem curbing the rising menace of market wrongdoings and injustices.

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ROLE OF REGULATORY AUTHORITIES IN CONSUMER PROTECTION IN INDIA

L. MANSINGH

Introduction

It is now universally accepted that a market based economy needs to be effectively regulated in order to ensure that there is competition in the market place and that the market forces are not manipulated to benefit only a few to the detriment of the general public. The concept of independent regulatory agencies was pioneered in the U.S with large number of Federal agencies being set up with specific mandate by Acts of Congress. This development took place in view of the increasing complexities of administration in modern times with advancement of technologies and rapidly expanding economies with increasing inter- dependence between the Nations. The developments in the U.S. in this regard spread to other developed countries as the existing system of administration of Acts and Rules through Ministries / Line Departments proved to be inadequate to the tasks on hand and the expectations of the general public. Moreover, the vagaries of political interference and discretionary decision making were no longer acceptable with increasing focus on good governance and accountability.

In India, the traditional structure of governance at the Central and the State levels through Ministries and Line Departments still continues to a large extent. However, with the initiation of the process of economic liberalization in July, 1991, one of the basic premises of which was the withdrawal of the Government from many areas of economic activities and opening of these for private sector participation, many sectors which had been totally controlled or dominated by the public sector, were opened up to FDI and participation of the corporate sector. In view of this, it became necessary for the
Government to ensure a level playing field in these sectors in order to attract private sector investment, particularly FDI. The traditional structure could not have created an accepted level of investor confidence as the Ministries function with a dual role as formulators and implementers of policies and as the owner of the Public Sector Undertakings which compete in the same sectors with the private sector. In view of this, independent statutory regulators were set up in sectors such as Financial Services, Telecom, Power, Petroleum and Natural Gas and Civil Aviation.

Apart from providing level playing field and modern regulatory framework for major economic and infrastructure sectors which have been opened up for private sector participation, there is also increasing concern about effective regulation of many activities which have a significant bearing on the health and safety of the citizens. It is now generally accepted that in India, while there are a plethora of Acts, rules and regulations both at the Central as well as the State levels, many of these are obsolete, outdated and irrelevant to the present requirements. It is also well-known that the major problem in this regard is not the lack of regulations but too much of it which are in any case not implemented effectively or on a totally discretionary basis, if applied at all. Multifarious agencies generally work at cross purposes without any coordination which compounds the situation and exposes the citizens to risks to their health, well-being and safety which are not acceptable in any civil society. This situation has also given rise to the need for the setting up of independent regulatory bodies in specific sectors. A good example of this is Food Safety and Standards Authority of India to ensure uniform standards of food safety and effective regulation in order to ensure a minimum level of food safety standards in the food processing industry as well as in food items which are commercially sold to consumers. This statutory regulatory body became necessary as nine Ministries and at least as many statutory enactments with different enforcing agencies working generally independent of each other were involved in ensuring food safety which virtually exposed the general population to a level of health hazards which will be unacceptable in any civilized country.

While good governance and non-discretionary transparent and effective regulation are factors which contribute directly to a high level of consumer welfare, all regulatory bodies set up in recent times have been specifically entrusted with the responsibility of ensuring protection of consumer interests. This has come about partly because of the adoption of Guidelines for Consumer Protection by the U.N General Assembly which enjoined the Member Countries to adopt specific steps to ensure protection of consumer rights which were enumerated and subsequently enhanced. This, along with increasing consumer awareness in the country, led to India adopting a pioneering step of setting up a three tier dedicated consumer fora at District, State and National levels to redress consumer grievances under the Consumer Protection Act, 1986. It is

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also being appreciated that while setting up of a dedicated system of consumer fora was a major initiative to protect consumer’s interests, it is only a reactive and not pro-active step for raising the level of consumer protection in the country. In view of this, the basic objectives of independent regulatory bodies in India are not only to provide a level playing field to encourage and facilitate flow of massive investments for the development of infrastructure to ensure rapid but orderly growth of the sector but also to provide effective consumer protection.

As far as the objective of raising the level of consumer protection through the functioning of regulatory bodies is concerned, all the statutory enactments for the setting up of regulatory bodies as also defining their role and responsibilities, have more or less similar provisions. I shall focus on the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006 in this regard. The Preamble to the said Act reads as follows :-

“An Act to provide for the establishment of Petroleum and Natural Gas Regulatory Board to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto.”

It may be noted that the Preamble to the said Act lays down as one of the objectives of the constitution of PNGRB as to protect the interest of both consumers and entities operating in this sector. This is significant as it is now universally accepted that the economic health of the regulated sector and the entities operating in it as well as the protection of consumers’ interests are but two sides of the same coin and cannot be separated. It is a clear indication of the deliberate departure from the thinking in the pre-reforms era dominated by the concept of a socialist pattern of the State as per which profit was viewed with suspicion. In the above Preamble, it is also worth noting the promotion of competitive markets is also one of the objectives for which PNGRB has been constituted as it is generally recognized that a competitive well regulated market is the best way to ensure a high level of protection of consumers’ interests.

There are a number of substantive provisions in the said Act which have a direct bearing on the protection of consumer’s interests and his welfare. For example, Section 22 providing for the powers of the Board to fix transmission tariff for natural gas and petroleum products through common or contract carrier pipelines, lists out the factors which should guide the Board in exercising this power. In particular, these include the factors which encourage competition, efficiency, economic use of resources, good
performance and optimum investments all of which would certainly be in the interest of the consumers as it would minimize the cost of transmission. In addition, the provision specifically provides that the safeguard of the consumer interest and at the same time recovery of cost of transportation in a reasonable manner would be another factor to guide the Board in exercise of this power. In addition, the principles rewarding efficiency and performance have also been included in the factors specified in this section. There are number of similar substantive provisions in the Act with regard to exercise of powers vested in the Board which emphasise efficiency, optimal investment and competition all of which are in the interest of the consumers.

Apart from the implied emphasis on consumer’s interests in the substantive provisions, the said Act also mandates a number of specific responsibilities of the Board in order to protect the interest of the consumers. These are bunched under sub-section (f) of Section 11 which lists out the functions of the Board. These provisions mandate the Board to ensure adequate availability of petroleum products and natural gas; display of information about the maximum retail prices fixed by the entity for consumers at retail outlets; monitor prices and take corrective measures to prevent restrictive trade practices by the entities; securing equitable distribution of petroleum and petroleum products; provide by regulations, and enforce, retail service obligations for retail outlets and marketing service obligations for entities as well as monitor transportation rates; and to take corrective action to prevent restrictive trade practices by the entities. Each of these responsibilities cast on the Regulator has a direct bearing on the protection of consumer interest in this sector. However, these provisions are in respect of notified petroleum, petroleum products and natural gas. While the Board had recommended to the Government the notification of all petroleum products and natural gas, Government has chosen not to notify a single product thereby rendering the Board powerless to exercise any of these functions provided in the Act by the Parliament for the protection of consumer interests. The Government merely informed the Board that whether to notify any product was a policy decision and it was for the Government to decide when such a decision should be taken.

It is relevant to point out in this regard that there is a separate provision in Section 11(a) which mandates that the Board shall protect the interest of consumers by fostering fair trade and competition amongst the entities. The scope of this provision is very wide and not restricted to notified products as in the case of provision of Section 11(f) mentioned above. The section casts an enormous responsibility on the Board to protect consumer interest in this sector by intervening effectively in ensuring fair trade and competition leading to protection of consumer interests. In effect, the Board can and must intervene whenever the activities of any of the entities in this sector come to its notice which do not confirm to generally accepted tenets of fair trade and / or are anti-competitive. It may be mentioned here that there is separate Competition
Act providing for the constitution of a Competition Commission with the broad mandate of promoting and improving competitiveness in the entire Indian economy.

There is an obvious overlap between the functions and the responsibilities of Competition Commission and of PNGRB as also the other sectoral regulators. The Competition Act recognizes this and provides for references by a sectoral regulator to the Competition Commission for its opinion and vice versa on any issue involving restrictions on competition. There is some apprehension about this overlapping of functions leading to confusion or even conflicting decisions. However, this need not be the case as the Competition Commission as an umbrella organization is expected to lay down through its decisions and guidelines the parameters for judging the competitiveness or otherwise of any act of omissions or commissions which the sectoral regulators should follow. On the other hand, the sectoral regulators are expected to have detailed domain knowledge of their sector which would definitely be relevant in deciding issues of fair trade and competition in that sector. In any case, all such issues would certainly get resolved through establishment of case laws along with the maturity of the economy in general and the regulated sectors in particular.

In addition to the above provision, PNGRB is also entrusted under Section 12 of the said act with quasi-judicial powers to act on any complaint by conducting any enquiry and investigation regarding contravention of retail service obligations, marketing service obligation, display of retail price and retail outlets, terms and conditions of operation of common carrier or contract carrier pipelines and third party access to such pipelines and to city or local natural gas distribution networks and any other provision of the Act, the rules or regulations or orders made thereunder. In deciding such complaints, the Board is empowered to pass such orders and issue such directions as it deems fit.

While the scope of power in resolving disputes and intervening on complaints is wide, it is circumscribed under the provision of Section 25(1) which stipulates that no individual complaint can be taken up by the Board which is maintainable before a consumer disputes redressal forum under the Consumer Protection Act, 1986. Considering the wide scope of the consumer fora under the Consumer Protection Act, this essentially would limit the Board’s powers to intervene on the basis of a complaint to only a few cases of commercial nature which fall outside the scope of the Consumer Protection Act. In view of the fact that the three-tier consumer fora is already over burdened with large number of complaints resulting in considerable delay in the redressal of consumers’ grievances, the above restriction on regulatory bodies cannot be considered to be in the interest of protection of consumer’s interests. After all, the regulator lays down the regulatory framework for a particular sector to achieve the objectives for which it was constituted under
an Act. In view of this, regulatory bodies would be in an eminently suitable position to ensure high degree of satisfaction of the interest of consumers, which is one of its major objectives in any case. Secondly, it is universally accepted that one of the major consumer rights is the right to choose. In view of this, it would be in fitness of things that the consumer should have the option of either approaching a consumer forum or a regulatory body for the redressal of his grievances. This would, in any case, ensure that many of the consumers would approach the body which is more responsive to their needs and effective in redressing their grievances in time. The counter argument of forum shopping by consumers is not such a factor as to justify denial to such a choice to the consumer. It is relevant to mention here that prior to the notification of the Competition Act, the MRTP Commission under the MRTP Act was also quite popular with consumers many of whom preferred to file complaints before it rather than go to a consumer forum. That forum is no longer available with the repeal of the MRTP Act.

In addition to the above statutory provisions for the protection of consumer interests by regulatory bodies, the regulator also has the responsibility of ensuring a high degree of consumer protection in its sector through its regulations. PNGRB has taken the initiative in finalizing and notifying the PNGRB (Code of Practice for Quality of Service for City or Local Natural Gas Distribution Networks) Regulations, 2010. These regulations apply to all entities authorized for construction and operation of city or local area gas distribution networks by the Board. These regulations lay down the code of practice for promoting reliable service to consumers and the public to ensure a minimum level of service by any authorized entity. At the same time, the regulations have tried to maintain a balance, in conformity with the Preamble to the Act quoted earlier, by laying down the obligation of consumers. The regulations specifies detailed norms for new PNG connections, metering, billing, dis-connection, quality of service pertaining to CNG stations and the obligations of the authorized entities towards consumers in case of disruption of service. These regulations also require the authorized entities to provide internal systems for redressal of consumer grievances with provision for regular monitoring of settlement of complaints by the top management. In addition, these regulations provide for appointment of ombudsman by each authorized entity with the approval of the Board for any consumer who is not satisfied with the response of the entity. While the decision of the ombudsman is binding on the entity, the consumer is free to seek alternative remedies from the consumer forum or from the regulator. It is hoped that through this elaborate and detailed provisions for ensuring minimum quality of service to consumers of natural gas through PNG by authorized entities, most of the consumer complaints would be settled by the entity itself.

One of the main reasons for lack of effective redressal of consumer grievances in this country is the low level of consumer awareness. Moreover,
consumer movement in this country is at a nascent stage. As a result, an average consumer would not be in a position to fight for his rights or get his grievances settled satisfactorily and in time inspite of the statutory provisions and elaborate regulations mentioned above. Our experience shows that consumer fora have not been very effective in raising the level of consumer satisfaction in this country. In view of this, it is imperative that the regulators take initiative in promoting Voluntary Consumer Organizations (VCOs) in the sectors for which they are responsible so that such bodies take up consumer issues with the regulator and other concerned authorities. Some initiatives in this regard have been taken by some regulatory bodies. PNGRB has taken the step of setting up a Consumer Welfare Fund from out of undue gains by authorized entities by way of excess charges which cannot be refunded to the concerned consumers. The fund is intended to help in capacity building of VCOs, promote consumer causes and undertake schemes leading to consumer welfare in this sector. It is hoped that by activising this Fund, the level of consumer awareness as well as protection of consumer interests in the petroleum and natural gas sector would be significantly enhanced.

Conclusion

In conclusion, it may be stated that mere statutory provisions and elaborate rules and regulations do not ensure protection of consumer interest. This would depend to a large extent on the sensitivity and responsiveness of the regulator regarding consumer causes. The effectiveness of the regulatory body in enforcing regulation on a non-discriminatory basis would go a long way in creating and enhancing consumer awareness in the country. This would ensure that the entities become fully responsive to the needs of the consumers leading to quality of service and minimization of consumer grievances.
INTRODUCTION

Protection of customers is an issue of paramount importance in the modern economic world order. With globalisation having lent an irreversible change in the manner in which trade and businesses are being carried out, the face of customer protection too has undergone a substantial change. The present day economies that are globally-oriented are inundated by customers’ demand ranging from essential to luxury and from latent to potential needs created artificially by the producers / suppliers of services. Fast paced product innovations, international character of trade, global customer base, etc. have created virtually inseparable inter-dependence between customers and product/service providers. Such dependence has always been characterised not only by innovations in products and services which improve the prospects of customers and suppliers, but also by growing conflict between their divergent expectations. Interestingly, customers have borne the brunt of both intended and unintended actions of suppliers. Despite the customer being portrayed as the cornerstone of a successful economy, oft-repeated incidents of exploitation of the customers remain a challenge for the governments and regulators alike.

The enactment of the Consumer Protection Act in 1986 was a landmark piece of legislation in independent India. Apart from ushering in an era of strong, enlightened and conscious customers, it also aimed at establishing a culture of responsible financial operations, particularly, lending and borrowing. It was a big step forward towards fulfillment of the citizens’ rights as
customers. In terms of enjoying power to influence financial decisions of ‘buying’ and ‘selling’ of financial products and services, the growth of financial system has been skewed in favour of the service providers who have grown to hold much superior position than the customers.

Due to this fast growing gap between financial service providers and customers, primarily in terms of availability and ability to make informed decisions and influencing important policy / regulatory decisions, the focus of various financial sector regulators on customer protection has intensified over the years - ranging from protecting and educating individual customers to playing critically important role in ensuring stability of the financial system itself, which may suffer serious setbacks should a rapid mass failure of customer confidence were to happen. The maintenance of financial stability has, therefore, become one of the important pre-requisites for ensuring customer protection. It entails that for banks, customer-centricity should not be only a one-time exercise of acquisition of customers but it must be at the root of all their actions; be it business strategy, market competition or collaboration. A well protected, educated and enlightened class of customers of financial services is essential for financial stability.

Role of Regulatory Authorities in Customer Protection

The ‘Role of Regulatory Authorities in Customer Protection in the Financial Sector’ assumes greater significance in times of market and competition driven pricing of financial products and services. Banking, Securities and Insurance cover a major portion of the formal financial services in the country. Banking services have the lion’s share among the three and account for about 70 percent of the financial system assets. Therefore, the topic on role of regulators in customer protection in financial services which should ideally encompass discussion on all the three sectors would tend to gravitate towards banking services only for the sake of conceptual clarity. This will help to flag the generic issues involved in the protection of customers of financial services. The regulator’s role is all the more important in an emerging economy like ours, with its varied needs and priorities ranging from sustainable high growth rate to stable financial system and at the same time accelerating the pace of financial inclusion of masses hitherto excluded from access to the mainstream financial services.

What makes Customer Protection so Important?

Customer protection seeks to provide level playing field between suppliers and consumers of financial services by aiming at addressing the imbalance and inequality between the two parties to a contract. The imbalance essentially stems from information asymmetries, limited product choices, largely monopolistic nature of service providers due to stiff entry barriers viz. banking systems, etc. Such imbalances are particularly pronounced in the financial
services where products tend to be complex and lack of timely information may prove costly for retail customers. The problem of customer protection gets further compounded in the case of products and services which are bundled, have very limited exit options and terms and conditions are not fully explained to consumers. More importantly, the millions of new customers entering the financial sector due to the ambitious official push under ‘financial inclusion plan’ add further to the above complexities. This new class of consumers has to be provided access to financial services along with financial education and awareness to help them protect themselves against any excesses. To this extent, regulatory intervention becomes necessary even in a free market economy so that products are not mis-sold to the customers.

The role of regulators in customer protection may be dwelt at length in three parts viz. (a) an ideal customer protection regime, (b) Global Financial Crisis and Customer Protection, and (c) Regulator’s role in customer protection in India.

Ideal Regulatory Customer Protection Regime

It is not difficult to envision the role of regulators who have to be ahead of the times and anticipate the problems to avoid any crisis situations. This requires multi-pronged initiatives on their part to ensure a conducive environment for customer protection. Such initiatives may be based on three mutually reinforcing pillars viz., Statutory and Prudential Regulation which protects customers, Self-Regulation by the Industry by way of Standards Codes & Fair Practices and Enhancing customer’s financial capability i.e. financial decision making ability and his financial well-being. An efficient customer protection policy puts clients at the centre of the financial services. However, a balanced customer protection policy requires commitments from financial service providers as well as from customers. It is important to highlight that customers have rights but responsibilities also. While financial service providers have to ask the relevant questions to their prospective customers and ensure that the proposed products and services are the most appropriate according to their needs and means, it is the customers’ responsibility also to provide relevant, complete and accurate information on their financial situation taking their personal as well as financial circumstances into account when making their decisions. The responsibility of the financial service provider may, therefore, be read and assessed in the light of the customer’s responsibilities.

First Pillar – Prudential Regulation

Unchecked market forces and lax policies combined with relaxed regulatory oversight can result in customers being exploited while efforts to open financial markets to serve the bottom of the pyramid are made through financial inclusion measures. While financial inclusion is a necessary pre-
condition for financial stability and inclusive economic development, the
negativities that may affect a poor ill-informed new customer can be enormous
- from high level of indebtedness due to excessively high prices and predatory
lending, to complete loss of savings and assets created out of loans and those
collaterally charged to the banks. While the regulation on customer protection
may have endless points to address, broadly speaking these may be summarised
into four heads viz. transparency, fair treatment, effective recourse to grievance
redressal and non-exploitative pricing. Further, unregulated entities must be
brought to the book by the law enforcing agencies by frequent and careful
monitoring. The issue of product regulation versus entity regulation and the
resulting overlap needs to be addressed by all concerned.

Promoting competition is also an important dimension of regulation on
customer protection. Meaningful competition has positive impact on prices,
quality of service and choice of products. However, end customers will fully
benefit from competition only when financial players operate in an open and
fair competitive environment. Besides, while competition is also a great driver
for market innovation and improvement of service, it should not come at a
disproportionate or undue cost.

**Transparency**

Information asymmetry between financial service providers and
customers, especially in emerging economies, works to the advantage of the
former. Therefore, transparency rules or disclosure regulations should, at the
minimum, seek to create standardised and comparable information about pricing,
suitability of the product to different population groups, terms and conditions,
and risks to customers and supervisory authorities. Full disclosure of quality
information should be combined with mechanisms to ensure that clients
properly understand the information provided and their impact on their personal
financial decisions. This requires that information is provided not only in an
easily understandable language but also according to the different demographic
categories of clients targeted. Such a requirement should be a pre-requisite
for launch of products / services under financial inclusion campaigns. Further,
informing customers should mean increasing the quality and not the quantity
of information provided and should cater to what the customers actually read
and need in order to understand the given product.

Financial advice is another important factor in the relationship between
customers and financial service providers but it should not be construed as
information. While financial institutions should neutrally, fully and appropriately
inform customers, the final decision to opt for a specific product should be
made by the customer based on his or her own needs and circumstances.
Providing professional advice is a separate service which the customer should
decide whether or not to avail of and pay for. An obligation to advice, however,
should not be imposed on service providers.
Fair Treatment / Business Conduct

In addition to transparency, the inexperienced and vulnerable customers need fair market practices and regulations relating to business conduct. The regulation in this area should seek to prevent discrimination between customers and any use of entry barriers. Fair treatment regulations may include, for example, rules on misleading advertisement, business and staff ethics, and the avoidance of harmful products and practices. Use of client data and their confidentiality are important aspect of business conduct including as to how these should be shared with credit bureaus.

Effective Recourse to Grievance Redressal

Mere existence of regulation may not be adequate as the players may resort to circumvent the existing regulations or innovate using regulatory gaps, or simply interpret the rules to their benefit. Therefore, the presence of regulations that provide effective recourse alternatives for grievance redressal would help build confidence and trust among the customers. In particular, existence of mechanisms to report complaints, errors and abuses help to reassure customers when problems occur. Such regulations should be readily accessible and easily understood by inexperienced and vulnerable customers. Redressal or complaint handling mechanisms are required also in order to understand customer issues and complaints, to analyze trends in market practices and respond with appropriate enforcement if needed.

Non-exploitative Pricing

The financial entities must not use the vulnerable sections to cross-subsidize the clientele with power to bargain and command a price of their choice. The reasonableness of service charges / interest rates must be ensured by way of commitment to the cause of financial inclusion. Any exploitative pricing may expose the weaker sections of the society to the mercy of the unorganized and unregulated entities like the money-lenders. Further, the service charges / penalties must not be disproportionate to the level of default. The bundling of products with a view to generate more non-interest income by banks would fall in the category of exploitative pricing.

With arrangements to end exploitative pricing, there is also a need to put in place regulatory arrangements to promote transparent and responsible pricing. Transparent pricing means terms and conditions as well as pricing are disclosed adequately in easily understandable terms. Closely associated with transparent pricing is the issue of transaction costs which may remain high due to lack of transparency, low level of competition and initial perception of being meant for niche segment only. Interestingly, firms also tend to benefit from the high transaction costs if the product is unique and creates a demand for itself. However, more often than not, the transaction costs are deliberately kept high rather than due to an absolute necessity to create sufficient operative
margins. Firms do so in a variety of ways such as providing contract terms after the contract has been agreed to, bundling them with other costs, omitting important terms from the written contract but introducing them later on some other pretexts. Firms also benefit by taking advantage of predictable customer behaviours such as fatigue from information overload, ignoring dull but important information, etc. In such a scenario, there is an important role that regulators may be required to play. Customer protection regulations should aim at removing all the obstacles that may impede the decline in transaction costs and should curb any tendency of profiteering in the name of service uniqueness or innovativeness.

**Second Pillar - Industry Self-Regulation**

Self-regulation is about developing and implementing such standards by the industry itself that incorporate and encourage sound and ethical practices in customer relationships, business practices and social obligations arising out of the mandate of doing business. In the case of financial services industry, self-regulation is most effective when the industry understands its role in the economy and ensures that in the long term, the interests of customers are aligned with the commercial goals of the firms.

Customer-oriented measures self-adopted by the financial service providers actually create an excellent business opportunity for the firms. Other things remaining non-differentiated, financial service providers may have only one way to turn to, i.e. to offer unique customer experience. It is akin to what marketing management propounds – to constantly create customer needs and keep on working for its fulfillment.

**Third Pillar - Financial Capability**

Financial capability may be termed as a combination of knowledge, understanding, skills and, more importantly, such behaviour which customers need to demonstrate in order to make sound personal financial decisions in accordance with their current and prospective financial standing. Financial literacy and education programmes must aim at the customers’ understanding of financial products / services and concepts and enhancing their ability and confidence to appreciate risk / return profile of the given products / situation. The objective is to empower customers to make informed choices, to know where to go for help and to take other effective actions to improve their financial well-being. Although transparency and disclosure norms may minimize the chances of customers being misled, basic financial education and relative information are necessary to help customers make sound and informed financial decisions by themselves. Financial literacy can be of immense help in improving the efficiency and quality of financial services, in maintaining market confidence and, thereby, underpinning market stability. It may be understood that empowered customers also reinforce competitive and regulatory pressure on financial service providers.
There should be concerted efforts to include non-informed and non-empowered customers in the financial mainstream with the help of technology. It may, however, be ensured that the technological advantages should be made available to these customers in a manner similar to the informed customers and to achieve this, adequate technological simplification and robustness should be planned and developed. Simultaneously, target customers must be educated to use it efficiently. In case of doubt or debate regarding misuse or failure of technology in certain transactions, customer protection regime should ensure that instead of the bank putting the onus on the customer to prove his non-involvement, the onus should be on the bank to prove non-failure of the technology or failure at customer level. Further, negligence, if any, on the part of the customer should not deprive him of his rights.

Global Financial Crisis and Customer Protection

It is widely believed that the complex financial instruments that led to the financial crisis essentially had their basis in the boom period home loans; the credit quality of which was poorly assessed. Apart from the credit quality issues which went against the interest of the lenders, the interest of the borrowers were also severely compromised as they were lured into the complex yet alluring deals (initial period teaser rates, principle/interest only loans, etc.) without being assessed for their repaying capacity based on their prospective income and net worth. The resultant risks upon the borrowers were enormous as their debt position became too leveraged and much beyond their repaying capacity. Finally, costs of such irresponsible lending and borrowing were borne by tens of millions tax payers in the form of bailout of beleaguered institutions.

Thus, apart from being unsound in their operations from financial perspective, financial entities simultaneously also acted against the very ideals of customer protection and customer welfare. As the financial giants failed or reached irretrievable points of financial bankruptcy and had to be bailed out with tax payers’ money, the developed economies woke up to the fact as to how deeply vulnerable the depositors and investors had become during the period of ‘Great Moderation’ due to absence of financial stability arrangements that cared for customer protection.

Among the factors leading up to financial instability, customers’ loss of confidence in the financial system is the most disastrous. In the recent global financial crisis, the emerging markets such as India were largely affected by propagation of crisis from overseas through ‘confidence channel’ resulting in the episodes of acute liquidity and credit shortages for some time. A regime of enhanced customer protection, therefore, entails better informed customers, which in turn helps foster financial stability by protecting customers from financial excesses. This increases the transparency of credit risks assumed by financial service provider firms. The regime, by addressing the imbalance
of power, information and resources between service providers and customers, prevents market failure. It also promotes market discipline which is an important financial stability component.

The USA, which was affected the most by the crisis, had in the aftermath of the crisis initiated exemplary policy and other structural reforms to guard against financial instability (Dodd–Frank Wall Street Reform and Customer Protection Act). Among the measures initiated, the customer protection aspect had received prime attention resulting in enactment of Customer Protection Act and creation of Customer Financial Protection Bureau (CFPB) to assure that markets for financial products and services worked in a fair, transparent, and competitive manner and were subject to meaningful and consistent oversight. In India, setting up of Financial Stability and Development Council has also been with a similar view to strengthen and institutionalize the mechanism for maintaining Financial Stability by way of macro-prudential supervision together with focus on developmental aspects of customer protection, viz. financial literacy and financial inclusion.

**Customer Protection Arrangements in India**

In India, the concept of customer protection has existed since ancient times. *Manu Smriti*, while describing social, political and economic conditions of ancient society, also dealt with ethical business practices and prescribed a code of conduct for traders and businessmen. Chanakya’s *Arthashastra* has dealt with the ideals of customer protection in a much more descriptive manner. In the medieval times too, customer protection continued to attract attention of the rulers. In the modern times, the British rule consolidated these in a far more structured manner, drawing both from Indian traditions and the laws of their own land. Some of the laws passed during the British regime concerning customer interest were Indian Contract Act of 1872, Sale of Goods Act of 1930, Drugs and Cosmetics Act of 1940, Usurious Loans Act of 1918, Agricultural Produce (Grading and Marking) Act of 1937 etc.

Sale of Goods Act of 1930 was the exclusive source of customer protection until Consumer Protection Act was enacted in 1986 thus becoming a specific legislation to protect customers and to provide ‘cheap, simple and quick’ justice. Before this enactment, except for the Monopolies and Restrictive Trade Practices (MRTP) Act of 1969, all other arrangements were mainly punitive and preventive in nature and customers could not seek remedy or redressal against an offending trader or manufacturer or careless service provider. With enactment of Competition Law in 2002 (MRTP Act got repealed), customer protection in India has gained further ground.

**Consumer Protection Act and Banking Services**

The applicability of the Consumer Protection Act undoubtedly extends to banking services also. An inclusive definition of services indicates the intent
of the legislature to consider banking service as an important service among the services listed in the Act. As per Section 2(1)(c) of the Act, inter-alia, unfair trade practices, deficiency in services as well as over-charging can form the subject matter of the complaint. Hence, a harmonious interpretation of Section 2(1) (c),(d) and (o) of the Act reveals that a customer of a bank who has a bank account with the bank or a person who purchases a bank draft, or hires locker facility, or obtains bank guarantee from a bank are all “customers” and can prefer complaints under the Act for “deficiency in service” on the part of the bank, or for “restrictive trade practice”, or “unfair trade practice” adopted by the bank.

Creation of Institutional Machinery to Strengthen Customer Protection

Dedicated Banking Customer Service

Although the nationalisation of 20 banks (14 in 1969 and 6 in 1980) had led to massive expansion in the bank branches and availability of banking services to millions of new customers, there did not exist any structured and well defined mechanism to promote customer protection and welfare. The welfare of the customers of the bank was not considered to be a main stream issue for immediate attention. Although the Banking Regulation Act, 1949 provided for the protection of the interests of the depositors from the perspective of institution specific financial soundness, yet there was no specific legislation towards customers and customer related services, particularly customers’ grievance redressal machinery.

Elaborate institutional machinery was set up to strengthen customer protection in the financial sector to ensure fair treatment of customers and for disclosure and transparency in dealings by the financial service providers. The Reserve Bank of India has issued detailed guidelines to all the banking entities regulated and supervised by it, regarding pricing of loans, transparency in pricing of loans, collateral security, rating of borrowers and fair, transparent and non-discriminatory treatment of all borrowers. The policy objectives focus on safety of depositors’ funds and stability of the banking system, which in turn are at the root of financial customer protection.

The Banking Ombudsman Scheme was operationalised in 1995 to establish a system of expeditious and inexpensive resolution of customer complaints on issues concerning deficiency in banking services. This scheme is primarily aimed at helping the common person / small borrowers / retail customers of banks. The Banking Ombudsman is to intervene for the ordinary citizen in his dealings with the complex machinery of the banking establishment. Any person whose grievance is not resolved to his satisfaction by the bank within a period of one month can approach the Banking Ombudsman if the complaint pertains to any of the matters specified in the Scheme. Currently, there are 15 Ombudsmen functioning all over the country. The Offices of the Banking
Ombudsmen have been rendering excellent service over the years in redressing customer grievances in an impartial and efficient manner. During the year 2010-11, the Banking Ombudsmen received about 72,000 complaints and disposed majority of the complaints during the year. Apart from this, relevant guidelines of the Reserve Bank invariably centre on ensuring fair, transparent and equitable treatment being meted out to the bank customers.

Establishment of the Banking Codes and Standards Board of India (BCSBI)

Recognizing an institutional gap in measuring the performance of the banks against codes and standards based on established best practices, Reserve Bank of India took the initiative in setting up the Banking Codes and Standards Board of India (BCSBI). It is an autonomous and independent body, adopting the stance of a self-regulatory organisation in the larger interest of improving the quality of customer service by the Indian banking system. Banks register themselves with the Board as its members and provide services as per the agreed standards and codes. The Board, in turn, monitors and assesses the compliance. This arrangement enables the Reserve Bank of India to derive greater supervisory comfort and so do the customers of the member banks.

Creation of a new Department in the RBI for Customer Service

The Reserve Bank of India constituted a new department called Customer Service Department (CSD) on July 1, 2006 with the following functions:

(i) Dissemination of instructions/information relating to customer service and grievance redressal by banks and Reserve Bank of India.

(ii) Overseeing the grievance redressal mechanism in respect of services rendered by various RBI offices/departments.

(iii) Administering the Banking Ombudsman (BO) Scheme, acting as a nodal department for the Banking Codes and Standards Board of India (BCSBI).

(iv) Ensuring redressal of complaints received directly by RBI on customer service in banks.

(v) Liaisoning between banks, Indian Banks’ Association, BCSBI, BO offices and RBI regulatory departments on matters relating to customer service and grievance redressal.

Several regulatory initiatives have been taken by the Customer Service Department in recent years in the form of both regulatory prescriptions (like reining in of recovery agents, introduction of comprehensive display board, banking facilities for the visually challenged, rationalization of service charges on collection of outstation cheques, free use of ATMs etc.) as also moral suasion and class action. A far reaching regulatory initiative taken for strengthening the banks’ internal machinery for protection of customer interests is that the banks have been advised to put in place the following institutional
machinery for improving the quality of customer service:

(i) Customer Service Committee of the Board: Banks have been advised to constitute a customer service committee at the Board level to strengthen the corporate governance structure and also to bring about ongoing improvements in the quality of customer service provided by the banks.

(ii) Standing Committee on Customer Service: This committee is chaired by the CMD/ED of each bank and has non-officials also as its members to enable an independent feedback on the quality of customer service rendered by the bank.

(iii) Branch Level Customer Committees: This forum encourages a formal channel of communication between the customers and the bank at the branch level.

(iv) Each bank will have a nodal department/ official for customer service in the Head Office and each Controlling Office to whom customers with grievances can approach in the first instance. He also acts as a single point contact with Banking Ombudsman and RBI in the matters relating to customer service in respective banks.

**Future Direction**

*Policy Development*

Despite having undertaken a number of initiatives for ensuring fair treatment to customers, it was realised that the efficacy of the tiered mechanism for customer grievance redressal in banks was far from satisfactory and it was necessary to further develop a credible and effective functional system of attending to customer complaints by strengthening banks’ internal structures to attend not only to the basic customer needs but the special needs of disadvantaged groups such as pensioners and small borrowers, including farmers. Taking into account these considerations, a Committee under the Chairmanship of Shri M. Damodaran, Ex-Chairman, SEBI was constituted by the Reserve Bank. The committee was to look into the banking services rendered to retail and small customers and pensioners, structure and efficacy of the existing grievance redressal mechanism, the functioning of Banking Ombudsman Scheme, possibility of leveraging technology for better customer service in the light of increasing use of Internet and IT for bank products and services etc. and to recommend steps for improvements. The Committee submitted its report on July 4, 2011.

The major highlights of the recommendations made by this Committee are as follows:

- Creation of a toll free Common Bank Call Number
- Providing plain vanilla savings account without prescription of minimum balance
• Prescription of service charges for basic services
• Providing small remittances at reasonable price
• Providing floating rate housing loans on non-discriminatory basis
• Compensation for delayed return /loss of title deeds in the custody of banks
• Zero Liability against loss in ATM and Online Transactions
• Enhancement of DICGC cover upto ₹ 5,00,000/-
• Transition to Chip based card (EMV) with Photograph
• Every bank to have a Chief Customer Service Officer (CCSO) for grievance redressal

The Committee’s Report to the Reserve Bank has been placed in public domain on Aug 3, 2011 for public and expert suggestions.

Spread of Financial Literacy for Financial Protection

Financial literacy has assumed great importance in the last few years. It has gathered momentum in the aftermath of the sub-prime crisis which exposed the cracks, both in regulatory structures and in customer understanding of financial products and their use. The challenges faced are many such as lack of easy and affordable access to banking services, wide demographic spreads, low literacy and income levels, electronic and physical connectivity issues, large rural base, lack of propensity to save and high cost of operations, etc.

The Reserve Bank has taken the lead in initiating financial education in India. It began a financial literacy drive in 2007. The aim of this drive is to create an empowered banking customer who is capable of taking financial decisions to optimise his resources. While earning opportunities for the individuals are being created under various Government sponsored schemes, the individual may not have adequate knowledge to manage his or her income to convert it into wealth through savings / investments, etc. Towards this end, the RBI has adopted a two-pronged strategy:

• Basic level: empower the individual who is currently out of the banking system by imparting basic banking concepts.
• Higher level: empower the individual who is a part of the banking system with literature on the regulatory role of the RBI and its importance.

To achieve the above objectives, various media such as films, internet, games, stalls at state-level exhibitions, comic books, training programme for students, essay competition for school children, tie-up with NGOs etc. are being adopted.

As part of the Platinum Jubilee celebrations and thereafter, the offices of RBI conducted over 200 outreach programmes at schools, villages and other places to reach the common people to familiarise them with the role and importance of the financial system in general and banking in particular. The
necessity to get connected with the financial system has been reinforced through information on various aspects of banking and currency such as the need to save through a bank account, to borrow responsibly, to plan and deploy financial resources gainfully and to create a mix of instruments in one’s portfolio. Besides, the advice on how not to take risk that one does not understand and customer awareness on the right to fair treatment and protection has been also disseminated. Further, RBI is the nodal office for the OECD initiative on International Network of Financial Education (INFE) that focuses on the national strategy for financial education, financial literacy/education issues affecting women who are unbanked and living in poverty, financial savings and investments of individual households etc.

**Conclusion**

An efficient and effective program of Customer Protection is of special significance to all of us because we all are customers. Simultaneously, providers of service must understand that their long term interest lies in the well being of customers which cannot be ensured without service providers ensuring good service and fair treatment. If both the providers and consumers of financial products and services realize the need for collaborative co-existence, deficiencies in services would become a thing of the past.

The active involvement and participation from all quarters i.e. Government, regulators, financial institutions, educational institutions, NGOs, print and the electronic media is necessary. The adoption and observance of the voluntary code of conduct by the financial institutions and the citizen’s charter by the service providers is necessary to see that the customers get their due. The need of the hour is for total commitment to the cause of the customer and responsiveness to his needs. This should, however, proceed in a harmonious manner so that not only do the service providers create value and maximize wealth, but the society benefits at large and becomes a better place for all of us to live in and prosper.

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ROLE OF ELECTRICITY REGULATORS IN CONSUMER PROTECTION

PRAMOD DEO

Introduction

The electricity sector in India has undergone transformation for some time now. The provisions of the Electricity Act, 2003 and the enabling regulations instituted by electricity regulators have paved the way for greater competition and consumer protection. Improved service to consumers has been an important aspect of the reform process in which electricity regulatory bodies have played a pivotal role. The electricity sector in India is the world’s fifth largest energy consumer, accounting for 4 percent of global energy consumption by more than 17 percent of the global population. Electricity is thus a basic consumer need, underscoring the need for a balanced regulatory environment that ensures sound competition coupled with consumers’ welfare. Owing to the fact that the electricity sector deals with consumers from every strata of society, the grievances of consumers in this sector are far greater than those in other sectors of the economy.

Prior to introduction of the Electricity Act, 2003, the electricity sector was primarily driven by politically motivated measures, involving huge subsidies, that resulted in operational deficiencies of distribution companies which led to poor and unreliable power supply to the end consumer. Power sector reforms were, therefore, initiated in the country to attract private investment, enhance competition and ensure consumers’ participation.

The role of a regulator is to strike a balance between the investor need and consumer interest. The regulator must not only issue orders and directives for regulating the operations of distribution companies, but also lay down regulations to ensure the assured quality of service and electricity supply to
consumers. Moreover, the regulator has to ensure that the redressal procedure for addressing consumer grievances is robust and simple. Another question of concern is the manner in which the Electricity Act, 2003 empowers the consumer and the regulator. In this context, it can be seen that the Act provides for a robust policy and regulatory framework. It has appropriate provisions that are focused on protecting the interests of the consumers and this reflects the commitment of the lawmakers towards such safeguards. The concept of consumer protection has also been reiterated in the Preamble of the Act. The National Electricity Policy (NEP) and the Tariff Policy framed under the Act reinforce its provisions. The Central and State Commissions have been empowered to make regulations. These regulations ensure the implementation of provisions in the Act for the promotion of competition and consumer protection.

Electricity consumers can face service deficiency in numerous ways ranging from defective electricity meters to voltage fluctuations. The law has envisaged the establishment of a two-tier mechanism for consumer grievance redressal. Firstly, Consumer Grievance Redressal Forums (CGRFs) have been appointed for each distribution licencee based on guidelines specified by the State Commission. The CGRF is the forum of first instance for adjudication of all grievances. Secondly, an Ombudsman is designated for each state by the State Commission to adjudicate upon any representation made by a consumer aggrieved by non-redressal by the CGRF and to then settle the grievance in the time and manner prescribed by the State Commission.

Consumer tariff is another contentious issue that directly affects the consumer. The tariff at which electricity is sold to consumers is first proposed by the distribution companies and then approved by the regulator. A detailed technical validation is conducted on the proposals by the regulator together with the representatives of consumers. The proposals are made public only after objections are considered and the validation is completed by the regulator. Public hearings are conducted in different parts of the states for feedback from different stakeholders and any consumer can participate in these hearings. The Commission issues a final order only after the public hearing is completed. The tariff proposed for each consumer category by the regulator is binding on the distribution companies.

While it is of prime importance that the regulations are in place, it is equally important that consumers are also aware of their rights and obligations, and for this a consumer advocacy system to educate the consumers needs to be institutionalized. Though consumer advocacy systems have been institutionalized in some states, a much-needed thrust is crucial in this domain for a larger spread.

In order to harmonize, coordinate and ensure uniformity of approach amongst the State Electricity Regulatory Commissions (SERCs) across the country, and achieve greater regulatory certainty in the sector, the Forum of
Regulators (FOR) was constituted under the provisions of the Electricity Act, 2003. The Forum consists of the Chairperson of the Central Commission and Chairpersons of the State Commissions. The Chairperson of the Central Commission is the Chairperson of the FOR, while secretarial assistance to the Forum is provided by the Central Electricity Regulatory Commission (CERC). The FOR has been taking steps to ensure full implementation of the provisions in the Electricity Act, the NEP and Electricity Rules, 2005. The FOR regularly deliberates on issues specific to the protection of consumer interest. In this context, the FOR has reviewed the steps taken by State Commissions and distribution companies with regard to consumer protection and has constituted a Working Group with the mandate to examine the issues at stake.

The Forum observed that most SERCs have notified the regulations for the establishment of CGRFs and Ombudsmen. The institutions of CGRF and Ombudsman have also been set up in most states. Besides, the status of implementation of consumer advocacy was also reviewed and it was found that diverse methods for consumer education and dissemination of information were being followed in different states. For instance, the Madhya Pradesh Electricity Regulatory Commission (MPERC) has involved non-governmental organizations (NGOs) for consumer education and empowerment and is reported to have used the technique of street plays (Nukkar Natak) to spread the information in the local language and dialect. The Uttar Pradesh Electricity Regulatory Commission (UPERC) has engaged the Voluntary Organization in Interest of Consumer Education (VOICE), an NGO for consumer education. The Jharkhand Electricity Regulatory Commission (JSERC) has advertised through the ‘Kya Aap Jante Hai?’ series to educate consumers about their rights and duties. However, a large number of SERCs are yet to institutionalize a coherent system for consumer advocacy.

With regard to institutionalizing a mechanism for continued compliance with the Electricity Act, 2003 in the interest of the consumers, the FOR has developed an online mechanism on its website that helps in evaluating the compliance status of the provisions related to consumer protection. The information pertaining to the CGRF and Ombudsman is also available in the public domain for consumers.

The FOR has further been instrumental in evolving the Model Regulations and documents to bring about uniformity and best practice in handling consumer-related issues. Some of the key Model Regulations and Codes evolved by the Forum to benefit consumers are discussed below:

- The Electricity Supply Code provides for aspects such as metering, billing and recovery of electricity charges. In its endeavour for reform, the Forum has taken significant steps for consumer protection by evolving a Model Supply Code that features the mandatory provisions in line with the provisions of the Electricity Act, 2003 and also
Some provisions of the Act, especially those relating to CGRFs and Ombudsmen, were being interpreted differently in some states. To bring about uniformity in approach towards consumer protection across states and reduce discrimination between consumers of different states, the FOR has evolved Model Regulations for protection of consumer interest.

- The SERCs also have powers to specify rules that govern the commercial relationship between a distribution licensee and its consumers. The quality of power supply is as important to the consumer as the access to it. The electricity company has to be committed to providing electricity through an efficient, good quality distribution network. The Act provides protection to consumers with reference to the Standards of Performance. The licencees are required to periodically submit information to the Regulatory Commission about their compliance with performance standards.

- The electricity regulators are expected to specify the Standards of Performance and the failure to comply with them makes the licencee liable to pay compensation to the affected customer within a stipulated time frame. The Standards of Performance of electricity distribution companies are guaranteed under the Standards of Performance regulations notified by the SERCs. The consumers have the right to receive services that conform to these standards. The Model Standards of Performance Regulations have been designed to attain the twin objective of enabling consumers to protect themselves by creating awareness of their rights, service delivery and the level of quality that electricity distribution companies must provide in their area of supply.

To enhance the knowledge concerning protection of consumer interest, the regulators have initiated capacity building and awareness programmes that help in providing solutions to issues of consumer protection in the present system. Besides, the Forum has also been active in creating a pool of resource persons for related subjects, towards which it has organized training programmes. However, some inherent complexities in the sector require special professional training for consumer representatives and other stakeholders, apart from the regulatory personnel. The policy emphasizes that the Central Government, State Governments and Electricity Regulatory Commissions will facilitate capacity building of consumer groups and their effective representation before the Regulatory Commissions. Such a framework is aimed at enhancing the efficacy of the regulatory process. However, there is still a need for greater regulatory contribution in this direction.
Independent regulation with consumer focus essentially follows a consultative approach of decision making. This is a relatively recent phenomenon, particularly for a developing country like India, in which a consistent regulatory environment that facilitates healthy competition is created. It is imperative that all regulatory decisions strike a balance among the competing interests of stakeholders. By providing a forum for consumer representatives to argue on behalf of the consumer, the regulators have demonstrably created a stronger and more reliable democratic process. The regulators have so far played a critical role by creating avenues that are directed towards consumer participation in the whole regulatory reform process.

In the wake of the current situation of our electricity sector, the regulators need to devise mechanisms that properly resolve grievances and protect the consumer who depends on the supplier for the quality of the product or service. Revisiting the minimum standards of services would certainly provide protection to the consumers. The regulators will have to keep a watch so that the regulations, which are of a statutory nature and binding on the electricity companies, are complied with in their true spirit. There have been cases, such as in Delhi, where the consumer approached the Delhi Electricity Regulatory Commission (DERC) for relief through refund of the security amount and also compensation for wrong billing by the distribution company. Appellate Tribunal for Electricity in its order has categorically specified that the State Commission should not have entertained the complaint and should have directed the complainant to approach the grievance cell constituted especially for this purpose. The Regulators can intervene only if violation of licence conditions is established.

It is, therefore, necessary to ensure that CGRFs function effectively and that measures to strengthen the CGRFs be adopted in combination with consumer advocacy. The Electricity Act gives precedence to the Consumer Protection Act. Thus the consumers also have the option of approaching the consumer forum constituted under the Consumer Protection Act. Policymakers and Regulators will have to ensure that the consumer’s voice is heard and issues resolved in the most effective way with greater involvement of NGOs. The reforms in the power sector are yet to reach the common man. The regulators are trying to attain the goal of inclusive growth but a lot needs to be done in this direction.

It is equally important that an evaluation of the status of consumer participation is carried out to assess the extent to which consumers are aware of their rights and responsibilities. There is also a need to bring about timely changes in the regulatory decision-making process, which will help in improving procedures and in turn produce improved service delivery and a better complaint redressal system. An enduring partnership between consumers, regulators and utilities is crucial to attaining the cherished goal of inclusive growth in the power sector.
CONSUMER PROTECTION IN INSURANCE

J. HARI NARAYAN

Introduction

Consumers range from the highly educated and well to do to the illiterate and poor. Insurance consumers fall under all these categories either by virtue of buying insurance themselves or being covered under insurance bought by either the Government or their employers or by being part of any other group that is insured. In a developing market like India which is gradually integrating itself with world markets, domestic practices, international practices and regulatory framework governing these have a serious impact on the state of welfare of consumers. Hence, consumer empowerment is a key element of consumer protection or policyholder protection. Policyholder protection is an important component of a sound and competitive insurance market. Policyholder protection not only implies a proper legal framework and empowerment of consumers through education and awareness but also an enforcement framework providing rights to consumers and a mechanism for resolution of disputes. There is a consumer dimension in almost every area of governance in insurance, as is the case in all other areas involving consumers, and therefore, there is a pressing need to take into consideration the policyholders’ interest in all policy decisions and implementation thereof.

Insurance is an important financial service sector catering to individuals directly and indirectly. Directly, when he/she solicits an insurance service for himself or family and indirectly, by catalyzing the economy with a slew of risk management measures. It is more than a decade since the insurance sector was opened up and the growth in terms of coverage, penetration, premium, policyholders has been tremendous. The number of insurance
consumers has been steadily increasing. The insurance companies in India issue more than 15 crore policies and the actual number of insured persons would be more considering that there could be groups of individuals covered as well under a policy. Insurance penetration, which is the ratio of premium underwritten in a given year to the Gross Domestic Product, has increased from 2.32% in 2000 to 5.20% in 2009. Further, insurance density, which is the ratio of premium underwritten in a given year, to the total population has increased from US$9.9 in the year 2000 to US$ 54.3 in the year 2009. Insurance is, therefore, without doubt a very important component of financial services in the country and its significance is increasing year by year.

Need for Consumer Protection

Insurance is an intangible product. What the policyholder gets is a piece of paper for the premium paid and no immediate benefit for the consideration. Insurance offers a promise which upon a contingent event at a later date, provides for a particular benefit or reimbursement for a loss or damage. Ultimately the quality of fulfillment of the promise by an insurer would result in the successful execution of the insurance contract. A deficiency in service would mean either a delay or a non-fulfillment of that promise. Insurance thus fits into the credence category of services where there is heavy reliance on the public’s trust that promises made would be delivered.

The need for consumer protection arises from an imbalance of power arising out of lack of transparency on the part of the insurers and intermediaries on the one hand and the consumer on the other most often placing consumers at a disadvantage. Such an imbalance is a serious market concern. Imbalances in information are most likely to occur in cases where transactions are not frequent; entry or exit costs are low, cost of payout to the consumer is due to happen after a long period of time. Consumer Protection aims to address this concern. Complex products can be difficult to understand and assess, even when all relevant information is disclosed. An insurance contract is bombarded with a slew of legal wordings encompassing details of coverage, exclusions, terms and conditions, definitions, special exclusions and legal terminology. A well designed consumer protection framework can help reduce such imbalances.

There is a low level of financial literacy and a culture of not reading the insurance contract not only among the masses but also among the educated. In such a situation, weak consumer protection can render individuals and households vulnerable to unfair and abusive practices as well as frauds and scams. Discontentment and disagreements on insurance contracts are the obvious outcomes resulting in grievances or complaints. Grievance redress, therefore, is an important component of consumer protection. To sum up, an effective protection framework would not only make available grievance redress channels but also ensure that consumers are provided information
with transparency, have choice of products and have confidence regarding privacy of personal information.

**Protection Framework in India**

The framework for Consumer Protection in Insurance in India is set out in the following:

(i) Provisions of the Insurance Act, 1938, IRDA Act, 1999 and the Rules and Regulations framed under these Acts,

(ii) Quasi judicial framework like the Insurance Ombudsman or the Arbitration proceedings under the Arbitration and Conciliation Act 1986, and Consumer Fora under CPA, 1986,

(iii) Judicial framework like the Civil Court, etc.

**Regulatory Framework**

Consumer Protection encompasses the whole gamut of activities that impact the policyholder in the entire life-cycle of an insurance product. The legislature has enshrined the responsibility of consumer protection to the Insurance Regulatory and Development Authority (IRDA) whose Mission states as follows – “to protect the interests of the policyholders, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto.” IRDA carries out several activities towards achieving its Mission of protecting the policyholder, the most important of them being in the following areas:

1. Issuance of licence to insurance companies and intermediaries after due diligence;
2. Prescriptions to insurers regarding capital adequacy and solvency;
3. Clearance/approval of an insurance product by IRDA before it is marketed so that it complies with the prescribed regulations, guidelines;
4. Prescription of training and establishment of Codes of Conduct for insurance intermediaries - agents, brokers, surveyors, TPAs;
5. Monitoring the finances of the stakeholders so that they operate within the prescribed margins;
6. Mandating turn around times for various services of an insurer and monitoring thereof;
7. Responsibilities of the insurer at the point of sale, viz. disclosure of product features in the form of prospectus, the requirement and importance of a proposal form, prescription of time-frame for an insurer to convey his decision on the proposal of a prospect;
8. Mandatory information to be shown in a policy contract, viz. details of the proposer, premium, terms, conditions and exceptions under the policy, perils covered, etc;
9. Claims procedure which includes the turn around times for various
procedures in a claim including its final disposal;
10. Prescription of time limit on policyholders’ servicing;
11. Obligation of insurers to have in place an effective grievance redressal mechanism.

IRDA (Protection of Policyholders’ Interests) Regulations, 2002

IRDA (Protection of Policyholders’ Interests) Regulations, 2002 cast obligations on insurers to have in place effective redress mechanisms. The regulations provide for turn around times in respect of various service parameters of an insurer’s operations including pre-sale, post-sale and post intimation of claim. These include the following:-

a. The responsibilities of the insurer at the point of sale, viz. disclosure of product features in the form of prospectus, the requirement and importance of a proposal form, prescription of time-frame for an insurer to convey his decision on the proposal of a prospect

b. Mandatory information that has to be shown in a policy contract, viz. details of the proposer, premium, terms, conditions and exceptions under the policy, perils covered, etc.

c. Claims procedure which includes the turn around times (TATs) for various procedures in a claim including its final disposal.

d. Prescription of time limit on policyholders’ servicing.

e. Obligation of insurers to have in place effective grievance redressal mechanism.

Section 64 UM 3 of Insurance Act, 1938

This section is applicable for general insurance claims of more than ₹ 20,000 where the Authority has the powers to call for an independent report from any approved surveyor and loss assessor and pass necessary directions in the matter of a claim including any direction to settle the claim at a figure less than or more than that at which it was proposed to be settled or was settled by the insurer.

Codes of Conduct Laid Down for Intermediaries

The Codes of Conduct laid down in the respective regulation for Brokers, Agents, Corporate Agents, Surveyors and Third Party Administrators cast responsibility on the respective intermediaries to deal with policyholder complaints and servicing.

Grievance Redress Guidelines issued by IRDA in July, 2010

These guidelines have prescribed turn around times (TATs) for acknowledgement and resolution of complaints, the requirement of Board approved Grievance Redress Policy, prescription of minimum requirements of a Grievance Redress System etc.
**Policyholder Protection Committee**

This is a mandatory committee of the Board of the insurance company with functions as prescribed in IRDA Circular ref. IRDA/F&A/CIR/025/2009-10 dated 5.8.2009 relating to Corporate Governance Guidelines.

**Quasi Judicial and Judicial Framework**

Consumer protection is also set out in the following which form part of the quasi judicial/judicial framework:

1. RPG Rules, 1998
3. Consumer Protection Act, 1986
4. Lok Adalats
5. Courts

**RPG Rules, 1998**

An insured can approach an Insurance Ombudsman for redress of complaint involving the following categories:

- Any partial or total repudiation of claims by an insurer.
- Any dispute in regard to premium paid or payable in terms of the policy.
- Any dispute on the legal construction of the policies in so far as such disputes relate to claims.
- Delay in settlement of claims.
- Non-issue of any insurance document to customers after receipt of premium.

The Insurance Ombudsman resolves complaints by way of mediation and conciliation and looks into complaints relating to personal lines upto a maximum claim value of ₹ 20 lacs.

**Arbitration and Conciliation Act, 1996**

This Act was enacted by Indian Parliament taking into account the UNICITRAL Model Law on International Commercial Arbitration of the United Nations. A policyholder who has a dispute in quantum payable under an insurance policy (liability otherwise being admitted by the insurer) can invoke the policy condition pertaining to settlement of dispute through arbitration proceedings. The procedure of appointment of an arbitrator/(s), etc is spelt out as part of policy condition in a contract. The insurer and insured may decide upon a single arbitrator or each of them may appoint his arbitrator and a third arbitrator may be appointed by these two arbitrators. The policy condition usually prescribes that ‘arbitration shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator/
arbitrators of the amount of the loss or damage shall be first obtained.’ An arbitral award shall be final and binding on the parties and persons claims under them respectively.

**Consumer Protection Act, 1986**

A policyholder can take recourse to Consumer Courts spread across the country for settlement of disputes in regard to deficiency in the insurance services availed by him/her. The Act provides for District Consumer Forums, State Consumer Commission and National Consumer Commission with prescribed limits for compensation. The District Forums can entertain complaints upto a financial limit of ₹ 20 lacs, the State Consumer Dispute Redressal Commission can take up complaints beyond ₹ 20 lacs and upto ₹ 1 Crore as also appeals against the orders of District Forums. The National Consumer Dispute Redressal Commission can take up complaints above ₹ 1 Crore and appeals against the order of State Consumer Commission. An appeal can be filed against the order of National Commission with the Supreme Court. The Act prescribes time limits for filing the cases (time limitation) by the concerned parties, time limits for appeal as also the disposal of the cases by the Consumer Forum/Commission. It is generally observed that these forums entertain cases pertain to admissibility of claims and dispute in quantum payable.

**Lok Adalats**

A Lok Adalat has the jurisdiction to settle, by way of effecting compromise between the parties, any matter (including insurance) which may be pending before any court, as well as matters at pre-litigative stage i.e. disputes which have not yet been formally instituted in any Court of Law. The value at dispute should not be more than ₹ 10 lacs.

**Courts**

Insured can file civil suits for redress of disputes arising out of an insurance contract.

**IRDA Initiatives for Policyholder Protection**

Apart from the IRDA Regulations for protection of policyholders’ interests, the Regulations for the Intermediaries—Agents, Corporate Agents and Brokers, among other things, lay down the Code of Conduct including at the point of sale. The IRDA (Insurance Advertisement and Disclosure) Regulations, 2000 address advertising and disclosure requirements at the point of sale. The File and Use procedure of IRDA is also a drill from the point of view of product simplicity and its understanding, apart from other parameters. One of the recent initiatives of IRDA, to ensure that clear information regarding products is given to the prospect/policyholder in a way he/she can understand is the proposal for Key Feature Document in simple language. The test of a Key
Feature Document is whether or not the target customer for a particular product understands its main features and is able to take a decision as to whether the product is suitable for him/her. A Key Feature Document would also ensure disclosure by insurers of other important information such as premium details, payment modes, various charges, risks involved, what happens in the event of discontinuance etc. IRDA is currently examining the feedback from various stakeholders on the exposure draft put up by it on the subject.

Another important element of policyholder protection is that Insurers and Intermediaries shall be non-coercive while selling. Not only shall they be non-coercive but more importantly, they shall not mis-sell. The Policyholder Protection Regulations and Regulations for the various intermediaries, brought out by IRDA are geared to address these issues. However, given the complexity of some of the products, IRDA felt the need for more specific solutions relating to mis-selling in the specific area of Unit Linked Insurance Products. All life insurance policies and certain categories of health insurance policies have the Free Look provision which allows a consumer 15 days time from the date of receipt of the policy document to decide whether or not to keep the policy based on whether he or she agrees to or disagrees with the terms and conditions mentioned therein. This provision offers a leeway to consumers to decide to return the policy even after they have actually purchased it.

In respect of ULIPs, IRDA had stipulated that insurers must provide the prospect/policyholder all relevant information about amounts deducted towards various charges for each policy year so that the prospect could take an informed decision. Further, insurers are required to provide Benefit Illustrations giving two scenarios of interest, 6% and 10% respectively. The prospect is required to sign on the illustration while signing the proposal. IRDA has also taken certain initiatives in the form of specific regulations/modifications to existing regulations. There are certain distribution related modifications with a view to ensuring that there is no scope for the involvement of unlicensed personnel/entities in the sale of insurance products. There is also no scope for payment of any remuneration other than commission where sale has been affected. This measure reduces the expenses of the insurer, thereby lowering the premiums to be paid by the policyholder. Further, IRDA has also addressed the issue of Referrals with the IRDA (Sharing of Database for Distribution of Insurance Products) Regulations, 2010 that leaves no scope for misuse of the system.

Needs Analysis is another initiative identified by IRDA as a step in curbing wrong advice and mis-selling. The idea is to require insurers to have Prospect Product Matrix that will match a product with the requirement, based on the Needs Analysis carried out. The feedback of the stakeholders on the exposure draft put up on the subject by IRDA is under examination. Guidelines relating to Distance Marketing have been issued by IRDA which address challenges
relating to mis-selling using distance marketing mode, a fallout of the advancement in technology. While the benefits of having new and faster channels need to be reaped, the loopholes created by them need plugging and this is precisely what the guidelines are aimed at.

IRDA has issued guidelines to agents for *Persistency of Life Insurance Policies* to ensure that servicing of policies by agents is sustained and is with a long term objective of servicing the policyholder and not driven by an objective of just pushing. While liberalization has helped create choice, there is a need to ensure that in the name of choice, the market does not have too many products that are badly designed and have blurred differentiations. Insurers shall offer stable, well designed specific products that are useful to the consumers, meeting their needs. The terms and conditions of the product shall ensure fair treatment to the policyholder. The Regulator steps in, wherever required, to ensure this. The ULIPs example again is a case in point. Recently, IRDA has taken several steps with regard to the product structure of ULIPs. The lock-in period has been increased from three years to five years, thereby making them long term financial instruments which basically provide risk protection. All regular premium/limited premium ULIPs shall have uniform/level paying premiums. Any additional payment shall be treated as single premium for the purpose of insurance cover. Charges on ULIPs are mandated to be evenly distributed during the lock in period, to ensure that high front ending of expenses is eliminated.

Further, all limited premium unit linked insurance products, other than single premium products shall have premium paying term of at least five years. All unit linked products, other than pension and annuity products shall provide a mortality cover or a health cover thereby increasing the risk cover component in such products. The minimum cover to be offered has been specified for these segments. With a view to smoothening the cap on charges in ULIP products, the capping has been rationalized by IRDA to ensure that the difference in yield is capped from the 5th year onwards. This will not only reduce the overall charges on these products, but also smoothen the charge structure for the policyholder.

IRDA has also addressed the issue of discontinuance of charges for surrender of ULIPs. The *IRDA (Treatment of Discontinued Linked Insurance Policies) Regulations, 2010* have been notified in this regard. The Regulations stipulate that an insurer shall recover only the incurred acquisition costs in the event of discontinuance of policy and that these charges are not excessive. The discontinuance charges have been capped both as percentage of fund value and premium and also in absolute value. The Regulations also clearly define the Grace Period for different modes of premium payment. Upon discontinuance of a policy, a policyholder shall be entitled to exercise an option of either reviving the policy or completely withdrawing from the policy without any risk cover. Further, the regulations also enable IRDA to order
refund of discontinuance charges in case they are found excessive on enquiry.

The other significant area where the Regulator has recently intervened is the pensions. A pension contract is a form of savings vehicle that caters to the needs of retired or the aged population. The contributions that have been used to fund the pension contracts shall not only be intact but also increase, to enable the individual to purchase an annuity which can atleast meet his or her basic needs. Unit linked pension contracts without any guarantee of return may either provide increased benefits or erode the funds accumulated. The downside risk is too much to be ignored. IRDA has introduced a prudential regulatory approach whereby it has stipulated that all ULIP pension/annuity products shall offer a minimum guarantee of 4.5% per annum or as specified by IRDA, from time to time. This will protect the life time savings for the pensioners, from any adverse fluctuations at the time of maturity. In the area of Motor Insurance, IRDA has stipulated a standard proposal form for all insurers and this is one step towards simplification and standardization of documents, from the consumer point of view.

Public disclosure of risks faced by the insurers is critical for policyholder protection. They help policyholders make informed decisions before entering into insurance contracts. Reliable and timely disclosures also ensure a fair and orderly insurance sector. With this in view, early this year, IRDA stipulated public disclosure requirements for all insurance companies. The disclosures were made effective from the period ended 31st March, 2010. Insurers shall publish the Balance Sheet, Profit and Loss Account, Revenue Account and Key Analytical Ratios on an half yearly basis in atleast one English daily newspaper circulating in the whole or substantially the whole of India and in one newspaper published in the regional language of the region where the registered office is situated or in Hindi in the stipulated font size and within the time-frame laid down. Insurers shall also host all the forms including Revenue Account, Profit and Loss Account, Balance Sheet, segmental reporting, schedules to accounts and other forms on their website as per the periodicity and other parameters stipulated.

The Consumer Affairs Department of IRDA gives a special focus to and oversees the compliance by insurers of the IRDA Regulations for Protection of Policyholders’ Interests. The Consumer Affairs Department also seeks to empower consumers by educating them regarding details of the procedures and mechanisms that are available for grievance redressal as well as their rights and obligations as policyholders.

Consumer Protection and Various Stakeholders

Consumer Protection is the joint responsibility of all the stakeholders. While the Regulator lays down the regulatory framework, implements and monitors, the insurers, intermediaries and other stakeholders too need to make efforts at their respective ends. There are various initiatives taken at the industry
councils and intermediary platforms towards this but the efforts need to be increased. The philosophy of protection of consumers and the culture of treating customers fairly should start from every organization’s top trickling down to the grass roots. Consumer protection can be used to avoid market power by the dominant players.

Insurers should be legally responsible for all statements made in marketing and sales material related to their products. The media and consumer associations ought to play an active role in promoting financial consumer protection. Intermediaries have a very important share in the responsibility of protecting the consumer and must endeavour to ensure that their activities are in line with the Codes of Conduct prescribed respectively, apart from working as a lot towards creation of the required awareness amongst the consumers and facilitating the consumer to take informed decisions regarding purchase of products.

**Consumer Concerns, Grievance Redress and Market Conduct**

There are whole range of consumer concerns in the life and the non-life insurance segments respectively. Starting from concerns relating to mis-selling to policy servicing and claims servicing, the concerns are many and may relate to several -areas in sales— including multi-level sales, tying and bundling resulting in *inertia sales* or forced selling insurance proposal; administration – including processing and acceptance, policy document issuance, policy corrections and changes in details, premium payments and receipt issuance, policy status and statements, lapses and revivals, renewal of policies; claims— including claim processing, quantum disputes in claims, dispute relating to liability arising out of denial of claims and many more.

There are several compulsory components in insurance sales that impact a consumer, such as compulsory motor insurance, insurance linked with provision of loans etc. and along with these a number of undesirable industry practices emerge in parallel and these can be mitigated only through strengthening of consumer rights. Further, considering that insurance is a service that is not expected to deliver immediately but only at the point a claim occurs, one comes across the following situations frequently (though some are peculiar to life insurance, others to non-life insurance and some to both) –

- the total cost involved is unknown at the time of sale;
- it is difficult for the public to compare products;
- issue of access wherein, some might be eligible for limited coverage only, but this is not known to them;
- lack of transparency –eg. Underwriting standards of the company are not available to the consumer; consumer is able to gauge suitability only when a claim occurs;
• an agent may give a positive nod for cover but the insurer does not accept the proposal;
• some insurance covers are mandatory like motor insurance or products tied up with loans etc.

Whenever an insurer contracts with a bank or any other lending organization or a dealer or another organization as distribution channel for its contracts, no bundling, tying or other exclusionary dealings should take place without the consumer being advised and being able to opt out. Cross-selling that constitutes bundling or tying can have positive demand and mobility. Bundling disguises the real price of associated credit or goods. Bundling is not *per se* anti-competitive, but can reduce competition and limit consumer choice, especially if there is a condition to purchase good B together with good A. Bundling also renders price comparison impossible.

When it comes to consumer grievances, it is not enough if a complaint is resolved. An organization should endeavor to do the Root Cause Analysis (RCA) test, especially for complaints of a specific nature. For this purpose, information technology should be optimally utilized not only for the resolution process but also in building up a repository of complaints. Keeping this in view the IRDA has embarked upon the establishment of the Integrated Grievance Management System (IGMS) for the entire insurance industry which enables the regulatory authority to monitor complaints across the industry on a real-time basis. IGMS will enable identification of wrong market practices that need to be regulated so that exploitation of gullible consumers is prevented.

While the resolution mechanism available with the insurance regulator is limited to service related issues like non-issuance of policy, delay/non-settlement of claims, pricing of insurance product, mis-selling, for disputes arising out of a contract, *viz.* repudiation of a claim, dispute in quantum, part-settlement of claims, etc., insurance consumers are required to approach judicial/quasi-judicial bodies like insurance ombudsman, consumer forum, etc.

Policyholders shall be provided with inexpensive and speedy mechanisms for complaints disposal and the IRDA (Protection of Policyholders Interests) Regulations, 2002 require insurance companies to have in place, effective and speedy grievance redress mechanisms. IRDA has also issued Guidelines for Grievance Redressal, which lay down specific time-frames and turnaround times (TATs) for response, resolution etc. which will further strengthen the redressal systems insurers already have in place. The effectiveness of the mechanism will now be monitored through the IGMS. IGMS is a comprehensive solution which has the ability to provide a centralized and online access to the policyholder. IRDA has also introduced the IRDA Grievance Call Centre (IGCC) that provides for a toll free number 155255. IGCC provides an additional channel for policyholders to lodge their grievances and also seek
their status over phone/e-mail. Grievances lodged through IGCC are logged into the IGMS.

With a view to going beyond facilitation of complaints resolution IRDA has begun to drill down into details of complaints to identify instances of violation/non-compliance of various provisions of the applicable Regulations through enquiries and inspections. Where required, regulatory action is initiated. While the insurance ombudsman’s functions have been successful in so far as individual insurance consumers are concerned, there is a dire need for enlarging the scope to include small time traders/industrialists upto a specified amount of dispute. The regulator is closely working with the Government of India on this issue. While an insurance consumer has the option to approach multiple mechanisms for redress of grievances, there is also the question of public money involved in managing these multiple institutions where the same issue may become a subject matter of these institutions and sitting on issues decided upon by other parallel authorities.

**Financial Literacy**

It is recognized that competition provides the platform for making available products and services at cheapest prices. Competition benefits consumers but consumers require knowledge and information to get the best out of a competitive market and therefore, consumer education and competition go hand in hand. Hence, consumer policy, competition policy and regulatory framework should be synergetic.

For a consumer to extract the best out of the market, he should be educated about the market and various products available. Only then would a consumer be able to take an informed decision. Consumers who are empowered with information and are aware of their rights and responsibilities would be in the interest of the industry, as they can impel the producers to provide larger choices, which will spur business to innovate and become competitive. Well informed consumers would also be an important source of market discipline and would ensure that insurers do not take advantage of poorly informed consumers. Consumer Protection and Consumer Education complement each other. Consumer education not only helps individuals understand the products and the risks involved better but is also a necessity for market efficiency as it contributes to more efficient, transparent and competitive practices by the insurance service providers. It also produces better educated citizens who can monitor markets through their own decisions.

Reaching out to the consumers is no easy task and this needs to be addressed through communication and education strategies. The Regulator, the Industry, the Intermediaries and other stakeholders have the responsibility of ensuring that financial literacy is improved. This indeed is a challenging task given the population of our country, the geographical spread and the demographic patterns. However, efforts are on to create the required awareness.
and every step in this direction is a step forward to achieve the desired goal. IRDA has taken several initiatives through various media—print, radio and television. Throughout 2010-11, the regulator carried out a sustained campaign to create insurance awareness on Rights and Obligations of policyholders, alerts regarding complex products such as Unit Linked Products. IRDA also encourages and supports consumer bodies to conduct seminars on insurance and grievance redress, thereby not only educating the consumer but also providing a platform for the consumer to interact with its representatives who, it makes sure, participate in such seminars. This apart, the IRDA itself conducts or participates and supports several national level seminars on different insurance topics or subjects as well as consumer related issues through which it reaches out to the public. A Consumer Seminar on an annual basis is part of the publicity plans. Further, a Consumer Education Portal, meant as the name indicates exclusively for the consumer is in the pipeline for launch by IRDA.

Looking Ahead

Financial literacy is a key pillar to sound market conduct. It is critical to market stability. The scale of activity relating to creation of insurance awareness needs to be escalated by all stakeholders. Consumer education needs greater attention. Efforts have to be made to ensure that individuals develop the knowledge, understanding, skills and the confidence need to adequately appraise and understand their rights and responsibilities. They should know where to look for important information and take informed decisions about how to protect themselves and their relatives. They should understand the consequences of bad choices. Encouraging activities and studies relating to insurance by Consumer Bodies and Non-Governmental Organisations involved in developmental work is also the need of the hour. It is seen that such stakeholders develop innovative tools that help consumers know about the options available to them. As far as regulation is concerned, the key to effective regulation keeping in view the policyholders’ interests is a balance between prudential supervision and consumer protection and this is what the IRDA endeavours to carry out.
DOCTOR’S NEGLIGENCE AND CONSUMERS’ WELFARE - CRITIQUE OF THE LEGAL RESPONSES

RAJIV KUMAR KHARE

Introduction

Doctors, one of the noblest professionals, savers of life of millions are placed next to the almighty God. They command great respect in the society for rendering humanitarian services. Their work is considered to be a science of uncertainty and art of possibility. However, these esteemed professionals at times come under severe criticism due to their negligent performance of duty resulting in deficiency of service. No other form of rendition of deficiency in service could have graver consequences than that of the services by a doctor. Its consequences may result in death of the patient or complete/partial impairment or loss of limbs, or may culminate into another misery. Thus any attempt to ensure better protection of consumers’ welfare and their rights and interests would be incomplete unless the doctors are sensitized to prevent, control and abate invasion of rights of the patients—the consumers through their negligence. Although it has been a extensively debated issue, that whether the doctors fall in the category of “service providers” and thus would be subjected to the ambit and scope of the Consumer Protection Act, 1986 which has now been settled by the hon’ble apex consumer court in Vasantha P. Nair v. Smt. V.P. Nair.¹

¹I (1991) C.P.J. 1685 the National Commission upholding the decision of Kerala State Commission had held that ‘a patient is a “consumer” and the medical assistance was a ‘service’ and, therefore, in the event of any deficiency in the performance of medical service the consumer courts can have the jurisdiction. It was further observed that the medical officer’s service was not a personal service so as to constitute an exception to the application of the Consumer Protection Act.
Since the doctors are well within the ambit of the Consumer Protection Act, 1986, it is necessary to understand as to what constitutes ‘negligence’ in legal parlance and to find out the nature and scope of doctors’ negligence and their liability and also to analyse the types of remedies available and their efficacy vis-à-vis providing better protection of rights and interests of the consumers in the contemporary scenario. It is also relevant to take an account of time taken in administration of justice and to explore the possibilities of invoking informal methods of disputes resolution and their probable impact on improving the overall scenario of consumers’ welfare. Thus the paper seeks to examine above issues in detail so as to find out the viability of legal responses.

The chief characteristics of any profession generally would include: that the nature of work is skilled and specialized, substantial part is mental rather than manual; and needs a commitment to moral principles beyond the general duty of honesty. Professionals are subject to professional code and standards on matters of conduct and ethics, enforced by professional regulatory authorities and they enjoy high status and respect in the society.

Negligence: Legally Construed and Explained

Negligence is a breach of duty to take care resulting in damage to one’s person or property. However, the Black’s Law Dictionary defines negligence as under:

“Negligence per se—Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes.”

Yet another classic definition of negligence is “The omission to something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.”

Negligence is considered to be a civil wrong, called a tort, and the same has been defined by Dr. Winfield to mean “Negligence as a tort is the breach

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of a legal duty to take care which results in damage, undesired by the defendant, to the plaintiff.\(^3\)

Thus, the above definitions clearly bring in three important essential elements of the negligence: (i) that a duty of care is owed to the plaintiff; (ii) there has been a breach of the duty; and (iii) damage has resulted from that breach or necessarily has causal linkage to the breach of duty besides infusing an element of the concept of *reasonable man’s* conduct in determining the duty of care.

### Doctors’ Negligence

*Halsbury’s Laws of England defines doctors’ negligence as under:*

“Negligence,—Duties owed to patient. A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and a duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient.” \(^4\)

In a celebrated and oft-cited judgment in *Bolam v. Friern Hospital Management Committee*\(^5\), Mc Nair, L.J. observed that:

“I must explain what in law we mean by ‘negligence’. In the ordinary case which does not involve any special skill, negligence in law means this: some failure to do some act which a reasonable man in the circumstances would do, or the doing of some act which a reasonable man in the circumstances would not do; and if that failure or the doing of that act results in injury, then there is a cause of action.”

Explaining further as to how to test whether the alleged act or failure is negligent and the answer given by the court is: “that in an ordinary case it is generally said, that you judge that by the action of the man in the street. He is the ordinary man in the street…But where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this man exercising and profession to have that special skill. …A man need not possess the highest expert skill at the risk of being found negligent. It is a well established law that it is sufficient if he

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\(^3\)In context of consumer protection the defendant would be the persons engaged in manufacturing, sale or supply of goods or the service providers and the plaintiff is a sufferer of such activities of the traders, manufacturers and service providers.

\(^4\)4th Edn, Vol 26 pp. 17-18

\(^5\)(1957) 2 All ER 118
exercises the ordinary skill of an ordinary competent man exercising that particular art.”

In *Laxman Balakrishna Joshi v. Trimbak Babu Godbole* the apex court has stated that, “a person (doctor) who holds himself out ready to give medical advice and treatment impliedly undertakes that: (i) he is possessed of skill and knowledge for that purpose; (ii) he owes a duty of care in deciding whether to undertake the case; (iii) a duty of care in deciding what treatment to give; or (iv) a duty of care in the administration of that treatment. Further a breach of any of these duties would give a right of action for negligence to the patient.” Ever since the Consumer Protection Act, 1986 has come into force, the medical professionals have been up in arms, although unsuccessfully, to exclude themselves from the purview of the Act. A few important principles laid down by the apex court in *Indian Medical Association v. V.P. Santha and Ors.* include:

- Service 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 medicinal and surgical, *would fall within the ambit of “service” as defined in section 2(1) (o) of the C.P. Act.*

- The fact that medical practitioners are subject to disciplinary control of the Medical Council of India and, or the State Medical Councils would not exclude the service rendered by them from the ambit of C.P. Act.

- The service rendered by a doctor is a contract for service rather than a contract of service and thus is not covered by the exclusionary clause of the definition of service contained in the Consumer Protection Act, 1986.

- A service rendered free of charge would not be service as defined in the Act.

- If the expenses have been borne by an insurance company under medical care or by one’s employer under the service conditions, the hospitals and doctors cannot claim it to be a free service.

The apex court while considering the question of doctors’ negligence in context of treatment of patients observed that “negligence has many manifestations—it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, willful

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*Ibid*

*(1969) 1 S.C.R. 206*

*AIR 1996 SC 550; the apex court has laid down 12 important principles stating the law with definite terms in this case.*
or reckless negligence or negligence per se”.

The sum and substance of above is that a doctor is required to adhere to the standard of an ordinary skilled man exercising and professing to have that special skill and it would be a ‘disservice to the community at large if we were to impose liability on doctors for everything that happens to go wrong’.

**Doctors’ Duty of Care**

A doctor may be held liable for negligence on one of the two findings: one, either he was not possessed of the requisite skill which he professed to have; or two, that he did not exercise, with reasonable competence in a given case, the skill which he did profess.

Some of the important duties that doctors generally have towards their patients include:

- To exercise reasonable care in deciding whether to undertake the case and also in deciding what treatment to give and how to administer that treatment;
- To extend his service with due expertise for protecting the life of the patient and to stabilize his condition in emergency situations;
- To attend to his patient when required and not to withdraw his services without giving him sufficient notice;
- To study the symptoms and complaints of the patient carefully and to administer standard treatment;
- To carry out necessary investigations through appropriate laboratory tests wherever required to arrive at a proper diagnosis;
- To advise and assist the patient to get a second opinion and call a specialist if necessary;
- To obtain informed consent from the patient for procedures with inherent risks to life;
- To take appropriate precautionary measures before administering injections and medicines and to meet emergency situations;
- To inform the patient or his relatives the relevant facts about his illness;
- To keep secret the confidential information received from the patient in the course of his professional engagement; and
- To notify the appropriate authorities of dangerous and communicable diseases.

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The Degree of Skill and Care required by a medical practitioner is defined in *Halsbury’s Laws of England* which is as under:

“A medical practitioner is required to meet the standard of an ordinarily skilled practitioner exercising and professing to have the special skill in question. Thus a specialist has to exercise the skill of an ordinary competent member of his specialty, and a practitioner of alternative medicine will be judged against the standards of similar practitioners. An error of judgment will not amount to negligence unless it is one that would not have been made by a reasonably competent practitioner with the standard and type of skill of the defendant, acting with ordinary care. The conduct is to be judged against the state of professional knowledge at the time of the matter concerned. Where there are differing and well established professional schools of thought on an issue, a practitioner will not be regarded as negligent in following one rather than another even if the outcome suggests that the wrong choice was made. However, in certain circumstances treatment will be held to be negligent if it cannot be demonstrated to the satisfaction of the court that the body of opinion relied on is reasonable or responsible. Deviation from normal practice is not necessarily an evidence of negligence. To establish liability on that basis, it must be shown: (i) that there is usual and normal practice; (ii) that the defendant has not adopted it; and (iii) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care.”¹³

Further, in order to ascertain whether a reasonable degree of care has been taken or not by the doctor and accordingly hold him liable may largely depend upon the following considerations:

Ø That whether the degree of care and competence which an ordinary competent member of the profession who professes to have those skills would exercise in the circumstances in question have been exercised or not, that is to say the concept of reasonable man becomes relevant here;

Ø That the standard of care is constant while the degree of care is variable, i.e. the same standard of care is expected from a generalist and a specialist; but the degree of care would be different.

Ø The doctor would be guilty of negligence when he falls short of the standard of a reasonably skillful medical man.

Ø The law will condemn the doctor when he falls short of the accepted standards of a great profession.

Ø Generally a doctor is not guilty of negligence if he acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art.¹⁴

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¹³See, 4th edition, reissue, Vol 30(1) Para 197
¹⁴*Bolam v. Friern Hospital Management Committee* (1957) 1 WLR 582
skill; it is sufficient if he exercises the skill of an ordinary competent man exercising that particular art. In the case of a medical professional, negligence means failure to act in accordance with the standards of competent reasonable man at the time. There may be one or more perfectly proper standards, and if it conforms with one of those proper standards then he is not negligent.

Thus a surgeon or a doctor will be judged by the standard of an average practitioner of class to which he belongs or holds himself out to belong. However, in case of a specialist, a higher degree of skill is needed.  

**Doctors’ Negligence—a Civil Wrong or a Criminal Offence**

The term negligence is used for the purpose of fastening the defendant with liability under civil law (the law of torts) and, at times, under the criminal law, i.e. the Indian Penal Code, 1860. Explaining the difference between the two, Lord Atkin in his speech in *Andrews v. Director Public Prosecution*, stated:

“… Simple lack of care such as will constitute civil liability is not enough for purposes of the criminal law there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established.”

Thus for negligence to be an offence, the element of *mens rea* (guilty mind) must be shown to exist and the negligence should be gross or of very high degree. In Criminal law, negligence or recklessness must be of such a high degree as to be held ‘gross’. The apex court in *Jacob Mathew v. State of Punjab*, has explained that; “the expression ‘rash and negligent act’ occurring in section 304-A of the I.P.C should be qualified by the word ‘grossly’. To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which has resulted

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15 Dr. P Narasimha Rao v. G Jayaprakasu, AIR 1980 AP 207
16 (1937) 2 All ER 552 (HL)
17 See, Charlesworth & Percy on Negligence, 10th Edn, 2001, para 1.13; A clear distinction exists between “simple lack of care” incurring civil liability and “very high degree of negligence” which is required in criminal cases. Also there is a marked difference as to evidence, viz. the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings the persuasion of guilt must amount to such a moral certainty as convinces the mind of the court, as a reasonable man beyond all reasonable doubt. (Syed Akbar v. State of Karnataka, (1980) 1 SCC 30, para 28 refers)
was most likely imminent.” From the above it may be inferred that the distinction between civil and criminal liability in medical negligence lies in the conduct of the doctor which should be of gross or reckless or of a very high degree and that where two views are possible relating criminal liability of the offender (the doctor), the view which favors the accused shall be adopted because in criminal law, it is the duty of the prosecution to prove the guilt beyond reasonable doubt which is not the case in civil liability.

**Patient’s Consent and Doctors’ Negligence**

The fundamental legal principle, plain and incontestable, is that every person’s body in inviolate. Interference, however slight with person’s body without consent would constitute trespass to the person which may take three forms—(i) assault; (ii) battery; and (iii) false imprisonment. A battery is said to be committed when there is an actual infliction of an unlawful physical contact with the plaintiff (the patient). Thus failure to obtain consent from the patient for administering particular kind of treatment or investigation might incur liability in trespass to person. However, it may be pointed out that soon the patient visits a doctor, it is deemed that the patient has impliedly consented for being examined, investigated and treated. But at times, the patient may be required to undergo surgery or other investigations wherein his consent would be expressly needed. The law emphasizes on *informed consent* which signifies that the consent of the patient should be obtained after disclosure of information regarding the diagnosis, alternative methods of treatment with their relative risks and benefits and known material risks of procedure.

The doctrine of informed consent has developed in law as the primary means of protecting a patient’s right to control his or her medical treatment. Under this doctrine, no medical procedure may be undertaken without patient’s consent obtained after the patient has been provided with sufficient information to evaluate the risks and benefits of the proposed treatment and other available options. The doctrine presupposes the patient’s capacity to make a subjective treatment decision based on his/her understanding of the necessary medical facts provided by the doctor and on his/her assessment of own personal circumstances. It may be further noted that the doctor who performs a medical procedure without having first furnished the patient with the information needed to obtain an informed consent will have infringed the patient’s right

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18 (2005) 6 SCC 1; Also see, *Dr. Suresh Gupta v. Govt. of N.C.T. of Delhi*, AIR 2004 SC 4091, wherein the court explaining distinction between civil and criminal liability held that ‘for fixing criminal liability on a doctor or surgeon the standard of negligence required to be proved should be so high as can be described as gross negligence of recklessness. …mere inadvertence or some degree of want of adequate care and caution might create a civil liability but would not suffice to hold him criminally liable.”

19 ‘Assault’ as a tort is committed where the plaintiff is caused to apprehend the immediate infliction of such a contact. Deprivation of liberty constitutes false imprisonment.
to control the course of his/her medical care, and will be liable in battery even though the procedure was performed with a high degree of skill and actually benefited the patient.\footnote{See, Malette v. Shulman, 72 OR (2d) 417 in Ontario Court of Appeal} In \textit{M. Chinnaiyan v. Sri Gokulam Hospital & Anr.}\footnote{III (2007) CPJ 228 (NC)}, the complainant approached to the defendant hospital with abdominal pain and was advised to undergo hysterectomy for which the consent was obtained from the complainant. However, the complainant suffered from bleeding of uterus as a result two units of blood was transfused after the operation. The blood units, so transfused, were not tested for contamination. The patient suffered with HIV-AIDS after three and a half year of the transfusion he died. The hospital was held liable. It was noted that the consent of the patient was required for transfusion of blood. It was clear from the records that the complainant had given consent only for hysterectomy operation and not for transfusion of blood.

However, there are certain exceptions to the requirement of informed consent, viz. (i) therapeutic privilege; (ii) emergency; and (iii) waiver. The informed consent, even though a legal necessity, is either expressly not taken or if taken in a mechanical process, i.e. without informing the patient or his relatives about its necessity or taken for different purposes and different treatment/tests are conducted making person of an individual a laboratory, have led to liability in negligence. For example, in \textit{Ramgopal Varshney v. Lasor Sight India Pvt. Ltd.}\footnote{I (2009) CPJ 23 (NC). See also, \textit{Force Society v. Ganeshwara Rao}, III (1997) CPJ 228, wherein Andhra Pradesh State Consumer Disputes Redressal Commission held that failure to obtain patient’s consent amounted to deficiency in service.} the doctor did not obtain the consent of a patient for a cataract surgery though he was conscious, mentally alert and capable of giving consent. The consent was given by the grandson of the patient. The National Commission held that there was deficiency in service in not obtaining consent of the patient. One of the most forward-looking decisions of the National Commission in \textit{Dr. Sathy M Pillai & Anr. v. S. Sharma & Anr.}, has further strengthened the necessity of informed consent. It was held that, ‘where informed consent is taken on the printed form without any specific mention about the name of the surgery, or signatures are taken from patient/relative in mechanical fashion, much in advance of the date scheduled for surgery, such forms cannot be considered as informed consent.'\footnote{IV (2007) CPJ 131 (NC)}

\textbf{Burden of Proof}

This situation may be explained by a case decided by the House of Lords, wherein the court observed that:

\begin{quote}
“the party seeking to recover compensation for damage must make out
that the party against whom he complains was in the wrong. The burden of proof is clearly upon him, and he must show that the loss is to be attributed to the negligence of the opposite party. If at the end, he leaves the case in even scales, and does not satisfy the court that it was occasioned by the negligence or default of the other party, he cannot succeed.”

In Acchutrao Haribhau Khodwa v. State of Maharashtra, the plaintiff’s wife was hospitalized in a government hospital and was operated. The doctors while performing a sterilization operation left the mop in the body of the patient which resulted in formation of puss and eventually leading to death subsequently. It was held that negligence was writ large and the surgeon performing that operation and the government were liable as res ipsa loquitur could be attracted. Thus from the above it is clear that in order to make a successful claim in tort of negligence, the plaintiff has to prove three broad essentials. These essentials are equally significant while deciding consumer grievances either alleging deficiency in services or defects in goods.

**Doctors’ Negligence and Judicial Trends**

The sensitivity of court in safeguarding consumers’ welfare is reflected in a recent judgment in Commandant Bar Hospital (Army) Delhi Cant. v. Wg Cdr K.K. Choudhary, wherein the wife of the complainant was terminally ill, immobile and bed ridden requiring 24 hours nursing help for her daily chores. No family member was allowed to attend her and no nurse was present when the patient breathed her last. It was held that lapse on the part of hospital to provide para-medical help amounted to deficiency in service. A totally negligent approach by the doctor was brought before the Maharashtra State Commission in Shailendra Singh v. Dr. Mangala L Paradkar case. It was alleged that the deceased patient, a nine months’ pregnant woman was brought to the doctor with a complaint of fever. Although she was suffering from malaria but no temperature was taken rather she was assured that it was only an ordinary fever. No examination of foetus was done. A dead child was delivered and subsequently patient also breathed her last. Thus failure to do the needful even though the patient was in a very critical condition were self explanatory of doctor’s negligence and accordingly the State Commission held it to be a case of negligence.

In yet another recent decision in Kusum Sharma v. Batra Hospital, the Hon’ble Supreme Court has settled the law relating to medical negligence.

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25 AIR 1996 SC 2377
26 II (2009) CPJ 57 (NC)
27 IV (2009) CPJ 329
28 (2010) 3 SCC 480
Mr. Dalveer Bandari, J., laid down certain basic principles to be kept in view while deciding the cases of medical negligence. According to the court, ‘while deciding whether the medical professional is guilty of medical negligence ‘the following well-known principles must be kept in view29:

- Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.
- Negligence is an essential ingredient of the offence. The negligence to be established by prosecution must be culpable or gross and not the negligence based upon the error of judgment.
- The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.
- A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.
- In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of the other professional doctor.
- The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.
- Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.
- It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.

29 Ibid para 89
• It is the bounden duty and obligation of the civil society to ensure that medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.

• The medical practitioners at times have to be saved from such a class of complainants, who use criminal process as a tool for pressurizing the medical professionals/hospitals, particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

• The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

The court did not rest the case here, by laying down eleven principles for determining the breach of duty by medical professionals/hospitals, but went a step ahead by observing that, “In our considered view, the aforementioned principles must be kept in view while deciding the cases of medical negligence.” The court further added a word of caution by stating that, “We should not be understood to have held that doctors can never be prosecuted for medical negligence. As long as the doctors have performed their duties and exercised an ordinary degree of professional and competence, they cannot be held guilty of medical negligence. It is imperative that the doctors must be able to perform their professional duty with free mind.”

The Emerging Scenario and Way Forward

Thus it may be inferred that the services rendered by the doctors are well within the ambit of Consumer Protection Act. The judiciary has tried to do justice to the parties as and when it had the opportunity. The dispute redressal agencies too have been responsive and have tried to render justice to the aggrieved consumers. The issue of quicker and cheaper justice to the consumers by the consumer forums has been raised. As per an empirical study conducted, it was found that the time taken for settling disputes is upto five years or even more in some cases, and also that many District Forums did not have full time President, thus delay is obvious. In such cases, it is suggested that the consumer cases may also be taken up by more informal system, i.e. Lok Adalats or may be decided through arbitration at the initial stage itself. This may help both the parties, i.e. the aggrieved gets what is due to him and the wrongdoer is saved from the cumbersome litigation process and also the stigma which may be a necessary consequence of the process.

ADVERTISING AND THE CONSUMER –
THE ETHICAL CONCERNS

SHEETAL KAPOOR

Introduction

Advertising is any paid form of non-personal presentation and promotion of ideas, goods, or services by an identified sponsor. Advertising plays an important role in gaining undivided attention of target audience, making them interested in the offering, creating desire for the products and services and helps in brand building and image creation. Advertising reflects contemporary society. The making of an ad copy, its message, its illustrations, the product advertised, the appeal-used all these have a social flavour. Advertising affects society and gets affected by it. It is, therefore, necessary to use this weapon with caution to avoid a corrosive effect on social values.

Consumers are bombarded with more than 1500 commercial messages a day. For most companies, the question is not whether to communicate but rather what to say, how to say it, to whom and how often. To reach target markets and build brand equity in this cluttered market advertisers sometimes overstep social and legal norms.

This paper attempts to explore the ethical concerns in advertising. Ethical norms deal with character, norms, morals and ideals. They give an idea of what is fair or unfair or what is right and wrong. The ethical principles underlie social policies and are dictated by the society we live in. To quote Jef I Richards, the Chairman of the University of Texas Advertising Department, “If it is not done ethically, advertising would not be trusted. If consumers don’t trust it, advertising is pointless.” Like any other profession, the advertising field is governed by the laws and enactment governing the mass
media. By citing live cases the paper discusses the nature of problems faced by the consumers through misleading advertisements and evaluates the relative efficacies of institutional mechanisms, laws and regulations available for easy redressal of consumers’ complaints.

**Ethics in Advertising**

In advertising ethical issues are broadly divided into two categories, i.e., ethical dilemma and ethical lapse. The first is ethical dilemma that arises when the pros and cons regarding a particular issue are even, where ethics are concerned; for example, the use of advertorials to promote a company’s products or services. The advertorial attracts readers’ attention and the ad copy has a bigger impact on the minds of the reader than an ordinary advertisement. The appearance or layout of an advertorial is similar to that of magazine or newspaper editorials and readers are beguiled into thinking that they are reading an article.

An ethical lapse occurs when there is violation or deviation from standards knowingly like conveying an inaccurate message while being well aware that it is wrong. For example, the Vim ultra dishwashing powder claimed that it contained pure lemon juice, but the laboratory test proved that the claim was false. There are three parameters, which help in deciding whether an advertisement is ethical, or not are:

1. **Advocacy:** It refers to what an advertisement is trying to say and whether this is objective or neutral.
2. **Accuracy:** It refers to whether the claim made by the company is true and verifiable.
3. **Acquisitiveness:** It refers to whether advertisement is promoting materialism.

**When is Advertising Deceptive**

The Constitution of India guarantees freedom of speech. However, special restraint is needed in commercial speech including advertising. An advertisement is called deceptive when it misleads people, alters the reality and affects buying behaviour. According to Federal Trade Commission (USA) deception occurs when:

1. There is misrepresentation, omission, or a practice that is likely to mislead.
2. The consumer is acting irresponsibly in given circumstances.
3. The practice is material and consumer injury is possible because consumers are likely to have chosen differently if there is no deception.

Deception exists when an advertisement is introduced into the perceptual process of the audience in such a way that the output of that perceptual
process differs from the reality of the situation. It includes a misrepresentation, omission or a practice that is likely to mislead.

Social and Ethical Aspects of Advertising

Advertising is criticized in relation to the following:

1. Advertising contents carrying inappropriate information: Use of untrue paid testimonials to convince buyers, quoting misleading prices, disparaging a rival product in a misleading manner are some examples of misleading. Advertisers of anti-aging creams, complexion improving creams, weight loss programs, anti-dandruff shampoos, and manufacturers of vitamins or dietary supplements are usually guilty of making exaggerated product claims. Some of the examples of advertisements in this category are:

- A fairness cream is advertised with the claim that its user will get a fair complexion within a month. The television commercial of ‘Fair and Lovely’ cream where a father commented ‘Kash mera beta hota’ because the daughter was dark skinned and was not getting good job was banned after the issue was raised in Parliament.

- Parle G Original Gluco Biscuits puts a tall claim of being ‘the World’s largest selling biscuits’ on its package on the basis of the results of a survey done in the Year 2003 by A. C. Nielsen.

- Wheel Active’s advertisement in 2006 as “World’s largest selling detergent” was asked to modify the claim by ASCI as it was highly misleading.

- Advertisements by some financial companies such as doubling money in a given time without base to justify claim are deceptive in nature.

- Many colleges misrepresent in their prospectus that the institution is affiliated to a particular university and an accredited one. In one of the cases decided in 2004 the complainant took admission believing that the representations made in prospectus, that college was recognized by the government of Punjab and was also approved by the Central Council of Indian Medicine for the whole course of five and a half years. The complainant deposited ₹ 1,00,000/- as donation and ₹ 65,000 as admission fees. Four years after 1996-97 no exams were being held. The Punjab University, CCIM and Baba Farid University did not grant any affiliation for want of requisite infrastructure. It was held to be a case of unfair trade practice and deficiency in service.

In the case of Bhupesh Khurana vs Vishwa Buddha Parishad a class action suit was filed by twelve students who had joined the BDS course offered by the Buddhist Mission Dental College run by Vishwa Buddha Parishad. The students’ complaint was that the college, in its advertisement and
prospectus inviting applications for the course, had given the impression that it was affiliated to Magadh University, Bodh Gaya and recognized by the Dental Council of India and was fully equipped to give the degree of Bachelor of Dental Science. However, after joining the college and attending classes, the students found to their dismay that the annual examinations were not being held because the college was neither affiliated to Magadh University, Bodh Gaya nor recognized by the Dental Council of India. As a result the students not only lost two precious academic years, but also spent money on fees, hostel charges, etc. Holding the college to be deficient of service the National Commission directed it to refund the admission expenses of all the twelve students along with interest of 12 percent.7

2. Products being Advertised and Safety Issues: When an advertisement for cooking oil says that using the said oil frees the user from heart problems, then such an advertisement is misrepresenting the facts. Companies advertise products highlighting health cures and drugs of questionable efficacy and health gadgets of unknown values. Tempted by an advertisement, claiming to increase a person’s height, Nadiya, a Class VIII student having a height of 135 cms got admitted to Fathima Hospital for surgery on 24-7-1996, for increasing her height. The surgery was conducted and a ring fixator was fixed on the legs which had to be adjusted every six hours. To her dismay Nadiya found her left leg shorter by ½ inches, and therefore, she could not walk. By September 1996, the pain had increased and the complainant was bed-ridden till March, 1998. The Commission held the hospital and the doctors negligent and deficient in their service and directed them to pay ` 5,00,000 with costs amounting to ` 2,000 to the complainant 8.

Many of the juice, sharbat, wafer manufacturing companies do not mention the ingredients used in it. For example, Haldiram offers many types of sharbats which are artificially flavoured but the front side of the package has big and attractive pictures of the fruit itself, creating misunderstanding amongst the consumers.

3. Advertisements Violating Consumers’ Right to Choice: When material facts which are likely to influence buying decisions are not disclosed, the advertisement becomes deceptive. In several advertisements it is stated that ‘conditions apply’ but these conditions are not stated. Not disclosing material facts amounts to deception. For example, the recent print ad for a well known brand mentions a 1-ton split-AC available for ` 15,990, a very attractive offer. But there is a small asterisk which mentions three things in small font. They are:

- Conditions apply
- Prices valid in Delhi and NCR under exchange only
- Actual products may differ from those displayed in the offer.

Such ads only mislead consumers by concealing important information...
from them. Advertisements for general medicines available over the counter, never talk of the side effects that may result from their frequent use. An advertisement “Diwali Dhamaal” offering a free Reliance mobile set besides other guaranteed gifts for the purchase of goods valued between ₹ 1,000 to ₹ 10,000 and more. When a consumer bought goods worth ₹ 14,178 he was denied a Reliance mobile and the dealer said that it would be provided only if he took a Reliance connection on payment of required charges. The National Commission held the advertisement to be highly misleading as no such condition was spelt out in the advertisement.

4. Advertisements Directed at Children

Children in India constitute 18.7% of the world kids’ population and one-third of our country’s population is under the age of 15 years. Thus in India, children form a massive 30% of the total population and this segment is growing at a rate of 4% per annum. This means a huge target market of 300 million is available to advertisers and they are already focusing on the kid channels. A survey by A.C. Nielsen UTV’s research partner showed that an average child watches TV for about three hours on week days and 3.7 hours on weekends, the time spent on television goes up with age, and the preferred language of viewing is Hindi across all age groups. Apart from the programmes children also view a lot of advertisements.

In India the advertising expenditure per year on products meant for children but purchased by parents, like health drinks, is 12 to 15 percent of the total ₹ 38,000 million. Ad expenditure per year on products meant for children and also bought by them such as chocolates is seven to eight percent. The advertisers rely on the children’s pester power on their parents. The ethical issues involved are that advertisers try to exploit young children by advertising products that are not conducive to their health. This is because:

- Children are naïve and gullible and are vulnerable to advertiser’s enticements. The general behaviour of children is affected due to advertising.
- Children lack independent judgment and experience and their purchase behaviour is affected. They cannot distinguish between fantasy and reality.
- Children learn certain norms which are unacceptable and want to imitate the celebrities in the ads. They start demanding products such as fast food, chocolates and ice creams everyday. This careless diet with trans fat leads to obesity increasing the risk of cancer by 40%, diabetes by 50%, also the cardio vascular problems, becoming an alarming issue these days. The Consumers International revealed that the most aggressive advertisers are from the junk food sector.

5. Puffery: Puffery means making exaggerated claims about the product
being advertised. The claims cannot be supported by evidence. The advertisers use them to boast of the merits of their products (best, finest, number one, etc.). Even law permits trade puffing or exaggeration. In 1997 MRTP Commission asked Hindustan Lever company to stop its campaign that its Pepsodent toothpaste was 102 percent better than the Colgate toothpaste. Hindustan Lever was restrained from “referring to any Colgate Toothpaste in any manner, either directly or indirectly, by means of any allusion or hint in its TV commercials or newspaper advertisements or hoardings, by comparison of its New Pepsodent with any product of Colgate in general, and Colgate Dental cream in particular”\textsuperscript{10}. Even the Lay’s potato chips slogan, “Bet You Can’t Eat Just One” involves puffery.

6. Advertising’s Influence on the Media: Advertisers undue control over media is based on the media’s dependence on advertising for their support. The average daily newspaper receives about 75 percent of its revenue from advertising. Most television and radio stations depend entirely on advertising for support. Thus, the support from advertisements tends to compromise the independence of media.

7. Promoting Unhealthy Products: Advertisements which promote the consumption of products such as tobacco, alcohol, and habits such as gambling in casinos are unethical. Despite a ban imposed by government on advertisements for cigarettes, liquor, paan masala, products that are harmful to the public, continue to find a place in outdoor advertisements, private channels, cable, and through the use of surrogates.

Regulation of Advertising

The process of regulating advertising can be divided into three areas:

1. Self Regulation by the advertising industry;
2. Externally imposed either by the aggrieved parties themselves or by the policing authority; and
3. Regulation by Government.

1. Self Regulation by the Advertising Industry

It is undertaken by the advertisers themselves on a broader perspective. Some advertisers feel that if some advertising is deceptive it must be regulated and they owe a duty towards consumers. Thus, with the increasing criticism of advertising, advertisers have devised self regulation to ensure true and accurate messages. Moreover, with the advent of new communication and information technologies, the national policy-makers have also become less willing and less able to intervene. Since print and audio-visual media exercise the essential freedom of speech and they are financed by advertising revenues, media has always resisted curbs thereby constraining the capacity of national governments to influence media. Further, the business also realizes that the
long term profitability of the organisation depends upon acting responsibly. Advertisers also feel that if they regulate advertising on their own, government would stay away from them because if government comes in between, the pressure would be more.

**Agencies Involved in Self Regulation**

A number of agencies are involved in self regulation. These can be classified into the following:

1. **Individual Companies and their Code of Advertising:** For example, Mudra an advertising agency of Reliance has its own Code of practice, similarly companies such as Lintas, McCann Ericsson, O&M have their own code of conduct.

2. **Advertising Trade Associations**
   - Advertising Standards Council of India (ASCI)
   - Advertising Association of India (AAAI)
   - Indian Newspaper Society (INS)
   - Press Council of India
   - Prasar Bharti

3. **Individual Media and Media Groups**
   - Code for Commercial Advertising on Doordarshan
   - All India Radio Code for Commercial Advertising

**Role of ASCI as Self – Regulator**

ASCI is a voluntary self-regulatory organization, registered as a not-for-profit Company under section 25 of the Indian Companies Act. The sponsors of ASCI, who are its principal members, are firms of considerable repute within industry in India, and comprise advertisers, media, advertising agencies and other professional /ancillary services connected with advertising practice. Thus, ASCI is not a Government body. However, ASCI is represented in all committees working on advertising content in every Ministry of the Government of India. The ASCI receives and processes 120-140 complaints against advertisements, from a cross section of consumers and the general public, and this covers individuals, practitioners in advertising, advertiser firms, media, ad. agencies, and ancillary services connected with advertising.

**ASCI’s Special Guidelines or Rules for a Particular Category**

ASCI has Guidelines on Advertising of Food and Beverages directed at children under 13 years of age. Children’s choice of diet (food and beverages) and level of physical activity, can impact their general health and well being. It can have a positive influence by encouraging a healthy, well balanced diet, sound eating habits and appropriate physical activity. Caution and care,
therefore, should be observed in advertising Foods and Beverages especially ones containing relatively high Fat, Sugar and Salt. For example, ASCI took a *suo motu* action against Cadbury’s Bournvita Ad that “Real Achievers Grow Upon Bournvita” and the company was asked to substantiate its claim as it was highly exaggerated. The advertisement was discontinued in 2006. ASCI also has Guidelines on advertisements for automotive vehicles.

Advertisements have a significant influence on people’s behaviour. As such, advertisers are encouraged to depict advertisements, in a manner which promotes safe practices, eg wearing of helmets and fastening of seatbelts, not using mobiles/cell phones when driving, etc. Specifically, Advertisements should not portray violation of the traffic rules, show speed maneuverability in a manner which encourages unsafe or reckless driving, which could harm the driver, passengers and/or general public, show stunts or actions, which require professional driving skills, in normal traffic conditions which in any case should carry a readable cautionary message drawing viewer attention to the depiction of stunts. For example, Suzuki Motorcycles advertisement showed a biker driving dangerously and overtaking between two trucks and rashly cutting the lane. ASCI asked the advertisers to modify the advertisement as the advertisement did not communicate good traffic sense and if emulated by immature drivers it can cause injury to them.

ASCI’s code of Self Regulation says: “Advertisements should be truthful and fair to consumers and competitors within the bounds of generally accepted standards of public decency and propriety. Not used indiscriminately for the promotion of products, hazardous or harmful to society or to individuals particularly minors, to a degree unacceptable to society at large”.

2. Externally Imposed either by the Aggrieved Parties themselves or by the Policing Authority: This regulation is done by consumers who either individually or collectively seek action against the defaulting advertisers either by writing to companies which carry the deceptive ad, or through consumer organizations. Sometimes these consumers succeed and if they don’t succeed they go for redressal by taking legal route.

3. Regulation by Government

These laws can be divided into two categories.

**Laws having Horizontal Application on Advertising**

1. The Consumer Protection Act, 1986
2. The Emblems and Names (Prevention of Improper Use) Act, 1950
3. Trade and Merchandise Marks Act, 1958
4. Cable Television Networks (Regulation) Act, 1995
5. Indecent Representation of Women (Prohibition) Act, 1986
7. Motor Vehicles Act, 1988

Laws having Vertical Application on Advertising

1. Section 58 of Companies Act, 1956
2. Drugs and Cosmetics Act, 1940
3. Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
4. Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
5. Prevention of Food Adulteration Act, 1954/ Food Safety and Standards Act, 2005
6. Prize Chits and Money Circulation Schemes (Banning) Act, 1978
7. Prize Competition Act, 1955
8. The Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 and Amendment Act, 2002
10. The Young Persons (Harmful Publications) Act, 1956

Regulatory Authorities having Power to Regulate Advertising

The following Regulatory Authorities have power to regulate advertising in their respective domain:

- Insurance Regulatory and Development Authority
- Telecom Regulatory Authority of India
- Securities and Exchange Board of India
- Reserve Bank of India
- Medical Council of India

Some of the important features of various laws concerning advertising are:

1. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954: The Act prohibits advertisements for products and services claiming to cure certain medical conditions. As per the law, no advertisement should promise magical cure for any ailments or disease and the rules specify the diseases and ailments that cannot be advertised promising cure or remedies. However, the enforcement of the Act by the state authorities is poor, as a result one finds a number of advertisements in the print media. The Act also does not cover advertisements that appear in various media pertaining to health gadgets of unproven efficacy, like tummy trimmers, bands for blood pressure control, and gadgets to increase height. This Act does not provide for issuing corrective advertisements.
2. **The Monopolies and Restrictive Trade Practice Act, 1969:** It was the most effective Act in the eighties and nineties to regulate undesirable advertising. In the year 1984, the government brought, through an amendment, “unfair trade practices” under the purview of the MRTP Commission and the Office of the Director General (Investigation and Registration). However, this Act is now replaced by the Competition Act, 2002 and the MRTP Commission has been abolished with effect from 14th October 2009. The MRTP Act had been very effective in hauling a number of advertisers to stop advertisements which are prejudicial to consumer interest through its ‘cease and desist orders’.

3. **The Consumer Protection Act, 1986:** The Consumer Protection Act, 1986, applies to advertisements for all products in the market place. A consumer may file a complaint related to false and misleading advertisements, which are included under the definition of unfair trade practice under Section 2 (1) (r) in which seven classes of unfair trade practices have been mentioned. The consumer courts can take the following actions under section 14 of the Consumer Protection Act, 1986:
   - Issue interim orders stopping such advertisements pending disposal;
   - To pass cease and desist orders;
   - Award compensation for loss or suffering, punitive damages and cost of litigation to the affected party;
   - Direct the advertiser to issue corrective advertisement.

4. **Cable Television Networks (Regulation) Act, 1995:** This law lays down the procedure for registration of a cable television network and also regulates the programmes and advertisements transmitted on cable network in India. The registering authority is the Head Post Master of a Head Post Office of the area within whose territorial jurisdiction the office of the cable operator is situated.

5. **Drugs and Cosmetics Act, 1940 as Amended in 1995:** The Act regulates the import, manufacture, distribution and sale of drugs and cosmetic in the country. The Act was amended to impose more strict penalties for manufacture and sale of adulterated or spurious drugs or drugs not of standard quality which are likely to cause death or grievances hurt to the user.

   This law regulates the production, manufacture and sale of all drugs and cosmetics in the country. The Act prescribes a fine of upto ₹ 500 for any person using any report or extract of report of a test or analysis made by the Central Drugs Laboratory or a government analyst for advertising of a drug or cosmetic.

6. **Section 292 and Section 293 of the Indian Penal Code, 1860:** These provisions of IPC prohibit the dissemination of any obscene matter. The Indian Post Office Act, 1898, imposes a similar prohibition on the
transmission of obscene matter through the post. The Customs Act, 1962, allows the detention and seizure of any obscene matter sought to be imported into the country.

7. The Children’s Act, 1960: The Act prohibits the disclosure of name, address and other particulars of any child involved in any proceedings.

8. The Indecent Representation of Women (Prohibition) Act, 1986: The Act forbids the depiction of women in an indecent or derogatory manner in the mass media. No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

   This is an Act to prevent the improper use of certain emblems and names for commercial and professional purposes. It extends to the whole of India and also applies to citizens of India living outside India. The name, emblem or official seal of certain organizations cannot be used.

10. Motor Vehicles Act, 1988: This law affects outdoor advertisements, like bill boards, posters, neon signs, etc. The Act, grants powers to remove such advertisements which may distract drivers and have the potential of causing road accidents.

Unfortunately despite several laws meant to protect consumers against such unfair trade practices, false and misleading advertisements continue to exploit the consumer. Outdated laws, poor enforcement of them are some of the lacunas in order to control advertising. The need of the hour is better laws in keeping with the times, better enforcement, corrective advertisements, better self-regulation by industry, independent regulator to regulate health and children –related advertisements.

Need for Consumer Action

1. The Government of India has launched a massive multi-media campaign since 2005 to make consumers aware of their rights. The slogan ‘Jago Grahak Jago’ has now become a household name and through its advertisements the Government has endeavoured to inform the common man and to empower him/her about his/her rights as a consumer.

2. As empowered consumers we should not be gullible to risky advertisements. Children are easily swayed by the false claim of the advertisers and fall in the trap of the greedy advertisers. Therefore, one should not blindly follow the advertisements and use logic and reasoning before purchasing anything.

3. MRTP Act had the powers of taking *suo motu* action whereas the Consumer Protection Act or ASCI, does not have such powers. Only if a consumer or industry complaints to the Consumer Courts or to
ASCI then action can be taken. By the time the action is taken by these bodies to either withdraw or modify the offending advertisement the advertisement has already conveyed the false message. Therefore, it is time to make some amendment in the Act and to give powers to the consumer courts for _suo motu_ action so that they can take up cases of false advertisements on their own.

4. Several consumers and consumer organizations are fighting against the misleading advertisements. Certain consumer magazines publish a column on misleading advertisements. They also request consumers to share their opinions regarding various advertisements so that any advertisement which is deceptive and false can be brought to the notice of the regulators.

5. Further many colleges and schools have started Consumer Clubs where discussions are being carried on unethical advertisements. If consumers feel that an advertisement is not true they can write to Advertising Standard Council of India also.

6. Regarding misleading advertisements related to banks, consumers can complaint to the Reserve Bank of India (RBI). Grievances regarding false advertisements by telecom companies can be made to Telecom Regulatory Authority of India and insurance related matters to IRDA.

The brighter side of all this is that as consumer awareness grows, marketers and advertisers are fast learning that in these days when the consumer is king, nothing but the best would do. As JWT agency quotes, “Advertising is a non-moral force, like electricity, which not only illuminates but electrocutes. Its worth to civilization depends upon how it is used”.

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CONSUMER PROTECTION UNDER HEALTH INSURANCE SECTOR

ASHOK R. PATIL

Introduction

The Indian Constitution came into force on January 26, 1950. Though the word consumer is not to be found in the Constitution, the consumer breathes and peeps out through many of the blood vessels of the Constitution. The Constitution of India is a social document. It is not made only to provide a machinery of government to maintain law and order and to defend the country. The founding fathers of the Constitution had a glorious vision of the establishment of a new society in India imbued with high ideals for guaranteeing the multidimensional welfare of all the people.1 The aspirations of the people of India found an explicit expression mainly in the preamble, the fundamental rights and the directive principles of the state policy.

It is the State's duty to give guarantee to everyone in this country that he/she has a right to live with human dignity, free from exploitation.2 This right to live with human dignity derives its life breath from the directive principles of state policy. Articles 38, 39 and 47 of the Directive Principles of State Policy imposes an obligation upon the State to undertake welfare functions for improvement of Public Health. It is essential for the government in a third world country like India to take steps to share the burden of ill health of socially and economically backward sections of the society. If only private players were involved in the insurance sector without any State intervention,

2 Constitution of India, Article 21.
the vision of our forefathers who drafted the Constitution of a more equitable society with better standards of living would not be realized. Thus, the need for government regulation was felt to be in consonance with the spirit of the Constitution.3

Basically Insurance started as a security against uncertain or unavoidable future risks. There are many facets to Insurance law as different kinds of risks are insured against under various sectors. The winds of liberalization have initiated vast changes in the functioning of the insurance industry. Therefore, the Insurance Regulatory and Development Authority Act, 1999 (IRDA Act) came into force and as a result the monopoly of Life Insurance Corporation (LIC) and General Insurance Corporation (GIC) was removed and private insurance companies including foreign insurance companies were allowed in India. Majority of the new private insurers are joint ventures with foreign partners. The IRDA Act limits foreign insurers to 26% equity participation. Under Section 3 of the Act “Insurance Regulatory and Development Authority” has been established to control the insurance business.

This article, attempts to explain how far Insurance legislations, rules, regulations, have succeeded in protecting the consumers especially in Health Insurance business.

**Health Insurance**

Health Insurance is one of the upcoming sectors in the Indian insurance market. In Indian context, the term “Medi-claim”4 and Health Insurance have often been used interchangeably. However, the two should not technically be used synonymously. It is only in recent times that the importance of health insurance has risen significantly. There are several factors responsible for it. One is the rise in the health care cost. Secondly, the increasing influence of technology in everyday lives. As a result, the government is making efforts in this sector to make provisions of such facilities to the economically weaker sections who would not be able to afford costs resulting from an unprecedented illness or disease.5

Every insurer promises customer satisfaction but to what extent this promise is being translated into reality is the million-dollar question. Basically, the problem arises because several insurers are not aware of what the customer really wants, or even though they understand, they cannot deliver because of organizational constraints. The insurers need to shift focus on customer needs. Although it is difficult for them to adapt to the changing needs of the customer,

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4 The Medi-claim Insurance Scheme was a popular Central Government approved scheme framed by the G.I.C.
5 *Supra* note 3.
they cannot survive otherwise and are sure to be the victims of marketing myopia. With the development of insurance sector the expectations of the consumers have also increased. Again, the consumers in case of the insurance sector are the society at large. It provides services to the members of the society and acts as a safety net. Therefore, in public interest, it becomes important that there is no fraud or unfair trade practice undertaken by insurance companies against the insured.

The Health Insurance policies are provided by the General Insurance Companies. The Health Insurance contracts also satisfy all essential elements like Utmost Good Faith, Contract of Indemnity. The Third Party Administrators (TPA) are introduced and regulated by the Insurance Regulatory and Development Authority (Third Party Administrators – Health Services) Regulations, 2001. TPAs essentially regulate the relationship between the insurance company and the insured by taking care of the procedural requirements so that the consumer would not have to run after the insurance company to get reimbursement for the medical expenses that he had to pay from his pocket while undergoing treatment covered under his or her insurance policy.

Third Party Administrator (TPA)

TPA is a company which has to be registered under the Companies Act, 1956 with a minimum paid up capital in equity shares of ` 1 crore. Also, the company’s main objective has to be the conduct of business in the area of health services as a TPA. After the grant of licence, the company is not permitted to associate itself with any other business.7

The object of health insurance contract is to cover the risk from an envisaged illness within its fold. Dependent on the terms and conditions of the insurance policy, the consumer may get either cashless service or claim reimbursement for the services availed of due to the illness covered by the policy. One of the most recent and important developments in this regard has been the induction of Third Party Administrators (TPAs) for the purpose of handling claims made by the insured. Earlier, the insurance company was in charge of processing the same. But now on the face of it the outsourcing seems to have made the system less biased and fairer. Not only are individuals making use of the benefits accruing from health insurance plans but the corporate world is also employing it as a strategic tool for luring and retaining employees by putting it forth as a measure of employee welfare.8 The TPAs are intermediaries who bring together all the players in a healthcare system,
namely doctors, hospitals, insurance companies, long-term facilities and pharmacies. They provide services which include cashless medical care at hospitals, call center support, management of services being provided and processing of all claims and reimbursements. Simply put, they seek to ensure cost-effective and hassle-free services.

The TPAs begin with the establishment of a network of healthcare facilities such as hospitals, clinics, pharmacies etc. Once a TPA establishes a network, it proceeds to sign a Memorandum of Understanding with an insurance company for provision of the aforementioned services. The insurance companies then inform policyholders of the network of healthcare facilities covered under the scheme and of the process for settling claims. When policyholders are admitted to any of these facilities, the facility informs the TPA who examines the claim and then informs the facility to proceed with the treatment.

Following treatment, the bills and other documents are then sent to the TPA where they are processed by an official and forwarded to the insurance company for reimbursement. Many companies pay the hospital from their corpus even before receiving reimbursements from the insurance company.

The primary source of revenue is the fees given by insurance companies. The fees are determined by the volume and scope of services provided by the TPA. Usually this is calculated as a percentage of the premium paid by the policyholders. The regulations have also incorporated several provisions aimed at consumer welfare such as prohibiting the collection of any fees by TPAs from customers. In addition to this, the Regulations also include several other regulations in the health insurance sector:

- A TPA must be a company incorporated under the Companies Act, 1956, with an equity share capital of at least ₹ 10 million. It is also required that the company must have this minimum share capital at any period during its functioning. This requirement has been brought
in so as to ensure that TPAs are financially stable and ensure that customers are not defrauded by a TPA going bankrupt during an emergency. This also ensures that only the best companies with strong financial backing enter the sector.

- The primary objective of the company must be to operate in the field of health services in India.\(^\text{17}\) A prohibition has also been imposed on Indian TPAs offering services in any other sector. This seeks to ensure that TPAs remain impartial and are not motivated by extraneous, commercial concerns while acting as an intermediary in the socially-vital healthcare sector.\(^\text{18}\)

- It is also necessary that TPAs possess expertise in the field of healthcare services in order to assist insurers and consumers more effectively. This is ensured by requiring that the Board of Directors of the TPA comprise at least one doctor registered with the Medical Council of India. In addition to this, it is also necessary that the CEO/CAO of the company possess a degree in hospital management with at least 3 years experience in the field.\(^\text{19}\)

- Again, healthcare being a socially important sector, foreign participation in TPAs has been limited to 26% of the equity share capital.\(^\text{20}\) This is also ensured by requiring that any share transfer for more than 5% of the equity capital be informed to the IRDA within 15 days.\(^\text{21}\)

- TPAs are required to disclose the fees they would charge from insurance companies at the time of obtaining a license itself. They are also required to make annual reports to the IRDA alongwith detailed statements of accounts.\(^\text{22}\) Thus, the Regulations seek to ensure that transparency is maintained in the functioning of the TPA and the regulatory body would become aware of any fraudulent conduct on its behalf.

- TPAs are also prohibited from trading the information that they possess such as patients’ medical records, hospitals’ success rates etc.\(^\text{23}\) They

\(^{17}\text{Regulation 3(2), Insurance Regulatory and Development Authority (Third-party Administrators – Health Sector) Regulations, 2001.}\)


\(^{19}\text{Regulation 8(4), Insurance Regulatory and Development Authority (Third-party Administrators – Health Sector) Regulations, 2001.}\)

\(^{20}\text{Regulation 3(6), Insurance Regulatory and Development Authority (Third-party Administrators – Health Sector) Regulations, 2001.}\)

\(^{21}\text{Regulation 3(7), Insurance Regulatory and Development Authority (Third-party Administrators – Health Sector) Regulations, 2001.}\)

\(^{22}\text{Regulation 24(1), Insurance Regulatory and Development Authority (Third-party Administrators – Health Sector) Regulations, 2001.}\)
are also barred from providing false information to the insurer or the consumer. Failure to meet these conditions would result in revocation of the license.

Thus, the law seeks to regulate TPAs. However, despite these seemingly stringent regulations, there are several issues regarding the functioning of TPAs which continue to concern policyholders and insurers alike. The following section of the paper analyses the actual and potential demerits of the TPA system.


The Insurance Regulatory and Development Authority Act, 1999

In the open insurance market, IRDA has the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business.\(^{24}\) It protects the interests of the policy holders in matters concerning assigning of policy, nomination by policy holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance. It controls and regulates the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938. It adjudicates the disputes between insurers and intermediaries or insurance intermediaries and supervises the functioning of the Tariff Advisory Committee;

The Insurance Regulatory and Development Authority (Protection of Policyholders Interests) Regulations, 2002

To ensure protection of the interests of the policy holders, the Authority, in consultation with the Insurance Advisory Committee, made the regulations by exercising powers conferred by clause (zc) of sub-section (2) of section 114A of the Insurance Act, 1938 read with sections 14 and 26 of the Insurance Regulatory and Development Authority Act, 1999. These regulations apply to all insurers, insurance agents, insurance intermediaries and policyholders. They lay down provisions regarding various aspects of consumer services. It lays down requirements regarding proposal form, matters to be mentioned in the policy, claim procedure, maximum time duration provided for processing of claims and grievance redressal system.

A person who wants to take policy, the proposal form and prospectus are


\(^{24}\)Insurance Regulatory and Development Authority Act, 1999: Sec 14.
the introductory documents to know about the insurance company and the terms and conditions of the policy. “Proposal form”\textsuperscript{25} means a form to be filled in by the proposer for insurance, for furnishing all material information required by the insurer in respect of a risk, in order to enable the insurer to decide whether to accept or decline, to undertake the risk, and in the event of acceptance of the risk, to determine the rates, terms and conditions of a cover to be granted. “Material” for the purpose of these regulations shall mean and include all important, essential and relevant information in the context of underwriting the risk to be covered by the insurer. And “Prospectus”\textsuperscript{26} means a document issued by the insurer or in its behalf to the prospective buyers of insurance, and should contain such particulars as are mentioned in Rule 11 of Insurance Rules, 1939 and includes a brochure or leaflet serving the purpose. Such a document should also specify the type and character of riders on the main product indicating the nature of benefits flowing thereupon.

\textbf{a) Point of Sale}\textsuperscript{27}

Notwithstanding anything mentioned in regulation 2(e), a prospectus of any insurance product shall clearly state the scope of benefits, the extent of insurance cover and in an explicit manner explain the warranties, exceptions and conditions of the insurance cover and, in case of life insurance, whether the product is participating (with-profits) or non-participating (without-profits). The allowable rider or riders on the product shall be clearly spelt out with regard to their scope of benefits, and in no case, the premium relatable to health related or critical illness riders in case of term or group products shall exceed 100\% of premium under the basic product. All other riders put together shall be subject to a ceiling of 30\% of the premium of the basic product. Any benefit arising under each of the riders shall not exceed the sum assured under the basic product. Provided that the benefit amount under riders shall be subject to section 2(11) of the Insurance Act, 1938. And the rider or riders attached to a life policy shall bear the nature and character of the main policy, viz. participating or non-participating and accordingly the life insurer shall make provisions, etc., in its books.\textsuperscript{28}

An insurer or its agent or other intermediary shall provide all material information in respect of a proposed cover to the prospect to enable the prospect to decide on the best cover that would be in his or her interest. Where the prospect depends upon the advice of the insurer or his agent or an insurance intermediary, such a person must advise the prospect dispassionately.

\textsuperscript{25}The Insurance Regulatory and Development Authority (Protection of Policyholders Interests) Regulations, 2002: Regulation 2(d).
\textsuperscript{26}\textit{Id.} Regulation 2(e).
\textsuperscript{27}\textit{Id.} Regulation 3.
\textsuperscript{28}Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) (Amendment) Regulations, 2002.
Where, for any reason, the proposal and other connected papers are not filled by the prospect, a certificate may be incorporated at the end of proposal form by the prospect that the contents of the form and documents have been fully explained to him and that he has fully understood the significance of the proposed contract. In the process of sale, the insurer or its agent or any intermediary shall act according to the code of conduct prescribed by the Authority, the Councils that have been established under section 64C of the Insurance Act, 1938 and the recognized professional body or association of which the agent or intermediary or insurance intermediary is a member.

b) Proposal for Insurance

Except in cases of a marine insurance cover, where current market practices do not insist on a written proposal form, in all cases, a proposal for grant of a cover, either for life business or for general business, must be evidenced by a written document. It is the duty of an insurer to furnish to the insured free of charge, within 30 days of the acceptance of a proposal, a copy of the proposal form.

The Forms and documents used in the grant of cover may, depending upon the circumstances of each case, be made available in languages recognised under the Constitution of India. In filling the form of proposal, the prospect is to be guided by the provisions of Section 45 of the Act. Any proposal form seeking information for grant of life cover may prominently state therein the requirements of Section 45 of the Act. Where a proposal form is not used, the insurer shall record the information obtained orally or in writing, and confirm it within a period of 15 days thereof with the proposer and incorporate the information in its cover note or policy. The onus of proof shall rest with the insurer in respect of any information not so recorded, where the insurer claims that the proposer suppressed any material information or provided misleading or false information on any matter material to the grant of a cover. Wherever the benefit of nomination is available to the proposer, in terms of the Act or the conditions of policy, the insurer shall draw the attention of the proposer to it and encourage the prospect to avail the facility. The proposals shall be processed by the insurer with speed and efficiency and all decisions thereof shall be communicated by it in writing within a reasonable period not exceeding 15 days from receipt of proposals by the insurer.

c) Grievance Redressal Procedure

Every insurer shall have in place proper procedures and effective mechanism to address complaints and grievances of policyholders efficiently and with speed and the same along-with the information in respect of Insurance

30Id. Regulation 5.
Ombudsman shall be communicated to the policyholder along-with the policy document and as may be found necessary.

d) Policyholders’ Servicing

An insurer carrying on life or general business, as the case may be, shall at all times, respond within 10 days of the receipt of any communication from its policyholders in all matters, such as: recording change of address; noting a new nomination or change of nomination under a policy; noting an assignment on the policy; providing information on the current status of a policy indicating matters, such as, accrued bonus, surrender value and entitlement to a loan; processing papers and disbursal of a loan on security of policy; issuance of duplicate policy; issuance of an endorsement under the policy; noting a change of interest or sum assured or perils insured, financial interest of a bank and other interests; and guidance on the procedure for registering a claim and early settlement thereof.

The requirements of disclosure of “material information” regarding a proposal or policy apply, under these regulations, both to the insurer and the insured. The policyholder shall assist the insurer, if the latter so requires, in the prosecution of a proceeding or in the matter of recovery of claims which the insurer has against third parties. The policyholder shall furnish all information that is sought from him by the insurer and also any other information which the insurer considers as having a bearing on the risk to enable the latter to assess properly the risk sought to be covered by a policy. Any breaches of the obligations cast on an insurer or insurance agent or insurance intermediary in terms of these regulations may enable the Authority to initiate action against each or all of them, jointly or severally, under the Act and/or the Insurance Regulatory and Development Authority Act, 1999.

Insurance Regulatory and Development Authority (Insurance Advertisements and Disclosure) Regulations, 2000

With new concepts of trade including insurance, the need for consumer protection has increased like never before. The growing size of production and distribution systems and advertising, mass marketing methods and emergence of e-commerce has resulted in reduction of personal interaction between buyers and sellers contributing to the increased need of consumer protection. From the womb to the tomb we are influenced by business world where each of its participant’s promises to give or deliver something or promises to sell or render quality services, but fails in reality.

Therefore, in exercise of the powers conferred by section 26 of the Insurance Regulatory and Development Authority Act, 1999, the Authority in

\[31\text{Id. Regulation 10.}\]

\[32\text{Id. Regulation 11}\]
consultation with the Insurance Advisory Committee, made the regulations called Insurance Regulatory and Development Authority (Insurance Advertisements and Disclosure) Regulations, 2000. These regulations apply to all insurers, insurance agents and insurance intermediaries. The regulations on advertisement are intended to protect the policy holders by preventing misleading or unfair advertisements and promotional material. The regulations define and lay down the criteria for an advertisement and also define a misleading advertisement.

“Insurance Advertisement”\(^{33}\) means and includes any communication directly or indirectly related to a policy and intended to result in the eventual sale or solicitation of a policy from the members of the public, and shall include all forms of printed and published materials or any material using the print and or electronic medium for public communication such as: newspapers, magazines and sales talks; billboards, hoardings, panels; radio, television, website, e-mail, portals; representations by intermediaries; leaflets; descriptive literature/ circulars; sales aids flyers; illustrations form letters; telephone solicitations; business cards; videos; faxes; or any other communication with a prospect or a policyholder that urges him to purchase, renew, increase, retain, or modify a policy of insurance. The following materials shall not be considered to be an advertisement provided they are not used to induce the purchase, increase, modification, or retention of a policy of insurance: materials used by an insurance company within its own organization and not meant for distribution to the public; communications with policyholders other than materials urging them to purchase, increase, modify surrender or retain a policy; materials used solely for the training, recruitment, and education of an insurer’s personnel, intermediaries, counselors, and solicitors, provided they are not used to induce the public to purchase, increase, modify, or retain a policy of insurance; any general announcement sent by a group policyholder to members of the eligible group that policy has been written or arranged.

Every insurance company shall be required to prominently disclose in the advertisement and that part of the advertisement that is required to be returned to the company or insurance intermediary or insurance agent by a prospect or an insured the full particulars of the insurance company, and not merely any trade name or monogram or logo. Where benefits are more than briefly described, the form number of the policy and the type of coverage shall be disclosed fully.\(^{34}\) Every advertisement for insurance shall state clearly and unequivocally that insurance is the subject matter of solicitation and state the full registered name of the insurer/ intermediary/ insurance agent.\(^{35}\)


\(^{34}\)Id. Regulation 5.

\(^{35}\)Id. Regulation 9.
Every insurer or intermediary’s web site or portal shall include disclosure statements which outline the site’s specific policies *vis-à-vis* the privacy of personal information for the protection of both their own businesses and the consumers they serve and display their registration/license numbers on their web sites. For the purposes of these regulations, except where otherwise specifically excluded or restricted, no form or policy otherwise permissible for use shall be deemed invalid or impermissible if such form or policy accurately reflects the intentions of the parties in such form or policy as published electronically or transmitted electronically between parties. Every insurer or intermediary shall follow recognised standards of professional conduct as prescribed by the Advertisement Standards Council of India (ASCI) and discharge its functions in the interest of the policyholders.

If an advertisement is not in accordance with these regulations the Authority may take action in one or more of the following ways: issue a letter to the advertiser seeking information within a specific time, not being more than ten days from the date of issue of the letter; direct the advertiser to correct or modify the advertisement already issued in a manner suggested by the Authority with a stipulation that the corrected or modified advertisement shall receive the same type of publicity as the one sought to be corrected or modified; direct the advertiser to discontinue the advertisement forthwith; any other action deemed fit by the Authority, keeping in view the circumstances of the case, to ensure that the interests of the public are protected. Any failure on the part of the advertiser to comply with the directions of the Authority may entail the Authority to take such action as deemed necessary including levy of penalty.

Every proposal for an insurance product shall carry the following stipulation, as prescribed in section 41 of the Insurance Act, 1938: “No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take out or renew or continue an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectus or tables of the insurer.” If any person fails to comply with, shall be liable to payment of a fine which may extend to rupees five hundred.

**Insurance Ombudsman**

As the insurance sector opened up in the country, a need was felt for a dispute settlement mechanism focusing exclusively on the insurance sector. In recognition of this need, the Central Government created the institution of

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36 *Id.* Regulation 8.
37 *Id.* Regulation 12.
38 *Id.* Regulation 11.
39 *Id.* Regulation 13.
the Insurance Ombudsman. The Government of India framed the “Redressal of Public Grievances Rules, 1998” (Rules), in exercise of powers conferred on it under Section 114(1) of Insurance Act, 1938. These Rules came into force with effect from 11th November, 1998 and the Insurance Ombudsman was established. These Rules aim at resolving insured’s complaints relating to the settlement of disputes, delay, repudiation etc., with insurance companies in a cost effective, efficient and impartial manner. The Rules apply to all insurance companies, whether they are operating in the general insurance business or the life insurance business.\(^{40}\) These Rules apply to companies in both the public and the private sectors. The Ombudsman functions within a set geographical jurisdiction\(^{41}\) and adjudicates only an insurance policy taken on personal lines. The maximum limit for the award is ₹ 20 lakhs. There is no appeal against a decision given by the Ombudsman, but complainant may exercise the right to take recourse to the normal process of law against the insurance company. Further, dismissal of a complaint by the Insurance Ombudsman does not vitiate the complainant’s right to seek remedy against the insurer, as per normal process of law.

But the object of establishing the Insurance Ombudsman has not been achieved completely. It was recently reported that insurance companies are not taking the institution of Ombudsman seriously in dispute resolution with the customers as well as execution of awards.\(^{42}\) This was the opinion expressed by a majority of the 12 Insurance Ombudsmen in the country in the operational reports for the last five years, submitted to the Insurance Regulatory and Development Authority (IRDA). Some of the issues identified by the Ombudsmen were that the insurance companies are negligent, there is a delay in response, speedy responses lack substance, etc. It is also generally found that most of the documents lie in the hands of the insurance companies at the complaint stage, making disposal of complaints extremely difficult. The Ombudsmen also pointed out that official representing the case for insurance companies are not well-versed with the contents of the file. In many cases, the officers representing on behalf of the insurers are not pleading the case properly.\(^{43}\) There have been many suggestions regarding improvement of the institution of Ombudsman. For instance, the Law Commission of India, in its “190th Report on the Revision of the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999”\(^{44}\). Therefore, the insured is opting Consumer Forum instead of Ombudsman for settlement of the disputes against the insurer.

\(^{41}\)Id. Rule 10.
\(^{43}\)Id.
Consumer Protection Act, 1986

In India, the need for consumer protection is paramount in view of the fact that there is an ever-increasing population and the need for many goods and services of which there is no matching supply. In India consumer exploitation is more because of lack of education, poverty, illiteracy, lack of information, traditional outlook of Indians to suffer in silence and ignorance of their legal rights against the remedy available in such cases. It was, therefore, necessary that a forum be created where a consumer not satisfied with the goods supplied or services (including insurance) rendered may ventilate his grievance and machinery devised to afford him adequate protection. The new law in the form of the Consumer Protection Act, 1986 was enacted with this end in view. The provisions of COPRA are in addition to and not in derogation of the provisions of any other law for the time being in force.45 The Consumer Protection Rules, 1987 were framed by the Central Government under the power conferred by sec. 30 (1) of the COPRA and came into force on April 15, 1987. The COPRA has been amended three times, i.e., in 1991, 1993 and 2002. The National Consumer Disputes Redressal Commission with the previous approval of the Central Government made the regulations, called Consumer Protection Regulations, 2005.46

The insured/policy holder is considered as a consumer under the COPRA. The “consumer” means, ‘any person who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who ‘hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes;’47 and “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment.48 Here, Insured and beneficiaries like nominee, assignee and legal heir are considered as a consumer under this definition.

If any act of the insurer without due diligence, without any valid reason, exploits the Insured (consumer) it is deemed to be deficiency in service. The “deficiency”49 means ‘any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be

45Consumer Protection Act, 1986: Sec. 4.  
46W.e.f. 31st May, 2005.  
47Consumer Protection Act, 1986, Sec. 2(1)(d)(ii).  
48Id, Sec. 2(1)(d): explanation.  
49Id, Sec. 2(1)(g).
maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.’ The service provided by insurer to the insured is a ‘service’ as defined under the COPRA. The “service” means service of ‘any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.’

Under Consumer Protection Act, the policy holder is a Consumer and Insurance Company provides service for consideration. Therefore, if there is any deficiency in service by the Insurance Company, for not following existed laws, rules and regulations related to the Insurance business, the consumer can file complaint before the Consumer Forum to get speedy and less expensive justice.

Judicial View on Insurance Company Behavior

The Supreme Court, National Commission and State Commissions have passed judgment against the exploitation of policy holders by the Health Insurance Companies. The following are some of the landmark decisions:

a) Life Insurance Corporation of India v. P.S. Aggarwal

The Insured was suffering from cough and breathlessness which found no mention in proposal form. No doctor was produced to confirm the information collected from hospital in support of evidence of disease. Death of insured had no nexus with bronchitis and breathlessness. Doctor of company failed to give nature of ailment. National Commission held that repudiation of claim on ground of concealment of disease unjustified.

b) Biman Krishna Bose Vs. United India Insurance Co. Ltd.

In this case husband and his wife had taken medi-claim policy on 14.12.90. During the currency of the said policy, the wife of the complainant had fallen ill and incurred a sum of ₹ 8243/- for treatment in the hospital in respect of which, claim was lodged with the Insurance Company, which was not paid and the appellant approached the District Forum which rejected the complaint. The State Commission set aside the order of the District Forum and directed the Insurance Company to pay ₹ 8243/-. The Insurance Company filed revision before the National Commission which allowed the revision and set aside the order of the State Commission. The appellant filed appeal before the Apex Commission.

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50Id, Sec. 2(1)(o).
512005(1)CPJ 0041
52(2001 Indlaw SC 19969)
Court, which was allowed with cost which was quantified at ₹ 20,000/-. Despite the order of the Apex Court, the payment was not made and the appellant had to take further proceedings. While the said litigation was going on, the appellant on 24.1.1996 sent a letter along with a cheque of ₹1796/- to the Insurance Company requesting for renewal of his existing medi-claim policy. On 7.3.1996, the Insurance Company declined to renew the medi-claim policy on the ground of past conduct of the appellant in having gone for litigation for payment of his claim. The appellant then filed a writ petition under Article 226 challenging the order of the Insurance Company refusing to renew the medi-claim policy. The writ petition was allowed. The matter was taken up with the Division Bench of the Calcutta High Court against the judgment of the Ld. Single Judge. The High Court directed the appellant to take fresh medi-claim policy. It is in these circumstances that the Apex Court had issued directions setting aside the order of the High Court directing the appellant to take fresh medi-claim policy and it was directed that if the appellant pays the premium of the expired period of medi-claim policy, the respondent Company shall renew the medi-claim policy.

c) P. Srinivasulu Chetty v. (i) Diners Club International, Chennai; (ii) New India Insurance Company Limited53 The Petitioner took the facility of medi-insurance in February 1993. The Petitioner spent ₹ 1,90,163/- on treatment of his wife who was suddenly hospitalized after the death of his son. Since the medical insurance cover under the policy was for ₹ 1,10,000/-, petitioner submitted a claim to the New India Insurance Company, limited to that amount. The said claim was rejected on the ground that since there is break in cover from 01.02.2000 to 31.03.2000, the present policy commencing after the break will be treated as fresh/first year policy and diseases contracted prior to inception of policy will be treated as pre-existing diseases. The Petitioner filed a complaint before District Forum which was dismissed. On appeal, the State Commission upheld the order of the District Forum. Hence, a revision petition was filed. The National Commission held that no evidence was produced to prove that petitioner’s wife was earlier suffering from any of the diseases for which she was hospitalized. Therefore, the contention that petitioner’s wife was suffering from pre-existing diseases and was not eligible for reimbursement has not been proved. Hence, repudiation of medi-claim on the grounds of pre-existing diseases is without just cause. Moreover, pertaining to the lapsing of the petitioner’s medical insurance policy, and issuance of a fresh policy in 01.04.2000, petitioner sent the renewal form to the respondents after the stipulated period. Thus the responsibility for the lapse lies with the respondents. The Respondent New India Insurance company was, directed to re-process the medical claim of the Petitioner’s wife.

532010 INDLAW NCDRC 203
d) In United India Insurance Co.Ltd. V/s Mohanlal Aggarwal the Division Bench of the Gujarat High Court has laid down the following six principles in respect of medi-claim policy:

(i) The insured has an option under the existing medi-claim insurance policy to continue the cover by payment of renewal premium in time in respect of the sum insured.

(ii) In case of renewal without break in the period, the medi-claim insurance policy will be renewed without excluding any disease already covered under the existing policy which may have been contracted during the period of the expiring policy. Renewal of medi-claim insurance policy cannot be refused on the ground that the insured had contracted disease during the period of the expiring policy so far as the basic sum insured under the existing policy is concerned.

(iii) In cases where the insured seeks an enhancement of the amount of sum insured at the time of renewal, the option to renew will not extend to the amount of such enhancement and renewal in respect thereof will depend upon the mutual consent of the contracting parties.

(iv) Renewal of a medi-claim insurance policy cannot be refused, despite timely payment of the renewal premium, on the ground that continuance of the cover would become more onerous or burdensome for the insurer due to the insured contracting a covered disease during the period of the existing policy.

(v) The insurer may refuse renewal, even in cases where the insured has an option to renew the policy on payment of the renewal premium in time, on the grounds, such as, misrepresentation, fraud or non-disclosure of material facts that existed at the inception of the contract and would have vitiated the contract of insurance at its inception or non-fulfilment of obligations on the part of the insured or any other ground on which the performance of the promise under the contract is dispensed with or excused under the provisions of the policy or any other law or when the insurer has stopped doing business.

(vi) The Government insurance companies continue to be ‘State’ within the meaning of Article 12 of the Constitution notwithstanding the entry of private companies in the field of general insurance, ending their monopoly by virtue of insertion of section 24A in the Act of 1972 and they cannot arbitrarily cancel or refuse to renew an existing medi-claim policy.”

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542004 ACJ 1657
The State Commission allowed the appeal and held that the Appellant/insured obtained the medi-claim policy initially from the Oriental Insurance Company as far back as in March, 1995, which was continued till 30.3.1998 and, thereafter, the insured switched over to United India Insurance Company which is a sister concern of General Insurance Company of India. The above said policy was renewed from time-to-time and during the subsistence of the policy, the insured was hospitalised in the Escort Heart Institute and Research Centre in Delhi where he had to undergo open heart surgery. The last renewal of the policy, in question, by the Insurance Company was in continuation of the original medi-claim policy obtained from the Oriental Insurance Company. The last policy issued by the respondent Insurance Company is treated as in continuity of the initial policy. The so-called suppression of pre-existing disease will not arise either. The second reason for denial on the ground of disease occurred within 30 days from the date of obtaining the policy will also not be a valid reason for the purpose of denying the claim under the policy.

Conclusion

The arena of health insurance is in need of reform. Market failures have become endemic to the system and there do not seem to be adequate checks in place to counter them. The same system can be better utilized if certain steps such as the greater involvement of the civil society, provision for accountability of the provider, better use of resources etc are taken.\(^\text{56}\)

Despite laws and regulatory mechanisms, it would only be a blind optimist who would believe that the TPA system would help reform the health insurance sector. The failure of the TPA system shall stem from the inherent flaws present therein. TPAs push up costs and restrict consumer choice in terms of the hospitals they can use. Most importantly, the TPA mechanism is marred by a conflict of interest between the Administrator and the insurance company that hires them and which decides whether they should be retained. This coupled with the degree of control that the Administrator would have over a hospital, means that the TPA shall have both the motive and the power to ensure that patients are treated with minimal costs, even at the risk of sacrificing quality. This flaw alone requires that a better alternative to the TPA system be explored. The establishment of IRDA and formulation of regulations by it is a very good effort to protect not only the policyholders and to control, encourage healthy environment in insurance business. But there is a need for better and proper implementation of these regulations. Under some of the

\(^{55}\)2004 ACJ 1657

regulations like regulations on protection of the interests of the policyholders, most of the times there is no effective check to ensure that the regulations are being followed. Even though the policyholders are more aware and informed than earlier, but still do not know all their rights. Hence, there is a need to make certain amendments to ensure better implementation of these regulations.

As regards Insurance Regulatory and Development Authority (Insurance Advertisements and Disclosure) Regulations, 2000, it is important to increase the punishment for violation of the regulations because low punishment will not be sufficient to deter large companies from publishing advertisements which are not in accordance with the rules. The Insurance Ombudsman was established in 1998, but the achievement is very less because of many reasons. This is partly due to lack of awareness about the existence of this system and mostly due to the vast jurisdiction covered by the Ombudsman. There may be a case for creating this post in each State Headquarters and give wide publicity about the role of the Ombudsman. There is also a need for active participation in real sense of insurers in the dispute settlement process. The additional solution for insured is to settle the dispute by approaching Consumer Dispute Redressal Fora at the different level i.e, District Forum, State Commission and National Commission depending on the territorial jurisdiction and pecuniary jurisdiction. The Consumer Forum decides the dispute with nominal fees, quickly and summarily. The consumer needs to be educated about the various options that are available to him to redress his grievances.
Introduction

Globalisation, liberalisation and privatisation have transformed the Indian economy into a vibrant, rapidly growing consumer market. As a result the markets are flooded with different kinds of goods and services, substantially effecting and changing the purchasing pattern of the consumers. The rural markets, which were earlier ignored by most of the big international market players, are now being seen as a land of great business opportunity. As the disposable income of the masses is growing, more and more corporate houses are entering into the rural markets with their new goods and products. Due to this marketing for rural consumers is becoming more complex. However, economic liberalization along with the rise in rural prosperity has opened the flood gates for rural markets. The rural market is growing fast and touching the lives of millions of the rural consumers. The rising prosperity in the rural areas and the impact of media penetration has opened up the rural market for the multinational companies and other producers. A range of products and services are available to the rural consumers. However, due to ignorance and lack of information the rural consumer has to endure with sub-standard products and services, adulterated foods, short weights and measures, spurious and hazardous drugs, and exorbitant prices along with unfulfilled manufacturing guarantees and host of other ills.
In a country like India, where a substantial number of the rural people are living below the poverty line, having high level of unemployment and poor literacy level; consumer awareness continues to remain low. Several studies have shown that rural consumers are generally ignorant and also unorganised. Under these circumstances, the sellers or the manufacturers, exploit the consumers. Though, the consumers in India have been provided with various safety measures against exploitation, still the sellers and producers are hoarding and black-marketing the essential goods, resorting to economic corruption and frequently cheating the consumers. Rural markets are full of sub-standard goods and duplicity of branded goods is another major problem in rural areas. As there is no check on production and sale of such products in the rural markets, many of these products have become health hazards. The expansion of service sector has added to the problem. Services like insurance, banking, electricity, medical have expanded in the rural areas without any checks and balances and the rural consumers continue to be exploited by the service providers. Deficiency in services is a major area of concern. Spurious drugs are causing major health hazards. The vulnerable sections are mainly women, children and farmers. It is common to find that farmers are supplied defective seeds, adulterated pesticides and other commodities.

The expansion of mass media has further given impetus to consumerism in the rural areas. Therefore, now it is widely believed that the fate of the consumers cannot be left to the market forces. In view of this the Government of India has taken a number of legal measures to protect the consumers by enlarging the scope of consumer protection. Of the various legal remedies, the Consumer Protection Act, enacted on 24th December 1986 is the principal legal remedy available to the consumers. This is an important Act which seeks to provide better protection of the interests of the consumers. Furthermore the welfare of the consumers lies in the fulfilment of their normal and legitimate expectation with regards to the goods they purchase and the services they avail. In a country like India where all the consumer protection laws are in place, the consumers are not really aware of them and the mechanism in place to redress their grievances. Those who know the laws know that the process is very slow and has become cumbersome. There are a number of steps taken to protect the rural consumer but without much impact due to the prevailing socio economic conditions of the rural consumers. They generally base their purchasing decisions on the advertisement campaigns and promotional strategies employed by the organizations and also lack of choice which leads to consumer exploitation.

There are many factors leading to consumer exploitation in rural areas. Illiteracy and ignorance is just one of the many causes of exploitation. Illiterate consumers can easily be cheated as they can neither read the name of the product nor the instructions. Illiteracy also affects the level of consumer awareness. Lack of information is another cause as the seller may take
advantage of the freedom of the market and keep away, the important or correct information from the consumer. Price, composition, quantity, conditions of use, and terms of purchase all must be given to the consumer. Monopoly is also a cause of consumer exploitation as the consumers are forced to purchase the product or avail the services. In markets where only one or few producers or sellers operate, the consumer is more vulnerable. This is all the more so in case of essential commodities like life saving drugs and food items without which the consumers cannot do. The consumers in such areas are charged with high price; given a low quality and their problems and complaints are not taken seriously.

As far as the service sector is concerned a large number of complaints regarding medical services, banking, insurance and electricity go unreported as the consumer is unaware of the redressal mechanism. Cases of medical negligence are common in the rural areas but then the consumer has no choice. It is quite common that the rural consumers are unaware about maximum retail price, expiry and manufacturing date and other information that is to be provided on the products. The consumers are at risk with such market practices. Sometimes the producers may deliberately conceal information and circumstances in which the product must be used or the accompanying devices to be used with the product or circumstances during which a product would not work. In such situations the consumers feel helpless and trapped.

The present paper is the outcome of a study conducted by Centre for Consumer Studies, Indian Institute of Public Administration in five states of India namely Uttarakhand from North, Meghalaya from East, Gujarat from West, Tamilnadu from South and Madhya Pradesh from Central India. The present paper attempts to evaluate the changing profile of the rural consumers in India, assess the level of awareness of rural consumers on various consumer protection measures initiated by the Government of India and other agencies, assess the rural consumers’ current knowledge, attitudes, behaviour and practices while purchasing goods or availing services, assess the level of satisfaction of the rural consumers on various products and services available in the rural areas and to draw conclusions from the study and suggest remedial measures for better protection of the rural consumers.

Rising Rural Prosperity and Changing Consumption Pattern

According to the 66th Round of NSSO survey, the real spending by each person in rural India rose by 6.3% in the five year period from 2004-05 to 2009-10. The year after 2004 saw the government waive unpaid farm loans, announce pay hikes for government employees through the sixth pay commission and put in place its flagship rural employment guarantee programme. The survey also shows that the share of the food basket in total consumption expenditure is coming down in rural India. The share of food in
consumer expenditure was 57% for rural India. In rural India people are spending less and less on cereals, edible oils and fruits. They are spending more on pulses, milk, non-vegetarian items and beverages. Consumption of non food items, which include consumer durables, education and recreation among others has gone up as a result of decline in expenditure on food items. Between 1999 and 2009 expenditure on food increased by about 70% among rural families but the spending on education jumped up as much as 378% in rural areas. Even after correcting for inflation, the expenditure on education increased by a phenomenal 162% in rural areas during the decade. Compare this to the overall household expenditure on all items, which increased by a mere 8% in rural areas.

Moreover it is not the same people who are spending more on their children’s education. In 2004-05 when the previous survey was carried out, 40% of rural families said that they were spending on education. The latest survey records a big jump in these numbers being 63% for the rural. Expenditure on health too has shown a considerable increase though not as much as education. At current prices, spending on medical care in hospitals increased by 152% in rural areas while spending on non-institutional medical care-medicines, tests, fees etc. jumped by 60%. The NSSO data suggests that there has been an improvement in the living standards of the rural population. The monthly expenditure in rural India was ₹953.05 in 2009-10, an increase of 64.6% from 2004-05. Thus the rural households are spending more on consumer goods like durables, beverages and services. The breakup of the expenditure, or how households spent their money, suggests a break away from mere subsistence for the vast majority. In rural households cereals accounted for only 15.6% of expenditure in 2009-2010 down from 22.2% in 1999-2000. During the same period, share of their spending on consumer durables almost doubled to 4.8% from 2.6%. The rise in spending on durables indicates on the overall increasing affluence of the rural population. Infact when the global recession hit the urban demand it was the strong rural demand that rescued the economy. All kinds of consumer product companies—from toothpaste marketers and mobile hand set makers to car makers and television companies have been expanding their rural reach in recent years.

Profile of Rural Consumers

The rural population in India comprises the core of Indian society and represents the real India. According to the 2001 census, there are 5, 80,779 villages in India and about 74% of Indian population lives in these villages. The number of people living in each of these villages also varies considerably. It is found that most of the Indian villages have a population of less than 10,000 while there are only a few villages where more than 10,000 people live (Table 1). The country opened up its economy in 1992 and since then due to globalisation and liberalisation the market is flooded with new products and
services. Technological revolution and information explosion have also given tremendous boost to consumer culture. The consumers have been sucked into the market economy and today the market determines the needs and preferences of the consumers. This consumer culture and the changing consumption pattern is now not only confined to the urban areas but is going deep down to the rural markets. The rural markets are the new hunting grounds for the business.

<table>
<thead>
<tr>
<th>Population Range (No of Persons)</th>
<th>Number of Villages</th>
<th>Proportion to Total Village</th>
<th>Proportion to total Rural Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 200</td>
<td>103952</td>
<td>17.9</td>
<td>1.7</td>
</tr>
<tr>
<td>200 to 499</td>
<td>141143</td>
<td>24.3</td>
<td>7.8</td>
</tr>
<tr>
<td>500 to 9991</td>
<td>144998</td>
<td>25</td>
<td>16.8</td>
</tr>
<tr>
<td>1000 to 1999</td>
<td>114395</td>
<td>19.7</td>
<td>25.7</td>
</tr>
<tr>
<td>2000 to 4999</td>
<td>62915</td>
<td>10.8</td>
<td>29.8</td>
</tr>
<tr>
<td>5000 to 9999</td>
<td>10597</td>
<td>1.8</td>
<td>11.2</td>
</tr>
<tr>
<td>10000 and above</td>
<td>2779</td>
<td>0.5</td>
<td>7.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>580779</strong></td>
<td><strong>100</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Source: Census of India, 2001

India Brand Equity Foundation (Trust established by Ministry of Commerce with the Confederation of Indian Industry) reports\(^1\) that the fast moving consumer goods (FMCG) industry is the fourth largest sector in the Indian economy and creates employment to three million people in downstream activities. The current Indian market at present is estimated to be in size of 13.1 billion dollar, which is expected to rise to 33.4 billion dollar by 2015. Also, FMCG and retail giants are making good use of technology to reach out to rural India. From low-cost handsets to tablet PCs, the Indian FMCG and retail sector is latching on to technology and applications to reach out to rural India.

According to NCAER, in 2009, of the 222 million households in India, the absolutely poor households (annual incomes below ₹ 45,000) accounted for only 15.6 % of them or about 35 million (about 200 million Indians). Another 80 million households are in income levels of ₹ 45,000-90,000 per year. CIA World Factbook indicates 72% of Indians belongs to rural India. Hence a good enough proportion is distributed mostly in rural area, which

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\(^1\)India Brand Equity Foundation, *the Great Indian Bazaar*, http://www.ibef.co.in/download/indianbazaar_jan19.pdf
CHANGING PROFILE OF RURAL CONSUMERS IN INDIA

offers excellent opportunity for FMCG industries and retailers. The consumer durable market in rural India will witness a 40% growth in the next fiscal, as against the current growth rate of 30%. The sudden enhancement is due to the change in lifestyle and higher disposable income of the rural populace. India has fascinated the consumer durable market according to a study, “Rise of Consumer Durables in Rural India” undertaken by the Associated Chambers of Commerce and Industry of India. These statistics along with increase in disposable income of rural population proportionately accompanied by their desire to improve existing lifestyle has created the necessary excitement within the producers.

The arenas of untapped rural mass has provided scope away from the saturated market scenario and develop new market with existing products and check for a little while from the cut throat world of competition. The bottom of the pyramid (BoP) is made up of the mass and needs to be addressed to ensure sustainable growth in India. The consumers in BoP are fairly ambitious in their attitude. Even these consumers are focused on improving their lives, use education as a tool to improve life and dream big for their children. The following data by FICCI-Nielsen is a witness to this: Figure 1

![Figure 1](source: Report: Challenges Before an Integrated India: Bridging The Urban-Rural Divide, 2009)

The reports of National Commission for Applied Economic Research clearly reveals that the rural growth rates have already outpaced urban ones and will continue to do so through the next decade. Rural India accounts for more than 50% of the GDP. Out of 62.97 million households of India those are getting more than 5 lakhs per annum, nearly 28.68 million households

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2Rural consumer durable market to grow at 40 percent in 2011-12
(46%) live in Rural India. The rural market in India is projected to be bigger than the urban market for fast moving consumer goods; rural consumption expenditure is accounted for around 60 percent of the country’s total consumption expenditure. The rural consumers need to be educated about their rights and adequate steps be taken to ensure that they get the value for their money as consumers.

**Rural India Scenario**

A survey by NCAER, shows the increase in purchase of durables and expendables by rural consumers in comparison to urban buyers. (Table 2)³

**TABLE 2. URBAN RURAL USAGE PATTERN**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Motorcycle</td>
<td>134.3</td>
<td>320.7</td>
<td>109.0</td>
<td>250.9</td>
</tr>
<tr>
<td>TV</td>
<td>942.8</td>
<td>1258.9</td>
<td>616.3</td>
<td>561.3</td>
</tr>
<tr>
<td>Car</td>
<td>31.4</td>
<td>52.2</td>
<td>1.6</td>
<td>3.5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Edible Oil</td>
<td>1000.0</td>
<td>1000.0</td>
<td>1000.0</td>
<td>1000.0</td>
</tr>
<tr>
<td>Shampoos</td>
<td>827.8</td>
<td>1000.0</td>
<td>354.5</td>
<td>458.4</td>
</tr>
<tr>
<td>Washing Powder</td>
<td>904.7</td>
<td>1000.0</td>
<td>775.4</td>
<td>946.9</td>
</tr>
</tbody>
</table>

Urban Rural Usage Pattern (Per ‘000 households)


The above table displays the figures and selling capacity of the sales force and also brings forth the fact that there is a steady rise in the purchasing power of the farmers. The percentage of Below Poverty Line (BPL) families has come to 26% from 42%. At present 42 million rural households avail banking service. A look at the percentage distribution of rural population, a little care for development by creating awareness on the rural front takes greater care on the

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whole of country. Scope provided by the rural market is wide but entry into it brings forth challenges as poor infrastructure, dispersed settlements, lack of education and a virtually nonexistent medium for communication.

In India, out of 6,00,000+ villages, only 10,000 villages have access to organized retailing. This also has a positive indication that that these villages have fair connection with the media. The rest, without any guidance or proper awareness are consuming spurious products. In such interior places the conventional mass media techniques turns out to be helpless mainly due to two reasons: First, due to lack of network coverage and secondly even if there is coverage, conviction of people residing in such interior areas is not easy to be won over. But at the same time the emergence of the lucrative rural market can also be not forsaken as NCAER reports that rural India is home to 720 million consumers.

**Rural Consumers**

The rural consumer is generally seen as the less affluent, as compared to his urban counterpart but things are changing in rural India over the last ten years. Like any market that has seen a demand and awareness boom, rural India has also been witnessing considerable rise in purchasing power. A change in consumption patterns and access to communication media have made rural market a vital cog in the sales-growth wheel, especially with demand for many categories of products and services plateau in the urban markets. Inspite of increasing number of rural consumers, provisions for consumer protection and welfare are often based on the general standard and circumstances of those living in big cities and towns. Although consumers as a whole are in an equal bargaining position, there are certain recognizable groups which are disadvantaged in more ways than the others. Disadvantaged consumers are those who are less able to assert their rights and rural consumers comprise one such group. Rural consumers remain disadvantaged as their right to information, choice, redress, and consumer education are not sufficiently fulfilled. Consequently such consumers need support in maintaining their rights so that they can bargain equally with the producers or the service providers.

One of the major problems being faced by the rural consumers is that of fake brands and spurious products. The brand image of the successful FMCG majors has been imitated by some of the small regional companies. These fake brands have been sold mostly in rural areas. Fake products are of two types – one counterfeit products and two pass - off products. Counterfeit products are fake products that bear identical name of a product/packaging/graphics/colour scheme and even same name and address as the genuine manufacturer. Someone produces these to look exactly like real products other than the legal owner of the real product, trademarks and product packaging. Sometimes it becomes difficult to tell which the real product is. A rural consumer is brand loyal and understands symbols better and this also
becomes a problem as it is easy to misguide the rural consumer. The FMCG industry alone has been facing loss of over ₹ 5,000 crore per year, due to counterfeit products, of the ₹113,000-crore FMCG market in India. Counterfeit products result in an annual loss of approximately ₹ 30,000 crore to the industry and ₹15,000 crore to the Government exchequer. Pass-off products use similar sounding or is similar in spelling. They use similar type of packaging or color or design. These are look-alike products that resemble the original products, mainly through misspelling of the trademark. For example, Sunslik instead of Sunsilk, Clemic Plus or Climic Plus or Cosmic Plus instead of Clinic Plus, Collegiate for Colgate, Vips Rub or Vives Rub as a pass-off for Vicks Vaporub. They come out with the motive to mislead and cheating ordinary consumers who are uneducated or in a hurry in purchasing products.

A study conducted by AC Nelson, a leading research agency reveals that FMCG industry loss is around ₹ 2500 crores annually to counterfeits and pass-off products. It is also estimated that top brands in India are estimated to lose up to 30 percent of their business to fake products. Besides the loss of revenue, the trading companies also face the loss of damage to brand image and brand loyalty to consumers. Apart from the loss of revenue and brand image fake products cause immense damage to consumer’s health. 10% of all major soft drinks sold are spurious, while 10-30% of cosmetics, toiletries and packaged food are counterfeits. Fake gold and precious metals are worth ₹ 60 billion in India. Another interesting point is that FMCG counterfeit products only come in smallest size of packing. In the rural segment where fake products thrive, the consumer’s low purchasing power makes sachets and smaller packs popular. It is in the case of these small packs that consumers are duped more easily as the quantity is not large enough for the buyer to discern its quality. This is especially so in sachets of shampoo, hair oils, and detergents and so on.

Research Findings

Purchase of Daily Goods

The rural consumers have little option while purchasing goods of daily use. The relationship between the rural consumer and the shopkeeper is of a different nature as they live in the same village. It’s more of a loyalty and trust and if a product is not good the shopkeeper generally tends to change it and there is no dispute between the two. The rural consumer prefers to purchase his daily needs from the same shop even if the items purchased are not good, but the shopkeeper agrees to change it or refund the amount. It is also a fact that many rural consumers particularly the poor purchase on credit. Therefore, they stick to one shopkeeper who gives goods on credit. Even though they are not satisfied with the products they purchase from him, they have no alternative as they have no choice. The consumer does not like to file a complaint or take up the matter with appropriate authorities, as the shopkeepers
generally redress their grievances. Moreover, the rural consumer thinks that it is a waste of time and money to fight with the shopkeepers.

The Figure 2 indicates the place of purchase of goods of daily use by the respondents according to the level of income. It reveals that a major portion of the respondents (34.9 percent) depend upon the local haat or weekly markets, 34.8 percent depend upon nearby town or kasba. Only 18.15 percent depend upon village shops and 13 percent go to city for shopping.

**Consumer Satisfaction: Goods and Services**

With the rise in the purchasing power due to the growing prosperity in the rural areas of the country, the rural consumer has come to purchase a variety of goods and also avail a number of services. The service sector like banking, insurance, electricity, postal, healthcare are growing and the strategy of the service providers is to reach the rural population. Products like shampoo, soaps, cosmetics and other packed commodities of daily use are now available in the rural markets. Many of these products are look alikes and spurious and do not conform to the quality standards. Figure 3 shows the level of consumer satisfaction with goods and services in rural areas.

As far as the FMCG products are concerned 13.6 percent of the respondents are fully satisfied with the quality of goods and 27.4 percent are satisfied only to some extent. A large percentage of 57.1 percent are not at all satisfied. In the service sector 18.5 percent of the respondents are fully satisfied with the health services while 51.6 percent are not satisfied at all. Similar is the case with education services. Very few had insurance cover, therefore, no response is very high. However, satisfaction level with water/electricity, postal services is not very encouraging. An overall assessment reveals that there is more of dissatisfaction with the consumer goods and services in the rural areas.

### Source
Field Survey, CCS, IIPA
Agriculture is the main occupation in rural India. Most of the rural people own land and do cultivation. Looking at the quality of the agriculture services being availed by the rural people only a few of them responded as most of them were unaware of the quality and other related issues. 12.8 percent were not satisfied with the services relating to the agricultural machinery. As far as fertilizers were concerned only 24.8 percent were satisfied to some extent. Similar was in the case of seeds (24.5 percent) and pesticides (29 percent) respectively. The study also revealed that in the five states under study, except Tamil Nadu and Gujarat more people are less satisfied with the services provided as mentioned in the Figure 3.

**Inquiry into Terms and Conditions before making Transaction**

One of the major problem relates to consumer education and awareness. Consumers generally do not seek information about the product they intend to buy or avail a service. Having full information about the product or service helps a consumer to take a rational decision and make a choice. It in fact protects them as there are a number of terms and conditions which are unfair.

As regards the inquiry into terms and condition of the goods/services before transaction was concerned (Figure 4) more than half (58%) did not make any enquiry, 23.1 percent of the respondents enquired about it sometimes and only 19 percent made enquiry frequently. Enquiry into various aspects before purchase was directly connected to the level of education. Only 7.7 percent of the respondents who had not attended schools inquired into the terms and conditions before purchase. (Table 3) On the other hand 63.3 percent of the graduate respondents sought information before purchasing goods or availing a service. Among the sample respondents only 17.8 percent
insisted on taking a cash memo regularly, 31.5 percent asked for it only sometimes while purchasing costly goods and the majority 50.8 percent never insisted for cash memo.

The dependence on the local shopkeeper or the representatives of the service provider is very high as most of them belong to the same area and know each other. The other factor relates to ignorance about various consumer rights and lack of literacy. As far as the relationship with the level of education is concerned, the study indicates that people who have attained some education are more aware about what they intend to purchase and inquire about the terms and conditions before making a purchase.

**Information about the Product at the Time of Purchase**

In the rural areas a large number of products which are sold are of inferior quality. The shopkeepers generally tend to cheat the consumers in terms of price and contents of the products. The government has made it mandatory for the producers to give information about the contents of the product on the label as well as indicate the MRP of the product. It is also mandatory to mention the date of manufacture and the date of expiry on packed items. The survey data revealed that not many of the rural consumers bothered to know about the contents, the expiry date and other relevant information. However, they were conscious about the price of the product and most of them sought information about it.

While purchasing goods 32.8 percent of the respondents always checked the available choice of the product, 25 percent checked it sometimes and 42.2 percent did not do that. 50.8 percent of the rural consumer did not bother to know about the contents and the expiry date of the product. They
### TABLE 3. INQUIRE ABOUT TERMS & CONDITION OF TRANSACTION BEFORE PURCHASING PRODUCTS OR AVAILING SERVICES (IMPACT OF EDUCATION LEVEL)

<table>
<thead>
<tr>
<th>States</th>
<th>Response</th>
<th>No Schooling</th>
<th>Primary</th>
<th>Middle</th>
<th>High School</th>
<th>Intermediate</th>
<th>Graduation</th>
<th>PG/Professional</th>
<th>Total</th>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uttarakhand</td>
<td>Yes</td>
<td>3.9</td>
<td>2.0</td>
<td>30.9</td>
<td>35.0</td>
<td>45.2</td>
<td>52.2</td>
<td>57.1</td>
<td>27.8</td>
</tr>
<tr>
<td></td>
<td>Sometimes</td>
<td>22.1</td>
<td>30.0</td>
<td>33.0</td>
<td>33.3</td>
<td>30.1</td>
<td>45.7</td>
<td>14.3</td>
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</tr>
<tr>
<td></td>
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<td>68.0</td>
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<td>24.7</td>
<td>2.2</td>
<td>28.6</td>
<td>40.8</td>
</tr>
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<td>M.P</td>
<td>Yes</td>
<td>1.7</td>
<td>2.6</td>
<td>22.4</td>
<td>36.8</td>
<td>28.6</td>
<td>70.8</td>
<td>75.0</td>
<td>18.0</td>
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<td></td>
<td>Sometimes</td>
<td>14.8</td>
<td>28.2</td>
<td>36.7</td>
<td>21.1</td>
<td>39.3</td>
<td>25.0</td>
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<td></td>
<td>No</td>
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<td>69.2</td>
<td>40.8</td>
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<td>32.1</td>
<td>4.2</td>
<td>0.0</td>
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<td>Gujarat</td>
<td>Yes</td>
<td>1.7</td>
<td>1.2</td>
<td>23.5</td>
<td>36.8</td>
<td>31.3</td>
<td>69.6</td>
<td>66.7</td>
<td>21.5</td>
</tr>
<tr>
<td></td>
<td>Sometimes</td>
<td>15.3</td>
<td>16.9</td>
<td>29.4</td>
<td>20.6</td>
<td>20.8</td>
<td>17.4</td>
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<td>81.9</td>
<td>47.1</td>
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<td>47.9</td>
<td>13.0</td>
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<td>1.7</td>
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<td>17.1</td>
<td>62.5</td>
<td>100.0</td>
<td>4.0</td>
</tr>
<tr>
<td></td>
<td>Sometimes</td>
<td>2.8</td>
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Source: Field survey, CCS, IIPA
are conscious only about the price of the product and sought information about the price. 83.7 percent of the rural consumer did not think it important to seek information about the nutritional value of the product. Respondent consumers were price conscious 87.4 percent of them inquired about the price of the product. (Figure: 5(a, b, c))

**FIG. 5: INFORMATION ABOUT THE PRODUCT AT THE TIME OF PURCHASE**

![Available Choice](image)

![Content](image)

![Price](image)

*Source: Field Survey, CC S, IIPA*

**Awareness about Standard Marks and MRP**

The Bureau of Indian Standards, empowered through a legislative Act of the Indian Parliament, known as the Bureau of Indian Standards Act, 1986, operates a product certification scheme, and has till date granted more than 30,000 licenses to manufacturers covering practically every industrial discipline from Agriculture to Textiles to Electronics. The certification allows the licensees to use the popular ISI Mark, which has become synonymous with quality products for the Indian and neighbouring markets over the past 50 years. This mark guarantees quality of every batch in production process (use of components, testing standard of product, in-process checks by qualified technical personnel). The survey revealed that 73.9 percent of the rural consumer did not see the expiry date only 21.4 percent checked it sometimes. (Figure 6(a)). 40.7 percent of the survey rural consumers knew about MRP (Figure 6(b)). Only 24.4 percent knew that one could bargain on the MRP and more than half (51.2 percent) did not know about the fact. Majority of the respondents were in fact surprised as to how you can ask for a lesser amount than what is printed and why should the shopkeeper sell the product at a lower price than the MRP. 40.3 percent of the rural consumers are aware about ISI mark, 11.9 percent knew about AGMARK, 10.0 percent about HALLMARK, 1.2 percent about FPO and 1.6 percent about BEE markings. (Figure: 6(c))
Forms of Consumer Exploitation

In the rural areas, the consumers are exploited in many ways. The most common forms of exploitation are food adulteration, under weight, over charge, spurious goods etc. According to the survey Figure: 7(a) amongst the various ways of exploitations, 40.2 percent were overcharged, 14 percent were victims of food adulteration, 12 percent complained about poor quality of products, 7.5 percent about deficiency in services and 7.4 percent complained about lesser weights.

On being cheated/exploited 28.50 percent respondents ignored the problem, 16.3% tried to get back the money or replace the goods and some respondents (0.8%) tried to mobilize people to put pressure on seller to address their grievances Fig: 7(b). It was also found that the balance that is being used is not as per government specifications and also not correctly calibrated. Moreover the weights being used are not of standard quality.

Awareness about the Consumer Protection Act/Redressal Mechanism

The Consumer Protection Act was enacted in 1986 to better protect the consumers. It provides for a three-tier redressal mechanism at the District, State and the National levels to address the complaints of the consumers.
Consumers can make use of this mechanism only if they are aware of its existence. Inspite of wide publicity being given by the government, not many consumers in the rural areas are aware about this Act. 92.4 percent of the respondents were not aware about the CP Act. 34.2 percent of the respondent knew about Jago Grahak Jago. Of the respondents who were aware about the Act (Table 4), 34.2 percent received the information from the electronic...
media i.e. TV/ Radio 6.5 percent gathered information from newspapers/journals and 6.5 percent from NGOs. Of the respondents aware about CP Act only 22.6 percent were aware about the redressal mechanism under the Act whereas 77.4 percent were unaware about it. Of the total respondents aware about the Act, 83.7 percent did not know as to who can file a complaint, 13.5 percent knew that the complaint can be filed by consumer and 1.7 percent said that any VCO can file a complaint.

Opinion on Issues Relating to Consumer Protection

The respondents were asked a variety of questions to know their views about the measures relating to consumer protection. Only 9.2 percent of the respondents agreed that the consumers were aware about their rights and 90.8 percent answered in the negative (Table 5). Further the respondents were asked whether consumers’ are well protected by law. 32.6 percent said that the consumers were well protection by law while 67.4 percent could not answer this question. The governments both central and the state are implementing a variety of welfare programmes for the consumers but many of the consumers do not know about this. Only 15 percent agreed that consumer welfare schemes are well implemented by the government. On the other hand 85 percent answered the question in negative.

Awareness about “Jago Grahak Jago”

Jago Grahak Jago is a popular advertisement issued by the Department of Consumer Affairs, which intents to inform, educate and protect the consumers. This message has also reached the rural consumers. Awareness about Jago Grahak Jago was quite high. Figure 9 shows that 34.2 percent of the respondents knew about the slogan. However, majority of respondents
(65.8 percent) did not know what was being conveyed through the advertisement. 83.2 percent of the respondents agreed that there is a need to create awareness among the consumers.

**Need for Awareness Programmes**

The respondents were of the view that there is a need to educate the
TABLE 5. CONSUMER’S OPINION ON CONSUMER PROTECTION RELATED ISSUES (in %)

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<th>Are consumers well protected by law</th>
<th>Are consumers aware about consumer welfare schemes?</th>
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<td>Total</td>
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Source: Field Survey, CCS, IIPA

FIG. 9

Awareness: ‘JAGO GRAHAK JAGO’

Source: Field Survey, CCS, IIPA

people about their rights and obligations so that they can be protected. Lack of education and awareness about their rights is the major cause of their exploitation. 83.2 percent of the respondents agreed that there is a need to create awareness among the consumers (Figure: 10). Even in the sample states there was a demand for consumer awareness programmes.

To a question as to who should be given the responsibility of educating
the consumers through awareness programmes. (Figure 11) 62.6 percent of the respondents said that it should be the responsibility of the gram panchayats. On the other hand 20.9 percent of the respondents were of the view that this task should be carried out by the government and 9 percent felt that the educational institutions can play a role in spreading awareness among the consumers.
Conclusion

Thus in the emerging scenario it is necessary to protect the rural consumers by educating them about their rights and empowering them to make decisions based on information about the goods and services. Awareness has to be created among the rural consumers. So far the consumer movement has largely been confined to the urban centers, and with the expanding rural markets now the focus has to shift to protect the rural consumer. Consumer organizations and similar civil society groups have an important role to play in consumer education. They have the means to provide consumers with information and help them to make informed choices. Consumer information needs to be available at the right time and in the right place before or when purchasing decisions are made. Several NGOs are very active in the rural areas in advocating for consumer rights but due to their limited ability to put enough pressure on policy makers, they lack consumer support. This is the dilemma of NGOs in consumer protection. Regardless of these limitations consumer empowerment programmes through regular training and education are very crucial. It is also time to consider consumer education as part of the school and college curriculum.

There is also a need for the effective implementation of various provisions of the legislations enacted to protect the consumers from fake and adulterated products from entering the markets so that the consumer’s interests could be safeguarded. Various business houses, NGOs and the governmental agencies have to come together to join hands to combat counterfeiting. Redress of complaints is a major concern for consumers. Having a right to access the redressal mechanism is of prime importance. For the right to redress to have a practical value, a mechanism must exist to ensure that it can be exercised effectively. If consumer confidence is to be built up they need assurances that if things go wrong they can seek redress. The District Consumer Disputes Redressal Forums which act as the first point of contact in case of a complaint have to play a pro-active role in building consumer confidence. The district forums should be strengthened and initiatives aimed at promoting access to simple, swift, effective and inexpensive legal channels be taken up. Moreover, it becomes difficult for a rural consumer to go to the district headquarters to file a complaint and then pursue his complaint. It will be better if the concept of circuit benches for the district forums is also introduced as in the case of the National Commission and the State Commissions so that access to justice is ensured for the rural consumers. There is also a need to set up more than one district forum in a district to clear up the pendency of complaints, which has increased substantially. Any further delay in disposal of the complaints will only shatter the faith of consumers in the redressal mechanism.

To reach the rural consumers, it is imperative to involve the panchayati raj institutions in not only educating consumers but also ensuring that fake and spurious products are not sold in the rural markets. These institutions
can play a meaningful role in consumer protection and consumer welfare and this has been recognised by the policy makers. The Standing Committee of the 10th Lok Sabha recommended that the Department of Consumer Affairs should take the desired initiatives to involve panchayat raj institutions in various programmes related to consumer awareness. The publication of the Department specifically ‘UPBHOKTA JAGARAN’ should be brought out in regional languages and distributed to the elected representatives of the PRIs.

No doubt some initiatives have been taken in this direction and capacity building and awareness programmes are being organized through the State Institutes of Rural Development. But to reach such a large number of rural consumers, a vigorous campaign with the involvement of the panchayats needs to be taken up. Specific capacity building programmes for the elected members of the PRIs are to be developed with adequate financial sanctions. All stakeholders need to coordinate their activities and ensure that adequate literature is also made available in the local languages. Street plays and folk songs can be meaningful instruments to create awareness in the rural areas. Apart from these there is also a need to formulate appropriate policies and strategies to protect the rural consumers particularly the farmers, women and children.

The slogan ‘Jago Grahak Jago’ has now become a household name as a result of publicity campaign undertaken in the last 3 years. Through the increased thrust on consumer awareness in the XI Five Year Plan, the Government has endeavoured to inform the common man of his rights as a consumer. As part of the consumer awareness scheme, the rural and remote areas have been given top priority.

Inspite of these initiatives of the government no specific programme or scheme exists which exclusively address the needs and aspirations of the rural consumers. Rural consumers are generally seen as a homogeneous group and most of the policies are designed keeping in view the needs of the urban consumers. The benefit of various programmes to educate the consumers and enhance their awareness has met with little success. Until the rural consumers are empowered the consumer movement in the country will continue to remain weak. A new strategy based on the ground realities needs to be made so that the bulk of Indian consumers who live in the rural areas are protected.

References


Introduction

“India’s way is not Europe’s. India is not Calcutta and Bombay. India lives in her seven hundred thousand villages”, said Mahatma Gandhi in 1926.

Still about 70 percent of India’s population lives in rural areas. There are about 6,38,365 villages in the country as against about 300 cities and 5,161 towns. Of the 121 crore Indians, 83.3 crore live in rural areas while 37.7 crore stay in urban areas, as per the Census 2011. The National Council of Applied Economic Research (NCAER) survey report says that there are 720 million consumers across the villages in rural India. Hence, the development of the nation largely depends upon the development of the rural population. Majority of the rural population is dependent upon agriculture for their subsistence.

Community Development Programmes, Integrated Rural Development Programme, bringing local self-government to the roots of the village through introduction of Panchayati Raj system ushered a new era of rural development. Schemes for providing effective rural healthcare, guaranteeing 100 days of job, promoting literacy and adult education, expansion of rural industries are other development programmes that have received the thrust of the government’s development approach. Islands of poverty still exist but most of rural India is transformed beyond imagination, as a result of a host of factors which has put unprecedented wealth into the hands of farmers across
the country and turned rural India into a huge consumer market.

**Changing Face of Rural India**

Over the past few years rural India has witnessed an increase in the purchasing power of consumers, accompanied by their desire to upgrade their standard of living. The steps taken by the Government of India to address the poverty have improved the condition of rural masses. As a result, rural consumers have upgraded their lifestyles through making changes in their consumption patterns by adding more nutritious food and are purchasing lifestyle products such as cosmetics, beverages, mobile phones etc., which have become necessities for them.

A number of schemes and programmes of the government have changed the rules of the marketing game in rural India. The flagship schemes of Government of India especially Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) scheme, which has a budget of more than ₹ 40,000 crores have given the rural population an opportunity to meet their daily needs. With the initiation of various rural development programmes there has been an upsurge of employment opportunities for the rural poor. NREGS guarantees 100 days employment to a rural household and provides much needed bargaining power to battle the exploitation in the farming sector as a labourer. Also the increased demand for labour in the urban projects such as Jawaharlal Nehru National Urban Renewal Mission (JNNURM) has resulted in more money being sent back home by the immigrant worker. Bharat Nirman, an Indian plan for creating basic rural infrastructure, is having a budget of ₹ 58,000 crores for 2011-12. It is a step towards bridging the gap between rural and urban areas and improving the quality of lives of rural masses. It comprises projects on irrigation, roads (Pradhan Mantri Gram Sadak Yojana), housing (Indira Awaas Yojana), water supply, electrification and telecommunication connectivity.

According to a study on the impact of slowdown on rural markets commissioned by the Rural Marketing Association of India (RMAI) and conducted by MART (a New Delhi-based research organisation that offers rural solutions to the corporate world), the rural economy has not been impacted by the global economic slowdown that took place since 2008. The study reveals that rural incomes are on the rise, driven largely by continuous growth in agriculture for four consecutive years. A record harvest of 230 million tonnes of food grains in 2010 coupled with a 40 percent increase in the minimum support price of wheat and paddy over a two-year period has resulted in farmers’ income rising sharply. The rural economy got a further boost with the farmer loan waiver of ₹ 71,600 crore. Today India’s 56 percent of income, 64 percent of expenditure and 33 percent of savings come from rural India. The rural share of popular consumer goods and durables ranges from 30 to 60 percent.
Potential of Rural Market

As per the Market information Survey of Households (MISH), study conducted by the NCAER – rural India is quietly transforming and growing and becoming different. Today the rural market offers a vast untapped potential. According to a McKinsey survey conducted in 2007, rural India would become bigger than the total consumer market in countries such as South Korea or Canada in another 20 years. Some simple facts to support this: Life Insurance Corporation of India (LIC) sold 55 percent of its policies in rural areas in 2010; 41 million Kisan credit cards have been issued as against 22 million credit-cum-debit cards in urban areas. With the growing market and purchasing power it is, therefore, natural that rural markets form an important part of the total market of India. As rural markets dominate Indian marketing scene they need special attention for the expansion of marketing activities. As per a Nielsen survey data, 40 percent of fairness creams for men are consumed in rural areas; the category has been growing at 40 percent for the past three years. Categories perceived to be urban-centric but where rural growth is outstripping urban include instant noodles, juices, sanitary napkins and milk foods.

A Silent Uprising

According to a report by McKinsey and Company named ‘The ‘Bird of Gold’: The Rise of India’s Consumer Market’, by 2025 India will triple its income level and will become the fifth largest consumer market, climbing from its current position at 12. A lot of this wealth will be created in the urban areas, but even the rural households will benefit. The real annual income for rural households will move from 2.8 percent in the past two decades to 3.6 percent in the next two. Rural markets are growing at double the pace of urban markets and for many product categories, rural markets account for well over 60 percent of the national demand. Companies are realising slowly but surely that the key to gain true market leadership lies in tapping the rural potential.

With urban markets getting saturated, most companies are looking at huge potential in rural markets. Major corporations have seen great success with innovative strategies such as smaller packaging (Fast Moving Consumer Group (FMCG) companies have creams and soaps priced at ₹ 5, hair oil and shampoo sachets at ₹ 1 and small Coke at ₹ 5) customised development and positioning and a good distribution network. The rural India success story is being replicated across a range of sectors in the rural markets.

Presently, the rural market accounts for a hefty share in most market segments – 70 percent of toilet soaps, 50 percent of TV, fans, bicycles, tea and wrist watches, washing soap, blades, salt, tooth powder and 38 percent of all two-wheelers purchased. Rural India consumers hold a major share in many categories. Rural India buys 46 percent of all soft drinks, 49 percent of motorcycles and 59 percent of cigarettes and almost 11 percent of rural
women use lipstick. This was found in a survey by MART. Car sales in rural India have been on the increase in last three years since the government announced various schemes such as farm loan waiver etc., for the rural population. According to report entitled ‘India Retail Report 2009’ by Images FR Research, India’s rural market offer a sea of opportunity for the retail sector. Presently, India is globally the fifth largest life insurance market in the emerging insurance economies. 78 percent households in rural India are having awareness about life insurance and 24 percent are policy owners.

The Indian pharmaceuticals market is regarded as one of the fastest growing in the world. According to a report by McKinsey, entitled ‘Indian Pharma 2015’, the rural and tier-2 pharma market will account for almost half of the growth till 2015. According to the Ministry of Communications and Information Technology, India is having more than 826.93 million mobile phones and 35.55 million landlines in April 2011, which is about 70.23 percent. Out of this about 40 percent are from rural areas, and by 2012, rural users will account for over 60 percent of the total telecom subscriber base in India.

**Absence of Redressal Mechanism in Rural Areas**

When the rural market grows at such a rapid pace, the quantum of consumer grievances also increase simultaneously. The main problems faced by rural consumers are related to adulteration, short weighing and measuring, lack of safety and quality in appliances and equipment, unfair warranties and guarantees, imitation and sales gimmick, unreasonable pricing etc. The Indian Consumer Protection Act, 1986 ensure better protection of rights and interest of people who are consumers in one way or the other from the exploitation of trade and industries. According to the Act, anyone who buys goods and services for his/her use is a consumer. A user of such goods and services with the permission of the buyer is also a consumer. The Department of Consumer Affairs of the Government of India and various state governments have undertaken a number of innovative measures to protect rights of rural consumers.

Consumer disputes redressal mechanism (popularly known as consumer forums) are set up under the Act at district, state and national level to provide simple, inexpensive and quick redressal against consumer complaints. A consumer can file complaint in the consumer court against any defective goods purchased or deficient service rendered including restrictive/unfair trade practice adopted by any trader/person. The Consumer Forum has power to order removal /replacement of defects/ deficiencies in goods and services, refund of price paid, compensation for loss/injury suffered, discontinuation of unfair/restrictive trade practice, withdrawal of hazardous or unsafe goods or award of adequate cost to the parties etc.

However, the three-tier consumer forums, set up under the Act are in urban areas. This makes it difficult for rural consumers to approach the
forum. Moreover, though the forums have been set up as special courts, the non-extension of their benches in rural areas makes accessibility a big problem leading to poor public participation. A web-based system for lodging and monitoring of complaints is also in place. However, only 6.9 percent of the Indian population is internet users. Hence unfortunately very few have availed this excellent mechanism due to lack of awareness and accessibility, particularly amongst rural and semi-urban populations.

While experts and consumer activists believe that redressal platforms can forge consumer activism in rural areas, the government is undecided about setting up such a mechanism below the district level. The Department of Consumer Affairs has been organising consumer rights’ awareness events in all talukas. As of now, there are no plans to extend the sittings of the lok adalats to villages or to set up redressal platforms there. Experts attribute the lack of participation by the rural population in consumer fora to the failure of the government to form protection councils as per the Act, at the state and district levels, to promote and protect consumer rights. The absence of laboratories at district level to test disputed products further makes the process delayed. In this context, the local administrative bodies in the country can play an important role in protecting the rural consumers.

Functions and Importance of Local Bodies (LBs)

Panchayati Raj system is a three-tier system in the state with elected bodies at the Village, Taluk and District levels. It is a constructional mechanism spread across the country. It ensures greater participation of people and more effective implementation of rural development programmes. There will be a Gram Panchayat for a village or group of villages, Panchayat Samiti (or Block Panchayat) at Taluk/Block level and the Zila Panchayat (or Zila Parishad) at the district level. India has a history of Panchayati Raj starting from self-sufficient and self-governing village communities that survived the rise and fall of empires in the past to the modern legalised institutions of governance at the third tier provided with Constitutional support.

The Constitutional (73rd Amendment) Act, passed in 1992 by the Central government, came into force on April 24, 1993. It was meant to provide constitutional sanction to establish “democracy at the grassroots as it is at the state level or national level”. At present, there are about 3 million elected representatives at all levels of the panchayat one-third of which are women. These members represent more than 2.4 lakh Gram Panchayats, about 6,000 intermediate level tiers and more than 500 district panchayats. Already the Constitution is amended to make the representation of women 50 percent. Spread over the length and breadth of the country, the new panchayats cover about 96 percent of India’s more than 6.4 lakh villages and nearly 99.6 percent of rural population. This is the largest experiment in decentralisation of governance in the history of humanity.
Consumer Protection and Role of Local Bodies

Like in many other countries, consumer movement in India as a social force originated with the necessity of protecting and promoting the interest of consumers’ against fraudulent, unethical and unfair trade practices. The movement initially reflected a common perception, which characterised traders and manufacturers as people who were out to maximise profits by means of fair or foul with scant regard for consumers’ well being. Selective shopping could be the only form of consumer resistance at the early stages, the basic tenet governing the legal position of consumers being ‘buyers beware’. The movement gained a momentum after enactment of CoPRA in 1986. Over time the movement found expression in efforts to bring pressure on business firms as well as government to correct business conduct that may be unfair and against the interest of consumers at large. The movement, which has been confined to the middle class citizens in urban centres by large, is now having a presence in the rural areas as well. But it has to spread and strengthened further among the masses in rural and semi-urban areas.

The fact is that majority of consumers in the country are even unaware of the existence of consumer forums to which they can make their grievances. A CAG-commissioned survey finding on the status of the CoPRA (1986) conducted in 2006, in connection with 20 years of CoPRA says, 82 percent of the consumers are not aware of the CoPRA and 66 percent of their rights. The ground reality is that the conditions are not very favourable and conducive for the consumer. He is being exploited and cheated day in and day out. Ignorance is one of the prominent factors contributing to the exploitation of the consumers and is most prevalent amongst the rural masses. The Gram Panchayats are there in all the villages, which is the available constitutional mechanism across the country spread in all 627 districts. It is only through this constitutional mechanism that the consumer movement can get a boost and consumer awareness can be spread among rural masses.

Hence, there is an urgent need to take initiatives by the Central and State Department of Consumer Affairs to involve and make use of Panchayati Raj Institutions (PRIs) in various programmes related to consumer awareness. In addition publicity/awareness materials on consumer protection need to be brought out in regional languages and distributed among the elected representatives of PRIs. Gram Sabha is the best forum to educate the rural masses about their rights as consumers as well as the techniques to redress their grievances, which are attended by almost every villager. On occasions like December 24, which is the National Consumer Day, meetings of the Gram Sabha need to be convened, where the villagers could properly be educated about their rights as consumers.

Necessary amendments have to be made to set up consumer protection councils at Block and Gram panchayat as well and to make the PRIs integral part of the councils at all the three levels. In addition, the concerned
departments mandated to deal with issues related to consumer protection need to be transferred to the PRIs and PRIs to be given the responsibility to coordinate the functioning of these departments.

The Gram Panchayat could play a significant role in creating awareness at the grassroots level. Appropriate technology and creative media could be used to raise awareness. The relevant resource materials in regional languages could be made available in hard copies as well as in soft copies through internet. The gram panchayats also can consider using media such as documentary films, street plays, competitions etc. to spread consumer awareness. The services of government primary school teachers could be utilised in conducting consumer awareness programmes.

‘Complaints Handling, Information and Advisory Services’ (CHIAS) cell could be opened in each of the Gram Panchayat offices. CHIAS can act as an advice giving and complaints handling mechanism between the common consumer and the district consumer fora. This will help in speedy resolution of the complaints without taking it to the consumer forums as well as substantially reduce the burden of district forums. Selected representatives from each of the gram panchayats can be identified and trained to handle these cells. Issues at local level affecting the consumers can be discussed and disposed off in these CHIAS cell instead of taking each complaint to the district forum. Similar mechanism could be established at Taluka (Block) level as well. A selected group consisting of Gram Sevak, Sarpanch, PRI members, teachers, youth, office bearers of self-help groups (SHGs) etc. can be trained as ‘barefoot consumer activists’ to assist the rural population to complaint resolution at the pre-litigation stage. Personal consumer advice could also be provided not only for legal problems, but also for everyday consumer problems. Required budgetary allocations have to be made to PRIs for consumer awareness, capacity building as well as for supporting the functioning of CHIAS.

Ministry of Panchayati Raj, Government of India is in the process of establishing Bharat Nirman Rajiv Gandhi Seva Kendras (RGSK) at Block and Panchayat headquarters respectively in each of the states to bring about convergence of techniques, resources and manpower. This RGSK could well support the functioning of CHIAS cell. In addition Ministry of Information technology is in the process of connecting every panchayat in the country through internet. By 2012, every panchayat will have an internet equipped service center, to ensure rural access to various online services. This can provide further boost to CHIAS.

The Way Forward

Taking into consideration the changing face of rural India and the fast growing rural market, in future Indian consumer movement and government mechanisms need to focus in the rural areas. Mahatma Gandhi said, “A
consumer is the most important visitor on our premises. He is not dependent on us, we are on him. He is not an interruption to our work; he is the purpose of it. We are not doing a favour to a consumer by giving him an opportunity. He is doing us a favour by giving us opportunity to serve him’. Keeping these words in mind, there is an urgent need to address the concerns of the rural consumers and the only way forward is to involve the available constitutional mechanism of PRIs.

References
STANDARDS, CONSUMERS AND CONSUMER PROTECTION

VIJAY K. SINGH

Introduction

Wherever we are and whatever we do, Standards are important part of our daily lives. Standards are everywhere. They have been applied to the brakes on our cars, the pipes of our houses, the floors and windows, our computers and printers, the food we consume and much more. But few take notice of the thousands of standards that enable us to carry out day-to-day activities such as e-mailing a digital photo to a loved one or riding our motorcycles and mopeds. It is only when standards are absent that we realize their importance.

The role of Standards in consumers’ protection is very well recognized all over the world. Ipso de facto each and every consumer wants to know that goods and services meet an acceptable standard. The consistent use of standards that reflects consumer interests in performance, as well as safety and specifications of products and services, enhances consumer confidence by increasing certainty and clarity regardless of where they are produced or marketed.

Consumers have expectations about the design, performance, safety, quality and reliability of the products and services that they buy and use. No one wants products of poor quality, that do not fit, which are incompatible with equipment he or she already has, are unreliable or dangerous. The Standards help to raise levels of quality, safety, reliability, efficiency and interchangeability, and provide these benefits economically.

Standards and Standardization

A standard is a document which provides, inter alia, requirements, rules,
and guidelines, for a process, product or service. These requirements are sometimes complemented by a description of the process, products or services. Standards are the result of a consensus and are approved by a recognized body. Standards aim at achieving the optimum degree of order in a given context.

Few of the aims of standardization are:

**Fitness for Purpose**

Fitness for purpose is the ability of the process, product or service to fulfill a defined purpose under specific conditions. Any product, process or service is intended to meet the needs of the user. Sometimes the expectations of the users may be at variance with the actual purpose. In addition, it is difficult for the users to always spell out the desirable quality of the process, product or service. Standards help by identifying the optimum parameters for the performance of a process, product or service (e.g. product standards) and the method for evaluating product conformity (such as test method standards and quality control standards).

**Interchangeability**

The suitability for a process, product or service to be used in place of another to fulfill a relevant requirement is called interchangeability. Through a deliberate standardization process, it is possible to make processes, products or services interchangeable, even if they are created in different countries. For example, shaving blades of different brands may be designed to be used in the same razor, injection needles of different sizes and brands may be designed to fit the same hypodermic syringe.

**Variety Reduction**

It is popularly believed that variety is the spice of life. While a large number of varieties for a particular process, product or service may be helpful to consumers and enable them to select the most appropriate; this large number of varieties requires large inventories, resulting in high costs to manufacturers. Variety reduction is one of the aims of standardization for the selection, *inter alia*, of the optimum number of sizes, ratings, grades, compositions and practices to meet prevailing needs. Balancing between too many and too few varieties is in the best interest of both manufacturers and consumers.

**Compatibility**

Parallel developments of processes, products or services, which are required to be used in combination, pose problems if they are not compatible. One of the aims of standardization is compatibility, namely, suitability of processes, products or services to be used together under specific conditions to fulfill the relevant requirements, without causing unnecessary interaction. For example in electronic data processing, information has to be coded for storage, transmission and retrieval in the form of electronic pulses. To make the code recognizable for
any machine at all times, it has to be standardized. Such standardization helps to establish compatibility between various machines or subsystems and permits expansion features and information exchange amongst different systems.

Guarding against Factors that Affect the Health and Safety of Consumers

Safety of the process, product or service is of great importance if, under certain conditions, the use of the process, product or service may pose a threat to human life or property. Therefore, identification of processes, products or services and their safety parameters, not only under normal use but under possible misuse, is one of the important requirements of standardization. For example, items for human consumption should be free from poisonous substances; if food colors are used in candy or sweets, they should be free from poisonous substances like lead or arsenic.

Environmental Protection

Environmental protection is an important aim of standardization. The focus here is on preserving nature from damage that may be caused during the manufacture of a product or during its use or disposal after use. For example, the domestic use of a washing machine should generate only a minimum of pollutants.

Better Utilization of Resources

Achievement of maximum overall economy through better utilization of resources such as capital, human effort and materials is an important aim of standardization. In manufacturing organizations, it is this aspect of standardization of materials, components and production methods that makes it possible to reduce waste and to carry out mass production in an economic way. For example, in construction and civil engineering, the use of the appropriate quantities of cement and steel to achieve a required strength are recommended in building standards and codes of practices.

Better Communication and Understanding

Whenever the transfer of goods and services is involved, standards spell out what means of communication are to be used between different parties. Since standards contain information that is recorded in a precise and documented form, they contribute towards better communication and understanding in a large variety of settings. In public places such as airports, railway stations and highways for instance, standardized signs play an important role.

Transfer of Technology

Standards act as a good vehicle for technology transfer. Since standards incorporate the results of advances in science, technology and experience, they reflect the state of the art in technical development. As standardization is a dynamic process, standards are updated as new technologies are developed.
Removal of Trade Barriers

Restrictions on the export of processes, products or services by the introduction of some technical barriers to trade, such as arbitrary product requirements, are being viewed with great concern. Standards prevent such non-tariff barriers to trade by harmonizing requirements in a manner that promotes fair competition. Purchasers can be convinced about the quality level of a product that has been manufactured according to a recognized standard.

Who Develops Standards?

There are three renowned international standard bodies that are responsible for overseeing standards globally. The International Organization for Standardization (Organization internationale de normalisation), (ISO) is an international-standard-setting body composed of representatives from various countries national standards organizations. Founded on February 23, 1947, the ISO promulgates world-wide proprietary industrial and commercial standards.

The International Electrotechnical Commission (IEC) is a not-for-profit, non-governmental international standards organization that prepares and publishes international standards for all electrical, electronic and related technologies – collectively known as electrotechnology. IEC standards cover a vast range of technologies from power generation, transmission and distribution to home appliances and office equipment, semiconductors, fiber optics, batteries, solar energy, nanotechnology and marine energy as well as many others.

The International Telecommunication Union (ITU) is an international organization established to standardize and regulate international radio and telecommunications. It was founded as the International Telegraph Union in Paris on May 17, 1865. The main tasks of the ITU include standardization, allocation of the radio spectrum, and organizing interconnection arrangements between different countries to allow international phone calls.

Amongst the various levels of standardization, i.e. the level of the individual, the company, the industry or the country, it is the national level that is most important. It is at the national level that the standardization requirements of individuals, companies and the industry are coordinated and integrated into purposeful national standards. At the same time, national level standards serve as a basis for forging international agreements on international standards, which help to promote worldwide exchanges of goods and services.

Formulation of Standards: The ISO Level

The development of a standard starts with a need. An industry sector or stakeholder group must first express a clearly established market need and communicate it to their national ISO member body. For instance, an industry might realize that being able to purchase parts with standard sizes from around the world would lower costs and increase efficiency. Standards might be required by innovators to facilitate the adoption and market entry of new technologies.
And regulators might want to rely on them to promote implementation of best practice while bringing down technical barriers to trade.

International organizations working in liaison with ISO may also propose ideas for new standards. ISO policy committees – on conformity assessment (CASCO), consumers (COPOLCO) and developing countries (DEVCO) – can also recommend future work areas.

To be accepted for development, a proposed work item must be supported by the majority of the participating members of the relevant ISO technical committee. The committee will, amongst other criteria, verify the global relevance of the proposed item, to confirm that the standard responds to an international need and will be suitable for implementation on as broad a basis as possible.

ISO standards are developed by technical committees (including subcommittees or project committees) comprising of experts from the industrial, technical and business sectors who have asked for the standards, and who subsequently put them to use. These experts may be joined by representatives of government agencies, testing laboratories, consumer associations, non-governmental organizations and academic circles. Experts participate as national delegations selected by the ISO member for the country. All interested ISO member bodies can opt to participate (P-member) in the work of a technical committee, or attend as an observer (O-member). National delegations should represent not just the views of the organizations of their participating experts, but those of all stakeholders in their country. For this purpose, the delegations are often based on and supported by national mirror committees to which they report.

International and regional organizations from both business and the public sectors may apply for liaison status to participate in this work, comment on drafts and propose new standards, but they have no voting rights.

The administrative support to the committee is provided by the Secretariat, which is held by an ISO member body. And a Chair is selected to lead the work. Every working day of the year, an average of 13 ISO technical meetings take place around the world. The national delegations of experts and organizations in liaison meet to discuss debate and argue until they reach consensus on a draft text. In between meetings, the experts continue the standards’ development work by correspondence. Increasingly, their work is carried out by electronic means, which speeds up the development of standards and cuts travel costs. In some cases, when substantial technical development and international debate on the subject has already occurred prior to a proposal being taken up by ISO, a document may be submitted for “fast-track” processing. In both cases, the resulting document is circulated as a Draft International Standard (DIS) to all ISO’s member bodies for voting and comment. If the voting is in favor, the document, with eventual modifications, is circulated to the ISO members as a Final Draft International Standard (FDIS). If that vote in turn passes, the document is then published as an International Standard. Because ISO standards
are voluntary agreements, they need to be based on a solid consensus (which need not imply unanimity) of international expert opinion. Although it is necessary for the technical work to progress speedily, sufficient time is required before the approval stage for the discussion, negotiation and resolution of significant technical disagreements. For a document to be accepted as an ISO International Standard, it must be approved by at least two-thirds of the ISO national members who participated in its development, and not be disapproved by more than a quarter of all ISO members who vote on it.

As technology develops and times change, International Standards may become outdated. All ISO standards are, therefore, reviewed at the least three years after publication (and every five years after the first review) by all the ISO member bodies to decide whether the document is still valid and should be confirmed or, alternatively, be revised or withdrawn.

**Formulation of Standards: National Standards Bodies (NSB)**

At the national level, the work of preparing and issuing standards is carried out by NSBs. In some countries, NSBs are called “institutions” or “institutes” (e.g. Sri Lanka Standards Institution, British Standards Institute) and in others “associations” (e.g. Standards Association of Zimbabwe) or “bureaus” (Bureau of Indian Standards). In some countries a department or an agency of the government is responsible for this work.

Most of the NSBs around the world are members of the ISO; in some countries that do not have NSBs, provisions exist for a correspondent membership status with the ISO. Fifteen NSBs were established between 1917 and 1925, mostly in developed countries. Germany was the first to establish an NSB, followed, *inter alia*, by the United Kingdom of Great Britain and Northern Ireland, the United States, Belgium, Canada, Netherlands, Switzerland and Austria. In developing countries, NSBs were launched first in Brazil (1940), then, *inter alia*, in India (1947), the Philippines (1947), Pakistan (1951), Myanmar (1956), Iran (1960) and Sri Lanka (1964).

The main functions of NSBs include:

- Preparation and promulgation of national standards;
- Promotion of the implementation of standards by industry;
- Certification of products;
- Provision of information on standards and related technical matters, with regard to both national and international standards;
- Country representation in international activities and at forums that deal with standards.

**National Standards**

Broadly speaking, an NSB usually consists of two main structures, the directorate and the committee department. The responsibilities of the directorate,
or secretariat, include chiefly the administration of the affairs of the NSB and serving the various committees. These tasks include publishing and organizing the sale of standards and other publications. The committee and council department of an NSB comprises a policymaking body called the general council or general body and several division councils or industry committees that are each responsible for fairly large industrial sectors. The division councils or industry committees determine the technical policies and programmes of standardization for their own sector of industry. The division councils are made up of representatives of industry, trade and other organizations that have an interest in the standardization process. The division councils or industry committees appoint sectional or technical committees to undertake the actual preparation of standards in specific fields. The knowledge and experience of interest groups such as manufacturers, users, government departments and universities is pooled in these committees. In turn, these committees may create working groups or subcommittees for in-depth studies and investigations on specific aspects of problems encountered in the development of standards and for preparing draft standards.

There are several types of standards; these include:

- Vocabulary standards, e.g. glossaries, signs and symbols;
- Basic standards, such as units of measures;
- Product standards that cover, inter alia, specifications for dimensions, performance, health, safety, environmental protection and documentation;
- Standards for inspection, test methods and analysis;
- Standards that focus on organization, such as for logistics, maintenance, inventory management, quality management, project management and production management.

In the area of standards, implementation means the use of standards (a) by industries in their manufacturing processes or in other operational or managerial activities, (b) by state-organized purchasing organizations such as government departments, railways, post and telegraph departments and (c) by private purchasers such as builders, contractors and cooperative stores. In countries with a controlled economy, implementation of national industrial and business standards could be made mandatory, while in countries with open economies, such as the United States, the United Kingdom, Japan and Australia, implementation is voluntary. In developing countries with mixed economies, the implementation of standards is generally voluntary, inter alia, because:

- It is difficult to enforce standards when seller market conditions prevail for raw materials and for finished products in the industrial sectors;
- The purchasing power of the common consumer is relatively low in many developing countries. If standards were introduced on a mandatory basis, this could raise costs and put products out of the
However, Governments may enforce standards for products which may affect the health and safety of users. For example, in India, out of 18000 plus Indian Standards published by the Bureau of Indian Standards, only approx 60-70 require compulsory certification.

**Standards: Changing Role in WTO Regime**

Among several constraints to trade, such as economic and procedural matters, technical (non-tariff) barriers to trade have emerged as a vexing problem. Technical barriers include standards, technical regulations, testing of products from accredited laboratories, sampling, inspection and certification systems. Unfortunately, each State has its own standards for products, its own technical regulations under a given legislation and other specific requirements. This plethora of technical documents that cover the same product both for import or export creates tremendous, but avoidable, confusion.

For instance, there are more than 150 States that are preparing national standards. In addition, a large number of government departments issue standards on subjects of their interest. In some States, several standardizing bodies represent large manufacturing interests (e.g. in the United States). This results in three undesirable situations. First, for the same product the requirements of different States are different when national standards are compared. Second, for the same product there is divergence in the State between national standards and governmental and industry standards. Third, some States may have more than one standard that may cover different aspects of the same product. This creates a major challenge for exporters, who may find it difficult to know which standards need to be satisfied for the same product. In the process, exporters may face losses due to low volumes of sales, increases in costs and eventually, they may even lose their markets altogether.

In addition to the large number of standards to be followed, States have their own Acts and Laws, of which technical regulations form a statutory part. Because the technical regulations are statutory in nature, it is not possible to deviate from them. These regulations may refer to national standards or other governmental standards. At the outset it is not possible for an exporter to be fully aware of all the technical regulations and standards and all their amendments over the years by the State concerned.

Additionally, a number of new standards and regulations, about which a potential exporter may have no prior knowledge, may be in preparation in a given State.

The constraints described in the preceding paragraph are called “technical barriers to trade” and make it difficult, even sometimes impossible, for an exporter to trade with another country. Such measures are considered undesirable in the context of world trade, because they restrict the flow of goods and services, drive up prices and are to the detriment of the consumer.
The Secretariat of the General Agreement on Tariffs and Trade (GATT) published a report following the conclusion of the Uruguay Round of negotiations held between 1986 and 1994 with the aim of reducing trade barriers. In this report, the GATT Secretariat estimated that implementing the Agreement, i.e. reducing trade barriers, could result in an increase in world trade of up to $US 510 billion by 2005. These barriers take on many forms, and are generally divided into two broad areas: tariff barriers and non-tariff barriers. Standards and technical regulations are considered to be non-tariff barriers. The last negotiations of the Uruguay Round gave birth to WTO, which was established on 1 January 1995. More than 145 States are members and observers of WTO. The agreement on Technical Barriers to Trade (TBT) is one of the 29 individual legal texts of the WTO Agreement, which obliges member States to ensure that technical regulations, voluntary standards, and conformity assessment procedures do not create unnecessary obstacles to trade. The TBT Agreement includes the Code of Good Practice for Preparation, Adoption and Application of Standards. In accepting the TBT Agreement, WTO members agree to ensure that local government, non-governmental and regional standardization bodies follow this code. This code requires standardizing bodies to adopt practices to ensure, among other things, that:

- Standards prepared do not create unnecessary obstacles to international trade.
- International standards are used as a basis for standards development.
- Member States play an active role in the preparation of international standards with a view to harmonizing standards.
- Duplication or overlap with the work of other standardizing bodies is avoided.
- Standards should specify product requirements in terms of performance, rather than design or descriptive characteristics.

In the interest of transparency, the code requires that standardizing bodies that have accepted the code notify this fact to the information centre of ISO/IEC (ISONET) at the ISO Central Secretariat in Geneva, either directly or through the relevant national or international member of ISONET (website www.iso.org). At least once every six months, standardizing bodies must publish their work programmes relating to development of standards and notify ISONET of the existence of their work programmes. Further, the WTO TBT Standards Code Directory (on the WTO website, www.wto.org) lists those standardizing bodies that have notified acceptance of the WTO-TBT Code of Good Practice for the Preparation, Adoption and Application of Standards. The directory also contains the addresses of these standardizing bodies and information relating to the availability of their work programmes. It is published annually.
The importance of the “user” perspective in the production of market-driven standards is now recognized regardless of a country’s level of development. Consumers can contribute in many ways, for example:

- by providing data on safety aspects and ensuring that safety is properly addressed;
- by giving examples of how products and services are actually used (or misused) in practice;
- by checking that the performance requirements and test methods reflect the way products and services are actually used.

Consumers lend their unique perspective to the creation of the voluntary standards that define products and services used in everyday life. Since 1978, the ISO has had a specialized Committee on Consumer Policy (ISO/COPOLCO). The Committee has systematically sought to ensure that consumers’ demands and needs are taken into account when standards are developed. Consumer representatives have played an important role in raising awareness of issues for consumers having special needs, for example, children, the elderly and persons with disabilities. Consumer representatives also have recommended entire new subject areas for Standardization. For example, complaints handling, product recalls, counterfeiting and fraud, as well as social responsibility, are all subjects that were introduced by consumer advocates.

ISO organizes consumers and encourages the input of consumers’ views on two levels:

- in standards development work, through the participation of its national members and Consumers International (CI).
- at the policy level, through the ISO Committee on Consumer Policy (ISO/COPOLCO).

COPOLCO members are the members of ISO - national standard bodies - which join COPOLCO and designate a person who is responsible for consumer liaison. This person usually comes from the ISO member but may come from a member-appointed national consumer association. Through the ISO Committee on Consumer Policy (COPOLCO) ISO undertakes to:

- Make COPOLCO’s services available to ISO members worldwide;
- Support its members in developing consumer participation in standards-making;
- Study how consumers can benefit from standardization;
- Promote the positive role of standards in consumer protection;
- Encourage the exchange of experience on standards work of consumer interest;
• Channel consumers’ views into both current standards projects and proposals for new work in areas of interest to consumers;

COPOLCO achieves its objectives in several ways:
• COPOLCO selects areas in ISO’s work that are of priority to consumers and then coordinates participation by consumer representatives in these areas.
• It develops publications to promote consumer participation in standards work and to train consumer representatives for this task.
• It coordinates training activities and representation at events involving consumers and standardization issues.
• Furthermore, COPOLCO organizes annual workshops that bring together representatives of consumers, public authorities, manufacturers and standardization experts.

These workshops are oriented around a specific current issue that is relevant to consumers. They provide a forum for COPOLCO to develop recommendations for action, policy statements, guides for standards writers, or proposals for new areas of standardization.

COPOLCO establishes working groups to develop specific areas of consumer interest. Some groups are advisory (such as the Chair’s Group) and some are project based. The latter are disbanded when their task or work programme is complete. Current working groups are:
• Guidelines on standardization of services (disbanded);
• Consumer protection in the global market place;
• Revision of ISO/IEC Guide 37 - Instructions for use of products intended for consumers;
• Consumer participation (in standardization);
• Priorities from the consumer’s point of view;
• Product safety;
• Training group;
• Joint working group for the revision of ISO/IEC Guide 51, Safety aspects – Guidelines for their inclusion in standards; and

As a consumer representative one can participate in meetings of national or international technical committees where standards are developed. The consumer representative’s role is to ensure that the standards being developed address issues of concern to consumers. These may include some of the following: health, safety, performance, ergonomics, quality, reliability, comfort, environmental protection, ease-of-use, compatibility and interoperability. No
particular background is required - though an interest in, and some knowledge of, the subject area is helpful - just a willingness to read and understand the issues, and get the voice heard by participating. This may be achieved through the following ways:

- Contacting national consumers’ association. Consumer associations often cooperate with national standards bodies, or with larger consumer groups, or both. If not, encourage your consumer association to do so!

- Contacting the ISO member body i.e. Bureau of Indian Standards (BIS) in India.

- Contacting international and regional consumer associations. Consumers International is the worldwide organization for consumer groups. In Europe, the European Association for the Coordination of Consumer Representation in Standardization (ANEC) is a regional association representing consumers in standardization.

Emerging, rapidly developing and complex technologies bring new challenges. This has meant that consumers continue to be one of the least represented stakeholder groups in standards making, despite the recognition of the need for their input. An example that stands out in this regard is the development of ISO 26000, which adopted a unique standards process that recognized consumers as a key stakeholder group. The multi-stakeholder process and ensuing procedures ensured that all stakeholders could participate effectively in consensus building. BIS has recognized the need for positive action to involve underrepresented groups as consumers to produce meaningful consensus-based International Standards. In real sense the involvement of Consumers is critical to the credibility and usefulness of standards, not just within national standards bodies, but at the international level too. We sincerely hope to see increasing consumer participation within areas of standards activity that is key to consumers. This can only further improve the value and applicability of standards.

Reference
CONSUMERS IN A DIGITAL WORLD-ISSUES AND CONCERNS

SAPNA CHADAH

Introduction

Change represents a key element in the evolution and development of each and every society. In the 1950s the world sold things on Main Street; in the 1980s it was mall; in the 1990s it was superstore; but in the 2000s it is and will be at www.com. Because, as Bill Gates, the founder of Microsoft says, “The Net represents frictionless capitalism”.1 The major changes of the last decades have resulted in the appearance of a new society, namely the information society, or the digital age, with flexibility, speed and technology as the main hallmarks. The digital technology has changed the way we live, think and perform things. The use of Information Technology has brought an increase in productivity, effectiveness and transparency. The application of the new and powerful Internet technology has vastly changed the world around and has ushered enormous possibilities having huge impact on human society. There has not been any other technology in the history of mankind that has touched so many lives in such a short period of time.

In the 21st century, the information society is a reality that is shaping the whole globe. The “death of distance”2 that is intrinsic to information networking is probably the single most important economic force shaping society at the dawn of the 21st century. Both for individual citizens and for businesses,

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affordable access to the information infrastructure has become a necessity for effective participation in a knowledge-based economy and society. Today the web is uniting the world and the information technology is considered as the key driver for the changes taking place. The Internet has not only allowed a significant spread of knowledge and information in next to no time at a global scale but also created new interpersonal means of communication, with neither time nor space barriers, enhancing the limited perspective and making way for new possibilities to be explored both at an individual and at a social level. Nowadays’ the Internet represents an essential element of daily activities, wherein the mouse click opens a great many means of information, fun, adventure, trade, and knowledge. The rapid pace of evolution of Internet is confirmed by the high number of users which is increasing constantly: from 16 million (0.4 percent out of world population) on December 1995, to 361 million (5.8 percent out of world population) on December 2000, to 1,018 million (15.7 percent out of world population) on December 2005 and to 1,669 million (24.7 percent out of world population) on March 2009. Approximately 1,733 million (25.6 percent) Internet users were estimated in September 2009 worldwide. The rapid pace of development of the Internet in such a short time also created a huge platform for an informational worldwide market. E-business, e-banking, e-communities, e-learning, e-mail, e-commerce, e-services etc. are the clear examples which emphasize the fact that today we live in a “little e-s” dominated world.

The background material for the OECD’s 2008 Seoul Ministerial Meeting on the Future of the Internet Economy, noted that: “As the services it [the Internet] supports become pervasive, ubiquitous and more essential in everyday life, the economy is increasingly the Internet economy”. Thus today is an age of Internet Economy which can be distinguished through three main traits “it is global, interconnected and renders intangible elements (ideas, information and knowledge”). The Internet has indeed changed ‘the face’ of the business environment, both companies and consumers adopting it as a

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3 Information Highway Advisory Council, (IHAC), Preparing Canada for a Digital World, 1997, Ottawa. Canada
mean of better accomplishing their desired objectives. Organizations now operate on a changing and competitive business environment in which information has become one of the main context determinants. Further the impact of the Internet and the rapid pace of development of TIME industry (telecommunications, information technology, media and entertainment) has not only resulted in the appearance of a new Generation- Generation Y, the so-called first generation of digital natives, but has also sparked the arrival of a new type of consumer, “the online consumer”. Internet’s heavy influence in everyday’s life has also changed the main determinants of the traditional consumer, companies now having to cope with well informed, selective and in control customer.7 Today the Internet users have new opportunities to enhance their power as consumers. They may obtain information regarding an immense range of relevant goods and services and benefit from the enormous possibilities available to participate in social networks, express their opinions on brand names, access independent sources of expertise, and interact and dialogue with firms and other service providers. They can play an active role in marketing communication processes and participate much more in the development and consumption of products. In such a shifting new market, companies have come up with new and by far more creative means of attracting the consumer. Online banners, pop up-s, text links, discussion forums, online chats, are all part of the “offensive” advertising to “reach the virtual consumer”.

Electronic Commerce (E-commerce)

E-commerce may be defined as any commercial transaction carried out, facilitated, or enabled by the exchange of information electronically. Electronic commerce (e-commerce) is the practice of purchasing and selling products and services over the Internet or other electronic systems. On September 25, 1998, the World Trade Organization (WTO) General Council adopted a broad view of electronic commerce in its work program on the subject: “the production, distribution, marketing, sale or delivery of goods and services by electronic means”.8 In more recent times, the term e-commerce has become strongly associated with commercial activities on the Internet. As the Internet and its supporting technologies have expanded, so, too, has the opportunity for rapid and convenient transactions. E-commerce is an important service that is facilitated by the Internet. E-commerce technologies and the digital markets that have resulted promise to bring about some fundamental,

unprecedented shifts in commerce. Prior to the development of e-commerce, the marketing and sale of goods was a mass-marketing and sales force-driven process. Marketers viewed consumers as passive targets of advertising “campaigns” and branding blitzes intended to influence their long-term product perceptions and immediate purchasing behavior. Companies sold their products via well-insulated “channels”. Consumers were trapped by geographical and social boundaries, unable to search widely for the best price and quality.

E-commerce covers a range of different types of business-to-consumer (B2C) businesses and activities, such as consumer-based retail sites and auction or music sites, and business-to-business (B2B) platforms in which businesses exchange goods and services. E-commerce is conducted between various entities namely: Business-to-Business (B2B); Business-to-Consumers (B2C); Government-to-Business (G2B); Government-to-Consumers (G2C). Accordingly there are a variety of different types of e-commerce and many different ways to characterize these types: Business-to-Consumer (B2C) E-commerce; Business-to-Business (B2B) E-commerce; Consumer-to-Consumer (C2C) E-commerce; Peer-to-Peer (P2P) E-commerce; Mobile Commerce or m-commerce.

One of the main drivers underlying e-commerce growth is the rising number of individuals connected to the Web. Some 22 percent of the world’s population used the Internet in 2007, compared to 2 to 5 percent in the late 1990s. The uptake has been particularly strong in the developed world, where the portion of Internet users has risen more than five-fold from the late 1990s, to 62 percent of the population in 2007. More recently, broadband penetration and the growing use of mobile devices have further boosted e-commerce. The broadband subscriptions have surged in the OECD area with a compound annual growth rate of 44 percent since 2000.9 With respect to mobile devices, between 1993 and 2007, the number of cellular mobile subscribers grew at an average compound rate of 30 percent per year in the OECD area. According to eMarketer, the combined spending on consumer and business mobile applications will top USD 13 billion worldwide by 2012, a nearly fivefold increase over 2009. In the United States, in 2007, there were 263 million US mobile subscribers (compared to 55 million in 1997), representing an 87.1 percent penetration rate of the US population.10 This number is likely to grow as US consumers continue to access the Internet from mobile devices more frequently than from PCs. In Indonesia, in 2008, the total number of CDMA subscribers exceeded 16.3 million, up from 14.4 million at the end of 2007.

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and 7.8 million at the end of 2006, compound annual growth rates of respectively 53 and 85 percent. In Japan, according to the Telecommunications Carriers Association, 3G CDMA subscribers exceeded 100 million in April 2009.

The presence of e-retailers is another important factor influencing e-commerce activity. In the United States a comparatively high level of e-commerce activity is due, in part, to many large successful Internet-only retailers, such as Amazon.com, as well as the presence of most major “bricks and mortar” retailers online. According to an EC report, in countries where there is a high proportion of retailers selling online, more consumers also purchase products or services online. Consumers in the Netherlands, Sweden and Denmark are the most active in buying online, with more than 60 percent having done so in the last 12 months. The proportion of retailers selling online in these countries is similarly high, exceeding 50 percent in each country. Other factors, such as the creation of new websites and supply diversification, are seen as drivers for e-commerce growth. Financial savings by purchasing items online is also a driving force for increase in e-commerce. According to research undertaken by Frontier Economics, consumers in the United Kingdom, Germany and France can obtain savings of around 17 percent by buying consumer electronics products, computers, DVDs and clothing on online trading platforms rather than in traditional stores.

For many enterprises, e-commerce has expanded and globalized markets, catapulting sales and increasing revenue. E-commerce has opened up new commercial opportunities for business and consumers. For individuals, e-commerce has provided the ability for people to acquire goods and services without leaving their homes or offices. The benefits of e-commerce are cost saving; increase in productivity; increase in profitability; accessibility to customers anywhere at any time; and accessibility to a huge market. Consumers

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have been benefited significantly through enhanced capacity to research and compare products, expanded choice in products that may be purchased at any time and from anywhere, and more possibilities to customize products to better meet personal preferences. In addition, increased transparency has intensified competition, often resulting in lower prices for consumers.

E-commerce provides a great leverage to the producers or manufacturers of goods. The Internet facilitates production and distribution across borders. Electronic commerce increases the range of services that can be traded internationally (e.g., medical, legal, educational, and gambling services) and can assist in opening markets that were previously closed. The dramatic increases in both online retail sales and advertising revenues are the most visible evidence of a much broader growth in electronic commerce in the global economy. Electronic commerce has the potential to generate benefits beyond those of trade liberalization on its own. Benefits for suppliers and vendors include reduced transaction costs, reduced barriers to market entry, more rapid product innovations, and economies of scale. One source of reduced transaction costs is the possibility to dispense with traditional intermediaries (for example, in relation to the travel industry). In many cases, electronic commerce dispenses with the need for physical presence at the point of sale or for the provision of services, which can drastically reduce expenses relating to premises or personnel. Now, the producers can set up their own online stores in the form of websites and sell directly to the consumer without relying on the wholesalers or retailers. If they lack the technical expertise to set up their own site, they can set up their online store in one of the many online retail stores.

In business to business transactions the big companies and financial organizations use the internet to exchange financial data to facilitate domestic and international business. B2B e-commerce is the largest category so far, but the other two consumer-oriented forms business-to-consumer transactions and consumer-to-consumer transactions have been growing rapidly in recent years, based largely on the rapid expansion and diffusion of the Internet and, more recently, on increased broadband access. Mobile commerce (or “m-commerce”) has also developed, offering a new platform for commercial transactions, including those that are Internet-based.\footnote{OECD, Conference on Empowering E-consumers-Strengthening Consumer Protection in the Internet Economy: Background Report, Washington D.C., 8-10 December 2009, p. 6}

E-commerce- Present Trends

In the OECD area, the number of consumers purchasing goods and services over the Internet is rising constantly. The percentage of adults doing so increased from 26.9 percent in 2004, to 35 percent in 2008. There is, however, considerable variation among countries. More than 50 percent of
adults from Japan and several European countries ordered or purchased goods or services on the Internet in 2008, while in a number of other OECD countries, less than 10 percent did so. In 1998, just before the 1999 Guidelines were adopted, consumers were not buying much online. They were using the information available on net to research the product’s cost and availability, and compare features, advantages, and benefits online, to then buy, using traditional means (phone, fax, retail outlet). Between 2000 and 2002, most individuals used the Internet principally for sending e-mails and searching for information. By 2007 however, online purchases increased notably. According to a survey, 66 percent of “online Americans” purchased a product online in 2007, up from 46 percent in 2000. In 2008 in the EU, out of the 36 percent of Internet users who compared goods or services through price comparison websites, 17 percent purchased a product online and 10 percent in a shop, while 13 percent did not make a purchase.\footnote{Ibid at pp.7-8}

However, the consumer acceptance varies among sectors. According to a 2008 Nielsen survey, in 2007 the most popular and purchased goods over the Internet worldwide were books, clothing, videos, DVDs, games, airline tickets and electronic equipment.\footnote{The Nielsen Company, Nielsen Global Online Survey on Internet Shopping Habits, 14 April 2008, q.in OECD, Conference on Empowering E-consumers: Strengthening Consumer Protection in the Internet Economy: Background Report, OECD, Paris, December 2009, pp.8} In the United States, online leisure travel related spending amounted to USD 83.9 billion in 2008, while other online retail spending amounted to USD 141.3 billion. Online non-travel related retail spending rose from USD 12.3 billion in 1999 to USD 141.3 billion in 2008.\footnote{Forrester Research, Internet Shopping Forecast, December 2008 q.in OECD, Conference on Empowering E-consumers: Strengthening Consumer Protection in the Internet Economy-Background Report, OECD, Paris, December 2009, pp.8} “Music and Videos” was one of the top merchandise categories for percentage of online sales, with 74 percent.\footnote{Census Bureau (US), E-commerce 2007 Sector Highlights, 28 May 2009, q.in OECD, Conference on Empowering E-consumers: Strengthening Consumer Protection in the Internet Economy-Background Report, OECD, Paris, December 2009, pp.9} It can also be noted that e-commerce has also been a growing vector for sales of services, accounting for 1.8 percent (USD 124 billion) of selected service industries’ total revenues in 2007, including, for example, the arts and entertainment services. In Italy, in 2008, e-tourism accounted for 50 percent of the e-commerce market. In Mexico, the yearly sales of e-tourism doubled in 2007 alone. In other sectors, the role of e-commerce is still relatively low, as evidenced by the overall low share of retail sales accounted for by e-commerce.\footnote{OECD, Conference on Empowering E-consumers: Strengthening Consumer Protection in the Internet Economy-Background Report, OECD, Paris, December 2009, pp.9} The Internet has provided a means for consumers to easily buy products from foreign businesses; their willingness
to do so, however, has been limited. In the EU, while 33 percent of consumers purchased products online in 2008, only 7 percent of consumers bought from another country. In the same year, while 51 percent of retailers in the EU were selling via the Internet, only 21 percent conducted cross-border transactions within the EU, representing 8 percent decrease from 2006. 22 There is considerable variation, however, among countries. In Norway, for example, the share of foreign purchases was 15 percent in 2008, while in Denmark and Finland, the share was 20-25 percent; in Canada, however, close to half of purchases were cross-border. 23

In 2010, US retail ecommerce sales (excluding travel) rebounded from the recession, posting 14.8 percent growth, compared with only 1.6 percent growth in 2009. It has been predicted that in 2011, online sales will reach $188 billion, but growth will drop to 13.7 percent, resuming a pre-recession trend of slower growth that signals a maturing sales channel. Still, online sales are expected to rise by over $100 billion from 2010 to 2015. Three major developments will spur this growth: mobile commerce, social commerce and daily deal sites. This year nearly 179 million consumers aged 14 and older will research products online. Some 83 percent of them will make an online purchase. Online shopping has become a mainstream activity. Women shop online at an equal rate to men, and seniors and lower-income consumers are beginning to have a significant impact on ecommerce sales. Some retailers, noticing changes in the demographic composition of their visitors, have adjusted the look, content and messaging on their sites to accommodate specific customers. 24

Retail e-commerce in Canada is late blooming compared with the US. But over the next few years, it will start to realize its potential. In 2010, consumers in Canada spent CAD16.5 billion ($16.0 billion) on domestic and foreign sites for products and services (including travel). By 2015, online spending will nearly double, reaching CAD30.9 billion ($30.0 billion). Shoppers are increasingly comfortable buying high-consideration goods online, such as home electronics and apparel. The allure of group buying is also introducing more consumers to e-commerce. Still, there are major obstacles curbing interest in online buying, including limited product selection, reservations about buying products sight unseen and high shipping costs. The lack of market participation has caused several prominent store-based retailers to shy away

from e-commerce. But some internet pure plays and specialty retailers are succeeding by offering superior customer service, multi-channel convenience and unique products.

The aggressive entry of US web retailers into Canadian e-commerce may also accelerate market growth. Major store-based retailers are under pressure to launch viable e-commerce businesses or risk losing market share. US retailers, who give shoppers greater product selection, are also introducing those in Canada through e-commerce. Some of the pure plays and specialty retailers believe the opportunity to acquire new customers can benefit all retailers.25

Against a background of economic uncertainty, UK business-to-consumer e-commerce sales including travel grew 14 percent in 2009, to £49.8 billion ($78.2 billion), the Interactive Media in Retail Group reported. Online sales growth will continue to outpace growth in overall retail sales in 2010 and 2011, as more shoppers use the web to save time, stretch their pennies and buy items not readily available in nearby physical stores. Books, music and films were among the items most often bought online in 2009, but clothing, consumer electronics and groceries were also popular purchases. The categories gaining most in 2009 included holidays and travel, event tickets, footwear, women’s clothing, and food and drink, according to the Royal Mail. Mobile commerce has barely taken off, however, Verdict Research calculated that 2.1 percent of UK adults used the mobile web to shop in 2009. As a result, m-commerce purchases amounted to just 0.6 percent of total retail e-commerce sales, or £122 million ($192 million). UK online shoppers admit to having become more demanding. As multichannel retailers leverage their physical infrastructure to cut costs and improve customer service, pure-play merchants also need to innovate and fine-tune their value propositions.26

The UK is the most mature market, but other countries increasingly contribute to the region’s online buying clout. For example, France and Germany together boast 89 million Internet users in 2010, eMarketer estimates, and the majority is online purchasers. The population of online shoppers and buyers in the region is rising steadily. Forrester Research projected that the number of Western Europeans buying on the Web will grow from 141 million in 2009 to 190 million in 2014. Event tickets, consumer electronics, books, music and DVDs, as well as travel and accommodation, rank among the most frequent online purchases in all major Western European countries. Clothing is becoming a popular buy, too. But there are key differences in these markets. France and Germany have shown much higher online sales

and greater e-commerce activity among Web users than Italy and Spain, where the Internet still represents a fraction of total retail volume. In Germany, for example, Internet purchases accounted for 6.9 percent of retail sales in 2009, according to Kelkoo, while in Italy the Web claimed just 0.8 percent of the total. The European Interactive Advertising Association (EIAA) found the frequency of online buying reflected a similar pattern in late 2009: Web users in Germany purchased most often, followed by those in France, Italy and Spain.\footnote{27}

**Usage of E-Commerce in India**

The internet reach has grown beyond being an enabling communication medium. E-commerce has been a new buzz word over the last decade and is likely to grow exponentially year on year in an under-penetrated country like India. In fact, e-commerce is expected to fast catch-up with the growth in overall trade market. This can be gauged from the fact that e-commerce penetration is still quite low even amongst active internet users who look for information regarding products. So, gradually, the conversion ratio of these users – which currently stands at around 40 percent – from being mere on-lookers to having brought any product over internet, could only rise from here.\footnote{28}

According to one of the study conducted by IAMAI\footnote{29} the net e-commerce in India has evolved over the past decade in terms of magnitude. Fuelled by the sustained growth of the online travel industry, the Indian e-commerce market will gallop at an impressive growth rate of 47 percent. Total net e-commerce market of India is estimated to be ₹ 19,688 crores in year 2009 and is expected to grow to ₹ 31,598 crores by year 2010. It has come a long way since 2007 when the market size was just ₹ 8,146 Crores. This growth is primarily driven by the online travel industry, which contributes 76 percent to the total net commerce industry in India today. The detailed usage pattern, however, has remained quite uniform and skewed over the years. Certain services continue to dominate the overall market while other still lag behind.

The IAMAI report on online commerce indicates that almost 80 percent market share of current online commerce industry is dominated by travel

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\footnote{27 e-marketer, *Retail E-Commerce in Western Europe*, May 2010, \url{http://www.emarketer.com/Reports/All/Emarketer_2000679.aspx}}

\footnote{28 Viral Dholakia, *Indian E-commerce Market at 47k cr by 2011 – Online Travel Bookings dominate!*, March 17, 2011 \url{http://trak.in/tags/business/2011/03/17/indian-e-commerce-market-2011-online-travel-bookings-dominate/}}

# NET E-COMMERCE MARKET SIZE FROM 2007 TO 2011

(Figure in Crores, Percentage indicate share of the overall market size)

<table>
<thead>
<tr>
<th>Year</th>
<th>Dec 2007</th>
<th>Dec 2008</th>
<th>Dec 2009</th>
<th>Dec 2010 *</th>
<th>Dec 2011*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Market Size</td>
<td>8,146</td>
<td>14,030</td>
<td>19,688</td>
<td>31,598</td>
<td>46,520</td>
</tr>
<tr>
<td>Online Travel Industry</td>
<td>6,250 (77%)</td>
<td>10,500 (75%)</td>
<td>14,953(76%)</td>
<td>25,258(80%)</td>
<td>37,890(81%)</td>
</tr>
<tr>
<td>Online non-Travel Industry</td>
<td>1,896(23%)</td>
<td>3,530(25%)</td>
<td>4,735 (24%)</td>
<td>6,340(20%)</td>
<td>8,630(19%)</td>
</tr>
<tr>
<td>e-tailing</td>
<td>978</td>
<td>1,120</td>
<td>1,550</td>
<td>2,050</td>
<td>2,700</td>
</tr>
<tr>
<td>Digital Download or Paid Content Subscription</td>
<td>238</td>
<td>290</td>
<td>435</td>
<td>680</td>
<td>1,100</td>
</tr>
<tr>
<td>Financial Services*</td>
<td>1,200</td>
<td>1,540</td>
<td>2,000</td>
<td>2,680</td>
<td></td>
</tr>
<tr>
<td>Other Online Services (incl. Online Classified)</td>
<td>680</td>
<td>920</td>
<td>1,210</td>
<td>1,610</td>
<td>2,150</td>
</tr>
</tbody>
</table>

* Financial Services were not calculated in the year prior to 2008; * Estimated Figures

business and remaining 20 percent share is constituted of non-travel businesses such as e-Tailing (electronic retailing), digital download, paid content subscription, financial services, online classifieds, etc. The above ratio of e-commerce market share has been skewed not just recently. It’s almost the same since last 5 years. The survey also indicates that there won’t be any drastic changes in the trend until the end of the year. However, online users in India have exhibited willingness to make purchases over the internet, which is evident from the increasing awareness and growth of net commerce industry.\(^\text{30}\)

The online travel industry has grown smartly from ₹ 6250 crore in 2007 to ₹ 25258 crore until December 2010 on the back of conveniences of paying online. Currently, domestic air travel segment constitutes 63 percent of online travel industry followed by 28 percent share from online Railway tickets (Figure 1). E-tailing – which comprises buying consumer items including electronic products, home appliances, personal products such as apparels and jewellery and other accessories – is currently worth ₹ 2050 crore, and is expected to grow by 32 percent to ₹ 2700 crore by next year.(Figure 2)\(^\text{31}\)

Another segment that could witness humungous growth opportunity is online financial services including Net Banking, utility bills payment, insurance and other services. The financial service segment is estimated to be worth ₹ 2000 crore currently, but is expected to log 34 percent growth by December

\[\text{FIG. 1: GROWTH OF ONLINE TRAVEL INDUSTRY}\]

<table>
<thead>
<tr>
<th>Year</th>
<th>Online travel Industry (in crores)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>6,250</td>
</tr>
<tr>
<td>2008</td>
<td>10,500</td>
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<tr>
<td>2009</td>
<td>14,953</td>
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<tr>
<td>2010</td>
<td>25,258</td>
</tr>
<tr>
<td>2011</td>
<td>37,890</td>
</tr>
</tbody>
</table>


\(^{31}\) Ibid
2011. India has witnessed breathtaking growth in the mobile segment thanks to low-cost smartphones. The digital download segment has grown at the fastest pace of over 50 percent year on year growth since December 2008. Majority of the mobile transactions through Ringtone / Wallpapers / Pictures downloads is said to be worth ₹ 140 crore. To the same extent as mobile downloads, even mobile recharge for pre-paid connections or paying post-paid bills forms a significant 34 percent market share of current digital downloads market size of ₹ 680 crore.\[32\]

Thus, e-commerce is surely being adopted by the Internet users as a way to shop. They are buying a variety of products online and visiting various websites to buy products from there. However, the adoption and usage of e-commerce in the country is a function of the overall environment for Internet usage in a country. To correctly understand the likely growth path for e-commerce in India it is imperative to understand the internet ecosystem in the country. Some of the key variables that need to be understood are the proportion of computer literates, internet penetration, frequency of access to the internet, purpose of internet access etc. A correct mapping of these would help in understanding the overall framework of e-commerce in the country.

**E-commerce-Issues and Concerns**

Today we live in an “information society”, where power and wealth increasingly depend on information and knowledge as central assets.

\[32\] *Ibid*
Controversies over information are often disagreements over power, wealth, influence, and other things thought to be valuable. Like other technologies, such as steam, electricity, telephones, and television, the Internet and e-commerce can be used to achieve social progress, and for the most part, this has occurred. However, the same technologies can be used to commit crimes, despoil the environment, and threaten cherished social values. The Internet and its use in e-commerce have raised pervasive ethical, social, and political issues on a scale unprecedented for computer technology. The speed and extent to which B2C and C2C commerce grow depends for a large part on the level of confidence that consumers have in online shopping. Some of the ethical, social, and political issues raised in each of these areas include the following:

- **Information Rights:** What rights to their own personal information do individuals have in a public marketplace, or in their homes, when Internet technologies make information collection so pervasive and efficient? What rights do individuals have to access information about business firms and other organizations?

- **Property Rights:** How can traditional intellectual property rights be enforced in an Internet world where perfect copies of protected works can be made and easily distributed worldwide in seconds?

- **Governance:** Should the Internet and e-commerce be subject to public laws? And if so, what law-making bodies, have jurisdiction — state, federal, and /or international?

- **Public Safety and Welfare:** What efforts should be undertaken to ensure equitable access to the Internet and e-commerce channels? Should governments be responsible for ensuring that schools and colleges have access to the Internet? Are certain online content and activities — such as pornography and gambling — a threat to public safety and welfare? Should mobile commerce be allowed from moving vehicles?33

### E-commerce Regulatory Frameworks

One of the strategic imperatives of any organization is to seek new markets. As the domestic markets mature it becomes increasingly difficult to generate high revenue and profit. In such a scenario the business uses the e-commerce to expand the market and sell the products and services around the world. The legal problem with e-commerce is that it is borderless and various laws that might apply were created in an environment that had borders. “The

cyberspace undermines the relationship between legally significant phenomenon and physical location. The power to control activity in cyberspace has the most slender connection to physical location.”

The events on the internet occur everywhere but nowhere in particular. In such a situation what law should apply to protect the transactional data? This generates an uncertainty of legal and regulatory environment. Thus there exist legal risks due to the ease of engaging in e-commerce and the lack of a comprehensive body of laws that could apply.

Because the internet is a forum without the traditional territorial boundaries, it creates a unique set of personal jurisdiction issues. Personal jurisdiction means that some country has a legitimate basis for exercising its authority over the person. The universal legal basis for acquiring personal jurisdiction over the defendant is based on the residency of the defendant in the state/country that is attempting to exercise its jurisdiction over the defendant by requiring him to subject to the power of that court. The more complex legal basis for acquiring personal jurisdiction over a defendant who is not a resident of the state/country where the court sits is based on some sort of “minimum contract” or “doing business within that state/country”. A business when he sells goods, services or provides information over the website to the buyer in another country, even though the seller is not a resident of that country, there could easily be personal jurisdiction over that seller because of the broad application of “doing business”. Such seller could then be sued in another country for breach of the contract, for product liability or any number of other civil/criminal violations. In such a condition the companies put a “choice of forum clause” on their website which means that the internet seller may place a clause on its site that states that “in the event there is a legal dispute the buyer agrees that the dispute shall be heard in inserted country / state”. This kind of choice of forum clause some times acts a restriction to the consumer from entering into the transaction.

Institutional approaches to e-commerce regulation differ across jurisdictions. The differences are recognised as a possible barrier for consumers and business to engage in online transactions across borders. The various approaches to choice of law and rules on jurisdiction complicate the matter. Consumer rights and obligations may vary considerably from one jurisdiction to another. Instruments developed to address the issues may be e-commerce specific or generic by nature. As a result, very small percentage of the transactions is concluded across jurisdictions. Small business has been described as being particularly affected by the diversity in frameworks. The issue of open access to all the content and services available online and whether

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consumers would be able to purchase a product outside the country of residence arises in this context. Examples are there where consumers are unable to purchase a digital product (including music or e-books) or service due to geographic limitations imposed by a vendor. More generally, it has been noted that in those cases where e-commerce transactions involve small amounts of money, consumers tend not to go to court when things go wrong. Effective, low-cost and adaptive online dispute resolution and redress mechanisms might help to address this issue.

**Consumer Privacy**

In today’s global world protecting the privacy of the consumers is of utmost importance. Privacy is one of the most complex legal issues facing e-commerce ventures today. Web shopping is generally very easy. The customer clicks on the site, buys the required merchandise by adding to their cart, enters his credit card details and then expects the delivery in a couple of days. In such a transaction customer’s information has to pass through several hands making privacy and security of information the most important issue. There are two kinds of threats to individual privacy posed by the Internet. One threat originates in the private sector and concerns how much personal information is collected by commercial websites and how it will be used. A second threat originates in the public sector and concerns how much personal information federal, state, and local government authorities collect, and how they use it. Information privacy is a subset of privacy. The right to information privacy includes both the claim that certain information should not be collected at all by governments or business firms, and the claim of individuals to control the use of whatever information that is collected about them. Individual control over personal information is at the core of the privacy concept.

E-commerce sites routinely collect a variety of information from or about consumers who visit their site and/or make purchases. Some of this data constitutes personally identifiable information (PII), which is defined as any data that can be used to identify, locate, or contact an individual. Other data is anonymous information, composed of demographic and behavioral information, such as age, occupation, income, zip code, ethnicity, and other data that characterizes your life without identifying who you are. Marketers would like to know who these people are, what they are interested in, and what they buy. The more precise the information, the more complete the information, the more valuable it is as a predictive and marketing tool. Armed with this information, marketers can make their ad campaigns more efficient by targeting specific ads at specific groups or individuals, and they can even adjust the ads for specific groups. Many websites allow third parties—including online advertising networks such as aquantive, Double Click, and others—to place “third-party” cookies on a visitor’s hard drive in order to engage in profiling the user’s behavior across thousands of other websites. A third-party cookie
is used to track users across hundreds or thousands of other websites who are members of the advertising network. Advertising networks and search engines also track the behavior of consumers across thousands of popular sites, not just at one site, via cookies, spyware, and other techniques. Today, the e-commerce behavior, profiles, and transactions of consumers are routinely available to a wide range of government agencies and law enforcement authorities, contributing to rising fears among online consumers, and in many cases, their withdrawal from the online marketplace. Recent large scale hacks into companies’ customer records have also contributed to undermine consumer confidence in providing their personal details online.

Payment security appears to be one of the most important factors for consumers in their decision to make or not make online purchases. According to a 2006 survey, more than 40 percent of users would refrain from transacting online for fear that their personal information could be stolen. As reported by the Office of Fair Trading in the United Kingdom, in 2006, 79 percent of Internet users were very concerned about the risk to the security of their payment details from online shopping; an estimate of 3.4 million people were prepared to use the Internet but not willing to shop online because of a lack of trust or fears about data security. These concerns are recognised in the 1999 Guidelines which recommend that consumers be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford. As recommended in the 1999 Guidelines, many countries now have laws limiting consumer liability for unauthorised transactions. However, these vary from country to country and, in a number of countries, they tend to be generic (i.e. not specific to e-commerce). In some countries, consumers may not be held liable or may be liable for a portion of an unauthorised charge. In others, liability may depend on the degree of negligence on the part of the consumer. In some countries, liability rules may vary depending on the payment mechanism used (i.e. debit card, or credit card), or the nature of the transaction (domestic versus cross-border).

Cyber Piracy and Protection of Intellectual Property Rights

As a general rule the creator of intellectual property owns it. The creator has exclusive rights to use this “property” in any lawful way he seems fit. But the Internet has potentially changed things. The early Internet was characterized by a spirit of worldwide community development and sharing of ideas without

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consideration of personal wealth. This early Internet spirit changed in the mid-1990s with the commercial development of the World Wide Web. Once intellectual works become digital, it becomes difficult to control access, use, distribution, and copying. These are precisely the areas that intellectual property seeks to control. The Internet technically permits millions of people to make perfect digital copies of various works—from music to plays, poems, and journal articles and then to distribute them nearly cost-free to hundreds of millions of Web users. The proliferation of innovation has occurred so rapidly that few entrepreneurs have stopped to consider who owns the patent on a business technique or method their site is using. The spirit of the Web has been so free-wheeling that many entrepreneurs ignored trademark law and registered domain names that can easily be confused with another company’s registered trademarks. The rapid growth and commercialization of the Internet have provided unusual opportunities for existing firms with distinctive and famous trademarks to extend their brands to the Internet. Cybersquatters exploit the first come first served nature of domain name registration system to register names of trademarks, famous persons or business with which they have no connection. These developments have provided malicious individuals and firms the opportunity to squat on Internet domain names built upon famous marks, as well as attempt to confuse consumers and dilute famous or distinctive marks (including your personal name or a movie star’s name). In short, the Internet has demonstrated the potential for destroying traditional conceptions and implementations of intellectual property law developed over the last two centuries.

Countries like United States have introduced certain measures in their existing laws to provide protection to the intellectual properties traded on internet. The Digital Millennium Copyright Act (DMCA) of 1998 is the first major effort to adjust the copyright laws to the Internet age. This legislation was the result of a confrontation between the major copyright holders in the United States (publishing, sheet music, record label, and commercial film industries), ISPs, and users of copyright materials such as libraries, universities, and consumers. The penalties for willfully violating the DMCA include restitution to the injured parties of any losses due to infringement. Criminal remedies are available to federal prosecutors that include fines up to $500,000 or five years imprisonment for a first offence, and up to $1 million in fines and 10 years in prison for repeat offenders. These are serious remedies. The Anticybersquatting Consumer Protection Act, 1999 creates civil liabilities for anyone who attempts in bad faith to profit from an existing famous or distinctive trademark by registering an Internet domain name that is identical, confusingly similar, or “dilutive” of that trademark. The Act does not establish criminal sanctions.

Even though United States and some other countries have updated the laws, an e-trader, who owns intellectual property, is dealing with mostly
outdated intellectual property laws and courts may make an attempt to fit those laws into the new environment. The reason is since those laws were created when interactions were territorially based, instead of in cyberspace where the laws are inadequate. One of the major problems is that there is no international registration of intellectual property and all the protection of the intellectual property is matter of local law. There are no uniform international laws that will protect intellectual property. Even the international agreements like North American Free Trade Agreement (NAFTA), Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Berne Convention, the Universal Copyright Convention, Patent Cooperation Treaty etc. are not truly international since none of these agreements have all the countries in the world as signatories. Even among the countries that do belong to these various agreements there is still variance among the rules. All this makes the protection of intellectual property a national legal issue. In such a condition losing one’s intellectual property over the internet is very real possibility.

Cyber Fraud

Cyber fraud or cyber crime is becoming a major area of concern. The openness of the Internet, the lack of identification and the low level of users’ understanding of security give rise to cyber crimes. Cyber crimes can be described as criminal acts in which computers are either a tool, a target or a place of criminal activity. Examples include software piracy, economic espionage, online trafficking (ID theft, credit and debit cards) or traditional crimes which have turned to use modern ICT, such as child pornography or online gambling. In many countries, criminal law does not address cyber crimes. The business community urged that more be done to tackle fraudulent commercial activities online, which continue to be a major challenge for business, governments, and consumers alike. In many countries, e-commerce was reported as topping the list of consumer complaints. It was important that a distinction be made between illegitimate commercial activity and other types of fraud and that the scope of the 1999 Guidelines be expanded to cover non-commercial fraud. To meet the threat of electronic crimes, countries have to create a positive environment including laws, policies, technical standards, law enforcement and cyber crime reporting. International standards as well as international cooperation are necessary to address the global extent of cyber crime.

Digital Content Products

With the expansion of broadband and advanced mobile networks, online content distribution is taking place on an unprecedented scale. Consumers can increasingly access a wide range of digital content products including films, music, news, videos, e-books, and games through different networks and devices. Various business models have been established to allow consumers to purchase content. These include i) digital (purchase or rental) download,
subscription downloads (whereby consumers can access a range of digital content products on a monthly or yearly basis), and iii) free on-demand streaming. Like any online purchase, there are basic consumer protection issues associated with the purchase of digital content products. Over the past few years it has become apparent that there are many discrepancies between the rights and interests of the consumers and the way digital content is marketed. There are overly restrictive contracts and technological measures that would prevent them from private copying and playing legitimately purchased CDs on their computers or car radios. Many of the concerns of internet consumers are the result of tensions between their wish to make the best use of digital technologies and the interest of the content industry to exercise some form of control over the use and distribution of digital content in order to maintain a viable business model. Traditionally the interest of the content industry and authors to control the dissemination and use of protected music, films, games, etc. are protected by copyright law. Copyright law regulates the relationship between the right holders and intermediaries e.g. music publishers. However, there is little place for consumers and concrete rights of the consumers in copyright law.

Providing consumers with certainty about what they can or cannot do with the digital products they purchase is indispensable to maintain confidence. Consumer usage of digital content products may be restricted by specific technology aimed to ensure legitimate content distribution, in line with consumer expectations, and thus to protect copyright holders’ rights. Many hardware manufacturers, publishers, and copyright holders have introduced Digital Rights Management (DRM) systems to control how consumers access and use media and entertainment content. However, consumers may, in some instances, not understand or be provided with insufficient, unclear, misleading or confusing information concerning usage restrictions. Some of the issues include:

- **Play Limitations**- In the case of downloaded music for example, consumers who wish to change their music service providers or playback devices may have to repurchase the music files in a different format. In such a complex environment, consumers may not always know on which devices they may be able to play the purchased content.

- **Copy Limitations**- The digital products area raises intellectual property issues that are not always within the scope of consumer policy-makers. Nonetheless, consumer rights and obligations regarding the distribution of content purchased online may neither always be clearly understood, nor adhered to by consumers.

- **Privacy and Security Concerns**- The use of DRM technology may raise privacy and security concerns when the content protection software monitors users’ preferences and collects personal information from them. Further, there are concerns about unwanted software and the potentially
harmful effects on consumers’ computers.

- **Status of Vendors** - Consumers, at the time they purchase digital content products, may encounter difficulties to establish whether the sellers of such products have distribution rights, or are breaching copyright laws. Thus consumers may face difficulty, and thereby legal uncertainty, with regard to their ability to determine whether the offer for a digital product is legitimate.

- **Geographic Limitations** - By nature, the online environment should allow content services to be made available across borders. However, a lack of multi-territory copyright licences may prevent such a development.  

Consumers as Sellers

Consumers are increasingly using the Internet as a mean to sell goods and services, through i) their personal websites, ii) e-mail, iii) auction sites, and iv) sites providing classified advertising services. A number of C2C online platforms have developed over the past decade, ranging from classified ads (such as Craigslist or XPat.com), to online marketplaces (such as eBay) which include auction sites, sites offering both auction and classified ads, and platforms such as Amazon.com, which facilitate transactions between consumers and third parties outside of Amazon, including small individual sellers. Key consumer protection issues in C2C transactions include i) the question of trust among sellers, buyers, and the organisation facilitating transactions; ii) the responsibilities and legal obligations of individuals involved in C2C transactions and of the intermediaries that provide trading platforms. More specifically, issues related to the role and responsibilities of Internet intermediaries to consumers include information disclosures and fraudulent activities such as cyber fraud and counterfeiting. The responsibilities of intermediaries (which play a prominent role in C2C e-commerce, but also play important roles in other context) have been addressed in a number of jurisdictions. In most OECD countries limited liability rules apply to them. In the EU, the Directive on Electronic Commerce indicates that limited liability is indispensable to ensuring the provision of basic services which safeguard the continued flow of information in the network and the provision of a framework which allows the Internet and e-commerce to develop. The most common consumer complaint about C2C transactions concerns fraud. As to the different types of fraud, in a 2008 report, Consumer Reports WebWatch indicates that non-delivery was among the most common complaints, affecting about 10 percent of users of online auctions. The next three most common were goods


not arriving in usable condition; consumers not being told a key detail about the item before it arrived, and being sent an item of lesser value than the one actually purchased. 39

Accountability in E-commerce

Consumer laws, policies, and practices limiting fraudulent, misleading and unfair commercial conduct are indispensable in building consumer confidence and establishing a more balanced relationship between businesses and consumers in commercial transactions. To achieve these goals, governments and businesses have taken a range of actions to develop accountability in the e-commerce marketplace and build trust and security in online transactions. The 1999 Guidelines call for online businesses to “provide accurate, clear and easily accessible information about themselves sufficient to allow, at a minimum ... prompt, easy and effective consumer communication with the business.” While such information can be found on businesses’ websites, domain name registration information can also serve as a useful complement. Effective dispute resolution and redress mechanisms are key to building trust as the lack of such mechanisms can inhibit consumers from taking full advantage of e-commerce. The situation is particularly important with respect to cross-border transactions where language and a lack of understanding of how domestic and foreign laws interact complicate matters.

The Participative Web

Today the Internet has developed into a participative platform that empowers users to contribute to developing, rating, commenting on, and distributing digital content and customizing Internet applications. The Internet has now become a vehicle through which large numbers of consumers worldwide can share their experiences with goods and services through social networks, blogging and related exchanges, and online consumer reviews. However, as the participative web blurs traditional distinctions among businesses, consumers, and marketers, there are concerns about the transparency of the identity of web participants and their affiliations with products and services. There are also concerns about consumers’ understanding of i) how their personal information may be used by site operators and other commercial entities, and ii) the terms under which consumers are using these sites. While consumer ratings and reviews are seen as promoting consumer interests by improving information flows and transparency, there are concerns that such evaluations could be manipulated by some market participants, thereby reducing their value. Then there are social networks which are platforms where persons can share information. A variety of Social Networking Sites (SNS) have emerged in recent years. Among the most popular are Facebook, MySpace and Twitter. These SNS invite users to provide personal data for generating their profiles. They can post
their material. These platforms also provide a list of contacts for each user. The growth in SNS has raised privacy concerns among consumer groups and privacy advocates, particularly with respect to the collection and use of consumers’ personal information, without users’ knowledge or consent.

**Mobile Commerce**

Today, m-commerce is playing a growing role in economies world over. With increased access to broadband and advances in mobile device technology, the situation may evolve even more rapidly and consumers may soon be accessing the Internet more from mobile devices than PCs. For example, third generation (3G) mobile phones are becoming mobile computers which allow easier download of content and are capable of browsing the Web, performing searches, playing games, installing and operating applications, replacing MP3 players, making and watching videos and TV. As mobile devices grow more technologically sophisticated, they are providing vehicles for new forms of advertising. New techniques are being used to send personalised ads, which include: SMS, often in the form of alerts or updates (news, sports, special offers), MMS (Multimedia messages); banners (at the top or bottom of a page); “in-content” advertising within applications, such as games; downloads, such as wallpapers, themes, and ringtones; click-to-call; and viral media whereby users are asked to pass on the ad (in the form of text or video) to other users. No doubt the mobile devices have provided growing opportunities to the consumers to engage in e-commerce, however, it has also posed certain challenges for the consumers like i) consumers’ difficulty to access full information about the products and transaction on offer due to mobile devices’ small screens and limited storage capacity; ii) the need to protect children from certain forms of advertising, over-consumption and unauthorised access to personal data; iii) in the case of complex chains of contracts, clear dispute resolution should be available to consumers; and iv) ensuring adequate privacy and security. Finally the risk that payment and personal information could unknowingly be compromised through the interception of wireless transmissions is an important concern.

**Protecting Children**

Protecting children online has become a key priority worldwide. In the digital age children start using the Internet at an early age for entertainment, games, information and research, and social networking. The accessibility of the Internet and mobile commerce to a growing number of children, and their increasing use of them through computers and mobile devices, have raised new opportunities and challenges for parents, businesses and society. The Internet and m-commerce may expose children to commercial content intended only for adults, allowing children to purchase unsuitable products (e.g. drugs, weaponry, alcohol, adult literature) and facilitating overspending through the
purchase of goods or services, or by generating large network usage charges. The difficulty that adults have in monitoring mobile activity further complicates the situation. Advertising that targets children and business practices that elicit personal information from children is another serious problem. In addition to these issues, inadequate age identification systems which make it difficult to determine whether buyers are minors, is a major concern. Minors do not have legal capacity to enter into commercial transactions. Currently, many online retailers simply ask consumers to confirm their age by ticking a box without taking any other measures to verify whether the person meets the age criterion. The situation is of particular concern in the case of mobile commerce as credit cards may not be needed to make a purchase. The absence of adequate age identification technology makes it difficult to verify the age of consumers.

**Conclusion**

No doubt the Internet and the rapid pace development of new technologies have opened new horizons towards a world-wide market where space and time barriers are not the constraints. The rapid pace development of the Internet in such a short time has also created an immense platform for an informational world-wide market. The Internet has indeed changed the face of the business environment for both companies and consumers. Online shopping is a definite reality in the 21st century and is expanding day by day. Driven either by better prices, wider variety, convenience, control or merely the hedonic shopping experience, the online customer represents a true challenge for marketers.

However, the rising importance of the Internet has its equal share of drawbacks. The Internet is faced on a daily basis with a great many security and privacy issues that negatively influence not only the companies’ activities but also the well-being of the consumer and individuals surfing the web. From viruses, spam, cookies, pop-ups, to identity theft, and other major security and privacy aspects (techno crooks, credit card fraud, loss of private information), all are issues to frighten the mind of the online consumer and make him seriously ponder about the actual cost of buying online. In such a scenario the protection of online consumer plays an essential part in the informational society. Having to face on a daily basis numerous virtual threats, the online consumers’ need for official privacy and security regulations at a global level is an issue of a higher importance and relevance for the protection of consumers in the digital age. It is of utmost importance for online consumer not only to have access to information about his rights but also to have the certainty that security and privacy are both respected and defended by law.

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CONSUMER PROTECTION IN PERSONAL FINANCE

MALA BANERJEE

Introduction

The mis-selling of financial products is rampant in India, so much so that it has taken on the nature of a menace. The extent of mis-selling is such that very often acting on the advice of one’s personal financial advisor can be harmful to one’s personal wealth. Mis-selling is the ethically questionable practice of salespeople misrepresenting or misleading a customer about the characteristics of a product or service when selling the service or product. In an effort to make a sale to a potential customer, a financial product salesperson could leave out certain information or describe a financial product as something the investor urgently needs, even though sound financial judgment would come to the opposite conclusion. It is selling of a product by giving a wrong picture to the client with a view to make the product more attractive, often by suppressing facts about the product, outright lying or even selling a product that the seller knows is entirely unsuitable to the client. Giving incorrect information and outright lying is the most obvious part of the practice of mis-selling.

However, mis-selling can also take more subtle forms such as giving unrealistic information such as cherry-picking the good returns of a product and giving the impression that such returns are the usual norm, suppressing some of the disadvantageous features, selling the product mentioning only the advantageous features to make the product more attractive to the customer even though it is not relevant to his personal finance needs. In short, it is knowingly selling a product that is unsuitable to the client.
Each year the global economy adds about 150 million new customers in financial services. Most are countries that are developing or emerging where customer protection and financial literacy are still negligible. These countries are generally those that have just recently moved away from central planning towards a market-based economy. In these countries the culture of understanding financial products is still in its infancy. These markets have yet to become either efficient or transparent. It is often seen that otherwise educated and smart people who are generally well aware of other things make basic mistakes when it comes to managing their personal wealth. It is not just the illiterate who fall prey to mis-selling.

**Reasons for Mis-selling**

There are many reasons as to why people are gullible when buying financial products and there is rampant mis-selling:

a) *Low awareness* – The level of financial literacy in India is very low. That is the reason why people do not understand fully the products they are purchasing. Sellers take advantage of this situation by presenting the product in such a way as if it is the best possible product for us.

b) *Salesmen having to fulfill sales targets* – There is a lot of pressure on salespeople from their company to be able to meet their sales target and show performance. As a result of this salesmen are often led to deceive the clients.

c) *Rush to save tax at the very last minute* – Generally, in India people do not plan their investments in advance. This results in a rush at the last minute to purchase products just to save their tax. This leads people to buy products which they do not really need.

A few examples of mis-selling in financial products and a few products that have been tremendously abused are:

1. **ULIPs**: ULIPs are a classic example of the mis-selling of insurance. There had in the past been a tendency to project ULIPs as a high-growth, low-risk product with an in-built insurance component in it. One of the ways of selling ULIPs was agents telling clients that ULIPs were risk-free and that it would not drop by more than x% and that it would rise by some 15 – 20% in the long term. This was nothing but a blatant marketing gimmick. Very dishonestly, the seller would not mention that ULIPs carried very high commission costs and other high charges which would take the buyer a long time to recover. Some of the other insidious ways of selling insurance are telling the client that the charges of the particular product/ company he is selling is the lowest. Chances are this is a blatant lie. Sometimes actually even the seller may not know this. This is a subtle form of mis-selling. Very few people outside the industry actually understand how exactly the charges are structured.
2. Mutual Funds: These too can be mis-sold. That happens when an agent recommends a fund which does not suit the buyer. Sometimes funds that are very risky and do not have a proven track record are chosen. Often the above average returns of the past few years are extrapolated indefinitely into the future.

3. Insurance: One very specific kind of mis-selling of insurance in India is that insurance agents almost never tell the buyer about term insurance. This is because of the low commission agents get from selling term insurance. Investors are almost lured by high-commission products like ULIPS and Endowment products which looks after the interest of the seller better. Agents don’t explain the benefits of insurance properly to people and generally give an impression that people will lose money in term insurance.

Need for Financial Literacy

In investing as in other areas in life such as health, prevention is better than cure. Often people who have bought the wrong products like endowment policies which they don’t really need have had to live with them for 15 – 20 years. Once the product is bought very little can be done about it. So understanding the product through and through before making the decision to buy is what should be done. What is needed to help the situation is financial education. If the customer is educated enough then no seller will be able to cheat him.

Another point to note is that small investors often look for free advice. This is one of the portals through which they fall prey to mis-selling. Small investors also need to get away from the mindset of seeking free advice. The culture of seeking free financial advice is widespread in our country. If the advisor is registered and is answerable for his advice, then the chances of mis-selling and deceiving the customer decline a lot. Nowadays the sellers of financial products often give the impression that they are giving free financial advice while they are actually getting a hefty commission for their sales. With increased financial literacy this will change. Financial literacy gives consumers the skills to evaluate and understand the information they receive from financial products sellers. The fact is that small/ retail investors need financial advice/ planning more than the high new worth or rich investors. In due course of time, financial planners will also service small investors. There is another kind of unethical practice going on. Some financial planners have adopted the practice of adopting a model wherein they have taken commission from the products they have sold. This is a clear example of conflict of interest.

There are other kinds of mis-selling such as advertising using celebrities. While this is alright for selling cars and soaps, it is not ethical when it comes to selling financial products. This practice should stop. Often financial products are sold saying that the returns would be 250% in 20 years and that it was
guaranteed. Is this really that impressive? The returns come to only about 6.25% compounded annually. Often buyers are unable to fully understand that what they are being sold is hardly impressive at all.

**Relevance of Consumer Protection**

One of the main tools to fight this menace apart from financial literacy is consumer protection. Consumer protection will ensure that consumers will receive information that will allow them to make informed decisions and are not at the receiving end of unfair and deceiving sellers and their unethical selling practices. It will also ensure that after the purchase of products there are proper recourse mechanisms to ensure that the danger is compensated. Another thing that is important is privacy of the personal information of the purchaser. Violation of this right is rampant in India. Private information is available freely in India illegally. Together consumer protection and financial literacy set clear rules of engagement between financial firms and their retail customers and help narrow the knowledge gap between financial products buyers and sellers.

If consumer protection laws are weak and financial literacy is low, the result is financial mis-selling. This situation is ideal for crooked financial salesmen to take advantage of and mis-sell their products. This is what is happening in India. Emerging countries like India have seen tremendous and fast-paced growth of their financial markets in the last 10 – 20 years. There is also much more money in the hands of the lower and middle income people to invest. However, the maturity and knowledge of the people buying these products has not happened at the same rate. Essentially financial mis-selling can take place because of the information gap between the product buyers and sellers. This is very important. The financial market is a market of “asymmetric information” between the buyers and sellers. It is only because of this that financial mis-selling can take place so rampantly.

There is also a vast amount of ‘power gap’ between the seller and the buyer. A small low income buyer of a financial product has very little chance of redressing the mis-selling by the salesmen of a large financial institution. Financial institutions know their products much better than individual buyers. Small retail investors also find it very difficult and costly to obtain sufficient information on their financial purchases. In addition, often financial products can be structured in a complex way which can be very difficult to assess.

This is where financial literacy comes in – by helping to narrow the knowledge gap between the product buyers and sellers. Weak consumer protection laws affect poor and middle income classes more than the rich classes, since the rich by nature have more experience in handling financial products. Thus financial products buyers are at an inherent disadvantage. Customer protection aims at redressing these imbalances.
Guidelines for Consumer Protection Laws

Consumer protection and financial literacy promote efficiency, transparency and deepening of retail financial markets. Consumer protection apart from giving justice to the customers who have been deceived should also work at creating rules that empower investors such as giving investors clear and complete information to make informed decisions and by prohibiting financial institutions from engaging in unfair or deceptive practices.

These guidelines could be kept in mind while framing rules to protect the consumer of financial products:

a. The law should provide clear consumer protection rules regarding financial products and services. Relevant institutional arrangements should be in place to ensure thorough, objective, timely and fair enforcement of the rules.

b. The codes of conduct that are laid down should be clear and principle-based. These should be framed in consultation with both representatives of the consumers and financial institutions. There should be a statutory agency which should monitor the conduct of the business of selling of financial products.

c. All companies that collect funds from individual or companies should be licensed.

d. There should be enforcement powers of the watchdog who will see to it that rules are clearly enforced.

It is, however, prudent to mention here that while regulation is necessary care should be taken to see that there is not too much regulation and that markets do not get stifled. There should be certain clearly laid down practices for salesmen or sellers of financial products. These could be as follows;

1. Before a customer purchases a financial product, the financial institution should provide a written copy of the general terms and conditions as well as those that apply to the product.

2. For all purchases, customers should receive a short ‘facts statement’ that describes in short the terms and conditions.

3. Before making a sale of any financial product, the financial institution should gather information about the customer to justify the relevance of the product sold.

4. Products with a long-term savings component should have a “cooling off” period wherein the customer will be allowed to cancel the contract/purchase without any penalty applying.

5. If on the purchase of any product, there is a pre-condition for receiving another product, it should be up to the customer to choose the product.
6. In all advertisement of financial products, it should be mandatory for the seller to mention whether it is regulated and which is the agency that regulates it, and who the consumer should approach in case of any dispute.

7. Staff of financial institutions involved in selling financial products should receive adequate training which will enable them to understand the complexity of the product being sold.

8. Each salesmen should be registered so that in case of mis-selling they can answer for it, even if they have changed jobs.

Consumer protection is vital for safeguarding the interests of financial products buyers, especially in a developing country like India where levels of financial literacy are low and mis-selling is rampant. Strict consumer protection laws and regulation will go a long way in curbing mis-selling. Apart from this the financial institutions should launch a vigorous drive to educate the consumers. Jago Grahak Jago campaign should also focus on financial literacy.
GREEN CONSUMERISM

SANJAY KUMAR SINHA

Introduction

The economic development after World War II raised the living standards of people in most countries. Their higher income level and the markets full of tempting products increased the consumption of goods and services. Enthusiastic marketing and advertising campaigns of multinational companies pushed the consumption level to new heights. The increased economic activity and consumption resulted in widespread environmental pollution and disruption. By early 1970, the world community started feeling the brunt of environmental disruption. The United Nations in 1972 convened its first major conference, also known as the Stockholm Conference, on international environmental issues. In 1973, the European Community (now European Union) created the Environmental and Consumer Protection Directorate, and constituted the first Environmental Action Programme.

During the 1980s consumers started becoming increasingly concerned about the environment. Their awareness of overuse of natural resources, and environmental pollution and disruption led to the beginning of green consumer movements in England in 1988. Labels such as ‘eco-friendly’ started becoming a marketing tool as companies attempted to show that their goods had no negative effect on the environment. As green consumerism took off, the media rushed to inform the public about the ‘green’. Lists of supposedly good and bad products with environmental and consumer experts’ advice on becoming a green consumer were presented. Soon, green consumerism rapidly spread all over the world as a movement dedicated to choosing goods or products safe to the natural environment and the companies and stores that sell such goods.
What is Green Consumerism?

Green consumerism is the use of individual consumer power to promote less environmentally damaging consumption, without compromising on the wants and needs of the consumers. It is a practice by which consumers show their responsibility towards the environment and society by buying and consuming eco-friendly products, even if they have to pay extra. The followers of green consumerism support environmental causes to the extent of switching allegiance from one product or supplier to another, even if it costs more.

Green Consumers

Green consumers are those who consume goods and use services consciously in accordance with the natural environment. They are accustomed to a new life style that is environmentally sound, and behave themselves according to the concept of sustainable growth. They buy and use products and services that, during their entire lifecycle, affects the environment the least. Green consumers buy eco-friendly products, i.e. products with little or no packaging; products made from natural ingredients; products that are made without causing pollution and produce the minimum waste; consume minimum energy to work. A true green consumer not only buys eco-friendly products but also minimizes his consumption level; he follows the principle of 3R i.e. reduce, reuse and recycle.

Consumption and Green Consumerism

Consumption by its very nature has an impact on the environment, to some degree or other; hence consumption cannot be truly green. The consumption of households and individuals is an important element of green consumerism. Consumers can consider reducing or abstaining from certain consumption activities. They can also replace certain activities with environmentally less damaging activities, even though not absolutely sound in character. In other words, they could change their consumption styles or patterns, out of consideration for environmental protection. With electricity, for example, a household can prefer solar energy — a way that is expensive but environmentally more sound than a conventional electric power supply.

Green Consumerism in Material Terms

In the twentieth century industrialization and mass production led the way for mass consumption, which resulted in over-consumption and excessive production of short-lived or disposable items and a large quantity of residuals, including pollutant materials. Consequently, environmental deterioration, degradation, and disruption were brought about with their impacts on human beings. This process is still continuing. Residuals consist mostly of plastics, metals, glass, etc. used in packaging and materials used for consumer durables such as TV, refrigerators, washing machines, personal computers, phones,
etc. Hazardous chemical substances like dioxins, PCB and DDT (dichlorodiphenyltrichloroethane), and toxic metals like lead, cadmium, hexavalent chromium often come out of residuals directly or through chemical changes in excess of natural resolvability or decomposition.

The global population increased and hence the consumption of food grain and other farm products has been increasing continuously. To fulfill the demand of food, more productivity is needed in agriculture. The use of chemical fertilizers and pesticides in agriculture are another major cause of degradation of the natural environment. Since last decade, environmental and consumer experts have been concerned about increasing use of endocrine disruptors or environmental hormones such as dioxin, PCB, hexachlorobenzene, besphenol-A, styrenes and parabens in consumer goods. These chemicals disturb the endocrine system not only of human beings but also of domestic and wild animals, and hence affect the ecosystem.

Green consumerism discourages these practices of production and consumption. Green consumers should be careful of the proliferation of all harmful substances and collect and disseminate latest information about the products and processes that harm human health and environment.

**Consumer Behaviour**

Consumers and producers, both, are economic beings. Consumers behave to maximize their total utility, and manufacturers and marketers aim to maximize profits; they hardly care and act for the environment. Therefore, it is necessary to highlight how closely environmental problems are related to consumers’ utility or interests. It is, however, by no means easy for individual consumers to identify and evaluate the causality and relationship between their behaviors and changes in the natural environment. Collective consumption behaviors are more systematic and assist individual consumers to study and comprehend environmental causality and relationships. The government, environment and consumer organizations can play a major role in collecting information on consumer behaviour, thereby building awareness about green consumption.

To measure and monitor green consumer behaviour, in January 2008, the National Geographic Society conducted its first Greendex survey of 14 countries around the world. The green consumer behaviour included people’s transportation patterns, household energy and resource use, consumption of food and everyday consumer goods, and what consumers are doing to minimize the impact these activities have on the environment. The survey ranked average consumers in those countries according to the environmental sustainability of their behavior. The Greendex survey results were indeed very surprising as consumers in the large developing economies of Brazil, India and China scored the highest, while Canadians and Americans, with their relatively massive environmental footprints as individuals, scored the lowest. Now the third annual Greendex survey 2010 has showed that the
green behavior among consumers in 10 out of 17 countries has increased over the past year. The survey results show that environmentally friendly consumer behavior has now increased from 2008 levels in all but one of the 14 countries polled in both 2008 and 2010. The survey of 17,000 adults in 17 countries placed India, Brazil, and China atop the list of countries with green-minded consumers; the United States ranked last.

**Indian Scenario**

Indian consumers constitute world’s biggest market for products and services. But unlike their counterparts in many developed countries like the US, UK and Japan, Indian consumers are more conscious consumers in terms of environmental protection. Besides the Greendex Survey report, many other reports show how Indian consumers are increasingly participating in green consumerism. According to Datamonitor’s latest survey titled ‘Green Consumers in India’, 60 percent of Indian consumers prefer making green choices and 95 percent of consumers who make green choices claim to do so to protect the environment. Also the number of consumers willing to switch to using green products and services is increasing and will continue to increase over the coming years.

Whatever be the figures and facts about the growth of Indian green consumerism, there are some areas of concern that need immediate attention of the Government and its agencies. For instance, the results of the Global ImagePower Green Brands Survey 2011 by Penn Schoen Berland, a research based strategic communication advisory, show that ‘limited choice’ and ‘lack of transparency in labelling’ are the key obstacles to buying green in India. The availability of green products, lack of product information, poor packaging are some critical factors in the growth of green consumerism in India and they need to be addressed. Green products need to be more widely distributed. For food products, the Government should mandate greater label clarity with respect to ingredients and food origin. Packaging and labelling needs to be improved to preserve the quality of the product and highlight the ingredients and its origin, food safety as well as environmental impact of the product and its packaging.

Since ‘green’ is an emerging product category, consumers are not very familiar with the products available today. Few standards exist and new products and technology solutions are coming to market each day. In this situation the Government and the regulatory and Standards organizations in India, e.g. the Bureau of Indian Standards (BIS), the Food Safety and Standards Authority of India (FSSAI), should formulate new criteria, Standards, and certification system for green products in the country. Indian consumers are significantly more influenced by mass media. TV advertising and programs and newspaper articles have the greatest impact on their probability to purchase green products. Consumers in India are more trusting of green advertising
compared to their counterparts in the UK and US. 86 percent of Indian consumers said to the Green Brands Survey 2011 that advertising about green products help them make more informed choices. In this scenario truthfulness of ‘green’ claims has a great relevance for consumers. ‘Greenwashing’ threaten the power of green products. Sometimes, self-regulation in advertising is not enough to control the menace of ‘greenwashing’ by the manufacturers and advertisers. It is high time that the Government enacts stringent rules to curb greenwashing and all types of misleading claims.

We believe that every consumer is a change agent for environment protection and green consumer movement. Even green products have an environmental impact, so the greenest option is to limit our consumption. We wish that people produce and consume economically viable, environmentally sound, and socially responsible products and services.

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The Consumer Protection Act, 1986
(68 of 1986)

24th December, 1986

An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers’ disputes and for matters connected therewith.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

1. Short title, extent, commencement and application.—(1) This Act may be called the Consumer Protection Act, 1986.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.

(4) Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.

2. Definitions. - (1) In this Act, unless the context otherwise requires,—

(a) “appropriate laboratory” means a laboratory or organisation—

(i) recognised by the Central Government;

(ii) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or

(iii) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;

(aa) “branch office” means—

(i) any establishment described as a branch by the opposite party; or
any establishment carrying on either the same or substan-tially the same activity as that carried on by the head office of the establishment;

(b) “complainant” means—

(i) a consumer; or

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

(iii) the Central Government or any State Government,

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

(v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;

(c) “complaint” means any allegation in writing made by a complain-ant that—

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

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

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

(iv) a trader or service provider, as the case may be, has charged for the goods or for the service mentioned in the com-plaint a price in excess of the price –

(a) fixed by or under any law for the time being in force

(b) displayed on the goods or any package containing such goods;

(c) displayed on the price list exhibited by him by or under any law for the time being in force;

(d) agreed between the parties;

(v) goods which will be hazardous to life and safety when used or being offered for sale to the public,—

(a) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

(b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

(vi) services which are hazardous or likely to be hazardous to life
and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;”;

(d) “consumer” means any person who—

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

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes;

Explanation.— For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;

(e) “consumer dispute” means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

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

(g) “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;
(h) “District Forum” means a Consumer Disputes Redressal Forum established under clause (a) of section 9;

(i) “goods” means goods as defined in the Sale of Goods Act, 1930 (3 of 1930);

(j) “manufacturer” means a person who—

(i) makes or manufactures any goods or part thereof; or

(ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or

(iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer;

(jj) “member” includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;

(k) “National Commission” means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;

(l) “notification” means a notification published in the Official Gazette;

(m) “person” includes,—

(i) a firm whether registered or not;

(ii) a Hindu undivided family;

(iii) a co-operative society;

(iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not;

(n) “prescribed” means prescribed by rules made by the State Government, or as the case may be, by the Central Government under this Act;

(nn)”regulation” means the regulations made by the National Commission under this Act;

(nnn) “restrictive trade practice” means a trade practice which tends to bring about manipulation of price or conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—

(a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;

(b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition
precedent to buying, hiring or availing of other goods or services;

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

(oo) "spurious goods and services” mean such goods and services which are claimed to be genuine but they are actually not so;

(p) “State Commission” means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9;

(q) “trader” in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;

(r) “unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely;—

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

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

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

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

(iv) represents that the goods or services have sponsor-ship, approval, performance, characteristics, accesso-ries, uses or benefits which such goods or services do not have;

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

(vi) makes a false or misleading representation concern-ing the need for, or the usefulness of, any goods or services;
(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(viii) makes to the public a representation in a form that purports to be—

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

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

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

Explanation. - For the purposes of clause (1), a statement that is—

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made
or contained;

(2) permits the publication of any advertisement whether in any news-paper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

*Explanation* .—For the purpose of clause (2), “bargaining price” means—

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

(b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(3) permits—

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;

(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(3A) withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme.

*Explanation* — For the purposes of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time, published, prominently in the same newspapers in which the scheme was originally advertised;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by 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, fin-ishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

(6) manufacture of spurious goods or offering such goods for sale or adopts deceptive practices in the provision of services.

(2) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

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

CHAPTER II

CONSUMER PROTECTION COUNCILS

4. The Central Consumer Protection Council.—(1) The Central Government shall, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).

(2) The Central Council shall consist of the following members, namely:—

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

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

5. Procedure for meetings of the Central Council.—(1) The Central Council shall meet as and when necessary, but at least one meeting of the Council shall be held every year.

(2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

6. Objects of the Central Council.—The objects of the Central Council shall be to promote and protect the rights of the consumers such as,—

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

   (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices;
(c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;

(d) the right to be heard and to be assured that consumer’s 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.

7. The State Consumer Protection Councils.- (1) The State Government shall, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council for..................... (hereinafter referred to as the State Council).

(2) The State Council shall consist of the following members, namely:—

(a) the Minister incharge of consumer affairs in the State Government who shall be its Chairman;

(b) such number of other official or non-official members representing such interests as may be prescribed by the State Government.

(c) such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

(3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

8. Objects of the State Council. — The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of section 6.

8A. (1) The State Government shall establish for every district, by notification, a council to be known as the District Consumer Protection Council with effect from such date as it may specify in such notification.

(2) The District Consumer Protection Council (hereinafter referred to as the District Council) shall consist of the following members, namely:—

(a) the Collector of the district (by whatever name called), who
shall be its Chairman; and

(b) such number of other official and non-official members representing such interests as may be prescribed by the State Government.

(3) The District Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The District Council shall meet at such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

8B. The objects of every District Council shall be to promote and protect within the district the rights of the consumers laid down in clauses (a) to (f) of section 6.

CHAPTER III

CONSUMER DISPUTES REDRESSAL AGENCIES

9. Establishment of Consumer Disputes Redressal Agencies. - There shall be established for the purposes of this Act, the following agencies, namely:—

(a) a Consumer Disputes Redressal Forum to be known as the “District Forum” established by the State Government in each district of the State by notification:

Provided that the State Government may, if it deems fit, establish more than one District Forum in a district.

(b) a Consumer Disputes Redressal Commission to be known as the “State Commission” established by the State Government in the State by notification; and

(c) a National Consumer Disputes Redressal Commission established by the Central Government by notification.


(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely:—

(i) be not less than thirty-five years of age,
(ii) possess a bachelor’s degree from a recognised university,

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that a person shall be disqualified for appointment as a member if he—

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the state Government involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the state Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualifications as may be prescribed by the State Government;

(1A) Every appointment under sub-section (I) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:—

(i) the President of the State Commission — Chairman

(ii) Secretary, Law Department of the State — Member

(iii) Secretary incharge of the Department dealing with consumer affairs in the State — Member

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier: Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is also made
on the basis of the recommendation of the Selection Committee:
Provided further that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned:

Provided also that a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

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

Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the District Forum.

11. Jurisdiction of the District Forum.—(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed “does not exceed rupees twenty lakhs.

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,—

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

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or
12. **Manner in which complaint shall be made.**—(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by—

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

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

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

Explanation. - For the purpose of this section “recognised
consumer association” means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force”.

13. Procedure on admission of complaint. — (1) The District Forum shall, on admission of a complaint, if it relates to any goods,—

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

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

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

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

(e) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to
the opposite party;

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

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

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

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

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

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

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

(c) *where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.*

(3) No proceedings complying with the procedure laid down in sub-sections [1] and [2] shall be called in question in any court on
(3A) Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:

Provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum:

Provided further that the District Forum shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that in the event of a complaint being disposed of after the period so specified, the District Forum shall record in writing, the reasons for the same at the time of disposing of the said complaint.

(3B) Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

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

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

(iii) the reception of evidence on affidavits;

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

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

(vi) any other matter which may be prescribed.

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

(6) Where the complainant is a consumer referred to in sub-clause (iv)
of clause (b) of sub-section (1) of section 2, the provisions of rule 8
of Order I of the First Schedule to the Code of Civil Procedure, 1908
(5 of 1908) shall apply subject to the modification that every reference
therein to a suit or decree shall be construed as a reference to a
complaint or the order of the District Forum thereon.

(7) In the event of death of a complainant who is a consumer or of the
opposite party against whom the complaint has been filed, the
provisions of Order XXII of the First Schedule to the Code of Civil
Procedure, 1908 (5 of 1908) shall apply subject to the modification
that every reference therein to the plaintiff and the defendant shall
be construed as reference to a complainant or the opposite party, as
the case may be.

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

(a) to remove the defect pointed out by the appropriate laboratory
from the goods in question;
(b) to replace the goods with new goods of similar description which
shall be free from any defect;
(c) to return to the complainant the price, or, as the case may be, the
charges paid by the complainant;
(d) to pay such amount as may be awarded by it as compensation to
the consumer for any loss or injury suffered by the consumer
due to the negligence of the opposite party.
Provided that the District Forum shall have the power to grant
punitive damages in such circumstances as it deems fit;
(e) to remove the defects in goods or deficiencies in the services in
question;
(f) to discontinue the unfair trade practice or the restrictive trade
practice or not to repeat it;
(g) not to offer the hazardous goods for sale;
(h) to withdraw the hazardous goods from being offered for sale;
(ha) to cease manufacture of hazardous goods and to desist from
offering services which are hazardous in nature;
to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent. of the value of such defective goods sold or service provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

(i) to provide for adequate costs to parties.

(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

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

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

15. Appeal. — Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not finding it within that period.
Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent. of that amount or twenty-five thousand rupees, whichever is less:

16. Composition of the State Commission. — (1) Each State Commission shall consist of—

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

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

(b) not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—

(i) be not less than thirty-five years of age;

(ii) possess a bachelor’s degree from a recognised university; and

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent. of the members shall be from amongst persons having a judicial background.

Explanation. — For the purposes of this clause, the expression “persons having judicial background” shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment as a member if he—

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent
(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualifications as may be prescribed by the State Government.

(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely:—

(i) President of the State Commission — Chairman;

(ii) Secretary of the Law Department of the State — Member;

(iii) Secretary incharge of the Department dealing with Consumer Affairs in the State

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

(1B) (i) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.

(ii) A Bench may be constituted by the President with one or more members as the President may deem fit.

(iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.

(2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government.
Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.

(3) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:

Provided further that a person appointed as a President of the State Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1) of this section:

Provided also that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

17. Jurisdiction of the State Commission. — (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore; and

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

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission
that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—

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

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or

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

17A. Transfer of cases. - On the application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

17B. Circuit Benches. - The State Commission shall ordinarily function in the State Capital but may perform its functions at such other place as the State Government may, in consultation with the State Commission, notify in the Official Gazette, from time to time.

18. Procedure applicable to State Commissions. — The provisions of Sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

(18A. Omitted)

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

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

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent. of the amount or rupees thirty-five thousand, whichever is less:

19A. Hearing of Appeal - An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission:

Provided that no adjournment shall be ordinarily granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission:

Provided further that the State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that in the event of an appeal being disposed of after the period so specified, the State Commission or, the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

20. Composition of the National Commission.—(1) The National Commission shall consist of—

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

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

(b) not less than four, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—

(i) be not less than thirty-five years of age;

(ii) possess a bachelor’s degree from a recognised university; and

(iii) be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent. of the members shall be
from amongst the persons having a judicial background.

Explanation. — For the purposes of this clause, the expression “persons having judicial background” shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment if he—

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has in the opinion of the Central Government such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualifications as may be prescribed by the Central Government:

Provided also that every appointment under this clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following, namely:—

(a) a person who is a Judge of the Supreme Court, — Chairman; to be nominated by the Chief Justice of India

(b) the Secretary in the Department of Legal Affairs in the Government of India

(c) Secretary of the Department dealing with consumer affairs in the Government of India

(1A) (i) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.

(ii) A Bench may be constituted by the President with one or more members as the President may deem fit.

(iii) if the Members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally
divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

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

(3) *Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier:*

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of seventy years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:

Provided further that a person appointed as a President of the National Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1):

Provided also that a member may resign his office in writing under his hand addressed to the Central Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 2002 shall continue to hold such office as President or member, as the case may be, till the completion of his term.

21. **Jurisdiction of the National Commission.** — Subject to the other provisions of this Act, the National Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and
compensation, if any, claimed *exceeds rupees one crore*; and

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

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

22. **Power of and procedure applicable to the National Commission. —**

(1) The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.

(2) Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.

22A. **Power to set aside ex parte orders.** - Where an order is passed by the National Commission ex parte against the opposite party or a complainant, as the case may be, the aggrieved party may apply to the Commission to set aside the said order in the interest of justice.

22B. **Transfer of cases** - On the application of the complainant or of its own motion, the National Commission may, at any stage of the proceeding, in the interest of justice, transfer any complaint pending before the District Forum of one State to a District Forum of another State or before one State Commission to another State Commission.

22C. **Circuit Benches** - The National Commission shall ordinarily function at New Delhi and perform its functions at such other place as the Central Government may, in consultation with the National Commission, notify in the Official Gazette, from time to time.

22D. **Vacancy in the Office of the President** - When the office of President of a District Forum, State Commission, or of the National Commission, as the case may be, is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior-most member of the District Forum, the State Commission or of the National Commission, as the case may be:

Provided that where a retired Judge of a High Court is a member of
the National Commission, such member or where the number of such members is more than one, the senior-most person among such members, shall preside over the National Commission in the absence of President of that Commission.

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

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

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent. of that amount or rupees fifty thousand, whichever is less.

24. Finality of orders. — Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

24A. Limitation period. - (1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.

24B. Administrative Control.—(1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely:—

(i) calling for periodical return regarding the institution, disposal pendency of cases;

(ii) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;
(iii) generally overseeing the functioning of the State Commissions or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

(2) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (1).

25. Enforcement of orders of the District Forum, the State Commission or the National Commission. — (1) Where an interim order made under this Act, is not complied with the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.

26. Dismissal of frivolous or vexatious complaints. — Where a complaint instituted before the District Forum, the State Commission or as the case may be, the National Commission, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order.

27. Penalties. — (1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than
one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.

27A. Appeal against order passed under section 27 - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from -

(a) the order made by the District Forum to the State Commission;
(b) the order made by the State Commission to the National Commission; and
(c) the order made by the National Commission to the Supreme Court.

(2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission: Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.
28. **Protection of action taken in good faith.** — No suit, prosecution or other legal proceedings shall lie against the members of the District Forum, the State Commission or the National Commission or any officer or person acting under the direction of the District Forum, the State Commission or the National Commission for executing any order made by it or in respect of anything which is in good faith done or intended to be done by such member, officer or person under this Act or under any rule or order made thereunder.

28A. **Service of notice, etc.** - (1) All notices required by this Act to be served shall be served in the manner hereinafter mentioned in sub-section (2).

(2) The service of notices may be made by delivering or transmitting a copy thereof by registered post acknowledgment due addressed to opposite party against whom complaint is made or to the complainant by speed post or by such courier service as are approved by the District Forum, the State Commission or the National Commission, as the case may be, or by any other means of transmission of documents (including FAX message).

(3) When an acknowledgment or any other receipt purporting to be signed by the opposite party or his agent or by the complainant is received by the District Forum, the State Commission or the National Commission, as the case may be, or postal article containing the notice is received back by such District Forum, State Commission or the National Commission, with an endorsement purporting to have been made by a postal employee or by any person authorized by the courier service to the effect that the opposite party or his agent or complainant had refused to take delivery of the postal article containing the notice or had refused to accept the notice by any other means specified in sub-section (2) when tendered or transmitted to him, the District Forum or the State Commission or the National Commission, as the case may be, shall declare that the notice had been duly served on the opposite party or to the complainant:

Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgment due, a declaration referred to in this sub-section shall be made notwithstanding the fact that the acknowledgment has been lost or mislaid, or for any other reason, has not been received by the District Forum, the State Commission or the National Commission.
Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice.

(4) All notices required to be served on an opposite party or to complainant shall be deemed to be sufficiently served, if addressed in the case of the opposite party to the place where business or profession is carried and in case of complainant, the place where such person actually and voluntarily resides.

29. **Power to remove difficulties**.—(l) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act

(2) Every order made under this section shall, as soon as may be after it is made be laid before each House of Parliament

(3) If any difficulty arises in giving effect to the provisions of the Consumer Protection (Amendment) Act, 2002, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of the Consumer Protection (Amendment) Act, 2002.

(4) Every order made under sub-section (3) shall be laid before each House of Parliament.

29A. **Vacancies or defects in appointment not to invalidate orders**.—No act or proceeding of the District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its member or any defect in the constitution thereof.

30. **Power to make rules.** - (1) The Central Government may, by notification, make rules for carrying out the provisions contained in clause (a) of sub-section (1) of section 2, clause (b) of sub-section (2) of section 4, sub-section (2) of section 5, sub-section (2) of section 12, clause (vi) of sub-section (4) of section 13, clause (hb) of sub-section (1) of section 14, section 19, clause (b) of sub-section (1) and sub-section (2) of section 20, section 22 and section 23 of this Act.

(2) The State Government may, by notification, make rules for carrying out the provisions contained in clause (b) of sub-section (2) and sub-section (4) of section 7, clause (b) of sub-section (2) and sub-
section (4) of section 8A, clause (b) of sub-section (1) and sub-section (3) of section 10, clause (c) of sub-section (1) of section 13 clause (hb) of sub-section (1) and sub-section (3) of section 14, section 15 and clause (b) of sub-section (1) and sub-section (2) of section 16 of this Act.

30A. Power of the National Commission to make regulations -

(1) The National Commission may, with the previous approval of the Central Government, by notification, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may make provisions for the cost of adjournment of any proceeding before the District Forum, the State Commission or the National Commission, as the case may be, which a party may be ordered to pay.

31. Rules and regulations to be laid before each House of Parliament - (1) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.
ABOUT THE BOOK

The thrust of the Consumer Protection Act, 1986 is to ensure better protection of the rights of the consumers. The Act is a milestone in the history of consumer movement in the country. Since its inception it has been amended thrice; 1991, 1993 and 2003 to make it more effective and also strengthen the redressal mechanism. The last quarter century has been marked by a mix of pessimism and optimism about the working of the Consumer Protection Act.

The present volume is being brought out to commemorate the silver jubilee of the Consumer Protection Act, which was enacted in 1986. The Book is a collection of papers written by well known experts in the area of consumer welfare and focuses on key issues of consumer’s interests. The papers are thought provoking and address a variety of concerns that are relevant to the consumers. New strategies have been advocated which will contribute in shaping and reshaping consumer policies in the country.

We are confident that the book will not only be useful to policy makers but also to academicians, practitioners, students and all those who are interested in consumer welfare.