



CP - 01

Vardhaman Mahaveer Open University, Kota



Consumer, Consumerism and the Law in India

Course: CP-01



**Vardhaman Mahaveer Open University,
Kota**

Consumer, Consumerism and the Law in India

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Consumer, Consumerism and the Law in India

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This Course is conceived and produced for the students of Certificate Program in Consumer protection Laws who need to study different basic aspects of Consumer protection laws. It will provide understanding, skill and elementary knowledge of consumer protection laws. It will train learner for career as Consumer Rights activists, consumer volunteers or professionals. Course will also inculcate the understanding of consumer laws at district, state, national level and it will provide some International dimensions in consumer protection field.

This Block contains Ten Units. First Unit will introduce students about the historical development of consumerism in India as well as of the world. It will also help students in knowing the impact of international changes on Indian consumer laws. This Second unit deals with the Consumer Movement in India along with the history and its impact. Students will also know about the future challenges ahead in consumer movement. Third Unit will explain students the meaning of consumer. Students will be able to recognize the rights and responsibility conferred on consumer. Unit Four will introduce students with the rights and duties of the consumer. It will also make you understand the Law relating to rights and duties of the consumer. Unit Five help students in knowing the meaning and concept of unfair trade practices. You will also learn the spread of UTPs in various sectors. Students will comprehend the various legal frameworks for tackling the UTPs and their major lacunas. Unit Six will explain students about the concept of services and consumer grievances. You will also know the tools and techniques of resolving consumer grievances. Unit seventh will introduce students with the various redressal agencies under the COPRA. You will also learn the procedure, power and jurisdiction of the various redressal agencies. Unit Eight will explain students about what the redressal means in different allied laws? You will also have a comprehensive understanding of various redressal systems. Unit Nine will explain students about the meaning, need and importance of consumer protection. It will help you in recognizing the role of non-government organizations in promoting consumer awareness and providing assistance to individual consumers. Unit Ten will apprise students about the meaning of consumer education. Unit will also explain the importance of consumer education. Unit will comprehend the concept of consumerism and emerging challenges to you.

Unit - 1

Historical Perspective: Global and Indian

STRUCTURE:

- 1.1 Introduction
- 1.2 Consumerism and Global Scenario
 - 1.2.1 United States
 - 1.2.2 United Kingdom
 - 1.2.3 Australia
 - 1.2.4 Consumer Protection in India
- 1.3 Indian Perspective
 - 1.3.1 Ancient Indian Consumer Protection Jurisprudence
 - 1.3.2 The Post-Independence Scenario
 - 1.3.3 International Developments and Their Impact on India
- 1.4 Sum Up
- 1.5 References
- 1.6 Check Your Progress
- 1.7 Terminal Questions

Objectives:

After studying this unit, you will be able to:

- understand the historical development of consumerism in India as well as of the world.
- know the impact of international changes on Indian consumer protection.

1.1 Introduction:

Now-a-days the consumer finds himself as a victim of many unfair and unethical tactics adopted in the market place. The consumer is trapped in industrialization competition, while all the development in industries is only for a consumer. The untrained consumer is no match for the businessmen marketing goods and services on an organized basis and by trained professionals. A consumer is very often cheated in the quality, quantity and price of goods or services. There was a time

when consumer's choice was the aim of businessmen, but now consumer has to decide what he has to purchase. The doctrine "Caveat Emptor" (Let the buyer beware) is the pivot of consumerism.

The Buyer's awareness is the root cause of the consumer protection. Peter Smith & Dennis Swann in their work "An Economic and Legal Analysis" speaks that the consumer was responsible for protecting himself and would do so by applying his intelligence and experience in negotiating the term of any purchase. The development in economic sphere changed many systems of buying and selling, and the principle of Caveat Emptor, which would be appropriate for transaction on conducted in village market where consumer might have been able to protect himself as the product were less sophisticated and could be inspected before purchase.

The scientific development invented many such technical things for daily use that a buyer is unable to inspect the things before buying. The consumer knows a little or nothing about these new inventions. These products are complex and of great variety and consumers and retailers have imperfect knowledge about them. Thus, the principle of Caveat Emptor is lessens its value. This theory can be applied in short term market. So the consumer needs protection for the goods of long term market and as it is a social injury so it needs legal protection.

The need of consumer's protection was felt by the whole world. Taking into account the interest and need of consumers in all countries, particularly for developing countries, the consumer protection measures should essentially be concern with:

1. The protection from hazards to health and safety,
2. The protection and promotion of economic interest,
3. Access to adequate information,
4. Control of misleading advertisements representations,
5. Consumer education, and
6. Effective consumer redress.

1.2 Consumerism and Global Scenario:

The General Assembly of the United Nations adopted Guidelines for consumer protection on 9 April 1985. These Guidelines provides a frame work for

Governments, particularly for developing countries. These Guidelines can be traced from late 1970s, when the Economical and Social Council recognized that consumer protection had an important factor for Social and Economical development. On the advice of the council Secretary General prepared a survey of national institution and legislations in the area of consumer protection. In 1981 the council aware of the need for an international policy frame work within which further efforts for consumer protection could be pursued.

There was a vast discussion between Secretary General and Government, for about two years about scope and contents of the Guidelines, culminating in their adoption in the year 1985. Ultimately, in July 1988 the Economic & Social Council passed a resolution which urged all Governments to implement the Guidelines. Thus the seed of Consumerism was germinated in United Nations. Secretary General of United Nations continued to promote their implementations and in co-operation with relevant United Nations agencies also requested to continue to provide assistance to Government, particulars for those of developing countries in implementing them.

Today, the notion of consumer protection is adopted by many countries. All over the world have Laws to regulate and control unfair and deceptive trade practices and to provide adequate relief to the consumer. It is proposed to outline briefly some developments concerned with consumer Laws in united states, United Kingdom and Australia.

1.2.1 United States:

Near about in 1890 United States enacted the first antitrust legislation, called Sherman Act. The Act declared 'every contract, combination in the form of trust or otherwise or conspiracy in restraint of trade or commerce to be illegal. But this Act is not sufficient to respond to the wide-spread pressures for increasing protection of consumers so meet this demand two major legislations were passed in 1914 *i.e.* The Federal Trade Commission Act and the Clayton Act. The oldest and most prominent statute for protection of consumer's right is the Federal Trade Commission Act. This Act is authorized the Federal Trade Commission to correct unfair methods of Competition. This Act was amended in 1938 by Wheeler-Lea Act, by which the scope of the Act to cover unfair or deceptive acts or practices was extended. This amendment provided three separate bases for the Federal Trade Commission's jurisdiction, *i.e.* unfairness, deception and unfair competitive methods. Then came Magnuson Moss Warranty—Federal Trade Commission

Improvement Act in 1975, which further strengthened the commission's rule making and other authorities over unfair and deceptive acts and practices.

This was the era when there were number of other legislations on consumer protection in addition to aforesaid legislation, *i.e.*: "Consumer Credit Protection Act;" "The Consumer Leasing Act;" "Consumer Product Safety Act," "The Federal Hazardous Substance Act;" "The Poison Prevention Packaging Act" and "Consumer Patient Radiation Health & Safety Act". These acts provide protection to the consumers in several ways. The Uniform Commercial Code attempts to protect purchaser of goods through a requirement of "good faith" and a prohibition of 'unconscionable' practice.

1.2.2 United Kingdom:

There is much legislation to protect the interest of consumer in United Kingdom. The important of them are; "Consumer Credit Act, 1974;" "Consumer Safety Act 1978;" "Foods & Drugs Act 1955;" "Poisons Act 1972;" "Trade Description Acts 1961 & 1972;" "Weights & Measures Act 1963-76 & 79;" "Supply of Goods (Implied Terms) Act 1973;" "Unfair Contracts Terms Act 1977;" "Prices Act 1974;" "Price Commission Act 1977;" and "Price Commission Amendment Act 1979." However it is beyond the scope of this work to go into the details of these legislations. The most significant of them are the "Fair-Trading Act 1973;" and "The Competition Act 1980". The "Fair Trading Act 1973 seeks to protect the consumers from consumer trade practice and unfair practices.

1.2.3 Australia:

In the year 1906 for the first time antitrust legislation was adopted in Australia; "The Australian Industries Prevention Act 1906". This fact was very much substantially similar to Sherman Act 1890 of the United States This Act was amended in 1911. But it was hardly the success of the 1906 Act that promoted the 1965 legislation called "The Trade Practice Act 1965". There were many amendments in this Act in the years 1977, 1978 and 1980. This Act is concern with Restrictive trade practices, and consumer protection, and is aimed at eliminating unfair competition in trade and commerce.

1.2.4 Consumer Protection in India:

India is a highly populating country. Moreover a large part of our country is below the poverty line and of the remainder the vast majority it a long way from affluence."In India due to illiteracy there is ignorance among the consumers for

their rights. As the consumers are not yet organized, so there is almost will movement for consumer's rights. There has been a lack of due recognition to consumer organization. All these have created a situation of a very safe haven for the traders and a position of frustration and uncertainty for the consumers. This does not mean that there is lacking of consumer thinking. There are number of Legislations following the constitutional mandate *i.e.*—"Drugs (control) Act 1950, Drugs and Magic Remedies (Objectionable Advertisements) Act 1954; "Preservation of Food Adulteration Act 1954; "Essential Commodities Act 1955;" "Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980;" "Essential Services Maintenance Act 1968;" "Trade and Merchandise Marks Act 1958;" "Standards of Weights and Measures Act 1976", "Bureau of Indian Standards Act 1986", and "The Monopolies and Restrictive Trade Practice Act 1969;" "There are also some pre independent legislations. "India Contract Act, 1872", "Sale of Goods Act, 1930" , Agricultural Product (Grading & Marking) Act, 1937 and "Drugs and Cosmetics Act 1940".

The litigation under these legislatives is disproportionately costly and troublesome for the poor and illiterate consumer. The legal procedures are complex, Cumbersome and time consuming and there is a very little scope for the remedies. The impact of these legislations in protecting the consumer has been relatively small.

The object of "Monopolies and Restrictive Trade Practice Act, 1969, to prevent concentration of economic power and to control monopolistic and restrictive trade practice, this is not sufficient to meet the need of consumer there is now greater recognition that consumers need to be protected from the effects of restrictive trade practices and also from the practices which are resorted to by the trade and industry to mislead the customers.

This act was amended in 1984 to incorporate amongst other things, new provision for the regulations of unfair trade practices *i.e.*—false representation, misleading advertisements bargain sales, bait and switch selling etc. "his efforts was also not sufficient to protect the consumers from defective goods or deficient services, over charging of prices and unscrupulous exploitation. To full fill the aim of protecting the consumers, parliament passed a potentially very important legislation "The Consumer Protection Act 1986".

This consumer Protection Act 1986 (Here in after referred to as the Act) envisages the formation of the Consumer Protection Councils at the Central and State

including the Union Territories Levels. The main objects of the council's are to promote and protect the rights of the consumer.

This Act provides three-tier quasi judicial machinery at the National State and District Levels for redressing consumer grievances. It is also very significant to note that the Act recognizes the role of consumer organizations in assisting the consumer in seeking justice through this nationwide network of consumer dispute redressal agencies as envisaged under the Act. The consumer can initiate an action under the Act against the defective goods, and deficient services.

This act applies to all goods and services in private, public, co-operative sector, government undertakings such as Railways, Telephones, Airlines, Banks, State Electricity Boards, state Railways etc. The object of this Act is to provide for the better protection of the interests of the consumers and for that purpose to make provisions for the establishment of consumer councils and other Authorities State and District Level for the settlement of consumer's dispute and for the matters connected there with.

1.3 Indian Perspective:

Consumer protection is not a new problem for India. This was, *inter alia*, one of the prominent socio-economic problems inherited by the nation with independence in 1947. Since then, the enactment of various consumer-oriented laws by the national and state governments from time to time to tackle this malady bears ample testimony to its existence, growth and ramification. Historically speaking, however, the problem has much deeper roots in the ancient Indian jurisprudence, perhaps a little beyond the imagination of modern jurists, law makers, and policy planners. Though complete examination of the historical perspective of the problem is beyond the scope of this study, as it could well be the topic of a full-fledged enquiry, an attempt has been made to briefly highlight some of the evidence of ancient Indian concerns about consumer protection. However, the primary purpose of this chapter is to discuss the development of law and policy concerning the problem of consumer protection in India since independence. The chapter attempts to show that a multiplicity of developments since 1947, both at the national as well as international level, have caused increasing concern for consumers and have ultimately led to the enactment of the recent *Consumer Protection Act, 1986*.

1.3.1 Ancient Indian Consumer Protection Jurisprudence:

It is not a recent phenomenon that legal mechanisms have been devised to protect gullible consumers from unscrupulous traders. In the West, for instance, the seeds of consumer protection can be traced in the Talmudic legal jurisprudence. Arthur Silverstein wrote:

Two specific Biblical references warned against the misuse of weights and measures. The gravity of such misconduct was emphatically expressed in the Talmud: "The punishment (i.e. divine) for (false) measures is more rigorous than that for (marrying) forbidden relatives." Moreover weights and measures were of particular concern to the sages because most transactions required their use, especially such necessities as grain, oil, and wine. Talmudic law specified the type of weights to be employed, procedures of weighing, general merchant rules to be applied, and methods of enforcement.

Similarly, regarding the provisions on fraud and merchantability in the Talmudic law, Silverstein has further written:

The doctrine of *caveat emptor* was almost totally rejected in Talmudic Law; the seller was obliged to inform the buyer of all defects. It was especially forbidden to deceive people by creating a false impression, i.e. an intentional misrepresentation. Examples of such unfair surprise include: a layer of oil placed on the top of a keg of wine, old produce mixed with new, and wine diluted with water. Moreover, certain representations would simply imply a warranty which did not exist and were thus fraudulent, e.g. meat soaked in water to make it look fatter, entrails of an animal displayed in the store inflated to make them appear larger. Similarly utensils could not be painted to make them look newer, although an owner could improve the new ones by polishing, ironing, or beautifying them as he desired.

India, too, has a long history of consumer considerations, dating back to the Vedic age (5000 B.C. to 2500 B.C.). Matters relating to civil rights and criminal offences are elaborately noted in the Vedas. Throughout the ancient period, one comes across four broad types of relevant criminal offences - adulteration of food stuff; charging of excessive prices; fabrication of weights and measures; and selling of forbidden articles for which statutory measures and punishments have been recommended, from time to time, by the leading texts of the time. Prominent among them went the *Manusmṛti* (800 B.C. to 600 B.C.); *Kautilya's Arthashastra* (400 B.C. to 300 B.C.); *Yajñavalkyasmṛti* (300 B.C. to 100 B.C.); *Blaradasmṛti* (100 A.D. to 203 A.D.); *Bṛihaspatismṛti* (200 A.D. to 400 A.D.); and *Katyāyanasmṛti* (300 A.D. to 600 A.D.).

Glimpses from this literature show that adulteration in different consumer goods was prevalent in ancient India and was mainly practiced by the trading class. The *Manusmṛiti* and the *Yajñavalkyasmṛiti* recommend that a person who deals in false gold shall be punished and also one who indulges in selling unclean meat should be maimed and fined with amercement. Similarly a person should be punished for adulterating (marketable) commodities by a 'fine of the first amercement.' The *Arthashastra* and *Yajñavalkyasmṛiti* also mention the malpractice of adulteration and accordingly recommend punishment for the offence. The *Arthashastra*, for instance, recommended imposition of a fine of twelve *panas* on a trader who adulterated grains, fat, medicine, perfumes, salt, and sugar and by mixing things of a similar nature. The *Bṛihaspatismṛiti* also contains instances of the practice of adulterating good articles with those of inferior quality and manufacture of false gold and gems. The deceivers who manufactured imitation articles of small value and caused them to appear very valuable were to be punished severely.

Use of false balance and fabrication of weights and measures was another criminal tendency which appears to have been common among the trading community in ancient times. Accordingly, from the very early times, the texts paid special attention to this criminal trait. For instance, the *Manusmṛiti* provided that all weights and measures must be duly marked by the king and should be re-examined every six months. Kautilya's *Arthashastra* also specifically provided for the appointment of a Superintendent of Weights and Measures to maintain and to have control over weights and measures with a view to minimizing the likelihood of fraud being committed. Constant watch and periodical checking's were indispensable for this. Single checking and stamping was not deemed enough for maintaining correctness in weights and measures for all time to come. Accordingly, the *Arthashastra* prescribed that at the end of every four months, weights and measures and balances used by the traders were to be re-examined and re-stamped by the officers so that there might be no fraudulent manipulation in them. K.M. Agrawal, while elaborately discussing the prescriptions of the Kautiliyian *Arthashastra* has written:

If a trader was at any time found using unstamped weights and measures, he was considered to be a cheat and was fined twenty-seven and a quarter *panas*. Kautilya further lays down proportionate fines ranging from three *farmas* and more for pressing and forging false weights and measures. In the case of an *adliaka* for one

karsa less or more, the fine was three *panas* which was to be increased for each successive *karsa*. In the case of a *tuld* for two *karsas* less or more, the fine was six *panas* and this was to be increased for every successive two *karsas*. In the case of *parimani* and *drona* for one *pala* less or more the fine was twelve *panas* and this was to be increased for every successive *pala*. The fine "for fraudulent irregularities in other types of weights and measures were to be determined on this very line In case the trader use correct weights and measures, but through the trick of his hand lessened or enhanced the weight and measure of an article for his own benefit he was a greater offender than one who simply used false weights and measures. In these cases if a weights or a measurer brought about a difference to the extent of one-eighth part of an article priced at one *panel*, the fine was two hundred *panas* and it increased by two hundred *panas* successively.

Other texts also prescribed punishments for falsification of weights and measures. For instance, the *Naradasmṛti* made special reference to rogues who forged weights and measures. The *Bṛihaspatismṛti* also mentioned cheats, forgers, and fraudulent traders. The *Katyayanasmṛti* and the *Matsya Parana* imposed fines upon traders who used false weights and measures. The *Mitaksara*, while explaining a verse of the *Yajnavalkyasmṛti* mentions persons who made scales, royal mandates, measures etc. different from the general standard of the country. The *Visnusenasmṛti* (591 A.D.) also refers to cases involving weights and measures and mentions an expert on matters pertaining to weights and measures whose view was necessary in cases involving such matters. From this text it appears that the weights and measures prevalent in the locality were to be examined by state officials twice a year. 'Similarly *Somadeva* made specific reference to the crime of falsification of weights and measures.

The trading community, also in ancient times, used to exploit gullible customers by charging excessive prices. In order to save customers from arbitrary exactions by unscrupulous traders, the State got publicly declared the rates for the purchase and sale of all marketable commodities. According to the *Manusmṛti*, it was obligatory on the king to fix the rates for the purchase and sale of all marketable goods, having duly considered from where they have come (distance), their destination (place to which it should go after sale), transport charges, (original) value of goods, incidental expenses and margin of profit. Such fixation, according to the *Manusmṛti*, should be done once in five, nights or fortnightly and publicly. The *Arthasastra* was comparatively strict in its approach towards this problem. It

prescribed a fine, the amount of which depended upon the extra profit made by the seller. It has been mentioned in *Arthashastra* that traders who, during their purchase or sale, raised the price or secured an extra profit of five percent beyond the limit fixed by the State, were to be fined two hundred *panas*. The fine was to go on increasing by two hundred *panas* at each additional increase of five per cent extra profit on the notified price. With a view to capturing the market and consequently raising the prices of commodities at their sweet will, if the merchants combined together and succeeded in their conspiracy, they were severely dealt with. The *Arthashastra* prescribes a fine of one thousand *panas* to be imposed on such confederacy of traders. On the issue of excessive price charging by the traders, the *Yajnavalkyasmṛiti* stated that sale and purchase should be conducted daily according to the value fixed by the King. It was even punishable to demand a higher price. The *Ayni Parana* laid down that merchants dealing fraudulently with honest men either in respect of the quality or price of a commodity should be punished and their goods should be confiscated to the state. Punishment was also reserved for those merchants who did not purchase foreign articles at the price fixed by the King and those who bought them cheaply and sold at a higher price.

Lastly, there were some restrictions on the private sale and purchase of forbidden articles. These restrictions were apparently imposed by the king as some of the traders even in olden times did enter into such prohibited transactions. According to the *Yajnavalkyasmṛiti*, if any merchant or person dealt in goods which were forbidden Iron being sold, the articles were to be forfeited to the king. Interestingly, under the present laws of India, we have the instance of sandalwood. This is a state monopoly. Accordingly no individual can cut and remove sandalwood, even grown on his own land He has to surrender it to the State, subject to his getting compensation at statutory rates, according to the rules framed under the provisions of the *Indian Forest Act* of 1927. Similarly mines and minerals are also under state control.

Two other key areas concerning consumer protection on which thoughts have been expressed in perhaps the *Arthashastra* are: Regulations concerning the sale of animal flesh and the obligations of professionals like artisans and craftsmen, washer men, weavers, goldsmiths, actors, and physicians. In the first place, for instance, the meat sellers were required to follow certain rules ensuring the purity and freshness of the meat they sold. They were to sell the flesh of deer and animals freshly killed shortly before. The flesh for sale was also to be free from bones. If

they did not follow the rules, they were liable to pay suitable *compensation* to their customers and fine to the king. Similarly, flesh that is as swollen and without head and legs of the animal killed, flesh of boneless fish, rotten flesh and flesh of dead animals were not to be sold, For selling these, the seller was to be fined twelve *panas*. If he sold the flesh of such animals as cats, dogs, and donkeys, whose flesh was forbidden for the purpose of eating, the offence became very serious and the vendor was to be fined nine hundred *panas* or instead of it, his left hand and both legs were to be cut off. In case he sold human flesh, his crime was "treated to be all the more serious and he was liable to capital punishment. Further, if the meat-seller, although supplying good flesh, gave it to customers less in weight through tricks of balancing, he was to be fined eight times the loss suffered by the customer Kautilya's *Artha. astra* is perhaps also the only classical text which mentions the 'codes of ethics' of various professionals. For instance, it may be particularly interesting to mention here the ethics of the medical profession. Agrawal has referred to the *Arthasastra's* views about the ethics of physicians:

The physicians also, while treating the patients, had to observe certain code of conduct. When a physician undertook treatment of such diseases as involved danger to the life of the patient, he was first required to inform the authorities about the seriousness of the disease. If he failed to do so and the patient succumbed to the disease, the physician was to be awarded the lowest amercement. But if the patient died due to the physician's mistake in the treatment, he was to be awarded the middlemost amercement. But if through carelessness he caused some physical deformity or injury to a vital part of the patient's body, then the offence was treated to be very serious and in this case different punishments for causing physical injury were to be given to the offender in view of the seriousness of the deformity.

We also find further seeds of consumer protection during the Mughal times and especially during the time of the Khajjis. It is said that Sultan *Alaud Din Khilji* (1296 A.D. to 1316 A.D.) had introduced strict price-control measures based on production costs. He had also established separate shopping centers in Delhi for (1) grain, (2) cloth, sugar, dried fruits, herbs, butter, and oil, (3) horses, slaves, and cattle, and (4) miscellaneous commodities. The supply of grain was censured by collecting tax in kind in the producing areas and keeping it in the royal storehouses. Hoarding of grain was forbidden. Elsewhere the growers were ordered to sell their grain for cash in their fields at fixed prices and were not allowed to take any grain home for private sale. The market controller, the state intelligence

officers, and the Sultan's secret agents each submitted independent reports on these shopping centers to the Sultan. Even a minor violation of the rules was not tolerated.

The shopping centre for cloth, known as the *sara-i-adl*, was established near one of the royal palaces on the inner side of the *Bada un Gate*. All goods, including foreign imports, were first taken there and their prices fixed. Every merchant was registered with the commerce ministry and had to sign a bond guaranteeing a regular supply of the goods in which they traded. The Hindu Multani merchants were advanced money by the treasury to import rare commodities for the *sara-i-adl*. Some prices were subsidized. Costly fabrics and luxury goods could be sold only to those who had obtained permits from the government. The prices of cattle were also fixed and unscrupulous merchants were deprived of their trading rights.

The shopping centre for general commodities was under the direct control of the commerce ministry. *Ala -ltd - Din's* Minister of Commerce was also the Superintendent of Weights and Measures and the Controller of Commercial Transactions. He was assisted by Superintendents for each commodity. Prices and weights and measures were checked by sending the children employed in the royal pigeon-house to buy petty articles."

The prices fixed for the Delhi market were also applied in the provincial capitals and towns. The success of the system depended on fixing prices in relation to production cost, although other factors, such as the growing poverty of the nobles and fear of the sultan's atrocities appears to have ensured obedience.

The brokers had been given a special place in the market system. They arranged for the supply of goods as middlemen between customers and small-scale producers. They also acted as clearing agents for their clients, paid customs duty, transported merchants' goods to warehouses, and arranged their sale. They obtained samples of cloth and other manufactured goods for their clients, paid advances to the manufacturers, and were helpful in many other ways. They controlled prices and the sale and purchase of commodities, exacting commission from both buyers and sellers. However, on learning about their profiteering activities and that they were responsible for rising prices, Sultan *Ala ud - Din* effectively stopped their profiteering and seems to have obtained their co-operation in fixing prices in relation to production costs.

During the British regime (1765 to 1947), also known as the 'Colonial Era', government's economic policies in India were concerned more with protecting and

promoting the British interests than with advancing the welfare of the native population. The administration's primary preoccupation was with maintaining law and order, tax collection and defence.'" Accordingly much of the legislation enacted during the British regime was primarily aimed at serving the colonial rulers instead of the natives. There were, however, some pieces of legislation which protected the overall public interest though not necessarily the consumer interest. Prominent among these were: the *Indian Penal Code*, 1860, the *Dangerous Drugs Act*, 1930, *Sale of Goods Act*, 1930 and the *Drugs and Cosmetics Act*, 1940. In a sense, the *Sale of Goods Act* and the principles of the law of torts were more for the protection of the trader than the consumer. In 1904, the co-operative movement started in India. It flourished in Maharashtra, but this movement laid more emphasis on distribution of consumer goods than on the consumer. The post-independence era, however, witnessed a series of measures.

1.3.2 The Post-Independence Scenario:

The struggle for India's independence was over by 15th August, 1947. However, the attainment of independence was not an end in itself. The fact that the transfer of power was accompanied by partition of the country was a burden for the new state, this partition also reinforced the maintenance of the *status quo*, as any departure from it was thought to be a threat to the integrity of the new republic. Thus independence was only the beginning of another major struggle - the struggle to live as a united independent nation and to establish a democracy based on the ideas of equality, fraternity, justice, and liberty.'" With the adoption of the Constitution in 1950, these aspirations of the people of India found an explicit expression in the Preamble, the Fundamental Rights and the Directive Principles of State Policy respectively. Independent India adopted a socialistic pattern of society. A predominantly agricultural country, as India then was and is even today, opted for planned development through industrialization, and more specifically, through Five Year Plans. The declared goals of India's development policy were to bring about a rapid increase in living standards, provide full employment at an adequate wage, and reduce -inequalities arising from the uneven distribution of income and wealth. Successive five-year plans have emphasized the necessity to pursue all these objectives simultaneously A leading economist, U.S. Minhas, has written: Securing rapid economic growth and expansion of employment, reduction of disparities in income and wealth, prevention of concentration of economic power,

and creation of the values and attitudes of a free and equal society have been among the objectives of all our plans.

Due to the increased emphasis on industrialization during the Second Five Year Plan, there was tremendous growth and establishment of heavy industries. As a result, there was a considerable amount of migration of rural population to the urban areas in search of employment, as India is characterized by a vast amount of disguised unemployment in the agricultural sector. Growing urbanization due to heavy industrialization resulted in proliferation of human needs - of basic necessities and also of luxuries. Due to the shortage of certain necessities and even their non-availability at reasonable rates with growing menace of adulteration, it was found necessary to empower the government to control their production, quality, supply, and distribution. Therefore, the decade of the 1950s, right from the very beginning, saw the enactment of a number of laws to safeguard the interests of the consumers from various angles. The enactment of the *Banking Companies Act, 1949* (later called '*The Banking Regulation Act*') to amend and consolidate the law relating to banking matters as well as the *Industries (Development and Regulation) Act, 1951* to implement the *Industrial Policy Resolution* of 1948 were among the earliest steps taken by the national government in India in the direction of consumer protection. Justice G.R Luthra, Chairman of the Monopolies and Restrictive Trade Practices (MRTP) Commission has observed:

In developing countries like India the need for a concept of consumer protection because imperative on account of economic unbalances and inequalities, teeming population, high rate of illiteracy, shortages of essential commodities, adulteration, black-marketing, under-weighting, wide variations in the quality and prices of comparable products and a vast knowledge gap in consumer rights."

Accordingly, two major statutes were passed by the government: The *Prevention of Food Adulteration Act* of 1954, which was aimed at protecting the consumers from the hazards of food adulteration and to ensure the sale of wholesome food to the people and the *Essential Commodities Act, 1955* which provided for the control of production, supply and distribution of, and trade and commerce in essential commodities.

The enactment of the *Indian Companies Act*, in 1956 constituted an important landmark in the history of Indian company legislation, for it was one of the largest socio-commercial enactments: ever passed by the Indian Parliament to regulate the

functioning of the corporate form of organizations in the broader public interest in India. Similarly, the *Indian Standards Institution (Certification of Marks) Act, 1956* provided for the operation of certification for marketing schemes in order to ensure quality in marketable products. However, In spite of these pieces of legislation, unscrupulous traders continued to cheat innocent consumers, especially in times of scarcity. Under the *Industrial Policy Resolutions of 1948* and of 1956 as well as through the licensing procedures and guideline, the government sought to restrict the scope and growth of the private sector by carving out a specific place for it. However, it was soon observed that many of the large-enterprises in the private sector had started operating under conditions of virtual monopoly and oligopoly. Another economist, Ruddar Datt, has explained the scenario thus:

Taking advantage of the absence of foreign competition and sheltered markets, the large enterprises entered into combinations, eliminated internal competition openly or secretly, got effective control of the markets for their products and thus exploited their helpless consumers. Many of them even managed to create artificial scarcities (by restricting their production) and to create the impression of excessive demand for their products. They influenced government policies to their own advantage and secured favorable tax measures and fiscal incentives for exports and foreign collaboration agreements. They were able to mobilize vast financial resources from the market and the public sector financial institutions and banks. These private sector enterprises had thus started enjoying considerable economic power and demonstrated the same through their monopoly power and restrictive trade practices in the market.

Both the Hazari Committee) (1967) and the Dutt Committee- appointed to enquire into the working of the industrial planning and licensing system - indicted large industrial houses for the concentration of economic power in few hands. The Monopolies Inquiry Commission (MIC), appointed also to enquire into the monopoly power and restrictive trade practices of the private sector, found that 75 business houses virtually controlled the core of the private sector. The Commission investigated product-wise concentration and industry-wise concentration and recommended the setting up of an independent body to keep a watch on big businesses. The Commission also stressed the need of establishing consumer organizations in the country to safeguard consumer interests. The Commission expressed the following views:

There is no reason why consumer societies should not, with proper encouragement, gather sufficient strength in the course of time to be able to fight back against practices of industrialists whether manufacturers or traders which tend to injure consumer interests.

It may be pointed out that the recommendations of the MIC culminated in the passing of the *Monopolies and Restrictive Trade Practices Act, 1969*.

Meanwhile, one or two consumer organizations had emerged in India around that time. The Indian Association of Consumers - a national agency started with the financial backing of the Planning Commission - was probably the first consumer association in India in the post-independence era."But it did not make any headway. However a nucleus consumer organization called 'National Consumer Service' was set up in 1963 as a wing of Bharat Sevak Samaj, a social organization. Its main object was to collect market intelligence, to study the trend of rising prices, to publish bulletins for the information of consumers, and to agitate against malpractices of the traders. Similarly, another consumer organization popularly known as Price Rise Resistance Movement (PRRM) was started in Delhi in 1964. It used to hold meetings to protest against rising prices, and formed special squads to keep watch on price trends in different areas of the city. Similarly, Gayatri Charitable Trust, Joti Sangh Grahak Suraksha Vibhag, and Bombay Civil Trust were a few other prominent consumer-oriented organizations established in India in the early 1960s. Thus the primary object of these consumer groups was to protest against rising prices. However, the pioneer among the modern consumer associations, which surfaced after the publication of the MIC report, was the Consumer Guidance Society of India (CGSI), which was established by nine housewives in Bombay in 1966 with the object to "inform, educate and organize consumers so as to enable them to secure, protect and preserve their interests and assert their rights."

During the 1970s, India witnessed the proliferation of more consumer organization in various parts of the country. These included: All India Bankers Association (1968); Surat Consumer Association (1969); Karnataka Consumer Service Society (1970); Visaka Consumer's Council (1973); Akhil Bharatiya Grahak Panchayat (1974); and Trichy District Consumer Council (1976). The nationalisation of insurance business in the year 1956 and of the 14 major commercial banks in 1970" was another major attempt by the government to channel investment into socially desirable lines of production. Prior to nationalization, the insurance and

banking system was controlled by the large industrial houses and the deposits collected from the general public were used almost exclusively for financing the industries owned and controlled by these business houses. In fact the banking companies played a significant role in the creation of industrial empires. Surprisingly, the working of the public sector financial institutions also accounted for the growing concentration of wealth and economic power of the private businesses. The Dutt Committee showed that about 56 per cent of the total assistance provided by the Industrial Credit and Investment Corporation of India (ICIC), the Industrial Development Bank of India (IDBI), the Industrial Finance Corporation of India (IFCI) and other financial institutions had gone to the large industrial houses."

Even though the price level in India had been steadily rising ever since economic planning was initiated in 1951, the upward movement of prices during the Fourth Five Year Plan (1969-74) was extremely significant. The widespread failure of Kharif crops in 1972-73 and the complete failure of the takeover of wholesale trade in wheat resulted in an unprecedented rise in price levels during 1973-74, with all the characteristics of a galloping inflation. Moreover, what the traders did in the 1960s - rampant black-marketing and food adulteration - continued in the 1970s. Dietmar Rothermund, an eminent German historian, in his recent work *An Economic History of India* has written:

Inflationary tendencies had affected the Indian economy even in the early period of planned development . . . Deficit spending without corresponding growth rates was mainly responsible for this problem. The black-market rate of the Indian rupee deviated to a large extent from the official exchange rate. India's export was hampered by this development and had to be subsidized by the government, which urgently needed foreign exchange in order to import capital goods required for India's industrialization. Exporters were tempted to manipulate their invoices with the connivance of their foreign partners in order to get higher subsidies or compensatory import licenses. A drastic devaluation seemed to be the only measure that would help to cut this Gordian knot of black-market rates, spurious invoices and rampant corruption.

In 1974, a Consumer Conference also reviewed that, "in an era of inflation, rampant food adulteration, profiteering, hoarding and black-marketing, unscrupulous trade practices and an economy of shortages . . . continually rising prices and unethical standards thrived." Thus the Government of India enacted two

new legislations during that period: The *Maintenance of Internal Security Act, 1971* and the *Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980*.' The crack-down on adulterators, black marketers, hoarders, and smugglers under these laws had a favorable impact on the situation. Consumers could now get essential commodities at reasonable prices in an open market, however, only for a short period.

Besides enacting consumer-oriented laws from time to time, a need was also felt to remind the trading community of their social responsibilities. In the year 1977, a High Powered Expert Committee - popularly known as the Sachar Committee - was accordingly appointed by the Government of India to consider and report, *inter alia*, on "measures by which re-orientation of managerial outlook in the corporate sector could be brought about so as to ensure the discharge of social responsibilities" by the business corporations. The Report of the Committee, which was released in 1978, pointed out that, "in the development of corporate ethics, we have reached a stage where the question of social responsibility of business to the community can no longer be scoffed at or taken lightly" and that, "social responsibility of business is now an accepted concept and we feel that our country with its tradition of social service must now make it a part of legislation." The Committee observed:

In the environment of modern economic development, the corporate sector no longer functions in isolation, of the plea of the companies that they are performing a social purpose in the development of the country is to be accepted, it can only be judged by the test of social responsiveness shown to the needs of the community by the companies. The company must behave and function as a responsible member of the society just like any other individual. It cannot shun moral values nor can it ignore actual compulsions. The real need is for some focus of accountability on the part of the management not being limited to shareholders alone. In the modern times, the objective of business has to be the proper utilization of resources for the benefit of others.

The Committee further pointed out:

A profit is still a necessary part of the total picture but it is not the primary purpose. This implies that the claims of various interests will have to be balanced not on the narrow ground of what is best for the shareholders alone but from the point of view of what is best for the community at large. The company must accept its obligation to be socially responsible and to work for the larger benefit of the community.

The Committee laid specific emphasis on the environmental responsibilities of the business corporations and observed:

Every company apart from being able to justify itself on the test of economic viability will have to pass the test of a socially responsible entity. In this context it will be judged by various tests dependent upon the circumstances in each company, and in each area. Thus a chemical company which may declare very high dividend may yet be responsible for polluting the water and air and would have to be named as a socially irresponsible company. Similarly the waste discharged from the factories resulting in loss of fish and thereby depriving large number of fishermen of their livelihood and also posing a risk to those eating fish would certainly be ranked as an irresponsible act. No company in these days can disown its responsibility.

For securing responsible behavior, the committee was in favour of "openness in corporate affairs", that is, adequate disclosure for the benefit of shareholders, workers, consumers, creditors and the community. The committee recommended that a provision may be made in the *Indian Companies Act, 1956* that every company, along with the director's report shall also give a 'Social Report' which will indicate and quantify, in as precise and clear terms as possible, the various activities relating to the social responsibility aspect mentioned above which have been carried out by the company in the previous year. It was emphasized by the Committee that, "the report on the social responsibility of business from the company should not be in a vague and general manner but should have an element of particularization and certainty."

The Committee recommended radical modifications in the *Monopolies and Restrictive Trade Practices Act, 1969* and the *Indian Companies Act, 1956*. For instance, one of the outstanding contributions of the Committee has been its recommendations relating to the incorporation of provisions against 'unfair trade practices' in the *MRTPA Act*. The Committee observed:

Thus, while all modern legislations on the subject accept the need for providing protection to the consumers, the present Act does not deal at all with what is commonly known as unfair trade practices namely, misleading advertisements, false information to dupe consumers etc., it also does not provide for any remedy against such practices by manufacturers or dealers. We are, therefore, suggesting the need for introducing a new chapter defining these practices and also providing for definite remedy to the consumers against these unfair trade practices.

In view of the dangers of monopoly and monopolistic tendencies and need for curb on unfair trade practices for safeguarding the consumers' interests, the *MRTTP Act* was accordingly amended in 1984 and a new concept of 'unfair trade practices' was introduced primarily for the protection of consumers. Similarly the *Indian Companies Act, 1956* was amended in the year 1988.

In the post-emergency era, ie in the late 1970s, India witnessed a new phenomenon of judicial activism and increased access to justice - the strategy of public interest litigation or social action litigation - when the courts started admitting the rights of social action groups and public-spirited citizens to approach them in the event of violation of legal rights of an individual or a class of persons in society. This added a new dimension to the traditional concept of *locus standi* and encouraged social action groups, journalists, lawyers, law professors, social workers and other public-spirited citizens to litigate on behalf of the poor, illiterate, exploited and the oppressed people in the country. Although the growth, working and efficacy of this strategy, more particularly with reference to consumer protection and environment protection has been discussed in detail respectively in chapters 6.1 and 6.2. below, it is necessary to point out here that social action litigation proved successful, at least initially, in checking governmental lawlessness and administrative deviance generally and soon expanded its wings to bring within its ambit environmental and, most recently, consumer protection issues. Today, the strategy of SAL has become a central legal strategy and is used very frequently by consumer groups to seek justice on behalf of the aggrieved consumers.

Although there is hardly a major instance of such type of litigation in the early 1980s on behalf of consumers, as we now find under the *Consumer Protection Act, 1986*, the birth of India's leading and most powerful consumer association, the CERC at Ahmadabad in 1978, coincided with the emergence of the social action litigation movement in India. CERC, which is now among the most successful consumer groups in the Third World, had been instrumental in safeguarding consumers' interests by disseminating consumer education, and above all, litigating on behalf of consumers. The emergence and recent spurt in consumer-oriented social action litigation owes a lot to the tireless efforts of consumer groups like CERC and CGSI. Even the enactment of the *Consumer Protection Act, 1986* itself has been largely due to the intensive lobbying by such consumer groups and voluntary social organizations.

With the continuous industrialization and urbanization, environmental problems also came more to the forefront, but seldom got any worthwhile attention of Indian planners and policy makers till the fateful incident of Bhopal in 1984. Thus the Bhopal catastrophe, perhaps for the first time, focused considerable attention on the industrialization hazards, environmental pollution, government responsibility and business accountability. The Union Carbide tragedy also highlighted the potential risks to the lives of the citizens or consumers from the operations of transnational corporations in foreign lands.

1.3.3 International Developments and Their Impact on India:

In the history of the development of consumer policy, 9 April 1985 is a very significant date. It was on that day when the General Assembly of the United Nations unanimously adopted a set of general Guidelines for Consumer Protection. The adoption of these guidelines was the culmination of much earlier work and negotiation, including strong lobbying by the International Organisation of Consumer Unions (IOCU). The purpose of the guidelines was well described by the United Nations Secretary General:

The draft guidelines represent an initial attempt to create an international framework within which national consumer protection policies and measures can be worked out. They are also intended to assist the international community in its consideration of the question of consumer protection policy and to further international co-operation in this field.

In the course of development of the United Nations Guidelines for Consumer Protection, the Secretary-General had commented:

Finally, it may be noted that international co-operation with regard to consumer protection is needed because the development of a consumer protection policy no longer requires that measures be taken only at the national level. Since the world economy has become so interdependent, national consumer protection policies have now acquired international dimensions. This is mostly due to the international character of business practices, in that the marketing of goods and services is often done on a multinational basis and, in many cases, by transnational corporations, and also to the fact that problems encountered by consumers are often not exclusive to any one country. As a result, measures adopted to protect consumers in one country can have implications for consumers in other countries. For instance, consumer protection measures, such as national standards, intended to protect consumers in one country can become barriers to international trade by

making it more difficult for consumers in that country to choose among various goods and to purchase those goods at the lowest possible price, and they may also affect consumers in exporting countries by depriving them of the income generated by exports . . . Another area where international co-operation is required is the exchange of information on banned and severely restricted products in order to enable importing countries to protect themselves adequately.”

Thus, for example, domestic policies on such matters as the export of hazardous products (especially, but certainly not limited to pharmaceuticals and pesticides), on the control of plant genetic resources and use abroad of hazardous technologies can have direct and at times devastating effects on consumers elsewhere.

Thus the UN Guidelines represent a “consensus of international opinion on what good consumer laws and practices should be and have been seen as setting out “an internationally recognized set of minimum objectives which consumers everywhere should be entitled to expect will be applied.” E. Peterson states:

In sum, then, for the first time since its formation 40 years ago, the world’s most representative international body, the General Assembly of the United Nations, has agreed on the principles, the common understanding world-wide, of what constitutes basic, fair and sound consumer protection standards and measures. And in the case of the consumer guidelines it has done this unanimously. That is the main significance of the Guidelines. In a world where double standards persist in international trade, different safety measures, warnings, quality standards and even different ethics for different markets are all too common - the guidelines represent a solid new basis for consumer participation to make the market place safer and more responsive to consumer needs wherever that market place is located, rich country or poor.

The UN Guidelines were passed in the year 1985 and it was mainly around that period that most developing countries, including India, witnessed the ever-growing concern for consumer protection due largely to the painstaking efforts of the IOCU. In India, there was a mushroom growth of consumer organizations during that period. These organizations along with other pressure groups were unanimous and unequivocal in their demand for a separate full-fledged piece of legislation concerning consumer protection. The emerging concern for consumer protection and for a better quality of life thus culminated in the enactment of two equally significant pieces of legislation by the Indian Parliament in the year 1986 - The *Environment Protection Act, 1986* and the *Consumer Protection Act, 1986*. “Thus

the year 1986 could probably be called an 'era of consumer concern', for besides the enactment of these two statutes, a number of other existing statutes concerning consumer protection were also amended in the same year. Thus we find that the *Drugs and Cosmetics (Amendment) Act, 1986*, the *Prevention of Food Adulteration (Amendment) Act, 1986*, the *Monopolies and Restrictive Trade Practices (Amendment) Act, 1986*, the *Standards of Weights and Measures (Amendment) Act, 1986* and the *Standards of Weights and Measures Enforcement (Amendment) Act, 1986* were all modified in the same year - 1986. The enactment of the two main statutes and modification of a number of others was done apparently with the major object of promoting and protecting consumers' rights and interests and thereby preparing the ground for the newly emerging consumer jurisprudence in India.

The above discussion sufficiently indicates that the concern for consumer protection, both in the Western world and in a major Asian jurisdiction is not really new, as is mostly understood. There is no denying the fact that the consumer movement is indeed modern but consumer jurisprudence, by any stretch of imagination, is centuries old. The following remarks of Magnuson and Carper, made in the context of the American jurisdiction, are true also in the Indian context:

In actuality, the concern for consumer protection, both here and in Europe, is not really new. What we see today is the culmination of an ever-growing momentum of consumer concern, rooted in the Middle Ages, and brought to fruition by merchandising changes wrought by modern technology.

The discussion thus brings home the point that the present-day concern for consumer rights is not new and that consumers' rights like the right to have safe, un-adulterated and defect-free commodities at appropriate prices has been recognized since ancient times. These consumer rights have now been specifically mentioned in the *Consumer Protection Act, 1986*. As we shall see in the next chapter, the 1986 Act has given a prominent place to these consumer rights in its objects and statement clause and also in section 6. The Act has also envisaged the establishment of Consumer Councils at the central and state level, consisting *inter alia* of consumer representatives, to promote and protect these rights, besides making consumers aware of their respective rights and spreading consumer education in the country. Concluding, it may be argued that if a detailed study of the ancient Indian customs and procedures of consumer protection is undertaken,"

one can definitely draw significant policy implications for the action and endeavors for consumer protection in the contemporary Indian legal system.

1.4 Sum Up:

More regions of world are getting increasingly interconnected. While this interconnectedness across countries has many dimensions cultural, political, local and economic. As consumer in today's world, some of us have a wide choice of goods and services before us. But these development also have some gray areas due to which consumer sovereignty becomes a populist slogan having no or little bearing in the market place and business. Consequently a spate of consumer laws have been passed especially in latter half of the twentieth century for consumer protection and so forth fixing accountability and strict liability on the seller cum manufacturer rather than buyer which he paved the way in the emergence of a new jurisprudence concerning consumer interest claims and needs.

1.5 REFERENCES:

- Singh, Avtar, Law Relating to Consumer
 - Tripathi, Dr. S.C., The Consumer Protection Act, 3rd Ed., 2006
-

1.6 CHECK YOUR PROGRESS:

Fill in the Blanks

1. The General Assembly of the United Nations adopted the guidelines for consumer protection on
2. The Doctrine of Caveat Emptor was almost totally rejected in
3. Theand..... of ancient age mention the adulteration.
4. National Consumer Service was set up in
5. The recommendations of Monopolies Inquiry Commission culminated in the passing of

True or False

1. The Federal Trade Commission Act and the Clayton Act were passed to meet the wide-spread pressures for increasing protection of consumers.
2. The object of "Monopolies and Restrictive Trade Practice Act, 1969, to
3. prevent concentration of economic power and to control monopolistic and

restrictive trade practice

4. The consumer Protection Act 1986 envisages the formation of the Consumer Protection Councils at the Central and State excluding the Union Territories Levels.

5. The consumer Protection Act 1986 applies to all goods and services in private, public, co-operative sector, government undertakings such as Railways, Telephones, Airlines, Banks, State Electricity Boards, state Railways etc.

6. The doctrine of *caveat emptor* was accepted in Talmudic Law.

ANSWERS TO CHECK YOUR PROGRESS

Fill in the Blanks

1. 9 April 1985
2. Talmudic law
3. Arthashastra and yajnavalkyasmrti
4. 1963
5. Monopolies And Restrictive Trade Practice Act 1969

True or False

1. True
2. True
3. False
4. True
5. False

1.7 TERMINAL QUESTIONS:

Q.1 Discuss the historical development of consumerism in global perspective.

Q.2 Describe the impact international development of consumer protection on India.

Q.3 Elaborate the historical development of consumer protection in India.

UNIT - 2

CONSUMER MOVEMENT IN INDIA

STRUCTURE:

- 2.1 Introduction
- 2.2 Origin and Growth of Consumer Movement
- 2.3 Objectives of The consumer Movement
- 2.4 Consumer Movement Abroad
- 2.5 Consumer Movement in India
 - 2.5.1 History and Growth of Consumer Movement in India
 - 2.5.1.1 Consumer Protection in Ancient Times
 - 2.5.1.2 Development of Co-Operatives
 - 2.5.2 Consumer Movement in the Modern Period
 - 2.5.3 Stages of Development of the Consumer Movement
 - 2.5.3.1 Some Important Consumer Organizations
 - 2.5.4 Achievements of the Consumer Movement
 - 2.5.5 Challenges Ahead/Tasks for the Future
 - 2.5.6 Taking the Consumer Movement Forward
- 2.6 Sum Up
- 2.7 References
- 2.8 Check Your Progress
- 2.9 Terminal Questions

OBJECTIVES:

This unit deals with the Consumer Movement in India. A study of the history and growth of consumer movement in India and its impact would enable you to:

- Retrace the development of consumer movement in India right up to the present times.
- Appreciate the impact of the consumer movement and know about the tasks for the future/challenges ahead

2.1 INTRODUCTION:

The consumer movement arose out of dissatisfaction of the consumers as the sellers of the consumer goods were indulging in many unfair practices. There was no legal system available to consumers to protect them from exploitation in the marketplace. For a long time, when a consumer was not happy with a particular brand product or shop, he or she generally avoided buying that brand product, or would stop purchasing from that shop. It was presumed that it was the responsibility of consumers to be careful while buying a commodity or service. It took many years for organizations in India, and around the world, to create awareness amongst people. This has also shifted the responsibility of ensuring quality of goods and services on the sellers.

The basic idea behind the consumer protection movement is the protection of the rights of consumers. It was President Kennedy who declared the consumers' rights for the first time in his message to the American Congress in March 1962. They were:

- the right to information,
- the right to choose and
- the right to be heard.

Later, International Organization of Consumers' Union added four more rights, viz,

- the right to redress,
- the right to consumer education,
- the right to healthy environment
- the right to basic needs.

These rights were incorporated in the United Nation's Charter of Human Rights. The Government of India also recognized these rights later.

In 1985 United Nations adopted the UN Guidelines for Consumer Protection. This was a tool for nations to adopt measures to protect consumers and for consumer advocacy groups to press their governments to do so. At the international level, this has become the foundation for consumer movement. Today, a Consumer International has become an umbrella body of 240 organizations from over 100 countries.

In India, the consumer movement as a 'social force' originated with the necessity of protecting and promoting the interests of consumers against unethical and unfair trade practices. Rampant food shortages, hoarding, black marketing, adulteration of food and edible oil gave birth to the consumer movement in an organized form in the 1960s. Till the 1970s, consumer organizations were largely engaged in writing articles and holding exhibitions. They formed consumer groups to look into the malpractices in ration shops and overcrowding in the road passenger transport. More recently, India witnessed an upsurge in the number of consumer groups.

Because of all these efforts, the movement succeeded in bringing pressure on business firms as well as government to correct business conduct which may be unfair and against the interests of consumers at large. A major step taken in 1986 by the Indian government was the enactment of the Consumer Protection Act 1986, popularly known as COPRA.

2.2 ORIGIN AND GROWTH OF CONSUMER MOVEMENT:

During the late 1800's and early 1900's the sale of many impure and unsafe products led to an increase of consumer interest in legislation to bring about standards of quality. Some consumer groups existed in the United States as early as the middle of the 19th century. Formation of the National Consumer League in the USA in the year 1899 was an indication of the growing strength of the consumer movement. The Novelist Upton Sinclair wrote "*The Jungle*" (1906), which described the filthy conditions in the meatpacking industry. This book led to the passing of Federal Food and Drugs Act of 1906.

The growth of large corporations and monopolies also contributed to an increased interest in consumerism. These giant business companies lacked competition from other firms and so they regulated the supply of products and charged high prices for them. They also marketed many low quality products. In the late 1980's the Congress passed the first anti-trust and anti-monopoly laws to protect consumers from the powerful firms. Business also began to advertise extensively to distinguish their products from those of other companies. As a result, the consumer movement began to emphasize the consumer's right to have adequate information about products.

In 1929, Consumer's Research, a pioneer in product testing, was founded to provide testing and rating services for consumers. A group of employees from that

organization formed the Consumers' Union in 1936. The passage of the 1938 Federal Food, Drugs and Cosmetics Act was an important landmark in the growth of the Consumer Movement.

In the 1950's unprecedented volumes of federal legislation favoring consumers were passed. The Food Act and the Textile Fiber Product Identification Act were passed during 1958. President John F. Kennedy formed the Consumer Advisory Council in 1962 and sent the first Presidential consumer message to the US Congress

In 1960, the International Organization of Consumers' Union was established in The Hague for the protection of consumers. Ralph Nader, a leading consumer in his book "*Unsafe at Any Speed*" (1965) maintained -hat many kinds of automobiles were unsafe. His book led to the National Traffic and Motor Vehicle Safety Act of 1966. This law established safety standards for motor vehicles. Nader and his group of investigations, often called Nader's Raiders, also increased consumer interest in the safety of other products.

During the 1970's which was a period of inflation, consumers became increasingly' interested in exercising their rights. Inflation helped the growth of consumerism because of the greater public concern with the cost and quality of products when prices went up continually. Consumer's boycott of beef, coffee and sugar succeeded in temporarily lowering the prices of those products in the mid 1970's.

Today, consumer groups play a larger role than ever before in supporting the inputs of consumers. Ralph Nader founded an organization in the name of the public citizen, which conducts research on products, works to influence Congress and state legislatures and develops educational programs for consumers.

2.3 OBJECTIVES OF THE CONSUMER MOVEMENT

The important objectives of the consumer movement are as follows:

1. To restore the balance in the buyer-seller relations in the market place.
2. To protect and promote the consumer's interest.
3. To safeguard consumer rights.
4. To prevent consumer exploitation by unscrupulous traders.
5. To represent it consumer interest before the Government and pressurize the Government to provide a meaningful consumer protection through proper legislation.

6. To organize consumer resistance against unfair trade practice and create a strong public opinion in favor of fair trade practices.
7. To collaborate with Government and business centers for consumer protection.
8. To undertake programs of consumer education, consumer information and comparative testing.
9. To ensure consumer-oriented practices of marketing programme by business enterprises, and
10. To redress the affected consumer with the help of Governmental and non-Governmental organizations.

Consumer Movement thus represents an organized, collective and united effort to create a buyer's market for all mass consumption of goods.

2.4 CONSUMER MOVEMENT ABROAD

The Consumer Movement organized in the United States, was a countervailing defensive force to safeguard the interest of the consumers from the abuses of economically powerful sellers and it spread gradually to many parts of the world. In some countries it became a deep-rooted movement and in others a highly militant movement. The nations where the consumer movement has shown much strength are the United States of America, Britain, Germany, New Zealand, France and Japan. Developments and method of coping with it differed from country to country and awareness of consumers also varied from one country to another. It was neither exclusive to any specific country, nor was it confined to any particular continent. In fact, the consumer movement became a world-wide phenomenon.

In the United States, the business scene has witnessed three District Consumer Movements in the early 1900's, mid- 1930's and in 1960's.

Housewives in England also faced the same situation of seller's sharp practices in the market place, although common law protected the consumers against aggressive salesmanship, fraud and breach of promise. The British National Standard Institute in the UK played a significant role in protecting the interest of consumers in 1925. Similarly consumer awakening was witnessed in Netherlands in 1926.

The several phases of the American Consumer Movement in mid-1930 was developed by factors like an upturn in consumer prices in the midst of the great depression. In 1935, a formal Consumers' Union came into existence. It

established a laboratory for regular testing of as many goods as possible and published "consumer reports" thereon. The Union also criticized misleading advertisements and challenged the manufacturers who made money from ignorant consumers.

Consumer organizations came into existence in Norway and Ireland in 1939 and 1942 respectively. Norway's consumer body was not essentially different from that of the United States, although it did not define its policy in the same way as the American Consumers' Union did.

As in England, women's organizations in most of the European countries have been a mainstay of the consumer movement. Housewives took much interest in it. In addition to organizations like Japanese "Shufuren", there were other main Consumers' Unions, Gross root Consumer Groups and the like. While functioning autonomously, they joined together from time to time, for joint action.

A 'Retail Trading Standard Association' was formed in England to resolve disputes between retailers and consumers. Because of the rapid interest taken in the consumer's protection, a Committee was formed by the British Government in the late fifties to suggest desirable changes in the existing laws and to ensure further protection of the consuming public.

The Canadian Association of Consumers composed of women, deals with cases of products, packing, labeling, pricing and advertising. This amounts to the association being required to be consulted on any change in price, size and packaging of the products in existence or of the products that are likely to be introduced.

In Denmark, an aggrieved consumer can lodge a complaint with the Housewives' Consumer Council stating that he has been palmed with a defective product off by a certain company. The dissatisfied purchaser will get either replacement or free repair or his money back ultimately.

As early as 1948, the Danish Government Home Economics Council was created to promote healthy hygiene, standard nutrition and worthwhile household goods. In Belgium, a Consumer Council was set up in 1964, in order to look into the problems of the consumers. In France, a National Commission on Consumer Problems was established under the auspices of the Ministry of Finance and Economic Affairs comprising representatives of consumer organizations, manufacturers, distributors, educationists and the Government.

In South-East Asia, there are a number of well-established consumer protection organizations in 14 Asian and Pacific countries. The Consumer Association of Malaysia is well-organized, carrying out product test, publishing a number of worthwhile reports on products and selling techniques in developing countries and it has been responsible for promoting the consumers' cause.

The Women's Association in South Korea is the motive force behind the consumer movement. It considers the consumer movement as a human rights movement. The consumer movement in the Philippines celebrates at the end of October every year, "Consumer Protection Week" and provides product tests and the results are published periodically in a regular magazine.

2.5 CONSUMER MOVEMENT IN INDIA

A nucleus consumer organization under the title "The National Consumer Service" was set up in 1963, in Delhi, as a wing of Bharat Sevak Samaj, a social organization. Its main object was to collect market intelligence, to study the trend of rising prices, publish bulletins for information of the consumer and to agitate against malpractices of the trade. A few local councils and consumer groups affiliated to it were also set up in Delhi. Another consumer organization popularly known as "Price Rise Resistance Movement" was started in Delhi in the year 1964. It held meetings to protest against rising prices and formed special squads to keep watch on the price trend in different areas of the city.

In Kautilya's Arthashastra, several measures are outlined for regulating the activities of merchants, artisans and craftsmen. Kautilya has also dealt with, in detail, the punishments to be given to such persons for transgression of the trade law. A goldsmith who committed fraud in weighing, had to pay a fine of 200 panas for every 1/6th part of gold stolen from a consumer (pana being the currency in use at that time); for substitution of gold by cheaper metal, the fine was 500 panas and so on.

Consumer Movement in India, in the past, was weak against the giant manufacturers and traders and in the fight against unfair trade practices, consumers often lost due to lack of funds and official support. The Consumer Movement emphasizes co-operative efforts by consumers themselves to protect their rights and interests in the market place against unfair trade practices. In India, the Consumer Movement has to awaken and organize the consumer and make him fight against his apathy. It has to enlighten the illiterate, the poor and the lower

income groups to fight against adulteration, unfair prices, shortness of weights and measures. The value of strong and effective Consumer Movement has to be recognized by trade and the Government.

From 1980 onwards, the movement gained momentum. Then there were about 230 consumer organizations in the country, of which 45 per cent were in Gujarat, Karnataka, Andhra Pradesh and Tamil Nadu. Surprisingly in the largest state of Uttar Pradesh these organizations are only four in number. Among the cities Delhi with 14 organizations occupies the first place, followed by Ahmadabad, Hyderabad and Bombay.

2.5.1 HISTORY AND GROWTH OF CONSUMER MOVEMENT IN INDIA

India has an ancient history of consumer protection. Consumer protection was part of ancient culture and formed the core of its administration. However, 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.

2.5.1.1 Consumer Protection in Ancient Times

India has an ancient history of consumer protection. Consumer protection was part of its ancient culture and formed the core of its administration. Kautilya's 'Arthashastra' 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 public was not put to any trouble. If high profits (for the ruler) put 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 sculptors, carpenter, tailor, washer man, rules for the protection of consumer interest were given. Thus, for a washer man, it was said that he should return washed clothes in a given time period, i.e., light colored ones in five days, blue dark colored in 6 days and silken, woolen or embroidered in 7 days. Failing this they had to pay fine.

The Superintendent of Commerce was to supervise weights and measures. For short fall in weighing and measuring, sellers were fined heavily. Weights and measures used in trade were manufactured only by the official agency responsible for standardization and inspection and they were 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 compensate for losses. 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 Mahaballi, people were not at all exploited in any manner. It is believed that there were not shortages or malpractices in weights or measures and nor excessive advertisements.

2.5.1.2 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 in their areas.

On the other hand, 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 asset 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 emphasized 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 Madras in **1904**. However, the proper appearance of consumer co-operatives in India could be seen only in **1918**, increasingly their number to **88** in **1920-21** and **323** in **1928-29**. However, in **1936-37**, their number reduced to **25** as they were still not organizations of consumers on felt needs.

Phase I

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 **9674** with a membership of **19** million members and an annual sale turnover of **Rs.76** millions.

Phase III

Decontrol and de rationing in 1951-52 meant a setback to the co-operative movement. Revival came in 1962. In 1960 an all India seminar on consumer co-operatives was held in Bombay 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, Rs.5.5crores was invested for consumer co-operatives in accordance with the 20 point program. 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 Rs.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 organized 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 organized consumer groups came up.

2.5.2 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:

- To provide opportunity to the consumers to buy intelligently
- Recognition of reasonable consumer requests
- Protection against fraud, misrepresentation, unsanitary and unjust products
- Participation of consumer representatives in management of aspects affecting consumers
- Promoting consumers interests

The basic reasons for the development of consumer movement in India are 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 influential producers especially for new and more sophisticated products. In India, the basic reasons for the consumers' movement have been:

- Shortage of consumer products; inflation of early 1970's
- Adulteration and the Black Market
- Lack of product choices due to lack of development in technology.
- Thrust of consumer movement in India has been on availability, purity and prices.

The factors which stimulated the consumer movement in recent years are:

- Increasing consumer awareness.
- Declining quality of goods and services.
- Increasing consumer, expectations because of consumer education.
- Influence of the pioneers and leaders of the consumer movement.
- Organized effort through consumer societies.

2.5.3 STAGES OF DEVELOPMENT OF THE CONSUMER MOVEMENT

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 put 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.

2.5.3.1 Some Important Consumer Organizations

Consumer movement in India had its beginning in the early part of this century. The first known collective body of consumers in India was set up in 1915 with the 'Passengers and Traffic Relief Association' (PATRA) in Bombay. The Women Graduate Union (WGU) Bombay was another organization started in 1915. One of the earliest consumer co-operatives was the 'Triplicane Urban Co-operative Stores' started in late 40's in Madras. It has about 150 branches all over the city. The Indian Association of Consumer (IAC) was set up in Delhi in 1956. This was an All India Association for consumer interests with the government's support. However, even IAC did not make any headway.

The first organization to really make an impact was the Consumer Guidance Society of India (CGSI), Bombay started by nine housewives in 1966 with Mrs. Leela Jog as its founder secretary. Instead of just holding conferences and meetings and asking questions like earlier consumer associations, it started testing and reporting the quality of items of daily use of foodstuffs and handling consumer complaints. It has 8 branches at various places carrying on publicity, exhibitions and education. It publishes a magazine called 'Keemat', in English, for consumer information.

The second consumer organization which made quite an impact in making the cause of consumers known throughout the country is the Karnataka Consumer Services Society (KCSS) formed in 1970. The main strength of the KCSS was Mrs. Mandana who spread the word of the movement throughout the country, especially among government circles at a time when the word 'consumer' was not familiar to many. It is based in Bangalore. It organized important seminars on consumers' education in schools and is represented on prevention of Food and Drug Adulteration Committee and Karnataka Food and Civil Supplies Corporation. The Visaka Consumers Council (VCC) started in 1973 in Vishakhapatnam, Andhra Pradesh, is another pioneering consumer organization, which has made a significant contribution to the consumer movement. It represented the plight of the poor ration card holders and LPG gas users, who had to stand in long queues because of the irresponsible attitude of the concerned authorities. Mr. V. K. Parigi

with 20 members held meetings, survey of ration cardholders and succeeded in achieving necessary changes in the fair price shops and the public distribution system. Besides this, about 15 more organizations came up in Andhra Pradesh taking up the task of solving problems of fair price shops and milk distribution in different parts of the state.

To wage a war against exploitation by the traders, some organizations came up with the novel idea of buying quality product of everyday use at wholesale and selling these to the consumers at much lower prices than that being sold by the merchants. These are the Akhil Bhartiya Grahak Panchayat (ABGP) started in 1974 in Pune, Mumbai Grahak Panchayat (MGP) in 1979 in Mumbai and Grahak Panchayat in 1979 in Jamshedpur. Another organization which made a significant contribution to the cause of consumers is the Consumer Education and Research Centre (CERC) which started in Ahmadabad in 1978. It added a new dimension to the Consumer movement with Prof. Manubhai Shah, the Managing Trustee of CERC. The organization constantly used legal machinery to bring about changes and protect consumer rights. Its special focus and intervention is against the governments and public corporations. It has a big library, computer centre and a product testing laboratory.

Recently, it has also launched a project on comparative testing in Ahmadabad where comparative testing, ranking and evaluation of consumer products are being undertaken with the aim of publication of such findings for consumer education. To begin with, testing of food, pharmaceuticals and domestic appliances had started. The findings will be published and action may be initiated against unsafe products. CERC also undertakes internship training for any consumer organization, besides routine exhibitions, seminars and publications of the magazine 'Consumer Confrontation.'

The Eighties of the present century saw the dawn of a new era in consumer movement in India. There was mushrooming of consumer organizations, many floated by politicians to earn additional income and capture a gullible vote bank! However some associations were really committed to the cause of the consumers. One of these **was** 'Jagrut Grahak' in Baroda, Gujarat started in 1980 by ten retired professionals. It imparts consumer education through seminars and publication and runs a network of 45 complaint centers.

The 'Consumers Forum' is another important organization which started in 1980 in a small form in Udupi in South Karnataka. Under the leadership of Dr. P.Narayan

Rao, it succeeded in bringing relief to many aggrieved consumers, chiefly from their problems with the state bureaucrats.

VOICE, the voluntary organization in the interest of consumer education, was founded by energetic young students and teachers of the Delhi University in 1983 in Delhi to fight against unfair trade practices. It gives consumers information about the benefits and shortcomings of various products and brands and enables them to make informed choices. With Dr. Shri Ram Khanna as the Managing Trustee, it has launched comparative testing. Its first attempt was directed at comparative testing of well-known brands of colour T.Vs.

The Consumer Unity and Trust Society (CUTS) started in Jaipur, Rajasthan, in March 1984, made its impact by effectively making use of media and publicity. For example, to tackle problems of garbage, it announced prizes for a photograph depicting the biggest heap of rubbish or the biggest pothole, and these galvanized authorities into taking prompt action.

The Consumer Action Group (CAG) founded in 1985 in Madras concerns itself with the issues of civic amenities, health and environments, for example- shortage of water in Chennai and Chemical pollution in Adyar River.

Some individual consumer activities which have been in the forefront of the consumer movement in the country Mr. R. R. Dollani, an old Gandhian, started a number of associations in Madras. He organizes meetings and rallies on consumer issues and other public interest issues in various parts of the city. Mr. H.D. Shourie, Director; Common Cause; Delhi, is a well-known litigant in consumer circles. This organization has 5000 members from all over the country keeping contact with the various consumers' outfits and taking up cases on problems of electricity, hospitals, taxation and similar issues. Another consumer activist who works primarily with his pen is Mr. R. Desikan of SMN Consumer Protection Council, Madras.

A new impetus was given to the consumer movement with the enactment of the Consumer Protection Act, 1986. It applies to the whole of India except J&K. This act is unique since it provides for setting up of quasi-judicial bodies vested with jurisdiction concurrently with the established courts for redressal of consumer disputes at the district, state and national levels. The basic objective is to provide inexpensive justice to consumers. For the enactment of this legislation, the late Prime Minister, Mr. Rajiv Gandhi deserves special mention from several ministries

and public sector monopolies and after vested interests; he went ahead and got the act passed.

The Nineties saw the fulfillment of efforts towards a unified approach. It had been always felt that there were benefits in collective and united approach. In March 1990, the Federation of Consumer Organizations (FEDCOT) was established in Tamil Nadu to bring together as many consumer groups as possible in the State less than one umbrella. In 1992, consumer groups of Gujarat joined hands to form a federation, Gujarat State, Federation of Consumer Organization (GUSFECO). Now 9 states in the country have federations. Besides Tamil Nadu and Gujarat, they are Kerala, Karnataka, Andhra Pradesh, Maharashtra, Rajasthan Orissa and Uttar Pradesh. Besides, at the apex level, there are Confederation of Indian Consumer Organization (CICO), New Delhi, formed in February 1991 and Consumer Coordination Council (CCC), New Delhi, formed in April 1992. The primary reason for forming these apex bodies is networking of consumer groups coming together for a common cause.

2.5.4 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 organizations 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, Sansad Marg, New Delhi. They deal with complaints relating to hawkers, railways, insurance, pensions and related matters. In the long run, they will cover all the ministries. The nationalized banks are observing 15th of every month as the 'Customer Grievance Day.' where an aggrieved consumer can walk into the top managers' offices in their respective town, district or zone. The Council of Fair Business Practices, of more than 20 years standing, is also trying to help in the redressal of complaints against business from individual consumers or groups. 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 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 (Government) Consumer Protection Councils, regulatory departments of Preventions 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 consumers rights through the decades has not been in vain after all.

2.5.5 CHALLENGES AHEAD/TASKS FOR THE FUTURE

It is now over a decade since the Consumer Protection Act, 1986 was passed after years of lobbying by the various consumer organizations. The redressal machinery, however, is not fully satisfactory. The number of cases pending in the district forums is piling high.

Unless consumer groups take determined action to see that the institutions set up for their protection work effectively, the redressal agencies will go the way of civil courts, where litigants have to wait for years and spend fortunes for the settlements of their disputes. Making the Consumer Protection Act effective is therefore, the first challenge facing the consumer movement in India.

There are now about **1000** organizations of consumers in existence, but not all the cities and towns have been covered. The rural areas where the greater part of our nine hundred million consumers live, are still virtually untouched by the consumer movement. Though the aim is to have a Consumer Complaints Redressal Forum in

every district, it is not easy for poor rural consumers to go to the forum with complaints, nor do many consumers have an awareness of ways to assert their consumer rights. The solution lies in training rural workers who are already active in the villages. Mass media should be used to penetrate rural houses. Creating consumer awareness in the vast reaches of rural India with its variety of customs, traditions and languages and little formal education is the second challenge for the consumer movement.

Another matter of concern for the consumer is the likely fall out of the liberalization policy adopted by the government. Undoubtedly, liberalization is going to bring us many benefits, notably, up to date technology, more competition and better products, more employment and investment opportunities. However, some possible adverse effects must be taken into account. The export to India of drugs, pesticides and cosmetics which was sometimes banned in the countries from which they originate is likely to be much easier with liberalized import laws. Consumer groups will have to be on their guard against such products and services. For example, obesity treatments, hair restoration treatments and arthritis cures, which were not approved in the countries of origin, have been brought in here through collaboration and launched with tremendous publicity. The Consumer organizations need to take action against them for their misleading and highly exaggerated claims. Laws against cigarette and liquor advertising are being openly flouted through advertising on hoardings and through cable television. Consumer movement needs to be extremely alert regarding dubious or hazardous products entering the country in the wake of liberalization.

Some other emerging areas of consumer protection are environment protection, investor protection and freedom of information. Relentless increase in environmental pollution of all kinds has totally impoverished the quality of our lives and is taking a heavy toll of our health. Consumer groups need to strongly support and work with environmentalists. Every consumer will have to join with others to reduce pollution in his/her own neighborhood.

Lastly, the concern of consumer movement should also be to discourage racism, communalism, violence, and conspicuous consumption. Violence is today the real hero in most **T.V.** serials and films. It enters our homes, assaults our senses and influences all of us, specially our children. In the words of Anwar Fazal, Regional Director, United Nations Development Programme for the Asia Pacific Region, "The Consumer Movement should be directed towards service to the people and

the Environment instead of just ensuring value for money for consumers." Consumer movement should seek a new vision which embodies 3 new cultures, i.e.

- the culture of balance and harmony (so well provided by nature),
- the culture of trusteeship and stewardship (as we are only guardians of earth) and
- culture of accountability to the future.

2.5.6 TAKING THE CONSUMER MOVEMENT FORWARD

India has been observing 24 December as the National Consumers' Day. It was on this day that the Indian Parliament enacted the Consumer Protection Act in 1986. India is one of the countries that have exclusive courts for consumer redressal. The consumer movement in India has made some progress in terms of numbers of organized groups and their activities. There are today more than 700 consumer groups in the country of which only about 20-25 are well organized and recognized for their work. However, the consumer redressal process is becoming cumbersome, expensive and time consuming. Many a time, consumers are required to engage lawyers. These cases require time for filing and attending the court proceedings etc. In most purchases cash memos are not issued hence evidence is not easy to gather. Moreover most purchases in the market are small retail sales. The existing laws also are not very clear on the issue of compensation to consumers injured by defective products.

After 20 years of the enactment of COPRA, consumer awareness in India is spreading but slowly. Besides this the enforcement of laws that protect workers, especially in the un organized sectors is weak. Similarly, rules and regulations for working of markets are often not followed. Nevertheless, there is scope for consumers to realize their role and importance. It is often said that consumer movements can be effective only with the consumers' active involvement. It requires a voluntary effort and struggle involving the participation of one and all

2.6 SUM UP:

You have learnt that consumer protection in India has an ancient history. It was part of our culture and tradition. Generally, there were no shortages and exploitation. Culprits were fined heavily. However, the golden era got over with the invasion of foreigners and modernization. The origin of consumer activities can be traced to the emergence of co-operatives at the beginning of the present century.

The governments also encouraged the development of Consumer Co-operatives. In general, co-operatives have been successful in halting abuses of the monopolies and improving conditions of the lower income groups.

Consumer movement, in its present form in India, came into being only in the 1960's with the formation of Consumer Guidance Society of India in 1966 in Bombay. With its success, the consumer movement spread over to fight for availability, purity and standard prices of commodities. At present, there are about **1000** organisations all over the country. One can say that the consumer movement in India has come of age. From simple awareness generation, it took over to direct action and then to testing and litigation. Its contribution to the passing of Consumer Protection Act, **1986**, has been a historic achievement.

Both business and bureaucrats have started taking consumers seriously. Some important organizations and corporations have launched consumer grievance cell. Consumers are represented on a number of consumer welfare committees set up by various organizations. However, with liberalization and globalization, there are challenges ahead for the consumer groups.

2.7 REFERENCES

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"Consumer Law and Practice", Robert Lome & Geoffrey Wrodroffe, Sweet and Maxwell.

2.8 CHECK YOUR PROGRESS

Fill in the Blanks

1. Schools and colleges are incorporating in courses at different levels.
2. Large business organisations have set up on their premises.
3. In United Nations adopted the UN Guidelines for Consumer Protection.
4. Kautilya's was the basic law of ancient India.
5. India has been observing as the National Consumers' Day.

True or False

1. In the ancient period, consumer was the 'King'.
2. Co-operatives and consumers organisations are one and the same thing.
3. Co-operatives came up after the start of the consumer movement.
4. Government of India has always encouraged co-operatives.
5. "*The Jungle*" written by Novelist Upton Sinclair led to the passing of Federal Food and Drugs Act of 1906.

Answers to Check Your Progress

Fill in the Blanks

1. Consumer protection
2. Consumer grievance cell
3. 1985
4. Arthasastra
5. 24 December

True or False

1. True
2. False
3. False
4. True
5. True

2.9 TERMINAL QUESTIONS

Q.1 Write an essay on development of the consumer movement in India?

Q.2 Enumerate the reasons for the consumer movement in India and discuss its impact on legal regime.

Unit - 3

Who is Consumer?

Structure:

- 3.1 Introduction
- 3.2 Who is Consumer?
- 3.3 Meaning of Consumer under the COPRA
- 3.4 Rights and Responsibilities of the Consumers
 - 3.4.1 Rights of the Consumer
 - 3.4.2 Rights under United Nation
 - 3.4.3 Responsibilities of the Consumer
- 3.5 Sum Up
- 3.6 References
- 3.7 Check Your Progress
- 3.8 Terminal Questions

Objectives

After studying this unit, you will be able to:

- understand the meaning of consumer.
- recognize the rights and responsibility conferred on consumer.

3.1 Introduction:

Everyone is a born consumer, whether he is an industrialist, a producer, a trader engaged in any profession or service or belonging to any other class. Whether one is a producer or whether he renders a service, the ultimate object of all production is to ensure consumption of goods and services to the satisfaction of the consumers. Adam Smith observed that, "Consumer is the sole end and purpose of all production and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer".

Consumers are the largest economic group in any country. They are the central point of all economic activity. The markets and products have increased their complexity and scope. Therefore, buying practices have undergone drastic changes

through the years. Technology has also brought in its wake a large variety of products and processes, which have changed consumption patterns from the natural agriculture produce to manufactured substitutes, which are transport and made available to consumers in distant markets.

3.2 Who is Consumer?

The consumer is self-explanatory and the literal meaning is “one who consumes” but as against a customer in the market place, a consumer has a wider and broader meaning. A consumer according to Collins dictionary is, “a person who purchases goods and services for his own personal needs.” In common parlance every human being is a consumer whether he buys any goods or hires any services.

On 15 March 1962 former US President John F. Kennedy said: “Consumers by definition include us all. They are the largest economic group, affecting and affected by almost every public and private economic decision. Yet they are the only important group... whose views are often not heard.” According to oxford **advanced learner’s dictionary** the word consumer means “A purchaser of goods or uses services”. And In **Black’s Law Dictionary**, it is explained to mean „one who consume, individuals who purchase, use, maintain, and dispose of products and services“. A member of that broad class of people, who are affected by pricing politics, financing practices, quality of goods and services, credit reporting, debt collection and other trade practices for which state and federal consumer protection laws are enacted.

To be a consumer, it is necessary that the transaction should be in respect of goods and services with the following qualifications:

- (i) That the goods must have been purchased for a consideration which has been paid or promised or partly paid and partly promise or under any system of deferred payment.
- (ii) That the services must have been hired or availed of for a consideration which has been paid or promised or partly paid or partly promised or under any system of deferred payment.
- (iii) That the word ‘consumer’ also includes a person who has not actually or personally paid or promised to pay consideration but who obtains such goods or is a beneficiary of such services with the approval of the person who has paid or promised to pay consideration, wholly or in part or in under a system of deferred payments.

3.3 Meaning of Consumer under the COPRA

The term 'consumer' has been defined in a specific sense in the 1986 Act. Under section 2(1) (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 persons 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 and includes any beneficiary of such services other than the person who hires or avails of the service 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.

The above definition reveals that the consumer is of two types:

- consumer of goods and
- consumer of services.

Consumer of goods - The provision reveals that a person claiming himself as a consumer of goods should satisfy that—

(1) **THE GOODS ARE BOUGHT FOR CONSIDERATION**

There must be a sale transaction between a seller and a buyer; the sale must be of goods; the buying of goods must be for consideration. The terms sale, goods, and consideration have not been defined in the Consumer Protection Act. The meaning of the terms 'sale', and 'goods' is to be construed according to the Sale of Goods Act, and the meaning of the term 'consideration' is to be construed according to the Indian Contract Act.

(2) **ANY PERSON WHO USE THE GOODS WITH THE APPROVAL OF THE BUYER IS A CONSUMER**

When a person buys goods, they may be used by his family members, relatives and friends. Any person who is making actual use of the goods may come across the defects in goods. Thus the law construes users of the goods as consumers although

they may not be buyers at the same time. The words “...with the approval of the buyer” in the definition denotes that the user of the goods should be a rightful user.

Example:

A purchased a scooter which was in B’s possession from the date of purchase. B was using it and taking it to the seller for repairs and service from time to time. Later on B had a complaint regarding the scooter. He sued the seller. The seller pleaded that since B did not buy the scooter, he was not a consumer under the Act. The Delhi State Commission held that B, the complainant was using it with the approval of A, the buyer, and therefore he was consumer under the Act. [*Dinesh Bhagat v. Bajaj Auto Ltd.* (1992) III CPJ 272]

(3) ANY PERSON WHO OBTAINS THE GOODS FOR ‘RESALE’ OR COMMERCIAL PURPOSES’ IS NOT A CONSUMER

The term ‘for resale’ implies that the goods are brought for the purpose of selling them, and the expression ‘for commercial purpose’ is intended to cover cases other than those of resale of goods. When goods are bought to resell or commercially exploit them, such buyer or user is not a consumer under the Act.

Examples:

- (i) A jeep was purchased to run it as a taxi. The question was whether the buyer of the jeep was a consumer under the Act. The Rajasthan State Commission held that to use the jeep as a taxi with the object to earn profits was a commercial purpose, and therefore, the buyer/user was not a consumer within the meaning of the Act. [*Smt. Pushpa Meenav. Shah Enterprises (Rajasthan) Ltd.* (1991) 1 CPR 229].
- (ii) L Ltd. purchased a computer system from Z. The computer system was giving constant trouble and Z was not attending it properly. L Ltd. filed a complaint against Z with the National Commission. Z contended that L Ltd. was not a consumer under the Act because computer system was used for commercial purposes. L Ltd. argued that computer system was not directly used of commercial purposes rather it was used to facilitate the work of the company. The Commission rejected the argument on the grounds that the system made part of the assets of the company, and its expenses were met by it out of business income. Thus the said purchase was a purchase for commercial purposes and L Ltd. was held not to be a consumer under the Act.

One thing is plain and clear from the decided cases that what is important to decide is - Whether a particular good is used for commercial purposes. If it is the buyer/user is not a consumer and if it is not - the buyer/user is a consumer.

(4) PERSON BUYING GOODS FOR SELF EMPLOYMENT IS A CONSUMER

When goods are bought for commercial purposes and such purchase satisfy the following criteria:

- the goods are used by the buyer himself;
- exclusively for the purpose of earning his livelihood;
- by means of self-employment,

then such use would not be termed as use for commercial purposes under the Act, and the user is recognized as a consumer.

Examples:

- (i) A buys a truck for plying it as a public carrier by himself, A is a consumer.
- (ii) A buys a truck and hires a driver to ply it, A is not a consumer.
- (iii) A has one cloth shop. He starts another business of a photocopier and buys a photocopy machine. He hasn't bought this machine exclusively for the purpose of earning livelihood. He is not a consumer under the Act.

The intention of the legislature is to exclude big business houses carrying on business with profit motive from the purview of the Act. At the same time it is pertinent to save the interests of small consumers who buy goods for self-employment to earn their livelihood, like a rickshaw puller buying rickshaw for self-employment, or a farmer purchasing fertilizer for his crops, or a taxi driver buying a car to run it as a taxi, etc.

Example:

A was running a small type institute to earn his livelihood. He purchased a photocopy machine-canon NP 150. It proved defective. He sued the seller who contended that A is not a consumer under the Act as he purchased the photocopier for commercial use. The Commission held that by no stretch of imagination it can be said that the photocopier would bring large scale profits to A. It was a part of his small scale enterprise. He was construed as consumer under the Act.

However, if such a buyer takes assistance of two or more persons to help him in operating the vehicle or machine, etc., he does not cease to be a consumer.

Examples:

- (i) A buys a truck, ply it himself and hires a cleaner who accompany him all the time and at times drives also when A is busy otherwise, A is a consumer.
- (ii) P, an eye surgeon, purchased a machine from R for the hospital run by him. The machine was found to be a defective one. R contended that P was not a consumer under the Act as the machine was bought for commercial purposes. The National Commission rejected this contention and held that P is a medical practitioner, a professional working by way of self-employment by using his knowledge and skill to earn his livelihood. It was not proved by any evidence that P is running a huge hospital. Thus the purchase of machinery is in the nature of self-employment. [*Rampion Pharmaceuticals v. Dr. Preetam Shah* (1997) 1 CPJ 23 (NCDRC)].

Consumer of services - A person is a consumer of services if he satisfies the following criteria:

1. **SERVICES ARE HIRED OR AVAILED OF:**

The term 'hired' has not been defined under the Act. Its Dictionary meaning is - to procure the use of services at a price. Thus the term 'hire' has also been used in the sense of 'avail' or 'use'. Accordingly it may be understood that consumer means any person who avails or uses any service.

Example: A goes to a doctor to get himself treated for a fracture. Here A is hiring the services of the doctor. Thus he is a consumer.

What constitutes hiring has been an issue to be dealt with in many consumer disputes. If it is established that a particular act constitutes hiring of service, the transaction falls within the net of the Consumer Protection Act, and *vice-versa*.

Examples:

- (i) A passenger getting railway reservation after payment is hiring service for consideration.
- (ii) A landlord neglected and refused to provide the agreed amenities to his tenant. He filed a complaint against the landlord under the Consumer Protection Act. The National Commission dismissed the complaint saying that it was a case of lease of immovable property and not of hiring services of the landlord. [*Smt. Laxmiben Laxmichand Shah v. Smt. Sakerben Kanji Chandan*[1992] 1 Comp. LJ 177 (NCDRC)].

- (iii) A presented before the Sub-Registrar a document claiming it to be a will for registration who sent it to the Collector of Stamps for action. The matter remains pending for about six years. In the meantime, A filed a complaint under the Consumer Protection Act alleging harassment by the Sub-Registrar and Collector and prayed for compensation. The National Commission held the view that A was not a “consumer” under the CPA. Because there was no hiring of services by the complainant for consideration and because a Government official doing his duty as functionary of the State under law could not be said to be rendering a service to the complainant. [*S.P. Goel V. Collector of Stamps* (1995) III CPR 684 (SC)].

2. **CONSIDERATION MUST BE PAID OR PAYABLE**

Consideration is regarded necessary for hiring or availing of services. However, its payment need not necessarily be immediate. It can be in installments. For the services provided without charging anything in return, the person availing the services is not a consumer under the Act.

Examples:

- (i) A hires an advocate to file a suit for recovery of money from his employer. He promises to pay fee to the advocate after settlement of the suit. A is a consumer under the Act.
- (ii) A goes to a Doctor to get himself treated for a fracture. The Doctor being his friend charged him nothing for the treatment. A is not a consumer under the Act.
- (iii) B issued an advertisement that a person could enter the contest by booking a Premier Padmini car. S purchased the car and thus entered the contest. He was declared as winner of the draw and was thus entitled to the two tickets from New Delhi to New York and back. S filed a complaint alleging that the ticket was not delivered to him. The National Commission held that S was not a consumer in this context. He paid for the car and got it. B was not liable so far as the contract of winning a lottery was concerned. [*Byford v. S.S. Srivastava* (1993) II CPR 83 (NCDRC)].

The Direct and Indirect taxes paid to the State by a citizen is not payment for the services rendered.

Example:

T was paying property tax for his house to the local corporation. This corporation was responsible for proper water supply to the premises under its work area. T raised a consumer dispute over the inadequacy of water supply by the corporation.

The National Commission held that it was not a consumer dispute as water supply was made by the corporation out of its statutory duty and not by virtue of payment of taxes by T. - *Mayor, Calcutta Municipal Corporation v. Tarapada Chatterjee*(1994) 1 CPR 87 (NCDRC).

3. **BENEFICIARY OF SERVICES IS ALSO A CONSUMER**

When a person hires services, he may hire it for himself or for any other person. In such cases the beneficiary (or user) of these services is also a consumer.

Example:

A takes his son B to a doctor for his treatment. Here A is hirer of services of the doctor and B is beneficiary of these services. For the purpose of the Act, both A and B are consumers.

Note that in case of goods, buyer of goods for commercial purpose ceases to be a consumer under the Act. On the other hand, a consumer of service for commercial purpose remains a consumer under the Act.

Example:

S applied to Electricity Board for electricity connection for a flour mill. There was a delay in releasing the connection. S made a complaint for deficiency in service. He was held a consumer under the Act. - *Shamsher Khan v. Rajasthan State Electricity Board* (1993) 11 CPR 6 (Raj.).

Thus the concept of 'consumer' has been given a specific meaning with a view to avoid technicalities of the existing law. First of all, the definition avoids the controversy relating to the requirement of privity in contractual transaction. It is well known that a contract confers rights and imposes obligations on the party to the contract only and not on third persons.

For instance H buys, an electronic iron from a dealer D. because of some manufacturing defect, the iron gives an electric shock and W, the wife of H, suffers injury due to electric shock. W has no remedy against D because of the lack of privity under the Indian Contract Act, 1872, even though she may sue the manufacturer for negligence under the law of torts. Under the Consumer Protection Act, 1986, however, an action will against D and W can be complainant. She has not to prove negligence but may invoke express or implied conditions and warranties. She might argue that the iron was not merchantable or fit for its purpose under S. 16 of the sale of goods act, 1930. She would be entitled to replacement of the iron or payment of the price.

The same principal applies to the actual user of services with the approval of the original hirer. Thus a tenant using the electricity supply with the express approval of the land lord shall be considered a beneficiary and can, therefore, invoke the provisions of the Act. Accordingly, it has been held that, "parliament intended to provide protection under the act not only to the person who had hired the services but also the person who availed the services with the approval of the person who had hired the services."

The above provision reveals that a person claiming himself as 'consumer' should satisfy that:

- (1) There must be a sale transaction between the seller and the buyer;
- (2) The sale must be of goods or services;
- (3) The buying of goods or services must be for consideration;
- (4) The consideration has been paid or promised or partly paid and partly promised or under any system of deferred payment;
- (5) The user of the goods or services may also be a consumer when such use is made with the approval of the buyer.

The Consumer Protection Act has succeeded in bringing about fair play in the supply of goods and services to a large extent. The Act applies to almost all goods and services. The Consumer Protection Act, which has been defined as "the Magna Carta", of Consumers in India but miles to go for achieving the concrete consumer justice and to make consumer a real king of the market in India.

3.4 Rights and Responsibilities of the Consumers

It is recognized theory of the jurisprudence that rights and duties are correlated and there can be no right without duty and vice-versa. Rights are the product of our demands where duties are the outcome of our conscience. They cannot exist alone because they are interdependent. Right cannot be enjoyed until and unless someone have corresponding duty to perform and on the other hand duty cannot perform except analogous right will be available.

Though sometime there can be some absolute duties depending upon one's conscience. The consumer law is also the integral part of jurisprudence hence consumer rights should also be matched with some parallel duties/responsibilities for its absolute implementation.

3.4.1 Rights of the Consumer:

Consumer rights are now an integral part of our lives like a consumerist way of life. They have been well documented and much talked about. We have all made use of them at some point in our daily lives. Market resources and influences are growing by the day and so is the awareness of one's consumer rights. These rights are well-defined and there are agencies like the government, consumer courts and voluntary organizations that work towards safeguarding them.

In the 20th century, the presence and influence of the market grew dramatically in consumers' life. We began to purchase things from the market for a price. Soon, mass production and industrial production came into being, giving the consumer world an entirely new dimension. Consumers should, not only to get value for their money but also to save him from the losses and inconvenience occurred due to market manipulations, know his rights as a consumer. They are as follows:

Rights under Consumer Protection Act, 1986:

1. Right to safety: It is Right to safety against such goods and services as are hazards to health, life and property of the consumer. For example, spurious and sub-standard drugs ; appliances made of low quality of raw material, such as, electric press, pressure cooker, etc. and low quality food products like bread, milk, jam, butter etc. Consumers have the right to safety against loss caused by such products.

2. Right to be Informed/ Right to Representation: Consumer has also the right that he should be provided all those information on the basis of which he decides to buy goods or services. This information relates to quality, purity, potency, standard, date of manufacture, method of use, etc. of the commodity. Thus, producer is required to provide all these information in a proper manner, so that consumer is not cheated.

3. Right to choose: Consumer has the full right to buy goods or services of his choice from among the different goods or services available in the market. In other words, no seller can influence his choice in an unfair manner. If any seller does so, it will be deemed as interference in his right to choice.

4. Right to be heard: Consumer has the right that his complaint be heard. Under this Right the consumer can file complaint against all those things which prejudicial to his interest. First there rights mentioned above (Right to Safety; Right to be Informed; Right to choose) have relevance only if the consumer has right to file his complaint against them. These days, several large and small organisations have set up Consumer service cells with a view to providing the right

to be heard to the consumer. The function of the cell is to hear the complaints of the consumers and to take adequate measures to redress them. Many newspapers like The Economic Times have weekly special columns to entertain the complaints of the consumers.

5. Right to Seek redress: This provides compensation to consumer against unfair trade practice of the seller. For instance, if the quantity and the quality of the product do not confirm to the promise of the seller, the buyer has the right to claim compensation, such as free repair of the product, taking back of the products, changing of the product by the seller.

6. Right to consumer education: Consumer education refers to educate the consumer constantly with regards to their rights. In other words, consumers must be aware of the rights they enjoy against the loss they suffer on account of goods and services purchased by them. Government has taken several measures to educate the consumers. For instance, Ministry of civil supplies publishes a quarterly magazine under the title "UPBHOKTA JAGRAN". Doodarshan telecasts programme tittles "SANRAKSHAN UPBHOKTA KA".

3.4.2 Rights under United Nation:

In addition to this six rights enumerated under Consumer Protection Act,1986 the United Nations organization also provided following rights of Consumers:

1. Right to Basic Needs: The Basic need means those goods and services which are necessary for the dignified living of people. It includes adequate food, clothing, shelter, energy, sanitation, health, care, education and transportation. All consumers have the right fulfill these basic needs.

2. Right to Healthy Environment: This right provides consumers the protection against environment pollution so that the quality of life enhanced. Not only this, it also gives stress that the need to protect the environment is for future generations as well.

3. Promotion and protection of consumers' economic interests: Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the market place.

4. Standards for the safety and quality of consumer goods and services: Governments should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services and give them appropriate publicity.

5. Distribution facilities for essential consumer goods and services: Governments should, where appropriate, consider:

a) Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; where appropriate, specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas.

b) Encouraging the establishment of consumer cooperatives and related trading activities, as well as information about them, especially in rural areas.

6. Measures enabling consumers to obtain redress: Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers.

7. Education and information programs: Governments should develop or encourage the development of general consumer education and information programs, including information on the environmental impacts of consumer choices and behavior and the possible implications, including benefits and costs, of changes in consumption, bearing in mind the cultural traditions of the people concerned. The aim of such programs should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities.

8. Promotion of sustainable consumption: Sustainable consumption includes meeting the needs of present and future generations for goods and services in ways that are economically, socially and environmentally sustainable.

3.4.3 Responsibilities of the Consumer

While we all like to know about our rights and make full use of them, consumer responsibility is an area which is still not demarcated. The consumers have a number of rights regarding the purchase of things, but at the same time they have

some responsibilities too. It means that the consumer should keep a few things in mind while purchasing goods or availing services. They are as follows:

1. Consumer should exercise his right: Consumers have many rights with regard to the goods and services. They must be aware of their rights while buying. These rights are: Right to safety, Right to be informed, Right to representation, Right to seek redressal, Right to consumer education, etc.

2. Cautious consumer/ do not buy blindly: The consumers should make full use of their reason while buying things. They should not take the seller's word as final truth. In other words, while buying consumer must get information regarding the quality, quantity, price, utility etc. of goods and services.

3. Filing complaint for the redressal of genuine grievances: It is the responsibility of a consumer to approach the officer concerned there is some complaint about the goods purchased. A late complaint may find that the period of guarantee/warranty has lapsed. Sometimes, consumers ignore the deception of businessmen. This tendency encourages corrupt business practices.

4. Consumer must be quality conscious/Do not compromise on quality: The consumers should never compromise on the quality of goods. Therefore, they should not buy inferior stuff out of greed for less prices. If the consumers behave like this, there cannot be any protection for them from any quarter. It is also the responsibility of the consumers only to buy goods with the **ISI, Ag mark, Wool mark, FPO, Hall mark** etc. printed on them. All these symbols are indicative of the good quality of the goods.

5. Advertisements often exaggerate/Beware of false advertisement: The seller informs the consumer about their things through the medium of advertisement. The sellers exaggerate the quality of their goods. Therefore, it is the responsibility of the consumers to recognize the truth of advertisement.

6. Do not forget to get Receipt and Guarantee/warranty card: One should always get a receipt or bill for the things purchased. In case a guarantee/warranty card is also offered by seller, it should also be taken. In case the goods purchased are of inferior quality or some defects appears and bothers the customers, these documents will be of great help in settling all kinds of dispute with the seller.

7. Do not buy in hurry: The first important responsibility of consumers is that they should not buy in hurry. It means that the consumers should make an estimate of the things they want to buy their along with their quantity required by

them. They should also take in consideration the place from where to buy the things.

3.5 Sum Up:

Consumer protection laws are federal and state statutes governing sales and credit practices involving consumer goods. Such statutes prohibit and regulate deceptive or unconscionable advertising and sales practices, product quality, credit financing and reporting, debt collection, leases, and other aspects of consumer transactions. The goal of consumer protection laws is to place consumers, who are average citizens engaging in business deals such as buying goods or borrowing money, on an even par with companies or citizens who regularly engage in business. Several types of agencies and statutes, both state and federal, now work to protect consumers.

India has the biggest consumer movement today due to the efforts of consumer organizations and the establishment of consumer courts etc. Still, the present scenario is not very encouraging. Unfortunately the consumer courts have become replica of legal courts, as the procedure is no longer simple and quick in practice. The consumer redressal process is relatively cumbersome and time-consuming than intended by the legislature. The process involves engaging professional personnel, though optional but technicality encourages aggrieved person to appoint the same, submission of fees, if required, required time for filing the case and attending the court proceeding and certain other formalities like producing the bill, warranty cards etc.

These procedures need to be made simpler and quicker for making the process more meaningful and realistic. Every consumer in own interest has to realise the role and importance in the right perspective. In a competitive economic environment, the consumer has to exercise the choice either in favor of or against the goods and services. The choice is going to be vital and final. One would have to realize the importance and prepare to exercise their rights with responsibility. The consumers in society get a position in the market depending upon what they do or do not do.

3.6 References:

- Pushpa Girimaji, Consumer Right for Everyone (Penguin Books), 2002 .

- Consumers' Awareness about Rights and Grievance Redressal, by Dr. Durga Surekha, 2010.

3.7 Check Your Progress:

Fill in the Blanks

1. The term 'consumer' has been defined in in the COPRA.
2. The buying of goods or services must be for
3. The user of the goods or services may also be a when such use is made with the approval of the.....
4. The right to safety is against such goods and services which are hazards to of the consumer.
5. One should always get a for the things purchased.

True or False

1. A person is said to be consumer only when he purchases the goods or services for consideration.
2. The goods purchased by the consumer can be for commercial purposes.
3. The person entering into a contract of personal services is deemed to be consumer.
4. The doctrine of privity of contract applies to COPRA.
5. Sustainable consumption includes meeting the needs of present and future generations for goods and services in ways that are economically, socially and environmentally sustainable.

Answers to Check Your Progress:

Fill in the Blanks

1. Section 2(1) (d)
2. Consideration
3. Consumer, buyer
4. Health, life and property
5. Receipt or bill

True or False

1. True
2. False
3. False
4. False
5. True

3.8 Terminal Questions:

- Q.1** What do you mean by the term consumer? Discuss in the light of the definition of consumer given in the 1986 Act?
- Q.** Discuss the rights and responsibilities conferred on the consumers?

UNIT - 4

CONSUMER RIGHTS, DUTIES AND LAWS IN INDIA

STRUCTURE:

- 4.1 Introduction
- 4.2 Necessity of Protection of the Consumer Rights
- 4.3 Reasons for Breach of Consumer Rights
- 4.4 The Consumer Protection Act, 1986
 - 4.4.1 Aims & Objectives of the Act
 - 4.4.2 Salient Features of the Consumer Protection Act, 1986
- 4.5 Rights and Responsibilities of Consumers
 - 4.5.1 Consumer Protection Councils: Central Council and State Councils**
 - 4.5.2 Definition of Consumer**
 - 4.5.3 Consumer Disputes**
 - 4.5.4 Consumer Rights in India
 - 4.5.5 Duties
- 4.6 Consumer Protection Measure
- 4.7 Remedies
- 4.8 Sum Up
- 4.9 References
- 4.10 Check Your Progress
- 4.11 Terminal Questions

Objectives:

After studying the Unit you should be able to

- know the rights and duties of the consumer.
- understand the Law relating to rights and duties of the consumer.

4.1 INTRODUCTION:

The contemporary world under the aegis of liberalization, free-market and open trade has led to limitless industrial development turning the whole world into a global village-market. This has contributed to manifold linkages in the political, ideological, economic, social, health and industrial spheres whereby no nation, no community and no individual can remain an island by himself.

The goals of Development for all, Wealth for all, Health for all, clean Environment for all and Consumer Justice for all - which were rather an Eldorado seem to become a near possibility in the twenty - first century. This has been possible due to number of external and internal ideological, political, social and economic factors necessary for human survival as well as mastery of man over nature culminating in revolutionary progress in scientific and technological fields opening new vistas, opportunities and challenges to man in all spheres.

However, such extraordinary developments have also caused some impending problems for mankind as how to survive against the mighty new hazards unleashed by liberalization and new free market economy. As unbridled development has led to environmental pollution, the free market system has led to manifold un-ethical and unfair trade practices resulting in the exploitation of the entire segment of consumers in both the developed and the developing world.

The consumers are continually subject to manipulate and non-manipulated unfair trade practices such as monopoly situation, cutthroat competition, sub-standard quality, misrepresentation etc. to garner benefits by tortuous, illegal and immoral means detrimental to public interest in general and the consumer interest in particular. Consequently the notion of Consumer Sovereignty is merely a populist slogan having no or little bearing in the market place and the business world which is propelled by laissez faire overtones like demand-supply, profits, sub-standard quality, high price wherein the buyer is generally at the receiving end.

Some such consumer hazards adversely affect human health, safety, quality, purity and standard of consumer goods. The absence of fair price, weak bargaining, lack of business ethic etc. the consumers for whom goods are produced become a usual casualty in the hub-bub of the market place. The lure of profits and incomes induces enterprises in collusive practices and behaves in a way, which is contrary to overall interests of the consumers. Consequently a spate of consumer laws have been passed especially in the latter half of the twentieth century for consumer protection against adulteration of foods, drugs cosmetics for information with regard to quality of consumer products, product safety, price warranty of goods and

so forth fixing accountability and strict liability on the seller-cum-manufacturer rather than the buyer.

The Consumer Protection Act, 1986 is an innovation in India for the better protection of the consumers. The praiseworthy objective of the enactment is to provide inexpensive and quick justice without any delay. There are number of laws, which protect the rights of consumers, but each Act deals with a special class of consumers and that too, with regards to only a particular area of consumer behavior. Whereas the Consumer Protection Act is a special class of legislation, which not only recognizes certain basic rights of consumers but also provides for an expeditious mechanism for the redressal of their grievances.

4.2 Necessity of Protection of Consumer Rights

The consumers have certain basic rights like the right to safety, right to be informed, right to choose, and the right to be heard. But do we always remember these rights while buying goods: Perhaps not. However, even if we are aware of these rights, sellers very often take advantage of our position and supply goods, which are defective, harmful, or unsafe and cause injury.

For example, the consumer has gone to buy edible oil in a store. The shopkeeper tells the consumer that it is available in a closed tin or container. The consumer wants to be sure that the oil is not adulterated, i.e., it is not mixed with some inferior or harmful oil. The shopkeeper will show the consumer the name of the producer on the label and say that it is a well-known company, which does not supply impure oil. However, after using the oil the consumer falls ill. Can the consumer go to the shopkeeper and return the oil? No, he will not take back the partly used oil in the open tin. He will perhaps tell the consumer that your illness must be due to something else. Therefore, at best the consumer can stop buying edible oil of the same label. However, what is the assurance that the consumer will not face the same problem with the oil of another producer?

Again, take for example the defect that consumers may find in a fan regulator, or electric heater, or a TV. During the warranty period, the dealer may repair it free of charge, but the defect may be there even afterwards. What will the consumer do? The defect in the electric heater causes injury. Is there any remedy? The consumer may take it to the seller, who may put the blame on the consumer, saying that the consumer did not take necessary precaution while using it. These are some instances of consumer helplessness even if he is a wise buyer.

Therefore, to safeguard the interest of consumers it is felt that some measures are necessary to help the common-man. Thus, consumer protection refers to the steps necessary to be taken or measures required to be accepted to protect consumers from business malpractices. It may be regarded as a movement like consumerism. This is necessary primarily because businessperson aim at maximizing profits and this is often done at the expense of consumers.

4.3 Reasons for Breach of Consumer Rights:

1. Limited Information—providing full and correct information will help in the choice.
2. Limited Supplies—when goods and services are in short supply then price shoots up.
3. Limited Competition.—single producer may manipulate the market in terms of price and stocks.
4. Low Literacy.—illiteracy leads to exploitation. Hence, Consumer Awareness is essential.
5. Rise of consumer Awareness- Kautilya was one of the earliest to write in his Arthashastra about the need for Consumer awareness and protection. With the growth of private sector, there is a greater need for discipline and regulation of the market. Consumers must be aware of the sale and purchase of goods, the health and security aspects also.

Ensuring the safety of food items sold in the market is essential these days. Legal measures for consumer safety and consumer awareness must be uniform, and transparent in terms of prices, quality of goods, and stocks. Consumers must have the tools to combat malpractices and protect their rights.

4.4 The Consumer Protection Act, 1986:

Several laws had been passed to protect consumer rights. The Contract Act, 1872, The Sale of Goods Act, 1930, The Agricultural Produce/Trading and Marking Act, 1937, The Drugs and Cosmetics Act, 1940, The Essential Commodities Act, 1955, The Preventions of Food Adulteration Act, 1954, The Monopolies and Restrictive Trade Practices Act, 1969, The Standards of Weights and Measures Act, 1976, etc., are examples of these laws.

It was; however, felt that there was need for a specific law for consumer protection. Therefore, The Consumer Protection Act, 1986 was passed.

The Consumer Protection Act seeks to provide better protection of the interests of consumers. It aims to provide a speedy and simple redressal to consumer grievances. The Consumer Protection Act offers for the setting up of three-tier quasi-judicial machinery. This machinery has been empowered to give relief of a specific nature and to award compensation to consumers. The Consumer Protection Act applies both the goods and services. It protects not only buyer but also user in the case of goods and any beneficiary in case of services.

4.4.1 Aims & Objectives of the Act

The State Institute for Consumer Awareness (here-in-after referred to as SICA) is functioning as a State Level Resource Center for Consumer Awareness / Protection with the following aims and objectives:

- To promote consumer awareness among the people of the State.
- To protect the rights of the consumers in the State and make them aware of their duties (while purchasing, various goods and availing services)
- To create awareness among the consumers about the Consumer Protection Act 1986 and other related Acts / Provisions through which grievances of consumers can be redressed.
- To take up activities such as conducting seminars, visual display, workshops, consumer camps, awareness camps, advertisement, leaflets, booklets, brochures programs in electronic media etc. for creating awareness generation about rights responsibility for the consumer.
- To organize library facilities where reference material on consumer rights will be available for reference of general consumers and consumer activists and other who interest on the subject.
- To collect information about the quality, quantity, potency, purity, standard and price of goods and types of services available in the market, (for creating awareness among the consumers about) the unfair trade practices adopted by the unscrupulous traders and service providers.
- To seek redressal in the matter of unfair trade practices or unscrupulous exploitation of consumers through provisions of law.
- To render consultancy and advisory services to the consumers and Consumer Organization's to enable them to assert consumer rights and to pursue remedies.

- To prepare and publish publicity material such as books, periodicals, journals, brochures to create awareness among the general people of Orissa on consumer rights.
- To function as a State level resource center for voluntary consumer organizations, consumer activists and members of general public having interest in protection of consumer rights.

4.4.2 Salient Features of the Consumer Protection Act, 1986

1. **Social Welfare Law:** It is a highly progressive piece of social welfare legislation. It is acclaimed as the Magna Carta of Indian consumers. This is a unique law, which directly pertains to consumers in the market place and seeks to redress complaints arising there from.
2. **Comprehensive Provisions and Effective Safeguards:** Its provisions are very comprehensive. It provides effective safeguards to the consumers against various types of exploitation and unfair trade practices. In fact, it provides protection that is more effective to consumers than any other law in India.
3. **Special Consumer Courts:** The Consumer Protection Act has created special consumer courts for enforcement of the rights of consumers.
4. **Three-Tier Grievance Redressal Machinery:** The Consumer Protection Act provides for a three-tier consumer grievance redressal machinery — District Forums at the base, the State Commission at the middle level and the National Commission at the apex level. The redressal machinery is quasi-judicial in nature.
5. **Simple and Inexpensive:** There are no complicated or elaborate procedures or other technicalities. The redressal machinery is merely to observe the principles of natural justice. No court fee or any other charge is to be paid by the complainant. It is not mandatory to employ any advocate. The complainant can write his grievance- on a simple paper along with the name and address of the opposite party against whom the complaint is made. Thus, the consumer protection Act provides a simple, convenient and inexpensive redressal of consumer grievances.
6. **Covers Goods and Services:** The Consumer Protection Act covers both the goods and services rendered for consideration by any person or organization including public sector undertakings and Government agencies. However, services rendered free of charge or under any contract of personal service are excluded. All suppliers of goods and services in private, public and cooperative sectors are covered under the Act.

7. **Time Frame:** The Consumer Protection Act lays down time limits for the disposal of cases so as to provide speedy redressal of grievances.
8. **Class Action:** The Consumer Protection Act allows filing of class action complaints on behalf of groups of consumers having common interest.
9. **Check on Unfair Trade Practices:** The Consumer Protection Act also covers complaints relating to unfair trade practices. Thus, a consumer can protect against food adulteration, short weighting and overcharging, directly to the District Forums. The consumer can pick up a food sample from a shop, get it analyzed by a chemist and file a complaint on that basis.
10. **Check on Overcharging:** The Consumer Protection Act also provides for complaints against charging in excess of the price of a product fixed by a law or rule and/or displayed on the packaged commodities.
11. To promote voluntary consumer movement and to ensure involvement of consumers. The Bill provides for the establishment of Consumer Protection Councils in Centre and the States. These Councils will have both non-official and official members. The objects of the Council will be to promote and protect the rights of the consumers.

4.5 Rights and Responsibilities of Consumers:

Consumer Rights:

It is referred to as the Right to Safety and protection from hazardous goods or services. The Right to be Informed and protected against deceitful, fraudulent or information that misleads and have an access to correct information as well as facts required to go for informed choices along with decisions. The Right to Choose and have easy access to different types of products and services offered at competitive and fair prices.

The Right to be heard helps to express and represent interests of consumer in the making of political and economic decisions. The Right to Redress and getting compensation for misrepresentation, unsatisfactory services or shoddy goods is important for consumers and the Right to Consumer Education helps the consumer to become informed and capable of functioning properly in the market. The Right to a Healthy Environment enhances the quality of life and gives protection from environmental issues for present as well as future generations.

Consumer Responsibilities:

Consumer responsibilities refer to the responsibility of having awareness of the quality and safety of goods and services while purchasing and the responsibility to collect information available about a product or service and to update oneself with changes or innovations taking place in the market.

It means the responsibility to think as well as make choices independently and consider immediate needs and wants. It refers to responsibility to speak out, and to inform manufacturers and governments of needs and wants and the Responsibility to Complain or inform business along with other people about discontentment with a product or service in an honest way. There should be Responsibility of being an Ethical Consumer and be fair and not engage not in malpractices which make all consumers pay.

The COPRA provides for establishment of Councils at national and state level for the protection of consumer rights.

4.5.1 Consumer Protection Councils: Central Council and State Councils:

The Consumer Protection Act, 1986 sought to provide better protection to the interests of the consumers and for that purposes made provision for the establishment of Consumer Protection Councils and other authorities for resolving consumers' disputes. The Consumer Protection Councils would be set at national and state levels. (Section 6 of Consumer Protection Act)

The objects of the Central Consumers Protection Council and State Consumers Protection Councils are to promote and protect the rights of the consumers, such as:

- The right to be protected against marketing of goods and services, which are hazardous to life and property.
- The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services as the case may be so as to protect the consumer against unfair trade practices.
- The right to be assured wherever possible, access to a variety of goods and services at competitive prices.
- The right to be heard and to be assured that consumers' interest will receive due consideration at appropriate forum.
- The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers, and
- The right to consumer education.

The objects of State Consumer Protection Council are to promote and protect within the state the rights of the consumers. Before knowing the rights and responsibilities of the consumer in detail, one should know the 'who is consumer' and 'what is consumer dispute'.

4.5.2 Definition of Consumer

Consumer, under section 2(1) (d) of the Consumer Protection Act, 1986, means one who pays money for goods or services. In other words, a consumer is a specific person who pays money either for purchase of some goods or some service of other persons, individual or corporate body. The definition under section 2(1) (d) (i) do not include a person who obtains such goods for resale or for any commercial purposes. But "Commercial purpose" under sub-clause (i) above does not include use by a consumer of goods bought and used by him exclusively for purpose of earning his livelihood, by means of self-employment.

Any individual who purchases products or services for his personal use and not for manufacturing or resale is called a consumer. A consumer is one who is the decision maker whether or not to buy an item at the store, or someone who is influenced by advertisement and marketing. Every time someone goes to a store and buys a shirt, toy, beverage or anything else, they make a decision as a consumer.

Consumer refers to any person who purchases some goods for a consideration. Consideration may be either paid or promised to pay or partly paid and partly promised, or found under any system of deferred payment and does include any user of this type of goods. He may be person other than the person who purchases these types of goods for consideration paid, promised, partly paid, or partly promised, or under any type of system of deferred payment when this type of use is done with the agreement of such person. Consumer does not include a person who gets such goods for resale or for any business purpose or hires or avails of some services for a consideration which has been paid or promised or partly paid and partly promised, or under some system of deferred payment as well as includes some beneficiary of such services other than the people who 'hire or avail 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 provided having the approval of the first described person and does not include a person who takes such services for any business purposes.

4.5.3 Consumer Disputes:

Consumer dispute is a dispute, which arises out of a denial of allegation complained in a complaint by the person against whom such complaint has been made. For definition of the term 'Complaint', it is an allegation in writing made by a consumer or a voluntary consumer association duly registered or by the central government or the state government. Disputes means a claim made by one party and denied by the other.

4.5.4 Consumer Rights in India:

The definition of Consumer right is 'the right to have information about the quality, potency, quantity, purity, price and standard of goods or services', as it may be the case, but the consumer is to be protected against any unfair practices of trade. It is very essential for the consumers to know these rights.

However there are strong and clear laws in India to defend consumer rights, the actual plight of consumers of India can be declared as completely dismal. Out of the various laws that have been enforced to protect the consumer rights in India, the most important is the Consumer Protection Act, 1986. According to this law, everybody, including individuals, a firm, a Hindu undivided family and a company, have the right to exercise their consumer rights for the purchase of goods and services made by them. It is significant that, as consumer, one knows the basic rights as well as about the courts and procedures that follow with the infringement of one's rights.

The Rights and Duties of Consumers as codified under the Indian Laws the Consumers have the following rights

1. Right to Safety—to protect against hazardous goods.
2. Right to be informed -about price, quality, purity.
3. Right to choose—access to a variety of goods and services at competitive prices.
4. Right to be heard—consumers' interest and welfare must be taken care of.
5. Right to seek Redress—protection against unfair trade practices and settling genuine grievances.
6. Right to Consumer Education.—Knowledge about goods and issues related to consumers.

Right to Safety:

According to the Consumer Protection Act 1986, the consumer right is referred to as 'right to be protected against marketing of goods and services which are

hazardous to life and property'. It is applicable to specific areas like healthcare, pharmaceuticals and food processing. This right is spread across the domain having a serious effect on the health of the consumers or their well-being viz. Automobiles, Housing, Domestic Appliances, and Travel etc. When there is violation of the right then there occur medical malpractice lawsuits in the country. It is estimated every year that thousands or millions of citizens of India are killed or seriously injured by immoral practices by doctors, hospitals, pharmacies and the automobile industry. Still the government of India, known for its callousness, does not succeed in acknowledging this fact or making a feeble effort for maintaining statistics of the mishaps.

The Government of India needs to have world-class product testing facilities to test drugs, food, cars or any other consumable product that can prove to be a menace to life. It does not happen coincidentally that Tata Nano is sold in India for half of what it costs in a country, which is industrially developed; this is a classic case of requirement of a cheap product that outweighs the need for safety of family and self. The developed countries like the United States have stalwart agencies, which oversee the protection of consumer products, the Food and Drug Administration (FDA) for food and drugs, the National Highway Traffic Safety Administration (NHTSA) for automobiles and the Consumer Product Safety Commission (CPSC) for various other consumer products etc. This right needs each product, which can potentially be a danger to our lives to be marketed after adequate and complete verification as well as validation. India is 50 years away, for empowering this right adequately and completely.

Right to Choose:

The definition of Right to Choose as per the Consumer Protection Act 1986 is 'the right to be assured, wherever possible, to have access to a variety of goods and services at competitive prices'. For regulating the market place, there is just one factor required and that is competition. The existence of cartels, oligopolies and monopolies prove to be counterproductive to consumerism.

The natural resources, liquor industry, telecommunications, airlines etc. all are being controlled by a mafia to some or the other extent. Since the Indian consumers come from a socialistic background, the tolerating of monopolistic market is found in their blood. It is seldom seen that people want to switch the power company, in the times when they have a blackout at home.

It is interesting to know that even micro markets like fish vendors in some cities are known to collude and discourage the consumers' bargaining power. No matter what size or form, or span, but collusion of various companies which sell a similar kind of product is unethical or say less legal. It can be estimated that India has to stride for about 20 more years for empowering its citizens fully in this regard.

Right to be Heard:

As stated in the Consumer Protection Act 1986, 'the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums' is the definition of the right to be heard. This right helps to empower the consumers of India for putting forward their complaints and concerns fearlessly and raising their voice against products or even companies and ensure that their issues are taken into consideration as well as handled expeditiously. However, until date the Indian Government has not formed even one outlet for hearing the consumers or their issues to be sorted out.

There are a number of websites striving to do this. The major objective of Consumer is to ensure that their voices are heard by the corporate world. There is a website, Consumerdaddy.com, where consumers can upload their criticisms as well as file complaints. Every criticism filed gradually lessens the overall score of the product which is being criticized therefore each complaint is independently checked by an investigator who belonged to Consumerdaddy.com website. This website provides the consumers the benefit of doubt always, so their voice is considered over that of the company.

It is believed at consumerdaddy.com, that consumer is always right, and that he is the king. In case a consumer makes an allegation regarding the product, the onus goes to the dealer, or supplying company or manufacturer to disprove that allegation is not true. To be precise, the consumer is heard, and the load of proof goes to the company. The government for empowering the citizens with this right makes various attempts, and it is believed that about 10-15 years more are required for the accomplishment of this goal.

Right to Redressal:

The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers' is referred to as the right to redressal according to the Consumer Protection Act 1986. The government of India has been more successful with regard to this right. The Consumer courts like

District Consumer Disputes Redressal Forums at district level, State Consumer Disputes Redressal Commissions and National Consumer Disputes Redressal Commissions have been incorporated with the help of the consumer protection act. These consumer grievance redressal agencies have fiduciary as well as geographical jurisdictions, which address consumer cases between businesses and consumers.

About 20 lakhs Consumer cases are heard in the district consumer forum, and around one crore can be heard in the state consumer court while more than one crore cases are heard at national consumer court. It has been found that if one becomes guardian of consumer protection or consumer rights in the country these courts today are found to be ineffective because of bureaucratic sabotages, clogged cases, callousness of government and decadent infrastructure. Only some of the district forums have appointed officials for time being and majority of them are non-functional because of funding and infrastructure constraints.

There are around 20-30 million open cases in India which remain unsolved and would take around 320 years to wind up. Having such type of compromised legal system the consumer cases form just civil litigations and are carried forward to the bottom of the priority list. It is estimated that India is 10 years away in effectively ensuring the right to redressal to every consumer of India.

Right to Consumer Education:

The right of every Indian citizen to have education on matters regarding consumer protection as well as about her/his right is regarded as the last right provided by the Consumer Protection Act 1986. The right makes sure that the consumers in the country have informational programs and materials, which are easily accessible and would enable them to make purchasing decisions that are better than before.

Consumer education might refer to formal education through college and school curriculums as well as consumer awareness campaigns being run by non-governmental and governmental agencies both. Consumer NGOs, having little endorsement from the government of India, undertake the task of ensuring the consumer right throughout the country. India is found to be 20 years away from giving this right that gives power to the common consumer.

Right to Information:

The right to information is defined as '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' in the Consumer Protection Act of 1986. In the market place of India, consumers get information by two ways namely advertising and word of mouth however, these sources are considered to be unreliable but still this word of mouth is quite common here. Because of this, the Indian consumers hardly have precise and complete information for assessing the true value, safety, suitability, reliability of any product. Usually the hidden costs can be found, lack of suitability, quality problems and safety hazards only after the purchase of the product.

There is another right claimed by Indian government on paper, this right must ideally make sure that all consumable products have been labeled in a standard manner containing the cost, quantity, the ingredients and instructions given to use the product safely. It is unfortunate that even the medicines in the country do not follow a standardized labeling convention. There should be establishment of unit price publishing standards for consumer market where costs are revealed in standard units like per kg or per liter. The consumers, ought to be informed in an exact yet accurate manner for the cost involve during time of availing a loan. For providing benefit to the society through this right, advertisers must be held against the standards of products in the advertisements.

The pharmaceuticals require disclosing potential side effects related to their drugs and manufacturers ought to be required to publish reports from independent product testing laboratories for the purpose of comparing the quality of their products from competitive products. There is a website: Consumerdaddy.com, for the purpose of empowering the consumers with right to information. Without help of these types of websites, it is difficult to spread awareness among the consumers of India. The right to information gives the power to the consumers to have an easy access to information, which is necessary for the consumer.

4.5.5 Duties:

Various efforts have been made by government and non-government organizations to protect the interest of consumer but exploitation of consumer will stop only when consumer himself will come forward to safeguard his own interest. Consumers have to bear some responsibilities, which are given below:

1. *Consumer must Exercise his Right:*

Under Consumer Protection Act the consumer is granted various rights such as right to safety, right to choose, right to be heard etc. but these rights will be useful

only when consumer exercises these rights. The consumer must select the product according to his preferences, he must file a complaint if he is not satisfied with the quality of product, and he must be aware of his rights and exercise them whenever required.

2. *Cautious Consumer:*

The consumer should not blindly believe on the words of seller. He must insist on getting full information on the quality, quantity, utility, price etc. of the goods or services.

3. *Filing Complaints for the Redressal of Genuine Grievances:*

Most of the time consumer ignores the loss he suffers on purchase of defective good or service but this attitude of not filing complaint encourages the corrupt businesspersons to supply low standard or defective goods and services.

The consumer must file a complaint even for a small loss. This awareness among consumers will make the sellers more conscious to supply quality product. Whenever consumer is filing a complaint, it must be genuine. The consumer should not exaggerate the loss or defects of goods.

4. *Consumer must be Quality-Conscious:*

The problems of supply of substandard goods, adulterated products and duplicate products can be solved only when consumer himself stops compromising the quality of product. While purchasing the goods or services consumer must look for quality marks such as ISI mark, Ag mark, ISO, Wool Mark, etc.

5. *Do not be carried away by Advertisements:*

The advertisements often exaggerate the qualities or features of product or service. The consumer must compare the actual use of product with the use shown in advertisement and whenever there is any discrepancy or difference it must be brought to the notice of sponsor of advertisement and insist to stop showing exaggerated qualities.

6. *Insist on Cash Memo*

To file a complaint the consumer needs the evidence of purchase, and cash memo is the evidence or proof that consumer has paid for the goods or service. A seller is bound to give a cash memo even if buyer does not ask for it. To file a complaint and get compensation the consumer must ask for cash memo.

7. Form consumer societies which could play an active part in educating consumers and safeguarding their interest.

8. Respect the environment; avoid waste littering and contribution to pollution.
9. Discourage black marketing, hoarding and choose only legal goods and services.
10. Be aware of variety of goods and services available in market.

4.6 Consumer Protection Measure:

1. The Consumer Protection Act 1986 provides for consumer disputes redressal at the state and national level. With the help of this law, the agencies can solve grievances in a speedy, simple and inexpensive manner. A separate department of consumer affairs was set up at the state and central government. A three-tier system of consumer courts i.e. at the National, State and District levels were set up. These agencies have done good work by handling lakhs of cases.
2. Public Distribution System: To protect the poor from price rise and black marketing the government food security to the poor by supplying essentials through the ration or Fair price shops.
3. Standardization of Products: These are done to assure the quality of products. The ISI stamp on goods is placed by the Bureau of Indian standards. This caters to industrial and consumer goods. These goods can be trusted to conform to specific standards. Ag- mark is meant for Agricultural products. At the International, level the International Organization for Standardization (ISO) located in Geneva sets common standards. The FAO and WHO provide food standards.

4.7 Remedies:

Remedies available under the act are :

a. Removal of Defects:

If after proper testing, the product proves to be defective, then the 'remove its defects' order can be passed by the authority concerned.

b. Replacement of Goods:

Orders can be passed to replace the defective product by a new non-defective product of the same type.

c. Refund of Price:

Orders can be passed to refund the price paid by the complainant for the product.

d. Award of Compensation:

If because of the negligence of the seller, a consumer suffers physical or any other loss, then compensation for that loss can be demanded.

e. Removal of Deficiency in Service:

If there is any deficiency in delivery of service, then orders can be passed to remove that deficiency. For instance, if an insurance company makes unnecessary delay in giving final touch to the claim, then under this Act orders can be passed to immediately finalize the claim.

f. Discontinuance of Unfair/Restrictive Trade Practice:

If a complaint is filed against unfair/restrictive trade practice, then under the Act that practice can be banned with immediate effect. For instance, if a gas company makes it compulsory for a consumer to buy gas stove with the gas connection, then this type of restrictive trade practice can be checked with immediate effect.

g. Stopping the Sale of Hazardous Goods:

Products which can prove hazardous for life, their sale can be stopped.

h. Withdrawal of Hazardous Goods from the Market:

On seeing the serious adverse effects of hazardous goods on the consumers, such goods can be withdrawn from the market. The objective of doing so that such products should not be offered for sale.

i. Payment of Adequate Cost:

In the end, there is a provision in this Act that the trader should pay adequate cost to the victim concerned.

4.8 SUM UP:

There are various institutional factors, which are responsible for growing concern for the consumer protection in India. To begin with, the Government is anxious to protect the vulnerable sectors of the community through schemes like streamlining the public distribution system.

Owing to inflation, different anti-social elements have appeared in the market place for exploiting the poor consumers through unfair trade practices like adulteration, underweight, substandard products of goods in short supply.

Hence, the Government has come forward to protect the consumers through the Maintenance of Internal Security Act, MRTP Act, 1969 and the Consumer Protection Act, 1986. Through the Consumer Protection Act, 1986, an attempt has

been made to strengthen the institutional framework to protect the consumer at local, state and central level. This Act has given legal recognition to consumer rights.

Consumer rights referred to as the right to safety and protection from hazardous goods or services. The right to be informed and protected against deceitful, fraudulent or information that misleads and have an access to correct information as well as facts required to go for informed choices along with decisions. The right to choose and have easy access to different types of products and services offered at competitive and fair prices.

The right to be heard helps to express and represent interests of consumer in the making of political and economic decisions. The right to redress and getting compensation for misrepresentation, unsatisfactory services or shoddy goods is important for consumers and the right to consumer education helps the consumer to become informed and capable of functioning properly in the market. The right to a healthy environment enhances the quality of life and gives protection from environmental issues for present as well as future generations.

Consumer responsibilities include the responsibility of having awareness of the quality and safety of goods and services while purchasing and the responsibility to collect information available about a product or service and to update oneself with changes or innovations taking place in the market.

It means the responsibility to think as well as make choices independently and consider immediate needs and wants. It refers to responsibility to speak out, and to inform manufacturers and governments of needs and wants and the responsibility to complain or inform business along with other people about discontentment with a product or service in an honest way. There should be responsibility of being an ethical consumer and be fair and not engage not in malpractices which make all consumers pay.

4.9 REFERENCES:

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4.10 CHECK YOUR PROGRESS:

Fill in the Blanks

- (i) The punishment provided in section 27 of the COPRA is.....
- (ii) If after proper testing the product proves to be defective, then the order can be passed by the authority concerned.
- (iii) At the International level the located in Geneva sets common standards.
- (iv) 'Consumer' is defined under Section of the CPA.
- (v) The Consumer Protection Act provides for a three-tier consumer grievance redressal machinery,..... at the base, theat the middle level and at the apex level.

True or False

- (i) The Consumer Protection Act allows filing of class action complaints on behalf of groups of consumers having common interest.
- (ii) Products which can prove hazardous for life, their sale cannot be stopped under the CPA.
- (iii) The FAO and WHO provide food standards.
- (iv) The Consumer Protection Act 1986 provides for consumer disputes redressal at the state and national level only.
- (v) The Consumer Protection Act applies both to goods and services.

Answers to Check your Progress

Fill in the Blanks

- (i) 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 Rs. 2000/- but which may extend to Rs. 10000/- or with both.
- (ii) 'remove its defects'
- (iii) International Organization for Standardization (ISO)
- (iv) Section 2(1) (d)
- (v) District Forums, State Commission and the National Commission

True or False

- (i) True
- (ii) False
- (iii) True
- (iv) False
- (v) True

4.11 TERMINAL QUESTIONS:

- Q.1** What do you mean by consumer? What are the causes of breach of consumer rights?
- Q.2** Enumerate the rights and responsibilities of the consumer.

UNIT - 5

UNFAIR TRADE PRACTICES

STRUCTURE:

- 5.1 Introduction
- 5.2 Unfair Trade Practices- Brief Background
- 5.3 Definition of UTPs by Different Countries
 - 5.3.1 *India*
 - 5.3.2 *Australia*
 - 5.3.3 *United States of America*
 - 5.3.4 *South Africa*
- 5.4 The Legal and Institutional Framework in Select Countries
 - 5.4.1 *India*
 - 5.4.2 *South Africa*
 - 5.4.3 *United States of America*
- 5.5 Reforms in India and Prevalence of UTP
- 5.6 Lack of Consumer Awareness
- 5.7 UTPs in Various Sectors
 - 5.7.1 *Pharmaceutical Sector*
 - 5.7.1.1 *Legal Framework*
 - 5.7.2 *Food Processing Industry*
 - 5.7.2.1 *Legal Framework*
 - 5.7.3 *Financial Services Sector*
 - 5.7.3.1 *Insurance*
 - 5.7.3.1.1 *Legal Framework*
 - 5.7.3.2 *Securities Market*
 - 5.7.3.2.1 *Legal Framework*
 - 5.7.4 *Education Sector*
 - 5.7.4.1 *Legal and Administrative Framework*
- 5.8 Gaps Perceived in Dealing with the Practice
 - 5.8.1 *Business to Business Disputes not Covered*

5.8.2 *Inordinate Delays*

5.8.3 *Dominance of Judge's Opinion over Other Members of the Forum*

5.8.4 *No Power to Take Up a Case SuoMotu*

5.8.5 *COPRA Mainly a Compensatory Legislation*

5.8.6 *No Investigative Powers*

5.8.7 *Lack of Awareness among Consumers*

5.8.8 *Concurrence of Sectoral Regulations along with COPRA*

5.8.9 *Cross-Border Disputes not Covered*

5.9 Sum Up

5.10 References

5.11 Check Your Progress

5.12 Terminal Questions

Objectives:

After going through the Unit you will have the ability to:

- understand the meaning and concept of unfair trade practices.
- know the spread of UTPs in various sectors.
- comprehend the various legal framework for tackling the UTPs and their major lacunas.

5.1 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 customer world over, are demanding value for money in the form of quality goods and better services. 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.

The 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.

5.2 Unfair Trade Practices- Brief Background:

The term Unfair Trade Practice (**UTP**) broadly refers to any fraudulent, deceptive or dishonest trade practice; or business misrepresentation of the products or services that are being sold; which is prohibited by a statute or has been recognized as actionable under law by a judgment of the court. However, the term does not have a universal standard definition.

Misrepresentations can be about any characteristic of a good or service, real or imagined. Consequently, laws prohibiting unfair trade practices often include a general provision and more specific provisions addressing some of the more common types of misrepresentations. Unfair trade practices encompass a broad array of torts, all of which involve economic injury brought on by deceptive or wrongful conduct. The legal theories that can be asserted include claims such as trade secret misappropriation, unfair competition, false advertising, palming-off, dilution and disparagement.

UTPs can arise in any line of business and also frequently appear in connection with the more traditional intellectual property claims of patent, trademark and copyright infringement. At the international level, the World Bank and the Organisation for Economic Cooperation and Development (**OECD**) Model Law list the following trade practices to be unfair:

- distribution of false or misleading information that is capable of harming the business interests of another firm;
- distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, and suitability for use, or quality of goods;
- false or misleading comparison of goods in the process of advertising;
- fraudulent use of another's trade mark, firm name, or product labeling or packaging; and
- unauthorized receipt, use or dissemination of confidential scientific, technical, production, business or trade information.

Article 10 of the Paris Convention prohibits the following components of unfair competition:

(i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

(ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor; and

(iii) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

5.3 Definition of UTPs by Different Countries:

The treatment and definition of UTPs in a country is majorly derived from the nature of its markets. The analyses of how open or closed markets are in such country, sale and purchase trend within that country, its domestic laws, level of restrictions imposed on the public authorities dealing with UTPs and other social and economic conditions decide the definition of UTP in such country.

Because of this reason, there has been a fair amount of uncertainty across countries regarding how to deal with the concept of unfair trade practices, in theory as well as in practice. As mentioned herein below, in some countries, UTPs fall within the purview of the competition statutes, in some others, that of the consumer protection law, and in some other cases, they are dealt with by a separate law/act.

Similarly, the notion of “fairness” involved in the concept of UTPs also is analysed separately since it means different things to different groups of stakeholders, and might vary according to contexts in a given market economy.

For example, when UTPs are inflicted upon consumers by enterprises in the market, the damage is pretty clear. When UTPs happen in the relationship between businesses/producers, their danger consists mainly in the erosion or loss of goodwill. The harm that a competitor does to his rival through unfair competition, in effect, is to cut down or take away his clientele and market share.

5.3.1 India

In India, pursuant to the replacement of the Monopolies and Restrictive Trade Practices Act, 1969 (**MRTP Act**) by the Competition Act, 2002 (the **Competition Act**), clarity emerged that UTPs would continue to be dealt under the Consumer

Protection Act, 1986 (**COPRA**) which defines UTPs to mean 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, and includes, *inter alia*, the following:

- ❖ making any statement, whether orally or in writing or by visible representation which:

- falsely represents about goods or services relating to its standard, quality, price, value, nature, guarantee/warranty, affiliation, sponsorship received, etc.;

- gives false or misleading facts disparaging the goods, services or trade of another person;

- ❖ permitting the publication of any advertisement 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;

- ❖ permitting 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 or conducting 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;

- ❖ 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;

- ❖ permitting the hoarding or destruction of goods, or refusing 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; and

- ❖ manufacturing spurious goods or offering such goods for sale or adoption of deceptive practices in the provision of services.

5.3.2 Australia:

The Australian Competition and Consumer Act, 2010 deals with competition and consumer related issues in Australia. As per Part 3.1 of Schedule 1 of the Act, the "*Unfair Practices*" include, *inter alia*, the following:

- ❖ False or Misleading Conduct, such as:

- false or misleading representation about goods or services relating to its standard, quality, value, nature, guarantee/warranty, affiliation, sponsorship received, etc;
- false or misleading representation about sale etc. of land relating to its location, pricing, nature of interest, use to which such land may be put, facilities associated with land etc.;
- misleading conduct relating to employment offered to a person;
- offering any rebate, gift, prize or other free item with the intention of not providing it;
- Bait Advertising;
- ❖ Unsolicited Supplies and assertion of right to payment for unauthorized entries or advertisements;
- ❖ Participation in pyramid schemes;
- ❖ Engaging in multiple pricing;
- ❖ Referral selling; and
- ❖ Harassment and coercion.

5.3.3 United States of America:

Similarly, Section 5 of the Federal Trade Commission Act, 1914 (“**FTC Act**”) of the United States of America (USA) prohibits “*unfair and deceptive acts or practices*” in or affecting commerce. Such practices broadly include:

- an act or practice that causes or is likely to cause substantial injury to consumers, that cannot be reasonably avoided by the consumers and is not outweighed by countervailing benefits to consumers or to competition; and
- an act or practice where a material representation, omission or practice misleads or is likely to mislead the consumer, who has reasonably interpreted such representation, omission or practice.

5.3.4 South Africa:

In South Africa, the Consumer Affairs (Unfair Business Practices) Act, 1988 defines “*unfair business practice*” to mean any business practice which, directly or indirectly, has or is likely to have the effect of:

- harming the relations between businesses and consumers;
- unreasonably prejudicing any consumer;

- deceiving any consumer; or
- unfairly affecting any consumer.

Hence, it can be seen that although not one uniform standard definition of the UTP has been formulated globally and the term is defined differently by different countries based on their domestic laws and market economies, yet the essence of all the definitions is the same. All of them seem to refer to UTP as a practice of misleading, deceptive and unlawful trade practice adopted for the purpose of promoting sale or supply of a particular good or provision of a particular service.

Australia, like India, tries to list out specific practices, without limiting the definitions just to those inclusions. The USA and South Africa on the other hand have avoided listing out the acts or the practices and define the concept broadly encompassing all related activities where unfair injury is caused to the consumer due to deceptive acts or practices even where the consumer purchases a particular goods or services after reasonable consideration.

5.4 The Legal and Institutional Framework in Select Countries:

This section analyses the legal and institutional framework in a few selected developing and transitional economies of the world. Additionally, the section also examines the institutional set-up in the USA, which is considered one of the well-developed frameworks in reference to the unfair trade practices.

5.4.1 India:

In India, until 2002, the MRTP Act, which was enacted to prevent monopolies and restrictive trade practices in India, was the foremost legislation to deal with unfair trade practices in the country.

Prior to 1984, the MRTP Act contained no provisions for protection of consumers against false or misleading advertisements or other similar unfair trade practices and a need was felt to protect the consumers from practices resorted to by the trade and industry, to mislead or dupe them. The GOI thus appointed a high power expert committee on the MTRP Act, under the chairmanship of Justice Rajindar Sachar (**Sachar Committee**), to review and suggest changes required to be made

in MRTP Act in light of the experience gained in administration and operation thereof.

The Sachar Committee recommended that a separate chapter should be added to the MRTP Act defining various unfair trade practices so that the consumer, the manufacturer, the supplier, the trader and other persons in the market can conveniently identify the practices, which are prohibited. This led to introduction of provisions relating to Unfair Trade Practices in the MRTP Act in the year 1984.

The 1984 an amendment also created a new authority in form of an independent body known as the Director General of Investigation and Registration (**DGIR**) which was supposed to work closely with MRTP Commission. They were to work on the basis of a complaint, or *suo motu acton*. DGIR was entitled to investigate into a claim of a restrictive or an unfair trade practice as listed out in Section 36A of the MRTP Act. It can bring the matter before the MRTP Commission (**MRTPC**) established under the MRTP Act to assess the need for MRTPC to initiate an enquiry.

The MRTPC, on determining a practice to be an unfair, was entitled to order the offending party to cease and desist the practice under Section 36D of the MRTP Act, if the practice was found to be 'prejudicial to the public interest or to the interest of any consumer or consumers generally'.

Apart from MRTPC taking *suo motu* action, the other people who can approach MRTPC with a complaint under MRTP Act included the individual consumer, trade associations and registered association of consumers.

To meet the growing needs of liberalization and globalization and to arrive at a better mechanism for regulating business practices and settling disputes, the Government of India appointed a committee on Competition Policy and Law under the chairmanship of Mr. S.V.S. Raghavan in October 1999 (**Raghavan Committee**). This committee was appointed with an aim to shift the focus of the law from curbing monopolies to promoting competition in line with the international environment. The Raghavan Committee concluded that the MRTP Act is limited in its sweep, and was deficient in many ways either to allow reaping of full benefits from the new economic opportunities or to meet the challenges thrown up by the policies of liberalization, privatization and globalization.

Following Raghavan Committee's recommendations, the government repealed the MRTP Act and gave way to the Competition Act, 2002. A Competition

Commission of India (**CCI**) was established under the Competition Act with effect from October 14, 2003. Also, as per the recommendation, it was decided that all the cases pending in the MRTPC will be transferred to the CCI for adjudication from the stages they are in. However, the Raghavan Committee was of the view that the Competition Act should not be burdened with UTPs and thus this was, instead, given effect under COPRA which was already dealing with unfair trade practices.

Thus, since a consumer needed protection not only from being supplied with defective goods and deficient service but also unfair trade practices, the provisions on unfair trade practices were transferred from the MRTP Act into the COPRA.

COPRA is an important milestone in the field of consumer protection in India and it created three-tier quasi-judicial bodies: (a) the District Forum; (b) the State Forum; and (c) the National Forum; through which a consumer could seek remedy in the event any of his/her rights as a consumer are violated. These quasi-judicial redressal agencies have the power to adjudicate complaints received from consumers against any defect in goods or services purchased by the consumer as well as against unfair trade practices.

These agencies do not have any investigative powers and suffer from a lack of infrastructure and qualified personnel, especially at the local level. Also, it is important to note that, in the course of being transferred from the MRTP Act into the structure of COPRA, the definition of a 'consumer' was narrowed and a person purchasing the goods/services for reselling or with a commercial purpose could not take up a case of an unfair trade practice before a consumer forum.

5.4.2 South Africa:

South Africa has a well-developed and regulated competition regime under the Competition Act, 1998 to deal with restrictive business practices, abuse of dominant position and mergers. However, the marketing practices and consumer protection issues are not included in the Competition Act, 1998.

As per the OECD Peer Review of Competition Law and Policy in South Africa, the complaints of unfair competition in South Africa are matters for private dispute resolution under common law rules. Consumer protection is included in some specific laws relating to gambling, estate agents, time-shares, and other common problems but there is no broadly applicable national law about misleading

advertising or unfair marketing practices, in part because consumer protection is a concurrent function between the national government and the provinces.

However, there is in place a Consumer Affairs (Unfair Business Practices) Act, 1988 (the **Consumer Affairs Act**) which provides for prohibition or control of certain unfair business practices and matters connected therewith. Since the definition of “Unfair Business Practices” under the Act, as mentioned herein above, is fairly broad, it appears that it will also include within its ambit the misleading advertising and other unfair marketing practices.

The Consumer Affairs Act has established a special Consumer Affairs Committee to receive and dispose of representations in relation to any matter with which it may deal and conduct preliminary investigations, either by itself or by any other competent authority, in the matter related to unfair business practices. Nevertheless, a detailed reading of the Consumer Affairs Act highlights that the standard of analysis for such UTPs is the “public interest”.

The Consumer Affairs Act gives high discretionary powers to the ministers and empower them above the Consumer Affairs Committee to pass a cease and desist order only upon consideration of a report by the Consumer Affairs Committee. They are of the opinion that an unfair business practice exists or may come into existence and are not satisfied that such practice is justified in the public interest. The Consumer Affairs Act also provides for special consumer courts, which operate on an ad hoc basis.

Hence, it can be seen that although Consumer Affairs Committee is a special agency looking after the issue of unfair business practices in South Africa covering broadly most of the UTPs. Yet, the Consumer Affairs Committee needs to be given more teeth by giving it more discretionary power at par with the ministers to pass a cease and desist order upon existence of an unfair trade practice and to decide the incidences of unfair business practices.

Also, the practice of analysing the unfair business practice on the basis of “public interest” seems to be outdated. The Act also needs to take into account the injury done and the intended injury to an individual consumer.

5.4.3 United States of America

There are two basic anti-competitive laws in USA, namely, the Sherman Act, 1890 and the Clayton Act, 1914. Both the laws are enforceable either by the Antitrust Division of the Department of Justice, the Federal Trade Commission (**FTC**) or

private persons alleging economic injury caused by violation of either of them. In addition to the above two laws, the Federal Trade Commission Act, 1914 (the **FTC Act**), which is enacted to protect trade and commerce against unlawful restraints and monopolies, may also be utilized by FTC and private persons.

However, only FTC, and not the Antitrust Division nor private persons, may enforce the FTC Act. Section 5 of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce.

The prohibition under the FTC Act applies to all persons engaged in commerce. This empowers FTC to prevent a person, partnership or corporation from engaging in incidences of unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

FTC Act is also given the power to investigate the relevant person, partnership or corporation for the non-compliance of anti-trust laws. At the federal level, FTC is the only entity regulating UTPs. But, along with UTPs, it also deals with other anti-competitive activities like mergers, cartelization, etc., at the same time. No specific, dedicated agency to watch over unfair trade practices exclusively has been established in USA at the federal level as yet.

Due to efforts and initiation by individual states some special agencies dealing with such UTPs have been established at the state level.

USA has a Uniform Deceptive Trade Practices Act (1964/1966) (**UDTPA**) in place which has been accepted by several states including Colorado, Delaware, Georgia, Hawaii, Illinois, Ohio, etc. The law addresses deceptive practices such as passing off of goods or services as those of another, causing likelihood of confusion or misunderstanding as to the source, sponsorship, approval of goods and services, "Bait and Switch" advertising, etc. The law focuses on protecting both competitors as well as consumers.

The State of California has a specific law that prohibits unfair business practices, namely, California's unfair competition law (**UCL**). The UCL was first enacted in the year 1933 and was modelled after the federal FTC Act, which prohibits unfair trade practices. As per UCL unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by the law.

Under UCL, any member of the public, including consumers, business enterprises as well as the competitors may sue on his/her own behalf or on behalf of the public

generally. Therefore, it can be seen that, UCL does not only limit itself to anticompetitive business practices but also takes care of the right of the public to protection from fraud and deceit.

Further, unlike the Indian situation the definition of “unfair competition” in UCL is not restricted only to deceptive or fraudulent conduct but extends to any unlawful business practice thus giving the right to sue for an unfair practice to everyone including a natural person, corporation, firm, partnership, etc.

However, it is observed that the UCL does not constitute a special agency for dealing with such unfair trade practices. The most common remedies sought under the UCL are injunctive relief and restitution of illegal business profits and there is no recovery for damages. However, section 17200 of the law authorizes injunctive relief and restitution, which the District Court of Columbia in the case *United States v. Philip Morris*, 449 F. Supp 2d 1 has been interpreted as including “disgorgement of ill-gotten gains or unlawful profits”.

Additionally, in a recent development, in 2011 a new Unfair Competition law, titled “Sale of Products - Stolen or Misappropriated Information Technology” was passed, which impacts manufacturers worldwide and deals with the manufacturing of articles or products using stolen or misappropriated information technology (IT), i.e., non-genuine and unlicensed software. As per Section 2 of the law, such manufacturer engages in unfair competition when it sells an article or a product in the state, either separately or as a component of another article or product, in competition with a product made without use of stolen IT.

While, the first laws were passed in the States of Washington and Louisiana, on November 4, 2011, Attorney Generals of 39 other US States have also signed a resolution to combat unfair trade practices in manufacturing by preventing usage of illegal or stolen IT, which provides an unfair advantage in the market place. The Attorney Generals of various states have also urged FTC to consider introducing a Federal Unfair Competition Law at the federal level to prevent IT theft.

Under the law a new cause of action allows private plaintiffs or the Attorney General to sue anyone who engages in this unfair competition, or to bring a claim against products made using stolen IT.

Although FTC is a fully functional and is the competent federal agency to look after the cases of UTPs in the USA, yet various states have always been aware

about the fact that UTPs need special attention and from time to time have enacted specific legislations to this effect.

Additionally, the concept of “unfairness” also has been under discussion repeatedly by the courts as encompassing more than just conduct, which would violate the Sherman Act or other antitrust statutes, and the conduct, which runs counter to established public policy, may also be deemed “unfair”.

It was held in the case *Federal Trade Commission v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 (1972), that unfair practices may extend to “public values beyond simply those enshrined in the letter or encompassed in the spirit of the antitrust laws”.

5.5 Reforms in India and Prevalence of UTP

The unprecedented growth of the Indian economy, the growing interdependence of the world economy and the wide dissemination of new communication and information process technologies have brought in significant economic and social changes that have revolutionised the way markets serve consumers. They have also contributed to the development of universal emphasis on consumer rights protection and promotion. Consumers around the globe are demanding value for money in the form of quality goods and better services.

At the same time due to globalization and such technological innovations, the problems faced by the consumers have also diversified. The consumers are exploited by way of numerous forms of unethical and unfair practices such as defective goods, deficient services, dubious hire purchase plans, high cost of products, spurious drugs, adulteration of food, poor quality, deficient services, deceptive advertisements, hazardous products, black marketing among others. Clever businessmen through ingenious salesmanship and glossy misleading advertisement about their products, cheat consumers and make them pay for something they did not intend to buy.

In the era of open markets, buyer and seller came face to face, seller exhibited his goods, and buyer thoroughly examined them and then purchased them. It was assumed that the buyer would use all care and skill while entering into a transaction. However, with growth of trade and globalization the principle of ‘*caveat emptor*’, which meant ‘buyer-beware’ is no longer effective in governing the relationship between seller and the buyer.

It has now become nearly impossible for the buyer to examine and have complete knowledge about the goods and services beforehand and to make the matter worse; most of the transactions are concluded by correspondence. Moreover, due to the complex structure of modern goods and services, it is generally only the producer or the seller who can assure the buyer about the quality of the goods and services being sold.

Further, with the advent of the age of revolutionized information technology and with the emergence of e-commerce, the consumers are further deprived of complete information to a great extent and have to rely on the information provided on the website. Changes in technology are making international transactions cheaper, quicker and more accessible, even for low income communities. E-mails, phones, SMSs and websites can make it easier to do business across the world than around the corner, even in economies in transition like India.

The revolution in information technology has also showered the consumers with newer kinds of challenges like cyber-crimes, infringement of intellectual property etc., which affect the consumers in even bigger way. 'Consumer is sovereign' and 'customer is the king' seems like a myth in the present scenario particularly in the developing societies.

Sometimes, the fact that an enticing offer is being made by a developed economy makes the offer more credible and attractive. As a result, the Indian buyer is being misled, duped and deceived every day in the market and the incidences of UTPs are increasing day after day.

5.6 Lack of Consumer Awareness

The apathetic behavior from the sellers/producers side is worsened by the lack of awareness among the consumers about their rights to be informed about the product, quality, price, protection against unsafe products, access to variety of goods at competitive prices, consumer education, etc.

As per CUTS' report on State of Indian Consumer, 2012, in India, even after 25 years, only 20 per cent consumers know about COPRA and just 42 per cent of consumers have heard about consumer rights. However, these findings are still encouraging considering the fact that five years ago the consumer awareness level was just 18 and 34 per cent, respectively.

It is observed that the exploitation due to such UTPs is especially very high in rural consumers, as their right to information, choice, redress and consumer education are not sufficiently fulfilled. Due to ignorance and lack of information the rural consumer has to endure sub-standard products and services, adulterated foods, short weights and measures, dubious advertisements hazardous drugs and exorbitant prices along with unfulfilled manufacturing guarantees and host of other evils.

One of the major problems faced by such rural consumer is that of fake brands and spurious products. Small and regional companies fake the brand image of successful products and sell them in rural areas. Such products are similar in looks and even copy the trademark symbols, which create a huge confusion. A rural consumer is brand loyal and understands symbols better thus becoming an easy target of various UTPs.

Services like insurance, banking, electricity and medical have expanded in the rural areas without any checks and balances and the rural consumers continue to be exploited by the service providers. It is common to find that farmers are supplied defective seeds, adulterated pesticides and other commodities.

In a survey done by the Centre for Consumer Studies, in the rural areas, amongst the various ways of exploitation: 40.2 per cent were overcharged, 14 per cent were victims of food adulteration, 12 per cent complained about poor quality of products, 7.5 percent complained about deficiency in services and 7.4 per cent complained about lesser weights.

5.7 UTPs in Various Sectors:

It is clear that UTPs are perpetrated in a manner as varied as the number of products and services in a market place. UTPs have been observed in the pharmaceutical sector, food processing industry, finance sector, education, etc. The UTPs are given effect through packaging and labelling, misleading advertising, testimonials by trusted or influential people, for example celebrities, experts, 'satisfied consumers', etc.

Herein below, certain incidences of UTPs in select sectors in India are analysed.

5.7.1 *Pharmaceutical Sector*

Competition amongst generic drugs is a desirable objective as it typically brings substantial savings to consumers. However, it is required that the same remain balanced against the incentives brand manufacturers need to invest in developing

innovative new products. Yet, it is often noted that the required degree of competition is often missing from these markets. For instance, fewer new medicines are being brought to market, and the entry of generic medicines is at times restricted through anticompetitive practices.

5.7.1.1 Legal Framework

Some of the important laws and regulations to deal with UTPs in the pharmaceutical sectors are as follows:

The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954: It prohibits advertisements for products and services claiming to cure certain medical conditions. The law prohibits advertisements promising magical cure for any ailment or disease and the rules specify the diseases and ailments that cannot be advertised.

However, the enforcement of the law by the state authorities seems to be poor, as a result of which one finds a number of advertisements in the print media. Additionally, the Act also does not cover advertisements that appear in various media pertaining to health gadgets of unproven efficiency, like tummy trimmers and gadgets to increase height. This Act also does not provide for issuing corrective advertisements.

Drugs and Cosmetics Act, 1940: The Act regulates the import, manufacture, distribution and sale of drugs and cosmetics in the country. There are very strict penalties for manufacture and sale of adulterated or spurious drugs or drugs not of standard quality, which are likely or cause death or grievances hurt to the user.

Whistleblower Policy: Union Health Minister, Ghulam Nabi Azad announced in July, 2009 India's ambitious Whistleblower Policy to handsomely reward those who help seize spurious, adulterated and misbranded drugs, cosmetics and medical devices.

However, not a single reward has been given out till now in absence of any credible information pin-pointing a place where manufacturing or supply of fake drugs was supplied by the public to the government.

Unfortunately, despite several laws enacted with an aim to protect consumers against such unfair trade practices; false and misleading advertisements continue to exploit the vulnerability of consumers, mainly because of: a) their poor enforcement; and b) the lacunae in some of the laws.

In fact, such advertisements now have a wider canvas. While earlier, such advertisements were seen only in the print media, today they cover television also, influencing a larger number of people and influencing even the illiterate consumer.

5.7.2 Food Processing Industry

There has been a global concern about food safety and unfair trade practices in quality and quantity of the food products. Almost everyone has come across cases of deliberate addition of chemicals like additives and adulterants, for the purpose of disguising inferior commodities, contaminating and/or earning undue profits or food contamination during production, processing, packaging and storage.

5.7.2.1 Legal Framework

The most important sector specific legislation in this sector is the **Food Safety and Standards Act, 2006 (FSSA)**. The Act, which consolidates and repeals various acts and orders that have hitherto handled food related issues in various Ministries and Departments, seeks to consolidate the laws relating to food and to curb food adulteration by prescribing higher penalties for violation of food laws. FSSA came into effect on August 4, 2011.

FSSA aims to ensure availability of safe and wholesome food for human consumption and enforcement of the food safety standards and seeks to regulate the law relating to advertising and unfair trade practices in the food sector. As per new rules in FSSA, a penalty will be levied on, and prosecution undertaken against restaurants found violating the provisions of FSSA. The proposals in FSSA apply to all types of food businesses – from a roadside food stall to a five-star hotel.

A Food Safety and Standards Authority of India (**FSSAI**) has been established under FSSA which has been created for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption. FSSAI receives complaints relating to the food sector from the consumers.

Additionally, food safety committees have also been established in each state. Such food safety committees meet each month and discuss the development in each state to learn from the best practices as well as to decide on future course of action.

It has been informed to CUTS by an FSSAI member that FSSAI is planning in near future to come out with new guidelines to deal specifically with misleading advertisements. Such guidelines will specify what content is allowed to be

published / broadcasted in the advertisement and what is prohibited. Such guidelines will bring more clarity in the field of misleading advertisements.

Although the implementation of the Act is facing the initial hitches, which is expected during gestation period of any new legislation, yet, it is only with time that one will be able to tell if this one legislation consolidating all other important legislations in this field was a wise decision or not.

5.7.3 Financial Services Sector

5.7.3.1 Insurance

Consumers become a part of insurance policies by virtue of buying insurance themselves or by being covered under insurance bought either by either the Government or their employers or by being part of any other group that is insured. Insurance is an important financial services sub-sector catering to individuals and the number of insurance consumers is steadily increasing. Insurance is an intangible product and the only document that the policyholder receives is a piece of paper for the premium paid and does not obtain any immediate benefit for the consideration paid.

5.7.3.1.1 Legal Framework

The legal framework in insurance sector in India includes the following:

Insurance Act, 1938 and relevant rules and regulations: As per section 45 of the Insurance Act, two years from the date of policy, an insurer can repudiate the policy on the ground that any material fact in the proposal or document is inaccurate or false. After the expiry of two years, an insurer can repudiate the policy on fulfilling all three conditions mentioned in section 45.

Insurance Regulatory and Development Authority Act, 1999 (IRDA Act) and relevant rules and regulations: The IRDA Act has established the IRDA as a statutory regulator to regulate and promote the insurance industry in India and to protect the interests of holders of insurance policies.

The IRDA (Insurance Advertisements and Disclosure) Regulations, 2000: The Regulations impose regulation on advertisements; lay down strict guidelines not only on the content of the advertisements issued by insurers and their intermediaries, but also on their compliance.

Besides stipulating that all advertisements follow the code formulated by ASCI, the regulations mandate that the advertisements related to insurance policy should not in any way be unfair or misleading. If an advertisement is not in accordance with

these regulations, then the Authority can direct issue of corrective advertisement; it can direct discontinuance of the advertisement or any other action deemed fit by the Authority, keeping in view the circumstances of the case, in order to ensure that the interests of the public are protected.

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

Insurance Ombudsman: This is an institution created by the central government under the "Redressal of Public Grievances Rules, 1998" framed by the Government of India in exercise of power conferred on it under Section 114(1) of the Insurance Act, 1938.

The Rules aim to resolving insured's complaints relating to the settlement if disputes, delay, repudiation, etc. with insurance companies in a cost effective, efficient and impartial manner. These Rules apply to all insurance companies, whether they are operating in the general insurance business or the life insurance business; or in public sector or private sector.

The Ombudsman appointed under Rule 6 of the Rules functions within a set geographical jurisdiction (Rule 10). There is no appeal against a decision given by the Ombudsman, but the 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 complaint's right to seek remedy against the insurer, as per normal process of law.

5.7.3.2 Securities Market

The Indian securities market, considered one of the most promising emerging markets, is among the top ten markets of the world. The Stock Exchange, Mumbai, which was established in 1875 as "The Native Share and Stockbrokers Association" (a voluntary non-profit making association), has evolved over the years into its present status as the premier Stock Exchange in the country. At present 24 stock exchanges, operate all over India. These stock exchanges provide facilities for trading securities. Securities markets provide a common platform for transfer of funds from the person who has excess funds to those who need them and is regulated by the Securities & Exchange Board of India (**SEBI**).

The major components of a security market include: (i) **Securities** - Shares, Bonds, Debentures, Futures, Options, Mutual Fund Units; etc. (ii) **Intermediaries** - Brokers, Sub brokers, Custodians, Share transfer agents, Merchant Bankers; (iii) **Issuers of securities** -Companies, Bodies corporate, Government, Financial Institutions, Mutual funds, Banks; (iv) **Investors** - Individuals, Companies, Mutual funds, Financial Institutions, Foreign Institutional Investors; and (v) **Market Regulators** -SEBI, RBI (to some extent), Department of Company Affairs

5.7.3.2.1 Legal Framework

The vast majority of securities regulations in all countries aim primarily at promoting fair and full disclosure of all material information relating to the markets, and to specific securities transactions, including all aspects of market trading as well as the financing and financial reporting by public companies, so as to present all investors with a level playing field. Securities market in India is regulated by following governing bodies:

- SEBI;
- Department of Company Affairs;
- Reserve Bank of India; and
- Stock exchanges

Some of the significant legislations for the securities market are the following:

The SEBI Act, 1992, establishes SEBI to protect investors and development and regulate securities market. All the powers under this act are exercised by SEBI.

The Companies Act, 1956 sets out the code of conduct for the corporate sector in relation to issue, allotment and transfer of securities, disclosures to be made in public issues and non-payment of dividend. Powers under this Act are exercised by SEBI in case of listed public companies and public companies proposing to get their securities listed.

The Securities Contract (Regulation) Act, 1956, provides for regulation of transaction in securities through control over stock exchanges, Most of the powers under this act are exercised by Department of Economic Affairs (DEA), some are concurrently exercised by DEA and SEBI and a few powers by SEBI.

The SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 enables SEBI to investigate into cases of market manipulation and fraudulent and unfair trade practices. As per the

Regulations, indulging in an act, which creates false or misleading appearance of trading in the securities market, constitutes an unfair trade practice. The regulations specifically prohibit fraudulent dealings, market manipulation, misleading statements to induce sale or purchase of securities, unfair trade practices relating to securities.

SEBI can conduct investigation, *suo motu* or upon information received by it, by an investigating officer in respect of conduct and affairs of any person buying, selling, and otherwise dealing in securities. Based on the report of the investigating officer, SEBI can initiate action for suspension or cancellation of registration of an intermediary.

SEBI (Mutual Fund) Regulations, 1996, regulate the mutual funds in the security market. Under the Regulations, the mutual fund companies are required to involve the reference to these risk factors by making a disclaimer, i.e. "Mutual funds are subject to market risk. Please read the scheme-related offer documents carefully." With respect to the audio-visual advertisements, the new regulation re-emphasizes the need to be audible and understandable to the viewers or listeners.

The Depository Act, 1996, provides for electronic maintenance and transfer of ownership of dematerialized securities, SEBI administer the rules and regulation under this Act.

Prohibition of Insider Trading Regulations, 1992, seeks to prohibit the illegal practice of trading on the stock exchange to one's own advantage through having access to confidential information. SEBI also has the power to direct the person who acquired the securities in violation of these regulations to deliver the securities back to the seller or to transfer the proceeds of the deal to the investor protection fund of a stock exchange.

The GOI had set up a Financial Sector Legislative Reforms Commission (**FSLRC**) in 2011 to review regulations of the entire financial sector in the country (including review of legislations). Its report is awaited.

5.7.4 Education Sector

Right to Education has been declared as a fundamental right in India by way of the 86th Constitutional amendment in 2002. The Right of Children to Free and Compulsory Education Act, which came into effect in 2010, makes it obligatory on part of the state governments and local bodies to ensure that every child gets education in a school in the neighborhood.

India has one of the world's largest education systems spread over 1.3 million schools, 30,000 colleges and 542 universities. The schooling segment covers the largest population of our society as compared to any other form of education. The segment is also the largest education segment valued at US\$44bn in 2011 and is expected to reach US\$144bn by the year 2020. According to the Education Division at Technopak Advisors, the size of the public education sector was US\$40bn and the private sector amounted to US\$60bn in 2011.

With the unprecedented growth of education sector, the unfair practices in the sector have also increased. In India, there has been an alarming increase in the number of fake universities and colleges. Such institutions do not have approval from the government and required permissions to offer courses in various streams.

A former head of the consumer department, West Bengal as well as a member/judge of district forum, Delhi during a discussion with CUTS stated that cases of unfair trade practices by the educational institutes form a bulk of the cases in the consumer forums.

With the growth in the number of engineering and medical colleges, there is an increasing public concern over the unfair practices that are prevailing in the higher education system. The unfair practices in technical college and higher education institutes usually include demanding huge capitation and donation for securing admission. Not recording any payments made by the students by not issuing receipts, non-transparent and suspicious means of admitting students for professional courses, poor quality of education imparted, misleading students and parents by giving advertisements, which are not real in terms of the quality of education and in terms of the facilities and infrastructure provided to students. There are institutions, which withhold the certificates of students to force them to make payments or to make them work without adequate compensation.

In addition to this, primary schools also have a beehive of rampant unfair practices. Many schools recommend or instruct students to buy their books, stationeries and uniforms from a particular place. Most of the time the price charged by such recommended sellers is higher than the price in open market. Also, some times, the schools make the purchase compulsory and the students have no option but to purchase the items from the recommended sellers.

5.7.4.1 Legal and Administrative Framework:

Although there is a lack of a national legislation regulating unfair trade practice in the country, some of the states have come with their own set of legislations in this respect.

For example, Maharashtra enacted the **Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987** to prohibit collection of capitation fee for admission of students in an educational institution and to promote higher standards of education. Similarly, the state of Karnataka and the state of Andhra Pradesh have enacted the **Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984** and **A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983**, respectively, to the same effect.

Apart from the legislative steps, some **administrative steps** also have been taken in past to curb UTPs in the education sector. In March 2012, the district administration in Indore prohibited school managements from compelling students to purchase books and uniforms from particular shops, which is a step aimed at ending the practice allegedly by some schools with a motive to earn commission from book and uniform sellers.

The most recent development in this area is the proposed **Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010**, waiting to be passed in Parliament in the Winter Session. The Bill aims to provide an institutional mechanism for preventing, prohibiting and punishing unfair practices in technical and medical educational institutions and universities.

The institutions are expected to mandatorily disclose information related to admission process by publication of its prospectus, which will bring about public accountability of such institutions and act as a check on use of unfair practices being adopted *vis-à-vis* students. The Bill provides for educational tribunals in every State and one at the Centre to handle these complaints exclusively and award penalties.

Similarly, **a draft legislation to prohibit unfair practices in school education sector** has been drafted as directed by the Human Resource Development (HRD) Ministry. The legislation seeks to make a punishable offence any offer or payment of capitation fee or donation, by way of consideration either in cash or kind or otherwise, for obtaining admission to any class in any school. It prohibits publication or circulation of false or misleading advertisements by educational

institutions and prohibits schools from insisting students, directly or indirectly, on private coaching on campuses or outside.

A seven-member Central Advisory Board of Education (CABE) comprising Education Ministers of various States formed by HRD Ministry has proposed stricter norms to curb malpractices in school admission process while drafting the abovementioned legislation to prohibit unfair practices in school education sector.

Thus, it is observed various kinds of UTPs are practiced across the sectors. Some of the unfair practices such as misleading advertisements, misrepresentation, false/misleading statements are found in almost all the sectors. On the other hand, there are some sectors specific unfair practices prevalent in that particular sector only. Regulations by Government

Apart from the sector specific regulation and COPRA, as mentioned in this paper earlier, the following laws also have horizontal application on in dealing with and imposing restriction on misleading advertisements:

Cable Television Networks (Regulation) Act, 1995: This Act lays down the procedure for registration of a cable television network and also regulates the programs and advertisements transmitted on cable network in India.

The Emblems and Names (Prevention of Improper Use) Act, 1950: This Act prevents improper use of certain emblems and names for commercial and professional purposes. The name, emblems or official seal of certain organisations cannot be used.

Trade and Merchandise Marks Act, 1958: This Act provides for registration and better protection of trademarks and for the prevention of the use of fraudulent marks on merchandise.

Multimedia Campaigns: GOI has launched a massive multi-media campaign since 2005 to make consumers aware of their rights. The slogan 'Jago Grahak Jago' has become a household name now. GOI thought this campaign is trying to make the common man aware about his rights.

Thus, it is observed that various sectors lay down sector-specific laws and regulations. However, it is important to note that COPRA is a law with horizontal application across the sectors and the consumers have the option to approach the forums/courts under the sectoral laws or forums under COPRA.

5.8 Gaps Perceived in Dealing with the Practice:

Thus, upon analyzing the abovementioned case studies it appears that the main motive behind the UTPs is obviously to influence the consumer to buy something he/she won't otherwise buy, to pay more for the product or the service than otherwise or to switch the consumer from one shop or product or service to another.

UTPs are amongst the trade practices which affect an individual directly and almost every day unlike other anti-competitive activity. UTPs such as misleading advertisements, deceptive sale of goods and services, misrepresentation of the products, etc. are very common and affect even the smallest of consumers. Consumers unlike the sellers are not organized and, therefore, there is very little that they can do to check their systematic exploitation.

Even though proper legislations have been introduced addressing specific concerns, yet, the situation of the consumer seems to be the same if not worse and the incidence of UTPs still prevail across the sectors. Under such circumstances it is imperative to analyse the reasons for the same.

5.8.1 Business to Business Disputes not Covered

As has been discussed upon replacement of the MRTP Act by the Competition Act, 2002, the provisions relating to unfair trade practices were transferred from the MRTP Act to COPRA and not in the Competition Act. Although the provisions were merely copied, yet, in the course of being copied from the MRTP Act into the structure of the COPRA, the provisions acquired a new meaning.

Within COPRA, a 'consumer' only means any person who buys any good or hires/avails of any service for a consideration which has been paid or promised or partly paid and partly promised, and includes any user of such goods other than the person who obtains such goods or avails of such services for resale or for any commercial purpose.

It is important to note that, 'commercial purpose' has been interpreted with an intention to protect the interest of small consumers who buy goods for self-employment to earn their livelihood, like a rickshaw puller buying rickshaw for self-employment, or a farmer purchasing fertilizer for his crops, or a taxi driver buying a car to run it as a taxi, etc. They fall within the definition of consumer.

However, such interpretation excludes from the purview of COPRA, the big business houses carrying on business with profit motive. CUTS believes that COPRA fails to acknowledge that sale and purchase transactions do not only

include purchasing of goods or availing services by a person for self but sometimes the goods or services are purchased by a person for reselling or other commercial purpose, such as to run another business and such purchasers also should have a remedy against UTPs under COPRA.

In *Laxmi Engineering Works v. P S G Industrial Institute*, 1995 SCC (3) 583, Laxmi Engineering Works, a proprietary concern and a small scale industry placed an order with P.S.G. industrial institute for supply of PSG 450 CNC Universal Turing Central Machine for manufacture of machine parts to earn profits. As per Laxmi Engineering Works, P.S.G. industrial institute not only supplied the machinery six months late but also supplied a defective machine, unlike what was promised.

The Supreme Court observed in this case that a purchase of goods could be said to be for a commercial purpose only if two conditions were satisfied:

(a) the goods must have been purchased for being used in some profit-making activity on a large scale; and

(b) there should be close and direct nexus between the purchase of goods and the profit-making activity. It was held that as Laxmi Engineering Works was purchasing machine with a commercial purpose and therefore did not fall within the definition of consumer. The complaint by Laxmi Engineering Works regarding defect in the machine was, therefore, not maintainable.

Therefore, the companies engaging in a sale purchase agreement with a commercial purpose or with a purpose to resale the purchased good do not have any direct remedy under COPRA. As a result, under COPRA, although a particular user of goods or services who is injured due to such UTPs can approach the consumer forum directly or through a consumer association or central government/state governments. But any company which purchases goods/services for resale or other commercial purposes cannot qualify as 'consumers' and cannot take up a case of an Unfair Trade Practice before a consumer forum and such cases can only be taken up by consumer associations, central government or the State Governments.

Thus, within the existing law, a manufacturer whose product is found deficient by another company has no *locus standi* to seek a remedy under COPRA. Competing firms cannot be 'consumers' to approach a consumer forum. It is pertinent to understand that these are only oblique routes of seeking justice. Even if a firm were

to succeed in getting an advertisement stopped through this route, as it is not a party to the case, it would not get any compensation for loss of profit. Thus, effectively, the field of comparative representation has become very unregulated.

However, the goods though purchased for commercial purposes, have been allowed in a Consumer Forum, when the defects were visible during the warranty period.

During CUTS' discussion with a relevant member from the Department of Consumer Affairs, CUTS was given to understand that the Department does not intend to bring in such business-to-business disputes within the realm of COPRA yet.

5.8.2 Inordinate Delays

Although COPRA provides for some checks on UTPs under the UTP provisions, but the jurisdiction of the forums and commissions under COPRA are so wide that it covers defective goods, deficient services and unfair trade practices. It makes the segment fairly wide in itself and plaguing COPRA with inordinate delays in the delivery of justice, enforcement of orders, etc.

Even though the Act provides for 90 days for redressal, there have been a number of cases, which have been pending for more than ten years at all levels.

5.8.3 Dominance of Judge's Opinion over Other Members of the Forum

Another important administrative loophole in the decision making process is the dominance of judges' opinion over other consumer representatives in the consumer forums.

Quoting a senior professor, School of Social Sciences, Jawaharlal Nehru University, "the judges in the consumer forums are mostly the retired civil/criminal court judges who have an experience of adopting adversarial approach to decide a case like they have done in past. However, consumer forums are required to adopt a non-adversarial approach and this mismatch makes it difficult for the judges to adapt to such non-adversarial and simple approach and they make even the proceedings in the consumer adversarial, long and complex."

5.8.4 No Power to Take Up a Case *Suo Motu*

The consumer courts cannot deal with UTPs in same way as MRTPC because they have neither the power nor infrastructure to investigate *suo motu*. They can only take up a matter upon filing of a complaint by a consumer/consumer organization/central or state government.

5.8.5 COPRA Mainly a Compensatory Legislation

A number of stakeholders, namely, a former member of MRTPC, President, Consumer India and a member/judge of district forum, Delhi, during their meetings with CUTS have highlighted that COPRA is mainly a compensatory legislation. It is providing compensation to the consumer for the harm suffered and does not contain any penalty for the wrongdoer, which does not act as a deterrent to the companies engaging in such UTPs.

However, the member/judge of district forum, Delhi stated that the consumer forum, at times, based on case to case might order the wrong doer to give a particular amount to the consumer welfare fund.

5.8.6 No Investigative Powers

One very important gap in COPRA is the lack of investigatory powers to deal with consumer issues. There is no office akin to office of DGIR of MRTPC under COPRA, which can take action against UTPs. The office of DG (I&R) could investigate the facts of unfair trade practices including misleading advertisements on its own and take action. There is no similar provision in COPRA for this kind of supportive, administrative mechanism of DGIR.

5.8.7 Lack of Awareness among Consumers

One of the biggest challenges in dealing with UTPs still lies within the general public. The common person is still not completely aware about his rights.

A consumer is vested with right to information when he purchases a good or avails a service and big corporations, but a lack of awareness amongst the consumers about this right deprives him/her from enjoying this right and gives the power to the producers and the sellers to exploit the consumers. This unawareness does not even let the consumer realize that the sellers are cheating them and withstand the worst of this exploitation.

5.8.8 Concurrence of Sectoral Regulations along with COPRA

It is noticed that in India there is not much co-ordination seen between sectoral authorities and the authorities established under COPRA. Under Indian law, various sector-specific laws such as Drugs and Cosmetics Act, 1940, Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, Food Safety and Standards Act, 2006, IRDA Act, 1999 and various other regulations co-exist along with COPRA to deal with such unfair practices.

Since most of the times, the consumer does not know or has little knowledge about the legal framework and the mechanism to exercise this right and fight against the unfair trade practices, they are not sure about the forum to be approached and steps to be taken. A common consumer will always be confused as to which forum will be more appropriate to address their cause and provide them the remedy, given the additional lack of co-ordination between the sectoral authorities and the authorities established under COPRA.

This situation may also lead to forum shopping. Additionally, most often, even if the consumer could have gone to courts, he prefers not to initiate any action against such unfair trade practices, knowing the lengthy and expensive procedures involved.

5.8.9 Cross-Border Disputes not Covered

It is also observed that the consumer protection authorities are locally (nationally) focused and ignore cross border conduct. Sometimes the local focus is the result of legislation that limits the jurisdiction of authorities.

Even where jurisdictional issues are not the problem, effective international cooperation between consumer protection authorities in different countries is still in its infancy. Often by the time, national authorities have coordinated with their international sister authorities the bird has flown; the bad people have shut up shop and moved on to other counties or the evidence has gone stale. This issue is of particular concern with respect to e-purchases with buyer sitting in one country and seller in the other like on eBay, Amazon, etc.

5.9 SUM UP:

The Unfair Trade Practice broadly refers to any fraudulent, deceptive or dishonest trade practice or business misrepresentation of the products or services that are being sold, which is prohibited by a statute or has been recognized as actionable under law by a judgment of the court. However, the term does not have a universal standard definition. As the UTPs are prevalent all over the world and are in most of the cases similar to each other. But the legal framework of each country is different. Even the term 'Unfair Trade Practices' do not have universally accepted definition.

In India, there is no specific law for the prevention of Unfair Trade Practices. Unfair Trade Practices in India come under the purview of the consumer law of the country, i.e. The Consumer Protection Act, 1986 or COPRA, which applies

horizontally on all kinds of UTPs. In addition to COPRA, there are various sectoral laws and regulations, which have a vertical application to sector specific UTPs. Such as the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 deals with UTPs in the pharmaceutical sector while IRDA Act, 1999 has an application in the Insurance sector.

In spite of a network of laws, regulations and guidelines being in existence to tackle the UTPs both under COPRA and sectoral laws, the UTP still exist and continue to adversely affect the innocent consumer as well as the competition in the market and thus the entire economy.

5.10 REFERENCES:

- Socio Legal aspect on Consumerism, Smt. Sudha Rani Srivastava, Commonwealth Pub.
- Bill Thomas, *The Legal Framework of Consumer Protection, in Marketing and the Consumer Movement* 49 (Jeremy Mitchell ed., 1978).

5.11 CHECK YOUR PROGRESS:

Fill in the Blanks

1. In India, pursuant to the replacement of the Monopolies and Restrictive Trade Practices Act, 1969 (**MRTP Act**) by the Competition Act, 2002 (the **Competition Act**), clarity emerged that UTPs would continue to be dealt under the
2. The deals with competition and consumer related issues in Australia.
3. To meet the growing needs of liberalization and globalization and to arrive at a better mechanism for regulating business practices and settling disputes, the Government of India appointed a committee.
4. A Competition Commission of India (**CCI**) was established under the Competition Act with effect from.....
5.prohibits advertisements for products and services claiming to cure certain medical conditions.

True or False

1. The UTPs are given effect through packaging and labeling, misleading advertising, testimonials by trusted or influential people, for example celebrities, experts, 'satisfied consumers', etc.
2. COPRA is mainly a compensatory legislation, providing compensation to the consumer for the harm suffered and does not contain any penalty for the wrongdoer, which does not act as a deterrent to the companies engaging in such UTPs.
3. The consumer courts can deal with UTPs in same way as MRTPC because they have the power and infrastructure to investigate *suo-motu*.
4. The term 'consumer' under the COPRA includes person-buying goods for commercial purposes.
5. A draft legislation to prohibit unfair practices in school education sector has been drafted as directed by the Human Resource Development (HRD) Ministry.

ANSWERS TO CHECK YOUR PROGRESS

Fill in the Blanks

6. Consumer Protection Act, 1986 (**COPRA**)
7. Australian Competition and Consumer Act, 2010
8. Raghavan Committee
9. October 14, 2003
10. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954

True or False

1. True
2. True
3. False
4. False
5. True

5.12 TERMINAL QUESTIONS:

Q.1 What do you mean by unfair trade practices? What steps have been taken to curb UTPs in global scenario?

Q.2 In spite of so many measures taken by the Government the incidences of the UTPs are on increase. In the light of the statement discuss the lacunas in legal regime and suggest the measures to curb the same?

UNIT - 6

SERVICES AND CONSUMER GRIEVANCES

STRUCTURE:

- 6.1 Introduction
- 6.2 Concept of Service
- 6.3 Meaning of Services under Consumer Protection Act, 1986
 - 6.3.1 Who is a Consumer?
- 6.4 Meaning of Grievances
 - 6.4.1 Examples of GRIEVANCE
- 6.5 SYSTEMIC PROBLEM AREAS
- 6.6 Consumer Detriment
- 6.7 Identification of Grievance Prone Areas and Analysis
- 6.8 How Grievances can be solved?
- 6.9 ROLE OF REGULATORS, OMBUDSMAN AND LIKE BODIES
- 6.10 Consumer Grievance Redressal Cell
- 6.11 Objectives of the Grievance Redressal Policy
- 6.12 Sum Up
- 6.13 References
- 6.14 Check Your Progress
- 6.15 Terminal Questions

Objectives:

After studying this unit, you will be able to:

- understand the concept of services and consumer grievances.
- know the tools and techniques of resolving consumer grievances.

6.1 Introduction:

Consumer markets for goods and services have undergone profound transformation since the enactment of the Consumer Protection Act in 1986. Globalization and liberalization, regulatory reforms, development of new technologies and the growth of consumer services along with rising aspiration of the consumer for better goods and services have acted as the major agents of change. In many instances, these developments have provided significant benefits to consumers.

However, relatively little attention has been paid to the challenges these developments have posed for both consumers and consumer policy makers. The modern marketplace contains a plethora of increasingly complex products and services. Increased global trade and the development of Internet have provided new opportunities for consumers, leading to new forms of unfair and unethical business practices. This undoubtedly requires consumer protection authorities to be more vigilant and active.

Globalization of production also leads to even more imported goods being consumed in the country. Traders from anywhere in the world via e-commerce or otherwise will increasingly sell products and services to Indian consumers. This not only increases the challenge but also the need to ensure greater and effective market surveillance.

Consumer related problems arise when market outcomes fall short of their potential, resulting in welfare losses for consumers. Identifying and measuring the nature and magnitude of consumer related threats are a crucial component of policymaking. Detecting and evaluating consumer problems and determining whether the level of consumer detriment that arises requires government intervention are a key challenge for policy making.

In recent years, consumer-related problems have rapidly increased and frequent business misconduct has greatly damaged consumer trust in business. Under these circumstances, to effectively respond to these changes in the economy, market and society, implementation of new consumer policies is necessary

6.2 Concept of Service:

All interactions between a customer and a product provider at the time of sale, and thereafter is customer service. Customer service adds value to a product and builds enduring relationship. However, as mentioned one of the key strategies to edging out the big-box competition is through the enhanced levels of customer service and

support you provide. Most of the companies they deal with are quasi-monopolies that get away with atrocious customer service.

If your company has dedicated online customer service representatives, they can also staff the Face book page and answer questions in real time via Face book chat. A type of economic activity that is intangible is not stored and does not result in ownership. A service is consumed at the point of sale. Services are one of the two key components of economics, the other being goods. Examples of services include the transfer of goods, such as the postal service delivering mail, and the use of expertise or experience such as a person visiting a doctor.

Customer service is the provision of services to customer before, during and after a purchase. According to Turban et al. (2002),

"Customer service is a series of activities designed to enhance the level of customer satisfaction – that is, the feeling that the product or service has met the customer expectation."

The importance of customer service may vary by product or service, industry and customer. According to Micah Solomon, the perception of success of such interactions will be dependent on employees "who can adjust themselves to the personality of the guest." From the point of view of an overall sales process engineering effort, customer service plays an important role in an organization's ability to generate income and revenue.

From that perspective, customer service should be included as part of an overall approach to systematic improvement. A customer service experience can change the entire perception a customer has of the organization.

Some have argued that the quality and level of customer service has decreased in recent years, and that this can be attributed to a lack of support or understanding at the executive and middle management levels of a corporation and/or a customer service policy. To address this argument, many organizations have employed a variety of methods to improve their customer satisfaction levels, and other key performance indicators (KPIs).

6.3 Meaning of Services under Consumer Protection Act, 1986:

Section 2(1)(o) of the Act provides that "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with *banking, financing, insurance, transport, processing, supply of*

electrical or other energy, board or loading or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

The definition provides a list of eleven sectors to which service may pertain in order to come under the purview of the Act. The list of these sectors is not an exhaustive one. Service may be of any description and pertain to any sector if it satisfy the following criteria:

- (1) service is made *available to the potential users, i.e.,* service not only to the actual users but also to those who are capable of using it.
- (2) it *should not be free of charge, e.g.,* the medical service rendered free of charge in Government hospital is not a service under the Act;
- (3) it should not be under a *contract of personal service.*

When we talk about 'service' under the Consumer Protection Act, we take it as a regular commercial transaction.

The Government servants not doing any service for consideration but a statutory function In the case of **S.P. Goel vs. Collector of Stamps**, it was held that a government official does not render any service in the course of doing his statutory duties. Hence, no remedy can be granted under the CPA. In this case, the complainant presented before the Sub-Registrar a document claiming it to be a will for registration. The Sub-registrar did not register the document claiming it to be a deed of conveyance and hence not adequately stamped. He impounded the document and sent it to the Collector of Stamps for action. Despite several notices issued to him by the Collector, the appellant did not appear before him. When the appellant appeared before the Collector he was asked to furnish certain other documents. In the meantime, however, the appellant filed a complaint before the District Forum under the Consumer Protection Act alleging harassment by the Sub-Registrar and Collector and had prayed for compensation being awarded to him.

The District Forum held the view that the appellant having paid registration fees, he shall be treated to have hired the services of the Sub-Registrar and the Collector and since the Collector had not taken any decision as to the nature of the document for about six years, allowed compensation to be paid to the complainant.

On appeal by the Collector, the State Commission, upheld the order of the District Forum and enhanced the compensation to Rs. 5,000.

On the revision petition filed by the Collector, the National Commission held the view that the appellant was not a "consumer" under the CPA because there was no hiring of services by the complainant for consideration and because a government official doing his duty as functionary of the State under law could not be said to be rendering a service to the complainant. It stated that assuming the Collector was discharging a service; he was doing the same as a functionary of the government under the authority of the statute and for the benefit of the revenue for which he was being paid by the Government and not by the complainant.

The Supreme Court upheld the order of the National Commission on appeal.

Failure to deliver houses by the housing board is deficiency in service. In the case of **S.P. Dhavaskar vs Housing Commissioner**, Karnataka Housing Board & Vice Versa, the complainant had made a deposit of Rs. 1.66 lakhs with the Housing Board for a house proposed to be built by the Board. He was told that the construction be completed within two years from March, 1987. In March, 1992 he was informed that the construction was not up to the expected level because of the use of low cost technology and that the houses constructed developed distress. Housing Board suggested that the complainant might take back the amount of deposit without interest or opt for a new house in lieu of the house already allotted. The complainant made a claim of Rs. 4.65 lakhs, which was rejected. The State Commission held that the act of the Housing Board amounted to a deficiency in service and returning deposit amount without interest was unreasonable and ordered payment of interest at 18% p.a. In appeal, the National Commission upheld the order of the State Commission.

Failure to provide basic safeguards in the swimming pool amounted to deficiency in service. In the case of **Sashikant Krishnani Dole vs. Shitshan Prasarak Mandali**, the National commission held that failure to amount basic safeguards in the swimming pool amounts to deficiency in service. A school owned a swimming pool and offered swimming facilities to the public on payment of a fee. The school conducted winter and summer training camps to train boys in swimming and for this purpose engaged a trainer/coach. The complainants had enrolled their only son for learning swimming under the guidance of the coach. It was alleged that due to the negligence of the coach, the boy drowned and died. The school denied any responsibility on its part. The coach claimed that he had considerable experience in coaching young boys in swimming. When the deceased was found to have been drowned, the coach immediately took him out of the water, removed the water

from his stomach, gave him artificial respiration, and thereafter took him to a doctor. The doctor advised that the boy be taken to the nearest hospital where the boy died. The State Commission held the school and the coach deficient in rendering service to the deceased. On appeal, the National Commission upheld the order.

Failure to settle provident fund claim in time amounts to deficiency in service. In the case of **Regional Provident Fund Commissioner, Faridabad vs. Shiv Kumar Joshi**, it was held that failure to settle provident fund dues on time amounts to deficiency in service.

Removal of ladder of an aircraft while disembarking by the passenger amounts to deficiency in service. In the case of **Station Manager, Indian Airlines vs. Dr. Jiteswar Ahir**, the National Commission held that removal of ladder while a passenger was disembarking, leading to injury to the passenger amounted to deficiency in service. The complainant after he was seated on the plane was intimated by announcement that part of his luggage was lying on the ground unidentified. He moved towards the door and finding that the ladder was in place, tried to get down. But before he could get his entire body on the ladder, the ladder was moved as a result of which he fell to the ground and sustained injuries. The passenger demanded compensation of Rs. 10 lakhs from the Airline. The Airline was willing to pay Rs. 40000/- which was the maximum amount payable under the Carriage by Air Act, 1972. The State Commission ordered a compensation of Rs. 4 lakhs and Rs. 1 lakh for mental agony and distress plus costs. The National Commission upheld the order of the State Commission.

Imparting education is not a service. In the case of **Chairman, Board of Examinations vs. Mohideen Abdul Kader**, the complainant, a student who wished to appear in the subject of production technology was denied permission to write that paper by the hall supervisor on the ground that his name appeared against Code No. 2 while the paper fell under Code No. 1. He alleged that he was wrongly restrained and prevented from writing the examination on that day. It was because of the attitude and negligence of the staff and therefore he claimed compensation for the inconvenience caused to him. The National commission in its order stated that a candidate who appeared for an examination could not be regarded as a person who had hired or availed of the services of the university or board for consideration. Therefore, he was not a consumer under the Consumer Protection Act and no compensation was awarded.

In the case of **Department of Posts & Telegraphs vs. Dr. R.C. Saxena**, it was held that there is deficiency in service where the Post Office refuses to pay interest on deposits simply by invoking technical rules. In February, 1988 the consumer opened a national savings scheme account in the General Post Office in Lucknow. In March, 1989 he opened a similar account at Chamba (H.P.) depositing Rs. 90,000. On his retirement from service he got both accounts transferred to Kangra. When he wanted to close the account by withdrawing the balance, the post office refused to grant him interest on the Rs.90000 deposited by him in his second account on the ground that under the NSS rules, one person can have only one NSS account. The National Commission held that the opening of the second account was merely an irregularity not amounting to contravention of the rules and that the investor was entitled to interest on the second deposit.

In the case of **Union of India vs Nathmal Hansaria**, it was held that the railways are liable for deficiency in service when a person passing through the inter-connecting passage way between two compartments of a train fell down resulting in death.

The services rendered under the contract of personal service are specifically excluded from the definition. The expression 'contract of personal service' is not defined under the Act. In common parlance, it means - a contract to render service in a private capacity to an individual. For example, where a servant enters into an agreement with a master for employment, or where a landlord agrees to supply water to his tenant, these are the contracts of personal service. The idea is that under a personal service relationship, a person can discontinue the service at any time according to his will; he need not approach Consumer Forum to complaint about deficiency in service.

There is a difference between 'contract of personal service' and 'contract for personal service'. In case of 'contract of personal service', the service seeker can order or require what is to be done and how it should be done. Like a master can tell his servant to bring goods from a particular place. But in a 'contract for personal service', the service seeker can tell only what is to be done. How the work will be done is at the wish of the performer. Like when a person gives a suit to the tailor for stitching, he does not tell him which method he should use to stitch it.

It is 'contract of personal service' is excluded from the definition of service, 'contract for personal service' is recognized as service under the Act. It does not make a difference whether the service provider is a Government body or a Private

body. Thus even if a statutory corporation provides a deficient service, it can be made liable under the Act.

Example:

A applied for electricity connection for his flour mill to Rajasthan State Electricity Board. The Board delayed in releasing the connection. It was held deficient in performing service. Some other sectors/professionals/services which are not specified in the definition of service but which have been considered by the Consumer Forums as service sectors from time to time are listed below: Advocates, Airlines, Chartered Accountants, Courier, Chit Fund, Education, Gas Cylinder/LPG, Medical services, Postal services, Railways, Investment related services, and Telephone services. Thus, the test is - whether the person against whom the complaint is made performs a service for consideration which is sought by a potential user.

The meaning of services in the Act can be understood in reference to the meaning of the consumer. As the consumer can be for goods and can be for services.

6.3.1 Who is a Consumer?

Section 2(d) of the Consumer Protection Act says that 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;

Explanation.—For the purposes of the sub-clause (i), “commercial purpose” does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

6.4 Meaning of Grievances:

The term “grievances” was first used in 14th century. Grievance means:

- An actual or supposed circumstance regarded as just cause for complaint.
- A complaint or protestation based on such a circumstance.
- Indignation or resentment stemming from a feeling of having been wronged.
- A feeling of having been treated unfairly
- *Obsolete*
 - The act of inflicting hardship or harm.
 - The cause of hardship or harm.
- A reason for complaining or being unhappy with a situation.

Definition of “Grievance / Complaint” (I R D A provided):

A “Grievance / Complaint” is defined as any communication that expresses dissatisfaction about an action or lack of action, about the standard of service/ deficiency of service of an insurance company and/or any intermediary or asks for remedial action.

6.4.1 Examples of GRIEVANCES:

1. He has a deep sense of *grievance* against his former employer.
2. She has been *nursing a grievance* all week.
3. In the petition, the students listed their many *grievances* against the university administration.
4. Several customers came to the front desk to *air their grievances*.

6.5 SYSTEMIC PROBLEM AREAS:

There are rules, regulations, instructions that are archaic and aimed at shifting the work towards citizens. Slackness in administration, low morale of the services, inherent inertia, absence of incentives, lack of proper authority and accountability are the delay-breeders and the delay is the major factor that generates the grievances. These factors need to be tackled properly through systematic changes. Prevention is better than cure. On these lines, the best method to redress a grievance is not to allow the grievance to arise at the first instance. Even the redress of a grievance that arose on account of delay is also delayed as is revealed

by the analysis of grievances according to which on an average six months are taken to redress a grievance.

Many a times Departments/Organizations are found to avoid taking appropriate decisions by resorting to rejection without application of mind, not taking appropriate interest in functioning of subsidiary offices/linked autonomous organizations, and emphasize on disposal and not on the quality disposal. Decisions taken earlier are reiterated without subjecting the cases of independent examination.

There is inertia to review decisions taken by down-the-line functionaries. In many cases Departments/Organizations justify the delay and continue with their inability to take decisions by putting the onus on another agency or on the petitioner. Many a times, the actual cause of grievance lay in internal inefficiency of the system and failure to identify simple systemic solutions. It is also observed that the time norms set by Departments for providing services were not being adhered to in many cases.

There is no doubt that grievances continue to arise because of a high systemic tolerance for delay, poor work quality and non-accountability in every day performance of functions. Failure to review archaic, redundant and incongruous rules, policies and procedures and to initiate simple, workable systemic changes is another cause for grievance generation. However, Departments and Organizations, which work with policies and procedures on a day-to-day basis, do not appear to have developed the ability to continually look 'within' and identify deficiencies. All these factors have ensured that grievances, once arisen, many a time do not get resolved in 'normal' course and need intervention at the highest administrative level.

Slackness in efficient functioning of 'Directors of Grievances' is identified as one of the prime cause for continuing delay in redress of grievances. Poor work quality, non-accountability in everyday performance of functions and failure to systemically review policies/procedures and suggest systemic changes are other important causes. In most Ministries, Departments and Organizations, the mechanism of Director of Grievances is not functioning as per the mandate prescribed.

6.6 Consumer Detriment:

➤ Consumer detriment arises when market outcomes fall short of their potential, resulting in Welfare losses for consumers. Identifying and measuring the nature and magnitude of Consumer detriment is a crucial component of National Consumer Policy. Although quantification is often times difficult, it is essential that detriment be assessed, even when it is only possible to do so in a qualitative manner. The policy aims to develop appropriate tools and methodology to effectively measure consumer detriments, which are often difficult to quantify in a straightforward way.

➤ A robust understanding of consumer detriment is at the heart of good policy-making in the field of consumer protection. The two main issues in relation to consumer detriment that are, to be assessed are:

- Identifying where consumers are suffering detriment, to enable formulation of policy initiatives,
- Assessing the impact of policy on consumer detriment, to assist in implementing a policy regime which promotes the interests of consumers in an effective way.

6.7 Identification of Grievance Prone Areas and Analysis:

(a) Identify areas susceptible to corruption and/or grievance generation and conduct work audit of such areas. In addition, consider external/social audit in areas of very high public interface, with the aim of identifying wrong doers and improving processes and systems. Involve NGOs in the exercise.

(b) Analyze the nature and causes of grievances with the aim of identifying systemic deficiencies in laws, rules, regulations, policies, instructions, work practices and procedures, and effecting systemic changes to remove/correct these deficiencies. The Directors of Grievances be the nodal officers for such purpose. The analysis should be conducted in the month of April every year and studies of identified grievance prone areas are undertaken. Recommendations made in the studies should be implemented by December of that year so as to bring systemic changes and remove the Causes of grievances.

(c) Fix responsibility in each and every case of delay, default or dereliction in performance of everyday duties on failure to deliver services, and take disciplinary action to avoid recurrence. This will send a clear signal that in the event of failure to perform duties or deal appropriately with grievances within the time frame norms prescribed, a real possibility of having responsibility fixed on one's

shoulder exists. Consider the feasibility of prescribing specific penalty clauses in such cases.

6.8 How Grievances can be solved?

Citizen's Charter:

Formulation and effective implementation of Citizen's Charters, which should, inter-alia, include disclosure of time norms for providing various services to the citizens/clients and details of all levels of grievance redress machinery that may be approached.

Information & Facilitation Counters (IFC):

Setting up and effective operation of IFC's civic society may be involved in the functioning of IFCs to make them citizen- friendly and effective.

On Line Registration of Grievances:

Make 'Public Grievance Redress and Monitoring System' (PGRAMS) software, operational with every Director of Grievances. This shall enable the Director of Grievances to immediately place the details of grievances received in a database (efficient 'dak' management) as well as record the fact whether he intends to monitor its progress. Thereafter identify the section/division where it is being sent, etc., generate the time taken in dealing with the grievance, enable review of pending grievances in the organization or across the organizations, generate acknowledgements to complainants, conduct analysis etc. The system should also have the facility of on-line registration of grievances by the citizens and access to information on the status of his/her grievances.

Prompt and Effective Redress of Grievances:

(a) All grievances should be necessarily acknowledged, with an interim reply within 3 days of receipt and redressed within 3 months of receipt in the Organization. The same time limit should apply even if co-ordination with subsidiary offices or another Department/Organization is involved. In such instances, special efforts, to be suo-moto disclosed when reports are called, should be made.

(b) No grievance is to be rejected without having been independently examined. At a minimum, this means that an officer superior, to the one who delayed taking the original decision or took the original decision that is cause for grievance, should actually examine the case as well as the reply, intended to be sent to the grievance holder.

- (c) Make the 'Director of Grievances' effective through the following inter-related steps:
- (i) Secretaries/Organizational Heads ensuring that Directors of Grievances are fully 'empowered' in accordance with instructions to perform their role.
 - (ii) All grievance representations received in the Department/Organization, either by mail, fax, email to be invariably routed through Director of Grievances before they go to concerned sections/divisions. At this stage, Office of the Director of Grievances shall go through the representations and come to a prima-facie view regarding the gravity of the matter involved and decide whether it shall monitor the case or allow down-the-line functionaries to independently deal with it. Directors of Grievances should monitor and follow up at least 3 to 5 percent of grievances received to enable them to assess the efficacy of grievance redress mechanism.
 - (iii) Fix responsibility in each case of delay, default and dereliction of duty, identified by Director of Grievances, and take appropriate action against concerned personnel. In addition, consider feasibility of prescribing specific penalty clauses for such failures.

Review and Monitoring of Grievance Redress Mechanism:

Ensure meaningful review of the performance of grievance redress machinery of the Ministry/Organization as well as that of attached/ subordinate organization by Secretary/ Head of the Department on a monthly basis. Review should also cover action against defaulters.

6.9 ROLE OF REGULATORS, OMBUDSMAN AND LIKE BODIES:

An explosive issue today in context of public grievance redress is the pace and phasing of the movement towards open markets after the gradual abandonment of centralized planning model. The Government is today withdrawing from various service sectors traditionally monopolized by it and private enterprise is moving in. This may lead to a scenario where the Government monopolies are replaced by even more vicious private monopolies or cartels in the absence of adequate regulation, enforcement and recourse to grievance redress.

This has significant implications for the role of Government. The Government cannot just abandon the interests of citizens to be taken care of by the market forces in areas of service delivery covered by the private sector. In the open market

scenario, it is often the major stakeholders and players, which define the cost, quality etc. of service delivery.

The Government therefore needs to put in place appropriate mechanisms in the regulatory authorities, ombudsmen and like bodies in such sectors so that the concerns of individual citizens are also accorded equal importance and weightage and are appropriately and effectively addressed. They should safeguard the interests of the common citizens and ensure that the grievances of the citizens are attended to promptly and effectively.

6.10 Consumer Grievance Redressal Cell:

1. To initiate pro-active measures to redress the consumer grievances in accordance with provisions provided in the Consumer Protection Act, 1986 read with relevant Rules, 1987.
2. Examine & scrutinize all type of complaints letters and grievances representations of aggrieved consumer with special reference to sale of defective goods or deficient services, charges of higher prices, non-receipt of share certificates possession certificates/dividend certificates etc. and, take up these matters with the appropriate authority for Redressal.
3. To deal consumer complaints appearing in newspapers columns, magazines, electronic media etc. & handle these cases as specified in the manner.
4. Scrutinize and initiate follow up action on the other general grievances, representations/complaints including those received from Cabinet Sectt./PMO/President Sectt. & other States/Central Govt. Depts. / Ministries.
5. To supervise the functioning of the facilitation Counter of the Deptt. at Krishi Bhawan for assisting/ helping the public visitors & aggrieved consumers.
6. To take up the grievances of the consumer cases pending in the various Consumer Courts including NCDRC for early hearing of the cases.
7. To deal/attend Parliament Question, VIP references & other Misc. type of work arising from time to time relating to consumers.
8. Take up follow up action at appropriate level for early disposal of the pending complaints/grievance representation as a part of monitoring.

9. To submit monthly/quarterly/yearly MIS report, D.O. material from Secy. (CA) to Cabinet Secretary about the details of progress, status & achievement of the cases disposed by the Cell.

6.11 Objectives of the Grievance Redressal Policy:

The Grievance redressal mechanism of an organization is the gauge to measure its efficiency and effectiveness as it provides important feedback on the working of the Organization. The main purpose of a Grievance Policy is to place an appropriate mechanism whereby the Customer who believe(s) that he/ she has been wronged by any act of the Company is afforded a fair opportunity to redress his/ her Grievance.

The objectives of the Grievance Redressal Policy are:

- (a) To develop an organizational framework to promptly address and resolve customer Grievances fairly and equitably;
- (b) To provide enhanced level of customer satisfaction;
- (c) To provide easy accessibility to the customer for an immediate Grievance redressal.
- (d) To educate the customers about their responsibilities to access benefits due under the policies;
- (e) To ensure that the customers are treated fairly at all times;
- (f) To identify systemic flaws in the operational functions of the organization and products suggesting corrective measures;
- (g) To put in place a monitoring mechanism to oversee the functioning of the Grievance Redressal Policy.

6.12 SUM UP:

The globalization and liberalization, regulatory reforms, development of new technologies and the growth of consumer services along with rising aspiration of the consumer for better goods and services have acted as the major agents of change. In many instances, these developments have provided significant benefits to consumers. However, relatively little attention has been paid to the challenges these developments have posed for both consumers and consumer policy makers.

A consumer is a user of goods and services. Any person paying for goods and services which he uses is entitled to expect that the goods and services are of a particular nature and quality promised to him by the seller.

All interactions between a customer and a product provider at the time of sale, and thereafter is customer service. Customer service adds value to a product and builds enduring relationship. Services means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or loading or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. The Government servants not doing any service for consideration but a statutory function

A "Grievance" is defined as any communication that expresses dissatisfaction about an action or lack of action, about the standard of service/ deficiency of service of an insurance company and/or any intermediary or asks for remedial action. The Grievances can be solved by formulation and effective implementation of Citizen's Charter and setting up information & facilitation counters (IFC).

The open economy has brought choices to consumers but has also increased the grievances. The consumer grievances if not checked will result in exploitation of common man. Thus, measures must be taken to resolve the consumer grievances. A new policy must be adopted to check the problems arising due to globalisation and liberalisation.

6.13 REFERENCES

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6.14 CHECK YOUR PROGRESS

Fill in the Blanks

- (i) All interactions between a customer and a product provider at the time of sale, and thereafter is.....
- (ii) The term "services" is defined in of the CPA.
- (iii) When a person gives a suit to the tailor for stitching is an example of

- (iv) The beneficiary is also
- (v) The objective of the grievance redressal policy is to provide enhanced level of

True or False

- (i) In recent years, consumer-related problems have rapidly increased and frequent business misconduct has greatly damaged consumer trust in business.
- (ii) A contract of personal service is a type of service.
- (iii) The goods brought for the purpose of earning livelihood are included in commercial purpose.
- (iv) For the services provided without charging anything in return, the person availing the services is not a consumer under the Act.
- (v) Citizen charter is a tool to resolve the grievances.

Answers to Check Your Progress

Fill in the Blanks

- (i) customer service
- (ii) Section 2(1)(o)
- (iii) contract for personal service
- (iv) consumer
- (v) customer satisfaction

True or False

- (i) True
- (ii) False
- (iii) False
- (iv) True
- (v) True

6.15 TERMINAL QUESTIONS

Q.1 What do you mean by Service and explain the meaning in reference to Consumer?

Q.2 Define grievance and enumerate the ways in which the grievances could be resolved?

UNIT - 7

REDRESSAL UNDER THE CONSUMER PROTECTION ACT, 1986

Structure:

- 7.1 Introduction
- 7.2 Origin of the COPRA
- 7.3 Formation of Three-Tier Grievance Redressal Machinery
- 7.4 Some Important aspects as to redressal under the COPRA
 - 7.4.1 How is right as a consumer protected under the Consumer Protection Act?
 - 7.4.2 Where should one complain?
 - 7.4.3 What is method of filing a complaint?
 - 7.4.4 Who is a consumer?
 - 7.4.5 Who can file a complaint?
 - 7.4.6 When a complaint can be filed?
 - 7.4.7 How can you file?
 - 7.4.8 What information should a complaint contain?
 - 7.4.9 Remedies
 - 7.4.10 Appeals
- 7.5 Redressal Machinery under the COPRA
 - 7.5.1 Consumer Protection Councils
 - 7.5.1.1 Objects of the Councils [Sections 6 and 8]
 - 7.5.1.2 Establishment and Composition of the Central Consumer Protection Council (Section 4)
 - 7.5.1.3 Procedure for meetings of the Central Council (Section 5)
 - 7.5.1.4 Establishment and Composition of the State Consumer Protection Council(Section 7)
 - 7.5.2 Three Tier Consumer Grievances Machinery under the Consumer Protection Act
 - 7.5.2.1 District Forum
 - 7.5.2.2 State Commission

7.5.2.3 National Commission

7.6 Sum Up

7.7 References

7.8 Check Your Progress

7.9 Terminal Questions

Objectives:

After studying this Unit, you should be able to:

- Know about the various redressal agencies under the COPRA
 - Understand the procedure, power and jurisdiction of the various redressal agencies.
-

7.1 Introduction:

In spite of host of the legislations, none of them could be described as consumer specific. They have been designed to provide reliefs in specific situations only. None of them, for example, provided for rights of consumers, separate judicial machinery for looking into complaints. Caveat Emptor - Let the buyer beware continued to be the governing rule. The helpless and harassed consumer did not really get effective remedies. Consumer remained the king only in the literature on economics. The **seller/manufacturer/supplier** continued to rule.

With the enactment of Consumer Protection Act, 1986 the scenario has undergone a change. The rights of consumers have been given a statutory recognition. Three-tier grievance redressal machinery at the District, State and National level has been constituted. Consumer is sought to be installed as a king.

The Indian Parliament enacted this legislation in December 1986. It came into force on April 15, 1987. By July 1987, all the provisions came into operation. The object of the legislation, as the Preamble of the Act proclaims, is for better protection of the interests of consumers. During the last few years preceding the enactment there was in this country a market awareness among the consumers of goods and services that they were not getting their money's worth and were being exploited by both traders and manufacturers of consumer goods. The need for Consumer Redressal Forum was, therefore, increasingly felt.

Understandably, therefore, a legislation was introduced and enacted with considerable enthusiasm and fanfare as a path-breaking benevolent legislation intended to protect the consumers from exploitation by unscrupulous

manufacturers and traders of consumer goods. A three tier fora comprising the District Forum, the state Commission came to be envisaged under the Act for redressal of grievances of consumers.

Emboldened by the legislation, enacted in 1986, consumers have been flooding these Redressal Agencies with petitions dead phones, malfunctioning television sets, delayed **LPG** cylinder connections, losses due to strikes in banks and hospitals, medical malpractices, bad pressure cookers, loss of agricultural crops due to power breakdowns, unkept promises and what you have.

Under COPRA, three-tier quasi-judicial machinery at the district, state and national levels were set up for redressal of consumer disputes. The district level court deals with the cases involving claims up to Rs 20lakhs, the state level courts between Rs 20 lakhs and Rs 1 crore and the national level court deals with cases involving claims exceeding Rs 1 crore. If a case is dismissed in district level court, the consumer can also appeal in state and then in National level courts. Thus, the Act has enabled us as consumers to have the **right to represent** in the consumer courts. Consumers have the **right to seek redressal** against unfair trade practices and exploitation. If any damage is done to a consumer, she has the right to get compensation depending on the degree of damage. There is a need to provide an easy and effective public system by which this can be done.

7.2 Origin of the COPRA:

The Consumer Protection Act, 1986 was enacted with the sole aim of promoting and protecting consumers' interests and to bring justice to their door-steps. Its enactment has ushered in a new era of consumer protection in the country. The 1986 Act is a benevolent and beneficent piece of legislation and a milestone in the Indian history of law making. Prior to its enactment, a large number of laws were already there on the statute book that directly or indirectly protected consumers' interests. However, seeking justice under those laws was a cumbersome, dilatory, and a cobwebish procedure that kept majority of consumers away from the process of litigation. As a result, thereof, the age old doctrine of Caveat Emptor (let the buyer beware) held sway in the market place, thereby relegating consumers' interests and concerns to the background. The market place, all through, had been a sellers' place.

There is no denying the fact that since independence, a large number of laws were passed by the Indian Parliament with the sole aim to protect the consumers against

their exploitation by unscrupulous traders and unethical businessmen. Prominent among these law were: The Prevention of Food Adulteration Act, 1954; the Monopolies and Restrictive Trade Practices Act, 1969; the Hire Purchase Act, 1972; The Standard of Weights and Measures Act, 1976; the Drugs and Magic Remedies (Objectionable) Advertisements Act, 1976; and the Prevention of Black Marketing Act, 1980.

However, notwithstanding the availability of all these pieces of legislation, the situation had indeed been dismal and an average consumer had always been exploited in the market place. Illiteracy, ignorance, unequal bargaining power, insufficient product information, denial of after-sale service, and lack of awareness and assertiveness on the part of consumers about their rights and above all cumbersome laws and complicated legal procedure cumulatively led to their never-ending exploitation at the hands of unscrupulous traders, unethical businessmen, and irresponsible service providers. Thus, the consumers needed protection.

All this continued until 1985 when the United Nations General Assembly laid down certain guidelines for consumer protection and desired the member states to abide by those guidelines. One of these guidelines enjoined upon the member states to enact full-fledged independent laws for the protection of consumers interest. Broadly speaking, it was in line with these guidelines that the Indian Parliament enacted the Consumer Protection Act, 1986 with the sole aim of promoting and protecting consumers' interests.

The Voluntary consumer organizations and various other social groups also lobbied heavily with the government for the enactment of a consumer-friendly legislation. However, the year 1986 can be called as the 'Year of Consumers' as, besides the enactment of the Consumer Protection Act, 1986, a number of other laws were also suitably amended with the sole aim of liberalizing the locus standi and thereby allowing consumer organizations to litigate on behalf of the exploited consumers and take justice to their doorsteps.

The Consumer Protection Act was passed in December 1986 and came to be known as a Code of Consumer Rights However, strictly speaking its effective implementation started in the year 1990 when the Consumer Disputes Redressal Agencies envisaged under the Act were by and large established throughout the country. It may be appropriate to mention here that it was due to the repeated intervention by the Supreme Court of India that these redressal agencies were ultimately established. Many states established these agencies when they were

likely to face the contempt proceedings in the Supreme Court. This sadly shows the apathy on the part of the governments in welfare state to implement even a benevolent piece of legislation on their own.

Once these agencies were well in place, they started dispensing justice by way of entertaining and disposing of complaints against the supply of defective goods as well as against rendering of deficient services, inter alia, by airlines, banks, housing boards and corporations, insurance companies, medical profession, posts and telegraphs, railways, roadways, and telecommunications. As it normally happens, a number of terms defined in the Consumer Protection Act, 1986 had different and divergent interpretations

As a result thereof, at the initial stages, many of these services claimed complete immunity from their governance by the 1986 Act by way of advancing the arguments that each of them had their own regulatory law and in-house control mechanism. However, the 1986 Act being the one that is "in addition to and not in derogation of any other law for the time being in force", Consumer Disputes Redressal Agencies brought all these services within the ambit and amplitude of the 1986 Act except for educational services, housing, legal and the medical profession in the first instance.

However, a large number of cases particularly filed against the housing boards and corporations as well as against the medical profession before the different Consumer Disputes Redressal Agencies. Claiming of immunity by these two types of services from their governance by the 1986 Act, coupled with the equally strong arguments advanced by the consumer protagonists and their organizations for their inclusion under COPRA. Medical profession against their exclusion created a lot of controversy and led to heated debates on the issue.

However, in a short span of time, even these two services were also brought within the ambit of this Act, thanks to the radical decision-making by the Supreme Court of India and pronouncement of some path-breaking judgments against housing services as well as against the medical profession. Notwithstanding the fact that the controversy relating to educational services and the legal profession is yet to be fully settled. There has not been any looking back for the redressal agencies and each decision pronounced by the National Consumer Disputes Redressal Commission as well as by some of the High Courts and above all by the Supreme Court of India has led to the crystallization as well as to the consolidation of law on

the subject thereby giving boost to the emerging consumer protection jurisprudence in the country

7.3 Formation of Three-Tier Grievance Redressal Machinery:

The Consumer Protection Act, 1986 envisages a three-tier redressal mechanism for the redressal of consumers' grievances. At the lowest level, the institution of District Consumer Disputes Forum has been envisaged. At the state level, the institution of the State Consumer Disputes Redressal Commission has been envisaged and at the apex level, the institution of the National Consumer Disputes Redressal Commission has been envisaged. The State High Courts have not been given any locus standi to entertain complaints from consumers or appeals against the decision-making by any of the three redressal forums. The State High Courts can entertain cases only under their writ jurisdiction and the Supreme Court of India is to be the final appellate authority under the Consumer Protection Act, 1986.

For enforcement of the rights of the consumers, the Act has created special consumer Courts. As Act provides for a three-tier consumer grievance redressal machinery with the District Forums at the base, the State Commission at the middle level and the National Commission at the apex level. The State and national level bodies also function as appellate authorities. Any verdict given by the National Commission can be challenged in the Supreme Court.

The cost of goods or services and compensation asked for is the criterion for filing the complaint with the above Redressal Forum. The Redressal Forum constitutes a quasi-judicial machinery to provide speedy and simple redress to consumers. The Redressal Forums are not trammled by any technicalities or rules of complicated or elaborate procedure. They are merely to observe the basic rules of natural justice. No court fee or any other charge is to be paid in respect of any complaint or petition of appeal or revision, however high be the value of its subject matter. Thus, the Act provides a simple, speedy and inexpensive redressal of consumer grievances relating to defective goods.

The complaint need only set out the grievances in the simplest form and furnish the name and address of the opposite party against whom the complaint is made? It may even be in the form of a letter to the concerned Redressal Forum and no formalities of any type would be insisted upon. Appearance may be by the complainant himself in person or by agent duly authorized by him. It is not

obligatory to engage any advocate. Thus, it is a far more convenient law for consumers. The definition of the expression 'service' in the Act is very wide and comprehensive. In fact, it will take in service of any description rendered for consideration by any person or organization including public sector undertakings (PSUs) and Government agencies.

However, services rendered free of charge or under any contract of personal service, are excluded. Thus, the following services do not fall within its ambit: (i) Health Services provided by Government hospitals, (ii) Civic amenities provided by municipal authorities. All suppliers of goods and services, both in the private and in the public sector and the cooperative sector, are covered by the Act.

The hallmark of the Act is that it has set a time frame or period for the disposal of cases. The Act allows filing of "class action" complaints on behalf of groups of consumers having common interest. The Act also covers complaints relating to unfair trade practices. Thus, a consumer can directly protect against food adulteration, short weighing and overcharging, directly to the District Forum.

The consumer can pick up a food sample from a shop get it analyzed by a chemist and file a complaint on that basis. It also provides for complaints against charging in excess of the price of a product fixed by a law or rule and/or displayed on the packaged commodities. To organize consumer resistance further and educate them, the Act also provides for the formation of consumer protection councils in every State. These councils do not have any legal authority under the Act but are meant to promote the cause of consumer protection and cover the six consumer rights - right to safety, to be informed, to choose, to be heard, to redress, and to consumer education.

7.4 Some Important aspects as to redressal under the COPRA:

To fulfill the objects of the Act the Central Government has established the Central Consumer Protection Council, and the State governments have established the District forums and the State Consumer protection Council in their respective states. A complaint may be made by either, the consumer, the government, a recognized consumer society or by one or more consumers having a common interest, within two years of the grievance arising.

A few instances when such a complaint may be made include losses caused to a consumer as a result of unfair trade practice, defect in goods, deficiency in services, charging in excess of price displayed etc. Once the complaint has been

received the other party will be asked to give their version of the case. If the matter pertains to defective goods, the same may be sent to a laboratory for testing. If it relates to a service matter then both parties shall be asked to produce evidence in support of their claims.

If the authority is convinced that the complaint is valid then it may order the producer to remove the defect, replace the goods, return the price paid by the consumer, or pay an amount to the consumer as compensation for any loss or injury suffered. An appeal may be made against such orders to the next highest authority. If a trader or any person against whom an order has been made, fails to comply with the order then they may be fined or imprisoned. On the other hand if a complaint is found to be frivolous or malicious then the complainant may be fined.

One of the major developments in the Consumer protection Act has been with respect to whether services provided by the medical profession, especially when it is a free service as in the case of government hospitals can fall under the act. It had been argued that technically such professions do not provide any contracts 'for services'. The courts however keeping in mind the fact that the Act was intended to protect consumers have held that all professional services whether free or paid for would render a person a consumer under the Act.

The procedures under the Act and under the Commissions are relatively simpler and more informal than under normal litigation. In fact, any consumer can appear before the commission and need not even hire a lawyer to argue one's case. Despite the simple procedures, there have not been too many consumer cases in India unlike the United States where the courts are filled with consumer grievances.

One of the reasons for this fact has been the lack of adequate consumer awareness of their rights in India and the seemingly intimidating structure of courts and the legal profession. However to its credit, it must be said the Consumer Protection Act remains one of those rare laws which allows for a speedy and simple protection of the rights of ordinary people, and judicious use of the same would foster a greater consumer movement in India where the market is flooded with more products but not necessarily more information.

7.4.1 How is right- as a consumer protected under the Consumer Protection Act?

The rights of the consumers are invoked in the Indian Legal System through the mechanism provided in the Consumer Protection Act (CPA). The CPA provides for establishment of Consumer Protection Councils – Advisory and recommendation bodies. The Consumer Protection Councils exist at the National, State and District Level. They are basically advisory bodies who meet at least 3 times a year to discuss and review consumer protection measures and issues. Two thirds of the members of these councils are non-official including representatives of women and consumer organizations.

The CPA provides for a three-tier quasi judiciary machinery at the national, state and district levels. The District Forum has jurisdiction to entertain complaints where the value of goods / services complained against and the compensation claimed is less than Rs. 5 lakhs, the State Commission for claims exceeding Rs. 5 lakhs but not exceeding Rs. 20 lakhs and the National Commission for claims exceeding Rs. 20 lakhs.

7.4.2 Where should one complain?

If the value of the services and compensation asked for is a. <Rs 5 lakhs then one can complain to the District Forum at the District Headquarter, b. > 5 lakhs and within Rs. 20 lakhs the complaint can be filed before the concerned State Commission at the State Capital. c. >20 lakhs the complaint can be filed before the National Commission. If the consumer is not satisfied with the Judgment of the District Forum, he/she can file and appeal to the State Commission. Similarly, appeal against an order of a State Commission lies before the National Commission. Appeal against an order of the National Commission has to be filed before the Supreme Court of India.

7.4.3 What is method of filing a complaint?

A complaint shall be instituted in the District Forum within the local limits of whose jurisdiction the opposite party (or any one of the opposite parties where there are more than one) or the defendant actually and voluntarily resides or carries on business, or has a branch office or personally works for gain at the time of institution of the complaint provided that the other opposite party/parties acquiescence in such institution or the permission of the Forum is obtained in respect of such opposite parties; or the cause of action arises, wholly or in part.

7.4.4 Who is a consumer?

All of us are consumers of goods and services. A consumer under the act is:

“One who buys any goods, hires any service or services for consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment.”

A person is not a consumer if he purchases goods for commercial purpose or resale purpose.

However, a person is consumer if he purchases goods for the purpose of earning his livelihood by means of self-employment.

Many acts enacted earlier are in force, whether enforced or not. Under any of these acts, one can seek redressal through the courts of law. However, ‘Consumer Protection Act’ (Act 68 of 1986) provides for redressal through specially-constituted agencies at different levels. A glimpse of the provisions is presented herein below:

1. It provides for the notification of Central and State Consumer Protection Councils by the respective governments with a view to protect the rights of consumers such as,

- the right to be protected (against hazardous goods)
- the right to be informed (about quality, quantity, against unfair trade practices, etc)
- the right to be heard (of complaints),
- the right to seek redressal (through appropriate agencies), and
- the right to consumer education

2. To promote and protect the rights of the consumers with regard to defective goods, deficient services, overcharging or any unfair trade practices (as defined under MRTP ACT 1969). It includes false statement on quantity or grade of goods/services, false claims to sponsorship, making false and misleading promises on the articles, false projection of the needs for or usefulness of goods/services, giving warranty on products not based on adequate or proper test, and the like, whether made orally or in writing or by visible representation.

7.4.5 Who can a file a complaint?

- A consumer (As above)
- Any registered voluntary consumer organization
- The Central Government

- The State Government

7.4.6 When a complaint can be filed?

Under the Act, a complaint can be made in writing in the following circumstances:

- If you have suffered loss or damage as a result of any unfair trade practices adopted by the trader.
- If the services hired/availed of suffer from deficiencies in any respect.
- If you have been charged a price in excess of the price displayed or fixed by or under any law for the time being in force.
- If, the goods hazardous to life and safety, when used.

7.4.7 How can you file?

The complaint is to be filed within two years from the date on which cause of action has arisen. There is no fee for filing a complaint. Even an affidavit does not need stamp papers. A complaint can be sent by post or can be presented in person by complainant or his authorized agent. Usually the Forums require 3-5 copies of complaint.

7.4.8 What information should a complaint contain?

Complaint should contain the following information:

- Name and complete address of complainant
- Name and complete address of the opposite party or parties as the case may be.
- Date of purchase/service obtained.
- Amount paid for consideration.
- Items of goods with quantities/nature of service.
- Whether the complaint relate to unfair trade practice/defective goods' deficient service/charging excess price.
- Copies of bills/vouchers/receipts and copies of correspondence made, if any.
- The relief sought-Under the Act.

7.4.9 Remedies:

The forums/Commissions can order the following relief:

- Removal of defects from the goods

- Replacement of the goods
- Refund of the price paid.
- Award of compensation for the loss or injury suffered.
- Removal of defects or deficiencies in the services.
- Discontinuance of unfair trade practices/restrictive trade practices and directing not repeating them.
- Withdrawal of the hazardous foods from being offered for sale.
- Award for adequate costs to practice.

7.4.10 Appeals:

Appeals can be filed as under:

District Forum Commission	Within 30 days	In	State
State Commission Commission	Within 30 days	National	
National Commission	Within 30 days	Supreme Court	

There is no fee for filing appeals in the State and National commissions. Procedure is the same as that complaint except that the application has to be accompanied by the copies of the orders appealed against with reasons for filing appeals.

7.5 Redressal Machinery under the COPRA:

The interests of consumers are enforced through various authorities set up under the CPA. The CPA provides for the setting up of the Central Consumer Protection Council, the State Consumer Protection Council and the District Forums.

7.5.1 Consumer Protection Councils:

The Consumer Protection Councils are at both Centre level and State level, that is one Central Council and many State Councils. These councils work towards the promotion and protection of consumers. They make investigations and give publicity to the matters concerning consumer interests, take steps towards furthering consumer education and protecting consumer from exploitation, advise the Government in the matter of policy formulation keeping consumer interest as pivotal concern, etc.

Although their suggestions are recommendatory in nature, but they have significant impact in policy making. While deciding about the composition of these councils,

the State keeps in mind that it should have proper representation from all the possible areas affecting consumer interests. Again the rules as to when should these councils meet, what should they aim at, how they conduct their business are framed by the Government with a view to balance the efficacy and practicability of its business.

While deciding about the composition of these councils, the State keeps in mind that it should have proper representation from all the possible areas affecting consumer interests. Again the rules as to when should these councils meet, what should they aim at, how they conduct their business are framed by the Government with a view to balance the efficacy and practicability of its business.

7.5.1.1 Objects of the Councils [Sections 6 and 8]:

There is one basic thought that 'consumer's need is to be protected'. Another thought is - how he can be protected? Definitely, there has to be some agency to work towards this protection. The Act has provided for constitution of Consumer Councils for this purpose. Now, when we say that these councils are there to protect the consumers, a question arises - consumers are protected against what? Thus, the Act has detailed some rights of consumers, which need to be protected by the councils. These are:

Right to safety - It is right to be protected against the marketing of goods and services which are hazardous to life and property. Unsafe goods may cause death or serious injury to the user due to defective ingredients, defective design, poor workmanship, or any other reason. At times safety hazards are found due to absence of proper instructions to use the product. Thus it is to be ensured that—Manufacturers and traders ensure that the goods are safe for the users, in case of hazardous goods, they give clear instructions as to mode of use, consumer is informed of the risk involved in improper use of goods, vital safety information is conveyed to consumers. Manufacturers or distributors who become aware of the unforeseen hazards after the goods are supplied must inform the authorities and the public in order to forewarn consumers about such hazards. Where a product is found such as is likely to be hazardous even when properly used, traders should either recall it and modify the same, or replace it with a new product, or adequately compensate for it.

Right to information - It is right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, with a view to protect the consumer against unfair trade practices. Adequate information is very important in

order to make a right choice. In our country, however, consumers do not get adequate comparative information about the quality, quantity, potency, purity, standard and price of different kinds of goods or services which are available. As a result buying decisions become difficult. Therefore consumers need to be given maximum information about the wide variety of competing goods available in the market.

Right to choose - The right to choose can be made meaningful by ensuring access to a variety of goods and services at competitive prices. Fair and effective competition must be encouraged so as to provide consumers with the widest range of products and services at the lowest cost.

Right to represent - It is right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums. The Consumer Protection Act, 1986 has well taken care of this right by making available the instrumentality of Redressal Forums. Every consumer has a right to file complaint and be heard in that context.

Right to redressal - It is a right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers. When consumers are wronged in a market place transaction, appropriate and adequate redress must be available. The Act has ensured this right by establishing Consumer Forums and recognising restrictive and unfair trade practices as a ground to make a complaint.

Right to education - The right to consumer education is a right which ensures that consumers are informed about the practices prevalent in the market and the remedies available to them. For spreading this education, media, or school curriculum, or cultural activities, etc. may be used as a medium.

The Central Council's object is to ensure these rights of the consumers throughout the country while the State Councils look to ensure these rights to consumers within their territories.

7.5.1.2 Establishment and Composition of the Central Consumer Protection Council (Section 4):

(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.

The Central council consists of 150 members and its term is 3 years.

7.5.1.3 Procedure for meetings of the Central Council (Section 5)

- (1) The Central Council shall meet as and when necessary, 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.

7.5.1.4 Establishment and Composition of the State Consumer Protection Council: Section 7 provides provisions for Establishment and Composition of the State Consumer Protection Council as under:

- (1) The State Government may, 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 In charge 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.

(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.

7.5.2 Three Tier Consumer Grievances Machinery under the Consumer Protection Act

The CPA provides for a 3 tier approach in resolving consumer disputes. The District Forum has jurisdiction to entertain complaints where the value of goods / services complained against and the compensation claimed is less than Rs. 5 lakhs,

the State Commission for claims exceeding Rs. 5 lakhs but not exceeding Rs. 20 lakhs and the National Commission for claims exceeding Rs. 20 lakhs.

The establishment of Consumer Disputes Redressal Agencies is given under the Section 9 as follows: 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.

7.5.2.1 District Forum:

Under the CPA, the State Government has to set up a district Forum in each district of the State. The Government may establish more than one District Forum in a district if it deems fit.

Composition of the District Forum (Section 10).-(1) Each District Forum shall consist of:

(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 recognized university,

(iii) be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry public affairs or administration

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 un-discharged 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 (1) 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, In-charge of the Department – Member 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

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of 65 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 provision 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.

Jurisdiction of the District Forum (Section 11): (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

(c) the cause of action, wholly or in part, arises.

7.5.2.2 State Commission:

Composition of the State Commission (Section 16): (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 who 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 recognized 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 a 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 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 (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, In-charge of 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.

(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 Subsection (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 President or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

Jurisdiction of the State Commission (Section 17): (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 1 [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 works for gain, as the case may be, acquiesce in such institution; or
(c) the cause of action, wholly or in part, arises.

7.5.2.3 National Commission:

Composition of the National Commission (Section 20): (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 recognized 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 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, to be nominated by the Chief Justice of India- Chairman.

(b) the Secretary in the Department of Legal Affairs in the Government of India- Member.

(c) Secretary of the Department dealing with consumer affairs in the Government of India- Member.

(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 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 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 and shall not be eligible for reappointment.

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 fulfils 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, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

Jurisdiction of the National Commission (Section 21): 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 twenty lakhs; 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.

7.6 SUM UP:

The declaration of the rights alone cannot fulfill the aims and objectives with which such declaration was made, unless, the declaration of rights is without the right of redressal. The right of redressal can be exercised through the redressal agencies. Thus, the formation of redressal agencies for the enforcement of rights is the most essential step to protect the consumer rights.

The rights of consumers have been given a statutory recognition through the COPRA. Consumers have the **right to seek redressal** against unfair trade practices and exploitation. If any damage is done to a consumer, she has the right to get compensation depending on the degree of damage. There is a need to provide an easy and effective public system by which this can be done.

The COPRA has established three-tier quasi-judicial machinery at the district, state and national levels for redressal of consumer disputes. The district level court deals with the cases involving claims up to Rs 20 lakhs, the state level courts between Rs 20 lakhs and Rs 1 crore and the national level court deals with cases involving claims exceeding Rs 1 crore. If a case is dismissed in district level court, the consumer can also appeal in state and then in National level courts. Thus, the Act has enabled us as consumers to have the right to represent in the consumer courts.

7.7 REFERENCES:

Francis Cherumilan, 1991 : *Business and Government*, New York.

P.K. Majumdar, 1995 : *Law of Consumer Protection in India*, New Delhi.

7.8 CHECK YOUR PROGRESS:

Fill in the Blanks

- (i) COPRA came into force on.....
- (ii) The Redressal Forum constitutes a to provide speedy and simple redress to consumers.
- (iii) If the value of the services and compensation asked for is the complaint can be filed before the National Commission.
- (iv) An appeal from the order of the District Forum can be filed within in the State Commission.
- (v) The objects of the Councils are enumerated in..... of the Act.

True or False

- (i) The definition of the expression 'service' will take in service of any description rendered for consideration by any person or organisation including public sector undertakings (PSUs) and Government agencies.
- (ii) If the value of the services and compensation asked for is <Rs 5 lakhs then one can complain to the District Forum at the District Headquarter.

- (iii) The Central Government or the State Government cannot file a complaint under the COPRA.
- (iv) A complaint can be sent by post or presented in person by complaint or his authorised agent.
- (v) There is fee for filing appeals in the State and National commissions

Answers to Check Your Progress

Fill in the Blanks

- (i) April 15, 1987
- (ii) quasi-judicial machinery
- (iii) >20 lakhs
- (iv) 30 days
- (v) Section 6&8

True or False

- (i) True
- (ii) True
- (iii) False
- (iv) True
- (v) False

7.9 TERMINAL QUESTIONS:

Q.1 Discuss the origin of the Consumer Protection Act, 1986? Briefly enumerate the various redressal agencies provided in the Act.

Q.2 Who can file a complaint under the CPA? Elaborate the procedure thereof.

Q.3 What are the remedies available to an aggrieved party under the CPA?

Q.4 Discuss the composition and jurisdiction of the National Commission?

UNIT - 8

REDRESSAL UNDER ALLIED LAWS

STRUCTURE:

8.1 Introduction

8.2 Various Redressal Forums for Consumer Protection

8.3 Redressal under Allied Laws

8.4 Sum Up

8.7 References

8.8 Check Your Progress

8.9 Terminal Questions

Objectives

The study of this unit will enable you to:

- understand the various redressal means in different allied laws.
- have a comprehensive understanding of various redressal systems.

8.1 Introduction:

In a laissez-faire society, consumer was a king and he was free to choose but the consumer sovereignty was a myth and the supposed benefit to the consumer accruing from perfect competition was not realized. The actual world is a world of imperfect or monopolistic competition and the consumer has only a limited amount of freedom in making purchase choices. When the consumer will be able to assert himself, 'the take it or leave it' nature of transactions in the Indian market will end. As the manufacturer has the free choice to produce and sell his goods so, the consumer should have the free choice to select from the range of products available. This is what we mean by consumer's sovereignty in the present socio-economic context.

The consumer movement exercises a considerable influence on the socio-economic environment of business. In a country like India where there is a high percentage of illiteracy among people, where people are less informed and where critical goods are always in short supply, the Government has a significant role in safeguarding the interests of consumers by promoting a climate of fair competition and

preventing exploitation of consumers. There are several instances of exploitations and malpractices on the part of manufacturers, traders, dealers and services providers. Now the question arises as to how can these be eliminated? Actually, it is very difficult to stop such exploitation by any consumer single handedly. The consumers have to collectively act against such malpractices and take the help of consumer organizations and the government agencies. In fact, consumer protection essentially needs consumer awareness, education and guidance, and it cannot be assured by voluntary business conduct or self-regulation.

The Grievance Redress Mechanism is part of the machinery of any administration. No administration can claim to be accountable, responsive and user-friendly unless it has established an efficient and effective grievance redress mechanism. In fact, the grievance redress mechanism of an organization is the gauge to measure its efficiency and effectiveness as it provides important feedback on the working of the administration.

8.2 Various Redressal Forums for Consumer Protection:

The following are the various ways and means of consumer protection and redressal forums in India.

(a) Lok Adalat:

Lok Adalats are the effective and economical system for quick redressal of the public grievances. The aggrieved party can directly approach the adalats with his grievance, and his issues are discussed on the spot and decisions are taken immediately.

The consumers may take the advantage of this system to solve their problems. The cases of electricity billing, telephone billings, road accidents etc. can be taken up in Lok Adalat for spot settlement. In fact, Indian Railways, Mahanagar Telephone Nigam Limited and Delhi Vidhyut Board hold Lok Adalat regularly to settle user's grievances on the spot.

The Consumer can approach the Adalat with his grievance. The issue is discussed and decision is taken on the spot. This saves time and money. Lok Adalat has become a speedy, effective and economical redressal system. Indian Railways, Delhi Transport Corp, Delhi Development Authority, Delhi Vidhyut Board, etc hold Lok Adalat from time to time to sort out problems faced by their users.

15th March is celebrated as World Consumer Right Day all over the world every year. In 1995, this day was organized at Vigyan Bhawan, New Delhi. In addition,

the Ministry with the help of DAVP undertook a massive outdoor publicity program such as displaying hoardings, banners, bus panels, etc. telecasting on consumer protection is also done by Doordarshan on a fortnightly basis.

(b) Public Interest Litigation:

Public Interest Litigation (PIL) is a scheme under which any person can move to the court of law in the interest of the society. It involves efforts to provide legal remedy to un-represented groups and interests. Such groups may consist of consumers, minorities, poor persons, environmentalists and others. Any person or organization, though not a party to the grievances, can approach the court for remedial action in case of any social atrocities.

(c) Redressal Forums and Consumer Protection Councils:

Under the Consumer Protection Act 1986, a judicial system has been set up to deal with the consumer grievances and disputes at district level, state level and national level. These are known as District Forum, State Consumer Disputes Redressal Commission (State Commission) and National Consumer Disputes Redressal Commission (National Commission).

Any individual consumer or association of consumers can lodge a complaint with the District, State or National level forum, depending on the value goods and claim for compensation. The main objective of these forums is to provide for a simple, speedy and inexpensive redressal of consumers' grievances.

The Act as amended in 2002 also provides for setting up of **Consumer Protection Council** at district, state and national level for promotion and protection of the rights of the consumers as laid down in Section 6 of the Act. The councils are required to give wide publicity to the rights of consumers, the procedures for filling complaints by them and provide inputs to consumer movement in the country.

(d) Awareness Programme:

To increase the level of awareness among the consumers the Government of India has initiated various publicity measures. It regularly brings out journals, brochures, booklets and various posters depicting the rights and responsibilities of consumers, redressal machineries etc. It observes World Consumer Rights Day on 15 March and National Consumer Day on 24 December. Several video programs on consumer awareness are broadcasted through different television channels.

Similarly, audio programs are also broadcasted through All India Radio and FM channels. The poster and slogan competition on consumer protection are also

organized at various level. To encourage the participation of public in the field of consumer protection the Government has also instituted National Awards to the persons who have done outstanding work in this field.

(e) Consumer Organizations:

Consumer organizations have been active all over the world to promote and protect consumer interests. A number of such organizations have also been set up in recent years in different parts of India. It is felt that neither it is possible to discipline all members of the business community through moral sanctions and a code of fair business practices nor can administrative orders and legislative provisions to ensure consumer protection without the active involvement of consumer associations.

Now with an increasing number of consumer organizations involved in consumer protection, the consumer movement is getting a foothold in India and helping individuals to seek quick and adequate redressal of their grievances. Look at the box for some of such consumer organizations.

(f) Consumer Welfare Fund:

The government has created a consumer welfare fund for providing financial assistance to strengthen the voluntary consumer movement in the country particularly in rural areas. This fund is mainly used for setting up facilities for training and research in consumer education, complaint handling, counseling and guidance mechanisms, product testing labs, and so on.

(g) Role of Universities and Schools in Consumer Protection:

Indira Gandhi National Open University (IGNOU) has developed a comprehensive syllabus, which provides the basic framework for other universities to develop a curriculum for consumer education. The Kakitaya University in Andhra Pradesh is offering a one-year post graduate course in consumer law.

The Maharashtra Open University in Pune is offering courses in consumer education. CBSE has published a Teachers' Manual on consumer education for students. Many other voluntary consumer organizations have mushroomed but due to lack of resources their contribution in this field has been insignificant. There is therefore an urgent need of an apex (main) Consumer Organization that will help to coordinate the activities of these voluntary organizations in India.

(h) Role of Media in Consumer Protection:

The press has been responding to consumer needs in several ways even much before the Consumer Protection Act was enacted. Besides publishing articles,

columns etc. it has rescued harassed consumers. For example the Indian Express was the first newspaper to start a column on consumer complaints.

It not only published the problems and grievances of consumers but also forwarded them to the concerned authorities for redress. In many cases the results were published and consumers were able to get their grievances settled. The success and popularity of the Indian Express column, motivated other newspapers to follow suit and today almost all newspapers, including regional language newspapers, publish consumer complaints on a weekly basis.

8.4 Redressal under Allied Laws:

A number of laws have been enacted in India to safeguard the interest of consumers and protect them from unscrupulous and unethical practices of the businessmen. Some of these Acts are as follows:

1. Agricultural Products (Grading and Marketing) Act, 1937
2. Industries (Development and Regulation) Act, 1951
3. Prevention of Food Adulteration Act, 1954
4. Essential Commodities Act, 1955
5. The Standards of Weights and Measures Act, 1956
6. Monopolies and Restrictive Trade Practices Act, 1969
7. Prevention of Black-marketing and Maintenance of Essential Supplies Act, 1980
8. Bureau of Indian Standards Act, 1986:
9. The Contract Act 1982:
10. The Sale of Goods Act 1930
11. The Trade Mark Act 1999
12. The Competition Act 2002
13. Drug Prices Control Order (DPCO) 1995
14. Electricity Act 2003
15. Telecom Regulatory Authority of India (TRAI) Act (amended 2000)
16. Food Safety and Standards Act
17. Company law

The object and interest of almost all these enactments are mainly punitive, though some of these are also preventive in nature. However, none of these laws provides any direct relief to the consumers. Hence, amendments have been made in some of the laws by which individual consumers and consumer organizations have been

conferred the right to take initiative and launch legal proceedings in civil and criminal courts against the violators.

Another legal enactment that made a dent in this situation was the Monopolies and Restrictive Trade Practices Act, 1969. It gained the status of a specific consumer protection law with amendments made in 1984. In spite of the changes made in 1984, a need was felt to have a more elaborate legislation. Therefore, the Consumer Protection Act was passed in 1986 to offer the necessary protection to consumers and provide an elaborate mechanism to deal with

(i) Agricultural Products (Grading and Marketing) Act, 1937: This Act provides for grading and certifying quality standard of agricultural commodities, which are allowed to be stamped with AGMARK seal of the Agricultural marketing department of the Government.

(ii) Industries (Development and Regulation) Act, 1951: This Act provides for control over production and distribution of manufactured goods. According to this Act, the central government may order investigation of any industry, if it is of the opinion that there has been substantial fall in the volume of production, or a marked decline in the quality of a product, or any unreasonable rise in price. After due investigation, the government may issue directions to set things right. If the directions are not acted upon, the government may take over the concerned undertakings.

(iii) Prevention of Food Adulteration Act, 1954: This Act provides for severe punishment for adulteration of food articles. In the case of sale of adulterated food which is injurious to health and likely to cause death, life imprisonment with a minimum fine of Rs 3000 may be payable. Food inspectors are appointed and they have powers to lift samples and send them for analysis. Penalties are also provided under the act for offences committed by persons with regard to manufacture, import, storage, sale and distribution of adulterated food articles.

(iv) Essential Commodities Act, 1955: Under this Act, the Government has power to declare any commodity as essential in the public interest. Thereby the government can control the production, supply and distribution of the trading of such commodities. It also provides for action against anti-social activities of profiteers, hoarders and black-marketers.

(v) The Standards of Weights and Measures Act, 1956: This Act provides for the use of standard weights and standard measures of length throughout the country. 'Metre' has been specified as the primary unit for measuring length, and

'kilogram' as the primary unit for measuring weight. Before this act came into force, different system of weights and measures were used in different parts of the country like 'pound', 'Chhatak' and 'Seer' as weights, yard, inch and foot for length, etc. These differences provided opportunities for traders to exploit the consumers.

(vi) Monopolies and Restrictive Trade Practices Act, 1969: Redressal mechanisms are an essential component of the competition legislation of any country and so is the case in India where the MRTP Act has in-built grievance redressal provisions. With subsequent developments in the Indian economy, there were nine amendments to the MRTP Act before it was finally repealed by the Competition Act. Of these, the amendments of 1984 and 1991 are significant. Prior to 1984, the MRTP Act contained no provisions for the protection of consumers against false or misleading advertisements and other similar Unfair Trade Practices (UTPs). It was felt necessary to protect them from such practices resorted to within trade and industry to mislead or dupe them. The Sachar Committee therefore recommended that a separate chapter be added to the MRTP Act defining the various UTPs so that consumers, manufacturers, suppliers, traders and others in the market could conveniently identify practices that are prohibited. The provision as to UTPs in the MRTP Act was introduced in 1984. With the restructuring of the MRTP Act through the 1991 amendments, the thrust shifted to curbing MTPs (Monopolistic Trade Practices), RTPs (Restrictive Trade Practices) and UTPs with a view to preserve competition in the economy. It safeguards the interests of consumers by providing them protection against false or misleading advertisements and/or deceptive trade practices. Thus, the Consumer Protection Act, 1986 and the Monopolies and Restrictive Trade Practices Act, 1969 had been playing complementary roles in promoting consumer welfare in India. However, over the years, because of its inefficiency (factors like inadequate budgetary allocation and lack of autonomy) the MRTP was not very effective in providing redress as number of cases kept piling up. Moreover, the MRTP solved the cases that were less damaging for the consumers and the economy, whilst the relatively more damaging cases remained unattended. Under the provisions of this Act, as amended in 1983 and 1984, consumers and consumer groups can exercise their right of redressal by filing complaints relating to restrictive and unfair trade practices. The government has constituted the MRTP commission, which is empowered to deal with consumer complaints after due investigation and enquiry.

The Commission has power to award compensation for any loss or injury suffered by consumers.

(vii) Prevention of Black-marketing and Maintenance of Essential Supplies Act, 1980: The primary objective of this act is to provide for detention of persons with a view to prevention of black-marketing and maintenance of supplies of commodities essential to the community. The maximum detention for persons acting in any manner against the intention of the act can be imprisonment up to 6 months.

(viii) Bureau of Indian Standards Act, 1986: The Bureau of Indian Standards has been set up under this Act, replacing the Indian Standards Institution (ISI), to protect and promote consumer interest. It has two major activities : formulation of quality standards for goods and their certification through the BIS certification marks scheme by which manufacturers are permitted to use the standardization mark (ISI) on their products after due verification of conformity with prescribed quality standards of safety and performance. The Bureau has set up a consumer affairs department to create quality consciousness among ordinary consumers. There is also a public grievances cell to which consumers can make complaint about the quality of products carrying ISI mark.

(ix) The Contract Act 1982: This Act is formed to bind people on their promises made in a contract. The Act also provides remedies available to parties in case of breach of contract. Under the Consumer Protection Act, 2002, you have the right to cancel an agreement and have your money returned to you if:

- The contract is subject to a cooling off period. You have the absolute right to cancel (for any reason) within 10 days of receiving a written copy of the agreement.
- The vendor has made a false, misleading or deceptive representation about the goods or services you agreed to buy or lease.
- The information about the goods or services, or your rights as a consumer required by the Consumer Protection Act, are not provided to you in the agreement.

The Consumer Protection Act stipulates that fixed term agreements are contracts of a definite duration. Cellular phone contracts, gym contracts, armed response / security contracts, educational institution contracts and property leases are all examples of fixed term agreements. Section 14 of the Consumer Protection Act

dealing with the expiry and renewal of fixed term agreements does not apply to agreements entered into between juristic persons, irrespective of their turnover or asset value. (This is likely to exclude application of the Section 14 provisions for most, if not all, commercial lease agreements.) A juristic person is defined as a body corporate (company, close corporation, etc.), a partnership, association, or a trust as defined in the Trust Property Act, 57 of 1988. Please note that a sole proprietorship is not a juristic person. The rules relating to fixed term agreements thus only apply where a natural person (including a sole proprietorship) is the subject of such an agreement. The Act provides that fixed-term consumer agreements must not exceed a certain maximum period. The regulations currently prescribe 24 months from the date of the consumer's signature as the maximum period, unless such longer period is expressly agreed with the consumer and the supplier can show a demonstrable financial benefit to the consumer. The Act also empowers the Minister to prescribe different maximum periods for different categories of agreements by way of regulation or as provided for in approved industry codes. A consumer may cancel such an agreement before the agreed expiry date by giving the supplier 20 business days written notice. No reasons for the cancellation are required. A supplier may also terminate the agreement prior to the expiry date if the consumer fails to remedy a material breach on his part, after having been placed on 20 business days terms to do so. Consumers should make use of the form contained in Annexure B of the Regulations when giving notice of early cancellation to a supplier.

(x) The Sale of Goods Act 1930: This act provides safeguard and relief to customers in case goods are not complying with the expressed conditions and warranty.

(xi) The Trade Mark Act 1999: This Act prevents the use of fraudulent marks on products. This act is introduced in place of trade and merchandise mark act 1958.

(xii) The Competition Act 2002: This Act is related to monopolies and restrictive trade practices Act 1969. This Act is formed to encourage healthy competition and protect consumers from companies which hamper competition. Effective competition regime provides necessary conditions for maximizing the interests of the consumers. The protection of consumer interests runs through the Competition Act. The Preamble of the Act and subsequent provisions like Sec 18, 19 etc. expressly provide for protection of consumer interests. Sec. 2(f) defines

'consumer' which, as earlier mentioned, is much wider than the definition given under the Consumer Protection Act, 1986. Further, under the chapter on Duties, Powers and Functions of Commission, it is provided that the Commission shall, while determining the "relevant geographic market" and "relevant product market", have due regard to consumer preferences. The National Competition Policy, 2011 also stated that the fundamental role of competition policy is to guarantee consumer welfare by encouraging optimal allocation of resources and granting economic agents appropriate incentives to pursue productive efficiency, quality and innovation. The inefficiency and inadequacy of the MRTP Act led to the formulation of the Competition Act, and the establishment of the Competition Commission of India to enforce its provisions. The Competition Commission of India is expected to serve consumers better as far as redress is concerned. Among other things the Competition Act allows individual consumers or their associations to present their grievances for redressal, before this forum. However cost considerations and other factors may deter individual consumers or local consumer groups to approach the CCI. The need for regional benches of the Commission is again felt in this context. In the pursuit of globalization, India has responded to opening up its economy, removing controls and resorting to liberalization. The natural corollary of this is that the Indian market should be geared to face competition from within the country and outside. The Monopolies & Restrictive Trade Practices Act, 1969 has become obsolete in certain respects in the light of international economic developments relating more particularly to competition laws and there is a need to shift our focus from curbing monopolies to promoting fair competition. A broad definition of competition is "a situation in the market in which firms or sellers independently strive for the buyers' patronage in order to achieve a particular business objective." The law aims to promote healthy competition. It bans anti-competitive agreements between firms such as agreements to fix prices or to carve up markets, and it makes it illegal for businesses to abuse a dominant market position. The ultimate *raison d'être* of competition is the interest of the consumer. The consumer's right to free and fair competition cannot be denied by any other consideration. Competition law and consumerism in this context, becomes an instrument to achieve efficient allocation of resources, technical progress, consumer welfare & regulation of concentration of economic power. The Competition Act 2002 (the Act) prohibits anti-competitive agreements between businesses; like agreements to fix prices or terms of trade,

limit the production to reduce competition, carve up the market or customers, and discriminate between customers. So there is a need to strengthen the competition notably; adequate spread of information throughout the market, free and easy communication and ready accessibility of goods, liberalized trade policy, relaxed foreign investment and type of practices that could indicate abuse include charging unfair prices or imposing other unfair trading conditions on customers, limiting production, or refusing to supply an existing customer without an objective reason.

(xiii) Drug Prices Control Order (DPCO) 1995- The number of drugs coming under price control were reduced by almost half and the mechanism that determined price was further simplified by this order. The order while allowing further competition by liberalizing price controls could affect consumer access to medicines because of possible adverse impacts on prices.

(xiv) Electricity Act 2003.-It creates a liberal policy environment to facilitate the entry of new players into the business of electricity generation. The Act vests the power of determining tariffs to the appropriate regulator (State and Central Electricity Regulatory Commissions) and not the generating company. The State Electricity Regulatory Commissions are expected to regulate prices that final consumers pay and also to foster competition. It also phases out cross-subsidization and insists that the government make upfront payment to electricity distribution utilities if any particular sections of consumers have to be subsidized. This Act promotes competition through tools like 'open access' while also introducing regulatory discipline to address consumer concerns regarding price, basic needs etc.

(xv) Telecom Regulatory Authority of India (TRAI) Act (amended 2000) - An Act empowering the regulator of this sector but falling short of giving it penal powers. The Act facilitates competition through regulation. It has pro-consumer elements relating to quality and access.

(xvi) Food Safety and Standards Act: The Food Safety and Standards Bill, 2005 consolidates eight laws governing the food sector and establishes the Food Safety and Standards Authority (FSSA) to regulate the sector. It is a part of the competition regime because it seeks to ensure competitive outcomes i.e. better standards, which is also good for the consumer.

(xvii) Company law: The Companies Act, 1956 does not expressly provide for the protection of consumer interests. However, shareholders can be considered as consumers by the following interpretation: Firstly, shareholders buy shares and

earn dividend. This payment of dividend is a service offered by the company in exchange of the price offered by the shareholders for the shares. Under the Consumer Protection Act, any person who hires or avails any service for a consideration is a consumer. Secondly, shareholders under the Companies Act, have limited liability, unlike the owners, who have an unlimited liability. Therefore, shareholders cannot be considered as owners, and thus can be considered as consumers.

8.5 Sum Up:

Some legislative measures have already been taken by the Government to safeguard the interests of the Indian consumer. There are a wide range of enactments which operate to protect the consumer. The Agricultural Produce (Grading and Marketing) Act, 1937 constitutes the basic law for the grading of agricultural produce. The Drugs and Cosmetics Act, 1940 regulates the import, manufacture, sale and distribution of drugs and cosmetics.

The Prevention of Food Adulteration Act, 1959 aims at preventing the sale of impure foodstuff. The Essential Commodities Act, 1955, regulates the production, supply, distribution and trade in essential commodities for the maintenance of the supplies of essential commodities and securing equitable distribution and availability at fair prices. The Packaged Commodities (Regulation) Order, 1979, requires manufacturers to display on labels and packages the weight, contents of the product, date of manufacture, selling price and address of the manufacturer.

Some other important acts include the Display of Prices Order, 1973, the Drugs and Magic Remedies (objectionable advertisement) Act, 1954, and the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975. Lately the Government has enacted the Consumer Protection Act, 1986. Through this Act, an attempt has been made to strengthen the institutional framework to protect the consumer at local, state and central level.

There are various institutional factors which are responsible for growing concern for the consumer protection in India. To begin with, the Government is anxious to protect the vulnerable sectors of the community through schemes like streamlining the public distribution system. Owing to inflation, different anti-social elements have appeared in the market place for exploiting the poor consumers through unfair trade practices like adulteration, underweight, substandard products of goods in short supply.

Hence the Government has come forward to protect the consumers through the Maintenance of Internal Security Act, MRTP Act, 1969 and the Consumer Protection Act, 1986. Secondly, the Indian traders did not bother about consumers because there had been a sellers' market. Today the market environment for most products has changed. Now it is a buyers' market. Unless the consumers are protected against dishonest and unethical business practices, the long-run business interest will suffer. Now the business community is becoming aware of the social responsibility towards customers.

Thirdly, the consumers are becoming more and more conscious of their rights and legitimate demands. The present day consumers are not ignorant of the market environment. They are conscious of customers' rights and to protect their interest, they form organisations like Consumer Co-operative and Consumers' Councils. Lastly, the consumer burden imposed by the Government is on the increase. On the pretext of fiscal discipline, the tax burdens are increased every year. It has almost become a practice to announce pre-budget hike in administered prices like petro-products, railway fares and post and telegraph rates. It is quite natural that there will be consumers' resistance to these additional burdens.

8.6 REFERENCES:

- Consumer Law and Practice , Robert Lome and Geoffrey Wrodroffe, (Sweet and Maxwell)
- S. Krishnamurthy, *Consumer and Law Redressal of Grievances*, Vinod Law Publication

8.7 CHECK YOUR PROGRESS:

Fill in the Blanks

- (i) 15th March is celebrated asall over the world every year.
- (ii) The Trade Mark Act 1999 is introduced in place of.....
- (iii) The Food Safety and Standards Bill, 2005 consolidates eight laws governing the food sector and establishesto regulate the sector.

(iv) A juristic person is defined as a body corporate (company, close corporation, etc.), a partnership or association or a trust as defined in

(v) The contract is subject to a

True or False

(i) The CPA has a three tier, simple, quasi-judicial machinery at the National, State and District level for hearing cases raised by consumers.

(ii) 50thNational Development Council Meeting Planning Commission has identified consumer awareness, redressal and enforcement of Consumer Protection Act as a priority agency for action by the Department of Consumer Affairs.

(iii) The consumers may take the advantage of this system to solve their problems. Cases of electricity billing, telephone billings, road accidents etc. cannot be taken up in Lok Adalat.

(iv) The Trade Mark Act 1999 prevents the use of fraudulent marks on products.

(v) The Companies Act, 1956 expressly provides for the protection of consumer interests.

Answers to Check Your Progress

Fill in the Blanks

(i) World Consumer Right Day

(ii) Trade and Merchandise Mark Act 1958

(iii) The Food Safety and Standards Authority (FSSA)

(iv) The Trust Property Act, 1988

(v) cooling off period

True or False

(i) True

(ii) True

(iii) False

(iv) True

(v) False

8.8 TERMINAL QUESTIONS:

Q.1 Discuss the various redressal forums available for consumer protection.

Q.2 Briefly write down the redressal provided under other laws than COPRA.

Q.3 What type of redressal machinery is provided under the COPRA? Discuss.

UNIT - 9

ROLE OF NGOs IN CONSUMER PROTECTION

STRUCTURE:

9.1 Introduction

9.2 Problems Faced by Consumers

9.3 Role of Consumer Organizations in Consumer Education

9.4 Need for Consumer Protection

9.5 Importance of Consumer Protection

9.6 Role of Non-Governmental Organisations

9.7 Sum Up

9.8 References

9.9 Check Your Progress

9.10 Terminal Questions

Objectives

After studying this unit, you will be able to:

- understand the meaning, need and importance of consumer protection.
- recognize the role of non-government organizations in promoting consumer awareness and providing assistance to individual consumers.

9.1 Introduction

Initially, the Indian traders did not bother about consumers because there had been a sellers' market. Today the market environment for most products has changed. Now it is a buyers' market.

Unless the consumers are protected against dishonest and unethical business practices, the long-run business interest will suffer. Now the business community is becoming aware of the social responsibility towards customers.

The consumers are becoming more and more conscious of their rights and legitimate demands. The present day consumers are not ignorant of the market

environment. They are conscious of customers' rights and to protect their interest, they form organisations like Consumer Co-operative and Consumers Councils.

The consumer movement in India has led to the formation of various organisations locally known as consumer forums or consumer protection councils. They guide consumers on how to file cases in the consumer court. On many occasions, they also represent individual consumers in the consumer courts. These voluntary organisations also receive financial support from the government for creating awareness among the people.

9.2 Problems Faced by Consumers:

Consumers may be deceived in various ways by unscrupulous businessmen including traders, dealers, producers and manufacturers as well as service providers. Some of the following unfair practices must have come to your notice sometime or the other:

- 1) Adulteration that is, adding something inferior to the product being sold. This is a practice we come across in the case of cereals, spices, tea leaves, edible oil, petrol, etc. For example, mustard oil may be adulterated with rape seed oil or argemone oil, black pepper is known to be adulterated with dry papaya seeds, petrol is mixed with kerosene oil, vanaspati may be mixed with ghee/butter. Sometimes, the inferior material used with the product may be injurious to health.
- 2) Sale of spurious products, that is, selling something of no value instead of the real product. This is often found in the case of medicines and drugs or health care products. Cases have been reported where ampoules for injections contained only water or glucose water in bottles contained only distilled water.
- 3) Use of false weights and measures is another malpractice which some traders adopt while selling the goods. Goods which are sold by weight (kg.) like vegetables, cereals, sugar, etc., those sold by measures (meter) like textile fabrics, suit pieces, are sometimes found to be less than the actual weight or length. False weights (Kg, 500 grams, 250 grams, etc) or measuring tapes or sticks having false markings are used for the purpose and buyers are cheated. Sometimes packaged goods and sealed containers (tins) contain fewer quantities, than what is stated on the label or packet. This cannot be easily verified. Sweets are often weighed along with the card board box which may weigh upto 50-100 grams. You pay for it at the same rate as the sweets.

4) Sale of duplicates, that is, goods that indicate a mark which shows it is of superior quality than what it actually is. For example, goods which are locally made are sold at a higher price as imported items expected to be of superior quality. Certain products like washing soap, detergent powders, tube lights, jams, edible oil, even medicines, carry well-known brand names although these are made by others.

5) Hoarding and black-marketing is another problem that consumers often face. When any essential commodity is not made available in the open market and stocks are intentionally held back by dealers it is known as hoarding. Its purpose is to create an artificial scarcity, to push up the prices. Black marketing is the practice of selling hoarded goods, secretly at a higher price. These practices are sometimes adopted when there is short supply of any product. You may have read in the newspapers sometime back about scarcity of onions in the open market in some states and high prices being charged by traders who had stocks.

6) Tie-in-Sales: Buyers of durable consumer goods are sometimes required to buy some other goods as a pre-condition to sale or may be required to pay after-sales service charges for one year in advance. You may have heard about tying up of new gas connections with the sale of gas stoves (burners). Also TV sets are sometimes sold on the condition that the buyers will make advance payment of a year's service charge.

7) Offering gifts having no additional value or coupons to collect a gift on the next purchase of some product are practices aimed at alluring consumers to buy a product. Often gifts are offered after the price of the product on sale has been increased. Dealers also announce contests or lottery among buyers of a product without the intention of awarding any prize.

8) Misleading advertisement is yet another practice by which consumers are deceived. Such advertisements falsely represent a product or service to be of superior quality, grade or standard, or falsely assert the need for or usefulness of a product or service. A pharmaceutical company advertised that use of its paracetamol tablet did not have any side effects like aspirin, but it suppressed the experts' report that the use of paracetamol had adverse effect on the liver. A company announced in its advertisement that it was manufacturing 150 cc scooters in technical collaboration with a foreign company, although no such collaboration had been entered into. In another case, a company used the trademark of a well-known company 'Philips' in its advertisement for TV sets. On enquiry it was found

that the company did not have the necessary permission from Philips for the use of its trade mark on TV sets. It was a case of misrepresentation of facts although that company was authorised to use the trademark 'Philips' on its audio products (radio sets) only.

9) Sale of sub-standard goods i.e., sale of goods which do not conform to prescribed quality standards particularly for safety. Such products include pressure cookers, stoves, electric gadgets (heaters, toasters, etc.), and cooking gas cylinders.

9.3 Role of Consumer Organizations in Consumer Education:

Consumer organizations are also expected to play a pivotal role in the area of consumer education. The consumer groups in the United States, Japan and the United Kingdom have been quite successful in their endeavors for providing adequate and updated information and education. Mann and Thornton claim that "the provision and disclosure of more shopping information and the education of the consumer to make maximum use of this information is essentially the Naderist approach to making consumerism operational." They argue that the basic philosophy behind this approach is that through the possession of all the relevant information, the consumer will be able to make a rational choice between product and service offerings and generally protect himself. This information would be provided, *inter alia*, by consumer associations through their consumer magazines and other publications and by independent comparative testing organization. They consider consumer education as the "responsibility of consumer organizations and the government."

Practically speaking, for instance Consumers' Union in the United States, which is a consumer-supported organization, occupies a prominent place in providing product testing information to the consumers. Its magazine *Consumer Reports*, which refuses advertising, describes the results of its tests of different brands. It also includes articles to aid in the purchase of insurance and other services and to provide information on current consumer issue. The Consumer Federation of America is a national federation of more than 250 groups with consumer concerns. Its membership includes state and local consumer organizations of retired persons and other groups. Its major functions are to keep its membership informed on consumer issues. Similarly, Ralph Nader and the organizations associated with him are also engaged in consumer education and research.

In Japan, ever since its establishment in 1970, the Japan Consumer Information Centre (JCIC) has been providing a wide variety of relevant information from an overall standpoint in order to contribute to the stabilization and enhancement of the Japanese people's life.

Now-a-days the consumer finds himself as a victim of many unfair and unethical tactics adopted in the market place. The consumer is trapped in industrialization and competition, while all the development in industries is only for a consumer. The untrained consumer is no match, for the businessmen marketing goods and services on an organized basis and by trained professionals. He is very often cheated in the quality, quantity and price of goods or services. There was a time when consumer's choice was the aim of businessman, but now consumer has to decide what he has to purchase. The doctrine "Caveat Emptor" (Let the buyer beware) is the pivot of consumerism. Buyer's awareness is the root cause of the consumer protection. Peter Smith & Dennis Swann in their work "An Economic and Legal Analysis (1979 PP. 8-9) speaks that the consumer was responsible for protecting himself and would do so by applying his intelligence and experience in negotiating the term of any purchase. Development in economic sphere changed many systems of buying and selling, and the principle of Caveat Emptor, which would be appropriate for transaction on conducted in village market where consumer might have been able to protect himself as the product were less sophisticated and could be inspected before purchase. The scientific development invented many such technical things for daily use that a buyer is unable to inspect: the things before buying. The consumer knows a little or nothing about these- new inventions. These products are complex and of great variety, consumers, and retailers have imperfect knowledge about them. Thus the principle of Caveat Emptor is lessons its value. This theory can be applied in short term market. Therefore, the consumer need protection for the goods of long term market and as it is a social injury so it needs legal protection.

The need of consumer's protection was felt by the whole world. Taking into account the interest and need of consumers in all countries, particularly for developing countries, the consumer protection measures should essentially be concern with:

1. The protection front hazards to health and safety,
2. The protection and promotion of economic interest,
3. Access to adequate information,

4. Control of misleading advertisements representations,
5. Consumer education, and
6. Effective consumer redress.

In this way we find that the consumers' organizations play a significant role in providing protection to the consumers.

9.4 Need for Consumer Protection:

The necessity of adopting measures to protect the interest of consumers arises mainly due to their helpless position and the unfair business practices. No doubt consumers have the basic right to be protected from the loss or injury caused on account of defective goods and deficiency of services. However, consumers are unable to make use of their rights due to lack of awareness and ignorance. For example, as consumers we have the right to choose the goods of right quality from a variety of similar goods available in the market. But often we fail to make the right choice because of misleading advertisements by which we are carried away and buy sub-standard goods.

Under certain circumstances, we are helpless in the sense of our inability to verify the quality of products. The clever shopkeeper can deceive us by his persuasive words. If the date of expiry on a strip of medicinal tablets is not legible, we may be in a hurry and depend on what the seller tells us. If the medicine does not have the desired effect, we may go to the doctor again and request him to prescribe some other medicine, we forget that the medicine we bought might not have had the effect as we were supplied the medicine after its date of expiry.

Often we are guided by some of our beliefs without any basis. For instance, many of us believe that 'higher price indicates better quality' and so do not mind paying higher price for a product if the salesman recommends it to be of good quality. Again, it is a common belief that imported goods are inevitably of a superior quality. Therefore, if there is a printed label or a mark that shows a product is made in a foreign country, we may buy it at a higher price without verifying its place of manufacture.

Processed food sold in packets, like potato chips, are not good for health. But young boys and girls buy these because they are tasty. Certain brands of soft drink are popular with young people as the brand ambassadors shown on the TV are popular film artists or cricketers and what they say carries lot of weight with their

fans. Excessive use of soft drinks is also not good for health. It seems we have forgotten fresh lime water with sugar or salt as a good drink.

Producers of goods often put standard certification marks like ISI on the package which are genuinely certified. Similarly, if packaged goods are sold short of weight we pay for, it is very difficult to verify always the weights before buying. Sometimes the weighing machines are defective. Above all, consumers are not fully aware of remedies open to them if goods are defective or there is deficiency of service.

So one can now very well realize why steps must be taken to protect consumers from business practices which are unfair and may cause loss and injury to health and other dangerous effects.

Now let's discuss importance and need of consumer protection one by one.

1. Protection from Exploitation:

Importance of the consumer protection is to safeguard the consumer from exploitation. In the absence of consumer protection, consumers were exploited in many ways e.g. sale of unsafe products, adulteration and hoarding of goods, using wrong weights and measures, charging excessive prices and sale of inferior quality goods, etc. Through various Consumer Protection Acts; business organizations are under pressure to keep away from exploiting consumers.

2. Consumer Education:

Importance of consumer protection is to create awareness among consumers about their rights and responsibilities by organizing workshops and seminars and gives them confidence to take legal action against companies who have defaulted.

3. Redressal of Complaints:

Importance of Consumer Protection is to present the consumer complaints in appropriate consumer courts and make sure that justice is done to consumers.

4. Bulletins and Periodicals:

Importance of consumer protection organization is to issue various journals and periodicals in which wide publicity is given to the unfair trade practices adopted by business organizations so that they are pressured to give fair treatment to consumers.

5. Encouraging Honest Businessmen:

Importance of consumer protection is to encourage the honest businessmen. Organizations give the credit to the business organizations which aims at consumer satisfaction by publishing favorable reports in their periodicals about them. This helps in building goodwill for such organizations.

6. Connecting Link:

Importance of consumer protection is they play connecting link between the consumers. Consumer Protection organizations act as a link between consumers wanting to file complaints on one side and the business organizations that have defaulted on other sides and make sure that justice is done to final consumers.

7. Unity:

Consumer Protection aims at bringing unity among consumers to fight collectively against the business organisations which indulge in unfair trade practices. Consumers are encouraged to form co-operative societies so that the focus is on providing services to members rather than earning profit on the cost of customers.

8. Quality life for Consumer:

Importance of Consumer Protection is to aim at redressal of consumer complaints in an effective manner but also on giving good-quality life to consumers by business organizations that have defaulted on the other side and make sure that justice is done to final consumers.

9. Ethical Obligations:

Today ethics play a prominent role in business. Business without ethical values is nothing but a criminal activity. Protecting the interests of the consumer includes absence of unfair business practices such as black marketing, profiteering, creating an artificial shortage, using wrong weights and measures, publishing false advertisement, etc. It is necessary for a businessman not to practice such uneven means thereby protect the interest of consumers.

10. Getting Public Support:

Importance of consumer protection does not isolate the business. Financial institutions and banks provide finance to business. Government provides support and incentives. Employees contribute their time, skill and labour. Consumers are ready to pay for value. The businessmen can get the best support of all these parties only when it stops exploiting its customers.

To conclude, the importance of Consumer Protection is to safeguard consumers from any kind of exploitation from business organizations and ensuring the position of '*King of Market*' to consumer.

9.5 Importance of Consumer Protection:

(1) **To Organize Consumers:** Indian consumers are scattered over a wide geographical area. They are not well organized. They have a low power and businessmen exploit consumers. Here we need consumer protection.

(2) **Provide Market Information:** Majority of the consumers has no information about quality, type, price and other marketing facilities. Many customers buy without product knowledge and this make them suffer losses.

(3) **Importance of Physical Safety:** Indian markets are over flooded with products. The products may be adulterated and may be health hazardous. This may endanger their life and due to this a consumer needs to be protected.

(4) **Avoiding Monopoly:** Consumer Protection is very important in terms of avoiding monopoly. Monopoly is the crown of modern market. Most of the organizations, irrespective of various restrictions follow monopoly practice. Due to this consumers get affected and needs to be protected.

(5) **Prevention from Malpractices:** Business malpractices are rapidly growing in modern market. Businessmen follow unfair trade practices, restrictive trade practices and monopolistic trade practice and consumer protection plays a vital role.

(6) **Avoiding Pollution:** Pollution is very serious issue taken by every country. Pollution affects the mind and health of not only consumers but also citizens. It is important to avoid pollution to save society at large from pollution.

(7) **Misleading Advertisements:** Many organizations deliberately cheat consumers through wrong or misleading advertisements. This will protect consumers from getting exploited.

(8) **Informing Consumers about their Basic Rights:** Majority of the consumers are ignorant. They do not know about consumer rights. Consumer movements inform consumers about their rights and protect their interest and rights.

9.6 Role of Non-Governmental Organizations:

Non- Governmental Organizations (NGOs) are those associations of people which aim at promoting the welfare of the public without any profit motive. They are

voluntary bodies having a constitution and rules of their own, and are free from government interference. They depend on donations and partly on government assistance. NGOs dealing with consumer problems are known as consumer associations or consumer organizations.

The role of NGOs has become increasingly more significant over the last two decades. There are now more than 800 such organizations in India. These organizations are registered under the Societies Registration Act or the Companies Act or as Charitable Trusts.

NGOs have undertaken various activities as part of the consumer movement. They perform several functions. Functions performed by consumer organizations and non-government organizations are as follows:

(1) Accelerating Consumer Awareness/Educating Consumers:

The first priority of a consumer organization is to accelerate consumer awareness towards their rights. Create awareness about consumer rights and educate the general public about consumer problems and remedies through seminars, workshops and training programs.

To accomplish this task following efforts are made:

- (i) To publish brochures, journals and monographs.
- (ii) To arrange conferences, seminars and workshops.
- (iii) To educate consumers to help themselves.
- (iv) To provide special education to women about consumerism.
- (v) To encourage to follow desirable consumption standards.

(2) Collecting Data on Different Products and testing them:

These organizations collect samples of different products from time to time and test them. After that, the results of the tests are declared to public. In this way, these organizations provide prior information to consumers about the authenticity of product and protect them. Apart from this, these organizations also work in conducting investigation/ research on consumer's problems. Arrange comparative testing of consumer products through their own testing apparatus or accredited laboratories so as to evaluate the relative qualities of competing brands and publish the test results for the benefit of consumers to become informed buyers.

(3) Filing Suit on Behalf of Consumers:

Whenever a consumer fails to raise his voice of protest regarding his complaints, these consumers' organizations come to his rescue and file a case in the court. By rendering this service to the consumers, the consumers get a feeling that they are not alone in their struggle. They also run voluntary complaint centers for the guidance of consumers. Provide legal aid to consumers by way, of assistance in seeking legal remedy. Undertake advocacy of consumers' point of view as representative members of consumer protection councils and others official boards. Some NGOs have successful used Public Interest Litigation (PIL) to enforce consumer rights in several cases. In other words, NGOs have filed cases in law courts in the interest of the general public, not for any individual

(4) Organizing Protests against Adulteration etc.:

The consumers' organizations play a significant role in eliminating the evils of adulteration, hoarding, black- marketing, and under-weight selling. Whenever there is an unnecessary rise in the prices of certain things, the consumers' organization raise a voice of protest against it.

Consumer organizations prepare films and cassettes related to adulteration in food products, ill effects of medicines and Acts related to consumer protection. Many a times exhibitions are arranged to bring awareness among the consumers against spurious and adulterated products.

Nowadays consumer organizations are playing a major role in encouraging consumers to raise their voice against faulty and inferior products. Publish periodicals and journals to disseminate information among readers about consumer problems, legal reporting and other emerging matters of interest. Most of these periodicals do not accept advertisements from business firms.

(5) Helping Educational Institutions:

These organizations tell the educational institutions the way to prepare courses of study keeping in view the interests of the consumers. They stress the fact that a special chapter on consumers' interest should always be added to the courses on general study.

(6) Promoting Network of Consumer Associations:

Consumer organizations are trying to grow their numbers. They want to cover all the regions of the country so that consumers of all the regions are benefited by

their services. Their effort is to form a federation at the apex level and then through the medium of the federation reach state and district level.

(7) Extending Support to Government:

Consumer organizations by informing the government agencies about adulteration, artificial scarcity, inferior quality products and other such evils help the government. This in turn helps the government to conduct proceedings in time.

Make suggestions and recommend steps which government authorities should consider in policy making and administrative measures adopted in the interest of consumers.

9.7 SUM UP:

Consumer protection refers to laws designed to aid retail consumers of goods and services that have been improperly manufactured, delivered, performed, handled, or described. Such laws afford the retail consumer with additional protection and remedies not generally provided to merchants and others who engage in business transactions.

The goal of consumer protection laws is to place consumers, who are average citizens engaging in business deals such as buying goods or borrowing money, on an even par with companies or citizens who regularly engage in business.

Some legislative measures have already been taken by the Government to safeguard the interests of the Indian consumer. There are wide ranges of enactments, which operate to protect the consumer.

Some consumer organizations have been set up in different parts of the country. They are doing several things to promote awareness about the rights and responsibility. But movement has yet to gather sufficient strength to become a living force to reckon with.

The hindrance to the growth of a strong consumer movement in India is the majority of the people are illiterate. They lack consumer education and do not have the necessary consciousness to organize themselves.

The protection of consumer s' rights is important to all inhabitants, because everybody buys commodities and uses services. That is why it is essential to everyone that his or her consumer rights are protected while making purchases – so that commodities one buys are safe and do not harm one's health or danger one's life. Information given is complete and real, and advertisements are not

misleading, so that there are no unjust provisions of the contracts and so that consumers can exercise their rights.

9.8 REFERENCES

- Gordon Borrie, *The Development of Consumer Law and Policy: Bold Spirits and Timorous Souls* 3 (1984).
- Bill Thomas, *The Legal Framework of Consumer Protection, in Marketing and the Consumer Movement* 49 (Jeremy Mitchell ed., 1978).

9.9 CHECK YOUR PROGRESS

Fill in the Blanks

- (i) Some consumers prefer to pay high price for goods as they believe that it indicates
- (ii) When you buy a product with a new brand name on the basis of an advertisement claiming best quality and then find it defective, it is a case ofadvertisement.
- (iii) The district forum can deal with complaints which involve value of goods and compensation amounting to not more than
- (iv) When a complaint is submitted before the District forum that requires testing of the product, the case is to be decided within a period of
- (v) An appeal against the order of State Commissions can be filed before the.....

True or False

- (i) Adulteration does not always mean mixing poisonous materials with the goods on sale.
- (ii) The Prevention of Food Adulteration Act provides for severe punishment if food items are found to have been adulterated by any person.
- (iii) Nothing can be done by businessmen to protect the interest of consumers.
- (iv) Government rules and regulations generally govern the functioning of NGOs.
- (v) The recommendations made by consumer organisations are considered by Government while amending relevant laws.

Answers to Check Your Progress

Fill in the Blanks

- (i) that the goods are of superior quality
- (ii) misleading
- (iii) Rs 20 lakh
- (iv) 5 months
- (v) National Commission

True or False

- (i) True
- (ii) True
- (iii) False
- (iv) False
- (v) True

9.10 TERMINAL QUESTIONS

- Q.1** What is the need and importance of the consumer protection? Discuss.
- Q.2** What is the role of NGOs in the protection of consumers?
- Q.3** Elaborate the role of consumer organization in consumer education.

UNIT - 10

CONSUMER EDUCATION, CONSUMERISM AND EMERGING CHALLENGES

STRUCTURE

- 10.1 Introduction
- 10.2 Consumer Awareness and Education
- 10.3 Consumer Education
 - 10.3.1 Who is a Consumer?
 - 10.3.2 What is Consumer Education?
 - 10.3.3 Why do we need Consumer Education?
 - 10.3.4 How can Consumer Education help us?
 - 10.3.5 UN Guidelines for Consumer Protection on Consumer Education
- 10.4 Consumerism
 - 10.4.1 Nature and Meaning of Consumerism
 - 10.4.2 CONSUMERISM: CONCEPTUAL CONSIDERATION
 - 10.4.3 Consumerism and Competition Law
 - 10.4.4 Position of Consumerism
 - 10.4.4.1 Position in England
 - 10.4.4.2 Position in USA
 - 10.4.4.3 Position in India
 - 10.4.4.4 Judiciary and Consumerism
- 10.5 The Consumer Protection Act, 1986-New Horizons
- 10.6 Sum Up
- 10.7 References
- 10.8 CHECK YOUR PROGRESS
- 10.9 TERMINAL QUESTIONS

Objective:

After studying this unit, you will be able to:

- Understand the meaning of consumer education.
- Understand the importance of consumer education.
- Comprehend the concept of consumerism and emerging challenges.

10.1 Introduction:

These days consumer is a victim of low income, price rise, scarcity, and immoral practices of seller. On account of competition among sellers adulteration, misleading presentations arising day by day. Often consumers cannot see through the seller's manipulations. A feeling of dissatisfaction creeps in the consumers when they fail to make proper purchases. In olden days, a human relationship existed between the consumer and the producer. But these days no personal relations exist between them. Producers want to earn maximum profit without considering the loss of the consumer.

At present Government has initiated many programs to safeguard the interests of the consumer. Government is advertising through newspaper and television to enlighten the consumers. In these advertisements, the consumer is being educated about his rights and the role of the Government in protecting these rights. Government controls the prices of the goods. Goods of daily use are provided at subsidized rates at Super bazaar, Kendriya Bhandar, Mother dairy, etc. The consumer is being educated about the procedure of the redressal of their grievances through advertisements and how the Government can punish the offenders.

The protection of consumer is the need of the hour. This is why consumerism is gaining momentum. Consumerism is a movement for the protection of consumers. Consumerism covers the wide range of activities of people, government, business and independent organizations designed to protect the consumer rights. Numerous steps have been taken and spread of consumerism is vast but yet it is in its infancy. The consumerism can be successful only when the consumers are aware of their rights and active to have redressal if they are infringed. In India, the basic problem is of illiteracy. Due to which consumerism is either slow or lacking. In such situation consumer, education becomes the most important task to be fulfilled.

10.2 Consumer Awareness and Education:

a) Creation of awareness among consumers about their rights in the entire country should be given high priority. People living in the remote and rural areas often become victims of unlawful trade practices. To give impetus to consumers'

right of education and awareness national awareness program can be implemented aggressively at the district and block/ tehsil levels with the help of State Government, Educational Institutions, Local VCOs, Self-help groups, Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs) with particular emphasis and focus on rural areas and most vulnerable sections of consumers.

b) Effective, appealing, and focused Publicity Campaign with lasting impact, inspiring confidence among the consumers should be launched. The campaign slogan 'Jago Grahak Jago' should be taken to the length and breadth of the country with the intention of awakening consumers about their rights.

c) In order to make the multi media campaign more broad based, dynamic support of experienced media agencies and VCOs on different areas in specialization like print, radio, T.V., social media, folk media etc. can be integrated into the campaign at Central and State/UT levels.

d) A holistic policy for consumer education should be developed with better re-sourcing of activities geared towards consumer education to get the best from all involved. The main stakeholders – Government departments, industry, voluntary consumer groups, educational institutions, education and advice providers, interest groups and community agencies – will be tapped.

e) Help incorporate certain values in consumer education, like concern for finite resources of the planet and the environment i.e. sustainable consumption.

f) Strengthen the consumer club scheme and also increasing the coverage of schools and colleges.

g) Promote consumer representation, which is an essential part of the democratic process. In a democratic society, consumers have an inherent right to take part in decision-making that affects their health, safety, and welfare with respect to goods, services, and other economic activity. It requires a recognized, legitimate and effective role for consumers in regulatory structures and processes and in the decision-making processes of Central and State governments on issues of consumer welfare.

10.3 Consumer Education:

Consumer education means educating the consumers about their rights and liabilities. This is a process to impart the knowledge about how can one claim compensation on the infringement of his/her rights.

10.3.1 Who is a Consumer?

A consumer is a person who consumes goods and services for his/her satisfaction and general well-being.

In this definition, there are three important concepts to recognize:

- First, when we talk about a consumer we refer to a person. In this context everyone, from the king to the pauper and from the young to the old, is a consumer. A businessperson is also a consumer. The businessperson plays dual role. As a businessperson he/she is a supplier of goods and services. As a consumer, he/she is a consumer of goods, services and gifts of nature.
- Second, we consume goods, services and gifts of nature. Often the consumption of these gifts of nature like fresh air, clean water and a healthy environment is left out in defining a consumer. We must not forget in addition to goods and services, the right to a healthy and clean environment is also an important prerequisite for a good quality of life.
- Third, the purpose of consumption is for satisfaction of our wants and needs to ensure our general well-being. We often pay for the goods and services we consume. Even if we do not pay and the goods and services are offered free, we as consumers are entitled to safe and satisfactory products and services that guarantee our well-being. A good example is the services by the government. The government in a democracy is in essence a provider to the people services such as keeping law and order, administration of justice and other services.

10.3.2 What is Consumer Education?

Consumer education is the process of supporting citizens to become more skilled, literate and responsible as consumers. It helps people to improve their understanding of goods and services and develop the skills and confidence to become more aware of their rights in the consumer market, make better informed choices and know where to go for help.

Consumer education is often not clearly/easily understood as it means different things to different people. To make you understand consumer education, it is necessary to address the fundamental questions related to consumer education. *It is*

important to recognise and understand that "consumer education" means different things to different people. For instance:

- To an ordinary consumer, education is viewed as information to help him/her to make better choices of goods and services in the market place.
- A businessperson views consumer education as activities that assist in selling services and products.
- A bureaucrat views consumer education as a programme to complement and supplement laws and regulations that foster trade competition. They believe that healthy competition and an educated body of consumers will ensure protection for the consumers.
- A consumer advocate sees consumer education as providing information to consumers to protect them from fraudulent trade practices and exploitative market operation.
- And an educator sees consumer education as development of skills and knowledge that assist consumers to play their role effectively in the market place.

There have been several definitions advanced to try and define consumer education. The US Department of Education defines consumer education as the process by which consumers:

- i. Develop skills to make decisions in the purchase of goods and services in the light of personal values, maximum utilization of resources, available alternatives, ecological considerations and changing economic conditions;
- ii. Become knowledgeable about law, their rights and methods of recourse, in order to participate effectively and self-confidently in the market place and take appropriate actions to seek consumer redress;
- iii. Develop an understanding of the citizen's role in the economic, social and government systems and how to influence those systems to make them responsive to consumers' needs.

Rather than limiting oneself to a rigid definition, understanding of consumer education can also begin from the standpoint that both children and adults should grow into becoming well-informed and critical consumers of products, commercial services, public service etc. The "process of becoming" entails not so much the provision of consumer information regarding products, services, the environment and other considerations but rather the continuous cultivation and development of living skills. These skills would include cognitive skills such as critical and

conceptual thinking, knowledge and understanding particularly the impact of individual, business government decisions on consumers and literacy skills such as the ability to read, write and count. Therefore, it is important for us to recognise the people involved and understand the meaning of consumer education according to their given perspectives

10.3.3 Why do we need Consumer Education?

In the contemporary societies, the consumer is always faced with a mass of goods and services that are products of complex and advanced industrial, agricultural and services technologies. The necessary skills to make rational decisions amidst these forces and the complexities of free market economies are often beyond the ability of most consumers.

Consumer education is essential to provide the skills and knowledge to empower consumers and enable them to use their resources effectively and increase their awareness of their wider role in society.

Consumer Education addresses not only problems of consumers individually but also of sustainable consumption, social justice, human rights, ethical values and overcoming poverty. Consumer education contributes towards the formation of a participative, critical and competent citizenship.

Specifically, consumer education enables individuals to develop the ability to become critical consumers. It teaches people for example to make reasoned appraisal of advertisements and other activities through which consumers are influenced to consume particular products and services. Reasoned appraisal could include the overall implications, both to the individual and society, of consuming that particular product or service. Through consumer education, consumers are equipped with knowledge, skills and understanding of the market. Consumer education enables consumers to judge and make competent decisions about their financial transactions.

It also stimulates the nation's social and economic development. Consumers, who exercise free choice based on knowledge of facts, will be able to make the best use of resources within their disposal such as time, money, knowledge and ability. For example, consumer education enables citizens to act in a more enlightened and critical manner which helps reduce the number of court cases. Consumer education also helps consumers to use scarce resources appropriately and responsibly thus increasing the successes of government development plans. For vulnerable

consumers, such as the poor in society, consumer education is of survival importance. Very often, the poor have no option but to live on very meagre resources. Consumer education thus enables them to separate wants from needs and to manage whatever is within their disposal more efficiently. These translate to significant social and economic development of the nation.

Consumer education is the only single cost effective mechanism that provides and guarantees consumer protection. Besides serving as a pro-active way of protecting consumers against abuses in the market place, consumer education also serves as a preventive measure. For example, educated consumers will protect themselves and prevent exploitation in the market place.

We need consumer education to build our knowledge, skills, aptitudes, values and capacity to play the role of a responsible consumer. There are five important aspects to consumer education:

- **Informed Choice:**

Consumer education must be functional. The business of living in this modern world is complex and can be bewildering. We must learn to obtain information on goods and services, discriminate between sources of information, understand the psychology of selling and advertising. Learn to shop wisely, distinguish between needs and wants, and understand the alternatives of conserving and saving rather than buying and consuming.

- **Value Systems:**

Consumer education must include the development of a Value System. We must learn how to share and care. Consumers are not individuals insulated away from the rest of society. They are part of the society. Consumer education must enable the consumer to understand that individual consumer decisions have broad social impact and influence on such important things as the overall allocation of resources within the society. We can use our power as consumers to promote value for money, value to people, value to the environment, value to democracy and value to justice.

- **Recognition of Responsibilities and Rights:**

In pursuing the daily business of living, we play three distinctive roles, namely that of a worker, consumer and citizen. Sometimes such roles can impinge upon and

may be in conflict with one another. As a consumer, we want to buy goods that are safe and durable. As workers, we may be contributing to the production of shoddy goods and goods that have built-in obsolescence. It is important to articulate and understand both our responsibilities as well as our rights as consumers. This will help to iron out possible conflict of roles and bring greater harmony in the relationship.

- **Wise Decision Making:**

To make careful and wise decision we need information to make informed choices. We also require developing the correct attitude and orientation. In addition we must become aware of our roles, responsibilities and rights. There is a need for consumers to wear their thinking caps all the time to evaluate, assess and make responsible decisions in their consumption choices and options. Consumer education should enable consumers to consider seriously and carefully the environment and social impacts of our economic decisions and the sustainability of the eco-system in supporting life on this planet.

- **Catalyst for Action:**

Consumer education must catalyse action. We must be aware of the available avenues of consumer complaint and redress and learn to use them for our benefit. Most important, consumer education should help in developing the intellectual processes of inquiry and problem-solving, motivate participation and social concern in promoting not only value for money but also value for people as human beings.

10.3.4 How can Consumer Education help us?

In the final analysis, consumer education must motivate consumers to participate proactively in the decision making process especially those that affect their day-to-day lives. Consumer education is "living and sharing". It must include both the individual concerns of the consumer and the shared concerns of society at large. Consumer education must awaken the consumer eye, inculcate the responsibilities of consumers, ensure constant vigilance of consumer rights and develop a shared value system.

- **Opening the Consumer Eye:**

It is believed that meditation opens the "third eye". Likewise, consumer education should help to open the "consumer eye" of the consumers. The "consumer eye"

concept means that an informed consumer looks at a product critically and analytically, first from own point of view as an individual consumer, then with the interest of the community at large in mind. The consumer who has had his "consumer eye" opened, analyses product on several level, like health, economics, product safety, legal and environment considerations, and social costs.

- **Shared Value System:**

Consumer education is about "living and sharing". This is a very powerful concept. Consumer education should assist the development of a strong consumer movement. The five pillars of the consumer movement which consumer education should help to imbibe as part of the Shared Value System are:

- i. **Caring people:** The consumer movement is people who care about others and about themselves. It's about value for money of goods. But more importantly, it's about value for people.
- ii. **Protecting the earth:** Consumers must be conservers, protecting and preserving the earth. We must be aware of the consequences of our actions so that the earth's resources are not squandered by the few at the expense of the many.
- iii. **Knowing your Rights:** Human rights are central to the consumer movement, especially the right of people to have their basic needs met.
- iv. **Fighting for justice:** Political and economic systems often discriminate against the powerless. Consumers can help to build fair, rational and just societies.
- v. **Discovering your power:** Acting together ordinary people can make a difference. Consumers can use their collective power to protect their interest and to fight those forces that threaten them.

To conclude, consumer education is necessary to develop living skills in the individual as well as his/her role in society. The right to consumer education is one of the basic consumer rights. This right to consumer education incorporates the rights to knowledge and skills for taking action to influence factors that affect the final analysis of consumer decision-making.

10.3.5 UN Guidelines for Consumer Protection on Consumer Education

Governments should develop or encourage the development of general consumer education and information programs, bearing in mind the cultural traditions of the people concerned. The aim of such programs should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities.

In developing such programs, special attention should be given to the needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels.

Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects.

Consumer education and information programs should cover such important aspects of consumer protection as the following:

- a. Health, nutrition, prevention of food-borne diseases and food adulteration;
- b. Product hazards;
- c. Product labelling;
- d. Relevant legislation, how to obtain redress, and agencies and organizations for consumer protection;
- e. Information on weights and measures, prices, quality, credit Conditions and availability of basic necessities; and
- f. As appropriate, pollution and environment.

Governments should encourage consumer organizations and other interested groups, including the media, to undertake education and information programs, particularly for the benefit of low-income consumer groups in rural and urban areas.

Business should, where appropriate, undertake or participate in factual and relevant consumer education and information programs.

Bearing in mind the need to reach rural consumers and illiterate consumers, Governments should, as appropriate, develop or encourage the development of consumer information programs in the mass media.

Governments should organize or encourage training programs for educators, mass media professionals and consumer advisers, to enable them to participate in carrying out consumer info.

10.4 Consumerism:

Consumerism is an organized movement of citizens and government to strengthen the rights and power of buyers in relation to sellers. It is the ideology and a concept which has come to stay in business literature. The consumer is exposed to many hazardous-physical, environmental and exploitation due to unfair trade practices.

He needs protection, for instance, against products which are unsafe for consumption products which may cause badly injury such as defective electrical appliances. He needs protection against mal-practices and deceit by sellers. He should have adequate rights and right of recourse to redressal measures against defaulting businessmen. He needs protected against environmental pollution of air; water and noise and effective measures should be devised to keep the surroundings neat and clean.

Consumerism has strong links with the Western world, but is in fact an international phenomenon. People purchasing goods and consuming materials in excess of their basic needs is as old as the first civilizations (e.g. Ancient Egypt, Babylon and Ancient Rome). A great turn in consumerism arrived just before the Industrial Revolution. In the nineteenth century, capitalist development and the industrial revolution were primarily focused on the capital goods sector and industrial infrastructure (i.e., mining, steel, oil, transportation networks, communications networks, industrial cities, financial centers, etc.).

While previously the norm had been the scarcity of resources, the Industrial Revolution created an unusual economic situation. For the first time in history products were available in outstanding quantities, at outstandingly low prices, being thus available to virtually everyone. So began the era of mass consumption, the only era where the concept of Consumerism is applicable. Businesses have realized that wealthy consumers are the most attractive targets of marketing. The upper class's tastes, lifestyles, and preferences trickle down to become the standard for all consumers. The not so wealthy consumers can "purchase something new that will speak of their place in the tradition of affluence".

A consumer can have the instant gratification of purchasing an expensive item to improve social status. Emulation is also a core component of 21st century consumerism. As a general trend, regular consumers seek to emulate those who are above them in the society. The poor strive to imitate the wealthy and the wealthy imitate celebrities and other icons. The celebrity endorsement of products can be seen as evidence of the desire of modern consumers to purchase products partly or solely to emulate people of higher social status.

10.4.1 Nature and Meaning of Consumerism:

Consumerism is a social as well as economic order, which encourages the buying of goods and services in ever-greater amounts. This term is sometimes associated with critics of consumption beginning with Thorstein Veblen. Veblen's topic of

examination, the newly emerging middle class coming up at the threshold of the twentieth century, is coming to full fruition by twentieth century end through the globalization process.

At some places, the term "consumerism" refers to the consumerists' movement, consumer activism or consumer protection which seeks to defend and inform consumers by having required these practices as honest advertising and packaging, product guarantees, and enhanced standards of safety. In this regard it is a movement or an array of policies having a mission of regulating the products, methods, services, and standards of sellers, manufacturers and advertisers in the buyers' interests.

As per economics, consumerism means economic policies laying emphasis on consumption. In a sense, it is believed that the consumers are free to make choice and should dictate the society's economic structure.

The term "consumerism" had been first used in the year 1915 and referred to "advocacy of the rights and interests of consumers" defined in Oxford English Dictionary but the term "consumerism" means the sense which was first used in 1960, "emphasis on or preoccupation with the acquisition of consumer goods'.

With the rising revolution in human expectations, hopes and desires towards consumerism has led to state regulation and protection of consumer interests in harmony with opposing interests and goals of industry and manufacturers. It has accordingly resulted in a plethora of consumer laws regulations, practices, and judicial principles, formal and informal norms for orderly regulation, protection and control of the respective interest of the parties in the overall interest of consumer justice of the consumer community.

Consumer jurisprudence, therefore, is that body of law concerning market-place whereby varying interests of the predominant groups of sellers and consumers are reconciled, adjusted and balanced on the matrix of business morality and wellbeing of the consumers by protecting them against abuses, impurities and misrepresentation of consumer goods. It is a study of such legal principles, precepts and judicial decisions, which regulate control and protect the interests of the consumers in the effective realization and administration of consumer justice.

It inherits a bundle of duties and obligations of the business world, which is obligatory for it to observe and follow in the interest of consumer goals without shifting its legitimate business goals and profits. Such obligations of the sellers-

cum-manufacturers are generally in the form of do's and don'ts, which they ought to observe in the interest of consumer justice e.g. prevention of the food... adulteration, drug abuse, smoking law etc.

Consumer jurisprudence has also become a variant of human rights jurisprudence encompassing some basic rights of man like right to live and life, right to health, right to information and other due-process rights in this new age of liberalization and laissez-faire conducive to generation of more entrepreneur freedom of trade and business within the framework of business ethic concerning consumer justice. Of course consumer jurisprudence is not merely a modern development as its traces can be found in ancient India, China, Rome, Greece, Egypt etc. In India the Ayurveda and its texts like Charka Samhita and later on Kautilya's Arthashastra contain manifold references, evidences and documentation on the entire gamut of unfair and unjust trade practices, abuse of health and purity related rules, control and prevention of injurious drugs and alcoholic beverages etc. which can be said to be the consumer code of the ancient Indians.

10.4.2 CONSUMERISM: CONCEPTUAL CONSIDERATION:

In the good olden days the principle of '*Caveat emptor*', which meant buyer beware governed the relationship between seller and the buyer. In the era of open markets, buyer and seller came face to face, seller exhibited his goods, and buyer thoroughly examined them and then purchased them. It was assumed that he would use all care and skill while entering into transaction.

The maxim relieved the seller of the obligation to make disclosure about the quality of the product. In addition, the personal relation between the buyer and the seller was one of the major factors in their relations. However, with the growth of trade and its globalization the rule no more holds true. It is now impossible for the buyer to examine the goods beforehand and most of the transactions are concluded by correspondence.

Further on account of complex structure of the modern goods, it is only the producer / seller who can assure the quality of goods. With manufacturing activity becoming more organized, the producers / sellers are becoming stronger and organized whereas the buyers are still weak and unorganized. In the age of revolutionized information technology and with the emergence of e-commerce related innovations the consumers are further deprived to a great extent. As a result buyer is being misled, duped and deceived day in and day out.

Mahatma Gandhi, the father of nation, attached great importance to what he described as the "poor consumer", who according to him should be the principal beneficiary of the consumer movement. He 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 favor to a consumer by giving him an opportunity. He is doing us a favor by giving an opportunity to serve him."

In spite of these views consumerism is still in its infancy in our country, thanks to the sellers' market and the government monopoly in most services. Consumer awareness is low due to the apathy and lack of education among the masses. No one has told them about their rights – to be informed about product quality, price, protection against unsafe products, access to variety of goods at competitive prices, consumer education etc. What consumerism lacks here are education and information resources, testing facilities, competent leadership, price control mechanism, and adequate quasi-judicial machinery. The providers of goods and services have been reluctant to give due consideration to consumer interest protection.

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 organizations with which there is exchanged relationship. It encompasses the set of activities of government, business, independent organizations 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. "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 organizations".

As commonly understood consumerism refers to wide range of activities of government, business and independent organizations 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 organized or unorganized efforts and activities. It is, in-fact a social movement seeking to protect the rights of consumers in relation to the producers of goods and providers of services.

In-fact consumerism today 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 will benefit not only business but government and society as well. So consumerism 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 in.

There are various components of consumerism. First and foremost is the 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 Organizations engaged in organizing consumers and encouraging them to safeguard their interests is another important element of consumer movement. The success of consumerism lies in the realization of the business that there is no substitute for voluntary self-regulations. Little attention from the business will not only serve 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.

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.

10.4.3 Consumerism and Competition Law:

In the pursuit of globalization, India has responded to opening up its economy, removing controls and resorting to liberalization. The natural corollary of this is that the Indian market should be geared to face competition from within the country and outside. The Monopolies & Restrictive Trade Practices Act, 1969 has become obsolete in certain respects in the light of international economic developments relating more particularly to competition laws and there is a need to shift our focus from curbing monopolies to promoting fair competition.

A broad definition of competition is “a situation in the market in which firms or sellers independently strive for the buyers’ patronage in order to achieve a particular business objective.” The law aims to promote healthy competition. It bans anti-competitive agreements between firms such as agreements to fix prices or to carve up markets, and it makes it illegal for businesses to abuse a dominant market position. The ultimate *raison d’être* of competition is the interest of the consumer. The consumer’s right to free and fair competition cannot be denied by any other consideration.

Competition law and consumerism in this context, becomes an instrument to achieve efficient allocation of resources, technical progress, consumer welfare & regulation of concentration of economic power. The Competition Act 2002 (the Act) prohibits anti-competitive agreements between businesses; like agreements to fix prices or terms of trade, limit the production to reduce competition, carve up the market or customers, and discriminate between customers.

So there is a need to strengthen the competition notably; adequate spread of information throughout the market, free and easy communication and ready accessibility of goods, liberalised trade policy, relaxed foreign investment and type of practices that could indicate abuse include charging unfair prices or imposing other unfair trading conditions on customers, limiting production, or refusing to supply an existing customer without an objective reason.

10.4.4 Position of Consumerism:

The Position of consumerism in various countries is as under:

10.4.4.1 Position in England:

In its true meaning and content consumerism is a reaction and revolt against the vagaries of commercialism and industrialism which exploited the consuming community contrary to elementary principles of business morality and ethic and endangering the life, health safety and well-being of the common people who were basically their product-buyers. This is because there was absence of government regulation and intervention between sellers and consumers to protect the latter from the detrimental consequences of adulterated or unsafe goods, drugs and foods.

Even Adam Smith, the high priest of capitalistic free market economy had explained ‘consumer sovereignty’ as an important factor which determined the quality and nature of economic activity yet manufacturers had been taking

consumer for granted and produced commodities some of which were not safe or of good standard quality etc. As Adam Smith remarked 'Consumption is the sale end and purpose of all production, and the interest of the producer ought to be attended to only as far as it is necessary for promoting that of the consumer'.

As such in free market economy, theoretically consumer sovereignty should have been the principal parameter of production, which was merely a means to satisfy consumer choice. However, in reality consumer did not remain the primary end wherein profit acquired as a priority end of production. In traditional common law too consumer ceased to be a king as the principle of Caveat Emptor ruled and governed the consumer philosophy, this rule stipulated 'Let the Buyer be aware' for he ought not be ignorant of what they are when he buys the goods or thing from the seller.

The purchaser-consumer was left with no remedy in the free market economy. In England, it is the House of Lords, which in post-World War I gave an impetus to the emergence of consumer jurisprudence. Lord Atkin's landmark decision in ***Donoghue v. Stevenson*** is a water shed in the growth and development of consumer jurisprudence. Lord Atkin observed:

'I do not think so HC of our jurisprudence as to suppose that its principles are so remote from the ordinary needs of civilized society and the ordinary claims it makes upon its members as to deny a legal remedy where there is so obviously a social wrong.'

His Lordship reiterated the proposition of English law that

'... a manufacturer of products which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with the knowledge that absence of reasonable care in the preparation of putting up of the products will result in an injury to the consumer's life and property, owes a duty to the consumer to take that reasonable care.'

The **Donoghue rule** of 'Love thy neighbor' herein the consumer swayed the consumer jurisprudence for over three decades in England and other common law countries.

Consequently the onus as to defects, deficiencies of the products goods shifted from the buyer to seller under the rule of Caveat Venditor (Let the Seller be aware). The consumerism received a quantum thrust in England in pursuant to entry of

England in the European Economic Community and the numerous directives, which England implemented in this regard. In 1961 the Parliament enacted the Consumer Protection Act, 1961.

But the major step forward in regard to consumer protection heralded on the recommendation of the Molony Committee which led to a series of amendments in the said Act in 1971, 1976 and 1978 including a White Paper in 1984 which led to the passing of the said law in a consolidated form - the Consumer Protection Act, 1987. Subsequent thereto another significant measure enacted is the Food Safety Act, 1990 relates to consumer food safety, labeling, advertising in order to prohibit and prevent food adulteration.

10.4.4.2 Position in USA:

USA traditionally is a land of free-market economy where during the age of golden *laissez faire* capitalism sustained by social Darwinism '*the survival of the fittest principle*' business and industry had its own way until federal government had to intervene due to business abuses of the market. The Big Business Houses and Corporations who were called by some 'robber barons' were neither responsible neither towards society nor to government and the general public remained at their mercy for the cost and quality of consumer goods.

This paved the way for anti-monopoly legislation and regulatory agencies to eliminate unfair business practices. In retrospect when the Civil War 1861-63 was over industries instead of producing war materials began to profligate market-places with consumer goods of mass consumption and started taking consumers on their terms or silence their protest against high prices, poor quality, unsafe and unhealthy products etc. Since consumer remained an exploited lot despite his fictional 'consumer sovereignty' it is during 1870 to 1930 covering World War I and the Great Depression a number of governmental agencies-came into existence for consumer protection.

The New Deal era witnessed the emergence of Consumer Union, which became a catalytic agent in the dissemination of consumer information to ignorant consumers about the unsafe, unhealthy consumer goods like spurious drugs, medicines, cosmetics, soaps, meat, dairy products machines, automobiles etc. It is Ralph Nader who greatly aroused American public opinion for consumer protection despite stiff opposition of giant corporations. The waves of popular indignation, identity of interest between unorganized and organized consumer groups led to special governmental protection for consumers protection against adulteration,

misrepresentation of foods, drugs, cosmetics, labeling of consumer goods, product safety etc. between 1962 to 1975.

10.4.4.3 Position in India:

In India, consumer protection is not wholly a modern phenomenon. However, it was during the British rule that India became a sellers' market with less production, high prices and inferior quality flooding the consumer market plagued by hoarding, black marketeering and profiteering. Yet the consumers remained neglected left at the mercy of sellers. The colonial rulers after the passing of the Indian Penal Code 1860 did an act some measures on consumer protection but these laws were seldom enforced. Likewise, after Independence during 1947-1986 the consumerism did not make many strides largely due to lack of consumer awareness, absence of legislative and administrative will and a weak consumer movement.

The general principles underlying *Caveat Emptor*; *Rylands v. Fletcher* and *Donoghue v. Stevenson* borrowed from England were pro-sellers which seldom enforced the claims of the consumers. The Constitution of India too indirectly and in remote fashion appear to include consumer justice in its Preamble and the Directive Principles of State Policy. There was a lack of drive and initiative in the protection of helpless consumers. The government viewed problems poverty, unemployment under-development and illiteracy more challenging and urgent than consumer protection.

The traditional cultural lag and the Gandhian psyche of simple living too acted as a negative factor in consumer awareness. In short, the pre-1986 legislation protected the consumer at the ring level only. However, it is after 1986 the government took a positive and bold step to confer basic consumer rights through the consumer protection law by providing simple, speedy and inexpensive redressal mechanism including the right to compensation for any loss or injury sustained because of defect or deficiency in the product.

10.4.4.4 Judiciary and Consumerism:

Much before the passing of the Consumer Protection Act 1986 in India the judiciary has been expounding new principles on consumer rights to prevent the menace of food and drug adulteration etc., which are a threat to health of the consumers causing diseases, premature deaths, pecuniary losses and social adverse effects on the entire society. In early 1970s and especially during the internal

emergency of 1975 the judiciary innovated new techniques, doctrines and principles to strengthen the basic fabric of consumer philosophy echoing the identical principles underlying the Consumer Message of President John F. Kennedy to meet the challenges of health hazards and exploitation like food and drug adulteration etc.

The judiciary adopted a stiff attitude towards such anti-social acts and justified the use of extreme weapon of detaining a trade under the Maintenance of Internal Security Act, 1971 to deter like-minded persons from continuing food adulteration activities. Extreme action of detention was justified against such anti-social elements who engage themselves in the racket in 'a big way that throws out of gear even the tempo of life'

However, it is Palghat Municipality case in which Justice Narayan Pillai expounded the theory of social engineering for establishing a correlation ship between the duties of the businessman and the rights of the consumer who is always the victim in consumer offences. He gave a new slant to consumer jurisprudence commensurate with rule of law when he observed:

'There are several rights such as right to safety, right to be heard the right to know, right to choose and the right to fair agreement involved in consumerism.... The most important right in consumerism is the right to safety and in our country it was recognized in the Prevention of Food Adulteration Act...'

The Supreme Court gradually invented new legal devices, doctrines and principles for the protection of the rights of the consumers. To fasten culpability the judiciary adopted the doctrine the judiciary adopted the doctrine of strict liability in matters pertaining to consumer wrongs and the dilution of the to meet such challenges affecting public health and life.

10.5 The Consumer Protection Act, 1986-New Horizons:

The Consumer Protection Act, 1986 had its birth-pangs from the days of Kennedy's Consumer Message 1962 and other metamorphic changes in the consumer world and free-market economy both within and outside India. Accordingly, consumer awareness, consumer literacy has received quantum jumps in India during the last decade of this century. This has been possible due to vast expanse in Indian markets as well as consumerism as a result of adoption of liberalization, decontrols and freeing of Indian economy from the cobwebs of socialist controls and socialist ownership of industry.

It is not only a constitutional obligation but also a new trust of the government to vast array of consuming public assuring and guaranteeing basic consumer rights, which were non-existent prior to 1986, shall inform all consumers institutions-administrative, business and judicial. It is interesting to understand that all human beings are consumers whether they are young or old, rich or poor literate or illiterate require legal protection against consumer hazards.

Consequently, the Act envisages the need of disseminating consumer awareness and education in furtherance of the protection of consumer rights through the instrumentality of consumer protection councils constituted at the district, state and central levels. These are namely:

- (a) the right to be protected against products which are hazardous to life and property;
- (b) the right to be informed of the quality, quantity, purity, price etc. so as to protect the consumer from unfair trade practices... and access to goods at competitive price;
- (c) the right to be heard and grievances and complaints redressed as a matter of right at the appropriate forums to save the consumer from exploitation by unscrupulous sellers or producers; and
- (d) the right to consumer education to sensitise the consumers on all problems and issues concerning consumerism.

In short both from the point of view of its coverage, applicability, voluntary democratic and participatory mechanism with a hierarchy of consumer justice delivery forums the Act creates in-built linkage with the victims of consumer wrongs. It embodies the principle of natural justice-the right to hear or an opportunity to both sides of being heard-(audi alteram partem) and provides effective, inexpensive and speedy disputes redressal mechanism commensurate to right to life and a healthy living free from the dangers of modern consumerist hazards.

In this way the Consumers protection Act has given a new Copernican turn of Indian consumer jurisprudence giving enough scope to judiciary to spin consumer jurisprudence around constitutional values of equality, liberty and right to life. Inevitably judiciary being a part of this national consumer ethos has responded to the need of consumer justice which in turn has generated consumer awareness. On a complaint filed before the Supreme Court that implementation of the Consumer

Protection Act being sluggish as the machinery for redress of the grievances at the base level is the District Forums had not been set up in the country the Court issued directions for the establishment of independent District forums for securing the implementation of the Act.

In this context Justice Ahmadi, as then he was, observed.

'Considerable time, almost over sixteen years, have now elapsed since the provisions of the Act were brought into force and we should have excepted the regular forum in position in every district by own. It is conceivable that the consumer protection movement is gaining ground in other countries because of strong consumer bodies having succeeded in organising the consumers; such powerful bodies are far and few in this country and they are unable to exert sufficient pressure on the powers that be as compared to the pressure brought by vested interests because the consumers in this country are not organized as one would like them to be.'

10.6 Sum Up:

The protection of consumer is the need of the hour. This pressing need makes the consumer education and the movement for consumer protection i.e. consumerism, very vital. Education systems must reflect the demands of social justice, contribute to heightened social awareness, solidarity and organizational capacity, especially among the more disadvantaged sectors of society.

Today, very young children have enormous direct and indirect spending power. Not only do they receive pocket money and birthday presents, but they influence parental spending on household goods and foodstuffs. Early consumer education is important in giving children the skills and knowledge to participate responsibly and effectively in the market place while also contributing to the development of sustainable consumption in the society.

It is in school that civic awareness is shaped and schools are fertile ground for moulding the mind of future consumers. There is no doubt that the integration of consumer education into the formal school curriculum can be of immense benefit to societies. Students already make consumer choices in school cafeterias, canteens and local shops and kiosks. Students for example should be educated to distinguish the needs from wants, to budget their spending and to make informed choices about the goods they buy. Surely, the growing market products, services and

advertising aimed at the young consumers makes consumer education in the formal schools all the more necessary.

Furthermore, consumer education has been proven to be an integral contributor to the development of an individual. It is therefore absolutely necessary that universal provision of this vital knowledge be realized to ensure that all citizens have an equal start in life.

In this environment of change, development, and consumer awareness, one can feel the quickening pulse rate of an economy ready to take off. But unlike most developed countries where development preceded consumer awareness, in India, the consumerism i.e. the consumer movement is likely to complement the development of the country, and by putting the necessary brakes in society, it might well succeed in preventing some of the troubles faced by consumer groups elsewhere in the world.

However, it should be realized that imposing rules and regulations from above is likely to have little effect, if consumers themselves do not believe in the utility of these regulations. Thus, education and awareness must accompany the process of making regulations and legislations. In fact, consumer education and dissemination of information should form part of any policy to help the consumer.

Thus, not only is labeling information on drugs and packaged commodities required, but there should also be awareness among consumers as to what these ingredients are -and what are the benefits and problems associated with them. Business houses can take a tip from here and perhaps compete with other houses in providing labeling information. This may serve as an incentive to consumers to purchase their products. Besides, putting escape clauses in their contracts with consumers is not going to help business houses for very long. For, the trend in legal interpretation appears to be to consider whether these clauses are valid. Finally, production and marketing of unsafe products may bring in its wake a whole series of tortuous litigations.

Nor can the entrepreneurs, who have been watching the fate of the Bhopal litigation, take comfort from the fact that any such litigation will be a long drawn out process during which the real assets of the international counterparts of the company can be disposed of, for people will rise against such acts.

It is clear that business, consumers, and government live on each other, live off each other and because of each other. Producers and the government are merely a

means to consumer satisfaction. Therefore, in any development process, it is important that both consumers and producers work together in the attainment of their goals.

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10.8 Check Your Progress:

Fill in the Blanks

1. Consumerism is an organized movement of citizens and government to of buyers in relation to sellers.
2. Consumers can use their to protect their interest and to fight those forces that threaten them.
3. In developing educational programs, special attention should be given to the needs of
4. Consumerism is only applicable in era of
5. The term "consumerism" had been first used in the year and referred to defined in Oxford English Dictionary.

True or False

- (i) "Consumer education" means different things to different people.
- (ii) The "consumer eye" concept means that an informed consumer looks at a product critically and analytically.
- (iii) Business should not undertake or participate in factual and relevant consumer education and information programs.
- (iv) Consumerism is a social as well as economic order, which encourages the buying of goods and services in ever-greater amounts.
- (v) The maxim '*Caveat emptor*' relieved the seller of the obligation to make disclosure about the quality of the product.

Answers to Check Your Progress

Fill in the Blanks

- (i) strengthen the rights and power
- (ii) collective power
- (iii) disadvantaged consumers
- (iv) mass consumption
- (v) 1915 and "advocacy of the rights and interests of consumers"

True or False

- (i) True
- (ii) True
- (iii) False
- (iv) True
- (v) True

10.9 Terminal Questions:

- Q.1** Write an essay on the consumer education.
- Q.2** Highlight the importance of Consumer Education in India.
- Q.3** Explain the concept of consumerism and the emerging challenges in India.
- Q.4** What is the position of consumerism in USA and UK?