Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic division. But, they are the only important group whose views are often not heard.\textsuperscript{563} Keeping in view of industrialisation some consumer activists argue, however, that the consumer actually has less choice that might be possible and desirable because of the economics of scale are necessary in order to enter and compete effectively in certain industries.\textsuperscript{564} Thus, consumerists support expanded choice for the consumer through regulations designed to control corporate power in the market place. Many of these controls are oriented toward breaking up larger corporate units into smaller and what are viewed as more freely competitive units. Major companies in industries involving computers, cereals, oil, and communications have been subjected to such attempts to dismember their operating units. It is not at all clear, however, that such a result would benefit consumers’ “right to free choice”.\textsuperscript{565}

\textsuperscript{563} In a speech in South Africa in 1890 Mahatma Gandhi said: “A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption in our work. He is the purpose of it. He is not an outsider in our business. He is part of it. We are not doing him a favor by serving him. He is doing us a favor by giving us an opportunity to do so.” This is a philosophy well worth absorbing and putting at the heart of all customer interactions. See, \textit{The Hindu: India's National Newspaper}, October 15, 2000.


Paradoxically, supporting more choice in the market place consumerists sometimes support reduced choice by arguing that consumers should be given not simply what they want, but rather what is “best” for them. Thus, some consumerists support the notion that buyers are not able to adequately determine for themselves what is in their best interest and must instead be provided with the “right” products. Other laws have also been implemented in order to promote the consumers’ safety in the products (such as state laws requiring motorcycle riders to wear helmets). Increased disclosure of information is also an attempt to respect consumers’ right. Certainly consumers expect and demand safe products. However, much more debate will be forthcoming over the desirability of government intervention, decision and control of consumers’ choice in order to provide guarantee that only product alternatives deemed by regulations as beneficial to consumers and society.\textsuperscript{566}

During the period of enactment of the Consumer Protection Act 1986 in India the much talked about the concept of “consumer protection” centres around the problem of buyers in a world of sellers.\textsuperscript{567} The question arises who is a consumer? The answer is that every-body is a consumer-one who eats food; buys commodities; travels by any means of communication; takes flat or house on rent; pays electricity and water charges. One is also a consumer who goes to doctor; lawyers or any professional; operates bank account; and involves in any kind of transactions.

It has been argued that in order to create a consumer democracy and ensure these basic rights, it is necessary to give a better deal to the population living


below poverty line in India. There is urgently necessity to check consumer fraud such as malpractices, adulteration, production of sub-standard goods etc. The central and local self-governments have definite role to play diligently in promoting the interest of consumers. There are a number of agencies which claim to be watch-dog of consumers’ interests. It has also been argued that the legislative enactments do exist on the statute book but how far they have been effective in protecting the interest of consumer is yet to be seen. Thus, in India the consumers are confronted invariably with the non-availability of effective and speedy machinery for redressal of their grievances in the market place. Therefore, it is imperative to consider consumers’ problems and their scope and nature of grievances. There are so many factors which have contributed to the powerlessness of consumers and one of them is the lack of appropriate mechanism for redressing their grievances. The low income consumers cannot think of any legal remedies and for them law is an instrument of harassment and oppression.

The year 1986 has been witnessed for significant developments in the field of consumer protection law. The consumer protection movement through law is taking shape gradually in India as it is no longer dark content of economic

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theory but it is a positively useful and essential discovery of twentieth century. There is no doubt that legal system in India provided some remedies for the consumers’ problems. Equality before law is not only a Constitutional right but also an essential ingredient for making the state into just and effective welfare state. India, in 1986, witnessed for enactment of new consumer law and several new amendments on existing consumer protection laws.\textsuperscript{571} As mentioned earlier despite the enactment of Consumer Protection Act 1986 (CP Act) and other relevant amendments the consumers are still facing a number of challenges in India. In this background the present study examined certain broad issues along with certain other sub-issues. For example, when how consumer law has been evolved and developed in India? What is the Constitutional and legislative framework of consumer protection law in India (other than the Consumer Protection Act, 1986)? What is the legislative framework of Consumer Protection Act 1986? Whether the Act has the potency to achieve the object of the Act? What are the various dimensions of deficiency in services under Consumer Protection Act 1986? These questions along with other relevant sub-questions have been examined in Chapters- 2, 3, 4 and 5 of the study which are summarised as under.

\section*{A. Evolution and Development}

It emerges from the study in Chapter 2 that the consumer protection laws have originated and developed as a natural response to the recognition of the rights of every consumer to be protected against exploitation and abuse by any

\textsuperscript{571} They were mainly- (i) the Consumer Protection Act, 1986, (ii) the Prevention of Food Adulteration (Amendment) Act, 1986 (iii) the Standards of Weights and Measures (Amendment) Act, 1986 (iv) the Standards of Weight and Measures (Enforcement) Amendment Act, 1986 (v) the Essential Commodities (Second Amendment) Act, 1986,(vi) the Monopolies and Restrictive Trade Practices (Amendment )Act,1986 (vi) the Agricultural Produce (Grading and Marking) Amendment Act,1986.
manufacturer or supplier of goods or service providers. In England, during 13th and 14th centuries, the official dignitaries of the country – the lieutenant, the sheriffs and the justices of peace performed both judicial as well as administrative functions to provide consumer justice. On increasing their duties and jurisdictions in the 16th century, they were given supervisory jurisdiction. The activity of consumer protection was confined only to control of prices of most needed commodities and protection from short supplies. The quality and quantity of essential commodities were to be regulated by the crown through judicial institutions. In early eighteenth century, the justices of peace and the mayors of boroughs were empowered to fix the weight and price of bread matching the prices of grain and require the bakers to mark the loaves with size and quality. This state of affairs continued till 1836 when Adam Smith’s proposed: “the interest of the producer ought to be attended to only so far it may be necessary for promoting that of the consumer” needs an appreciation. Thus, during the initial legislative phase, the provisions regarding protection of consumers came to be incorporated in certain laws only in the ordinary process of legislation.

Since the advent of British rule in India various legislative measures were also taken, from time to time with a view to protect the interest of public at large. However, in spite of these enactments, principles of English common law also continued to be applied through the judgments of the Privy Council and the High Courts and when necessity arose for either interpreting or clarifying these statutes or for dealing with those subjects which were not covered by these statutes. Thus, the protection of consumers has been a continuous process with different dimensions. But the modern legislation has initiated an era of clear distinction of consumer rights and their protection with a formal system of enforcement. Even under the Indian Consumer Protection Act, 1986 the liability of manufacturers of products is based on the principles laid down in the famous
case of *Donoghue v. Stevenson*.\(^{572}\) The court held that a manufacturer of a product owed a duty to the consumer to take reasonable care in preparation of goods and selling the goods in the market. In this case the plaintiff purchased a ginger beer bottle manufactured by the defendant. When she poured some of its contents into a glass for the purpose of drinking it, she saw a dead snail floating out of the bottle. She suffered a shock and later with gastroenteritis. She brought an action for damages.\(^{573}\) The manufacturer contended that since there was no contractual relationship between the plaintiff and the defendant he was not liable. But the House of Lords held that the manufacturer was liable because he owed a duty of care to the plaintiff and there was breach of that duty by him. Lord Atkin propounded the modern doctrine of negligence thus:

“\(\text{You must take reasonable care to avoid acts or omissions which you can reasonably would be likely to injure your neighbour.}\) Who, then, in law is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have in contemplation as being so affected I am directing my mind to the acts or omissions which are called in question.”

Thus, under this rule a consumer is entitled to bring an action against manufacturers even though there is no privity between them. But it is necessary for him to prove negligence by the manufacturers. It is the duty of the manufacturer to take reasonable care that the products are designed and manufactured in such manner that they do not pose any danger to public safety.

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The law requires that the manufacturer should engage not only competent persons but also establish a system of quality control to check product and their performance on a systematic basis.\textsuperscript{574}

Besides the above development, the consumer protection has attained enormous international dimensions due to increase in international trade and commerce. The production, distribution and promotion of goods and services by multinational companies have raised various issues which call for intergovernmental cooperation. The developing countries are far behind in protecting the interests of their consumers because of the lack of resources and necessary infrastructure to do so. The low-income groups comprising the major consumer population in these countries face not only the dearth of food products and basic necessities of life but also crisis in terms of quality at reasonable prices. These countries need a vibrant consumer movement with international outlook. Since, without a vibrant consumer movement, they cannot protect themselves against hazardous or adulterated goods or food items and effects of deficient services, the matter has been given due place in the international agenda. Many programmes have been launched in the international level to deal with consumer protection and the emphasis is on providing basis goods and services.

In 1980, the UN Secretary General emphasized: “international cooperation with regard to consumer protection is needed because the development of consumer protection policies no longer require that measures be taken only at the national level”. There is so also because the world economy has become inter-dependent and due to international character of business practices the marketing of goods and services is often done on multinational basis by transnational corporations. So the problems encountered by consumers are often not exclusive to any one

country. As a result, measures adopted to protect the consumers in one country can have implications for consumers in other countries as well. An important issue is that the consumer protection measure, such as national standards, intended to protect consumers in one country, can become barriers to international trade and make it more difficult for consumers in that country to choose among various goods which could be available at the lowest possible price.

In view of the effectiveness of programmes at the international level, many international organisations have been actively contributing towards developing global consumer cooperation. Inter-governmental organisations are also participating in the process by creating special divisions for the protection of consumers in different areas. Food and Agriculture Organisation (FAO) is not only pursuing special programmes for food but is also providing necessary guidance for pursuing the consumer objectives. The International Labour Organisation (ILO) promotes the interests of workers (as consumers) by providing them basic necessities of life, reasonable in terms of price, quality and quantity. The World Intellectual Property Organisation (WIPO) has been favouring a new model law for developing countries on trade marks in order to ensure the supply of genuine goods to the consumers. The International Organisation of Consumers’ Union (IOCU) deals with inter-governmental organisations and national governments and has contributed substantially by extending consumer protection beyond the concern of private consumer, to include the availability, quality and safety of goods and services to the general public. The Expert Committee of the World Health Organisation (WHO) is also active for the protection of consumers and has prepared a list of drugs considered “most essential” for maintenance of health at a reasonable price.

It is evident that the above developments in the field of consumer protection law have influenced the development of consumer law in India.
B. Constitutional and Legislative Framework

As stated above the Chapter 3 of the study examines the Constitutional and legislative framework of consumer protection law in India (other than the Consumer Protection Act, 1986). It appears from the study in this chapter that the Constitution of India does not contain any explicit provision on the subject of the consumer, a large number of Constitutional provisions have direct bearing on the consumer protection. Most of these provisions are pertaining to the directive principles of the state policy.\textsuperscript{575} As a part of fundamental freedoms, the Constitution of India guarantees under sub-clause (g) of Article 19(1), freedom of profession, trade or business, and thereby ensuring that the State cannot prevent a citizen from carrying on a business, except by a law imposing a reasonable restriction in the interest of the general public.\textsuperscript{576} However, under Article 19(2), no such right can be enforced where the business is dangerous or immoral. Such business may be absolutely prohibited or may be required to be licensed. Moreover, restrictions can be imposed on a business in terms of place and time also. There is no right to carry on a business at every place or at any time. There can be reasonable restrictions on “business on the streets”\textsuperscript{577} and any “harmful trade”\textsuperscript{578} or “dangerous trade”.\textsuperscript{579} Reasonable restriction can be imposed for public convenience also.\textsuperscript{580} Thus, sub-clause (g) of Article 19(1) of


\textsuperscript{577} Pyare Lal v. Delhi Municipality, AIR 1968 SC 133.

\textsuperscript{578} Hari Shankar v. Deputy Commissioner, AIR 1975 SC 1121.


\textsuperscript{580} Ebrahim v. Regional Transport Authority, (1953) SCR 290.
the Constitution of India does not confer on any individual or association the monopoly right to carry on any trade or business or any right to carry on a trade or business without competition from eligible persons. Hence, if by reason of any state action, an element of completion is introduced into a trade, the existing trader or licensee who might have been enjoying a monopoly in the trade cannot complain of the infringement of his fundamental right conferred by this Article.

Article 43 of the Constitution of India obligates the State to secure, by suitable legislation or economic organisation or in any other way, for all workers, agricultural, industrial or otherwise, work, a living usage and conditions of work ensuring a decent standard of life in the same way as the ILO (International Labour Organisation) is promoting the interests of workers as consumers. The Article 43 has been relied upon the reasonableness of the restrictions imposed by the Minimum Wages Act 1948, upon the fundamental rights of business guaranteed by Article 19(1)(g); to condemn unfair labour practices.

Regarding public health, Article 47 requires the State to take steps to raise the level of nutrition and the standard of living to improve public health and to prohibit consumption of intoxicating drinks or drugs which are injurious to health. The Article 47 makes improvement to public health a primary duty of the State. Hence the court should enforce this duty against a defaulting local authority, on pain of penalty prescribed by law, regardless of the financial resources of such authority. In case of need, the local authority should approach the State Government to grant loan or aid, and the latter should supply the

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582 Nayar Rice Mills v. Teekappa, AIR 1971 SC 246.
584 Eveready Co. v. Labour Court, AIR 1962 All 497.
money required in view of the primary duty of the State under Article 47. Restrictions imposed by a law providing for the prohibition of consumption or production of liquor cannot be challenged as violative of Article 19(1)(g) in as much as dealing in liquor cannot be regarded as a “trade or business” within the meaning of Article 19(1)(g) and because such law gives effect to the provision of Article 47. The Constitution of India has distributed the subjects, relating to product and service regulation, between the centre and the states for their better quality and efficiency. Most of the subjects concerning consumer protection have been placed in the Concurrent List of the Seventh Schedule to the Constitution of India.

Under Article 19(1) (g) of the Constitution the words “occupation, trade or business” have been used. Though the word “business” is ordinarily more comprehensive than the word “trade”, in the Article 19(1) (g) it is used as synonymous with the other, as meaning any substantial and systematic organised course of purpose. This is a wide expression and would comprise within its ambit the interests of public health and morals, economic stability of the country, equitable distribution of essential commodities of fair prices, maintenance of purity in public life, prevention of fraud, amelioration of the conditions of farmers or workmen; implementation of the directive principles in Part IV of the Constitution of India.

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588 The Constitution of India, Seventh Schedule (Article 246), List III- Concurrent List.
The above constitutional mandate and the philosophy underlying in it reflects that all laws including legislations concerning consumer protection in India must respect the said mandate and underlying philosophy thereto.$^{590}$

In this background the study examined the relevant legislations$^{591}$ concerning consumer protection in India. It emerges that the interest of consumers has been protected in India through appropriate legislations since the time of British people in produced codified law in India. The Indian Penal Code was enacted in 1860 under which certain Sections of law are useful for the protection of consumer interest. Similarly, the Indian Contract Act, 1872 contains a large number of general principles of law which are still applied in deciding consumer disputes. In the beginning of the twentieth century Sales of Goods Act was enacted in 1930 under which certain principles of consumer protection law where incorporated. After India’s independence the Constitution of India contains certain principles which are consumer protection friendly. Therefore, Indian Parliament has enacted a large number of legislation in the field of food and other essential commodities, maintenance of standards weights, measures, marketing and packaging, standard of drugs and medicines as well as quality of goods, services and competition. Though the Competition Act, 2002 is successor to the Monopolies and Restrictive Trade Practices Act (MRTP Act), the scope of both the Acts are completely different. The change in economic policies reflects change in legal regime. After 1990’s onward India changed her economic policy from protection, insulation and regulation to free market


economy. This change finds reflection in the objectives of the Competition Act, 2002.

C. Various Dimensions of Deficiencies of Services

The Chapters 4 and 5 of the Study discuss the legislative scheme of Consumer Protection Act 1986 and various dimensions of deficiencies of services are coming within the purview of CP Act, like, medicine, banking, insurance, railway, advocate, electricity etc which show that the Act is another development in the field of consumer protection law. The CP Act is enacted in order to provide better protection to the interest of the consumers. This is a comprehensive legislation with main thrust on providing simple and inexpensive redressal of consumer grievances. The provision of the Act is in addition to and not in derogation of the provisions of any other law for the time being in force. The provisions of the Act are supplementary in nature and have no over-riding effect as the consumer interests are protected by various other enactments. The scope of the Act extends to providing speedy remedy to the consumer against (i) unfair trade practices or restrictive trade practices by trader, (ii) the goods purchased by a consumer suffers from one or more defects, (iii) the services hired or availed or agreed to be hired or availed by the consumer suffer from deficiency in any respect, (iv) the price charged is in excess of the price fixed by or under any law for the time being in force or displayed on the goods or on any package containing such goods and goods which will be hazardous to life and safety when used are being offered for sale to the public etc. By an amendment to the Act in 1993, the scope of the Act was enlarged to enable one or more consumers to file class action complaints on behalf of group of consumers having common interest. The scope of “service” was also enlarged by including housing construction in the definition of service. The Act is being administered by three-tier quasi-judicial machinery at the
National, State and District levels for redressing consumer grievances. It is significant that the Act recognizes the role of consumer organizations in assisting the consumer in seeking justice through the nation-wide network of consumer disputes redressal agencies.

The Act defines who is a consumer, what is a consumer dispute and other relevant terms and also specifies before which authority a consumer complaint will lie. Proceedings before the authorities under the Act are adversarial in nature because the consumer alleges defects or deficiency against the seller or service provider, who in turn contests the same. The concerned authority is requested to adjudicate and determine the dispute. Under the Act a consumer can lodge a complaint with the authorities. Therefore, it is necessary to understand who is a consumer and what are the conditions are to be satisfied to become consumer within the meaning of the Act.

Consumer is any person who buys any goods or avails of any service. The buy goods or availing of services can be either for the buyer himself or for any other beneficiary. The consideration can be either paid or payable. However, any goods purchased for resale or commercial purpose disentitles such purchase to be consumer. However, ‘commercial purpose’ does not include use by a person of goods bought by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment. The allegation made by a consumer with respect to any defects in the goods or any deficiency in service provided in consumer dispute. Defect with respect to goods mean any fault, imperfection, or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract express or implied, or as it claimed by the trader in any manner whatsoever in relation to any nature and manner of performance which is required to be maintained by or under any law for the
time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

Under the CP Act a consumer, a voluntary consumer association, Central or State Government, one or more consumers having some interest (class action) and legal heir of a deceased consumer can also be a complainant. The starting point in a consumer action under the Act is the filing of a complaint. Any complainant can file a complaint alleging any of the following consumer disputes: (i) any restrictive trade practice or unfair trade practice adopted by any trader or service provider, (ii) defective goods, (iii) deficiency in service, (iv) charging of excess price for goods or services, (v) offering of goods and services that are hazardous to life and safety. A consumer complaint has to be filed within two years from the date of arising of cause of action before any District Forum or State Commission or National Commission as the case may be. However, the delay in filing may be condoned upon showing “sufficient cause” for not filing within the limitation period. The District Forum or State Commission or National Commission can pass any one or more of the following orders: (a) removal of the defect in goods and deficiency in service, (b) replacement of defective goods, (c) return of price to the consumer, (d) compensation for loss or injury, (e) discontinuance of restrictive trade practice or unfair trade practice, (f) not to offer hazardous goods or services, (g) withdrawal of hazardous goods from the market, (h) seizing of manufacture of hazardous goods, (i) issue of corrective advertisement, and (j) cost to parties.

Non compliance of any interim order passed by the District Forum or State Commission or National Commission will result in the attachment of the property of the defaulter. If the non compliance continues even after three months of such attachment, the attach property may be sold and the proceeds may be utilized to pay of damages and or / compensation to the complainant. When any amount determined by the authorities remains unpaid, the
complainant may apply to the authorities that made such order for the issue of a recovery certificate upon which collector will recover the amount as arrears of land revenue.

D. Findings and Suggestions

In conclusion it can be said that in examining the effect and efficacy of the consumer protection law in India a large number of consumers centric legislations have been examined. The study shows that the landmark legislation in the field of consumer protection in India is the Consumer Protection Act, 1986 (the CP Act). The CP Act was enacted to protect the interests of the consumers which provided for establishment of three-tier quasi-judicial consumer disputes redressal agencies at the District, State and National levels to render simple, inexpensive and speedy justice to consumers. At present, 631 District Consumer Disputes Redressal Fora (District Fora) and 35 State Consumer Disputes Redressal Commissions (State Commissions) have been established in the country besides the National Consumer Disputes Redressal Commission (National Commission) established at the national level in New Delhi. It also emerges from the present study that as a result of the enactment of the CP Act a large number of consumer related disputes have been redressed by the consumer disputes redressal agencies at the District, State and National levels and also successfully provided remedies to the consumers. It is also beyond reasonable doubts that downtrodden people are also prefer to go before the consumer disputes redressal agencies.

Although, the Consumer Protection Act, 1986 is aimed to provide all possible justice to the consumers it is not however said to be a panacea for all ailments presently suffered by the consumer in the rapidly changing socio-economic environment. The consumer is confused with the permanent phenomenon of rising prices. Consumer is very much in a perplexed situation as to whether the
price charged by the trader/retailer is reasonable or unreasonable. Generally, the consumer reconciles himself to avoid unnecessary wastage of time in persecuting his complaint even though the Act provides relief. Under the Act the redressal agencies have been clothed with the power to issue prohibitory orders or injunction against the defaulting traders or /and manufacturer. The manufacturer or traders can also be ordered by the forum to remove the defects in the goods or rendering of services or to compensate the laws suffered by the aggrieved consumers. The redressal agencies/ forums imposes damages/ punishment in appropriate cases and if satisfied impose lessor sentence then minimum prescribe. However, goods for commercial purpose specially excluded under the Act is unfortunate that one who buys the goods for trade or commerce and feels that he has been duped by the manufacturer or /and distributor cannot file a complaint against such manufacturer or /and distributor as he has been especially excluded from the definition of “Consumer” given under the section 2(d) of the CP Act.

Another inherent difficulty in the implementation of the CP Act is lack of facilities available for testing the correct qualities of the goods purchased by the consumers. India is a vast country inhabited mostly in remote villages where the people are economically poor, illiterate, innocent and simple. They have always been victim of unfair trade practice indulged in by the traders/retailers. Some of them even now after almost seven decades of Indian independence think it the government which is manufacturing all the things and it is difficult to fight with government machinery. Some of them who are aware of the actual manufacturers of goods think that with the reasons available with them they cannot fight the powerful business magnets. This is thought and believed in general that it is the responsibility of the government to see that there uncalled for economies are removed and the public in general is provided with wholesome food and other necessities of life. However, in the present day set
up, our every aspect of life has become adulterated and real culprit get escort free from one reason to other.

Notwithstanding the above, assuming that everything goes smooth, even then thinking into consideration the dimension of India, it appears that the laboratories so far established would be incapable of coping up with the task involved in the testing of the goods. Further, most of the laboratories are not fully equipped as yet for the purpose. The goods that are involved for testing are innumerable, their qualities, grade and kinds are also at variance with each other. Unless the facilities of testing of the goods are comparatively extended, the full objects and purposes of the CP Act may not be achieved. Besides these, during the present study following shortcomings were noticed in the CP Act and also following suggestions are worth considering:

1. The CP Act defined a number of concepts, for example, “branch office”, “defect”, “deficiency” etc. But these definitions are restrictive and did not cover all situations/contingencies. Therefore, uniform implementation of the CP Act is not taking place throughout India although it is a parliamentary legislation. A high level central committee shall be set up to look in to the matter.

2. Unfair contract has not been specifically included as a ground for filing a complaint in the Consumer Fora. Therefore, refusal of the service provider or seller of goods to furnish a bill to the consumer for payment made was not considered as an unfair trade practice against which a complaint could not be filed in a Consumer Fora. It is evident from the daily life at Calcutta. For example, hire taxi refusal cases. Therefore, implementation machinery of the CP Act shall be strengthening by introducing/establishing watching groups in all 631 District Consumer
Foras, 35 State Consumer Commissions and the National Consumer Commission.

3. Although the CP Act provides for the National Commission as well as State Commissions for setting up additional benches for quick disposal of cases, similar provision was not available for the District Forum. Therefore, the CP Act shall be amended and appropriate provisions shall be made for setting up additional district benches for quick disposal of cases.

4. There was a lack of clarity in the Act as to whether the President of the District Forum is also eligible for reappointment like the Members, leading to ambiguous interpretations in different States. This problem shall be solved by suitable amendment of the CP Act.

5. At present on line transaction system is a valid legal system in India. Hence, the computerization and computer networking of the Consumer Fora is being done. However, there is no provision in the CP Act for online filing of complaints and payment of fees in the Consumer Fora. A suitable amendment shall be made to the CP Act for introducing the same.

6. So far as the procedure provided in the CP Act is concerned, at present there is no time limit mentioned for the other member to give his opinion on points referred to him in cases where the proceeding is conducted by the President and one Member, and they differ on any point or points. While mentioning the composition of the Selection Committee for appointment of the Members of the State Commission, it was not clear that the appointment of the Members only through the Selection
Committee but not that of the President. Unlike the National Commission, the State Commission did not have any power to review any order made by it. All these ambiguity shall be removed by suitable amendment of the CP Act.

The working of the CP Act shows that in case of deficiency of services provided to the consumers are actionable under the Act. So under the umbrella of the CP Act and within the purview of deficiency of services a large number of service providers are falling, like, medical services, banking services, insurance services, railway services, telephone services, electricity services etc. The existence or non-existence of the facts in the services rendered may not only depend on the terms of understanding between the parties but it may also depend on the status of the opposite parties. For example, there are services which are provided by the Railways under the so called implied contract. The general attitude of the public is to reconcile the situation then existing. However, when there is a complaint that the Railway Compartment was dirty or the glasses of the windows were broken or the seats were in torn out condition, it becomes difficult for a particular passenger to prove the existence of these defects or prove the injury or loss caused. When a person purchases a ticket of second class from the current window the name of the passenger is not noted. In case he sustains any injury during the course of journey it becomes difficult for him to prove whether he actually travelled on the particular date on which he sustained injury or not. In such cases the redressal agencies in the interest of justice should follow the principle of natural justice and decide the case taken into account the genuine difficulties of the passengers, no doubt, after giving full opportunities to such governmental agencies to present their case. Unless and until the government machinery moves whole heartedly and sincerely to take preventive measures in removing the difficulties of the consumer in general, the individual complaint coming forward for the redressal of his
genuine complaint about the deficiencies in services provided will not solve the problems. Likewise when the telephone becomes dead and in spite of complaints, it is not rectified for a couple of days, it would not be possible to prove the loss or damage actually suffered due to the defect in telephone service.

In many cases it may be a business or loss or it may be that due to fault in the telephone speedy medical aid could not be provided to a heart patient. Such kind of losses are not unusual on account of faulty telephone but the consumer generally takes them lightly and avoids agitating as he is otherwise preoccupied with other jobs. Similar difficulties also crop up in the rendering of other services like, banking, financing, insurance, transport, supply of electricity and other energy, boarding and lodging or both entertainment, amusement or the purveying news or other information. In this connection, preventive measures can only safeguard the interest of the consumers of such services in a better way then taking recourse to a complaint before the redressal forums as the reliefs that may, if at all be granted, will in most of the cases not be a reasonable compensation for the loss for injury caused.

With the enactment of the Consumer Protection Act, 1986 the consumers may take recourse to the provisions under the Act. But it may be noted herein that the scope of the remedies provided under the law of tort is wider than other legislations. Under the law of torts a person can file a petition even against government servants for the loss or injury sustained by them due to their negligent acts. The scope and ambit of liability of health professionals and the state agencies have been widened by the Supreme Court and enabling the consumers to redress their grievances by approaching the appropriate court for immediate relief. Thus, in connection with deficiency in medical services under the Consumer Protection Act, 1986 following observations and recommendations are worth considering:
1. A review of cases decided by the courts under the law of torts reveals that
the courts have mainly relied upon the principles such as (i) test of reasonable foresight, (ii) duty to care, and (iii) loss or injury. The court has taken the charge of professional negligence against a person to be of serious nature, and has awarded compensation in such cases. The court has at the same time recognized the dangers, which are inherent in surgical operations and for wrong diagnosis, not amounting to an act of negligence. According to the courts, a doctor is not required to take the highest degree of care but he is only required to act in accordance with the practice accepted as proper, by a reasonable body of medical man skilled in that particular art. The court stated that professional man should possess a certain minimum degree of competence, that they should exercise reasonable care in the discharge of their duties. Keeping this in view, the Medical Council should strictly monitored the educational institution providing medical education and awarding degrees to practice. It should also take measures to test the competence of doctors from time to time at least once in a five years period. It has also been reported that Homeopathy Degree holders doctors are practising allopathy/modern medicines which is gross negligence. A committee shall be set up to look into the matter strictly.

2. The court drew no distinction between doctors working in government hospitals and private hospitals. It imposes a duty upon all doctors to protect the life of the patients. The court has taken a serious view where a surgeon failed to perform an emergency operation, which resulted in the death of the patient. In such situations it is the duty of the doctors to prove that the non performance of surgery or non administration of treatments, was on account of refusal on the part of the patient to give
consent thereto. Since many of the times it was found difficult for the complainant to obtain evidence or prove negligence, it should be made compulsory on the part of the doctors to prove that he is not guilty of committing the act of negligence.

3. There is a need to sensitized doctors and other medical professionals about the importance of providing immediate medical aid to injured person, even medical legal cases irrespective of the fact whether the patient is innocent or a criminal. As suggested by the Supreme Court, it is the duty of the doctors to extend medical assistance to save the life of patient. But the court has not clarified whether legal procedure is to be followed or not? Thus it may be suggested that doctors may follow the legal procedure after giving the necessary medical aid.

4. Steps should be taken to implement the directives of the Apex Court in *Dr. Joshi v. State of Uttar Pradesh*, wherein the court directed the District Magistrate, and Chief Medical Officers of all the district in Uttar Pradesh to identify and take appropriate action against all the person practising medicine without recognised qualifications. The Apex Court immediately provide the similar directive to all states including Union Territories and Capital Territory. Similarly Medical Council of India give wide publicity to the judgment so that other states may also follow the same procedures for preventing the entry of “quacks” and in protecting the life and health of individuals. Besides following norms may be incorporated in the guidelines of Medical Council of India for compliance by all medical professionals and Hospitals/Health Centres/Dispensaries: (i) All Hospitals/Health Centres/Dispensaries must properly maintain

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records of patients, previous case history, summary of laboratory reports and their treatments irrespective of government hospitals or private hospitals, (ii) it has been reported that inflow of visitors cause infections and create other complications which is to be controlled immediately by adopting adequate care, (iii) life saving drugs must be available in all government hospitals including private hospitals, (iv) All the State Medical Councils/Indian Medical Councils/Central and State Government should lay down the standard of care which the medical professional is required to observe in respect of diagnosis, duty to want patient of inherent risk, treatment, surgery, post operative care etc.

The deficiency of banking and financial services is also “deficiency in service” under the Consumer Protection Act, 1986. Therefore, a large numbers of cases are coming to the consumer redressal forum with complex question of law and fact. In a number of cases there were delayed information regarding dishonour of a cheque. The aggrieved party (drawer) claimed huge financial losses and also loss of goodwill. This required recording of evidence. For example, in Calcutta Stock Exchange Assn Ltd. v. Indusind Bank Ltd., it was held that the dispute was not adjudicable in a summary jurisdiction. Therefore, it is recommended that the jurisdiction of the consumer redressal forum under section 11 of the Consumer Protection Act, 1986 be widened so that the forum may entertain all issues relating to question of law as well as fact.

Like the banking and financial services, the insurance come within the definition of “service” under the Consumer Protection Act, 1986. It has been noticed during the study that a number of complicated insurance claims has been referred to civil court. For example in C. P. Moosa v. Chowgle Industries

it was held that the matter was too complicated for a consumer forum to sort out and, therefore, a civil suit would be better. The Act is silent when a claim be referred to civil court. Therefore, a suitable amendment be made to the Act so that civil court’s jurisdiction be identified clearly. This amendment will be helpful for minimising the delay of justice dispensation process. Similarly, it has also been noticed that large number of cases are coming to the consumer redressal forum while there is arbitration clause in the insurance policy in some cases. In such a case consumer redressal forum shall not admit the case. Through a suitable amendment to the Act and the matter be clarified which will save the wastage of time through litigation by the innocent consumers. In the case of motor vehicle insurance, “hit and run” cases should be given equal importance and it should only be decided relying on the witnesses that there was a motor vehicle accident and victim is applicant.

The deficiency in railway services which comes within the definition of “service” under the Consumer Protection Act, 1986. The Railways Act 1989 also allows the compensation for damages of goods and services. Therefore, large number of issues are coming to the consumer redressal forum which is also coming with the ambit of the Railway Act, 1989. For example, the issue relating to entry of unauthorized persons in the First Class Compartment of Railways was examined by the National Commission in General Manager, Southern Railway v. N. Prabakaran. It was held that it cannot be said that entry of unauthorized person in first class compartment is due to the negligence of railways and so the complainant is not entitled to any compensation of this point. Similarly, late running of train due to derailment has been held no deficiency of railway service in Saraswati N. Kambhevi v. Divisional Railway

594 (2001) 3 CPJ (NC).

Manager, Hubli Division. The railway staff is buying themselves unable to cope with the problems. The use of police to regulate the entry of passengers into compartment often takes an ugly turn. It may be respectfully submitted that the Railway Authority enjoys monopoly for long time at least from the beginning of the Indian Independence; hence the justifications given in above stated two judgments are not based on sound footings. Having neglected in checking the entry of unauthorized person and removing them the railway administration had failed to perform its duty. Although, the Indian Railway Act, 1890 has been replaced in 1989, but in the new Act of 1989 it is clearly mentioned that one has to choose remedy under either CP Act, 1986 or the said Act of 1989. Therefore, the problem of security of bonafide passengers remains the same. This problem may be solved by suitable modification of both CP Act 1986 and Railways Act, 1989 and a distinct link and bridge be made between them for proper dispensation of consumer justice. The basic reason for rethinking about the Railway Act, 1989 and the CP Act, 1986 is that both the Acts were enacted during pre globalization era that is before 1990s. In pre 1990s legislations were based on monopolies trade practice (for example MRTP Act, 1969) which has been replaced by competition law. In India also Competition Act was enacted in 2002. In the light of the competition law both the Railway Act, 1989 and the CP Act, 1986 are to be amended.

On the issue whether services provided by the legal profession or Advocates is “service” under the Consumer Protection Act, 1986 is a controversial issue. The Madras High Court and the National Consumer Disputes Redressal Forum are conflicting to each other on the issue. It has been argued that while in case of legal services provided by the bar and bench, “judiciary being sovereign function of the state outside the ambit of the Act but Advocates are not”. Similarly, it has also been debated that “no reason why lawyers should be

596 1991(1) CPJ 539 (Knt. SCDRC).
excluded from the Act describing the fact that they like doctors are professionals and are subject to the disciplinary control to the State Bar Council and the Bar Council of India”. Thus, it may be pointed out that the catalogue of grievances against lawyers, about high charges, negligence by which the claims get barred by limitation and incompetent advice, is formidable. Therefore, it is strongly recommended that a suitable amendment shall be made to the Consumer Protection Act, 1986 so that services provided by the Advocates to their clients are to be added under the purview of the Act in order to make the Act more effective.

However, these laws require the consumer to initiate action by a civil suit which involves a lengthy legal process. The process itself is very expensive and time-consuming. Hence there was need for a simple and quick process for redressal of consumer grievances. A Summary of the Consumer Protection Act â€“ 1986: Short Title. The consumer protection act, 1986. Official Citation. The Act envisages the establishment of the Consumer Protection Councils at the central level, state levels, and district levels whose main objects will be to promote and protect the rights of the consumers. The provisions of the Act are compensatory in nature. The provisions of this act are in addition to and not in derogation of the provisions of any other law for the time being in force. Related posts The Consumer Protection Act 1986 is a social welfare legislation which was enacted as a result of widespread consumer protection movement. Consumer Protection Act imposes strict liability on a manufacturer, in case of supply of defective goods by him, and a service provider, in case of deficiency in rendering of its services. In order to promote and protect the rights and interests of consumers, quasi judicial machinery is sought to be set up at district, state and central levels. These quasi judicial bodies have to observe the principles of natural justice and have been empowered to give reli. Consumer Protection Vis a Vis Insurance Sector in India an Overviews of Challenges and Needs by Yashasvi Virendra & Anshika Agarwal. Law as a Product of Tradition and Culture-losc Seminar. Municipal legal orders hence are required to be suitably modified to make them more functional and people/ justice oriented 1. Consumerism is a process through which the. The Consumer Protection Act provides for legal framework for the protection of the rights and interests and to accord socio-economic justice to people of Indian Republic 8. Through the enactment of this statute, an attempt has been made by the Indian Parliament to provide a speedy and cheap remedy by way of an alternative to the time consuming and expensive process of.