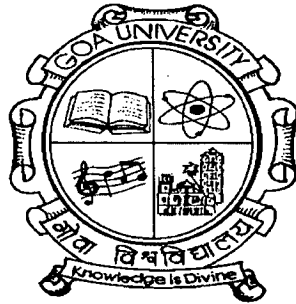


**FUNCTIONING OF CONSUMER DISPUTE
REDRESSAL AGENCIES IN THE STATE OF GOA:
A SOCIO LEGAL STUDY WITH SPECIAL
REFERENCE TO SERVICES**



**A Thesis
Submitted to Goa University
for the Award of the Degree of**

343.071
ALI / Fun

**DOCTOR OF PHILOSOPHY
IN
LAW**

*Dr. C. Rajashekar
External Examiner
13.5.11.*

By

Gandaman Shaber Ali.

LL.M., (NLSIU) M.L., (SKU)

Research Guide

Prof. Dr.M. Pinheiro

M.A., LL.M., Ph.D.

Dean, Faculty of Law,
Chairman BOS, Goa University,
Panaji, Goa

*VIVA VOCE
13/5/2011
Dean*

13/5/2011

Goa University, Panaji, Goa

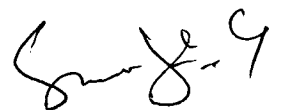
April 2010

T-536

DECLARATION

I hereby declare that this thesis titled, "**FUNCTIONING OF CONSUMER DISPUTE REDRESSAL AGENCIES IN THE STATE OF GOA : A SOCIO LEGAL STUDY WITH SPECIAL REFERENCE TO SERVICES**" submitted for the award of the **Degree of Doctor of Philosophy in Law**, to Goa University, Panaji, is an original research work done by me.

I also hereby declare that this thesis or any part of it has not been submitted to any other University for the award of any Degree or Diploma or Fellowship.



Date: 24-04-10

Gandaman Shaber Ali

Place: Panaji

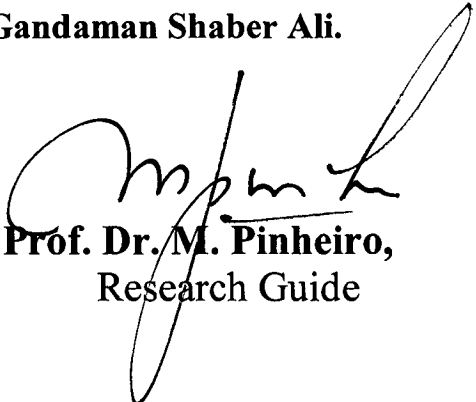
Dr. M. Pinheiro
M.A., LL.M., Ph.D.,
Dean, Faculty of Law,
Chairman, Board of Studies,
Goa University, Panaji, Goa.

Principal,
V.M.Salgaocar College of Law,
Miramar, Panaji, Goa

CERTIFICATE

This is to certify that the thesis titled, “**FUNCTIONING OF CONSUMER DISPUTE REDRESSAL AGENCIES IN THE STATE OF GOA: A SOCIA LEGAL STUDY WITH SPECIAL REFERENCE TO SERVICES**” submitted for the award of the Degree of **Doctor of Philosophy in Law**, is a record of the research work done by Mr. Gandaman Shaber Ali under my guidance and supervision during 2005 - 2010.

I certify that this is a *bonafide* work of **Mr. Gandaman Shaber Ali**.


Prof. Dr. M. Pinheiro,
Research Guide

Place: Panaji

Date: 24/04/2010

ACKNOWLEDGEMENTS

In the preparation of this thesis, I am indebted to so many persons that it is impossible without appearing encyclopaedic, to acknowledge this debt to all, by name.

I wish to express my sincere and heartfelt deep debt of gratitude to my guide **Dr. M. Pinheiro**, Professor of Law, Dean Faculty of Law, Chairman BOS, Goa University, Principal, V.M.Salgaocar College of Law, Panaji, Goa, for his most valuable advice, guidance, suggestions, encouragement, and continuous inspiration, which were responsible for the successful completion of this research study.

I am highly indebted to **Dr. Carmo D'Souza**, Associate Professor, V.M.Salgaocar College of Law, Goa, **Dr. T. R. Subramanya**, Professor of Law, University Law College, Bangalore, and **Dr. K.R. Aithal**, Professor of Law, Karnataka University, Dharwad, for their most useful interaction and guidance during this research.

I express my sincere thanks to my colleague **Ms. Mrunmayi M. Vaidya** for her careful and meticulous reading of this thesis and making corrections wherever necessary.

I hereby express my profound sense of gratitude to my friends **Prof. Krishna Deva Rao**, **Dr. C. S. Patil** and **Vishwanath M.** for their cooperation in providing material for this study.

I will be failing in my duty if I don't record my gratitude to the Presiding Officers of Consumer Dispute Redressal Agencies in Goa and other official staff for extending important statistical data for this study.

I wish to express my sincere thanks to Advocates, Consumer Organizations, and Consumers who have extended their cooperation during this research.

I am thankful to the **Librarian and other library staff** of V. M. Salgaocar College of Law, Panjim, National Law School of India University, Bangalore, Consumer Education and Research Centre Ahmadabad, Gujarat National Law University, Gandhi Nagar, University Law College, Dharwad and Bangalore, and other libraries visited (in Goa and outside) by me, for their full cooperation and support in providing material for this thesis.

I am also thankful to all **my colleagues, librarians, students** and well wishers for their constant inspiration in completing this work.

I am grateful to **Prof. A.S. Nadkarni**, Principal, G. R. Kare College of Law, Margao for his kind co-operation and help in completing this thesis.

I am also thankful to those who have helped me in many respects to bring the work in this shape.

I express my deep sense of love and gratitude to my wife **Rafia Begum**, my dearest son **Rashid Ali** and my lovely daughter **Nikath Tarannum**, whose patience, continuous moral support and persuasion, have been instrumental in accomplishing this task.

Finally let me whole heartedly acknowledge my deep sense of gratitude and appreciation for my parents and family members in extending to me, continuous support and inspiration to complete this research successfully.

Gandaman Shaber Ali

CONTENTS		Page No
	DECLARATION	i
	CERTIFICATE	ii
	ACKNOWLEDGEMENTS	iii – v
	CONTENTS	vi - xi
	ABBREVIATIONS	xii - xv
	LIST OF CASES	xvi – xvii
	LIST OF STATUTES AND RULES	Xviii
CHAPTER – I		1 – 24
1.	INTRODUCTION	
1.1.	INTRODUCTION	1
1.2.	SIGNIFICANCE OF THE STUDY	8
1.3	OBJECTIVES OF THE STUDY	11
1.4	METHODOLOGY ADOPTED	12
	i. Primary Data	12
	a. Information from Complainants	13
	b. Information from concerned Authorities	13
	c. Observation Method	14
	d. Information from Consumer Redressal Agencies	14
	ii. Secondary Data	15
1.5	HYPOTHESIS	15
1.6	LIMITATIONS OF THE STUDY	17
1.7	SCHEME OF THE STUDY	21
CHAPTER – II		25 – 104
2.	DEVELOPMENT OF CONSUMER MOVEMENT : THE INTERNATIONAL PERSPECTIVE	
2.1.	INTRODUCTION	25
2.2.	CONCEPT OF CONSUMERISM AND ITS SCOPE	28

	PART I	39
2.3	CONSUMER MOVEMENT IN USA, UK AND OTHER COUNTRIES	39
2.3.1	ANCIENT PERIOD	40
2.3.2	DEVELOPMENT OF CONSUMER MOVEMENT IN USA	45
	1. Emergence of consumer movement	46
	2. Second Era of consumer activism	49
	3. Cotemporary era of consumer activism	53
	4. Consumer activism after 1960's	56
	a. Public response to consumer problems	58
	b. Ralph Nader's Crusade	61
2.3.3	DEVELOPMENT OF CONSUMER MOVEMENT IN UK	67
	A. Law of Contract	69
	B. Law of torts	71
2.3.4	CONSUMER MOVEMENT IN OTHER COUNTRIES	79
	1. Consumer movement in Japan	79
	2. Consumer movement in Australia	81
	3. Consumer movement in Poland	83
	4. Consumer movement in Sweden etc.	84
	PART II	
2.4	GROWTH OF CONSUMER MOVEMENT AT THE INTERNATIONAL LEVEL	87
2.4.1	INTRODUCTION	87
2.4.2	CONSUMER MOVEMENT IN EEC	88
2.4.3	GOWTH OF CONSUMER MOVEMENT BY VOLUNTARY CONSUMER ORGANIZATIONS	91
	CHAPTER – III	105 – 154
3	DEVELOPMENT OF CONSUMER MOVEMENT IN INDIA	
3.1.	INTRODUCTION	105
3.2	CONSUMER JURISPRUDENCE IN INDIA	106
3.2.1	VEDIC ERA	107
3.2.2	MEDIEVAL PERIOD	111

3.2.3	BRITISH PERIOD OR PRE INDEPENDENCE ERA	114
	a. Criminal Law	115
	b. Law of Contract	117
	c. Law of Torts	119
	d. Area specific legislations	124
3.2.4	POST INDEPENDENCE ERA	125
	i) Constitutional Mandate and Consumer Protection	128
	ii) Legal framework of Consumer Protection prior to 1986	133
3.3	CONSUMER PROTECTION ACT, 1986 AS AMENDED IN 2002 - ITS OBJECTS and SALIENT FEATURES	142
	CHAPTER – IV	155 – 191
4.	SERVICES UNDER THE C P ACT, 1986 WITH REFERENCE TO THE HOUSING AND INSURANCE SECTOR	
4.1	INTRODUCTION	155
4.2	HOUSING SECTOR	158
	A. Development of Housing Sector	160
	B. Role of Judiciary - Housing	162
	C. Authorities in relation to Housing Sector	167
4.2.1	CONSUMER PROTECTION ACT, 1986 AND THE HOUSING SECTOR	169
4.3	INSURANCE SECTOR	173
4.3.1	VARIOUS CATEGORIES OF INSURANCE	177
	1. Fire Insurance	177
	2. Marine Insurance	178
	3. Motor Vehicle Insurance	179
	4. Liability of Insurance or Miscellaneous Insurance	181
4.3.2	LIFE INSURANCE	182
	A). Concept of Life Insurance	183
	B). Advantages of Life Insurance	185

	a) Mobilization of small savings	185
	b) Tax relief	185
	c) Easy settlement	186
	d) Protection against creditors	186
	C). Dispute settlement – Life Insurance	188
CHAPTER – V		192 – 226
5	STANDARDS PRESCRIBED FOR SERVICES RENDERED	
5.1	INTRODUCTION	192
5.2	LAW APPLICABLE IN UK AND USA	194
5.2.1	STANDARDS IN U K AND USA	195
5.3	STANDARDS UNDER INTERNATIONAL REGIME	201
	1. ISO Standardization	201
	2. ISO Partners	203
5.4	INDIAN LAW AND MINIMUM STANDARDS	205
	1. Standard Form of Contract	206
	2. Regulation of Insurance Business	213
	3. Standards prescribed for goods in India	217
CHAPTER – VI		227 – 290
6.	FUNCTIONING OF CDRA IN THE STATE OF GOA	
6.1	INTRODUCTION	227
	PART I	233
6.2	ANALYSIS OF DATA OBTAINED FROM NORTH & SOUTH GOA DISTRICT FORA	233
	1. Time taken for disposal of Complaints	236
	2. Time taken for disposal of Complaints	239
	3. Comparative analysis of North & South Goa CDRA	241
	4. Time taken for disposal of Complaints	247
	5. Outcome of the dispute	252

	6. Pending status	255
	7. Opposite party	259
6.3	GOA STATE CONSUMER DISPUTE REDRESSAL COMMISSION	263
	A. Appeals filed	263
	B. Time taken for disposal	267
	C. Outcome of the dispute	269
	D. Appeal pending status	270
	E. Opposite party	272
	PART II	
6.4	INFORMATION OBTAINED FROM SOCIETY	279
	1. Time taken by CDRA in disposal of Complaints	280
	2. Cost of Litigation	285
	3. Procedure followed by CDRA	286
	4. Satisfaction of the Complainants	287
	CHAPTER – VII	291 – 318
7.	CONCLUSIONS AND SUGGESTIONS	
7.1.	INTRODUCTION	291
7.2.	OVERVIEW	294
7.3	HYPOTHESIS	298
	1. Time taken for disposal of Complaints	298
	a. Reasons for delay	299
	2. Cost of litigation	301
	3. Procedure followed by the CDRA	302
	4. Satisfaction of the Consumer	303
	5. Appeals preferred to GSCDRC	304
	6. Status of Opposite Party	305
7.4	SUGGESTIONS	306

BIBLIOGRAPHY		317 – 327
	BOOKS	317
	ARTICLES	321
	DISSERTATION/ THESIS	324
	SEMINAR/ PAPERS	324
	NEWS ITEM	325
	REPORTS/ RESOLUTION/ DOCUMENTS	325
	WEBLIOGRAPHY	326
ANNEXURES		328 - 331
I	Questionnaire to Officers' of CDRA	328
II	Questionnaire to Complainants	329
III	Questionnaire to Advocates	330
VI	Questionnaire to Consume Organizations	331
APPEDIX		332 – 333
I	News Paper Clipping	332
II	News Paper Clipping	333

ABBREVIATIONS

ATM	Automatic Teller Machine
BIS	Bureau of Indian Standards
BLH	Bharat Law House
BMC	Bombay Municipal Corporation
CDRA	Consumer Dispute Redressal Agency
CEDAW	Committee on Elimination of Discrimination against Women
CERC	Consumer Research and Education Centre
CERD	Committee on the Elimination of Racial Discrimination
CGIS	Consumer Guidance Society of India
CHAN	Consumer Health Action Network
CLA-N	Consumer Law Association National Commission
CP Act	Consumer Protection Act
CPA	Consumer Protection Act
CRC	Committee on the Rights of the Child
CrPC	Code of Criminal Procedure
ECOSOC	UN Economic and Social Council Commission
EEC	European Economic Community
ESCAP	Economic and Social Commission for Asia and Pacific
EWS	Economically Weaker Sections
FAO	Food and Agricultural Organization
FDA	Food Drug Administration
FDI	Forest Direct Investment
FTC	Federal Trade Commission

GDA	Goa Development Authority
GSCDRC	Goa State Consumer Dispute Redressal Commission
IBR	Indian Bar Review
ICESCR	International Covenant on Educational, Social and Cultural Rights
IEC	International Electro technical Commission
IFCO	Indian Federation of Consumer Organisation
ILI	Indian Law Institute
ILO	International Labour Organization
IOCU	International Organization of Consumer Union
IPC	Indian Penal Code
IRDA	Insurance Regulatory Development Authority
ISI	Indian Standard Institute
ISO	International Organization for Standardization
ITU-T	International Telecommunication Union
JCA	Japanese Consumer Association
JCIA	Japan Consumer Information Centre
JILI	Journal of Indian Law Institute
LIC	Life Insurance Corporation
LIG	Low Income Groups
MIG	Middle income Groups
MRTP	Monopolies Restrictive Trade Practices

NABL	National Accreditation Board for Testing and Calibration Laboratories
NBA	Narmada Bachao Andolan
NCO	National Consumer Ombudsman
NGDCDRF	North Goa District Consumer Dispute Redressal Forum
NGO	Non Governmental Organization
NIAC	National India Assurance Company
NIC	National Insurance Company
OECD	Organisation for Economic Cooperation and Development
OIC	Oriental Insurance Company
ORA	Officer of Rate Payers Advocates
PCF	Polish Consumer Federation
PUC	Public Undertaking Corporations
QCI	Quality Council of India
QOS	Quality of Service
RVA	Raad Voor Accreditatie
SGDCDRF	South Goa District Consumer Dispute Redressal Forum
TRAI	Telecom Regulatory Authority of India
TDSAT	Telecom Dispute Settlement and Appellate Tribunal
UDHR	Universal Declaration of Human Rights
UIIC	United India Insurance Company
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Convention on Trade and Development

UNIDO	United Nations Industrial Development Organization
USA	United States of America
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WSC	World Standards Cooperation
WTO	World Trade Organisation

LIST OF CASES

Common Cause, A Registered Society v. Union of India AIR 1993 SC 1403

Derry v. Peek (1889) 14 AC 337

Donoghue v. Stevenson, (1932) AC 562

Gautam Constructions and Fisheries Ltd v. National Bank for Agricultural and Rural Development (2000) 6 SCC 519

Haseldine v. C A Daw & Son Ltd, (1941) 2 KB 343

Hedey Byrne & Co Ltd v. Heller & Partner Ltd (1964) AC 465

Henderson v. Stevenson (1875) 2 HL SC App 470

J J Merchant v. Srinath Chaturvedi AIR 2002 SC 2931

Laxmi Engineering Works v. P S G Industrial Institute AIR 1995 SC 1428

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

Madras Railway Co v. Govinda Rau, (1898) 21 Mad, 172

Narmada Bachao Andolan v. Union of India AIR 2000 SC 3751

National Fertilizers v. Puran Chand Nangia (2000) 8 SCC 343

Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180

Palsey v. Freeman (1789) 3 TR 5

Parker v. South Eastern Railway Co. (1872) 2 CPD 416

Richardson, Spence & Co. v. Routree (1894) AC 217

State of Karnataka v. Vishwabharathi House Building Co-op Society AIR 2003
SC 1048

Sugar v. London Midland & Scottish Railway Co. (1941) 1 All ER 172

Young & Marten v. McManus Child's, (1969) 1 AC 454

LIST OF STATUTES AND RULES

Code of Civil Procedure, Act No. 05 of 1908.

Code of Criminal Procedure 1973, Act No. 02 of 1974.

Consumer Protection Act, Act No. 68 of 1986.

Consumer Protection Amendment Act, Act No. 34 of 1991.

Consumer Protection Amendment Act, Act No. 50 of 1993.

Consumer Protection Amendment Act, Act No. 62 of 2002.

Consumer Protection Rules, 1987.

Consumer Protection Regulation, 2005

Indian Bar Councils Act, Act No.38 of 1926.

Insurance Laws (Amendment) Bill, 2008

IRDA (Protection of Policy Holders Interest) Amendment Regulation, 2002

Life Insurance Corporation Act, Act No. 31 of 1956

Marine Insurance Act, Act No.11 of 1963

The Constitution of India 1950.

The Indian Contract Act, Act No. 09 of 1872.

The Indian Evidence Act, Act No. 01 of 1872.

The Indian Penal Code, Act no. 45 of 1860.

The Insurance Act, Act No. 4 of 1938

The Insurance Regulatory and Development Act, 1999

CHAPTER I

INTRODUCCION

“Law is what the law does and so the test of legislative fulfillment for the seekers of consumer justice is not the broad wording of the text but the easy facility to redressal”

Justice Krishna Iyer

1.1 INTRODUCTION

Every person is a consumer in one form or other. From cradle to the grave we are consumers. No sooner a person purchases a commodity or hires certain services than he becomes a consumer. In the present socio-economic scenario, we find that the consumer is a victim of many unfair and unethical practices adopted in the market place. Most of the consumers are largely poor, illiterate, ignorant, apathetic or just defeatist and continue to be at the receiving end. This is due to lack of awareness on the part of the consumer. Besides this, the development of modern technology and large number of goods, have added to the misery. Modern technological developments have no doubt made a great impact on the quality, availability and safety of goods and services. But the consumer knows little about these highly sophisticated goods.

Industrial revolution has ushered in radical changes in the lives of human beings as regards the goods and services for their day to day life. The consumer goods flooded the market and the traders started adopting various devices to sell the goods manufactured by them. Consumer was not in a position to appreciate the goods purchased by him in the market.

As the society was Laissez Faire, the State used to intervene in the lives of its citizens very rarely. There was no effective law to regulate the relationship between the buyer and seller. In the era of open market buyer and seller came face to face, where the seller exhibited his goods, and the buyer thoroughly examined and then purchased them. It was presumed that he would use all care and skill while entering into transaction. Infact, the consumer was not in a position to know the quality and quantity of goods. This helps the trader to monopolize the market and the trader became the king. The consumers are abused and exploited by unscrupulous practices of the traders mainly to make profits. This resulted in exploitation of consumer in market place.

In the olden days the principle of 'Caveat emptor' 'let the buyer beware' governed the relationship between the buyer and seller. The consumer required protection by law when the goods and services provided failed to achieve the purpose. There is wide spread dissatisfaction with respect to the quality and cost of goods provided to the public. In addition, with the revolution in information technology, newer kinds of challenges have been thrown on the consumer like cyber crimes, plastic money etc.

All the above factors culminated in a new phenomenon resulting in the abuse and exploitation of consumers. This led to the consumer movement throughout the world. In the present situation, consumer protection though as old as consumer exploitation, has assumed greater importance and relevance. Consumerism is a recent and universal phenomenon. It is a social movement. Consumerism is all about protection of the interests of consumer. The concept

of consumerism came into existence and consumer protection became one of the primary duties of the State. Responsibility was imposed on the State to protect the interest and rights of consumer through appropriate policy measures, legal structure and administrative frame work.

The developed countries like the United States of America and United Kingdom were first to realize the need to protect the interest of consumers. Various legislations were passed to achieve this object. In the history of the development of consumer policy, 9th April 1985 is a very significant date. On that day the General Assembly of the United Nations adopted a set of general guidelines for consumer protection. The Secretary General of the United Nations was authorized to persuade member countries to adopt these guidelines through policy changes or law. These guidelines constitute a comprehensive policy framework outlining what governments need to do to promote consumer protection with respect to safety, standards, protection and promotion of consumer welfare.

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

In recent times the educated public has become aware of their rights as consumer and are willing to fight against exploitation.

India adopted a mixed economic model, where the State has to perform different functions to protect the interests of citizens. It being a Welfare State, is the guardian and protector of social interest. Our Indian Constitution spells out the philosophy of a Welfare State. Preamble to the Constitution resolves to secure to all its citizens political, social and economic justice.

In a Welfare State it is the duty of the state to safeguard the interests of consumers by rendering consumer justice as a part of social and economic justice as enshrined in the Constitution. Following the constitutional mandate, a number of legislations have been enacted from time to time in the field of consumer protection like laws regulating grading, packing and branding, prevention of food adulteration, short weights and measures, hoarding, profiteering etc.

There was no dearth of laws that have been enacted in the interest of consumer. Since 1930's the legislature has from time to time brought various legislations to redress specialized aspects of consumer interest. For example Sale of Goods Act 1930, The Standard of Weights and Measures Act, The Drugs Control Act 1940, Prevention of Food Adulteration Act 1954, The Essential Commodities Act 1955, The MRTP Act 1969 and so on. In addition to these legislations the Indian Penal Code, 1860 and the principles of Common law contained in the Law of Torts are also applicable.

All the above legislations have failed to protect the interest of consumer. To obtain consumer justice under these legislations, the consumer has to move from pillar to post. Litigation involved high cost and proved to be troublesome to small consumer. The procedures were complex, cumbersome and time consuming and the redressal available was limited in scope. These legislations failed to protect the rights of average consumer. To a large extent they created confusion and chaos.

In this complex scenario the role of court in protecting consumer rights cannot be over emphasized. They have proved responsive by widening the concept of locus standi and considerably allowing any individual or organization to go to court in the larger interest of the society. Even small courts have given wide ranging judgments relating to Public Interest Litigation. None of these legislations provided for any remedy to the consumer enabling him to seek redressal against the offending parties. He was left high and dry with only the choice of instituting a civil litigation. Litigation before the civil court is time consuming, expensive and causing enormous delay. However the ordinary consumer is not in a position to approach these courts.

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

interest of the consumer have become a heaven for unscrupulous ones, as the enforcement machinery either does not function or it functions ineffectively and inefficiently.

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

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

The Consumer Protection Act has opened a new era in the field of business. It imports new dimensions to the concept of law as a tool of social engineering. Legislation, however perfect, is futile unless it is enforced. The Consumer Protection Act, which was passed by the Central Government in 1986, brought a significant change in the prevailing situation. This Act made a new beginning and was a step forward in the establishment of egalitarian consumerism. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy.

The main objective of the Act is to promote and protect the rights of consumer. This Act recognizes various rights of consumers such as right to safety, right to information, right to redress, right to representation, right to choice and right to consumer education.

The Act envisages the formation of the Consumer Protection Councils at the Central, State and District levels. The main object of the Councils is to promote and protect the rights of the consumers.

This Act also provides for setting up of three tier quasi judicial authorities for redressal of consumer disputes at District, State and National level. The main thrust of the Act is to provide simple, speedy and inexpensive redressal to consumer grievances. The aim of the Act is better protection of consumer by way of settlement of consumer disputes. The dispute settlement machinery has got the power to penalize those who do not comply with the orders. It is significant to note that the Act recognizes the role of the consumer

organizations in assisting the consumer in seeking justice through a nationwide network of consumer disputes.

The Act applies to all goods and services in public, private or the co-operatives sector. Thus the consumer can initiate an action under the Act against the defective goods or deficient services rendered even by the public sector or government undertaking such as Railways, Telephones, Airlines, Banks, Insurance, State Electricity Board, Hosing Development Authority, etc.

Since the enactment of Consumer Protection Act, 1986 there has been a demand to make the Act more effective and purposeful. There has been a feeling that the Act was drafted in hurry and needs improvements. This Act was amended from time to time for the better protection of consumer in the year 1991, 1993 and recently in the form of The Consumer Protection (Amendment) Act, 2002. Changes introduced by these amendments will work wonder in the life of consumer by protecting his rights. In case of grievance, it provides an appropriate remedy that is compensation or penalizing the seller or trader.

1.2 SIGNIFICANCE OF THE STUDY

Consumer protection is the latest development in India. It has gained attention only during the last two decades. Consumer Protection has taken a solid shape after the enactment of the CP Act, 1986, to protect the interest of consumer. This Act provides for the establishment of Consumer Redressal Agencies. The main object of the Consumer Redressal Agencies is to provide simple, speedy

and inexpensive justice. The active campaigning by the consumer organizations and the innovation of science and technology has brought unforeseen changes in the life of the Indian consumer through a myriad of consumer goods and services. These factors played an important role in enacting a new and comprehensive legislation.

The Consumer Protection Act, which was passed by the Central Government in 1986, brought a significant change in the prevailing situation. This Act made a new beginning and was a step forward in the establishment of egalitarian consumerism. According to the Act 'consumer' means a person who purchases goods and hires services for consideration. Goods and services have been brought under the purview of this Act. In case of defect in goods or deficiency in service the consumer can approach Redressal Agency and avail appropriate remedy.

We have witnessed the growing awareness among the consumers. Consumers became aware of their rights incorporated under the C P Act through legal aware created by newspapers, magazines, television and consumer organizations. People started fighting for their rights and started approaching Consumer Redressal Agencies to lodge the complaint. Number of complaints lodged before the Consumer Redressal Agencies were increasing day by day. At the same time we also witnessed the lack of implementation of the objects of the Act in letter and spirit. Now and then articles are appearing in the newspapers and journals about the non implementation of the objectives of the Act. Implementation of the objectives depends upon the functioning of the

Consumer Dispute Redressal Agencies. Non implementation of these objectives is a problem not only at National level but also at State level.

As per the Central Government guidelines the State Governments also tried to implement the Act by setting up Consumer Fora for the purpose of disposal of consumer cases. Goa State also established Consumer Fora for the speedy disposal of consumer complaints. The State Government established the District Consumer Redressal Forum in the year 1989. To enable the aggrieved consumer to prefer appeal, the Goa State Consumer Redressal Commission was set up in the year 1987. From 1987 onwards complaints were preferred before the appropriate Consumer Redressal Fora. Most of the consumers are unhappy with the functioning of the Redressal Agencies in providing consumer justice. Consumers are dissatisfied with the orders passed by these Redressal Agencies.

Goa is a small coastal State with floating population. Most of the people in Goa are literate, as a result of which the litigation rate is high as compared to the other states. Various consumer organizations are working regularly to create awareness at the grass root level about consumer rights, consumer fora and remedies in case of consumer complaints. Due to this awareness about speedy remedy, people are approaching Consumer Redressal Agencies. Disposal rate of consumer complaints is very slow and the orders passed by the Consumer Fora are against the interest of consumer. As the establishment of Consumer Redressal Fora is not sufficient by itself, there is a need to look into the functioning of these Consumer Fora.

Implementation of the objectives of the Consumer Protection Act, 1986 at State level, depends on the functioning of District and State Consumer Fora. Since the researcher is working in the State of Goa, he has selected to do an in depth research in this area. No research has been done in this area in the State of Goa. Hence, the researcher is of the opinion that there is a need for in depth study in this area to find out the loopholes in the functioning of Redressal Agencies and to provide suitable suggestion to implement the objectives of the C P Act in practice.

Consumer deserves to get what he pays for, in real quality and quantity. Consumer justice implies securing the consumer commodities or services worth the payment made by him.

1.3 OBJECTIVES OF THE STUDY

To understand and appreciate the functioning of Consumer Redressal Authorities in the State of Goa with special reference to housing and insurance services, the present research study consists of the following objectives;

1. To study the development of consumer movement in India as well as the development abroad and its impact in India
2. To critically evaluate and analyze the reasons for and objectives of the enactment of Consumer Protection Act, 1986 as amended in the year 2002

3. To cull out importance of housing and insurance sector in our day today life and its inclusion under the Consumer Protection Act
4. To study and analyze the general standards laid down with special reference to housing and insurance sector
5. To evaluate the functioning of the Consumer Dispute Redressal Fora in the State of Goa in disposal of consumer complaints relating to housing and insurance services.
6. To appraise awareness among the consumers about Consumer Redressal Agencies in protecting their rights and to analyze the extent of satisfaction by the consumers regarding the functioning of CDRA
7. To provide suggestions and recommendations to improve the functioning of Consumer Dispute Redressal Fora in the State of Goa

1.4 METHODOLOGY ADOPTED

The present research study is empirical in its nature. Methodology for this research includes collection of data through primary and secondary sources.

i. Primary data has been collected through formal and informal interviews. Formal interview includes structured questionnaires with open ended questions. Questionnaires were distributed to persons who are affected, persons who had complaints and those who are involved in obtaining services. Informal

interviews include unstructured questionnaire keeping in mind the functioning of Consumer Fora.

Primary data for this research regarding the functioning of Consumer Redressal Authorities was collected from the following persons, who are associated and involved with consumer problem, issues etc.

a. Information from complainants

Researcher collected information from consumer complainants who preferred the complaint regarding housing and insurance service. Data is collected through formal and informal methods, distribution of questionnaires or by personal interview, telephonic interview, and e-mail

b. Information from the concerned Authorities

To find out the functioning of Consumer Dispute Redressal Agencies in the State of Goa the researcher collected the data through formal as well as informal interviews with the following persons who are actually involved with the functioning of Consumer Fora.

1. Presiding Officers of Consumer Fora
2. Judicial Officers/Presiding Officers of the High Court
3. Ministry of Consumer Affairs (Members)
4. Officials of Department of Civil Supplies and Consumer Affairs

5. Consumer Associations in the State
6. Advocates practicing in Consumer Fora
7. Officials of insurance and housing sector

c. Observation method

Data is collected by personal attendance at Consumer Fora to analyze the actual functioning of Redressal Fora and to find out the procedure followed by the Fora in disposing the consumer complaints.

Further the researcher collected Primary data from the records available in the Consumer Redressal Agencies in the State of Goa to find the implementation of the objectives mentioned in the Consumer Protection Act, 1986 in practice, that is in letter and spirit

d. Information from Consumer Redressal Agencies

Researcher collected the information available from the records maintained by the North Goa District Consumer Redressal Agency, South Goa District Consumer Redressal Agency, and State Consumer Redressal Agency, by personal attendance. The researcher personally visited these Fora several times. He went through the records maintained by the Fora and collected the following information from the records of Consumer Fora. Number of complaints lodged from the date of inception, disposal of complaints, nature of remedy provided to the consumer, name and address of complainants, name and address of

opposite party, nature of the complaint, date of filing the complaint, date of disposal of the complaint and order passed by the Consumer Redressal Agency.

ii. Secondary data for the study includes references to various Law Reporters, books, articles, newspaper clippings, journals, magazines, dictionaries, encyclopedias, Government Notifications, Official Gazettes, parliamentary enactments and other existing literature on this subject. The researcher has also collected the secondary data from various inter net associated web sites dealing with consumer related activities.

1.5 HYPOTHESIS

The researcher is of the opinion that the objectives of the Consumer Protection (Amendment) Act, 2002 are not fulfilled even after two decades. The researcher proposes the following hypothesis to be tested in course of this research;

1. Consumer justice is not as speedy as specified under the Consumer Protection Act, 1986. Complaints are not disposed as per the time frame prescribed under this Act (Order may be made within a period of three months or five months if analysis of testing is required) by the Consumer Dispute Redressal Agencies. In practice the Consumer Dispute Redressal Agencies take approximately more than one year in disposing the complaints. Sometimes the complaint is pending before the Redressal Agencies for five to six years.

2. It is clear that the amount spent by the complainant is much less if the complaint is preferred to the Consumer Dispute Redressal Agencies, as compared to the regular judiciary.
 - a. Complaint can be drafted on a plain paper with all the details and there is no need to use stamp paper. The court fee is limited to Rs. 100 to Rs. 500.
 - b. Complainant can argue the case by himself without appointing advocate.

In practice the illiterate consumer cannot fight against mighty trader, as a result he has to approach an advocate. Appointment of advocates makes the process of consumer justice expensive.

3. Procedure followed by these Consumer Fora is designed to be simple, and the complaints are to be disposed summarily without following any procedural formalities. However, in reality the Presiding Officers actually follow all the procedural formalities. This is due to the reason that those who are appointed, have originally been a part of the regular judicial system.
4. Most of the consumers are not happy with the orders passed by the Consumer Redressal Agencies. Orders of the Consumer Fora are mostly in favour of trader or seller.

In this research the researcher is testing his hypothesis taking into account the above mentioned factors.

1.6 LIMITATION OF THE STUDY

The present research is limited to the State of Goa. Goa is a small, beautiful coastal state and attracts mainly the tourist. People in Goa are literate and are fighting for their rights as consumers. This small State of Goa is divided in to two districts; they are North Goa and South Goa. Each district consists of one Consumer Forum and there is a State Commission in case of appeal from District Fora. The researcher will be collecting data from these three Consumer Redressal Agencies established in the State of Goa. Collecting complaints and disposal of complaints by these Consumer Redressal Agencies helps us to verify the hypothesis proposed.

Consumer means a person who purchases goods and hires service for consideration. If there is any defect in goods or deficiency in service the consumer can lodge the complaint before the consumer redressal agency.

Researcher has confined his study only to 'services' under the Act.. Service means providing of accommodation and activities required by the public, as maintenance, repairs, supply etc. Services are essential for any individual without which their life is difficult. These services will affect the public at large if there is any defect. Now a days because of lack of time, and the fact that most of the family members are working for their livelihood, we depend on the services provided by service providers. Service is provided by both private as well as public sector. Services provided by these sectors are not satisfactory, they are not up to the mark. Many complaints came before the consumer

dispute redressal agencies with regard to services. Service being an important area, the researcher has confined his study to look in to consumer complaints with respect to service sector.

Service is not confined to one or two categories. Various kinds of services are specified under Sec. 2 (o)¹ of the Consumer Protection Act. They include banking, insurance, entertainment, housing construction, etc. Further the researcher has confined his research to insurance and housing construction.

Housing and insurance sectors always affect the life of human beings. If there is any deficiency in service it may cause damage not only to one individual it affects the society at large. Housing and insurance services are provided by public as well as private sector. There is wide spread dissatisfaction among the consumers regarding these services. In case of housing construction the main issue is relating to sub standard material used by the contractor. Using substandard material by the contractor amounts to deficiency in service. In the beginning the term 'service' did not include housing service under the CP Act, 1986. The judiciary interpreted and held that service includes housing service also. Further the judiciary held that in case of any deficiency in housing service, complaint can be brought before the Consumer Redressal Agencies. As a result the CP Act, 1986 was amended in the year 1993 and incorporated housing construction under the purview Sec. 2(o) of the Act. Housing being

¹ *Sec. 2(0) of Consumer Protection (Amendment) Act 2002*: 'service' means service of any description which is made available to potential user and includes, but not limited to, the provisions of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

one of the basic necessities for human survival. Every day we are coming across the problems relating to housing sector. The researcher therefore selected this service for in-depth study.

Insurance sector also plays an important role in human life. One of the most important fields in insurance is life insurance. In case of life insurance, people insure their life from any kind of accidental death or unforeseen event; the insurer believes that his family should not suffer from any hardship. Insurer believes that his family will get the benefit from his death. In certain situation the insurer's family does not get the benefit, due to which they approach the redressal agencies to avail the remedy. If there is delay in providing justice by these redressal agencies, it may cause hardship to the consumer's family. In this matter there is a need on the part of the redressal agencies to dispose the complaint as per the rules laid down under the CP Act, 1986. To analyze the time taken by the redressal agencies, this research is important.

Housing construction and insurance services are provided by public as well as private sector. Private sector is limited to some areas, where as public sector provides large number of services to facilitate the needs of the people. Some times the government acts in a monopolistic way and exploits the consumer. Services provided by public and private sector shows deficiency in service. So it is essential to verify housing and insurance services provided by public and private sector. This helps us to find out, in which sector deficiency is more and the reasons for such deficiency.

The researcher has selected these two sectors to do an in-depth study to analyze the complaints, time taken for disposal and orders passed by the consumer redressal agencies.

Statistical data for this study has been collected from the above three Consumer Redressal Agencies functioning in Goa State by personal verification of the records available in these three offices, on the following basis;

North Goa Consumer District Redressal Forum – Complaints filed from the date of inception till December 2008,

South Goa Consumer District Redressal Forum – Complaints filed from 1998 till December 2008 and

Goa State Consumer Dispute Redressal Commission – Appeals preferred from 1999 till December 2008

Legislation itself will not be of any avail, unless its implementation is made effective. So it is necessary to see how far the C P Act is effective in protecting the interest of consumers, in practice. To find out the efficacy of C P Act there is a need to verify the functioning of Consumer Redressal Fora. Functioning of Redressal Agencies is measured by taking in to consideration the following factors:

- i. Time factor for disposal of cases
- ii. Cost of litigation
- iii. Status of the Opposite Party

- iv. Satisfaction of the consumer with the decision of the Fora
- v. Procedure followed by CDRA
- vi. Percentage of appeals preferred to State Commission

1.7 SCHEME OF THE STUDY

To study the Functioning of Consumer Redressal Agencies in the State of Goa with special reference to housing and insurance services, the researcher has divided the present research study in to seven important chapters. They are,

CHAPTER-I

INTRODUCTION

This chapter highlights the need of the study, its objectives, its limitations, the hypothesis and the various methods adopted by the researcher in collecting empirical data from various sections of the public involved in consumer related matters, in order to understand the functioning of Consumer Dispute Redressal Agencies in the State of Goa.

CHAPTER-II

DEVELOPMENT OF CONSUMER MOVEMENT – THE INTERNATIONAL PERSPECTIVE

The chapter deals with the concept of ‘consumer’ and ‘consumerism’, the development of consumer movement in United States of America and United

Kingdom in detail, as well as the growth of consumer movement at the International level. It also contains in brief the development of consumer movement in other countries like Japan, Australia, Poland, etc.

CHAPTER - III

DEVELOPMENT OF CONSUMER MOVEMENT IN INDIA

This chapter highlights concept of consumer protection in India during ancient period, and medieval period. Further the researcher has discussed the various enactments made by the government from time to time to protect the interest of consumers in India during the pre and post independence era. At the end the researcher analyses the importance, objectives and Authorities established to protect the interest of consumers under the Consumer Protection Act, 1986 as amended from time to time.

CHAPTER - IV

SERVICES UNDER THE CONSUMER PROTECTION ACT, 1986 WITH REFERENCE TO THE HOUSING AND INSURANCE SECTOR

This chapter explores the importance and development of housing and insurance service in India. Further, it deals with problems relating to these sectors and general remedy available within the sector. The researcher also mentions the extent to which the remedy is available under the Consumer Protection Act, 1986. Housing was included as a service under the Act only in the year 1993 after the Apex Court interpretation. Regarding insurance sector,

the researcher mainly dealt with life insurance. The researcher also deals with the claims settlement prescribed in respect of housing and insurance sectors with in its prescribed field.

CHAPTER-V

STANDARDS PRESCRIBED FOR SERVICES RENDERED

In this chapter the researcher has made an attempt to study the various kinds of standards (ISI, ISO) prescribed at International and National level while providing services to the consumers. Generally every service consists of a contract. As a result the researcher also mentions the importance of standard form of contract and the terms and conditions to be followed while providing services to the consumers. In case of insurance sector, a new legislation has been enacted to regulate the services provided by Insurance Authorities in the form of Insurance Regulatory and Development Authority Act, 1999. This Act is a landmark in the insurance legislation by which it tries to regulate the Private and Government Corporations engaged in the insurance business.

CHAPTER-VI

FUNCTIONING OF CDRA – IN THE STATE GOA

It consists of empirical analysis that is data collected and compilation from various Consumer Dispute Redressal Agencies in the State of Goa and the data obtained from various person associated with the Fora by applying various primary data collection methods. For the purpose of convenience, this Chapter

has been divided in to two parts. Part I contains the statistical data collected from the three Consumer Fora functioning in the State of Goa (North and South Goa District Fora and the State Commission). The same data has been analyzed and depicted in the form of tables and graphs. Part II pertains to the data collected from various persons associated with the functioning of Consumer Fora. The data has been analyzed and projected in the form of various tables and charts wherever necessary, to demonstrate the functioning of Consumer Fora. In appropriate places the researcher has verified his hypothesis, whether it is proved or disproved.

CHAPTER-VII

CONCLUSIONS AND SUGGESTIONS

This Chapter pertains to the Conclusions of the study. It captures the gray areas surrounding the functioning of CDRA. Basing on the empirical data and analysis, the researcher has drawn various inferences and has given suggestions for the effective functioning of CDRA in the State of Goa. Changes to be made to the Consumer Protection (Amendment) Act, 2002 have also been prepared as a part of the study.

CHAPTER II

DEVELOPMENT OF CONSUMER MOVEMENT THE INTERNATIONAL PERSPECTIVE

“We can learn from history how past generations thought and acted, how they responded to the demands of their time and how they solved their problems. We can learn by analogy, not by example, for our circumstances will always be different than theirs were. The main thing history can teach us is that human actions have consequences and that certain choices, once made, cannot be undone. They foreclose the possibility of making other choices and thus they determine future events”.

Gerda Lerner¹

This chapter emphasizes the development of consumer movement abroad and in India. For the purpose of convenience this chapter is divided into two parts. Part I mainly deals with consumer development in United States of America, United Kingdom, and in other countries. Whereas Part II deals with development of consumer movement at international level through EEC and various other international organizations established to protect the interest of consumer. This chapter also highlights the concept of consumerism and its scope in the present society.

2.1 INTRODUCTION

Consumer is the main component of the economic cycle of each and every country because all other developmental activities are centered on him. In a competitive economy, it is the consumer who decides the success or failure of business either by buying or rejecting the product. The ultimate purpose of all the economic activity is to satisfy the consumer².

¹ http://www.wisdomquotes.com/cat_history.html dt. 12.04.2010

² Mathew M.O, *Indian Consumer and Consumerism*, (Special lecture series. 1993, University of Mysore, Mysore, 1984), See also Ali Shaber.G, Efficacy of Consumer Protection Act in Protecting Consumer Rights against Public utility Services A Study with special reference to Bangalore City, LL.M., Dissertation at NLSIU, Bangalore, 1992

The economy of every nation depends on the consumer's ability to respond to the changes in the market place. The consumer exercises economic vote for everything he buys. This vote, in the present competitive economic system means life and death for the producer³. Most of the time consumer is a victim at the hands of producer. The producers always try to strengthen their position through modern market techniques.

Consumers are the largest economic group in each and every country. Most of the consumers are incapable of raising their feeble voice due to various reasons. The interest of the consumer in the present market place is distant and diffused, because of stiff inaction and inattention on the part of the powers. This leads to a conflict between the consumer and the producer that has resulted in to consumerism

Adam Smith, a well-known economist in his book 'The Wealth of Nations' describes market place as a pillar of strength of the consumer⁴. Market is the place where the buyer and seller have personal encounter. Consumer is a victim of many unfair and unethical tactics adopted at the market place in the present socio economic scenario. He is incapable to assess the quality and quantity of goods and services provided by businessman in an organized manner⁵. Consumer who plays an important role in the market place is a victim, at the hands of seller or businessman.

³ Schoenfield David & Arthur. A Natella, *The Consumer and his Dollar*, (195) at1

⁴ Adam Smith, *The Wealth of Nation*, (New York, The Modern Library ,1937)

⁵ Agarwal. V.K., *Consumer Protection (Law and practice)*, (BLH Publishers & Distributors. Ltd, New Delhi, 1992) at1

The idea of consumer movement began with the development of Industrial revolution. The needs of the human beings were very few before the revolution, which were met through the exchange of goods or barter system. As the population increased, the demand increased, leading to industrial revolution, ushering in radical changes in the consumption pattern.

Industrial revolution has been responsible for proliferation of human needs in respect of goods and services. With industrialization consumer goods flooded the market, and the entrepreneurs and traders to sell these goods in the market place have used all kinds of unethical methods. Modern life made it compulsory on human beings to depend upon the industrial products. Industrialization has made our life easy⁶.

Industrial revolution has brought various changes in the market world, with the development of new technology different products and services have been provided to the public. Due to the lack of understanding, illiteracy, etc, people are not aware about the quality of such goods or services. At this stage steps in the concept was '*Caveat Emptor*' that is 'let the buyer be ware'. This has led to encounters between the buyers and the sellers. The concepts of laissez faire, laws of demand and supply, have slightly disintegrated. No protection was available to the consumer in the market. Market became a place of exploitation and the consumer's plight was in the hands of the seller. Consumer was availing goods and services at his own risks no liability was imposed on the seller.

⁶ Saraf D.N, *Law of Consumer Protection in India*, (NM Tripathi P.Ltd, Bombay, 2nd Ed. 1995) at 1

During the 20th century there has been a rapid increase in the supply of consumer goods and services. The development of modern technology, new methods of sale⁷ and services made it difficult for the consumer to bare a valid choice on his own, unaided experience and judgment. The gap between the seller and consumer has widened. Marketers have taken undue advantage of consumer ignorance and helplessness. They adopted various techniques to meet their selfish ends. They have made the consumer a target of their unscrupulous practices. Consumers do not get adequate response from the producer to settle their grievances. As a result consumers have become victim of various types⁸ of exploitation⁹.

The need to protect the consumer from exploitation in the market place, finally led to a social movement called 'Consumerism' or 'Consumer movement', seeking to enhance the economic well being and political power of the consumers.

2.2 CONCEPT OF CONSUMERISM AND ITS SCOPE

The emergence of 'consumerism' is directly related to the change in the market concept. Consumerism is not a novel idea as many of us think.

Consumerism is the name given to consumer protection movement.

Consumerism like most 'ism' varied in definition depending on who is defining

⁷ Such as advertisements, super market, self service centre, pre parking and shopping mall etc.,

⁸ Such as spurious drugs, adulteration, misuse of colouring matter, short weights and measures, abuse of monopoly position, dubious hire purchase plans, high price of products, poor quality, non standard goods, poor pre and post paid service, sale gimmicks, deceptive advertisements, hoarding, black marketing, illegal trading, hazardous products, product break down, costly spare parts and repairs etc.,

⁹ Sharma Chandrakant, *Role of Consumer Organizations in Consumer Protection*, (Kanishka Publishers, New Delhi, 1995) at. 1

the term. Consumerism is a kind of people's movement. It is not a political movement but it is the movement of people's living. The monopoly of big enterprises gave a sense of solidarity among consumer class, making business a target of consumerism.

Consumerism has emerged as a movement to the forefront as a result of the consumers dealing with the seller.

In this competitive age, people are demanding more and more recognition of their interest and satisfaction for the products purchased in the market place. While looking for an alternative remedy to protect the interest of the people against the producer, 'consumerism' came into picture.

Consumerism is considered as a "20th century citizen's revolt against the unresponsiveness of both the public and private institutions to human needs and satisfaction¹⁰,"

Consumerism involves the action of individuals and organizations, in response to consumer's dissatisfaction arising from exchange relationship. In this respect consumerism is an attempt to preserve the free enterprise economy by making the market work better¹¹. It is a process through which the consumers seek redress, restitution and remedy for their dissatisfaction and frustration with the help of their organized or unorganized efforts and activities. Infact, it is a social

¹⁰ Ralph M. Galdeke and Warren, E. Etch son, *Consumerism view points from Business, Government and Public interest*, (Ed. 1972) at. 3

¹¹ Sherlekar S.A, *Trade Practices and Consumerism*, (Himalaya Pub. House, Bombay, 1977)

movement seeking to protect and augment the rights of the consumer in relation to the producer¹².

The term consumerism is a convenient word for the sum total of consumer consciousness, awareness of his rights, annoyance with rising prices, with occasional irritation at the gap between poor performance and over promise, disillusionment with certain imbalances in the market place, dissatisfaction with the business practices¹³. It is directly related to the objectives of fulfilling the minimum needs of consumers in terms of necessity, quality, purity and prompt service.

First let us examine some of the **definitions** incorporated in the dictionary and specified concept regarding consumerism as provided by various other experts in this filed dealing with consumers.

According to *McMillan Dictionary*¹⁴ consumerism is concerned with protecting consumers from all organizations with which there is an exchange relationship. It deals with all activities that are linked with government business, independent organizations and concerted consumers that are designed to protect the rights of the consumer.

Consumerism is a movement or a set of policies aimed at regulating the products or services, methods and standards of manufacturers, sellers and

¹² Joshi Navin Chandra, "Creating Consumerism" *Financial Express*, Ahmadabad (21st December 1989)

¹³ Jag Parvesh Chandra, "Consumer want their money's worth", *Financial Express*, Ahmadabad (11th February 1991)

¹⁴ Macmillan, *Dictionary of Marketing and Advertising*, (Michel J. Baker, 1985) at 52

advertisers in the interest of the buyers. Such regulation may be institutional, statutory or embodied in a voluntary code accepted by an industry, or it may result more indirectly from the influence of consumer organizations¹⁵.

There is no single accepted definition of consumerism. A variety of definitions exist focusing on different aspects. The definition of consumerism varies from person to person. Attempt has been made to examine various definitions by putting them under two main groups¹⁶. The first one is traditional group of definition, and the second is the modern group of definition.

Traditional group of definition consists of definitions which restrict the meaning of consumerism mainly to deals with welfare of individuals and achievement of rights of consumer through regulation.

According to L. Barder et al¹⁷ 'consumerism' is a collective action of consumers to secure protection from commercial terrorism.

K. Dameron¹⁸ defines consumerism as 'the attitude and activities of consumers to secure a balance of strength between them and products'.

According to Richard H. Buskirk et al¹⁹ consumerism

'As an organized effort of consumers seeking redress, restitution and remedy for dissatisfaction they have accumulated in the acquisition of

¹⁵ *The New Encyclopedia Britannica*, (Vol. 3, 15th ed, 1990)

¹⁶ *Supra* note. 8 at 8

¹⁷ Barder L and Warnette JP, "Consumer Movement", *Journal of Marketing*, New York, (1938) at 3

¹⁸ Dameron K, "The Consumer Movement" Vol. XVII, *Harvard Business Review*, Spring (1939) at 271

¹⁹ Richard H. Buskirk and James T. Rothe, "Consumerism an interpretation" Vol. 34, *Journal of Marketing*, (October 1970) at 63

their standard of living'. They are of the opinion that consumerism emerged as a result of abuse of the marketing concept rather than malfunction of it.

David W. Cravans and Hill²⁰ describes consumerism 'as a social force within the environment designed to aid and protect the consumer by exerting legal, moral and economic pressure on business'.

Stanton W J²¹ states that consumerism is 'an organized reaction of consumers to have business unfair practices remedied'.

According to Shah A C²², "Consumerism as an organized movement of consumers. It emerged as countervailing defensive force to safeguard the interest of consumers from the abuses of economically powerful seller".

From the above definitions we can understand that the concept of 'consumerism' is

- a) An organized effort on the part of consumers
- b) It is a reaction against business class against their malpractices in the market place
- c) To consider market interaction as the outcome of seller and buyer interaction
- d) A need for adequate relief in case of any dissatisfaction, while using goods or hiring of services

²⁰ David W. Cravans and Gerald & Hill, "Consumerism A perspective", *Business Horizon*, (August 1970) at 24

²¹ Stanton WJ, *Fundamentals of Marketing*, (Mc Graw Book Co, New York, 1971) 657

²² Shah AC, "Consumer Protection in India", Mimeograph, Surat, Third Conference on Consumer Protection in India, (1976) at 1

- e) Rectification of the defect in providing proper relief
- f) To save the economic interest of consumers
- g) Attempt to guarantee the rights of consumers
- h) To concentrate the interest of consumer

Taking in to account the present complex market a transaction spurring out of marketing malpractices, excessive emphasis is laid on individual satisfaction. In this regard certain new dimensions emerged to define the term consumerism. According to **Modern definition** the interest of consumer includes general interest, the initiative of government and other aspects. Various thinkers have understood consumerism as given below:

According to Kotler P²³.

‘Consumerism is the social movement seeking to provide the rights and powers of the buyer in relation to sellers’.

To Kotler, consumerism becomes inevitable for the following reasons:

- i. Increased income and educational levels that sensitized people to the value of the quality of life beyond these values of material gains,
- ii. Increased complexities of technology and increased product complexity
- iii. Increased complexity of marketing techniques, and
- iv. Increased exploitation of the environment, diminishing scarce resources²⁴

²³ Kotler P, “What Consumerism means for Marketers?” *Harvard Business Review*, (1972) at 48-57

²⁴ Sundaram I.S, *Consumer Protection in India*, (IBR Publishing Corporation, Delhi, 1985)

Cappett A John²⁵ gave the behavior oriented definition to the term consumerism. He says

‘Consumerism is a form of psychological projection engaged in by consumers who as a result of repeated failure to attain a desired life style have accumulated negative attitude toward marketers in the form of criticism that seem to be socially acceptable to those who hear complaints’.

Mandana J²⁶, observes’ “consumerism as a citizen’s activity towards fighting trade injustice and scrutinizing of public conscience”.

According to Fazal A,²⁷ “consumerism is a phenomenon of group awakening ushered in a social movement to fight injustice and seek a fair deal in the exchange of process”.

According to Peter Drucker

“Consumerism means that the consumer looks upon the manufacturer as somebody who is interested but who really doesn’t know what the consumer’s realities are. He regards the manufacturer as somebody who has not made the efforts to find out, who doesn’t understand the world in which the consumer lives, and who expects the consumer to be able to make distinctions which the consumer is neither willing nor able to make”²⁸.

²⁵ Cappett A. John, “Consumerism from a Behavioural Perspective”, *Business and Economic Review*, (Akron, 1974) at 23-28

²⁶ Mandana J, *Consumer Education*, (Brindavan Publishing House, Bangalore, 1977) at 32

²⁷ Fazal A, “Striking out for the Consumer” *Asia Week*, Peang, International Organization of Consumer Union, (March 1978) at 24

²⁸ Drucker Peter, “Consumerism in Marketing”, Speech to the National Association of Manufacturers, New York,(April 1969)

He has taken into account four important premises of market concept to define the term consumerism. They are

- a. Consumers know their needs,
- b. Sellers are aware about their needs and knows exactly how to find them out,
- c. Seller provides useful information about the product and
- d. The product or services satisfy the expectations as well as the promises made by the seller.

Chaudhary H C²⁹ gave his opinion that, ‘consumerism is a wide range of activities to protect individuals from business malpractices which infringe upon their rights as consumers and to put buyers on parity with the seller’.

The most common understanding definition of consumerism is with reference to the widening range of activities of government, business and independent organizations that are designed to protect individuals from market practices.

From the above definitions we can conclude the following important aspect provided in modern definitions:

- a) It highlights the role of public and private concern
- b) Consumerism is a social movement
- c) Society needs protection along with the consumer satisfaction

²⁹ Chaudhary HC, “What is Consumerism”, Vol. XVII, *Indian Journal of Marketing*, (September, 1986) at 1

- d) Consumer should be empowered with adequate means like legislation, representation in decision making and logistical support
- e) Business should be regulated by its own self regulation mechanism
- f) Creation of consumer awareness in market place
- g) Resources of the country should be utilized to the optimum level
- h) Protection of political, social and economic interest of consumer

All the above definitions make it clear that the meaning of consumerism has changed over the years. It is also clear that each definition has been given in certain context as per the prevailing condition at that time.

Consumerism is taking shape as a comprehensive campaign. It is a substantive movement of consumers, by consumer, for consumers. It has no political overtones, nor should it ever have them. Once the cult of consumerism gets going it would be beneficial not only to the consumer but, to the producers as well. Protecting the interest of consumer means making the weak strong and the strong just. Well satisfied consumers are a great encouragement to the production activity and its planning for future³⁰.

Now a day certain new concepts relating to consumerism have emerged³¹. New movement has added certain sociological aspects. It is aimed at improving health services, utilities, safety, consumer representation, purity, trust and social issues. The ultimate aim of consumer movement is the monitoring of

³⁰ *Supra* note. 11

³¹ Such as paper consumerism, cooperative consumerism, reverse consumerism and green consumerism.

exchange system to improve the quality of life of individual and the public at large³².

In the present scenario the following factor are responsible for emergence of consumerism are³³:

- i. Information gap,
- ii. Performance gap,
- iii. Role of impersonal and unresponsive institutions,
- iv. Budget squeeze,
- v. Ghetto consumers,
- vi. Different views of the market place,
- vii. Ever increasing complexity of legislative controls and goods,
- viii. Altered patterns of communication,
- ix. Need for informed participation,
- x. Fundamental innovations and problems of development

New issues have emerged because of technological developments and higher standards of life, increased needs and transactions. Earlier, the consumer was able and competent to make his buying decisions with relatives, friends and other members of the society. Now the products demanded and required by the consumers have grown enormously in quantity, quality and complexity. It is difficult for an ordinary man to keep pace with widening information about

³² *Supra* note. 8 at 11

³³ Verma S.K., *A Treatise on Consumer Protection Laws*, (ILI, New Delhi, 2004) at 13 - 14

products and technical knowledge required. Moreover, new modes of marketing, like sky shopping, have also emerged, giving less opportunity to the consumer to examine the goods before buying. The consumers generally face time constraints and also lack necessary capacity and competence to select products in the increasing competitive market.

Consumerism 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 today's context consumerism is an all pervasive term meaning nothing more than people's search for getting better value for their money.

Consumer is the focal point of any business. Consumer's satisfaction will benefit not only business but government and society as well. So consumerism should not be considered as consumer's war against business. It is a collective consciousness on the part of consumers, business, government and civil society to enhance consumer's satisfaction and social welfare. This will benefit all, and finally makes the society a better place to live in.³⁴

To protect the interest of consumers and to recognize their rights the idea of consumerism emerged in to a movement known as consumer movement. The development of consumer movement is discussed in this chapter under two different heads, they are development of consumer movement in USA, UK and in other countries. Further the researcher discussed about development of consumer movement through EEC and various international voluntary

³⁴ Singh SS, Sapna Chadah, *Consumer Protection in India: Some Reflections*, (Indian Institute of Public Administration, New Delhi) at 6

organizations. Consumer protection is not new concept in India. This protection was available to the consumers from time immemorial. The ancient scripts like Vedas mentioned the protection available to the poor and deserved consumers. Historically this concept has its roots in ancient Indian jurisprudence. Development of consumer protection at length, in India is highlighted in the next chapter.

PART I

2.3 CONSUMER MOVEMENT IN USA, UK AND OTHER COUNTRIES

Consumer movement emerged to avoid exploitation of consumer in the market place. Today numbers of countries all over the world have laws to regulate and control unfair and deceptive trade practices and to provide adequate protection to the consumer. It is essential to verify the development concerned with consumer laws in the United States, United Kingdom and other countries from whose experience India has benefited in framing the consumer laws and policy for itself. The development of consumer movement under this part is divided in to four categories. They are

1. Ancient Period,
2. Consumer Movement in United States of America, and
3. Consumer Movement in United Kingdom
4. Consumer Movement in other Countries

- a. Consumer Movement in Australia
- b. Consumer Movement in Japan
- c. Consumer Movement in Poland
- d. Consumer Movement in Sweden etc.

Consumer protection is not a new concept and has been evolving from time to time. Consumers have been victims in the market place and they have been exploited from time immemorial. They became helpless mainly after industrial revolution due to complexity of consumer product in market place. First let us examine the concept consumer protection during ancient period.

2.3.1 ANCIENT PERIOD

A close examination of 'consumerism' shows that the recent emphasis of 'consumer protection' is not revolutionary occurrence but it was evolutionary in its character. There is no society and there is no generation which did not face many of the problems faced by the consumer today. The only difference is that some problems have become complex, grown in intensity and assumed greater significance with passage of time. Every society has had its own control mechanism and sanction to provide protection to consumers. Even the earliest civilization was apprehended with problems.

This has been effectively stated by Anwar Fazal,

“The Hittites of Anatolia now in Turkey, a civilization 3,500 year ago had a consumer Code of sorts on food matters. The Code said ‘Thou shall not poison thy neighbor’s fal’ meaning ‘food should be safe and

wholesome'. The Code also said 'Thou shall not bewitch thy neighbors fal' meaning 'you should not misled or cheat'. There is also a theory that the Roman Empire collapsed because of lead poisoning arising from the use of lead pipes for their water supply system. There are reports that bankers who cheated in the Middle Ages were put in cages and completely immersed in water and taken out when they were on the point of drowning"³⁵.

Laws aimed at the protection of consumers are not confined to modern times. Some prohibitions against adulterated food and false weights and measures are thousands of years old. Such laws are also found in the Old Testament, the Code of Hamurabi and the ancient Indian laws³⁶.

Protecting the interest of consumer can be traced in *Hammurabi's Code*. Hammurabi (1792 – 1750 BC) was recognized for a period of forty three years over Babylon. This is the first record which dates to four centuries earlier. It is the best preserved legal document giving an insight to the social structure during this rule. The laws were discovered in 1901³⁷. This Code tries to protect the interest of buyer. During this period they failed to give the names like consumer, consumerism and consumer movement. Some of the legal provisions in this Code read as follows:

“Any person who did not construct the house properly, and it fell, he shall re-erect the house from his own means.

³⁵ Fazal Anwar, "Striking out for the Consumer," in *Consumer Action in Developing Countries*, IOCU (1980) at 7

³⁶ Reddy G.B, *Law of Consumer Protection in India*, (Gogia Law Agency, Hyderabad, 6th Ed. 2004) at 4

³⁷ Kakkar Avoantikar, *A Perspective on product Liability Law and Consumer Safety*, (Snow White Publication, P. Ltd, Mumbai, 2004) at 2

If a builder builds a house for some one, even though he has not yet completed it, if then the walls seem toppling, the builder must make the walls solid from his own means”³⁸.

The above provisions did not specifically use the term consumer and buyer, but indirectly they provide the same meaning and protect the interest of the consumer. This shows that consumer protection was recognized under the Hammurabi’s Code.

During most of the middle ages, consumers were protected to some degree by the moral strictures of the Catholic Church, self regulations by craft guilds and consumer’s own knowledge on products and local sellers. The laws did not favour the consumer neither did they favour the seller, there was essentially no law covering consumer transaction³⁹.

Gradually the European Kings over saw a shift in legal doctrine that favoured the sellers, in their efforts to encourage the growth of trade. The dominant rule of the market place became ‘*caveat emptor*’ or ‘*buyer be ware*’. The supply and demand conditions that underlay the doctrine of *caveat emptor* and limited Government interventions on behalf of consumers changed rapidly in the later decades of the 19th century⁴⁰.

The perils of crude cheating have been recognized for centuries. Duty was imposed on the government with regard to standardization of weights and measures in the market place. Attempts were made to enforce the use of honest

³⁸ *Id* at 3

³⁹ Preston Ivan L, *The Great American Blow-Up*, (University of Wisconsin Press, Madison, 1975)

⁴⁰ *Supra* note. 35

weighing and measuring devices by law⁴¹. Concern about abuses in market place is also an old concept. The tempo of change in the character of the market place has been greater in this century than during any comparable period in history.

Owing to industrialization, there was substantial change in the mode of manufacture, transportation and the market place. This has considerably affected the control by the consumer over the quality and prices of the goods and services offered to him. With the advent of sophisticated technology, mass consumption and production of a variety of goods offered for sale has increased to such extent that no person could be an expert in judging them. The poor consumer faces bewildering problem in evaluating the products. He is supposed to judge differences of technology, function, price and promotion. The mode of production has become so complex that it is very difficult to recognize merits and demerits in the products. The art of analyzing the quality or consumption goods had advanced to a stage of expertness which is inaccessible to an ordinary consumer.

All this lead to the exploitation of consumers by the business community by introducing new and subtle forms of deceit. The crudest forms of cheating are the use of short weights and measures, the adulteration of products and the misrepresentation of articles for sale. Advertisements and mass propaganda, has made the innocent buyer to purchase the products, which have ultimately proved to be not what he had expected to be. Monopoly of business is another

⁴¹ Mesopotamians (1750 BC) had laws on money lending, weight and measures, price control etc.

problem. It had long been recognized that the interests of the consumers are threatened when a substantial part of the production of an industry is under monopoly. Monopoly power can rapidly exploit the consumer by fixing prices so as to provide excessive profits. This can limit the consumer's choice, it can reduce efficiency and it can hold up the development of new techniques because there may be little incentive for change⁴².

This scenario has put the consumer in a helpless position. As products proliferate in the market, the gullible consumer is unable to match the market complexities. This resulted in the movement of protecting consumers through organizations.

After discussing the concept of consumer protection during ancient period it is worth to look at the development of the consumer movement in different countries where various consumer organizations have been established to create awareness among the consumers to protect their interest in the market place. United States is the first country to initiate the concept of consumer protection. Let us verify the development of consumer movement in USA.

⁴² Borrie Gordern & Aubrey, L. Diamond, *The Consumer Society and the Law*, (Penguin Books.3rd ed. 1973) at 287

2.3.2 DEVELOPMENT OF CONSUMER MOVEMENT IN UNITED STATES

The United States of America (USA) claims to be the most advanced country having various 'Consumer Societies' meant to protect the interest of consumer in the market. Even in the advanced country like USA, it has been proved that the consumer has not been protected properly till 1960's.

The consumer movement in the USA is undergoing a change from time to time. It is becoming less fragmented and more pragmatic. Its wave had been primarily economic in 1930's, but was largely social during 1960's. Consumerism became a hot topic during the early and mid 1970's. Different consumer protection legislations were passed during this period to protect the consumer as a result of public agitations and consumer organizations.

According to Mr. Michael Pertschnk- conceptually speaking the consumer movement was low by 'the reaction and revolt of business'. Caveat emptor prevailed for a long time in USA from the end of civil war until the advent of 20th century. Action to protect the consumer has come lately and significant progress was achieved only during the past three decades or so⁴³.

The growth of consumerism in USA can be better understood by briefly dividing the movement in to three eras of consumer activism⁴⁴. They are

1. Emergence of Consumer Movement

⁴³ Pertschuk Michael, *The Rise and Pause of the Consumer Movement*, (1982)

⁴⁴ Laurence, P. Feldman, *Consumer Protection : Problem and Prospects*, (1980) at 1-20

2. Second Era of Consumer Activism
3. The Contemporary Era of Consumer Activism and
4. Consumer Activism after 1960's

1. Emergence of Consumer Movement

The post civil war period saw the advent of large scale production of goods, sophisticated technology and process unfamiliar to the buyer. It was the age of production in a seller's market where all kinds of fraudulent, shoddy, adulterated and dangerous products were pumped⁴⁵. Development of consumer movement during this era can be traced before 1890. It was an out growth of the massive changes brought by the early stages of the industrial revolution.

The first organized consumer revolt in the United States occurred before the country was founded. Settlers in the 1760 are fought to reverse imperial policies by boycotting imported goods. The colonists protested British taxes on stamps, glass, paint, paper and tea. Over a period of twelve years, many consumers gave up imported tea, liquor, ribbons, laces, and silks. These actions also induced long lasting preferences for American made products. Thus the American colonial era gave birth to the traditions of its consumer movement⁴⁶.

The United States has been leader in consumerism in the world since consumers first began to recognize, that they had rights in the market place. Perhaps this awareness dates back to the Boston Tea Party in 1773, in which

⁴⁵ Ibid

⁴⁶ Witkowski, TH, "Colonial consumers in revolt : Buyer values and behaviour during the non-importation movement, 1764-1776" *Journal of Consumer Research*, (1989) at 216-226

American patriots boarded British ships and tossed incoming tea chests in protest of unfair taxes⁴⁷.

During 1776, the people lived a highly individualistic life. They wanted freedom and independence and were extremely self reliant. They were basically self sustaining, cooperative, and giving. The welfare of consumers depended in part on the honesty and buying skills of both themselves and a few local shopkeepers. Retail stores consisted of itinerant peddlers, rural general stores, specialized city shops and auction sales. If the shopkeepers were smart enough to purchase good quality products, then consumers who bought from them at least had access to good products.

The range of products available to consumers was quite small, and “locally produced items accounted for the majority of the purchases”⁴⁸. The products were generally simple in design and were in everyday use. Buyers were faced with few products that were not within their range of experience. Intelligent buyers, therefore, had the expertise to make a reasonable evaluation of most products. But most of the consumers were thrifty and frugal.

Most goods had no trademarks, and few had brand names. A wise consumer knew the merchandise and tried to avoid substandard products. However, consumers had almost no protection against merchants who raised prices

⁴⁷ Virginia H. Knauer, “The Consumer’s Stake in Trade” Vol.7 (10), *Consumer Confrontation*, Ahmadabad (Oct, 1987) at 2

⁴⁸ *Id* at 217

needlessly, and they could do little to stop frauds, such as misbranding and adulteration⁴⁹.

The 1870s witnessed introduction of first popular Coca Cola, Wrigley's Chewing Gum, Boxes of Kellog Brothers, Corn Flakes and Chocolate Bars. There was optimal level of competition and there the need to regulate the competition. It was also necessary to take care of the safety and quality of the new goods. Many men in public life such as Supreme Court Justice Louis Brandeis, Wisconsin Senator and Governor Robert La Follete and President Theodore Roosevelt were engaged in regulating the competition. They represented consumer interest and were sympathetic to consumer wellbeing and were instrumental in organizing the progressive movement and reacting to the growing concentration of business power in both the market place and political arena⁵⁰.

Greatest scandals of food and drug products were witnessed in this era. Public pressure began to build for the regulation of the quality of these products. As a result a Federal Bill to regulate foods was introduced in the Senate in 1874. The Senate Committee was appointed to investigate into the food products and drug scandals. Their findings held that oil beef, pork were adulterated and many of the medicines contained opium derivatives. The public was greatly agitated over the issue of unsafe and harmful drugs⁵¹. This initial consumer movement was an extension of other social movements like labour, cooperative

⁴⁹ Garman Thomas E, *Consumer Economic Issues in America*, (Dama Pubn. Inc, Houslar, 1997) at.31

⁵⁰ Mc. Craw, Thomas, *Principles of Regulation*, (Cambridge, Mass Harward University Press, 1984)

⁵¹ Kengu Norman, Lee Richardson, *Consumerism New Challenges for Marketing*, (American Marketing Assn. Illinois, 1978)

and women's groups which provided the foundation for today's consumer activities. The first Consumer's League was formed in 1891. In 1899, the National Consumer League was founded to fight marketplace injustices, and soon branch offices were established in 20 states. During these years, Congress passed over 50 consumer protection laws⁵².

In 1887, the Interstate Commerce Commission was established to regulate the rail road industry, setting the precedent for independent Regulatory Agencies and in 1894 the Federal Trade Commission was established to regulate products⁵³.

Emergence of consumer movement in USA was a part of a broader social movement. It heralded the formation of first Consumer League. However it lacked the kind of consumer consciousness that was to characterize latter periods of consumer protection. This era made the people to recognize their distinct political interest as consumers.

2. Second Era of Consumer Activism

The period after 1890 to 1930 marks the second era of consumer activism and it may be conceived as response to the broadening impact of industrial revolution. It goes beyond the factories and transportation systems, to the domain of consumption itself.

⁵² *Supra* note. 47 at. 31

⁵³ *Supra* note. 35 at. 6

By the 1890s, the effects of a rapidly growing society changed the role of the consumer. Industrialization along with population growth brought 40 percent of the population to the cities. A nationwide system of railroads, served the economic needs of those who had moved into urban areas, where employment opportunities and local trolley transportation system flourished.

Despite the early precedents, the level of federal food and drug regulation was still inadequate and State Laws were often helpless to deal with the goods shipped between States. The rudimentary level of government control was matched by the primitive state of production techniques and products themselves. Ice was still the principal means of refrigeration, milk was not pasteurized and the cows were not tested for TB. Patent medicines contained Opium, morphine and alcohol. The labels did not indicate their contents. The efforts of the anti adulteration movement culminated. Further the Jungle Upton Sinclair's novel about the stockyards published in 1906, brought demand for regulation of Food and Meat processing. All the above factors led to the passing of two Bills in 1906 – the Meat Inspection Act and The Food and Drugs Act⁵⁴.

During these years, a number of product- testing laboratories, some of which were run by department stores and trade associations, were established to provide buying information to the public. The Federal Bureau of Standards established a national system of weights and measures. At that time, trusts were combinations of firms that got together to reduce competition and control

⁵⁴ *Ibid*

supplies and prices throughout a geographic area or industry. Trusts existed in fuel, sugar, whisky and matches. The battle against trusts established the Federal Trade Commission Act in 1914. This was one of the major legislation to deal with the interest of consumer protection⁵⁵.

Patriotic fever, wartime shortages and post war readjustments then diverted much attention from consumer problems. After the war, during the early 1920's consumer incomes rose sharply. Mass production techniques were developed bringing consumers more and newer products such as automobiles, radios, telephones, introduction of electricity and movies⁵⁶.

Less than a decade after the First World War that is by 1925, 53.2 percent in United States of America had electricity⁵⁷. Every house hold was equipped with electricity had electric iron, washing machine, refrigerators, sewing machine and vacuum cleaner. Therefore when a consumer purchased any of these appliances, it was likely to be for the first time. So the purchase decision was complicated by both inexperience and technological complexity. In addition to the new products, consumer choices were further complicated by aggressive salesmanship, particularly in the form of advertising. Advertising suggested the importance of coordinating the styles and hues found in every relatively private room such as the bathroom, kitchen and bed room⁵⁸.

⁵⁵ *Supra* note. 49 at32

⁵⁶ *Id* at 31

⁵⁷ USA, Census Bureau quoted in Merchand Roland, *Advertising the American dream*, (Berkeley, University of California Press, California, 1985)

⁵⁸ "Your Money's worth" by Stuart Chase and Frederick J. Schlink, 1927 in *Supra* note. 36 at 7

Advertising expenditure, which had been criticized as serving no useful purpose, quickly exceeded \$3 billion annually. Buyers were confused by the growing array of products, and it is no wonder that such consumer outrage books, as *Counterfeit*, *Not to Be Broadcast*, *40,000,000 Guinea Pig Children*, *The American Chamber of Horrors* and *100,000,000 Guinea Pigs* became best sellers. These books illustrated dozens of instances of misbranding, mislabeling, and unsafe practices being committed by large, well-respected companies that injured or cheated consumers⁵⁹.

In 1927, an economist, Stuart Chase and an engineer F.J. Schlink published a book '*Your Money's Worth*'. In this book they mentioned about the activities of the National Bureau of Standards, and concluded that the Government was, indeed getting its money's worth and that most consumers were not, mainly because they did not pay sufficient attention to the real values of goods they were buying. This gave rise to an association, the first of its kind, known as the "Consumer Research". They also published a Consumer's Research Magazine. It was from this association that a splinter group under the name of Consumer Union of the U.S. emerged in 1936⁶⁰.

The above events, along with rising prices and an increasing torrent of advertising, all helped make the public aware of their interests as consumers as distinguished from their interests as workers or property owners. The establishment of consumers union constitutes one of the key events in the

⁵⁹ *Supra* note. 49 at 31 - 32

⁶⁰ Festschrift in honour of Prof. Sathe S P., *Dimensions of Law*, (ILS, Pune, NM Tripathis P. Ltd, Bombay, 1992) at 7 -8

second era of consumerism in America. Thus 'consumer consciousness' developed during this period.

3. The Contemporary Era of Consumer Activism

A variety of circumstances brought on a renewed interest in consumer issues from 1929 through the 1960s. During this period public started migrating to the cities. Public attention was diverted due to World War II and about twenty years was to elapse before consumer protection again assumed the role of a major public issue. In this era till the decade of 1960s' the consumer protection activity did not start.

The first major issue during this era related to the drug industry. President Franklin D. Roosevelt appointed a Consumer Advisory Board and incorporated the issue of consumer protection in his 1933 message to the congress. But this proposal was delayed by the business community. After the tragic death of ninety three consumers in 1937 from taking a drug, provided the final impetus for the passage of The Food, Drug and Cosmetic Act, 1938. The new Act amended the Food and Drugs Act, 1906, expanding the jurisdiction of the Food and Drugs Administration (FDA) to include cosmetic and therapeutic devices. The other major piece of consumer protection legislation of this era was the Wheeler- Lea Amendment (1938) to the Federal Trade Commission Act. The

Amendment expanded the mandate of the FTC to include ‘unfair as well as deceptive practices or promises in commerce’⁶¹.

People’s agitation regarding the safety of drugs paved the way for the Kefauver Harris Amendment (1962) to the Federal Food, Drugs and Cosmetic Act, 1938 to provide safety and effectiveness of all new drugs prior to marketing⁶².

The postwar period of the late 1940s and into the 1950s saw strong economic growth and rising consumer incomes for our primarily blue collar society. During the 1950s, thousands took advantage of the educational opportunities offered to World War II veterans, which pushed them up the economic ladder and helped gradually transfer the US into a better educated and increasingly white collar society. Magazine circulation for the popular buying information magazine Consumer Reports, published by Consumers Union, Inc, grew to almost half a million by 1950. The National Association of Consumers, a small consumer group, merged with the Council on Consumer Information⁶³.

During the 1950s, grass roots issues were not numerous, but the increased use of installment credit and the buying of new homes and durable products did provide some incentive for including consumer education courses in the schools. Schools increasingly began to teach students the hows and whys of buymanship until the Soviet Union sent up the first satellite, Sputnik, in 1957.

⁶¹ *Supra* note. 51

⁶² *Supra* note. 44 at 1- 20

⁶³ *Supra* note. 49 at 33

This event rapidly turned attention away from such life adjustment courses and the curriculum began to emphasize science and mathematics⁶⁴.

There was increase in consumer prices owing to inflation between 1946 and 1956, it offered difficult choice to the consumers among the new and technologically complex products. For example two thirds of Americans had acquired their first television set by 1953. Similarly consumers encountered complicated new services offerings in the post war years, such as life insurance, installment credit. The first credit cards were introduced by the Diner's Club. All these provided a kind of contentment with the American standard of living. It is not surprising that the opening salvos in the third era of consumer activism were aimed not at the goods people consumed but the method by which the products were promoted⁶⁵.

In 1957, a book written by Vance Packard entitled '*The Hidden Persuaders*' indicted the advertising industry for using psychological techniques to manipulate consumers. The attack on advertising was intensified in 1958 with the publication of John Kenneth Galbraith's '*The affluent Society*'. This author was less concerned with the methods of advertising but more with its social effects. He contended that advertising played a key role in making the United States of America an 'unbalanced society' in which the pursuit of private goods

⁶⁴ *Ibid*

⁶⁵ *Supra* note. 36 at 8

overwhelmed the provisions of public rules such as schools, hospitals, and museums⁶⁶.

Some consumer issues still caught the headlines and during this era public was being manipulated mainly by the advertisers. Generally speaking, the relative economic prosperity of the 1950s, Senator Joseph Mc Carthy's campaign against so called communists, and the growing interest in space and national defense kept things rather quiet on the consumer front⁶⁷.

It was evident that during this era the jurisdiction of the FTC was extended over a wide range of harmful business practices, including dissipative advertising. The consumer activism was absent from the American scene until the 1960s primarily because consumers were relatively satisfied.

4. Consumer Activism after 1960's

The wave of consumerism was started in 1960's Americans were much more aware of the market place. Television made every consumer an expert, because for the first time in history people were constantly exposed to product claims. The decade of the 1960s saw the evolution of a new social movement, in which more economically informed Americans expressed dissatisfaction with the existing social, economic, and structural systems. This disharmony helped public to develop a greater social conscience, and they demanded social change. Americans turned their attention to social concerns, such as race relations, consumer problems, pollution cleanup, product safety and social

⁶⁶ *Ibid*

⁶⁷ *Supra* note. 49 at 33

justice. As these problems were not addressed by the government or traders, American consumers perceived this inattention as a violation of the public trust and demanded action⁶⁸.

People became more open to self-criticism regarding social and economic problems. Some of the best selling books were Rachel Carson's '*The Silent Spring*' (1962 dealing with environment), Michael Harrington's '*The Other America*' (1962 deals with poverty), Jessica Mitford's '*The American way of Death*' (1963 regarding funerals), David Caplovitz's '*The Poor Pay More*' (1963 dealing with poverty and credit), Maurine Neuberger's '*Smoke Screen ; Tobacco and the Public Welfare*' (1963, cigarettes), and Richard Harris '*The Real Voice*' (1964 deals with drug safety). The nation was becoming increasingly aware of its problems, and this ushered in the loosely organized era of activist consumerism, which lasted until the mid 1970s⁶⁹.

Every event served the purpose of initiating modern consumer movement in America. A finely tuned level of public interest in consumer protection in USA can be recognized in two ways

a. Public Response to Consumer Problem and

b. Ralph Nader's Crusade

⁶⁸ *Id* at 34

⁶⁹ *Ibid*

a. Public Response to consumer problem

During these years, consumerism was a label put on the efforts of a growing number of consumer advocates who questioned the inadequacies of the market place and the unwillingness of business and government to deal with important consumer needs and demands.

Consumerism emerged because many people concluded that making money should not be the only objective of the capitalistic economic system. Many Americans began to question the logic of commitments to maximizing economic growth that were crucially important to earlier generations. People demanded justice and fair play in the marketplace, which represented a significant shift in the national value system. Americans began to realize that fulfilling the consumer interest, as suggested by Adam Smith in his 1776 book *The Wealth of Nations*, is the best means to enhance the wealth of the country⁷⁰.

The term consumer movement characterizes the organized activities of a loose coalition of groups of people working toward the achievement of a number of related goals which

- a) Protect consumer rights - such as health and safety,
- b) Help consumers gain power to control critical factors in their lives - competent choice making and appropriate redress, and
- c) Limit market place abuses

⁷⁰ *Supra* note. 49 at 34

People involved in the consumer movement come from several areas of the society, community, senior citizens, cooperatives, labour unions, foundations, academics, consumer information, consumer advocacy, and consumer affairs professionals in business and government⁷¹.

The beginning of the consumer movement of the 1960s probably began with a boycott by a group of housewives in Denver, Colorado, who picketed local supermarkets protesting high prices. With nationwide publicity of this event and others, the consumer movement grew and began to make its strength felt in America. Numerous groups with an interest in consumer concern began to spring up⁷².

In March 1962, John F. Kennedy presented the first Presidential message to Congress directed at consumer concerns. He asked for legislative action and new programs in several areas. The most important aspect of this message, however, was the now famous Consumer Bill of Rights. President Kennedy stated that consumers have four rights. They are

- i. Right to safety,
- ii. The right to be informed,
- iii. The right to choose, and
- iv. The right to be heard

⁷¹ *Id* at 34 - 35

⁷² *Ibid*

This message provided a great surge of interest in consumer concerns. Consumer problems remained in the news. President Kennedy established a Consumer Advisory Council to assist his Council on Economic Advisors. The Thalidomide Drug Scandal resulted in the birth of over 20,000 deformed babies around the world, although few occurred in the United States. The Congressional hearing prior to passage of the Kefauver-Harris Drug Amendments revealed scandalous information about large numbers of ineffective and useless drugs being sold to unsuspecting Americans⁷³.

Consumer Rights enunciated by President Kennedy were subsequently incorporated in the UN Charter of Human Rights. These rights have been universally accepted by all National Governments as the Consumer's Magna Carta⁷⁴.

In 1964, President Lyndon B. Johnson created a new White House position, Special Assistant to the President for Consumer Affairs. He appointed Esther Peterson to this post. With White House visibility, consumer concern became front page news. Later the year, Johnson sent a consumer message to Congress urging passage of several new laws. These indeed were exciting times for consumers and consumer advocates, and the liberal landslide in the 1964 election gave strength to those calling for reforms⁷⁵.

⁷³ *Ibid*

⁷⁴ Swami Narayana S, "Consumer Protection : No Lukewarm Attitude", Vol. 9, *Consumer Confrontation*, Ahmadabad, (March – April, 1989) at 12

⁷⁵ *Supra* note. 49 at 35

Public response towards consumer concern brought changes in the governmental attitude. Presidents of America considered the issues relating to consumer and established Consumer Councils to protect the interest of Consumer. Government heard and took some actions to help consumer. The late 1960s also saw the rise of a charismatic consumer champion Ralph Nader, whose efforts coupled with an increasing public awareness of consumer problems, led to the consumer movement to the present state as a growing social, economic and potential force.

b. Ralph Nader's Crusade

Ralph Nader, a lawyer was considered as the chief exponent of modern consumer movement in the USA. He became famous for the case he fought against business and government practices. His contribution towards consumer legislation has brought about tremendous change in the consumer movement.

He was an important spokesman for the consumer at Senate Committee Hearing on Automobile Safety. His book '*Unsafe at any Speed*' in the year 1965 brought the consumer safety issue to the forefront. This book effectively disseminated knowledge of the problem of auto safety to the general public. The passage of the National Traffic and Motor Vehicles Safety Act, 1966 was an attribute to Nader's efforts⁷⁶.

With in the next few years, Ralph Nader was to figure prominently in many congressional hearings on a wide variety of subjects relating to consumer

⁷⁶ Lester A. Sober, *Consumer Protection*, (Facts on File, New York, 1976)

protection. He published US Department of Agriculture Data on the unwholesome conditions prevailing in meat processing plants, in intra state shipping, which were not subjected to the Federal Meat Inspection Act, 1906. These disclosures led to the passage of the Wholesome Meat Act, 1967⁷⁷.

Ralph Nader's call for volunteers to come to Washington to research and become active on consumer issues resulted in hundreds of people joining what The Washington Post writer William Greider called 'Nader's Raiders'. The raiders descended on federal agencies such as the Federal Trade Commission, Interstate Commerce Commission, and Food and Drug Administration. Their mission was to document the extent to which these regulatory watchdogs had fallen asleep on the job or worse, become the tools of the very interests they were supposed to regulate⁷⁸.

Ralph Nader has become an institution by himself in the struggle to safeguard public interest, including consumer protection. He has sponsored two organizations, namely The Centre for Study of Responsive Law and The Public Interest Research Group⁷⁹.

Nadar and his associates shooting from the hip and distracting the opposition's attention, more moderate consumerists, particularly a number of consumer minded members of Congress, succeeded in passing a series of major pieces of consumer legislations. In 1966, the Child Protection Act, banning dangerous

⁷⁷ Shella TN, Consumer Protection with special reference to Public Utilities, thesis submitted to the University of J & K for the Degree of Ph.D. in Law (1990)

⁷⁸ *Supra* note. 36 at 10

⁷⁹ *Supra* note. 77

toys from interstate commerce, and the Fair Packaging and Labeling Act were signed in to law. The Wholesome Meat Act and Flammable Fabrics Act were enacted in the next year. In 1968, the Consumer Credit Protection Act, Interstate Land Sales Full Disclosure Act, Natural Gas Pipeline Safety Act, Poultry Inspection Act, and Radiation Health and Safety Act became law, and this was only the beginning⁸⁰.

In United States, consumer activism reached its peak in the early 1970s. The Consumer Product Safety Commission was created in 1972 to coordinate and strengthen federal efforts to protect consumers from unreasonable product risks. Consumer rights pertaining to credit were strengthened in 1974 with the passage of the Fair Credit Billing Act and Equal Credit Opportunity Act⁸¹.

The Congress had to pass more than twenty five statutes of consumer, environmental and regulatory reforms in a period of about eight years (1966-1974). Again, it was because of Nader's push that the Congress had to clear the Freedom of Information Act in 1974, the only law of its kind in the world. This Act is described by many thinking Americans as a hammer to beat on the government to produce information for procuring consumer cause when the information is held up from citizens on the plea of secrecy of government records⁸².

By the end of the 1970's there was considerable evidence of change in the Consumer Movement. The passage of the Magnuson Moss Warranty Federal

⁸⁰ *Supra* note. 36 at 10

⁸¹ *Ibid*

⁸² *Supra* note. 60 at 8

Trade Commission Improvement Act, 1975 was probably the legislative high water mark in the current era of consumer protection. In 1976, premarket testing of all new chemical substances was mandated by the Toxic Substances Control Act. They have reached a stage of an institutionalized acceptance of the idea of consumer protection in America⁸³.

Until about 1976, consumerists were highly successful in Congress, but during the Carter administration the movement lost its legislative momentum. Mark Green, director of the Nader organization Congress Watch and one of Nader's most durable associates, attributed this shift to a public disenchantment with government, a rejuvenated Republican party, and a more effective lobbying effort on the part of business interest. The decline of consumer movement was partially regained by the appointment of consumer activists to high level posts in federal agencies. But after Regan's election four years later, the movement lost whatever grip it had attained on the government's regulatory apparatus. Thus 1980s serves as a convenient point for marking the end of consumer activism in the United States of America⁸⁴.

After 1962, very important legal developments took place in the United States to ensure special protection to consumers against adulteration, misrepresentation, labeling and other related matters. The Uniform Commercial Code⁸⁵ and the 1986 Restatement of torts made a manifest shift in favour of consumers by recognizing strict liability in the sale of defective products. The

⁸³ *Supra* note. 77

⁸⁴ *Supra* note. 36 at 11

⁸⁵ Uniform Commercial Code (Official text), 1962, article 2.138

1986 Restatement makes a seller of defective products liable to a consumer for any harm caused to him even if the seller has exercised all reasonable care in the preparation and sale of the product and there exists no contractual relationship between the consumer and the seller. Such a liability of the seller also exists with respect to his obligations arising under any advertisement, labels or misrepresentation of material facts regarding fitness of goods. Thus, in US the liability of seller to consumer for defective goods is irrespective of any proof of negligence on the part of the seller or contractual relationship between the seller and the consumer. The liability under the 1986, Restatement of Torts can be escaped by a seller only if he is not engaged in the business of selling the product in question or the product has reached the consumer with substantial change in its condition in which it was sold or the negligence of the consumer. The other US legislations in the area of consumer protection include: The Food Drugs Amendment Act, 1962, Cigarette Labeling Act, 1965, Fair Packaging and Labeling Act, 1966, Wholesome Meat Act, 1967, Consumer Credit Protection Act, 1968, Consumer Product Safety Act, 1972 and Consumer Product Warranty act, 1975⁸⁶.

In the United States of America the idea of consumer protection emerged due to number of events⁸⁷:

- a. Housewives boycotting supermarket because of high meat prices,

⁸⁶ *Supra* note. 33 at 6

⁸⁷ *Supra* note. 49 at 35

- b. Exposes in the form of books, news articles, and radio and television programs,
- c. The formation of numerous local consumer action groups,
- d. A flurry of legislative action on national and state levels,
- e. Scandals concerning fabrics, drugs, food, credit, and product safety,
- f. Presidential support by Lyndon B. Johnson and Richard M. Nixon through more consumer messages,
- g. Introduction of consumer education courses into many schools,
- h. An increased media interest in consumer issues as news,
- i. Nader's network of consumer organizations and
- j. A group broadening of support for consumer concerns

Awareness about the Consumer interest is undoubtedly the highest in history. Today's consumer interest is no longer submerged into the broader public interest. Consumers across the country now demand an acceptable quality of goods, and services with fair or low prices appropriate for particular levels of quality. In short, they want a good deal for themselves and others.

Due to consumer awareness once the consumer problem comes into picture regarding price and quality, complainants continue about the disparity between claims and performance. Consumers look at ways to fix the systematic poor attitudes of seller. When the growing dissatisfactions were not met by corporations, consumers took their grievances to the government. To protect

the interest of consumer and to protect their rights the governments have been passing appropriate legislation from time to time.

Consumers today are generally aware that they have certain rights, to help them avoid getting ripped off or cheated. They may not be aware about specific law or regulation that can apply but they know there is probably some corporate office or government agency that will help. Consumers in the United States inherently believe both, that they have consumer rights and the power to assert them. American consumers live in a society that has permanently imprinted the consumer interest in the mentality of its people, as well as in many of the mechanisms of business and government⁸⁸.

After going through the development of the consumer movement in America let us examine the development in United Kingdom.

2.3. 3 DEVELOPMENT OF CONSUMER MOVEMENT IN UK

In England, the consumer movement developed during the 13th and 14th Century. The official dignitaries of the country – the Lieutenants, the Sheriffs and the Justices of Peace performed both judicial as well as administrative functions. By increasing their duties and jurisdictions in the 16th century, they were given supervisory jurisdiction with regard to the bridges, highways, lighting and cleansing of streets, etc. The activity of consumer protection was confined only to control of prices of most needed commodities and protection from short supplies. The quality and quantity of bread, fuel, beer and meat were

⁸⁸ *Supra* note. 49 at 50

to be regulated by the crown through judicial institutions. However, the state of the consumer was not satisfactory and there was reported little or no observation of the law as regards size or price of bread and the people were deceived and oppressed.

In the early 18th century, making a mention of this fact about bread in a Statute of 1709, the justices peace and the mayors of boroughs were empowered to fix the weight and price of bread, matching the prices of grain and require the bakers to mark the loaves with size and quality. To prevent contravention penalties were prescribed. This state of affair continued till 1836 when the principle of competition propounded by Adam Smith was adopted to regulate these matters. The Adam Smith proposition that ‘the interest of the producer ought to be attended to only so far it may be necessary for promoting that of the consumer’ needs an appreciation. Any review of this situation in the market economy would show that the producer should adjust themselves to consumer preferences. This truly marks the bottom line of the phenomenon, but consumers being generally the weaker party, laws cannot be kept out of the consumer protection process⁸⁹.

In England the initial emphasis regarding the consumer protection was on ‘the duty to take reasonable care’ and ‘the product liability’. Manufacturer and suppliers liability for their negligence was laid down under a) The Law of Contract and b) The Law of Torts.

⁸⁹ *Supra* note. 33 at 4

A) Law of Contract

The early Law of Contract was based on the twin doctrines of *Caveat Emptor* and sanctity of contracts. In order to succeed in a contractual action, the buyer had to prove that he relied not merely on the statement made by the seller. The statement should have been in the nature of a promise made by the seller to the buyer. In case the product was defective the seller would repair or replace it, although exceptions were made in some situation⁹⁰.

With the growth and complexity of consumer transactions, and in view of the manifest injustices of the application of this rule, the courts in the nineteenth century groped in the dark for new basis of contractual liability for supplying defective goods. How could the buyer beware if he had no opportunity to inspect the goods?⁹¹ For safe guarding the interest of an unwary buyer the courts in some cases laid down the requirement of merchantability which, according to them was, implied in the sale. In *Jones v. Bright*⁹² Best, C.J. of the Court of Common Pleas observed that ‘ if a man sells an article he thereby warrants that it is merchantable—that is fit for some purpose’. By the end of the nineteenth century the warranty of merchantability had been developed and incorporated as exception to the *caveat emptor* rule in the Sale of Goods Act, 1893. *Section 14* of the Act reiterated the time honoured the maxim *caveat emptor* by providing that there was no implied warranty of quality, fitness or condition of goods supplied under a contract of sale but exceptions to the rule

⁹⁰ *Crosse v. Gardner* (1688) Carth. 90, *Chandler v. Lopus* (1603) cited in Hard. L. Rev. 283

⁹¹ Borrie Gordon & Aubrey L. Diamond, *The Consumer, Society and the Law*, (Penguin Books, 4th Ed. 1983) at 22 -24

⁹² (1829) 5 Bng, 533

were set out when implied warranties of merchantable quality and fitness of purpose would apply, the most important one being that the seller was a dealer in the goods sold⁹³.

Under the name of freedom of contract both parties were free to make any stipulations without regard to the position of the parties. In monopolistic trading and public utility services, the seller of goods or provider of services was always in a dominant position and to protect itself from liability, standardized terms of contract were developed to exempt the seller from liability. The typical exemption clause would be framed as 'all conditions, warranties and liabilities express or implied by statute, common law or otherwise are excluded'. In the course of time the courts developed new strategies to strike down such exemption clauses. For a long time there was a tug of war between the draftsman of such clauses and the courts. While the former would recast the clause to fill in the gaps, the courts found new way of holding these as ineffective and void. The most significant theory developed was that a party to the contract could not by making a sweeping exemption destroy the contract itself which would constitute fundamental breach. In any case, the courts would not take the position that a contract would be unenforceable on the ground that it was harsh or unfair. To set the matter right the Parliament did intervene to protect a consumer who had no option but to agree to such conditions in contracts of sale and services. The Supply of Goods

⁹³ *Supra* note. 6 at 9

(Implied Terms) Act 1973 and Unfair Contract Terms Act, 1977 now cover the field regarding such exemption of liability clauses⁹⁴.

B) Law of Torts

Tort is the violation of a duty laid down for which damages are awarded by the court. It is well established that to succeed in an action in torts that plaintiff must prove that a duty was owed to him, that there was a violation of that duty and the plaintiff suffered loss or injury as a consequence. In contrast to contractual liability which involves violation of an obligation owed to a specific individual or individuals (in personam) liability in tort arises out of violation of a duty which is owed to people in general (in rem). We have seen that requirement of privity, made it impossible for the buyer to claim damages from the manufacturer of goods unless the product was actually sold. Likewise, the seller of goods could not be made liable to any one other than a buyer. Thus if the buyer had allowed the use of the thing to some one else who suffered injuries due to defects in the product, the user could not sue the seller because of the doctrine of privity. A steady rise in the complaints regarding defective products which resulted in injuries to users other than actual buyers finally prompted the courts to adapt the law to the needs of the time⁹⁵.

Protecting Consumer in England was initially based on the concept of 'Product Liability'. The classic case of *Donoghue v. Stevenson*⁹⁶ has given rise to the law of negligence relating to consumers. This case was concerned with the

⁹⁴ *Ibid*

⁹⁵ *Id* at 10

⁹⁶ (1932) AC 562

nature of the duty owed by the manufacturer to the ultimate consumer of his products. In the instant case, the appellant and her friend went to a café. The friend purchased a bottle of ginger beer and gave it to her. After she consumed the contents of the bottle, the friend poured out the remainder of the bottle revealing a decomposed snail. She consequently suffered shock and severe 'gastro enteritis'. Even though, the appellant was not a party to the contract as a purchaser of goods, but still the manufacturer owed a duty of care to the ultimate consumer. Lord Atkin while explaining the nature of this duty observed⁹⁷:

“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 the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property, owes, a duty to the consumer to take reasonable care’.

Thus where a consumer suffers any loss or injury by manufacturer's products, the manufacturer was held liable, if negligence could be proved against them. The principle laid down in *Donoghue v. Stevenson* was made applicable also to the suppliers, distributors, retailers, packagers, bottlers and repairers over a period of time. Manufacturer's liability was reiterated time and again by the Court in various judgments⁹⁸.

⁹⁷ *Id* at 599 case

⁹⁸ *Grant v. Australian Knitting Mills Ltd.* (1936) AC 85, *Stennet v. Hancock* (1939) All. ER 578, *Holmes v. Ashford* (1950) 2 All.ER 6

In all such cases the manufacturer was at fault – and he did not take reasonable care. A higher degree of care would be expected in respect of products which are likely to cause extensive damage or grave injury than those where there was no apprehension of such damage or injury. Product liability has, however, now been put on a firm footing with the adoption of EEC directives in the United Kingdom.

With regard to tortious liability it may be noted that until recently it was possible for a person to exclude liability for negligence and this device was sued extensively in contracts for supply of goods or services. The Unfair Trade Terms Act, 1977 contains provisions to suppress this evil. It is laid down that an exemption clause which excludes or limits liability for negligence causing physical injury or death would be unenforceable. With respect to damage or loss of property caused by negligence such exemption clause may be upheld if it is reasonable⁹⁹.

Law of Torts and Contract played an important role in protecting the interest of consumer in United Kingdom. These laws provided remedy against the manufacturer with respect to products. Besides this, the judiciary also imposed liability on the manufacturer.

Before the emergence of the modern consumer movement, the consumers had to depend upon the ordinary remedies for defective products under

⁹⁹ *Supra* note. 6 at 10

- a) Laws relating to implied conditions and warranties, requiring the goods to be true to their description, of merchantable quality and fit for the buyer's purpose,
- b) Guarantees of after sale services, and
- c) Advertisements in the form of contractual promises.

Before the First World War, 'Laissez faire' served to bring about the rule of 'Caveat Emptor'. Common law was the protection against aggressive salesmanship, fraud and breach of promises. British National Institute in UK played a significant role in assessing the interests of consumer in 1925. In Great Britain the consumer movement actually began to gather momentum during the years following Second World War through voluntary actions mostly taken by Women's Organizations. For the first time one of the leading political parties came into the picture in a significant manner, when in 1955 the Labour Party put out a pamphlet entitled "*Battle for the Consumer*". It not only argued the case for quality marketing of goods but also the setting up of a Consumers' Council. Another significant development of the late fifties was the establishment of a Retail Trading Standards Association with the primary objective of helping to resolve disputes between retailers and their consumers. In fact, a consumer revolution was gradually taking place in Britain¹⁰⁰.

In Britain the main consumer realities of the 70s which were in existence which intensified the consumer movement were viz. skepticism, knowledge and professionalism. Consumer protection in Britain is an established concern,

¹⁰⁰ Pylee M V, "Consumer Protection in Developing Society" quoted in *Consumer Protection and Legal Control* by Leelakrishnan P, (Eastern Book House, Lucknow, 1981) at 19

addressing itself to the matter of consumer protection in a very different way. Consumer advice is a major focus. Much of this advice is preventive rather than redressal of actual grievances¹⁰¹.

The British Parliament had taken initiative to protect the interest of consumer and to redress their grievances by enacting various legislations with regard to various kinds of consumer exploitation like consumer credit, monopolies, restrictive and unfair trade practices etc.

In Britain enormous amount of sales takes place on credit. It became a practice for the manufacturer and the trader, to provide or supply the goods on credit to the buyer and to recover the sale price in easy installments. Generally goods were bought from the dealer by the company and then the latter entered into hire purchase agreement with the customers. As a result, the dealer was not answerable to the customer for any fault in the goods as there was no privity between the two¹⁰². To protect the interest of the affected consumer and to provide relief, the Parliament passed The Hire Purchase Act, 1938. It was then replaced by Hire Purchase Act of 1965, in respect of faulty goods supplied under the hire purchase agreement, conditional sale agreement and credit sale agreements, under the Supply of Goods (Implied Terms) Act, 1973. The implied conditions of merchantability and fitness of purpose are to be read in the same manner as in the case of Sale of Goods Act, 1979. In this situation consumer was not in a position to protect his rights under these enactments.

¹⁰¹ Werner F. Menski, "Consumer protection in India and Britain" Vol. 17, *Consumer Confrontation* Ahmadabad, (1987) at 11

¹⁰² For an excellent history of hire purchase law see Borrie & Diamond, *The Consumer Society and the Law* (Chapter IV, Penguin Books, 4th Ed., 1983)

Finally to protect the consumer from all the implications of consumer credit, the Consumer Credit Act, 1974 was enacted based on the report submitted by the Crowther Committee¹⁰³.

To regulate and control monopolies in United Kingdom, the British Parliament enacted the first law that is Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948. Further the passage of the Restrictive Trade Practices Act, 1956 brought into existence the Restrictive Practices Court. Under this enactment certain agreements which restricted competition were required to be registered with the Registrar of Restrictive Trading Agreement. Cases of false or misleading trade descriptions through advertisements are covered by the Trade Description Act, 1968. This Act makes unfair trade description as an offence. There is also a prohibition on the making of a false statement regarding services, accommodation or facilities provided during the course of business.

The above enactments made by the British Parliament failed to protect the interest of consumer. All these enactments are haphazard. To avail justice, the consumer had to move from pillar to post. There was no separate statute to protect the interest and the rights of the consumer. In this situation, a duty was imposed on the Parliament to make a comprehensive legislation to protect the interest of consumer.

¹⁰³ *Supra* note. 6 at 10 - 11

For the first time the manufacturer's liability towards the consumer was explained by the Report of the Royal Commission on Consumer Protection known as the Malony Report in 1962. This report deals with the principle of collateral contract as well as the victim of deception induced to buy goods by offering guarantee. Later the Lord Pearson Commission I 1973, recommended applications of strict liability to consumer sales. The Strasbourg Convention in 1977 on Production Liability in regard to personal injury or death, reflected the same view¹⁰⁴.

Based on the new thinking on consumerism, the consumers were given wide space to breather by the Unfair Contract Terms Act, 1977 and the Consumers Transactions (Restrictions on Statements) Order, 1978. This Act excluded the possibility of exempting the supplier from liability under any express terms in the contract by making such terms non-applicable to consumer goods that is goods of type ordinarily supplied for private use or consumption¹⁰⁵.

Later, with the European Commission Directive of 1985 the British Parliament enacted Consumer Protection Act, 1987. This was the most important and comprehensive legislation to protect and promote interest of consumer. This Act imposes a strict product liability, making the producer jointly and severally liable to the consumers. Under *Sec. 7* of the Act, they cannot escape the liability by any terms in the contract. During 1990s the most important and significant Act was made for consumer safety known as Food Safety Act, 1990.

¹⁰⁴ *Supra* note. 33 at 4

¹⁰⁵ *Ibid*

Under this Act directions can be issued at any time for the safety of consumers, whenever found necessary.

Besides all these statutory developments, the remedy under Law of Torts continues to be available to consumers and this has been expressly provided under *Sec. 6* of the Consumer Protection Act, 1987. This Act consolidated with amendments, the Consumer Safety Act, 1978 and the Consumer Safety (Amendment) Act, 1986¹⁰⁶.

In United Kingdom the manufacturer and product liability is recognized under common law provisions. Parliament has taken initiative from time to time and made various legislations for the protection of consumers.

After understanding the development of consumer movement in the most important developed countries like USA and United Kingdom. Now let us examine in brief the growth of consumer movement in other developed and developing countries in the world like Japan, Australia, Yugoslavia, Poland, and New Zealand etc.,

¹⁰⁶ *Id* at 5

2.3.4 CONSUMER MOVEMENT IN OTHER COUNTRIES

Even though during 1960's America and United Kingdom pioneered in developing consumer enactments and policy to protect the consumer in the market place. Consumers are cheated and exploited in other countries also. In other countries consumer movement gained due to consumer consciousness, consumer believed that he is not getting what he deserved in the market. Voluntary organizations also helped in this aspect.

1) Consumer movement in Japan

Japan is one of the most technologically developed countries in the world. Japan has demonstrated how consumer revolution can take place along with rapid economic development and the emergence of a mass consumption society. In Japan, some laws, like Food Sanitation Law, enacted in the period of economic recovery after Second World War, contain certain benefits for consumer, but the conscious tackling of the consumer problems started only after the high growth period when unsafe products started causing serious suffering to consumers.

Consumer organizations in Japan are extensive and well organized particularly in consumer boycott activity. They are largely made up of women especially 500 housewives' groups. These groups are active in product testing as well as boycott¹⁰⁷.

¹⁰⁷ *Supra* note. 60 at 8

Japanese Housewives Association was founded in 1968 at Tokyo, after a series of administrative and legislative measures introduced in 1948. The basic law for the protection of consumer was established accordingly every organization was directly responsible to the Prime Minister. In Japan, consumer protection is not confined to the national government alone. It is the responsibility of all the municipalities and other local governments. A large number of voluntary consumer organizations have also sprung up devoting increasing attention to the other aspect namely, information, education and guidance. The movement in Japan took its roots through the various forms or measures of protection of consumer taken by the government. In addition to organization like Japanese "Shufureh", other main current of movement were consumer union, grass root consumer groups and government sponsored consumer groups. While functioning autonomously they combined from time to time for joint action¹⁰⁸.

In 1963, a report on consumer protection was issued by the Council on Measures to Improve Living Standards which had been established in 1961 as an Advisory Body to the Secretary General of the Economic Planning Agency. The report was followed by the establishment of Consumer Affairs Division in the ministries of Agriculture and Forest and the International Trade and Industry in 1964 and 1966 respectively. Soon the law against Unjustifiable Premiums and Misleading Representation (1964) and the Consumer Protection Fundamental Law (1968) were enacted. The Local Government Law was amended in 1969 to designate consumer protection as the responsibility of the

¹⁰⁸ Sharma Chandrakant, *Role of Consumer Organizations in Consumer Protection*, (Kanishka Publisher, New Delhi, 1995) at 14 -15

local government. These legislations now constitute the main base for the protection of consumers in Japan¹⁰⁹.

Japanese Consumer Association (JCA) was formed in 1963 with a combination of government subsidy, subscription to its magazine, donations by manufacturers of products to be tested and government testing agencies. The JCA, made a serious efforts to reduce possible outside influences when it decided to purchase in the open market, the products to be tested¹¹⁰.

The government of Japan is one among the other countries that are now taking a keen interest on developing consumer awareness in the Asia Pacific Region. The Japan Consumer Information Centre (JCIC) a quasi government body is engaged in providing aid for projects related to consumer affairs, overseas. Other efforts are being made in regards to setting up of Regional Training Centre and a testing laboratory¹¹¹.

2) Consumer movement in Australia

In Australia, consumerism provides a fine example of government's purposefulness in the field of consumer protection. In the wake of establishing consumer protection as a national issue, the consumer participation in public management has been attempted. To protect the interest of the consumers the government has sponsored a Consumer Forum to provide consumer

¹⁰⁹ *Supra* note. 33 at 6 -7

¹¹⁰ Arch W. Troelstrup E Carl Hall, *The Consumer in American Society*, (Mc Grew Hill Book Co, New York, 6th Ed. 1978) at 527

¹¹¹ Kanniah Rajeshwari, "The Consumer Force in the Asia Pacific Region" Paper presented in the National Workshop on Consumer Laws, IOCU, 1990

representation on official advisory bodies with a general mandate in the consumer area. It is a standing advisory board under the presidency of the Federal Minister of Trade, Commerce and Industry. The Forum has issued a Declaration of the Basic Rights of the Consumer, which has been accepted by the government as the guideline of its policy. The Declaration specifically asks for effective protection against dangerous products, information about the characteristic of all goods displayed and advertised protection against misleading sales, information and the promotion of all institutions and forms of consumer services and consumer consultation by the government and the institution of its economy. The Consumer Forum has become the exclusive platform of discussion and final compromise between different sectors of the Australian economy, which must be accepted as the guideline of government policy on trade prices and quality, its deliberations have come to acquire tremendous weight¹¹².

Consumer protection received significant attention both at federal and state levels in Australia. Australian Consumer Association (1959) is largest, and produces a monthly magazine Choice. CLA-N (Consumer Law Association-National) is an emerging Australian network of consumer lawyers. It is to be noted that most of the consumer protection agencies were established in the seventies¹¹³.

¹¹² *Supra* note. 77

¹¹³ *Supra* note. 108 at16

In Australia consumer testing is undertaken without government support. The private consumer testing agencies in the country has been most careful to steer clear of business entanglements. They have recruited technical personnel to give impartial assessment of products bought on the open market.

3) Consumer Movement in Poland

Poland has a very active consumer movement and a system of redress of grievance more or less similar to the Consumer Forums envisaged in India under the Consumer Protection Act, 1986 functioning for the last nine years. Poland, in fact, had the distinction of being the first socialist country to officially register a consumer organization known as 'Polish Consumer Federation' (PCF) set up in 1981. PCF is independent economic organization not under the control of the state administration. The basic organizational unit of the federation are 'Consumer Federation Clubs,' which regularly hold consumer tribunes or meetings between consumer and representatives of local authorities, managers or economic units and organizations operating in the area to successfully resolve consumer problems. The clubs called Municipal Clubs, Village Clubs, and Community Clubs depending on their territorial range¹¹⁴.

Another important function of the Consumer Federation is to regularly hold telephonic opinion surveys in cooperation with newspapers on all aspects concerning consumers from price and quality to postal and transport services. Their opinion found a reflection in legal solutions. The Consumer Federation

¹¹⁴ *Supra* note. 77

lawyers extend advice to consumers in person, by telephone or by correspondence. Sometimes these consultations are followed by intervention. In 1984, the Federation was endowed with the right to institute, legal action in civil cases on behalf of defendants or on its own behalf in favour of consumers¹¹⁵.

In 1985, the Consumer Federation created a 'social quality circle', that gathers people interested in a particular problem. Participants discuss the problem in depth, come to conclusions and publish them regularly. A Product Testing Centre has been set up in 1988. It conducts independent tests on products available in market to assess their quality and suggests improvements. The mass media in Poland has also taken up the cause of consumers in right path. Regular programmes meant for consumers are being broad cast and regular consumer columns in many newspapers, published. The Federation also publishes its own monthly magazine called "ATUT"¹¹⁶.

Further the researcher aims to highlight the development of consumer protection in other countries like Sweden, New Zealand, and Yugoslavia.

4) Sweden is a country that has particularly made a distinctive effort. It has done a pioneering work in the field of consumer protection through an active government policy. Two comprehensive legislations have been passed. They are Marketing Practices Act and the Prohibiting Improper Terms of Contract Act, 1971. These Acts are implemented through the Office of National Consumer

¹¹⁵ *Ibid*

¹¹⁶ *Ibid*

Ombudsman (NCO). Senior Official of NCO is appointed directly by the King in Council and has complete autonomy and is immune from political pressure. His position is similar to that of civil servant¹¹⁷.

In Sweden, since the early fifties three institutions of great significance have been functioning for consume protection. These are the National Institute of Consumer Information, Ministry of Consumer Welfare and the State Financed Consumer Council¹¹⁸.

The Swedish citizens consider the Consumer Ombudsman as the primary method of obtaining consumer protection. The Consumer Ombudsman made a significant contribution towards creating a climate of consumer protection in Sweden. Swedish consumers are made aware of consumer issues because of his work. He is known throughout Sweden as a Consumer Advocate and is looked at as a focal point for securing consumer justice¹¹⁹.

5) The most interesting development from the point of consumer protection has taken place in **New Zealand**, where the influence of consumer's movement is reflected not only in legislation but also in the organization of consumers. In 1959, a Consumer's Council was established under the Ministry of Industry and Commerce. By 1966, consumer's institute was formed. The Council has been placed outside the administrative control of the Ministry and it also invites the public to become subscribing members of the Institute. The Institute's

¹¹⁷ *Ibid*

¹¹⁸ *Supra* note. 100

¹¹⁹ *Supra* note. 77

objectives are to educate the public of the relative disadvantages of different available brands to publish useful literature¹²⁰.

In New Zealand, the consumer organization undertakes consumer testing through government subsidy. The government linked the testing facilities of its Bureau of Standards and of its Universities with the consumer testing movement and has developed a quasi autonomous consumer testing movement supported by voluntary subscription.

6) In **Yugoslavia**, consumer organizations for decades have been keeping a check on irregularities and unfair market practices. They involve the public extensively, and about 6,000 Consumer Councils have been formed in the country. The influence of Consumer Councils is increasingly felt in the domain of production. There is special center in Belgrade for giving expert judgment on the quality of consumer durable and to inform the public about it¹²¹.

Analysis of consumer movement in other countries proves that, it was a movement of consumers and organizations that came forward to protect the interest of consumers. In almost all countries this movement was initiated by Consumer Organizations.

The further part analyzes the development of consumer movement at international level.

¹²⁰ *Supra* note. 100

¹²¹ *Supra* note. 77

PART II

2.4 CONSUMER MOVEMENT AT INTERNATIONAL LEVEL

2.4.1 INTRODUCTION

Every day of our lives each one of us plays a part in the intricate machinery of international trade. We may be awakened in the morning by a Japanese clock-radio, dress in English tailored clothes or Italian shoes, run our Germany made automobiles on Middle Eastern or Venezuelan fuel, sip French wine at dinner, with Central American fruit for dessert and light our homes by means of wires manufactured from African or Chilean copper. In similar fashion, foreigners consume and use countless American products, including bread from United States grain. They ride in American made jet aircraft or on roads bulldozed or paved by American earthmoving machinery. They go to discotheques wearing American blue jeans while they dance to American made records. The list is endless¹²².

As consumers, each time we buy a product made in a foreign country or made from raw materials from a foreign country, we participate in the vast and complex interchange or international trade. International trade has a substantial impact on our life. Every one being consumer one way or other let us verify the development of consumer protection at the international level.

¹²² *Supra* note. 110 at 526

To understand the development of consumer movement through various voluntary international organizations, the researcher has discussed the development under two important categories. They are

1. European Economic Community and
2. Growth of consumer movement by voluntary international organs

2.4.2 CONSUMER MOVEMENT IN EEC

There is rapid development in European consumer development. An unprecedented number of consumer protection organizations have emerged in Europe. Some are stimulated by the cooperative movement, some given governmental assistance, and some arising from independent efforts. The European Economic Community (EEC) has founded an appropriate outlet to the ordinary citizens of the common market in the field of consumer protection. Jean Monnet was recognized as the founding philosopher towards the establishment of EEC. He always considered that the welfare of the consumers lay at the heart of the reasoning in favour of common market (EEC)¹²³. The aim was to achieve high productivity to keep competition and therefore, lower prices combined with the greatest variety of consumer choice across the community as a whole. The 1957 Treaty of Rome, in which the EEC Charter set out the rules governing the 'four freedoms' – movement of goods, services, people and capital – consisted the indispensable frame work of the market and

¹²³ Rich W. Micklitz HW, *Consumer Legislation in the EC Countries : A Comparative Analysis*, (Britain, 1980)

the procedures to deal with practices restrictive of competition¹²⁴. Consumer protection is the positive intervention by public authorities in the market place. The Consumer Protection Laws enacted in the US during sixties found early echoes in Europe.

In European countries, the period of substantial development in the consumer protection laws began during 1960s and their main purpose was to prevent trading abuses caused due to imbalance of power between the ordinary persons and the producers of goods and service providers. In 1973, the Consumer Organization supported the entry of Britain in to the European Economic Community as they wanted to benefit from the common market and the goods flowing freely into their markets. In 1975, a specific programme for consumer protection was approved by the Council of Ministers of the Community. In this respect, the President of the Commission of the European Communities observed that “we must make the community a practical reality in terms of everyday life”¹²⁵. The main objectives to be achieved by the 1975 programme include:

- a. Effective protection against hazards to consumer health and safety,
- b. Effective protection against damage to consumers’ economic interests,
- c. Adequate facilities for advice help and redress,
- d. Consumer information and education,

¹²⁴ *Ibid*

¹²⁵ Commission of the European Communities, Consumer Protection and Information Policy, Foreword (1977)

- e. Consultation with and representation of consumers in the framing of decisions affecting their interests.

Consumer Organizations looked to the European Community to give a lead in more explicitly directed initiatives and much faith was placed to implement the above rights. The Commission has submitted its draft regarding mis-leading advertisements, door step contracts, consumer credit and product liability¹²⁶.

Further, Draft Resolution concerning the second programme of the EEC for 'Consumer Protection and Information Policy' was submitted to the Council in 1979. In 1981, the Council of Ministers of the European Economic Community, to attain harmonization in the common market and to unify the law relating to defective products, adopted an important directive, known as the EC Product Liability Directive, issued on July 25, 1985. By introducing the Directive, it was recognized that the varied levels of protection afforded to consumers in different countries could distort the movement of goods in the common market and sought to remove this obstruction to free trade. So the Directive was issued to implement, throughout the common market, a strict liability system of compensation to consumers for death, personal injury or damage to property due to defects in products. The system introduced by the Directive, which supplemented the national laws, sought to prescribe minimum

¹²⁶ Bourgoignie Thierry M, "Consumer Law and the European Community" in Bourgoignie Thierry M and David M. Trubeek, *Consumer Law Common Market and Federation in Europe and in the US* (1984)

rights of consumers, upon which they could rely and the producers could be held responsible¹²⁷.

2.4.3 GROWTH OF CONSUMER MOVEMENT BY VOLUNTARY INTERNATIONAL ORGANS

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 inter governmental 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 the 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 at the international level to deal with consumer protection and the emphasis is on providing basic goods and services¹²⁸.

At the international level, many Non Governmental Organizations and consumer groups (labour organization, business communities and their

¹²⁷ *Supra* note. 33 at 8

¹²⁸ *Id* at 9

representatives and industrial groups) have organized themselves to advance the cause of consumers.

The prominent and internationally known organization, International Organization of Consumer Union (IOCU) was formed in 1960 at Hague by consumer groups of United States, Britain, Australia, Belgium and Netherlands, with a view to promote world wide cooperation in consumer information, education and the comparative testing of goods and services. The IOCU is a non commercial organization. Its members have agreed to refrain from any use of their membership for advertising purposes, for promoting the sale of any product, or for any commercial purpose whatsoever. The name of IOCU or references to IOCU publications and other materials may not be used for advertising or for any commercial purposes.

Transcending the national level, it found poignancy by the United Nations Organization and as a result the consumer interest got expression at the 29th Session of the United Nations Commission on Human Rights, held in Geneva in 1973¹²⁹. In August 1977, the UN Economic and Social Council passed a Resolution on Consumer Protection calling upon the UN Secretary General to submit on its sixty fifth session a survey illustrative of the range of institutional and legal arrangement existing in the field of individual consumer protection at the national level¹³⁰.

¹²⁹ "Consumer Affairs", (London, Britannica Book of the Year, 1974) at 206

¹³⁰ Fazal Anwar, "Consumerism : An International Perspective", *Keemat*, CGIS, Bombay, at 6

IOCU has played a leading role in the development of consumer affairs in the Asia Pacific Region ever since the founding of the Asia Pacific Office in 1974 in Malaysia. The main work of IOCU has revolved around developing consumer groups in the region, providing information and representing regional interests at the international level. The IOCU Penang Office is also the focal point for many global or regional issue oriented networks such as Consumer Interpol, Health Action International and Action for Rational Drugs in Asia (pharmaceuticals) Pesticide Action Network (Pesticides), etc. These networks facilitate information exchange, linking up, collaborating and joint advocacy with other likeminded groups on issues of common concern and interest. IOCU has consultative status with several UN agencies such as ECOSOC, FAO, WHO, UNIDO, UNICEF AND UNESCO¹³¹.

Let us examine role played by some of these UN Agencies in protecting and promoting consumer interest. Consumer movement at international level further gained a momentum at the intervention of UN General Assembly. In 1980, the UN Secretary General emphasized that “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 international level”¹³². This 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

¹³¹ *Supra* note. 108 at 17

¹³² Report of the Secretary General, “International Activities for Consumer Protection”, in IOCU, Proceedings of the International Seminar on ‘Law and the Consumer’, Hongkong, January, 6-10, 1980

transnational Corporations. So the problems encountered by consumers are often not exclusively 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 measures, 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. That may also affect producers in exporting countries by depriving them of the income generated by exports. Again the issue that calls for wider concern is the exchange of information on banned and severely restricted products at international level in order to enable importing countries to protect themselves adequately¹³³.

In view of the effectiveness of programmes at the international level, many international organizations have been actively contributing towards developing a global consumer cooperation. Inter Governmental Organizations are also participating in the process by creating special divisions for the protection of consumers in different areas. Food and Agricultural Organization (FAO) is not only pursuing special programmes for food but is also providing necessary guidance for pursuing the consumer objectives. The International Labour Organization (ILO) promotes the interests of workers (as consumers) by providing them basic necessities of life, reasonable in terms of price, quantity and quality. The welfare facilities at the work place and providing education to

¹³³ *Ibid*

workers also help in strengthening cooperative consumerism. The World Intellectual Property Organization (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 consumers¹³⁴.

The WIPO is, therefore, concerned about the measures to use industrial property for the improvement of the protection of consumers particularly in developing countries and relations between developed and developing countries. The Expert Committee of WHO is also active for the protection of consumers and has prepared a list of drugs considered 'most essential' for maintenance of health to help governments in the selection and procurement of drugs at a reasonable price, which is particularly important for developing countries with limited financial resources. The list leaves scope for necessary modifications which may be required to meet local conditions and needs. However, the other drugs have not been declared as not useful, but it has been emphasized that the enlisted drugs are essential to ensure basic health care of the majority of the people¹³⁵.

To protect the interest of consumers, the Inter governmental Working Group on the Code of Conduct of the Commission on Transnational Corporations, in its

¹³⁴ *Supra* note. 33 at 10

¹³⁵ World Health Organization, The Section of Essential Drugs, Report of WHO Expert Committee, Technical Report Series No. 165, 1977

4th session on March 1978 laid down certain formulations¹³⁶. To evolve equitable principles and rules for the protection of consumers and also to restrict business having adverse effect on consumers, efforts are continuing for framing model laws in order to help developing countries to devise appropriate legislations. The Third Adhoc Group of Experts on Restrictive Business Practices of UNCTAD identified certain restrictive business practices, affecting consumers, including fixation of prices, re sale price maintenance, refusal to sell, the price policies of enterprise on an individual basis, acquisitions, mergers and take over agreements between enterprises concerning standards, and the supply of spare part and replacement in particular for after sale services¹³⁷. As regards the role of UNCTAD, at the meeting of the 'Group of Governmental Experts on the Role of the International Property System in the Transfer of Technology' held in October, 1977 considerable attention was given to the matter relating to implication of trade marks for consumer protection in the agreed conclusions and decisions as well as in the 'Declaration of Government Experts from Developing Countries Members of

-
- ¹³⁶ (i). Perform their operations in a way that does not cause dangers to the health and safety of consumers and maintain consistent quality of products,
(ii). Disclose, to the appropriate authorities of the country in which they operate, information relating to features of their products which are directly related with the health and safety of consumers,
(iii). Disclose all information relating to prohibition, restrictions, warnings and other regulatory measures imposed in other countries on grounds of health and safety protection on products which they produce or market or propose to market and on process which they use or propose to use in the countries concerned,
(iv). Disclose appropriate information relating to experimental aspects and uses of products which they propose to use or market in the country concerned,
(v). disclose to the public all necessary information on the contents and the possible dangers or other adverse effects of the products they produce or market or propose to produce or market in the countries concerned by means of proper labeling, informative and not misleading advertising and other appropriate methods and
(vi). Cooperate with the governments of the countries in which they operate with a view to promote standards for protection of the health and safety of the consumers in relation with their production or marketing in the countries concerned.

¹³⁷ Singh Gurbax, *Law of Consumer Protection*, (Bharat Law Pubn, Jaipur, 1991) at 7

the Group of 77'. In this respect, the UNCTAD prepared a study giving a comprehensive analysis of the role of trademarks, particularly foreign owned trademarks, in consumer decisions and its consequences for developing countries¹³⁸.

The Food Science Control and Consumer Protection Group of the FAO has played an important role in the matter of increasing food production, raising food quality, promoting food processing to meet established standards, conservation of food resources and in improving food storage, marketing and distribution system. An important step was the documentation at the international level, developed to help the countries to reach desired goals and publication of general guidelines for food control services, including preparation of Model Food Law, laboratory and inspection manuals, specialized documents on the problems such as mycotoxins, expert inspection, training aids, etc. To set international standards, the Codex Alimentarius Commission, established in 1963 has also done a significant work. Its 26th session was held in Rome from June 30th – July 7th 2003. Its work is also related to legislative aspects of food irradiation to prevent food losses, labeling, advertising and nutritional questions relating to foods¹³⁹.

The United Nations Industrial Development Organization (UNIDO) has made contributions with regard to the safety of consumers by providing the required institutional machinery to promote adequate quality control procedure for

¹³⁸ *Ibid*

¹³⁹ *Supra* note. 33 at 12

improving the quality of goods and products organization and implementation of national quality certification marketing schemes which guarantees certain relevant quality standards. Its integrated programmes include the continuing technical cooperation projects and planned activities in standardization, quality control and quality certification. In the area of food for infants and children and the safety and nutritional value of such food, the UNICEF has done appreciable work by encouraging breast feeding over powder milk for infants¹⁴⁰.

Further, in 1985 IOCU established an Office for Latin American and the Caribbean in Montevideo, Uruguay. In 1988, IOCU made inroads into Africa with two Conferences that gave direction to the budding consumer movement there. Again in 1989, IOCU recognized its Central Office in Hague into a Regional Office for Europe and North America. In response to exciting political changes underway in the socialist countries, it also brought Western and East European Consumer Groups together for first time in Warsaw, Poland¹⁴¹.

Two other main inter governmental institutions involved in consumer affairs in the region are the Organization for Economic Cooperation and Development (OECD) and the Economic and Social Commission for Asia and Pacific (ESCAP). ESCAP has had a direct but modest influence on the development of Consumer Protection Policy in Asia Pacific Region. OECD Council decisions

¹⁴⁰ *Ibid*

¹⁴¹ Crosby Louis, "Jeep in Jeopardy : The Suzuki Affair", Vol.9 (5), *Consumer Confrontation*, Ahmadabad, (Sept/Oct. 1990) at 11

are legislating in member countries and the recommendations and guidelines are voluntary, moral obligations on member countries¹⁴².

To study governmental consumer protection polices in member countries, the OECD constituted a Committee on Consumer Policy. Its report highlighted the problems relating to consumer credit and the principles for providing more consumer information and protection. The committee on consumer policy also publishes annual report on consumer policy in OECD member countries, reviewing institutional developments and enactments and amendments to existing regulations as measures for providing consumer information and education. Besides, the Inter Scandinavian Committee on Consumer Matters coordinates research and information on consumer protection and keeps in touch with the National Consumer Councils in the Scandinavian countries¹⁴³.

In between, the various sporadic efforts have been noted in other countries such as the National Boycott Committee of Mauritius and its branch, the Consumer Health Action Network (CHAN) which held protest marches in 1989, thus making Mauritius the 11th country to join the Second Nestle Boycott¹⁴⁴.

IOCU has done invaluable work in the field of consumer protection. It is having membership from over 50 countries as well as government financed Consumer Councils, Labour Unions and similar groups and possessed a consultative status with various international agencies. The International Chamber of Commerce (established in 1920 in Paris) also deliberated on the

¹⁴² *Supra* note. 111

¹⁴³ *Supra* note. 33 at 13

¹⁴⁴ Patrica, *The CUTS Newsletter*, (January - March, 1990) at 14

issue of consumer protection in 1997 and established an international Council on Advertising Practice and drafted a Code of Advertising Practice. Its Code of Market Research Practice worked for laying down standards for enterprises specializing in market research. The last half century has been phenomenal increase in consumerism and with that the efforts to protect the interest of consumers¹⁴⁵.

UN also played an important role in protecting and promoting the interest of consumer through its various agencies. Besides establishing various agencies the UN has laid down vital guidelines for the benefit of consumers. On April 9, 1985 the UN General Assembly, with due negotiations in the UN Economic and Social Council (ECOSOC), adopted by consensus a set of Guidelines on Consumer Protection¹⁴⁶. They provided a framework to strengthen policy and legislation to protect consumers and also promote international cooperation in this field. These guidelines include provisions on:

- a. Physical safety of consumers,
- b. Protection of economic interests of consumers,
- c. Consumers' access to information needed to make informed choices,
- d. Measures enabling consumers to obtain proper redress and
- e. International cooperation in the filed of consumer protection

The Guidelines also proposed measures in the essential areas of food, water and pharmaceuticals, emphasizing for product quality control, adequate

¹⁴⁵ *Supra* note. 33 at 13

¹⁴⁶ UN Guidelines for Consumer Protection, Resolution No.39/348, dated 9th April, 1985

distribution facilities. Standards, labeling and education and research programmes. The governments are also required to take care in the areas of pesticides and chemicals under the Guidelines.

The Guidelines have identified the main concerns in consumer protection with reference to consumer's basic needs, safety, choice, information, consumer education, redressal, representation and healthy environment. The objectives of these guidelines are¹⁴⁷:

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

¹⁴⁷ UN Guidelines for Consumer Protection, Resolution No 39/348, dated: 9th April, 1985, Clause 1

The actual specifications and the legitimate needs which these guidelines are intended to meet are¹⁴⁸:

- a. The protection of consumers from hazards to their health and safety,
- b. The promotion and protection of the economic interests of consumers,
- c. Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs,
- d. Consumer education, including education on the environmental, social and economic impacts of consumer choice,
- e. Availability of effective consumer redress,
- f. Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision making processes affecting them and
- g. Promotion of sustainable consumption patterns.

A perusal of the objectives of these Guidelines and the specifications there under, make it clear that there should be concrete consumer protection policies in each country to be adopted after due consideration of relevant factors applying modern research techniques. There should be adequate infrastructure to develop, implement and monitor these policies. Relevant laws and regulations should also be framed and followed by all the enterprises, national or multinational, conforming to the international standards because adoption of

¹⁴⁸ UN Guidelines for Consumer Protection, Resolution No. 39/348, dated 9th April, 1985, Clause 3

any appropriate policies or measures would necessarily include a consumer friendly legal system¹⁴⁹.

The above mentioned objectives can not be attained without effective legal system. The legal system of a country should, besides taking a note of general consumer safety and advancement of economic interest of consumers, adopt standards for quality of consumer goods and services and distribution. In case of any harm or damage accessible, redressal mechanisms should be available to them. Consumer education should be an integral part of the basic curriculum of the education system imparting sufficient knowledge about health, nutrition, food adulteration, prevention of food borne diseases, product hazards, labeling, weights and measures, prices, and credit conditions¹⁵⁰.

Consumer movement spread all over the world at length and breadth due to the initiative taken by the IOCU and United Nations. The main impetus to the movement was given through revolutionary writings. Various countries adopted different measures for the protection of interests of consumers. All the nations in the world made suitable legislation to protect the interest, health and safety of consumers according to the local needs. Efforts were also made by voluntary organizations in different countries. At international level, IOCU is playing a pivotal role in strengthening the consumer movement. It has

¹⁴⁹ *Supra* note. 33 at 16

¹⁵⁰ *Id* at 17

established the links with other countries and helps in coordination with their activities¹⁵¹.

In this chapter the researcher discussed about the development of consumer protection at international level and its development through various international organisations like IOCU and United Nations. The present research is the functioning of redressal agencies in the State of Goa, which is part of Indian continent. Now let us verify the development of consumer movement in India.

¹⁵¹ *Supra* note. 108 at 18

CHAPTER III

DEVELOPMENT OF CONSUMER MOVEMENT IN INDIA

“History, we can confidently assert, is useful in the sense that art and music, poetry and flowers, religion and philosophy are useful. Without it -- as with these -- life would be poorer and meaner; without it we should be denied some of those intellectual and moral experiences which give meaning and richness to life. Surely it is no accident that the study of history has been the solace of many of the noblest minds of every generation”.

Henry Steele Commager¹

3.1 INTRODUCTION

Consumer protection is not a new phenomenon in India. This has been inter alia, one of the prominent socio-economic problems inherited by our nation with its independence in 1947. Since, then, various consumer oriented enactment were made by the National and State Governments from time to time to tackle this malady which bear ample testimony to its existence, growth and ramification.

Indian consumers are exploited by the sellers at the market place. Most of the consumer's in India are illiterate, living below the poverty line who becomes a victim at the hands of trader. The consumer below the poverty line suffer the most from fraud, excessive prices, exorbitant credit charges, poor quality of merchandise and service. Protection of consumer is not a new concept. From time immemorial Indian consumers were protected through various scripts written in ancient India.

Historically speaking, the problem has much deeper roots in the ancient Indian jurisprudence, perhaps a little beyond the imagination of modern jurists, law

¹ http://www.wisdomquotes.com/cat_history.html dt.12.04.2010

makers, and policy planners. In this chapter, an attempt has been made to briefly examine the historical perspective of consumer protection in India.

Development of consumer movement in India can be broadly divided in to two categories. They are Consumer Jurisprudence in India pre and post independence scenario. Pre independence era mainly speaks about the role played by the British Government to protect the consumer in the market place. Post independence scenario deals with the various enactments made by the Parliament from time to time to protect the interest of consumers.

The development of consumer jurisprudence in India can be further divided in to three categories. They are

1. Vedic era
2. Medieval period
3. Pre independence era and
4. Post independence era

3.2 CONSUMER JURISPRUDENCE IN INDIA

Consumer protection is an old concept in Indian scenario. Consumer was a victim at the hands of the trader and he has been exploited since ancient periods. The seeds of the idea of protecting the consumer can be traced back to the ancient period or Vedic era that consists of various literary sources which deals with consumer protection.

3.2.1. Vedic Era

India has a long history of consumer protection, dating back to the **Vedic age** (5000 BC to 2500 BC). The Vedic Age in India, considered to be the first literary source of civilization, is seen as a glorious period of cultural evolution in the ancient world. The word 'Veda' signifies the knowledge of growing civilization and intimate problems of life. The Vedas are not books of law, but are the repository of culture delineating the feelings and habits of the people of the time which indicate and give vivid ideas of legal concepts in a developed civilization. Matters relating to civil rights and criminal offences are elaborately noted in the Vedas. Through out 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 are: the Manusmriti (800 BC to 600 BC), Kautalya's Arthashastra (400 BC to 300 BC), Yajnavalkyasmrti (300 BC to 100 BC), Naradasmrti (100 AD to 200 AD), Brihaspatismrti (200 AD to 400 AD), and Katyayanasmrti (300 AD to 600 AD)².

Glimpses from these literature show that adulteration of different consumer goods was prevalent in ancient India and was mainly practiced by the trading class. The Manusmriti and the Yajnavalkya smriti recommend that a person who deals in false gold and sells unclean meat should be maimed and also be made to pay the highest amercement. Similarly a person should be punished for adulterating (marketable) commodities by a fine of the first amercement. The

² Singh Gurjeet, *The Law of Consumer Protection in India Justice Within reach*, (Deep & Deep Publications, New Delhi, 1996) at 44

Arthashastra and Yajanvalkya smriti also mention the malpractice of adulteration and accordingly recommend punishment for the offence. The Arthashastra, recommended imposition of a fine of twelve panas on traders who adulterated grains, fat, medicine, perfumes, salt, and sugar and by mixing things of similar nature. The Brihaspatismriti also contains instances of the practice of adulterating goods, 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 severely³.

Use of false balance and fabrication of weights and measures was another criminal tendencies which appear to have been common among the trading community in the ancient times. Accordingly, from the very early times, the texts paid special attention to this criminal trait. For instance, the Manusmriti provided that all weights and measures must be duly marked by the king and should be reexamined 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. It also prescribed that at the end of every four months, weights and measures and balances used by the traders were to be reexamined and re stamped by the officers to prevent fraudulent manipulation. Deceiver was fined twenty seven and a quarter panas. Kautilya further lay down proportionate fines ranging from three panas and

³ *Id* at 44 - 45

more for pressing and forging false weights and measures. Naradasmriti and Brihaspatismriti also prescribe punishments for falsification of weights and measures⁴.

In ancient times, the trading community used to exploit the gullible customers by charging excessive prices. To save the customers from this arbitrary practice, the State Government publicly declared the rates for the purchase and sale of all marketable commodities. According to the Manusmriti, it was the duty of the king, to fix the rates for the purchase and sale of all marketable goods taking into consideration transport charges, original value of goods, incidental expenses and margin of profit. Such fixation should be done once in five nights or fortnightly and publicly. The Arthasastra was strict in its approach on this aspect. It prescribed a fine, the amount of which depended upon the extra profit made by the seller. It has been mentioned that, the trader who raises the price to an extra profit of five percent beyond the limit fixed by the State, was to be fined two hundred panas. Accordingly the fine may extend up to one thousand panas. Yajnavalkyasmriti stated that the sale and purchase should be conducted daily according to the value fixed by the king. Demanding higher price was punishable⁵.

Other important areas concerning consumer protection expressed in the Arthasastra are; the Regulations concerning the sale of animal flesh and the obligations of professionals like artisans and craftsmen, washermen, weavers,

⁴ *Ibid*

⁵ *Id* at 46

goldsmiths, actors and physicians. Meat sellers were required to follow certain rules like purity, freshness etc. The seller was to be fined twelve panas for selling the swollen flesh and without head and legs of the animal killed, rotten flesh and flesh of dead animals. If he sold the flesh of forbidden animals like cats, dogs, and donkeys, the offence became very serious and the vendor was to be fined nine hundred panas or instead of it, his hand and both legs 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. Kautilya's Arthashastra is perhaps the only classical text which mentions the 'Code of Ethics' for various professionals⁶.

During this era, the people's interaction with merchants, sewer, weaver, potter, garland makers, tanner, distiller, physician, and the references of the dealing with various wrongs done in the usual commercial discourse are found in Vedas. According to Kautilya, artisans like blacksmiths and carpenters were to generally work in guilds and receive from people material for their work. In case of unreasonable delay in the delivery of furnished articles the workers were to receive wage cut of one fourth of their full wages and were also to be fined twice the amount of wages for their slackness. Arthashastra was very specific about the quality of standards expected for the foodstuffs. The conduct of a washer man has been specified in the Manusmṛiti. The washer man is reminded to wash the clothes gently on a smooth board of samali wood. He would also ensure that only the proper owner received back the entrusted

⁶ *Id* at 47

clothes and not any other person. He was again duty bound not to allow anyone other than the original owner to wear the clothes⁷.

It is very clear that, during the ancient period customers were adequately protected from the unscrupulous practices followed by the traders. The ancient texts provided various kinds of punishment for different kinds of trading practices adopted to earn more and more profits in the market place. After the ancient Vedic era we can discover the importance of consumer protection during the medieval period.

3.2.2. Medieval Period

Protection given to the consumer can be traced during the Mughal times. **Historically** speaking, India is believed to have been governed by Muslim rule from 712 AD to 1765 AD. The references to the concept of consumer protection are found during the time of the Khaljis. It is said that Sultan Ala ud-Din Khalji (1296 AD to 1316 AD) had introduced strict price control measures based on production costs. He had also established separate shopping centers in Delhi for

- a) Grains,
- b) Cloth, sugar, dried fruits, herbs, butter and oil,
- c) Horses, slaves and cattle and
- d) Miscellaneous commodities.

⁷ Alex Jasmine, "Indian Legal Thought on Consumer Justice", Vol.3, *Journal of Indian Legal Thought*, (2005) at 112

The supply of grains was ensured by collecting tax in kind in the producing area and keeping it in the royal storehouses. Hoarding of grain was forbidden. The grower was ordered to sell their grain for cash in their fields at fixed prices and was 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 would not be tolerated⁸.

The shopping centers for cloth, known as the sara-i-adl, were established near one of the royal places 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 rights⁹.

The shopping center for general commodities was under the direct control of the commerce ministry. Ala-ud-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

⁸ *Supra* note.2 at

⁹ *Id* at 49

and weights and measures were checked by sending the children employed in the royal pigeon house to buy insignificant 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 also appear 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 cooperation in fixing prices in relation to production costs¹⁰.

Much importance was not given during the medieval period to protect the interest of consumers. To some extent the Mughal rulers protected the rights of the consumers. After the Muslim rule in India, British slowly occupied Indian

¹⁰ *Ibid*

Territory and ruled for a quite long time. During their rule they made certain enactments to protect the interest of consumer at the market place.

3. British Period or Pre independence era

The British came to India in 1600 AD as traders in the form of the East India Company. They did not become the ruling power until the second half of the 18th century. The victory of the Company in the battle of Plassey in 1757 against Sirajudindaulla, Nawab of Bengal, laid the foundation of the British Empire in India. In 1765, Shah Alam granted the Diwani i.e. the responsibility of the collection of revenue to the company, which automatically involved the administration of civil justice. 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 defense. Accordingly, much of the legislation enacted during the British period 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, 1940¹¹.

¹¹ *Id* at 50

Provisions regarding protection of consumers are contained in the most important legislations like the Indian Penal Code, 1860 and the Indian Contract Act, 1872. The principles of the Common Law contained in the Law of Torts also protect the interest of consumers. These legislations are general in nature.

a) Criminal Law

The first ever notable provisions for consumer protection adopted in India are found in the *Indian Penal Code, 1860*¹². This is the most relevant Act for the prevention of food adulteration. *Sections 272*¹³ and *273*¹⁴ of *IPC, 1860* dealing with the offences affecting public health, made certain offences like adulteration of food or drink, making it noxious, and sale of noxious food or drink, punishable

with six months imprisonment or with fine up to one thousand rupees or with both. *Section 274 to 276*, made the offences of adulteration of drugs intended for sale, sale of adulterated drugs and sale of drugs as a different drug, or preparation, punishable with similar sentence. *Sections 264*¹⁵ and *267* of the Code, made punishable, the fraudulent use of false instruments for weighing, and fraudulent use, possession and making and selling of false weights and

¹² *The Indian Penal Code*, Bare Act with comments, case law, (All India Reporter P. Ltd, Nagpur, 2008)

¹³ Sec. 272 of IPC, 1860: Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

¹⁴ Sec. 273 of IPC, 1860: Sale of noxious food or drink

¹⁵ Sec. 264 of IPC, 1860: Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

measures publishable with imprisonment extendable to one year or with fine or with both.

*Section 479 to 489*¹⁶ deals with the fraudulent and misleading description of articles of trade and fake packages. *Section 486* covers offences pertaining to counterfeit trademark. The offence of public nuisance has been defined under *Section 268*, in general, to mean an act or illegal omission which may cause any common injury, danger or annoyance to the public or people in general. Further *Section 269 to 278* deals with certain specific categories of public nuisance.

Chapter XIX of IPC, deals with offences 'of criminal breach of contract of service', making especially punishable the breach of a contract to attend on and supply wants of helpless persons¹⁷, is very much relevant for consumer safety or persons incapable to do so themselves, because of 'youth, or of unsoundness of mind, or of a disease or bodily weakness'.

*Section 133*¹⁸ of *Criminal Procedure Code, 1973*¹⁹ provides special powers to the District/Sub divisional/Executive Magistrate in case of violation of consumer rights specially relating to public nuisance. *Section 153*²⁰ of *CrPC, 1973* entitles any officer in charge of a police station to enter, without warrant,

¹⁶ Sec. 478 to 489 of IPC, 1860 were substituted by the Indian Merchandise Marks Act, 1889 (4 of 1889)

¹⁷ Sec. 491 of IPC, 1860: Whoever, being bound by lawful contract to attend on or to supply the wants of any person who, by reason of youth shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

¹⁸ Sec. 133 of Cr.P.C, 1973: Conditional order for removal of public nuisance

¹⁹ *The Code of Criminal Procedure, 1973*, Bare Act with short notes, (Universal Law Publishing Co. Ltd, New Delhi, 2007)

²⁰ Sec. 153 of Cr.P.C, 1973: Inspection of weights and measures

any place within the limits of such station for the purpose of inspecting or searching for any weights and measures or investment for weighting, used or kept therein. Furthermore, whenever there is a reason to believe that in such a place the weights, measures or instruments for weighing are false, he may seize the same and send information of such seizure to the concerned Magistrate.

Under the criminal law, the only remedy available to the victim of market practice, is imprisonment of the offender. This law fails to provide any benefit to the victim. Most of the victims are incapable to approach the appropriate criminal court to avail the remedy due to their poverty, illiteracy and incompetence.

b) Law of Contract

The law relating to buyer and sellers, their rights and responsibilities and conditions on which the contract is to be executed, is contained in *The Indian Contract Act, 1872*²¹. This Act has specified basic principles by which an agreement becomes a contract. This Act contains important provisions relevant to consumer interest, though, in remedial aspects the scope of the Act is limited because of the concept of privity of contract. Hence, the third party cannot seek remedy generally under the Act which leads to the exclusion of large number of consumers from the purview of the Act. In spite of such limitations, the Act is important from the consumer perspective. In this respect judiciary has played an important role in protecting the interest of the consumers.

²¹ Singh Avtar, *Contract and Specific Relief*, (Eastern Book Co., Lucknow, 10th Ed.2008)

*Section 27*²² of *Indian Contract Act, 1872* declares that agreement in restraint of trade is void. This serves consumer interest by promoting competition and restricting monopolistic tendencies. Consumer can also claim protection of their interests under *Section 73* and *74* of the Act, dealing with compensation for the loss or damage, by breach of contract or may have recourse to alternative remedies available under the Specific Relief Act, 1963. Earlier, the Act contained provisions about sale of goods in *Sections 76 -123*. They were found inadequate to look into the whole law on sale of goods. A new enactment was passed in 1930, namely the *Sale of Goods Act, 1930* to serve the purpose of regulating the sale of goods²³.

Sale of Goods Act, 1930 provides for the settlement of consumer and seller disputes. This Act has changed the principles of 'Caveat Emptor' casting a responsibility on the seller to offer mercantile goods. The ordinary rule in sale of goods is that conditions and warranties are not implied. The Sale of Goods Act provides several important exceptions to this rule. Further there is an implied condition that the goods are free from any charge or encumbrance, are of the description tendered and shall perform according to usage and standards. Besides the return of price or free repair or replacement, damages can also be claimed for any loss or harm or injury suffered by the buyer.

Sale of Goods Act needs a revision, taking into account the complexities of transactions involving goods and services in the market place in the modern

²² Sec. 27 of Indian Contract Act, 1872: Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

²³ Verma S.K., *A Treatise on Consumer Protection Laws*, (ILI, New Delhi, 2004) at 24

times. The myth of consumer sovereignty has been eroded because of the helplessness of the consumer as a buyer of goods and recipient of services. With the progress of science and technology we have entered into an age marked by sophistication of industrial products for the use of the consumer. It has become extremely difficult to judge quality, nature and performance of the product at the time of purchase. In view of this, it is becoming increasingly important to compel a manufacturer, or retailer to make disclosures regarding the composition, performance and hazards, if any, of the product. The older notions of merchantability, fitness of purposes, warranties and conditions have increasingly been the target of attack²⁴.

The Contract Act fails to provide remedy to the buyer of goods even if he is harmed by the seller. Contract law requires privity of contract between the buyer and retailer, dealer or the manufacturer. In such a situation the Common Law remedy is available under Law of Torts.

c) Law of Torts

In spite of various legislations related to consumer protection the Common Law remedies under Law of torts are still available to consumers in India. Under the law of torts, liability may be imposed on the manufacturer, supplier, importer, distributor or retailer or two or more of them together.

²⁴ Saraf D.N, *Law of Consumer Protection in India*, (NM Tripathi P. Ltd, Bombay, 2nd Ed. 1995) at 22

The foundation of this approach is well reflected by the case of *Donoghue v. Stevenson*²⁵, which laid down the principle that a manufacturer owes a duty of care to every possible consumer of his product and a consumer can bring an action against the manufacturer even if there is no contract between the two.

Duty in tort is owed not to any specific individual but to the entire world at large. This decision made the Law of Torts very relevant to consumers and also made the manufacturers liable to compensate the claimants harmed by their products.

Under the Law of Torts the consumers are entitled to damages for loss caused by any defective, unfit or dangerous product, and the liability may arise whether the respondent is negligent or has defrauded the plaintiff or has committed a willful act. In cases of fraud, the tort of deceit enables a consumer to recover damages for fraud practiced on him by the defendant. If the defendant is negligent, the tort of negligence would provide to the consumers, redress for damage suffered due to defective and unsafe products. The remedy for negligence is available in case of deficiency in service also²⁶.

There are certain circumstances in which the liability in tort may be negative. If a plaintiff suffers harm and the determining cause of that is his own wrongful act, then he has no cause of action against the defendant. Statutory authority, consent to risk, act of God or inevitable accidents are valid defenses to an action in tort. Thus, against an act authorized by the statute, no action can be

²⁵ (1932) AC 562

²⁶ *Supra* note. 23 at 26

maintained, even though it has resulted in some damage or loss to the plaintiff. Similarly, a person who has expressly or impliedly consented to an act being done or takes upon himself the risk of suffering damage, cannot bring an action in respect of that act or damage. This is called as *volenti non fit injuria* or what is commonly known as 'leave and license'. However, no consent can legalize an unlawful act or stand against an action based on a breach of statutory duty²⁷.

The tort of deceit enables a consumer to recover damages for fraud practiced on him. It is one of the categories of torts of injurious falsehood and it has been defined as a false representation of fact made with the knowledge of its falsehood or without belief in its truth. Tort of deceit is also committed by making reckless statement, whether it is true or false, with an intent to induce a person to act in reliance upon it, with the result that the person acts on it and suffers damage²⁸. A false statement, made honestly but negligently can give rise to liability²⁹. The motive behind the representation should be to induce the other party to act upon it and the party subjected to fraud must have suffered some loss.

The tort of negligence is most relevant to the protection of consumers. It covers all the cases of breach of a duty caused by omission to do something which a reasonably prudent person would do, and doing of something which such a person would not do. The tort of negligence is actionable, whenever the

²⁷ *Id* at 28

²⁸ *Palsey v. Freeman* (1789) 3 TR 5 and *Derry v. Peek* (1889) 14 AC 337

²⁹ *Hedey Byrne and Co. Ltd. V. Heller and Partner Ltd.* (1964) AC 465

defendant has a duty of care and a breach of this duty causes damage to the plaintiff. The essentials to be proved in the tort of negligence are

- a. Duty of care,
- b. Breach of duty, and
- c. The breach of duty being the direct and proximate cause of damage
- d. suffered by the plaintiff.

The maxim *res ipsa loquitur* that is, 'that thing speaks for itself' is used in connection with the tort of negligence to cover the situations when the plaintiff need not prove negligence on the part of the defendant, and the inference of negligence is drawn from the facts.

Defenses available in an action for the tort of negligence are:

- a) The defendant not owing any duty of care to the plaintiff,
- b) No failure to take the reasonable care owed by him to the plaintiff,
- c) The plea of *volenti non fit injuria*.

In England, contributory negligence was a complete defense at Common Law in an action for the tort of negligence up to the passage of the Law Reform (Contributory Negligence) Act, 1945, which introduced the principle of 'apportionment of liability,' between both, the plaintiff and the defendant, in all cases of contributory negligence. In India, although there is no corresponding

legislation on this subject, the courts may give consideration to this principle while deciding cases on this subject³⁰.

Passing off is another tort under which traders use deceptive devices to push up sales. In this, the goods are passed off under an impression that they are the goods of some other person. In passing off, liability arises even without the proof of any knowledge or intention to deceive. The only proof required is that the goods were marked or made up or described to mislead an ordinary purchaser by making him believe that the goods of the defendant were that of the plaintiff. The basic purpose of this concept is to protect the good will of a trader which he may have earned by his trade name or a particular make, design, get-up, or colour of his goods.

The principles of Common Law contained in the law of torts had been received in the Indian law through various judgments of the Privy Council and the High Courts. Thus Torts Law has played an important role even after independence in India to protect the interest of consumers. Besides this, the contract legislation and the criminal legislation has played a vital role in providing various remedies in protecting the rights of customers before Indian independence. During the pre independence era the British also enacted various other laws to protect the rights of the consumers. The British Government also made specific legislations to protect the interest of the consumers during pre independence era.

³⁰ *Supra* note. 23 at 30 - 31

d) Area specific legislations

In addition to the general protection available under the general laws of the land there are a number of specific legislations which in their own way have attempted to protect consumer interest to some extent. The below given are illustrative of such legislations which also adds to the legal regime on consumer protection.

Agricultural Products (Grading and Marking) Act, 1937

This Act provides for quality certification popularly known as “AGMARK” for agricultural commodities. The certification scheme is voluntary for domestic, but mandatory for export purpose.

Drug and Cosmetic Act, 1940

The purpose of this law is to regulate the production, trade, distribution, import and export of drugs and cosmetics which are up to the required standards but also being sold under misbranding.

The Central Excise Act, 1944

This Act empowers the Central Government to provide for remission of duty of excise leviable on any excisable goods which are found to be deficient in quantity due to any natural cause³¹. In the public interest, the Central Government can also grant exemption, full or partial, from payment of basic excise duty in respect of any articles as may be notified or specially ordered.

³¹ Sec. 5 of The Central Excise Act, 1944

The exemptions are granted to achieve varied objectives of socio-economic importance and to lessen the burden on the users³².

Capital Issues Control Act, 1947

The main object of this Act is to channelise resources in planned direction on priority basis and also to protect the innocent investors.

The above mentioned various enactments prevailed in India to protect the interest of consumers from time to time. But they failed to protect the interest of consumer due to the loopholes within these specific legislations. During the British period consumer was exploited in the market place. When they bought the products, they expected that the quality of the good to be equal to their money. The plight of consumer didn't change till 1986. Gradually changes were introduced by the Indian Parliament after independence to safeguard the interest of the consumer.

3.3 POST INDEPENDENCE ERA

Consumers are simple, sincere people who earn their money the hard way, honest themselves, they seek honest merchants to supply their needs. Most of the consumers in India are largely poor, illiterate, ignorant, apathetic or just defeatist and continue to be at the receiving end. Most of the articles of mass consumption sold in the market are often adulterated in a variety of ways or contaminated in the process of preparing, packing or storage. They are facing

³² Sec. 5 A of The Central Excise Act, 1944

problems like short weights and measures, misleading advertisements etc. In recent time's educated public have become aware of their position as consumers and are willing to fight against the exploitation in the market place.

In India after independence, the seed of 'consumerism' was sown by Late C. Rajagopalachari, who setup the first Consumer Centre at Madras before 1950. In the 1950's an attempt was made to usher in a consumer movement in the country on the advice of the Planning Commission, but their failed³³.

In India the idea of consumer protection started as a cooperative movement, during the British period in 1904. It flourished in Maharashtra, but this movement laid more emphasis on distribution of consumer goods than on the consumer³⁴.

The Indian National Congress, the then ruling party in India, approved the recommendations on industrial growth in its Economic Programme Committee in 1948. The Government of India then summoned an Industrial Conference to consider the problems relating to future industrial policy. The deliberations of the conference led to the adoption of the Industrial Policy Resolution on April 6, 1948. This resolution laid down the broad objectives of the Government in the industrial field and marked the first step in the direction of imposing social control on economic activities of the private enterprises and also of promoting

³³ Swami Narayana S, "Consumer Protection : No Luke warm Attitude" Vol.9, *Consumer Confrontation*, Ahmadabad (March – April, 1989) at 12

³⁴ Bhat G A and Mangala Khadikar, "Mumbai Grahak Panchayat Moves On", *Mumbai Grahak Panchayat*, Bombay(1994) at 5

to some extent, the desired goal of prevention of concentration of economic power³⁵.

In Bombay during 1956, nine house wives and social workers joined hands to form the Consumer Guidance Society of India (CGSI). After a decade or two, consumer groups began to sprout forth in various parts of the country, most of them dealing with local issues. In 1971, Indian Consumer's Union was registered in New Delhi. Its objective was to fight against the price rise. During the Emergency (1975-76) a large number of consumer groups mushroomed all over the country but many survived for a short while. Even though the consumer protection guaranteed in the Twenty Points Programme and grants were given to consumer groups. The tenure of the Janata Government proved a dampener in consumer matters³⁶.

In 1978, a potent organization, known as the Consumer Education and Research Council (CERC) was established at Ahmedabad. The next year eleven Consumer Organizations joined together and set up the Indian Federation of Consumer Organizations (IFCO) at the national level to represent consumer interest. The Government played significant role in safeguarding the interest of the consumers by promoting a climate of fair competition and quality regarding the products between the consumers and the business people³⁷. Before examining the various specific laws passed by the Parliament

³⁵ Agarwal V K, *Consumer Protection in India*, (Deep and Deep Publication, New Delhi, 1989) at 53

³⁶ *Supra* note. 33

³⁷ Sharma K P, "The Pronged Approach to Consumer Problems in India", Vol. IX, *IJLS*, Jodhpur (1989) at 108

to protect the interest of consumer, it is worth to examine Constitutional provisions.

i) Constitutional Mandate and Consumer Protection

In India, the consumer protection laws comprise a wide spectrum of legislations with specific dimensions and parameters, from the Constitution to the general and specific consumer centric laws. After independence in 1947, the Government of India assumed an active role in the socio-economic development of the country.

On 26th January 1950, the Constitution of India came in to force. Though the word 'consumer' is not to be found in the Constitution the consumer breathes and peeps out through many of the blood vessels of the Constitution³⁸. The Constitution of India is a social document. Indian Constitution spelt out the philosophy of 'welfare state' in more clear and definite terms. In its Preamble, it resolved to secure to all its citizens not only political but also social and economic justice. This is for the effective exercise of all other basic rights guaranteed. Consumer justice as a facet of socio economic justice thus flows from our Constitution's basic philosophy. The underlying Constitutional imperative and mandate for Consumer Protection can also be read in other provisions of the Constitution.

³⁸ Rao Koteswara P, "Constitution, State and Welfare" in Leelakrishnan P, *Consumer Protection and Legal Control*, (Eastern Book Co, Lucknow, 1981)

As part of fundamental freedoms, the Constitutional guarantees³⁹ under Art.14⁴⁰ in the form of equality before law, and equal protection of the laws, aim at establishing what is called 'equality of status' as enshrined in the preamble of the Indian Constitution. Art. 14 enjoins a duty on the state to positively, deliberately and effectively participate in the task of protecting all the persons irrespective of any other considerations against harmful actions and omissions of others. As a constitutional postulate, the state is obliged to protect the helpless consumer in his various dealings by passing necessary laws and enforcing them.

In all civilized countries most of the functions (regarding goods and services) have been undertaken by the State, to provide socio economic justice to the people. According to Prof. W. Friedmann, "a modern welfare state functions as a protector, dispenser of social services active participant of industrial and commercial activities and as the arbitrator"⁴¹. It is the duty of the state to protect the people from exploitation by the producer, industrialist and traders. The State may take any measures to protect the consumers in the interest of the general public. State may impinge upon the fundamental rights of the individual to carry on trade or business Art. 19 (1) (g) guarantees a right to all the citizens to carry on any occupation, trade or business, it is subject to 'reasonable restrictions' under Art. 19 (6). However, under Art. 19 (2) such a right cannot be enforced where the business is dangerous or immoral. Such a

³⁹ Bakshi PM, *The Constitution of India*, (Universal Law Publishing Co. P. Ltd, Delhi, 2008)

⁴⁰ Art. 14 of the Indian Constitution: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

⁴¹ Friedmann W, *Law in a Changing Society*, (1970) at 378 - 82

business may be absolutely prohibited or may be required to be licensed. Moreover, restrictions can be imposed on 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' and any 'harmful trade'. Reasonable restrictions can be imposed for public convenience also.

Art. 21⁴² of the Constitution, guarantees to every person, life with dignity free from all kinds of exploitation. The term 'life' is interpreted by the judiciary to include any kind of dangerous or spurious activities that affects life falls under the ambit of Art. 21 of the Constitution. Judiciary played an important role in protecting life of citizens from such dangerous activities under this Article. It is one of the most important fundamental rights that prohibit all kinds of exploitation.

A welfare state like ours has to promote the prosperity and well being of the people. This philosophy was further strengthened under the heading that is Directive Principles of State Policy (Art. 36 to 51) Part IV of the Constitution. These provisions lay down certain economic and social policies to be pursued by the state. State is obliged to take positive action in certain spheres in order to promote the welfare of the people and usher economic democracy. Art 38 (1)⁴³ of the Constitution imposes a duty on the state to promote the welfare of the

⁴² Art. 21 of Indian Constitution: no person shall be deprived of his life or personal liberty except according to procedure established by law.

⁴³ Art. 38 (1) of the Indian Constitution: The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

people by securing and protecting. Under clause (b) and (c) of Art 39⁴⁴, the state is duty bound to direct its policy towards securing the distribution of the ownership and control of the material resources of the community to sub serve the common good.

The operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. These provisions have virtually designed a grand role of a dispenser of socio-economic justice and of an economic controller for the state, which it is obliged to play effectively to promote the welfare of the public and to protect and sustain the common good. Since in the ultimate analysis, the consumer interest is tantamount of public interest, and public interest being the predominant concern of our welfare state, the above referred directives endorse the duty of the state to adopt measures for Consumer Protection.

Some other relevant provisions are present under Art 39 (e) and (f)⁴⁵, 42⁴⁶, 43

⁴⁴ Art. 39 (b) of the Indian Constitution: The State shall, in particular direct its policy towards securing (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good,

© that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment

⁴⁵ Art. 39 of the Constitution:

(e) that the health and strength of workers, men and women; tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength

(f) the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

⁴⁶ Art. 42 of the Indian Constitution: The State shall make provisions for securing just and humane conditions of work and for maternity relief.

and 47 of the Constitution. Art 43⁴⁷ obliges the state to secure, by suitable legislation or economic organization or in any other way, for all workers, agricultural, industrial or otherwise, work, a living wage, and conditions of work ensuring a decent standard of life in the same way as the ILO is promoting the interest of workers as consumers. Regarding public health, Art 47⁴⁸ 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 Constitution has distributed the subjects, relating to products 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 Schedule VII of the Constitution.

All the above provisions of the constitution clearly demonstrate the availability of abundant legislative and administrative power under the Constitution. A progressive interpretation has been accorded by the judiciary in protecting the basic, essential, legitimate interest of the consumers. In a fit case, an aggrieved consumer can file a writ petition before the High Court or Supreme Court under Art 226 or 32 of the Constitution to vindicate his constitutional right to protection. To avail the remedy under the Constitution, the consumer has to

⁴⁷ Art. 43 of the Indian Constitution: The State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and in particular, the State shall endeavor to promote cottage industries on an individual or co-operative basis in rural areas.

⁴⁸ Art. 47 of the Indian Constitution: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

prove that there is violation of his fundamental right and the violation is done by the state. Most of the consumers feel shy to approach the High Court or Supreme Court for silly or meager amount, as a result the consumer interest is not protected at large.

Apart from these civil remedies under the Law of Contracts, Law of Torts, Penal sanctions under the Criminal law and the writ petition under the Constitution referred above, there are specific regulatory provisions of special laws which require the trader or dealer to observe certain standard of conduct in the sale or distribution of goods.

ii) Legal framework of Consumer Protection prior to 1986

There is no dearth of laws that have been enacted in the interest of the consumer. Legislation historically took care of only specified areas according to its importance in the society from time to time. Prior to 1986, there were scattered provisions, which sought to protect the interest of the consumer. Around twenty five enactments⁴⁹ were passed. Besides, there were a large number of statutory orders and notifications meant to secure consumer protection, particularly in respect of the fair price, equitable distribution and

⁴⁹ The Important legislations passed from 1947 to 1986 were: The Drug Control Act, 1950; The Emblems and Names (Prevention of Improper use) Act, 1950; The Industries (Development & Regulations) Act, 1951; The Indian Standard Institution (Certificate of Marks) Act, 1952; The Drugs & Magic Remedies (Objectionable Advertisements) Act, 1954; The Prevention of Food Adulteration Act, 1954; The Essential Commodities Act, 1955; The Standard of Weights & Measures Act, 1956 (as amended by 1976 Amendment Act); The Trade & Merchandise Act, 1958; The Essential Services Maintenance Act, 1968; The MRTP Act, 1969 (Amended by 1986 Amendment); The Standard of Weights & Measures(Packaged Commodities) Rules, 1977; The Prevention of Black (Prevention & Control of Pollution) Act, 1981; Chit Funds Act, 1982; The Standard of Weights & Measures(Enforcement) Act, 1985; Trade & Merchandise Marks Act and Bureau of Indian Standards Act, 1986

quality control. All the legislative enactments before 1986 can be broadly grouped into two categories.

With the advent of the 20th century certain changes occurred in the nature of industrial corporations and the advanced types of products came in to existence to the consumer in the market place. Growth of large corporations with monopolizing influences for setting prices and standards of quality for particular product, have left no scope for affording opportunity to choose among effectively competing suppliers. These corporations cannot control products entire market, which is generally divided among several suppliers of the same type of goods or products on similar terms which make effective choice of the consumer merely impossible. Due to lack of necessary technical information, consumer is unable to choose between two or three types of products or other electronic products or patent drugs. Advertisement techniques have played influencing role in choosing the goods or products of all categories. But the common consumer is incapable to evaluate the product properly. It resulted in consumer's incapacity to identify the goods to a great extent. His increasing exposure to advertising has predominantly persuasive rather than informative, that created a demand for products which are unnecessary. Besides the modern techniques or sale methods such as introductory offers or free gifts or new sales techniques such as door to door seller, sales girls or sales boys. In this way consumers are influenced by advertisements without understanding the quality and quantity of products or

goods. Due to the different pressures and methods as mentioned, consumer's interests are felt to be protected by enacting laws in various fields⁵⁰.

The first category (covering particular aspects of wide range of products) consists of The Standard Institutions Certificate Marks Act, 1952; Standard of Weights & Measures Act, 1956; The Display of Price Order, 1973; The Packaged Commodities (Regulation) Order 1976 etc.

The second category (relating to particular goods and transactions) enactments are the Essential Commodities Act, 1955; The Prevention of Food Adulteration Act, 1959; The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954; The Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975 etc.

However, there was no specific consumer protection legislation on the lines of British Statues like the Consumer Protection Act, 1987. Anyhow the government has tried to provide legal umbrella to safeguard consumer interests. These laws if properly enforced, the consumer will be certainly adequately protected. Experience shows that enforcement is woefully ineffective mainly due to plethora of laws, lack of proper personnel, redtapism and large scale corruption⁵¹. However, the existing laws, before 1986, have not succeeded in their entirety, because they suffer from certain deficiencies:

⁵⁰ Tiwari O.P., *Consumer Protection Act*, (Allahabad Law Agency, Haryana, 3rd Ed. 2007) at 2 - 3

⁵¹ Bawa S S, "Marketing and Consumerism", *Employment News*, New Delhi, (February, 1990) at 17 – 23

- a. There is shortage of technically competent staff, and of funds, apart from which the existences of too many departments lead to an overlapping in their functions,
- b. The enforcement machinery often find itself handicapped due to procedural formalities, with the result that the objectives for which an Act was enacted are not achieved as should be,
- c. Provisions laid down were found significant since with the lapse of time the manner of malpractice also changed,
- d. Once traders are found guilty, the punishment meted out is merely the payment of few hundred rupees, which is no punishment,
- e. Absence of any machinery exclusively entrusted with the redressal of consumer complaints,
- f. The government and the government controlled monopolistic undertaking and restrictive trade practices adopted by them are not brought with in the purview of the MRTP Act
- g. These statutes are not applicable to public sector undertakings and other public corporations running public utility services,
- h. The ISI is the competent authority to certify the standards of the various products but unfortunately it is left to the choice of the producer to get ISI Certification Mark except in the cases of goods affecting the health and safety of the user,
- i. The enforcement machinery becomes inefficient because of the lethargy and corrupt practices adopted by the enforcing authorities, and
- j. Above all, ignorance on the part of the consumers about their legal safeguards and legal rights

Due to the above reasons and loopholes present in the different enactments, the Indian consumer became an easy prey in the hands of the powerful traders. Whatever protection was available to the consumer under these laws was haphazard and piece-meal. Most of these legislations were dressed in Victorian clothes, and no protection was possible to the ultimate consumer.

In our country there was absence of an enlightened and vigilant consumer movement. Individual consumer always found himself at the receiving end because in comparison with an industrial establishment or a trading organization, his bargaining power, resources, knowledge and familiarity with his legal rights were very very weak. There was an immediate need for a comprehensive Code of substantive and procedural laws designed to secure and promote consumer protection. To quote Bhagat, HKL (Minister of Parliamentary affairs and Minister for Food and Civil Supplies) in Lok Sabha

“The existing arrangements have not led to the growth of an effective consumer protection movement. These laws are either preventive or punitive in approach, and they don't provide for speedy relief and compensation to the aggrieved consumers. The procedures are long drawn and cumbersome. Besides, at present there is no statutory machinery which could function as a common platform for official or non-official to discuss the consumer problems and to advise the government in relation to various policies and measures to promote and protect the rights and interest of consumers”⁵².

In 1983, the government of India established Consumer Protection Council of India as an apex body to promote consumer movement. It was an advisory

⁵² *Lok Sabha debates*, Vol.XXIII, No. 26, 8th Lok Sabha, 7th Session, (9th December, 1986)

body with a duty to give the directions and need for the consumer protection movement in India. But there was a public cry for a comprehensive Code for consumer protection with active government participation. In recognition to this public demand, three legislative initiatives were taken during the three years 1984-85 viz. the Delhi Consumer (Purchase) Dispute Council Bill, 1984, The Madhya Pradesh Upbhokta Sanrakshan Vidheyak, 1984 and The Karnataka State Consumer Protection Bill, 1985. The first two were presented in the respective legislatures but the third one was drafted and presented by Karnataka Consumer Protection Board. All these three attempts proved abortive⁵³.

Looking at the plight of consumer in the market place, their apathy, ignorance, illiteracy and the role played by some of the states, more and more consumer organizations started their agitation to enact a separate legislation to deal with consumer matters.

With the above background, a comprehensive Consumer Protection Bill, 1986 was formulated after considerations of Consumer Protection Legislations in countries like USA, UK, Australia and New Zealand.

National Level Seminar was held in New Delhi in January 1986 in which representatives of the State Government, voluntary consumer organizations and Central Ministerial Departments participated to provide suggestion, and amendments to the draft legislation for better protection of consumers.

⁵³ Shella TN, Consumer Protection with special reference to Public Utilities, thesis submitted to the University of J & K for the Degree of Ph.D. in Law (1990)

Suggestions flowing from the seminar and those received from prominent persons were taken into consideration while introducing the Consumer Protection Bill for consideration in Lok Sabha. The then Minister for Parliamentary Affairs and Food & Civil Supplies Mr. H K L Bhagat, hailed the Bill as a landmark in the field of socio-economic legislation of the country.

The Consumer Protection Bill, 1986 was made keeping in view the following statement of objects and reasons⁵⁴.

It seek to provide better protection of consumer interest and for the purpose, to make provision for the establishment of Consumer Councils and other authorities or the settlement of consumer disputes and for matter connected therewith.

Further this Bill seeks, inter alia, to promote and protect the rights of consumers such as –

- a. The right to be protected against marketing of goods which are hazardous to life and property,
- b. The right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices,
- c. The right to be assured, wherever possible, access to an authority, in the matters relating to goods at competitive prices,

⁵⁴ Reddy G.B, *Law of Consumer Protection in India*, (Gogia Law Agency, Hyderabad, 6th Ed. 2004) at 43

- d. The right to be heard and to be assured that consumer interest will receive due consideration at appropriate forums,
- e. The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers and
- f. Right to consumer education.

These objectives are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central and State Level.

To provide speedy and simple redressal to consumer disputes, quasi judicial machinery is sought to be set up at the District, State and Central levels. These quasi judicial bodies have to observe the principles of natural justice and have been empowered to give relief of a specific nature, and to award, whenever appropriate, compensation to consumers. Penalties for non compliance of the orders given by the quasi judicial bodies have also been provided.

The Bill provided for protection of various consumers rights, redressal of consumer grievances at National, State and District level. Further the proposed legislation was a milestone for providing simple, speedy and inexpensive redressal to the grievances of the consumers and for promoting a strong and grass root based voluntary consumer movement in the country. The Consumer Protection Bill had excluded from its purview the complaints against public sector, when the government first drafted the Bill. But there was a loud protest and consumer organizations demanded that all the public sector units and public utility services be brought within the reach of the proposed Bill. After long deliberations, the government finally agreed to bring all services under the

purview of the Act. Dispelling any doubts in this connection, the Hon'ble Minister H K L Bhagat, while moving the Bill in Rajya Sabha said that the Bill "shall apply to all goods and services both public, private and co-operative sectors"⁵⁵.

In the month of December 1986, the Indian Parliament passed a basket of Bills giving unprecedented protection to the consumer. Besides the Consumer Protection Act 1986⁵⁶, the Parliament also passed seven amending legislations⁵⁷ aimed primarily at empowering an aggrieved person or a recognized consumer association to approach the prescribed authorities under the respective legislation for relief. The Bill received the assent of the President on 24th December 1986, but it came in to force on 15th April 1987.

The Consumer Protection Act, 1986 (C.P.Act, 1986)⁵⁸ has made a beginning and is a step forward in establishing egalitarian consumerism. The enactment of the legislation is to safeguard the interest of the community. Legislation for the benefit of the consumer has been sporadic and as a part of social welfare legislation.

⁵⁵ *Rajya Sabha debates*, Vol. 140, No.21 – 27, Col. 120, (2nd to 10th December, 1986)

⁵⁶ Act No. 68 of 1986, it received the Assent of President of India on 24th December 1986 and was published in the Official Gazette of India, Extra Part 2, Sec. 1, dated 26th December 1986 at 1 -12

⁵⁷ The Prevention of Food Adulteration (Amendment) Act 1986; The Drug & Cosmetic (Amendment) Act 1986; The Standard of Weights & Measures (Enforcement) Amendment Act 1986; The Essential Commodities (Second Amendment) Act 1986; The MRTP (Amendment) Act 1986; and The Agricultural Produce (Grading & Marketing) Amendment Act 1986. All these amended legislations were assented by the President of India on 24th -25th December 1986. These Amendments have been made to bring the Parent Acts in time with the objectives of the CP Act, 1986

⁵⁸ Act 68 of 1986

3.4 CONSUMER PROTECTION ACT, 1986 AS AMENDED IN 2002 – ITS OBJECTS AND SALIENT FEATURES

The new legislation in the form of Consumer Protection Act has been enacted to provide for the better protection of the interest of consumers. This is a small enactment consisting of 31 sections divided into four chapters. It is unique in many respects. It shows, a silver lining on the otherwise darker clouds shrouding the present day judicial system in obtaining justice⁵⁹.

The Consumer Protection Act, 1986 starts with a Preamble as follows,

An Act to provide for better protection of the interest of consumers and for that purpose to make provisions for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith.

The scheme laid down under the Consumer Protection Act, 1986 is as follows:

Chapter 1 of the Consumer Protection Act, 1986 consists of three sections. This Chapter deals with preliminary, various important definitions and it says that, this Act shall be in addition and not in derogation of the provision of any other law for the time being in force.

Chapters 2 of the Consumer Protection Act 1986 consist of five sections. This chapter provides for the establishment of Central, State and District Councils to create awareness among the Indian consumer with respect to their rights at various levels.

⁵⁹ Sar Desai V S, "Ball in Consumers Court", *Lest ET Juris*, (December, 1990) at 52

Chapter 3 of the Consumer Protection Act, 1986 consists of nineteen sections. It deals with establishment of Consumer Dispute Redressal Agencies at National, State and District level to resolve the consumer disputes. Further, it deals with composition, procedure in filing consumer complaint, jurisdiction, and appeals

Chapter 4 of the Consumer Protection Act, 1986 consists of four sections. This chapter deals with miscellaneous provisions like power to remove difficulties, power to make rules and regulations and the power of the National Commission to make regulations.

This Act was enacted keeping in mind the following important features in administration of consumer justice:

1. The main objective of this legislation is to provide for the better protection of the consumers through settlement of disputes.
2. This Act intends to provide simple, speedy and inexpensive redressal to the consumer's grievance.
3. To provide the setting of Consumer Dispute Redressal Forum in every District, a Commission at the State level and the National Commission at the Central level. The Forum at district level will have original jurisdiction to redress complaints up to Rs. one lakh, the State Commission lakhs and up to Rs. ten lakhs, and the National Commission for any claim above Rs. ten lakhs. The State and National Commission will be vested with the appropriate appellate and revisionary powers.

4. It envisages the establishment of Consumer Protection Councils at the Central, State and District⁶⁰ level for the promotion and protection of consumer rights
5. To make the enactment effective penal and punitive provisions have been incorporated to protect consumer rights.
6. The provisions of the Act are in addition to and not in derogation of any other law for the time being in force.
7. It applies to all goods/classes of goods or all services/classes of services except those which are specifically exempted by notification by the Central Government.
8. The complaint can be on account of any unfair trade practices resulting in to loss or damage, defect in goods, deficiency in services, prices charged in excess of the prices fixed by or under any law or displayed on the goods or packets.
9. Complaint can be filed by a consumer or an organization being a Society registered under the Societies Registration Act or a Consumer Organization registered under the Company's Act.
10. This Act can act like a one window clearance for an aggrieved consumer, instead of wandering in the jungle of earlier multiplicity of Act and enforcement agencies. An aggrieved consumer can avail simple procedure under the Act.
11. The Consumer Dispute Redressal Agencies under the Act are required to resolve the consumer complaints early without going into the technicalities of law and evidence as is adopted in civil litigation⁶¹.

⁶⁰ Ins. By Act 62 of 2002, Sec. 8 A

⁶¹ Tiwari YK, "Consumer Protection Law and Peoples Participation – Problems and Prospects" Vol.IX, *IJLS*, Jodhpur, (1989) at 64

12. The Act is an improvement over the earlier Consumer protection legislations. The early legislations were not properly implemented because the burden of doing so rest entirely and exclusively on a lethargic and corrupt bureaucracy. But under the present Act, the initiative rests with the aggrieved consumer or consumer association.

The Consumer Protection Act, 1986 was amended in the year 1991, 1993 and 2002 respectively, as per the changing conditions in the society and to provide more powers to the consumer redressal agencies in redressing consumer complaints and for better protection of consumers.

The National Consumer Dispute Redressal Commission felt that the said Act required certain modifications. Accordingly, the Consumer Protection (Amendment) Ordinance, 1991⁶² was promulgated to provide inter alia:

1. For amendment of sub section (2) of Section 14 to provide that every proceeding of the District Forum shall be conducted by the President and at least one member thereof sitting together,
2. That every order made by the District Forum shall be signed by its President and member or members, who conducted the proceeding,
3. That where the proceeding is conducted by the President and a member of the District Forum and they differ on any point or points, the same shall be referred to the other member on such point or points and the opinion of the majority shall be the order of the District Forum,
4. To validate the orders which have been signed by the President and one member of the District Forum or the State Commission before the amendment, and

⁶² Amendment Act 34 of 1991

5. That in the case of vacancy in the office of the President, the person who is qualified to be appointed as President of the District Forum or the State Commission may be temporarily appointed to hold such office.

The working of the redressal agencies set up under the Act has helped to arouse the expectations of the people and also brought to focus certain inadequacies in the coverage of the Act. The Consumer Protection (Amendment) Bill, 1993⁶³ sought to plug these loopholes and enlarge the scope of areas covered and entrust more powers to the redressal agencies under the Act. Accordingly, the Bill *inter alia*, sought to provide the following:

1. To enlarge the scope of the Act so as to enable the consumers to file class action complaints where such consumers have a common interest and to file complaints relating to restrictive trade practices adopted by a trader.
2. To enable the consumers who are self employed to file complaints before the redressal agencies where goods bought by them exclusively for earning their livelihood, suffer from any defect.
3. To add **'services'** relating to **'housing construction'**.
4. To provide for the constitution of selection committees for the selection of non-judicial members of various redressal agencies,
5. To increase the monetary jurisdiction of District Fora/ State Commission and the National Commission,
6. To confer additional powers on the redressal agencies by way of awarding costs to the parties, for ordering removal of defects or

⁶³ Amendment Act 50 of 1993

deficiencies from the services, and for empowering to recall of goods likely to endanger the safety of the public,

7. To impose punishment on the complainant in case of frivolous or vexatious complaints and
8. To provide for a limitation period of one year for filing complaint.

The Consumer Dispute Redressal Agencies have, to a considerable extent, served the purpose for which they were created. However the disposal of cases has not been fast enough. Several bottlenecks and shortcomings have also come to light in the implementation of various provisions of the Act. With a view to achieve quicker disposal of consumer complaints by the Consumer Dispute Redressal Agencies securing effective implementation of their orders, widening the scope of some of the provisions of the Act to make it more effective, removing various lacunae in the Act and streamlining the procedures, amendments were proposed in the Act.

A long waited comprehensive amendment Bill to amend the Consumer Protection Act, 1986 has been passed by the Parliament and became an Act on 17th December, 2002 that is Consumer Protection (Amendment) Act, 2002⁶⁴.

The objective and highlights of the recent Amendments are as follows:

1. Creation of benches of the National Commission and the State Commission and holding of circuit benches of these Commissions,

⁶⁴ Amendment Act 62 of 2002

2. Prescribing time frame for admission of complaints, issue of notices and disposal of complaints and appeals,
3. Recovery of compensation amount ordered by the redressal agency through certificate case in the same manner as arrears of land revenue,
4. No adjournments to be ordinarily allowed, and if allowed than, a speaking order giving reasons would be made,
5. Revision of pecuniary jurisdiction in respect of redressal agencies at different levels i.e.,
 - a. District Forum – from Rs. 5 lakhs to Rs. 20 lakhs
 - b. State Commission – from Rs. 20 lakhs to Rs. 1 crore
 - c. National Commission – from above Rs. 20 lakhs to above 1 crore.
6. Provisions for charging of fee in respect of complaints filed before the Consumer Dispute Redressal Agencies,
7. Provisions for depositing, either fifty percent of the amount of compensation or fine or the amount mentioned below whichever are less, before the admission of appeal namely,
 - a. Rs. 25,000 in case of appeal to a State Commission from the District Forum,
 - b. Rs. 35,000 in case of appeal to the National Commission from a State Commission and
 - c. Rs. 50,000 in case of appeal to the Supreme Court from the National Commission
8. Exclusion of services availed for commercial purpose from the purview of the Consumer Dispute Redressal Agencies,

9. Prescribing minimum qualifications as well as disqualifications for members of the Consumer Dispute Redressal Agencies,
10. Provisions for re-appointment of President and Members of the District Forum, State Commission and the National Commission,
11. Extending the provisions of the Act to service providers indulging in unfair and restrictive trade practices or offering services which are hazardous,
12. Bringing sale of spurious goods or services within the meaning of unfair trade practices,
13. Expressly conferring the powers of a Judicial Magistrate of the First Class on the Consumer Dispute Redressal Agencies with a view to try offences under the Act,
14. Provisions for recovery of amounts ordered to be paid by the Consumer Dispute Redressal Agencies as arrears of land revenue.
15. Provisions for substitution of legal heir or representative as a party to the complaint in the event of the death of the complainant or the opposite party.
16. Provisions for issue of interim orders by the redressal agencies,
17. Establishment of Consumer Protection Council at District level for the promotion and protection of consumer rights.

The object of this Act has been aptly described by the Supreme Court in the case *Lucknow Development Authority v. M K Gandhi*⁶⁵,

“In fact the law meets long felt necessity of protecting the common man from such wrongs from which the remedy under the ordinary law for

⁶⁵ AIR 1994 SC 787

various reasons has become illusory, various legislations and regulations permitting the state to intervene and protect interest of the consumers have become a heaven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, ineffectively and for reasons which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy”.

It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, ‘a network of rackets’, or a society in which, producers have secured power to rob the rest, and might of public bodies which are degenerating in to store house of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting for it, is accepting it as a part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot.

The object of the Act as enshrined in various provisions of the Act has been further strengthened by the decision of the Supreme Court in *J J Merchant v. Srinath Chaturvedi*⁶⁶. It should be kept in mind that legislature has provided, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on the ground that complicated questions of facts cannot be decided in summary proceedings. It would also be totally wrong

⁶⁶ AIR 2002 SC 2931

assumption that because summary trial is provided, justice cannot be done when some questions of facts require to be dealt with or decided. The Act provides sufficient safeguards.

Further, the Apex Court held that the object and purpose of enacting the Act is to render simple, inexpensive and speedy remedy to the consumers. Consumer can lodge a complaint against the defective in goods and deficiency services and the benevolent piece of legislation intends to protect large body of consumers from exploitation. Prior to the Act, the consumers were required to approach the Civil Court for securing justice for the wrong done to them and it is a known fact that decision in such suits takes years in the court. Consumers are provided with an alternative efficacious and speedy remedy. As such, the Consumer Forum is an alternative forum established under the Act to discharge the functions of a Civil Court.

In *State of Karnataka v. Vishwabharathi House Building Co-op Society*⁶⁷ it was held that

“the provisions of the Act clearly demonstrate that it was enacted keeping in view the long felt necessity of protecting the common man from wrongs which for the ordinary law for all intent and purport had become illusory. In terms of the said Act, a consumer is entitled to participate in the proceedings directly as a result whereof his helplessness against a powerful business house may be taken care of”.

The scope and object of the Act came for discussion before this Apex Court in *Common Cause, A Registered Society v. Union of India*⁶⁸ it was held:

⁶⁷ AIR 2003 SC 1048

“The object of the legislation as the Preamble of the Act proclaims, is for better protection of the interest of consumers”.

Further in *Laxmi Engineering Works v. P S G Industrial Institute*⁶⁹ it was held:

“The idea was to provide an additional forum providing inexpensive and speedy resolution of dispute arising between consumers and suppliers of goods and services. The Forum so created is uninhibited by the requirements of court fee or formal procedure of a court. Any consumer may go and file a complaint. Complainant need not necessarily be filed by the complainant himself, any recognized consumers association can espouse his cause. Even the Central or State Government can act on his or their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services availed in the market place. The entire act revolves round the consumer and is designed to protect his interest. The Act provides for ‘business to consumers’ dispute and not for ‘business to business’ disputes”.

The objectives of the Act, explain the scope and extent of the Act. However, this Act extends to the whole of India except the State of Jammu and Kashmir and secondly, this Act shall apply to transactions of all goods and services.

During the last few years preceding the enactment, there was a marked awareness among the Indian consumers of the goods, that they were not getting their money’s worth and were being exploited both by the traders and manufacturers. The need for consumer redressal was increasingly felt. Therefore the legislation was introduced and enacted with considerable enthusiasm and fanfare as a path breaking legislation intended to protect the

⁶⁸ AIR 1993 SC 1403

⁶⁹ AIR 1995 SC 1428

consumer from exploitation by the trader or manufacturer. A three tier mechanism comprising the District Forum, the State Commission and the National Commission came to be envisaged under the Act for redressal of grievances of consumers.

Once again the objectives recognized under the C P Act, 1986 are reiterated by the National Consumer Dispute Redressal Commission (NCDRC) after two decades. The NCDRC, as per the powers conferred under Sec. 30A of the Act has made the Regulations with the prior approval from the Central Government. These Regulations are known as Consumer Protection Regulations, 2005⁷⁰. This Regulation makes it clear that the CDRA should follow a simple procedure⁷¹ as well as simple arrangements in the Consumer Forum⁷². It also restricts adjournments by imposing penalty on the parties to provide speedy justice⁷³. There is a need to implement and enforce the Regulations made by NCDRC in letter and spirit.

The emerging legal regime as to the protection of consumer is indeed having economic and social implications. Though protection of consumer is not a new legal idea in India, the establishment of Consumer Dispute Redressal Agencies

⁷⁰ <http://ncdrc.nic.in/Regulations2005.html>

⁷¹ Sec. 26 (1) of the Consumer Protection Regulation, 2005: In all proceedings before the Consumer Forum, endeavour shall be made by the parties and their counsel to avoid the use of provisions of Code of Civil Procedure, 1908

⁷² Sec. 3 (1) of Consumer Protection Regulation, 2005 : A Consumer Forum, being not a regular court, shall have the arrangements as to depict it distinct from a court

⁷³ Sec. 11 (3) of the Consumer Protection Regulation, 2005: The cost of adjournment, if asked by the opposite party or parties, shall not be less than five hundred rupees per adjournment and could be more depending upon the value and nature of the complaint as may be decided by the Consumer Forum.

is an introduction of new Fora for the consumer to avail remedies in case of consumer management in the market place.

The consumer protection has ancient and historical roots in India, the pre independence and the post independence legislations have merely paved the way for the creation of a legislation solely dedicated to consumer protection. The Consumer Protection Act, 1986 and the various amendments has ensured that the consumer is protected against the exploitative market competition and profiteering techniques that are usually practiced by producers of goods and producers of services.

The next chapter deals with one of the most important concept of consumer protection, that is the services provided to the consumer. Consumer means person who purchases goods or avails services for consideration. Service is provided by a mixture of persons, voluntary organization, private and public sector. If there is any deficiency in service, the consumer can avail remedy under the CP Act, 1986. Next chapter highlights the concept and importance of service with special reference to housing and insurance sector.

CHAPTER IV

SERVICES UNDER THE C P ACT, 1986 WITH REFERENCE TO THE HOUSING AND INSURNCE SECTOR

“A Consumer is the most important visitor to the business premises. He is not dependent on the business; in fact business is dependent on him; he is not an interruption to business activities but he is the purpose of it; we are not doing a favour to the consumer by giving an opportunity to serve him.”

Mahatma Gandhi¹

4.1 INTRODUCTION

Most people enjoy shopping. Whether we like it or not, all of us spend lot of time as consumers of goods and services. When we buy goods, eat in a restaurant, travel, or seek the help of doctors, engineers, or repairmen we act as consumers. Very often we do not get what we seek. The washing machine or car does not keep up its promises. Some times we even buy disasters like adulterated medicines or building material. Then we are outraged and want to complain and get compensation from the manufacturer².

Unlike in the past, the consumers are now protected by several effective laws. These laws confer a number of rights on consumers and impose duties on the sellers. Violations of these rights and duties may entail civil and criminal consequences on the seller and manufacturer.

Out of all the enactments, the most important piece of legislation made by the India Parliament to protect and provide justice to the consumer is the Consumer Protection Act, 1986. In the previous chapter the researcher has mentioned the various enactments made from time to time during the British period and as

¹ http://www.woopidoo.com/business_quotes/customer-quotes.htm dt. 30.03.10

² Anthony MJ, *Consumer Rights*, (Hind Pocket Books Private, Ltd, Delhi, 4th Ed. 1996) at 1

well as post independence period, to protect the interest of consumer in the market place. All these enactments did not secure fully in achieving their objectives of protecting the interest of consumer. The reason behind that is most of the consumers are illiterate, ignorant and they are always at the receiving end.

This chapter mainly deals with the most important enactments to protect the interest and rights of consumer i.e., the Consumer Protection Act, 1986 as amended in the year 2002. Here the researcher mainly deals with the concept of service in general. Services occupy an important place in life. Most of the time the services provided by the service providers are substandard. Consumers are always cheated due to their illiteracy and inefficiency while availing the services. In this chapter special preference is given to services rendered by the housing and insurance sectors to human life. These two sectors are the most important in our life.

Every one of us avail various kinds of service in our day to day life. Availing of these services is important aspect for our survival. We also avail certain new kinds of services in our life. For example using of ATM Cards to with draw money, door delivery in relation to all kinds of food articles and other services.

Present Chapter focuses on the housing and insurance services provided to the public and protection available in case of deficiency, authorities to be approached and finally the protection available under the Consumer Protection Act to protect the consumers with respect to these two sectors.

The Consumer Protection Act, 1986 defines the term 'consumer'. Consumer³ means a person who purchases good and hires services for consideration. If a person avails any service for considerations and there is deficiency in service he can avail the remedy under this the Act. 'Service'⁴ means any kind of service availed by the consumer for consideration. A consumer avails of numerous services in his/her day-to-day activity in return for a consideration, which has been paid or promised, or partly paid and partly promised, or under any system of deferred payment. The definition of "service" under the Act does not include the rendering of any service free of charge or under a contract of personal service. A few examples of services would include banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing construction⁵, entertainment, amusement or the purveying of news or other information. Also services by and large, include those provided by professionals such as Doctors, Engineers, Architects, Lawyers etc.

³ Sec. 2 (1) (d) of CP Act, 1986: "Consumer " means any person who –

- i. Buys any goods for consideration 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 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 but does not include a person who avails of such services for any commercial purpose.

⁴ Sec. 2 (1) (o) of CP Act, 1986 as amended in 2002: "Service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but doesn't include the rendering of any service free of charge or under a contract of personal service.

⁵ Inserted by Act 50 of 1993, Sec. 2 with effect from 18.06.1993

Redressal agencies will accept the complaint only in case if there is deficiency⁶ in service. Under the Act, deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance of a service. In order to file a complaint against deficiency in service, such service should necessarily have been rendered for consideration.

In the beginning housing construction was not incorporated as a service within the purview of CP Act, 1986, even though construction comes under the purview of service. As a result the Consumer Fora were reluctant to entertain housing construction complaints. Consumer Fora were referring back the complaint to the ordinary Civil Court to avail consumer justice. Due to this the consumers were facing hardship and they are not aware as to whom they can approach. Ultimately the Apex Court intervened in this matter and brought housing construction within the umbrella of CP Act, 1986.

4.2 HOUSING SECTOR

Every human being on this earth needs certain basic necessities like food, clothing and shelter. Out of the three basic necessities the most important and prominent necessity is shelter. Shelter provides an individual with dignity, power and recognition in the society, without which his life becomes meaningless. Housing is also a basic human right. Insecure and inadequate shelter, threatens physical and mental health and the overall quality of life in

⁶ Sec. 2 (1) (g) of CP Act, 1986: 'Deficiency' means any fault, imperfection, shortcoming, or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

other words, human dignity. This idea is mirrored in relevant International Instruments.

Internationally, the right to housing has a significant place in several instruments. On the basis of the provisions established in the Universal Declaration of Human Rights of 1948 (UDHR), the right to adequate housing occupies a significant place in the International Covenant on Educational, Social and Cultural Rights of 1966 (ICESCR). Article 11.1⁷ of the Covenant recognizes the right of everyone to an adequate standard of living for himself and his family that include housing also.

The right to adequate housing is also recognized internationally in several other instruments that have focused on the need to protect rights of particular groups, such as CEDAW, 1982 (Committee on the Elimination of Discrimination against Women), CRC, 1989 (Committee on Rights of the Child) and CERD, 1969 (Committee on the Elimination of Racial Discrimination), and there are even a few General Comments specifically on housing as a fundamental human right.

The first UN Conference on this issue, known as 'Habitat', was held at Vancouver in 1976. Equity, social justice, solidarity, human dignity, free choice and free movement were the main principles articulated at this

⁷ *Art. 11.1 of ICESCR, 1968*: 'The states parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The states parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent'.

Conference. It recommended that the Government and International Organizations should make 'every effort to take urgent action'.

Twenty years later, in 1996, Istanbul hosted the second Habitat Conference. The Habitat Agenda, the main document adopted by UN member states, represented an unprecedented breakthrough and a step forward. It recognized adequate housing as a fundamental human right. The whole process emphasized the importance of civic participation, thus breaking away from the previous approach of the Vancouver goals. It allowed for both meaningful and efficient NGO involvement in the drafting process⁸.

Not only is it crucial that relevant international law must provide guidance to domestic courts, but that as a signatory to the Covenants and other treaties, a member state abide by its obligation to adopt the principles therein. India is still grappling with unmet basic housing needs of hundreds of thousands of its citizens. While we represent the world's largest democracy and have a truly remarkable Constitution, millions of people are still living in sub-human conditions on pavements, in squatter settlements, bastis, jhuggies or unauthorized slums and are under constant threat of being evicted.

A) Development of Housing Sector

Even after 52 years of independence, our country is facing shelter problem, especially of the poor. The problem has further been compounded by rapid increase in urban population. The New Housing and Habitat Policy in 1998

⁸ http://www.choike.org/nuevo_eng/informes/1162.html Dt. 29.09.06

aims at ensuring basic "Shelter for all" and better quality of life to all citizens by harnessing the unused potentials in Public, private and household sectors. The central theme of the policy is on creating strong Public- Private Partnership for tackling the housing and habitat issues. In the Annual Plan 1999-2000, in the central sector, an outlay of Rs 2973.5 million has been provided for housing. In the approved outlay for housing of 1999-2000 for central sector, there is an increase of 25.3% as compared to actual expenditure of 1998-99. Voluntary Organizations like Habitat and Humanity India help provide decent affordable housing to those who have none and provide interest free loans through their branches to build houses that are repaid by beneficiaries in monthly installments. It is common for government to take up programs of providing low cost housing for the poor and the needy⁹.

The housing sector in India is governed by hundreds of laws, most of which have been enacted several decades ago. In the present era of deregulation, corporate sector participation and community involvement, most of these laws have come under serious scrutiny. All these legislations have failed to protect the interest of poor and illiterate housing consumers.

During the 1970s and 1980s, India witnessed a very interesting phenomenon. Due to the strong judicial activism, several socio-economic rights were brought within the sphere of the fundamental rights. Therefore, while earlier there existed merely the negative duty not to interfere with the life or liberty of an individual without the sanction of law, activist judges now imposed a positive

⁹ <http://www.asianphilanthropy.org/countires/india/development.html> dt:29.09.06

obligation upon the state to take steps for ensuring to the individual a better enjoyment of life and dignity¹⁰.

Reliance on international obligations in the housing rights judgments of the Indian Supreme Court has been significant but unfortunately not very consistent. The courts have relied on the provisions of the UDHR and the ICESCR, but the arguments have not proceeded beyond these provisions. The use of these provisions is random and not regularly practiced by the courts. Sadly, most lawyers and judges in India are entirely unaware of the existence, let alone complexities, of the field of International Human Rights Law. These international norms of 'minimum core obligations', even with a local interpretation, are not considered by the Indian courts to determine housing rights.

B) Role of Judiciary

Right to adequate housing is not only an important component of the right to live with dignity, but also an obvious component of the right to equality. The right to equality is symbiotically linked with our social and economic rights - the one set of rights providing some of the context within which the other set can be understood. The Indian Supreme Court has placed great emphasis on

¹⁰ Kothari Jayna, "A Right to Housing" <http://www.indiatogether.org/opinions/rhousing02.htm> date 29.09.06

guaranteeing housing rights as part of the larger goal of achieving social and economic equality, which is also a fundamental constitutional objective¹¹.

One of the first, and perhaps most important, housing rights case to be heard by the Supreme Court in India was the *Olga Tellis v. Bombay Municipal Corporation*¹² this petition was in the form of a public interest litigation by thousands of pavement dwellers of Bombay city. The petitioners argued that they could not be evicted from their squalid shelters without being offered alternative accommodation. They further argued that they had chosen a pavement or slum to live in only because it was nearest to their place of work, and that evicting them would result in depriving them of their livelihood. The petitioners (living in around more than 10,000 hutments) were to be evicted under the Bombay Municipal Corporation Act, which empowered the Municipal Commissioner to remove encroachments on footpaths or pavements over which the public have a right of passage or access.

The judgment handed down in this case expanded the right to life guaranteed under Article 21 of the Constitution to include within its scope, the right to livelihood, which in this context translated into the right to be allowed to remain on the pavements. And although the final orders in *Olga Tellis* found that the BMC Act was valid and that pavement dwellers should be evicted, the Supreme Court also laid down that this could be done only after arranging alternative accommodation for them. In a sense, therefore, by imposing this

¹¹ *Ibid*

¹² AIR 1986 SC 180

strong condition of providing alternate accommodation before eviction, the Supreme Court was in fact upholding the right of the pavement dwellers to shelter. More interesting is the fact that more than 15 years after the Supreme Court Judgment in 1985 as a result of the strong activism and pressure from NGOs and the pavement dwellers themselves, most of them have still not been evicted by the BMC.

However, a judgment in 2000 in the matters of projects, complete disregard for fundamental human rights and international obligations, by the Supreme Court in *Narmada Bachao Andolan v. Union of India*.¹³

The extreme insensitivity of the Supreme Court with regard to housing in the October 2000 Narmada judgement and the poor and random use of well-developed international law, suggest that the regressive attitude of the courts might well be an indication that law may be one means but certainly not the definitive route to social justice. It is necessary to recognize the equality principle as the backbone of the right to life only than with the right to housing acquire the status of a justifiable fundamental right. In the light of these various arguments, it is perhaps with this judgment we begin to rethink and revive our commitment to the right to adequate housing, both nationally and internationally.

NBA case concerned the continued construction of the Sardar Sarovar Project dam and its significant impact on both the environment and hundreds and

¹³ AIR 2000 SC 3751

thousands of tribal people in the Narmada valley, who have been displaced with inadequate resettlement and rehabilitation options. Despite full knowledge of the concerned authorities' failure to determine the total number of people to be displaced, or find adequate land for their resettlement, and the incomplete resettlement of those already displaced, the Supreme Court ruled that, *'...displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights...'* and held that the construction of the dam would continue. The judgement contradicted all previous Supreme Court rulings that have upheld the right to shelter as a right related to the right to life

There was dearth of interpretation to bring housing as a fundamental right. Whether housing is a fundamental right or not, most of the people in our country buy or construct house for their own settlement. They spend their hard earned money in this respect, but most of the time they are cheated at the hands of the seller, housing board or constructor, but they do not get what they deserve. People are dissatisfied with the services provided by the seller, housing board or constructor of house.

Today a consumer gets relief of interest from housing loans at the time of calculating his total income. This makes it as an important source of tax savings. The primary objective behind this law was to allow the consumer to own their dwelling and deflect the money that went in to rental payments into the purchase of an asset. While this was worthy intention, the fact is that real

estate investments with housing loans is a good tax saving opportunity for those who are not in immediate need of a dwelling unit or those who already possess one.

Individual who are not in a position to construct their own houses by themselves, have to depend upon the constructor or builder. Housing construction is a major activity in India. In our country real estate assets are locked outside the financial market and not leveraged for investment purposes. In certain places construction of housing is done by State Housing Boards or by private contractors. The housing problem has grown steadily over the past few decades, both in rural and in urban areas. Increasing building activity and construction has been an important factor in the regulation of the economy. Public is facing problems in construction of house and material used for construction, both in the public and in the private sectors.

Housing Authorities in India are solely responsible for the rapid development of Indian real estate market. These authorities are formed under the Ministry of Urban Development, there are Regional Housing Authorities at State and City level with pre-determined areas under its jurisdiction. There are Metropolitan Development Agencies active in the metro cities like Delhi, Mumbai, Kolkata, Chennai and urban cities like Bangalore, Hyderabad, Pune, Noida, Gurgaon, Ghaziabad, etc. They undertake the mammoth task of providing adequate infrastructure facilities to the masses¹⁴.

¹⁴ <http://www.indiahousing.com/authorities/> dt.02.03.09

Housing authority in India has to draft a development plan called Master Plan for their city that declares the development plans and objectives set forth by the Regional Housing Authority. The implementation of these plans in an efficient and judicious way has enabled the Regional Housing Authorities in developing entirely global cities like Noida , Navi Mumbai etc. Special Housing Schemes are rendered for the Lower Income Groups (LIG), Economically Weaker Sections (EWS) and the Middle Income Groups (MIG)¹⁵.

Any property in India is being developed in a well-planned way by utilizing the available resources including land and infrastructure facilities in the most optimal manner, there is a general stir of curious interest among the NRI investors for major real estate investments in India. This has also forced the Government of India to relax the restrictions earlier imposed on FDI (Foreign Direct investments) in the real estate sector in India¹⁶

C) Authorities in relation to Housing Sector

Government has created a comprehensive database of the top listed Regional Housing Authorities in India working under the Ministry of Urban Development India. Further they provide information regarding the significance and past, present or upcoming projects by each Housing Authority in India. Detailed profiles of these Metropolitan Development Agencies are placed on internet for public access.

¹⁵ *Ibid*

¹⁶ *Ibid*

In addition, the Government, through greater interaction with the National Housing Bank and housing finance institutions, is seeking to ensure greater private sector participation in the housing sector. The Government is also seeking to strengthen further the cooperative housing sector through National Co-operative Housing Federation. The Government is also seeking to give a boost to housing through the propagation of appropriate cost effective and environmental friendly technology¹⁷.

The present study is limited to the State of Goa. The authorities dealing with housing development and its implementation in the State of Goa are Goa Development Authority (GDA) brings about development in the fundamental infrastructure of the region and at the same time encourages construction of low cost residential houses. The residential houses provided by such agencies serve good purpose. Though Goa is a small state, the cost of real estate is ever rising. Goa is hailed as the most glamorous tourist destination of the country, the region maintains a tradition that is unparalleled and unique in lifestyle and culture. The Regional Housing Authority in Goa understands the delicate fabric of the local society and living patterns and comes up with such housing projects that match exactly with the aspiration of the people living here. Being a tourist hot spot, the Goa Development Authority has to maintain the international standard when it comes to the development of infrastructure and

¹⁷ <http://news.indlaw.com/news99-0549> dt.02.03.09

the provision of basic amenities. The following Authorities are responsible for regulating the housing construction in the State of Goa¹⁸;

- a. Town and Country Planning Authority, Goa
- b. Chief Town Planners, Goa
- c. Senior Town Planner & Director Technical – Panaji
- d. Deputy Town Planner - Panaji

The above authorities are regulating the housing construction in the tiny state. They prepare and implement various rules and regulations from time to time. Consumers approach these authorities to avail the relief against the Housing Board or Builder in case of deficiency in service. However they remain dissatisfied with the relief, as a result of which they have to approach the Civil Court where the remedy is expensive and time consuming.

Consumers are cheated by the builder, due to use of substandard material in construction, no proper plan, delay in allotment etc.

4.2.1 CONSUMER PROTECTION ACT, 1986 AND THE HOUSING SECTOR

Consumer has to move from pillar to post to avail justice. In our bureaucratic system consumers were not getting justice within reasonable time. They have to wait for years together to obtain justice. To provide simple, speedy and inexpensive justice to the consumer the Consumer Protection Act, 1986 was

¹⁸ <http://www.indiahousing.com/goa/housing-authorities.html> dt. 02.03.09

enacted by the Central Government. The provisions of the Act have to be construed in favour of the consumers to achieve the purpose of enactment, as it is a social, benefit oriented legislation.

The expression 'housing construction' was added within the definition of 'service'¹⁹. The purpose of widening the definition was to protect the interest of consumer in case of deficiency in housing service. Construction of a house or a flat can be achieved by a person either by doing it himself or by hiring services of a builder or contractor. Earlier where the consumer hired the services of a contractor or builder and found a deficiency, he would not be aware whom to approach. The remedy available was expensive and time consuming. But later by incorporating housing construction as a service under the CP Act, 1986 the law has benefited large number of consumers.

The term service in clause (o) of Sec. 2 of the Act is very wide and clearly includes, inter alia, the 'housing construction'. The Apex Court while dealing with the issue of housing in the case of *Lucknow Development Authority v. M.K. Gupta*²⁰, has observed, inter alia, as under;

'The entire purpose of widening the definition is to include in it not only day-to-day buying and selling activity undertaken by a common man, but even such activities which are otherwise not of commercial nature, yet they partake a character in which some benefit is conferred on the consumer. Similarly, when a Statutory Authority develops land or allots a site, or constructs a house for the benefit of

¹⁹ By an Ordinance No. 14 of 1993

²⁰ 1994 (1) SCC 243

a common man, it is as such, service rendered by the builder or contractor. When possession of the property is not delivered within stipulated period, the delay so caused is denial of service. Such disputes or claims are not in respect of the immovable property as argued, but 'deficiency in rendering of service' of particular standard, quality or grade.

Similarly, when a Statutory Authority undertakes to develop and frame a housing scheme, it renders service to the society in general, and individual in particular in course of discharge of its duty. A person who applies for allotment of building site or for a flat constructed by the Development Authority or enters into an agreement with a builder or a contractor, is a potential user and the nature of construction is covered in the expression 'service' of any description.

Housing services are provided by Statutory Authority or by private contract. Statutory Authority develops land or allots a site or constructs a house for benefit of a common man. It is treated as service by a builder or a contractor. Certain times consumer can hire a private contractor for the construction of a building, or house. In case of statutory or contractual service any defect in construction activity would be denial of comfort to the consumer.

The Act requires provider of service to be interpreted broadly and more care should be taken when dealing with public service. When Private Undertakings are taken over by the Government or when corporations, are created to discharge what is otherwise State's function, and the objective of such social welfare is to provide better, efficient and cheaper services to the people. A

Government or semi -Government Body or a Local Authority is as much amenable to the Act as any other private body rendering similar service.

The broad areas of deficiency in housing construction at the hands of Housing Board, State Development Authority and Builders can be summarized as under:

- a) Booking of plot,
- b) Deposit of price,
- c) Pricing,
- d) Refund of the amount deposited,
- e) Poor construction at the hands of the builders or the development of the Housing Authorities,
- f) Delay in the delivery of possession of the flat or the plot,
- g) Cancellation of the plot,
- h) Allotment of non-existence sites,
- i) Purchase through open auction of the flat or plot,
- j) Allotment of an alternative plot in lieu of the original allotment, possession of which could not be given to the allottee for one reason or the other,
- k) Compensation,
- l) Plot has not been developed by the Authority in accordance with conditions of allotment,
- m) Plots sold without approval of the layout plans, and

n) Houses under the co-operative group Housing Societies etc.

The Consumer Protection Act, 1986, being a social welfare legislation to help poor housing consumer, strict legal technicalities are not required to be followed by the Consumer Fora. These Fora must act differently from ordinary Civil Court, to provide simple and speedy justice in protecting the interest of housing consumer.

The next and another most important service the consumer's avail, is with regard to the insurance sector. In the recent times this sector is growing and helping the insured consumers. Still the consumers are not satisfied with the functioning and claim settlement adopted by the insurance sector.

4.3 INSURANCE SECTOR

Almost everything is capable of being insured these days, from our life to house hold items. Even a singer's voice or a juggler's hand may be insured, for a premium. Insurance is simply an agreement between two individuals by which in the event of any specified misfortune takes place during a specified time the insurer must pay the insured an agreed amount or sum. Insurance provides a pool of funds to which many contribute a certain sum called the 'premium', out of which the few who suffer losses are compensated. Thus the loss caused by a particular risk is spread over a large number of people.

Insurance provides a sense of security to the income earner as also to the family. Buying an insurance policy, is meaningful to the individual from

unnecessary financial burden that can otherwise make him spend sleepless nights. The individual has a sense of consolation that he has something to fall back on.

Insurance is also important because of the uncertain future adverse effects of life, accidents, illness, disability etc, the facts of life, which can be extremely devastating. Other than that, the hospitalization, medication bills may run up as the aftermath of the incident.

Insurance today has opened up new vistas for every section of the society. Even for the village farmer insurance holds a lot of potential. Considering how dependent our agricultural system is on monsoon. The uncertainty of monsoon can be taken care of by insurance. Looking at the advantages of an insurance policy a number of farmers have gone in for insurance. Insurance has become a necessity today. It provides timely financial rewards with bonuses²¹.

The Indian Insurance Law is the product of various legislations made on the basis of the English Law of Insurance. The expansion of the insurance business in different fields prompted the enactment of the Indian Life Assurance Companies Act, 1912 based on the English Act of 1909 to deal with life insurance business. In the initial stages insurance business was governed by the provisions of the Company Law. Later, a Draft Bill was introduced with an aim to consolidate the laws of insurance, applicable to all types of insurance business. But the Bill was not passed for various reasons. The Insurance

²¹ LIC Agent Manual

Companies Act, 1928 was drafted on the guidelines of the bill that was tabled earlier in England. But it did not have sufficient regulations and provisions to meet the needs and control the insurance business. The ever expanding nature of the insurance business, particularly the life insurance and some general insurance fields, warranted the need to have one comprehensive Act, to govern all the multifarious insurance forms of business²².

The general insurance business (non life insurance business) is fundamentally covered by the provisions of the Insurance Act, 1938 and some special contracts are governed by different Acts such as Marine Insurance Act, 1963, Public Liability Act, 1991 and Motor Vehicles Act, 1988. Most of the provisions of the Insurance Act, 1938 are applicable to the life insurance contract and in addition to these provisions, the provisions of the Life Insurance Act, 1956 are also applicable to the life insurance business²³.

Insurance business is divided into two main branches (a) life insurance and (b) general insurance. General insurance business is also known as non life insurance business. It can be classified as accidents, sickness, fire insurance, marine insurance, crop insurance, third party liability, professional liability, etc.,. Both are conducted by Government Corporations in India. The Insurance Act, 1938 lays down the definitions and general principles of the business. The Life Insurance Corporation Act, 1956 governs life insurance business and the General Insurance Business (Nationalization) Act 1972 governs the rest. While

²² *Legal Environment Business*, (The ICFAI University Press, Hyderabad, 2007) at 241

²³ *Ibid*

life insurance is a monopoly of the LIC of India, general insurance is transacted by the General Insurance Corporation of India with its four subsidiaries²⁴:

- a. The National Insurance Co., Calcutta
- b. The New India Assurance Co., Ltd., Bombay
- c. The Oriental Insurance Co., Ltd., New Delhi, and
- d. The United India Insurance Co., Ltd., Madras

An insurer, assurer or underwriter is the party in an insurance contract who promises to pay the sum in case of an event. The party to whom the protection is given in exchange of premium is called the insured or the assured. The document containing the terms and conditions of the contract of insurance is called policy. So an insured is also called a policy holder. While the insured pays premium for the protection, the amount for which a policy is issued is called the insured amount or policy amount²⁵.

There are several principles governing the Law of Insurance, which lay hassle on the personal needs. But one important point to note is that a contract of insurance is one of the 'utmost good faith'. It means that it is the inherent duty of each party to make full and fair disclosure of all material facts relating to the subject matter insured. A person seeking life insurance must disclose whether he is suffering from any ailment which affects his life. He should not be vague or silent about such material facts. If there is any breach of this condition, the insurer can avoid payment. Therefore, one should be careful while filling up

²⁴ *Supra* note. 1 at 38

²⁵ *Id* at 39

the 'proposal form' supplied by the corporation. There are different forms for different policies. The questions should be answered in good faith. Proof of age is vital in this context²⁶.

A person who has attained majority, is of sound mind and capable of entering into a valid contract can take a life insurance policy of self or on those in whom he has an 'insurable interest'. Policies can be taken, subject to certain conditions, on the life of spouse or child. Normally mere blood relationship or affection is not enough to constitute 'insurable interest'. There should be a financial interest in the continuance of the life of the insured²⁷.

4.3.1 VARIOUS CATEGORIES OF INSURANCE

There are various categories of insurance, the most important are, Fire Insurance, Marine Insurance, Motor Vehicle Insurance, Liability Insurance and Life Insurance.

1. Fire Insurance

Fire insurance is a contract by which the insurer agrees for consideration to indemnify the assured up to a certain extent and subject to certain terms and conditions against loss or damage by fire which may happen to the property of the assured during a specified period. In India the Insurance Act 1938 defines

²⁶ *Ibid*

²⁷ *Ibid*

the term fire insurance²⁸ business as the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against the loss by or incidental to fire or other occurrence customarily included among the risks insured against fire insurance policies.

The object of the contract is to indemnify the assured from the loss caused to the property of the assured by damage or destruction by fire. Fire insurance presupposes the existence of some physical object which is capable of being destroyed by fire and upon the loss of which by fire the right of indemnity given by the contract is intended to arise. The other object of fire insurance contract though not to prevent accidents, is to minimize the loss to the assured²⁹.

2. Marine Insurance

Marine insurance³⁰ is a contract whereby the insurer undertakes to indemnify the assured in the manner and to the extent thereby agreed, against marine losses, that is to say the losses incidental to a marine adventure. A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk

²⁸ Sec. 2 (6-A) of The Insurance Act, 1938: 'Fire Insurance Business' means the business effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks in fire insurance policies.

²⁹ Murthy KSN & Sharma KVS, *Modern Law of Insurance*, (Lexis Nexis Butterworth's India, New Delhi, 2002) at 209 - 213

³⁰ Sec. 2 (13-A) of Insurance Act, 1938: 'Marine Insurance Business' means the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interest which may be legally insured, in or in relation to such vessels, cargoes and freights, goods wares, merchandise and property of whatever description insured for any transit by land or wares, or both, and whether or not including warehouse risks in addition or as incidental to such transit, and includes any other risks customarily included among the risks insured against in mariner insurance policies.

which may be incidental to any sea voyage³¹. In a contract of marine insurance, what is insured is not the property exposed to peril but only the risk or adventure of the assured.

With the due development of commerce and civilization, insurance also developed and now the strict scope of marine insurance, which was concerned only with the risk incidental to a sea voyage, has been expanded to cover a wide variety of risks which are of course incidental to or connected directly or remotely, with a sea voyage. In modern times, the normal insurance of goods includes a transit clause, which covers the goods from the warehouse of the manufacturer or wholesale seller to that of the consignee or the buyer³².

3. Motor Vehicle Insurance

According to the Law of Torts if a person negligently drives a vehicle and causes injury to or death of a third party, the driver whose negligence caused the damage is liable to the third party. The driver is a servant of the vehicle and the actual delinquent. Common Law recognized vicarious liability of the owner of the vehicle as the Master and he is liable for the tortuous acts of the servant provided the servant does such act in the course of his employment³³.

In absence of the vicarious liability principle to provide benefit to the third party the law recognized third party or compulsory insurance of motor vehicle. Once the motor vehicle is insured the owner is liable towards the third party for

³¹ The Marine Insurance (Indian) Act, Sec 4 (1)

³² *Supra* note. 28 at 253

³³ *Id* at 327

causing injury or death by the use of the motor vehicle. The Motor Vehicles Act, 1939 under Chapter 8 deals with this branch of liability. This is another branch of insurance and is made compulsory. The contract in this type of policy like any other contract of insurance, is one of indemnity. The object is to protect the insured against his liability to the third party arising out of an accident caused by the use of motor vehicle on a public road and it is also made compulsory. The general effect of the Act is that every person who runs a motor vehicle is under a duty not to use or to cause or permit any other person to use it on the road, unless any liability, which may be incurred thereby in respect of the death or bodily injury to any person caused by or arising out of this user is covered by a policy of insurance. Third party insurance is a must for running a motor vehicle in a public place³⁴.

In cases of car insurance, the Consumer Courts have even held that in case of a rejection of an insurance claim due to non-application of mind by the insurer, the insurer is liable to pay the entire amount along with interest. With respect to car insurance it is important to remember that at the time of claiming insurance you may not receive the entire market value of the vehicle but may only receive the value depending upon the age of the vehicle & resale value.

Where the insurance agreement specifically states that in case of any loss to the vehicle within a period of 6 months there would be no depreciation of the value, the insurance company was bound by it and had to pay the entire amount .In

³⁴ *Id* at 328

case where the driving license itself is fake it may not be possible to claim insurance.

4. Liability Insurance or Miscellaneous Insurance

The categories of insurance are not a closed list, and with the progress of civilization new types of insurance are emerging. In India, the Controller of Insurance has published data, according to the classification adopted by the Indian Insurance Act 1938 as life, marine and general or miscellaneous insurance³⁵. This miscellaneous insurance in England is called as 'accident insurance' and in USA it is named as 'causality insurance'. Though this branch is of recent origin, as it covers a multifarious and varied variety of risks, with rapid developments and progress of civilization, it has an enormous growth. The risks covered under this category can be broadly classified in to three main categories, namely, risk concerning person, property and liability. The first two heads correspond to the classical classification of life and non-life, or property or fire and marine insurance³⁶.

The above discussion highlights the need for various categories of insurance and the benefit available to the insured. Out of all the above discussed categories of insurance the most important one which deals with human beings in their day to day life, is the Life Insurance. For this reason the researcher is concentrates only on the idea of life insurance and claims settlement.

³⁵ Sec. 2 (13-B) of Insurance Act, 1938: 'Miscellaneous insurance business' means the business of effecting contracts of insurance which is not principally or wholly of any kind or kinds included in Sec. 2 (6-A), (11) and (13-A)

³⁶ *Supra* note. 28 at 307

4.3.2 LIFE INSURANCE

Life insurance today plays a major role in ones life at various stages. Considering the benefit it offers, one cannot but give a thought to buying an insurance policy at the earliest. The need for life insurance comes from the need to safeguard our family. If you care for your family's needs you will definitely consider insurance.

Life insurance³⁷ of a person is a contract by which the insurer in consideration at a certain premium, either in a gross sum or periodical payments, undertakes to pay the person for whose benefit the insurance is made, a stipulated sum, or annuity equivalent, upon the death of the person whose life is insured. The contractual guarantee is the promise to pay, backed by one of the oldest and most stable regulated financial industry operating in the Indian sub-continent today.

Life insurance is nothing but the creation of capital funds on an installment basis. Here the results are guaranteed. Life insurance is basically a property that is bought under a contract accompanied by contractual guarantee that ensure large sums of money at the death of the insured.

³⁷ Insurance Act, 1938 .Sec. 2 (11): 'Life Insurance Business' means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) and the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include

- (a) the granting of disability and double or triple indemnity accident benefit, if so provided in the contract of insurance
- (b) the granting of annuities upon human life and
- (c) The granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons

In cases of life insurance it is important for the individual to disclose all material facts as to any serious illness or ailment before signing up for any insurance. However the individual does not have to disclose casual ailments, which do not require any medical attention.

A) Concept of Life Insurance

Insurance is an arrangement where a large number of persons agree to share the loss which a few of them are likely incur in future. Due to this sharing, the individual share of the loss will be relatively small and when this arrangement is made with a large group of individuals, contribution remains fairly steady from year to year. This agreement is organized by an institution, the idea of average works out to the benefit of all the members.

Life insurance in particular is a contract providing for a payment of a definite sum of money to the person insured or his family on the happening of a contingency, either death or survival. This contingency is dependant on human life. The paramount importance of life insurance as a measure of social security arises from the fact that it provides the only means of protecting his asset, namely the economic value of human life. In other terms, the individual's ability to earn an income is capitalized and this capitalized value is insured³⁸.

In India, the history of life insurance commenced in 1871, with the starting of the Bombay Mutual Insurance followed in 1874 by the Oriental Insurance, both in Bombay. There was a steady growth from 1870 to the beginning of this

³⁸ Rao Appa. Machiraju, *Life Insurance – A Consumer Hand Book*, (CERC, Ahmadabad, 1993) at 2

century as many other life Insurance Offices were established in India. Due to the increase in level of education, industrialization and nationalization the insurance consciousness in the people of the country increased. Confidence in the insurance companies has increased. Insurance companies also indulged in vigorous developmental programmes. All these contributed to a boon in the insurance business and in particular in life insurance business. Huge amount of capital was available with the insurers and the government found it handy to utilize these funds for its developmental plans and also to ensure the investing public, a better security. The life insurance business was first nationalized in 1956. The Life Insurance Corporation was created on 1st September 1956 conferring on it the exclusive privilege of carrying on life insurance business in India except otherwise expressly provided in the Act³⁹.

The business of life insurance is now broadcasted, whereby the payment of money is assured on the happening of any contingency depending on human life. Broadly life insurance includes;

- a) Death benefit or survival benefit
- b) Granting of disability and accident benefit along with the death benefit
- c) Granting of annuities depending on human life and
- d) Granting of death benefit cum superannuation benefit on a group basis, the group being homogenous.

³⁹ *Supra* note. 28 at 7 - 10

B) Advantages of Life Insurance⁴⁰

Life insurance policies consist of various advantages. Depending upon the policy, the advantage may be for short term or long term. Some of them are as follows;

a) Mobilization of small savings

The most important benefit accruing to the country on account of life insurance business is that it serves as an effective vehicle to mobilize small amounts from individuals and channelize the funds so mobilized into various types of investments in nation building activities and purposes which will improve the nation's economy as a whole.

b) Tax relief

One of the main advantages is the income tax relief. Life insurance premium paid by individuals or Hindu Undivided Families are taken into account for computing income tax payable and considerable tax relief is given to the policy holders. This relief will substantially reduce the net outlay on the premium payments.

⁴⁰ *Supra* note. 37 at 2 - 3

c) Easy settlement

In case of policy holder's death, transfer of the sum assured can be made easy and less cumbersome. Nominees, legal heirs can receive the policy money in case of death of insured.

d) Protection against creditors

The proceeds of life insurance policy can be protected against the claims of creditors of the life insured if the policy holder makes necessary arrangements either by assigning the policy absolutely or making it transferable to wife, children etc, under any law for time being in force.

There are various and combinations in the nature of life insurance contracts, depending on the benefits that are available. Life insurance primarily covers the risk of death i.e., in case of the death of a person whose life is insured, the insurer pays the agreed sum assured to the dependants of the life assured. This is the insurance cover covering pure death risk. In addition to the death risk if the sum assured is paid on the survival of the insured after the expiry of the term the cover comes under endowment policy. Besides in these kinds of life insurance, there are various new categories of risk cover as per the new kinds of risk in our society.

The insurer makes various types of life insurance services available to the consumer, and issues policies enumerating various conditions and privileges

under the policy. The insurer has to receive a proposal and declaration and the first premium in order to issue a policy.

In case the event insured against happens, the assured becomes entitled to enforce the policy and the insurer becomes liable to pay the amount secured in the policy in accordance with its terms. The operative portion of an Endowment Life Assurance Policy states that the insurer will pay the sum assured with bonuses to the persons to whom it is expressed to be payable.

In advance of the date of maturity the Life Insurance Corporation sends maturity intimation informing the insured of all the requirements, which he has to fulfill for enabling him to receive payment under the policy.

In case of the death of the insured, the claimants are usually the heirs. Assignees or nominees have to inform the insurer of the death of the assured within the stipulated time, if any, in the policy and in its absence within a reasonable time. On receiving the intimation certain forms are to be sent by the Corporation to the claimant or claimants informing him or them of the requirement to be fulfilled for settling the claim. On receipt of these forms, the insurer makes his own investigation and if there are no suspicious circumstances, the insurer issues the discharge form to the claimant to be sent back to the insurer after filing it up properly. When the assured dies an unnatural death, such as by accident, suicide or due to unknown causes, the

insurer makes further investigations after seeking further information from the claimant⁴¹.

C) Dispute Settlement Authorities and Life Insurance

In the event of a dispute as to claims on small life insurance policies the insurer may refer the matter to the Controller of Insurance and his decision on the matter is final⁴².

The next important Authority in the settlement of insurance disputes is the 'Ombudsman'. The Ombudsman is appointed in accordance with the Redressal of Public Grievances Rules, 1998, to resolve all complaints relating to settlement of claims on the part of insurance companies in a cost-effective, efficient and effective manner. The Ombudsman so appointed has jurisdiction on both, life and general insurance claims and his office shall be located at such place as may be specified by the Insurance Council from time to time and the governing body shall specify his territorial jurisdiction and he may hold his sittings in his area for expeditious disposal of the cases⁴³.

Any person who has a grievance against an insurer may make a complaint to an Ombudsman within whose jurisdiction he comes and as per the provisions specified. However, prior to making a complaint, such person should have made a representation to the insurer, and either the insurer should have rejected the complaint or not replied to it. Further, the complaint should be made not

⁴¹ *Supra* note 28 at 199 - 203

⁴² The Insurance Act, 1938 Sec. 47 A

⁴³ *Supra* note. 28 at 355

later than a year from the date of rejection of the complaint by the insurer and there should not be any other proceedings pending in any other Court, Consumer Forum or Arbitrator pending on the same subject matter. The Ombudsman is also empowered to receive and consider any partial or total repudiation of claims by an insurer, any dispute in regard to the premium paid in terms of the policy, any dispute on the legal construction of the policies in as much as such dispute relates to claims, delay in settlement of claims and the non-issue of any insurance document to customers after receipt of premium⁴⁴.

The Ombudsman acts as a counselor and mediator and make recommendations to both the parties in the event that the complaint is settled by agreement between both the parties. However, if the complaint is not settled by agreement, the Ombudsman may pass an award of compensation within three months of the complaint, which shall not be in excess of what is necessary to cover the loss suffered by the complainant as a direct consequence of the insured peril, or for an amount not exceeding rupees two million, (including exgratia and other expenses), whichever is lower⁴⁵.

Most of the time the insured is dissatisfied in getting back what he invested in insurance business. Sometimes he does not get proper justice if he approaches the Authorities established under the Insurance Act. In this respect Consumer Redressal Agencies play an important role in providing consumer justice to the insured. For the purpose of the Consumer Protection Act, the consumer has

⁴⁴ <http://www.nishithdesai.com/Research dt.17.08.06>

⁴⁵ *Ibid*

been defined separately as 'consumer of goods' and 'consumer of services'⁴⁶. The insurer agrees to indemnify the policy holder from a contingent loss and the policy cannot be called goods in any sense, but the insurer may be called the provider of service and the policy holder comes under 'consumer of services' in this context.

The term 'service' under Sec. 2 (1) (o) includes insurance. It may be of life or general which may be respectively conducted by Life Insurance Corporation and General Insurance Corporation. Since their business is a service, they are amenable before Consumer Fora. Policy holders and beneficiaries under the policy are consumers within the meaning of this Act.

In general, Insurance Companies and firms can be held liable in case of a deficiency in service under the Consumer Protection Act, 1986. If the insurance company makes any adverse claim or assertion with respect to insurance claim, the onus is on them to prove that the assertion is true. It is also very important for us to check and carefully read the insurance agreement. One should not suppress any important or material facts which may be relevant for ones insurance cover from the insurance company and always remember to read the fine print and small details, as these will make a big difference if & when one has to collect the insurance money.

It is clear that housing and insurance sectors are providing service to the consumers. In case of deficiency in service the consumer can approach the

⁴⁶ Sec. 2 (1) (d), Consumer Protection Act, 1986

appropriate redressal agency and can avail consumer justice. This chapter highlights the importance of housing, insurance sector and the claims settlement in case of dispute. Next chapter deals with standards to be followed while providing housing and insurance services.

CHAPTER V

STANDARDS

PRESCRIBED FOR

SERVICES RENDERED

“We see our customers as invited guests to a party, and we are the hosts. It's our job every day to make every important aspect of the customer experience a little bit better”.

Jeff Bezos¹

5.1 INTRODUCTION

According to the new style of governance, the consumer is the "king", and therefore his interest has to be protected, and he has to be provided with a quality service at reasonable costs. Further, his complaints as regards poor quality of services must be quickly redressed. Even before the introduction of regulatory legislation in sectors such as **housing, insurance**, electricity, telecom, or ports, the Consumer Protection Act (CPA), 1986, sought to promote and protect the following rights of the consumers;

- a) The right to be protected against marketing of goods and services which are hazardous to life and property,
- b) The right to be informed about quality, purity, standard and price of goods or services as the case may be, so as to protect the consumer against unfair trade practices,
- c) The right to be assured, whenever, possible, access to a variety of goods and services at competitive prices,
- d) The right to be heard, and to be assured that consumer's interests will receive due consideration at appropriate forum,

A complaint under the Act also includes any allegation relating to “the services hired or availed for or agreed to be hired or availed by him, if he suffers from one or more deficiency”. Further, a "deficiency" is defined as "any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of

¹ http://www.woopidoo.com/business_quotes/customer-quotes.htm dt. 30.03.10

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"². *Section 2(1) (o) of the Act* defines the term "service" as "service as any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, **insurance, housing, transport,** processing, supply of electrical energy or other energy, boarding, or lodging ,....., but does not include the rendering any service free of charge or under a contract of personal service". To address the consumer grievances under the Act, there are three tier Consumer Fora at every District, in various States as well at the National level.

The previous Chapter has analyzed the importance of services rendered by housing and insurance sector. It also mentions various Authorities established in settlement of claims by the consumers. Whenever services are provided to the consumer the service provider is required to follow minimum standards prescribed at International and National level. Standard to be followed by the service provider varies from one service to other. There is no hard and fast rule to be applied to verify the standards followed by the service provider while providing service.

² Sec. 2 (1) (g) of the Consumer Protection Act, 1986

The present Chapter verifies the law governing in other countries especially United Kingdom and United States of America, in case the service provider fails to satisfy the consumer or provides a substandard service to the consumer.

4.2 LAW APPLICABLE IN UK AND USA:

‘Quality of service’ would depend on the sector under consideration. Parameters that measure quality in a given sector also vary across countries. The quality of service should not be static, rather dynamic. Thus, depending on the stages of development in a particular sector, the parameters governing quality of service in a given sector could vary over time³.

For example, development indicators (such as telephone density) are not QOS (quality of service) indicators in UK, while they are in India. In UK’s electricity sector, ‘keeping appointment’ with the utility is one of the indicators, but it is not so in India. Typically, a network industry such as telecommunication or electricity industry is expected to ensure high quality of service, if combination of network quality and service quality to its customer improves, the former being the core of the overall quality of service⁴.

³ <http://static.teriin.org/discussion/regu-ip-htm> dt. 27.10.06

⁴ *Ibid*

4.2.1 STANDARDS IN U K AND USA

British Parliament has paid less attention to the standard of services. Absence of legislation is because of the reason that services lacked the element of large volume trading at a distance which applied in the case of sales. In the absence of commercial need there was no reason for the Parliament to depart from the principle of not legislating extensively in the business area. Individuals were thus left to resort to the common law when they were dissatisfied with the quality of services. The judiciary has implied terms in contracts for services along the lines of those of products in the Sale of Goods Act, 1893. The absence of legislation has meant that the reform in favour of consumers has lagged behind in the case of services. Exemption clauses are effective in excluding liability for the quality of services unless, pursuant to the **Unfair Contract Terms Act, 1977**⁵.

Consumer can often invoke general principles of contract law if they are dissatisfied with the quality of services. At this juncture the judiciary played an important role to lay down various implied standards to be followed by the service provider. English law identifies three types of contract involving services where it implies terms as to quality, contract of hire, contract for work and materials and contracts for services simpliciter⁶.

With contract of hire, the courts imply a term as to fitness or quality of the product hired, although there is some uncertainty about its extent. As per the

⁵ Cranston Ross, *Consumers and the Law*, (Weidenfeld and Nicolson, London, 1978) at 133

⁶ *Id* at 133 - 139

implied terms the service should be fit for the purpose for which it is availed. It means that the provider of service should apply reasonable care and skill.

In contract for work and materials the courts imply terms that the materials are of normal quality and suitable for the purpose. The implied terms are strict and a business is liable for latent defects in materials even though it has exercised reasonable care. The leading case is *Young & Marten v. McManus Child's*⁷, the House of Lords held, that building contractors were liable for latent defects in the tiles they had used although they had purchased them from a nominated manufacturer. The implied term as to suitability for purpose was negated because the tiles came from a nominated source of supply, but that did not relieve the contractors from using materials of normal quality, even though the defects were latent and not apparent on reasonable examination.

The courts imply a number of terms regarding the work element in contracts for work and materials and contracts for services. There is an obligation to perform the undertaking unless performance is rendered impossible by circumstances beyond business's control, as where a product to be repaired is accidentally destroyed by fire. Where no time is fixed the undertaking must be performed within reasonable time.

The most important implied term regarding work is obligation to exercise reasonable skill and care. In **Australia** this common law standard has been incorporated in legislation, and *Sec. 74 of the Trade Practices Act, 1974*

⁷ (1969) 1 AC 454

provides an implied warranty that services will be rendered with due skill and care and that they shall be in accordance with any particular purposes made known expressly or by implication. The implied term at common law requires that a business must use the skill appropriate to a reasonable competent member of the relevant trade. For example, a lower standard of care is required from a jeweller piercing ears than from a medical practitioner. In holding itself out as qualified to do certain work, however, a business warrants that it possesses those skills and so may be held to a high standard⁸.

Reasonableness is defined as the appropriate standard on the basis that, a person who has performed the work, frequently specifies its nature and extent—very often, we can refer to the cost, and the minimum necessary standard of skill and care. Reasonable skill and care as the standard for workmanship means that decisions turn on the nature of the trade and the particular circumstances involved. In building contracts where there is an implied term that a newly constructed house must be finished in a workmanlike manner, may mean for example, fittings like water taps, and baths must be properly installed and walls must be plastered⁹. Medical practitioners must bring to bear a reasonable degree of skill and knowledge, though the British courts are lenient when compared with those in the United States.

⁸ *Supra* note. 5 at 136

⁹ *Perry v. Sharon Development Co. Ltd* (1937) 3 All.E.R. 390, See Jonathan L. Kemper, “The Home Owners Warranty Program – An Initial Analysis”, (1976), 28 *Stan. L. Rev.* 357,367 (statutory warranty in Maryland)

Person performing the service is not in the same position as a seller, in that he is controlled by the customer's instructions. He can not require a customer to order a complete overhaul or even an adequate repair. Rules of servicing must therefore differ from rules governing the sale of goods and it would seem impracticable to require more than that the repair or service ordered by the customer should be competently performed and that it should not be defective or hazardous in itself, and that if it would in itself render the article's use more hazardous, it should not be carried out¹⁰.

Recently the Parliament incorporated in legislation the terms about quality to be implied in contracts for the sale of products. To ensure clarity and consistency it is time that similar action was taken for contracts of hire, work and materials and services. At the same time other specific steps should be taken if standards are to be improved. Voluntary efforts are one approach, and the Office of Fair Trading has negotiated a number of Codes of practice focusing on the servicing and repair of consumer durables. There is also a need for more government regulations¹¹.

To eliminate shoddy work in house building, the Ontario New Home Warranties Plan Act 1976 creates a statutory warranty on the part of builder and developers selling newly constructed homes, that a home be constructed in a workmanlike manner, be free from defects in material, be constructed in accordance with the Ontario Building Code and be free from major structural

¹⁰ Department of Prices and Consumer Protection, Consumer Safety, A Consultative Document, Cmnd.6398 (London, HMSO, 1976) at 89

¹¹ *Supra* note. 5 at 138

defects¹². The warranty does not apply to defects in materials, design or workmanship supplied by the owner, to consequential damage caused by defects, or to surface defects in workmanship and materials specified and accepted in writing by the purchaser¹³. The warranty applies to complaints made within a year (five years if major structural defects are involved) and can be made by subsequent owners in that period despite an absence of privity of contract. Sec. 13 (4) to (5). When a purchaser has a claim under the warranty of financial loss resulting from the vendor's bankruptcy or failure to perform, he is entitled to be paid out of a guarantee fund if action against the vendor is for some reason impossible¹⁴.

Public regulations cannot solve all the problems. There may be shortage of skilled tradesmen in service industries, but it will go part of the way to eliminate abuses and to ensure the minimum standards required by the civil law¹⁵.

In the US, the Office of Rate Payers Advocates (ORA) attached to the Public Undertaking Corporations (PUC) represents the consumers in the proceeding before the Commission. In Pennsylvania, the government funds certain consumer groups who can hire necessary expertise for defending their interests before the commission. In India, there is a need to devise a system so that

¹² Sec. 13 (1), The Act also includes licenses of Builders (s.6)

¹³ Sec. 13 (2)

¹⁴ Sec. 14

¹⁵ *Supra* note. 5 at 139

consumers are well represented during the regulatory process and are suitably empowered to interact effectively with the regulators.

Existing literature on quality of service, argue that monopolistic and even some competitive environments are not conducive to promote quality. Although a competitive environment is expected to maximize consumer welfare, it does not always satisfy individual's heterogenous price-quality preferences. It is evident from the literature that monopolies tend to distort quality of service by either over supply or under supply quality depending on various factors such as elasticity of demand. Even in a competitive environment when firms have a better understanding of their product and quality than most consumers and therefore, charge a higher price, customers by agreeing to pay no more than the price for average quality of goods for services, can induce the firms to lower quality leading to a downward cycle in prices and quality. Although higher quality of service would entail high cost of providing such service, this may not lead to lower level of profit in view of transfer of costs, such as costs towards complaint handling, or payment of compensation to improve in service, in addition to having higher volume of use of services, new customers, etc¹⁶.

Careful analysis of literature proves that there are certain standards prescribed for services through enactments, customs and practices followed in the market place. But these standards are not uniform. They may vary in each and every country, society and place of business. After going through the standards prescribed to be followed while providing services in different countries let us

¹⁶ *Supra* note. 3

verify the standards laid down at international level to protect the interest of consumers.

5.3 STANDARDS UNDER INTERNATIONAL REGIME

One of the most important Non Governmental Organizations set up at international level to set standards to be followed by all other nations in the world is **International Organization for Standardization (ISO)**.

1. ISO Standardization

ISO is a global network that identifies what International Standards are required by business, government and society. It develops in a partnership with the sectors that will put them to use, adopts them by transparent procedures based on national input and delivers them to be implemented worldwide¹⁷.

ISO standards distil an international consensus from the broadest possible base of stakeholder groups. Expert inputs come from those closest to the needs for the standards and also to the results of implementing them. In this way, although voluntary, ISO standards are widely respected and accepted by public and private sectors internationally.

ISO's work programme ranges from standards for traditional activities, such as agriculture and construction, through mechanical engineering, manufacturing and distribution, to transport, medical devices, the latest in

¹⁷ www.iso.org dt. 10.08.2008

information and communication technology development and standard of service.

Its standards specify the requirements for products, services, processes, materials and systems, and for good conformity assessment, managerial and organizational practice. ISO standards are designed to be implemented worldwide¹⁸.

International Organization for Standardization is a worldwide federation of National Standards Bodies, which aims to promote the development of standardization and related activities in the world with a view to facilitating international exchange of goods and services, and to developing cooperation in the spheres of intellectual, scientific, technological and economic activity. The results of its technical work are published as International Standards. The ISO 9000 family of standards represent an international consensus on good management practices with the aim of ensuring that the Organization can deliver the product or services that meet the consumer's quality requirements.

ISO 9001:2000 is one of the core standards in the family of ISO 9000 standards which deals with the requirements of Quality Management Systems. The main benefits of implementing these requirements and getting certification licence under Quality Management Systems Certification Scheme are that it¹⁹

- (i) Provides an opportunity to increase value of the activities of the Organization,

¹⁸ *Ibid*

¹⁹ *Ibid*

- (ii) provides clear indication of firm's capabilities as well as strong evidence of its commitment to quality,
- (iii) improves the performance of processes/activities continually,
- (iv) Leads to less material wastage, production down time, rework, etc. through an increase in 'quality know-how' and efficiency,
- (v) Provides satisfaction to consumers by assuring them quality of products,
- (vi) facilitates proper implementation of statutory and regulatory requirements related to products/services, and
- (vii) facilitates better resource management.

2. ISO's Partners²⁰

ISO is a Non-Governmental Organization consisting of a federation of the National Standard Bodies of 157 countries, one per country, from all regions of the world, including developed, developing and transitional economies.

Each of the members is the Principal Standards Organization in its country. The members propose the new standards, participate in their development and provide support in collaboration with ISO Central Secretariat for the 3000 technical groups that actually develop the standards.

The members appoint National Delegations to Standards Committees. In all, there are some 50000 experts contributing annually to the work of the Organization. When their work is published as an ISO International Standard, it may be adopted as a national standard by the ISO members and translated.

²⁰ *Supra* note. 17

ISO collaborates with its partners in international standardization, the IEC (International Electro Technical Commission) and the ITU-T (International Telecommunication Union), particularly in the field of information and communication technology. They have established the World Standards Cooperation (WSC) as the focus for their combined strategic activity.

It has a strategic partnership with the World Trade Organization (WTO) aiming to promote a free and fair global trading system. Signatories to the WTO Agreement on Technical Barriers to Trade (TBT) commit themselves to promoting and using international standards of the type developed by ISO.

ISO cooperates closely with most of the specialized agencies and bodies of the United Nations that are involved in technical harmonization and assistance to developing countries.

It also maintains close working relations with Regional Standards Organizations, many members of the Regional Organization belong to ISO. In addition, several hundred specialized organizations representing trade and regulatory sectors participate in developing ISO standards.

ISO's work programme ranges from standards for traditional activities such as agriculture and construction, through mechanical engineering, manufacturing and distribution, to transport, medical devices, the latest in information and communication technology development and standard of

service. Further the ISO Standards and Guide for conformity assessment – covering all aspects from supplier’s declaration of conformity to third-party certification and accreditation - which is becoming a vital component of business transactions, global trade and regulatory requirements²¹.

Quality Standards prescribed by ISO are followed by various countries in global trade and commerce. These standards prescribes international consensus of good management practice, while delivering products and services. BIS is a founder member of ISO and represents India in ISO. Now let us analyze the standards recognized in India to protect interest of the consumer in the market place.

5.4 INDIAN LAW AND MINIMUM STANDARDS

There is no separate legislation in India that governs standard of service provided by the various service providers. The present research is concerned with the services provided by housing and insurance sector. Generally in these sectors standard of services is provided between the parties through a contract or agreement among them. All the terms and conditions are clearly laid down in that agreement in relation to the standards to be followed by the service provider. In case of breach, the remedy is available under the Law of Contract. Contract law is applicable if the service provider fails to provide quality of service as specified in the agreement. Service provider cannot enter in an agreement according to his whims and fancies. The agreement should consist of certain specific terms and conditions. These terms and conditions are

²¹ *Ibid*

governed by standard form of contract. If the agreement is not as per this standard form of contract it amounts to breach, and remedy is available under the Law of Contract.

1. Standard form of Contract

Standard form of contract has arisen out of the modern 'large scale and widespread' practice of concluding contracts in standardized forms. In the present society it would be difficult to draw up a separate contract with each and every individual by any Corporation or Organization. Therefore, they maintain printed forms of contract. Such standard contract contains a large number of terms and conditions, which restrict and often exclude liability under the contract. The individual can hardly bargain with the massive Organizations²². He cannot alter those terms or even discuss them, they are there for him to take or leave²³.

This gives a unique opportunity to the Company or the Organization to exploit the weakness of the consumer by imposing upon him various terms and conditions. These terms and conditions look like a kind of private legislation which may go to the extent of exempting the Corporation or Organization from all the liability under the contract. As a result many cases have come before the court in this regard. The courts have found it very difficult to come to the rescue of the consumer particularly where he has signed the document without bare reading. In such situation the courts have been constrained to hold that he

²² Examples like LIC of India, Railway Administration, Courier Services, Transport Services, Dry Cleaners etc.

²³ Singh Avatar, *Contract and Specific Relief*, (Eastern Book Co, Lucknow, 10th Ed. 2008) at 69

will be bound by the document even if he never acquainted himself with its terms and conditions²⁴.

There is a need therefore, to protect the consumer who has entered into standard form of contract. Following are some of the modes of protection that have been evolved by the courts from time to time;

- a) Reasonable notice,
- b) Notice should be contemporaneous with contract,
- c) Theory of fundamental breach,
- d) Strict construction,
- e) Liability in tort,
- f) Unreasonable terms,
- g) Exemption clauses and third parties

a) Reasonable Notice

It is the duty of the person delivering a document, to give adequate notice to the offeree of the printed terms and conditions. If this is not done, the acceptor will not be bound by the terms. The House of Lords in *Henderson v. Stevenson*²⁵ held that the plaintiff could not have accepted a term 'which he has not seen, of which he knew nothing, and which is not in any way ostensibly connected with that which is printed and written upon the face of the contract presented to him'. There was nothing to attract the attention of the passenger to the place where the conditions were printed.

²⁴ *Ibid*

²⁵ (1875) 2 HL SC App 470

If a folded up ticket was handed over to a passenger and the conditions printed on it were also obliterated in part by a stamp in red ink²⁶, and in another case, the words on a ticket, “for conditions see back” were obliterated by the date stamp²⁷, it was held that in either case no proper notice of the terms had been given.

In case where written contract is signed by the party accepting, he becomes bound by all its terms, whether he has read it or not. “An action is brought on a written agreement which is signed by the defendant, the agreement is proved by proving his signature and, in the absence of fraud, it is wholly immaterial that he has not read the agreement and does not know its contents”²⁸. This statement was relied upon by the Madras High Court in deciding *Madras Railway Co v. Govinda Rau*²⁹, and *Gautam Constructions and Fisheries Ltd v. National Bank for Agricultural and Rural Development*³⁰. Further the court held that the Arbitrators and Courts must adhere to the contract terms. The court did not approve interference in rates for construction and the interest rates.

b) Notice should be contemporaneous with contract

Secondly, notice of the terms should be given before or at the time of the contract. A subsequent notification will indeed amount to a modification of the original contract and will not bind the other party unless he has assented thereto.

²⁶ Richardson, Spence & Co v. Routree (1894) AC 217

²⁷ Sugar v. London Midland & Scottish Railway Co. (1941) 1 All ER 172

²⁸ Parker v. South Eastern Railway Co. (1872) 2 CPD 416

²⁹ (1898) 21 Mad. 172

³⁰ (2000) 6 SCC 519

In *Olley v. Marlborough Court Ltd*³¹, a man and his wife hired a room in a hotel and paid a week's rent in advance. When they went up to occupy the room there was a notice on one of the walls to the effect that 'the proprietors will not hold themselves responsible for articles lost or stolen, unless handed to the managers for safe custody'. Property of the man having been stolen owing to the negligence of the hotel staff, the defendants were held liable as the court held that the notice was not a part of the agreement.

c) Theory of fundamental breach

The third method is the doctrine of fundamental breach. It is a method of controlling unreasonable consequences of wide and sweeping exemption clause. Even where adequate notice of the terms and conditions in a document has been given, the party imposing the conditions may not be able to rely on them if he has committed a breach of the contract which can be described as 'fundamental'³².

Every contract contains a core or fundamental obligation which must be performed. If one party fails to perform this fundamental obligation, he will be guilty of a breach of the contract whether or not any exempting clause has been inserted which purports to protect him.

The theory of fundamental breach has not found statutory recognition to some extent in the *British Unfair Contract Terms Act, 1977*. This Act says that a party who commits breach of his contract cannot take the advantage of any

³¹ (1949) 1 All ER 127, CA

³² *Supra* note. 23 at 78

clause in the contract which either excludes or limits his liability. Further, if there is any provision in the contract to the effect that 'no performance' or 'substantially different performance' will be taken as equivalent to performance that will be of no avail. Thus the term breach will include a performance which is substantially different from that contemplated by the contract³³.

d) Strict construction

Exemption clauses are construed strictly particularly where a clause is so widely expressed as to be highly unreasonable. Any ambiguity in the mode of expressing an exemption clause is resolved in favour of the weaker party. Where under a housing scheme, the price to be charged is made expressly variable, the allottees cannot claim any estoppel against variations nor seek refund on the ground of any proposed, but reasonable variation.

The Supreme Court has held that the power to vary terms relating to quantum of work cannot be unlimited. Any clause giving absolute power to one party to modify the contract terms would amount to interfering with the integrity of the contract. Under the general law of contract, once the contract is entered into, any clause giving power to one party to modify the terms of the contract at his sweet will or to cancel the contract would be in essence negation of the contract³⁴.

³³ *Id* at. 84

³⁴ *National Fertilizers v. Puran Chand Nangia* (2008) 8 SCC 343

e) Liability in tort

Any exemption clause is exhaustive enough to exclude all kinds of liability under the contract; it may not exclude liability in tort. It is, however open to the parties to exclude liability even for negligence by express words or necessary implication. The British Unfair Contract Terms Act, 1977 expressly provides that any clauses in a contract which excludes or restricts liability for death or personal injury resulting from negligence shall be absolutely void. The expression 'negligence' is defined in the Act to mean the breach of any common law or contractual duty³⁵.

f) Unreasonable terms

Another mode of protection is to exclude unreasonable terms from the contract. A term is unreasonable if it would defeat the very purpose of the contract or if it is repugnant to public policy. The principle of excluding unreasonable clauses has now found statutory recognition in the British Unfair Contract Terms Act, 1977. The Act provides that in respect of any loss caused by the breach of contract, any restricting or excluding clause shall be void unless it satisfies the requirements of reasonableness. A term will be regarded as reasonable if it is a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been known to or in the contemplation of the parties when the contract was made³⁶.

³⁵ *Supra* note. 23 at 90

³⁶ *Id* at 92

g) Exemption clauses and third parties

One of the most important principles of contract is that a contract is a contract only between the parties to it and no third party can either enjoy any rights or suffer any liability under it. This should apply to standard form of contracts also. The effect would be that where goods are supplied or services rendered under a contract which exempts the supplier from liability, and a third party is injured by the use of them, the supplier is liable to him notwithstanding that he has purchased his exemption from the other party to the contract. If a contractor agrees to maintain and repair a lift in certain premises under contract with the owner who exempts him from liability, the exemption would be of no avail to the contractor against a person who is injured owing to bad repairs. If this were not so, the life and security of millions of people would be in the hands of the two parties to a contract. They would then make law not only for themselves, but also legislate for countless others. Therefore, in *Haseldine v. C A Daw & Son Ltd*,³⁷ the lift case the defendants were held liable for the tort of negligence. The court stated that 'the duty to the third party does not arise out of contract, but independently of it'

Services provided by the contractor in case of housing and insurance are governed by standard form of contract as mentioned above. There are no separate standards prescribed in this regard. Housing and insurance service provider should follow this standard form of contract. In case of insurance sector a new regulatory authority was set to govern insurance contract.

³⁷ (1941) 2 KB 343

2. Regulation of Insurance Business

Insurance Regulatory Development Authority Act, 1999 (IRDA)

The changing economic scenario, liberalization and globalization of economy and economic reforms prompted the government to appoint a high powered Committee under the Chairmanship of Sri. RN Malhotra, former Governor of Reserve Bank of India to examine the structure of insurance industry and suggest changes in other parts of financial system of the economy. The Committee has recommended the establishment of strong and effective insurance regulatory authority in the form of a Statutory Board. On the recommendations of the Committee, the Government by resolution appointed an Interim Insurance Regulatory Authority pending the enactment of comprehensive legislation. Though this was introduced in 1996 it was however not passed. In 1998, amendments were proposed to Sec. 30 of LIC Act, 1956 and Sec. 24 of the GIC Act, 1972 to permit the entry of private Indian Companies into the insurance business and statutory provisions was accorded to Insurance Regulatory Authority. The Insurance Regulatory Authority is replaced by the Act passed in 1999, known as the 'Insurance Regulatory and Development Authority Act, 1999'. There after some more additional provisions were made to the Act by inserting new supplementary Acts to it. In this Act, the powers and functions of the Body are defined along with area and scope of operation. This Act is a landmark in the insurance legislation by which

the need to regulate the private and Government Corporations engaged in the insurance business, is recognized and fulfilled³⁸.

IRDA is acting as a tool to check the accounting system and reporting system of insurers. The Act has made it mandatory to present systematic formats for submission of the accounts. The Act has permitted the Authority or the representative of the Authority to inspect the insurance offices or sites or discuss with the staff or the groups of the insured to arrive at requirements of the insurance business. The Authority is authorized to recommend enacting new laws required to meet the needs of the insurance business. It has the powers to make regulations in the field of licensing of insurers, agents, intermediaries, in relation to the capital, investment and securities, etc, with their powers, authorities, regulating the insurance business³⁹.

There is no specific legislation to prescribe standards for services provided by the service providers in India. Service providers are governed by the rules and regulations made in between the parties at the time of entering in to a contract. Contract entered between the parties should be in conformity with standard form of contract, as explained. If the contract is not in conformity then the consumer can avail the remedy by approaching the court. Further, each and every service provider had their own Regulatory Authorities to dissolve the disputes filed by the consumer. Except these Regulatory Departmental

³⁸ *Legal Environment Business*, (ICFAI University Press, Hyderabad, 2007) at 253

³⁹ *Id* at 254

Authorities, and standard form of contract no other standards are prescribed in relation to services.

There is no uniform approach in the regulatory legislation to the question whether regulation should deal with consumer complaints or not. The TRAI (Amendment) Act 2000 also, is silent on the regulator's relationship with individual consumer or group of consumers, although the TDSAT (Telecom Dispute Settlement and Appellate Tribunal) is empowered to deal with disputes between the service providers and group of consumers. In the absence of clear regulatory mandate on handling consumer complaints, the regulator's role in consumer protection is not clear.

It would appear that an individual consumer or a group of consumers can either approach Consumer Court or a regulator for a remedy against poor quality of infrastructure services. An occasion could arise when these two institutions are called upon to address a similar complaint filed by a consumer or a group of consumers. The relationship between the two institutions has not been clarified in the existing regulation; nor has any provision been made for the two to cooperate and assist each other.

There is also ambiguity in the existing legislation as to whether a non performance of the standard of the service, as set by the regulators, would give rise to sufficient conditions for attracting provisions relating to "deficiency" of service under the Consumer Protection Act, 1986.

While the Consumer Forum can award compensation to a consumer for the damages caused by the opposite party, the regulators cannot do so. Further, there is no mechanism by which the non-fulfillment of QOS (Quality of Service) standard by the utilities/service providers would result in automatic compensations to the consumers.

The issues raised above would indicate that there is lack of clarity in our approach to the legislative process and mechanism to specifically address consumer interests⁴⁰.

The regulator has to balance the private and public interests during the regulatory process. If there is information asymmetry on the part of the various stakeholders including the consumers, or if the consumers are not adequately represented during such process, the regulator process is likely to be inefficient. In India, there are more than 10, 000 consumer organizations who are yet to get fully associated with the regulatory process. The need for empowering such consumer organizations with proper training on regulatory issues and regulatory basics has to be recognized. Their involvement in such process would make qualitative changes in regulatory governance⁴¹.

After careful analysis of the standard form of contract and Regulatory Authorities established in dealing with consumer disputes in relation to services provided by service providers. Let us verify the standards and various

⁴⁰ *Supra* note.3

⁴¹ *Ibid*

authorities established in laying down the standards in relation to services in India.

3. Standards Prescribed for Goods in India

In relation to goods purchased, distributed or supplied by the seller, the goods should conform with the standards prescribed by different standards prescribed by different Authorities. One of such Authority is **Bureau of Indian Standards (BIS)**. This BIS is engaged in formulation of need-based Indian Standards in line with national priorities as well as harmonizing these National standards with regional and international standards⁴².

It has been set up under **Bureau of Indian Standards Act, 1986 (BIS Act, 1986)** as the National Standards Body of India. It mainly performs two types of activities, namely, formulation of quality standards of goods or services, and their certification through Product Certification Scheme/ Quality Certification Scheme. BIS Act, 1986 seeks to protect the interests of the consumers and promote their welfare by formulating and enforcing the standardization, marking and quality certification of goods. Quality Management Systems serve as an indicator of the ability of the firm to meet quality needs of the consumers⁴³.

The product certification scheme is basically voluntary and aims at providing quality, safety and dependability to the ultimate customer. Presence of certification mark known as Standard Mark on a product is an assurance of

⁴² http://business.gov.in/consumer_rights/current_scenario.php dt. 27.02.09

⁴³ *Ibid*

conformity to the specifications. The conformity is ensured by regular surveillance of the licensee's performance by surprise inspections and testing of samples, drawn both from the factory and the market⁴⁴.

The BIS product certification scheme is essentially voluntary in nature, and is largely based on ISO Guide 28, which provides general rules for third party certification system of determining conformity with product standards through initial testing and assessment of a Factory Quality Management System and its acceptance followed by surveillance that takes into account the Factory Quality Management System and the testing of samples from the factory and the open market. All BIS certification is carried out on Indian Standards, which have been found amenable to product certification. A sizable number of Indian Standards have however, been harmonized with ISO/IEC Standards and some are dual numbered as IS/ISO or IS/IEC Standards. A large number of operational elements of the BIS product certification scheme correspond with the requirements of ISO Guide 65.

Although, the scheme itself offers voluntary licensing, the Government of India, on considerations of public health and safety, and mass consumption has enforced mandatory certification on various products through Orders issued from time to time under various Acts. While the Bureau continues to grant licenses only on application, the enforcement of compulsory certification is done by the notified authorities. Given later in this document is a list of items

⁴⁴ <http://www.bis.org.in/cert/procert.htm> dt. 12.11.2008

brought under mandatory certification, together with the corresponding Indian Standard Number, and the authorities responsible for enforcing the orders⁴⁵.

Under separate arrangements with statutory agencies some products have been placed under special certification schemes of lot or batch inspection, carried out by BIS inspecting officers. A majority of Gas cylinders and valves are certified through such schemes. Under agreement with UNICEF, deep well hand-pumps, a critical potable water supply source for rural areas is also licensed under a lot inspection scheme.

For all other products, the manufacturer is permitted to self certify the products after ascertaining its conformity to the Standard licensed for. Through its surveillance operations, the Bureau maintains a close vigil on the quality of goods certified.

Provision exists for sub-contracting certification surveillance activities to competent agencies in specific areas. Some steel products, rubber products and electronic products are presently under such surveillance agreements⁴⁶.

The BIS Product Certification Scheme is open to manufacturers in all countries without discrimination. While a licence can be granted for any Indian Standard, specifying product characteristics, which is amenable to certification, the broad areas of technologies now under certification are⁴⁷;

⁴⁵ *Ibid*

⁴⁶ *Ibid*

⁴⁷ *Ibid*

- a) Textiles,
- b) Chemicals and Pesticides /Rubber and Plastic products /Cement and concrete products,
- c) Basic metals and fabricated metal products /Machinery and equipment,
- d) Electrical, electronics and optical equipment /Automotive components,
- e) Agriculture, food, beverages and tobaccos /Leather products /Wood products,
- f) Paper and pulp products /Testing instruments /Building materials,
- g) Pumping, irrigation, drainage and sewage equipment.

Bureau of Indian Standards (BIS), is the main Authority which has been promoting the industrial development in the country by formulation of National Standards, Operation of Product Certification Scheme, Management Systems, Certification Schemes and Training.

The **Product Certification Scheme of BIS** aims to provide the third party Guarantee of quality, safety and reliability of products to the ultimate consumers. Under the scheme, BIS grants licenses to manufacturers after assuring that their product quality conform to the prescribed national standards/specifications. The certification permits the licensees to use **ISI** certification mark, known as Standard Mark, on their product. This conformity is ensured by regular surveillance of the licensee's performance by surprise inspections and testing of samples, drawn from both the market and factory.

ISI Mark holds a good brand image in the eyes of consumers as it gives assurance about the quality of product. Therefore, the consumer as well as

organized purchaser gives preference to the ISI marked products over non-ISI products.

The Product Certification Scheme is basically voluntary in nature and is largely based on ISO Guide 28, which provides general rules for third party certification system for determining conformity of product quality with standards.

However, for a number of items affecting health and safety of the consumer and those of mass consumption, this Scheme has been made mandatory by the Government through various statutory measures such as Prevention of Food Adulteration Act, Mines Act, Gas Cylinders Rules, along with **Bureau of Indian Standards Act, 1986**. Some of such items brought under mandatory certification are LPG Cylinders, pressure stoves, self ballasted lamps for general lighting services (commonly known as CFL), processed cereal based complementary foods for infants, sweetened ultra high temperature treated condensed milk, skimmed milk powder, constant speed compression ignition (diesel) engines for general purposes (up to 20 KW), Refillable Seamless Steel Gas Cylinders, clinical thermometers, packaged drinking water, different types of cement, etc.

To complement and support the activity of product certification, BIS have established a chain of 8 laboratories in five regions, that is, Sahibabad, Kolkata, Mohali, Mumbai and Chennai as well as a network of 33 Branch Offices set up in the State capitals or major industrial towns. Out of this, six laboratories have

been accredited by **National Accreditation Board for Testing and Calibration Laboratories (NABL)** for their testing facilities. Electrical Calibration Laboratory at Sahibabad has been accredited for its calibration facility.

BIS has also introduced Certification Schemes for **foreign manufacturers** and **Indian importers**. Under these schemes, foreign manufacturers can seek certification from BIS for marking their products with BIS Standard Mark and Indian importers can also seek BIS certification for applying BIS Standard Mark on the products being imported into the country. Under the BIS Certification scheme for foreign manufacturers, 65 licenses have been granted and three licenses have been granted to importers. Besides, there is **BIS Certification Scheme for Hallmarking of Gold Jewellery**, which has been launched to protect consumers against any fraudulent practices due to irregular gold quality. It, thus, instills confidence in the consumer about the purity of gold jewellery and seeks to develop India as a leading gold market centre in the world. The scheme is voluntary in nature and operates through BIS network of regional and branch offices located across the country. Under this, a jeweller has to obtain certification mark licence from BIS to get his jewellery hallmarked from a BIS recognized Assaying and Hallmarking Centre. The recognition of these Centers is done by BIS after ensuring that the Centre are following BIS Criteria for Hallmarking based on laid down norms for sampling, assaying and hallmarking as well as have adequate testing facilities, trained and competent manpower.

Another major Scheme being operated by BIS is the **Quality Management Systems Certification Scheme**, which is operating as per IS/ISO 9001:2000 standard. The scheme was launched in 1991 covering a wide range of industry as well as service sectors including engineering, chemicals, pharmaceutical, cement, ceramics, food, textiles, automotives, mechanical, metallurgical, electronics, aeronautics, hospitals, financial, banking services, construction, hospitals, wholesale and retail trade, education and training, hotel, power, printing, telecommunications, testing laboratories and information technology. This scheme has received accreditation in 23 technology sectors from the **Raad Voor Accreditatie (RVA)** of Netherlands, an international accreditation body of repute and in 9 technology sectors from **Quality Council of India (QCI)**. In simpler terms, accreditation refers to certification of the certification body⁴⁸.

Consumer protection has always been one of the main thrust areas of policy formulation. One of the way to achieve this is to ensure accuracy and reliability in Weights and Measures of goods and services purchased by the consumers. Use of proper and accurate standards, weights and measures is very important for effective functioning of any economy, as it plays an indispensable role in promoting welfare of consumers. Through this, consumers are protected from malpractice of underweight or under measure. They get the right and exact amount of product for the money spent by them. Further, the marking and certification of quality of products bring confidence and satisfaction to the consumers. Their purchase decisions become simplified and they are assured

⁴⁸ *Supra* note. 42

that their needs for quality will be met. Hence, protection of consumers is accomplished by setting minimum quality specifications and safety standards for both goods and services as well as by establishing mechanisms to redress their grievances.

The **Weights and Measures Unit**, under the **Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution**, has been set up to promote use of exact and correct weighing and measuring instruments. For this, various legislations have been enacted like Standards of Weights and Measures Act, 1976, Standards of Weights and Measures (Enforcement) Act 1985, Standards of Weights and Measures (General) Rules 1987 and Standards of Weights and Measures (Packaged commodities) Rules, 1977. All such regulations aimed to ensure that consumers get the exact quantity of commodities, with mandatory declaration of relevant information on the package of goods; as well as facilitate use of standard weighing and measuring instruments in trade and commerce activities. Further, there are also Weights and Measures Departments/ Wings or Department of Legal Metrology in various States and Union Territories to regulate all such provisions of weights and measures⁴⁹.

Marking and quality certification of products and services has become very important in today's rapidly changing business scenario. These facilitate the production of quality goods/services as well as make them available for the satisfaction of consumers at large. Because of this, consumers get better choice

⁴⁹ *Ibid*

and assurance of consistency in quality of product/ service with its timely delivery. Further, they also get to monitor the firm's supplies and clear indication of its capabilities. Hence, their time and money is saved in doing the assessment of the suppliers. This system of certification and marking is also beneficial for producers as well. This helps them to gain a competitive edge in domestic as well as global market. Disruptions created to their routine due to multiple assessments by various customers are also reduced. They have greater liability of producing quality goods matching international standards⁵⁰.

Service standard, in short 'standards of service' means more than service delivery to the targets such as waiting time and hours of operation. Everyone is entitled to know what they expect from the service provider, how services will be provided and at what cost, and lastly what the consumer can do if the service is not acceptable. Service provider must follow the five essential elements while providing service to the consumer⁵¹. They are;

- a) Description of the service,
- b) Principle describing the quality of service,
- c) Delivery targets,
- d) Cost of delivering the service, and
- e) Redressal mechanism that can be used by the consumer

While each of these elements can exist on their own, it is expected that, in most cases, service standards will eventually cover all elements. If these essentials are followed by the service provider we can avoid consumer litigation.

⁵⁰ *Ibid*

⁵¹ http://www.tbs-sct.gc.ca/pubs_pol/opepubs/tb_d3/GUID-eng.asp dt. 03.07.09

This chapter deals with standards to be followed while providing services to the consumer at international and national level. In India no separate legislation is made to prescribe standards for service providers. In India we are following standard form of contract to protect the interest of consumer. There is a need to make a specific law to prohibit the seller from providing sub standard service to the consumer. In relation to goods, various authorities are established to grant certification mark to identify the standard followed by the manufacturer.

In the matters relating to Insurance, changes were introduced mainly to protect the interest of policy holders by IRDA (Protection of Policyholders Interest) Amendment Regulation, 2002. Recently, Insurance Laws (Amendment) Bill, 2008 has been introduced, and is pending before the Parliament. This Bill tries to amend three enactments, vis., Insurance Act, 1938, the General Insurance Business (Nationalization) Act, 1972 and the IRDA Act, 1999. This Bill makes the insurer responsible for appointing insurance agents and the IRDA for regulating their eligibility and qualification. One of the important feature of the Bill is that, no life insurance policy shall be questioned on any grounds what so ever after five years from the date of the policy. It also limits the grounds for challenge with in the period of five years. It is important to pass this Insurance Amendment Bill, 2008 as early as possible to protect the interest of insurer⁵².

In the next chapter the researcher has analyzed the statistical data and data collected from people associated with the functioning of Consumer Redressal Agencies functioning in the State of Goa.

⁵² [http://en.indiapolicywiki.org/index.php?title=The_Insurance_Laws_\(Amendment\)_Bill,2008](http://en.indiapolicywiki.org/index.php?title=The_Insurance_Laws_(Amendment)_Bill,2008)

CHAPTER VI

FUNCTIONING OF CDRA IN THE STATE OF GOA

6.1 INTRODUCTION

Goa, a tiny emerald land on the west coast of India is situated between the borders of Maharashtra and Karnataka. Goa has emerged as one of the most developed States in India. The State is bestowed by nature with lovely coastal beaches along the Arabian Sea and beautiful hill ranges of Western Ghats.

The State of Goa stretches over an area of 3,702 sq. km, 1,736 sq. km in North and 1,966 in South. With the Arabian Sea on the west of its 100 km coastline, Goa has some of the most scenic beaches with a fringe of palm trees along its shores.

Goa is one of the best holiday destinations in the world. Famous for its long stretches of beaches dotted with shacks. It is a favourite destination for all tourists especially for the European flocks to Goa during the winter month¹.

Goa is blessed with natural harbours and ports that are ideal for the trade and commerce. It is one of the leading coastal areas in the Indian Territory, attracting tourist from India as well as abroad. Its coastal stretch extends up to 100 kms. Goa's population is around 16 lakhs. Most of the people earn a living by fishing and providing boarding and lodging facility to the tourists who visit Goa. People in Goa are literate moderately and live above poverty line as compared to the other States in India.

Goa is divided for administrative purposes into two Districts, North Goa District and South Goa District. There are 11 Talukas or CD Blocks, 6 in

¹ <http://www.travelmasti.com/domestic/goa/index.htm>

North Goa and 5 in South Goa. According to the 2001 Census, the total population of Goa was 13, 43, 998 (757407 in North Goa and 586591 in South Goa). There are 209 inhabited villages in North Goa, 138 in South Goa, totaling to 347 inhabited villages in the State of Goa. There are a total of 188 Panchayats with 119 in the North Goa District and 69 in the South. There are 14 Municipal Towns with seven each in North and South Goa and 30 Census Towns with 20 in North Goa and 10 in South Goa.

The State of Goa has 40 Vidhan Sabha seats, 2 Lok Sabha seats and 1 Rajya Sabha seat. Goa was liberated from Portuguese rule as late as 1961 and the last census that was conducted by the Portuguese administration was in 1960. The subsequent censuses from 1971 followed the Indian pattern of decadal census. Goa was a Union Territory right up until 1987, and then it was declared as the 25th State in India.

Though Goa consists of floating population and cosmopolitan culture, substantial numbers of local people earn their living mainly by providing lodging and boarding facility to the tourist. While providing these facilities they will face various consumer problems.

To protect and guard the interest of the consumers in the State of Goa and to make available to them their rights as well as to redress their grievances, and to provide free, fair and independent consumer justice to the aggrieved consumer in the State of Goa, the Government established Goa State Consumer Disputes

Redressal Commission² (GSCDRC) and the District Consumer Disputes Redressal Forum of North and South Goa³. These two Redressal Agencies started functioning in Goa since 1991 and 1989 respectively⁴. These redressal authorities were established as per the requirements laid down under the Consumer Protection Act 1986, after three years.

Consumer Disputes Redressal Forum, North Goa hears the complaints from the consumers residing in North Goa i.e. from Pernem, Bicholim, Bardez, Sattari, Tiswadi and Ponda Talukas of Goa, and the Consumer Disputes Redressal Forum South Goa hears complaints of consumers residing in Salcette, Marmugoa, Quepem, Sanguem, and Canacona Talukas of Goa (**Ref Map .1**)⁵. Both the Fora hear the complaints, which are having a value / claim of the complaint being up to Rs.20lakhs.

The Goa State Consumer Disputes Redressal Commission hears complaints that are valued above Rs. 20 lakhs but below Rs. 1 crore. The State Commission is also an appellate and revision body over the complaints decided by any of the District Fora in Goa.

To take care of administrative set up of consumer redressal agencies in Goa, the Department of Civil Supplies & Consumer Affairs, Government of Goa provides all the adequate requirements, infrastructure and staff to these agencies.

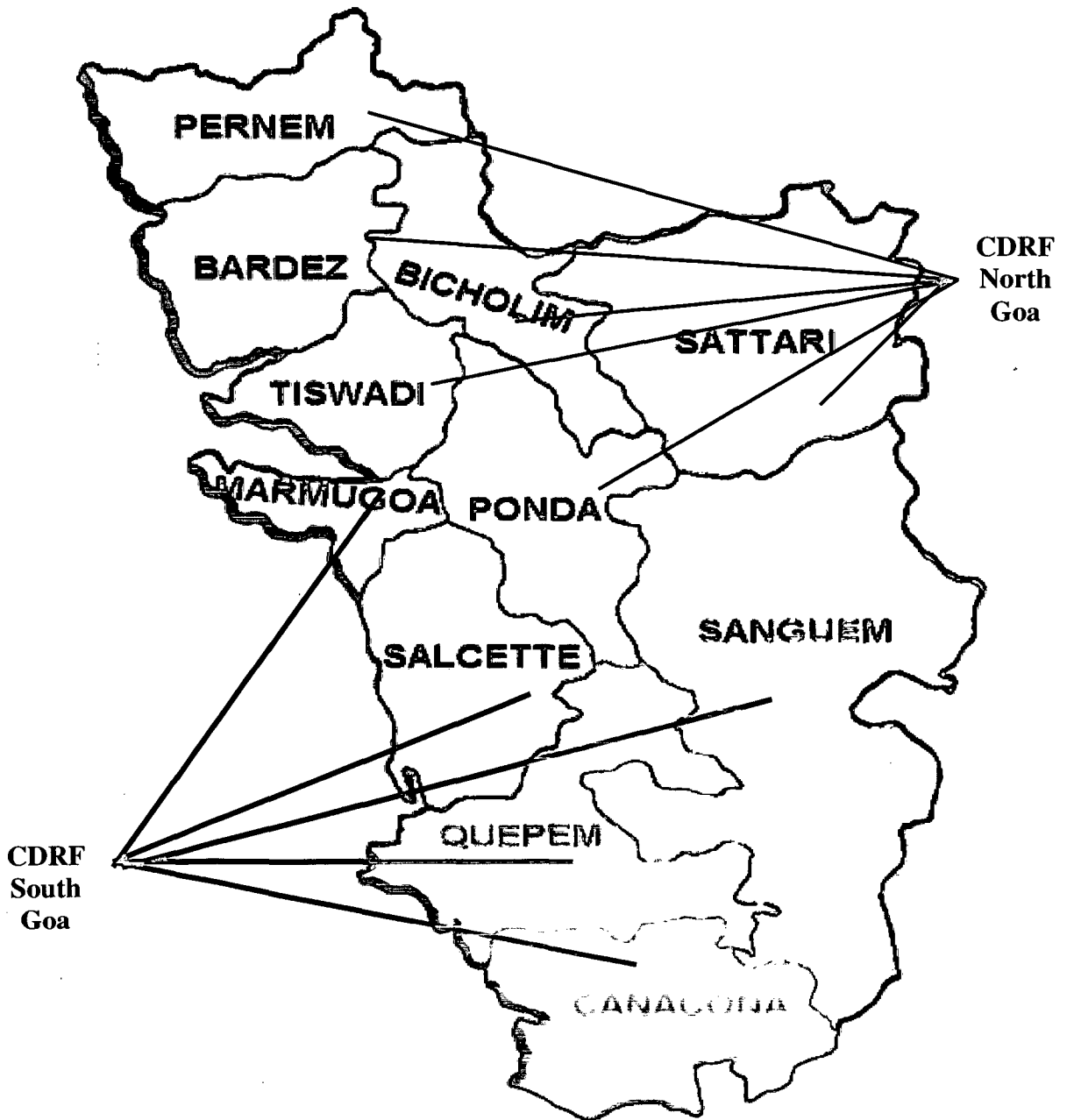
² Sec. 9 (b) of Consumer Protection Act, 1986

³ Sec. 9 (a) of Consumer Protection Act, 1986

⁴ <http://goagrahak.nic.in/statistics/htm>

⁵ Ibid

The appointments to the Benches of the District Fora and the State Commission are made by the Selection Committee comprising of the President of the State Commission, the Secretary of Consumer affairs and the Law Secretary to the Government of Goa



Map No.1 Map of Goa

(Shows the various talukas falling under North and South CDRF)

The Department of Civil Supplies & Consumer Affairs is the nodal Department for Consumer Affairs activities in Goa which makes efforts to spread consumer awareness throughout the State of Goa in order to protect consumer interest.

The Department has having its wide network at the Taluka level through its Inspectorate functioning in the Taluka Mamlatdar office.

The Director of Civil Supplies and Consumer Affairs heads this Department. His team in the Office includes the Assistant Director, Assistant Accounts Officer, Superintendent and the Section Heads of each sections viz. Establishment, Enforcement, Supply, and Movement and Accounts.

Though Goa is a small State it is not devoid of consumer exploitation. Inspite of the majority of the people being literate and above poverty line, and though aware about consumer rights, still they are victims in the market place. Therefore in order to create consumer awareness in Goa, there are various consumer organizations established⁶ which work through out the territory of Goa even at grass root level. To protect their interest and the interest of consumers they approach the redressal agencies to avail appropriate remedies.

The Researcher has visited all the three Redressal Agencies in the State of Goa to find out the functioning of the Consumer Redressal Agencies in the State of Goa and to make suggestions to improve the functioning of these agencies. To study the functioning of redressal agencies the researcher has taken into

⁶ Around twenty five consumer groups were functioning in the State of Goa to create consumer awareness. <http://www.goagrahak.nic.in> dt 11.09.2008

account the following factors for consideration. The following factors are relevant in assessing the functioning of Consumer Dispute Redressal Agencies.

1. Time taken for disposal of a consumer complaint
2. Cost of the litigation in general
3. Satisfaction of the complainant in redressing his complaint
4. Procedure followed by the consumer redressal agencies
5. Appeals preferred to the State Commission

In order to have an indepth study, the researcher concentrated mainly on services with special reference to housing and insurance sector. In these two sectors, the researcher verified time taken for disposal of consumer complaints by the redressal agencies with respect to private and public undertaking and has collected the data from these agencies.

To facilitate and redress the consumer disputes in the State Goa the Goa Government has established two District Redressal Agencies in the year 1989. In the beginning, both the District Consumer Redressal Agencies were operating from the same office, that was located at Junta house, 18th June Road, Panaji. The District Consumer Redressal Forum North Goa was functioning during morning hours and the South Goa Forum was functioning during after noon sessions. Due to lack of infrastructure facilities from the date of inception, Dispute Redressal Agencies were presiding in the same premises, to deliver consumer justice.

These Consumer District Redressal Agencies started functioning independently from the year 2000 in the appropriate districts that is North and South. Both the District Forums shifted to new premises with minimum administrative staff provided by the State Government with other appropriate infrastructure facilities.

Researcher for the purpose of convenience and easy understanding has divided this chapter broadly in to two parts. Part I deals with statistical data collected and analyzed from the Consumer Redressal Agencies and Part II deals with the information collected from various authorities, NGO's, Advocates and complainants regarding the functioning of Consumer Redressal Agencies.

PART I

Researcher has collected primary statistical data by personal visits to collect or make a note or photocopies of the records available in the Consumer Redressal Agencies. Data collected from the Consumer Redressal Agencies is analyzed and shown in the form of tables wherever necessary, and the same has been represented in the form of line chart, bar chart, pie chart, etc.

6.2 ANALYSIS OF DATA OBTAINED FROM NORTH AND SOUTH GOA DISTRICT FORA

First, let us look into the functioning of North Goa and South Goa Consumer District Redressal Forum. The Consumer District Redressal Forum North Goa

has started functioning independently from its new premises at Porvorim⁷. This Forum is headed by the newly appointed President Smt. Harsha Naik⁸ (Ex President Smt. Subbalakshmi Raikar) along with two other members⁹ as prescribed under the C P Act, 1986. Goa Government provided supporting staff in administration of consumer justice to the Consumer Redressal Agencies.

The Consumer District Redressal Forum South Goa started functioning independently from its new premises near Civil Court, Madgao¹⁰. This Forum is under the Presidentship of Mr. Jagadish Prabhu Desai¹¹, along with two other members¹² as prescribed under the C P Act, 1986.

The researcher has made a comparative study of complaints filed, disposed and pending position in both the District Redressal Agencies. Further, it includes the study of cases filed, disposed and pending in respect of two sectors (Housing and Insurance) selected by the researcher for the purpose of in-depth research.

Statistical Data collected from the two CDRA (North, and South Goa District Fora) has been analyzed and is placed in the form of tables as follows.

⁷ Consumer District Redressal Forum North Goa, Housing Board Colony, Above Maharashtra Bank, Porvorim, Bardez, Goa

⁸ 'Appointed on 15th December 2009 and her appointment was terminated as she was under age' for further details see. *Navhind Times*, (Panaji, Goa) 23.03.10 at 2 (*Appendix - 2*)

⁹ Mr. Dhanunjai Jog and Mrs. Shanti Fonseca

¹⁰ Consumer District Redressal Forum South, Blessing Pioneer Commercial Complex, Opposite of District Court, Madgao, Goa,

¹¹ Recently he was appointed as President for second term, for further details see. *Times of India*, (Panaji, Goa) 16.12.2009 at 3 (*Appendix - 3*)

¹² Mr. Aremmy Fernandez and Mrs. Kala Dalal

The first table highlights the total number of cases filed from 1989 until 1997. During this period all the complaints were recorded in the same register, without any separation of complaints received, disposed or pending both from North and South Goa. The below table mentions total number of complaints filed and disposal rate from the date of inception.

Table No.1, highlights the total number of complaints filed from the date of inception until 1997. During this period complaints from North as well as South Goa, were filed in the same office. There has been no regular increase in the number of complaints filed. But there are variations from year to year. Further, the table indicates that out of 2106 complaints filed, 7.5% of complaints are against housing sector and 6.6% are against insurance sector. This shows that around 15% complaints are against these two sectors. The details of the table are depicted in the form of bar chart (Fig No.1).

Table No: 1
Complaints filed from 1989 to 1997
Both North and South Districts

Year	Complaints filed	Housing Sector		Insurance Sector	
		Filed	Disposed	Filed	Disposed
1989	32	01	01	01	01
1990	175	01	01	03	03
1991	273	08	08	07	07
1992	398	24	24	12	12
1993	465	50	50	46	46
1994	221	25	25	29	29
1995	134	06	06	15	15
1996	165	13	13	16	16
1997	243	26	26	10	10
Total	2106	154	154	139	139
%		7.5		6.6	

Source: Records of NGCDRF
From the date of inception, till 31.12.1997

The researcher further analyzed the time taken for disposal of complaints filed, and dispute outcome against housing and insurance sector during 1989 to 1997.

1. Time taken for disposal of Complaints

All the complaints filed in both the sectors that is Housing and Insurance sectors, from the date of inception, have been disposed and no complaint has been pending as on 31.12.1997. CP Act, 1986 was enacted by the Parliament to provide speedy justice to the consumers to save them the trouble of moving from pillar to post to settle their grievances. One of the important objects of the Act is to provide speedy justice without looking in to the formalities followed by ordinary courts. As per *Sec. 13 (3A)*¹³ of the Act, any complaint filed has to be disposed within a period of 3 months or 5 months (if it requires analysis or testing of commodity) respectively. The same section also specifies that the District Forum should not grant adjournments unless it is necessary, that too by writing down the reasons for such adjournment. The following tables indicate, the extent to which this objective has been achieved while disposing housing and insurance complaints.

¹³ *Sec. 13 (3A) of Consumer Protection act, 1986*: Inserted by *Act 62 of 2002*, Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities

Provided that no adjournment shall be ordinarily granted by the District Forum (DF) unless sufficient cause shown and the reasons for grant of adjournment have been recorded in writing by the forum,

Provided further that the DF shall make such orders as to the cost occasioned by the adjournment as may be provided in the regulations made under this Act,

Provided also that in the event of a complaint being disposed of after the period so specified this DF shall record in writing, the reasons for the same as the time of disposing of the said complaint.

Table No. 2
Time taken for disposal of complaints (Housing Sector)

Number of complaints filed	Pending	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
154	00	46	48	25	19	06	10
Percentage		29.8	31.1	16.2	12.3	3.8	6.4

Source: Records of NGCDRF
From the date of inception, till 31.12.1997

Table No.2, indicates that only 29.8% of the housing complaints were disposed with in a period of 3 months as specified under the Act. Majority of complaints i.e. 31.1% were disposed above 3 months and below 1 year. The Forum has taken 1 year to 2 years in deciding 16.2% of complaints. 12.3% of complaints were disposed with in a period of 2 years to 3 years. Forum has taken more than 4 years in disposal of 6.4% of complaints and 3.8% of complaints were disposed within a period of 3 to 4 years. Careful analysis of the table shows that the forum is taking more than one year in disposal of complaints. The details are depicted in the form of bar chart (Fig No.2).

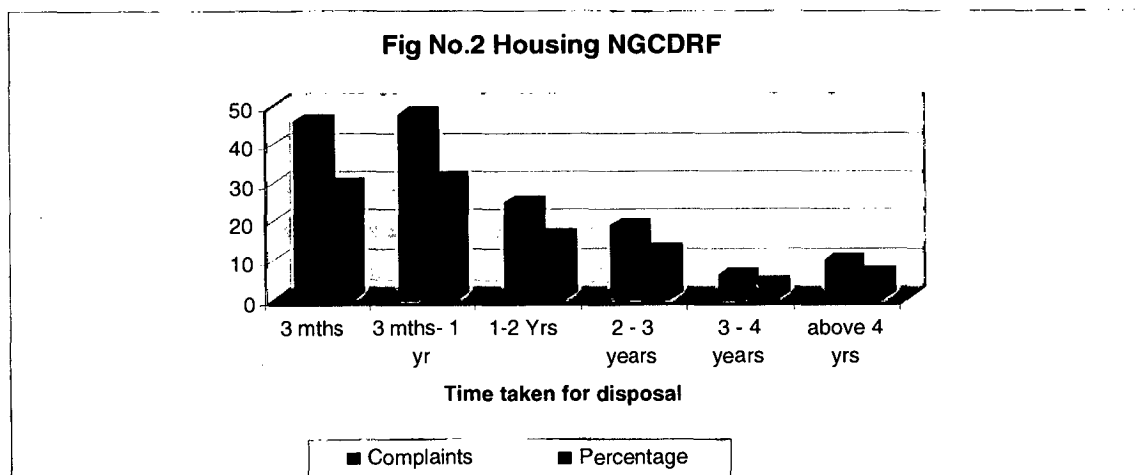
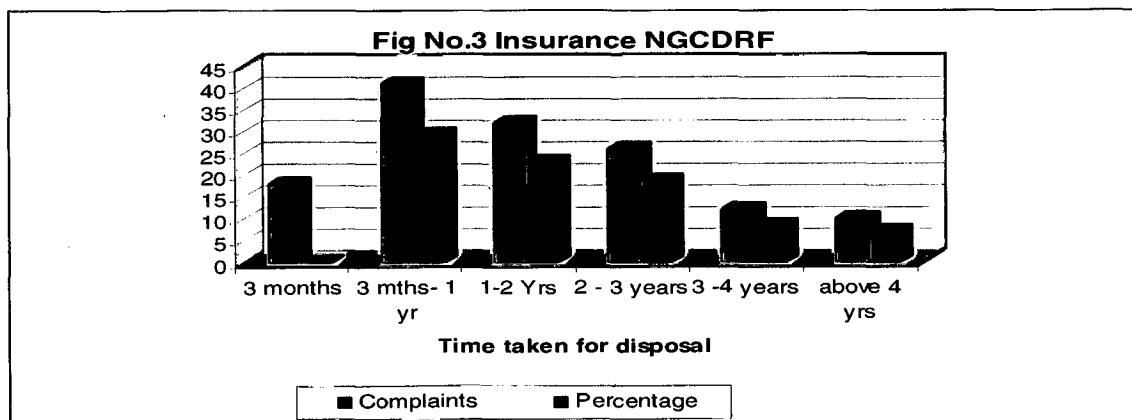


Table No. 3
Time taken for disposal of complaints (Insurance Sector)

Number of complaints filed	Pending	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
139	00	18	41	32	26	12	10
Percentage		0.12	29.4	23.02	18.7	8.6	7.1

Source: Records of NGCDRF
From the date of inception, till 31.12.1997

Table No.3, depicts that the Forum has taken above 3 months and below 1 year to dispose 29.4% of complaints 23.02% of complaints were disposed with in 1 year to 2 years period, 18.7% of complaints were disposed above 2 years and up to 3 years period, 8.6% of complaints were disposed with in a period of 3 to 4 years, 7.1% of complaints were disposed after 4 years period. The Forum has disposed 0.12% of complaints as per the time period specified under the Act. The details are depicted in the form of bar chart (Fig No.3).



2. Satisfaction of the Complainants

Satisfaction of the complainants depends on the orders passed by the Consumer Redressal Forum. If the orders are in favour of the consumers then we can say that the consumers are satisfied with the functioning of the CDRA. The following table deals with this aspect.

Table No. 4

Outcome of the Dispute (Housing Sector)

Number of complaints disposed	Relief	Settled	Withdrawn	Dismissed	Closed
154	58	10	24	57	05
Percentage	37.7	6.5	15.5	37.0	3.2

Source: Records of NGCDRF

From the date of inception till as on 31.12.1997

Table No. 5

Outcome of the dispute (Insurance Sector)

Number of complaints disposed	Relief	Settled	Withdrawn	Dismissed	Closed
139	59	07	58	14	01
Percentage	42.4	5.0	41.7	10.0	0.7

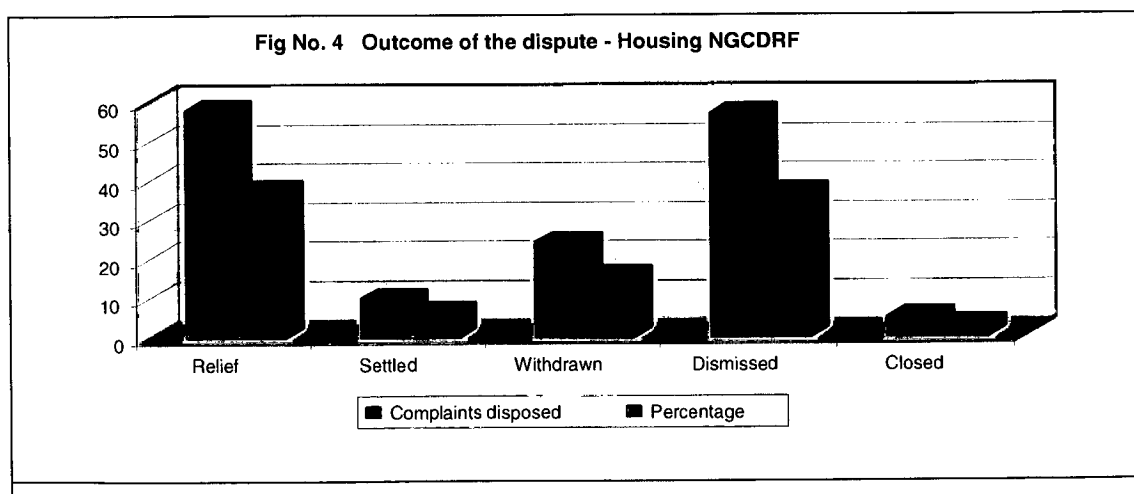
Source: Records of NGCDRF

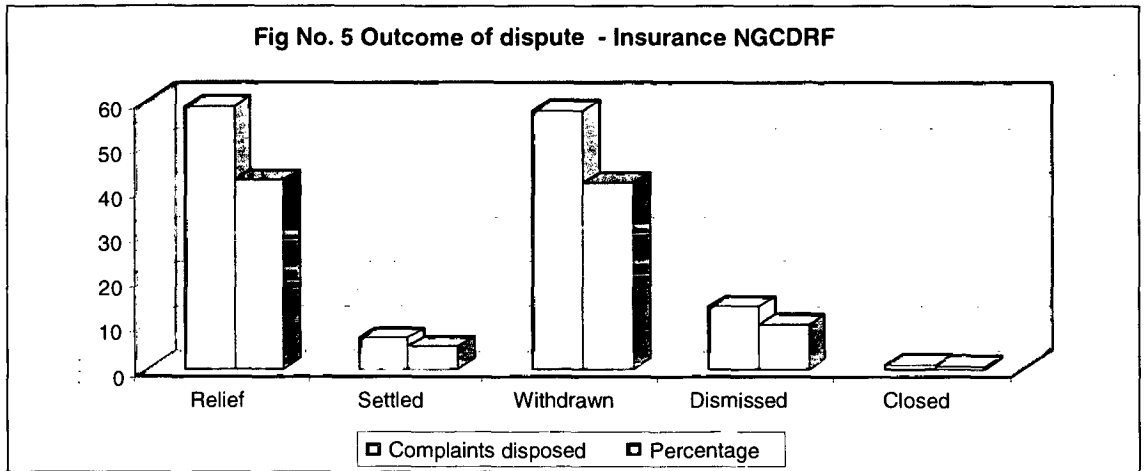
From the date of inception, till 31.12.1997

Tables Nos. 4 and 5, show the outcome of the dispute in relation to housing and insurance sectors. 39% of complainants got relief from the Consumer Redressal Forum. It means that 39% of complainants are satisfied with the order passed by the CDRF. Around 34.3% complaints are settled or withdrawn by the

parties. Settlement and withdrawal of complaints is due to amicable settlement of the matter by the parties out side the CDRA. This shows that after the complaint is filed before the CDRF, the opposite party tries to settle the matter peacefully to safeguard their reputation or goodwill in the market place. Both the complainant and the opposite party are satisfied with the settlement. Withdrawal rate (41.7%) is very high in case of insurance complaints. 23.5% of complaints are dismissed by the CDRF. Dismissal rate (37%) is very high in housing sector. The CDRF has dismissed the complaints either because the complaint is not maintainable, or for default, or settled out side the Consumer Forum, dismissed to seek remedy before Civil Court, or that the limitation period has expired, or lack of merit, or lack of jurisdiction, and delay in filing the complaint, etc.

Overall, the table high lights that most of the consumers are satisfied with the orders passed by the CDRF, or the matter is settled amicably between the parties out side the CDRF. Above details in the table are indicated in the form of bar charts (Fig No. 4 and 5)





3. Comparative Analysis of North and South Goa District Fora

South Goa District Consumer Redressal Forum started maintaining records separately, from the year 1998 onwards. As a result, it became easy for the researcher to make a comparative analysis of complaints filed before the NGCDRF and SGCDRF, from 1998 to 2008 with special reference to housing and insurance sectors separately. The following tables deal with complaints filed in general as well as with special reference to housing and insurance sectors, complaints filed, disposed and pending, time taken for disposal of complaints, out come of dispute and the prominent opposite party against whom the complaints are lodged before the CDRF.

Table No: 6
Complaints filed 1998 to 2008 (North Goa)

Year	Complaints filed	Housing Sector			Insurance Sector		
		Filed	Disposed	Pending	Filed	Disposed	Pending
1998	365	38	38	0	07	07	0
1999	209	45	45	0	13	13	0
2000	239	127	127	0	06	06	0
2001	147	60	55	05	12	11	01
2002	206	24	23	01	07	07	0
2003	128	36	32	04	13	12	01
2004	139	29	23	06	12	12	0
2005	115	28	22	06	12	12	0
2006	126	37	28	09	16	11	05
2007	115	19	09	10	13	06	07
2008	148	19	05	14	24	07	17
Total	1937	462	407	55	135	104	31
%		23.8	88.09	11.9	6.9	77.03	22.9

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008

Table No.6, depicts the total number of complaints filed before the NGCDRF from 1998 till 2008. During this period 1937 complaints were filed, out of these 23.8% of complaints are against housing sector and 6.9% of complaints are against insurance sector. 30.7% of complaints are filed in respect of these two sectors. This shows that the selection of the two services for in-depth study is proper and justified. 11.9% of housing and 22.9% of insurance complaints are pending before the North Goa District Forum. If we refer to disposal of complaints 88% of housing complaints and 77% of insurance complaints are disposed. Details of the table are displayed in the form of bar charts (Fig No.6, 7 and 8).

Fig No.6 - NGCDRF (1998 - 2008)

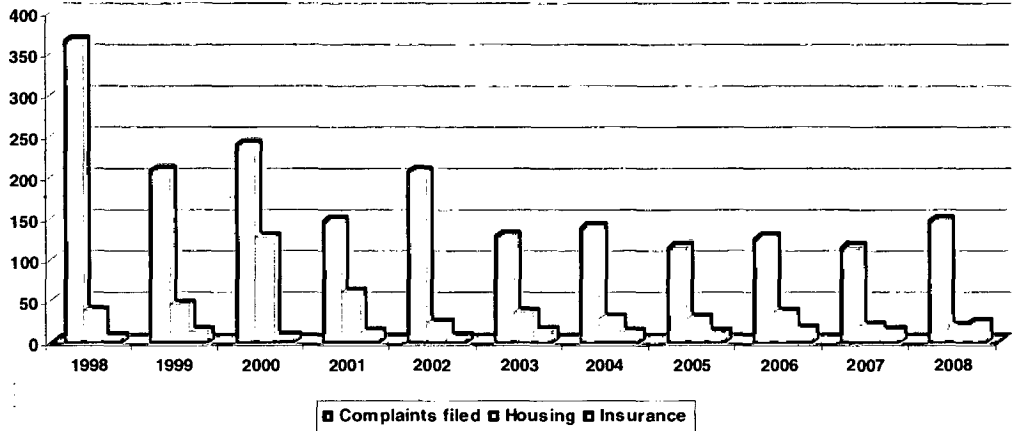


Fig No.7 - Housing Sector (NGCDRF)

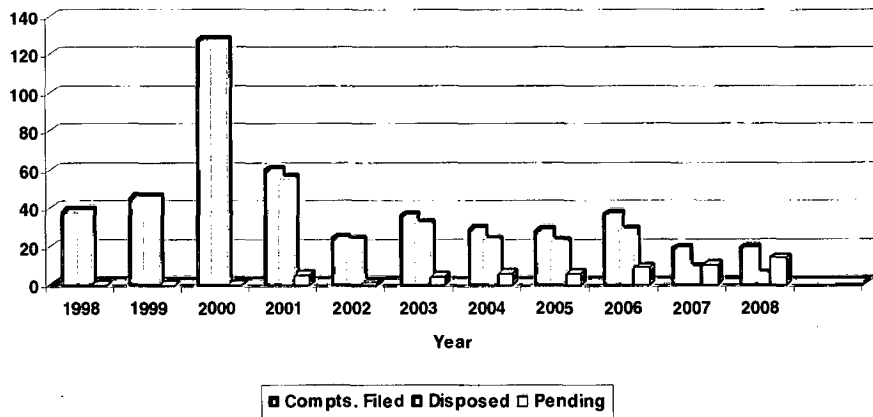
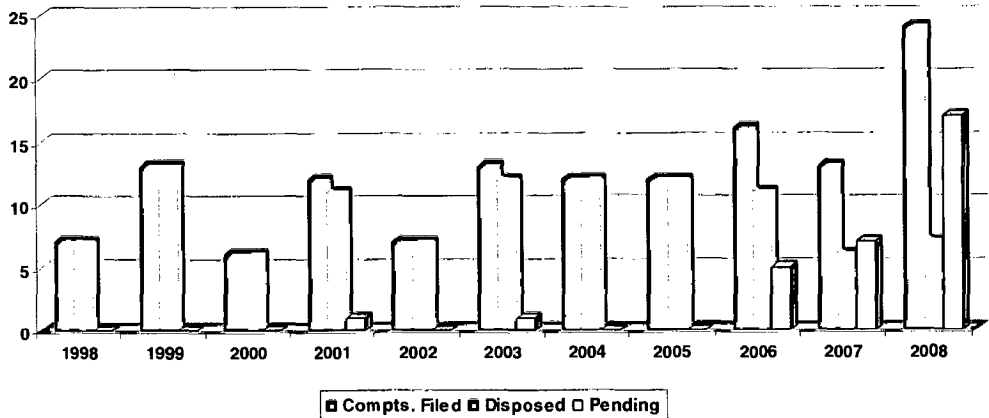


Fig No.8 - Insurance Sector (NGCDRF)



To compare the functioning of North and South Goa Fora, the following table highlights number of complaints filed in general and number of complaints filed, disposed and pending with reference to housing and insurance sector before the SGCDRF from 1998 till 2008.

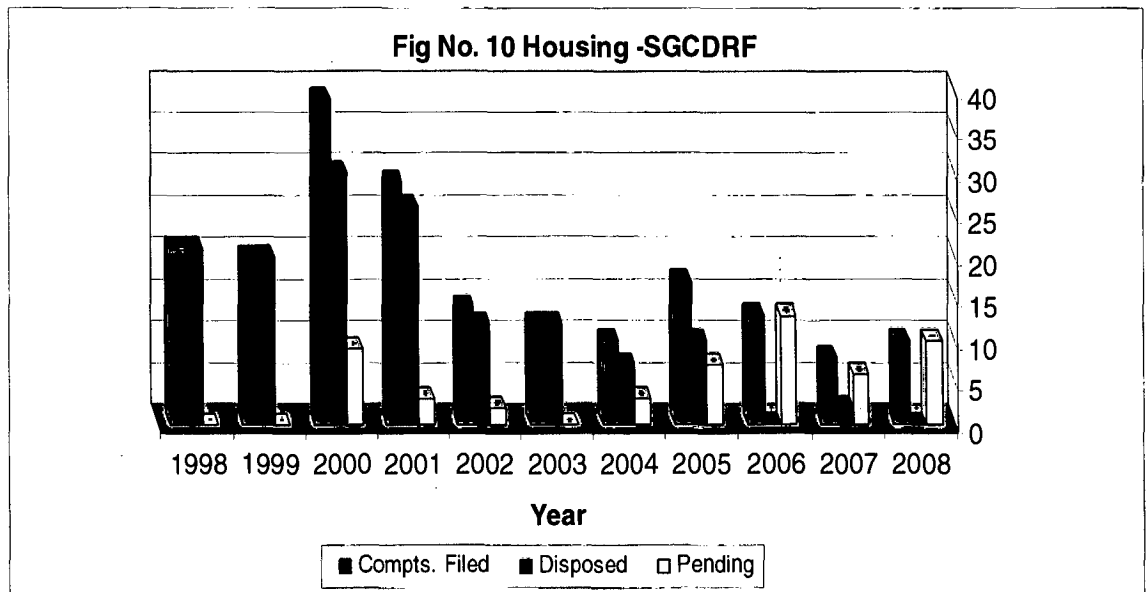
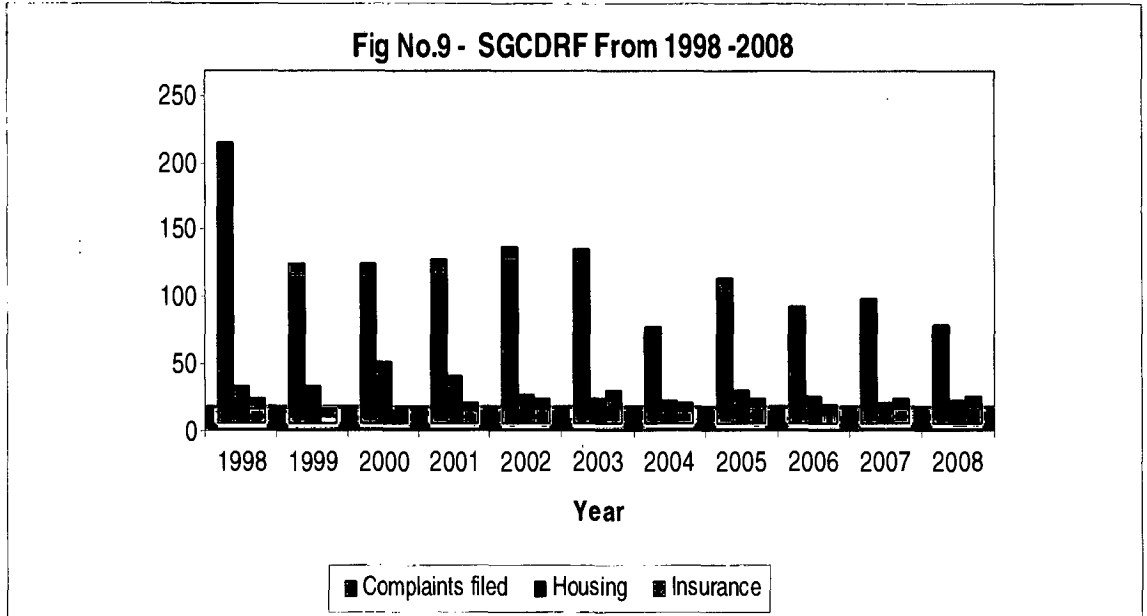
Table No: 7
Complaints filed 1998 to 2008 (South Goa)

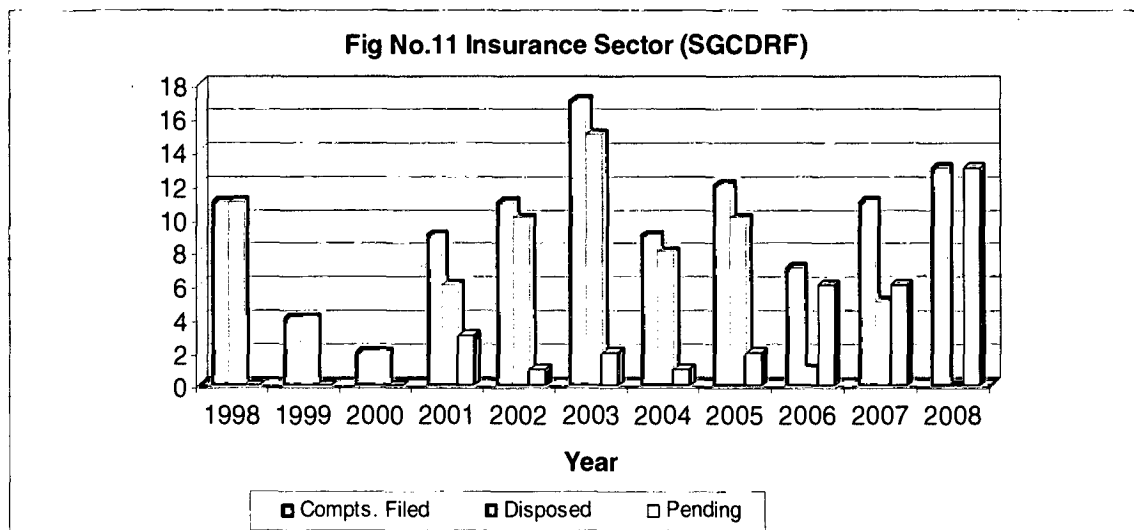
Year	Complains filed	Housing Sector			Insurance Sector		
		Filed	Disposed	Pending	Filed	Disposed	Pending
1998	203	21	21	0	11	11	0
1999	112	20	20	0	04	04	0
2000	112	39	30	09	02	02	0
2001	115	29	26	03	09	06	0
2002	124	14	12	02	11	10	03
2003	123	12	12	0	17	15	01
2004	65	10	07	03	09	08	02
2005	101	17	10	07	12	10	01
2006	80	13	0	13	07	01	02
2007	87	08	02	06	11	05	06
2008	66	10	0	10	13	0	06
Total	1188	193	140	53	106	72	13
%		16.24	72.5	27.4	8.9	67.92	32.07

Source: Records of SGCDRF
Complaints filed from 1998 till 31.12.2008

Table No.7, depicts the total number of complaints filed before the SGCDRF from 1998 till 2008. During this period 1188 complaints were filed, out of which 16.24% of complaints are against housing sector and 8.9% of complaints are against insurance sector. 25.1% of complaints are filed in respect of these two sectors. This shows that the selection of the two services for in-depth study is proper and justified. 27.4% of housing and 32.07% of insurance complaints are pending before the South Goa District Forum. If we refer to disposal of

complaints 72.5% of housing complaints and 67.92% of insurance complaints have been disposed. Details of the table are displayed in the form of bar charts (Fig No.9, 10 and 11).





Careful analysis of the above two tables (6 and 7) demonstrates that there is no consistent increase of complaints year wise. Total number of complaints filed for a period of ten years is more in North Goa as compared to South Goa. Disposal rate is slightly high in case of NGCDRF. Nearly 30% of complaints are pending before the SGCDRF in relation to housing and insurance sectors. South Goa is industrially well developed with more floating population. Though the business facilities are more, the people do not file complaints in case of defect or deficiency. We can presume that North Goan consumers are more aware compare to South Goan consumers. One of the reasons is that the students associated with Free Legal Aid Cells¹⁴ established by V.M.Salgaocar College of Law, Miramar, Panaji are creating awareness through their legal literacy camps, seminars, quiz competitions, poster making, street plays and skits. This type of facility is not available to the South Goa consumers. Regarding the number of pending complaints, the reason is that from the date

¹⁴ Around 38 Free Legal Aid cells are established from 1998 onwards and they are functioning with the help of students in creating awareness even in remote areas, mainly in North Goa.

of bifurcation no regular President was appointed to dispose the matter. Even there was delay in appointment of President¹⁵ and other members for the SGCDRF.

4. Time taken for disposal of Complaints

Complaint disposal rate is approximately around 70% before the NGCDRF and SGCDRF. Mere disposal of complaints is not enough unless the complaints are disposed as per the time limit prescribed under the CP Act, 1986. The researcher verifies the time taken by these Fora in disposing of the complaints with reference to housing and insurance sectors during 10 years that is 1998 to 2008 and rate of disposal as on 31.03.2009.

Table No. 8

Time taken for disposal of complaints (Housing Sector) – North Goa

Number of complaints disposed	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
407	12	35	88	48	42	182
Percentage	2.9	8.5	21.6	11.7	10.3	44.7

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008
Disposed as on 31.03.2009

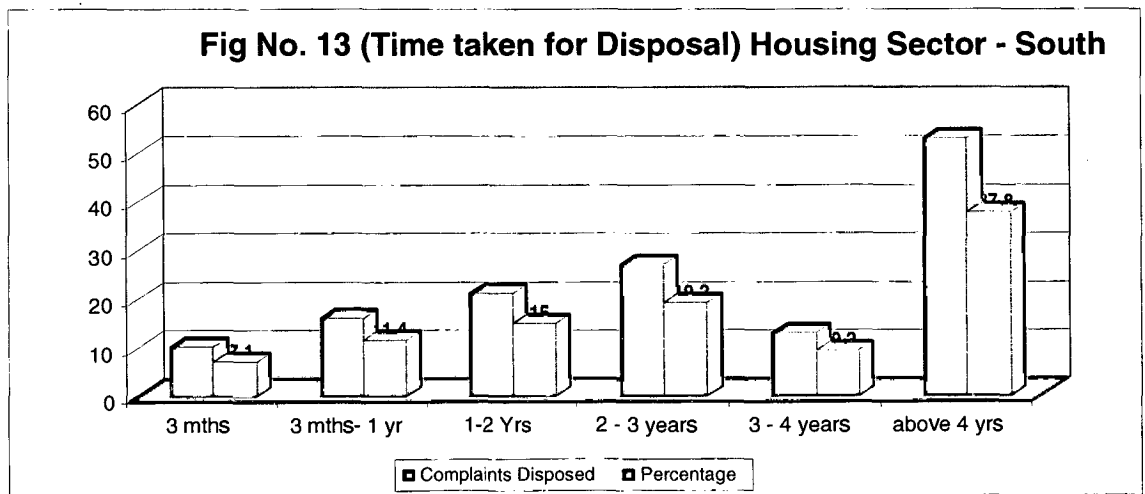
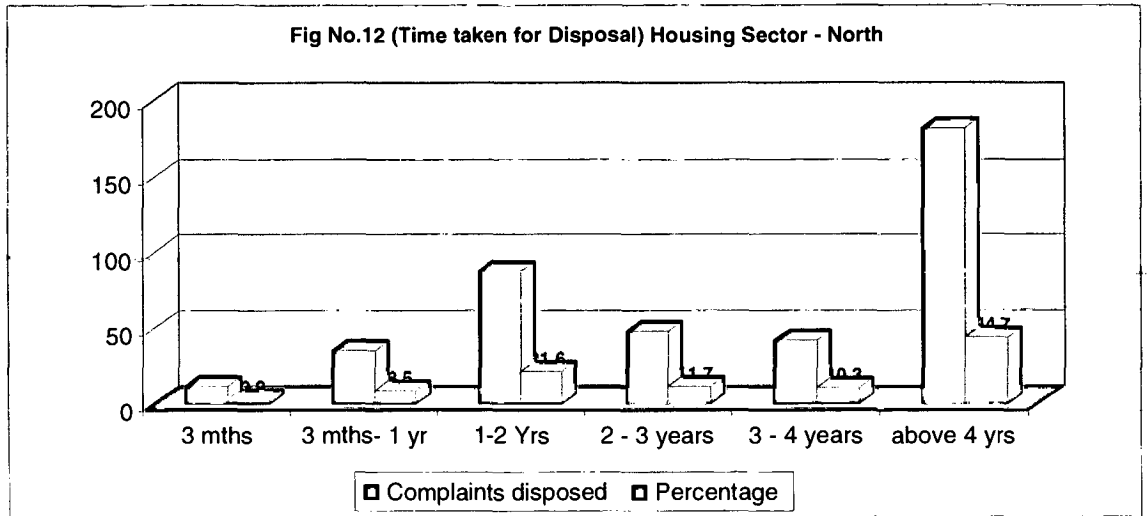
¹⁵ "Judges appointed to Consumer Courts - Posts had been lying vacant for 6 months" Times of India (Panaji, Goa) 16th December 2008

Table No. 9
Time taken for disposal of complaints (Housing Sector) – South Goa

Number of complaints disposed	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
140	10	16	21	27	13	53
Percentage	7.1	11.4	15	19.2	9.2	37.8

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008
Disposed as on 31.03.2009

The above two tables' (no. 8 and 9) reveal only meager number of complaints (2.9% and 7.1%) are disposed by North and South Goa Consumer Fora as per the time limit prescribed under the CP Act, 1986. 44.7% and 37.8% of housing complaints are pending before these Fora for more than 4 years. The NGCDRF has taken one to two years to dispose 21.6% of complaints and SGCDRF has taken two to three year in disposing 19.2% of complaints. From this it is clear that the Consumer Fora are not in a position to dispose the matters as per the time schedule. Most of the complaints are disposed within two to three years period. Details of the table are indicated in the form of bar chart (Fig No.12 and 13).



Now let us verify the time taken by these Fora in disposing insurance complaints. 30% of insurance complaints are pending before the NGCDRF and SGCDRF. Pending percentage is slightly high as compared to Housing sector complaints.

Table No. 10
Time taken for disposal of complaints (Insurance Sector) – North Goa

Number of complaints disposed	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
104	14	20	20	21	11	18
Percentage	13.4	19.2	19.2	20.1	10.5	17.3

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008
Disposed as on 31.03.2009

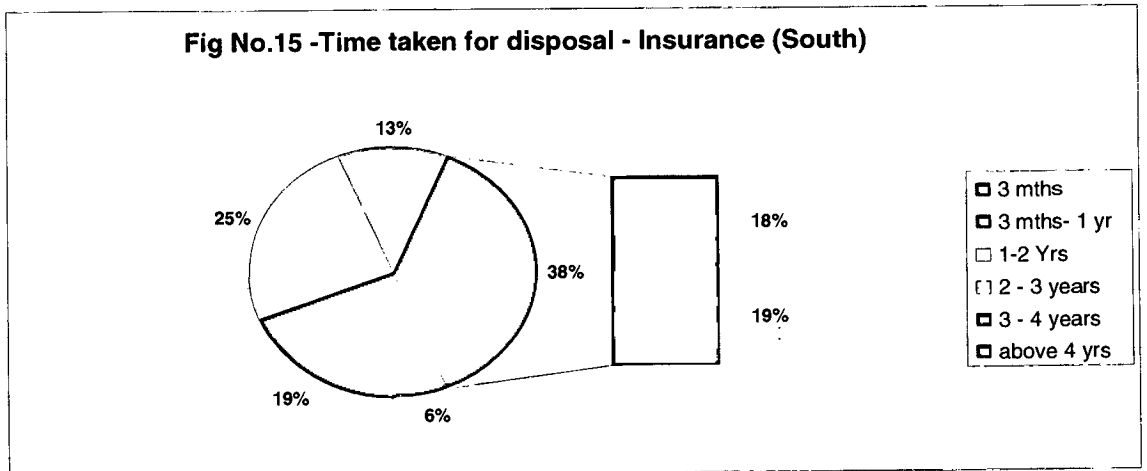
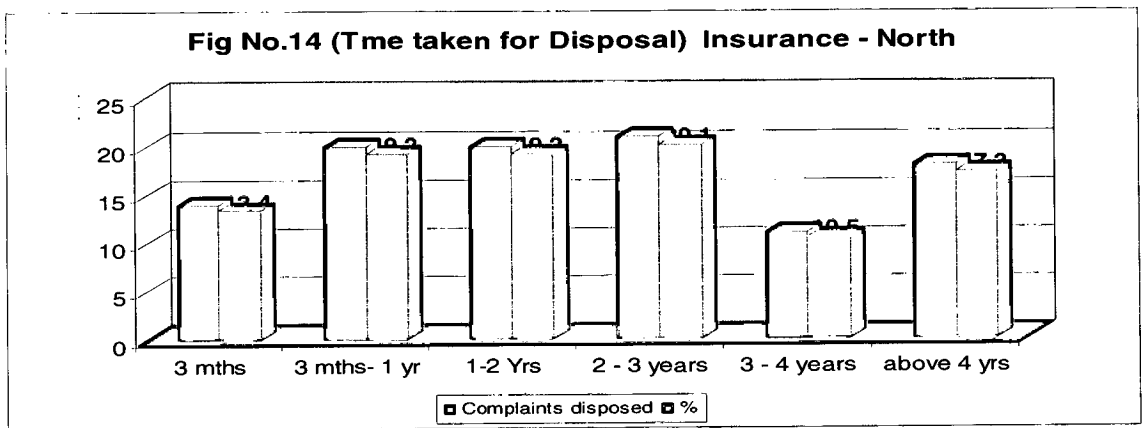
Table No. 11
Time taken for disposal of complaints (Insurance Sector) – South Goa

Number of complaints disposed	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
72	04	14	18	09	13	14
Percentage	5.5	19.4	25	12.5	18.0	19.4

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008
Disposed as on 31.03.2009

Table Nos.10 and 11, highlights that 13.4% and 5.5 % of insurance complaints are disposed with in the time limit of 3 months by the NGCDRF and SGCDRF respectively. Disposal rate is very low at SGCDRF compare to NGCDRF. 18% of complaints are pending before both the Fora for more than 4 years. Around 19% of insurance complaints are disposed with in a span of 3 moths to 1 year. 15% of the complaints are disposed with in the period of 1 year to 2 years. Around 17% of complaints are disposed with in a span of 2 years to 3 years and the Fora has taken 3years to 4 years for disposal of 16% of insurance complaints. The Fora has taken above four years in disposing 18% of the

complaints. SGCDRF has taken above three years in disposing 38% of insurance complaints. From this table it is clear that the Fora is incapable to dispose the complaints as per the time schedule specified under the CP Act, 1986 but it is taking around 1 year to 2 years in disposing 50% of the complaints. The details are shown in bar chart and pie chart respectively (Fig No. 14 and 15).



5. Outcome of the dispute

Disposal of the complaints has to be in favour of the complainant other wise the enactment of the Act would be futile. If the complainants are happy, it would mean that the Act is helpful and useful to the public. Now let us verify the orders passed by the District Fora.

Table No.12
Outcome of dispute (Housing Sector) – North Goa

Number of complaints disposed	Relief	Settled	Withdrawn	Dismissed	Closed
407	305	26	37	32	07
Percentage	74.9	6.3	9.0	7.8	1.7

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008
Disposed as on 31.03.2009

Table No.13
Outcome of dispute (Housing Sector) – South Goa

Number of complaints disposed	Relief	Settled	Withdrawn	Dismissed	Closed
140	56	58	10	16	Nil
Percentage	40	41.4	7.14	11.4	--

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008
Disposed as on 31.03.2009

The above tables (No.12 and 13) explains that relief granted by the NGCDRF, in favour of the housing complainant is approximately double (75%) as compared to the SGCDRF. Only 10% of complaints are disposed by both the Fora. It is also clear that most of the housing complainants of North Goa are

satisfied with the functioning of NGCDRF. 41% of the housing complaints are settled before the SGCDRF. Overall the dispute outcome is in favour of the consumers. Most of the consumers are happy with the orders passed by the CDRA. The same data is disclosed in the form of pie chart (Fig No.16 and 17).

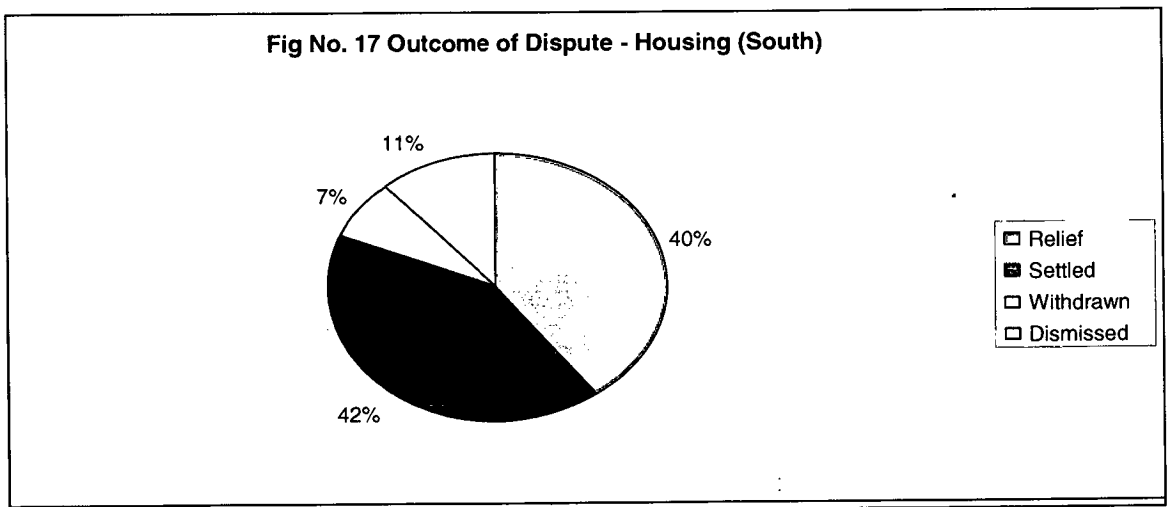
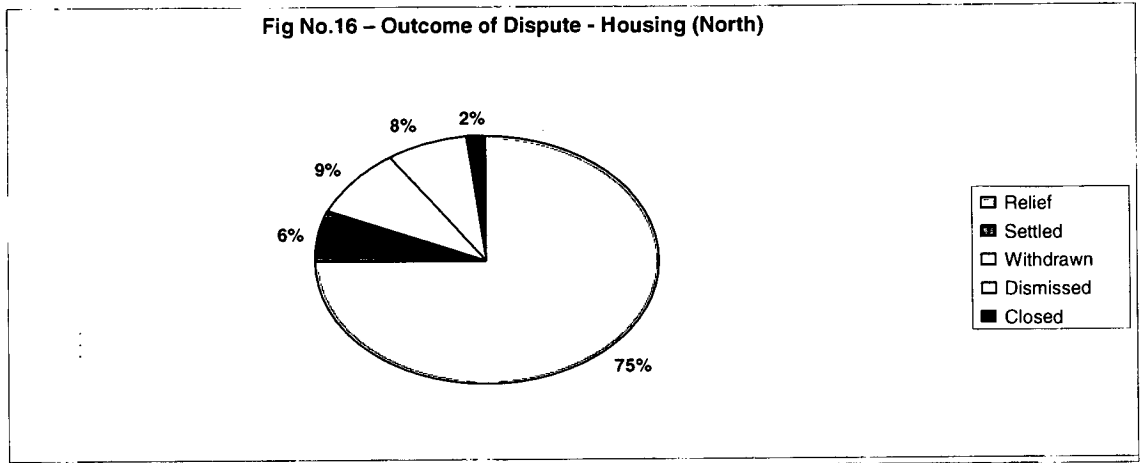


Table No.14
Outcome of dispute (Insurance Sector) – North Goa

Number of complaints disposed	Relief	Settled	Withdrawn	Dismissed	Closed
104	49	07	43	04	01
Percentage	47.1	6.7	41.3	3.8	0.9

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008
Disposed as on 31.03.2009

Table No.15
Outcome of dispute (Insurance Sector) – South Goa

Number of complaints disposed	Relief	Settled	Withdrawn	Dismissed	Closed
72	43	22	03	04	Nil
Percentage	59.72	30.55	4.1	5.5	--

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008
Disposed as on 31.03.2009

The above tables (No.14 &15), show that around 53% of the insurance complaints are decided in favour of the complainants. Only 4% of complaints are dismissed by the Fora. It means that only 53% of the consumers are happy with the orders issued by the Fora and remaining are unhappy with the orders of the Fora. Relief granted in favour of consumer is slightly more by the SGCDRF than the NGCDRF. 30.5% and 6% of complaints are settled by South and North Goa CDRF respectively. 41% and 4% of insurance complaints are withdrawn due to settlement out side the Fora from North and South GCDRF respectively. The details of the table are shown in the form of pie chart (Fig No. 18 and 19).

Fig No. 18 Outcome of Dispute Insurance (North)

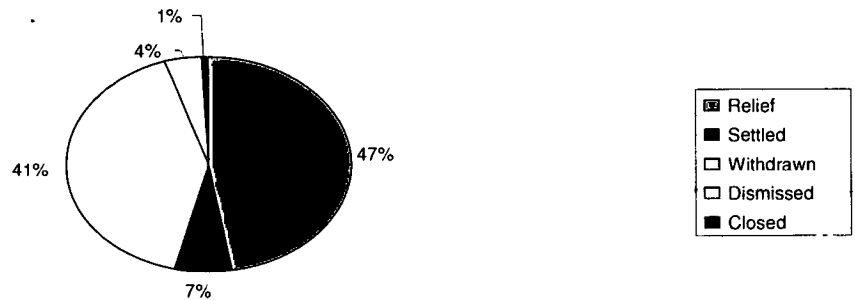
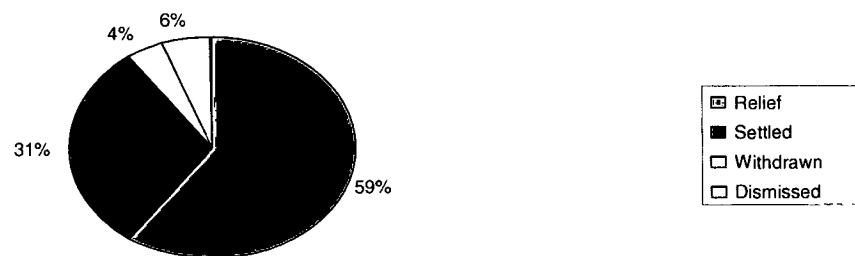


Fig No. 19 Outcome of Dispute - Insurance (South)



6. Pending status

The research also analyzes the data relating to pending complaints. The following table (No. 16) shows the duration of pendency of the housing and insurance complaints before the North and South Goa CDRF.

Table No.16
Pending Status (Housing Sector) – North Goa

Number of Pending Complaints	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
55	03	06	14	08	08	16
Percentage	5.4	10.9	25.4	14.5	14.5	29.09

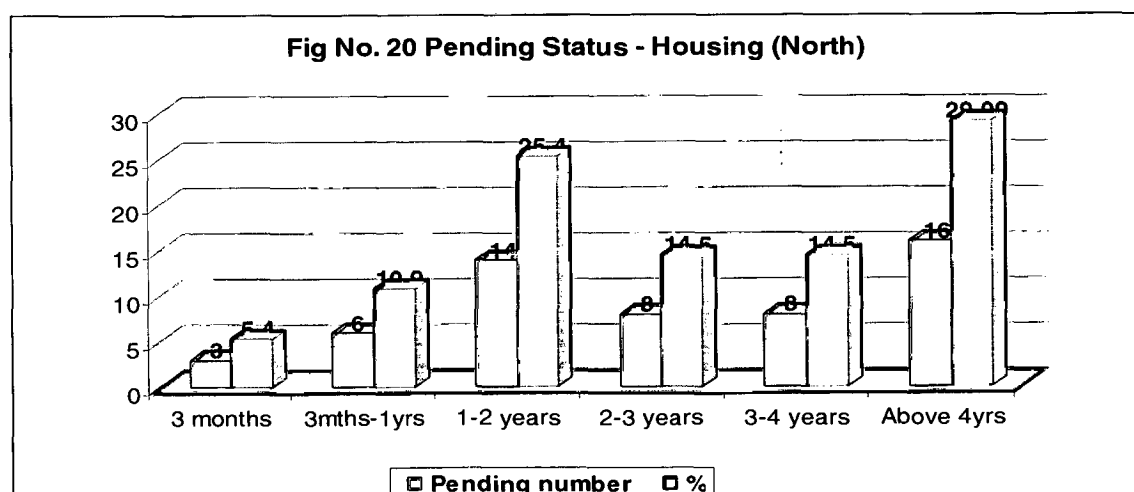
Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008
Pending as on 31.03.2009

Table No.17
Pending Status (Housing Sector) – South Goa

Number of Pending Complaints	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
53	--	04	15	12	08	14
Percentage	--	7.5	28.3	22.6	15.09	26.4

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008
Pending as on 31.03.2009

Number of housing complaints pending before the North and South Goa CDRF is almost the same. Around 28% of complaints are pending for more than 4 years. 26% of complaints are pending for a period of above 1 year to 2 years. Only 5% of housing complaints are pending for a period of 3 months before the NGCDRF. Nearly 85% of housing complaints are pending for more than 1 year. It is clear that most of the complaints are pending for more than the time limit specified under the CP Act, 1986. This shows that the CDRA are not able to dispose the complaints with in the time limit. The details of the able are stated in the bar chart (Fig No. 20 and 21).



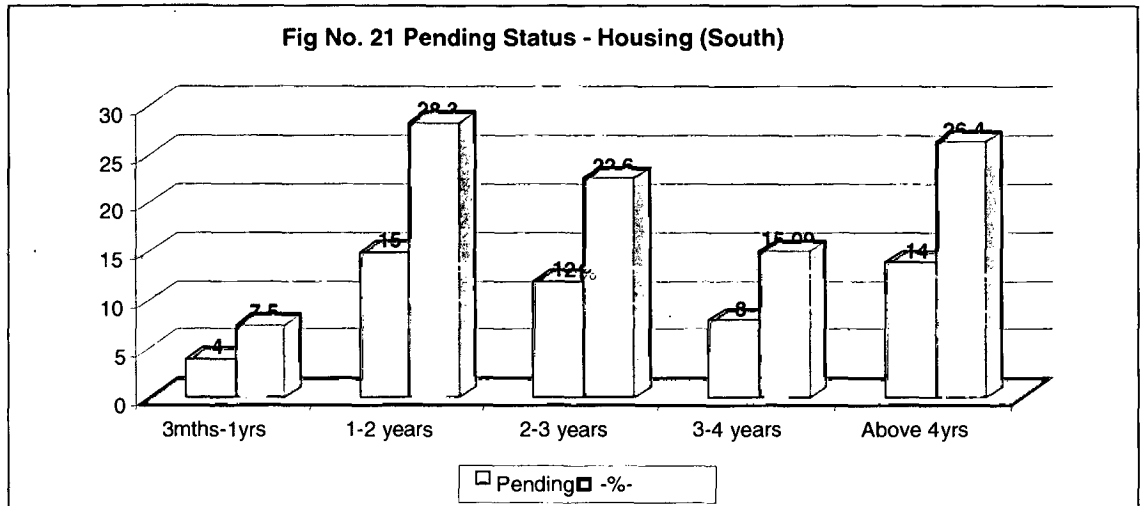


Table No.18
Pending Status (Insurance Sector) – North Goa

Number of Pending Complaints	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
31	01	12	11	05	--	02
Percentage	3.2	38.7	35.4	16.1	--	6.4

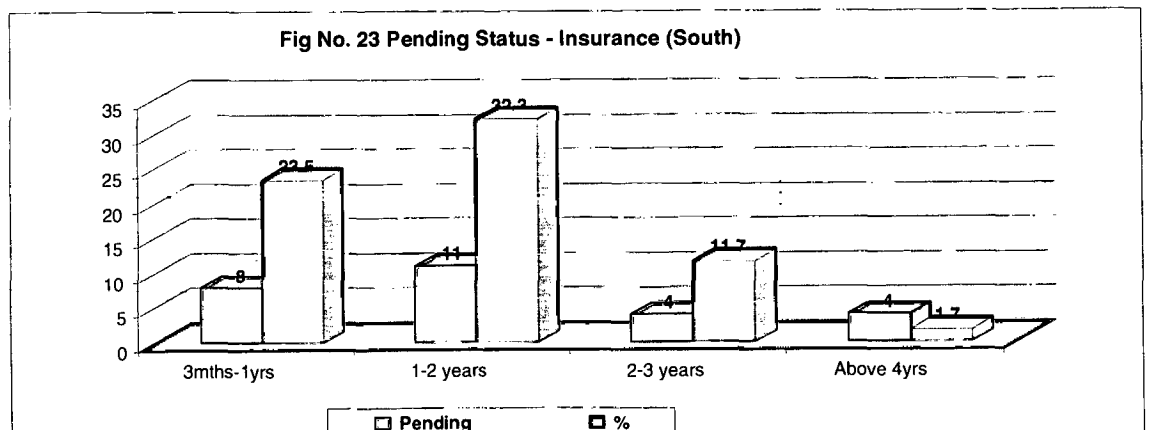
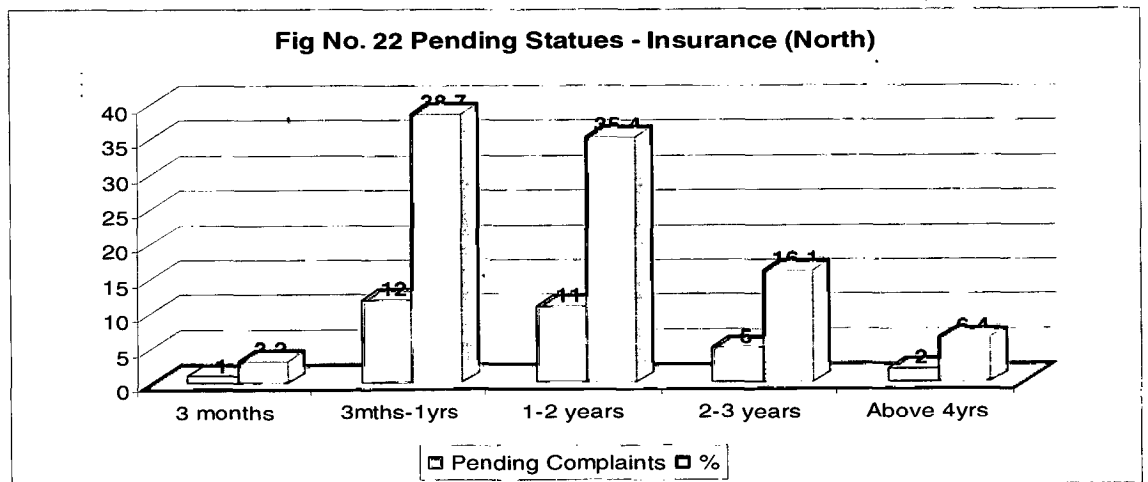
Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008
Pending as on 31.03.2009

Table No.19
Pending Status (Insurance Sector) – South Goa

Number of Pending Complaints	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
34	--	08	11	04	04	07
Percentage	--	23.5	32.3	11.7	1.7	20.5

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008
Pending as on 31.03.2009

Table Nos. 18 and 19, explain the duration of pendency of the insurance complaints before the North and South Goa CDRF. 20.5% and 6.4% of the complaints are pending for more than 4 years before the SGCDRF and NGCDRF. It is clear that the number of complaints pending before the South Goa CDRF is very high. 33% of complaints are disposed with in 1 to 2 years period. Only 30% of complaints are disposed with in a span of 3 month to 1 year. 14% of complaints are pending for 2 to 3 years period. This table indicates that CDRF are taking more than 1 year in disposal of complaints. The details of the table are depicted in the form of pie chart (Fig No. 22 and 23).



7. Opposite party

Opposite party against whom the complaints are filed is important in disposal of consumer complaints. If the opposite party is strong they will appoint their own advocate to argue the complaint. This may lead to injustice to the consumer who is not aware about the provisions of the Act. Even in case the opposite party is a public authority it will affect the consumer interest. In both these situation the opposite party may use various techniques against the consumer in the administration of consumer justice. Due to the techniques adopted by the opposite party it is difficult for the CDRA to decide the matter as per the time limit specified under the CP Act, 1986. The following table indicates the opposite party against whom the complaint is filed in relation to housing and insurance sector respectively.

Table No. 20
Opposite Party Housing Sector – North Goa

No. of Complaint filed	Housing Board	Private Builder
462	15	447
Percentage	3.2	96.7

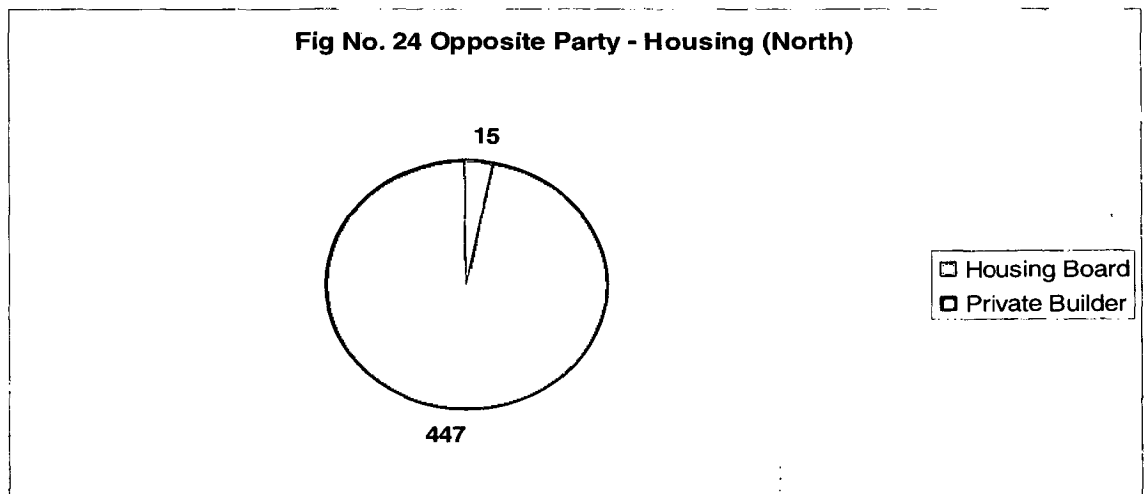
Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008

Table No. 21
Opposite Party Housing Sector – South Goa

No. of Complaint filed	Housing Board	Private Builder
193	04	189
Percentage	2.07	97.9

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008

The above table (Nos.20 and 21), explains that nearly 97% of housing complaints are filed against private contractor or builders who are involved in real estate business in the State of Goa. Sometimes large numbers of complaints are filed against the same contractor or builder. It shows that majority of the housing consumers are not happy with the services provided by the private contractor. In order to get relief or remedy against such contractors they file consumer complaints before the CDRA functioning in the State of Goa. Only meager number of complaints that is around 3% of complaints are filed against Goa Housing Board. That means that the Government does not manipulate the administration of justice. The delay in disposal of complaints is due to the tactics followed by the advocates, non appointment of regular president and members for these CDRA and inadequate quorum for disposal of complaints. The details of the table are depicted in the form of pie chart (Fig No. 24 and 25).



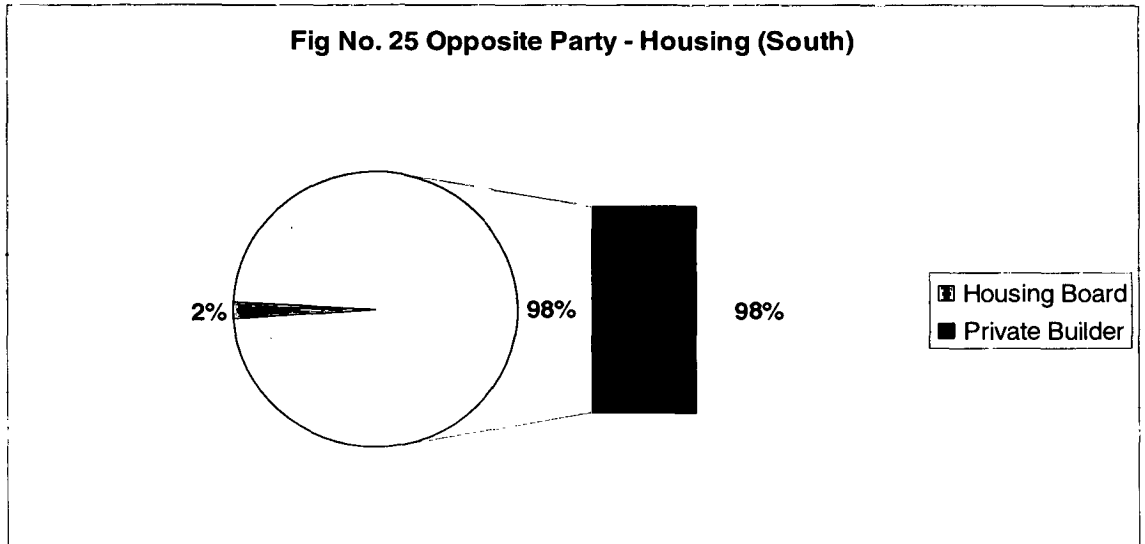


Table No. 22
Opposite Party Insurance Sector – North Goa

No. of Complaint filed	LIC	Other Insurance Co.
132	23	109
Percentage	17.4	82.5

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008

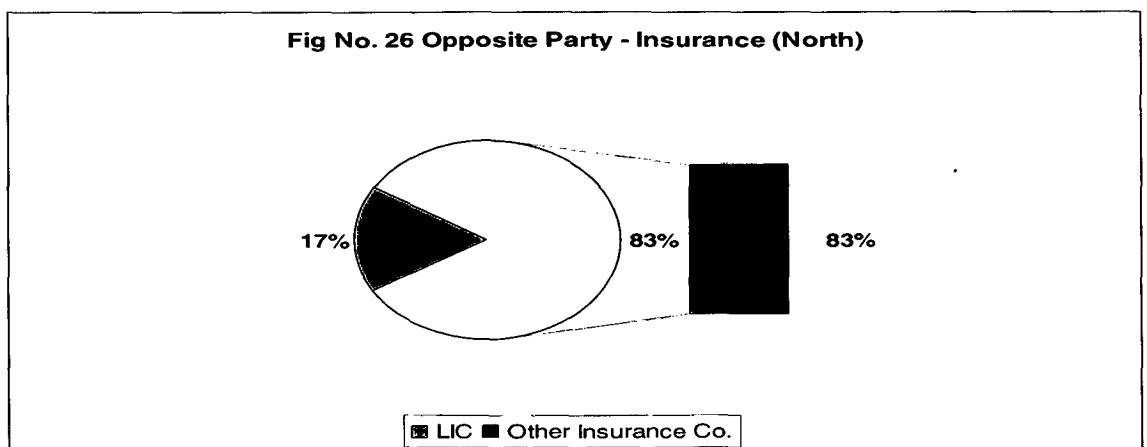
Table No. 23
Opposite Party Insurance Sector – South Goa

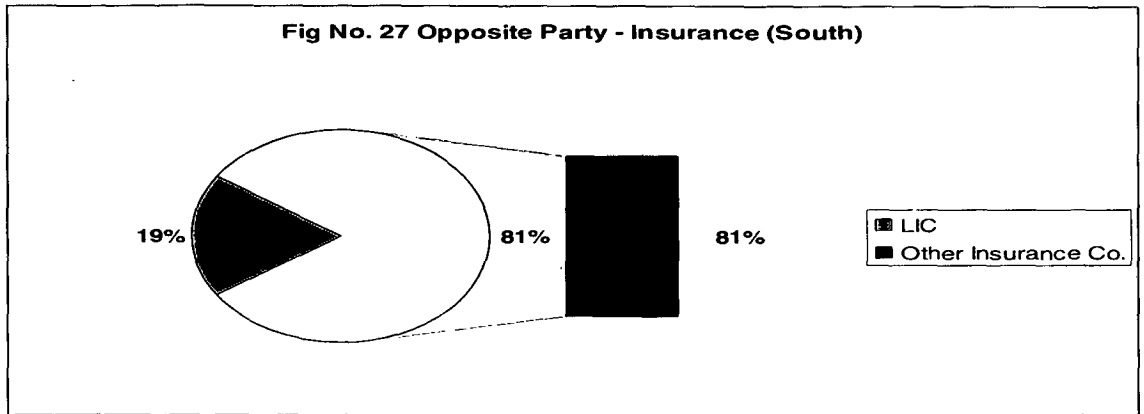
No. of Complaint filed	LIC	Other Insurance Co.
106	20	86
Percentage	18.8	81.13

Source: Records of NGCDRF
Complaints filed from 1998 till 31.12.2008

The above table (Nos. 22 and 23) shows that nearly 82% of the insurance complaints are filed against other private and public insurance companies like Oriental Insurance Company, United India Insurance, New India Assurance Company, and National Insurance Company. These are the major companies

against whom the consumer complaints are filed. This indicates that the consumers are not happy with the performance of these companies. It shows that majority of the insurance consumers are not happy with regard to the services provided by these insurance companies. In order to get relief or remedy against such companies they have filed consumer complaints before the CDRA functioning in the State of Goa. Only meager number of complaints that is around 18% of complaints are filed against Life Insurance Corporation of India. LIC is one of the largest public insurance corporations working in India. This means that the public corporation does not manipulated in administration of justice. The delay in disposal of complaints is due to the tactics followed by the advocates, non appointment of regular president and members for these CDRA and inadequate quorum for disposal of complaints. The details of the table are depicted in the form of pie chart (Fig No. 26 and 27).





6.3 GOA STATE CONSUMER DISPUTE REDRESSAL COMMISSION

After careful analysis of consumer complaints filed before the District Consumer Fora and the rate of disposal of the complaints, relief granted by these Fora let us verify the data available before the Goa State Consumer Dispute Redressal Commission (GSCDRC). Here the research mainly analyzes the appeals preferred to the Commission with relation to housing and insurance sector. Researcher has selected appeals only to verify the satisfaction of the consumer in respect of orders passed by the District Fora. Further the researcher has collected the data for a period of ten years from 1998 till 2008 and appeals pending before the State Commission as on 31.03.2009.

A. Appeals filed

Complainants dissatisfied with the orders of the District Fora can prefer an appeal to the Goa State Consumer Dispute Redressal Commission (GSCDRC). Recently Justice B D Deshpande was appointed as President, (Justice

Mahajan¹⁶, Ex President) and two other members headed this Commission¹⁷. President of the SCDRC visits Goa 2 days in a month only. This commission is situated in the capital city of Goa¹⁸ from the date of establishment in 1991. This commission is having original as well as appellate jurisdiction¹⁹. It also has the power to supervise the functioning of the District Fora functioning in the State of Goa.

Number of appeals preferred to the State Commission, shows the dissatisfaction of the complainant. For this purpose data has been obtained from the Commission and analyzed as follows. The following table highlight the total number of appeals preferred to the State Commission and further it deals with appeals filed, rate of disposal and pending appeals with special reference to Housing and Insurance sectors only.

Complainants who are dissatisfied with the orders passed by the District Consumer Fora can approach the State Commission. The below table (No. 24) shows that 20% of the appeals are filed against Housing and Insurance sector. Number of appeals is 30% in relation to housing sector alone. Appeals preferred to the Commission are not consistent. There are up and down in filing

¹⁶ "Consumer Panel chief quits post" *Times of India*, (Panaji, Goa) 19th December 2008, at 4

¹⁷ Adv. Caroline Collasso and Adv. Sandra Vaz Correia

¹⁸ GSCDRC, 18th June Road, Junta House, 1st Left, 4th Floor, Panaji, Goa

¹⁹ Sec. 17 of C P Act, 1986: Subject to other provisions of this Act, the State Commission shall have jurisdiction –

(a) To entertain

i. Complaints where the value of the goods and services and compensation, if any claimed exceeds rupees twenty lakhs but does not exceed one crore and
ii. Appeals against the orders of any District Forum within State

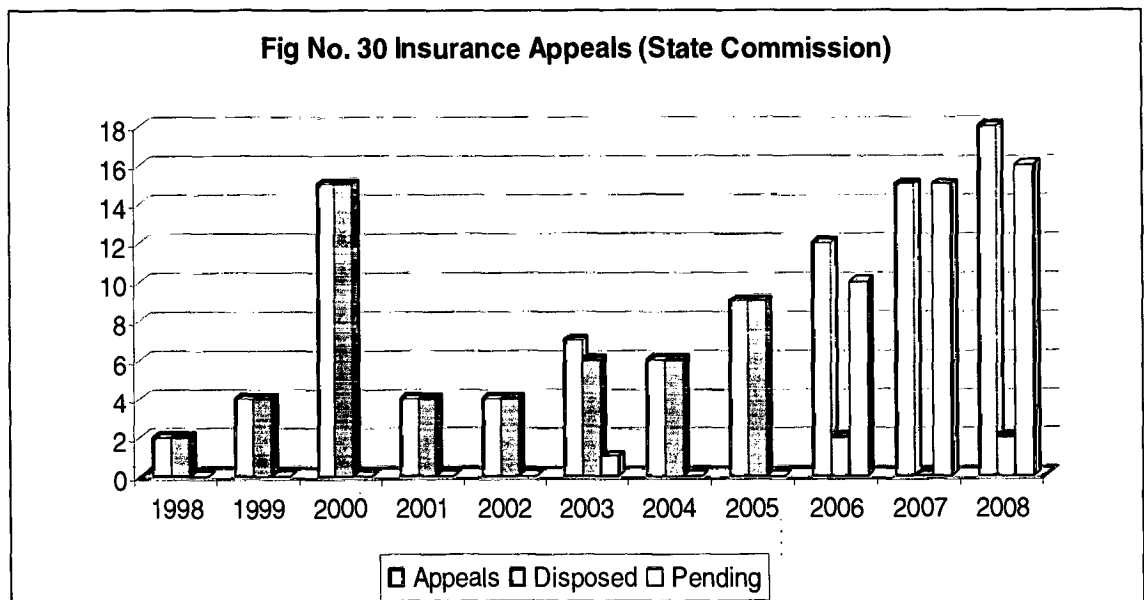
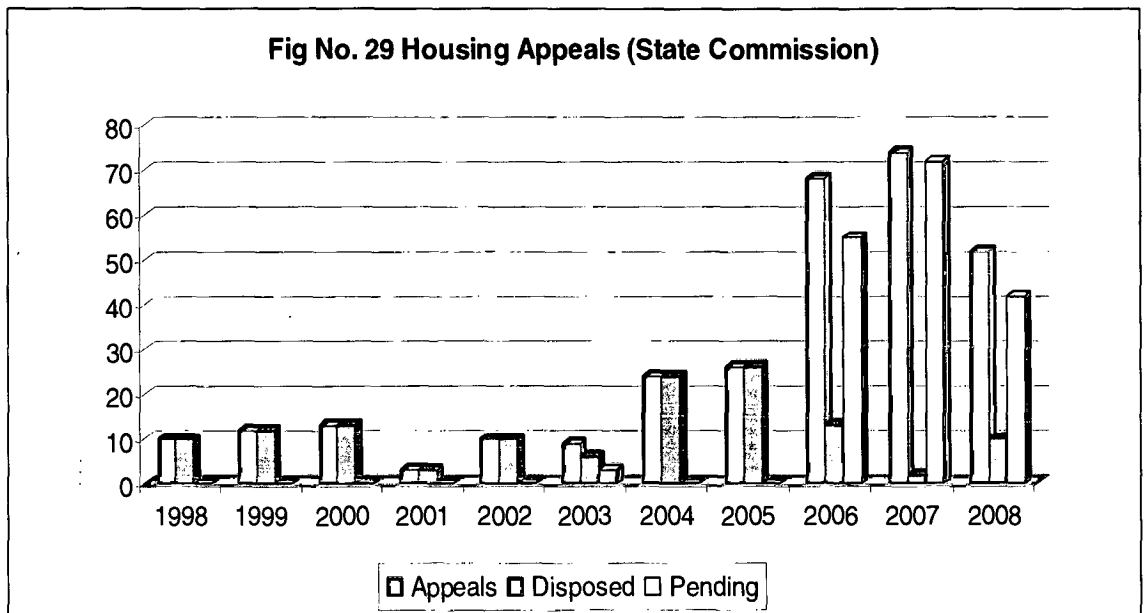
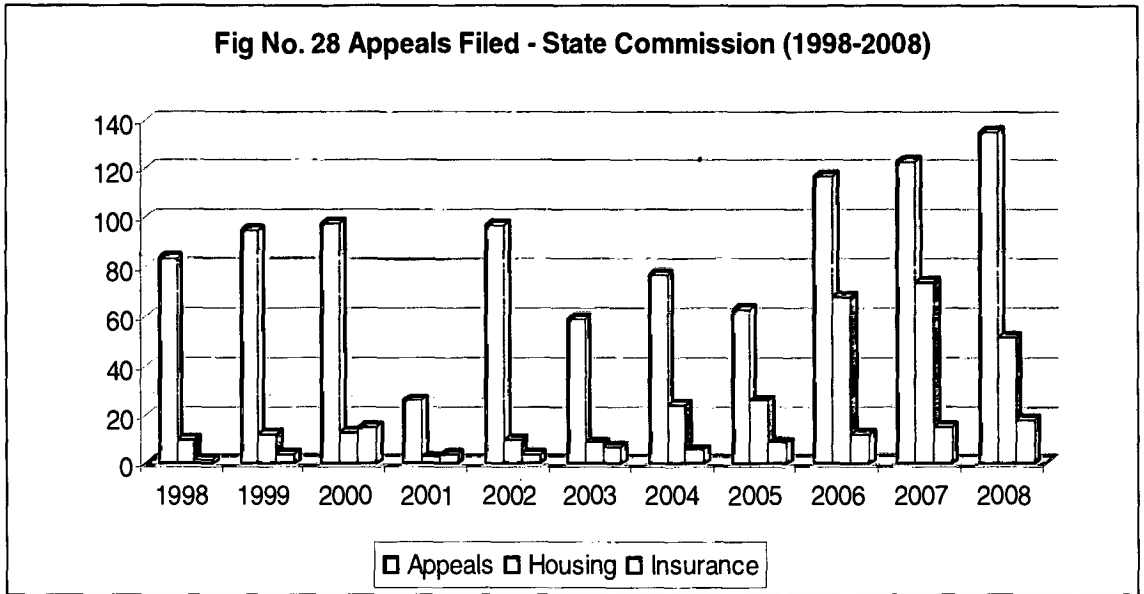
(b) To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any district Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity

appeals to the Commission. But from 2006 till 2008 there is increase in filing appeals against the orders passed by the District Fora. The situation is same with regard to the insurance sector. 50% of the appeals have been disposed by the State Commission. Disposal rate is slightly high in insurance matters compare to the housing matters. Majority of the housing appeals are filed against private contractors. The details of the table are shown in the form of bar chart (Fig No. 28, 29 and 30).

Table No: 24
Appeals filed from 1998 to 2008 (State Commission)

Year	Appeals filed	Housing Sector			Insurance Sector		
		Filed	Disposed	Pending	Filed	Disposed	Pending
1998	84	10	10	0	02	02	0
1999	95	12	12	0	04	04	0
2000	98	13	13	0	15	15	0
2001	26	03	03	0	04	04	0
2002	97	10	10	0	04	04	0
2003	59	09	06	03	07	06	01
2004	77	24	24	0	06	06	0
2005	63	26	26	0	09	09	0
2006	117	68	13	55	12	02	10
2007	123	74	02	72	15	0	15
2008	135	52	10	42	18	02	16
Total	974	301	129	172	96	54	42
%		30.9	42.8	57.1	9.8	56.2	43.7

Source: Records of GSCDRC
Appeals filed from 1998 till 31.12.2008
Appeals disposed as on 31.03.2009



B. Time taken for disposal

After analyzing the number of appeals filed, disposed and pending before the State Commission, let us verify the time taken by the Commission in disposing housing and insurance appeals.

Table No. 25
Time taken for disposal of Appeals (Housing Sector)

Number of Appeals disposed	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
129	34	42	21	12	10	10
Percentage	26.3	32.5	16.2	9.3	7.7	7.7

Source: Records of GSCDRC
Appeals filed from 1998 till 31.12.2008
Appeals disposed as on 31.03.2009

Table No. 26
Time taken for disposal of Appeals (Insurance Sector)

Number of Appeals disposed	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
54	06	14	19	05	06	04
Percentage	11.1	25.9	35.1	9.2	11.1	7.4

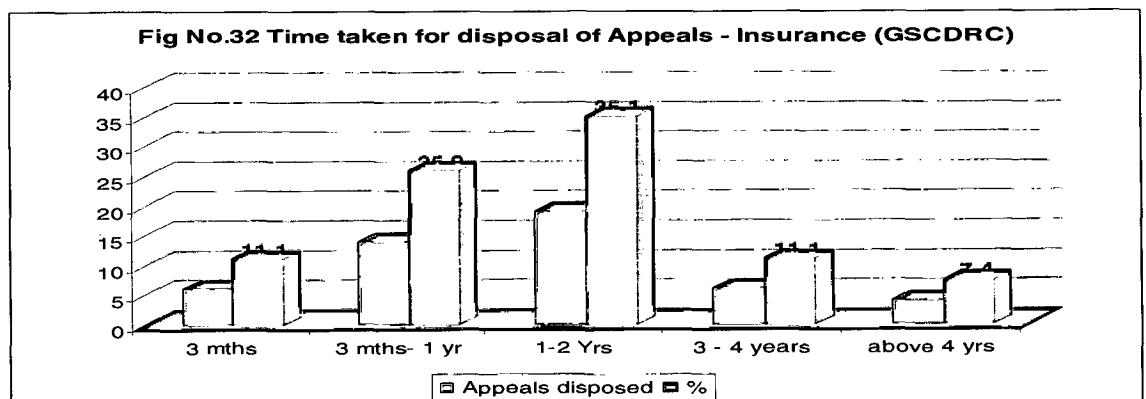
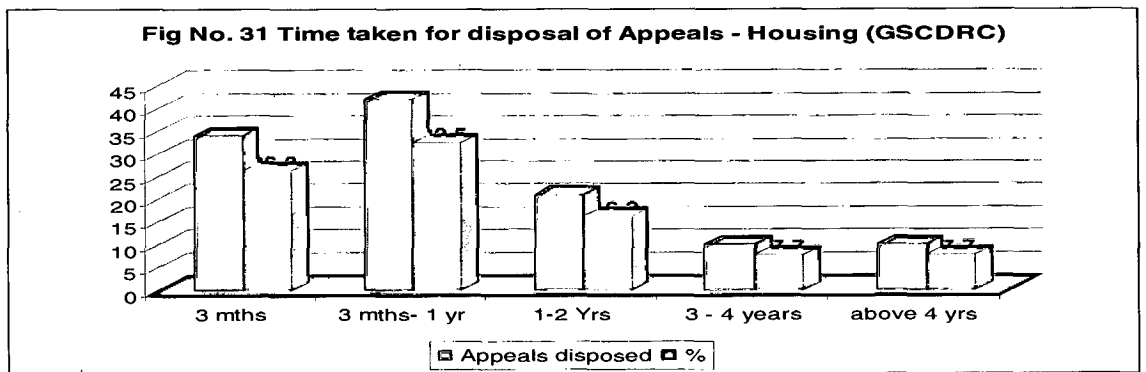
Source: Records of GSCDRC
Appeals filed from 1998 till 31.12.2008
Appeals disposed as on 31.03.2009

Table Nos. 25 and 26, highlights that 26.3% and 11.1 % of housing and insurance appeals respectively are disposed with in the time limit of 3 months.

The Commission has taken more than 4 years for disposal of 7.5% of appeals.

Around 30% of housing and insurance appeals are disposed with in a span of 3

moths to 1 year. 25% of the appeals are disposed with in the period of 1 year to 2 years. Around 9% of appeals are disposed with in a span of 2 years to 3 years and 11% of appeals took 3years to 4 years for disposal respectively. From this table it is clear that the State Commission is also not in a position to dispose the complaints as per the time schedule specified under the CP Act, 1986 but it is taking around 1 year to 2 years in disposing 65% of the complaints. This means that the CDRF are capable to dispose the complaint or appeal with in a span of 2 years. The details are shown in bar chart and pie chart respectively (Fig No. 31 and 32).



C. Outcome of the dispute

Disposal of the appeals has to be in favour of the appellant otherwise the enactment of the Act is futile. If the appeal is decided in favour of the opposite party means consumers are not satisfied with the orders passed. Now let us verify the orders passed by the State Commission with reference to housing and insurance sector.

Table No. 27
Outcome of dispute (Housing Sector)

Number of Appeals disposed	Relief	Settled	Withdrawn	Dismissed	Closed
129	71	14	35	--	09
Percentage	55	10.8	27.13	-	6.9

Source: Records of GSCDRC
Appeals filed from 1998 till 31.12.2008
Appeals disposed as on 31.03.2009

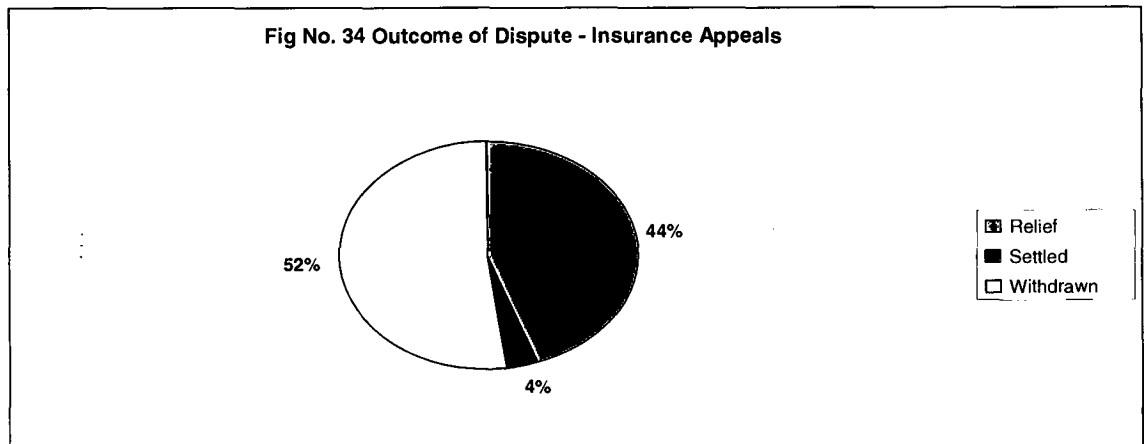
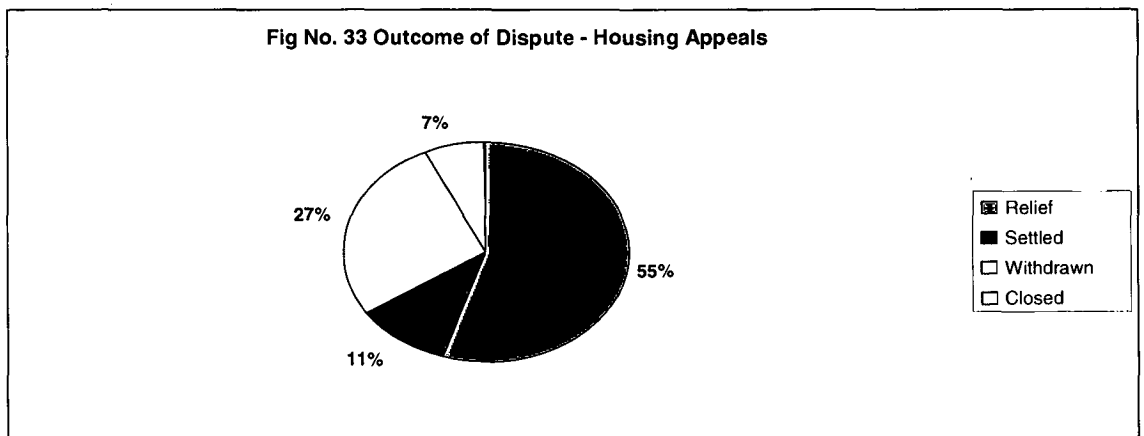
Table No. 28
Outcome of dispute (Insurance Sector)

Number of Appeals disposed	Relief	Settled	Withdrawn	Dismissed	Closed
54	24	02	28	--	--
Percentage	44.4	3.7	51.8		

Source: Records of GSCDRC
Appeals filed from 1998 till 31.12.2008
Appeals disposed as on 31.03.2009

Table No.27 and 28, explains that relief granted in favour of the appellant is approximately 50% in regard to housing and insurance appeals. Relief in favour of the appellant is slightly more in regard to housing sector. Withdrawal of

appeals is approximately double in insurance sector (51.8%) than housing sector. 10.8% and 3.7% of appeals are settled. Overall the dispute outcome is in favour of the consumers. Most of the consumers are happy with the orders passed by the State Commission. The same data is disclosed in the form of pie chart (Fig No.33 and 34).



D. Appeal pending status

The research also analyzes the data relating to duration of pendency of the appeals before the GSCDRC. The following table shows how long the housing and insurance complaints are pending before the State Commission.

Table No. 29
Appeal Pending Status (Housing Sector)

Number of Pending Appeals	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
172	09	29	29	101	--	04
Percentage	5.2	16.9	16.9	58.1	--	2.3

Source: Records of GSCDRC
 Appeals filed from 1998 till 31.12.2008
 Appeals disposed as on 31.03.2009

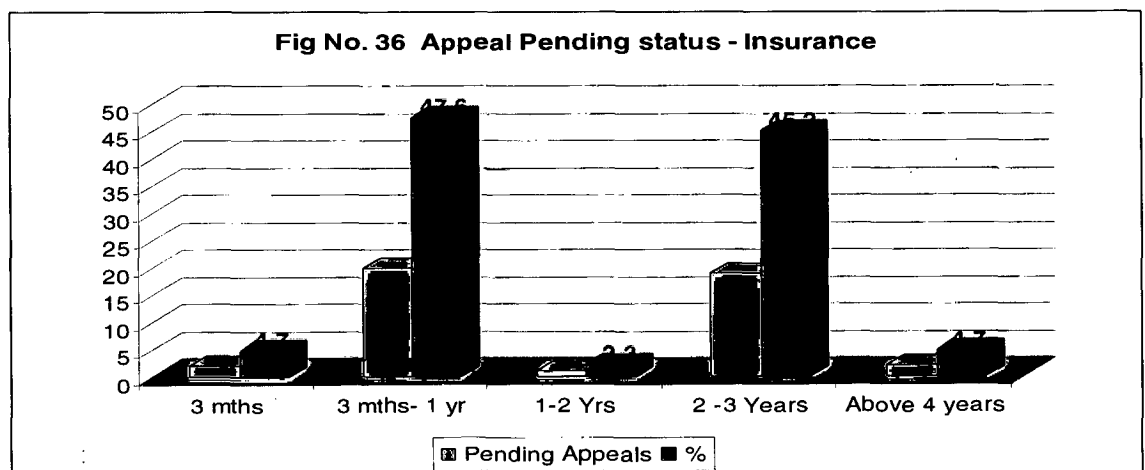
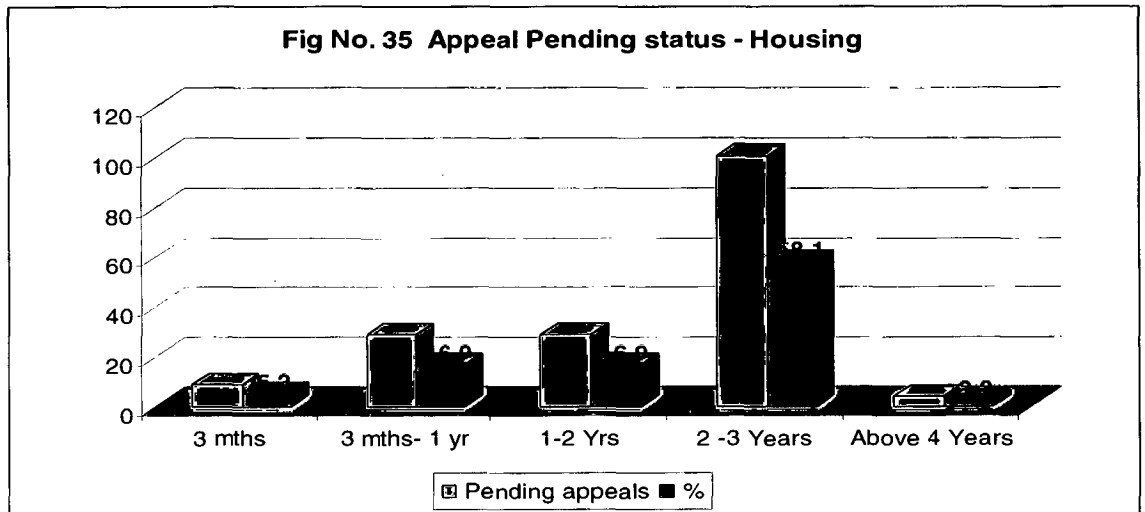
Table No. 30
Appeal Pending Status (Insurance Sector)

Number of Pending Appeals	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
42	02	20	01	19	--	02
Percentage	4.7	47.6	2.3	45.2	--	4.7

Source: Records of GSCDRC
 Appeals filed from 1998 till 31.12.2008
 Appeals disposed as on 31.03.2009

The above tables (N0s. 29 and 30) highlights that 58.1% and 45.2% of housing and insurance appeals are pending before the State Commission from 2 to 3 years. 16.9% of appeals are pending for above 3 months to 1 year and 1 to 2 years respectively in regard to Housing appeals. 47.6% appeals are pending for more than 3 month up to 1 year in regard to insurance sector. It is clear that most of the complaints are pending for more than the time limit specified under the CP Act, 1986. This shows that the State Commission also is not able to dispose the complaints with in the time limit. The Commission is taking nearly

2 to 3 years to clear 50% of appeals. The details are shown in the form of bar chart (Fig No.35 and 36).



E. Opposite party

Party against whom the consumer complaints are filed is important in disposal of appeals. If the opposite party is strong they will appoint their own advocate to argue the appeal, this may leads to injustice to the consumer who is not aware about the provisions of the Act and he is not in a position to argue his matter. If the opposite party is public authority then it affects more to the interest of consumer. In both these situation the opposite party may use various

techniques against the consumer in administration of consumer justice. Due to the techniques adopted by the opposite party it is difficult for the State Commission to decide the matter within the time limit specified under the CP Act, 1986. The following table indicates the opposite party against whom the appeal is filed in relation to housing and insurance sector respectively.

Table No. 31
Opposite Party - Housing Sector

No. of appeals filed	Housing Board	Private Builder
301	19	282
Percentage	6.3	93.6

Source: Records of GSCDRC
Appeals filed from 1998 till 31.12.2008

This table (No. 31) depicts that 93.6% of housing appeals are filed against private contractors involved in real estate business. Majority of the housing appellants are not satisfied with the services provided by these private builder. Only 6.3% of the appeals are filed against the Goa Housing Board. That reveals that services rendered by the Housing board are satisfactory. As a result there is no necessity for the GHB to involve in administration of consumer justice. GHB is not responsible in delay in administration of consumer justice. The details are shown in the form of pie chart (Fig No. 37)

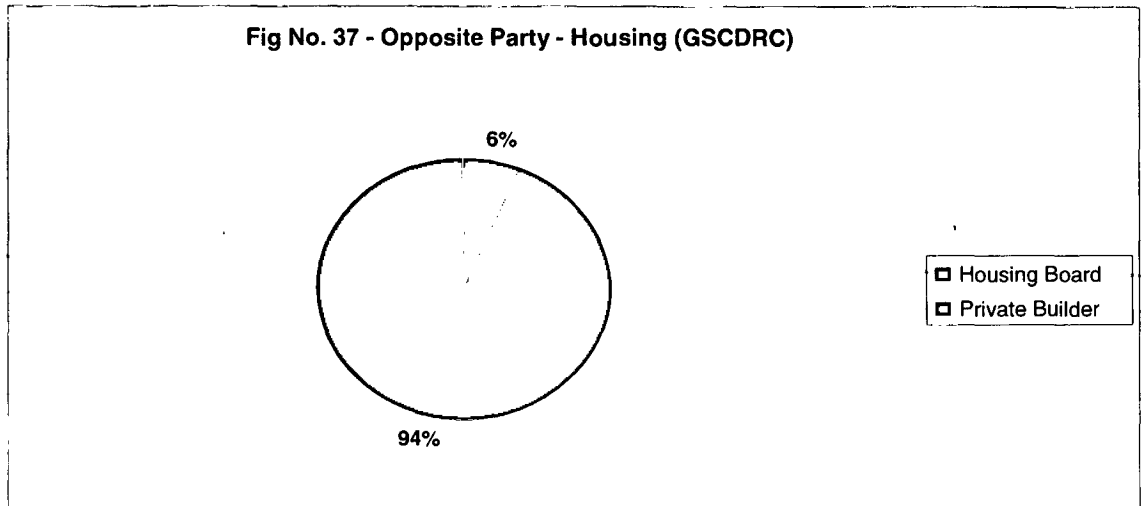


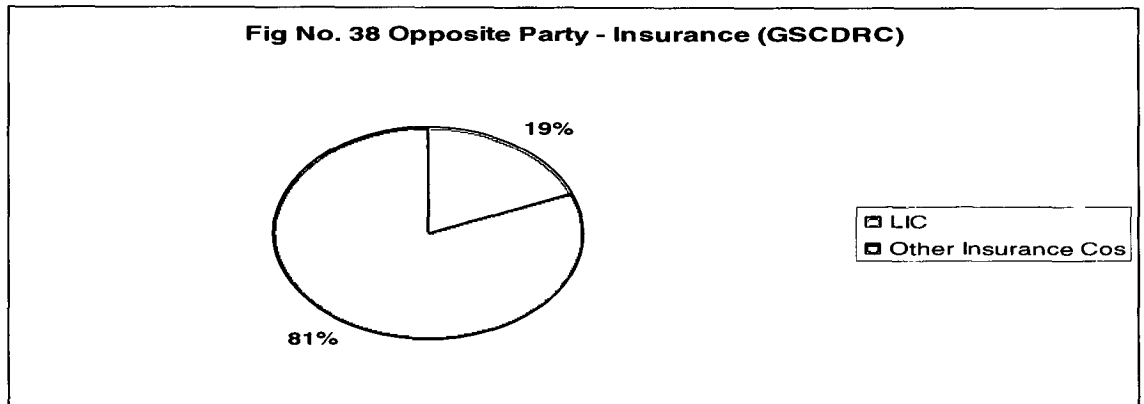
Table No. 32
Opposite Party - Insurance Sector

No. of appeals filed	LIC	Other Insurance Cos
96	18	78
Percentage	18.7	81.2

Source: Records of GSCDRC
Appeals filed from 1998 till 31.12.2008

Table No.32, indicates that the majority of the appeals (81.2%) are against other insurance companies involved in insurance business in India. Only 18% appeals are preferred against LIC of India, one of the largest insurance corporations operating in India. This proves that people are not satisfied with the services provided by the other Insurance Companies operating. Other Insurance companies include UIIC, NIAC, and OIC etc. Services provided by these insurance companies are not up to the mark. As a result, in order to obtain remedy in relation to insurance, consumer is approaching CDRA. Further we can presume that LIC of India is not involved in manipulating of the administration of consumer justice. Delay in disposal of appeals is due to lack

of infrastructure facilities, non appointment of President or member to the State Commission. Even the President and member are not full time and there is no dedication in administration of consumer justice. The details of the table are depicted in pie chart (Fig No.38).



After analyzing the statistical data obtained from the three Consumer Redressal Agencies functioning in the State of Goa separately, it can be observed that there is delay in disposal of consumer complaints. The CDRA are not capable to dispose the complaints with in the time limit specified under the C P Act, 1986. Other objective of the Act that is satisfaction regarding the functioning of the CDRA and appeals preferred to the State Commission, majority of the consumer are satisfied with the orders passed by the CDRA in case of housing and insurance sector. Further the researcher has compiled the data obtained from all the three CDRA functioning in the State of Goa with reference to time taken for disposal of complaints, appeals and outcome of the dispute in relation to the housing and insurance sector.

Table No. 33
Time taken for disposal of Complaints/Appeals – Compiled

CDRA	Complaints/ Appeals disposed	3 months	3 mths to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	Above 4 years
NG -H	407	12	35	88	48	42	182
NG - I	104	14	20	20	21	11	18
SG - H	140	10	16	21	27	13	53
SG - I	72	04	14	18	09	13	14
SC - H	129	34	42	21	12	10	10
SC - I	54	06	14	19	05	06	04
Total	906	80	141	187	122	95	281
%		8.8	15.5	20.6	13.4	10.4	31.0

Source: Records of NGCDRF, SGCDRF and GSCDRC
Complaints/Appeals disposed as on 31.03.2009

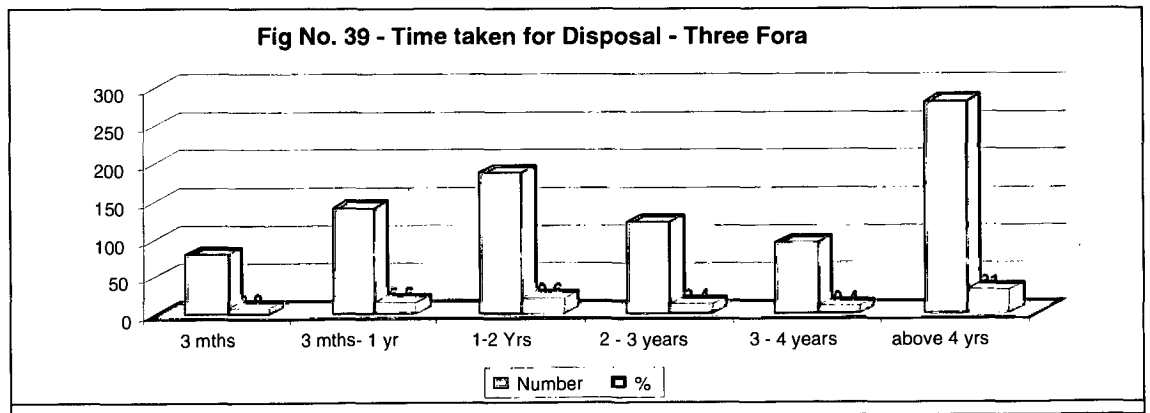


Table No.33, and the bar chart (Fig No.39) highlight the time taken by the three Fora functioning in the State of Goa in disposal of consumer complaints/appeals. It reveals that only 8.8% of complaints and appeals are disposed with 3 months period as specified under the CP Act, 1986. 36% of complaints and appeals are disposed from 3 months to 2 years period. 24% of the appeals and complaints are disposed with in the period of above 2 years and

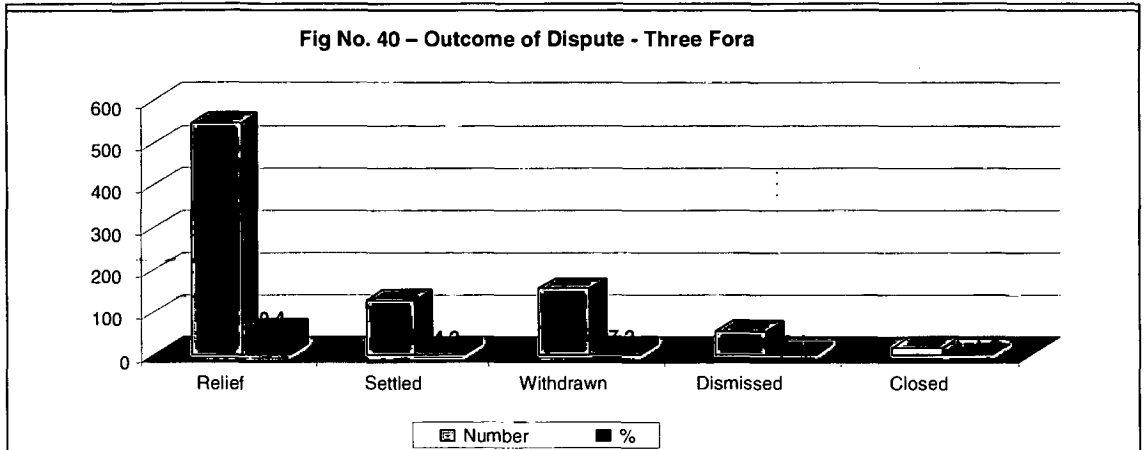
below 4 years. The Fora has taken above 4 years period to dispose 31% of complaints and appeals. Approximately 45 % of disposal of complaints is within 2 years. It means that the Fora need around 2 years to dispose 50% of complaints.

Table No. 34
Outcome of Dispute Complaints/Appeals – Compiled

CDRA	Complaints/ Appeals disposed	Relief	Settled	With draw n	Dismiss ed	Closed
NG -H	407	305	26	37	32	07
NG -I	104	49	07	43	04	01
SG - H	140	56	58	10	16	Nil
SG - I	72	43	22	03	04	Nil
SC - H	129	71	14	35	--	09
SC - I	54	24	02	28	--	--
Total	906	548	129	156	56	17
%		60.4	14.2	17.2	6.1	1.9

Source: Records of NGCDRF, SGCDRF and GSCDRC
Complaints/Appeals disposed as on 31.03.2009

The above table (No.34) explains that 60% of the consumers are satisfied with the relief provided by the CDRA functioning in the State of Goa. This also proves that 60% orders are in favour of the consumers. As a result they are satisfied with the functioning of CDRA. Only 8% of the complaints are dismissed. 31% of complaints are settled or withdrawn as the matter is amicably settled between the parties outside the CDRA. Overall it is very clear that more than 50% of the consumers are satisfied with the functioning of the three CDRA functioning in the State of Goa. The details of the table are shown in the form of bar chart (Fig No. 40).



To cross verify the statistical data obtained from the CDRA the researcher also has obtained empirical data through personal interview with the persons involved in functioning of CDRA, as well as distribution of questionnaire and by personal observation to find out the functioning of CDRA in the State of Goa. The data collected from the public has been analyzed, tabulated and depicted in the form of chart for easy understanding.

PART II

6.4 INFORMATION OBTAINED FROM SOCIETY

Part II of this Chapter deals with the information and data obtained by the researcher from various persons involved in consumer complaints redressal. Data for this study was collected through observation method, personal interview, e-mail, telephonic conversation and formal and informal questionnaire methods. To find out the functioning of the redressal agencies the researcher collected the data from the following persons

- a. President and members of the Consumer Redressal Agencies
- b. Administrative authorities of Consumer Redressal Agencies
- c. Officers of Consumer and Civil Supplies Department
- d. Advocates dealing with consumer complaints
- e. Consumer Organizations
- f. Consumer complainants

The researcher utilized formal as well as informal interview techniques (*Annexure – I*) to collect the information from the authorities of Consumer Redressal Agencies, the researcher witnessed the proceedings of the Redressal Agencies through observation method. In case of complainants, the sample of the Study is 10% of the complaints filed before the CDRA. For this purpose one hundred and fifty complainants who filed the complaints before the Redressal Agencies against housing and insurance sectors have been interviewed. Data from the complainants was collected through questionnaire (*Annexure – II*).

Data was obtained from advocates who are practicing in the above-mentioned three redressal agencies. To collect the data regarding the functioning of Redressal Agencies the researcher followed questionnaire method, (*Annexure – III*), telephonic conversation and e-mail techniques. Total number of advocates selected for this purpose is 100. This number includes advocates practicing in both the North and South district of Consumer Redressal Agencies in the State of Goa.

The researcher also collected the data through questionnaire (*Annexure – IV*), telephonic interviews and through e- mail from consumer organizations

working in Goa dealing with consumer issues. Total number of voluntary consumer organizations functioning in the Goa State is 15.

Further the researcher obtained the data through formal and informal interview technique to obtain information from various authorities involved in administration of consumer justice. 16 officials associated with the functioning of CDRA in the State of Goa have been interviewed.

Data collected from the above sources has been analyzed and tabulated. Tables are prepared based on the questions with respect to the functioning of Consumer Fora in the State of Goa. First, the most important question is the time taken by the Fora in deciding the complaint.

1. Time taken by CDRA in disposal of complaints

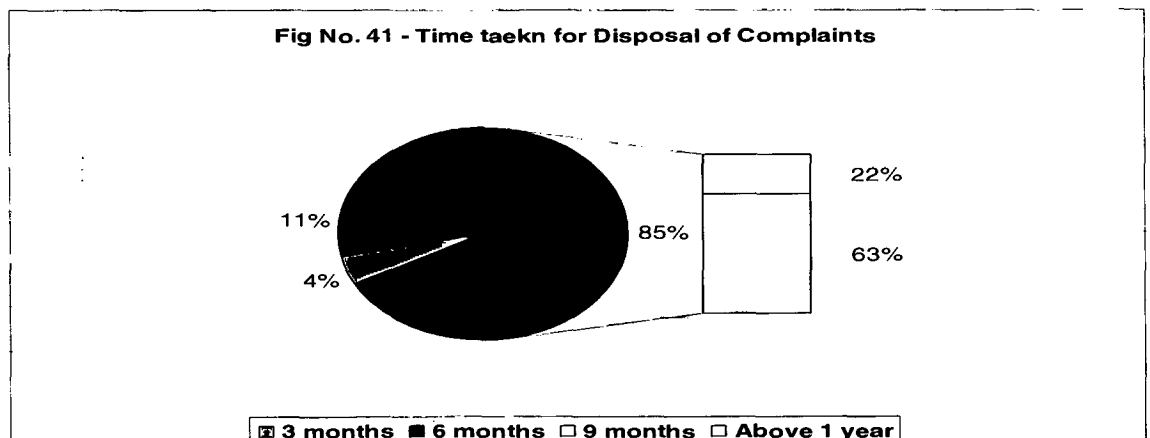
Functioning of the CDRA depends upon the disposal of complaints. According to the Consumer Protection (Amendment) Act, 2002 the authorities under this Act should decide the complaint with in 3 months or with in 5 months (in case of analysis of sample) as laid down under *Sec 13 (3A)*²⁰ of the CP Act, 1986. To ensure speedy remedy the Consumer Fora are free from the shackles and trapping of the court. It certainly helps in speedy remedy. Functioning of the Fora has been simplified by Amendment Act, 2002 which inserted a provision, where by now the Fora can issue interim order. The below table (No.35) indicate the response obtained during collection of the primary data.

²⁰ Supra note.13

Table No. 35
Time take for disposal of complaints

Persons interviewed	3 months	6 months	9 months	Above 1 year
279	13	34	66	193
%	4.6	12.1	23.6	69.1

The researcher collected the above data from 279 persons. That is 100 advocates, 150 consumer complainants, 13 Consumer Organization and 16 officers. Data is collected from various sections of the public. It indicates that 69% of them are of the opinion that the CDRA are taking above 1 year in disposal of complaints. 23% informed that the CDRA takes 9 months in disposal of complaints. Only 4% says that the Fora take 3 months in disposal of consumer complaints. From this table it is very clear that the CDRA are taking more than 1 year in disposing the complaints. CDRA are not in a position to dispose the complaints with in the period specified under the Act. The details are shown in the form of pie chart (Fig No. 41). The chart indicates that 85% of the public is of the opinion that the CDRA will take more than 9 months in disposal of complaints.



The researcher verified the reasons for delay in disposal of complaints filed before the CDRF. The researcher after careful verification and through his personal observation identified the major reasons that may be responsible in delay in administration of consumer justice. On the basis of the opinion obtained from all the sections of the society with respect to the reasons specified, data has been analyzed and presented in the following table. For this purpose the data was obtained from 279 persons. 279 persons include all the sections of the society associated with the functioning of CDRA.

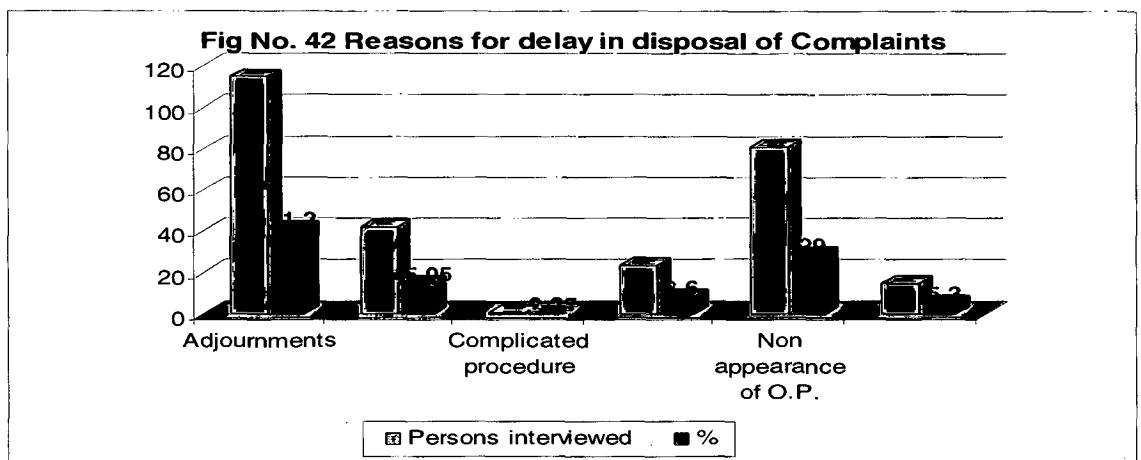
Table No. 36
Reasons for delay in disposal of Complaints

Persons interviewed	Adjournments	Work load	Complicated procedure	Behaviour of judges	Non appearance of O.P.	Collection of evidence
279	115	42	1	24	81	15
%	41.2	15.05	0.35	8.6	29.0	5.3

Table No.36, indicates that 41% of the consumers expressed that adjournment of the complaint is the main reason for the delay in disposal of complaints. As per *Sec 13 (3A)*²¹ of the Act, the Fora ordinarily shall not grant adjournment unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Fora. From this it is clear that the Fora are violating the provision of the Act. 29% of the consumers opined that non appearance of the opposite party lead to delay in disposal of complaints. 15% opined that the workload is the reason for delay in disposal of complaints. 9% and 5% mentioned that behaviour of the judges and collection of evidence

²¹ Supra note. 13

respectively are the reasons for delay in disposal of complaints. Overall it is clear that there are three reasons for delay they are adjournment, non appearance of opposite party and workload. In some CDRA there is no proper infrastructure and qualified office staff in handling consumer complaints. Other reasons are not very significant in administration of consumer justice. The details of the table are shown in the form of bar chart (Fig No. 42).

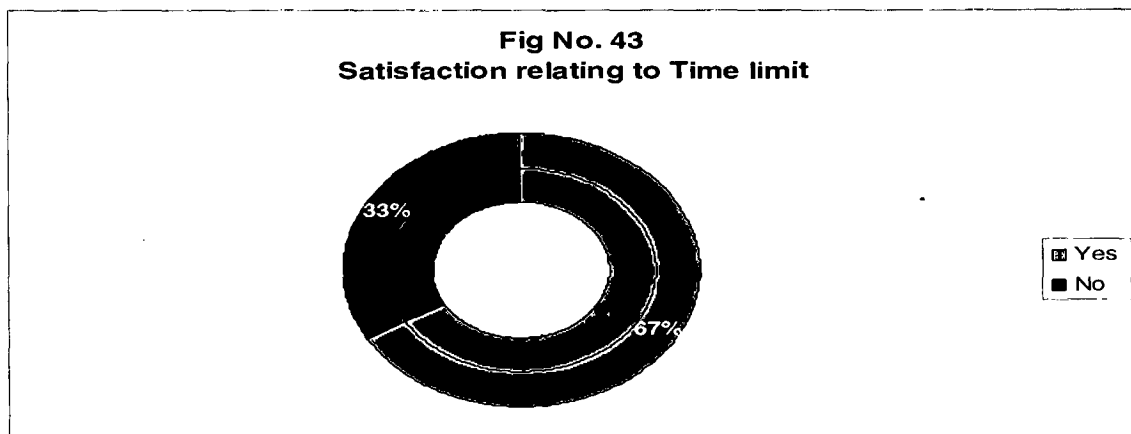


CP Act, 1986 was enacted by the Parliament to provide speedy justice to consumer complaints. Analysis of statistical and empirical data depicts that the CDRA are taking more than 1 year in disposal of complaints. The researcher has verified whether the consumers are satisfied with the time limit mentioned under the Act. For this purpose the researcher collected data from 129 persons. 129 persons include advocates, Officers of the CDRA and Consumer Organizations involved in consumer justice. Their opinion is explained in the following table.

Table No. 37
Satisfaction with time limit

Persons interviewed	Yes	No
129	86	43
%	66.6	33.3

The above table (No.37) indicates that 67% of the persons interviewed stated that they are happy with the time limit specified under the Act. Only 33% expressed that they are not happy with time limit and informed that there is a need to extend time limit up to 1 year. 66% express a view that extension of time limit leads to greater delay which may delay the objective of the Act. If the government provides proper infrastructure, qualified office staff and permanent full time President and member of the CDRA, it would be sufficient to dispose the complaints with the time limit prescribed under the Act. The details are explained in the form of doughnut chart (Fig No. 43).



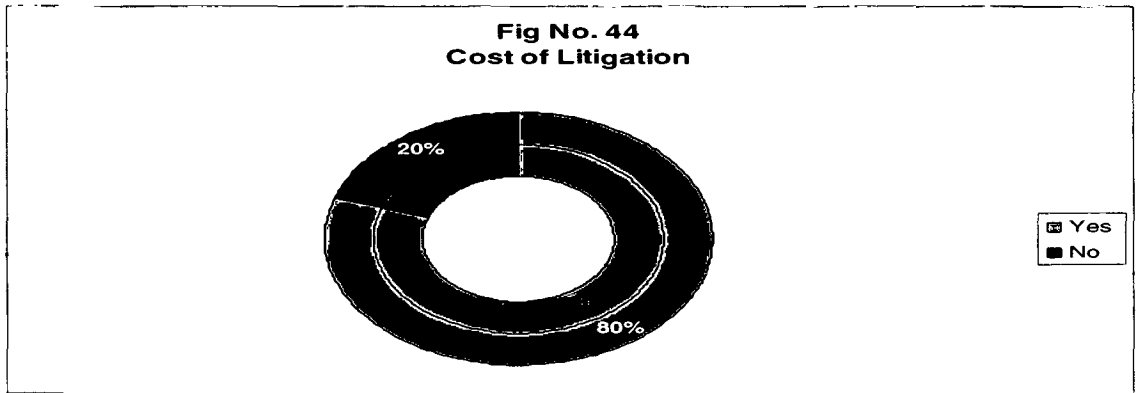
2. Cost of Litigation

One of the objectives of the CP Act, 1986 is to provide inexpensive justice. This Act was enacted with a view to provide justice to the grass root consumer who is unable to approach the court due to his financial incapacity. Lack of financial capacity is a reason for avoidance of court. This hindrance has been removed by the Act as now one need not pay any court fee or engage a lawyer. Though Amendment Act, 2002 requires fees to be deposited by the complainant but the amount is nominal and that has to be provided by the rules. Even after the Amendment the cost of litigation is less before the CDRA in comparing to the ordinary Courts. To verify this object the researcher interviewed 279 consumers. Their opinion has been presented in the form of table.

Table No. 38
Cost of litigation

Persons interviewed	Yes	No
279	224	55
%	80.2	19.7

80% of the consumer opined that the cost of litigation before the CDRA is much less compare to the ordinary court. 20% expressed a view that there is no difference and the cost of litigation is the same whether it be the Court or CDRA. Overall it is clear that the cost of litigation is less. As a result the objective of the Act is being achieved. The details are shown in the form of doughnut chart (Fig No.44)



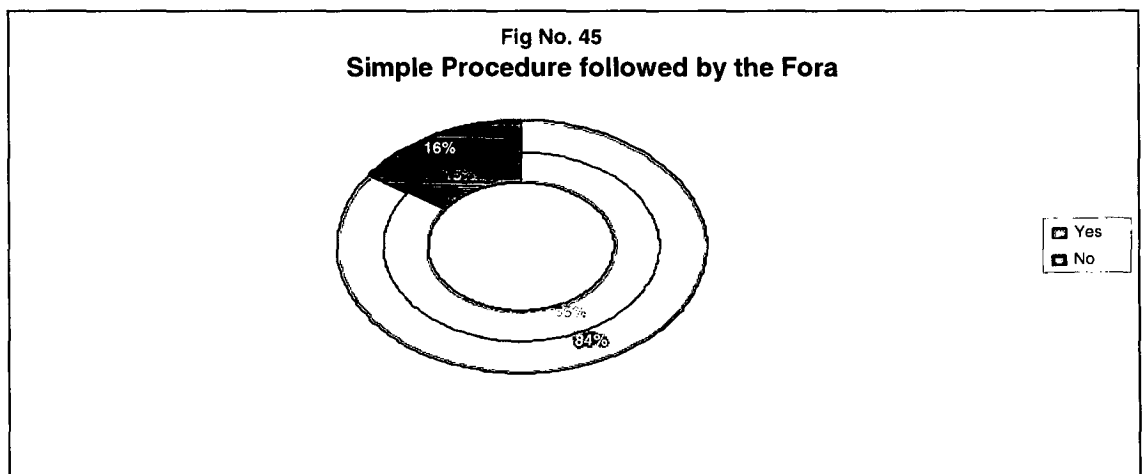
3. Procedure followed by the CDRA

Another important objective of the CP Act, 1986 is to provide simple justice to the consumers. As mentioned earlier, the Fora shall not suppose to grant adjournment unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum. The procedure under the Act is simple and easy. It is free form procedural bindings of the court. Procedure is made simple as there is no requirement of stamp paper as well as lawyers representation. The Fora should decide the dispute on the basis of the complaint. The dispute which involves affidavit, evidence, examination and cross examination of witness are beyond the purview of this Act. All the above points prove that the procedure followed by the Consumer Fora need to be simple. To verify this object the researcher interviewed 279 consumers. Their opinion is shown in the following table.

Table No. 39
Simple Procedure is followed by the Fora

Persons interviewed	Yes	No
279	236	43
%	84.5	15.5

85% of the consumer expressed that the procedure followed by the Consumer Fora is simple compare to the ordinary court. Only 15% opined that the procedure is slightly complicated and same as followed by the ordinary court. Taking in to account the opinion of 85% we can say that one of the objects of the CP Act, 1986 is being satisfied as in most of the cases the procedure followed by the Fora is simple. The details of the table are explained in the form of a doughnut chart (Fig No. 45).



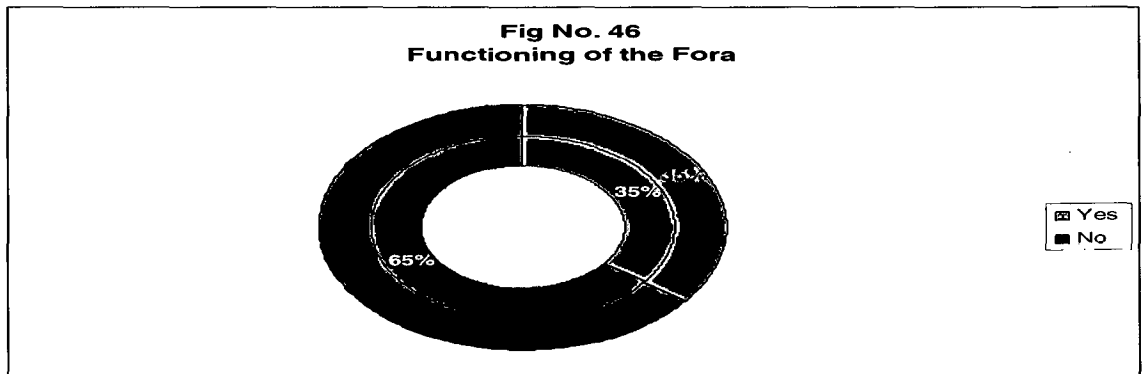
4. Satisfaction of the Complainants

After verifying the satisfaction of the consumers in fulfilling of the objectives of the CP Act, 1986 while providing consumer justice, now let us verify their satisfaction in relation to functioning of the Fora and the orders passed by the Fora.

Table No. 40
Satisfaction of the Functioning of the Fora

Persons interviewed	Yes	No
279	98	181
%	35.2	64.9

Establishment of CDRA would be fruitless unless the consumers are satisfied with its functioning. To verify this the researcher interviewed 279 consumers. 65% of them are not happy with the functioning of CDRA functioning in the State of Goa. Only 35% are satisfied with its functioning. The majority of the consumers are not satisfied with the functioning of CDRA. The details are depicted in doughnut chart (Fig No.46)

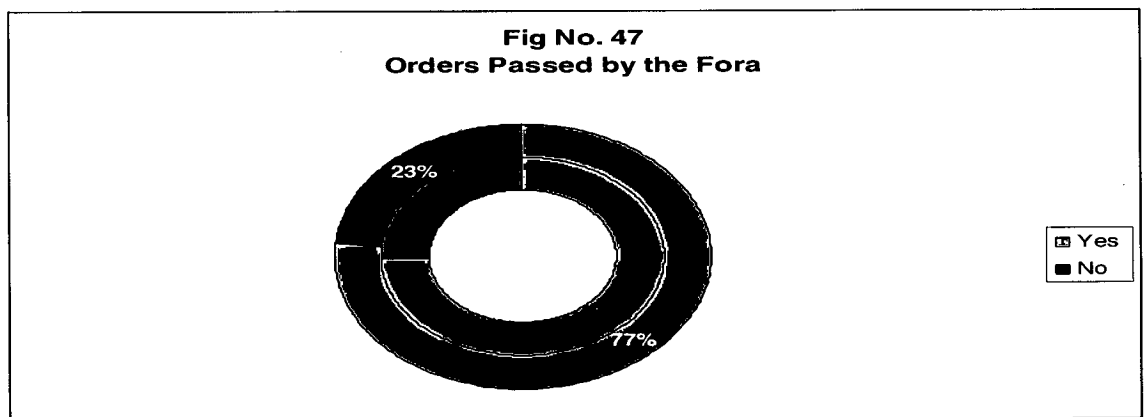


Lastly, the researcher has verified the orders passed by the CDRA. To verify whether orders are proper and consumers are satisfied with such orders, the researcher has collected information from 166 consumers (150 complainants and 16 officers of CDRA). The following table expresses their view.

Table No. 41
Functioning of the Fora

Persons interviewed	Yes	No
166	112	38
%	76.5	23.4

77% of the consumers interviewed opined that they are satisfied with the orders passed by the CDRA. Only 23% are not satisfied with the orders passed by the CDRA functioning in the Goa State. Overall around 70% of the majority of the consumers are satisfied with the functioning and orders passed by the CDRA. The details are depicted in the form of doughnut chart (Fig No.47).



In this Chapter the researcher critically evaluated the functioning of the three CDRA in the State of Goa with the help of statistical and empirical data obtained from the CDRA as well as the consumers. The above data reveals that consumers are not satisfied with the time period prescribed under the CP Act, 1986 because the CDRA are not in a position to dispose the complaints within the time limit specified under the Act. CDRA also do not expedite in the disposal of complaints. With regard to other objectives regarding the cost of

litigation and the procedure followed by the CDRA, majority of the consumers are satisfied. They have opined that the cost of litigation is much less before the Fora as compared to ordinary Court. The recent amended Rules prescribe limited fees and the procedure followed is not complicated.

In the next Chapter, the researcher has concluded his opinion in the light of the hypothesis proposed by him. Further, various changes to be made in the better functioning of the CDRA in the State of Goa have been proposed.

CHAPTER VII

CONCLUSIONS AND SUGGESTIONS

“Customers today want the very most and the very best for the very least amount of money, and on the best terms. Only the individuals and companies that provide absolutely excellent products and services at absolutely excellent prices will survive”.

Brian Tracy¹

7.1 INTRODUCTION

The consumer is the forgotten man of the modern Indian economy. He is the least organized and most centrifugal element in the circle of investment, production, sale and consumption. He is generally taken for granted as one who has no alternative then to buy, in order to live in the society².

The consumer has to face number of problems day in and day out. Some of these problems are in the nature of unfair trade practices, misleading and deceptive advertisement, offering gifts and prizes, spiraling prices, promotional contests etc³.

Modern technological developments have made a great impact on the quality, availability and safety of goods and services. Due to the total helplessness of the consumer in the corporate sector with its vast resources and control over the media, it has been found necessary to devise new methods of regulation and control. As a result, plethora of legislations has been enacted to protect the interest of consumers⁴.

¹ http://www.woopidoo.com/business_quotes/customer-quotes.htm dt 30.03.10

² Gulshan S S, *Consumer Protection and Satisfaction Legal and Managerial Dimensions*, (Wiley Eastern Ltd., New age International Publisher Ltd, New Delhi, 1995) at 3

³ *Id* at 4

⁴ Saraf D N, *Law of Consumer Protection in India*, (NM Tripathi P. Ltd, Bombay, 2nd Ed. 1990) at 2

In fact, laws to control and punish businessmen indulging in adulteration and short weights have existed in India since 400BC. However, there was no organized and systematic movement to safeguard the interest of consumers. Various enactments were made by the Indian Government from time to time to protect the interest of consumers in India during the pre and post-Independence era. Under the enactments made before 1986, the consumer had to initiate action by way of civil suit, which meant a time consuming and expensive legal process. Therefore, the need for a simpler and quicker access to redress consumer grievances was felt. Accordingly the Consumer Protection Act 1986 was enacted and amended in 2002⁵. This is one of the most important and beneficial legislations to protect the rights of consumers and provides remedies incase of defective consumer goods or deficiency in service.

The important measures to empower consumers are, right to information, education, representation and redressal. Any legislation, directly or indirectly related to consumer protection, is obliged to take due note of these rights. All these rights have been incorporated under the CP Act, 1986 to safeguard the interest of consumers.

The consumer has to be awakened to the task of making his or her own movement a success. For this purpose, better testing, information and other facilities have to be provided. Consumer literacy should be the main slogan and

⁵ Eradi Balakrishna V, Consumer Protection Jurisprudence, (Lexis Nexis, New Delhi, 2005) at 49

this should lead to creating consumer power in order to stop exploitation. It has been rightly remarked,

“To enact a law is, however, only to hope and at best to ordain that it may be followed. To ensure that the consumer protection laws are observed faithfully and fruitfully, it is necessary to spread legal literacy among the common consumer, trader and among social workers in the consumer protection movement and to enshrine the right to know, the right to complain and the right to redress and remedy in the law of the land. Such laws will help to build up citizen consciousness and citizen vigilance and activism”⁶.

According to consumer protection activist, *Ralph Nader*, “The fibre of a just society in pursuit of happiness is a thinking active citizenry”⁷. It is the extent of participation and the sense of involvement of the people that will lead to real and effective consumer movement.

Consumer education should be an integral part of the basic curriculum of the education system imparting sufficient knowledge about health, nutrition, food adulteration, prevention of food borne diseases, product hazards, labeling, weights and measures, prices, and credit conditions. Proper uses of media can be supportive in this regard. Presently the most important areas of concern are food, clothing, shelter, health care, drinking water, sanitation, education, energy and transportation⁸.

⁶ Singhvi L.M., “The Law and the Consumer – II”, *Indian Express*, News Paper, (New Delhi), 27th March, 1980

⁷ Nader Ralph, “Consumerism and Law : Merging of Movements” Vol.11, *Law and Society Review*, (1976) at 247

⁸ Verma S.K., *A Treatise on Consumer Protection Laws*, (ILI, New Delhi, 2004)

In the context of the above concern the researcher would like to submit at this juncture an overview of the research and findings. So that complete and comprehensive conceptual idea of the nature and content of the research would substantiate the conclusions and suggestions drawn from this research towards the end of this chapter.

7.2 OVERVIEW

In the initial stage of study the concern of consumer in terms of the remedies available to him under the Consumer Protection Act, 1986, has been highlighted and the chapter lays down the complete scheme of the study and the preferences for which the study is carried out. The focus is on the effectiveness of Consumer Dispute Redressal Mechanisms, structural as well a functional, having laid down the basic premises of the research study.

Chapter II deals with the historical development and the internationally recognized consumer rights through a comparative study of the two of the leading nations namely USA and UK. The study has also taken into account that fact of the beginning of consumer movement in other developed nations like Japan, Australia, and Poland. Through this chapter deals with the development of consumer movement in India, the national consequence of higher sensitivity of the consumers and the concern of the State in protecting the consumer rights have been discussed elaborately. From this premises the researcher develops his concern has to how the ideal of consumer protection is

imported in the Indian psyche by drawing illustrations from the ancient as well as medieval period. This early initiation of the idea of consumer protection has indeed laid a deep rooted foundation for a legal spectrum, to provide consumer protection. The chapter has discussed various legislations prior to independence as well as post independence, where in the idea of consumer protection has been incorporated in to these legislations.

It is of course only in the year 1986 that a enactment of dedicated legislation in the form of the Consumer Protection Act of 1986, was enacted. The objective of the legislation and the various Consumer Protection Redressal Agencies there in, are also discussed in detail in this chapter. Having laid down the broad canvas of consumer protection, the researcher has further taken his research to specific areas and therefore the fourth chapter zeroes down the discussion more specifically on the two areas of Housing and Insurance Sector.

Housing is an essential component of right to life. In the recent times with the government's proactivity towards providing dwelling family housing units, there has been a large number of legislations and government notifications encouraging setting up of housing plots, housing conglomeration, flat system, etc, which has resulted in large number of middle class and lower middle class persons anxiously entering in to contractual relationship with the service provider in this system, resulting in breach of promise, and deficiency in services. This chapter explains the extent to which the Consumer Protection Act, 1986 has provided relief to such aggrieved persons. Certain decisions of the Apex Court are also highlighted in this regard.

The second area of choice for the research is that of insurance sector. With the high risk, life time insurance has become the way of life in human dealings in all most all sectors except may be the realm limited to religion and spiritualism. Though there are many sectors of insurance, considering the fact the most of the insurances are relating to Life Insurance, and with many private players entering this arena, the research study and analysis is focused on Life Insurance, more specifically on claims settlement through the mechanism of Consumer Protection Act, 1986.

The study of disputes relating to claims settlement has given certain anticipated revelations regarding the inconvenience and hindrance caused to claimant, and prompt settlement is mostly a mirage. The problem of course seems to be the failure of the adjudicatory system and the adjudicators as such, to adapt to the changing situations, interpretations and analysis of a law which calls for speedy and prompt redressal which cannot be subjected to traditional interpretations and procedural wranglers. This has resulted in not only prolonged litigation but much hand burn for the concerned consumers.

The Consumer Protection Act, 1986 as amended, is a best mediocre attempt at consumer protection. Better late than never, when it comes to law in India, it lacks teeth in several areas, like safety, standard, quality. Due to this the

provider of services, still enjoys absolute freedom in India, to disregard safety, standards and quality when it comes to consumer protection⁹.

Chapter V espouses the need to have a system of standardization in terms of services so that it becomes much easier for an adjudicator to determine from accepted standards. The researcher has cited some illustrative national and international standards and argued that the immediate need in this sector is for standardization on certain defined parameters. The benefits that may accrue by such standardization has also been elaborated in this chapter. No doubt there is of course an urgent need to ensure that the mechanisms and systems are capable of fulfilling the very objectives of such a path breaking and consumer oriented legislations.

Having theorized on this issue of faulty and ineffective consumer redressal system, the researcher has substantiated his hypothesis and propositions through a scientifically formulated field study and data analysis. The core contents of chapter VI deals with the findings obtained from the field study of the functioning of Consumer Dispute Redressal Agencies in the two districts of Goa namely North Goa and South Goa. The researcher also collected data from the State Consumer Dispute Redressal Commission. The data collected from the CDRA has been systematically analyzed to bring out the main contentions of delay in deciding complaints, that is defeating the very object of

⁹ <http://www.consumerdaddy.com/a-12-history-of-consumer-protection.htm> dt. 31.03.10

the legislative exercise. The findings speak for themselves and bring out the fundamental issues in the failure to fulfill the legislative objects.

Having conducted the in-depth study it is but natural for the researcher to draw certain specific conclusions as an outcome of the study and in the process prove the hypothesis, as enumerated in the initial chapter of the research study.

7.3 HYPOTHESIS

The first hypothesis proposed is

1. Time taken for disposal of complaints

Functioning of the CDRA depends upon the disposal of complaints. According to the Consumer Protection (Amendment) Act, 2002 the authorities under this Act should decide the complaint within 3 months or within 5 months (in case of analysis of sample) as laid down under *Sec 13 (3A)*¹⁰ of the CP Act, 1986.

Complaints are not disposed as per the time frame prescribed under this Act by the Consumer Dispute Redressal Agencies. In practice the Consumer Dispute

¹⁰ *Sec. 13 (3A) of Consumer Protection act, 1986*: Inserted by *Act 62 of 2002*, Every compliant shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date or receipt of notice by opposite party where the complain does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities

Provided that no adjournment shall be ordinarily granted by the District Forum (DF) unless sufficient cause shown and the reasons for grant of adjournment have been recorded in writing by the forum,

Provided further that the DF shall make such orders as to the cost occasioned by the adjournment as may be provided in the regulations made under this Act,

Provided also that in the event of a compliant being disposed of after the period so specified this DF shall record in writing, the reasons for the same as the time of disposing of the said complaint.

Redressal Agencies take approximately more than one year in disposing the complaints. Sometimes the complaint is pending before the Redressal Agencies for five to six years.

The statistical analysis of the empirical data in this regard points to the fact that only 8.8% of complaints/ appeals were disposed within 3 months as prescribed under the CP Act, 1986. 31% of complaints/ appeals are pending for more than 4 years. Thus **proving the hypothesis proposed** by the researcher. The Table No.33 and Bar Chart No. 39 of Chapter VI are evidence and substantiation of the above statement.

Further, to cross verify this hypothesis the researcher also analyzed the empirical data. Table No. 35 and Pie Chart No. 41, in Chapter VI, indicates that 69% of the public opinioned that the CDRA are taking more than a year in disposal of complaints. 23% informed that the CDRA takes 9 months in disposal of complaints. Only 4% says that the Fora takes 3 months in the disposal of consumer complaints. It is clear that the CDRA are **not in a position to dispose the complaints with in the period** specified under the Act.

The researcher is of the opinion that the **hypothesis proposed has been proved** and therefore the research is useful and stands validated.

a. Reasons for delay

To ensure speedy remedy the Consumer Fora are free from the shackles and trappings of the court. It certainly helps in speedy remedy. Functioning of the

Fora has been simplified by Amendment Act, 2002 which by incorporating a new provision, where by now the Fora can issue interim order.

The researcher verified the reasons for delay in disposal of complaints filed before the CDRF. The researcher after careful verification and through his personal observation identified the major reasons that may be responsible in delay in administration of consumer justice. The statistical analysis of empirical data indicates that 41% of the consumers expressed that **adjournment** of the complaint is the main reason for the delay in disposal of complaints. As per *Sec 13 (3A)*¹¹ of the Act, the Fora ordinarily shall not grant adjournment unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Fora. From this it is clear that the Fora are violating the provision of the Act. The second reason for delay is **non appearance of the opposite party** (29%). Overall it is clear that there are three reasons for delay they are adjournment, non appearance of opposite party and workload. The Table No.36 and bar chart Fig No. 42, in Chapter VI provides detailed substantiation of the contention mentioned above.

The researcher also conducted an empirical study to find whether there is a need to extend the time limit specified under the CP Act, 1986 in disposal of consumer complaints.

¹¹ Supra note. 8

67% of the persons interviewed stated that they are happy with the time limit specified under the Act. Only 33% expressed that they are not happy with time limit and informed that there is a need to extend time limit up to 1 year. 66% express their view that extension of time limit leads to greater delay which may hamper in the fulfillment of the objective of the Act. The Table No.37, Fig No. 43, Chapter VI substantiates the above mentioned contention.

2. Cost of litigation

One of the objectives of the CP Act, 1986 is to provide inexpensive justice. This Act was enacted with a view to provide justice at the grass root level to the consumer who is unable to approach the court due to his financial incapacity. Lack of financial capacity is a reason for avoidance of court. This hindrance has been removed by the Act as of now one need not pay any court fee or engage a lawyer. Though Amendment Act, 2002 requires fees to be deposited by the complainant but the amount is nominal and that has been provided by the rules. After the Amendment the cost of litigation has been less compared to that of the ordinary Courts. To verify this object the researcher interviewed 279 consumers. Their opinion has been presented in Table No. 38, Doughnut Chart No.44, and Chapter VI of the present study.

Accordingly to that table, 80% of the consumer opined that the cost of litigation before the CDRA is much less compare to the ordinary court. 20% expressed a view that there is no difference and the cost of litigation is the

same whether it is the Court or CDRA. It is clear that the cost of litigation is less. The objective of the Act is achieved. Hence the **hypothesis is proved** and the research is significant.

3. Procedure followed by the CDRA

Procedure followed by these Consumer Fora is designed to be simple, and the complaints are to be disposed summarily without following any procedural formalities. However, in reality the Presiding officers actually follow many procedural formalities. The reason is that those who are appointed were previously members of the regular judiciary. The dispute which involves affidavit, evidence, examination and cross examination of witness are beyond the purview of this Act. All the above points prove that the **procedure followed by the Consumer Fora need to be simple**. To verify this object the researcher interviewed 279 consumers. Their opinion is shown in the Table No. 39, Doughnut Chart No.45 of Chapter VI.

Table No. 45 highlights that 85% of the consumer expressed that the procedure followed by the Consumer Fora is simple compared that of to the ordinary court. Only 15% opined that the procedure is slightly complicated and same as followed by the ordinary court. In practice the **hypothesis put forth by the researcher is justified**, because the Presiding officer and members follow the same procedure followed in the ordinary court.

4. Satisfaction of the Consumer

Establishment of CDRA would be fruitless unless the consumers are satisfied with its functioning. To verify this the researcher interviewed 279 consumers. 65% of them are not happy with the functioning of CDRA functioning in the State of Goa. Only 35% are satisfied with its functioning. The majority of the consumers are not satisfied with the functioning of CDRA. Orders of the Consumer Fora are found to be mostly infavour of trader or seller.

Basing on the data analyzed in the Table No. 40, Doughnut Chart No. 46, Chapter VI, it is clear that the **hypothesis proposed by the researcher is proved.**

Further the researcher has also verified the orders passed by the CDRA to verify the satisfaction of consumers in relation to orders passed. The researcher has collected information from 166 consumers (150 complainants and 16 officers of CDRA). The Table No. 41, doughnut Chart No. 47, Chapter VI expresses 77% of the consumers interviewed opined that they are satisfied with the orders passed by the CDRA. Only 23% are not satisfied with the orders passed by the CDRA functioning in the Goa State. Overall around 70% of the (majority) the consumers are satisfied with the functioning and orders passed by the CDRA.

Further to cross verify the satisfaction of consumers in relation to orders passed by the CDRA the researcher verified and analyzed the statistical data.

Table No. 34, Bar Chart. 40 of Chapter VI, explains that 60% of the consumers are satisfied with the relief provided by the CDRA functioning in the State of Goa. This also proves that 60% orders are in favour of the consumers. As a result they are satisfied with the functioning of CDRA.

From this it can be concluded that **the hypothesis put forth by the researcher is partly proved.**

5. Appeals preferred to GSCDRC

Complainants who are dissatisfied with the orders passed by the District Consumer Fora can approach the State Commission. **More number of appeals proves dissatisfaction** of the consumers.

The statistical analysis of the empirical data indicates that 20% of the appeals are filed against Housing and Insurance sector. Number of appeals is 30% in relation to housing sector alone. From 2006 till 2008 there is increase in filing appeals against the orders passed by the District Fora. Due to their experience at the District Fora complainants do not prefer appeals to State Commission against the orders of District Fora, assuming that consumer justice is time consuming and protracted. Table No. 24 of Chapter VI provides detailed substantiation of the contention mentioned above. This further proves that the **hypothesis put forth by the researcher is proved** and the present research is meaningful.

6. Status of opposite party

If the complaint is against government, there is a possibility that the government may delay the process in justice administration. The record shows that in housing sector above 90% of complaints are filed against private builder or contractor, only around 10% of complaints are against Goa Housing Board. Further in case of Insurance 85% of complaints are against other private and smaller insurance companies like NIAC, OIC, ICICI, remaining 15% of complaints are against the biggest company that is LIC of India. This shows that majority of the complaints are against private builder/ private insurance company.

It is clear from the above discussion that the various **hypothesis proposed has been substantially proved** and therefore the research had yielded the anticipated outcome. However in the light of the underlined purpose of this research that results of this nature should contribute towards reformation of law and legal machinery as such. Hence as an outcome of this research the following suggestions are made.

SUGGESTIONS

1. Though the CP Act, 1986 has to a greater extent come to solace of the aggrieved consumer, but considering the Indian situation and the common human psychic many more situations of consumer grievances are not redressed, simply because of the fact that the affected consumers do not approach the Fora either because of their ignorance, or because of lack of faith in the system or sheer economic inability. It is therefore necessary to adopt a proactive approach and **set up a National Consumer Protection Authority (NCPA)** who would **suo moto** initiate action and proceeding whenever the consumers are affected by the supplier or manufacture of goods or produce which would come under the category of hazardous item or are meant for direct human consumption¹².

2. In country like India where large proportion of consumers are illiterate, poor or comes under the category of disadvantaged group or groups which need protection like children, women, aged persons etc., there is a need for appropriate legal machinery to **ensure that the consumer safety** is not compromised in any situation. Legislation on the lines of United States of America¹³ aimed at protecting children from unsafe products needs to be enacted in India as well, needless to say that **such legislation should have proper enforcement machinery** so that the

¹² <http://www.topnews.in/centre-amend-consumer-protection-act-255560> dt 02.02.10

¹³ On August 14, 2008, President Bush signed into law the Consumer Product Safety Improvement Act of 2008. Aimed at protecting children from unsafe products, this legislation requires that all products for use by children of ages 12 and younger have additional information on a permanent label, which includes:

1. Product location
2. Date of production
3. Name of manufacturer
4. Lot or batch number

<http://www.ibmd.averydennison.com/solutions/cpsi-act-of-2008> dt. 30.03.10

guilty would be punished. Besides the age old saying that prevention is better than cure is true.

3. Many of the issues and the problem of identification, whether the service or the goods are defective could be easily solved if there are **systems and machineries to set out standards and norms for each category of service** something similar to ISO, ISI, AGMARK could be thought of, in case of housing and insurance, where in presently an unsuspecting customer is required to follow elaborate procedures to ensure that he is justly redressed. Therefore it is suggested that each of the services should have an independent body to set up standards and minimum quality requirements. The need is more so in this era of quality where in every one speaks of quality and looks for quality.
4. The major concern in the functioning of CDRA is in terms of non availability of the Presiding Officers at regular timings. It should be noted that the CP Act, 1986 has become an important legislation which generates substantial litigation the government having undertaken to enforce such legation, the government should ensure the purpose of legislation results in the achievement of its objectives. **Regular, full time Presiding Officer and members need to be appointed on regular basis** for the efficient functioning of CDRA and for prompt disposal of complaints.
5. It is unfortunate that often the Government in power protracts and delays the appointment of Presiding Officer. Every day of delay ends up in increase of t backlog of complaints. The purpose of the Act being prompt settlement of disputes the governmental delay in appointment is not just counterproductive but defeats the very purpose of the legislation. Therefore there is a **need to incorporate in the Statute**

itself that the post of the Presiding Officers shall not remain vacant for more than 30 days at any point of time¹⁴.

6. It is noticed especially in the State of Goa (there are several illustrative cases) that the appointing authority gives scant respect as to the needed qualifications and competence of the Presiding Officer and other members. Under the CP Act, 1986 it should be noted that this legislation deals with a very important right of citizens and the government need to be cautious, sincere and contentious in selecting of persons to occupy such important position. Therefore the **procedure for appointment needs to be transparent and open** so that the qualification or competence of such Officer remains a matter of public domain¹⁵.

7. It is the bane on our Indian democracy that the politicians are able to interfere with all systems of administration including the judiciary with impunity. Appointment of the Presiding Officers is no exception to this malady. Therefore in order to ensure that the CDRA are not tampered by the politicians and political systems, there is a need to lay down clear criteria and procedure for appointment of Presiding Officers to the Consumer Forum. **An independent body needs to be thoughts of in processing the application or names of eligible candidates for appointment as Presiding Officer.**

8. It is often noticed that the presiding Officer and other members neither have expertise nor the required sensitivity in dealing with consumer grievances. There has to be a **system of training of the Presiding Officers and the members of the Fora before they assume the office.**

¹⁴ "6 months on Consumer Courts without Heads" *Times of India*, (Panaji, Goa) 8th Dec 2009 and "Judges Appointed to Consumer Courts – Posts had been lying vacant for 6 months" *Times of India*, (Panaji, Goa) 16th December 2009 (*Appendix – II*)

¹⁵ "Appointment of N Goa Consumer Forum Chief Terminated" *Navhind Times*, (Panaji, Goa) 23rd March 2010, at 2 and "Consumer Panel Chief Quits Post" *Times of India*, (Panaji, Goa) 19th December 2008, at 4 (*Appendix – I*)

The training should be for a period of 6 months and the responsibility of such training could be entrusted to the various Judicial Academies that exists in our country.

9. Whether it is because of lack of knowledge or that of training there have been situations where in the Presiding Officers while preparing the orders fails to substantiate their decisions with appropriate reasoning, this affects the parties to the litigation. Often it is difficult to comprehend the rationale behind such decision. It should therefore be made mandatory for the officials under the Act to act judicially and determine the rights of disputants, they should express the **logical and legal basis** of the same in as clear terms as possible. Giving of the reasons therefore has to be made mandatory by amending the rules.

10. The basic ideology of this specific legislation is to ensure prompt and speedy remedies to affected consumers. It is often found that even after the proceedings are completed the Presiding Officers takes considerable length of time to pronounce the orders. Thus keeping not only the consumers in suspense but often giving rise to misgivings as to the credibility of the system. It is therefore **necessary to fix time limit with in which the order ought to be passed** after the conclusion of the proceedings.

11. It seems that the lawyers and Judicial Officers find it extremely difficult to shed their habitual tendencies, since all these persons have the exposure of practicing before the ordinary courts. They often tend to adopt the accepted practice of asking and granting adjournments. **Sec 13 (3A)¹⁶** of the CP Act, 1986 as amended, mandates prompt disposal of complaints. There is a **need to amend the rules to ensure that if the number of adjournments is more than the maximum number the**

¹⁶ Supra note. 8

decision of the authority remains ineffective. This would ensure that the minimum adjournments will be transformed from being mere directives to mandatory requirements. Added to this there is a **need to incorporate a provision for penalizing those seeking adjournments**¹⁷ beyond the permissible number.

12. Justice administration does not take place in a vacuum nor in the open air as it was in the ancient times. It is important that a justice administrative system does have adequate infrastructure facilities and necessary administrative support. The responsibility wholly rests on the State Government to ensure that the lack of physical facilities does not affect consumer rights. Therefore **it is absolutely necessary that the State Government ensures the availability of suitable court room, office premises, and required administrative staff** for the smooth and effective functioning of CDRA. The Central Government should therefore either by amending the rules or by notifications and by providing financial support lay down minimum requirements for infrastructure facilities for each of the Fora. It could adopt a scheme similar to other development or welfare schemes of the Central Government.

13. It is often noticed that the provisions for arbitration clause is incorporated in the contract between the parties. This prevents the aggrieved from approaching the C P Act, 1986. Considering the fact, the provision of arbitration clause is not a matter of choice for the litigant but that it is incorporated by one party on the other. The party affected should always be given a choice to approach CDRA despite having such a provision. The arbitration clause is normally found in a standard form of contract and therefore has to be interpreted restrictively in such a way

¹⁷ Need to strictly follow and impelmt Sec. 11 of Consumer Protection Regulation, 2005. Accordign to Sec. 11 (3) : The cost of adjournment, if asked by the opposite pary or parties, shall not be less than five hundred rupees per adjournment and could be more depending upon the value and nature of the complaint as may be decided by the Consuemr Forum.

that the affected party should have a choice to approach CDRA as recourse to arbitration. Ban on such jurisdiction should have been justified if it is a normal suit. But the CDRA is machinery for speedy disposal of complaints the choice will always be given to the litigant. Hence there is need to amend Sec 3¹⁸ of the Act to provide choice to the aggrieved consumer to approach CDRA or to abide by arbitration clause¹⁹.

14. There may be situations where in the Presiding Officer (PO) may opine that limited remedy provided under the Act is unable to met out justice to the aggrieved consumer. At times it may so happen that the remedy is so miniscule or insignificant that the defaulter may continue to default knowing very well that his liability is meager. In such situations by the application of judicial mind the Presiding Officer would often like to reformulate his order and the remedy. Therefore there is a need to **provide a legislation backing by providing certain inherent powers to the Presiding Officer** to grant remedies beyond those which are stipulated under that Act, in those cases and situations where in the PO in the interest of justice desires to be done.

15. Government has to ensure that every citizen no matter who or where, he or she, is a beneficiary of nation's growth and considering that the consumer grievance may even relate to a single item purchased by him by making payment. It is important that the Redressal Forum must reach to the door steps of the consumer. Therefore there is a **need to set up Consumer Fora at the Taluka level**. Fora at Taluka level will help the consumer to realize his rights as a consumer in the interest of large

¹⁸ Sec. 3 of CP Act, 1986: The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the tie being in force.

¹⁹ *The Hindu*, online edition of India's National newspaper (Tamilnadu) 20th November 2009

number of rural poor. Fora at Taluka level will ensure consumer justice delivery system to the poor, illiterate and disadvantaged people.

16. The whole world is moving on a fast track, paperless governance, e-governance have become the order of the day. Therefore keeping in tune with the technological advancements, the Act should not only permit but also **encourage e-filing of complaints** in order avoid delay and to bring in promptness.

17. One cannot forget the fact that this legislation has become one of the most important legislation as every human being is a consumer and more so in the consumer age **creating awareness and constantly informing the people** regarding the existence of this legislation and system of dispute settlement is mentioned under Sec. 8²⁰ and 8B²¹. Though this is an enabling provision, is not made use of or rarely used. The responsibility should lie on the **Consumer Councils** to create awareness especially in educational institutions. There is a need to define the number of programmes the Council shall take up during a particular year and such details will ensure that the Council undertakes this responsibility. The rule should also incorporate necessary provision to ensure that the educational institutes, cooperates and provides suitable system to implement awareness programmes through organizations like **Law Clubs, Law Clinics²², Legal Aid, NSS** etc.,

These consumer clinics and clubs will not only be beneficial to the consumer will also help in inculcating numerous skills among the law students such as confidence, relationship with the complainants,

²⁰ Sec. 8 of C P Act, 1986: The objects of every State Council shall be to **promote and protect** within the State the rights of the consumers laid down in clauses (a) to (f) of section 6

²¹ Sec. 8 A of C P Act, 1986: The objects of every District Council shall be to **promote and protect** within the District the rights of the consumers laid down in clauses (a) to (f) of section 6

²² Ali Shaber G, "Role of Law Colleges in Administration of Consumer Justice", *Legal News and Views*, New Delhi, (August 2007) at 6

interview techniques, drafting skills, argument skills, research techniques, alternative dispute resolution techniques, cooperation and coordination, leadership qualities etc²³.

18. Consumer protection and consumer rights are going to be the order of the day even in the future Indian society. Knowledge of consumer rights available remedies and procedures needs to be **incorporated in to the minimum information content of the educational system at school and college levels** either by appropriate syllabus content or by incorporating other learning methodologies like slide shows, short film, live demonstrations, skit, debates, quiz, poster making, etc., So that the future generations will have better awareness of the rights of consumers and of their obligations as producers of goods and provider of services.
19. The number of **law students** in the country so also in Goa is necessarily a large pool of untapped talent, if their talent and time could be utilized for the activities like research on consumer rights and judgment/order writing etc., and **incorporating such activities as part of the curriculum** will not only help the system but would bring in expertise and modernization.
20. It is pertinent to note that the existence and functioning of the **Consumer Societies/ Organizations** have positive impact with the CDRA. However they need to focus on certain defined activities which will certainly have a quantum impact on the Consumer Redressal System. The activities so suggested are²⁴

²³ Ali Shaber G, "Administration of Consumer Justice through Consumer Clinic", *The Radical Humanist*, New Delhi, (August 2008) at 26

²⁴ Supra note.4 at 228

- a. Consumer advocacy – It is the organization of public arguments and citizen's participation with a skill that forces those in power to listen when they would otherwise ignore the consumer. Lobbying to influence the policy makers, legal suit that challenges the government for proper implementation of the law, and campaign to build support for any consumer issue are examples of such advocacy.
- b. Consumer lobbying – Policy decisions by several intermediaries such as industry, business, professions and more necessary to involve unions and consumers.
- c. Demonstration and boycott – Consumers should be trained to raise their voice through demonstration and boycott to protect their interest against manufacturer, trader, service provider in relation to defective goods or deficiency in services.

21. Law is of course dynamic and since this law to deal with human beings and in their everyday concern. Flexibility and adaptation to the emerging needs of the situation should be a part of CP act, 1986. Many new situations have come in to existence after the recent amendment of the Act in 2002, and therefore amending the legislation and incorporating the new challenges and at the same time remedying the lacunae and defects is need of the hour. The researcher feels the following amendments are required on the priority basis.

- a) Need to amend Sec. 3 of CP Act, 1986
- b) Need to incorporate new proviso under Sec 13 (3A) to limit adjournments and to incorporate penal provisions
- c) Need to fix time limit to pronounce the order by the CDRA

- d) Need to incorporate a provision for inherent powers to the Presiding officers of CDRA
- e) Establishment of CDRA at Taluka level
- f) Permission for E- filing of applications
- g) Need to fill the vacancy in CDRA immediately
- h) Need to appoint permanent, fulltime, competent and eligible Presiding Officers and members for the CDRA

Parliament has enacted this Act with good intention, Act in letter is no use unless it is implemented properly and to the fullest extent to achieve the objectives of the Act. The fruits of law are meant for vigilant and not for negligent. According to learned scholars Prof. Reddy D.V. N.

“No amount of legislation can guarantee a complete and effective protection to the consumers unless the consumer himself is prepared and willing to fight against the evil of consumer cheating. People will have to be vigilant and active in mobilizing their efforts and creating awareness against consumer abuse”²⁵.

The first and foremost requirement for legislation and legal remedies to succeed is community awareness and the will and the determination of the community. Consumer education is the most important factor, which will create awareness among the consumers.

The success of the Act depends upon the active participation of Consumers, Consumer Associations and the commitment of the Government to consider the consumer problems sympathetically while formulating its policies.

²⁵ Reddy D V N., “Justice to the Consumer and the Consumer Protection Act” Paper submitted at National Seminar on Consumer Protection: Evolving Norms and Institutions, held at Department of Law, Cochin University of Science and Technology, Cochin, (16th – 18th March 1989)

Even after two and half decades still consumers are facing hardship in availing consumer justice in the State of Goa due to certain defects in selection and appointment of Presiding Officers of CDRA.

In a nation governed by democracy and rule of law, legislations are important instruments of social change. Legislation which deals with the rights of individuals and in this case that of consumers do play vital role in building and retaining the democratic institution. CP Act, 1986 is indeed a path breaking legislation aimed at providing necessary succor to affected consumers. The machinery for implementing of this legislation suffers from many inconsistencies and lacunae. It is only by continuous evaluation and monitoring that an effective mechanism for consumer dispute redressal grievances could come in to existence. This research is a small step in this direction where in the researcher endeavored to conduct an in-depth analysis of the machinery and its functioning under the CP Act, 1986. It is hoped that some of the suggestions and observations mentioned herein would become part of the law and system of justice administration. This is a small contribution towards the very idea of '**let justice be done though the heavens fall**'.

BIBLIOGRAPHY

BOOKS

- Adam Smith, *The Wealth of Nation*, (New York, The Modern Library, 1937)
- Agarwal V.K., *Consumer Protection in India*, (Deep and Deep Publication, New Delhi, 1989)
- Agarwal. V.K., *Consumer Protection (Law and Practice)*, (BLH Publishers & Distributors. Ltd, New Delhi, 1992)
- Anthony M.J., *Consumer Rights*, (Hind Pocket Books Private, Ltd, Delhi, 4th Ed. 1996)
- Arch W. Troelstrup E Carl Hall, *The Consumer in American Society*, (Mc Grew Hill Book Co, New York, 6th Ed. 1978)
- Audrey Rebello, *Societal Response to Consumer Movement Business*, (CERC, Ahmadabad, 1991)
- Bakshi P.M., *Consumer Protection Law*, (Ashok Law House, New Delhi, 2004)
- Bakshi P.M., *The Constitution of India*, (Universal Law Publishing Co. P. Ltd, Delhi, 2008)
- Borrie Gordern & Aubrey, L. Diamond, *The Consumer, Society and the Law*, (Penguin Books.3rd Ed. 1973)
- Borrie Gordon & Aubrey L. Diamond, *The Consumer, Society and the Law*, (Penguin Books, 4th Ed. 1983)
- Bourgoignie Thierry M and David M. Trubeek, *Consumer Law Common Market and Federation in Europe and in the US* (1984)
- Cranston Ross, *Consumers and the Law*, (Weidenfeld and Nicolson, London, 1978)

- Eradi Balakrishna V., *Consumer Protection Jurisprudence*, (Lexis Nexis, New Delhi, 2005)
- Festschrift in honour of Prof. Sathe S.P., *Dimensions of Law*, (ILS, Pune, NM Tripathis P. Ltd, Bombay, 1992)
- Friedmann W., *Law in a Changing Society*, (1970)
- Garman Thomas E., *Consumer Economic Issues in America*, (Dama Pubn. Inc, Houslar, 1997)
- Gulshan S S., *Consumer Protection and Satisfaction: Legal and Managerial Dimensions*, (Wiley Eastern Ltd., New Age International Publisher Ltd, New Delhi, 1995)
- Kakkar Avoantikar, *A Perspective on Product Liability Law and Consumer Safety*, (Snow White Publication, P. Ltd, Mumbai, 2004)
- Kengu Norman, Lee Richardson, *Consumerism: New Challenges for Marketing*, (American Marketing Assn. Illinois, 1978)
- Laurence, P. Feldman, *Consumer Protection: Problem and Prospects*, (1980)
- Leelakrishnan P., *Consumer Protection and Legal Control*, (Eastern Book House, Lucknow, 1981)
- Legal Environment Business*, (The ICFAI University Press, Hyderabad, 2007)
- Lester A. Sober, *Consumer Protection*, (Facts on File, New York, 1976)
- Majumdar P. K., *Law of Consumer Protection in India*, (Oriental Publishing Co, New Delhi, 5th Ed. 2004)
- Mandana J., *Consumer Education*, (Brindavan Publishing House, Bangalore, 1977)

BIBLIOGRAPHY

- Mathew M.O., *Indian Consumer and Consumerism*, (Special Lecture Series. 1993, University of Mysore, Mysore, 1984)
- Mc. Craw, Thomas, *Principles of Regulation*, (Cambridge, Mass Harward University Press, 1984)
- Murthy K.S.N & Sharma K.V.S., *Modern Law of Insurance*, (Lexis Nexis Butterworth's India, New Delhi, 2002)
- Pertschuk Michael, *The Rise and Pause of the Consumer Movement*, (1982)
- Prabhu S.B., *Consumer Protection Act, 1986 on Insurance Services*, (Smita Pubn. Pune, 1994)
- Preston Ivan L., *The Great American Blow-Up*, (University of Wisconsin Press, Madison, 1975)
- Ralph M. Galdeke and Warren, E. Etchson, *Consumerism view points from Business, Government and Public interest*, (Ed. 1972)
- Rao Appa. Machiraju, *Life Insurance – A Consumer Hand Book*, (CERC, Ahmadabad, 1993)
- Reddy G.B., *Law of Consumer Protection in India*, (Gogia Law Agency, Hyderabad, 6th Ed. 2004)
- Rich W. Micklitz H.W., *Consumer Legislation in the EC Countries: A Comparative Analysis*, (Britain, 1980)
- Saraf D.N., *Law of Consumer Protection in India*, (N.M. Tripathi P. Ltd, Bombay, 2nd Ed. 1990)
- Saraf D.N., *Law of Consumer Protection in India*, (N.M. Tripathi P.Ltd, Bombay, 2nd Ed. 1995)
- Sarkar A., *Problems of Consumers in Modern India*, (Discovery Publishing House, Delhi, 1989)

- Schoenfield David & Arthur. A Natella, *The Consumer and his Dollar*, (1958)
- Sharma Chandrakant, *Role of Consumer Organizations in Consumer Protection*, (Kanishka Publishers, New Delhi, 1995)
- Sherlekar S.A., *Trade Practices and Consumerism*, (Himalaya Pub. House, Bombay, 1977)
- Singh Avatar, *Contract and Specific Relief*, (Eastern Book Co, Lucknow, 10th Ed. 2008)
- Singh Gurbax, *Law of Consumer Protection*, (Bharat Law Pubn, Jaipur, 1991)
- Singh Gurjeet, *The Law of Consumer Protection in India: Justice Within reach*, (Deep & Deep Publications, New Delhi, 1996)
- Singh S.S., Sapna Chadah, *Consumer Protection in India some Reflections*, (Indian Institute of Public Administration, New Delhi)
- Stanton W.J., *Fundamentals of Marketing*, (Mc Graw Book Co, New York, 1971)
- Stuart Chase and Frederick J. Schlink "Your Money's worth", 1927
- Sundaram I.S., *Consumer Protection in India*, (IBR Publishing Corporation, Delhi, 1985)
- The Code of Criminal Procedure, 1973*, Bare Act with short notes, (Universal Law Publishing Co. Ltd, New Delhi, 2007)
- The Indian Penal Code*, Bare Act with comments, case law, (All India Reporter P. Ltd, Nagpur, 2008)
- Tiwari O.P., *Consumer Protection Act*, (Allahabad Law Agency, Haryana, 3rd Ed. 2007)
- Verma S.K., *A Treatise on Consumer Protection Laws*, (ILI, New Delhi, 2004)

ARTICLES

Ali Shaber G., "Role of Law Colleges in Administration of Consumer Justice", *Legal News and Views*, New Delhi, (August 2007)

Ali Shaber G., "Administration of Consumer Justice through Consumer Clinic", *The Radical Humanist*, New Delhi, (August 2008)

Alex Jasmine, "Indian Legal Thought on Consumer Justice", Vol.3, *Journal of Indian Legal Thought*, (2005)

Barder L. and Warnette J.P., "Consumer Movement", *Journal of Marketing*, New York, (1938)

Bawa S. S., "Marketing and Consumerism", *Employment News*, New Delhi, (February, 1990)

Bhat G.A. and Mangala Khadikar, "Mumbai Grahak Panchayat Moves On", *Mumbai Grahak Panchayat*, Bombay(1994)

Bourgoignie Thierry M., "Consumer Law and the European Community" in Bourgoignie Thierry M. and David M. Trubeek, *Consumer Law Common Market and Federation in Europe and in the US* (1984)

Bourgoignie Thierry M., "Consumer Law and the European Community" in Bourgoignie Thierry M. and David M. Trubeek, *Consumer Law Common Market and Federation in Europe and in the US* (1984)

Cappett A. John, "Consumerism from a Behavioural Perspective", *Business and Economic Review*, (Akron, 1974)

Chaudhary H.C., "What is Consumerism", Vol. XVII, *Indian Journal of Marketing*, (September, 1986)

Crosby Louis, "Jeep in Jeopardy : The Suzuki Affair", Vol.9 (5), *Consumer Confrontation*, Ahmadabad, (Sept/Oct. 1990)

- Dameron K., "The Consumer Movement" Vol. XVII, *Harvard Business Review*, Spring (1939)
- David W. Cravens and Gerald & Hill, "Consumerism A perspective", *Business Horizon*, (August 1970)
- Fazal A., "Striking out for the Consumer" *Asia Week*, Peang, International Organization of Consumer Union, (March 1978)
- Fazal Anwar, "Consumerism: An International Perspective", *Keemat*, CGIS, Bombay,
- Fazal Anwar, "Striking out for the Consumer," in *Consumer Action in Developing Countries*, IOCU (1980)
- Gupta K.K., "Protection of the Interest of Consumer and Unfair Trade Practices", Vol.24, *Indian Socio Legal Journal*, (2003)
- Jag Parvesh Chandra, "Consumer want their money's worth", *Financial Express*, Ahmadabad (11th February 1991)
- Jonathan L. Kemper, "The Home Owners Warranty Program – An Initial Analysis", (1976), 28 *Stan. L. Rev.* 357,367 (statutory warranty in Maryland)
- Joshi Navin Chandra, "Creating Consumerism" *Financial Express*, Ahmadabad (21st December 1989)
- Kotler P., "What Consumerism means for Marketers" *Harvard Business Review*, (1972)
- Kumar Ashwin, "Consumer Protection through Legislation", *All India Reporter*, Nagpur (2004)
- Madhok K.L., "What more is needed under the Consumer Protection Act, 1986" *The Insurance Times*, (February 2001)

- Moorthy V.R., "Consumer Protection (Amendment) Bill 2001: An Overview", *SEBI and Corporate Law Magazine*, (October 2001)
- Nader Ralph, "Consumerism and Law: Merging of Movements" Vol.11, *Law and Society Review*, (1976) at 247
- Patrica, *The CUTS Newsletter*, (January - March, 1990)
- Pylce M.V., "Consumer Protection in Developing Society" quoted in *Consumer Protection and Legal Control* by Leelakrishnan P, (Eastern Book House, Lucknow, 1981)
- Rao Koteswara P., "Constitution, State and Welfare" in Leelakrishnan P, *Consumer Protection and Legal Control*, (Eastern Book Co, Lucknow, 1981)
- Rao Mamata, "Consumer Protection in other Countries : America, UK and Australia" Vol. 26, *Civil and Military Law Journal*, (2000)
- Richard H. Buskirk and James T. Rothe, "Consumerism an interpretation" Vol. 34, *Journal of Marketing*, (October 1970)
- Sardesai V. S., "Ball in Consumers Court", *Lest ET Juris*, (December, 1990) at 52
- Sharma KP, "The Pronged Approach to Consumer Problems in India", Vol. IX, *IJLS*, Jodhpur (1989)
- Swami Narayana S., "Consumer Protection : No Lukewarm Attitude" Vol.9, *Consumer Confrontation*, Ahmadabad (March – April, 1989)
- Swami Narayana S., "Consumer Protection: No Luke warm Attitude", Vol.9, *Consumer Confrontation*, Ahmadabad, (March – April, 1989)
- Tiwari Y.K., "Consumer Protection Law and Peoples Participation – Problems and Prospects" Vol.IX, *IJLS*, Jodhpur, (1989)
- Virginia H. Knauer, "The Consumer's Stake in Trade" Vol.7 (10), *Consumer Confrontation*, Ahmadabad (Oct, 1987)

Werner F. Menski, "Consumer protection in India and Britain" Vol. 17, *Consumer Confrontation* Ahmadabad, (1987)

Witkowski, T.H., "Colonial consumers in revolt : Buyer values and behaviour during the non- importation movement, 1764-1776" *Journal of Consumer Research*, (1989)

DISSERTATION / THESIS

Ali Shaber. G., Efficacy of Consumer Protection Act in Protecting Consumer Rights against Public Utility Services: A Study with special reference to Bangalore City, LL.M., Dissertation at NLSIU, Bangalore, 1992

Shella T.N., Consumer Protection with special reference to Public Utilities, thesis submitted to the University of J & K for the Degree of Ph.D. in Law (1990)

SEMINAR /PAPERS

Drucker Peter, "Consumerism in Marketing", Speech to the National Association of Manufacturers, New York, (April 1969)

Kanniah Rajeshwari, "The Consumer Force in the Asia Pacific Region" Paper presented in the National Workshop on Consumer Laws, IOCU, 1990

Reddy D V N., "Justice to the Consumer and the Consumer Protection Act" Paper submitted at National Seminar on Consumer Protection: Evolving Norms and Institutions, held at Department of Law, Cochin University of Science and Technology , Cochin, (16th – 18th March 1989)

Shah A.C., "Consumer Protection in India", Mimeograph, Surat, Third Conference on Consumer Protection in India, (1976)

NEWS ITEM

“6 months on Consumer Courts without Heads” *Times of India*, (Panaji, Goa)
8th December 2009

“Appointment of N Goa Consumer Forum Chief Terminated” *Navhind Times*,
(Panaji, Goa) 23rd March 2010,

“Consumer Panel Chief Quits Post” *Times of India*, (Panaji, Goa) 19th
December 2008,

“Judges appointed to Consumer Courts - Posts had been lying vacant for 6
months” *Times of India* (Panaji, Goa) 16th December 2008

Singhvi L.M., “The Law and the Consumer – II”, *Indian Express*, News Paper,
(New Delhi), 27th March. 1980

The Hindu, online edition of India’s National Newspaper (Tamilnadu) 20th
November 2009

REPORTS, RESOLUTIONS AND DOCUMENTS

“Consumer Affairs”, (*London, Britannica Book of the Year*, 1974)

Commission of the European Communities, Consumer Protection and
Information Policy, Foreword (1977)

Department of Prices and Consumer Protection, Consumer Safety, A
Consultative Document, Cmnd.6398 (London, HMSO, 1976)

Lok Sabha Debates, Vol. XXIII, No. 26, 8th Lok Sabha, 7th Session, (9th
December, 1986)

Macmillan, *Dictionary of Marketing and Advertising*, (Michel J. Baker, 1985)

Rajya Sabha Debates, Vol. 140, No.21 – 27, Col. 120, (2nd to 10th December,
1986)

Report of the Secretary General, "International Activities for Consumer Protection", in IOCU, Proceedings of the International Seminar on 'Law and the Consumer', Hongkong, January, 6-10, 1980

The New Encyclopedia Britannica, (Vol. 3, 15th ed, 1990)

UN Guidelines for Consumer Protection, Resolution No.39/348, dated 9th April, 1985

USA, Census Bureau quoted in Merchand Roland, Advertising the American dream, (Berkeley, University of California Press, California, 1985)

World Health Organization, The Section of Essential Drugs, Report of WHO Expert Committee, Technical Report Series No. 165, 1977

WEBLIOGRAPHY

<http://www.asianphilanthropy.org/countires/india/development.html>

<http://www.bis.org.in/cert/procert.htm>

http://www.business.gov.in/consumer_rights/current_scenario.php

http://www.choike.org/nuevo_eng/informes/1162.html

<http://www.consumerdaddy.com/a-12-history-of-consumer-protection.htm>

<http://www.goagrahak.nic.in/statistics/htm>

<http://www.goagrahak.nic.in>

[http://en.indiapolicywiki.org/index.php?title=The_Insurance_Laws_\(Amendment\)_Bill,2008_Summary](http://en.indiapolicywiki.org/index.php?title=The_Insurance_Laws_(Amendment)_Bill,2008_Summary)

<http://www.indiahousing.com/goa/housing-authorities.html>

<http://www.ibmd.averydennison.com/solutions/cpsi-act-of-2008>

<http://www.indiahousing.com/authorities/>

<http://www.iso.org>

<http://www.indiatogether.org/opinions/rhousing02.htm>

<http://www.topnews.in/centre-amend-consumer-protection-act-255560>

<http://ncdrc.nic.in/Reulations2005.html>

<http://www.news.indlaw.com/news99-0549>

<http://www.nishithdesai.com/Research>

<http://www.static.teriin.org/discussion/regu-ip-htm>

http://www.tbs-sct.gc.ca/pubs_pol/opepubs/tb_d3/GUID-eng.asp

<http://www.travelmasti.com/domestic/goa/index.htm>

http://www.wisdomquotes.com/cat_history.html

http://www.woopidoo.com/business_quotes/customer-quotes.htm

Kothari Jayant, "A Right to Housing",

<http://www.indiatogether.org/opinions/rhousing02.htm>

ANNEXURE I

Questionnaire to Presiding Officers of Consumer Forum

Please kindly indicate your answer by a tick mark in the appropriate box

1. Name :

2. Designation : President Member

3. Place : Panjim Margao

4. What is the time taken by the Forum in deciding your complaint?
 a. Upto 3 mths b. Upto 6mths
 c. Upto 9 mths d. above 1 year

i. If there is delay, indicate the reasons **number** in the box:
 1. Adjournments 2. Workload 3. Complicated procedure
 4. Non-appearance of opposite party 5. Collection of evidence
 6. Any other reason

Indicate the answer in appropriate box Yes No

- | | | | |
|--|---|--------------------------|--------------------------|
| 5. Are you satisfied with the time period prescribed by the Act in deciding the complaint | : | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Is there a need to extend the time specified under CP Act, 1986 : | : | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Are you satisfied with the order passed by the Consumer Forum: | : | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Do you think that cost of the litigation is comparatively less in the Consumer Forum | : | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Are you satisfied with the functioning of Consumer Forum in dealing with complaints | : | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Procedure followed by Consumer Forum is – simple <input type="checkbox"/> Complicated <input type="checkbox"/> | | | |
| 11. Would you like to suggest any steps to improve the functioning of Consumer Forum? | | | |
| a. | | | |
| b. | | | |
| c. | | | |

ANNEXURE II

Questionnaire to Complainants

Please kindly indicate your answer by a tick mark in the appropriate box

1. Name
 2. Place : Panjim Margao Vasco Mapusa
 3. Problem faced by you:
 Housing: Insurance: Others
 4. Did you ever lodge a complaint to eh concerned authority: Yes No
 5. Are you satisfied with the decision of the concerned authority: Yes No
 6. How did you represent the complaint before the Consumer Forum:
 Self / Advocate / Consumer Org. / Any other
 7. How did you come to know about the Consumer Forum:
 Paper / Magazine / Friends / Neighbors / Consumer org.
 8. How much money you paid to the Advocate:
 Total money spent by you till the order passed by the Forum:
 9. How many times did you appear before the Consumer Forum:
 Below 4 times / below 6 times/ below 8 times/ more that n 8 times
 10. What is the time taken by the Forum in deciding your complaint?
 a. Up to 3 months b. Up to 6months
 c. Upto 9 months d. above 1 year
 i. If there is delay, indicate the reasons **number** in the box:
 1. Adjournments 2. Workload 3. Complicated procedure
 4. Behavior of judges 5. Non-appearance of opposite party
 6. Collection of evidence 7. Any other reason
- Indicate the answer in appropriate box
- | | Yes | No |
|--|--------------------------|--------------------------|
| 11. Are you satisfied with the order passed by the Consumer Forum: | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Do you think that cost of the litigation is comparatively less in the Consumer Forum | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. Are you satisfied with the functioning of Consumer Forum | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. Would you like to prefer an appeal against the order | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Procedure followed by Consumer Forum is – simple <input type="checkbox"/> complicated <input type="checkbox"/> | | |
| 16. Would you like to suggest any steps to improve the functioning of Consumer Forum?
a.
b.
c. | | |

ANNEXURES

ANNEXURE III

Questionnaire to Advocates

Please kindly indicate your answer by a tick mark in the appropriate box

1. Name _____ :
2. Place : Panjim Margao Vasco Mapusa
3. How many complaints you have filed before the Consumer Forum:
Housing: Insurance: others
4. Did you think that the involvement of Advocates is necessary in the Consumer Forum? : Yes No

Indicate the reason **alphabet** in the box:

- a. To file complaint
- b. In complicated cases
- c. Speedy disposal
- d. To collect necessary evidence
- f. Lack of legal knowledge
5. How much fee did you collect: *optional*
6. What is the time taken by the Forum in deciding the complaint?
 - a. Up to 3 months
 - b. Up to 6 months
 - c. Upto 9 months
 - d. above 1 year
 - i. If there is delay, indicate the reasons **number** in the box:
 1. Adjournments
 2. Workload
 3. Complicated procedure
 4. Behavior of judges
 5. Non-appearance of opposite party
 6. Collection of evidence
 7. Any other reason

Indicate the answer in appropriate box

Yes No

7. Are you satisfied with the time period prescribed by the Act in deciding the complaint :
8. Is there a need to extend the time specified under CP Act, 1986: :
9. Do you think that cost of the litigation is comparatively less in the Consumer Forum :
10. Do you think that the objectives of CP Act are achieved: :
11. Are you satisfied with the functioning of Consumer Forum in dealing with complaints :
12. Procedure followed by Consumer Forum is – **simple** **Complicated**
13. Would you like to suggest any steps to improve the functioning of Consumer Forum?
 - a.
 - b.
 - c.

ANNEXURE IV

Questionnaire to NGO's

Please kindly indicate your answer by a tick mark in the appropriate box

1. Name _____ :
 2. Name of the organization and Place: _____
 3. How many complaints you have filed before the Consumer Forum:
 Housing: Insurance: others
 4. Did you think that the involvement of Advocates is necessary in the Consumer Forum? : Yes No
 If yes specify the reason **alphabet** in the box:
 a. To file complaint b. In complicated cases c. Speedy disposal
 b. To collect necessary evidence e. Lack of legal knowledge
 5. Do you charge any fee to file the complaint: Yes No
 6. What is the time taken by the Forum in deciding the complaint?
 a. Up to 3 months b. Up to 6 months
 c. Upto 9 months d. above 1 year
 i. If there is delay, indicate the reasons **number** in the box:
 1. Adjournments 2. Workload 3. Complicated procedure
 4. Behavior of judges 5. Non-appearance of opposite party
 6. Collection of evidence 7. Any other reason
- | Indicate the answer in appropriate box | Yes | No |
|--|--------------------------|--------------------------|
| 7. Are you satisfied with the time period prescribed by the Act in deciding the complaint _____ : | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Is there a need to extend the time specified under CP Act, 1986: _____ : | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Do you think that cost of the litigation is comparatively less in the Consumer Forum _____ : | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Do you think that the objectives of CP Act are achieved _____ : | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. Are you satisfied with the functioning of Consumer Forum in dealing with complaints _____ : | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Procedure followed by Consumer Forum is – simple <input type="checkbox"/> complicated <input type="checkbox"/> | | |
| 13. Would you like to suggest any steps to improve the functioning of Consumer Forum?
a. _____
b. _____
c. _____ | | |

APPENDIX

APPENDIX - I

District consumer forum prez's appointment draws flak

TIMES NEWS NETWORK

Panaji: The appointment of the president of the North Goa district consumer forum is irregular not only because she is below 35 years in violation of rules, but she also continues to be a government lawyer thereby affecting her capacity to issue orders on government departments like PWD, electricity, etc.

These are the concerns raised by members of the legal fraternity and consumer activists who have sent complaints to the director of the civil supplies department, the state consumer disputes redressal commission and the

national disputes redressal commission.

The director of civil supplies, S P Masurkar, confirmed that he has received complaints from people pointing to "irregularities about age" in the appointment of the president. He said he will refer the matter to the government.

The noise about the district forum president's appointment comes soon after the unceremonious dropping of the president of the state consumer disputes redressal commission due to irregularities. One complaint to the civil supplies director, copy of which is in the possession of

TOI, said, "Only recently the president of the state commission was asked to step down in shame. I do hope that the same will not be the case in the present appointment."

The letter, copy of which has been forwarded to the high court registrar, states further, "Kindly ensure that an enquiry is conducted as to how the present appointments have been made. If substandard people were present for the interview, then there was no compulsion to make appointments. The appointment (of president) is absolutely violative of all the recruitment rules in the consumer protection act. To

name one violation is that the present incumbent appointed, Adv Harsha Naik, is below the age of 35 years."

Sources said that this is the first time that a person below the age of 35 has been appointed as president of the district forum.

The interviews were first held in October this year, pointed out sources. But when the candidates reached the venue of the interview, it was suddenly cancelled due to objections to the presence of one member on the selection panel. The interview was subsequently held in November. But, curiously, the same panel conducted the interviews.

Appointment of N Goa consumer forum chief terminated

NT NETWORK

MAPUSA: The appointment of Ms Harsha Naik as the president of the North Goa Consumer Dispute Redressal Forum has been terminated.

Though her appointment was terminated on Friday it is learnt that the order about the same was served on her on Monday. Confirming this, the Director of Civil Supplies, Mr Pilarnkar when contacted confirmed that Ms Naik's appointment has been terminated as she was "underage".

"As per the requirement, the president of the Forum has to be 35 years of age minimum, in this case the incumbent was 32 years of age due to which her appointment has been terminated" informed Mr Pilarnkar.

Ever since Ms Naik was appointed as the president last October the legal

fraternity had been complaining and various complaints were made to the respective authorities that Ms Naik was not only a government lawyer but was even underage and all this affected her capacity to issue orders on government departments. The then director of Civil Supplies had assured to do the needful after receiving complaints from the legal fraternity against the appointment of Ms Naik. It is learnt that even interviews conducted to fill up the post were not held in a transparent manner and the appointment violated all norms. Consequently, the appointment of Ms Naik has been terminated from Monday.

It may be recalled that less than a year back, the President of the State Level Commission, Mr Justice Mahajan was also asked to step down as even his appointment violated all norms.

APPENDIX - II

TIMES CITY

Judges appointed to consumer courts

16/12/09

Posts Had Been Lying Vacant For 6 Months

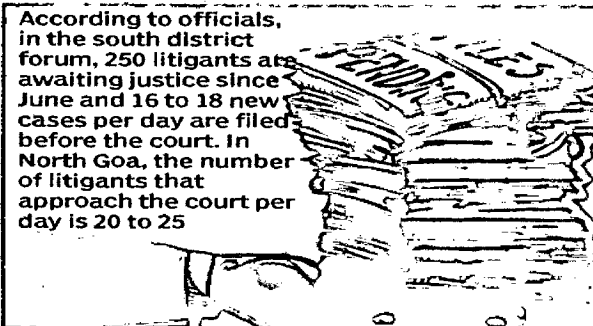
TIMES NEWS NETWORK

Margao: With the government finally appointing judges to the North and South Goa district consumer dispute redressal forums—six months after the posts were rendered vacant—the derailed consumer grievance redressal mechanism is likely to get back on track.

According to the appointment letters issued on Tuesday, advocate Jagdish Prabhudessai has been reappointed as the president of the South Goa consumer dispute redressal forum. The other two members appointed are Aremmy Fernandes and Kala Dalal. In the north district forum, advocate Harsha Naik has been appointed as the president with Shanti Maria Fonseca and Dhananjay Jog as members.

TOI had reported earlier this month that the significant delay in appointing the judges had nearly brought the consumer justice system to a halt, thereby affecting a huge number of litigants in both districts. The report had also stated that the delay in appointment is in sharp contrast to the directives of the Supreme Court and the National Consumer Dispute Redressal Commission that direct the state government to take

According to officials, in the south district forum, 250 litigants are awaiting justice since June and 16 to 18 new cases per day are filed before the court. In North Goa, the number of litigants that approach the court per day is 20 to 25



necessary steps to anticipate such vacancies six months in advance.

According to officials, in the south district forum, some 250 litigants are awaiting justice since June and some 16 to 18 new cases per day are filed before the court. In North Goa, the number of litigants that approach the court per day is 20 to 25.

Prabhudessai, who resumed duty on Tuesday, told TOI that the court will work towards ensuring consumer welfare and also said that more cases would be disposed off at the monthly lok adalats. While indicating that the government set up a laboratory to carry out testing procedures, he said, "The

delay in getting the tests done from Hyderabad is a time consuming affair and most often delays justice."

While claiming that consumer interest protection should be one of the paramount concerns of the government, Prabhudessai stressed upon the need to design policies and enact legislations to protect consumer interest and grant them the right to choice, safety, information and redressal.

"The government should initiate lok adalat sittings in villages at least once in a while which can help consumers in villages who are more vulnerable to abuse. Besides, it will also help generate an awareness on consumer rights," he said.

TIMES CITY

THE TIMES OF INDIA, GOA | TUESDAY, DECEMBER 8, 2009

CLEARANCE GRANTED TO 111 IRON TRIBALS BEGIN CHAIN PROTEST OPPOSITE
ROM SEPT 2006 TO NOV 30/09 CAPTAIN OF PORTS JETTY ON MONDAY 15



6 months on, consumer courts without heads

Delay In Filling Up President's Posts Brings Redressal Mechanism To A Near Halt

Rajeshree Nagarsekar | TNN

Margao: A significant delay in filling the posts of president in each district's consumer dispute redressal forum has brought the state's consumer grievance redressal mechanism to a near halt, affecting a large number of litigants.

The six-month delay in appointing the two presidents to man the south (Margao) and north (Panaji) district forums has consequently led to over 500 consumer litigations pending in these district forums, say sources. They add that the posts have been vacant since June 10.

This delay is in sharp contrast to directives of the Supreme Court and the National Consumer Dispute Redressal Commission (NCDRC) that direct the state government to take necessary steps to anticipate the vacancies six months in advance. Furthermore, the delay is a negation of consumer justice as the Consumer Protection Act 1986 strictly calls for disposal of cases (not wanting laboratory testing) filed before the forums, within 90 days of them being filed.

Director of civil supplies and consumer affairs, Sunil P Masurkar, told TOI on Monday that the vacancies were advertised in newspapers in January 2009 as per the SC and NCDRC directives. "As mandated, the posts were ad-

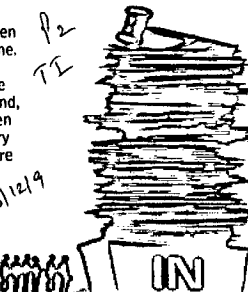
Almost 250 original cases have been pending before the court since June. In the absence of the judge (president), it is impossible for the two members to write the order and, hence, hardly any orders have been passed. Despite the back log, every day between 16 to 18 new cases are filed before the court

SENIOR OFFICIAL



vertised in January even though the terms were to end in Jun," said Masurkar. He refused to comment on why the posts have not been filled.

However, a senior official attached to the south Goa forum told TOI that the process got derailed as the president of the state consumer dispute redressal commission—the main



body under which the two district courts function—resigned and the commission's new president has been on board only since the last three months. "The presence of the president of the commission is vital as he is the chairman of the three-member selection committee which performs the task of selecting suitable persons from a panel of candidates prepared

by the government. The president to the state commission was appointed only in September 2009," he explained.

Explaining the problems faced by litigants at the forum, he said, "Almost 250 original cases have been pending before the court since June. In the absence of the judge (president), it is impossible for the two members to write the order and, hence, hardly any orders have been passed." "Despite the back log, every day between 16 to 18 new cases are filed before the court. In North Goa, the number of litigants approaching the court per day is between 20 and 25," he continued.

With consumer grievances remaining unaddressed, various consumer rights activists and NGOs have submitted representations to the government seeking its intervention in filling up the vacant posts. At its recently held general body meeting, the South Goa Advocates' Association has passed a resolution raising objections to what they termed as an unreasonable delay in appointing the president and requested the government to take immediate steps to fill up the same.

"The process of appointment has been set into motion. Interviews have already been conducted and as soon as the government approves, the posts will be filled," said Masurkar.