CHAPTER IV

SERVICES UNDER THE CPF ACT, 1986 WITH REFERENCE TO THE HOUSING AND INSURANCE 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 Gandhi

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 manufacturer.

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'. Consumer means a person who purchases goods 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' 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 construction, 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 deficiency 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 complainant 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 11.1 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 conference.

---

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 process.

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.htm 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 needy. 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 needy. 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 needy. 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 needy. 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 needy.

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/countrieis/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 dignity.¹⁰

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.indiatogther.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 objective\textsuperscript{11}.

One of the first, and perhaps most important, housing rights case to be heard by the Supreme Court in India was the \textit{Olga Tellis v. Bombay Municipal Corporation}\textsuperscript{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

\textsuperscript{11} \textit{Ibid}

\textsuperscript{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 masses\(^{14}\).

\(^{14}\) 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)\textsuperscript{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 India\textsuperscript{16}.

\textbf{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.

\textsuperscript{15} Ibid
\textsuperscript{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 technology\textsuperscript{17}.

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

\textsuperscript{17} \url{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 Goa:

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'\(^\text{19}\). 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 of 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*\(^\text{20}\), 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 advertise 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 bonuses\(^{21}\).

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 business\(^\text{22}\).

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 business\(^\text{23}\).

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 subsidiaries:\(^{24}\):

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 amount:\(^{25}\).

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

\[^{24}\text{Supra note. 1 at 38}\]
\[^{25}\text{Id at 39}\]
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 context\textsuperscript{26}.

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 insured\textsuperscript{27}.

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

\textsuperscript{26} Ibid
\textsuperscript{27} Ibid
the term fire insurance\textsuperscript{28} 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 assured\textsuperscript{29}.

2. Marine Insurance

Marine insurance\textsuperscript{30} 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

\textsuperscript{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.

\textsuperscript{29} Murthy KSN & Sharma KVS, Modern Law of Insurance, (Lexis Nexis Butterworth's India, New Delhi, 2002) at 209 - 213

\textsuperscript{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 voyage\textsuperscript{31}. 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 buyer\textsuperscript{32}.

### 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 employment\textsuperscript{33}.

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

\textsuperscript{31} The Marine Insurance (Indian) Act, Sec 4 (1)
\textsuperscript{32} Supra note. 28 at 253
\textsuperscript{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 insurance\textsuperscript{35}. 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 insurance\textsuperscript{36}.

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.

\textsuperscript{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)

\textsuperscript{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 insurance\(^{37}\) 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 insured.\(^{38}\)

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

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 Act\textsuperscript{39}.

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.

\textsuperscript{39} \textit{Supra} note. 28 at 7 - 10
B) Advantages of Life Insurance

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 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 claimant\textsuperscript{41}.

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 final\textsuperscript{42}.

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 cases\textsuperscript{43}.

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

\textsuperscript{41} Supra note 28 at 199 - 203
\textsuperscript{42} The Insurance Act, 1938 Sec. 47 A
\textsuperscript{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 premium\textsuperscript{44}.

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 lower\textsuperscript{45}.

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

\textsuperscript{44} http://www.nishithdesai.com/Research dt.17.08.06

\textsuperscript{45} Ibid
been defined separately as ‘consumer of goods’ and ‘consumer of services’\textsuperscript{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

\textsuperscript{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.