ISSUES OF SPECIAL INTEREST TO CONSUMER
The objective of this chapter is to look into some of the current problems faced by consumer where adequate legal protection in the form of simple, speedy and inexpensive justice is not available. The problem concerning Public utilities, Municipal services, Medical services, Environmental problems, Economic and Social effect of Advertising and the exploitation and lack of accountability in Education are the main issues which form part of the chapter. After discussion of the problems and the laws on the subject, an attempt is made to recommend some remedial measures.

5.1 Medical Services and Consumer

5.1.1 Medical Negligence

Medical aid and advice is not only necessary for health and well being of mankind but is essential for survival. The need for it starts when a child is in the womb of his mother and ends only with his life. Any negligence in this service may cause irreparable loss/injury to a person and at times may result in fatality. Medical negligence can be simply stated as the lack of care and caution which a prudent person would have taken under the circumstances. In the case of medical negligence it would obviously be the care and caution expected of a qualified medical practitioner in diagnosing and treating the patient.

5.1.2 Available Remedies

The laws governing medical services are as under.

(i) Indian Medical Council Act 1956
(i) Indian Medical Council Act regulates the functioning of medical profession. However, the Act has not been effective in either helping the victims of medical negligence or disciplining the doctors. According to Dr. Krishna Swamy, the Indian Medical Council Act, 1956 has been found to be deficient in the three crucial areas of activities i.e., medical negligence, inability to entertain a complaint from the patient for damages and inability to chastise the offending doctors. The only deterrence is taking out the name of the offending doctors from their register (de-registration).

(ii) The second remedy is to take action Under Indian Penal Code (Criminal Complaint). In case of death due to negligence of doctor/hospital, an FIR could be filed. This is a cognizable offence under IPC (Sec 304-A), however, the offence is bailable. The case could be tried by magistrate 1st class. However, it has to be proved by the complainant/that the death was caused due to rash and negligent act. If found guilty, an imprisonment upto 2 years or fine or both can be awarded. The problems in taking action under IPC for medical negligence are many i.e. the inordinate delays, the legal expenses and the inability of the petitioner to procure all the relevant records which can prove negligence. All the operations are done behind closed doors and the records made

118. Dr. Krishna Swamy: 'Making Doctors accountable' The Times of India
are not given to the complainant easily. The veracity of the information contained in records and given to the patient on demand can also not be taken for granted.

(iii) The third course of action is to file a suit under Law of Tort (Civil Suit). A civil suit could also be instituted for compensation for the loss/injury suffered by the patient under Law of Torts. However, Proving negligence is not easy. The basic rule of evidence places the onus of proving the allegations made in a complaint squarely on the complainant. Most of the complaints of alleged medical negligence are difficult to prove, as the complainant does not have access to case papers maintained by the doctor or the hospital. The complainant's demand for copies of such papers mostly get turned down by the hospitals.\(^\text{119}\) It is also difficult for the complainant to get a medical expert's opinion. There is however a well known exception to the rule of evidence. The doctrine of *res ipsa loquitur* (thing speaks for itself). In the cases like when a patient admitted for a minor surgery dies in the operation theatre the court can invoke *res ipsa loquitur* to benefit the complainant. The doctrine shifts the onus of proof onto the other side in cases where the negligence is obvious on the face of the circumstances and fact of the case like when the patient dies during a minor operation in a closed door operation theatre or in a manner that it could not have occurred without some negligence on the part of the doctor or the hospital. The onus then lies on the doctor or hospital to prove that all reasonable precautions were exercised. If the

\(^{119}\)Sirsh V Deshpandey: 'Bringing your doctor to book may be a terminal case' The Times of India, August 4, 1995.
doctor or hospital fails to disprove the charge of negligence then the courts can uphold the complaint of medical negligence and grant necessary relief. An analytical study of tort litigation in India during 1975-85 made by Prof. Galanter reveals that out of 416 tort cases decided by the High Courts and the Supreme Court of India, only three related to medical malpractice and the rest were claims under Motor Vehicles, Act. And one of the factors inhibiting such claims is the court fee that is required to be paid by the complainant who sues for damages on grounds of medical negligence.

(iv) The fourth option open to a victim of medical negligence or his relation is to file a complaint under Consumer Protection Act. The Consumer Protection Act 1986 is enacted with a view to help and protect the interest of consumers and to provide them with simple, speedy and inexpensive remedy. Although "Health services" were always within the purview of CPA but due to certain decisions of some of the State Commissions it became to be considered outside the purview of Consumer Courts till in 1992 when the National Consumer Disputes Redressal Commission said that the services rendered by doctors came under the purview of the Act [M/S cosmopolitan Hospitals and another Vs Vasantha P. Nair]. However, a judgement by a division bench of the Madras High Court [C.S. Subramaniam Vs Kumaraswamy 1994] two years later led to a controversy. The Madras High Court in Feb. 1994 took the view that services rendered by the medical practitioner are not covered by the

Consumer Protection Act. On 13 Nov. 95 the Supreme Court of India in the famous Indian Medical Association's case held that

1. Services rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service) by way of consultation, diagnosis and treatment both medical and surgical, would fall within the ambit of "service" as defined in Sec 2(1)(o) of the Act.

2. The fact that medical practitioners belong to the medical profession and are subject to the disciplinary control of Medical Council of India and, or, State Medical Councils would not exclude the services rendered by them from the ambit of the Act.

The court held that a service rendered free of charge by a medical practitioner attached to a hospital or Nursing Home, or a medical officer employed in a hospital or nursing home where such service was rendered free of charge to everybody would not be 'service' as defined under the Act. The court held that a service rendered at a non-government hospital or nursing home where charges were required to be paid by a person availing the service would fall within the purview of the Act. 121

Another point clarified by the Supreme Court was that

121. Patients can claim damages : SC Verdict on CPA : The Times of India, November 14, 1995
the individual doctors employed and serving in hospital, which demand payment for services rendered are also amenable to the provisions of the Act along with the management of the hospitals, jointly and severally.\textsuperscript{122}

The SC has clearly observed that "the summary procedure of the Consumer Disputes Redressal Agencies is not rules for all types of complaints regarding medical negligence," It is no doubt true that sometimes complicated questions requiring recording of evidence of experts may arise in a complaint about deficiency in service based on the ground of negligence in rendering medical services by a medical practitioner but this would not be so in all complaints about deficiency in rendering services by a medical practitioner. There may be cases which do not raise such complicated questions and the deficiency in services may be easily established such as removal of wrong limb or performing operation on wrong patient or leaving in side the patient swabs or other items of operating equipment after surgery. The issues arising in the complaints in such cases can be speedily disposed off by the procedure that is being followed by the Consumer Dispute Redressal Agencies and there is no reason why complaints regarding deficiency in service in such cases should not be adjudicated by the Agencies under the Act. In complaints involving complicated questions and issues requiring recording of evidence of experts the complainants can be asked to approach the

\textsuperscript{122} Pushpa Girmaji: 'Medical negligence under CPA' Times of India November 25, 1995.
This judgement by the Apex Court has settled the issue once and for all and made doctors liable under Consumer Protection Act for deficiency in service. The judgement, being a landmark, affecting an age-old relationship of faith and trust between the patient and his doctor, attracted the attention of consumers, doctors, legal experts and led to a debate in the media. While the medical fraternity was generally against the judgement, a few of them supported it on the ground that medical profession was becoming commercial and needed to be regulated. The public at large and Consumer Associations welcomed it and wanted that Government hospital and doctors should also be covered under the Consumer Protection Act. However, the apex Court has clearly ruled that all government and private hospitals which provide free service to all patients are not covered by the Act, the law needs to be amended to ensure that quick and inexpensive redressal as provided under the Consumer Protection Act (CPA) is available to every victim of medical negligence. This is also one of the recommendations of the working group set up by the Ministry of Consumer Affairs to suggest amendments to the Act. According to Dr. Naresh Trehan, a known Cardiac Surgeon, a Professional Protection Act, 124.

It is an ongoing debate, the doctors wanting to keep out CP Act and the Consumer Associations and public wanting even the government doctors/hospitals to come within the purview of CP Act. A few references are cited below: Navin Thukral: 'Consumer Hail it doctors doubt it', Chandigarh New Line, November 15, 1995. Kalpna Jain: 'Doctors Draw better lines', Sign up lawyers, The Times of India, November 28, 1995. Sabina Sehgal Salkia: 'The doctors New orders', Times of India, March 26, 1996.

Putting doctors in the dock not a good thing say observers: 'The Times of India', November 27, 1995. Kalpna Jain: 'Malpractice cases will speed up', Times of India, November 11, 1995
providing for review panel on the lines of prevalent practice in the West will be a better solution. He is of the opinion that otherwise there is a possibility of doctors refusing to treat those very patients who need them the most i.e. high risk complicated cases, to avoid potential problem.\textsuperscript{125,126}

**Vicarious Responsibility of Government**

It has been now settled by the apex court that Government is liable for patient's death due to negligence on the part of doctor in a Government Hospital. This has extended the scope of vicarious liability. "Just as running of passenger buses for the benefit of general public, is not a sovereign function, similarly running of a hospital, where the members of public can come for treatment can not also be regarded as being an activity having a sovereign character" This observation was made by Hon'ble Justice Mr. S.P.Bharucha and Mr. Justice B.N.Kirpal\textsuperscript{127}.

The Supreme Court of India has ruled in the case of [Panschim Banga Khet Majdoor Sammiti Versus State of West Bengal] that Government Hospitals can not deny medical facilities to serious patients on flimsy grounds like non-availability of bed and any patient denied of

\textsuperscript{125} Sabina Sehgal Saikia : 'The doctors New orders' : The Times of India, March 26, 1996.
\textsuperscript{126} 'Plan for setting up neutral medical panel to help investigating agencies.' The Economics Times, Feb. 13, 1998.
\textsuperscript{127} Rakesh Bhatnagar : 'Government is liable for patients death due to negligence', The Times of India, February 24, 1996.
\textsuperscript{128} Jeevan Prakash : 'Honouring right to medical treatment', The Times of India, January 9, 1997.
such facility is entitled to compensation 128. It has also been clarified in another case by the Supreme court that "right to health is integral to right to life". The judgement has also widened the scope of article 21 "right to life " by interpreting right to life with "right to live with dignity".129

5.1.3 Other Problems with Health Care System

Apart from medical negligence, another disturbing feature of the prevailing health care system is the doctor - chemist nexus and the questionable link up between some doctors and laboratories and scanning centres. Patients are recommended a particular test from a particular lab / scanning centre for want of serviceable equipment/facility. There appears to be an unholy tie up. Similarly while recommending drugs, a particular brand is recommended which may be very costly compared to the same formulation under different brand name. Recently, a division bench of the Delhi High Court has taken a decision to set up a committee to probe why costly equipment lay unused and wasted in government hospitals causing tremendous hardship to the general public.130

Another area which needs urgent attention is inadequate

130. 'Penal will probe equipment lying idle in Government hospitals' : The Times of India, September 5, 1997.
allotment in public health sector. According to Indian Medical Association the low priority assigned to public health is the major factor responsible for the emergence of new epidemics and re-emergence of those which were under controlled. The expenditure on public health in India is among the lowest in the world.

5.1.4 Recommendations

■ It is very necessary to bring the medical negligence under the purview of consumer courts in respect of government hospitals and the doctors working there in. This is highly desirable particularly keeping in view the fact that these hospitals are mainly visited by the poor people and people living in rural areas and using rural health services provided by government are left out. Bringing government medical services and government. doctors under the purview of the consumer Courts will enhance accountability and efficiency.

■ The suggestion by Dr. Naresh Trehan of having "Professional Protection Act" merits consideration and will go a long way in protecting the doctors as well as Consumers.

■ A recent decision of Union Ministry of Health and Family Welfare\textsuperscript{131} to setup a complaints cell in the ministry itself is a welcome step in the interest of consumers.

\textsuperscript{131}Kalpna Jain: 'Health Ministry cell will look into complaints against doctors': The Times of India, March 14, 1997
The address of the cell is as under
Grievances redressal cell, Health Sector
Room No. 552, A wing
Directorate General Health Services, Ministry of Health and Family Welfare
New Delhi,
Telephone 3019366.

The cell will receive and look into cases of medical negligence. According to VHAI for every reported case of medical negligence there are many more which remain unreported. A very small percentage of the people who suffer at the hands of negligent doctors realise that they had been victims of unethical/negligence in medical practice. According to the latest report the cell is not functioning as it was intended, due to non-seriousness on the part of the states as the "health" is a subject which falls under the state list. Up to July 15, 1997 the cell received 76 complaints which were processed but, the response from States where these cases of Medical negligent took place was still awaited.132

There is also a need to have compulsory prescription audit to find out whether patients are given proper prescription or not. This will reduce the chances of prescribing unwanted drugs and will ensure that un-necessarily costly and unwanted drugs are not prescribed to help the pharmaceutical companies at the cost of patients.

132. Kalpna Jain: 'Cell for complaints against doctors fails to take off'
The Times of India, July 7, 1997
5.2 Consumer and Public Utilities

Public utilities like post, telecommunication, railways, municipal services etc. are essential for modern living. These involve a very heavy expenditure and as such these are natural monopolies. Monopoly invariably results in concentration of wealth which is detrimental to public interest. It was because of this that Public Utilities were nationalised in India to enable the State to safeguard the interest of consumers. Post and Telegraph, Railways and Municipal Services viz. Water Supply and sewage were already in the public sector, the banks, insurance, transport, airlines and energy were subsequently nationalised. The services like postal, Telecommunication, Railways, Insurance and Civic Facilities are solely owned by State to the exclusion of private persons and as such these are termed as state monopolies and these are discussed in brief in the subsequent paragraphs.

Available Remedies

The following legal options are open to a Consumer for redressal of grievances against public utilities.

(i) Civil courts
(ii) Tribunals constituted specifically for particular utility
(iii) Writ jurisdiction of High courts and the Supreme court of India.
(iv) Consumer courts (established under the Consumer Protection Act., 1986)
Civil Suit

An aggrieved consumer can file a civil suit in a civil court for enforcement of contractual obligation, and for damages in case of loss or injury but, the Court fees/lawyer’s fees, technicalities of procedures and inordinate delays make this option not a very desirable one. The time between the institution of the suit and the final judgement may take years accompanied with inconvenience and other hassles.

Tribunals

Most of the public utilities have tribunals - quasi judicial bodies which are created by statutes, their jurisdiction, functioning, procedures, relief awardable etc. are laid down in the same statutes which create them. Generally jurisdiction of a civil court is barred in respect of matters over which the tribunal has jurisdiction, however, the power of judicial review vested with High courts and the Supreme court of India is not ousted.133

Writ Jurisdiction of High Court/Supreme Court

An aggrieved person can file appropriate writ in the High Court under Art. 226 and in the Supreme Court of India under Art. 32 for the enforcement of his fundamental rights. Public interest litigation can also be instituted on behalf of aggrieved consumers. However, in the case of private public utilities the writ jurisdiction of High court/ Supreme court is not available.

133. Refer Art. 134, 136 and 227 of Constitution of India
Consumer Courts

According to section 3 of the Consumer Protection Act 1986, the provisions of the Act are in addition to and not in derogation with any other law for the time being in force. However, in [Union of India Vs Adaikalam, CPJ-II, 1993 pg. 145,] the National Commission observed otherwise. "The Railways claims Tribunal has the Exclusive Jurisdiction to adjudicate upon claims relating to deficiency of service arising from loss, destruction, damage, deterioration, or non-delivery of the goods, etc., entrusted to railway administration for carriage." This has narrows the scope of Consumer Protection Act, to the disadvantage of consumers.

5.2.1 Postal Services

(a) Consumer Problems

The Postal Service is controlled by Central Government Department under Ministry of Posts. The public very much interested in its efficient functioning as it impinges upon their every day life. The main problems faced by consumers are none-delivery/late delivery of mail, loss/damage of articles sent through post office etc.

(b) The Laws governing Postal Services

The functioning of post offices is regulated under post office Act 1898. According to section 4 of the Post Office Act, 1898, the Postal Department has the monopoly for carrying mail and according to sec. 5 carriage of mail is prohibited by private persons. Sec. 6 of the Act exempts the government from liability in the event of mis-delivery or
delay or damage to any postal article in the course of transmission unless it can be proved that the loss or damage has occurred because of a fraudulent or wilful act or default of an officer of post office unless the central government or Department of Posts, expressly undertakes the liability e.g. in the case of registered post. As regard registered post and V.P.Ps the undertaking to deliver is express and the Postal Department is liable for compensation. A Consumer can not legally send mail except through postal deptt he can not claim compensation in case of loss/damage of unregistered mail, if the postal department is not responsible for this delay, then who is?

Similarly sec. 48 (1) of the IPO Act, 1898, exempts the post office from liability in the event of delay in delivery of the money order, unless it can be established that it was due to any fraud, wilful neglect or default of a particular officer. However, in the case of M.O. by speed post the delay was considered deficiency in "service" by Goa State Commission in [Senior Superintendent of Posts Panaji Vs Mrs. Molita Lobo 1991(2) CPR 236 S.C. Goa].

On the question of whether consumer courts have jurisdiction or not, it was held by Gujrat State Commission in the case of [Department of Posts, Rajkot Vs J.K. Diagnostics, CP](III) 1993 pg 1677, Gujrat S.C. ] that postal department can not claim exemption under section 6 of IPO Act 1898 as the provisions of the Consumer Protection Act are in addition to the provisions of any other law for the time being in force. Different state commissions have given different decisions like for
example, the Andhara state commission held in [Koka Rajendra Prashad Vs Union of India represented by Supt. of post offices, Nellore 1991 III(CPR299)] that post office's liable for damages for negligence (misdelivery of letter) not withstanding sec. 6 of Post Office Act, but on the other hand Punjab State Commission held in [Ms Manpreet Kaur Vs Government of India through Chief Post Master General and Other 1993 - III CPR 465] that post office is not liable-to damages for negligence (late delivery of letter) in view of sec. 6 of Post Office Act.

The National Commission held that compensation for loss, misdelivery etc. of unregistered mail is not covered by sec. 6 of the IPO Act. [Presidency Postmaster Vs Shanker Rao. 1993 CPJ NC, 141] It can be seen that unless the department under takes expressly as in the case of Registered letter, Speed Post and VPP, the department officials are not generally liable in the case of delay/loss.

(c) Recommendations

* The Indian post office Act 1898 is an old legislation which needs immediate amendments to make it consumer friendly. The Act gives an impression that carriage of mail is a sovereign function. The deptt is not discharging any sovereign function by carrying mail, it carries on its commercial activities, although charges in respect of certain services are highly subsidised, however, it being a commercial activity the department must be made liable. There is the need to make the department accountable in case of delay/deficiency in the service provided. Currently there is a case pending in Delhi High Court seeking to make the department

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responsible for unexplained delay in delivery of postal articles.\textsuperscript{134}

* Section 5 of the Act which prohibits carriage of mail by any private party needs to be deleted/amended as it has become a joke particularly when so many courier companies are functioning and which are preferred by consumers. These are carrying mail under the garb of "documents". What a way to circumvent the law? Why not amend the outdated Act and bring it in line with today’s requirements?

5.2.2 Telecommunications

(a) Consumer Problems

In 1985 the two Departments i.e. Postal and Telecommunication were bifurcated and the Department of Postal Services and Department of Telecommunication came into being as Separate Departments. Some of the main problems faced by consumers in the area of Telephonic Services are:

(i) Delay in getting a telephone

(ii) Delay in shifting.

(iii) Dead telephones for long periods and Delayed complaint handling.

(iv) Excessive billing.

The introduction of electronic exchanges and computerised

\textsuperscript{134} The Ultra vires of section 6 of Indian Post Office Act, 1898 have been challenged through Public Interest Litigation (PIL) before Delhi High Court: The Times of India, September 16, 1997.
complaints handling cell wherever this is available has reduced the problems in respect of delay in handling the complaints. The waiting list for telephones has also come down due to setting up of electronic exchanges. The main problem now is of excessive billing and dead telephones for long duration due to general fault and late attending to by the department.

(b) The Law Governing Telecommunication Services

The telecommunication services are governed under The Indian Telegraph Act 1885 and The Indian Telegraph Rules 1951. The Consumer Courts can always be approached for deficiency in service.

Barring Provision

Section 7 (B) provides that whenever there are disputes relating to any telegraph line and if such disputes are between the telegraph authority and the beneficiary, such disputes can be decided by reference to Arbitrator appointed by central government. Whenever a case is governed by section 7 (B) the jurisdiction of civil court is barred. However if the case is not governed by the 7(B) then one could go to civil court or High Court by way of writ petition.

The Act, protects the Department rather than Consumer

Sec. 9 of Indian Telegraph Act, 1885 states that the government shall not be responsible for any loss or damage which may occur in the consequence of any telegraph officer failing in his duty with respect to receipt, transmission or delivery of any message and no such
officer shall be responsible for any such loss or damage unless the same is done negligently maliciously or fraudulently. Such provisions do not provide any protection to the consumers rather they protect the department in case of loss or damage. This is akin to section 6 of Indian post office Act 1898.

Rules Contradictory

Rule 421 and 443 of Indian Telegraph Rules are contradictory. While Rule 421 does not permit the department to disconnect a telephone without giving a prior notice and for the reasons being issued in writing; whereas Rule 443 permits such disconnection without notice. There are diverse views among the judiciary about the supremacy of the rule, some of the courts have held that, the rule 443 prevails over Rule 421, whereas some have given the opposite view.135

Provision for rebate

The Telephone Department Rules provide for proportionate rebate of rental if the telephone is dead for more than 7 days. However there are hardly any cases where department has given rebate on their own or even on request.

Case Law Under Consumer Protection Act


138], directed the telecom department to give suo moto rental rebate to all subscribers in their area whose telephones were not functional for 7 days or more during the period of strike. The department was directed to give notice of allowance of rental rebate in all the leading news papers (English and Vernacular) and invite claims for rebate. The other recent cases in this regard which can be referred are [Dist. Manager Telephone Vs Dr. Meena Choudhry SC (Bihar) CLT 1995 (1) Pg. 529] and [Union of India Vs M/s Ravi Papers and Board Mills Pvt. Ltd. 1994 SC (Pb.) CLT 1994 (2) Pg. 365-66.]

Excessive Billing

The majority of complaints pertain to excessive billing. This is one area where a consumer feels helpless. The judicial ruling in this regard is against consumer interest. In [DMT Lucknow Vs Madhu Enterprises (1991)(1) CPR, pg. 421], the National Commission observed that "the amount in the bill will be regarded as correct unless the subscriber can show defect in the metering equipment or tampering of line by a specified person."

(c) Recommendations

1. The Telegraph Act is very old piece of legislation. Its provision exempting the liability of telecommunication department in case of excessive billing is very harsh on consumer. The law in the case of over billing is that unless it is established either that the metering equipment is defective or there is evidence to show that there has been tampering and misuse of telephone line by third party, the bill is presumed to be correct. This is unfair as all the equipment and its sole control is in the
hands of department. Even if the meter was faulty during the disputed period for which the excessive bill has been given, the consumer has no means of proving this; the consumer has no access to the meter and other equipment like junction boxes or the lines etc. These can only be tampered with by the employees of the department or third party with their connivance.

In case of non payment of excessive bill the telephone is disconnected by the department and in the absence of Consumer Courts having power to issue 'interim injunction', the disconnection continues till finalisation of the case, which might these days take anything between 2 to 3 years. The burden to prove that the metering equipment was faulty or it was tampered with is difficult, particularly when all this is under the control of the department. However, disconnection of telephone without prior notice has been held to be 'deficiency' in service except under rule 443 for non payment of charges.

2. It is here that installation of individual meters with each telephone like it is for electricity becomes all the more important and attempt at tampering and misuse by unauthorised parties can be curbed.

3. The Rules 421 and 443 of Indian Telegraph Rules being contradictory need to be reconciled by suitable amendment.

4. Section 9 of Indian Telegraph Act 1885 exempts the department from any responsibility in the case of any loss or damage in case of receipt, transmission or delivery of any message unless it can be proved that this was done negligently, maliciously or fraudulently. This is
extremely difficult for the consumer to prove and is against his interest. This must be suitably amended.

5. Section 7(B) of the Act provides for arbitration where in the arbitrator is required to be appointed by central government. Thus the government becomes a party to the dispute as well as decider who should be the judge in the matter, performing a dual role. The consumer is at a disadvantageous position in case the government does not appoint any arbitrator for a long time. There is no provision in the Arbitration Act for the consumer to approach the court to get the arbitrator appointed. This needs amendment to make it fair to consumer.

6. Whenever a case is covered under section 7 (B) the jurisdiction of civil court is barred. This is not in the interest of consumer as he cannot avail of the easy, inexpensive and fast remedy by going to the consumer courts.

7. Some of the steps taken by the Government in the recent past are praise worthy. Franchise given to private PCO operators for STD, ISD and FAX has made available the facility at nominal cost to all those who need it. Government has also allowed private participation in this industry in some of the areas. This will generate competition to the advantage of consumer. The setting up of the Regulatory Authority [TRAI] is also Welcome.
5.2.3 Railways

Railways in India is another monopoly of the state. It comes directly under the Ministry of Railways. The responsibility for its administration and management is with the Railway Board.

A. Consumer Problems

The normal problems faced by the consumers relate to

* Deficiencies in service i.e., delayed running, lack of basic amenities and thefts, untoward incidents in trains/railway premises
* Arbitrary increase in the fares etc.
* Safety of passengers against avoidable accidents.

B. The Law Governing Railways and its deficiencies

The Railways Act, 1989 governs the functioning of the railways and The Railways Claims Tribunal Act, 1987, deals with the Claims. The Act provides for constitution of Railway Rates Tribunal. Section 33 of The Railway Claim Tribunals Act, 1987, provides for disposal of accidental claims, cases of refund of fares or freight, or any loss or damage to goods dispatched by rail or compensation for death or injury to passengers occurring as a result of railway accident or any untoward incident. The claims are disposed off by the Railways Claims Tribunal (RCT) under the Act. The claims can be preferred by the individual, his guardian, duly appointed agent or his legal dependent in case of death.
Fixation of Fare and Freight charges

The Fares and Freight charges are varied in the railway budget presented to the parliament every year. Consumer has no say in the fixation of these. The details of working of the new rates / charges are not made public, however, there is a debate in the parliament. The parliamentarians and their entourage travel free. A consumer can complain before RRT under section 36 of the Act on the following grounds:

a) Charges of goods are discriminatory under section 70 of the Act.

b) Charging unreasonable Rates for carriage of any commodity between two stations.

c) Any other charge which is unreasonable.

However, the onus of proving the unreasonableness is on the complainant. Without knowing the full details and the basis for hike in fares and charges for carriage of goods, it is impossible for any complainant to prove their unreasonableness. There is no provision for challenging the hike in passenger fare once the parliament has passed the bill, a consumer has no option but to pay the fare if he wishes to avail of the services of railway.

While the jurisdiction of courts in case of claims falling under RCT, Act 1987 and issues under RRT are barred, the Consumers can move the Consumer Dispute Redressal Agencies for deficiency in service.
Case law under consumer protection Act.

It was held that passengers travelling by train on payment of the stipulated fare charges for tickets are consumers and the facility provided by the Railways Administration is service rendered for consideration as defined in the Act. Thus, it is clear that the consumer courts have jurisdiction in dealing with cases of 'deficiency' in service. [General Manager S.E. Railway and others Vs Anand Prakash Sinha CPJ. (1) 1991 pg 10.N.C.]

(c) Recommendations

1. The details regarding working of revised rates/charges must be made public so that public is aware about the necessity and rationale for such an increase. In this process consumer associations/consumer activists should be associated. Parliamentary debate alone is not considered enough. The travelling public should not get an impression that they are paying additional fare/charges for the inefficiency of railways. Over the past 15 years the railways freight rates have increased 500 per cent resulting in a study loss of its share of the freight market to the road sector which accounts for 85 per cent of freightage. This is done to subsidise the passenger traffic. There is a need to rationalise the structuring of fare/freight. The Expenditure on free passes and compensation during Mr. Paswan Tenure as Railway minister amounted to Rs. 262 crore.136


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2. The Railways Ministry has taken certain steps which show that the ministry is keen to see that consumers are given better service, and their grievances are redressed expeditiously. The advertisements in media gave the procedure for making complaints and explained the procedure for claiming compensation in case of Railway Accidents. The limitation period, and the address and telephone numbers of the responsible officers from whom additional clarification / assistance could be obtained were also given. This was done to help improve the public redressal system.

3. The main problem which is worrying the travelling public is the number of Railway Accidents which results in loss of life and property. During the period Dec. 96 to Sept. 97\(^{136a}\) there were five major accidents which resulted in over 100 deaths. 249 out of the 300 accidents in 1997 upto Sept. including collisions, derailments, fires and involving road traffic at level crossing, were caused due to human error. The major accidents during 3 months (July - Sept. 97) claimed at least 126 lives \(^{137}\) This needs urgent attention of the department. The inquiries must go deep into the underlying causes of these accidents and the government must institutes remedial measures to avoid their recurrence.

\(^{136a}\) 'Ibid'
\(^{137}\) 'Ibid'
5.2.4 Insurance

The insurance in India is another monopoly. It is mainly in the hands of companies and corporations under the control of Government of India. Life insurance is with Life Insurance Corporation Of India (LIC) whereas General Insurance Corporation (GIC) has four subsidiaries (Oriental, The New India Assurance Co. Ltd., United India Insurance Co. Ltd. and the National Insurance Co. Ltd.).

A Consumer Problems

The Consumer in India has no choice as far as life or general insurance is concerned as they are State owned monopolies. There is a general feeling of dissatisfaction content among the consumers regarding functioning of these organisations.

Insurance is based on contractual obligations between the parties i.e. the insurer and the insured. Freedom of contract forms the basis of a valid contract. This requires equality of bargaining power between the parties. There being no option / no alternative, how can one enjoy the freedom to contract. Being the monopolies both the Corporations offer no alternative to the consumer. The terms and conditions of the contract are unilaterally framed as standard conditions by these corporations. The insured has to sign on the dotted line if he wants to avail of the facility; this thus is not a "free consent" and is a contract of adhesion. There is also no obligation on the part of the insurer to explain the implications of various conditions to the insured for whom these are of far reaching importance. What to talk about interpretation of complicated conditions, the plight of majority of
the people who can not read or write can be visualised. In order to have a valid contract, both the parties to a contract must agree to the same thing in the same sense: this is only possible when the insured is explained all the conditions and their implications before he signs so that his consent is a 'free consent' and they agree 'ad idem'.

Other Lacunas in Functioning of Insurance
Part time agent - Non serious attitude

On paper, GIC has one million strong agents and around fourteen thousand development officers whereas LIC has five lakh odd agents and eighteen thousand development officers. Only a fraction of agent force of GIC is full time career agents. Though according to LIC majority of its agents are full time career agents but, it admits that the insurance has not been sold the way it should have been.138 How can such a part time force be responsible towards the need of consumers?. The main concern of this type of force would normally be to look after their own interest and only advance the interest of the company provided it serves their own interest. The Consumer interest gets relegated to the last place.

Delay in settlement of claims
The other problems faced by consumers relate to delays in

138. Shailesh Dobhal: 'Insurance is just waking up', The Economics Times: November 27-3 December, 1998
settlement of death claims, due to lack of proper guidance and advice by the agent and lapsation of policies etc. Nearly 40%\(^{139}\) of maturity claims and 52% of the death claims were outstanding for more than three months, the time that should be more than sufficient to settle the claims except in few difficult cases.

The consumer has also no role in fixing the premium rates. High premium rates is another main concern of the consumer.

B The Governing Law

The functioning of insurance is governed under The Insurance Act, 1938. This Act consolidates the law relating to the business of insurance. The law of contract is applicable as insurance policy is a contract between the insured and insurer. Section 23 of Indian Contract Act provides that contracts against public policy are void. Unfairness and unreasonableness of terms of contract have also been held to be violative of Article 14 of the Constitution of India by the Supreme Court of India in [Central Inland Water Transport Corporation Ltd. vs Brojonath Ganguly, A.I.R.,1988, SC, Pg. 1571]. 'Insurance' has been included in the definition of 'service' under Sec. 2(O) of the CP Act. Not only the insured but the beneficiary is also covered under CP Act.\(^{140}\)

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140. Refer case CERS Vs LIC, CPJ (1) 1993 Pg. 124.
Some clarifications by courts

The courts have given certain judgements which clarify some of the important law points. A few of the points which have come up through case law are:

(i) Delay in appointing surveyor is considered as deficiency in service.

(ii) When the claim is repudiated by the insurer without giving reasons or where reasons given are irrelevant or extraneous, it is a case of deficiency in service.

(iii) Onus to prove nondisclosure of material fact is on the insurer.

(iv) In case of an insurance claim the insured gives the receipt in a full and final discharge of the claim, such a receipt is considered to be given under coercion and is not binding on the insured.

(v) Insured is entitled to interest if the payment agreed in a compromise is delayed.

(vi) Normally if there is no dispute in settlement of claim, a three months period is considered as sufficient to settle the claim from the time the company becomes seized of the claim. Inordinate or unjustified delay also amounts to an unfair trade practice under section 36(A) of the MRTP Act, 1969.

(vii) Not only the insured but, the beneficiary also covered under the definition of 'Consumer' under CP Act (CERC Vs LIC, CPJ (1) 1993 p-124)

C. Recommendations

1. There is a need to get standard conditions vetted by an
independent agency which should include representative of consumers before these could be included in Insurance contracts. The Insurance Regulatory Authority has now been established. This is a welcome step. Insurance Regulatory Authority (IRA) will hopefully regulate this.

2. In fixing the premium rates consumer groups should be associated and full details about the reasons for fixing the premium should be made public. Once the bill on-right to information is passed by the parliament and the citizen charter for insurance Industry is formulated the Consumer will have easy access to information and will be able to demand details about the working of premium rates.

3. In order to render better service to the consumers/policy holders and to meet the existing and emerging challenges in the financial market, there is no alternative to improving the knowledge and expertise of the agents and surveyors. The proper selection and in service training of agents and surveyors will play a major role in improving the functioning of insurance sector.

4. The move to open up the insurance sector to International and other private companies is a welcome step. However, currently there is a lot of resistance by the left sponsored trade unions. If and when the insurance business is fully privatised, it will generate the healthy competition in favour of consumer.

5.2.5 Municipal Services

Public services are fast becoming a misnomer. The urban infrastructure and civic services in the country are breaking down.
A. The main problems faced by consumer

The civic services are provided by either the local government, or state government. Consumers normally has no choice as these are monopolies. The state of our civic services has been well summed by Shri Jagmohan\textsuperscript{141}, M.P. Rajya Sabha and former Governor J & K. According to him “while our problems have been increasing, both in magnitude and complexity, our civic set up has been deteriorating. Today it resembles a large octopus - slow, apathetic, ineffectual. Far from acting as an institution for service to the people and a spring board for providing experienced leadership at the state and national level it has become a happy hunting ground for corrupt, callous and communal elements. Every year we pay a very heavy price in human life and misery due to poor civic services”.

Post monsoons malaria, dengue and hepatitis etc., are caused due to poor treatment of water and cases of leakage of sewage into water pipes are not very uncommon. This shows poor functioning of the municipal authority. In most cities, an efficient drainage and garbage disposal system is almost nonexistent. Garbage heaps and open drains are a common sight. The heaps of garbage lying about untreated adds to the problem.

During rainy seasons roads get flooded. This disrupt traffic and uncovered manholes getting filled with water pose great danger to unsuspecting pedestrian. In Calcutta, for example, an official estimate in 1993 put the number of open manholes at 2,000 of the 10,000 in the

\textsuperscript{141}Sh. Jagmohan :’Netaji and Sardar were good city dads’ : The Times of India, January 17, 1997.
city. These result in deaths due to drowning of about 25 people every year.\textsuperscript{142}

The reports about accidental deaths due to open live wires, carelessly left by the electricity department, keep appearing in the press every now and then. Pot holes and uneven surfaces add to the physical discomfort of travelling and at times cause serious road accidents. Experts at the Central Research Institute, New Delhi say that 'there is nothing wrong with our road-laying technology. The problem lies with poor quality control, lack of supervision and timely repairs of roads by municipal authorities'.\textsuperscript{143}

B. Legal Remedies

The following options are available to Consumers

(i) Register a complaint with the appropriate municipal authority for initiating disciplinary proceedings against the official responsible for the tragedy.

(ii) Register a civil suit under the law of tort to demand compensation in case of loss / injury.

(iii) Register a criminal case under section 304A of the IPC.

(iv) Public Interest Litigation (PIL) in the High Court.

The problems associated with registering a civil case are the court fee / lawyers fee and inordinate delay associated with such cases. In case


\textsuperscript{143}\textsuperscript{. Pushpa Girimaji : 'Why are our roads so badly made?, The Tribune, June 3, 1994.}
of criminal complaint under sec. 304 A the maximum punishment in case of
death due to negligence is 2 years and or fine or both; this is inadequate and it
should be increased upwards to act as a deterrent.

The public sector utilities are "state" within article 12 of
constitution of India. High Courts and Supreme Courts can be moved
under article 226 and Art. 32 if the utilities are providing "service"
violative of the fundamental rights. In [ M.C. Mehta Vs. Government of
India A.I.R. 1987 S.C. 965 ], the Supreme Court held that the municipal
corporation must perform their statutory duty and directed Kanpur
municipality to take steps to prevent pollution of the Ganga. In [ State of
H.P. Vs. Umed Ram A.I.R. 1996 S.C. Pg. 847 ], it was observed, "Every
person has right under Article 21 to his life and this right not only
involves physical existence but the quality of life also and for residents of
hilly areas the society has a constitutional obligation to provide road for
communication". These two cases amply clarify the constitutional duty of
municipalities.

The power of High Courts and Supreme Court of judicial
review under Article 227 and 136 is also available under constitution of
India.

In the case of [ Calcutta Municipal Corporation Vs. Tarapada
Chatterjee CPR (1) 1994 Pg. 87 N.C. ], the National Commission held
that in the case of inadequacy of water supply there was no deficiency of
service as there is no hiring of municipal service by consumer. Payment of tax
can not be considered as consideration. In November, 1993 a Division bench
of Supreme Court ruled that 'all Institution, including Governmental agencies which have a duty to provide a service or facility fall within the purview of the CP Act, earlier the court had ruled that Municipality has to keep its town clean, irrespective of its resources'.

Although the Consumer Protection Act covers all services provided by government., statutory bodies like municipalities or private individual but the qualifying requirement is that these services are to be hired or availed of for consideration paid or promised or partly paid and partly promised or under the system of deferred payment. These thus include services rendered by all professionals like lawyer, doctors, engineers etc. The definition in the Act is only illustrative and not exhaustive. It is only the lack of consideration which keeps it out of the purview of CPA.

C. Recommendations

1. The main problem with "service" sector is that there is no laid down criteria against which the quality of these could be judged. The proposed "Citizen Charter" is the only ray of hope against this sort of state of affairs. There is a urgent need to have "Citizen Charter" which should lay down the standard of service to be provided and the method of grievance handling.

2. There is lack of accountability and in case of complaint, firstly no one replies, even if the reply is sent it may not give actual facts and there is

no way to find the truth in the matter. There is no specific law laying down accountability of provider of service particularly if it is provided by government/local authority, the case of municipal and other utilities is a pointer in this regard. The "right to information" the bill for which is likely to be placed before the next session of parliament, once passed will give right to consumer to demand information.

3. Due to poor functioning of our municipal services hundreds of people suffer, they get no relief/ compensation for their suffering/loss. If municipal services are brought under the purview of consumer courts, it will help individual to seek speedy justice at little or no cost.

4. In order to make civil services more accountable they must be brought under Consumer Protection Act. The civil remedy through court is time consuming, costly and it is not easy to prove negligence etc. Ultimately the maximum punishment in the case of death caused due to negligence is 2 years u/s 304A. All this gives a licence to these organisations to function without responsibility and the poor consumers keep on suffering silently without having easy and effective remedy.

5. Municipal Corporation of Delhi has taken steps by at least giving a public notice in the English Daily requesting people to inform them in case of any manhole where cover is missing.

6. Stricter laws should be enacted to prohibit people from throwing litter and plastic bags/rubbish in the open. The laws must provide for heavy
penalty for the defaulters.

5.3 Consumer and Environment

5.3.1 The need for Environment Protection

The survival and progress of Humankind depends upon use of natural resources like fresh water, fertile land, forests, fresh air and fossil fuels. However, it is absolutely necessary to maintain the balance between their use for economic development and their preservation for keeping the planet fit for human survival and also ensuring that we do not encroach upon the right of survival of our future generations for whom we are the custodian of these resources. The most important question facing the mankind today is how 'sustainable development' which calls for economic development without destroying the natural environment and depleting resources can be achieved. The obvious answer is that we have to control population and discipline ourselves in the use of scarce resources by adopting environmental friendly technologies, processes, practices and products.

India has 16 per cent of world's population which is supported on about 2.4 per cent of world's land area. The Earth has been used and misused for centuries with little or no regard to its degradation. Increased burden of population and uncontrolled industrialisation has resulted in number of environmental problems and

put tremendous pressure on our depleting resources. Urgent steps are needed to be taken to control further exploitation of Earth, if this is not done, it will no longer remain fit for habitation.

5.3.2 The Right to a Healthy Environment

The Right to a healthy environment as recognised and defined by Consumer International (CI) formally called International Organisation of Consumers Unions (IOCU) means the right to a physical environment that will enhance the quality of life, implies protection against environmental problems over which the individual consumer has no control. It acknowledges the need to protect and improve the environment for present and future generations. Although we have not included right to healthy environment in Consumer Protection Act 1986 but Indian Constitution recognises the "right to life" as a fundamental right. Can a person live unless the environment is conducive to living? It has been further clarified by Hon'ble Supreme Court of India that the "right to health" is integral with "right to life". Can the health of citizens be guaranteed when environment is not fit for healthy living?

5.3.3 Effects of Environment Degradation

Consumer is effected by degradation of environment in more than one way. Air, Water and Noise Pollution causes a lot of adverse effects on human health and well being. Toxic hospital waste and untreated garbage lead to spread of number of diseases like malaria, hepatitis, diarrhoea etc., which are very harmful to human health.
Degradation and depletion of resources at a rate faster than their regeneration capacity and over use of those resources which do not regenerate puts the mere survival of society at stake and positively depletes life support system. Not only the present generation is effected but we also encroach upon the right of survival of our future generations for which we are the custodian of the natural environment. According to the Green India study, prepared by Tata Energy Research Institute [TERI] 'environmental degradation is costing the economy 10 per cent of its National income'\textsuperscript{146}

Forests are very essential for healthy living and help in protection of soil erosion, counter floods and landslides, improve the quality of air and provide greenery and shelter for vast variety of flora and fauna. The forests also help in getting the required rainfall. They also help in reducing the ill effects of noise and air pollution. The importance of having adequate forest cover can not be over emphasized.

State of Pollution and its Effects

Air Pollution

The two main sources of air pollution are vehicular and industrial emissions. According to Justice Kuldip Singh\textsuperscript{147} "93,000 industries were operating in Delhi and 80 per cent of them have not installed pollution control devices. Nearly 700-800 mt of sulphur dioxide was spewed into the air by the Mathura Refinery. 350 stone crushers were functioning within the residential

\textsuperscript{146}Economic Degradation Costing 10\% of GDP, The Times of India, August 7, 1997
\textsuperscript{147}'Judiciary going by statute : Judge', Chandigarh News Line, March 17, 1996

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area of Delhi City." According to a recent World Bank funded study by Centre for Science and Environment (CSE) 7,500 people in Delhi die each year from environmental pollution related diseases\textsuperscript{148}. A study by the AIIMS in collaboration with the Central Pollution Control Board found that "air in Delhi is laden with lead, a pollutant that affects intelligence and behaviour"\textsuperscript{149}. According to the "white paper" issued on Delhi by Union Environment Ministry "Pollution in Metropolis is threatening to get out of hand"\textsuperscript{150}. The situation in other metros and cities can not be better. According to Centre for Science and Environment study in 1995, 52000 people died in 36 Indian cities due to pollution related complications\textsuperscript{151}. Automotive emissions contribute to 64 per cent of total air pollution in Delhi, 52 per cent in Mumbai and 30 per cent in Calcutta.\textsuperscript{152}

Some of the most common health problems caused by these pollutants are given in Chart 5.3.1. In addition to these enumerated health problems, nitrogen oxides and sulphur dioxide contribute to the formation of acid rain, which defaces buildings and causes the ph levels of lakes to rise to such a level that the survival of most fish becomes difficult\textsuperscript{153}. These pollutants are frequently referred to as criteria pollutants.

**Noise Pollution**

Noise can be defined as 'Undesirable and unwanted sound'

\textsuperscript{148} An Editorial 'Wrong direction': 'The Times of India', November 15, 1996.
\textsuperscript{149} City Notes: 'The Times of India', January 9, 1998.
\textsuperscript{150} The Times of India 5th December, 1997.
\textsuperscript{151} Rashmi Sehgal, 'Breath of Life', The Times of India
\textsuperscript{152} Choked Cities, The Times of India, 14th March, 1997.
### Table 5.3.1
Criterial Pollutants and Associated Health Problems.

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Associated Problems</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbon monoxide</td>
<td>Angina, impaired vision, poor coordination, and lack of alertness</td>
</tr>
<tr>
<td>Lead</td>
<td>Neurological System and kidney damage</td>
</tr>
<tr>
<td>Nitroben oxides</td>
<td>Lung and respiratory tract damage</td>
</tr>
<tr>
<td>Ozone</td>
<td>Eye irritation, increased nasal congestion, reduction of lung functions, and reduced resistance to infection.</td>
</tr>
<tr>
<td>Particulates</td>
<td>Reduced resistance to infection and eye, ear, and throat irritation.</td>
</tr>
<tr>
<td>Sulphur dioxide</td>
<td>Lung and respiratory tract damage</td>
</tr>
</tbody>
</table>

**Source:** Thomas W. Dunfee: Modern Business Law and the Regulatory Environment McGraw Hill, Inc., New York (Pg. 1082)
it can originate from various sources like vehicular, industrial, commercial, generators and home appliances and crackers during festivals and loud speakers. The recommended noise exposure limits are given in chart 5.3.2.

According to a survey carried out by Vatavaran, Delhi based NGO all roads had noise level of 80 dB. This included the so-called silence zones and sensitive areas like hospitals and schools.\textsuperscript{154} Delhi Pollution Control Committees' Survey identified vehicles, i.e. three-wheeler, trucks and motor cycles as the main source of noise pollution.\textsuperscript{155}

According to Prof. Gloring an international expert on sound "The potential cost of noise induced hearing loss to industry is greater than for any occupational disease.\textsuperscript{156} In a study on the impact of noise on health undertaken by the All India Institute of Medical Sciences (AIIMS), New Delhi it has been established that noise not only impairs the physical and psychological functioning of human beings but it also causes nausea, vomiting, pain, hypertension and host of other complications including cardiovascular complaints, psychological and emotional changes in the human body"\textsuperscript{157}.

\textsuperscript{154} Sharika Muthu : 'A Blaring problems', The Times of India, February 5, 1996
\textsuperscript{155} Rakesh Bhatnagar: 'SC, seeks Govt's explanation on steps against noise pollution' The Times of India, June 1, 1998.
\textsuperscript{156} A.K. Lal : Noise : 'The not so silent health hazard in our cities', The Times of India, January 10, 1997.
\textsuperscript{157} 'Ibid'
Table 5.3.2.
Recommended Noise Exposure Limits
(World Health Organisation - 1990)

<table>
<thead>
<tr>
<th>Environment</th>
<th>Recommended</th>
<th>Effects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indoor/domestic</td>
<td>35dB</td>
<td>Increased awakening</td>
</tr>
<tr>
<td>Night time</td>
<td></td>
<td>at higher levels</td>
</tr>
<tr>
<td>Indoor/domestic</td>
<td>45dB</td>
<td>Speech communication</td>
</tr>
<tr>
<td>Daytime</td>
<td></td>
<td>deteriorates at higher levels</td>
</tr>
<tr>
<td>Community/Urban</td>
<td>45dB</td>
<td>Difficulties in falling asleep at higher levels</td>
</tr>
<tr>
<td>Community/Urban</td>
<td>55dB</td>
<td>Annoyance increases</td>
</tr>
<tr>
<td>Daytime</td>
<td></td>
<td>at higher levels</td>
</tr>
<tr>
<td>Industrial/Occupational</td>
<td>75dB</td>
<td>Predictable risk of hearing impairment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>at higher levels</td>
</tr>
</tbody>
</table>

Source: Adopted from Times of India; 18 Aug. 1996.
According to Dr. Rajesh Parikh, Neuropsychiatrist of Jas Lok Hospital Bombay "Noise stress studies show that industrial workers are prone to irritability, depression and anxiety, besides psychosomatic problems like ulcers and acidity. According to Sh. S.S Bhutada, the Asian representative in the International Association of occupational Health and president of Indian occupational Health, "among the Asian countries India has the highest level of Noise Pollution touching 80 - 90 dbs with Delhi, Bombay and Calcutta being the noisiest cities."

The Hospital Waste

The hospital waste poses a serious health hazard if it is not properly segregated and incinerated. According to Ms. Malik of "Vatavaran" 'segregation of waste at source is one of the key elements in the effective management of medical waste. Also it reduces the extra burden on the incinerator or auto clave and leads to cost minimisation.' According to the same report, of the more than 25 hospitals in Coimbatore, only 5 have incinerators. This is generally true in the case of most of our cities and towns. Of all the hospitals in Chandigarh including private nursing homes only PGI has got the incinerator. Chandigarh is expected to generate about 8,000 kg bio-medical waste per day. It was also reported in the media that recycled catheters are being used for making

158. Anita George : 'Noise is slowly turning us deaf' Times of India, August 18, 1996.
toys. The proper segregation and proper treatment of the waste is very essential. According to J.S. Chopra\textsuperscript{163}, Director Tata Consultancy Services (TCS) "dumping of unsorted waste leads to the release of chemicals that react with each other to release a substance called lechylate which is hundred times more dangerous than arsenic". The hospital waste is required to be segregated from the municipal solid waste before disposal. According to the recommendations of the team of the experts from United States, which studied the problem indepth, a separate agency for managing and monitoring this wastes is required to be set-up.\textsuperscript{164}

The Supreme Court on a Public Interest Litigation (PIL), in 1995 had asked the Central Government to install incinerators in all hospitals and nursing homes having more than 50 beds.\textsuperscript{165}

The Problem of Toxic and Industrial Waste

It has been reported in the press that a large quantity of hazardous waste are routinely imported into the country illegally, causing severe damage to health and environment. Lead is known to be highly toxic. A study in North-West Delhi conducted by a team from the Central Pollution Control Board found that in the vicinity of lead smelters in Delhi, the level of

\textsuperscript{163}Sucheta Dalal : 'There is more to garbage than throwing it out', The Times of India, September 20, 1996.

\textsuperscript{164}Dr. G.S.Dhillon: 'From Hospital and Back' The Indian Express Dec 13, 1997.

\textsuperscript{165}Damandeep Singh : 'Orders for safe disposal of hospital waste soon', The Indian Express, August 1, 1997.
lead in water was 35 to 175 times higher than the normal levels, soil had 6 to 172 times higher concentration of lead and fodder between 17 to 500 times more than normal\textsuperscript{166}.

According to Srisithi\textsuperscript{167} - a group working to stop imports of toxic waste to India, 151 Indian companies had imported lead and zinc waste during the last one and half year according to customs records except 7, the others did not have licence for it.

\textbf{Garbage Pollution}

Garbage has become a problem, Untreated garbage leads to toxic residual emissions, giving rise to spread of diseases which quite often take the form of epidemics. Plague of Surat and Dengue fever of Delhi are fresh in our memory. According to an estimate, Delhi generates 2400 tonnes of solid waste per day, most of it is dumped in land filled sites in low lying areas or along river banks.\textsuperscript{168}

\textbf{The State of Water Pollution}

Our seas, rivers and coastal areas have become highly polluted due to the heavy discharge of industrial waste\textsuperscript{169}. At least 3,000 crores litres of untreated sewage adds to another 40,000 lacs litres of

\begin{itemize}
  \item \textsuperscript{166} 'Toxic waste import continus unabated', The Times of India, July 20, 1996.
  \item \textsuperscript{167} 'Ibid'.
  \item \textsuperscript{168} Gopal Bhargwa : 'Managing Urban Polution', The Times of India, April 18, 1996.
  \item \textsuperscript{169} 'Ibid'
\end{itemize}
Industrial effluents, dumped daily into our water bodies\textsuperscript{170}. This has affected marine life and made the water even unfit for bathing and certainly unfit for drinking. In India 11.5 per cent of all diseases are water borne. Health hazards associated with contaminated water include Gastroenteritis, Dysentery and Jaundice and cholra to name a few\textsuperscript{171}. According to justice Kuldip Singh "about 175 million hectare of total land of India and all major 14 rivers are polluted\textsuperscript{172}. The major water polluting industries are leather, pulp paper, textile and chemicals\textsuperscript{173}. The survey of 241 class 2 towns in 17 states has revealed that on an average 90 per cent of the water supplied is polluted. Only 1.6 per cent of the waste water gets treated.\textsuperscript{174}

5.3.4 Environmental Laws

Drawing inspiration from the Stockholm Conference of United Nations on Human Environment held in 1972, India enacted the following Acts with a view to preserve natural resources:-

i. The Water (Prevention and Control of Pollution) Act 1974,

ii. The Air (Prevention and Control of Pollution) Act 1981.


\textsuperscript{170} Lalita Panicker: 'Parakeet Politics' The Times of India, August 28, 1997.
\textsuperscript{171} Kiriti S. Parikh: 'India Development Report 1997'. (pg. 99)
\textsuperscript{173} Kiriti S. Parikh: 'India Development Report 1997'. (pg. 99)
\textsuperscript{174} Aditi Kapoor: 'Urban Planning is caught between hipe and despair', The Times of India, December 1, 1997.
Noise has been notified as a pollutant under the Air (Protection and Control of Pollution) Act 1981. Action can be taken under section 4 of the Environment Protection Control Act.

The Wild Life Protection Act 1972

The Wild Life (Protection) Act, 1972 was enacted by the Parliament for the protection of wild animals and birds. The Act provides for the constitution of The Wild Life Advisory Board for each state; Regulation of Hunting of Wild Animals and Birds; laying down of procedures for declaring areas as Sanctuaries and National Parks and regulation of possession, acquisition or transfer of, and trade in wild animals, articles and trophies etc.

The Forest (Conservation) Act, 1980

Forests are very essential for healthy living and help in protection of soil erosion, counter floods and landslides, improve the quality of air and provide greenery and shelter for vast variety of flora and fauna. The forests also help in getting the required rainfall. They also help in reducing the ill effects of noise and air pollution.

The forest are being exploited for many needs like agricultural operations, cooking and for lumbering. According to Safudin Soz, Forest minister, the current forest policy is under consideration of the government to ensure greater involvement of local communities in grading and managing the forest. At present the forest cover in the country is 63.96 million hectares which is 19.46 per cent of the...
The National objective is to have at least one third of the land area under forests. The Forest (Conservation) Act, 1980 has been enacted with a view to check indiscriminate dereervation and diversion of forest land to non-forest purposes. Under this Act, prior approval of the central government is required before any reserve forest is declared as dressers or forest land is diverted to non-forest purposes. Detailed guidelines and procedures have been laid down for submission of proposal under the Act. It also provides for constitution of an advisory committee to advise the government on the cutting of forest land. The Supreme Court has now put a ban on non-forest activity in the forest area; this was very much needed to protect our forests. The Supreme Court has banned the non forest activity in forest areas as per the Act.

Industries (Development and Regulation) Act, 1951, lays down the procedure for issue of industrial license, for selected hazardous industries, the letter of intent will be converted into an industrial licence only after adequate steps have been taken by them to prevent air, water and soil pollution and adequate safety measures have been taken to treat industrial effluents. Clearance of Department of Environment is made compulsory for any new industrial enterprise to be set up after 1980.

175. ‘Written reply by forest minister in the parliament as reported in,’ The Times of India, August 2, 1997.
177. S.C. Directive as reported in 'The Times of India' Dec 18, 1996.
5.3.5 Recommendations

1. The main objective of National Development Strategy should be to enhance quality of life of our citizens. This should be achieved through sustainable economic development. Economic development without human development is meaningless. To achieve this 'Environment' must be brought under the agenda of National Development Council (NDC). This will help in getting better response from states who are largely responsible for implementing environmental laws.

2. The Ministry of Environment should be brought under the charge of Prime Minister. Keeping this Ministry under a Minister of State, does not bring in that effectiveness and respectability as it deserves. Environmental issues are interrelated with other Ministries like Surface Transport, Industries, Chemicals, Science & Technology and Health etc. hence if it is under Prime Minister, there will be better control and co-ordination.

3. There appears to be lack of understanding about the Environmental issues among the people. This was also evident from the Consumer Survey. To improve this, concerted efforts need to be made through educational campaigns which should highlight the importance of preservation of our natural resources, forest and wild life, ill effects of pollution and the need to keep the surroundings neat and clean.

4. Environment education must be introduced in school, colleges and at university levels as a subject. It will help in better
appreciation and understanding of the environmental problems.

5. The green technologies must be popularised and people encouraged to use 'eco friendly' products.

6. To reduce the ill effects of vehicular emission alternate technologies should be developed like four strokes engine for two/three wheelers, and the use of unleaded petrol, solar/electrical powered vehicles. A legal ban on use of vehicles which are more than 15 yrs. old should be enforced and heavy penalty imposed on the violaters.

7. Introduction of efficient mass transit system in metros will help in reducing air pollution to a large extent due to less number of vehicles being on roads.

8. To reduce the adverse effect of industrial air pollution on human beings the industries must be located away from populated areas and certainly not in cities and metros. In any case emission standards should be strictly enforced. There should be heavy penalties for any deviation from these standards. Industries should be encouraged to introduce pollution control systems. With a view to encourage industrial units to undertake pollution control measures, and to foster clean environment, the GOI is already giving several fiscal incentives in the form of tax exemption, depreciation allowance at increased rate, reduced water cess etc. to industrial units which introduce pollution control devices. To promote growth of pollution-control equipment manufacturing industry, some incentives like reduced custom duty (35 per cent) on pollution-
control equipment, (25 per cent) on CNG kits and full exemption from additional duty and 100 per cent depreciation on pollution equipment is being given.

9. The noise pollution laws are violated routinely. There is an urgent need to enforce these without any delay. Noise causes irreparable damage to human beings particularly infants, industrial workers and the traffic police men who get effected by high noise level due to traffic in addition to being exposed to vehicular emissions. It causes nuisance to the elderly, sick and students when they are busy in preparing for the examinations.

10. Hospital waste and other hazardous waste must be properly segregated and incinerated. The incinerator/(s) should be made part of hospital infra structure depending upon the bedded capacity of the hospital. There should be proper control over hospitals/private nursing homes and clinics which generate poisonous waste so that it is not thrown about along with domestic waste. The local/municipal government should exercise the required control to see that it is incinerated and in case of any violations they should be heavy fined.

11. There should be ban on the import of hazardous waste. A large quantities of hazardous waste continue being imported unchecked. This should be checked and heavy penalties awarded for non-adherence.

12. The use of insecticides, chemicals should be regulated
because their over use is dangerous to human health and also degrades the fertility of the soil.

13. The legal system in India is very slow moving. There is a need to have separate environmental courts for speedy disposal of cases. The legal cases must be funded by the government.

14. To discourage the manufacture and consumption of those product which degrade environment and where alternate products/technologies are available, the government must tax these products and encourage by giving subsidies for the production of environmental friendly products.

15. The Environment Protection Act 1986, provides for the collection and dissemination of information regarding environmental pollution. The Act, however, does not provide for regulatory agency/authority for mandatory dissemination of information. The consumer who is resident of a particular area where the industry which is potentially hazardous is located, suffers, he can only raise objection after giving 60 days notice. Under such circumstances individual consumer are silent spectators. It is only through the Public Interest Litigation (PIL) and judicial activism that certain action has been taken in such matters.

16. There is also a need to bring municipal services under the purview of the Consumer Protection Act. This will help pin pointing the responsibility in the case of pollution caused by garbage and sewerage and non segregation and treatment of toxic waste.
17. An intensive programme of afforestation must be undertaken; this will help in saving and preserving our wild life as well as increasing our forest cover.

18. Citizens also have to desist from throwing away garbage, plastic bags and other rubbish littering the places. Heavy penalties is the only answer through proper legal provisions.

19. The state of Water, Air and Noise pollution and fast depleting forest areas are indicative of the fact that our laws through good in their contents are not implemented effectively.

5.4 Consumer and Advertising

5.4.1 Role of Advertising

Advertising plays a very vital role of disseminating information about product/brand or about service to enable the prospective buyer to make an informed choice. The honest advertising is very essential to help consumer to make a better choice. However, from seller's point of view, advertising is not only an instrument of information but its ultimate aim is to persuade the target market and influence the purchase decision. The first part deals with providing information about products, their specifications, features, functions, and prices and at times, the place from where these can be purchased. This aspect of advertising is highly desirable. It is the second part i.e.
the persuasion attempt at influencing the purchase decision through exaggeration, deception and misleading.

5.4.2 Consumer Concerns

Advertising instead of providing fair and unbiased information goes beyond and particularly when the market becomes highly competitive, the role of advertising acquires another dimension; of luring the prospective buyers by pulling them away from the competing brands. Promotion under these market conditions becomes a very important marketing tool along with the Product, Price and Distribution. Advertising agencies have to be very innovative and only a creative idea in the message will pay rich dividend. This requires hiring of the best advertising agencies for which a very high cost has to be paid resulting in pushing up the promotional costs. According to Shri R.D. Saxena¹⁷⁸ by the year 2000 A.D., the annual spending on advertising in this country is expected to touch 95,000 crores. The expenditure on advertising and marketing constitutes 6.7 per cent whereas on Research and Development (R&D) it is a meager 0.6 per cent. In the year 1994-95 T.V adspend² accounted for approximately Rs. 1120 crores, out of a total estimated media expenditure of Rs. 3900 crore. This figure rose to 1522 crore in 1995-96 out of total media adspend of approximate 4727 crore. According to doordarshan projections in the calendar year 1997 the total media adspend is expected to be around 5,500. These costs are ultimately passed on to consumer.¹⁷⁹

The misleading and exaggerated claims, in advertisements take the gullible consumers for a ride. It can thus be said that the consumers not only get duped but, also pay for getting duped in terms of high prices of

¹⁷⁹. Smriti Chopra : Market Crunch forces slowdown in TV adspendgrowth: The Times of India, July 11, 1997

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products which actually they either do not need or which do not fit the description or are shoddy and thus consumer does not get value for his money. Let us now see what are the different laws which provide protection to consumer against the evil of false or misleading advertisements.

Advertising and Children

Advertisements easily effect children. According to a study conducted in Delhi by Namita Unnikrishanan and Shalja Bajpai, 47.68 per cent of upper class children and 62.32 per cent of the middle class and 55.55 per cent of the lower class watch more than 2 hours of TV every day and 63.90 per cent of children under eight admit that they enjoy, the commercials more than the programmes themselves. This is the group which is increasingly being targeted by advertisers and is highly vulnerable. In countries like Sweden and Norway, advertising aimed at children below 12 is not permitted. Even Doordarshan's code [no. 24.] states that any advertisement that endangers the safety of the children or creates in them an interest in unhealthy practices shall not be accepted. The code also provides that no advertisement shall be accepted which leads children to believe that if they do not own or use the product advertised they will be inferior in some way to other children or that they are liable to be condemned or ridiculed for not using it [code No. 23]. In ASCI code also prohibits advertisements which contain any thing whether in illustration or otherwise which might result in their physical, mental or moral harm or which exploits their vulnerability.

T.V. is a very powerful media and has a tremendous reach. Being

181. 'Ibid'
visual media it has more impact and can influence literates as well as illiterates. There is a definite need for stricter laws to control advertising and particularly on electronic media. The case of 'Thums Up' add which prompted six year old Rinku to jump head long from the roof of his house in imitation to the Ad should be a good reminder to all concerned that only code cannot be considered sufficient to control advertising. What happened ? The Ad reappeared with a warning that the Model in the Ad is specially trained and this may not be tried out by others. I am sure the children particularly the very young ones will not read, understand and perceive the warning which comes for a few seconds. Are we trying to meet the legal requirements of the code only ? Don't we have social responsibility?

The other aspect pertains to excessive advertising which entails too much expenditure which obviously is ultimately on consumer's account. The benefits of competition are negated by the increase in costs due to high cost of promotion in the form of advertising. It also encourages to purchase things which we really do not need or purchase in excess of our need. The basic purpose of marketing and its definition of need satisfaction through provision of products and services at affordable price seems to have undergone a change. Now it is more appropriate to define marketing 'as an activity to create need and then try to fulfil it '. Need creation is a new dimension of the role of advertising. Consumerism is catching up in a big way giving rise to wasteful expenditure and if the income levels do not correspondingly rise, this will lead to a social problem of unfulfilled needs leading to conflicts and tendencies to adopt undesirable means for acquisitions. This is a problem which needs to tackled before it gets out of hand.
5.4.3 **The Governing Law**

The following legislative measures are relevant in this regard.

i) **The contract Act, 1872**

ii) **The Sales of Goods Act, 1930**

iii) **The MRTP Act, 1969**

iv) **The Consumer Protection Act, 1986.**

**Provisions under Law of Contract**

Under the law of contract, any contract including the contract of sale of goods entered on fraudulent statement (section 17) or statement misrepresenting facts (section 18) makes the consent invalid and the contract voidable at the option of the person whose consent was so obtained and gives rise to claim damages if the deceit has resulted in deceiving. With the growth of electronic media like TV, the importance of public misrepresentation assumes significance. Television commercials highlighting products and their features amount to an express warranty to the public. Therefore, a manufacturer can not escape liability on the ground that there was no contract between the ultimate buyers and himself.

Advertisement describe goods, its features, specifications etc., and as such make some claims, if these are false then the consumer has an option to repudiate the contract of Sales of Goods on the grounds of non-fulfilment of 'condition' i.e. essential stipulation to the contract and claim damages for any loss/injury suffered under the Sales of Goods Act, 1930. Claims made in advertisements are 'express conditions' and their non-fulfilment is a serious lapse.
Similarly, in the case of 'inherently unsafe' goods a potential customer must be sufficiently and clearly warned by the seller. If the advertisement and the label is silent on it, would tantamount to non-fulfilment of an implied warranty, any harm, loss /injury suffered by the customer will give him right to claim damages under sales of Goods Act.

Provisions under MRTP Act.

Misleading advertisement and false representation with regard to standard, quality grade, composition style and model etc. are also covered under 'Unfair Trade Practices' under MRTP Act, 1969. This provision in the Act was introduced through an amendment in 1984 (section 36 A and 36 E). This was done on the recommendation of sacher committee. Any practice of making false and or misleading statement verbally or in writing or by visible representation shall be Unfair Trade Practice (UTP). It is pertinent to point out that proof of loss or injury is not necessary; Unfair Trade Practice is considered inherently capable of causing loss or injury.

The Case Law Under MRTP

In 're Girnar Scooters Ltd. == UTPE 10/1986' the advertisement that the scooter gives mileage of 40 Km per litre, when actually the performance was not beyond 30 Km was held to be UTP.

Advertising that 'Sidhi Brand' cement was of double strength indicating that less quantity is required, though the correctness of claim could not be proved was held to be UTP ( DG 1& R v Cement Corporation of

182. The Cases have been quoted from V. S. Datey : 'Corporate and Economic Laws and Practice', (Pg. 224-225).
Gujrat Ltd. MRTP order dt. 07-02-92)

Not covering Tourist Spots mentioned in advertisement and not providing facilities and conveniences as promised - was held to be UTP [Shree Raj Travels and Tours (P) Ltd. In re- (1994) 79 Comp. 408 (MRTPC)].

Provision Under CPA

The Consumer Protection Act, 1986 also covers the issue of 'Misrepresentation' under 'Unfair Trade Practice' as defined in [section 2 (r)] of Consumer Protection Act. There is no need to prove loss or injury due to false representation; it is actionable 'per se'. The Consumer Disputers Readdress Agencies (CDRAs) can issue "cease and desist" order in such cases.

In Lakhani National Limited Vs MRTP commission and another [1989 com cases,519]\(^{183}\), the supreme court observed 'The issue cannot be resolved by merely examining whether the representation is correct or incorrect in the literal sense. A representation containing a statement apparently correct in a technical sense may have the effect of misleading the buyer by using tricky language. Similarly, a statement which may be inaccurate in the technically literal sense can convey the truth and sometimes more effectively than a literally correct statement. It is, therefore, necessary to examine whether the representation complained of, contains an element of misleading the buyer. Does a reasonable man, on reading the advertisement, form a belief different from what the truth is? This position will have to be viewed objectively and in an impersonal

\(^{183}\) D.N. Saraf and Sujata Mehta : Consumer Protection Act 1986, Published by Consumer Co-ordination Council, New Delhi (Pg. 37)
Self Regulation

In addition to the legal protection through various statutory measures, the Advertising Standards Council of India (ASCI) has come out with a code for self-regulation in advertising. The basic guidelines on the code are

1. To ensure the truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements.
2. To ensure that advertisements are not offensive to generally accepted standards of public decency.
3. To safeguard against the indiscriminate use of advertising for the promotion of products which are regarded as hazardous to society or to individuals to a degree or of a type which is unacceptable to society at large.
4. To ensure that advertisements observe fairness in competition so that the consumer's need to be informed on choices in the marketplace and the canons of generally accepted competitive behaviour in business are both served.184

The New modification185 in the code of ethics enlarges the definition of advertisement to include 'any communication which in the normal course would be recognised as an advertisement by the general public even if it is carried free of charge by any reason...' Now, advertisement on packaging

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184. Ms. Audrey Rebello: 'Societal response to consumer movement - Business', Published by Consumer Education Research Center Ahemdabad (Pg. 53).
185. Lajwanti D'souza: 'ASCI to modify code of ethics for advertisements', The Times of India, April 29, 1995.
is also included "any written graphic or audiovisual matter on packaging, whether unitary or bulk or contained in it is subject to the modified code".

The New Code

The New Code asserts that while judging whether an advertisement is the one in respect of any product whose advertisement is prohibited the following need to be kept in mind.

■ Whether the unrestricted product is produced and distributed in reasonable quantities having regard to the scale of advertising in question, the media used and the markets targeted.

■ Whether there exist in the advertisement, any direct or indirect clues or cues which could suggest to consumers that it is a direct or indirect advertisement for the product whose advertising is prohibited.

■ Where advertising is necessary the mere use of a band name or company name that may also be applied to a product whose advertising is restricted.

In the last ten years, the ASCI 'has done commendable work in encouraging members to voluntary follow the code'. But unfortunately, not every advertiser abides by the code and therefore, the Consumer Complaints Cell (CCC) of the ASCI takes up complaints directly from consumers and enquires into it. The address of council is

The Advertising standards council of India
206 Bombay Market
Tardeo Road
Bombay - 400034.
5.4.4 Recommendations

1. There is no requirement of pre-publication clearance in Indian code. The British Code however stipulates such pre-publication clearance for advertisements publicising cigarettes and other components, pregnancy testing and counselling services, termination of pregnancy, vasectomy and sterilisation. It also recommends pre-publication clearance for ads. for hair treatment, hair replacement and hair pieces, nutrition, financial services, slimming and alcoholic drinks. The irresponsible advertising beside causing irreparable damage to particularly the vulnerable segment of society also adds to the cost.

2. There is a need to undertake sociological studies to find out the effect specifically on the young minds.

3. Consumer and Consumer association should make concerted efforts to persuade business to avoid excessive advertising which leads to increased costs which are ultimately past on to consumers. It also tempts consumers to purchase things which they really do not need.

5.5 Students as Consumer

5.5.1 Role and Importance of Education

Education plays a very important role in overall development of human personality. The quality of our human resource will largely depend on the quality of education imparted. In India college / University degrees are also entry requirement for jobs and therefore any unjustified delay in award of a degree or declaration of result will deny the chance to get a job or admission in courses for further study.

186. Ms. Audrey Rebello: 'Societal response to consumer movement - Business', Published by Consumer Education Research Center Ahemdabad (Pg. 184).
5.5.2 The Problems Faced by Students

The main problems beside the quality of education imparted pertain to wrong / late declaration of results. Our Universities and Education Boards charge separate examination fee and conduct examinations. Students at times suffer due to inordinate delay in declaration of results, incorrect declaration i.e. printing of incorrect marks on certificate/ marks sheet etc. This in some cases results in losing an academic year or a job opportunity and is accompanied with associated hardship to the students who suffer due to no fault of theirs.

5.5.3 The Legal Remedies

Unfortunately there is no general law which defines the quality a service required to be provided and hence one cannot find an easy legal remedy for poor quality of education. The proposed 'citizen charter' covering the standard of education required to be imparted by universities / colleges / schools will go a long way to mitigate the problem of lack of standard in education and is expected to bring in more responsibility. The Consumer Protection Act mainly deals with 'defect' in goods and deficiency in service and provides a simple, speedy and inexpensive remedy. The question is whether University is performing a 'Service' within the meaning of Consumer Protection Act and are the students 'Consumers'? . Is the University deficient in providing the service when it declares the result late without any reason? Service has been comprehensively, defined under Consumer Protection Act, 1986. It says 'service' of any description which is made available to potential users. A few services are expressly included like financing, banking, insurance, transport, amusement or purveying a news or other information, supply of electrical and other energy, processing, housing construction, board or lodging or both and entertainment. [Section-2(0)]. These services are inclusive and not

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exclusive, thus any other type of service will be covered within the purview of
definition but rendering of any service free of charge or under a contract of
personal service, can not be included. The question arises whether the service
rendered in conducting of examinations and associated matter connected there
with like declaration of result etc., is covered under service as defined u/s 2 (o)
of the Consumer Protection Act. The argument infavour of including education
in service under section 2(O) of Consumer Protection Act is that the university
charges separate examination fee and as such the service it provides is not free
and it is not a personal service as noted by National Commission while deciding
M/S . Cosmopolitan Hospital (P) Ltd. Vs Vasantha P. Nair, [CLT (1) 1993 pg.
101] case which came up in appeal, that 'the personal service stems from a
master and servant relationship' There is no such relationship involved between a
student and University. So, the service provided by university is neither provided
free nor is under a contract of personal service. The same argument holds good
for other examining bodies like Education Boards etc. In another Appeal in the
case of Secretary, Board of Education, Haryana versus Mukesh Chand concerning
inordinate delay in declaration of result after one year and 8 months, the
Haryana State Commission ruled in favour of the respondent Shri Mukesh Chand
and upheld the award of compensation of Rs. 2,000/- given by the Distt. Forum
[CLT, 1994(2), Pg. 117]. In Tilak Raj Vs School Board, Bhiwani [CLT, 1992
Pg. 234, 235] state commission Haryana observed that whenever education is
 imparted for a consideration, it is obvious that there exists a quid pro quo for the
provision of education and a monetary recompense thereof. On principle there does
not seem any logical reason for excluding education from the ambit of the definition
of 'service' under the Act and awarded Rs. 10,000/- to the complainant. [In Naresh
Kumar Vs Kurushatera University and another (first appeal No. 408, 410 of 1992 and
20 of 1993 decided on 12.2.93)]. The State Commission affirmed District Forum's
observations 'that after the university had conducted the examination it is under a patent legal obligation to declare the result of the candidate one way or the other and the delay in doing so would be a patent case of negligence.'

In "[The Karnatak University Registrar versus Poornima Bhandari case 1994(2) CPC 101]" The National Consumer Disputes Redressal Commission held that 'the examination conducted by an University can not be described as a service rendered by it for a consideration' and held that 'In carrying out its statutory functions of conducting examinations, evaluating answer papers and publishing the result of candidate the University was not performing any 'service' for consideration and a candidate who appeared for the examination could not be regarded as a person who had hired or availed off the service from the university for consideration.

The same views were reconfirmed in another case [Chairman, Board of Examination Madras versus M.A.Kader 1996 (2) CLT 50 (NC)] in which the National Commission in a majority judgement held that the students can not seek relief from the Quasi-Judicial bodies for grievances pertaining to examinations conducted by University or a Board and set aside the award given by the Tamil Nadu State Commission, which had held that education imparted by the Government, universities and private institutions as well as the examination conducted by them as services rendered for a consideration and students availing these services are consumers as defined in CPA. Two members, Dr. R. Thamarajakshi and Mr. S.P. Bagla gave a dissenting judgement, they were of the view that issues such as holding of examinations by a university or a board were integral components of the basic issue of whether imparting education, 'per se' is within the purview of the Consumer Protection Act. They felt a positive approach is needed in interpreting
the provisions of the Act to capture to a maximum extent the spirit underlying the enactment to render natural justice to Consumers and also to make those rendering service accountable. Referring to the Supreme Court judgement in the case [Lucknow Development Authority Vs M.K. Gupta] the dissenting judgement pointed out that the Supreme Court had observed that "any attempt, therefore to exclude services offered by statutory or official bodies to the common man would be against the provisions of the Act and the spirit behind it."187

Justice E. Balakrishna Eradi, President of the National Commission, is of the view that Universities per se are not outside the purview of consumer courts, however, examinations conducted by them do not constitute a 'service' hired by a student for a consideration because irrespective of whether the student attend the examination or not university is non to conduct. Further, he differentiates between a Government School and College that imparts education free of charge or at highly subsidised rates and a private college, that takes capitation fee or huge amount as admission fee, and if imparting education becomes purely commercial proposition or there is clear proof of "service" rendered for a consideration being not upto the mark, then the cases will have to bee treated as such and relief given.188

5.5.3 Other Mal Practices

The other mal practices in education adopted by private schools / educational institutions include charging of excessive fee, demanding students to buy school uniforms/books from a particular shop, charging developmental fee and registration fee which is in quite a few cases is non refundable. These were some

of the findings of the survey undertaken by Consumer Forum Chandigarh - a Chandigarh based NGO.\textsuperscript{189} It is also a well known fact that education has turned into an industry without any regulation. Traders and people who have no clue about education have set up teaching workshops, the land has been taken from the government. at concessional rate, the students are charged very high fees whereas the teachers are paid very low salaries and there is no proper check on their qualifications/training etc. The so called educationists minting money without any accountability as the government schools are a few in no. and the educational standard of these government schools is also low. Delivering judgement in the case of 'Julian Day School Vs Gurudas Gupta\textsuperscript{190} Justices Bhagavati Prashad Banerjee observed 'that schools can not be allowed to become profit making machines as this could be detrimental to education and public interest'. The case pertained to extortion of money from guardians. This is another area of serious concern needing definite reforms and regulation in the larger interest of consumer. At present he has no easy remedy in this case. A Public Interest Litigation (PIL) has been filed by Shri Navjit Singh Brar, President National Consumer Welfare Association Chandigarh on the grounds of unjustified frequent hike by private schools in school fees.

5.5.4 \textbf{Recommendations}

1. It is strongly felt that the education must be brought under the definition of 'service' under the Consumer Protection Act. With due respect to National Commission, the researcher is of the view that by not including university examination, valuation and declaration of result within the purview of 'service' when

\textsuperscript{189} 'Consumer Panel seeks check on private schools', Chandigarh Newsline, May 3, 1996.
\textsuperscript{190} 'When Parents are caught in a Dilema', The Hindustan Times, September 13, 1996.
the students have paid separate fee for the specific purpose is perpetuating the inefficiency and negligence. The University / Board employees are getting paid for the job, and if this is not done in time or done negligently, they must be held responsible and made to pay for their callous attitude/ carelessness or inefficiency. The effected party need to be compensated. There is no better legislation than the Consumer Protection Act 1986 which can provide them the much needed remedy which is simple, inexpensive and speedy. To deny today's youth the Protection under the Act, is an invitation to inefficiency and incompetence. I go a step further and recommend that every one who avails off the 'service' of getting educated has the right to see that the quality of service he gets is of the desired standard and further he is not made to suffer because of inefficient /negligent employees who declare wrong results or delay declaring the result.

2. The functioning of private schools / educational institutions require urgent attention. There is a need to regulate their functioning so that the students and the parents are not fleeced. A 'Citizen Charter' covering education in school, colleges and Universities will go a long way to elevate the problems faced by the students and researchers. This will enhance excellence in education which is so essential for all round development of human beings and it will also bring in transparency and account ability. There is a definite need to have stricter control by government in the functioning of private schools/colleges. The qualifications of teachers, their pay scales and the procedure for admissions etc. must be regulated to provide for better education to make the providers more accountable. In a poll conducted by MODE research for Times of India found that 97 per cent respondents favoured stricter guidelines from the government for charging school fees; patients and public should be consulted on such matters and donations to schools should be voluntary and not in exchange for seats. The poll was conducted on telephone in Delhi where 312
respondents took part. The Supreme Court expressing concern at growing commercialisation and unethical practices in many private professional colleges has prescribed a scheme which encompasses admissions, fee structures, NRI quota, students loans and institutional subsidies.