CHAPTER 3
RESEARCH METHODOLOGY AND CONCEPT OF CONSUMER
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THE CONCEPT CONSUMER

PART A

3.1 Introduction to the Statement of Problem

The Consumer Protection Act, 1986, and Amendment 2002 (herein after referred as the CPA) is a strong piece of legislation for consumers. Evidence of research in a very comprehensive way seems lacking. Literature seems to revolve on the structured organizational working mechanism for the Consumer Protection Act implementation and the loopholes that need to be plugged. Research on awareness seems to be multi-fold by most researchers, some focusing on geographic area, some on religion and culture, some on age groups et al. The field that remains largely unexplored is the need to study the awareness on a given class of people that has achieved the highest level of education that is graduation in the Indian context and exploring further based on their professional qualification skills and service that they provide their awareness and willingness to enforce their rights as enshrined in the Consumer Protection Act. The objective being that the graduate educated masses come from various fields i.e. advocates that provide legal service, doctors that provide medical services, teachers that provide educational services, engineers involved with infrastructure and machine building, chartered accountants providing financial tax services, graduate bankers providing banking services and home makers that provide service to families. These educated mass find themselves performing dual roles one of producer of goods and services and the other of a consumer. Having knowledge of their individual professions, their awareness is sought to be gauged and their willingness to use the Consumer Protection Act as a tool to redress their grievance is sought to be monitored. India is the 2nd largest populous country in the world. A large size of this population is illiterate and economically poor and thereby become susceptible to the unscrupulous practices of businessmen. The Consumer Protection Act being an excellent piece of legislation appears ineffective mainly due to its lack of use, due to lack of awareness which is a consequence of illiteracy. This lack of awareness results into the consumer being directionless as to the path he needs to undertake to pursue if in case he is cheated, provided he knows that he has been cheated. Awareness about their rights and the remedies available needs an honest boost for the CPA to be effective. The
dismantling of restrictions in trade amongst country has given multiple choice for consumers. The use of new technology and an increase in the number of brokers and misleading information through advertisements has led to an increase in the number of consumer complaints. Awareness amongst consumers in the above scenario needs all more an impetus. Government initiatives: The government has begun to introduce several measures to make consumers more aware and respond to any unfair practices by businessmen. Measures like multi-media campaign promoting awareness and encouraging consumers’ involvement through Government and Non-Governmental Organizations.

**Consumer Rights:** An aware consumer is knowledgeable and thereby in a position to uphold his rights through the mechanism set up by the government under the act. Awareness comes through education that is to be on a continuous basis and through confidence and trust in the organizational structure set up by effective enforcement of its decisions. The ever aware consumer makes the rouge businessmen adhere to the law of land thereby bringing about efficiency and healthy competition.

**3.2 SCOPE OF THE STUDY**
1. The scope of this research is ultimately to understand the area that needs to be strengthened that will make the Consumer Protection Act an effective tool if awareness and willingness can be made to complement each other.
2. If common masses are found to be unaware, the remedy would be to educate them.
3. It there is awareness but lack of willingness, the reasons for the same needs to be evaluated so as to remedy it. They could be:
   a) The amount involved is negligible.
   b) Lack of time at disposal of the consumer.
   c) Lack of knowledge with reference to the procedure involved.
   d) Time involved in resolving disputes from filling complaint to the final judgment.
   e) The jurisdiction of the forums involved in resolving of the disputes and their enforcement of judgments.
   f) The cost of litigation involved etc.…
4. Reinforce the need to educate the consumers whether literate or illiterate by bringing about awareness and building up their attitude towards being willing to enforce their due rights.
5. The purchasing power of the middle class section (literate graduate masses), which is the largest segment of the population has increased because of a prospering economy. This has necessitated giving high priority for the protection of the consumers and promotion of responsible consumer movement in the country.

3.3 OBJECTIVES OF THE STUDY
Following are the objectives of the present study:
1. To analyse the awareness level of the consumer regarding their rights.
2. To study the relation between existing provisions and their implementation by the consumer.
3. To analyse the hazards to the health and safety of consumer and their means of protection.
4. To find out how far the Consumer Grievance Redressal Agencies are successful to stop unethical practices and injustice on consumer.

3.4 HYPOTHESES
Hypotheses are formulated in order to explain observed facts and draw conclusions regarding the relation between variables. For this purpose, each hypothesis is tested individually to examine whether they are significant or not. According to Best and Kahn, “A research hypothesis is a formal affirmative statement predicting a single outcome, a tentative explanation of the relationship between two or more variable”. A hypothesis is the supposition made as basis for reasoning. These are directed towards some conclusion which will be helpful in examining the phenomenon under consideration in the research.

Null Hypothesis: The null hypothesis, denoted by H0, is usually the hypothesis that observations result purely from chance.

Alternative Hypothesis: The alternative hypothesis, denoted by H1 or Ha, is the hypothesis that observations are influenced by some non-random cause.

3.4.1 Hypotheses for the Present Study
1) H0 : All consumers are not aware of their rights under Consumer Protection Act, 1986.
    H1: All consumers are aware of their rights under Consumer Protection Act, 1986.
2) H0 : Consumers are not vigilant towards unfair trade practices, service deficiency and adulteration.
H1: Consumers are vigilant towards unfair trade practices, service deficiency and adulteration.

3) H0 : There is no significant relation between education and general awareness amongst the consumers.

   H1: There is significant relation between education and general awareness amongst the consumers.

4) H0 : Consumer do not get speedy redressal under Consumer Protection Act.

   H1: Consumer do get speedy redressal under Consumer Protection Act.

3.5 RESEARCH METHODOLOGY FOR THE PRESENT STUDY

3.5.1 RESEARCH METHODOLOGY

According to Clifford Woody “Research comprises defining problems, formulating hypotheses or suggested solutions; collecting, organizing and evaluating data; making deductions and reaching conclusion; and at last carefully testing the conclusions; to determine whether they fit the formulating hypothesis”.

The methodology used in the study is based on the research questions, the problems to be addressed and also based on the theoretical base. The survey methods used were direct personal interviews based on a questionnaire besides study of research articles.

The data collected through this process will provide a direction for designing a strategy to improve the effective implementation of the CPA. In this study, the researcher compared the responses of the consumers about the awareness and willingness to implement the Consumer Protection Act, with reference to age, gender and qualification. The researcher also found the opinion of the consumer activists about their experiences in the application of CPA to make it an effective tool to empower consumers. This study is quantitative, qualitative and descriptive research. The qualitative and quantitative research methods used for data analysis make it a descriptive research. The research probes the consistency in the responses based on Occupation, Gender, Age and Monthly income.

3.5.2 RESEARCH AREA

The research area of the present study is Vasai Taluka in Thane District of Maharashtra State. The place is a suburban area of Mumbai City. The majority of the labour force is employed in various sectors. The parameters for demographic
profiling are Education, Occupation, Gender, Age and Monthly Income of consumers. The various categories the parameters are given the questionnaire.

3.5.3 DATA COLLECTION

The large volume of numerical information gives rise to need for systematic methods which can be used to organize, present, analyse and interpret the information effectively. Croxton and Cowden clearly point out four stages in statistical investigation

i) Collection of data
ii) Presentation of data
iii) Analysis of data
iv) Interpretation of data

Utmost care is required in collecting the data because they form foundation of statistical analysis. If the data are faulty conclusions drawn can never be reliable. The first hand collection of data is one of the most difficult and important tasks faced by a researcher. The first hand data is primary data, and there are various methods of collecting primary data.

**Primary data**

1. This study is analytical in nature. The data collected for analysing the relationship between the type of profession, their awareness & willingness for implementation of consumers rights under CPA through a structured questionnaire; besides their personal details like Age group, Gender and residing address. The respondents were from various categories like semi urban part of Vasai Taluka and rural part. Out of which some were students, senior citizens, male, female, businessman or serviceman. The sample represents the entire universe representing the diverse population including both rural and semi urban population.

2. Personal interviews were conducted of the stakeholders to understand the importance of CPA & its awareness & effectiveness of its implementation.

**Secondary Data**

1. The secondary data will help us to analyse the performance of the CPA from published & unpublished sources includes journals, research articles, published researches, published documents including the reports of the committees under Ministry of Consumer Affairs, books, thesis as well as the e-sources

2. Judicial cases, outcomes and Precedents set.

**PERIOD OF STUDY:** Year 2015-2017
3.6 SAMPLING TECHNIQUE / SIZE
Since field studies are planned, the time and cost are a deciding factor in the
selection of respondents. They must represent the population to produce the right
results. This selection of respondents is called a ‘Sample’ and the process of
selection is called ‘Sampling technique’. A definite plan used for obtaining sample
from a given population is designing a sample.

3.6.1 Sampling Technique for present study
Convenience or volunteer sampling technique was used. The researcher got the
form filled from the individuals who were willing to fill the form. The respondents
covered were residing across Vasai Taluka. The researcher asked them to fill up the
questionnaire.

3.6.2 Sample Size for present study
Population of Vasai Taluka as per 2011 census was near about twelve lakhs. The
sample size for present study is 600.

3.7 TOOLS USED FOR DATA COLLECTION
A pilot survey was conducted with over 100 respondents where the random
convenience sampling method was used to select the respondents. The data was
collected using a questionnaire from Vasai Taluka. The survey probed the
awareness & willingness of different groups through a common set of questions. At
Final stage this questionnaire was used to collect primary data from the target
respondents applying convenience random sampling method of sample size of 600
individuals. Individuals were contacted with one to one interview method. The
Questionnaire consisted of two parts as follows:

Questionnaire
Sir/ Madam,

Please be kind enough to fill in the appended questionnaire pertaining to my
doctoral study entitled “AN ANALYTICAL STUDY ON CONSUMER AWARENESS
IN VASAI TALUKA WITH REFERENCE TO CONSUMER PROTECTION ACT,
1986”. I will be more obliged if you could respond to the below mentioned
questionnaire. Your response can put more light on my research work and I can
come out with realistic findings.

Yours Truly
Mrs. Payal Cholera
Part I
Please Tick Mark wherever applicable
1. Name : __________________________________________
2. Education : □ 10th □ 12th □ Graduation □ Post Graduation
3. Occupation : □ Business □ Service
4. Gender : □ Male □ Female
5. Age : □ 18 Years to 25 Years □ 25 Years to 40 Years
          □ 40 Years to 60 Years □ 60 Years and above
6. Residential Address: _______________________________________________________
7. Monthly Family Income :
   □ upto Rs. 25,000
   □ Rs.25,000 to Rs.50,000
   □ Rs.50,000 to Rs.1,00,000
   □ Rs. 1,00,000 and above

Part II
1. Are you aware of any legislation (Rule) under Indian Law which protects consumer?
   □ Yes □ No
2. If Yes, Name it
   a. __________________________________________
   b. __________________________________________
   c. __________________________________________
3. Are you aware of any consumer rights ?
   □ Yes □ No
4. Do you examine the expiry date of the item you buy ?
   □ Yes □ No
5. Do. You check the MRP (Maximum Retail Price) before buying a product?
   □ Yes □ No
6. When you buy any product what you pay ?
   □ MRP
☐ More than MRP
☐ Less than MRP
☐ Depends upon the product

7. When you buy any product/ thing do you demand bill?
☐ Yes ☐ No
☐ Depends upon product / service

8. From the following products / services are you provided with bill?

<table>
<thead>
<tr>
<th>Products / Services</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grocery / Household requirements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cosmetics</td>
<td></td>
<td></td>
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<tr>
<td>Electronic products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mobile service provider</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gold / Silver</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hardware and Electrical items</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Doctors, Hospitals, Health care checkup clinics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Restaurants / Hotels</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9. Do you ever check the weight of the products mentioned on the items? ☐ Yes ☐ No

10. What factors do you primarily take into account when buying cosmetics or any other chemical related products?

a. Price ☐ Yes ☐ No
b. Quality ☐ Yes ☐ No
  c. Name / Producer of Manufacturer ☐ Yes ☐ No
  d. Best before date ☐ Yes ☐ No
  e. Allergy to the product ☐ Yes ☐ No
  f. Information about the composition ☐ Yes ☐ No
  g. Advertisement ☐ Yes ☐ No
h. Appearance or Package of the product: □ Yes □ No

i. Trust in seller or shopkeeper: □ Yes □ No

j. Environment friendliness: □ Yes □ No

No

11. Have you come across mixing or duplicate items? □ Yes □ No

12. If yes, did you complain to
   □ Shopkeepers
   □ Main Supplier
   □ Any other

13. If you did not complain, why?
   □ Not get satisfactory remedy
   □ Don’t know to complain.
   □ Would not want to argue

14. Are you aware of consumer courts for remedy of the consumer?
   □ Yes □ No

15. If Yes, have you ever filed a case or gone to the consumer court.
   □ Yes □ No

16. If there is a defect in goods / deficiency do you need for forming some consumer club to fight for your rights?
   □ Yes □ No

17. Do you think consumer should be educated at school / college level regarding their rights?
   □ Yes □ No

18. Have you watched some TV programmes about the product analysis and related matters for the guidance of the consumer?
   □ Yes □ No

19. Do you think media can play an important role in increasing consumer awareness?
   □ Yes □ No

20. Have you ever tried to inform yourself about consumer protection topic?
   □ Yes □ No

21. If Yes
   □ Out of curiosity
   □ Problems with product / service.
22. Do you think you are having enough information regarding this subject?
□ Yes □ No

23. Would you be interested in reading specialized magazines for consumers?
□ Yes □ No

□ Yes □ No

Q25. Are you aware of any of the following Consumer Rights provided under Consumer Protection Act, 1986?
□ Right to be Protected □ Right to be Informed
□ Right to be Assured □ Right to be Heard
□ Right to Seek Redressal □ Right to Consumer Education

Q26. Are you aware of the procedure that is to be followed if consumer needs to file a complaint under consumer court?
□ Yes □ No

Q27. Are you aware of time limitation to file a complaint under Consumer Protection Act?
□ Yes □ No

Part II has questions based on general awareness (Q 1 to Q24) and questions about the Consumer Protection Act 1986 (Q24 to Q27). Simple daily life hypothetical situations were presented to the respondents & their responses to such situation which indicated their awareness and willingness or unwillingness to execute their rights as a consumer if and when required. The research has covered four major areas
1) Services
2) Food & Consumables
3) Electronic Goods
4) Advertisement.

The data collected was classified & tabulated. The data was represented in diagrammatic & Graphical form wherever required. The data was analysed using the statistical techniques.

3.8 HYPOTHESIS TESTING
Pearson Chi Square Tests are used to test our assumption with its alternative based on valid values. It helps to decide whether our assumption is true. In this Study the data has been captured on certain parameters.

3.9 THE TOOLS FOR STATISTICAL FINDINGS

SPSS Statistics is a software package used for statistical analysis. Long produced by SPSS Inc., it was acquired by IBM in 2009. The software name stands for Statistical Package for the Social Sciences (SPSS). SPSS is a widely used program for statistical analysis in social sciences.

3.10 UTILITY OF THE RESEARCH

1. To check if there is any correlation between the occupation, age, gender and income of consumer in their awareness & willingness to implement the consumer rights.
2. Understanding from conclusions derived the level of awareness in relations to their rights as a consumer being
3. To find out as to why violations are not pursued by the consumers.
4. To impress upon the stakeholders the need for pursuing consumer violations.
5. An attempt being made to arrest the violations by suggesting simple do’s & don’ts for the consumers before they make their final purchases.
6. Any need for amendments in the act in terms of the organizational structure, methodology to be applied for filing the consumer grievances.
7. Any need for amendments in compensation, fines, penalties, interest that will act as a deterrent for producer/seller/service provider & as an incentive for the consumers.
8. The finding of the study will be helpful to establish the coordination among consumer for their welfare.
9. It will help to generate awareness among consumer about their rights and responsibilities.
10. The consumer will be motivated to assert their rights so as not to compromise on the quality and standard of goods and services and seek redressal of their disputes in consumer fora if required.

3.11 LIMITATIONS OF STUDY

The present study is based on the reliability of primary data. The sample unit selected was from diverse groups.
1) The area covered is a Taluka. The factors like religion and culture impacting awareness has not been considered.
2) The opinions of the respondents & interviewee are their perception at a given point of time. Hence its validity may be limited in terms of time.
3) The questionnaire may not be exhaustive.
4) The geographical area demarcate is only limited to Vasai Taluka, Thane.

PART B

WHO ARE CONSUMERS?

As such all of us are consumer but to understand who all are covered under the definition of C.P.A, 1986 it is necessary to study the decisions given by different governing bodies. Working of the C.P.A, 1986 According to the Preamble the purpose of the Act is: To offer for the improved safeguard of the benefits of consumers and for that tenacity to make endowment for the instituting of consumer councils and additional specialists for the clearance of consumers’ clashes and for substances concerned therewith.

As noted above, for providing cheap and speedier justice to a consumer, the Act provides for setting up of Consumer Protection Councils both at Central and State level and also establishment of “Consumer Disputes Redressal Agencies” for the purpose. Such Agencies are:

(i) Consumer Disputes Redressal Forum to be known as “District Forum”
(ii) Consumer Disputes Redressal Commission to be known as “State Commission” and
(iii) National Consumer Disputes Redressal Commission.

Who is a Consumer under C.P.A

CONSUMER means any person who either
(i) Buys any goods for a consideration, or
(ii) Hires or avails of any services for a consideration he is a consumer.

Some of the landmark decisions were the above definition throws the exact light who can be taken the preview of the word consumer;

1) Bihar School Examination Board v/s Suresh Prasad Sinha

The Supreme Court ruled that the School Examination Board was not a “service provider” and the student who took examination was not a “consumer” within the meaning of the definition.
The court explained that the Board was a statutory authority whose function was to conduct school examination. This statutory function involving different stages was a non-commercial function. Participation by a student in a general examination, the court said was not availing of a service by a student and examination fees paid by the student was not the consideration for availing of any service.

The members of the societies for construction of dwelling units/flats for their members, controlled by the Chandigarh Administration & the Housing Board, are held to be consumers within the meaning of the Section 2(1) (d).

Where the National Seeds Corporation entered into agreements with the selected growers, where under the corporation was to supply foundation seeds to them far a price with an assurance that within few months they would be able to earn profit. Besides the seeds sown under the supervision of the experts deputed by the corporation and the growers were not to sell the seeds in the open market or to any person other than the corporation. The apex Court held that the growers of seeds would fall within the definition of consumers under the Section 2(d) of the C.P. Act 1986.

2) **Regional Provident Fund Commissioner v/s Bhavani**

The apex court held that the appellant, who was a person responsible for working of Pension Scheme under the Employees’ Provident Fund and Family Pension Scheme, 1971 was a service giver and the respondent a consumer within the meaning of section 2(1)(0) and 2(1)(d) respectively of the Consumer Protection Act, 1986.

The respondent in the instant case, a worker in cashew factory owned and managed by the Kerala State Cashew Development Corporation Ltd., was a member of the E.P.F and F.P Scheme, 1971 and was making contribution to the scheme. Though eligible for the pension, the appellant did not order its payment. Upholding the claim of the respondent to the pension under the scheme the Apex court hold that it was not a case of rendering of free services so as to bring the relationships between the appellant and the respondent within the concept of the “master “ and “servant”.

3) **Central Bank of India v/s Tadepalli Padmaja**

The petitioner Bank was hired to act as the Debenture Trustee for the benefit of debenture holders and to protect their interests on receipt of fees. The petitioner was held to be a “service provider” for a consideration and the debenture holders as “consumers” within the meaning of Section 2(1)(d)(ii) of the C.P. Act, 1986.
Buyer of Goods for a consideration

Purchaser of Merchandises for a worth the ‘purchaser of products for a consideration’ is a consumer. The Act, contrasting the Sale of Goods Act, 1930, does not contend on money consideration only. Dealings of transfer for amenities, or swap or interchange will come within the purview of the Act.

4) Motor Sales and Services v/s Renji Sebastian

The complainant booked a Hero Honda for consideration. His turn was ignored. The dealer was ordered to give him the vehicle at the price on the day of his turn for the same and to pay him compensation of Rs. 500 in addition.

Purchaser for re-sale or commercial purpose

Position under the 1986 Act. According to Section 2(d)(i), the term “consumer” did not include a person who obtained such goods for resale or for any “commercial purpose”. Thus, a purchaser of a paper copier machine for business purposes was held to be not a consumer.

A purchaser of goods for reselling them, or a purchaser of taxi for plying the same on hire, or purchaser of a V.C.R. for running a video library/parlour, or the purchaser of machinery for his commercial establishment, was also held to be not a consumer.

Position after the 1993 Amendment Act

An Explanation has been added to Section 2(d) which reads as follows:

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

Thus, if a person purchases a taxi, or a Photostat machine, or a sewing machine or any other goods which are to be used by him exclusively for the purpose of earning his livelihood by means of self-employment, that will not be deemed to be commercial purpose. Such a person will be considered as consumer under the Consumer Protection Act.

The purchaser of a car (or other goods) as a means of self-employment for earning his livelihood is a consumer and is entitled to seek relief under the C.P.A., 1986.

Even before the 1993 amendment of the C.P.A., the National Commission had taken the same view in Secretary, Consumer Guidance & Research Society v. B.P.L. India Ltd.
Car for director’s private use

5) Anant Raj Agencies v. TELCO
The company purchased a car for the private use of a director of the company. The car had serious defects and it stopped working altogether. The complainant claimed the replacement of the car or the refund of price with interest.

It was held that the car had not been purchased for the profit making activity of the company on large scale. There was no nexus between the purchase of the car and profit making activity of the company. The complainant was a consumer and the complaint was admissible under the C.P.A.

Computer for office use

6) Sterling Computer Ltd v. P.R. Kutty
The complainant purchased a computer for his personal use, which was to be used by his office staff for the purpose of business. The complainant was a contractor by profession. The computer was not being used to earn his livelihood. The computer did not work properly from the very beginning.

The Nation Commission held that the computer was purchased for commercial purpose and the complainant was not a consumer. The complaint was, therefore, dismissed.

Hirer of service for a consideration

According to section 2(d)(ii), any person who hires services for a consideration is a consumer.

According to section 2(1)(o):

“SERVICE” means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying a news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

the question before the Supreme Court was whether a private limited company was included in the term “person” for the purposes of Section 2(1)(d) of the Act, 1986.

Section 2(1)(m) of the Act, 1986, enumerates the following four categories to be included in the term “person”-

(i) A firm whether registered or not;
Stating that the term person could not be given restrictive meaning in view of the definition given in S. 2(1)(m) which was found to be an inclusive definition, the Apex Court held that the term included juristic person like a company. The Court further held that non-supply of electricity to a manufacturing unit, by the Transmission Company within time fixed, amounted to deficiency in service and a complaint for the same was maintainable, before the consumer forum.

8) U.T. Chandigarh Administration v/s Amarjeet Singh

The sites were auctioned in public. It was held that purchaser/lessee of the site was not a consumer. Therefore, any grievance by the purchaser/lessee would not give rise to complaint before the Fora under the Act, 1986. Once a person has participated in an auction, with open eyes, he would not be heard to say that he would not pay the balance of the price on the ground that the site suffered from certain disadvantages, the Court ruled.

In case of any grievance by the purchaser/lessee of a site at public auction, it has been held that Fora under the Act, 1986 could not entertain such a grievance, since it did not amount to complaint within the meaning of S. 2(c) of the Act, 1986.

Construction of Building

In case of agreement between the land-owner and the builder for the construction of a building and delivery of agreed construction area, it has been ruled by the Apex Court in

9) Sujit Kumar Banerjee v. M/s. Ramesh Wasan, that the land-owner is a consumer within the meaning of Section 2(1)(d)(g) of the Act, 1986 and the builder is a service provider.

Consideration for service necessary

To enable a consumer to bring an action, he must have availed the services for a consideration. The consideration may be either paid or promised or partly paid and partly promised or under any system of deferred payment.

A person hiring banking services for consideration is a consumer. Thus, if a depositor of a Fixed Deposit Receipt in a Bank applied for a premature encashment
and the same was delayed, the depositor was a consumer entitled to file a complaint as such.

10) Mumbai Grahak Panchayat v. Andhra Pradesh Scooters Ltd., the complainant made an advance deposit of Rs. 500 with the respondent for booking a scooter. The complainant was not given the refund of the deposit when he demanded the same as per his contract with the opposite party. It was held that the failure to refund amounted to rendering the service defectively within the meaning of section 2(g) of the Act. The complainant was a consumer, and entitled to relief asked for by him.

11) Union of India v. Mrs. S. Prakash, it has been held that the subscriber of a telephone is a consumer as the rental charges paid to the Central Government is the consideration for the services rendered by the Tele-Communication Department. The Consumer Forum, therefore, has full jurisdiction to entertain complaint in the matter.

Service without consideration

According to section 2(d)(ii), the consumer must hire any services “for a consideration”. Section 2(1) also stipulates that service does not include the rendering of any service free of charge. When the services are rendered without consideration, the complaint cannot be entertained in a consumer forum. Thus, when the Housing Board of Naval Personnel is established to promote suitable services to its members free of charge, no member can bring an action as a consumer, for any deficiency in the apartments allotted to him?

12) Shri. A. Srinivasa Murthy v. Chairman, Bangalore Development Authority, the question which arose was, as to whether a tax payer could be considered to be a consumer in respect of specific service rendered by an authority. In this case, the complainant, who paid house tax including the health cess, brought an action against the Bangalore Development Authority for having failed to check the menace of stray dogs, and claimed compensation for a dog bite. It was held by the Karnataka SCDRC, Bangalore that there is no quid pro quo between the tax paid and the general duty of the Bangalore Development Authority, the complainant is not a consumer within the meaning of Section 2(1)(d)(ii) of the Act and, therefore, his complaint has to be dismissed.

If a sterilization operation is done free of cost and moreover incentive money is paid to those taking the benefit of the service, a person availing such facility is not a consumer. Hence, no complaint can be made in such a case.
Deficiency in Service

The term “Service”, according to Sec. 29(1)(o) means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, procession, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying a news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

Sale of sites with an assurance of development of infrastructure/amenities/lay out approvals, an offer/sale and obligation undertaken pursuant thereto has been held to be “Service” within the meaning of Section 2(1)(o) of the C.P. Act, 1986.

13) In Haryana Urban Dev. Authority v. Raja Ram’ it was ruled by the Supreme Court that where the re-allottees of plots had accepted the allotment with knowledge of delay in giving possession, a complaint filed by them within few days of re-allotment and even before payment of full price, was not warranted as it did not amount to deficiency in services. Order of the States Commission directing the payment of interest to the re-allottees was set aside by the Apex Court. The Court ruled on the principles laid down in Ghaziabad Dev. Authority v. Balbir Singh.

Failure to refund entire earnest money by the Housing Board where the demand of the Society is cancelled amounts to deficiency in service.

In case of medical negligence or deficiency in service, the factors are to be determined by the courts.

But, delay by the Development Authority in giving possession to the allottee, because of Court order has been not deficiency in service on the part of the D.A.

The definition of “service” in Section 2(10(0) of the C.P. Act, 1986 is held to be not restrictive. However, it excludes services rendered free of charge or under contract of personal services.

14) In Kishori Lal v. Chairman, E.S.I. Corporation, the Apex Court held that the service rendered by the medical practitioners of hospitals/nursing homes run by the respondent Corporation could not be regarded as a service rendered free of charge, since the expenses incurred for the services rendered in these hospitals would be borne form the contribution made to the Insurance Scheme by the employer and the employee. It was, thus, held that medical care provided by the E.S.I. Hospital to members of the scheme or to their families, was “service” within the meaning of Section 2(1) (o) of the C.P. Act, 1986.
“Deficiency”, according to sec. 2(1) (g), means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

A complaint in respect of “unfair trade practice” is held maintainable under the C.P. Act, 1986.

15) In Awaz v. R.B.I., it was held that charging of interest at rates in excess of 30% p.a. from credit card holders by banks for former’s failure to make full payment on due date or paying the minimum amount due or charging of interest with monthly rests were unfair trade practices, which could be dealt with under the C.P. Act, 1986.

“Housing construction” has been included within the meaning of “service” in clause (o) of Section 2(10 of the C.P. Act, 1986 by the amendment of the Act in 1993. it is a usual practice that in advertisements for the purpose of registration of intending purchasers of flats, “tentative price” is shown therein. But, the price so shown is dependent on alterations as a result of certain factors. In such cases demand of additional price considering alterations in scheme and increased land acquisition compensation and other factors is not held deficiency in service on the part of the Housing Development Authority. The Apex Court in

16) T.N. Housing Board v. S.S.A.O.N. Association, said that the issue of price fixation dependent upon various factors should not normally be decided by Consumer Forum. In the instant case, the price quoted in the initial advertisement was tentative. On alteration of Scheme, plinth area and ground area was increased. As a result, demand of additional price was held not arbitrary nor deficiency in service within the meaning of Section 2(1)(g) of the C.A. Pact, 1986.

Any delay caused due to Court order has been held to be not deficiency in service within the meaning of Section 2(1)(g), (o) of the C.P. Act, 1986. So ruled, the Apex Court in

17) Punjab Urban Planning & Development Authority v. Daya Singh, held that delay by the Development Authority in giving possession to the allottee caused because of Court order would not hold the authority liable to pay interest, the service offered by it not being deficient.

In case of joint venture agreement between owner and builder for development of duplex complex, flats constructed by the municipal authorities, the
Supreme Court held that the consumer forum could not make the owner jointly liable along with the builder when the purchasers had filed complaints alleging deficiency in service against the builder.

TELEPHONE

Telephone service has been held to be ‘service; for the purpose of application of the provisions of this Act. If the appellant suffered loss in business due to non-shifting of the external extension of his telephone due to the negligence of the telecommunication department, he was awarded compensation for the same.

Delay in installation of Telephone

18) In Telephones, Jalandhar v. Om Prakash, there was undue delay in the installation of phone even after the turn of the complainant had matured. There was further delay in making the Telephone operation. The opposite party was held liable to pay compensation for the same.

Out of Order Telephone

19) In Mahanagar Telephone Nigam v. Vinod Karkare, it has been held that if a telephone complaint remains unattended for over six months, that amounts to deficiency in service. In such a situation, the telephone department has been held liable to pay compensation of Rs. 6,600 for the same and also to given rebate in the telephone charges. In this case, the claim was allowed in favour of the user of the telephone although he was not the subscriber of the telephone. It was further held that the remedy under the Consumer Protection Act for negligence of the Telephone Authorities was not under section 9 of the Indian Telegraph Act.

Similarly, it has been held that the billing of the appellant for a period when the phone was not used as it was in the shifting process cannot be justified. The delay in disconnecting the phone after application for shifting is deficiency in service.

Negligent Telephone Disconnection

20) In Dist. Engineer Telecom, Sriganganagar v. Dr. Tej Narain Sharma, the dues of the telephone bill had deposited by the complainant after the due date, 22 days after this deposit the telephone was disconnected without even reminding the complainant on phone. The phone remained disconnected for 15 days.

The disconnection was held to be due to the negligence of the O.P. and the same amounted to deficiency in service.
The District Forum awarded Rs. 800/- as economic loss and Rs. 2000/- as compensation for mental distress, agony and loss of reputation. The Rajasthan State Commission upheld the Order of the District Forum.

**Telephone Bill**

The adjudicating authority under the C.P.A., 1986 cannot adopt the formula of average calls of the previous bills for determining whether the disputed bill was excessive or not. The District Forum and the State Commission had acted contrary to the decision of the National Commission in *Niti Saran* case by following the average formula.

**Inflated Bills**

21) In *Bhoj Raj Dalmis v G.M., Calcutta Telephones*, the complainant had been receiving inflated Telephone bills. The O.P./Respondent was directed to cancel the disputed bills and to issue fresh bills on the basis of average of undisputed period of past six months, to refund the rental charges for the period the telephone remained disconnected and pay compensation of Rs. 10000/- for mental agony, harassment and torture to the complainant for 5-6 years, and also cost of Rs. 2000/- for those of the proceedings.

The Telegraph Act, 1885, being a special Act, overriding the CP Act, 1986, it has been ruled that dispute about telephone bills is beyond the jurisdiction of the consumer Fora.

**RAILWAYS**

**Change in Train Timings**

22) In *Union of India v. Ashok Kumar Singh*, the train timings were changed, according to the established Railway practice, w.e.f. 1<sup>st</sup> May. W.e.f. 1-5-90 departure time of 6651 up was changed from 21.15 hours to 20.15 hours. The complainant, an advocate, who had purchased 1<sup>st</sup> class tickets from Saharsa to Hazipur by Hariharnath Express missed the train.

The National Commission held that the complainant, being an educated person, who negligent in watching his interest and enquiring from the enquiry, as new timings were to come into force w.e.f. 1-5-90. The order of the State Commission holding the Railways liable was set aside.

**Departure late by 10 hours**

23) In *Union of India v. Kedar Nath Jena & others*, the complainant, an Advocate, purchased tickets from Cuttack to Bangalore, to take his son for treatment there. The
Gauhati Express train which was to leave Bangalore at 10-30 p.m. on 9-6-90 actually started at 9 a.m. on 10-6-90. The complainant suffered inconvenience and expenses and had to hire a lodging room. The Railways failed to disclose the reasons for the delay. There was held to be deficiency in service. Each of the complainants was awarded compensation of Rs. 500/-

**Passenger’s accidental death**

24) In *Union of India v. Nathmal Hansaria*, Kabita Hansaria, the daughter of the complainants, fell down and died while passing through inter-connecting passage in the Tinsukhia Mail going from Delhi to Guwahati. The passage was not protected by any grills, etc. The State Commission awarded compensation of Rs. 2 lacs for death of Kabita and Rs. 25,000/- for mental agony, etc. to the parents of the deceased on account of deficiency in service by the opposite party, Railways. The decision was upheld by the National Commission.

The National Commission also held that the death was not by Railway Accident. It was accidental death. The jurisdiction of the Consumer Fora was not barred under Sec. 13 and 15 of the Railway Claims Tribunal Act, 1987.

**Non-availability of reserved accommodation**

25) In *Anil Gupta v. General Manager, Northern Railways*, the complainant had booked two IInd Class A.C. berths, but no reservation was available to the complainants for the day for which the berths were booked. That was held to be deficiency in service by the Railways, and a compensation amounting to Rs. 2,000/- was allowed for the discomfort and mental agony caused thereby.

**Railway platform without light**

26) In *G.M., N.L. Rly. v. Ram Parvesh Singh*, the complainant travelled by the opposite party Railway from Muzaffarpur to Turkey. When he tried to alight at Turkey Railway Station in the darkness, the train started without a whistle. He fell down and his legs were chopped off by the wheels of the train.

The Railway Authorities were held liable for deficiency in service.

**Theft of a parked car**

27) In *Airport Authority of India v. Arun Kumar*, the complainant parked his car at the parking to the licensee. The Airport Authority was not liable for the loss of the car.

**Responsibility as carrier of luggage**
Where reserved compartment was not protected from intruders. Theft had occurred. Deficiency in service was proved by evidence by complainant and co-passengers. As such, the Railways were responsible to care and protect the passengers in reserved compartment and liable to pay compensation.

**Water not available in the toilet of reserved compartment**

28) **In Satish Bagdoria v. Airdoot International**, the complainant purchased a ticket from the respondents for a night from Chandigarh to New Delhi. The said flight was cancelled but the complainant was not informed. He was held entitled to the refund of the price of the ticket, i.e. Rs. 720/-, together with compensation of Rs. 5000/- and costs of Rs. 1,000/-.  

29) **In Chander Shekhar v. Chairman, Indian Airlines**, there was cancellation of a flight from Bangalore to Mangalore on 20-11-89 due to unavoidable reasons, i.e. sudden strike by the Technical and Engineering staff of the opposite parties. They were not negligent. There was, therefore, no deficiency in service on their part. The complaint was dismissed.

However, when the complainant’s tickets already confirmed, were cancelled, without showing any material, they would be entitled to “Denied Boarding Compensation”, besides refund of cost and tickets.

**Flight leaving before time**

30) **In Chief Commercial Officer, Indian Airlines v. P. Lalchand** the complainant purchased ticket for a flight in Airlines of the O.Ps. The time of departure was mentioned as 10.45 a.m. The plane theft at 9.20 a.m. and the complainant, who reached the airport at 9.45 a.m. missed the flight.

The O.Ps. Were held guilty of deficiency in service by the District Forum. The appeal against the order of the District Forum was dismissed.

**Delay in Operation of Flight**

31) **In Indian Airlines v. Shri. Rajesh Kumar Upadhyay**, the complainant claimed compensation alleging delay in operation of flight from Lucknow to Delhi, and the alleged lack of medical facilities to his wife, as a consequence of which she died next day. Indian Airlines staff was found to be not negligent and hence the complainant was not awarded any compensation under Sec. 149 d) of the C.P.A., 1986.

**Excess fare charged**

32) **In Bhupinder Singh v. Air India**, the complainant got a confirmed ticket from the O.P. for 3-4-1993 from Delhi to Toronto in Canada. Due to the strike by the
employees of the O.P. i.e. Air India, the flight did not take off on that day. The complainant thereafter was booked for another flight scheduled for 15-4-93, but by that time the fares had increased and the complainant was required to pay excess fare.

It was held that charging excess fare in this case amounted to deficiency in service and the complainant was held entitled to the refund of excess fare charged from him.

**Passenger died in air crash**

Where there was IATA Inter carrier Agreement on passenger liability. Passenger had died in an air crash. Settlement was arrived, but figure of compensation was challenged. On the contention, that undue influence was exercised by Airways being in dominating position. Complaints were ignorant of IATA (IIA) and MIA which was applicable in case of death, wounding, and bodily injury of passenger without any limitation. Compensation was awardable with reference to law of domicile of passenger. Complainant had come to know about IIA and MIA subsequent to their signing agreement and discharge voucher. Held, that existence of these documents could not have been known to a common man. Principle of ignorance of law was not applicable as such documents did not constitute any law. As such, Kenyan Airways was directed to file affidavit regarding the delay as to how compensation offered was arrived at.

**Agent liability – Principal if not available in India then Agent liable**

Where excursion tickets of foreign Airlines were purchased through local agent. But the flight discontinued in midway. No alternative arrangements were made. Complaint was allowed by Forum. Appeal against order was dismissed. On revision, it was held that exemption from liability pleaded under Section 230, Contract Act was not available in view of exception (1) to General Rule, i.e. principal if not available in India, and Agent will be liable. Order of District Forum was upheld.

**ELECTRICITY**

33) In *Punjab State Electricity Board Ltd. v. Zora Singh*, an administrative circular as also the regulations of the Board indisputably required supply of energy to the agriculturists within a period of two months from the date of receipt of the amount asked for a terms of the demand notice. Failure on the part of the appellant Board to supply electricity to the respondent within the specified period, was held deficiency of
service of supply of electricity energy within the meaning of Section 2(o) of the C.P. Act 1986.

It has been held in 34) K.P.T. Corpn. Ltd. v. Ashok Iron Works Pvt. Ltd., that non-supply of electricity to consumer by the transmission company within time agreed upon even if the consumer is a manufacturing unit, amounted to deficiency in service as per the definition of ‘consumer’ as it stood before 2002 Amendment.

The term ‘service’ within the meaning of S. 2(1) (o) of the Act, 1986, the court said, meant service of any description which was made available to potential users and included the provision of facilities in connection with supply of electrical or other energy.

As regards the term ‘deficiency’ under Section 2 (i) (g) of the Act, 1986, the court said that it meant any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which was required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

Wrongful disruption

35) In Haryana S.E.B. v. T.R. Poultry Farm, the complainant was having an electricity connection for his poultry farm. An electric transformer got burnt, the same was not replaced for 25 days, whereby the electric supply to the poultry farm got disrupted. 3080 birds died as a result thereof. The O.P. demanded Rs. 12,560 from the complainant without justification, which was paid under protest. The State Commission ordered the refund of Rs. 12560 and allowed compensation of Rs. 75,000/- to the complainant for loss of birds. The decision of the State Commission was upheld by the National Commission and a cost of Rs. 2,000/- was awarded by the National Commission to the respondent.

Illegal disconnection

36) In H.S.E.B. v. Naresh Kumar, the supply of electricity to the complainant was disconnected illegally and without prior notice, on 12-2-1993 and restored on 6-4-93 under the orders of the State Commission. There was held to be deficiency in service. By the non-running of the Mill, the loss to the complainant was assessed at Rs. 50,000/- and compensation of the like amount was awarded to him.

Defective Meter

37) In Gita Rani Chakroborty v. S.S.B., W.B.S.E.B, the defective electricity meter on the complainant’s premises was not replaced in spite of repeated reminders. It
was held to be negligence and deficiency in service on the part of the O.P. Compensation of Rs. 1,000/- was awarded to the complainant for harassment and mental pain caused to him.

**Voltage Fluctuations**

38) In Travancore Oxygen Ltd. v. Kerala S.E.B., the complainant alleged irregular electric supply and supply of low voltage electricity by the O.P., resulting in closure of plant on various occasions during the past few years.

It was not proved that voltage fluctuations were due to wilful action on the part of the O.P. Board. It was held that there was no deficiency in service of the O.P. – Board.

The complaint was dismissed with the liberty to the petitioner to seek redressal by way of Civil Suit, if so advised.

**Misuse charges**

Where levy of misuse charges was levied on the basis of Meter Reader’s report without inquiry and without notice to consumer. Such order was quashed by forum and upheld in appeal.

Surcharge for later payment of bill – Where payment of bill was made by registered post but draft was received after the due date, hence, surcharging for late payment was demanded. Deficiency in service was alleged. Such draft was not encashed and amount was lying in Bank. Forum had directed Bank to refund amount within fifteen days failing which complainant will be entitled to interest @ 10% per annum. Appeal against order was dismissed and no interference was required in revision.

**INSURANCE**

**Controversy regarding Insurance claim**

39) In Janata Machine Tools v. Oriental Insurance Co. Ltd., the insurance company rejected a claim after investigation, on the ground that the same was false.

It was held that such a controversy between the parties could not be decided by the consumer forum.

Non-payment of amount of damages covered by the Insurance Policy by the Insurer on the ground that the driver of the offending vehicle was possessing forged licence, was held not deficiency in service. Renewal of the forged licence was held to make no difference and would not take away the effect of fake licence. The insurer in such a case, would not be liable to indemnify the owner of the vehicle in regard to losses sustained by him.
40) In United India Insurance Co. Ltd. v. M/s. Kiran Combers & Spinners the insured property was damaged on account of collapse of building due to heavy rains and floods. The Insurance Policy contained an exclusion clause covering only typhoon, storm, cyclone, tempest, hurricane, tornado, flood and inundation. Since the exclusion clause did not include “subsidence”, the appellant company was held liable to compensate. Plea of defective structure i.e. column of building was held not tenable, when the building was certified by the Insurance Company.

41) In M/s. Shobika Alfire v. New India Assurance Co. Ltd., the claimant filed claim for damages for the entire stock stored in his showroom comprised of two basement levels as also ground floor level, insured with the respondent having been destroyed by series of bomb blasts, fire as also loot by armed been removed in anticipation of rioting. The owner having discharged the initial burden regarding destruction/damage of showroom and stock therein, rejection of claim in respect of stock in two levels of basements was held not sustainable.

Beneficiary of Group Insurance is Consumer

42) In Vikas Verkhedkar v. Narmada Electronics (P) Ltd., the complainant was one of the employees of the Narmada Electronics (P) Ltd. The employees of this concern were covered by the Group Insurance Scheme of the O.p./respondent. He met with an accident and lodged a claim but was not paid in full. He filed a complaint under the C.P.A. to recover the amount.

It was held that the complainant was a beneficiary under the policy of insurance of the group scheme, he was covered by the definition of “consumer” in Sec. 2(1)(d)(i) of the C.P.A. and the complaint was to be disposed of accordingly.

Proximate consequences of Fire

43) In National Ins. Co. v./ Pavan P. Sahni, the respondents got their flat in a multi-storey building, insured with the appellant. As a consequence of breaking out of fire on the 11th floor of the building, the entire building was sealed by the Chief Fire Officer. The respondents, therefore, could not get rent of their flat for about 9 months. The respondents claimed compensation from the appellant for the loss due to non-receipt of rent, etc. due to fire in that building.

It was held by the National Commission that loss of rent of the respondent’s flat was the proximate consequence of fire in the building. The order of the State Commission, Delhi awarding compensation to the respondents was upheld by the National Commission.
Vehicle set on fire by miscreants
Where claim for loss of vehicle was settled. Damage to goods being conveyed in vehicle at the time of incident was exonerated under policy. “Property of third party” refers to property not inside (carried) but outside the vehicle. Liability towards loss of goods was rightly repudiated.

Death due to accidental drowning
Where deceased was insured under Endowment Policy and had accidentally got drowned in swimming pool. Claim was not settled. In spite of proving of death due to drowning by post-mortem and inquest report. Held, that company was not justified in insisting of production of final investigation report. As such, complaint was rightly allowed by Forum due to deficiency in service but interest was reduced in appeal.

44) In New India Assurance Co. Ltd. v. m/s. Hira Lal Ramesh Chand, the complainants, the manufacturers of Rugs and Durries, entrusted to M/s. Overseas Container Line Inc. 17 consignments, to be delivered to Atlanta Rugs Inc., the buyers. The consignment were insured with the appellant. On not being able to find out the whereabouts of the consignments, they telephonically lodged an oral claim with the insurer, who in turn, asked their surveyor to inquire and investigate the matter. The surveyors submitted their reports to the Insurer but failed to furnish copies thereof to the complainants.

The insurers were held not liable for deficiency in service. Since the complainants did not produce any document showing lodging of claim, it was on mere oral intimation to the insurer that the investigation by the surveyor was set in motion, failure to furnish a copy of their report to the complainants, the Apex Court held could not be termed as deficiency in service. Since, there was no averment or evidence that the consignments were lost or damaged, nor was there any averment that the holder of the document of title applied for delivery of the consignments and the same was denied or refused on account of non-availability of the consignments either due to pilferage, loss or miss delivery, the Court held that it was inconceivable as to how the complainants could maintain a claim against the insurer.

BANK
Charges for Cheque Book
45) In Catholic Syrian Bank v. Saju Mathew, the complainant had a current account and he applied for a cheque book. The O.P. (bank) issued a cheque book and sent the same by Registered Post and debited the account with Rs. 22.50, being
Rs. 12.50 for 25 cheque leaves and Rs. 10/- as registration charges. There was held to be no deficiency in service on the part of the bank in levying charges for the issue of the cheque book.

**Strike by bank employees**

46) In the **Federal Bank, Bisturpur, Jamshedpur v. Shri. Bijon Mishra**, it has been held that if the functioning of the bank is not there due to the strike by its employees, there is no negligence of the bank and the things are not in control of the bank, the bank cannot be held liable to pay compensation under sec. 14(10 9d) of the C.P.A. 1986.

**Dishonour of Cheque/Demand Draft**

47) In **Sankar v. B.M. Vijaya Bank**, it was held the dishonour of a cheque without justification amounts to deficiency in service. The O.P. who dishonoured the cheque issued by the complainant was held liable to pay compensation for the same.

48) In **Mr. N. Ravendran Nair v. Branch Manager, State Bank of India**, a bank draft for Rs. 90,000/- was dishonoured on the ground that it does not bear the signatures of two officials of the issuing bank. It was held to be a case of deficiency in service.

**Payment despite Stop Payment instructions**

49) In **Harjivandas v. Manager, Dena Bank**, the complainant issued a cheque of Rs. 1,00,000/- in favour of a co-operative society. He instructed the O.P. Bank to stop the payment of the cheque, but the bank honoured the cheque. There was held to be deficiency in service. The complainant was held entitled to compensation of Rs. 1 lac with interest @ 18% p.a. from the Bank.

**Non-Sanction of Loan**

50) In **Manager, UCO Bank v. S.C. Mohanty**, it was held that an applicant of loan is not a consumer, and if the loan applied for is not sanctioned by the bank, the applicant cannot file the complaint as a consumer.

However, non-disbursement of sanctioned loan would amount to deficiency in service and the Bank cannot plead financial crunch in their defence.

51) In **Punjab National Bank v. K.B. Shetty**, the complainant hired a bank locker. Due to the negligence of the bank, the locker was found open and ornaments kept therein were found missing.

It was held that the consumer forum has jurisdiction in such a case and the bank would be liable for negligence.
Hike in the service charges by the opposite party (R.B.I.) through a circular to the member banks is neither an unfair trade practice, nor a restrictive trade practice.

**Forged cheques honoured by Bank**

Where complaint was dismissed by National Commission as numerous documents were required to be proved, including 150 cheques. On appeal it was held by Supreme Court that the principal object sought to be achieved by Fora was to relieve the conventional Courts of their burden which was ever increasing with the mounting arrears and where at the disposal was delayed because of the complicated and detailed procedure which at time is accompanied by technicalities. Held that merely because recording of evidence was required, or some questions of fact and law had arisen which needed to be investigated and determined could not be a ground for shutting the doors of any Forum under the Act to the aggrieved person. The Commission should have formed opinion regarding nature and scope of inquiry when pleadings for both parties were available.

**Dishonour of cheque**

Refund with interest was claimed. But complainant had already got relief from Banking Ombudsman. Complaint was dismissed by lower Forums and no interference was required in revision.

**MEDICAL SERVICES**

**Patient is Consumer**

52) In a significant ruling in *Vasantha P. Nair v. Smt. V.P. Nair*, the National Commission upheld the decision of the Kerala State Commission which said that a patient is a “consumer” and the medical assistance was a “service” and, therefore, in the event of any deficiency in the performance of medical service, the consumer courts can have the jurisdiction. It was further observed that the medical officer’s service was not a personal service so as to constitute an exception to the application of the Consumer Protection Act.

The controversy has been set at rest and the Supreme Court in its landmark decision in **53) Indian Medical Association v V.P. Shantha and others** has held the patients aggrieved by any deficiency in treatment, from both private clinics and Govt. hospitals, are entitled to seek damages under the Consumer Protection Act. The judgement of the Madras High Court was thus set aside by the Supreme Court. It was held that –
• Service rendered to patient by a medical practitioner (except where doctor renders service free of charge to every patient or under a contract of personal service) by way of consideration, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of “service” as defined in Section 2(1)(o) of the C.P. Act.

• The fact that medical practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils would not exclude the service rendered by them from the ambit of the C.P. Act.

• The service rendered by a doctor was under a contract for personal service (rather than a contract of personal service) and was not covered by the exclusionary clause of the definition of service contained in the C.P. Act.

• A service rendered free of charge to everybody would not be service as defined in the Act.

• The hospitals and doctors cannot claim it to be a free service if the expenses have been borne by an insurance company under medical care or by one’s employer under the service condition.

The position as it has emerged in various cases concerning medical negligence is being discussed hereunder.

54) In Martin F. D’Souza v. Mohd. Ishfaq, the respondent when admitted to the Hospital was not only suffering from renal failure but was also suffering from urinary train infection and also blood infection, i.e. Septicaemia, which was blood poisoning caused by bacteria or a toxin. He had also extremely high urea. The situation was aggravated by the non-cooperation of the respondent who seemed to be of an assertive nature.

In the above mentioned extremely serious situation, the appellant Doctor had naturally to take a drastic measure to attempt to save the life of the respondent. To meet such a situation, the Doctor prescribed high dose of antibiotic to save the life of the respondent. It was alleged that the heavy dose of antibiotics administered to the patient resulted in impairment of hearing of the respondent. Holding the Doctor not guilty of medical negligence, the Apex Court observed:

• that the medical practitioner would be liable only where his conduct fell below that of the standard of a reasonably competent practitioner in his field;
• that negligence of doctor must be gross negligence amounting to recklessness;
• that, a medical practitioner is not liable to be held negligent simply because things went wrong from mischance or misadventure or through an error of judgement in choosing one reasonable course of treatment in preference to another.

It is now settled that every person who hires or avails services of a medical practitioner after payment comes within the ambit of “Consumer” under Section 2(1)(d)(o).

Medical negligence of ESIC doctors is determined by the Consumer Forum. A claim for such damages does not fall within the purview of employees Insurance Court.

**Brain damage to a child**

55) In *Harjot Ahluwalia v. Spring Meadows Hospital*, Harjot Ahluwalia, the complainant, a minor, the only child of his parents, who had high fever was brought to the Spring Meadows Hospital, East of Kailash, New Delhi. He was administered certain medicines, and intravenous chloroquine injection by an unqualified nurse without prior test. Immediately thereafter, the child collapsed and suffered cardiac arrest. No oxygen was given as gas cylinder was not available. The child suffered irreparable brain damage, rendering the child into a “vegetable state” for the rest of his life. The National Commission held that there was deficiency in service on the part of the O.P. It awarded compensation of Rs. 12.5 lacs to the minor child, Harjot Ahluwalia and Rs. 5 lacs of his parents.

**Foreign matter left in the body**

56) In *Nihal Kaur v. Director, P.G.I., Chandigarh*, Amrik Singh, aged 52 years, was operated upon at the P.G.I., Chandigarh after Splenic Abcess was diagnosed. The family was informed that the operation was successful. The patient soon developed trouble and died. A ‘Scissors’ utilized by the surgeon were found in the last remains after Amrik Singh was cremated. There was thus negligence of the surgeon, i.e., deficiency in service, in allowing the scissors to remain in the body. Compensation of Rs. 1,20,000 was granted to the complainants, i.e., the dependents of the deceased.
57) In Mrs. Aparna Dutta v. Apollo Hospital, Madras, the plaintiff got herself operated upon in the defendant hospital for removal of her uterus, as a cyst was found to have developed near one of her ovaries. The surgeon, who performed the operation, left abdominal pack in the abdominal. This caused lot of pain, suffering and uneasiness to the plaintiff and the foreign matter was subsequently removed by another surgical operation.

It was held to be a case of res ipsa loquitur. The surgeon concerned and the hospital authorities were held to be liable for negligence and were ordered to pay damages to the tune of Rs. 5,80,000 to the plaintiff.

58) In Samira Kohli v. Prabha Manchanda, the appellant, an unmarried women of 44 years, advised to undergo surgery, was explained, when she signed the consent from that the procedure for surgery to be undergone by the appellant as “diagnostic and operative laparoscopy, Laparotomy may be needed”. While she was still unconscious, consent of her mother for performing “hysterectomy under general anesthesia” was obtained. Thereafter, the respondent performed an abdominal hysterectomy (removal of uterus) and bilateral salpingo-oophorectomy (removal of ovaries and fallopian tubes). Holding the consent given by patient’s relatives as not valid and real, there was no medical emergency and matter was only at the state of diagnosis, the Apex Court held the respondent liable for medical negligence and for treatment beyond consent given by the patient and directed the doctor to pay Rs. 25,000/- as damages.

Doctor’s duty to maintain Secrecy

59) In Dr. Tokugha v. Apollo Hospital Enterprises Ltd., the appellant, a doctor by profession, whose marriage was proposed to be held on December 12, 1995 with one Miss. Akli, was called off, because of disclosure by the Apollo Hospital, Madras to Ms. Akli that the appellant was HIV(+).

The appellant claimed damages from the respondent alleging that his marriage has been called off after the latter disclosed his health to his finance.

It was held that there was no breach of duty of confidentiality by the Hospital as the disclosure was in the interest of others to save their life from future health risk. If the fact was not disclosed, the fiancé of the appellant would have been infected with HIV(+) after her marriage with the appellant.

Moreover, it was held that the right of privacy of the appellant was subject to the right of life of the lady to whom the information was disclosed.
It has been held that the doctors are not immune from medical negligence. However, as long as the doctors have performed their duties and exercised on ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence.

“Stating that it is imperative that the doctors must be able to perform their professional duties with free mind”, the Apex Court said that “it is bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated.”

So said the Court in 60) Kusum Sharma v. Batra Hospital and Medical Research Centre, held that where the procedure adopted by the doctor performing surgery supported by expert opinion, no negligence could be attributed to the doctor.

Later in Malay Kumar Ganguly v. Sukumar Mukherjee, the Apex Court laid down the factors which were to be considered for establishing medical negligence or deficiency in services on the part of the doctors.

Free Services in Govt. hospital

61) In Paramjit Kaur v. State of Punjab, the complainant was operated upon in the Punjab Govt. Hospital free of charge for family planning (Tubectomy). Subsequently, she gave birth to a female child. She filed a complaint against the State of Punjab and the doctor, who performed the operation, to claim compensation of Rs. 2 lacs for negligence in performing the operation. The complaint was dismissed as she was not a consumer, because the services were offered free of charge.

Beneficiary of Central Govt. Health Scheme is not a Consumer

62) In Additional Direcotr, C.G.H.S., Pune v. Dr. R.L. Bhutani, the complainant was a retired Govt. servant, he paid Rs. 9/- p.m. towards the Central Govt. Health Scheme (C.G.H.S.) and he and his family was beneficiary of C.G.H.S. His wife was suffering from some ailment for which surgery was performed in a private hospital. Her condition could not improve and she became paralytic. He claimed reimbursement of the amount paid for treatment in the private hospital.

Reversing the decision of the State Commission, Maharashtra at Bombay, the N.C. held that the complainant was not a consumer as defined in Sec. 2(1)(d) of the C.P.A. because service under C.G.H.S. is rendered free of charge and under a contract of service.

The N.C. referred to the Supreme Court decision
63) in Indian Medical Assn. v. V.P. Shantha, where it had been ruled that services rendered at a Govt. Hospital where no change whatsoever is made from any person availing the services and all patients (rich and poor) are given free service is outside the purview of the expression ‘service’ as defined in Sec. 2(1)(o) of the C.P.A. The payment of a token amount for registration purpose does not alter the position.

In the present case, Rs. 9/- p.m. paid by the complainant was only regarding administrative charges and not for treatment.

TAILOR

The National Commission has held that the service rendered by a tailor is not a contract of personal service, and if he defectively stitches a garment, he is liable for loss arising thereby.

In a “Landmark” judgement against a tailoring concern, the Chandigarh District Consumer Forum granted compensation of Rs. 6,650/- plus interest @12% p.a. until the satisfaction of the claim to a consumer (the author of the book) being the cost of two woollen suit lengths, refund of stitching charges, cost of litigation and damages, as the tailoring concern had spoiled the suits by defective stitching.

Beneficiary of Services is Consumer

Consumer not only means merely one who hires services for consideration, but also includes a person who is beneficiary of such service. The user of a telephone even though he is not himself the subscriber can make a complaint and get a remedy under the Consumer Protection Act if the complaint remains unattended for over six months.

The Supreme Court has held that when parents hire services of a hospital for treatment of their minor son, and because of the negligence of the hospital, the son suffers brain damage, the son can claim compensation, as being beneficiary of services, he is a consumer.

It was also held that the parents are also consumers, having hired the services; and they can also claim compensation for damage to their son caused by medical negligence.

Exceptions: Free Service and Contract of Service

The term service, is defined in Sec. 2(1)(o) does not include “the rendering of any service free of charge or under a contract of personal service.”

A Housing Society offered services to its members on no profit no loss basis. The complainant filed a complaint contending deficiency in the apartment allotted to
him. It was held that since the services were being offered by the respondents free of charge, it was not ‘service’ for the purpose of Section 2(1)(o) of the Act and the complainant was not a consumer within the meaning of Section 2(1)(d), and hence the complaint was dismissed.

The contract with an advocate is a contract of personal service rather than a contract of service within the meaning of the Act and, therefore, the person availing the facility of an advocate is not a consumer. A dispute between an advocate and his client is not a consumer dispute, and therefore, the same does not fall within the jurisdiction of a consumer forum.

**Damage to trespasser not actionable**

64) In *Rajnath Kaul v. O.D. Sharma*, Sunny, aged 15, son of the complainant was a student of 10th class in Kendriya Vidyalaya, Sector 31, and Chandigarh. He left regular class without permission and proceeded towards the playground on the back of the school, where practice of Javelin was going on. A Javeling hit his chest piercing his ribs, rupturing his lungs and cutting his arteries, which resulted in his death.

In an action by his father, it was held that the student himself had committed trespass to the playground. There was no negligence/deficiency on the part of the school authorities. The complaint filed by Sunny’s father was dismissed.

**No action for time barred claims**

If a complaint petition is brought after the expiry of the period under the Limitation Act, the same would be dismissed.

65) In *M. Salhi v. United India Insurance Co. Ltd.*, the complainant got a fishing vessel insured with the respondent Insurance Co. for a sum of Rs. 4, 65,000. The said vessel having capsized and sank on May 26, 1984, the complainant forwarded a claim for the full insured value immediately thereafter. The respondent insurance company repudiated the claim by registered letter dated September 24, 1986. The complainant preferred the present petition before the National Commission more than 4 years after the rejection of this claim by the insurance company, i.e., on November 14, 1990. Under Article 44-B of the Limitation Act, any action for enforcement of a claim for recovery from an insurer has to be instituted within three years of the occurrence causing the loss, or the denial of the claim by the insurer. The petition having been filed after the expiry of the period of Limitation, the same was dismissed on the ground that it was barred by Limitation.
If the wrong is a continuing wrong, for example, the result of a candidate stated as “ResultLater” is not declared for 10 years, the candidate can still make a petition in the consumer forum.

**Limitation period prescribed under the C.P.A.**

Sec. 24A, a new provision has been inserted by the Consumer Protection (Amendment) Act, 1993, w.e.f. 18.6.93. According to this provision, a complaint can be filed within two years from the date the cause of action has arisen.

**Provisions of this Act are additional**

Section 3 of the Act states that “the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”

The remedies under this Act are additional and supplemental remedies.

66) In **Maharshi Dayanand University v. Shakuntala Chaudhry**, the result of the complainant was declared by the respondent University giving wrong particulars in her result. She brought an action under the CPA against the opposite party claiming compensation for the negligence of the latter. It was held that Section 27 of the M.D. University Act, which grants immunity from a legal action for the acts done in good faith by its officials, is no bar against remedies to be availed by the complainant under the Consumer Protection Act. The complainant was held entitled to a compensation of Rs. 500 by the Haryana State Consumer Disputes Redressal Commission.

**Existence of alternative remedy**

67) In **Commercial Officer v. Bihar State Warehousing Corpn.**, it has been held that the existence of alternative remedy under the Arbitration Act, 1940 does not debar a consumer to have redress under the Consumer Protection Act, 1986.

**Jurisdiction of the consumer forums may be completely barred**

According to Section 15 of the Railway Claims Tribunal Act, 1987, no Court or other authority shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to the matters referred to in Section 13(1) that Act. Section 3 of the Consumer Protection Act is of no avail in such matters. Sec. 15 of the Railway Claims Tribunal Act completely ousts the jurisdiction of the Court and any other authority. The complaint filed by the claimant against the railway cannot be entertained, tried, heard and decided by the State Commission under the Act.

**No complaint in sub judice cases**
When the subject-matter of a complaint before the Consumer Commission is sub judice in a civil court, where the complainant has claimed practically the same common reliefs, the complaint would be dismissed.

**POSTAL SERVICES**

It is well settled that the C.P. Act, 1986 has a wide reach. The Fora/Commission created under the Act, has jurisdiction even in cases of service rendered by the statutory authorities and such authorities become liable to compensate for misfeasance in public office.

68) In *Department of Posts v. V.C. Seethamma*, the respondent-complainant had opened a MIS Account in the Post Office. She authorized her son to draw the interest amount by affixing her signatures on withdrawal forms. After the death of her son, she approached the petitioners for withdrawal of interest amount. But, she was informed that the accounts were closed and the maturity amount was withdrawn and paid to her son before his death. It was found that there was premature closure of her account based on withdrawal form SB-7. Further that amount in excess of Rs. 20,000/- was paid in cash instead of cheque of maturity amount. The postal authorities failed to discharge the burden as to the practice and procedure of accepting withdrawal form SB-7 for premature closure of Monthly Income Scheme Account. They also failed to establish any prescribed application from for premature closure of the M.I.S. Accounts. Further, the payment of amount in excess of Rs. 20,000/- in cash instead of by cheque was held liable to deficiency. On both these counts, the Postal Authorities were held liable to compensate the complainant for misfeasance in public office, amounting to deficiency in postal service within the meaning of Section 2(g) of the C.P. Act, 1986.

**Non-delivery of registered letter**

Where letters were irregularly returned by area postman but departmental action was not taken against such postman. Compensation was awarded due to deficiency in service but appeal for enhancement of compensation was dismissed.

**Non-delivery of money order**

Where amount was returned back of the complainant after two months. Compensation was awarded due to deficiency in service.

**Delivery of postal article delayed**

Compensation and costs were awarded by lower Forums. On revision it was held that O.P. was exempted from liability under Section 6 of Post Office Act. But the
amount involved was too small and law point had already been settled. In view of this revision petition was dismissed.

**Money Order delayed**

Deficiency in service was proved. Order awarding compensation was upheld in appeal required no interference in revision.

**Compliance of Law Provisions-Not deficiency in service**

69) In *A.D.T. Palani v. D.G. Post Offices, Dept. of Posts*, the Supreme Court has ruled that where the appellant institution deposited huge amount in a postal scheme which was not open to institution under Rule 17 of the P.O. Savings Bank General rules, 1981, refusal of interest on the money deposited would not amount to deficiency of services on the part of the postal authorities.

Likewise, 70) in *Post Master Dargamitta HPO, Nellore v. Raja Prameelamma*, non-payment of interest at rates printed on the National Savings Certificates which were subsequently lowered by a notification issued by the Government was held not deficiency in service.

The Court, however, made suggestions to the postal authorities to ensure that its officials be conversant with all information relating to various deposits and that the depositors get full information about deposits.

**Role of Consumer Education and Research in Consumer Protection**

The major delinquent of higher education is that it has petrified within a framework of intents, values, methods and measures which were evolved in the 19th century to suit the surroundings and needs of that era. Since then, the world has altered very radically. During the last 100 years, in ultimate countries, the share of agriculture in national product and also in occupation, has diminished very substantially. On the other hand, the importance of the ground sector has increased beyond all prospects and innovative products centred on new machineries are rapidly overhauling the place of unadventurous products based on natural resources. In the speedily shifting scenario, the 19th century archetypal of Indian education is unable to cope with the anxieties of present and the coming decades. This does not callous that all products of higher education are useless. Surprisingly, a considerable number of people accomplished of handling contemporary glitches do emerge from it. However, these people are only a part of the total output of higher education and their expansion is often the mutual result of an enlightened home environment, an instinctive innovativeness and the inspiration of an unusually live and forward looking faculty.
Notwithstanding these exclusions, whose absolute number may be ample, the fact remains that with the fossilization of education, maximum of the contributions going into higher education are squishy poor results. There is a wide-ranging feeling among parents, students, teachers and the employers, that maximum of the pupils in the system of higher education do not stipulate or deserve to be there also that the pre-eminent majority of graduates do hurl of lasting importance in our colleges and universities. At one time, it was anticipated that any graduate would be able to prompt himself, vocally and in writing, with some lucidity and precision, at least in the philological of instruction. These days, one cannot be sure unfluctuating of this. On the other hand, what is being conveyed in most of the advancements has little value in forthcoming life because it is being reassigned mainly as 'information' for the restricted persistence of memory constructed examinations? There is no prominence on enabling the students to reason for themselves or use their ingenuity in raising and answering unforeseen questions or to relate the information provided concluded course curricula to the real life around them. Actually, our scheme of higher education is frustrating rather than inspiring the very attributes on which the country will have to count on for its success in the 21st century.

The reluctance of the politicians or impresarios to provide adequate funds for education is principally a reflection of the general discernment about morbidity of education in general and higher education in specific. The organisation is being kept alive with minutest expenditure largely because, in the non-attendance of an alternative, colleges and universities serve a useful drive either to veneer unemployment or to provide degrees which define entitlement for employment. However, even for defining eligibility, the degrees of most of the institutions of higher education have become dubious. That is why, people are chatting of delinking degrees and jobs and impressive technical institutions as well as deep-rooted private and public sector employers are going in progressively for their own tests to evaluate the capabilities of degree holders. It is substantial that today, for preparing students seeking either for prestigious jobs or fortifying admission in methodological foundations, private tutoring colleges enjoy better credibility than acknowledged public-funded institutions. Perhaps the abysmally low fees placid for colleges and universities are in cooperation the cause as well as the reason for the weakening of these institutions.
If the fees charged were corresponding with real overheads, parents and students would claim much more from the teachers and institutions. This burden would unescapably result in a thorough overhaul of the course-core curriculum as well as the eminence of teaching and curriculum.

Seeing the challenges facing us, it is domineering that we should judge our institutions and universities from the viewpoint of price addition to the proficiencies of students entering their portals. Once this tactic is adopted, everything will endure a radical change. Parents and students remunerating realistic fees would gauge higher education in the perspective of individual needs, individual prices and the value accumulation in terms of the proficiency of individual students to reason, articulate, perform their day-to-day task with competence and adroitness, and also get jobs proportionate with the outlay. Similarly, the funding movements such as the government, private benefactions and entrepreneurs would also twitch evaluating higher education in terms of social needs, social costs and assessment addition in terms of the acquisition of socially anticipated values, civilized and representative patterns of conduct and knowledge and assistances relevant to the economic and socio-cultural improvement of society.

It is possible that the tactic suggested above will result in the cessation of many colleges and universities. No one needs wailing this possibility. Many forms of the Education Ministry, the report of the National Commission on Instructors and recent study conducted by well-known academicians have revealed that many universities and colleges, predominantly in Bihar and Uttar Pradesh, have been non-functional for years. Unquestionably, we need to expend much more per capita and per institution on higher edification. We also want these institutions to convert catalytic epicentres not only for general expansion but also for the benefit of the underprivileged groups, chiefly in the backward areas. It is, however, time we recognize that neither the goals of quick economic development nor of parity can be served by non-functional institutions divulging an education which has neither any inherent value nor any relevance to the encounters of today and tomorrow. Against this circumstantial of the present scenario of educational inappropriateness to the societal desires an attempt has been made through this study to choose an imperative area of public concern i.e., consumer protection by involving rather beseeching the potentials of commerce faculties in the universities to justify the avowed cause of consumerism through research and leeway programmes.
Education: A Tool for Consumer Protection

Consumers are the prevalent economic group in any country. They are the crucial point of all our commercial activities. But the very same patrons are the most disenfranchised group in most countries of the world. The consumer of nowadays have no power to order what he longings. He dreams of a buyers’ market where he can mark his purchase at will. But wherever he goes he sees only a seller’s market. The seller’s brashness towards the consumers also is: “take it or leave it”. Before the machine age, although his speech was limited, he could contact the maker and specify what he wanted. In his prologue to the book “Consumer Economics”, Francis Rollock of Columbia University explained that the we are illiterates when it comes to consumer concerns, the schools, colleges and universities must admit much of the blame. Cultivating young people to be savvy consumers has certainly not enjoyed a high primacy in these educational institutions. Indeed they have been more anxious with teaching people how to be efficacious creators, marketers, business executives, doctors, lawyers, engineers, teachers, accountants, auditors and so on. There are educational organizations at school, college and university stages besides being special academies. They instruct and promote education of all portrayals. There are organisations and sequencers to train employees for all sorts of jobs and livelihoods. And providentially now there are teachers to say roughly about consumerism. A course of study on consumerism is accessible in many of our educational institutions. What will transpire when consumers choose not to buy a specific product? It has not happened in India, because we have been enforced to live in scarcities. But it can happen in the near past and have an influential effect on Selling as it has an imperative place in the continuum of social life and living; so too, fabrication in the national arena. Salesmanship has come to be deliberated as a hi-tech issue with its add-ons of exhibitions, demonstrations, showmanship, festivals, etc. All these are considered to boost transactions but not to serve or advice or educate the consumers. Whoever parleys of a “purchase turnover”? The stress is always on sales turnover and the success in the market is always linked with this term. Consumers are just a mass of zilch, it may appear a hypothetical question; but still it is worth asking. What will occur when consumer decide not to buy a particular product? It has not happened in India, because we have been forced to live in shortages. But it did happen in the neighbouring past and had a telling effect. During the freedom scuffle, Gandhi’s call to "boycott" foreign belongings as a transgression
on the British Rule, shook the monumental empire. Now that the consumer is educated sufficient in the art of buy man ship (i.e., consumerism), salesmanship as prior inflicted on the users, will have to be reorganise and should remould itself into a new configuration with more contemplation for the buyers. So, too, manufacturer.

With the dawn of consumer education, the obtaining - distribution - consumption table resolve be turned tipsy- survey; the merchant bound to sell what the consumer wants, the wholesalers indebted to do what the retailer can push, and the company to produce only what the vendor is willing to stock and distribute to the retailers the definitive aim of consumer education is to set the "goods train" in the inverse order

Consumers at contemporary do not have even the kindergarten level of consumer education. Unless the Indian consumer is polished on a national priority basis similar to Family Planning, his security will be a far cry, however vigorous the depiction of laws may be. To assessment Pt. Nehru’s word- Rules and constitutions, do not by themselves make a nation great. It is the zeal, energy and constant determination of the people that make it a prodigious nation. But regrettably no meaningful exercise was done in this esteem so far. Consumer Education should be as enduring as the commercial activities of creation and sale. It must be engaged up as a mass movement, as a "literacy drive", in civic interest. Consistent lessons on consumerism at applicable levels in appropriate dealings must be acquainted with in the educational stream. We often express of socially related courses of education. But rarely do we come out with execution. Newspapers and periodicals can also be given more space and Radio and TV more spell for consumer subjects and education. Non-formal and grownup education programmes can also comprise of consumer hitches in their lessons. Education bounces knowledge. And knowledge is power. Once consumers are converted commanding, they can easily counterattack any anti—consumer move in addition to being wise and judicious in their money management.

Need for Research on Consumerism

The prominence so far has been on better creation of articles or goods in expectancy of future market mandate and selling the production expediently in the market with a gridlock of trained salesman and excessive advertising media. While the publicising research helps to appreciate investigate, analyse and understand the market conditions only with an axiom boosting up of sales devoid of much concern about imperfections or deficiency of services in the merchandises purchased thereafter by
the buyers. Marketing Exploration concentrates on the swotting of the problems concerning to buying pronouncements in the market and also concerning to the profit making of the trade. Though the connotation of marketing research embraces people as buyers/sellers and shoppers preferences, habits and procuring power, the orientation of marketing is chiefly profits, sales enlargement with least alarm for ethical and scrupulous means to satisfying consumers.

Because of the non-realisation of selling concept in practice the necessity for evolving new means of research in the zone of consumer protection has developed a far more requisite than it was prior. Thus research in consumerism has to be premeditated with a new coordination to embrace on exploration activities carried on in joining with the management of consumer problems. The academic framers and research institutions thus, have to cultivate and reconnoitre the new area of research to determine and analyse the type of deficiency of service and defects in goods agonised by consumers in the post-acquisition period mainly as an aid to the extenuation of consumer woes at the hands of profit mongering business people and their highly proficient salesmen and promotion gimmicks.

SERVICE TO SOCIETY THROUGH COMMERCE EDUCATION AND RESEARCH IN INDIAN UNIVERSITIES

Business in different products and services is mounting day by day. However, the principled commitment on the part of the commercial community is being given a good-bye. The so called 'marketing concept', i.e., user orientation of creation and selling accentuating the be-all and end-all of the business, that should be of purchaser interest has transformed far from reality. The commerce faculties in several academies have so far confined themselves to the mere creation of graduates and even the research accompanied has not made any dip in the execution of socially oriented/beneficial research. Consumers' welfare means people well-being. The well-being of people hinges upon the excellence of life (health-wise) which again directly or indirectly hinges on the preservation of standards of expendable. Reasonability of prices, accessibility of products on ultimatum, absence of practices like black-marketing, adulteration, gloomy labelling, non-observance of obligatory quality, etc., all these express of the canons of business hypothetical to be adhered to by the trading communal. The consumer, who is said to be the king of the market, has been abridged to the plight of a crushed one (king) surrounded by enemies as a result of devious line of defence. The business community/ industry
and its associated sectors which are hypothetical to defend the long-run perceptions
of social interest have become aliens in the very environment in which they are
associates since everyone in humanity is a consumer. Therefore, it should be
apprehended by the Universities and other academic institutions that they have an
imperative role to play in by making use of their speculative inputs with a view to
upkeep the consumers' interest in society. There has been no attentiveness among
faculties as to what ought to be done and how best they can sort themselves to
serve society over their expertise.

The need of the hour is formation of Consumer Protection Cells as Extension
Service Wings of faculties in the numerous universities in the developing countries
like India where consumer education is lacking. These Cells can condense instant
services to the realised consumers in the form of guidance, education and promotion
in respect of the various purchases done by people. Faculty Specialisation - A
resources to many results Under this, the extension service work relating to
consumer supervision, education and protection can be divided between the faculty
on a knowledge basis in the areas of indispensable products, insurance & banking,
transport and passenger services, finance stake market, public distribution system,
telephone electricity, electricals 'electronics, housing' plots and rural sanitation, etc.
Besides these, services can be concentrated to the very alma mater (university).
This part of work can be specialised by one of the members of faculty. This is mostly
a public relations job. A university itself is a public body principally dealing with the
several aspects of educational interests of society. A large number of grievances are
being filed against innumerable educational institutions including universities in the
consumer courts for their hiatuses while rendering services to the student-
consumers. Universities are paying heavy fines on account of court rulings owing to
some delays on their part. However, it is conceivable to alleviate such losses by
educating the number of sectional heads about the likely ramifications if a complaint
is filed against a university in the Forum (consumer court) - thus making the
machinery to accelerate solutions. The Consumer Protection Cell can discuss the
problem affably by acting as a liaison between the complainant and the sectional
heads fretful and can ultimately win the obligation of the Public when the problem is
deciphered. Thus in the course of its functioning, the Cell may receive complaints
against its own university/institution which can, thus, be tackled tactfully. Faculty
Meets the Faculty can meet once in every fortnight or week to sort out the
complaints for a combined action. The number of grievances conveyed may appear small in the commencement but as the faculty tackles up its commitment for the said reason and after its happenings are widely accepted by the people, there would be irresistible response leading to round the clock work in the department. Then it may become essential to create a separate founding within the university by broadening the scope for the involvement by other faculties on the campus. The university can seek resources from other sources like countless funding agencies and philanthropists to strengthen the Cell financially. Inter—disciplinary Approach to Consumerism the already accessible human and non-human resources in the practice of Faculty expertise and tools respectively can be organized put to use without much additional financial assurance on the part of the University for the Reason of consumer protection. For instance, certain complaints in respect of contamination of commodities can be put to test in the labs of the Chemistry department. Electrical and automated items (TVs, radios, bulbs, high voltage and low voltage problems, etc.) can be scrutinised by the departments of Instrumentation and Physics. In the instance of housing, consumers’ complications (low quality cement, construction defects in the flats purchased and other housing materials) can be premeditated by the Engineering Faculties on depictions from the public. Similarly services can be concentrated to the agricultural consumers in reverence of the type of seeds they have to use, replantation, type of nourishments and pesticides to be selected, timely advice concerning crops in rainy season, unauthentic drugs, livestock maintenance, etc. These things can be together viewed after by the departments of Botany and Zoology. Through the interaction with the rural consumers/agriculturists, cattle/sheep reapers, if any objections come to the notice of these aptitudes in respect of purchases (fertilisers, seeds, pesticides, feeding material to the cattle etc.) done, they can be conveyed to the notice of the Consumer Protection Cell in the Commerce Faculty for instigating necessary action against the manufacturers/dealers/retailers of such products. It is correct to mention here large number of complaints are heard in the countryside about the obsolete seeds, ineffective fertilisers/pesticides and low standard feeding materials purchased for the livestock. The ignorant rural patrons are the helpless victims since they are not educated about typical marks like ISI, the PACKAGE Act and price promotions and other malpractices by the traders. Required role can be produced for other departments gradually.
Therefore, a great mission lies ahead for the faculties in the universities in shielding the interests of the unaware and illiterate rural shoppers in our country. The Law section in the university can come to the aid eventually if a complaint is to be registered in the Consumer Court against the accused in case out-of-court discussions fail. The section of Commerce can be the nodal assistance for spearheading the consumer fortification with the participative powers of other faculties. In the case of consumer-cases, a consumer-complainant can argue it by himself deprived of the need of a lawyer; nevertheless, in the case of consumers who belong to in other than headquarters and have to emanate all the way from unsociable places in the region by spending a lot of money and time, the Cell can involve the Law faculty members to embody such consumers. Only in anomalous cases does the existence of consumer—complainants become necessary. Moreover, there is an endowment in the C.P. Act, 1986 that if the consumer—complainant turn out to be a member of a registered consumer organisation, the administration can file the grievance and its secretary or legal adviser can act on the date of adjournment. Therefore, this facility can be fully browbeaten by the Consumer Protection Cell (duly registered) in order to help consumers be located in away from district headquarters of the consumer courts. Additional point that needs to be stressed here is money—value involved in the case. Sometimes, users may not come forward to give a complaint in case only a meagre amount—say Rs. 50 or Rs. 100 is intricate in respect of their purchases even yet they might have writhed a defect in the product or a scarcity in service. It is in such circumstances the Protection Cell should stance by and infuse self-assurance in the consumers and should also perform on their behalf in the court, thus extenuating the expenses and loss of time. It must be reminisced that the complaint made by a buyer may be small in nature, but its result on society may be very large.

COMPLAINT MANAGEMENT - MODUS OPERANDI

Soon after a grievance is conveyed to the Cell, it will be studied judiciously and after satisfying itself with the Prima facie whinge, a notice with an advisory note in the designation of the council/cell will be dispensed to the opposite party with a view tolocale the problem out of court through an inimitable communication and negotiation procedure. The communication traces the socio-economic and legal phases of the problem under reference. The communication also clarifies the opposite party that all and sundry in society is a consumer containing the respondent party, thus soliciting
his support too in the form of compliance with the grievance communicated. The advisory notice which seeks compliance thru from the opposite party within 15/20 days also informs them the need for eluding loss of time and money involved in appearing at the consumer court which is the ultimate resort for the consumers under C.P. Act. However, the Faculty Chamber for Consumer Grievances will reconnoitre all possibilities for the disbursement of the grievance without resorting to lawsuit. For this perseverance, the faculty member in control of such grievances should keep himself in trace with the authorities’ concerned (respondent parties) with all the proceeds of communication available and if necessary they visit/ meet the offices of the apprehensive for the purpose of negotiating out the problem.

CONSUMER EXPLORATION COUNCIL (CEC) AND ITS AMENITY – LINKED-RESEARCH EXERTION

This Council will act as an information-gathering rather advisory, and helps the Consumer Protection Cell in the facility to realise the fruits of ‘service-linked research endeavour’. Under the visualised area of research, the various topics of consumer apprehension relating to black-marketing, contamination, duplicate products, swindling of commodities, lapses in the public circulation system, warranty/guaranty problems, duplicitous in lottery/benefit schemes, false commercials, spurious drugs, time-barred objects, woman-consumer glitches, customer contentment in various public utility services like postal, telegraph, telecommunications, insurance, banking, housing, etc., and investor complications both in public and private sector companies, transport amenities etc., and many more areas in relation to the public at large will be picked for research study. The CEC of the faculty concerned would deliver the findings of research periodically to the assistances concerned with an attentiveness that unless the pauses as exposed through research are modified immediately people will be forced to seek the help under the Consumer Protection Act, 1986, to get their grievances remedied by the District/State or National Forums and in such cases the service execution agencies will have to pay reimbursement to the effected parties. Another unique piece of the research activity of the CEC is while the survey is being administered among the consumers, they partake in discussions with the investigator about how they writhed or the suffering from the deficiency of service and deliberate negligence of the traders or an agency. In the procedure, the scholar investigators will be visible to various other complications of the consumer-public in addition to the problem under investigation. Thus a prospect will arise for
the research scholars to emanate into contact with new hitches besides finding resolutions to the earlier ones and to elucidate to the ignorant consumers the cost-free legal route available through consumer forums and also the Faculty's consultancy amenities through the Consumer Protection Cell (CPC) for the redressal of their grievances. In other words, the research movement will be of applied nature by encompassing the scholars in gathering teething troubles and finding solutions so that the public promptly feel the effect of research on consumer interrelated issues. It is also projected the findings of the research could develop an affidavit or constitute the suggestion necessary for seeking all-purpose directions from the State/National Forums in circumstance of similar/common grievances generally suffered by the public. Concluded this service-linked research endeavour, the Faculty's proficiency can be conveyed to the door-steps of the consumer—public who are largely illiterate and ignorant in our country. The eventual aim of the whole exertion is expected to empower the unorganised and ignorant consumers in society to develop self-helping and self-reliant and assured individuals by inculcating the eminence of voluntary initiative in the community in the long run. People's voluntary ingenuity is the life blood of democracy. Government only appendages the voluntary efforts. Hence the need for participation of the highest academic bodies like universities to play an imperative role regarding the convenience, purity and pricing of essential merchandises and services. Since the massive majority of consumers in India have to keep an equilibrium amid income and expenditure, the requisite to protect the interests of the patrons has now assumed greater implication.

Consumer Education Is Beneath Grave Consideration

The need for coaching education and conception of awareness amongst the consumers is very much sensed by the numerous consumer organisations and consumer campaigners as revealed from the report of the Working Group Set up by Ministry of Civil Supplies, consumer affairs and Public Distribution Cell, New Delhi). The Working Group detects three important points for which consumer training education and awareness is an imperative one. The Working Group distinguished with apprehension the adjournment in setting up of National Institute of Consumer Affairs. However it may be tough at this point of time to host consumer education as a distinct subject in schools, the need to build awareness in the students at a very early stage will be enthusiastically accepted. The comprehensive area of consumer education should be Consumer Comportment, Consumer Choice, Promotion,
Coinage Consumer Protection, Health and Environment. The rudiments of consumer education will have to be announced as part of a prevailing subject at altered class levels. This ought to be done at all intensities of education starting from the primary level, by folks in charge of setting/preparing text books. The Ministry of Human Resources Development (Department of Education) should take the central motive in this by issuing appropriate instructions in this respect to the NCERT (for schools following separate State syllabi) and the UGC (for colleges). The NCERT could act as the exemplary agency for this. It should however be accentuated that the State Education sections with their vast coverage would be the most imperative agency responsible for accomplishing this. What should be presented in the syllabus should not be mere simplifications but also specific matters like diminutive weighment, in excess of pricing, quality control, how to get remedies, etc. The agents of the Ministry of Civil Supplies and the NCERT should get organised and work out the minutiae. Once this is prepared for the NCERT syllabus schools, the State Government can also be instructed to follow suit. The National Services Scheme ought to also be stimulated to proliferate the message of consumer movement. The Working Group noted with anxiety that the Government of India seems to have abandoned the idea of Government of India itself promoting the setting up of a National Institute of Consumer Affairs (NICA). The Group feels that the NICA is the need of the hour and that the Government of India themselves should take the lead in setting this up. It will not be tough for the Government of India to set reserved the seed money, which can very acceptable come from the plan funds. All State Governments and the business should contribute liberally in setting up the institute. In the same manner as the Administrative Staff College, the Indian Institute of Management and Indian Institute of Technology are drumming non-Governmental funds, the anticipated NICA should also be able to run shorn of any large depletion from the Government of India. The Working Group discussed with FICCI etc., the prospects of the trade and manufacturing sharing a percentage of these expenses involved in setting up the National Institute. They have established in principle to partake financially and otherwise in setting up the Institute. The agency intricate in setting up the institute ought to contact FICC1 etc., at the suitable time. The NICA should be a separate establishment with a core educational faculty. The scope of the Foundation should be Training, Research, Development and Extension.
It could have testing workshops for academic purposes. Being a research and training oriented institution, it will obviously have an effective data collecting machinery.

As concerns location, the subsequent general principles were accepted:

- It must not be set up in or adjoining a State capital or a metropolitan city.
- It should nevertheless, be easily accessible.
- If there are other related institutions located nearby, that will be an added benefit.
- The institute shall be set up merely in a State where the State Government has a good track best ever in promoting the consumer movement.
- The magnitude to which the State Government can contribute financially and otherwise in setting up the Institute will also be pertinent

It shall be the obligation of the NICA to deliver focused training aimed at delivering the quasi-judicial mechanism of the Consumer Disputes Redressal Fora. The training structure of the institute should therefore be strong. The training provided should alert the trainees appropriately. Numerous training institutes in the country are running large amount of training programmes. These programmes can comprise one module on consumer protection. While the crucial responsibility for fostering the consumer movement is with the Government, the commerce must also be made a partner. Government could be assisted in this regard by consumer organisations, educational institutions and even some of the development sections like the Rural Development Department. The Anganwadi staffs and school and college students could offer a ready working force for the dissemination of consumer awareness.

The large organization of school teachers could be connected with the consumer movement for which suitable training and orientation should be prearranged. The Food & Civil Supplies Department of each State ought to play an important role in the consumer movement.

This department which was initially conceived (and still continues to be, in most States) as a supervisory one has to shift their stance to that of an extension division. The conversion from mere rationing to PDS and then on to the grander role of consumer protection is necessary and very well conceivable. Their large setup is a great asset. The officers of the Department will have to be set appropriate training to change their orientation.
Recommendation of the working group on training education and creation of awareness amongst the consumers

I. Sanctions on training

It is suggested that the Government in harmonisation with voluntary consumer organisations would draw up a national level plan for various stages of training which have to take care of namely:

- Working out of trainers.
- Training of women staffs.
- Managing and professional training of consumer militants.
- Introduction of consumer training plan in the syllabi of managing institutes.
- Training of non-judicial associate.
- Training of public sector personnel.
- Training of merchants on matters relating to consumer protection.

The group extends its total support to the Government's initiative of setting up a National Institute of Consumer Affairs.

II. Recommendations on Education

On the assumption that there is no substitute to an educated consumer, the entire group unanimously recommended adoption of consumer protection into the syllabi of schools and colleges.

- The cluster recommends that Consumer Education to be incorporated in the National Educational Policy.
- The group acclaims that at the time of constitution of the syllabi by NCERT a committee should be constituted and all participants in the concord and outside who have the capability in the arena of education be invited by NCERT to send in their proposals and recommendations. A meeting alluring these interested parties be structured by NCERT and the syllabi accordingly toiled out.
- NCERT may use prevailing material on consumer protection which is being operated by NCERT in innumerable colleges and by CBSE in nearly all schools and tailor them in such a manner that it meets the requirements or pre-primary, and secondary level learners.
• The University Grants Commission should be move toward to give an instruction to all colleges to combine consumer education in the college curriculums.

CONCLUSION
It is apparent from the foregone exploration that there has been a sombre concern about the mounting irrelevance of present day education, accessible through various educational institutions, to the prerequisites of society. Hence the need has been sensed to develop linkages among the faculties and the civilization where the apprehensive universities can play their probable in the vindication of economic and social sufferings of the people. In order to prevail upon the business communal in the realisation of promotion concept by either lobbying/1iasoning with them or by educating the patrons of their rights as consumers so that they themselves take over haul of consumer guidance, attentiveness and protection cells have to be set up as addition service wings of the commerce faculties in numerous universities. It could also be perceived that many working groups hired by the Government have acclaimed for the inclusion of consumerism as a matter to be taught from school to collegiate level.