CHAPTER – 1

INTRODUCTION

1 Overview
Justice delayed is justice denied is an age old saying in judicial circles. If one does some introspection it is the lack of effective implementation of the law that results in denial of justice. In general sense, effective implementation of law provides quick redressal at a reasonable cost, and it is the Indian consumer who is the greatest beneficiary.

Health insurance or mediclaim in India is an integral part of insurance services. It is an angle of consumerism that affects the consumer directly as it is personal and comes to the fore at a critical time. It is the second largest claimed product apart from consumer items. Moreover, it covers that part of one’s existence which is very significant, one’s health. With more and more people becoming aware of mediclaim, seconded by the increasing medical expenses for illness, the rate of consumers dissatisfied is also on the rise. This leads to rise in problems pertaining to claims and complaints with regards to aggrieved insured as a consumer. Judicial proceedings are generally related to court battles but it is felt that consumers are seldom benefitted and rather entangled in the proceedings.

Having gone through the studies done by various researchers, it is very evident that whatever research that was done in the past pertains to the consumer in general and the Consumer Protection Act of India as a whole. None of them has covered the topic of medical consumers, their grievance and the redressal against the same. Medical insurance is one that is regularly claimed and rejected as well. Considering all the above factors and it being an integral part of consumer service needs to be studied in depth and so the researcher has treaded on this new path and focused on the effective implementation of Consumer Protection Act with special reference to mediclaim customers/consumers.
The numerous previous studies discussed in detail in literature review on the state of Consumer Protection Act implementation reveal that the very purpose of the Act (speedy and cheap redressal) is not achieved. Much is to be done to improve the state of implementation to make it effective.

‘Effective Implementation of Consumer Protection Act – A study with reference to Mediclaim’ the topic under taken by the researcher to gauge the effective implementation of medical insurance claims as covered by the Consumer Protection Act. The key issue in law is its implementation, and a weak execution means an ineffective law. Authors like Renu Arora have addressed the issue but at a general level of consumer redressal organizations. The Researcher has covered the topic from the side of the aggrieved as well as the judiciary.

Due to the shortage of District Forums, delays have become the rule rather than exception, says Mandanna, a consumer activist in Bangalore. The 90 days period stipulated for Consumer Courts has long been forgotten, with cases pending for up to three years. People are now filing suits at the drop of a hat, instead of promoting awareness we seem to be marketing consumerism commented ‘Phiroze Amroliwalla’, member of the Maharashtra state consumer protection council. (Prasannan and Abraham, 94) ¹

To summarize, the underlying point of study is, whether the Consumer Protection Act is executed effectively to benefit the consumers at large. Its implementation should be such that the redressal of mediclaim complaints is simple in procedure, speedy and cheap, but at the same time not overlooking equitable justice.

Surat District Forum is taken as a case study.

1.1 Theoretical Background
This chapter of the thesis deals with introducing insurance as a concept, and its background. Health insurance being an integral part of general insurance, an outline of the different rudiments of insurance like its elements, the contract, the legalities involved, have been covered. Further elucidation has been done in depth on the insured as consumers, their expectations and in particular health insurance. The evolution, history, the current scenario and its importance as a socio-economic aspect,
1.2. **Insurance**

1.2.1 **Insurance – Meaning**

Insurance is a policy from a large financial institution that offers a person, company or other entity reimbursement of or financial protection against possible future losses or damages.

Insurance is a hedging instrument used as a precautionary measure against future contingent losses. This instrument is used for managing the possible risk of the future. Insurance is bought in order to hedge the possible risk of the future which may or may not take place. This is a mode of financially insuring that if such an incident happens then the loss does not affect the present well being of the person or the property insured. Thus through insurance a person buys security and protection.

Though loss of life or injuries incurred cannot be measured in financial terms; insurance attempts to quantify such losses financially. Insurance can be defined as the process of reimbursing or protecting a person from contingent risk of losses through financial means, in return for relatively small regular payments to the insuring body or insurance company.

1.2.2 **Concept of Insurance**

There is a close interaction between insurance and economic growth. As economy grows the living standards of the people increase, as a consequence, demand for insurance business increases. As the assets of people or business enterprise increase in the growth, process, the widening of the economy demands for new types of insurance products to emerge.

The insurance business makes a significant input to the growth of the economy of a country. It does a dual function of influencing the economy and inspiring growth. The insurance companies collect meager amounts from the consumers of insurance products by way of premium (which denotes the habit of saving in the public) and invest the funds as per the provisions of the Insurance Act 1938 (amended update).
which facilitates the Government to utilize the investments for the economic
development of the country. These are low cost and long range resources. Thus, these
business organisations fulfill the Government’s need for low cost and long term
finance for utilization in the infrastructural development of the nation.

The main or central objective of insurance business is to shield the insured from the
loss. Risk is the latent source of loss or the subject matter of insurance itself. Risk and
insecurity are the basic concepts of the insurance business. We may say that insurance
is a mechanism for risk relocation by which an organization exchanges the
uncertainties and insecurity for certainty and security, uncertain loss for certain loss.
Thus insurance is a risk trimming device. Insurance has not been defined by any law
of insurances but the Insurance Act, 1938 has defined various relevant terms, such as
fire insurance, business insurance, general insurance, marine insurance, miscellaneous
insurance, etc. Thus, plainly speaking insurance business can be understood as a risk
transferring and sharing mechanism. John R. Ingrisana and Corrine M. Ingrisano, in
the insurance dictionary, define and explain insurance as protection, through specified
money compensation or reimbursement for loss provided by written contract against
the happening of specified chance or unexpected events. The transfer of risk results
when one party for consideration, agrees to reimburse another for loss caused by
designated contingencies. The first party is called insurer, the second the insured, the
contract-the insurance policy, the consideration-the premium, the property in question
risk and the contingency in question the-hazard or peril. The term assurance, common
in England, is ordinarily considered identical or synonymous with insurance, thus the
definition is exhaustive, defining insurance as a contract affected by the insurer, of
insured for consideration of premium and the risk.

1.2.3 The Insurance Contract
As discussed earlier, insurance is the mechanism of transfer and distribution of risk
between the two parties namely the insured and the insurer, in which one agrees to
take the risks of another person’s life, property or liability in consideration of certain
comparatively small periodic payments i.e. it, is an arrangement and agreement
between two parties. The major factor in this arrangement is it also includes the
payment of compensation on happening of event to save the person who suffered the
loss due to the risk for which he is insured. Insurance is an agreement under which
individuals, businesses or organizations, entities, in exchange for payment of a sum of money, are guaranteed compensation for losses resulting from certain perils under specified circumstances. The insurance contract is aleatory in so far as it depends upon a contingency, it is executory as the contract is deemed as executed on payment of the premium and it is conditional as it depends upon compliance of certain conditions such as payment of premiums, avoidance of misrepresentations, being conditional on communication of material facts. The essential elements of insurance are:

- Principle of indemnity and subrogation
- Concept of insurable interest
- Doctrine of good faith
- Proximate cause

1.2.4 Insurance and Law

The insurance sector has turned a full orbit, from initially being unregulated to being completely regulated, and then being partly deregulated at present. It is administered by many acts, with the foremost one being the insurance Act, 1938.

The Insurance Act, 1938

With a view to provide strict state control over insurance business, the first legislation introduced for governing all types of insurance was the Insurance Act, 1938.

Life Insurance Corporation Act, 1956

Even though the first legislation was enacted in 1938, it was only after a span of almost two decades that is on 19 Jan, 1956 that life insurance in India was completely nationalized through a Government ordinance. The Life Insurance Company Act 1956, effective from 01-09-1956 was enacted in the same year to, inter-alia, form ‘The Life Insurance Corporation’ after nationalizing the 245 operating companies, both Indian as well as foreign, into one entity. Nationalization was accomplished by the Government’s acquisition of the management of these companies. The Life Insurance Corporation of India was created on 1st September, 1956, as a result and, has matured to becoming the largest insurance company in India.
General Insurance Business (Nationalization) Act, 1972

After nationalization of life insurance companies, the second in line was the general insurance business. To execute this arrangement, The General Insurance Business (Nationalization) Act, 1972, was enacted to nationalize the 100 odd general insurance companies and subsequently merging them to create four new entities. All the companies were amalgamated into National Insurance, New India Assurance, Oriental Insurance, and United India Insurance, headquartered in each of the four metropolitan cities.

Insurance Regulatory and Development Authority (IRDA) Act, 1999

After nationalization, up to 1999, there were no private insurance companies operating in Indian insurance sector. Then the Insurance Regulatory and Development Authority Act introduced in 1999 by the Government of India, de-regulating the insurance sector and giving permission to private companies to foray into the insurance. Moreover, foreign investment was also allowed but capped at holding just 26% in the Indian insurance companies. In the years thereafter, many private players penetrated the insurance sector of Indian companies with equal strength competing in the India insurance market. Currently only 0.2% of the Indian populace that is 2 million people are covered under mediclaim, as compared to developed countries like USA where about 75% of the total population is covered under some medical insurance scheme and with more and more private players entering this sector the scenario will change more rapidly.

1.2.5 Insurance Consumer and Consumer Expectations

The insurance sector is not only a business sector, but is also referred to as a service sector. Success of an insurance company entirely depends upon the service it delivers. The insurer deals with the insurer and other parties who have the benefits or interest in the contract of insurance. In a strict sense, the insured or the policy holder himself becomes the consumer of the policy as he pays money by way premium for the service provided by the insurer. The entire system of insurance business runs on the premium money collected from the insured against the coverage. The working of the insurance company is based on the purchases of the insurance policies. A legal relationship is also established between the insured and insurer. As soon as the insurer
accepts the proposal of the insured, he is under an obligation to provide all the information and services to the insured relating to the policy.

Immediately on the purchase of an insurance policy the insured automatically and statutorily becomes the consumer of insurance company for the services vide the policy under the Consumer Protection Act. The insurer, under the contractual obligation of the insurance contract, is under a duty to provide all the services concerning the insurance policy purchased by the insured. The purchaser or the insured has every right to demand help and assistance directly from the insurance company or from the agent through whom he has purchased the policy. The agent and the insurer are under an obligation to help the insured to pay the premiums and file the claims application. On insured’s demise, the insurer is under an obligation to provide similar services to the beneficiary or the claimant under the policy. It is the insurer’s fundamental duty to discharge the claim immediately or within reasonable time. Delay in claims payment on the part of the insurer may create crisis to the insured or his dependants claiming the funds on his behalf. Further, any delay in claim settlement attracts the provision under the Consumer Protection Act.

Utmost good faith is the fundamental principle of the insurance contract to be observed by the contracting parties. Good faith prevents either party from concealing (non-disclosure) what he privately or partially knows, to draw a bargain from the other party, from his ignorance of that fact and his believing to the contrary. Just as insured has duty to disclose, similarly it is the duty of insurers and their agents to disclose all material facts within their knowledge, as the principle of good faith is applicable to both, the insured and the insurer.

The insurance business in India is experiencing much transformation to create a good relationship between the two parties to the contract. Insurance covers risk and it has to be minimized as far as practicable. To meet the mounting and changing needs of the people and to restraint them from approaching the courts unnecessarily, the insurance law needs to be altered from time to time. Law considers a balanced relationship between the insurer and the insured. The insurance business contemplates a smooth and honest relationship between the insured and the insurance company. Every insurance company must secure justice to the purchaser of the insurance policy in the
best possible mode so that they do not have to approach the courts unnecessarily and frequently for redressal of their grievances.

1.3. Health Insurance

1.3.1 Meaning and Types of Health Insurance

Health insurance can be defined as “any form of insurance whose payment is contingent on the insured incurring additional expenses or losing income because of incapacity or loss of good health”. Many markets, particularly in Europe, classify health insurance as non–life insurance, whereas in US it is considered as a branch of life insurance.

Figure 1.1 Demand and Supply Aspects of Insurance

Like any other product or service that is traded in the market, insurance, besides being influenced by factors like economic security of human life and diminishing nature of economic value, is also subjected to the laws of supply and demand. The higher the price, lower the demand and higher the supply, and vice versa. The figure illustrates this basic principle of economics. The demand curve for the insurance policy shows that the market is in equilibrium at a price of $P^1$ and a quantity of $Q^1$ where supply is
equal to demand. When the price increases from $P^1$ to $P^2$ the insurers offer more insurance but customers would lesser their purchases from $Q^1$ to $Q^3$. This behaviour of consumers builds up pressure on the insurance companies to bring down prices back to $P^1$.

**Need for Health Insurance**

Health care costs are ever on the rise. The costs will further go up in case of a serious accident or major illness. If not impossible, it is indeed difficult for an individual to locate financial resources to meet such expenses, some of which may occur unexpectedly. The demand for health insurance is also viewed from other perspective of life

- To make sure that no one is deprived of at least the standard form of health.
- To insulate the patient and his family from resultant financial disaster.
- To simplify mode of payments.
- To purge sickness as a cause of poverty.
- To ease economic, medical and moral anxieties.

Health insurance companies thus provide financial assistance to the insured in case of disability or loss of health, so that he not only can take curative measures but also maintain the dependents during the period of sickness / disability with the benefits provided by the insurer in a reasonable manner which in ordinary course would be near impossible for him.

**Table 1**

<table>
<thead>
<tr>
<th>Insurance types</th>
<th>Why do you need it?</th>
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<tbody>
<tr>
<td>Health Insurance</td>
<td>Medical care is very expensive. You may have to spend thousands of rupees and meet the hospital expenses, which may not be available when the need arises.</td>
</tr>
<tr>
<td>Disability Insurance</td>
<td>You must have disability insurance if you rely on your own salary to meet the obligations.</td>
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*Source: Health Insurance-The ICFAI University Press*
Types of Health Insurance
The word health insurance is used to signify any form of insurance whose payment was contingent on, the insured incurring extra expenses on medical treatment of illness or losing income because of incapacity or loss of good health.

Health insurance is classified into three categories.

- **Medical Expenses Insurance**: The expense incurred by the insured, on hospital, physician or other health care are covered by this arrangement.

- **Disability Income Insurance**: This type of policy replenishes loss of income when the person covered under the policy is disabled as a result of sickness or injury. Payment is made because physical or mental incapacity prevents the insured from earning.

- **Long term Care Insurance**: Long term insurance policies undertake to pay expenses if the incapacity prohibits the insured’s activities of daily life.

1.3.2 History of Health Insurance
Since the beginning, human societies have sought ways to ease the outrage of illness and disablements. Our ancestors were also aware that no man could shoulder the burden of facing such a contingency alone, and tackling such emergency needs is possible only by pooling the resources of the many. However, community based mutual support for one another subsided with the passage of time due to rapid economic progress, which in turn reduced cohesiveness within the societies or community. In his constant pursuit for security, man found that the ultimate tool which served the purpose was insurance.

The initial health insurance coverage program basically took care of only disability risks and was termed as disability insurance. The only purpose of the disability insurance was to cover the cost of emergency care arising out of different damages occurring as a result of unanticipated catastrophes. This coverage of the health insurance was first conceptualized and proposed by Hugh and Elder Chamberlain from the Peter Chamberlain family. Though it was proposed way back in the year 1694, it was not until the 19th century that it qualified enough to be termed as health insurance. Having, disability insurance as its base and having evolved from it, most
of the rules and regulations concerning health insurance actually suggest to disability insurance. The initial model of health insurance was a ‘fee – for – service’ model, made it necessary for the consumers or patients to settle their health care costs. However, this model was not fully functional in the presence of swift industrial development and economic progress, which resulted in the evolution of insurance services providing to the medical needs of the patients and came to be known as health insurance. The progression of disability insurance into modern day health insurance can be ascribed to the efforts by the employers and governments who recognized the importance of health care by encouraging employees and citizens to undergo systematic health care checkups, so that a disease could be treated at the earliest identifiable stage. The health insurance programs have extended so extensively that health insurers impart a full basket of services covering most of the medical expenses including those for the routine health check up, prescription drugs, preventive and emergency health care, etc.

The foundations of health insurance is laid in the United States as early as the mid 1800 as “accident” insurance which operated much on the lines of disability insurance of today. Often this insurance coverage was linked to accidents caused by rail or steamboat, which were common means of transport in those days. These early coverage plans laid the base for a more modern comprehensive medical and health coverage. Massachusetts Health Insurance of Boston in 1847 offered the first group policy providing comprehensive coverage. Later on, in 1929 a group of teachers in Dallas, Texas contracted with a local hospital for room, board and medical service for a prepaid fee, which now is termed as premium.

During the two decades of 1940’s & 1950’s major steps were taken towards the establishment of modern health benefits when trade unions negotiated with employers for benefit packages and tax free sponsored health insurance for the employees. During war time, wage freeze helped the propagation of health insurance as employers offered enhanced benefit packages to attract employees since they could not pay more wages. In the year 1965 the United States government created the Medicare and Medicaid programs at the government level. Till that time, private sources still paid a majority (75%) of all health care costs. But by 1995, the government’s contribution towards health expenses increased dramatically and it was
accountable for about half of the nation’s health care costs. Today, because of the exorbitant cost of healthcare, many politicians in the USA are urging for a more European approach of free health care. However this subject is much debated on. American citizens still rely on health insurance providers for low cost health care.

1.3.3 Economic Security and the need for Health Insurance

Man has always sought security. The need for security was a central force in the establishment of families, tribes and other groups in primitive period. Since the beginning of mankind, tribes and other groups has been the vital source of security – physical as well as emotional. Folks in a group helped their less privileged associates in times of difficulties. Even today clusters continue to be major source of refuge against uncertainty. Mankind relies on groups to stay away from financial instability or financial suffering. The perception of security remains unaltered though the clusters have taken new forms. The new forms of groups can be a government, an employer, an association or an insurance company. Today, people are at a higher risk than their ancestor way back used to be. Due to industrialisation, the material and monetary security provided by joint families and tribes is extinct today. Now, the income dependency and wealth acquiring style of people put them more at risk to peripheral changes over which they have no domination. Individuals and families need to be prepared to face unfavourable consequences of loss of health, death, unemployment, old age, etc. Individuals face personal losses from incapacity and death. It is a fact that individuals cannot predict or entirely avoid such occurrences but they can minimize the financial losses resulting due to such occurrences.

Insurance provides defense against such disasters by making money pay for the loss of the under privileged few. Security against extra expenses or loss of income due to disability or ill health is provided by health insurance.

Economic value of Human Life

In terms of corporeal constitution the human anatomy has no economic value, but the earning talent of a particular person may be worth crore of rupees. It does not imply that the earning ability alone can create an economic value. An individual is said to have economic value only if some other person or organization can expect to benefit from his existence. If no other person or organization can benefit from his life either
in the present or in the future, and he has no dependents then that particular individual, for all practical purposes has no economic value. However such individuals are not found frequently. Most income earners either have dependents or can expect to have them in the near future. Even those income producers who have no family dependence often extend monetary help to the society through charitable institutes. We seldom come across a person who has no economic value though the value may differ from person to person. Thus, every individual possess an insurable interest in his wealth creation abilities. ‘Health’ being a very important component of keeping one’s earning capacity intact demands its preservation. This very ability to generate income and be of help to others, and the need for its safe keep constitutes the basis of insurance.

**Family’s economic security**

Usually, the family of the income earner, to meet their daily needs, is totally dependent on his earnings. The economic security of a family depends upon the earning capacity of each income earner, which is represented by his character and personality, health training and experience, the industry in which he is working, initiative and judgment, etc. Over a period of time, these strengths are slowly converted into income, a part of which is used on self upholding, part of it to support dependents and the remaining is saved to meet the future requirements and contingencies. All those who get financial support from his labour will benefit only if the individual lives and stays in good health and the total income potential is realized. If a revenue creator dies or is disabled wholly or permanently, the unrealized fraction of his earnings will be lost and if no supplementary measures are taken, the family will soon find itself impoverished or with reduced income. This can be avoided by entering into contracts that can provide a fund on permanent total disablement or death, either partially or fully to offset the income of the insured. Such contracts are commonly known as health insurance or life insurance. By means of health insurance an individual can make sure that the family will receive the monetary value of the economic or income producing qualities that fall within his or her physical being, irrespective of sickness / death, by bearing the cost of curing the sickness, besides reimbursing the loses in earnings during the times of sickness. Thus the income earner can leave his family in the same economic position that they would have enjoyed under normal circumstances.
It is inborn instinct among human beings to take up the responsibility of providing support and maintenance to their dependents, be they parents, spouse or children. In fact it is considered to be one of the greatest experiences of life. Besides, the law too attaches obligation on people to support their spouse and children. It is in quest of this moral obligation towards their families, that many resort to health insurance as an indemnity towards income corrosion owing to ill health or sickness or disability inflicted due to ill health.

**Diminishing Nature of the Economic Value**

From any given point, the economic value of an income producer tends to weaken as time passes by. It is altogether a different matter that income may continue to increase for a certain indefinite period but as the days pass by, the remaining productivity period becomes shorter. Since the individual’s economic value is unrealized earning capacity, the economic value of a person tends to diminish as prospective income is converted into actual income.

Fig.1.2 The chord AB denotes the lifetime of an individual born at a point A and dying at point B. The arc AB represents the income tax liability and cost of maintenance during the productive years of an individual. The arc CD denotes his earning capacity. There is no income during the period A to C but the costs of maintenance exist during the same period represented by the triangle AEC. Earnings start at C. The area of arc CD that exceeds above arc AB represents income after taxes and cost of self maintenance. The retirement age is marked by point D and the area DFB shows another major period of an individual’s life during which the cost of self – maintenance is higher than the earnings.
The above figure is only illustrative as could be deciphered from the fact that earnings as well as maintenance costs are seldom uniform. For example earnings may start before point C and may not decrease so gradually to the date of retirement and this is most likely to happen among lower income groups. Normally, an individual’s earnings are at their peak level in his 40s and decline slightly towards retirement.

Source: Mc Gills’ Life Insurance

(Health Insurance – The ICFAI university press pg.no.4)
Fig. 1.3 shows a fairly ideal pattern of earnings among professionals and clerical groups. The economic value of a person is at its peak at point E as net earnings have just started. At the point where $XX^1$ intersects the arcs, the earnings rate has increased but the potential future earnings have declined. The earnings potential further declines at $YY^1$ and $ZZ^1$. At point F, the earning potential is zero i.e., by the time one reaches the age of retirement.

**Basis for Insurance**

The figure no. 1.2 and 1.3 explain the economic foundation of 3 broad categories of insurance. The area lying within AEC represents the first phase of life during which, parents or other persons who are responsible for an individual’s well – being met his needs. The whole investment is lost if the child dies or is disabled before becoming an income producer. The loss will be higher if the child has been educated at private school. Most parents are not comfortable in calling these costs as investments but treat it as a duty or privilege of parenthood. Whatever may be the name given to such expenditure; it creates a substantial insurable value, which can rationally serve as one of the basis of insurance.

The second phase is represented by the area in arc CD lying above arc AB where, an individual starts earning income on his own. The surplus earnings portrayed by this area are the source of the financial support for the individual’s dependents. This will be lost if the income producer dies or is disabled. A part of these earnings will go for the old age needs and another towards insurance premiums, but the share that is kept for care and maintenance of the family should be capitalized and preserved for the family through the medium of insurance.

Finally, the area DFB portrays the retirement needs of an individual. Although these needs are partially met by personal financial plans and other tax qualified plans and the individual investment, the more realistic source of funds to meet one’s retirement needs is group insurance for retirement benefits / annuities through employment or personal insurance.

Thus, it may be concluded that all the three phases of human life form the basis for insurance.
1.3.4 Importance of Health Insurance

Health insurance coverage is of immense significance to the society. Usually the more developed a nation the more enhanced is the role of insurance as a financial security device. Health insurance provides financial security to individuals in terms of timely treatment against diseases / maladies and contributes to the growth of a nation. It benefits the individual, makes savings realizable, it is a safe and beneficial saving instrument, promotes savings, minimizes worry and increases initiative and benefits the society at large.

Over and above providing protection to the people covered under the policy, health insurance offers various implicit benefits to individuals.

One may argue that he prefers to save instead of opting for health insurance. No doubt the savings habit needs to be encouraged, but one needs to realize that savings involve time, and requires restraint besides resources. A saving program can thus yield only a little in the beginning while insurance policy guarantees the full value and other benefits provided in the policy right from the start. Thus the health insurance policy provides a hedging against the danger of a policy holder’s liability to save sufficiently large sums in the early stages of life because of his incapacity. Hence, it is unsafe financially, to depend wholly on savings as a way of accumulating funds for the future requirements. It also serves as a hedge against the probable failure to continue accumulations of savings fund because of disability.

Health insurance policy serves as accumulation plans, and with a prudent choice it can prove to be a long term savings instrument too. In the current times, with tax benefits that are offered on these policies perk up the attractiveness of the contract as a saving tool. Apart from being a safe instrument, health insurance provides policy owners an opportunity to safeguard the policy proceeds and values.

Non-payment of premium results in stoppage of the coverage. Thus a health insurance policy can induce a sort of semi compulsory savings plan if the policy is of cash value type. This positively adds extra effectiveness to one’s performance be it at business, profession or employment and thus enables him to even generate extra wealth.
Health insurance combined with many other factors contributes to the creation of wealth for the policy holder. Being relieved from worry and stress increases his efficiency. The financial losses of the policy holder due to his disability or ill health can be avoided to a great extent through insurance policies.

Health insurance by mobilization of funds, substitution of government security program and efficient use of capital allocation benefits the society at large.

1.3.5 Insurance-Mediclaim - 7 Ps:
The insurance business deals in selling services, therefore due weight age in the formation of marketing mix for the insurance business is needed. Marketing 4 Ps as advocated by Jerome McCarthy can be aptly applied to this subject, and also enhanced to 7 Ps, i.e. the product, its price, place, promotion, people, process and physical attraction. The marketing mix includes sub-mixes of the 7 P’s of marketing. The above mentioned 7 P’s can be used for marketing of insurance product (mediclaim), in the following manner:

1. **Product**
A product means items produced. If goods are produced, it amounts to tangible product and when services are produced or generated, it amounts to an intangible product. A product is both what a producer or seller has to sell and a buyer or consumer has to buy. Thus, insurance is a product and the insured is a consumer as an insurance company sells its services. When a medical or health insurance policy is purchased by an individual or an organisation from the insurance company, he not only buys mediclaim, but along with it the assistance and advice of the agent, the prestige of the insurance company and the facilities of claims and compensation. It is obvious that the consumers expect a reasonable return for their investment and the insurance companies desire to maximize their profitability. Hence, while deciding the product portfolio or the product-mix, the services or the schemes should be motivational.

2. **Pricing**
In the insurance sector the costing decisions are related to:
i) The premium charges associated with the policy,
ii) Interest charged in case of default in the payment of premium and credit facility, and

iii) Underwriting and consultancy activity commission charged.

With a view of inducing the target market or prospects, the formulation of pricing tactic becomes significant. In a developing country like ours where the disposable income in the hands of prospects is low, the pricing decision also governs the fructification of prospective consumers into actual policy holders. The pricing in insurance is in the form of premium charges. The three main factors used for determining the premium rates under a mediclaim policy are acuteness of the disease, the expense involved and interest outlay.

3. Place
This element of the marketing mix is related to two important facets –

i) Insurance personnel management, and

ii) Branch location.

The management of agents and insurance personnel is found vital with the viewpoint of maintaining the standards for offering the services. This is also to process the services to the end user in such a way that a gap between the services promised and services offered is bridged over. In a majority of the service providing establishments, such a gap is found present which has been instrumental in making worse the image problem. The culmination of potential policyholders into actual policyholders is an intricate task that depends greatly on the professional brilliance of the personnel.

4. Promotion
Just as in the case of other products and services, insurance services also depend heavily on effective promotional measures. In a country like India, where the illiteracy rate is very high and the rural economy has pre-eminence in the national economy, it is essential to have both personal and impersonal campaign strategies. In promoting insurance business, the agents and the rural career agents play an important role. Due attention needs to be given in selecting the promotional tools for agents and rural career agents and even for the front line staff and the managers at the branch levels. They also have to be given proper training in order to create impulse buying.
5. **People**

Understanding the customer better, allows designing appropriate products. Being a service industry, involving a high level of people interaction, it is very important to use this resource competently in order to satisfy customers. Training, development and strong relationships with intermediaries are the key areas to be kept under consideration. Training the employees, use of modern day information technology for efficiency, both at the staff and agent level, is one of the important areas to look into.

6. **Process**

Being a service business, the process in insurance industry needs to be customer friendly. The speed and accuracy of payments is of great importance. The processing method should be easy, convenient and understandable to the customers. Installment schemes should be reorganized to cater to the ever growing demands of the customers. Information technology and data warehousing will smoothen the process flow.

7. **Physical Distribution**

As in other businesses, distribution is a key determinant of success for all insurance companies. Today, the nationalized insurers have a considerable reach and presence in India. Setting up a distribution network is very expensive and time consuming. If the insurers are willing to take advantage of India’s large population and reach a profitable mass of customers, then new distribution avenues and alliances are to be thought of.

1.3.6 **Health Insurance in India**

In addition to per capita income, health and human development is an integral part of overall socio-economic development of a country. With the spread and availability of modern medicine the health system in India has improved considerably and marked improvement in health situation. In comparison to other developing countries India’s health situation is below level and the level of improvement is also low.
1.3.7 Evolution of Health Insurance in India

1986 Introduction of first Mediclaim insurance scheme by GIC
1999 Insurance Regulatory and Development Authority (IRDA) Act, passed; Opening up the insurance sector to private players; Allowing, 26% foreign direct investment in the sector
2001 IRDA introduced several insurance regulations including provisions for third party administrators (TPA) system to support administration and management of health insurance product offered by insurance companies.
2005 IRDA stipulated the regulation on micro insurance for 5% business in rural sector.

1.4 Consumer Protection

1.4.1 Definition of Consumer

A consumer within the meaning of the Act is

- any person who buys goods for a consideration, which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes end user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of differed payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- hires or avails any service for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payments and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised or partly paid and partly promised or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.

1.4.2 Consumerism

Consumerism is a social movement intending to inform, educate and enable the consumers to protect themselves from business malpractice and abuse of position by the business community. In words of William J. Santon, consumerism, interpreted as
a collective endeavor of the consumers to protect their interest, is a manifestation of failure of business including that of public sector and the government to guarantee and ensure the legitimate rights of consumers. According to Philip Kotler, it is a social movement seeking to augment the rights and powers of the buyers in relation to sellers.

Thus in spirit, consumerism seeks to protect the consumers from the below listed grievances which more often than not restored by business community.

- Supply of inferior quality, harmful or unsafe products and services
- Incorrect or deceptive information contained in advertisement/business propaganda and
- Unfair practices in pricing, quality and after sales services etc.

Often the growing interest for quality life culminates itself into demand for more public goods and services, like better highways, better education, better health-care, better transport, crimeless cities, better environment conditions to name a few may be termed as consumerism. It is the movement or public demand which calls for refinement in business and marketing practices to make them more revealing, more receptive, more sincere, more truthful, more efficient and more concerned with aspects other than privately consumed goods and services that determine the quality of life. Consumerism therefore, represents vital aspects of socially responsible marketing/business practices.

**1.4.2.1 Definition of Consumerism**

In the present economic and social scenario, the subject of consumerism is of vital concern and importance for every citizen of the country, as all of them are consumers in one way or the other. There are different apprehensions regarding the term consumerism. Many economists have tried to define it in a number of ways, giving its meaning, causes and implications. In literature, it was seen that there appears to be no generally accepted definition of the term, consumerism. It may be because the problems the consumers face in the market place are so wide and complex, that it might be difficult to find one general definition covering all the aspects of consumer protection. But in general, consumer movement is conceived as a social movement
which seeks to enhance the economic well-being and bargaining power of consumers (Sethi and Seetharaman, 1994).

Some of the Views regarding the term Consumerism: Some economist have name it as ‘Consumer Movement’, while the others have addressed it as ‘Consumer Protection’.

Consumerism also means different things to the social scientists. Although, there is a general view-point that consumerism consists of all those actions aimed at protecting and enhancing the rights of buyers, some analysts confines consumerism to the market transactions between buyers and sellers, whereas, others comment that consumerism includes the consumer’s transactions with the government. The term ‘consumerism and ‘consumer movement’ are used interchangeably.

The definition given by (Kotler, 1972), provided a comprehensive idea on consumerism, which described it as a social force. It says ‘consumerism’ as a social movement seeking to augment the rights and powers of the buyer in the relation to seller.

Definition given by (Aakar and Day, 1970) includes the government as well as organizations which protect the consumers in the market place. They define consumerism, as ‘the widening range of activities of government, business and independent organizations that are designed to protect individuals from practices that infringe upon their rights as consumers.

Virginia H. Knauer (1969) special assistant to the President for consumer affairs of America in 1970 stated that the watchword for new consumer movements is “let the seller beware” or ‘Caveat Venditor’ in comparison to the age old Latin phrase ‘Caveat Emptor’ or ‘let the buyer beware’.

According to McMillan dictionary (1985), “consumerism is concerned with protecting consumers from all organisations with which there is exchange relationship. It encompasses the set of activities of government, business, independent organisations and concerned consumers that are designed to protect the rights of the consumers”
The Chambers dictionary (1993) “consumerism is a movement or policies aimed at regulating the products or services, methods or standards of manufacturers, sellers and advertisers in the interest of buyers. Such regulation may be institutional, statutory or embodied in a voluntary code by a particular industry or, it may result more indirectly from the influence of consumer organisations”

From the above definitions, it can be said that consumerism includes activities of the consumers as well as by consumer organizations and the government’s action in response to consumer dissatisfaction. Consumers may experience some sort of frustration from the use of products and services if they do not conform to their expectations. It is this sense of frustration only, on part of consumers, which is the force behind consumerism.

1.4.2.2 Comment on Consumerism

Muruganantham and Radha Krishnan, (2008), in the study on ‘Consumerism and Indian Consumer: A contextual review’, commented, “Consumer is the focal point of any business. Consumers’ satisfaction will benefit not only business but government and society as well. Thus, consumerism should not be considered as a consumers’ war against business. It is a collective consciousness on the part of consumers, business, government and civil society to enhance consumers’ satisfaction and social welfare, which will in turn benefit all of them and finally make the society a better place to live in. The objective of consumer welfare and protection can be achieved in a reasonable time frame only when all concerned act together and play their role”

G. Ramesh Babu, (2008), in ‘Growth of Consumerism in India’ wrote “Consumerism should be strengthened in our country so that the tendency to push up the prices could be curbed and the quality of the services and products ensured. Consumer problems must be reduced by making them good buyers through education and implementing various acts. The consumers themselves have to protect themselves through powerful consumerism”.

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1.4.2.3 Factors leading to Consumerism

1. Organizational change
The wide spread business units have widened the gap and delinked the manufacturers and consumers. Even if communication may be there, it is not as efficient as it should be. The direct contact is lost and all the consumer complaints, suggestions and grievances are not always redressed in favour of the consumers.

2. Technical advancement
With the advent of highly sophisticated techniques in production, several new varieties and alternative products are available which raised the living standards of people as reflected in their increased spending and diminished savings.

3. Social and political changes
The society is changing gradually in every aspect and the awareness of the people increases their sense of self – respect. People have become bolder to be exposed to several challenges and have realized the public accountability of various business and non – business organisations and of government departments which have given rise to consumerism.

4. Individual contribution
The existing stage of consumer awareness is the result of increased exposure to environment in which they live and also due to contribution of the journalists, academicians, politicians, social workers and voluntary associations involved in the well being of the consumers.

5. Contribution of business community
Many business units have liberally extended financial assistance to consumer organisations in achieving the goals of consumer as a part of their social responsibility towards society.
6. **Government effort**

The Government took a lot of measures for developing a strong consumer movement in India. The measures taken in this regards are:

A. **20 point program:**
   
   This program was introduced by the Late Prime Minister Indira Gandhi

B. **Legislative measures:**
   
   There is a sound legal frame work protecting consumer interests like the Commodities Act, Monopolies and Restrictive Trade Practice Act, The Indian Standard Institution Certification Marks Act, The Consumer Protection Act, 1986 etc. Moreover these laws are amended as and when required to make them more purposeful.

C. **Support to voluntary organizations:**
   
   The government extends the financial support and the required encouragement for the establishment and development of consumer organizations. Owing to the ever increasing awareness, many organizations have buckled down working for the consumer welfare.

**1.4.2.4 Why consumerism is not powerful in India\(^{13}\)**

1. **Docile and fear**
   
   It is said that a common citizen in India is by and large a docile person. He takes the problems as Karma and does not complain much. This is largely due to lack of education as they are not educated to know their rights which our laws have given.

2. **Rationalization**
   
   Quite a number of times we justify our weaknesses. Rich society also spoils the system. Because of their connections or wealth, they are able to meet their requirements without any trouble and they ignore social responsibility.
3. Apathy of consumers:
The apathy of consumers has slackened the growth of consumerism. When it comes to the question of either writing a complainant or following it up with the dealer, most consumers choose the softer option of throwing up their hands in despair.

4. Increase in population
The increase in population has put a tremendous pressure on the production of food articles and other services and public utilities. As a result, supplier of goods does not pay much attention to the quality of goods.

5. Lack of knowledge
Many a time consumers just do not known the legislations that are available in India. Though some people know they are not showing any interest to exercise their right.

6. Quality marks and expiry dates
Many consumers are not aware that there are things like “quality marks”, “expiry dates” etc. Though many consumers may not be able to understand them, yet they do not know that there are markings like these which they should look into. Such marks on the products are meant to protect the consumer’s interest.

When western countries attained development, the probable reason why India lags behind is Citizen’s unawareness of the consumer laws and rights and inefficient execution of law. Majority of laws enacted remains on paper.

1.4.3 Consumer Movement
1.4.3.1 Origin of Consumer Movement
Consumer movement is a people’s collective combat on a colossal level against the omnipresent and inherent evils of the business class. The consumer movement is a countervailing safeguard strategy to protect their interest from the deceptive attitude and abuses of economically powerful sellers sprouted in United States and steadily it spread its hold worldwide. In certain countries, the movement takes deep roots and in
others highly militant. The nations showing greater potency of the consumer movement are the United States of America, Britain, Germany, New Zealand, France and Japan. With that there has been found signs of new efforts to spread the movement in a number of other developing countries. The formation, the character of the movement and the extent of consumer awareness among the people also varied widely from country to country. It is a universal phenomenon and not limited to any particular country.

Three consumer movements at the district level during the early 1900’s, mid 1930’s and mid 1960’s shook this business scene of ours. Although the consumer movement originated in the United States in the year 1900, it has taken its full shape only during the sixties. During these ten years the consumer consciousness wave further spread to other countries like Latin America, Eastern Europe, Africa, Middle East, Far East and South East Asia. The movement in the United States was the consequence of a set of various factors like technological, social, economic, political, ecological and marketing discontents. Sudden spiraling of prices of food stuffs in mid sixties, further provoked consumer dissatisfaction and supermarket boycotts throughout the country.

As their income went up, people fulfilled their necessities thereby sufficiently increasing the purchasing power. The manufacturers and traders were taking unwarranted advantage and exploiting the situation, by not divulging precise information about their stylish and complicated goods which could well be used in valuation of alternative products and services available to the customers. This has been brought to the fore in the writings of social critics like Vance Packard’s “The Waste Makers”, Earnest Ditcher’s “The Strategy of Desire” and Galbraith’s “Affluent society.” These works were published towards the realization of credulity of ignorant and semi-ignorant public against organized efforts of systematic hard-selling and large scale pushy advertising. These works aroused the American consumers and stimulated more consciousness about their rights while making their purchases. Further the appearance of Ralph Nader a consumer activist on the American continent gave a boost to the consumer movement. His name characterized and heralded a considerable widening to the span of the ‘consumer movement’ concept. Ralph Nader is the one distinctive idealist whose crusade extended the world over and brought a noteworthy industrial revolution and to expand the consumer consciousness and led to
consumer legislation being introduced in the United States. His works motivated consumers in Sweden, Singapore, Mexico, Greece and other developing countries in the early seventies and consequently leading to the formation of consumer groups to safeguard themselves against the unfair trade practices. These consumer associations pressurized and persuaded the government to take care of their well being and make the legislative procedures more far-reaching. Various legislations for consumer welfare were approved and several central, state and local bureaus of consumer affairs started. Now there is barely any developing country left out without awakening and responding to this new social movement.

With all these efforts, consumerism surfaced and unfolded as an international social power by the end of 1960 leading to the all together active involvement of consumer organisations, socio-economists and house wives organisations in this social movement. As a result, the international organisation of consumer unions was established in Hague by the consumers of the US. Other European nations like Britain, Belgium, & The Netherlands and also Australia assisted in worldwide promoting consumer information, education and testing of goods and services. Transcending at the national level, if found poignancy by the UNO and as a result the consumer interest got expression at the 29th session of the UN Commission of Human Rights held at Geneva in 1973. In August 1977, the UN Economic and Social Council passed a resolution on consumer protection calling upon the UN Secretary General to submit to its 65th session, a survey illustrative of the range of institutional and legal arrangements existing in the field of individual consumer protection at the national level.

Consumer activism movement actually gained impetus in America and other countries of Western Europe after the Second World War. The slogan Caveat Emptor, “let the buyer beware” was replaced by Caveat Vendedor, “let the seller beware”. Intensive and concentrated moves were made to alter the totality of loss which affected the customer negatively. Consumerism became apparent in the western countries after getting affluence in manufacture and sale of essential and luxurious goods. Under these existing market environments, the consumer asked for added information about the salient traits of competing products and also to speak up for the collective use of consumers in order to influence the manufacturers.
The prime reasons for the emergence of consumer movement in our country are quite different from those of developed western nations.

1.4.3.2 History of Consumer Movement in Advanced Countries.\textsuperscript{15}

The world consumer movement has a history of over a century. Consumerism first took root in the United States in the beginning of the 20\textsuperscript{th} century and then was spread to many other countries of the world. United States of America, thus, can be said to be the pioneering country of the voluntary consumer movement in the world.

However, the consumer movement is by and large a postwar (Second World War) movement that emerged in developed countries. In the USA, there were distinct periods in which the wave of consumerism emerged in response to rising prices, due to which the real income of the consumer declined. This situation thus, gave rise to consumer movement. These periods were early 1900’s, mid 1930’s and mid 1960’s. Each period was approximately ten to twenty years in duration. The first wave of consumerism occurred in the early 1900 when there was a rapid growth of industrialization. It lasted for twenty years (1887-1907). In the year 1930, the United States suffered through the great depression resulting in creating many social problems. This period lasted some ten years (1929-1938). The third period spanned some 23 years (1951-1974). In 1960, the economy continued to grow despite recurring periods of inflation and recession. Moreover consumers by that time became aware that their survival was threatened by unsafe and unhealthy products offered to them. The fourth period projected for a period of twenty years (1978-1998), it is just getting under way.

The first ‘Consumer Union’ emerged in 1935. This is the most important and influential organization. Since its inception, it has undertaken a wide range of issues concerning consumer problems. The wave declined in the 1950’s which again picked up momentum in 1960’s. It was on March 14, 1962, when moving the US Bill for consumer rights in Congress, the, then, President John F. Kennedy equated the rights of the American Consumer. He gave American citizen four rights i.e. the right to safety, the right to choose, the right to be informed and the right to be heard. Later on, the Consumer International (CI) formerly known as International Organization of Consumer Union (IOCU) expanded the list to eight rights, which include basic needs...
of safety, information, choice, to be heard, representation, redress, education and healthy environment. The CI is an independent, non-profit and non-political organization, which was set up several years ago to co-ordinate the activities of consumer unions of different countries. However, the credit for arousing consumer consciousness and consumer legislation in the US goes to ‘Ralph Nader’ whose great efforts gave birth to many consumer societies. Under his inspiration only, many consumer organizations sprung up all over the country who were motivated to pressurize their respective governments for taking necessary consumer protection measures for protecting consumer rights.

By this time, consumerism had gained wide acceptance and spread to many other countries like Sweden, UK, Japan, Hong Kong, Israel, Malaysia, France, West Germany, Denmark and Belgium to protect the interest of the consumers. In Sweden, the consumer movement has done much to protect consumers, while the movement in France and Germany is much newer and thus has achieved less. Whereas the achievements in the United States and Great Britain fall somewhere in between. The international consumerist movement, reached its peak in most countries in the late 1960’s and early 1970’s with single objective i.e. the desire to ensure that the consumer got a fair deal in the market place. Moreover, several means of allowing consumers to raise voice regarding grievances with regard to their purchases were also most extensively developed in the United States.

On the whole, it can be said that the rise of consumer movement occurred at somewhat different times in different countries. It has emerged as an outgrowth of economic difference in the post war period irrespective of the stages in various countries; the objectives of the movement are basically the same i.e. to educate the consumers about their legal rights. This would help them to make an informed choice and also, they would learn to offer resistance against all sorts of exploitation forced in the market place.

1.4.3.3 History of consumer Movement in India

Consumerism is not a new phenomenon in India. Like other developed countries it started much earlier yet, it is a much less known conception in India as compared to the western countries, where it has emerged as a powerful force. Consumerism, as a
social movement is slowly emerging in India. It has resulted due to several nefarious practices followed by the traders. It is true that consumer movement is gathering strength but still it is in its infancy in India. It has not taken any functional shape so far. This is due to the fact that Indian consumers are mostly illiterate, ignorant, majority are disinterested in asserting their rights and therefore, are unorganized. On account of these, they have either an indifferent attitude or have high spirit of tolerance against the unethical practices of the traders. These are the main reasons for a slow growth of consumer movement in India.

Consumer protection in India is not the outcome of the twentieth century legislation. India was among the first countries to enact legislation to protect consumers. As said earlier, ancient economists like Kautilya and Brishaspat laid down rules to protect the interests of consumers. In recent times Swami Vivekananda declared that ‘consumer is king’ and Mahatma Gandhi, the father of the nation was described as the world’s greatest consumer activists by Ralph Nader. The first consumer protection efforts actually began with the development of early civilization. It is seen that even during the period of ancient Rome, protection was available to the consumers. In the Middle Ages, established consumer standards also played their part. During that time, a merchant of shoddy goods was dragged round the town on a hurdle with his wares tied round his neck, Greek and Roman laws prohibited the adulteration of wine and in 300 BC India imposed punishment upon adulteration of grains and oils. Thus, consumerism is not something new in India.

Consumer movement in India is going through a ‘Silent Revolution’, though it made its beginning in the early part of this century. Practically speaking, it has been passed through four different stages (CERC, 1992).

The first stage of the movement which had its beginning in the early part of the century was more representational in nature. The main aim of this phase was, to bring awareness among the consumers through media. Slowly, the scope of the movement widened and many more areas on consumer protection were covered.

The second stage which the consumer movement had to pass through was direct action. The basic elements for consumer resistance during this stage were boycotting
the goods and holding demonstrations against the malpractices. But later, it was found that these activities of consumers did not have any long term effects.

As a result of the lacunas found in the earlier stages, the third stage of the consumer movement emerged, when professionally managed consumer groups started growing in the country. These organizations had varied aims and objectives in the field of consumer protection. These were varying from educational activities to areas involving litigation, lobbying, conducting laboratory testing and publishing literature. This was a very healthy sign of the movement. The activities of these organizations have done a lot, thus, helping the consumers against the malpractices of the traders.

The discussion highlights the fact that in India, the last two decades have witnessed an over expanding interest in consumerism. One can see a wave of awakening and an upsurge of enthusiasm for the rights of consumers (Bakshi, 1990).

For a sound and healthy consumer movement, the consumer organizations, cannot work in isolation. They need the support of the masses so that the movement is converted into revolution against exploitation by mischievous business community (Mathur, 1991). Moreover, for a movement to be effective, the role played by government is also a powerful instrument in protecting the interests of consumers. Though, the government of India had taken a number of steps in the area of consumer protection for the interest of consumers but, it was felt by these organizations, that government’s machinery was not effective enough to fully protect the consumers. Thus, they had put pressures on the government to make improvements in the existing governmental machinery, in fact their efforts, in turn, gave rise to the fourth stage of the movement when a more comprehensive legislation was enacted by the government. It was in the form of CPA, 1986 which gave fresh impetus to the consumer movement in the country. The basic idea behind the act was to promote some basic rights of consumers so that they get a fair deal in the market place. This is one of the most significant gifts given to the Indian consumers for getting their grievances redressed.

The following discussion gives a summary of emergence of consumer groups in India from beginning of the century to present times. This gives a brief description of the
development of the consumer movement over the decades. Consumer International has for a long time realized the growing consumer movement in Asian countries. With this in view, a ROAP (Regional office for Asia and Pacific) was set up to take special care of consumer activities in Asia and Pacific. However, the growing consumer movement in India has been acting as an impetus to set one regional office in India too. Thus, regional office was set up at Pune, India in 1995. The interest shown by an International organization has highlighted the emergence of consumerism in India. These can be represented decade wise in the following manner.

**1.4.3.4 Development of Consumer Groups-Decade wise**

1. Emergence of consumer movement in India (1990-1959)
2. Consumer fighting for their rights (1960-1969)
5. Consumer protection in the (90’s)

These stages indicate that consumer movement is picking up momentum in India too.

Thus, it is clear from the above discussion that as far as the growth of consumer organizations are concerned, there was considerable progress in the formation of consumer groups. All these groups have been involved in different activities in the area of consumer protection. However, it is seen that movement so far has been restricted only in urban areas. It has not made its impact in the rural areas among the poor masses. The reason, being unawareness on the part of the consumers regarding the existence of the consumer groups. This is due to the poor publicity media in the country. Moreover, the literature revealed that lack of manpower and the shortage of ends with these organizations are the major handicaps in making the movement strong. Thus, there is an urgent need to professionally manage and help these voluntary groups so that they can acquire new momentum. It can be said, that in order to become successful consumer movement should be built up at the grass root level. Further, there is a need for a coordinated effort of all sections of the society including the government, business, industry, the voluntary organizations and the
prominent consumers, which would go a long way in the attainment of the broad based and effective consumer movement.

1.4.3.5 Historical Evolution of Consumer Protection and Law in India

Consumer protection has its deep roots in the rich soil of Indian civilization, which dates back to 3200 B.C. In ancient India, human values were cherished and ethical practices were considered of great importance. However, the rulers felt that the welfare of their subjects was the primary area of concern. They showed keen interest in regulating not only the social conditions but also the economic life of the people, establishing many trade restrictions to protect the interest of buyers.

In ancient India, all sections of society followed Dharma-Sastras (“Dharma”) which laid out social rules and norms and served as the guiding principle governing human relations. The principles of Dharma were derived from Vedas. Vedas were considered the words of God and law was said to have Divine origin which was transmitted to society through sages. Thus Vedas were the primary sources of law in India.

Many writers and commentato...
crimes against buyers/consumers. During those times, in the below mentioned two occasions, the sovereign had the absolute power to impound the entire property of a trader

1. When the king had a monopoly over the exported goods; and
2. When the export of the goods was forbidden.

There was also a system of price control and to punish offenders. It was more or less a controlled economy and the king fixed the rates for trading of all marketable goods. Manu said “man who behaves dishonestly to honest customers or cheats in his prices shall be fined in the first or in the middle most amercement. There was a routine to inspect all weights and measures every six months and the results of these inspections were accordingly taken note of. Looking at the above writings, we can realise how effective ancient society was in regulating the many wrongs of the market place. These measures also show how advanced the system was in identifying the negative market tactics of traders. Thus, Manu Smriti effectively dealt with various consumer matters, many of which remain of great relevance in modern legal systems.

**Kautilya’s Arthasastra**

Kautilya’s ‘Arthasastra’ followed Manu Smriti. This volume is deemed to be a discourse and a prominent source, elaborating on the different models of statesmanship, the privileges and the duties of the subjects in a ruled kingdom. Though Arthasastra mainly deals with matters of practical governance, welfare of the consumers occupies a prominent place in this writings. It describes the role of the state in streamlining trade and its duty to stop offenses against consumers.

It may also be noted that, during the decades between 400 and 300 B.C. a director of trade was also appointed, whose main duty was to keep an eye on the market situations. During this period several measures were taken to maintain official standards of weights and measures. Kautilya has observed that, “the superintendent of standardization should cause factories to be established for the manufacture of standards weights and measures.” He further said “(the superintendent) should cause a stamping (of weights and measures) to be made every four months” as compared to six months stated in Manu Smriti. Kautilya noted that trade leagues were forbidden from taking recourse to black marketing and unfair trade practice. Severe sentences were prescribed for different modes of cheating. But justifiably, the rights of the
traders were also protected. During the reign of Chandragupta Maurya, in which Kautilya lived, fair trade procedures were prevalent e.g. the goods could not be sold at the place of their origin, field or factory. The allotted market yard where goods were carried to, was called Panya Sala where the dealer had to declare particulars as to the quantity quality and the prices of the goods which were examined and registers were maintained to record the details. Each seller had to take a license and get himself enlisted as a trader to operate in that market. A foreign trader from out of the kingdom had to obtain special permission. The superintendent of commerce fixed the whole sale prices of goods as they entered the Customs House. He controlled the trade and allowed a margin of profit to fix retail price. Speculation and cornering to manipulate prices were forbidden. Thus, the state bore a heavy responsibility for protecting the public against unjust prices and deceitful dealings. There were severe punishments for smuggling and adulteration of goods. Also during this period of time, easy access to justice for all, including consumers was considered of great importance. The king was the central power to render justice. The judiciary also was well organized during Kautilya’s time. Similar to the current modern times, they had two separate benches comprising judges and magistrates to run trials of civil and criminal cases. Thus, rendering justice was regarded as one of the essential duties of the government, and great concern was shown to ensure that justice was accessible to all. Indeed, this emphasis on justice for all remains a cornerstone of India’s legal system till date.

**Consumer Protection in Medieval and Modern Periods**

Just like their predecessors for rulers during the medieval period also, the issue of consumer protection continued to be of prime concern. The Muslim rulers used a large number of units of weights in India. During the Sultanate period, the prices were determined by local conditions. Alauddin Khalji, established strict controls over market place. During those times the supply of grain was unending to the city and was sold by the grain carriers at prices fixed by the Sultan. A mechanism was evolved for price enforcement in the market and the shopkeepers were punished for under weighing their goods.

With the advent of the British rule in India in the modern period the British system replaced the age of traditional legislatures of India. One of the exceptional accomplishments by the British rule was that a unified modern legal system was made
applicable throughout the nation. During this period, the Indian legal system was totally transformed and the English legal system was introduced to dispense justice. However, they took care not to overlook and disregard the Indian traditions and customs. The law itself underwent considerable adaptation. The British institutions and rules were combined with structural features and rules which were in harmony with indigenous understanding. It took a very long time to stabilize and adapt the system. The borrowed features underwent more than a century and a half of abridging in which British localisms and inconsistencies were rejected and rules detailed to deal with new kinds of population, property and transactions. To administer justice they had to face the difficulty of the value suitable to attach in practice to the Indian traditions and customs. Here, it is worthy to note that, regardless of the challenges of amalgamating the British legal system with the one prevalent in India, the composition of modern Indian law is unmistakably Indian in its viewpoint and procedures and consumer protection is not an exception to this perception.

Some of the laws which were passed during the British regime concerning consumer interest which provided specific legal protection for consumers are:

1. Indian Contract Act of 1872,
2. Sale of Goods Act of 1930,
3. Indian Penal Code of 1860,
4. Drugs and Cosmetics Act of 1918, and
5. Agriculture Production (Grading and Marketing Act) of 1937

The Sale of Goods Act of 1930 was an exclusive source of consumer protection in India for almost five decades. It is drafted with precision and is an admirable piece of legislation. It is also commended as a “consumer’s charter”. It was exclusive consumer legislation until 1986, until the passing of Consumer Protection Act of 1986, designed to supplement the remedies already provided under the Sale of Goods Act. Consumer protection was also taking place within India’s criminal justice system. The Indian Penal Code of 1860 has a number of provisions to deal with crimes against consumers. It deals with offences related to the use of false weight and measures, the sale of adulterated food or drink, the sale of noxious food or drink and the sale of adulterated drugs.
Consumer protection legislation enacted after India’s independence from Britain include: the Essential Commodities Act of 1955, the Prevention of Food Adulteration Act of 1954 and the Standard of Weights and Measures Act of 1976. Criminal law in the field of consumer protection has acquired much significance and its functional value is high. Consumer protection is considered as ‘a public interest issue rather than private issue.’

With the enactment of the Consumer Protection Act of 1986, specifically designed to protect consumer interest, the Indian Legal system experienced a revolution. It was passed with objectives of providing justice which is less formal and involves less paper work, less delay and less expense. It has received wide recognition in India as poor man’s legislation, ensuring easy access to justice. However, the CPA simply gives a new dimension to rights that have been recognized and protected since the ancient period. More than two decades of experience shows the popular acceptance and the legal preference of injured consumers to enforce their rights under the Consumer Protection Act. Its cost effectiveness and user friendliness has commanded the consumers support. It has inculcated a sense of legal awareness among the public. The greatness of the Consumer Protection Act lies in its flexible legal framework, wider jurisdiction and inexpensive justice. It liberalized the rigid procedural requirements and introduced simple and easy methods of access to justice. A simple letter addressed to the consumer forum draws enough attention to initiate legal action. Another major procedural flexibility is the option the consumer has to engage a lawyer. If the consumer prefers, he can represent himself. It is the simple measures of action that drive consumers to avail themselves of the benefits of the Consumer Protection Act. It has initiated a legal revolution and developed a new legal culture among the masses to take remedy under the act. The huge backlog of consumer cases before consumer fora is forcing the Indian legal system to think of ‘alternatives’ for speedy disposal of consumer cases. India, home to the majority of the world’s consumers is committed to working for the welfare of consumers through new legal innovations. The Indian Government is also taking an active interest in protecting consumer rights and promoting effective consumer movements.

1.4.3.6 Objectives of Consumer Movement

The main objectives of consumer movement in India are:
a. To restore the better balance between the buyer-seller relations in the market place.
b. To protect and promote consumer interests.
c. To safeguard consumer rights.
d. To prevent exploitation of consumers by unscrupulous traders.
e. To present consumer interest before the government and pressurize the Government to provide meaningful consumer protection by legislation.
f. To organize consumer resistance against the unfair trade practices and to create strong public opinion in favour of false trade practices.
g. To collaborate with the government and business concerns for consumer protection.
h. To undertake programmes of consumer education, consumer information and comparative testing and ensure the practices of consumer oriented marketing programmes by business enterprises.

1.4.3.7 Reasons for slow growth of consumer movement in India

Indian consumers are the worst victims of exploitation adopted by the ruthless businessmen through unfair means. The merciless exploitation of the consumers and the consequent discontent led to the growth of consumer movement. But the progress of consumer movement in India has been rather very slow as compared that with Western European countries and USA. Slow growth of consumer movement may be attributed to:

- Lack of general awareness in consumers
- Poverty
- Illiteracy
- Cumbersome legal procedure
- Lack of consumer interest groups
- Lack of proper education and guidance
- Limited government involvement

Indian consumers by and large lack awareness about their rights and responsibilities, the main reason being poverty and illiteracy. Poverty suppresses awareness and illiteracy makes people ignorant and unaware about their rights. The legal procedure
to fight against consumer problems is burdensome, time consuming and expensive. Moreover, the consumer welfare organisations are limited, the rights and responsibilities are not brought to the consumers’ doorstep and the government’s involvement is limited. The consumer movement at its highest level is only possible through the permanent consumer associations and organizations with adequate resources and support from the government.

1.4.4 Consumer Rights and Their Effectiveness in India

Eight rights are incorporated in the United Nations Guidelines for Consumer Protection (UNGCP). These are right to safety, right to information, right to choice, right to be heard, right to redress, right to education, right to basic needs and rights to healthy environment. The government of India also includes the above rights in its Twenty Point Programme, the consumer rights numbered 1 to 6 are also enshrined in the Consumer Protection Act 1986.

1. Rights to Safety

This right means, right to be protected against the marketing of goods and services, which are hazardous to life and property. The purchased goods and services availed should not only meet their immediate needs, but also fulfill long term interests. The following are key aspects:

- right to be protected against goods or services that are hazardous to health and life;
- responsibility to read instructions and take precautions; and
- Choose safety equipment, use products as instructed and teach safety to children.

The role of standards is to facilitate consumer protection and support economic development, facilitating trade and improving the quality of life such as encapsulating new technologies in usable tools for the industry, is widely recognized. Presently the Bureau of Indian standards (BIS) under the BIS Act, 1986 develops voluntary national standards. In a few cases these standards are referred in national regulations. There are also nearly 30 regulatory department of the government making regulations, which prescribe specifications/requirements in different sectors. Safety and quality issues are
dealt with by various articles of the Constitution of India as well as by laws of the parliament and state legislatures. The Directive Principle of state policy also has provisions requiring the state to frame policies in such a way that the safety of the citizen is protected. The Consumer Protection Act (COPRA) is the umbrella act that enshrines the consumer’s rights to safety. Some other important pieces of legislation that have a bearing on the right to safety are;

- Prevention of Food Adulteration Act, 1954;
- Agricultural Produce (Grading and Marketing) Act, 1937;
- Essential Commodities Act, 1955,
- Prevention of Black Marketing and Supply of Essential Commodities Act, 1980;
- Motor Vehicle Act, 1988
- Drugs and Cosmetics Act, 1940;
- Sale of Goods Act, 1930;
- Trade and Merchandise Act, 1958;
- The Spirituous Preparations (Inter-state Trade and Commence) Control Act, 1955;
- The Emblems and Names (Prevention of Improper Use) Act, 1950 and
- Food Safety and Standards Act, 2006.

Besides, other Acts dealing with other services like railways and electricity, or say, the use of dangerous machines, etc., have safety provisions built in.

In spite of presence of number of laws and acts, there are a number of accidents happening in the country due to lack of proper safety measures or the failure in their implementation.

Lack of proper testing facilities, bureaucratic intransigence, lack of funds and lack of consumer awareness are all reasons that militate against the proper implementation of the body of legislation and existing mechanism.
2 Right to be informed

This right means, right to be informed about the quality, quantity, potency, purity standard and price of goods so as to protect the consumer against unfair trade practices (UTPs).

The key aspects are:

- The right to be given the facts needed to make an informed choice, to be protected against misleading advertising or labeling;
- The responsibility to search out and use available information;
- To read and follow labels and research before purchase.

Consumer should insist on getting all the information about the products or service before making a choice or a decision. This will enable him to act wisely and responsibly and also to desist from falling prey to high pressure selling techniques. Without information on quality, quantity, potency, purity standard and price of goods and services consumers would not be able to make right decisions and protect themselves from abusive practices.

Various interpretations of Article 19(2) of fundamental rights clearly state that there should be a definite policy or uniform guidelines on the part of the state to help consumers make “informed choice”. Moreover provisions regarding the right to information are provided as under:

- The Consumer Protection Act, 1986;
- The Standards of Weights and Measures Act, 1976;
- The Bureau of Indian Standards Act, 1986; and
- Competition Act, 2002 etc.

The new Right to Information (RTI) Act is expected to have far reaching implications for the right to information of the consumer.

3. Right to Choose

This right means, right to be assured, wherever possible of access to variety of goods and services at competitive prices. In case of monopolies, it means right to be assured of satisfactory quality and service at a fair price. It also includes right to basic goods and services. This is because unrestricted right of the minority to chose can mean a denial for the majority of its fair share.
The right can be better exercised in a competitive market where a variety of goods are available at competitive prices. The key elements of this right are:

- The right to choose products and services at competitive price with an assurance of satisfactory quality;
- The responsibility to make informed and responsible choices;
- To resist high-pressure sales and to compare shop.

Among the most important pieces of legislation that have a role in guaranteeing this right is the Competition Act, 2002. The COPRA also has some provisions to Control Restrictive Business Practices (RBPs). While the BIS and Weights and Measures Act providing for standard of quality, safety, weights and measures of goods and services sold, also have bearing on the right to choice. There has also been a spate of regularity reform in certain sectors like electricity, telecom etc., which has led to the creation of regulations at the State and Central levels. If these regulatory bodies function efficiently and can be kept free of corruption, then they will go a long way in guaranteeing the right to choice.

In spite of a fair amount of legislation and other safeguards, the right to choice of the Indian consumer is far from realized. At the micro level, the individual is duped each and every day by dishonest traders, forced to buy items he does not require as part of tied selling, and cheated by wrong weights and poor quality. Consumers in many parts of the country are deprived of supply of electricity, good roads, proper transport and other public services and utilities. While Electricity Regulatory Commissions (ERCs) have been set up in some states, their performance still leaves much to be desired.

The government, the bureaucracy, producers, middlemen and consumers – all have important roles to play and have a bearing on the consumers’ rights to choice and its realization. There is a positive atmosphere in the country in the context of consumer’s right to choice from the time; the Indian Government has been promoting an environment of competition in the economy. However, unfettered competition without regulation does not translate to consumer
welfare. While regulatory institutions have been set up, their functioning have not been satisfactory everywhere.

4. **Right to be Heard**

The right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums. It also includes the right to be represented in various forums formed to consider the consumer's welfare. So, if you have a problem with a good or a service, it is your right to go to court and be heard. It is your right to form a consumer's association and then use the collective might to either lobby directly with the company or collectively go to court in a class action suit.

5. **Rights to Redress**

The right means, right to seek redressal against UTPs or unscrupulous exploitation of consumers. It also includes right to fair settlement of the genuine grievances of the consumer.

The key aspects are:

- The right to be compensated for misrepresentation, shoddy goods or unsatisfactory services;
- The responsibility to fight for the quality that should be provided;
- To complaint effectively and refusing to accept shoddy workmanship.

The right to seek redress is set out in the Preamble to the Constitution of India, wherein has been declared that people has the right to strive for justice, social, economic and political and equality of opportunity. The COPRA, enacted in 1986 is one of the benevolent social legislation, intended to protect the large body of consumers from exploitation. The Act has come as a panacea for consumers all over the country and has assumed the shape of practically the most important legislation enacted in the country during the last few years. It has become the vehicle for enabling the people to secure speedy and inexpensive redressal of their grievances.
Until the COPRA was adopted, the consumers had to rely upon a number of legislations but none of them provided effective remedy against the violation of consumer’s rights. Under COPRA, three-tier, simple, quasi-judicial machinery at the national, state and district levels, have been established. The COPRA has been amended in 2002, and the changes became effective on March 15, 2003. The amendment among other things, relates to rights of complaint, rules of appointment of members, transfer of cases, monetary jurisdiction and enforcement. The amended Act also provides for the attachment and subsequent sale of the property of a person not complying with an order. Proceeds of such sale may go to pay the damages of the aggrieved consumer. Apart from the COPRA, redressal mechanisms are incorporated under the competition Act 2002, the Arbitration and Conciliation Act, 1996 and through codes of conduct of business.

While COPRA is a comprehensive piece of legislation, it is plagued by inordinate delays in the delivery of justice, enforcement of orders etc. Between 2000-01 and 2004-05, the National Commission had 8301 cases pending. This fact is really a cause of concern for the consumers in general.

The first and the foremost problem is that most state government do not evince requisite enthusiasm and attention in promptly implementing the provisions of the Act by establishing properly functioning District Forums and State Commission. Secondly the consumer forums are becoming like civil courts with presidents (Judicial members) asking for a more formal approach. Such systematic problems are resulting in inordinate delays. The appointment of members is another problem. In the past, members were appointed on the basis of their connections rather than merit. Now the system has improved substantially due to an amendment in law requiring a selection committee to appoint them. However, there is a lackadaisical approach in selecting people for such position.

Apart from these, consumers are also reluctant to make use of the redress system. One major reason is the general apathy and absence of proper knowledge and fear of exploitation by lawyers. An average Indian consumer is noted for his patience and tolerance. Perhaps because of these two
traditional traits, he considers the receipt of defective goods/services as an act of fate or unfavourable planetary position in his horoscope. It is rather paradoxical that the customers is advertised as the “King” by the seller and service provider but in actual practice treated as a slave or servant. This will clearly indicate the level of consumer sensuousness. However, things are changing – slowly-but steadily – and the momentum has increased considerably since the establishment of consumer courts and due to the efforts of a number of consumer organizations and the media. The next millennium will witness a high degree of consumer awareness and the concepts of “comparative costs” “consumer preference/resistance/abstinence” and “consumer choice” will become vital aspects of the economy.

6. **Right to Consumer Education**

This right contains the provision to acquire knowledge and skill needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to Act on them.

- The right to acquire the knowledge and skills necessary to be an informed consumer;
- The responsibility to take advantage of consumer opportunities.

Thus, the right to consumer education envisages the right to knowledge and skills needed for taking actions to influence factors, which affect consumers’ decisions.

There is no legal framework establishing the right to consumer education nor there guarantees in the Constitution.

Consumer education faces the universal problem of matching its limited resources against an infinite need. More over in a large country like India with multiplicity of languages the problem is of larger dimensions.
7. **Right to Basic Needs**

All consumers have the right to basic goods and service such as adequate food, drinking water, shelter, clothing, healthcare, electricity and education. These rights lay a foundation to lead a life with dignity and therefore give a meaning to citizen’s rights. The key aspects are:

- The right to basic goods and services, which guarantee survival;
- The responsibility to use these goods and service appropriately;
- To take action to ensure that basic needs are available.

Basic needs are important to everyone’s survival and access to a decent standard life. This is more important for a country like India, which has a history of the systematic denial of access to basic needs and service to the majority of its people.

The UN guidelines do not explicitly mention the right to basic needs, but expect government to take appropriate measures so that essential goods and services could be easily accessible to the consumers.

Everyone has the right to have an access to adequate clothing, housing, education, primary health etc. In addition, everyone requires pure air and water, safe and responsible waste disposal, the preservation of natural resources and effective conservation measure. In other words, consumers want respect for the earth and the overall environment where the beauty of nature can be enjoyed and relished by all. But unfortunately the right to basic needs still remains outside the domain of COPRA in India.

Fulfillment of basic needs is recognized by the government through:

- Public Distribution System;
- National Health Policy and Drug Price Control;
- National Housing and Habitat Policy, 1998;
- The Electricity Act, 2003;
- The Textile Policy, 1981 and
- Employment Guarantee Programmes.
However, much remains to be done in terms of reaching out to the poorest of poor, the remote areas of the country, to avail the consumers of basic needs.

8. **Right to a Healthy Environment**

To live and work in an environment which is non–threatening to the well being of present and future generation. The right contains the following elements.

- The right to live and work in an environment that is neither threatening nor dangerous and which permits a life of dignity and well being;
- The responsibility to minimize environmental damage through careful choice and use of consumer goods and services;
- To reduce waste, reuse products and to recycle whenever possible.

As far as the issue of healthy environment is concerned, Article 21 of the constitution requires the state, inter alia, to protect life, which is construed as including the right to a healthy and safe environment.

1.4.5 **Outline of the Consumer Protection Act**

The Consumer Protection Act, 1986 was enacted to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith. The basic motive of enacting this important act is to provide cheaper and speedy remedies to the consumers who are in disadvantageous position in comparison with the traders, who are well organized and rule the market.

- It extends to the whole of India except the State of Jammu and Kashmir.
- It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.
- Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.
Who can file a complaint?
The complaint before the competent authority can be filed by the following persons (Section 12).

1. A Consumer:
   To whom the goods are sold or agreed to be sold or to whom the services are provided or agreed to be provided.

2. One or more consumers:
   Where there are numerous consumers having the same interest, then with the permission of the District Forum, any one or more of them can file the complaint on behalf of all the consumers so interested.

3. Any recognized consumer association: A recognized consumer association here means only voluntary consumer association registered under the Companies Act, 1956, or any other law for the time being in force. It is, however, not necessary that the aggrieved consumer is a member of such association.

4. Central or State Government: The government can file a complaint in its individual capacity or as a representative of interests of the consumers in general.

Where to file the Complaint
The competent redressal agency where the complaint is to be filed depends upon the value of goods or services, which is as under:

1. If the value of the goods or services and the compensation, if any, claimed, does not exceed rupees twenty lakhs, then the complaint is to be filed in the District Forum within whose jurisdiction the opposite party actually and voluntarily resides or carries on business, or works for gain (Section 11).

2. If the value of the goods or services and the compensation, if any, claimed exceeds Rupees twenty lakh but does not exceed rupees one crore, then the complaint is to be filed in the State Commission (Section 17).

3. If the value of the goods or services and the compensation, if any claimed exceeds rupees one crore, then the complaint is to be filed in the National Commission (Section 21).
Limitation Period for filing a Complaint
The complaint before the concerned consumer forum should be filed within two years from the date on which cause of action has arisen.

Time Limit for disposal of Complaint
As per the provision, every complaint shall be heard as expeditiously as possible and within the time as stated below:

1. Where the complaint does not require analysis or testing of commodities, an endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by the opposite party;
2. Where the complaint requires analysis or testing of commodities, an endeavour shall be made to decide the complaint within five months from the date of receipt of notice.

Consumer Protection Councils
The consumers Protection Council are established to promote and protect the interest of the consumers. The Consumer Protection Act, 1986, provides for the establishment of the following councils:

1. Central Consumer Protection Council (Section 4)
2. State Consumer Protection Council (Section 7)
3. District Consumer Protection Council (Section 8A)

These councils are established at Central, State and District level to take care of the interest of the consumers at different levels.

Consumer Dispute Redressal Agencies
The Act provides for the establishment of three-tier quasi-judicial machinery at the District, State and National levels. The three consumer disputes redressal agencies at the different levels are as under.

1. Consumer Disputes Redressal Forum to be known as District Forum at the District level.
2. Consumer Disputes Redressal Commission to be known as State Commission at the State level.
3. National Consumer Disputes Redressal Commission to be known as National Commission at the National level.

1. District Forum – The District forum is established by the State Government in each district of the State by notification. If the State Government deems fit, it may establish more than one District Forum in a district, Section 9 (a).

Composition of the District Forum Section 10 (1)
The district forum is a body of three persons appointed by the State Government. Legally each District Forum shall consist of a President and two other members.
   a. President: A person who is or has been or is qualified to be, a District judge shall be the President of the District Forum.
   b. Other member: Apart from the President, the District Forum shall consist of two other members one of whom shall be a woman.

2. State Commission – The ‘State Commission’ is established by the State Government in the State by notification [section 9 (b)]. Each state has to have a separate State Commission. The state commission shall ordinarily function in the state capital.

Composition of the State Commission, Section 16(i)
Each State Commission shall consist of President and at least two other members.
   a. President: A person who is or has been a Judge of a High Court shall be the president of the state commission.
   b. Other Members: Apart from the president, the State Commission shall consist of two other members one of whom shall be a woman.

3. National Commission – The ‘National Commission’ is established by the Central Government by notification. The office of the National Commission shall be located in the Union territory of Delhi. It is the highest body to settle disputes under the Act.
Composition of the National Commission:
The ‘National Commission’ shall consist of a President and at least 4 other members.
   a. President: the person who is or has been a judge of the Supreme Court shall be the President of the National Commission.
   b. Other members: Apart from the President, the National Commission shall consist of at least 4 other members, one of whom shall be a woman.

Tenure of Office
A member of the District Forum including its President shall hold office for a term of 5 years or up to the age of 65 years, whichever is earlier.

The president or the members of the State Commission shall hold office for a term of five years or up to the age of 67 years, whichever is earlier.

The President or the members of the National Commission shall hold the office for the term of 5 years or up to the age of 70 years, whichever is earlier.

Qualification for Appointment of Members
1. He must not be less than 35 years of age.
2. He must possess a bachelor’s degree from a recognized university.
3. He must be a person of ability, integrity and standing and have adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

Disqualification of Members
A person shall be disqualified for appointment of a member of the forum in the following cases.
1. If he has been convicted and sentence to imprisonment for an offence, which, in the opinion of the State Government involves moral turpitude, or
2. If he is an un-discharged insolvent, or
3. If he is of an unsound mind and stands so declared by a competent court, or
4. If he has been removed or dismissed from the services of the Government or a body corporate owned or controlled by the Government, or
5. If, in the opinion of the State Government, he has such financial or other interest which is likely to affect prejudicially the discharge by him of his functions as a member, or
6. If he has such other disqualification as may be prescribed by the State / Central Government.

1.4.6 Deficiencies

The Act seems to have been enacted in a great hurry. This is why many significant aspects have not been covered or foreseen.

The deficiencies include:

1. Some of the definitions contained in the Act, particular those of ‘consumer’ and ‘complainant’ has been found to be of a restrictive nature. As a result, the redressal forums are constrained to decline relief in many cases.
2. U/s 14(1) of the Act, the District Forum has no jurisdiction to award interim relief or to order the offending party to cease production of goods in question or to recall goods certified as defective by an appropriate laboratory.
3. Consumerism is confined only to cities and urban areas. The consumer movement in India is active and effective only in the cities and urban areas and has yet to reach the villages and the rural and semi urban areas where more than $3/4^{th}$ of the Indians live.
4. Huge amounts belonging to consumers are lying with various Ministries and Corporations. There are various ministries and corporations such as textiles, soft drinks, Indian cotton mills federation, Life Insurance Corporation of India, Commercial Bank and Indian Railways. Where unjust enrichment running into crores of rupees belonging to consumers have been defying in the hands either of the respective corporations, industry or the excise or customs department.
5. Inadequacies in the implementation and functioning of the consumer protection act causing inordinate delay in disposal of cases. The three tier quasi judicial machinery set up under the act for speedy redressal of consumer grievance is not working properly resulting in pilling up thousands of cases at
the district, state and national levels. Though the statute clearly states the cases should be disposed off within 90 days, it has a rider as far as possible due to which in many cases the first hearing is scheduled nearly four to six months after the filing of the complainant.

6. Appointment of unqualified politicians on District Forums and delay in filling up vacancies in the District Forums and State Commissions. It is common practice among the state government to appoint semi–literate, undeserving members of the political party in power as members of district fora. The vacancies in the Consumer forum and State Commissions at district and state levels are not filled up in reasonable time. Added to this there are complaints of inordinate delay in the payment of allowances to members of the benches of consumer courts whose workings are affected due to inadequate accommodation and understaffing.

7. Abuse of the provisions of the act by filing false and frivolous complainants. In the case of very nominal fees payable by a person in filing a complainant before a consumer forum and a deterrent penalty against false and frivolous complaints, a large number of false and baseless complaints are filed with the consumer courts by a number of unscrupulous persons.

1.4.7 Constraints\textsuperscript{24}

To strengthen the Consumer Protection Act and to eradicate the deficiencies and inadequacies prevailing in the system appraisal of the functioning of the redressal system is needed. With the spread of awareness in urban areas the Forums are flooded by complaints which lead to enormous backlogs of pending cases in the District Forums, State Commissions and National Commission. Not only the number of complaints, but there are other deficiencies and inadequacies such as inadequate staff, inadequate accommodation, lack of modern technological instruments, constraint of funds, has hampered the functioning of the redressal system. In consumer protection Act, it is envisaged that decision would be given in 90 days. There are hardly any cases which are decided within this period. Tendency of filing appeals, intermediacy of lawyers and number of adjournments are some other reasons which creates problem in the smooth functioning of the system. Another major practical problem
everywhere is regarding execution of the order passed by the consumer courts. In a large number of cases, there are defaults in compliance with the orders.

1.4.8 Consumer Protection and Insurance

As insurance company is not only a business organisation but also a service provider to the customer, the provisions of the Act are applicable to the insurance business too. The insured is the consumer of the products and service sold by the insurance company, thus the provisions of the Act are applicable to the consumer of the insurance business i.e. the insured. Any deficiency of service by the insurance company attracts the provisions of the Consumer Protection Act, 1986.

As per the Insurance Act 1983, a person who buys the insurance policy is designated as ‘insured’, but he is a consumer within the meaning of sec. 2(1) (d) of the Consumer Protection Act 1986. The Act provides relief to consumers from deficiency in service and unfair and restrictive trade practices, etc. of the manufacturers and providers of services.

Once the insured purchases an insurance policy for the material consideration called the premium, and avails the services of the insurance company, becomes a consumer within the meaning of the Act. He is entitled to all the privileges provided under the Consumer Protection Act, 1986.

The insurer is bound by duty to take reasonable care in providing service to the insured. The insurer must ensure that all the terms and conditions of the policy are disclosed to the insurer fully and fairly. The insurer in this regard must take care of the following:

- There is no default or negligence as to settlement of insurance claims, which shall constitute a deficiency on the part of the insurance company as per the meaning of the act.
- To ensure that the contract of insurance is complete in all aspects, so that the consumer does not face problem when it comes to claims settlement.
- The terms and conditions of the insurance policy should be fully disclosed and explained to the consumer.
The terms of exclusion of the insurance policy must be read so as to serve the main purpose of the policy, which is to indemnify for the damage caused to the assured.

The terms of the insurance agreement must be construed so as to determine the extent of the liability of the insurer.

There should not be any undue influence and coercive bargaining or compelling circumstances while the insurer in dealing with the insured regarding settlement of claims, forming policies, etc.

The conduct of the insurer should be reasonable and customer oriented.

The insurer is also expected to act diligently and take all such care in rendering the service. Not doing so may amount to negligence which gives the customer the right to move a consumer grievance forum or an appropriate court. The provision of sec. 14 (1) (d) Consumer Protection Act, 1986 can be enforced only if the person from whom the damages are claimed has been found to act negligently and the person claiming damages has suffered a loss.

1.5 Chapter Summary

With the health care becoming expensive, there is more inclination towards buying health insurance (Mediclaim), with the increase in the purchase of mediclaim policies, there is also increase in the numbers of claims made. More the claims made, more the disputes arise. Awareness is increasing amongst consumers for seeking redressal leading to filing of complaints with redressal agencies under the Consumer Protection Act. But are our Forums that effective in disposing the complaints? In the end part, the overall idea of who is a consumer, what is consumerism, evolution of consumer movement, the enactment of Consumer Protection Act, its deficiencies and constraints and how Consumer Protection Law and is applied to mediclaim related disputes is discussed.
End Note

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