CONSUMERISM IN INDIA-
SOME RECENT TRENDS
INTRODUCTION

The field of consumer protection being so all pervading, it covers all aspects of human, animal and plant life. Thus consumerism encompasses may facets of human life that are interlinked with socio, economic and legal protection offered by Constitution. It is a known fact that right from the baby in the mother’s womb to the one on the death bed is a consumer. Many thinkers on the subject of consumerism are of the opinion that the definition of 'consumer' as per the Act must be widened so that all problems of a rational being (consumer) can be redressed through. In the last few years, with the active functioning of the consumer forums all over the country, there has been a lot of enlightenment among the people about the Act and a stage has come where the new law (CP Act) is poised to embrace new horizons so that some more additional areas confronting consumer interests can be brought under the ambit of the law.

The main objectives of this chapter is to present in detail of the emerging issues linked with consumerism with a view to throw some light on such issues having future perspectives for further research and discussions.

DOCTORS AND CONSUMER PROTECTION ACT, 1986

In a landmark judgment delivered on April 21, 1992 the National Consumer Disputes Redressal Commission has extended the ambit of the Consumer Protection Act, 1986 (CPA) to cover ".... the activities of providing medical assistance for payment carried on by hospitals and members of the medical profession..." The learned Commission has given "... an extended meaning to the expression 'Consumer' defined under Section 2(1) (d) of the Act" so as to include not only
persons who have ‘hired for consideration’ services of a hospital or a member of a hospital or a member of the medical profession but also ‘legal representatives of deceased consumers’ for the purpose of enforcing the cause of action which has developed’ on the latter.

Consumer protection is neither a Western concept nor a new phenomenon as it is popularly believed. In ancient India there were several Arthasasthas (treatises on state craft) guiding rulers on how to govern. Kautilya’s Arthasasthra (200 B.C. or 150 A.D.) is one such compilation incorporating earlier versions. He had dealt with several aspects of consumer protection in clear cut terms. In today’s context one reference pertaining to doctors and consumer protection can be cited.

Kautilya says, ‘Physicians shall inform the authorities before undertaking any treatment which may involve danger to the life of the patient. If, as a result of treatment, the patient dies or is physically deformed, the doctor shall be punished.

‘Doctors not giving prior information about treatment involving danger to life with the consequences of physical deformity or damage to vital organ can be given the same punishment as for causing similar physical injury, for death of the patient, the lowest level of standard penalty; and for death due to wrong treatment middle level standard penalty to be given’. (Kautilya’s Arthasastra translated by L.N.Rangarajan, Penguin, 1992).

This only shows that doctors have always been held responsible for deficiency and negligence in their services and the patients have been protected
against them. In modern India, suing doctors for their negligence in a civil court has always been an option. The famous instance of a table tennis player getting compensation of Rs. 17 lakhs was through a high court and not through the consumer redressal commission. However, it took him seven years to get that. Doctors have never objected to their being tried in civil courts but now they object to their being tried in consumer fora. In other words, if it could take a patient seven years through civil courts, it is okay for them. What they object to is the patient getting redress within six months or a year through the set up of consumer fora.

Now the Indian Medical Association is seeking exemption from the Consumer Protection Act on the following grounds. It may be shown that none of them is a valid one.

Reason1. It will destroy doctor-patient relationship.

Reply: The doctor-patient relationship is covered only under service category in the Consumer Protection Act and not under seller-buyer relationship as it is being propagated. If this Act instils a greater sense of responsibility among doctors, it is only good. It will improve their services and the doctor-patient relationship will only be better.¹

Reason2. It will result in a defensive practice by doctors.

Reply: Taking due care is a positive thing. It should not be defensive. The competent doctors who always serve with care have nothing to worry. Just because one could be made accountable to the consumer dispute redressal commission should not make any one defensive. All other professionals whose services are also covered under the Consumer Protection Act have not said that service would become defensive. As a matter of fact, every newspaper can be sued for libel, defamation and for so many other things. That has not made anyone stop talking or writing or functioning. Anyway, the recent amendment to the Consumer Protection Act has also provided for a penalty of upto Rs. 10,000 for vexatious litigation.
Reason 3. It will make treatment costlier to the public.

Reply: This can only be a veiled threat. Even before this Act some doctors were making unnecessary tests and examinations. Perhaps, they would continue to do so. However, a majority of the doctors had faith in their competence, skills and care and they would ordér tests only when they feel they are necessary whether there is a Consumer Protection Act or not. As long as there are such doctors, the cost need not go up. Anyone who tries to be unduly over-protective at the expense of the patient will soon reveal himself and the public would naturally avoid him. Free market economy will take care of that. The Indian Medical Association is requested to give up this futile exercise and concentrate on several other positive functions open to them.

The fact, the heated public controversy over the larger question of whether or not medicare as a service be it in the private or public sector, should be within the ambit of the consumer protection law - with the medical profession vigorously lobbying for its specific exclusion - that primarily accounted for the Government's delayed action. Conceptual nuances aside, the fact that consumer jurisprudence is still in its nascent stage of evolution strongly militates against, subjecting what is a highly specialised professional conduct to the quasi-judicial scrutiny of consumer dispute redressal fora. At the same time, it needs to be emphasised that if only the doctors had been made to realise their accountability to society and to be truthful to their profession and a body like the Medical Council of India had not been remiss in playing its role through prompt intervention in cases of gross professional negligence, the claim for remedy through the consumer courts would have been even less tenable.

The high power Working Group constituted by the Consumer Protection Council of India to suggest amendments to the COPRA has said in its report: "Services like health in hospitals run by government and local bodies...need to be
brought within the purview of the Act as they affect the lives of the citizens. Section 2(1) (d) may be amended accordingly." Prime Minister P.V. Narasimha Rao has already declared in the Parliament that not just private practitioners but govern­ment doctors too will be brought under the purview of the Act. A sure indication that the Government is keen on making all doctors liable under the Consumer Protection Act.

ARGUMENTS FOR INCLUSION OF MEDICAL SERVICES UNDER CP ACT, 1986

The inclusion of medical services under the Consumer Protection Act (COPRA) to provide quick legal remedy to aggrieved patients has brought much cheer to consumer activists and gloom to the medical profession.

Both are, however, critical of the Government for having failed to bring services in government hospitals under the purview of the Act for which there was a pressing demand from consumers. They regret that the recom­mendations of the Working Group set up by the Prime Minister last year to make the provisions of the Act more people-oriented were not accepted in respect of government hospitals.

The recommendation of the Working Group was no doubt prompted by the fact that cases of negligence by doctors have been on the rise in the country despite great advances in the field. There have been innumerable news reports to testify to this... death on the operating table due to negligence while administering anesthesia the wrong eye operated the left limb amputated instead of the right one the shocking list goes on.
Consumer organisations have welcomed the Act as they feel that accountability of doctors and nursing homes towards patients has not been commensurate with the high cost of treatment. They see no reasons why certain services should be included and medical services excluded from the Act. They felt that medical practitioner should be accountable and must face the consequences of negligence and malpractices. The medical practitioners generally conduct themselves with out any sense of fear of liability against negligence and maltreatment with the result that people may have to suffer from such treatment. Cheap and easy remedy provided under the Consumer Protection Act will enable people having a grievance against the treatment or conduct of a medical practitioner to get justice and also to create a sense of responsibility among the medical practitioners.

Now, to examine these arguments one by one:

Whether doctors have, or do special relationship with patients is not the point - is negligence, and a doctor who leaves a pair of scissors inside the patient’s abdomen through carelessness, is just as guilty of negligence as a builder who uses substandard materials and causes injuries through house collapse. If the builder can be pulled up in court why not a doctor?

Nobody is going to haul a doctor to court simply because the Act allows one to - unless there is a grievance; and if a grievance is established, even a doctor deserves to be hauled up.²

Right now, for such cases, a victim has no redress except in a civil court and that is expensive, long drawn - out and intimidating. It was precisely to make
available a better redressal machinery than the civil procedure that several services were brought under the Act. Does it make sense to exempt doctors alone?

If the threat of being pulled up for negligence did not exist, doctors would merrily go on being callous or negligent? How is it that we do not hear the argument, if refrigerator manufacturers have the threat at being sued in the redressal court, they will stop manufacturing refrigerators, and the public will suffer? The Act does not expect doctors to be "Gods"; it only wants them to be accountable in cases where they have given a raw deal to the patient. Why shouldn't they be accountable when other professional are?

If medical services are 'specialised' and 'technical', so are others; builders have expertise, bankers have expertise, lawyers and architects have expertise, so have tailors and furniture makers for that matter. None of them are objecting to being tried by judges who are not specialists in that particular field. Judges can and do, seek expert opinion when necessary. If we begin to exempt 'specialists' every one can be exempted.

**The Medical Council?** It is made up of doctors themselves; how many of them will penalise a fellow practitioner? How many have been punished so far? Besides, the Council has 'no authority to grant any redress or compensation to an aggrieved patient' as doctors themselves concede; in any case, the Act does not seek to create a new accountability for doctors; this already exists, in a civil court of law. So why are doctors objecting now?

Instead of threatening to push up costs due to insurance, why don't doctors concentrate on ensuring that they do not work negligently? (After all, don't doctors themselves say, 'prevention is better than cure,?') If they are sure that they
provide the service that patients are entitled to where is the threat of malpractice? And in any case, the poor in our country cannot afford medical treatment, even now, especially treatment by specialists. The poor crowd in municipal dispensaries, or not even that, if they cannot get to one or can't spare time to stand in a queue for two hours. So which 'poor' are the doctors concerned about? (How many doctors are ready to practice in the rural areas where the poor really need medical attention? So much of concern for our poor...)

If a doctor has to spend so much time in court defending himself/herself, that means there are so many allegations of negligence. Such a doctor should not be practiced. According to the doctors themselves, negligence is around three per cent. Since 37,000 doctors are reportedly on the medical register, this means 1,110 doctors do not offer proper advice to patients.³ Multiply that, by the number of patients each doctor sees and it is no longer a small '3 per cent' aberration what can be overlooked. Some people argue that sometimes a specialist doctor wants payment of cash else refuse to give receipts. Why this distrust by doctors?

Finally, is a doctor's negligence less of a wrong doing than a negligence by other services that are now under the purview of the Act? One should think it is, if anything, a greater lapse for, medical negligence can kill. It is a matter of life and death literally.

In the case of a doctor or a lawyer or a tailor or such like, is the hirer not paying any wages or salary for services provided. Neither the work of the professionals are supervised nor controlled. The consumer is always at the mercy of the professional and quite often a victim of their negligence. Many tales can be recounted by the readers alone.
Courts in the US as well as in the UK are known for the awards of exemplary damages against negligent doctors. This is to ensure that they must be more careful when dealing with human life. Such damages are awarded under the Law of Torts.

As in other professions, there are good practitioners and bad. The Act wants to protect the public from the latter. Doctors should be the first to support such a move. Doctors allege that patients will file 'frivolous' cases. It seems justifiable to accuse patients thus, but not justifiable for patients to ensure that negligence does not go unquestioned.

ARGUMENTS AGAINST THE INCLUSION OF MEDICAL SERVICES UNDER CP ACT, 1986

The medical fraternity has been protesting for some months now against the move to bring doctors' services under the purview of the Consumer Protection Act. And if government doctors were to be held liable, it would mean loss of crores of rupees to the government exchequer by some people. Most government hospitals lack equipment. Hence some argue that it is not fair to punish the doctors if something goes wrong because of lack of infrastructure.

The proposal to bring medical services under the Consumer Protection Act has evoked sharp reactions from the medical profession as it apprehends a spate of litigations and increased business for medical insurance companies at the cost of patients.

The services rendered by medical men are of a highly personalised nature and hence do not fall under the purview of the CP Act. The inclusion of service
sectors like medical in the CP Act, would be counter productive, contend by the top medical professionals.

A doctor is different from the provider of other professional services because he/she has a 'human relationship' with the patients. This 'sacred trust' will be violated if doctors are put on a par with builders who provide substandard housing or bankers who dealt on the services that customers are entitled to. If the threat on negligence or malpractice suits is present, doctors will be scared (or reluctant) to touch patients and therefore patients will suffer.

Society should look upon doctors as 'friends' and as 'human beings'. Doctors are 'not Gods', they provide treatment according to what they feel will work; if it doesn't, one cannot blame the doctor; each patient reacts differently, so we cannot expect 100% cure every time.

Since medical services are 'specialised services', judges hearing complaints will not be able to understand the technicalities, therefore, doctors cannot be included under the Act for redressal. The Medical Council can take suitable action against a negligent doctor. Another forum for redressal is unnecessary.

If doctors are scared of being sued for negligence, they will start insuring against such eventualities; the cost of insuring will be passed on to the patients; so ultimately patients will suffer. Look at what is happening in the U.S. where medical services have become so prohibitive that the poor cannot afford it. Do we want that to happen in our country? The medical practitioners feel that the country cannot afford to venture on such a move when its own health service sector is in
shambles with increased number of litigations, unnecessary medical examinations imposing a heavy burden on patients and mushroom growth of insurance claim agents trying to take advantage.

Thus, doctors hold a diametrically opposite view saying that a medical consultant cannot be equated with a shopkeeper or a detergent manufacturer. A surgeon has to take instant decisions, often under pressure to save a patient in a critical condition though his line of treatment need not necessarily be endorsed by another doctor. A doctor will have to refer even cases of headache for a CAT scan to convince the patient that he does not have a tumour in the brain. Some say even a small nursing home will now have to install costly equipment like pulse Oxymeters, Cardiac monitors and Defibrillators normally required in only one per cent of the cases. All these costs will be passed on to the patients.

What are the other fallouts if malpractice suits against doctors are allowed at the drop of the coin? The consumer court may be an easy excuse for blackmailing and the doctor may opt to compensate outside the court. The CP Act can be held as a weapon to blackmail an honest doctor. This would seriously blunt his professional acumen. In two years doctors would double their fees. This is to meet any eventual litigation and whopping advocates' fees.

Let us have a look as to what has happened in the United States. In that country malpractice has taken a heavy toll of the medical practitioners, especially the obstetrician (because there are two potential victims here). A study by the American College of Obstetricians and Gynaecologists reveals that nearly 71 per cent of Obstetricians have been sued at least once and about 25 per cent sued three times or more. The professional Obstetrician is being forced to discontinue
the practice because of the liability. Two thirds of the 56 countries in the State of Montana do not have maternity care. In Colorado, a lady must travel 32 miles on an average to deliver a baby. The insurance premium of an obstetrician has skyrocketed to about 1,00,000 to 2,00,000 dollars annually. We are already having a taste of it in Tamil Nadu. The premium for malpractice insurance has shot up from Rs. 800 to Rs. 2,000. The burden would naturally be passed on to the patient.

Wyden a Congressman in one of his statements to the House of Representatives (U.S.A.) has referred to the frightening impacts of their health care delivery system and observed that (1) Obstetricial practices were already closing down in large numbers. (2) Malpractice insurance rates would continue to rise and (3) The practice of defensive medicine would experience continued growth and might include questionable and inadvisable procedures, as a possible shield against the continuous threat of Malpractice suits. India is bound to follow this trend.

* Indemnity Policy: To meet the situation arising out of the Act, the New India Assurance Company, which deals with medical insurance, has devised a new Indemnity Policy to cover what it calls "Professional negligence, errors and omissions" in medical establishments. The policy indemnifies the insured for legal claims arising out of injury or death of any patient caused by error, omission or negligence.

The limits of indemnity can be selected by the insured depending on the volume of cases handled in the hospital. The premium rates are 3% on any one year limit, Rs. 5 per in patient or Rs. one per out patient.

In a circular to doctors, the Company has said that since the Government has already brought professional services under the CP Act we feel that hospitals will not be able to absorb all the awards that may be given by consumer forums against the hospitals. The cost of defence is also increasing day by day. We, therefore, advise that the hospitals can have great relief by obtaining our professional Indemnity Insurance cover.
Doctors, however, have adopted the stand that it is not they who will suffer but the patients, if the medical profession is brought under the Act. One is that the costs of treatment will skyrocket. The argument is that since doctors will be held liable if something goes wrong, they will simply refuse to take the risks they took earlier. For even the simplest condition, they will tend to prescribe a host of tests and investigative procedures.

The doctor will have to react by practising defensive medicine. The casual patient who comes with a headache of one day duration may have to be advised three views of x-ray skull, opinion from the ophthalmologist, a CT scan and an MRI scan, lest the doctor miss a brain tumour. A patient with a two-day fever may need to have mandatory investigations of a blood count, widal and culture, urine culture, chest x-ray, ultrasound examination of abdomen, well felix reaction, mantoux reaction and soon. These procedures would also involve time and the patient may not be able to avail emergency treatment if he is forced to undergo all these before treatment. There will be no end to investigations. And the doctor cannot help this defensive medicine. He has to save his skin and keep the ambulance chasers away. Such lawyers are already there in Bombay, on the look-out for such cases in hospitals.

The doctor will have to become a Robot. There may be no humane or compassionate approach in him. The doctor will increase his fee. Thus, the patient will have to undergo quite a few unnecessary investigations to protect the doctor. The hospitals will increase their charges to include ‘legal expenses’. The price that the community will have to pay to accept malpractice medicine is enormous. In our country with medical care is still not accepted at the preventive level on the one
side and most doctors not insured against malpraxis on the other side; hence it looks as though we are heading for a disaster of the health care system. This is no exaggeration. It is already happening in the U.S. The horror story is bound to be re-enacted in India.

The Indian Medical Council (IMC) in its turn has not been very dynamic either in taking up this issue or in going into the root cause of this malaise. The IMC is the apex body which can take disciplinary action against the doctor and it can strike the doctor off the rolls. But it has no more judiciary powers like making the doctor, pay a compensation to the afflicted party. There is also a justifiable complaint that the medical council (consisting of persons of the same fraternity) tend to play soft when one of their clan is accused. Naturally, there is a feeling that very few complaints are decided in favour of the aggrieved and the doctor goes scot free.5

The other major lacuna is a lack of proper medical audit system, both in private and public hospitals. Hand in hand with lack of updating of knowledge, this lack of introspection contributes a lot to qualitative degeneration in medical practice. Proper documentation and obtaining a second opinion where needed will go a long way towards building the confidence of the patient. The Indian Medical Association and the Medical Council must give serious thought to these aspects and make both mandatory.

The Medical Council must take cognizance of this and try to improve their standards of discipline in medical profession. This rampant agree of publicity in the lay press by the medical practitioners especially those who have returned from
abroad and by the hospitals with latest technological gadgets which vie with each other in full page advertisements, may have become acceptable today as a norm. But still the Council seems to be dormant about it.

It must be remembered that the Tort Law is always there in gross medical negligence. This will be the proper channel for an aggrieved person. Shortcuts to law may not produce the desirable effects one would with. There is justice in making justice available at a small cost of the court fee. The present CP Act will permit complaints, flood the court to enable the complainant, earn a quick buck at no expense.

An attempt must be made to form a referring tribunal in which members of the medical council and non-medical personnel may participate to adjudicate over malpraxis cases.

Subjecting the medical profession to the CP Act will perhaps reduce its professionalism and convert it into a trade making treatment much costlier. Such a move could lead to harassment of dedicated doctors, thereby affecting the interest of the community.

CONSUMERISM IN THE WEST

The UNESCO guidelines (1985) refer to physical safety of consumer, economic interests, access to information, satisfactory production and information marketing. The study of these guidelines do not suggest anything except that the trader is the person against whose misconduct the Act is intended.
In the U.K. the patient if unsatisfied with the medical practitioner or his services, approaches the civil court. In the United States, the patient who complains against the erring doctor approaches a lawyer who then establishes a 'discovery' followed by a discovery deposition, where all the evidences are called upon, when the plaintiff and defendant can ask them questions. If a 

*primafacie* case is established, the case is referred for a trial by jury. The consumer forum has no role in medical malpraxis cases in these countries. The legality of the consumer forums trying a professional is thus subject to review.

**NO COMPARISON**

The doctor and the trader do not stand comparison. The consumer law is meant for the trader whose intentions to fraud was there and was in addition intentional and a priori. This stands in total contrast to a doctor-patient relationship, where a defective goods (here the patient who is ill) is brought to be set right by the doctor. The doctor intends to cure and he at times fails to cure. The intention, it must be pointed out was not mala fide and much less a priori. To weigh both these acts in the same balance, sounds overcome and alter the existing principle of *Caveat emptor* - 'Let buyer beware', and not to cover medical malpraxis.

When a medical practitioner acts, he acts on the basis of the information available to him as on date and acts with the best of intentions. He does not mean to harm the patient, since he will then be harming his own interests and will also be liable to prosecution, in his considered opinion, he feels that the patient should need a particular type of treatment. Such decision on the line of therapy may be of varying hues and colours depending on what the concept on that day is in the medical world, it may vary from person to person or patient to patient. One patient may be treated with
chloramphenical for his typhoid and another with Ampicillin or again the Quinolone
group of drugs. This choice is often a shrewd guess as to what would be the safest to
the patient. Yet if it misfires, morbidity or mortality may be the end result. But yet, there
was no intention to harm the patient.

It may not be irrelevant to quote Lord Dennings with reference to professional competence and its human limitations (White House Vs. Jordan). "Whenever I give a judgment and it is afterwards reversed by the House of Lords, is it to be said that I am negligent? That I do not pay enough attention to a previous binding authority or the like. Everyone of us, every day, give a judgment which is afterwards found to be wrong it may be an error in judgment, but it is not negligence. Likewise with medical men if they are found to be liable wherever they do not affect a care or wherever anything untoward happens, it would be a great disservice not only to the profession itself but also to society at large. The damages are colossal, not only from financial but also from the point of view of his reputation.

All of us are aware that there is a Law of Torts. There is no need to duplicate the same by running a parallel judiciary. The intention of CP Act is to enable a consumer to question the credibility of a sale of ghee worth Rs.20 where adulteration to the extent of 25 per cent may have been brought to the notice of the consumer court. It may of course involve much bigger transactions. But to make things too easy for the complainant. When he has no cost to bear beyond filling up a complaint form and sending it to the nearest consumer cell, it will make room for frequent complaining. And why not, since it costs nothing and the returns may be reasonably handsome if the case is won. It was only to prevent such frivolous complaints that the civil courts charged a court fee.
But the harm it does to the medical practitioner is really enormous. His capacity to come to reasonable conclusions with the danger of malpraxis complaints hanging above him like a hampered is an unreasonable thing.

Mediocrity will take the upper hand relegating meritocracy. In short remedy should not be worse than the malady. It is time Government initiate meaningful dialogues with professional bodies such as the Indian Medical Council, Bar Council of India, Institute of Chartered Accountants etc., to tighten the existing provisions for effective implementation to punish the erring few instead of bringing them under the purview of Copra.

Quite obviously it was never the intention of Parliament to include medical relief within the meaning of 'Services' under the Section 2 (1) (0) of the CP Act 1986. It is unfortunate that while dealing with the definition of 'Services', the learned National Commission should have rejected any "Reference to the Preamble to the Act, the statement of objects and the reasons appended to the Bill or to the debate and speeches on the floor of the Legislature / Parliament", where as during the course of the same judgment, some ten pages after, while giving an extended meaning to the expression "Consumer" defined in Section 2 (1) (d) of the Act, the same Commission has taken cognizance of the 'objects and scheme of the Act'.

The National forum judgment based on the legal interpretations of essentially two sets of words viz, "Contract of service" and "Personal service" appearing under Section 2 (1) (0) of the CP Act, has overlooked its far reaching implications especially on transfer of skills - invasive procedures and surgical techniques to doctors, nurses and paramedics in training. It would now be extremely wearisome for the chief of
a surgical service to ask a nurse to even give an injection or a junior doctor to perform the simple task of dressing a wound for the fear of the patient, who has ‘hired for consideration’ the services of his hospital or mine, claiming compensation through the redressal forum under the CP Act on the ground that he was subjected to undue risk, physical discomfort and mental agony, because he (chief) himself did not give the injection or dress the wound.

ELEMENT OF EXPERIENCE

The art and science of surgery and complex procedures diagnostic as well as therapeutic have always been and will have to be learnt and perfected on living human bodies -- the patients. There is an element of experiment in every operation a doctor performs and in every prescription he gives. The more specialised is the task, the greater is the risk involved and the narrower is the margin between success and failure. It is humanly impossible to keep abreast of every available information pertaining to the various problems faced by a doctor, particularly a cardiac surgeon on minute to minute basis.

Under the circumstances, one can have absolutely no doubt that, if the CP Act in its present construction is applied to doctors then, before long, we shall indeed see the frightening spectrum of unskilled ‘surgeons’, ‘anaesthesiologists’, ‘invasive cardiologists’ and so on investigating and treating patients who have been included by the National Commission’s judgment in the list of "Consumers" and whom the CP Act is thought to be providing protection.  

CONSUMER PROTECTION ACT NOT THE ANSWER

Opponents to Copra further argue that if it is a question of protecting the interests of the persons who may have suffered on account of any negligence or
deficiency in the service rendered by hospitals and the members of the medical profession, then, the CP Act 1986 is not the answer. How else can a social welfare legislation aiming at providing a speedy and inexpensive alternative remedy in respect of claims for compensation for loss or injury suffered and ‘suppress the mischief’ should have failed:

a) to offer the benefits of this Act to the millions of poorest among the poor - the so called common man - who seek medical relief in non paying government hospitals, charitable dispensaries, free health camps etc., and from doctors not charging fees.

b) to provide protection of action in respect of anything which is in good faith done or intended to be done - by hospitals or the members of medical profession when such a provision has been made under Section 28 of the Act for the benefit of the member of district forum, the state commission or the National Commission or any officer or person acting under the direction.

c) to include a person of eminence - having adequate knowledge or experience of or have shown capacity in dealing with problems relating to “so sensitive a profession as medical profession, which deals with life and death, in the composition of the district forums, the state commission and the National Commission or

d) to mention the ‘term medical relief’ or ‘medical services’ or ‘medical profession’ or ‘hospital’ anywhere in the Act, not even under Section 2 (1) (0) wherein the provision of facilities in connection with as many as ten ‘services’ have been specifically enumerated.

COMPREHENSIVE LAW

i) Amend the CP Act 1986 to explicitly and in unambiguous terms to exclude the services rendered by hospitals and the members of the medical profession from the meaning of “Services” under Section 2 (1) (0) of the Act and legislate on entirely new and comprehensive Act to provide speedy and inexpensive legal remedy “in respect of claims for compensation for loss or injury suffered as a result of the imperfection, shortcoming and inadequacy in quality, nature and manner of performance of the services rendered by hospitals and the members of the medical profession”.

245
ii) Amend the Section 28 of the Act (CPA 1986) so as to enlarge its ambit to cover the medical professionals for performing any procedure or prescribing any remedy medicines or otherwise - "in good faith", "with adequate knowledge of its outcome - beneficial or adverse", and amend the Section 13 (2) of the Act to insert a clause wherein it shall be made obligatory that even before the copy of a complaint against a member of the medical profession is forwarded to him. For giving his version the "complainant" must first convince the concerned redressal agency that there is sufficient evidence to indicate lack of "good faith", "deliberate negligence" mala fide intention or absence of "adequate knowledge of the outcome of the procedure performed or remedy prescribed by the person against whom the complaint is lodged."

Justice (Retd.) V.R. Krishna Iyer writes:

"It is a pity that never or rarely in the history of the Indian Medical Councils Act has punitive action been taken against peers. Nor can compensation and criminal sentence be awarded by such bodies, even where guilt is found."

Secondly, this argument is against the first principle of justice which suggests that justice shall not only be done but shall seem to have been done. The doctor's case against the consumer courts is that they do not have confidence in them, stated in plain words. By the same tongue they suggest that the patients' complaints shall repose confidence in the medical councils. This argument is against common sense and is only to be rejected.

The third argument is that the medical service will become costly and the members of the public themselves will be the losers. It is true that the medical service will become costly. But to say that the costs will shoot up is an exaggeration. Costs will increase on two counts. One, the doctor's will all take insurance policies with high coverage and will incur heavy expenditure for payment of premium. They will then distribute the burden of the premium on the patients. Considering that this
is true hundred per cent what will be the percentage of increase in the medical bill. Scattered over a period by one year and divided among all the patients examined by a doctor, the burden but on an individual patient in the name of premium will only be negligible unless the doctors use it as a means to make extra profits, as is done by traders after every budget or official price hike. Two, the doctors will resort to defensive or protective practices and subject a patient to many tests to reduce any chance of error. At the first instance, it needs to be pointed out that there is a limit to defensive practice. A doctor cannot subject his patient to unnecessary tests which are irrelevant or remote. That will prove the incompetence of the doctor landing him in trouble. Subjecting a patient to necessary tests will bring positive results though the cost will be higher. The doctor and the patient can make sure that the patient is safe. When, on the other hand, medicines are prescribed without subjecting the patient to necessary tests, there is no guarantee that the patient is safe. Analysed deeply, it can be seen that the cost is not high in the long run. When a patient is treated imperfectly, there will be repeated occurrences of diseases and each time he spends money for treatment and medicine. The only relief gained in this process by the patient is that he does not spend the money at one occasion over a period of time. But there is another cost factor. He drains out his health and becomes a permanent patient. In fact, the so called defensive practice in our country is viewed as a safe practice in the developed countries. We are philosophically trained to justify imperfections for the sake of money.

Hitherto we examined the correctness of the arguments raised by the doctors against inclusion of medical service in the CP Act 1986. Let us, now, explore the reasons which compelled the parliament to do so. The reasons are in the present state of medical services in the country.
COMMERCIALISATION OF MEDICAL SERVICE

The increase in private nursing homes and hospitals has converted medical care which is a 'need' into a commodity, which can be purchased over the counter. Like any other business, the medical profession is increasingly being guided by the profit motive rather than that of service. Such a situation gives rise to unethical practices and there have been a number of cases, both reported and un-reported of misdiagnosis, unnecessary testing and surgeries from different parts of the country.

"Private Practice has become extremely commercial. There is no attempt to check the rampant out practice (Commissions doctors pay one another for referrals) and expensive investigations like CT scans ordered without sufficient indications", says Dr. Sanjay, Nagral, Department of Surgery, Kem Hospital, Bombay. Dr. Arun Bal too raises the point. "Doctors themselves are to be blamed for the turn of events because they have failed to exercise self regulation. In the last two decades there has been a phenomenal rise in malpractice. Over charging, unnecessary tests, referrals and operations have increased beyond limits".

This kind of a trend has been well documented in the case of the pharmaceutical industry which is known to persuade doctors to prescribe certain types of drugs by offering commissions, concessions and fancy gifts in the form of household luxuries to trips abroad. Some of these drugs are not only irrational but also extremely hazardous. Drugs banned in other parts of the world still remain in third world countries like India.
CONSUMER INTEREST AND INTERNATIONAL TRADE

The issue of international trade traditionally has had a far reaching effect on consumers. On the most basic level, of course, trade benefits consumers by moderating the costs of goods and services through the mechanism of competition. By the same means, it increases the choice and quality of products available to consumers. On a more complex level, however, international trade and formal trade policies interact in complex ways with economic and social policies, including such basic ones as environmental policy, consumer and worker health and safety policy - and with even more fundamental policies that underlie the conditions of personal and political freedom.

International trade is an activity which has roots almost as old as mankind itself, kept alive by the mutual ability of various geographies and peoples to extract, produce and fashion goods and services that some others cannot, or at least cannot as efficiently. Trade can bring goods to consumers who would normally not have access to comparable items, thus increasing the choice that consumers have in the marketplace. This increased choice creates competition, serving the dual purpose of increasing quality of goods and lowering costs is an attempt to woo the savvy consumer. This is a result of trade which translates into tangible benefits that the consumer can experience when standing in the market place or, as it is referred to in Minneapolis, the shopping mall.

But the issues of international trade often run much deeper and are less cut and dried than simple cost and quality benefits. Even within the narrower context of commercial activity, consumers have competing interests in trade policy. And
this especially is a dilemma for lowering income consumers, whether at home or abroad. Consumers want more affordable food but they also want it to be safe - however, accepting slight risks can some instances be a way to keep down the price of foods. Consumers want affordable pharmaceuticals which may be more affordable if they are available from sources other than a patent-holder, but they may want the most modern medicines, which may not be available in places where the patent-holder perceives the patent laws not to afford adequate protection. Consumers may enjoy more and lower-priced services such as banking and insurance if trade in services across borders increases competition, but opening borders to such foreign competitors may raise questions about the effectiveness of local regulatory bodies on behalf of consumers.

Trade also affects issues broader than these commercial ones, issues so essential that we view them very emotionally - employment, working conditions, public health and safety, the environment and national sovereignty. To note that, however, does not necessarily mean that trade agreements are the only or the best instruments by which to address these broader social issues. As the International Organisation of Consumer Unions has stated, "The environment is too important to leave to trade officials". Trade agreements should be environmentally friendly, but they are no substitutes for separate international agreements that deal with environment or human rights or labour conditions or other social issues - more directly. Therefore, it is important to step back and view the juncture between trade and these broader issues analytically and in context.

Further, it is easier to bring trade and social issues closure together in small agreements involving a limited number of contiguous nations - such as the
NAFTA agreement - than in global agreements such as the GATT. Much has been achieved, at least on paper, in the NAFTA environmental agreement, which lead several of our largest environmental organisations to support NAFTA ratification. That made sense because we share borders with Mexico and Canada and have direct trans-border environmental problems.

Negotiating the same kinds of specific 'do list' environmental improvement programmes in single negotiations with many dozens of developing nationals in Asia, Africa and South and Central America seems a far less feasible undertaking. Every added trade partner in such a negotiation far more than doubles the trade-offs, to the point where the geometric progression of difficulty would prove enormous. GATT, the global agreement, is about to consider undertaking a 'green' programme when its ministers meet in April. It is at the same time essential to insist that GATT become green and otherwise more socially aware and, at the same time, to have realistic expectations about the time needed both to work out a plan and as to the level at which problems can be effectively addressed.

As to the first, much of the advocacy against these agreements assumes that governments through trade agreements can control the fine details of investment and business decisions throughout the world. This is not so. Governments do a fair job when they set rules of honesty and fair play, rules to promote health and safety. They do less well when they try to direct technology and investments rather than to set the rules by which technology may be applied and investments may be made.

As to the second, 'the big picture' of trade is like a TV screen. It is made up of the little pixels of light and colour that constitute the fine print of trade agreement texts. If the fine print if flawed, we will not perceive the big picture may not be what it
seems. Nor will we see the big picture accurately if we misperceive the fine print, or if we view some little corner of the picture as the whole. This is part of what has taken place in the debates on NAFTA and GATT.10

There has been a perception in some quarters that these agreements will result in the demise of our society and environmental standards as well as out national sovereignty. In a common view, this resulted in part from citizen advocates of good intention testing the ‘worst case’ interpretations of the fine print insisting and apparently believing, that these interpretations were necessarily the meaning of the Draft Agreement of the GATT Uruguay Round that surfaced in December, 1991, the so called ‘Dunkel Draft’.

The purpose of the Uruguay Round of the GATT is to address non-tariff barriers to trade. The kinds of barriers included in the category ‘non-tariff’ is broad and varied. It includes agricultural subsidies and non-tariff imports restrictions as well as other means of managing farm economies; National Intellectual Properties Laws (and the lack thereof); the lack of market access for providers of many kinds of services - including consumer banking and insurance services; and standards, including both private and governmental product technical standards and food safety standards. Some of these barriers are in fact, barriers simply because of a lack of uniformity among nations, others are barriers by design. Nations that want to protect national industries from foreign competitions found myriad ways to do so. For example, by writing a standard so that a domestic product but not a foreign would meet the standard. Or so that nation's unique method of testing to meet the standard was the only governmental test or inspection methods acceptable, even though there is nothing inherently in appropriate from a health or safety endpoint about an imported good’s use in the domestic market.
These barriers injure consumers as well as exporting producers, for they deprive consumers of the competitive benefits of trade. Thus, there is nothing conceptually 'anti-consumer' about the Uruguay Round or its food safety proposal. (Since the NAFTA food standards negotiations started with the GATT Dunkel Draft, these remarks at this point apply equally to the NAFTA.)

What is important to consumers of food is to assure that, in both concepts and drafting details, the food safety agreements - or 'sanitary and phytosanitary Agreement', as it is formally known - does not mean threaten the right of the US, or any country measures, provided that they are for the valid purpose of protecting human, plant and animal life and health, rather than for the invalid purpose of excluding foreign products as a national economic objective.

As already suggested consumers have dual interests in an affordable, varied diet and in a safe food supply. While these interests can be made consonant, they are not automatically so. And where a health concern is genuine and not theoretical, at least in economics of plenty health is generally given a higher priority over price. However, there is a greater potential tension between these competing considerations where the health concern is real but the degree of risk is slight and the cost effect is substantial. There also may be income - distributive effects, with some consumers on very limited food budgets willing to take greater risk than those on ordinary or generous food budgets.

The Dunkel Draft reflected a scheme that was to require that there be a scientific basis for each national food safety basis. A country whose products were excluded through applications of such a measure could successfully challenge the
measure through the GATT dispute settlement process if it could demonstrate that such was not the case. This would allow nations to have scientifically-based food safety standards but at least curtail the ability to use unscientific standards primarily for the purpose of trade discrimination. Under this proposal, a national food standard that was the same as an international standard would be presumed not to violate the Agreement. Nothing in the Draft stated or directly implied, however, that national standards more strict than international ones would be presumed to violate the Agreement.11

The expressed concerns followed this script. The science basis and an asserted preference for international standards would be used to weaken US food standards (including some stricter than federal state standards) bringing them down to (supposedly unacceptably low) international standards. A trade complaint could be filed under this proposed new GATT dispute process in which the 'dueling science' arguments of the complaining and defending parties would be tried before a three-member panel. The panel could then choose among the arguments of the parties as to which 'science' it agreed with, relying if it chose on the opinion of experts identified by the supposedly weak Codex, and throw out a strict US standard because it agreed with the arguments of the challenger and the opinions of the Codex-supplied experts that science did not require so strict a standard.

If this characterization were accurate, there would indeed be a valid US consumer concern with the food safety agreement. We are accustomed to and fully expect to be adequately protected by food safety standards that are among the strictest in the world. We would not want to see these standards pulled down to some lower common denominator as a result of a trade agreement. And certainly,
we would not tolerate this result as the product of process in which a trade dispute panel choose to side with the arguments of foreign government against, for example our own Food and Drug Administration (FDA), in a reevaluation of the science on which the FDA relied in setting the standard.

The meaning of ‘science basis’ question was resolved, first in the final version of the NAFTA final agreement, then in the GATT Final Act was adopted on December 14, 1993. The NAFTA food safety agreement defined ‘scientific basis’ to mean ‘a reason based on data or information derived using scientific methods’.

The GATT Final Act provides that there is scientific justification for A stricter-than-Codex standard if it is adopted ‘on the basis of an examination and evaluation of available scientific information....’ and the nation adopting the standard ‘determines that the relevant international standards, guidelines of recommendations are not sufficient to achieve its appropriate level of protection’.

The United States should have little difficulty sustaining its food safety standards under these criteria. The NAFTA standard is simple. The judgment of validity has a reason, based on scientifically-based reasons or data. The GATT criterion is more complex, in that it requires the standard to have taken into account the adequacy of the codex standard. However, as the NAFTA provision does, it takes into account only whether the required determination has taken place, not a challenging country’s arguments about the validity of or the determination. No dueling science appears to be contemplated by either definition.

Thus, the ‘pixel’ of the science-basis requirement as it turns out in the final agreements turns out to give the big picture a very different appearance than
did the characterizations of this issue during the debate. We could cite numerous additional points which turned out the same way. When all of these pixels are adjusted to reality, the picture is quite different. No longer is the big picture on the screen one of 'Frankenstein', but instead something quite ordinary.

Finally, we come to what may be the root of much of the controversy surrounding our participation in international trade, a narrow view which assumes that the appropriate culture in an international setting is always an American culture. The fear of losing our rights to protect our own standards and national sovereignty is predicated on the belief that most Americans have that our standards and our politics are the only right ones in the world. In many ways we want to insert into the international context our own exact ways of doing things, based on the idea that we need to bring other nations around to our way of thinking. While our goals for health and safety are valid, we must realize two things. First, that there may be other ways than our own of reaching them. Second, consumers in other countries especially those in differing economic and cultural situations, may have other preferences in balancing such potentially competing considerations as risk and income. And they may have higher priorities than the adoption of our own current ones, such as basic sanitation before clean air.

In a world of so many cultures and customs, we need to learn to take the needs and views of others into account. Trade, and especially the rules set out in trade agreements, should be used sparingly as a tool for forcing change in other countries. Otherwise it looses its effectiveness. And the victims may be the very people we mean to help. Every one impressed recently by a radio interview with a China expert regarding the attitude of the Chinese dissident movement towards the
extension of Most Favored Nation status by the US to the China. Apparently, the dissidents reduce their level of activity whenever the MFN consideration is pending with our government because they do not want China to lose this status. While they want the political freedom that we too seek in threatening to change China's MFN status, they realize that if the status is withdrawn, many people will not work, many Chinese consumers will have lowered standards of living.

This is not to say that trade agreements should be accepted without question. Certainly there are many issues in international trade which require close scrutiny to ensure that the wants and needs of consumers are adequately represented. As consumers we all have an interest in making sure that trade agreements become more modern and equitable in serving everyone's social concerns and needs—not just our own. Today's economy is too global for any one nation to force every last jot of its own domestic agenda and process on all others. While remaining vigilant, we still must encourage the positive side of international trade so that consumers all over the world may reap the benefits trade can bring.
CONSUMER PROTECTION, LIBERALISATION AND GATT

An attempt has been made in this chapter to analyse the impact of liberalisation policies of Government of India on the interest of consumers, and also the contribution or otherwise of GATT (General Agreement on Trade and Tariffs) provisions to the consumer welfare. The competitiveness of an economy rests upon its system of values. This especially true for the so called market economies, where the margins of freedom allowed in the behaviour of producers and consumers must be compensated for by a strict respect for the values of society. It is striking to note now in Western societies the growing pressure of public opinion in favour of respecting values (notably in such areas as food, health, financing, the environment, not to mention politics).

The market economy is not as Paul Valery, the French author described it: 'A free fox in the free chicken run'. On the contrary, the more sophisticated it becomes, the more it must, in an almost intransigent manner, respect the values on which it is founded. With the liberalisation policy of the Government of India having thrown open the doors of the economy to leading global players who are entering the country either directly or through joint ventures, huge foreign investments are being pumped into Indian marketing leading to a widening of consumer choice and the proliferation of global markets and services.

The opinion seems to be divided on the implications of economic liberalisation for consumer protection in India. Some consumer activists argue that opening up of economy will lead to elimination of foreign companies thus killing the initiative of indigenous industry. The consumer activists belonging to this school of thought
are set to be swayed by the popularist and emotional overcomes and unable to appreciate the significant contribution of economic liberalisation and GATT to the consumer welfare. This is because of the following reasons.

There is no informed and objective public discussion on this important topic. All the opposition parties tried to gain political mileage by disseminating incorrect and incomplete information, vested interest like the union leaders of various public sector institutions have been organising agitation against GATT, failure on the part of the government to educate people on GATT, etc.

Once the license-permit quota raj was eliminated in the case of two wheelers industry, consumer became the king. Before the liberalisation, consumers had to deposit money (some are still struggling to recover those deposits from companies like LML Vespa) and wait for 7 to 10 years to get their vehicles. Now one can walk into any showroom and buy any vehicle of their choice. The producers are slowly finding out that they need to conduct market research to learn about the actual needs of the consumers.

When Telecom department did not allow anybody to manufacture telephone, it used to cost Rs.2,000. Once its monopoly was eliminated, not only the price of the telephone collapsed to Rs. 500, but we were also able to buy different types of telephone. Now with the implementation of Telecom Privatisation policy, there will be revolutionary changes in telecommunication. The cost to the consumers will definitely come down and many more will be in a position to afford the telephone.
Many of us can remember the times when we had to request or beg the corrupt politicians to get us permit to buy cement. With the liberalisation, not only cement is available in plenty, but also even its price has come down in real terms. The price decline would have been even more significant if the government had monitored the cement trade better and prevented the monopoly from increasing prices.

Excepting for the die-hard socialists union leaders, self-serving political leaders and some public sectors employees, it is not difficult to see the great advantages of economic liberalisation. Wherever the government has monopoly position in banking, power supply, public transportation, railways, petroleum supply (slowly being liberalised), coal supply, municipal services etc. (garbage collection, water supplies etc) not only do the common consumers fail to get proper services and products, but they are also forced to pay a high price. Despite enactment of Consumer Protection Act, harassed consumers are not able to get their grievances redressed in time. Who are actually the beneficiaries of the government monopoly control which is presumably done to help the poor? It is the politicians in power (through collecting bribes), bureaucrats and executives in the management (risk free jobs with many perks) and employees (high wages in relation to poor productivity and guaranteed employment) are the beneficiaries. In other words, for the sake of a negligible minority (less than 2% of the population) should the majority suffer by opposing liberalisation and perpetuating permit-quota-licence and public sector monopoly run? In fact, properly implemented liberalisation, leads to a win-win situation i.e. all the parties stand to gain as the economic piece-expands rapidly. Whereas under the old system, we have a zero sum game i.e. employees and politicians gain at the cost of the consumers.
If we believe in the economic liberalisation, then the acceptance of GATT with all its drawbacks and inequities should not be a big problem. Then, why is it that GATT has come to the top of the political agenda diverting our attention from the more important question of improving economic productivity and fighting communal and castcist hatred?

General Agreement on Tariffs and Trade is an agreement among 117 signatory countries to reduce the tariffs and non-tariff barriers to increase the world trade to the mutual benefits of the signatory countries. The earlier seven rounds of GATT had been successful in reducing the tariff to an average of 5% in the developed countries. An economic model developed by the World Bank forecasts that the latest GATT round will add about $213 billion to the world GNP and in the case of India it would be $46 billion. Everyone feels that the model has vastly underestimated the benefits to the Indian economy perhaps by considering only the direct effect. Because of GATT, Indian economy will become more vibrant and Indians, GNP will be 30 per cent to 40 per cent higher than what it would have been in the next 10 years. GATT will help us to remove the shackles put around India's economy. The enterprising talents and the inherent productive abilities of Indians which had been caged behind bars in the name of socialism will now have a chance to bloom.

The above point can be illustrated through a simple example of a consumer product like T.V. A latest model T.V. with all the features will cost around Rs. 6,000 in the U.S. But a comparable T.V. model in India with old technology and also with few features costs more than Rs. 15,000 even when the labour costs are low here. Why should consumers in India with less purchasing power fork out Rs. 9,000 more for an interior product? Who shares in the spoils of Rs. 9,000? During the times
of licence-permit-quota raj, the producers had to bribe the politicians and bureaucrats to obtain the required licence. Because of lack of competition, they also raked in huge profits. Now, most of the additional costs is because of the customs duty. If the government did use the tax revenues properly to build the infrastructure on to help the downtrodden through welfare schemes, then the economy would have benefited. But we know very well that with the present political set up, it is indeed a pipedream.

Now with GATT, as tariff structure comes down and Indian traders are exposed to the cold wind of global competition, not only will they be forced to improve their productivity but will be compelled to pay attention to the customers needs by improving quality and reducing prices. What is true for TV is also applicable for thousands of essential and non essential consumer goods.\textsuperscript{12}

It is true that the government should provide level playing field to our industrialists through improved infrastructure (proper roads, efficient telecom facilities, better ports etc), lower cost of capital, elimination of unnecessary bureaucratic hurdles, elimination of judicial delays, power and energy supplies at competitive prices etc. A number of doubts and fears have been raised regarding GATT namely India's economic sovereignty will be compromised, farmers will be ruined, drug prices will skyrocket, public distribution systems will be curtailed, our genetic wealth will be lost etc. But none of the above fears are justified.

There is nothing in GATT that will lead to the curtailment of Public Distribution System (PDS). It is true that GATT will force a reduction in agricultural subsidies. But this will mostly affect the western countries where the average subsidy is around 20 per cent to 40 per cent. In the case of India, based on GATT rule, Indian
farmers are given the negative subsidy, since our agricultural product prices are below the internationally prevailing prices in the case of many commodities. In the future, since our farmers will be able to export they will started to gain. This is one of the factors which has influenced the farmers leaders like Sharad Joshi to fully support GATT.

It is in the area of Trade Related Intellectual Property Rights (TRIPS), India has to make some legislative changes by revising our Patent Act by giving both products and process patents. At present, India gives only process patent which in reality amounts to giving no incentive to the inventor. Since the product patent will not be retroactive, the price of the drugs that we are manufacturing today need not go up. In addition since the share of the patented drugs (in light of the UN study recommending only about 250 drug formulations being essential) is small, price impact need not be significant. By developing an effective plant breeder protection system, not only can we prevent any exploitation of our genetic wealth by outsiders, but can also give enough incentive and protection to our farmers. It is not at all true that our farmers have to buy their seeds every year from the multinationals and nor is it true that farmer’s freedom to use farm saved seeds will be affected.

If we prepare ourselves better, then India will be in a much better position to take advantage of General Agreement on Trade in Services which is also covered by the latest GATT agreement since it will allow us the flexibility of temporary relocation of our skilled and professional personnel in developed countries.

There is no doubt that the developed countries have succeeded in driving a hard bargain. Opening up in the trade in textiles which can help India will be done only gradually and be 100 per cent free only after ten years. Whereas the product patenting which will mostly keep the developed countries will start from
1995 itself. It is about time that we stop asking the question whether we should belong to GATT or not (China has been knocking at the doors to be allowed into GATT) and start debating what steps we should take to make the best use of GATT. We also need all expertise and information to make sure that Multi National Companies (MNCs) will not take us for a ride. For example, let us take a look at power sector.

The Government has taken the correct step in inviting the MNCs to invest in power sector. We need to have an effective system to monitor their operation. Since 16 per cent rate is guaranteed, MNCs, may be tempted to goldplate their investment at the cost of the consumers. Their choice of fuel and how they price that fuel will have great impact on consumer economics. If MNCs use fuel like Liquified Natural GAs (ENRON has plans to use that fuel), then India will stand to lose a lot. It is to these factors that we should now start paying more attention.

In conclusion, economic liberalisation and India continuing as a member of GATT will help the consumers in that we will get quality goods at lower price, and consumers will have plenty of choice. With economy expanding, employment opportunities will also improve. Contrary to the belief of many politicians especially from the opposition parties and labour leaders, GATT membership is not a zero sum game. By properly playing the game in the international arena, Indian economy can become vibrant and we can indeed improve the living standards of all.

CONSUMER EDUCATION IN THE LIBERALISING ECONOMY

Now the problem is how to prepare the Indian consumer to operate in the changed circumstances, is an issue none has thought to be important. Assumption seems to be that the customer is all prepared and ready to play
his role in the new economy. Notwithstanding the above, this chapter recognises that there is equally a need to prepare and educate the average Indian consumer so that he is not overwhelmed and is able to make informed decisions in his role as a consumer.

CHARACTERISING CHANGE FROM THE CONSUMER ANGLE

By minimising the national barriers to trade, the liberalising economy exposes the consumer to the world market. It provides an easy access to the world's latest products and services. From the point of consumer, the objective conditions of the market change as follows:

* Consumer is catapulted from sellers' market to buyers' market.

* Hitherto unexperienced range of brands in which a product/services is available.

* The rate at which new brands and new products/services enter the market is high.

* Technical specifications of technologically complex products/services are beyond the comprehension of even the well educated.

* The marketing, sales and financing schemes are complex in themselves about which no systematic data is available at one place.

* The products/services are becoming highly specific to the end user. Thus, the user must articulate his needs in today's product jargon.

It is certain that the genuine difficulties Indian consumer will face in coping with market change described above need to be formally addressed. In generic terms, the following educational needs are identified.
EDUCATIONAL NEEDS

* Awareness of the range of technological products / services for a given function = Sensitising.

* How to match the user's need with the products available to choose the brand = Decision making.

* How to decide the mode of buying, supplier, financier, delivery mechanism, warranty, after sales service, commissioning, mode of payment, ownership conditions etc. = Choice of a package.

* To be the effective user of technology, knowing capabilities of technology = Knowledge of scientific and technological principles.

* Adapting technology and innovating for new purpose. = Knowing the limits of technology. Being intelligent user of technology

* Maintenance = Understanding technology -- user interface.

* Understanding obsolescence, and the necessity to upgrade = Discard decision.

TECHNOLOGY CENTRE: A FORUM FOR UNDERTAKING CONSUMER EDUCATION

Concept of a Technology Centre proposed here is to provide an institutionalised education service to the consumer. Its objective will be to serve the consumer in a true sense towards meeting the educational needs mentioned above. Following functions and areas are identified from the point of consumer at large which a Technology Centre may address.14

* It will have round the year temporary displays with contents changing every quarter. The displays will consist of 3-d working models, real or scale, animated exhibits, audio-visual material, printed literature, etc.
* It will organise short term hands-on, skill-oriented courses.

* It will be a forum where the consumer has an access to scientific information, free from marketing bias, on various technological products in the Indian market.

* Technology Centre will create opportunities for consumers to meet and interact with technical experts for enhancing their understanding of underlying scientific/technological principles.

* It will offer service to consumers in terms of specific queries on the scientific/technological aspect of a product.

* Technology Centre will not act as a mouth piece to any particular brand of technology.

* The preliminary list of areas of consumer interest has been made on the basis of three criteria (i) high cost products where the consumer must be doubly sure of what he is buying, (ii) health related products where there is a risk to health if improper choice is made, and (iii) where his efficiency as a working person can suffer if he is not well conversant with certain technologies, e.g. office automation and (iv) various services offered by the burgeoning service industry where the tangibles and intangibles are intricately packaged into a composite.

The areas are:

(i) Domestic appliances (Washing machines, micro oven, domestic security, etc.)

(ii) Automobile and accessories

(iii) Computer

(iv) Communication technologies (FAX, EMAIL, etc.)

(v) Banking System

(vi) Capital Market (vii) Medicines & medical appliances

(viii) Office automation (Photocopier, DTP, PC, etc.)

(ix) Processed Food
* The Technology Centre will thus cater to all age groups irrespective of educational attainment levels with the objective of facilitating technology diffusion. It will also address the issue of cultural barriers / inhibitions which delay the technology diffusion process.

* Lastly, the Technology Centre may operate on the basis of membership on a continuing basis through subscription and/or stand alone service on payment.

**The Prospective Providers**

If there is a need, there should be a provider. Following abilities and attributes are required of a provider:

* Scientific and technological knowledge expertise.

* Communication skills and technologies.

* Ability to provide service through distributed points would enhance access to consumers.

* Image associated with the provider.

Consumer accustomed to a seller’s market may see such an effort as a marketing gimmick of industry. It is important that providing institution is free from this image. Academic institutions are therefore suitable for the task. Universities have a tradition of doing some engineering consultancy. They also earn a modest revenue out of it. It is possible for a university to organise from its existing resources a new activity directed towards consumer education, or one may call it a kind of consultancy service to a consumer. In the current financial crunch, as the institutions are finding methods of raising funds, this may be considered as one possible source. Further, it may be possible to mobilise industry resources towards this
objective, thus opening out a new dimension of university-industry linkage. If academia and industry jointly undertake a responsible education of the consumer, it should literally help closing the gap between knowledge, technology and market. Concept of a Technology Centre proposed here is an institutional mechanism to achieve the above objectives.

All those institutions which are engaged in continuing technical education theoretically are in a position to proactively respond to the new emerging need of a fast changing Indian economy.

Ideally, science and technology museums are also in a position to provide the service. The education extension services of science and technology museums in India have widely addressed the need of supplementing formal school education through school loan service, science demonstration lectures, hobby clubs, science quizzes, science fairs, teacher training programs and so on. They have also tried to inculcate scientific awareness in rural population through mobile science exhibitions. All these activities can truly be described as dissemination of science. Their expertise of nonformal educational methods in dissemination of science and technology can easily be reoriented to now address a more palpable issue of technology diffusion.¹⁵

**ROLE FOR INDUSTRY**

The model of Technology Centre proposed here will require inputs from academia as well as industry combined in such a way as to foster technology diffusion through secular methods. Industry would see it in its interest to support a forum for consumer. It may contribute by way of technical expertise, demonstration
products, exhibition material, and financial contribution. The Government of India's policy to give 100% tax exemption to industry for financial contribution is a boon to the proposal.

Under regulated economy, Indian consumer was accustomed to function in a seller's market. With liberalisation taking place, he will be catapulted in a buyer's market. Further, a free market economy to be successful, will itself require a cultural paradigm shift in the consumer. The idea has argued a need for educational inputs to the consumer and has proposed a concept of a Technology Centre towards meeting the above need.

It may be concluded that liberalisation facilitates a free market economy which in turn fortifies the so called position of a consumer as king of the market.

Infact, in our country the sovereignty of the consumer exists only in theory but not in practice. Even in the so called affluent and highly competitive economies, the consumer is not a king and in countries like India, where seller's markets exists, he is nowhere near even a king without the 'privy purse'. A free market economy largely permits the evolution of consumer sovereignty by allowing consumer to express their performances and tastes as between goods and services.

INVESTOR PROTECTION

India has 15 million share holders, 21 active stock exchanges, the second highest number of 6,500 listed companies, and a market specialisation of Rs. 90,000 crore, the highest among the emerging markets of the world according to the IFC.
The phenomenal growth of the capital market may or may not be related to the success of the ongoing reform process. It may not even be possible to state unequivocally whether it is a cause or the effect of the reform programme. By every conceivable yardstick the capital market has never had it so good. Market capitalisation reached record levels. Notwithstanding temporary setbacks to it, the Bombay Stock Exchange’s sensitivity index continues to be the focus of attention, perhaps obsessively so. It touched an all time height of 4650 in September 1994. Indian companies raised as much as Rs. 216 billion from the capital market. Fourteen years earlier the amount so mobilised was a mere Rs. 2 billion.16

A variety of entrepreneurs are accessing the market for financing a tremendous range of activities, some of which just a few years ago would have been considered unsuitable for capital market participation. The perception of the average investor on the risk element is changing fast and this along with the introduction of new instruments has most certainly contributed to the depth of the markets.

Among the may plausible reasons cited for this phenomenon is the decline in the capabilities of the financial institutions and commercial banks to provide cost effective loans to the market, primarily because they themselves have to depend in no small measure on the capital market for their resources. An amasingly large number of would be investors have been trying their lucks with the stock markets by applying the new issues. And in a significant change the new investors are from practically the whole of the country, although their largest concentration is still from western India. Incidentally, the country has the largest number of stock exchanges -23 - in the world.
Welcome as these developments are, there is nevertheless a flipside. What is the level of protection these large number of investors have? Is the infrastructure adequate to take care of the explosion in the market activities.

Investor protection has been the goal of the Securities and Exchange Board of India (SEBI) and since acquiring legal status in 1992 it has been pursuing it with singular determination. But SEBI's record has been uneven even while it has come to be recognised as the principal forum for redressing investor grievances. Statistics furnished by the SEBI indicate that right from its inception until the end of March 1994, it received more than 10,65,000 individual complaints of which it was able to resolve more than 4,32,000.\(^{17}\) This works out to a redress rate of just over 40 per cent. Its task has been doubly daunting because none of the activities of large number of capital market intermediaries - the merchant bankers, bankers to the issue, underwriters and registrars - was ever regulated in the past. Infact, it is only after the advent of the SEBI that all these entities were required to be registered with any official agency. The stipulation regarding capital adequency, satisfactory track record and experience gave some of those intermarries a status which they did not have. With more judicial teeth, the SEBI has been able to compel companies that approach the capital market frequently to disclose in the offer document itself both the extent of complaints in their previous issues and the mechanism for solving them. SEBI's efforts have, thus, helped to create a substantial investor awareness regarding their rights.

The country is passing through an era of transition in the sense that from a controlled economy it is heading towards a liberated economy and integration with global players in the market by making available Indian securities for trading in the
international stock market. In a free market economy there can only be a few factors governing economic activity namely market forces, demand and supply.

GOVERNMENT EFFORTS

The Government has taken several measures to protect small investors. These cover pre issue and post issue problems faced by them. A company making a rights or public issue can now allot shares or debentures only if it has received a minimum of 90 per cent subscription against the entire issue. If subscriptions to this extent are not received, the entire amount collected will have to be refunded to the applicants at the end of 90 days from the closure of issue.

An Investors' Protection Fund was proposed among the changes being contemplated in the Companies Act. For this purpose, the Government of India decided to create a corpus to which the unclaimed dividend amounts remaining unpaid for sever years will be transferred. The need for creating such a fund was felt because punitive action along against companies infringing the company law was not found sufficient to redress the investor's grievances.

PROBLEMS OF INVESTORS

Redressal of investor grievances is an important role of the regulatory agency. The SEBI has been quite active in this respect. Most grievances relate to delay in issuing, or returning share certificates after registering the transfer. The listing agreement contains a clause to the effect that the company will return the share certificates within 30 days of acknowledgment. When one receives back the share certificate prima facie it will appear that the transfer was processed by the company.
within 30 days time limit. But the post mark on the envelope will bear a much later date. It seems likely that the company merely anti-dates the transfer to make it appear that it has compiled with the 30 days rule. If SEBI randomly inspects the transfer records and compares the days with the postal records it will be able to detect such practices. Deterrent punishments to a few habitual offenders will serve as a warning to others and help in raising the general level compliance.

Annual reports to shareholders have long been recognised as an important means of control over directors. In recent times, many companies, including some highly respected ones, have indulged in 'creative accounting practices' for the purpose of reporting a better financial position than the truth. Many devices were pressed into service, and questionable practices were adopted. Further, most companies took advantage of a clause in the Companies Act and sent to the shareholders only abridged versions of the annual accounts. This also eroded the already tenuous control shareholders have over the directors. The Institute of Chartered Accountants on its part should take urgent steps to improve the standards of accounting, and bring them on par with the international standards. If the Institute of Chartered Accountants does not act fast, will SEBI amend the listing agreements and enforce international standards on all listed companies? The SEBI should also consider requiring companies which have raised funds abroad and consequently furnished to foreign stock exchanges and authorities, accounts drawn upon a different basis, to publish such information in the reports to the domestic shareholders also.

Absence of transparency, clouded settlement systems, unfair pricing, widely prevalent insider-trading, questionable corporate practices, primitive transfer proce-
dures, maintainious paper work and lack of custodial services in India continue to bother
the FIIs. Even the domestic investors are unhappy with the developments such as
proportionate allotment and bought out deals which are brought in on consid-
erations of lack of infrastructure (such as banking and postal facilities in
adequate measure) and reduction of issue cost.

MAKING THE SHAREHOLDERS' VOICE AUDIBLE

In the matter of investor protection, the Company Law also has an important
role. The SEBI should persuade the Company Law Department to amend the law
suitably in this respect. In general, it is now recognised that the small shareholder has
virtually no control over the directors. Various reasons have been suggested but the
following is an important one.

The present law is that the annual general meetings are to be held in the city,
town or village in which the registered office of the company is situated. Another rule
lays down that a proxy holder cannot speak at general meetings. The vast distances
and the high costs effectively deter shareholders from attending annual meetings.\textsuperscript{19}
Further, some companies have their registered offices in remote rural areas with very
poor infrastructure, so that the difficulties in attending AGMs (Annual General Body
Meetings) at such places are increased. A possible solution to this difficulty may be to
require companies to hold their AGMs at state capitals or district head quarters which
are likely to have adequate lodging and transportation facilities. In addition, if the law
is changed to furnished proxies to speak, or if shareholders' associations are enabled
to attend and speak, the voice of the small shareholders will become more audible.
ROLE OF SEBI

The Securities and Exchange Board of India (SEBI), established as an administrative body in April 1988, became a body corporate under the Securities and Exchange Board of India, 1992 (the Act) which came into force on January 30, 1992. The Securities Exchange Board of India (SEBI) thus, was established as a statutory organisation charged with the regulation and development of securities' markets.

The SEBI Act is based on the concept of investor protection and regulation of intermediaries. The Board has framed a number of regulations and issued various guidelines, covering a wide spectrum with a view to realising the objectives of investor's protection and regulations of intermediaries. As the regulations deal with many matters and are so numerous one perspicacious commentator has been made to remark that the regulations and guidelines have spawned an entirely new profession of SEBI interpreters. A major problem for SEBI lies in the area of staffing. Created to function like the Securities and Exchange Commission of the U.S., SEBI needs adequate organisation of competent, satisfied executives and staff and a healthy work ethos in dealing with exceptions to good market behaviour. Its strength in terms of qualified and trained manpower is, therefore, crucial. Such a facility can be put in place only on the basis of reasonable remuneration package. While SEBI speaks loud about its role in protecting the interests of small investors, it is silent on the interest of other investors. When the Act does not make any distinction among various classes of investors, the SEBI's present attitude makes it clear that it intends to protect only the small investors. 20
In investment activity, it is common knowledge that small investors do not make any real contribution to capital formation on a long term basis and they are only interested in short term appreciation and gains in investments they make. They cannot, therefore, be called ‘investors’, but can only be called ‘traders’ in securities, if not ‘speculators’. There is no justification in law to differentiate among investors such as the foreign institutional investors, NRIs and overseas corporate bodies controlled by them, off-shore mutual funds, domestic mutual funds, financial institutions, foreign collaborators, Indian promoters and preferential allots. All of them are investors and when they step into the investment activity, they have to keep their eyes and ears wide open and none of them should depend on statutory protection. In such a scenario, the so-called protection of the small investors is out of place, what is required is a free and fair market in securities where no one is favoured particularly.

Very often, the Securities Exchange Commission (SEC) of the U.S is being cited as an example by SEBI and the Government in their eagerness to develop an independence agency to oversee and regulate the securities market.21

In the U.S., laws relating to securities are federal, very stringent and are enforced strictly. There is a tremendous amount of voluntary compliance with such stringent laws, rules and regulations which leaves the enforcement authorities to act only on complaints of insider trading, unfair trade practices, market manipulations, fraudulent behaviour, violations of law and the like. The number of cases involving all these appears to be small compared to the vastness and volume of the securities market and the various types of securities dealt with in such markets on a day to day basis. On the
contrary, in India, the laws appear to be stringent but leave room for doubts and clarifications, and there is no enforcement machinery worth its name,

Quite often laws, rules and regulations are freely violated with impunity taking recourse to influence and power.

CONSUMER PROTECTION ACT VIS-A-VIS SEBI ACT:

Besides the SEBI Act, the investors can also take recourse through MRTP Act, the Company Act, Consumer protection Act, and Securities (Contracts Regulation) Act. There has been a lot of debate whether investor can be equated to that of consumer as defined in the CP Act. Majority of the District Consumer Forums in India have admitted the complaints on the corporate sector for its failure in furnishing information to the investors about the allotment of shares, refund of money (in case of no allotment), and its fraudulence of postal misgivings of refund orders and irresponsible attitude of the financial agencies like UTI and similar organisations in sending the certificates of investment and dilly-dallying tricks of manufacturers in refunding the advance deposits even on receipt of the discharge cards, etc., thus causing great distress to the investors.

And many state consumer Commissions have upheld the decisions of the district forums which provide a lot of relief and adequate compensation for the corporate failure in fulfilling certain obligations towards its investors. Thus the CP Act has been considered a boon to protecting the interest of investor - consumers.
However in May 1994 in a particular case, the company namely Morgan Stanley Mutual Fund went on to appeal to Supreme Court* against the National Commission' judgment and argued that the investor was not a consumer and therefore, consumer forums could not have jurisdiction in redressal of investor grievances as such. The Apex Curt favoured the arguments of the company and held that the 'prospective investors is not a consumer and therefore, consumer forums have no jurisdictions in deciding the matter. This judgment is very disheartening for the consumer organisations in the country, since the Apex Court didn't favour the investor community to be treated as community of consumers. After this judgment came, the consumer organisations in India have made several representations to the Government to amend the CP Act so that investors' interest could be safeguard through consumer forums which provide speedy justice. The other recourses of law for redressing investors' grievance are no doubt there, but they can not provide cost less and speedy judgments as is possible in the case of consumer forums.

Investor protection has become one of the important objectives of many of the consumer organisations in India. Many consumer organisations have also started developing necessary liaison with SEBI and the Investor Service cells of various stock exchanges in the country in the mitigation of investor grievances.

* The Supreme Court, in a significant judgment has ruled that Consumer Protection Forum has "no jurisdiction whatsoever" under the Consumer Protection Act (CPA) to entertain a complaint from a prospective investor in respect of shares floated by a company or units by a mutual fund. The bench also said that a prospective investor (either an individual or a voluntary consumer association) is not a consumer under the Act. Mr. Justice S.Mohan, who delivered the judgment of the Bench ruled that a District Consumer Dispute Redressal Forums (DCDR) "has no power under the CPA to grant any interim relief or even an ad-interim relief like an ex-parte injunction" (restraining a company from proceeding with the issue of shares in a given case).
There are lacs of middle and lower income group people who would like to channel their modest savings and also to support the country's economic ventures if they are assured of reliable and prompt services of corporate sector. Otherwise the rapid strides that have been witnessed in Indian capital market would receive a serious jolt if the functioning of the corporate sector is not properly streamlined. Investor grievances can be minimized substantially by the companies adopting investor friendly policies.

CONSUMER MOVEMENT: ENVIRONMENTAL DIMENSIONS

An attempt has been made here to study the environmental dimensions of consumer movement with special reference to the role of consumer organisations in India. Threats to the environment are multiplying year after year: Chloroflourcarbons (CFC) are eating away the earth's protective ozone layer. Acid Rain and Logging are depleting our forests, heaps of throwaways, tins, plastics and glass are rising around us. India, inspite of being aware of these environmental problems, conveniently swept these issues under the carpet, as there were other pressing problems facing the country. Over a decade, the concern for environment has surfaced and gained momentum.

Environmental pollution no doubt forms the 'seamy side' of industrial, scientific and technological development achieved in India. In fact environmental pollution is the bane of industrial civilisation which has grown up after industrial revolution in developed countries where the concerned governments and voluntary organisations of the people (consumers) have become conscious of this malady and taken both remedial and preventive measures and are evolving new methods and techniques in this process.
However, the importance of environmental purity was buried in the depth of oblivion in the ages that followed.

After independence, with accelerated industrial development along with achievements in the fields of science and technology and their application to farm lands as well, growing new cities and towns and overcrowding of the existing metropolitan cities and other urban areas, vehicular road transport, merciless deforestation for setting up industries and townships, thermal power plants etc., and introduction of chemical fertilizers, pesticides and insecticides in the farming sector, environmental pollution in urban and rural areas besides ecological imbalances have been alarmingly on the increase.

Thanks to the educational campaign of environmental experts, the media, various conferences including Envirotech Conferences and exhibitions, the Indian Science Conference Sessions, seminars organized by citizen's committees and consumer associations, observance of world Environmental day, the 'chipko' movement etc. In India, environmental pollution is at least now a matter of table among educated and enlightened section of the people.

The WHO has also become involved in the matter affecting human beings throughout the world. The International Organisation of Consumer Unions (I.O.C.U.) with Headquarters at Hague has also adopted inter alia "the right to healthy environment" amongst other rights in their manifesto on consumer protection. The International Co-operative Alliance (I.C.A.) in their 24th Conference held in Homburg in September 1969 declared that the consumers have a right to "adequate standards of safety and a healthier environment free from pollution" among their rights as
CONSUMER ORGANISATIONS AND ENVIRONMENTAL ISSUES: THE INDIAN PERSPECTIVE

During the last decade due to alarming deterioration in the environmental conditions the world over, this area no longer seems to be a monopoly of the environmentalists alone. A galaxy of organisations and pressure groups have come forward to resist the environmental violations at different levels. Prominent among these groups are: Consumer Organisations; Human Right Non Governmental Organisations (NGOs); Intellectuals' Associations; Trade Unions and Workers' Associations and many other Public Interest and Social Action Groups. These pressure groups have had their respective share of success and failure in their endeavours to resist the environmental violations. Nevertheless, at least some groups seem to have been undaunted even by failures and are continuing their crusade against the menace of pollution and are championing for the humanity's right to clean environment. Consumer organisations are one such powerful lobby.

During the last few years, a new phenomenon has come to be witnessed, that is, the consumer organisations worldwide have begun to focus on global environmental problems, thanks to the uniting efforts of the International Organisation of Consumer Unions (ICOU) - a federation of consumer organisation which currently links the activities of at least 180 consumer groups in about 70 countries and represents the consumer interest at the various international forums.22
One of the peculiar features of the Consumer Protection Act, 1986 is that the traditional rule of locus standi - whereby only an aggrieved person could approach the Court for the redressal of his grievances - has been considerably liberalised in this statute and accordingly, any consumer or a consumer association and even the Central or State Government can also file a complaint under this Act. This liberalisation has, in turn, enabled the consumer associations, voluntary social action groups, and public spirited citizen's to resort to Social Action Litigation (SAL) - the representative and non-adversarial form of litigation which had made its headway in India in the early 1980s primarily to check governmental lawlessness and repression. SAL, it is now being used by the consumer groups primarily to highlight the individual and societal grievances, in particular, against consumer exploitation and environmental degradation.

In India, though both statues were passed in the same year, the enactment of the Environment Protection Act, 1986 preceding the enactment of the Consumer Protection Act, 1986 by seven months. Interestingly, the locus standi principle has also been liberalised in the Environment Protection Act. Nevertheless, this liberalisation does not seem to have encouraged the environmental groups to seek remedies under this legislation. Moreover, as yet, there are no separate environmental Courts in India. Therefore, the environmentalists have mostly invoked the writ jurisdictions of the High Courts and the Supreme Court by way of public interest petitions under the Indian Constitution. As a result thereof, even after six years of the enactment of the Environment Protection Act, 1986 there is not much evidence of social action litigation under this particular statute. On the other hand, as has been mentioned above, a new trend is being witnessed in India concerning the emergence of environmental litigation under the Consumer Protection Act, 1986. Though the number of environmental cases...
argued before the Consumer Forums is not substantial, there is, however, a visible spirit of optimism in this area of law. There is also a clean indication that the problems of environmental law are now being equally looked after by the consumer protagonists in India. It may, therefore, be argued that, in view of the comparatively liberalised procedure under the Consumer Protection Act, there is a greater scope for seeking quickly and time-bound remedies under this Act even for the environment-related issues. Accordingly, this warrants the increased attention of the consumerists and the environmentalists towards the consumer protection mechanism. Further, it is amply clear that the filling of environmental cases before the Consumer Forums has primarily been possible due to the simple and comparatively non-technical procedure involved in filling a complaint under the Consumer Protection Act, 1986. For instance, whereas the provisions of the Environment Protection Act requires a complainant to serve a notice of minimum sixty day's to the Government before filing a complaint [Section 19 (b)], no such notice is required to be given under the Consumer Protection Act. [Section 12] Both Section 19 (b) of the Environment Protection Act and Section 12 of the Consumer Protection Act respectively deal with the manner in which complaints can be made. Moreover, there is no legal formality of affixing any Court fee while filling a complaint under the Consumer Protection Act. In addition, a complainant does not necessarily need to approach a District Court, High Court or the Supreme Court as is the case with the Environment Protection Act. In fact the establishment of the three tier quasi-judicial mechanism under the Consumer Protection Act has facilitated the filing of the complaints, according to the amount involved, before any of the three institutions - the District Forum, the State Commissions or the National Commission. This is a novel infrastructure of its own kind hardly ever seen anywhere else. And unlike in most other
It is obvious that these provisions have encouraged consumer organisations to approach the Consumer Forums to get their grievances redressed, even in cases where the issues involved were primarily concerning environment protection. Since the C.P. Act applies to both goods and services and to both the public as well as the private corporate sector, the Indian consumer organisations have filed a number of complaints against the public sector undertakings including airlines, banks and insurance companies, departments of electricity, health and sanitation, housing, railways, and telecommunications as well as against irresponsible and unethical businesses. In the present context, however, we are primarily concerned with the cases filed by the consumers organisations where the issues involved were concerned with environmental violations.

It may be noted that these organisations have filed cases primarily against air, noise and chemical pollution. As mentioned earlier, the number of such cases is almost insignificant, yet they have brought home the point that consumer organisations, too, can help in checking the ever growing menace of pollution. A brief discussion of these cases enables us to understand and appreciate the emerging trends in the Indian legal system.
In the first instance, the consumer organisations in different states have filed a number of cases against un-hygienic conditions contamination of drinking water and against a variety of other fact causing environmental deterioration. For instance, in Consumer Education and Research Society Ahmedabad & Ors v. The Ahmedabad & oRS v. The Ahmedabad Municipal Corporation & Ors, an Ahmedabad based voluntary consumer organisation, the Consumer Education and Research Centre (CERC), filed a complaint petitions alleging gross negligence and failure on the part of the city Municipal Corporation to take adequate preventive measures before the onset of the monsoon season in the year 1988, such as clearing of garbage, removal of dead carcasses of animals, repairing of pipe lines, streamlining of the drainage system etc., so as to avoid contamination of drinking water supplies to the public through the Corporation water supply pipes. As a consequence thereof, there was an outbreak of cholera and gastro-enteritis in epidemic from within the Corporation limits of Ahmedabad. It was alleged that despite receiving numerous requests for clearing of garbage and dead animals etc. from different people, who had apprehended that in the rainy season the contaminated water in the drains might enter into the damaged water supply pipe line, the Corporation had paid no attention to such requests. The result was that after the first heavy rains, garbage of all kinds including industrial waste, was absorbed by the rain water. Due to water logging, the accumulated waste material posed an imminent danger to the health of the residents of certain areas of the city. The consumer organisation had further complained that it was only after the epidemic of cholera and gastro-enteritis broke out in the city that the Corporation authorities woke up to the necessity of performing their duties of repairing and cleaning of public latrines etc. The CERC alleged that, had this work been carried out before the onset
of the monsoon, the outbreak of the epidemic could have been prevented and many precious lives could have been saved. It was further complained that underground water pipes had got exposed and sprung leaks and they became carriers of sewage and other abnoxious materials during the rainy season, and inspite of their having known about it, adequate steps were not taken by the Corporation to disinfect the contaminated water supply or to discontinue the supply of such water. The degree of chlorination of the drinking water supply by the Corporation was allegedly inadequate and the state of sanitation in several areas of the Corporation was also deplorable. After the epidemic had broken out and several affected persons were admitted in the hospitals run by the Corporation, the services provided to the patients were allegedly deficient in many respects and there was acute shortage of even life-saving drugs in almost all the hospitals. It was alleged that most of the victims of the epidemic were persons who were paying charges to the Corporation for water supply and conservancy services. It was submitted that, but for the callous indifference, negligence and total failure on the part of the respondents to take adequate preventive measures in advance of the monsoon season, it would have been possible to effectively anticipate and prevent the outbreak of water-borne diseases like cholera and gastro-enteritis during the monsoon season. As many as 6500 persons were affected by the epidemic, of whom 327 were said to have died in the different hospitals run by the Corporation. The complainant association, therefore, demanded compensation for the victims of this epidemic.

The respondent Corporation denied all the charges and stated that the entire water supply had been super-chlorinated and the chlorine content in the water was
being closely monitored every day by drawing several water samples from various parts of the city and more particularly from the affected pockets. It was stated that in the areas where there had been focal outbreak of the epidemic, water supply was being given through tankers whenever the private water supply system was found to be not satisfactory or there was contamination in such water. Since the negligence of the Corporation could not be proved, no relief could be granted to the complainants. The National Commission, however, disposed of the complaint petitions on the basis of the satisfactory assurances given by the respondent-Corporation for future action. The Commission concluded:

"We do not find it possible to say that the unfortunate outbreak of the epidemic of cholera and gastro-enteritis in the city of Ahmedabad in 1988 was the result of supply of contaminated water by the respondent-Corporation or of any failure on the part of the respondents to take adequate anticipatory measures to prevent the outbreak of such disease during the monsoon period.... We record the assurance given to us by the learned Advocate General on behalf of the Corporation that the existing measures of sanitation and maintenance of health and hygiene set out therein will be continued uninterrupted in future also and that the further programme of action set out therein for bringing about all-round general improvement and modernisation of the civic services related to health, sanitation, etc., will duly and faithfully implemented".

Similarly in the years 1976, 1982 and 1990 respectively, the people in the State of Madhya Pradesh had become victims of viral infective hepatitis. This was again allegedly due to the consumption of polluted water. As a result thereof, hundreds of lives were lost. Three cases were filed in quick succession. For instance, in State of Madhya Pradesh and Anr. v. Tribhuvan Prashad Chaturvedi & Ors, and Administrator, Municipal Corporation, Rewa v. Jila Upbhokta Sanrakshan Parishad, Rewa one Tribhuvan Prasad in his capacity as President of Jila Upbhokta Sanrakshan
Parishad - a voluntary consumer organisation - filed a complaint averring that due to polluted water supply, insanitary and unhygienic conditions and sale of adulterated foodstuffs, the city of Rewa was in the grip of jaundice and meningitis fever which had claimed many lives, and many other inflicted were taking treatment in the hospitals. It was contended that all this had happened due to the supply of polluted water. The petitioner averred that attention of the authorities was drawn but they had failed to solve the problem and that the water pipes continued to supply polluted water thereby causing the dreadful diseases. The petitioner, therefore, claimed a compensation of rupees one lakh and preventive steps for the future. The opposite party denied the allegations. However, the Madhya Pradesh State Commission dismissed the petition on the ground that the petitioner had not taken samples of the water and that "the alleged defect of bacterial water supply could not have determined without proper analysis of sample as contemplated under Section 2 (1) (a) read with Section 13(c), (d), (e), (f) and (g)" of the Consumer Protection Act, 1986. According to the Madhya Pradesh State Commission, in the absence of any such sample testing report, the allegation that the water supplied was contaminated and had caused the disease could not be upheld. The State Commission, however, took serious note of the problem and directed the State Government to alert its functionaries about the prompt and timely action in future. The Commission also emphasised on the need for educating the people in the matters of personal and social health, hygiene and sanitation requirements and made the following significant observations.

"Though we strongly deprecate the leakages, filth near the pipelines, or gutters running parallel to them etc., but there is no evidence that a particular leakage and particular pipe line and tap water consumed by those persons was found bacterial. Absence of any simple analysis is significant. In this poor country,
with masses even ignorant of personal hygiene and sanitation, this kind of proof was very important. Otherwise, merely on basis of reports that there is this or that epidemic in a town, it would open the floodgates of complainants everyone claiming compensation. This is to undermine the duties of a Welfare State and Directive Principles enshrined in Constitution to ensure basic health facilities. We should be aware to the realities of life, should we shut our eyes when we find even urinals uses by some persons as W.C.s? Or some persons using gutters as convenient places for their children as Commodes? Even holy rivers are polluted. Hence the suggestion of the Forum that the whole area of water storage should be protected by fencing to protect it from ablutions is an unrealistic view. People need to be properly educated in matters of personal and social health, hygiene and sanitations. Incidentally we would also draw the attention of the authorities to the wholesome provisions contained in the Water (Prevention and Control of Pollution) Act, 1974.25"

Similarly, no relief could also be granted to the complaint in Nagar Palika Nigam, Rewa v. Ravikant Pandey and Madhya Pradesh State & Ors. v. Ravi Kant Pandey due to the absence of "direct nexus between his illness and the negligent act alleged and in State of Madhya Pradesh Through Collector & Ors v. Shri Rammitra Pidhia, Advocate and Nagar Palika Rewa through Commissioner v. Shri Rammitra Pidhia, Advocate due to the absence of "the nexus between the ailment suffered and water supplied by the P.D.E.D. However, in all the three cases, the Madhya Pradesh State Commission expressed its concern about the steps to be taken by the State Government and its functionaries in future so as to avoid similar environmental deteriorations, thereby avoiding further mishaps.

In the State of Rajasthan too, similar situations had been reported. It was alleged that in the year 1988, viral hepatitis had broken out in the city of Jodhpur in Rajasthan as a virulent explosive epidemic and thousands of citizens had suffered from it. The alleged cause of the outbreak of this epidemic had been faecal contamination of drinking water supplied by the Public Health Engineering Depart-
A voluntary consumer organisation filed a common cause complaint in Upbhokta Sanrakshan Samiti v. Public Engineering Department & Ors. alleging that the opposite parties were responsible for this outbreak. It was contended by the petitioner that the people of Jodhpur city had a right to get "safe, clean and hygienic water" and that "this right had been squarely denied to them" which had resulted in the outbreak of viral hepatitis in epidemic proportions. It was, therefore, prayed that rupees ten thousand may be awarded as compensation to every person who had suffered from jaundice during the last one year in Jodhpur city. It was also prayed that a direction for a total relaying of water-supply and sewer disposal systems and for an immediate over-haul and repair of both the systems pending renewal be made. The opposite party denied all the allegations. Since the consumer organisation had filed the case in a representative capacity, the opposite party raised some jurisdictional objections which were ultimately resolved by the National Commission in appeal. The decision in the case is still pending.

The various consumer organisations in India have also raised their voice against the deficiencies in environment related services rendered by the local Municipal Corporations in various towns. On this point, there are at least two reported cases. For instance in Vasant Kolhatkar v. Commissioner Thane Municipal Corporation, the complainant had alleged that the opposite party - the Municipal Corporation, Thane - was not taking effective steps to supervise the underground drainage system as a result of which the people in general were put to great inconvenience and were prone to the various health hazards. Unfortunately, however, the complaint was dismissed by the Maharashtra State Commission as the complaint was allegedly filed by the individual petitioner in the public interest which could not be allowed under the Consumer Protection Act, 1986.26
However, in Executive Officer, Gram Panchayat, Kullur v. A. Aswartha Reddy on the basis of a complaint filed primarily against the pollution of drinking water, the Andhra Pradesh State Commission had directed the District Medical and Health Officer to visit the village concerned and take four samples of water that was being supplied by the Gram Panchayat to the residents of the area for drinking purpose and get them tested and analysed to find out whether the water was fit for human consumption or not. The District Medical and Health Officer was also directed to furnish a copy of the report to the Gram Panchayat.

The gist of grievance put forward in a similar petition filed on behalf of the residents of Yamuna Vihar Resident Welfare Association in Yamuna Vihar (Block No.5) Residents Welfare Association v. Vice Chairman, D.D.A. & Ors. was that several of amenities which were originally promised to be provided in the colony relating to drainage facilities and maintenance of proper hygienic conditions and environmental purity had not kept by the Delhi Development Authority and later by the Municipal Corporation. Notices were sent to the parties and in compliance with the order passed by the National Commission, the Municipal Corporation explained the steps which were proposed to be taken by them in order to rectify the defects that existed in regard to the drainage system and other factors referred to in the petition. The National Commission accordingly directed the Municipal Corporation to duly implement the proposals within the time frame and to file the compliance report within the stipulated period.

On the front of chemical pollution, there have been at least five reported cases where the various consumer associations have highlighted grievances primarily against the chemical pollution. For instance, in Common Cause v. Union Government
& Ors the main grievance of a Delhi based consumer organisation ‘Common Cause’ was that the adequate steps were not being taken by the Government of India and the State Governments to insist on iodisation of edible salts sold to the general public in goitre-prone areas of the country. In response to the complaint, the Government of India explained the various steps being taken for the enforcement of its policy of complete iodisation of the salt sold in the markets throughout the country by the year 1992. Similarly, the State of Uttar Pradesh, within whose territory there were many goitre-prone areas, stated that a total ban was imposed by the State and that necessary amendments for making the sale of non-iodised salt an offence under the Prevention of Food Adulteration Act, 1954 had been carried out in the said Act and the rules. Messers Hindustan Salts Limited - one of the leading manufacturers of salt in the public sector - also assured about the necessary steps being taken to maintain the requisite standard of iodisation in the salt marketed by them and the percentage of iodisation to be included on the packaging of the salt.

In ‘Common Cause’ v. Drug Controller of India & Ors., the same consumer organisation had lodged a complaint against the contamination of fluids marketed by the pharmaceutical companies in India. The petitioner organisation had asked for steps to be taken for protecting the public against any possibility of contamination of intra-venous fluids which were either marketed for sale in pharmaceutical shops or supplied to hospitals for the patients. The complainant organisation pointed out that, having regard to the enormous increase both in the number of drug formulations being marked and in the number of drug manufacturing units and outlets, the inspectorate wings of the drug control organisations in various states were woefully inadequate. Though the Ministry of Health and Family Welfare, in pursuance of the
earlier directions given by the National Commission had constituted an expert committee to review the provisions of the existing Drugs and Cosmetics Act, 1940 and rules as well as the administrative set-up for the purpose of ensuring the quality and safety of intra-venous fluids, the Commission expressed its concern over the unsatisfactory state of affairs in this regard. The National observed:

"We feel greatly concerned that such an unsatisfactory state of affairs should exist in our country with respect to a matter which is of such fundamental importance and vital concern to the health, life and safety of the people. We are making this observation in the hope that it will alert the Government and State Government to the need for taking immediate action to remedy the situation by augmenting the strength of the drug control staff at the different level in each state and also to provide adequate laboratory facilities in every state for testing the quality and potency of drugs."

The CERC had also filed similar complaints against the two big pharmaceutical manufacturers. For instance, the main grievance of the CERC in Consumer Education & Research Society V. Godrej Soaps Ltd., was that the opposite party - a leading manufacturer of many widely sold consumer products - was selling a hair dye which was likely to cause injury to its users. It was alleged by the complainant that the hair dyes manufactured and marketed by the opposite party consisted of a mixture of Para-Phenylenediamine (P-pd) (e.g. resorbinol and/or aromatic nitro-derivatives). According to the complainant, the doubling of these compounds in the presence of hydrogen peroxide could produce large coloured molecules which were incorporated into the hair-shaft. The complainant alleged that according to the study conducted for the last twenty years evidence had been found that some of the hair-dyes sold in the market contained deleterious substances. Consequently, the consumer organisations of several countries had
been engaged in research and dissemination of information regarding objectionable ingredients used in various types of hair-dyes sold in the market. Based upon the result of research findings, experience and study made upon such research, the complainant stated that P-pd as was used in the hair-dye with hydrogen peroxide was suspected to be carcinogenic and, therefore, caused adverse effect to the health and safety of human life. The complainant association had allegedly written to the said effect to the manufacturer.

The opposite party, however, suggested that there was hardly any proof of the P-pd chemical used in the hair-dye being carcinogenic. The complainant, however, stressed that in a matter where health hazard was involved, they did not need to wait for people to die of cancer and then to issue the warning. In order to prevent the occurrence of any tragedy in future, it was suggested that the manufacturer was under a duty not to sell or distribute any goods which were likely to cause danger to the safety or to cause injury to the human being. It was further alleged that the hair-dye should have at least contained the warning on the pack itself. The Gujarat State Commission partly accepted the petitioner organisation's plea that the manufacturing company should modify the advertisement for the hair-dye. The Commission accordingly directed the opposite party to drop the word '.. total safety..' from the advertisement of the hair-dye which had been portraying the product as completely safe for use. However, in this context it may be argued that simply dropping the words 'total safety' does not seem to be a very effective remedy. In fact the State Commission should have directed the manufacturer to introduce a mandatory label on the packs of the hair-dye which would list the potential effects of the P-pd just like the statutory warning on the
pack of cigarettes reads that 'Cigarette Smoking is Injurious to Health' and is mandatory for all cigarette manufacturers.

The CERC also filed another complaint against a pharmaceutical company. The main grievance of the CERC in Consumer Education & Research Society v. Hindustan Ciba-Geigy Ltd was against the hazards to public health which were likely to be caused by the use of flouride in toothpastes being marketed in the country. In response to the complaint by the Consumer Association, the Ministry of Health, Government of India explained the steps taken by them for constituting an expert group to go into the question whether there were any hazards to public health by the use of flouride beyond any particular level in toothpastes. It was averred that although in the draft rules published on the basis of the expert group's original recommendations, there was a note of 'caution' stating that children below the age of 7 years should not be allowed to use flouride toothpaste, this note was subsequently deleted at the time of finalisation of the rules since the members of the expert group were said to have felt that flouride in toothpaste was known to prevent 'caries' - a disease which usually starts in the age group of 3-5 years amongst children. Therefore, according to the respondent, if the use of toothpastes by the children below the age of 7 years was to be prohibited, the beneficial protection against 'caries' will be denied to them. On the other hand, the grievance of the petitioner association was that there was a need for retaining the note of caution and that there was no possibility of any benefit to the children below the age of 7 years by use of the toothpastes containing flouride. The National Commission disposed of the complaint with the suggestion to the petitioner Consumer Association to make a fresh representation to the Government of India to this effect.
A complaint against the marketing of toxic fungicide by the same company Hindustan Ciba Geigy Ltd., was also made by another consumer association. The main grievance of the petitioner in Consumer Protection Council of Kerala v. Hindustan Ciba-Geigy Ltd & Ors., was that the opposite party had introduced a toxic fungicide into the market without proper testing and verification and that its use had led to extensive damage to the framers. In this case, the complaint was filed by the Consumer Association on behalf of a farmer and cultivator of peppervines. According to the complainant, the opposite party was marketing a fungicide called Ridomil MZ72WP as an effective remedy for controlling quick wilt - a disease afflicting peppervines. It was complained that the farmer had purchased the fungicide and used it on a number of his peppervines. After a couple of days the peppervines so treated showed a withering tendency at the tender shoots and the withering spread at an alarming speed. Thus the complainant alleged that it was the toxic fungicide which had been marketed by the manufacturing company and that he had suffered extensive damage on this account. The preliminary objections raised by the respondent were overruled, but the decision of the case is pending and has not yet been reported.

Another environment-related consumer issue which has been the subject matter of complaints by the consumer associations is the emission of air pollution from automobiles. At least there is one such reported case on this issue wherein plying of vehicles with music and defective vehicles which caused pollution was the subject matter of complaint before the Orissa State Commission. Thus in Orissa Consumer Association v. Transport Commissioner, Orissa, the Orissa State Commission admitted that the complainant had a cause to make the grievances and accordingly directed the Transport Commissioner to make necessary enquiries and
to take suitable action to eradicate the evils complained of within three months of
the complaint.

ENVIRONMENT FRIENDLY PRODUCTS (EFP)

The Government of India, Ministry of Environment and Forests, published
an eco-labelling scheme in February, 1991. Even after three years, we have yet to
seek any single brand in the market with eco-label. Orders and bans are not
sufficient instruments of an environment policy. Fortunately, the Government of India,
Ministry of Environment and Forests have taken the initiative to evolve a policy for
labelling Environment Friendly Products. Suddenly the world over EFP’s are ‘in’, as
a result India feels left behind in the race for environmental conservation.

What Are EFP’s

With the fast pace of technological and industrial developments, the
markets today are flooded with a variety of consumer articles. Day and night indi-
viduals make use of several articles like soaps, aerosols, plastics, household pes-
ticides etc. Little do we realise the impact of these articles on the environment
through the various stages of their manufacture, distribution, use, disposal and
recycling. Those products or constituents which do not cause harm or damage to
man and his environment during their production and use and which do not pollute
the environment on their disposal or recycling may be called as Environment Friend-
ly Products. Conversely a product containing a harmful constituent to environment
or human health is not environment friendly e.g. some soaps that contain phos-
phates are not EFPs as they pollute water bodies leading to deprivation of O2 in
the water thus adversely affecting adequate life. Plastic products which are photo-
degradable are more EFPs than those which are less degradable. Paper produced
from recycled fibres is more EF than that produced from natural wood resources as it cuts down on our forest resources.

**Labelling of EFPs**

Just as we have the ISI or BIS (Bureau of Indian Standards) mark for ascertaining the quality of consumer products, an EFPs symbol or logo should be given to products which are environment friendly. This can be over and above the ISI mark; or even a mark by itself. E.g. in Germany the labelling of EFPs has been in existence since 1978. The 'Blue Angle Label' (the symbol of UN's environment programme) has been awarded to the products which met the established environmental criteria. In Australia most of the environmentally sound products carry the 'green spot' to exhibit their logo. The environment friendliness can be judged on the basis of certain criteria which make the product most suited for environment and human health. To begin with 'single most important environmental criterion' could be selected for each category or products.

**Basis of Scheme**

In most countries the scheme is voluntary i.e. companies are free to decide whether they wish to apply for the awarded environmental labels. At the same time they are also free to use other labels if they so wish. On the basis of several discussions with parties it has been decided that the Ministry considers a voluntary basis as appropriate for a scheme of positive environmental labelling.

**Product Coverage**

The scheme would essentially relate to consumer products such as plastics, soaps, detergents, aerosols, food additives, cosmetics, electrical and electronic
goods, batteries, beverages etc. Even if the schemes were general, it would be necessary to concentrate at least initially on certain priority items.

Cost Factors For Testing And Certification

The Ministry is of the view that the scheme should be self-financed. Manufacturers desiring the award of EF logo will bear the cost of testing and certification as worked out by the Bureau of Indian Standards.

Assessment Criteria

A perfect environmentally sound product does not exist. Also whether a particular feature of a product is really beneficial in the environment and human health or not is also a matter of controversy. Even if the assessment rests on sound scientific basis, there can be split opinion. However whether the assessment should encompass all aspects of a product's life cycle or part of its life cycle. E.g. production to use should be judged is a matter of controversy. Both approaches have their own merits.

A 'cradle to grave' assessment is comprehensive but takes immensely long time to perform an environmental audit of a factory. Some production processes are already subject to pollution control legislation. It would in effect superimpose another layer of approach through labelling system. A more limited assessment of a single characteristics is of key importance in environmental aspect of product. E.g. preserves of CFC in aerosols. This makes decision making process simpler and quicker. However, too narrow an assessment can overlook importance aspects of a product and give a deceptively partial account of a product's friendliness.
Hence, the Ministry favours a simple system in which the single most criterion will be the highest beneficial environmental aspect without forgoing the quality of the product. This process of judgment is accurate, reliable and transparent. Although the same judgment cannot apply to all products, electrical goods can be judged on energy efficiency and noise production. The pricing of such products should also not be extraordinarily higher than comparable products.

**Period of Award**

Technological advancement has raised the expectation of the consumer regarding the product performance. The system of positive environmental labelling thus needs to be flexible. Too frequent revision of the scheme would make it less attractive. The Ministry is of the view that initially a label should be awarded for three years with a roll-forward annually thereafter.

**Wording of Label**

The message conveyed by the term 'environment friendly' is open to a range of interpretations, it may even suggest an absolute quality which is unattainable in practice. Increasing the transparency of the system by including a brief explanation of the label eg. such as the product which was made mostly from recycled material or without ozone depleting compounds like CFC's can definitely help the consumer to understand the product better. This strategy of a symbol or logo with a sound description should be instituted since it also brings environmental consciousness among consumers.
Organisational Set up

It is suggested by the Ministry of Environment and Forests that, the Bureau of Indian Standards (BIS) shall be the overall authority to administer and implement the scheme. It will draw its authority to do so from a gazette notification issued by the Ministry under the environment Protection Act of 1986. The EF promotes the idea of the scheme, some tax and fiscal incentives should be provided to producers who use the EF logo. We have yet to see the brands into Indian market with eco-label. Massive efforts have to be made for ongoing adequate consumer education providing comparative information on products which are environment friendly and which are not. Services of voluntary consumer and environment protection organisations can be mobilised for the purpose. The Ministry can also consider the idea of providing adequate grants to consumer and environment groups for the various surveys and studies to be carried out.30

SOME SUGGESTIONS

The above discussion shall enables us to draw some significant implications of this emerging trend and also to offer some suggestions for the future. In the first place, for instance, it may be observed that the strategy of Social Action Litigation (SAL) has come to stay in the India legal system and has acquired legitimacy. In case of SAI, the traditional locus standi principle is usually relaxed to enable the petitioners to file public interest petitions. Ever since its inception in the late 1970s, SAL has significantly developed during the last decade and a half and a considerable number of aggrieved have been given relief through it. They, inter alia, include children, women, workers, prisoners, undertrails, and many others. The strategy has expanded its wings and has been successfully used by the environmentalists and very recently even by the consumer organisations. The above discussed case
law sufficiently indicates how the consumer organisations have made frequent use of SAL strategy for highlighting environmental violations before the Consumer Forums and that the success rate has also been encouraging. However, the discouraging aspect of the matter is that only four or five voluntary consumer associations have come forward with such complaints. In a vast country like India, this is not even the tip of the iceberg. It is, therefore, very much required on the part of many other consumer groups to take this challenge and file environment related complaints before the Consumer Forums.

In the second place, it may be pointed out that what the consumer organisations have done is primarily because of the liberalised *locus standi* procedure and an easy as well as local access to the Consumer Disputes Redressal Mechanisms established under the Consumer Protection Act, 1986. Under this Act, a complaint can be filed before the Consumer Forums either by a consumer, or by any voluntary consumer association on a consumers' behalf or even by the Central or the State Government. Accordingly, in the recent past, there has been a flood of complaints before the various Consumer Forums. However, on the other hand, even though the locus standi procedure has also been similarly liberalised under the Environmental Protection Act, 1986, the response of the environmental NGOs has not been much encouraging primarily because the local access to the redressal mechanism under this Act has not been improved. There are no Environmental Courts to try environmental crimes. Therefore, one has to necessarily approach either the Civil Court or the High Court and the Supreme Court under their writ jurisdiction whereas the Consumer Protection Act, 1986 provides local and comparatively much easier access to the redressal mechanism. Moreover, unlike under the provisions of the Environmental Protection Act, 1986 no formal notice of
sixty days is required to be given to the opposite party under the Consumer Protection Act, 1986 and even a simple letter or telegram is sufficient to initiate the judicial process. In addition, as the past experience shows, whereas the environmentalists have primarily made use of the writ jurisdiction of the Supreme Court in most environmental cases, the consumerists on the other hand have been highlighting their grievances before the local consumer forums instead of even the civil courts. This comparison between the provisions of the two statutes brings home the point that local access to the protective mechanisms under the Environment Protection Act, 1986 needs to be considerably improved. This shall, in turn, enable both the environmental NGOs as well as the voluntary consumer associations to seek the remedies locally. The establishment of Environmental Courts is one such suggestion. It may be noted that the Government in India had full intention to go ahead with their establishment. However, due to certain political upheavals in the country, the plan was almost abandoned. Nevertheless, there is a need for serious endeavour on this front and this probably requires more lobbying both by the consumer groups and environmental NGOs at the Central Government level.

Thirdly, there is a need for raising the environmental ethics of the business corporations. It may be reiterated that the concern for clean environment is an important dimension of the corporate social responsibility. There is no denying the fact that business everywhere has been a major contribution to air, water, noise and solid waste pollution. However, until recently the accountability has been almost negligible. In the aftermath of the environmental catastrophes like Bhopal, mass public are now demanding corporate responsibility in terms of industrial accountability. The public wants business to find a workable balance between industrial production and nature's limits, to act quickly and openly to prevent and alleviate
human suffering. Thus the conclusion is inescapable that the business strategies need to include not only business but also social goals. Corporate strategic planning has greater chance of success, and the public tends to accept the Corporation, when business executives are aware of the broad social environment in which they operate. Otherwise a Corporation may have to face the wrath of the iron law or responsibility which states that 'in the long run who do not use the power in ways that society considers responsible will tend to loose it'. However, it may be argued that business and environmental ethics should be an important component of any corporate conduct. In the age of public interest, a business unit cannot claim immunity from this responsibility in the guise of manufacturing for the community. Business corporations should deploy their resources in the area of ecological equilibrium. This is too important an issue to be distorted by limited pecuniary motivations. In this context it may be argued that the above discussed case law indicates that the consumer groups have taken on heavily those business which tend to act unethically and irresponsibly to the detriment of consumers. These groups have also succeeded, though partially, in their endeavours which should be a pointer for the other NGOs to highlight the corporate environmental violations before the appropriate forums.

In the fifth place, the media are also expected to come to the help of the voluntary consumer groups and environmental organisations. There is an equally significant role for the audio-visual and print media in the modern day world. The role of the media can be appreciated at least from the two important angles. First, it is expected that the media should promptly and prominently highlight any environmental violations to inform the public about the grave consequences of such violations as well as to deter the potential violators. In the second place, and more
importantly, the media should play a constructive part in educating and making the people aware regarding the need for environmental cleanliness. The Supreme Court of India in M.C.Mehta v. Union of India has recently given directions to the Union Government in this regard. In this case a public interest petition was filed and the reliefs claimed, inter alia, included the issuing of appropriate directions to cinema exhibition halls to exhibit free of cost, slides containing information and messages on environment; directions for spread of information relating to environment in national and regional languages and for broadcast thereof on All India Radio and exposure thereof on television in regular and short-term programmes with a view to educating the people of India about their social obligations in the matter of the upkeep of the environment in proper shape and making them alive to their obligation not to act as polluting agencies or factors. The petitioner had also prayed for the court directions to the Government for making environment a compulsory subject in schools and colleges in a graded system so that there could be general growth of awareness. The petition was admitted by the Supreme Court and the necessary directions were given to the Government for immediate compliance.

Lastly, it may be suggested that there is need for introduction of environmental education at the school and college level. Even the World Commission on Environment and Development had suggested that environmental education should be made a part of the formal education curriculum at all levels 'to foster a sense of responsibility for the State of the environment and to teach students how to monitor, protect, and improve it'. According to the Commission, these objectives could not be achieved 'without the involvements of students in the movement for a better environment, through such things as nature clubs and special interest groups'. The Commission laid emphasis on adult education on-the-job training,
television and other less formal methods to reach out as wide a group of individuals as possible. However, according to the Commission, "the attitudes of teachers will be the key in increasing the understanding of the environment and its links with the development".31

The need for imparting environmental education right at the school level in India has also been recognised by the Supreme Court. In M.C.Mehta v. Union of India, it was observed by the Apex Court that the Central Government was under an obligation to direct all educational institutions throughout the country to teach, at least for one hour a week, lessons relating to the protection and improvement of the natural environment including forests, lakes, rivers and wild life. For the first ten classes, the Central Government was asked to get the text books written for this purpose and to distribute them to the educational institutions free of cost. The Court also observed that the children should be taught about the need for maintaining cleanliness commencing with the cleanliness of the house and the streets in which they live. It may be interesting to observe that environmental NGOs like SOCLEEN in Baroda in the State of Gujarat are doing commendable work locally and are involving school and college students with their day to day activities concerning environment protection. This is a matter worth emulation by the other environmental NGOs, consumer organisations, and the various other voluntary social action groups.

Certain important observations may be made in this regard. First of all, it may be argued that it will be a little difficult to distinguish environmental education from consumer education. As a matter of fact there is a considerable overlap between the two types of education. Take, for instance the case of consumer education which has already been started in some of the educational institutions in India. If we analyse the contents of the curriculum of consumer education, environ-
mental issues will be apparently visible in them. The SNDT University at Bombay, has started a one year Diploma in Consumer Protection Studies and the courses covered in this diploma are: Consumer Economics, Food Testing, Equipment Testing, Consumer Legislation, Environmental Legislation and Consumer Research. Similarly, the National Law School of India at Bangalore - a premier institution exclusively imparting legal education - is also imparting consumer education and environmental education in the subject of Business Ethics. The Indian Institution of Management, Ahmedabad is another prominent educational institution where formal consumer education is being imparted to the students of the M.B.A. and M.Com courses and consumer activists from the CERC, Ahmedabad are regularly invited to address the students. These activists deliver lectures to the students on consumer and environmental problems. It is, therefore, clear that wherever consumer education is being imparted, environmental education is also inter-mixed with it. Secondly, some leading consumer organisations are actively engaged in imparting environmental education, though as a part of consumer education. These associations have specialists on their staff to deal with educational aspects. These associations educate both urban and rural people. They impart education to the urban people through their newsletters and periodicals. For instance, CERC publish their monthly journal 'Consumer Confrontation'. Similarly Consumer Guidance Society of India and Mumbai Grahak Panchayat at Bombay being out their monthly publications. 'Keemat' (Price) and 'Grahak' (Customer) respectively. There are some more consumer organisations who also publish their journals and newsletters in their local language. Their volunteers also go to the rural areas to disseminate information and education to the rural people. Rural literacy camps are also organised for imparting consumer as well as environmental education to the rural people. Thus the consumer organisations are doing commendable work in the area of consumer education and
the environmental education. This is also a lesson for the environmental NGOs that they should offer their maximum support to the consumer groups in the spreading of consumer and environmental education. Thirdly, in view of the fact these two types of education can not be separated from each other, it is necessitated that at the school and college level, a new subject called 'Consumer and Environmental Education' should be formally introduced. However, in view of the red-tapism and bureaucratic hassles and many other constraints in the Indian Society, it is likely to take considerable time before the educational curriculum on the suggested lines is devised. However, consumer associations and environmental groups can work together to draft and prepare the education pack. In the first instance it can be administered locally. Once the move is successful, then the collaborative efforts can be made at the national level. Then the draft course in the educational system in the country. In my view this is a challenge for the consumer organisations like the CERC and the CGSI. These consumer associations must make use of their international contacts with their counterparts in advanced countries as well as with the world consumer organisations like International Organisation of Consumer Unions (IOCU). Indian consumer groups can acquire the educational packs devised by the consumers associations in other nations and can incorporate at least some of these things which may be suited to the Indian educational requirements. The primary reason for my emphasis on emulation is that the educational packs by the voluntary groups have been devised after a lot of painstaking research and field studies which can hardly be afforded by the consumer groups in any third world jurisdiction. Thus a lot of effort is required on the part of consumer groups in India in the field of consumer and environmental education.
Recently, it has been observed that besides imparting education, there are at least some leading consumer associations who have even got the environmental issues on the top of their agenda. For instance, issues like air pollution, chemical pollution, food irradiation and noise pollution are some of the priority items on the agenda published by the CERC in Ahmedabad. More particularly 'Green Testing' - evaluating the environmental impact of products - is an area of increasing interest and importance for consumer groups in India. Such testing is needed to help consumer select products on the basis of 'value for the environment' as well as 'value for money'. It may be observed that it is the consumer who will ultimately compel market forces to produce safer and environmentally friendly products. However, unlike many consumer organisations in industrialised countries, Indian consumer groups did not so far have the resources to carry out extensive and independent comparative tests of various products. A new laboratory, the first of its kind in India, is currently being set up by the CERC in Ahmedabad. The laboratory - "Testing Organisations for Research in Chemicals and Health Hazards (TORCH)" - will initially test, evaluate and rank three different types of consumer products: food, electrical appliances and pharmaceuticals. To build on those plans, at least four IOCU member organisations in India are also currently exploring the possibility of joining together in producing the country's first consumer magazine for nationwide distribution. They are CERC, CGSI, Voluntary Organisation in Interest of Consumer Education (VOICE) and Consumer Education Centre (CEC). If this magazine materialises, it will probably include product tests, consumer surveys, consumer advice, and other consumer and environment related information. In this context, too, there is a need for better co-ordination among the various consumer organisations on the one hand and between the consumer organisations and the environmental NGOs on the other.
The leading consumer groups have also been showing their intimate concern for environmental matters in many other ostensible ways. For instance, the consumer organisations on every continent celebrated the 30th Anniversary of World Consumer Rights Day on March 15, 1992. The year’s chosen theme - ‘Choose for a Healthy Environment’ - formed the basis for many different types of activities by consumer associations. The CGSI published several articles stressing the need for Indian consumers to make environmentally sound buying choices. The Consumer Unity and Trust Society organised a 15 March seminar on the State of the environment in West Bengal. Many grassroots activists and scientists came together to debate specific examples of environmental damage and corrective steps to be taken. The CERC co-organised a public meeting on the topic 'Pollution in Ahmedabad - A cause for Concern'. The meeting identified the growth of slum areas, air pollution and rusted water pipelines as leading environmental problems facing the city.

Therefore, besides filing cases before the Consumer Forums, these organisations are now giving equal attention to matters concerning environment and consumer protection. However, whereas taking on the environmental violations by the consumer associations may be a lesson for the environmentalists, there is also a need on the part of the consumer associations to work in liaison and co-ordination with the environmental NGOs so that the environmental violations could be checked from various angles. It is also suggested that, in view of the fact that the media plays a very significant part in the modern day world, there is a message for both the environmental and consumer groups to make an effective use of the media both for the education of the masses as well as for highlighting the environmental violations. The real problem will be solved when the people are educated and the remedy lies in making consumer and environmental education a
part of the compulsory education curriculum at the school and college level on the lines suggested above. These situations pose a common challenge to the consumerists and environmentalists.

RECALL OF PRODUCTS

In Australia has adopted a system of voluntary and compulsory recall of unsafe products from the market. Within 48 hours of the report of the unsafe character of a product being announced, orders are issued for its compulsory recall. If a producer voluntarily recalls his unsafe product, he saves adverse publicity at the Government level. There is also an in-between provision, where the producer provided time to rectify the defects of design by which the product can be made safe.32

The above discussion, therefore, brings home the point that the consumer movement in India is spreading fast. Though the movement is still nascent, it has been able to initiate the much-awaited process of social change in the Indian legal system. The ability of the movement to solve divers consumer problems in general and to look after the environmental problems in particular shall depend upon the systematic working of the consumer organisations, their co-ordination with their international counterparts and their liaison with the environmental NGOs and other voluntary groups. Their ability in meeting the challenge of environmental pollution and their contribution in the development of the environmental dimension of the consumer movements is a thought provoking and intellectually stimulating topic of future research.
Consumer organisations have to create amongst their members a bias towards encouraging the market for environmentally less harmful products. By boycotting environmentally unfriendly products, consumers can change the manufacturing policy of the future.

CONCLUSION

It is clear from the foregone discussion that the emerging issues like doctors versus CP Act, the impact of GATT on consumer interest in India, C.P. Act and investor protection, strengthening of consumer laws in safeguarding healthy environment, etc., are of paramount significance and are likely to open new vistas in the struggle for consumer protection in the years to come not only in India but also abroad.
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