CHAPTER-V

CONCLUSION AND SUGGESTIONS
CHAPTER V

CONCLUSION AND SUGGESTIONS

5.1. CONCLUSION

As is clear from the study, the consumer protection has social, ethical and economic dimensions. Each country has had a movement for providing consumer justice peculiar to their historical, social, economic and legal background. The United Nations has played a very important role in laying down the guidelines which serve as a consensus on minimum standards for all countries, where consumer protection is concerned. The countries all over the world are required to incorporate the same in their local consumer laws taking into consideration their specific needs and requirements. In India, the consumer protection can be traced to ancient India where the unscrupulous traders were required to keep restraint and if they failed, punishment was prescribed. In modern India the sacred documents, the Constitution envisaged social and economic justice, of which consumer justice is a part. To fulfill the pious objectives a large number of laws were enacted by the Parliament for the protection of consumers. However, many of them had become either out-dated or needed suitable amendments to make them more effective. These laws provided relief or inadequate relief to aggrieved consumers. In order to provide for the better protection of the rights of the consumers, the Consumer Protection Act, 1986 was passed.

The Act was effective and purposeful. But, in order to make it more effective, certain amendments were purposed. Thus it can be said that the Consumer Protection Act, too, had its teething problems and has had its crop of amendments in 1991 and 1993. It has been successful in providing relief to the consumers as it covers all types of consumer transactions. It protects the consumers from the burden of restrictive and unfair trade practice and services. It also protects the consumer from deficient services. The judiciary has played a
very important role in balancing the interests of the providers and users of service. On one hand, it has come to the rescue of consumers in certain important cases and issues, where it has enlarged the scope of the definition of services, for providing relief. On the other hand, it has refused to intervene and has given restrictive decisions. It has clearly held in Vasantha P. Nair's case that patients are included in the definition of 'consumers' and the professional services such as those rendered by a doctor are also covered within the term 'hiring of services'. Directions have also been issued in a number of cases to provide the minimum standard of services or maintain the given standards. Thus the judiciary has filled up the interstitial gaps in the Act by its innovations. At the same time it has treated on the path cautiously so as not to interfere in the policy decisions or to cause unwarranted burden on the providers of service. Thus it can be asserted from the detailed study that the fifth hypothesis that the judiciary tried and has been successful in establishing and maintaining a balance between the conflicting interests of the consumers on one hand and the producer, supplier of goods and services on the other is sustained. The need is also felt for better control and regulation of service sector.

An effective, efficient and fair implementation of the Consumer Protection Act is one of the conditions precedents for promoting the culture of good governance and thereby ensuring the better promotion and protection of the rights of the consumers. If the rights of the consumers in relation to the quality of goods and services are assured and taken care of then there will be no cause for complaints. This situation would certainly create an atmosphere wherein the clients, customers and consumers would feel satisfied with the things needed most to them. In this context, the concerns of the good governance need to be mentioned briefly with a view to establish linkage with the concern of the Consumer Protection law and institutions. Generally speaking, the thrusts of the good governance movement are efficiency, effectiveness, ethics, equality, economy, transparency, accountability,
empowerment, rationality, impartiality and participation. In view of these requirements of the good governance one can easily and with success establish the co-relations with the concerns of the Consumer Protection law and policies. From the point of view of the concerns of the Consumer Protection Law, it may generally be emphasised that the concerns of consumers’ rights protection are to ensure fair trade practices, quality goods and deficiency free services with information in regard to quality, quantity, potency, components and price with a view to provide opportunity to the consumers in regard to their choices. In view of the remedies available to the consumers under the Consumer Protection laws there is no doubt that at the end of the day, if efforts of the operators of law and agencies are genuine and there is a sense of commitment, the culture of good governance would pervade wherein the consumers would feel highly satisfied and there would be no real cause for making a complaint or showing their dissatisfaction in any way. Therefore, the proper and effective implementation of the laws, dealing with the protection of the Consumers’ rights would promote the cause and concern of the good governance. It would, finally, be better to highlight one or two areas with a view to focus the developments in regard to the protection of Consumers’ rights as well as the concern of the good governance.

As stated earlier, one of the concerns of the good governance movement is to promote and ensure accountability of producers and providers in public domain. The judgement of the Supreme Court in *Lucknow Development Authority Vs. M.K.Gupta*\(^\text{369}\) may be cited as an illustration. In the instant case the Supreme Court while establishing the jurisdiction of the Consumer Disputes Redressal Agencies created under the Consumer Protection Act emphasised that the service provided by a private body or a statutory or public authority are within the jurisdiction of the Consumer Protection Act. In this context, the Supreme Court also laid down that any defect or deficiency in such service

---

\(^{369}\) (1994) 1SCC 243, See also Ghaziabad Development Authority vs Balbir Singh, AIR 2004 SCW 2362.
would be treated as unfair trade practice and would amount to denial of service. It would be instructive to highlight the observation of the Supreme Court in the above case in regard to the concept of public accountability. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression then it should, further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behavior. In view of the above law of personal accountability of the concerned public functionary as laid down by the Supreme Court while protecting the rights of Consumers under the Consumer Protection Act is in fact an appreciable contribution to the body of law on public accountability which is one of the major concerns of the good governance movement.

In view of the importance of the law on public accountability and the role of the Consumers’ adjudicatory bodies, the above decision should be made a compulsory reading for all those having role to play in the promotion and protection of the consumers’ rights and also with the process of administrative reforms for good governance. Similarly, the approach of the Supreme Court in ensuring qualitative change in the attitude of the medical service provided by the hospitals and the medical professionals followed in the Indian Medical Association Vs. V.P. Shantha and Ors
deserves high appreciation with a view to giving real meaning to the accountability of professionals. In Charan Singh’s judgment the observation of the Supreme Court to the effect that “the Consumer Forums while quantifying damages are required to make an attempt to serve the ends of justice so that compensation is awarded, in an established case, which not only serve the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the

370 Ibid
372 Charan Singh Vs Healing Touch Hospital and Ors. (2000) 7 SCC 668
attitude of the service provider"). It may, in addition, be pointed out, in view of the number of complaints brought before the Consumer Forums and Commissions, that the number of complaints in regard to the quality of public services are more than complaints dealing with defects in goods. Keeping in view the changing economic scenario, the number of complaints in regard to the deficiencies in services would certainly increase in the future. Therefore, the Consumer Forums and Commissions established under the Consumer Protection Act, need to be given extra attention to ensure its efficient, effective, fair and inexpensive functioning.

The year 1986 has gone in the history as the golden period of consumer protection, particularly because the role of the voluntary consumer associations was recognized in the Act itself. It not only saw the birth of the historic Consumer Protection Act, but also far reaching amendments to a bunch of consumer legislations. These organizations, evolved through decades finally joined hands to form pressure groups in order to protect the interest of the consumers. Consumer protection can be better achieved with the holistic vision, peoples' participation, and political will, active co-operation of Governmental and Non-Governmental agencies. It is only through a concerted effort of all the above, that the rights of the consumers can be protected. Although consumer protection has proved to be a milestone in the establishment of consumer protection movement in the country there is scope for improvement. A few recommendations thus can be proposed on certain amendments which can be introduced in the Consumer Protection Act, 1986 to give more teeth to it.

- The scope of the word 'complaint' under Sec. 2(l) (c) has been enlarged by the 1993 Amendment Act, but it has not been extended to cover cases where there is a likelihood of any injury or loss to the consumers. It should be amended to encourage consumers to take action against likelihood of loss or injury to the consumer and not just actual injury.
The Act includes from the definition of 'service' under Sec. 2(l)(o), services which are rendered free for cost, as in that case the consumer has not hired the services for 'consideration'. This takes the Government hospitals, municipality and local bodies, out of the purview of the said Act. An amendment should be introduced to include all services except those under a contract of personal services, where clearly a master-servant relationship is established. By including all other services a consumer may be able to sue the responsible persons for rendering negligent services under the garb of free services in the consumer counts. There are divergent views on this issue. One is that it will increase the cost of professional service for e.g. medical expenditure and the other; the State will have to bear the increased cost in cases of Government rendering free services. But since, there is no effective system of regulation or a grievance redressal machinery, to ensure accountability; the 'free' services have to be brought under the Consumer Protection Act. If however the complaint is found to be frivolous, vexatious there is already a provision for punishment under Sec. 26 of Consumer Protection Act, 1986.

- The Consumer Protection Act, 1986 has been construed to be a general law and the National Commission has held that if a legislative provision provides for specific relief under the Act, then a consumer cannot avail the remedy under the Consumer Protection Act, for example, the claim under Railway Claims Tribunal Act, 1987. It was held that a consumer can file a complaint only in the Railway Claims Tribunal and not in the Consumer forums. The Act should be amended to add non-obstante clause to Sec. 3 to avoid such interpretations restricting the remedy of the consumers. It should be left to the consumer to exercise his choice for the forum in which he wishes to institute his complaint.
• The rights of the consumer have, for the first time, been enumerated in Sec. 6 of the Consumer Protection Act. However, the rights of the consumers may be included in a separate chapter to give more weight and importance. The Central Council and State Councils have been created with the object to promote and protect the rights of consumers but they have not been given powers except, the recommendatory powers. To make this body more effective it may be divided into three cells and given additional function as, (1) Grievance Cell; (2) Inspection Cell; and (3) Advisory Cell. The Grievance cell may enter consumer grievances of public nature and it may also be given suo motu powers to take cognizance of any grievance, concerning consumers at large. The Inspection cell may undertake various surprise checking’s of industries, factories and public undertaking to ensure maintenance of minimum standard, and lastly, the Advisory Cell which may make recommendations regarding the price fixation etc. Thus the Consumer Councils should be given more powers so that the rights which have been enumerated are implemented in a more effective manner.

• Just as the qualifications have been prescribed for the appointment of President of the District Forum, State Commissions and the National Commission, certain basic qualifications should also be prescribed for the appointments to the post of members of the Redressal Agencies. Although selection committees have been established to ensure that political appointments are not made, it is equally important to prescribe the essential qualifications for other members to ensure that only competent people occupy the posts of members of these redressal agencies including the post reserved for women members.

• Full time District Forum may be established in every District. As the Consumer Protection Act has awarded compensation for not only the amount lost in purchasing defective material or in hiring deficient
services but also for mental pain and suffering and harassment. It has become a new instrument of social and economic justice. Consumers are resorting to the remedies provided under the Act, by which the workload pendency of cases is increasing. Hence, it is very essential to have full-time District Forum working in each district with all the infrastructural facilities that are required for their proper functioning.

- By the 1993 amendment, additional powers have been conferred to provide for better and adequate relief. Additional powers may be given to grant interim injunction or relief to the aggrieved consumer. The National Commission, State Commissions, District Forums may also be given powers to direct issue of corrective advertisements and pass cease and desist order. This may be made mandatory to ensure the right of health, safety and information of the consumer. The forum should also be empowered to initiate *suo moto* proceedings if a case of public importance comes to their notice. Also, powers should be given to strike down the unfair conditions of the contract as being opposed to public policy.

- Since the National Commission, State Commissions and District Forums are not meant to follow elaborate legal procedures, the lawyers should not be permitted in the proceedings before the forum. At the same time it is well known that it is not possible to debar them completely from appearing before the three-tier redressal machinery in view of the Constitutional freedom given to them to practice their profession. It is recommended that ordinarily they should not be permitted. Lawyers may be allowed only if it is certified by the President that the case involves legal technicalities and therefore, a lawyer, may be permitted to represent the client.
• The concept of punitive damage should be introduced under the Act for non-settlement of claims especially by Insurance Companies and other utilities, within a reasonable time, to be decided by the Courts as to what is the appropriate time.

• As the Non-Governmental organizations are playing a very important role in the consumer protection movement and also these organizations receive grants for carrying out educational programmes, Social Auditing and Monitoring of these organizations is a must. A large number of Non-Governmental organizations take up programmes but for some ulterior purpose rather than protecting the interest of the consumers. To ensure the proper utilization of funds it is essential to keep a watch on these organizations and to make them accountable to some authority or a body.

• It is extremely imperative to encourage volunteers, who are gallant, audacious and forthright, concerned in consumer protection movements. Organizations, NGOs, institutions and agencies allied to consumer movements should hearten administrative advocacy in settling consumer disputes so the hitch of case pendency and delay in case disposal can be avoided.

5.2. SUGGESTIONS

The researcher after careful study made the following suggestions.

• Govt. should come up with varieties of plans to establish and manage laboratories, equipped with latest available international standard technologies, for testing samples of consumer goods with a view to determining their quality, purity and relative merit.
• Government should enter into treaties with various countries in order to ensure extra territorial operation of the act.

• Government should be pro active towards the cunning policies of MNCs to exploit the consumer.

• A heavy sum should be taken from the multinational companies in the form of security money at the time of their establishment and incorporation.

• Most of the Indian consumers know only COPRA but they are not aware about other laws and statutes which protect their right so along with the dissemination of COPRA consumer should be made aware about the existence of other laws i.e. MRTP, Essential Commodities Act 1955, Bureau of Indian Standard Act 1986 etc.

• Government should make efforts to create a consensus for 'global consumer policy.'

• Judicial activism should be increased in consumer related issues also and parental role should be played by the Supreme Court for consumer redressal agencies.

• Administrative advocacy should be encouraged in order to reduce the burden of consumer redressal agencies.

According to APJ Kalam the concept of PURA which stands for "Providing Urban amenities in Rural Areas" -- is about giving a cluster of villages physical, electronic and knowledge connectivity. The idea is to empower the villagers, so that economic connectivity can emerge. The core-competence of the village will enable the production of competitive products for national and international markets. This will lead to rural enterprises which
will create jobs in villages and lead to a vibrant economy in India's hinterland. Strictly implementing the policy of compulsory public service by medical graduates from public medical schools, as also make public service of a limited duration mandatory before seeking admission for post-graduate education. This will increase human resources with the public health system substantially and will have a dramatic impact on the improvement of the credibility of public health services. Essential drugs as per the WHO list should be brought back under price control (90% of them are off-patent) and/or volumes needed for domestic consumption must be compulsorily produced so that availability of such drugs is assured at affordable prices and within the public health system. Local Governments must adopt location policies for setting up of hospitals and clinics as per standard acceptable ratios, for instance one hospital bed per 500 populations and one general practitioner per 1000 persons. To restrict unnecessary concentration of such resources in areas fiscal measures to discourage such concentration should be instituted.

The medical councils must be made accountable to assure that only licensed doctors are practicing what they are trained for. Such monitoring is the core responsibility of the council by law which they are not fulfilling, and as a consequence failing to protect the patients who seek care from unqualified and untrained doctors. Further continuing medical education must be implemented strictly by the various medical councils and licenses should not be renewed (as per existing law) if the required hours and certification is not accomplished. Integrate ESIS, CGHS and other such employee based health schemes with the general public health system so that discrimination based on employment status is removed and such integration will help more efficient use of resources. For instance, ESIS is a cash rich organization sitting on funds collected from employees (which are parked in debentures and shares of companies!), and their hospitals and dispensaries are grossly under-utilized. The latter could be made open to the general public. Strictly regulate the private health sector as per existing laws, but also an effort to make changes in these laws to make
them more effective. This will contribute towards improvement of quality of care in the private sector as well as create some accountability. Strengthen the health information system and database to facilitate better planning as well as audit and accountability.

• The National Charter of Healthcare Rights should be recognized as part of the National Complaints arrangements

• A ‘plain English’ guide to complaints processes in Australia is developed for consumers

• A tracking system should be developed to provide consumers with information about the status of their complaint

• The complaint liaison person identified within the NRAS should keep consumers informed of the process and any referrals to other complaints processes if agreed

• Community members who are able to bring forward community values must be included on all boards, committees, panels and tribunals established to investigate.

Thus the health education must impart to all sections of our society, so as to equip them with the knowledge good health environment. The Education System of our country to be revamped along with the development of technology and which would lead us to have a clean environment and better standard of living.