The second chapter discusses the legal measures relating to Consumer Protection and critically evaluates the functioning of CDRAs in the Light of Theory and Practice.

The third chapter analyses the functioning of CDRAs created under the Consumer Protection Act, 1986.

The fourth chapter evaluates the quantitative performance of the CDRAs in India and Tamil Nadu in terms of the number of cases filed, disposed and pending.

The fifth chapter evaluates the qualitative performance of CDRAs by analysing the attitude of complainants, defendants, lawyers, office bearers of VCOs, presidents and members of the fora, towards the functioning of CDRF.

The sixth chapter analyses the comparative opinion of the beneficiaries such as complainants, defendants (opposite parties), and office bearers’ of VCOs on the functioning of CDRF in Tamil Nadu.

The seventh chapter presents the summary of findings and suggestions that emerge from previous chapters based on historical and empirical data, discussion, views and observations from knowledgeable persons in the area of consumer protection.

CHAPTER II
CONSUMER PROTECTION – A LEGAL FRAMEWORK

2.1 Introduction

2.2 Major Consumer Protection Laws in India

2.3 Consumer Protection Act 1986

2.4 Procedural differences in the Functioning of the Civil Court and the Consumer Court

2.5 Evaluation of the Functioning of the CDRAs in the Light of Theory and Practice

2.6 Conclusion

CHAPTER II

CONSUMER PROTECTION – A LEGAL FRAMEWORK

2.1 INTRODUCTION

The importance of consumer protection has considerably increased perhaps, due to the damaged role of the state and its sub-
systems as service state. The satisfaction of the consumers generates confidence, which is prerequisite of the credibility and the legitimacy of the system. The growing interdependence of the world economy and the international character of many business practices contribute to the development of, more or less, uniform and universal emphasis on the need of consumer protection. Consumer Protection should, therefore, be seen as an essential part of international economic and social policy – one that can lead to vital and concrete benefits to governments and to the well being of their citizens.

2.2 MAJOR CONSUMER PROTECTION LAWS IN INDIA

Since the ancient times, the task of protecting the consumer’s interest has been the prime responsibility of the government. During the reign of the Mauryas in 300 B.C, the act of adulteration was considered *adharma* and distribution of adulterated articles of food and drugs was prohibited.

Though before independence, the Government did not provide much for consumer welfare its activities were mostly pro-consumer. It was consumer pressure, which compelled the government to enact legislations and assume other roles for protecting the consumers. The main roles assumed by the government are those of regulators and umpires.

Statutory measures for consumer protection were existed in India for a long time. A list of the major pieces of legislation containing provisions relating to the protection of the consumer interest, arranged in a chronological order, is given in Table 2.1.

**TABLE 2.1**

<table>
<thead>
<tr>
<th>MAJOR CONSUMER PROTECTION LAWS IN INDIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Indian Penal Code, 1860</td>
</tr>
<tr>
<td>2. The Indian Contract Act, 1872</td>
</tr>
<tr>
<td>3. The Sale of Goods Act, 1930</td>
</tr>
</tbody>
</table>
4. The Agricultural Produce (Grading & Marking) Act, 1937
5. The Drugs and Cosmetics Act, 1940
6. The Drug (Control) Act, 1950
7. The Industries (Development and Regulation) Act, 1951
8. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
10. The Essential Commodities Act, 1955
11. The Trade and Merchandise Marks Act, 1958
13. The Cigarettes (Regulation of Production, Distribution and Supply) Act, 1975
14. The Standards of Weights and Measures Act, 1976
15. The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980
16. The Standards of Weights and Measures (Enforcement) Act, 1985
17. The Bureau of Indian Standards Act, 1986
18. The Consumer Protection Act, 1986

It can be seen from the Table 2.1 that there are numerous laws in order to protect the interest of the consumer. However, before 1984, there was no effective protection of the consumer interest. The legislative measures dealt with only certain aspects of consumer protection. Moreover, there was no unified and effective machinery for the enforcement of these legislative measures. Consumers did not enjoy statutory rights to seek redress of their grievances arising out of the violation of the provisions of these laws. Therefore there was a need for enactment of the Consumer Protection Act 1986, which is compensatory in nature.

**2.3. CONSUMER PROTECTION ACT 1986**
The Consumer Protection Act of 1986 was enacted to provide for better protection of the interest of the consumers making provision for the establishment of Consumer Councils and Consumer Disputes Redressal Agencies. It is a milestone in the history of the consumer protection movement. It is a very unique and highly progressive piece of social welfare legislation. It is a statute, which provides more effective protection to the consumers than any corresponding legislation in force in more advanced countries.

(a) Salient features of CPA 1986

- This Act is exclusively for consumers’ interest.
- It is simple to understand. It has just 31 sections
- It applies to the whole of India except the State of Jammu and Kashmir
- It is not in derogation of any other law for the time being in force,
- This Act shall apply to all goods and services
- It covers all the sectors whether private, public or co-operative
- The provisions of the Act are compensatory in nature
- It seeks, interalia, to promote and protect the rights of consumer. They are right to safety, right to choose, right to be informed, right to be heard, right to seek redressal and right to consumer education

Looking at the above features of the law, one can certainly say that this is an ideal piece of consumer protection legislation. However, the law is, after all, not an ornamental piece to beautify the statute of the country but supposed to be an instrument to do justice to the community. The efficacy of any law has to be tested on the basis of the success it has achieved in attaining the objective behind such law. The avowed objective of the Indian Consumer Protection Act – 1986 is “to provide for BETTER PROTECTION OF THE INTERESTS OF CONSUMERS”.

b) Objectives of the Consumer Protection Act 1986

The main objectives of the Consumer Protection Act, 1986 are
i) To promote and protect the Consumer rights by establishment of the Consumer Protection Councils; and

ii) To provide simple, speedy and inexpensive redressal to consumer grievances by establishment of quasi-judicial machinery at District, State and Central levels known as Consumer Disputes Redressal Agencies (CDRAs)

c) Limitations of the Consumer Protection Act 1986

(i) Limitation Period: The Agencies shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen; provided that the Agencies may entertain an appeal after the expiry of 30 days, if it is satisfied that there was sufficient cause for not filing it within the prescribed time limit.

(ii) Act is not in Derogation: Consumer Protection Act, 1986 is not in derogation of any other law. (The provisions of the Act shall be in addition to and not in derogation of the provisions of any other for the time being in force).

(iii) Limited Power: The CDRAs have no power to declare any provisions of the CP Act as unconstitutional or infringing on any fundamental rights of any person.

d) Miscellaneous:

(i) No suit, prosecution or other legal proceedings shall lie against the members of the CDRAs.

(ii) Every rule made by the Central Government under this Act shall be laid, as soon as it is made, before each House of Parliament.

(iii) Every rule made by the State Government under this Act shall be laid as soon as it is made, before the State Legislation.

(iv) The environment of the CDRAs should be such that justice-seeking parties are able to express their views freely and frankly.

(v) There is no need to pay any court fee and
(vi) There is no need to engage a lawyer.

2.4 PROCEDURAL DIFFERENCES IN THE FUNCTIONING OF THE CIVIL COURT AND THE CONSUMER FORUM

The working of the Indian liability system in respect of protecting the interest of the consumers may be examined by evaluating the functioning of the CDRAs established under the provisions of the Consumer Protection Act 1986. There are some major procedural differences in the functioning of the civil court and the consumer fora, which can be explained with the help of Table 2.2

<table>
<thead>
<tr>
<th>Consumer Disputes Redressal Agencies</th>
<th>Civil Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Complainants need not pay any court fees or stamp duty.</td>
<td>It is necessary to pay court fee or stamp duty</td>
</tr>
<tr>
<td>2. Parties do not need to engage a lawyer.</td>
<td>Parties must engage a lawyer.</td>
</tr>
<tr>
<td>3. There is a time limit fixed for disposal</td>
<td>There is no such time limit.</td>
</tr>
<tr>
<td>4. It should be free from legal technicalities during filing as well as procedure of the case.</td>
<td>There are no such provisions.</td>
</tr>
<tr>
<td>5. The court environment is friendly in nature.</td>
<td>There is no such principle.</td>
</tr>
</tbody>
</table>
6. During the hearing of the case the presence of the consumer is not necessary each and every time.

7. Under the purview of the executive.

8. The order should be of the majority of the members.

9. Persons with no legal knowledge can also become members of the Fora.

10. The Principle of Natural Justice is followed in deciding the cases

Both the parties (or their lawyers) are required to be present at each and every court hearing.

Under the purview of the judiciary.

It is not the same in a majority of the cases.

Only with legal knowledge persons can become judges of the courts.

The Principle of Evidence is followed in deciding the cases

2.6 CRITICAL EVALUATION OF THE FUNCTIONING OF CDRAs IN THE LIGHT OF THE THEORY AND PRACTICE

(i) The Problem of Defining Consumer:

The section 2 (d) of the consumer protection act 1986 pronounces the definition of the consumer. The frequent change in definitions may lead to a situation where some complainants may be brought to the court and at the same time some complainants may not be brought to the court. This creates a lot of confusion among the consumers in filing a suit against the producer. It is always better to clearly define consumer, in order to avoid unnecessary cost paid by the consumer in the case of wrong filing

(ii) The Environment of the CDRAs:
Ideally the environment of the CDRAs should be friendly in nature. The consumers must be in such a situation that they can put the facts of the case in front of the members of the CDRAs freely, frankly and without any fear. The appointment of the non-legal knowledgeable members of CDRAs is mainly because of the environment of the CDRAs, which is very different from the environment of the civil court. For example, there is no presence of hold book on which the parties are supposed to take a kind of oath in order to tell the truth before jury, there is no witness box, and there is no cross examinations, where the witnesses have to answer either Yes or No. As far as my observation about the consumer court environment is concerned it is better than the civil court but it is still necessary to modify it. Especially some of the Presidents of the CDRAs wanted to practice the civil court traditions. For example, parties were in one group, lawyers were in one group and members were in one group. The consumer should be treated as equal as lawyers especially during the hearing time. While presenting the facts of the case by the consumer there are some incidents where the members made jokes on the ways in which the parties were presenting the case. Such incidents should be stopped immediately. In some cases the parties were unable to sit in a relaxed manner. Though these issues were minor, they certainly had an impact on the environment of the CDRAs. However, the presidents and members of the fora were opined that the environment of the fora is favourable to the consumers.

(iii) Accessibility of CDRAs:

In general the accessibility of CDRAs to the aggrieved consumers is easy because there is no fee and the state governments can establish more than one district forum in a district if it thinks it is necessary. It is essential to avoid such inordinate delays in establishing the district fora and providing access to consumers to redress their grievances. But in practice most of the district fora are not functioning hence the accessibility of the fora is not easy as laid down in the Act.
(iv) Lawyers Involvement in Consumer Cases:

The CDRAs should be free from the legal jargon as this is also one of the motivations of the act for setting up of separate courts for consumers. The act says that there is no need to engage a lawyer for getting redressal from the CDRAs for consumer disputes, which was also accepted by the members of the fora. And at the same time they opined that the lawyers’ involvement is unavoidable if the cases are complicated in nature. The possibilities of involvement of lawyers in CDRAs is due to either the complicated nature of cases or the opposite party engages the lawyer or when the consumers don’t know the legal procedure due to lack of time or information. Problems do arise when the consumer is party-in person and the opposite party engages a lawyer. It is difficult for the consumers, especially those who do not know anything about the legal language as they are incomparable, to argue with the skilled lawyers. In such a situation it is very difficult to get compensation from the opposite parties even though the members give support to the consumers. The usefulness of such support is not measurable and it simply depends upon the way in which the consumers receive the support. The involvement of the lawyers may not only be a cause for laws delay but also a cause for the application of legal technicalities in consumer disputes. However the majority of the lawyers for consumer counsels reject this opinion. They state that the laws delay is not because of lawyers’ involvement but it is mainly because of those members of the CDRAs who do not follow the rules and regulations in the case of adjournments. They also opined that the involvement of lawyers in the CDRAs is advantageous to the consumers.

(v) The Presence of Consumer during the Hearings of the Case:

In general the consumer can file the case in CDRAs by registered post. Based on that complaint the CDRAs issue a notice to the opposite party to give his or her version about the facts of the case. If there is difference between the parties, then the CDRAs call the parties and after listening to both parties’ arguments, if it is necessary to send the goods to the laboratory for testing and wait for the results or if it is not necessary to deliver the judgment immediately. At the time of delivering the judgment the presence of the consumer seems to be not necessary because the CDRAs send the copy of the order by registered post. Yet the CDRAs call the consumer more often than his or her presence is required for providing the redressal.

(vi) Need for expert advise on Scientific and Technical Issues
The CDRAs depend on the advice of the experts especially on scientific and technical knowledge like medicine, the services of doctors’ etc., in order to provide incentives to the parties to take precautions to reduce the risk of harm.

(vii) Question of Informational Disadvantage:

The theoretical arguments for the alternative legal system, i.e. the courts having less informational advantage especially on scientific and the technological knowledge, may also prevail in the case of CDRAs because of the following reasons viz., the appointment of non-legal members which may further intensify the informational disadvantage on scientific and technological knowledge over standards and it may also be true that the CDRAs speedy, inexpensive and simple redressal sometimes leads to inadequate information.

(viii) Inadequate Wealth of Tortfeasors:

Often, the CDRAs are unable to provide any redressal for the consumers because of inadequate wealth of the tortfeasor. In such a situation regulatory system works effectively because, the ex-ante fine is much lower than the ex-post compensation. The ex-ante price can be calculated on the basis of expected damages, whereas the ex-post compensation is based on the actual damage. In addition, the other possibility is to provide criminal punishment to the tortfeasor i.e. imprisonment.

(ix) Ability of Providing Compensation for Suffering and Other Immaterial Damages

The CDRAs are also unable to provide adequate compensation, if the defective goods or deficiency of service causes damages to the consumer, if the claim is based on sentimental value or mental agony. It is evident that the liability system is unable to calculate and award the cost of compensation equal to the subjective value based claim of the complainant and his family. This is mainly because the CDRAs want to calculate and award the costs of compensation based on subjective value.

(x) Compensation for Complicated Cases:

The CDRAs are simply dismissing the case even though the case is under the purview of the consumer protection act, because the case is complicated in nature,
needs lot of investigations and also needs lot of time to dispose of the case. In general the CDRAs are not strictly following the time bound disposal of the consumer disputes, which provided under section 13 of the COPRA due to several reasons, such as

1. Frequent adjournments
2. Non-appointment of the CDRAs members,
3. Absence of parties and the members of the CDRAs.
4. Whenever complicated questions arise
5. Wherever deep investigations are required to pronounce the order
6. Delays in serving notices to the parties because of postal delay
7. Absence of not only the parties but also members of the CDRAs

(xi) The Problems Involved in Implementing the Orders:

The CDRAs are unable to implement their orders, especially, in the case where the tortfeasor does not belong to the jurisdiction of a particular District Forum. There are no specific rules and regulations under the Consumer Protection Act to enforce CDRAs orders, whenever an order is issued against the respondent who is out of the territorial limits of a particular District Forum.

(xii) The Discretionary Powers of the Members of the CDRAs:

The Consumer Protection Amendment act 1993 has given wide discretionary powers, for example, they can allow the original cases and appeals even after expiry of limitation period to the members of the CDRAs in order to strengthen the CDRAs to protect the interests of the consumers. And at the same time there is no proper guidelines regarding awards of the compensation in general and in particular to the award of application costs, rate of interest and sometimes there is no proper calculation made by the CDRAs in the case of awards which may perhaps lead to the adverse effects. Section 14 (1) of the act
pronounces the power of CDRAs to award the compensation to the complainant at their discretion, though there are no criteria to be followed by CDRAs while pronouncing the awards to the petitioner. Even in National commission the award of compensation seems to be arbitrary.

(xiii) Law’s Delay:

Speedy disposal of the cases is one of the major objectives for establishment of separate courts for consumer disputes. It seems that the CDRAs are also not free from the law’s delay in spite of its time bound redressal. Section 13(1) of the Act pronounces that the CDRAs should dispose/ dismiss the case within stipulated time limit. According to the empirical evidence, since the inception of CDRAs upto the end of December 2004, 81.27 per cent in the State Commission of Tamil Nadu, 72.52 per cent of the National Commission and 60.18 per cent in the District Fora of Tamil Nadu of the total cases filed were not disposed / dismissed within the time limit prescribed by the CDRAs.

(xiv) Threat based Withdrawals by the Consumer:

Of the cases filed, the cases withdrawn by the consumers accounted for 19.05 percent in the State commission of Tamil Nadu, 13.16 percent in Madurai, 15.68 per cent in Dindugal and 18.93 per cent in Pudukkottai District fora. It may be either because the complainant was satisfied with the offerings of the opposite parties, which are a kind of positive sign, or because the consumer may have faced a severe threat from the opposite party, which seems to have negative impact on fulfilment of the consumer rights because they are unable to get the redressal from the CDRAs. The threat-based injustice through the liability system may not only affect consumers but also judges as the opposite parties several times threatened them.

(xv) Imposing costs on the Consumer for Frivolous or Vexatious Claims:
In general even till the date the CDRAs are in such a position that they are unable to make clear distinction about which cases genuinely come under the purview of the Consumer Protection Act 1986. In practice this type of problem may be overcome by case by case method which is one of the advantages that the liability system provides to the society in order to reduce the risk of harm. In fact though the act was enacted in the year 1986, few of the CDRAs started functioning only from the 4th quarter of the year 1988 and even up to the year 1993 the CDRAs were not fully established all over the country. Especially in Tamil Nadu the working of the CDRAs started as Saturday courts and did not have adequate staff and separate building even up to the year 1993. The appointment of the members was based on political influence even up to the Amendment Act 1993. In such circumstances it is not possible to draw a clear distinction about the cases which come under the purview of the act and those which do not. Even after the amendment there was a lot of confusion among the members of CDRAs on this issue. But suddenly the amendment act 1993 section 26 pronounced that the consumer had to pay to the opposite party upto Rs.10,000/- or as may be specified in the order by the CDRAs for filing frivolous or vexatious claims. This had an adverse effect on the protection of the interests of the consumer as it acted as deterrent effect on the aggrieved consumer, who were merely incompetent to decide whether the cause of action came under the purview of the act or not. Inclusion of these types of clause does much harm to the consumers rather than protecting the interests of consumers.

(xvi) The Problems Involved in the Case Appeals:

It seems that the CDRA are somehow unable to award the costs of compensation based on the actual figures. Does the consumer get the exact compensation through the consumer court? It is clearly evident that the consumer forum needs to take some favourable steps like award the costs based on the inflated price in order to provide incentives to the tortfeasor to take precautions in order to reduce the risk of harm. There are a lot of cases of example of how the tortfeasor, can delay the